



**National Survey of Canadians' Knowledge of
the Law on Physical Punishment of Children
(Section 43 of the *Criminal Code* of Canada)**

Conducted by PR Exchange

January to March 2006

Executive Summary

Section 43 of the *Criminal Code* of Canada allows physical punishment of children by school teachers and parents by providing a defence to a charge of assault if the courts consider the punishment reasonable and for the purpose of correction. In 2004, the Supreme Court of Canada narrowed the grounds on which this law can be used as a defence to a charge of assault of a child. As Toronto Public Health has a mandate to promote the safe and healthy development of children, it commissioned a national survey to assess Canadians' awareness of the Supreme Court's limitations on the definition of reasonable corrective force. Its objective was to evaluate the impact of the decision on public knowledge relevant to the health of Canadian children.

The findings demonstrate that a majority of Canadians did not know about the Supreme Court's decision about section 43 – the law on physical punishment of children. Of those who reported knowing about the Supreme Court decision, less than one in five knew the legal limitations placed on its use by the Supreme Court. The survey also found that a minority of Canadians believed that parents and teachers are allowed to physically punish children. Of the minority of Canadians who believed that parents are allowed to physically punish children, most were unaware of the legal limitations on its use. These findings indicate that the Supreme Court's decision has not effectively increased protection for children.

The Government of Canada can improve the legal system's effectiveness in protecting children by repealing section 43. This option would be consistent with or clarify the existing beliefs of many Canadians who believe that physical punishment of children is not allowed by law. It would reinforce the government's own efforts to eliminate physical punishment and support the positive parenting initiatives of hundreds of Canadian professional organizations. Furthermore, repealing section 43 would uphold the principles of the *United Nations Convention on the Rights of the Child* and the recommendation of the UN monitoring committee that Canada eliminate this defence from the *Criminal Code*. A 2003 national survey demonstrated that the majority of Canadians were in favour of removing section 43 from the *Criminal Code* (Toronto Public Health, 2003).

Background

Toronto Public Health received Early Childhood Development (ECD) funding from the Province of Ontario to work with community partners to implement a family abuse prevention project to promote the safety and healthy development of young children and their families. One component of this project focuses on the prevention of physical punishment of children with the aim of reducing physical abuse. Approximately 70% of substantiated physical abuse cases arise from parents' use of physical punishment.

A growing body of research indicates that physical punishment is a risk factor in children's development. These cumulative and consistent research findings indicate that physical punishment places children at risk of physical injury, impaired mental health, poorer parent-child relationships, and increased childhood and adolescent aggression and antisocial behaviour (Gershoff, 2002). Physical punishment in childhood has also been associated with negative outcomes in adulthood such as increased aggression, poorer mental health, and an increased risk of abusing one's own child or partner (Gershoff, 2002). Most parents believe that physical punishment is ineffective and potentially harmful, often feel regretful or guilty about using it, and want information on effective discipline for young children (Durrant et al., 2004).

On the basis of this research, many nations are re-shaping their public health policies to include physical punishment prevention as a core component of family violence prevention strategies. These policy shifts tend to focus on: 1) public education aimed at raising awareness of the risks associated with physical punishment, as well as providing information on child development and safe and effective discipline; and 2) banning all forms of physical punishment in recognition of the role that legal justification of physical punishment plays in its normalization.¹

In Canada, some progress has been made in public education. In 2004, the Public Health Agency of Canada published a brochure called, “What’s Wrong with Spanking?” that was distributed through its Nobody’s Perfect parenting program and made available to the general public through the National Clearinghouse on Family Violence. But Canada’s progress in the legal arena has not kept pace with its public education efforts. Section 43 of the *Criminal Code*² of Canada allows the use of physical punishment of children by school teachers, parents, and those acting in the place of parents, by providing a defence to a charge of assault if the courts consider the punishment reasonable and for the purpose of correction. This section has been in the *Criminal Code* since 1892. Recently, the Supreme Court of Canada heard a constitutional challenge to section 43 that was based on the argument that the law discriminates against children based on their age and violates children’s rights to physical security.

In 2004, in a split decision, the Supreme Court of Canada upheld the constitutionality of section 43. However, the Supreme Court narrowed the grounds on which this law can be used as a defence against the assault of a child. According to the Court’s decision, the use of force against a child is justified if:

1. it is administered by a parent (teachers may not use corporal punishment³);
2. the child is age 2 to 12 years, inclusive;
3. the child is capable of learning from it;
4. it constitutes “minor corrective force of a transitory and trifling nature”;
5. it does not involve “the use of objects or blows or slaps to the head”;
6. it is not degrading, inhuman or harmful; and
7. it is corrective – that is, not the result of the caregiver’s “frustration, loss of temper or abusive personality.”⁴

The Supreme Court also ruled that the seriousness of the child’s misbehaviour is not relevant in judging the “reasonableness” of the force used. Therefore, while the wording of section 43 remains unchanged in the *Criminal Code*, its interpretation has changed substantially. For

¹ The following countries have banned all forms of physical punishment and repealed the reasonable force defence from their criminal law where it exists: Sweden (1979), Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Denmark (1997), Croatia (1998), Latvia (1998), Germany (2000), Israel (2000), Bulgaria (2000), Iceland (2003), Ukraine (2004), Hungary (2004), Romania (2005), Greece (2006), and Netherlands (2007).

