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CHILD ABUSE

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CHILD ABUSE

ISSUE DEFINITION

"Spare the rod and spoil the child" is an old saying frequently used to justify the corporal punishment of children. While a spanking with one's hand is unlikely to cause serious injury, a sizeable number of children have received severe injuries or died in Canada as a result of beatings at the hands of their parents or guardians. Numerous others are sexually abused by relatives, neighbours, religious leaders, teachers or strangers. Among the issues in the study of child abuse, two emerge on the federal scene: possible changes to the *Criminal Code* and *The Canada Evidence Act* and the use of a federal registry to identify child abusers.

BACKGROUND AND ANALYSIS

A. Children's Rights

History has documented the power of parents. The Romans went further than any other legal system in placing the liberty and lives of children within the power of their father. Early Roman law referred to as *patria potestas* included the right of the father to give a child away or have it put to death. Under English medieval law a new concept took hold, *parens patria*, whereby the father had an obligation to exercise guardianship over minors. Under l8th-century English common law children were regarded as chattels. Parents had three duties: maintenance, protection and education; from these obligations followed the parents' claim to authority over children.

It has only been during the past 100 years that childhood has been recognized as a unique period. The first legal challenge in North America to the absolute rights of parents was in New York in 1870 when a social worker who was horrified at the neglect of a child sought legal assistance and finally turned to the American Society for the Prevention of Cruelty to Animals as a

means of obtaining legal sanction. Shortly thereafter, the American Society for the Prevention of Cruelty to Children was founded. Twenty years later, in 1891, the first such organization in Canada, the Children's Aid Society, was established in Toronto.

From this early beginning flowed legislation in North America to protect children who were neglected and abused. Such actions demonstrated a concern by the state for the well-being of children and an acknowledgement that parents did not have sole authority over their offspring. From this has evolved a feeling that a child is a citizen whom the state has an obligation to assist in exercising his or her rights. Thus, in recent years there has been a concern about the need for a children's bill of rights. No longer does a parent have the undisputed power of the Roman father.

B. Early Detection of Child Abuse

The first clues to child abuse were uncovered around the turn of the century by radiologists who, upon examining X-rays of children, discovered evidence of earlier fractures. In l946, an American, Dr. John Caffey, published a landmark article on multiple fractures in the long bones of infants suffering from bleeding in the skull. He postulated that these injuries were not accidental but were caused by some form of battering. Later, Dr. C. Henry Kempe of the Colorado School of Medicine became concerned about the large number of children suffering from mysterious injuries that did not appear to be caused by unobserved or unreported accidents. Through a survey of hospitals, Kempe found 250 to 300 cases of child abuse per million population; he coined the phrase "battered child syndrome" to describe his findings.

The intense publicity in the United States about child abuse in the late '50s and '60s led to the enactment of U.S. legislation requiring physicians and others to notify authorities of such abuse; by 1968 all 50 States had enacted such laws. Moreover, in 1974 the *Child Abuse Prevention and Treatment Act* created the National Center on Child Abuse and Neglect, an institution which provides grants to states and agencies for child abuse programs as well as for research. More recently, American research has looked at the relationship between child abuse and delinquency, teenage prostitution and wife battering.

Interest in Canada in child abuse was a product of the late '60s. At that time several provinces took steps to establish provincial registries as well as mandatory reporting laws. The

subject of child abuse was topical at annual meetings of various associations and national organizations. Meanwhile, the federal government convened consultations with the provinces and funded research and demonstration projects.

C. Definition

Child abuse is a general term used to describe a variety of injuries inflicted by a parent or guardian. There are three main types of abuse: physical abuse or battering; neglect, usually involving food or water deprivation or inadequate hygiene often resulting in failure to thrive; and sexual abuse, which includes pornographic exploitation, incest, violent molestation or paedophiliac contact.

Earlier definitions of child abuse tended to concentrate on physical abuse. Current definitions specify a wider range of activities including sexual abuse, an area which has only recently been given prominence.

One should note, however, the lack of a standard usable agreed-upon definition of child abuse in Canada. Each province specifies in its legislation certain types of injuries and also the age of the child. Thus, there is a wide variety of interpretation about what constitutes child abuse, a fact which complicates any national reporting system. Debate continues in Canada and the United States about what constitutes psychological abuse.

D. Extent of Child Abuse

The vast amount of unreported child abuse makes estimating the extent of this problem very difficult. Most provinces have child abuse registries, but child protection workers and victimization studies indicate that these registries record only a fraction of cases. However, the number of reported cases has been rising dramatically each year across the country.