² Section 43 of the *Criminal Code* states: “Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances. R.S.C., 1985, c. C-46”

³ The Court ruled that teachers may use reasonable force only to “remove a child from a classroom or to secure compliance with instructions, but not merely as corporal punishment.” To date, however, teachers remain identified in section 43 as authorities who are “justified in using force by way of correction of a pupil or child.”

⁴ *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76, 2004 SCC 4 (CanLII). The decision is posted at <http://www.canlii.org/ca/cas/scc/2004/2004scc4.html>.

example, striking a 1-year-old child is no longer justifiable under section 43 and neither is slapping a child's head or spanking a child in frustration.

A minority of the Supreme Court disagreed with this judgement and held that section 43 does violate the *Canadian Charter of Rights and Freedoms*.

Purpose of the Survey

The Supreme Court's decision to place limits on the interpretation of section 43 was intended to protect children from physical and psychological harm arising from physical punishment that does not conform to these limitations. If this change to section 43 is to have the intended effect, the public needs to be aware of these limitations.

Toronto Public Health commissioned a national survey to assess Canadians' knowledge of the law on physical punishment of children, and specifically Canadians' awareness of the Supreme Court's limitations on the definition of reasonable corrective force. Its objective was to evaluate the impact of the decision on public knowledge relevant to the health of Canadian children.

Methodology

The study was conducted by PR Exchange through telephone interviews with a representative sample of 2,451 English- or French-speaking Canadians, 18 years of age or older. The interviews were conducted between January and March 2006, two years after the release of the Supreme Court's decision on section 43. The maximum margin of error for a sample of 2,451 respondents is $\pm 2.0\%$, 19 times out of 20.

Before starting the interview, all respondents were told that the survey was about the law in the *Criminal Code* of Canada concerning physical punishment of children and what Canadians know about this law. They were informed that "physical punishment" includes "spanking" and "slapping." They were also told that the survey was not about how parents discipline their children.

Statistical significance was set at the 95% confidence level. Percentages do not always add to 100% due to rounding and/or non-response.

In addition to examining results for the whole sample, the results for respondents who were parents with children from birth to 13 years of age were also examined as it could be argued that the law on physical punishment would be most salient to parents currently raising young children.

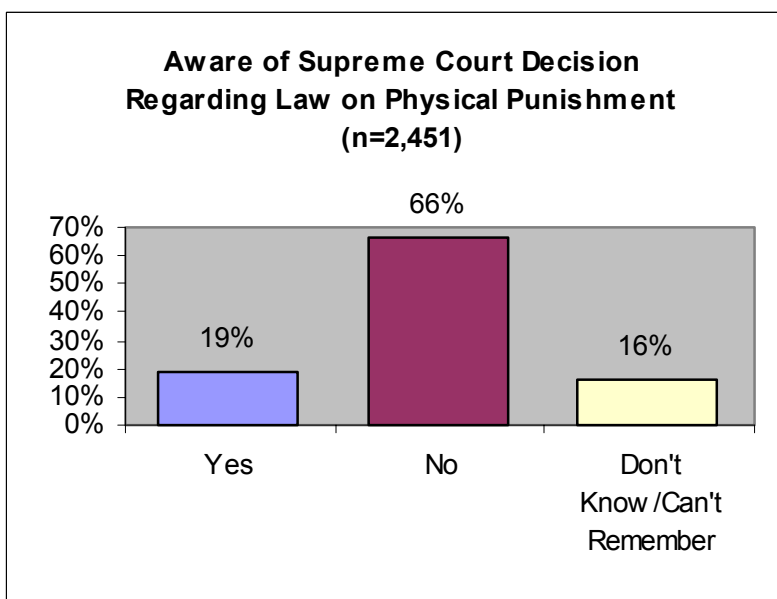
Findings

Awareness of the Supreme Court Decision on Section 43

As Figure 1 shows, two-thirds of respondents were not aware of the Supreme Court's decision regarding the law on physical punishment, 19% were aware, and 16% said they did not know or could not remember if they had heard about it.

Awareness was no greater among parents than among the general population; 66% of parents were unaware of it (18% were aware of it and 15% didn't know or couldn't remember if they had heard about it).