Sexual abuse has been one of the least reported types of child abuse. The Badgley Report on Sexual Offences Against Children (1984) has published the highest estimate of child abuse, although it dealt only with sexual abuse. Based on a national sample of adult Canadians (rather than on child abuse cases known to the police or agencies) the study found that at some point in their lives 1 in 2 females and 1 in 3 males had been “victims of unwanted sexual acts.” Four-fifths of these incidents had happened when the victims were children or youths. Sexual abuse most often occurs in the afternoon, in the home of the victim or offender, and is more often abuse of girls than of boys.

In May 1991, Statistics Canada released its first national report on violent death among children in Canada. The report revealed that parents and other relatives, rather than strangers, are the commonest killers of children, and that children are at the greatest risk of being murdered when they are under five years of age.

From 1980 to 1989, 542 children under 12 were killed in this country. Of that number, 76% were killed by relatives. Two-thirds of those accused of murdering a child were its parents – one-third mothers and one-third fathers, while 3% were foster parents or step-parents, and 7% were other family members or relatives. Almost one-third of all Canadian children killed during the 1980s were less than a year old, and 70% of child homicide victims were under the age of five. Women were accused in 38% of the child killings; 12% of these women were under the age of 18, and almost half were under 25 years. The report stated that women who kill children are often "barely more than children themselves." Boys were slightly more likely than girls to be killed over the decade; boys were 53% of the child killings, and girls were 47%.

In addition to murder, the report looked at other violent crimes against children. Drawing on data from seven police departments across Canada, the report revealed that one-half of violent crimes other than homicide were sexual assaults. Of those accused of sexual assault against children, 98% were men. In 81% of sexual assault cases, the child knew the accused; almost twice as many girls as boys were victims of sexual assault.

A province-wide study of reported child abuse and neglect carried out by the province of Ontario's 54 Children's Aid Societies, reported its findings in 1994. During 1993, the study year, an estimated 46,638 children in the province were investigated for maltreatment. Maltreatment of a child was substantiated or suspicion confirmed in 58% of the cases; 42% of the cases proved to be unfounded. Of the fewer than one third (27%) of the investigated cases substantiated, 36% involved neglect, 34% physical abuse, 28% sexual abuse and 8% emotional maltreatment.

Not surprisingly, the alleged perpetrator of child maltreatment in 75% of cases was a parent or step-parent. Mothers were more often involved in maltreatment involving neglect (82%) whereas fathers were more likely to be involved in cases of physical abuse (54%). In investigated sexual abuse cases, 65% of which involved girls, 90% of the alleged perpetrators were male.

The study findings reaffirmed the association between poverty and reported child maltreatment. Of families reported for suspected child maltreatment, 42% were led by a single parent, more than three times the percentage of lone parent families in the general population. Over one third (36%) of families investigated for maltreatment relied on social assistance.

The results from the Ontario research were compared with the estimated incidence of child maltreatment in the United States (reported by the National Child Abuse and Neglect Data System). The U.S. estimate of 43 such cases per 1,000 children is slightly more than twice the Ontario estimate of 21 cases per 1,000 Ontario children. In addition to handling more child maltreatment cases, the U.S. child welfare system also deals with more cases involving serious harm, than does the Ontario child welfare system. The differences, according to the study's authors, may be related to higher U.S. poverty levels and the fewer social, medical and education services and programs in that country.

The Institute for the Prevention of Child Abuse, which funded the study, expects that the research methodology will be replicated in other provinces and will ultimately result in a national database on child abuse and neglect.

Although the true incidence of child abuse is unknown, there is overwhelming agreement that the abused child is likely to become an abusing parent. The cycle of violence breeding violence is well established. Now research is focusing on the role of child abuse in juvenile delinquency, teen prostitution and wife battering. Indeed, there is mounting evidence that being sexually abused in childhood is an antecedent to a number of adult problems. A recent study published by the University of California's Neuropsychiatric Institute uncovered a relationship between being sexually abused in childhood and being sexually harassed as an adult. Over three quarters (76%) of the women who reported being sexually harassed at work had been abused as a child. Among those who did not experience workplace harassment, 47% reported prior abuse. Women sexually abused as children often suffer from low self esteem, lack confidence, perceive themselves to be powerless and expect to be victimized. According to the study's author, they may be sexually harassed because they are seen to be vulnerable by sexually aggressive men. The link between sexual abuse and vulnerability in adulthood was also found in a recent study carried out by Toronto's Clarke Institute of Psychiatry. The research indicates that women with the eating disorder bulimia are three times more likely to have been sexually abused in childhood than women who are not bulimics. Women who have been abused are also five times as likely to be alcoholics and are at greater risk for major depression and anxiety disorders.