Figure 1

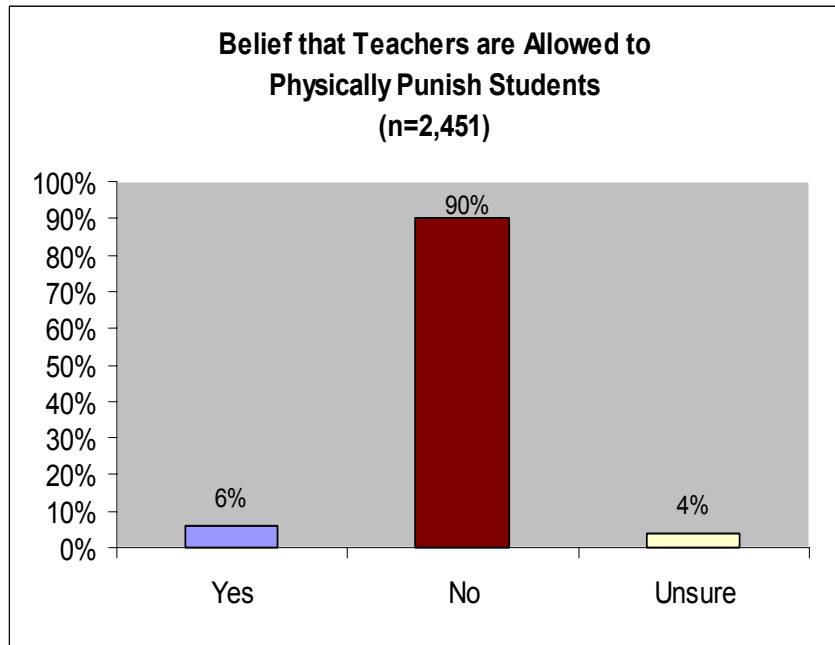


Canadians' Beliefs about the Law

As shown in figure 2, only 6% of respondents believed that the law allows teachers to use physical punishment to correct students' behaviour.

Among parents, in particular, only 4% believed that teachers are allowed to use physical punishment (93% believed that teachers are not allowed, and 3% were not sure).

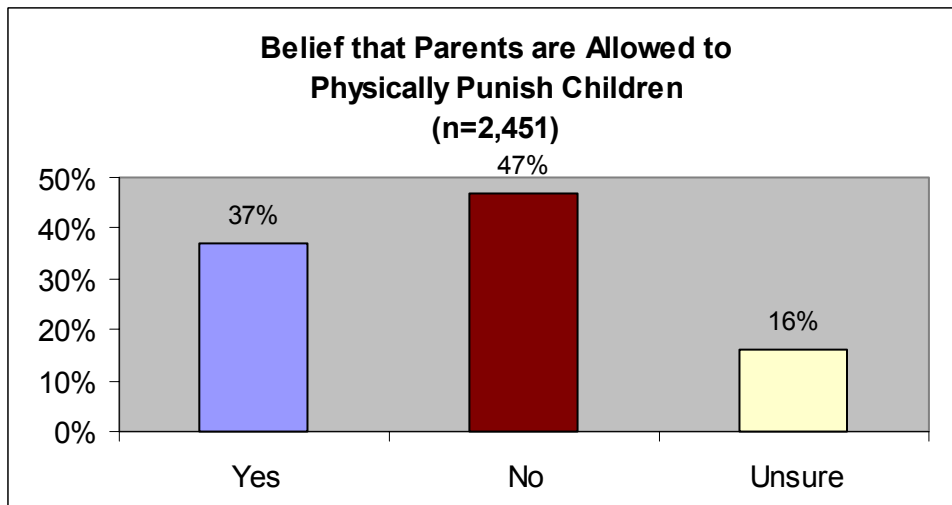
Figure 2



As shown in figure 3, a minority of respondents (37%) believed that the law allows parents to physically punish their children.

Similarly, among parents, 37% believed that the law allows parents to use physical punishment (49% believed it does not allow it, and 15% were unsure).

Figure 3



Canadians' Knowledge about the Legal Definition of "Reasonable Force"

Those respondents who believed that parents are allowed to use physical punishment were asked about the legal limits on reasonable force. They were asked to respond "yes, no, or unsure" to the following:

1. As far as you know, are parents allowed to physically punish children of any age?
2. As far as you know, are parents allowed to use objects to physically punish their children?
3. As far as you know, are parents allowed to physically punish their children anywhere on the body?
4. As far as you know, are parents allowed to physically punish their children when they are frustrated or angry? (possible responses were: Yes, No, Makes no difference, Unsure)
5. As far as you know, does the amount of force that parents are allowed to use to physically punish their children depend on the seriousness of the child's misbehaviour? (possible responses were: Yes, No, Think I know/Not sure)

These respondents also were asked if they knew how much force parents are allowed to use to physically punish their children. The possible responses were: "I know, I think I know, or I really don't know."

Figure 4 shows that, of those who believed that parents are allowed to use physical punishment, at least half knew at least one of the legal limits on reasonable force. However, only 19% knew all five legal limits. Figure 5 shows that a majority (64%) reported that they did not know how much force is allowed and 13% were unsure.

Similar results were found among parents. Only about one quarter (24%) reported knowing all five legal limits on reasonable force. The majority (63%) did not know how much force is allowed, and 17% were unsure.

Figure 4

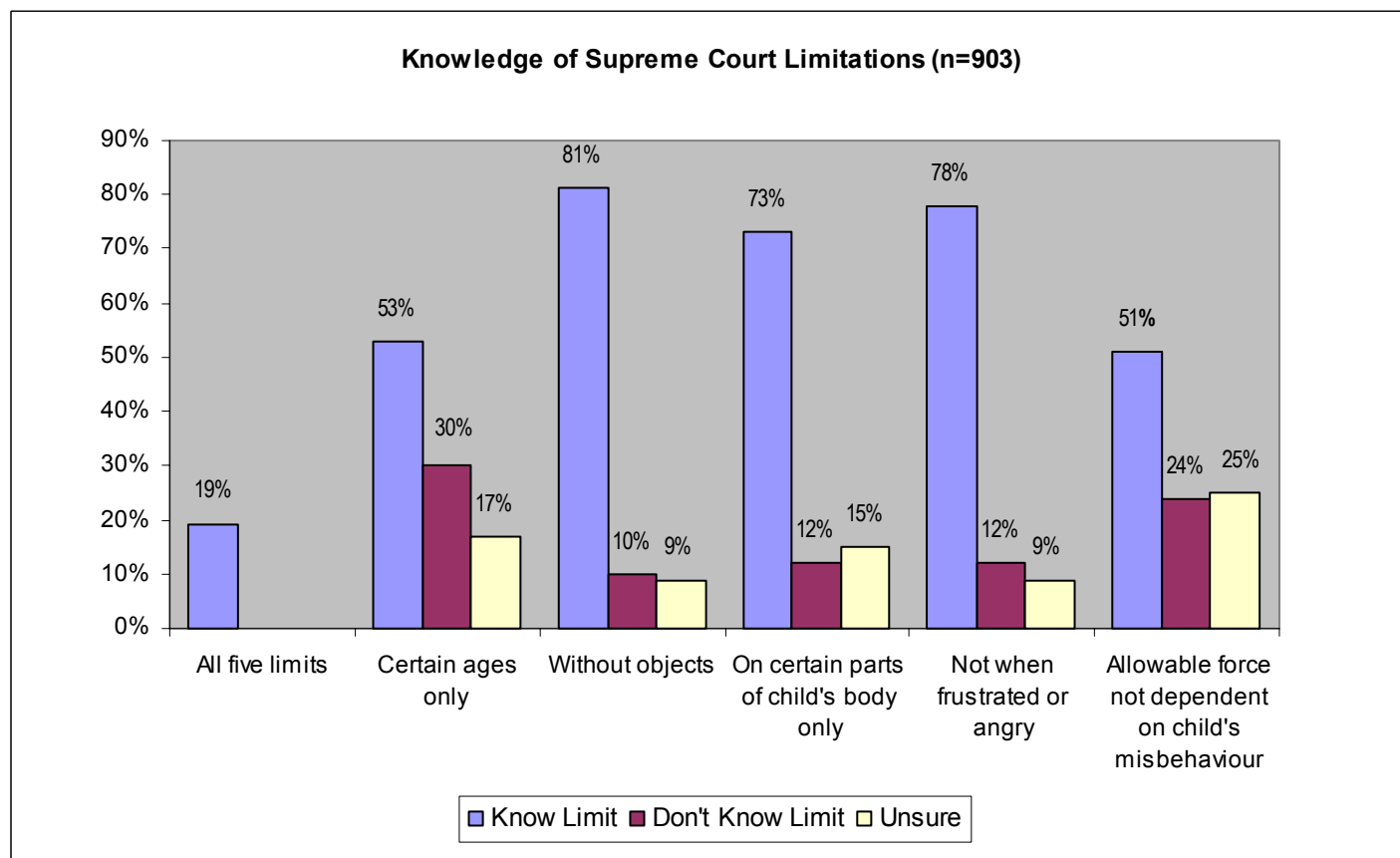
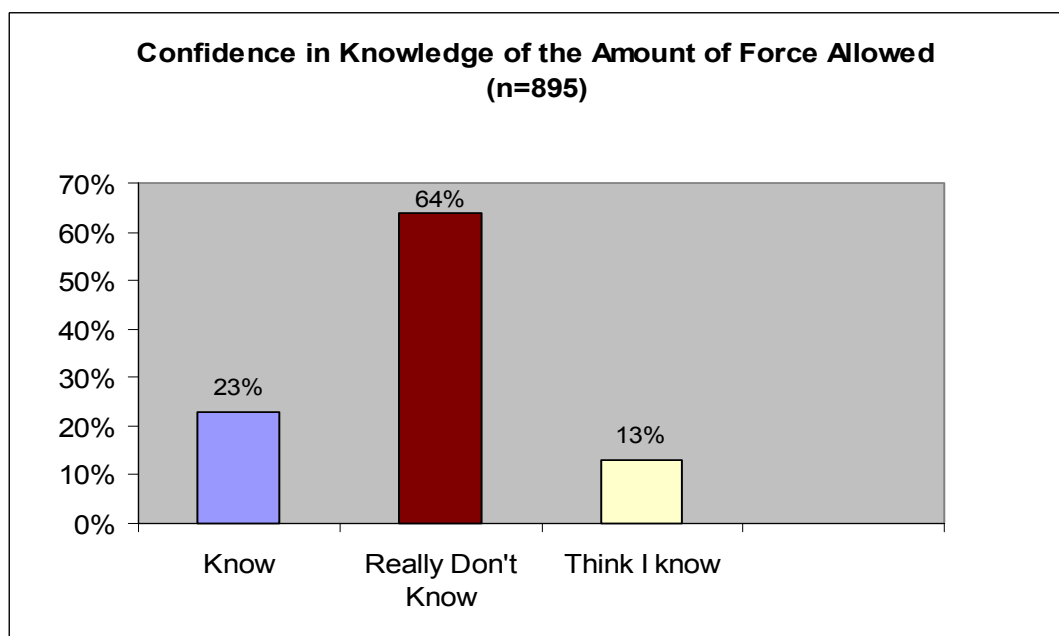


Figure 5



Does Awareness of the Decision Equate to Knowledge of the Supreme Court Decision?