E. Role of Federal Government

One of the most contentious issues in the study of child abuse revolves around section 43 of the *Criminal Code* which reads as follows:

> Every school teacher, 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.

The original intention of section 43 was protection of the child from unreasonable force, not to sanction physical punishment by parents. Under English common law parents had complete control over children; thus section 43 acted as a restraining measure.

Critics of section 43 think that this provision gives legal sanction to parents to assault their children with impunity. Others feel that eliminating section 43 would remove the protection parents now have against criminal prosecution if they physically discipline their children. Furthermore, it would be easier to convict teachers of assault. The problem centres on defining "reasonable force," which can be defined quite differently by different individuals. Interviews of parents of abused children show that the parents usually feel that their actions, however severe, were simply an extension of a parent's normal disciplinary practices. Beatings or other measures are viewed not as sadistic but as acceptable child-rearing methods.

The argument about the retention or elimination of section 43 continues. In 1976 the House of Commons Committee on Health, Welfare and Social Affairs recommended further consideration of this section saying it was "not prepared to recommend the repeal of section 43 without further study." By 1981 this same Committee had moved to the position of advocating its immediate repeal. The House of Commons Standing Committee on Justice and Legal Affairs received correspondence from the Committee to Repeal Section 43 of the *Criminal Code of Canada* ("the Committee") on 17 March 1994. As indicated by its title, the Committee supports the repeal of, rather than amendments to, s. 43. It highlights research findings showing the relationship between physical punishment in childhood and aggressive and violent behaviour in adulthood and the fact that child abuse very often consists of a parent's use of legal corrective force carried too far. Indeed, the 1993 Ontario study of reported child abuse and neglect found problems with punishment or discipline were factors in 72% of substantiated cases of physical abuse. The Minister of Justice, during his April 1994 appearance on Main Estimates before the Justice and Legal Affairs

Committee, stated that his Department is working with federal ministries and women's organizations to review the use of force in correcting children. No government action has been announced.

Although the detection of abuse and services for abused children are governed by provincial law, the federal government's role is reflected in the *Criminal Code*, cost-sharing arrangements for health and welfare services, and grants for research. As the provinces are responsible for property and civil rights, they have enacted legislation to protect children under a specified age and to intervene if the child appears to be neglected or in need of protection according to criteria set out in the legislation.

The federal government under its constitutional powers has enacted the *Criminal Code*, which contains certain provisions affecting abused or neglected children. These include sections respecting the use of force as a method of discipline; penalties for sexual offences and indecent acts against children; penalties for every person who endangers the morals of a child or renders the home an unfit place for the child; the duty of a parent or guardian to provide the necessities of life and penalties for failure to do so; and penalties for abandoning or exposing a child under 10 years so that its life is endangered, or likely to be endangered, or health is injured, or likely to be permanently injured.

The mandate of the Committee on Sexual Offences against Children and Youth, chaired by Dr. Robin Badgley, was "to enquire into the incidence and prevalence in Canada of sexual offences against children and youths and to recommend improvements in laws for the protection of young persons from sexual abuse and exploitation." To this end, the Committee (known as the Badgley Committee) designed and carried out broad-ranging social and legal research that produced the first interdisciplinary and national perspective in this country on the problems related to the sexual abuse of children. Its final report included 52 recommendations, many of which dealt with needed amendments in the laws for the protection of young victims of sexual abuse. However, the Badgley Committee was critical of the ineffectiveness of both legal and social measures to protect children against sexual offences. It wrote:

> On the basis of our findings about some 10,000 cases of sexual offences against children and youths, our principal conclusions are that these crimes occur extensively and that the protection now afforded these victims by the law and the public services is inadequate. The law is inequitable in its application. Sharp inequalities exist, often occurring in the same community, in the provision of assistance and protection for the victims of these offences.

Subsequent to the Committee's 1984 report, the federal government introduced amendments to the provisions of the *Criminal Code* dealing with child sexual abuse. On 1 January 1988, Bill C-15, An Act to amend the Criminal Code and the Canada Evidence Act with respect to sexual offences against children, was proclaimed into law. The federal government's legislative initiative in this area sought to remedy a number of the problems child victims experienced when they sought justice in the criminal courts.

The amendments contained in Bill C-15 created new laws concerning offences of child sexual abuse and new evidentiary provisions, and it refined some existing offences. The amendments were enacted to improve the protection and experiences of child victims and witnesses, facilitate the prosecution of child sexual abuse cases and balance penalties with the gravity of the offences.

Bill C-15 extended greater protection to persons under 14 by voiding their consent to sexual activity with an adult (ordinarily a defence in sexual assault cases). It created the new offences of "sexual interference" (touching a person under 14 for a sexual purpose), "invitation to sexual touching" (involving a person under 14) and "sexual exploitation" (sexual touching or invitation of persons over 14 but under 18, by a person in a position of trust or authority).

The legislation also created new and special procedural rules for the trial of sexual offences involving complainants under 18. For example, it allows a young complainant to testify in sexual offence proceedings from behind a screen or from outside the courtroom (ordinarily by means of closed-circuit television). Victims under 18 may also give evidence in such proceedings by videotape made within a reasonable time after the commission of the offence, so long as the complainant adopts the contents of the videotape during testimony at trial. At trial of those accused of various sexual offences, the complainant and any witness under the age of 18 have the right to seek an order banning publication of identifying information. The presiding judge must inform them of that right and grant the order, upon application by either the witness, complainant or prosecutor.

Further, corroboration of the victim's testimony is no longer required for conviction in sexual offences. The legislation removes the right of defence counsel to question the complainant at trial about sexual activity with someone other than the accused. Amendments to the *Canada Evidence Act* render an accused's husband or wife a competent and compellable witness in the prosecution of the aforementioned *Criminal Code* offences; this may have particular application

in cases of abuse by a parent. For child sexual abuse offences, "recent complaint," whereby the absence of a complaint soon after the alleged offence could be used to challenge the integrity of the witness, was abolished. Finally, the *Canada Evidence Act* allows an unsworn child who is able to communicate his or her evidence to testify in court on a promise to tell the truth.

F. Central Registries

During 1993, the House of Commons Standing Committee on Justice and the Solicitor General reviewed the child sexual abuse provisions of the *Criminal Code* and the *Canada Evidence Act*. Witnesses called for the creation of a national register of convicted child abusers to screen those seeking paid or volunteer work with children. The Committee agreed that such a national register is necessary for the better protection of children. It recognized, however, that there are significant legal and administrative barriers to the creation and maintenance of such a register. In light of the importance of the scheme and the need to ensure it is both fair and workable, the Committee recommended that a parliamentary committee conduct an extensive study on the development and implementation of a national child abuse register.

In November 1994, the federal government implemented a system that will enable organizations and agencies that work with children – Girl Scouts, Boy Scouts, Big Brothers, sports groups, child care centres, school boards – to screen potential employees or volunteers for a record of previous child sex offences. The system is being operated through the RCMP-run national information data bank, CPIC, which contains information on people with criminal records. CPIC's data base has been expanded to include information on both indictable and summary child abuse offences, family violence, and court orders. People who apply to work with children will be asked, as a condition of their employment or voluntary work, to agree to a computer check through local police. To protect his or her privacy, each person has the right to decide whether to submit to a background check and to volunteer the screening report to a prospective employer. The screening system is the result of the joint effort of the federal departments of Justice, Health and the Solicitor General and of national consultations with volunteer agencies and employers who work with young children.

G. Provincial and Other Initiatives

In 1987, the Metro Toronto Special Committee on Child Abuse started the Child Victim-Witness Support Program, which prepares children who are to testify in sexual assault cases. The program introduces the children to the courtroom setting and to the process of giving evidence and of being cross-examined. The program also supports the children in the courtroom when they give evidence against their alleged offenders and testify against them. This service is regarded favourably by criminal justice and social service agency workers including Crown attorneys, police and Children's Aid workers who do not have the time or the expertise to prepare children adequately for court.

The respective rights of the child, the family and the state are still controversial. Alberta's *Child Welfare Act*, which went into effect in July 1985, calls for family rights and child rights to be equal. However, in British Columbia, some have argued that the *Family and Child Services Act* gives excessive power to the state to protect the child but insufficient safeguards for the family. A 1988 study investigating the role of the Alberta Children's Guardian Office concluded that the Office works too closely with the provincial government to be "a true voice for children and a challenger of the system."

The storing and dissemination of information on child abusers continue to be of concern. For example, since the well-publicized case of child molester Robert Noyes, B.C. school boards have attempted to find a more effective way of preventing convicted child molesters from working in the school system.