As shown in figure 6, most respondents believed that teachers are not allowed to physically punish students regardless of whether they were aware of the decision. Approximately 9 out of 10 respondents of each group believed that teachers are not allowed to physically punish students. The findings for parents were very similar as shown in figure 7.

Figure 6

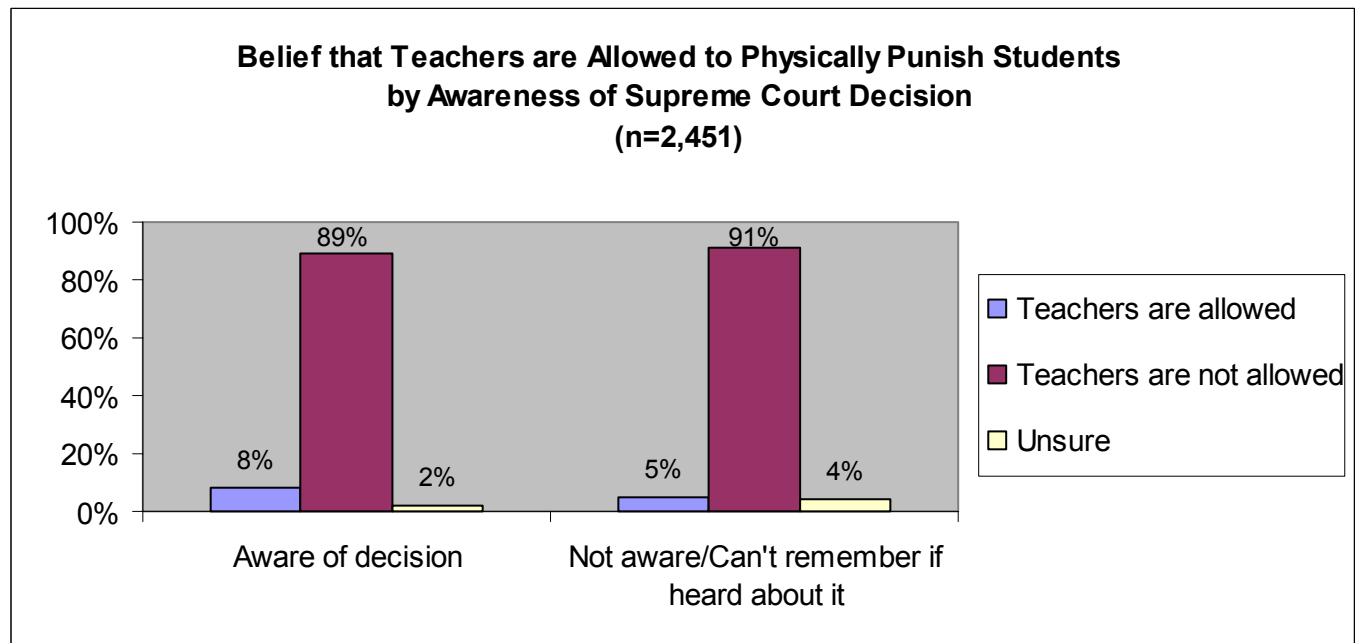


Figure 7

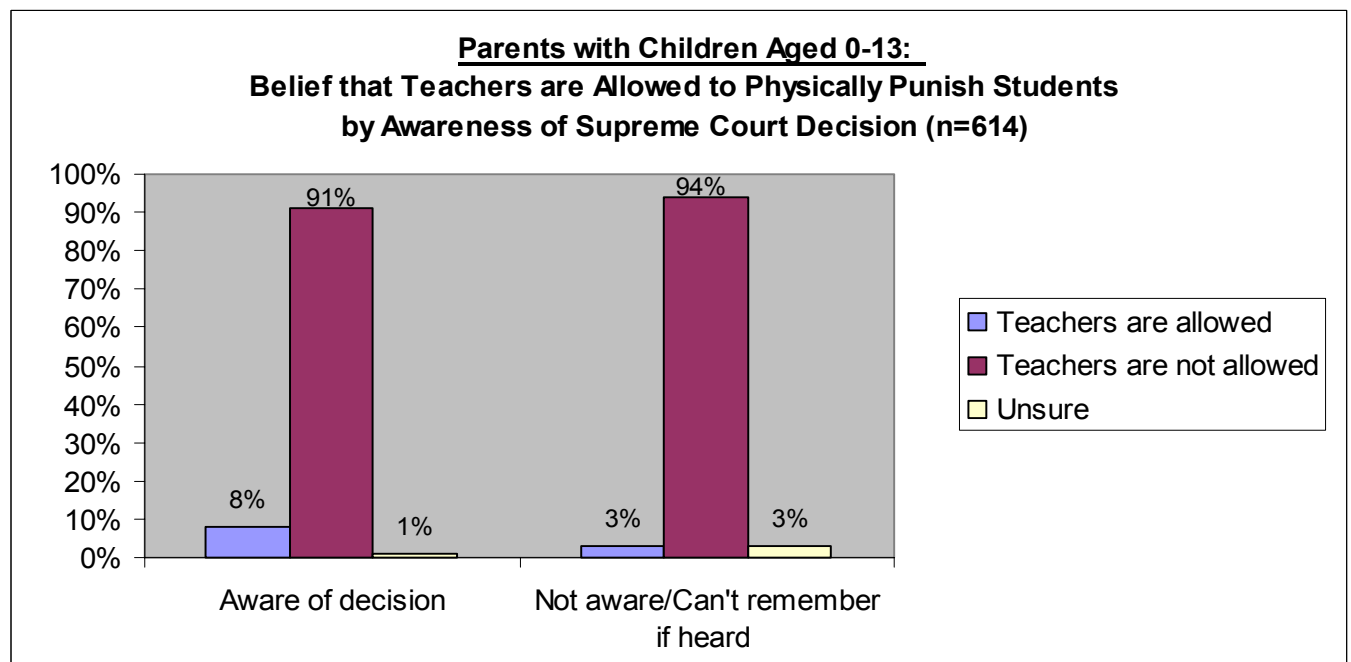


Figure 8 shows that approximately one-half of respondents believed that parents are not allowed to physically punish their children, regardless of whether they were aware of the Supreme Court's decision. However, compared to those who were not aware of the decision, respondents who were aware of the decision were more likely to believe that parents are allowed to physically punish their children and less likely to feel unsure that this is allowed.

Figure 9 shows that among parents, those who were aware of the decision were more likely to believe that parents are allowed to physically punish their children, less likely to believe that parents are not allowed to do so, and less likely to be unsure about this than parents who were not aware of the decision.

Figure 8

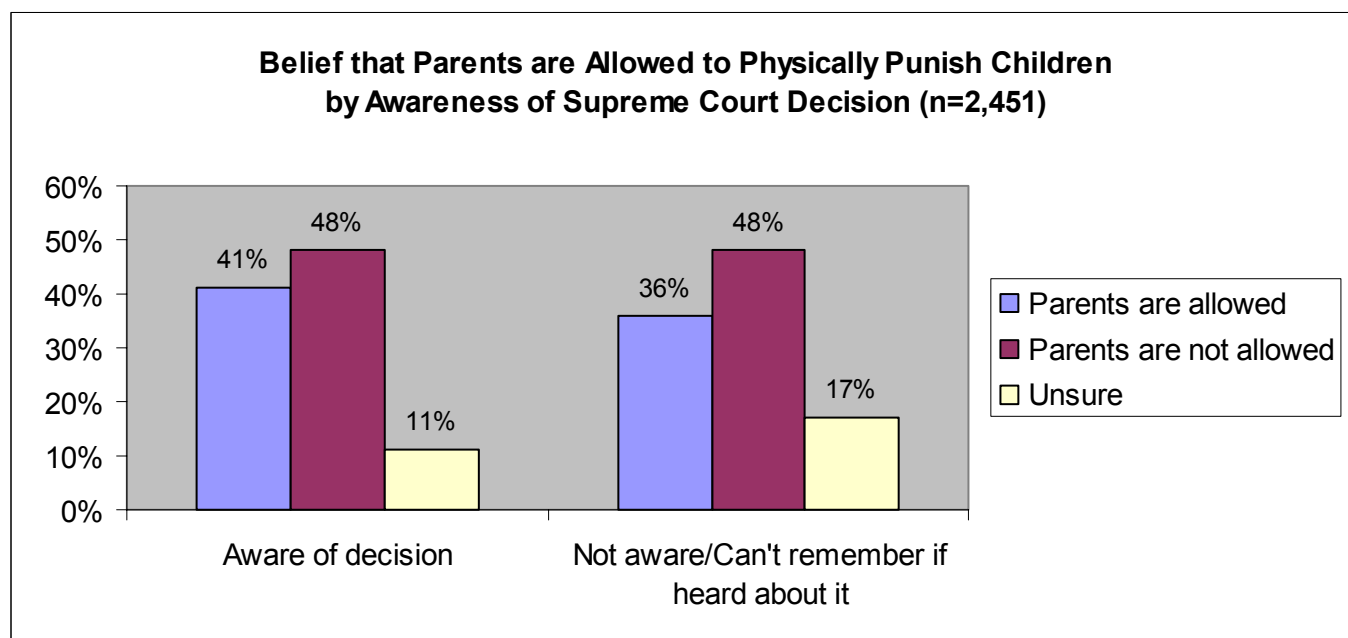
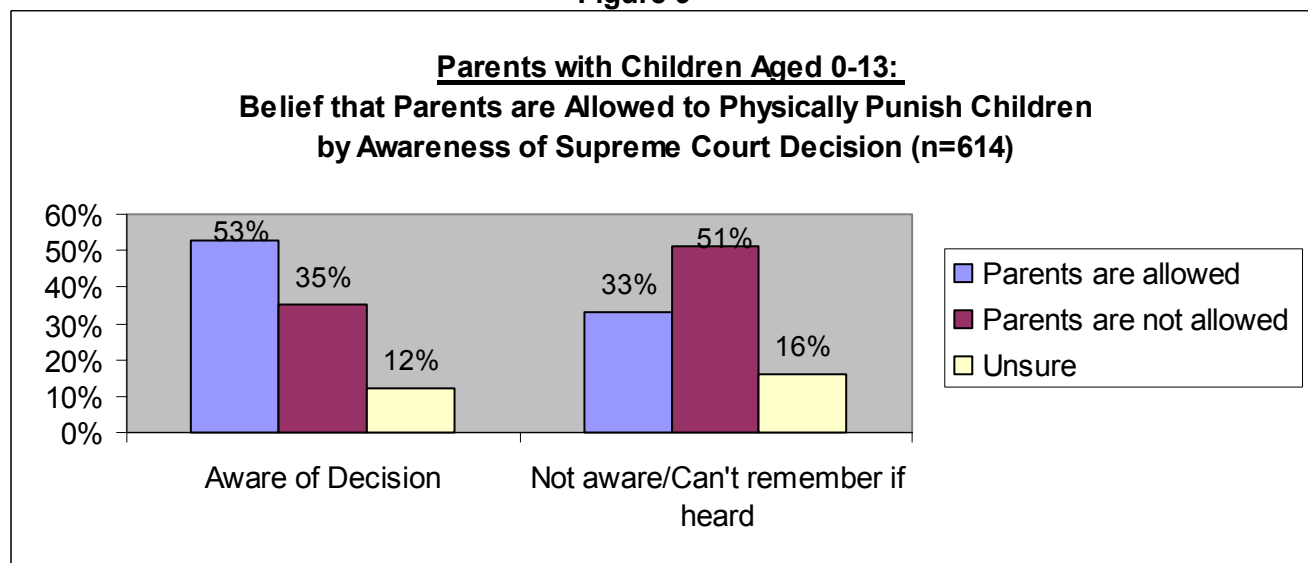