At present, in British Columbia, some school boards, non-profit organizations and professional associations, as well as the provincial government, have policies requiring new employees and volunteers working with children to undergo a criminal record check as a condition of employment. However, not all employees in public organizations are required to be screened for past offences that may present a risk of physical or sexual abuse of children. In an attempt to provide uniform and consistent assessment of risk to children across the province, the B.C. government has developed a proposal for legislation to make criminal record checks mandatory for approximately 280,000 employees and licensees – such as teachers, doctors, dentists, nurses, child care workers. The *Criminal Records Review Act* (Bill 26), which is to become law in 1996, will apply to current and new employees in organizations that are licensed, operated by, or receive funds

from the provincial government. A conviction or outstanding charge relating to offences specified in Schedule 1 of the bill signifies that an employee may be at risk of harming children. The list includes offences in the *Criminal Code* dealing with sexual and physical assaults as well as criminal negligence, trespassing at night, and drug trafficking. All record checks are to be coordinated by a central government agency; if the check reveals a relevant conviction or outstanding charge, an adjudicator will determine whether the employee is a risk to children.

Critics allege that Bill 26 is too sweeping as it applies to employees whose work may never grant unsupervised access to children, such as some nurses and dentists. As well, there is concern that the relevant offences are too broad and that some of the 66 Schedule 1 offences may be only indirectly connected to child abuse. In view of the fact that most individuals charged with the sexual abuse of children do not have criminal records, some commentators have proposed that the resources that would be required to set up and operate the criminal records check system be directed instead to public awareness programs emphasizing prevention.

In 1985, Alberta established a "clearing house" to co-ordinate child abuse information, giving the overall responsibility to the province's Children's Guardian. Since a known child abuser killed her own child after moving from Alberta to Manitoba, authorities are now also calling for more sharing of child abuse information among provinces.

A 1989 study co-sponsored by the Northwest Territories Native Women's Association and the Social Services Department concluded that in certain communities 80% of girls under the age of 8 and 50% of boys of the same age are sexually abused. This conclusion came from interviews with elders, leaders, health and social service officials, victims of sexual abuse and offenders in Western Arctic communities.

Stories of widespread physical, sexual, and emotional abuse have come recently from native people who were students in residential schools run by religious denominations in Canada before the 1960s. Over a 100-year period, thousands of Indian children in Canada were educated at such schools, which were financed by the federal government and operated under the *Indian Act*.

In Newfoundland, child abuse became a contentious issue in 1989, when several priests were convicted of sexually abusing boys. In April 1989 a royal commission was appointed to conduct a public inquiry into the response of police and justice and child welfare authorities to complaints made 14 years ago about child abuse at Mount Cashel boys' home.

The proved and alleged cases of physical and sexual abuse of children at Catholic-run Mount Cashel and at other church-run institutions in Ontario, Manitoba and Saskatchewan have had a profound and negative impact on victims, their families and the Catholic community in Canada. In response, the Canadian Conference of Catholic Bishops has prepared a 64-page document entitled *Breach of Trust, Breach of Faith*, which is intended to "eliminate the sexual abuse of children in Church and society." The booklet, released in early 1992, contains five study sessions designed to "promote actions that will purge this evil from society and the Church." In its attempt to isolate factors that contribute to the sexual abuse of children by clergy, the booklet draws on quotations from the 1990 commission of inquiry into Mount Cashel. According to the booklet, "paternalism and sexism are very much in evidence in the Church" and "many have argued that patriarchal thinking is one of the many contributing factors to the sexual abuse of children." Priests are encouraged to involve their parishes in the study sessions and to make recommendations.

In recent years, adults have come forward in unprecedented numbers expressing a belief, often not previously held or disclosed, that they were sexually victimized in childhood, usually by their father. In a typical case, memories of traumatic child sexual abuse experiences surface in the course of therapy.

The validity of recovered memories of abuse has become a hotly debated and topical social issue in North America. On the one side are experimental psychologists, individuals who have retracted their childhood abuse allegations, and those who maintain they have been wrongly accused of such abuse. In their view, traumatic experiences are rarely suppressed and most "recovered" memories are false memories created and implanted by therapists. This is the view espoused by the U.S.-based advocacy group, the False Memory Syndrome (FMS) Foundation. It was established in 1992 by the parents of a woman who, in the course of therapy, said she recalled that her father had sexually exploited her when she was a child. The organization has coined the phrase "false memory syndrome" to describe false memories of sexual abuse intentionally or unwittingly implanted by an overzealous, improperly trained or ideologically motivated therapist in his or her patient.