Figure 9



As shown in figure 10, respondents who were aware of the Supreme Court decision were no more likely to know all five legal limits on physical punishment than those who were unaware of the decision. This finding suggests that respondents might have reported what they “believed” to be true, rather than what they “knew” to be true. However, despite the fact that they did not know the five limits, those who were aware of the decision were more likely to report knowing how much force is allowed, as shown in figure 11. Similar results were found among parents. Parents who were aware of the Supreme Court decision were no more likely to know the five limits than parents who were unaware of the decision.

Figure 10

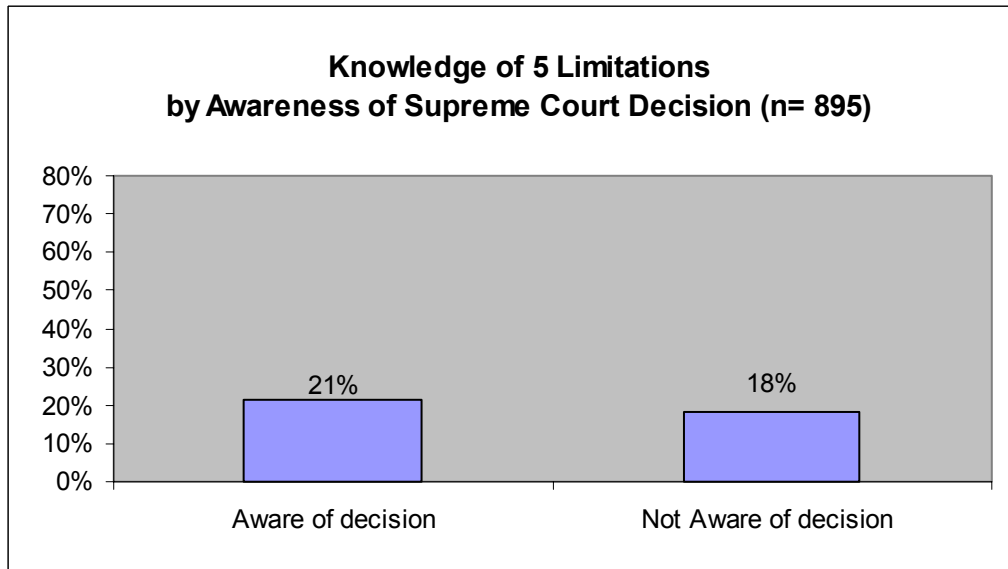
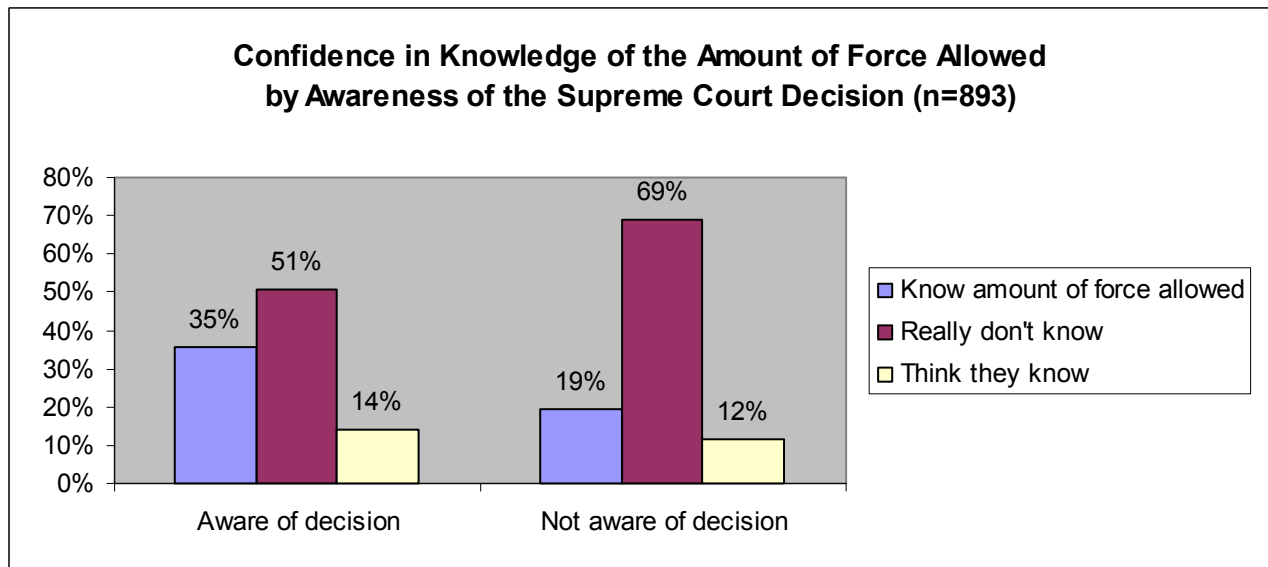


Figure 11



Summary

A minority of Canadians believe that parents are allowed to physically punish their children. An even smaller minority believe that teachers are allowed to physically punish their students.

Most Canadians were unaware of the Supreme Court decision that placed legal limits on the amount of force that parents can use to physically punish their children. Surprisingly, Canadians who were aware of the decision knew no more about the legal limits on physical punishment than those who were unaware of the decision. However, they were more likely to believe that parents and teachers are allowed to physically punish their children - and they were more likely to believe that they knew how much force the law allows.

These findings suggest that the Supreme Court's decision did not have an impact on the knowledge of most Canadians, other than perhaps reinforcing the notion that parents and teachers are allowed to use physical punishment.

The intent of the Supreme Court's limitations was to better protect children by limiting the conditions under which section 43 could be used as a defence to a charge of physical assault of a child. But only about one fifth of Canadians who believed that parents are allowed to physically punish children knew five of the limitations and only one quarter felt they knew how much force is allowed. The majority of parents with children under age 14, for whom the Supreme Court decision is arguably most relevant, also did not know the limits or the amount of force that is allowed. This situation suggests that the law is ineffective in protecting children in the way the Court had intended, and it also places caregivers at risk of prosecution for acts that they do not know are criminal offences.

In order to improve the law's effectiveness in protecting children, the Government of Canada has two options. The first is to launch a campaign to inform Canadians about the legal limits on physical punishment. This option, however, would:

- inform Canadians who believe the law does not allow physical punishment that in fact it does, thus creating a risk that this information may encourage the use of physical punishment;
- contradict the government's own explicit message against physical punishment⁵;
- undermine the efforts of hundreds of professional organizations that strive to eliminate physical punishment and foster positive parenting,⁶ and
- violate the principles of the *United Nations Convention on the Rights of the Child*⁷ and contravene the recommendation of the UN Committee that oversees the implementation of the *Convention* that physical punishment of children in all settings, including the family, be prohibited.⁸

⁵ Health Canada and the Department of Justice Canada published a brochure called "What's wrong with spanking?" which states, "Never spank! It simply doesn't work - for the child or the parent." http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/spanking_tip_sheet_e_web.pdf

⁶ Over 240 organizations have endorsed the *Joint Statement on Physical Punishment of Children and Youth* which summarizes the literature on physical punishment, concludes that physical punishment is both harmful and ineffective, and advocates for parent education on safe and effective discipline.

⁷ Article 19 of the *U.N. Convention on the Rights of the Child* requires governments to protect children from all forms of physical or mental violence, injury, or abuse.

⁸ See *General Comment No. 8 (2006)*, United Nations Committee on the Rights of the Child www.ohchr.org/english/bodies/crc/docs/co/CRC.C.GC.8.pdf

The second option is to repeal section 43. This option would:

- be consistent with or clarify the existing beliefs of the majority of Canadians;
- reinforce the government's own efforts to eliminate physical punishment;
- affirm and support the positive parenting initiatives of hundreds of Canadian professional organizations; and
- uphold the principles of the *United Nations Convention on the Rights of the Child* and the recommendation of the UN monitoring committee.

In 2003, the findings of a national survey conducted by Decima Research demonstrated that the majority of Canadians were in favour of removing section 43 from the *Criminal Code*, for both teachers and parents (Toronto Public Health, 2003).

Given the large body of research evidence showing that physical punishment is associated with multiple risks for children's physical and mental health in the short-and long-terms (Gershoff, 2002; Durrant et al., 2004), Toronto Public Health supports the repeal of section 43 as the only viable option for the Government of Canada. Repeal would send a clear message that no physical punishment is acceptable, and would support the efforts of Toronto Public Health and hundreds of organizations across the country in promoting positive parenting.

References

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