On the other side of the debate are child sexual abuse survivors and clinicians who believe that memories of traumatic experiences can indeed be repressed and recovered years later and that most recovered abuse memories are authentic.

According to these commentators, the false memory syndrome concept does not meet the criteria of a syndrome. Further, there are no clinical studies or trials that confirm empirically the existence of a false memory syndrome, which, in the opinion of some, merely offers a legal defence and the means for those accused of sex crimes against children to avoid being held accountable for their behaviour.

Since 1989, a number of states in the U.S. have passed legislation permitting people to launch civil law suits on the basis of recently discovered facts about historical abuse. And a 1992 Supreme Court of Canada ruling in *K.M.* v. *H.M.* made it possible for victims of incest to sue their assailants after the time limits set by the Ontario *Limitations Act* had expired. In its ruling, the Court enunciated a number of fundamental principles that may facilitate access to the courts in other Canadian jurisdictions by victims of incest.

Systemic problems in the area of child protection, particularly poor communication and professional boundaries between child protection, public health and other social agencies, appear to be at the centre of three recent, widely publicized child abuse-related deaths in the provinces of New Brunswick, British Columbia and Ontario. In all three cases, the young victims were well known to the protective service agencies in their respective communities.

The 1996 report of the New Brunswick investigation into the 1994 death of John Ryan Turner concluded that the interventions of social workers and public health professionals had actually exceeded what the *Family Services Act* requires of them and yet they had been unable to protect the three-year old boy against emotional, psychological and physical neglect and abuse perpetrated by his parents. Among the contributing factors in the boy's death was the absence of a "formal mechanism for coordinating intervention and for sharing information" among the various professionals involved with the victim's family. Of the eight recommendations contained in the report, the first proposes the creation of a "child at risk committee" to break down professional barriers, create partnerships and coordinate services and data among front-line workers in social, health and justice agencies.

British Columbia Judge Thomas Gove's investigation into the death of five-year old Matthew Vaudreuil, who had been beaten and tortured by his mother, found that the young boy had in his short life had an extraordinarily high number of contacts with social workers and doctors. In fact, he had been seen by 21 social workers, been the subject of at least 60 reports,

been taken to a physician 75 times, and examined by at least 24 different doctors. In his two-volume report, Judge Gove made 118 recommendations for extensive reform to B.C.'s child protection system, including the establishment of a new ministry for children, the creation of a new agency to investigate child deaths, and enhanced qualifications and improved training for child protection workers. In addition, he called for an investigation into the deaths of 19 children who died between 1992 and 1995 and were "known" to the B.C. Ministry of Social Services. In response, the Ministry has created a new child death investigation agency, upgraded staff qualifications and training, and improved its data base.

In the aftermath of the death of Sara Podniewicz and a probe of 77 child deaths by the *Toronto Star,* the Ontario government in September 1996 appointed a task force made up of child abuse workers, legal experts, police, public health professionals and members of the Ontario Coroner's Office to examine children's deaths brought about by abuse. In addition, five inquests into the child abuse-related deaths have been ordered by the province. Six-month old Sara Podniewicz was beaten to death by her mother and father, who were both addicted to cocaine. At the time of her death, her father was on statutory release from a five-year prison sentence for an aggravated assault on his 10-week old son in 1988 which had left the boy permanently and severely disabled. Three weeks before Sarah's murder, she had received medical care for a broken arm; it was determined after her death that the injury was the result of abuse. In addition to medical intervention, the Podniewicz family was being supervised by Catholic Children's Aid and the Canadian Mothercraft Society, and the father by a parole officer. Ontario's Solicitor General anticipates that the inquests and task force will improve protection for children at-risk by increasing the communication between children's aid societies, health providers, social agencies and the justice system. Currently, there is no system in place in Ontario for sharing information among the various agencies that deal with children.

H. Federal Initiatives

In 1978, the federal government established a Child Abuse Information Program which was later subsumed by the National Clearinghouse on Family Violence located in the Department of National Health and Welfare. With respect to child abuse, the primary work of the clearinghouse is information dissemination and consultation.

In June 1986, the Minister of Justice and the Minister of Health and Welfare announced the need for federal government leadership in a concerted effort on behalf of abused children. The federal government allocated $20 million over five years in aid of inter-departmental and inter-governmental co-ordination, research and public information programs and initiated new legislation on child abuse. The RCMP also set up a missing child's registry to help locate missing children and to determine the role of sexual abuse in causing children to run away. The federal government also appointed a special advisor to the Minister of National Health and Welfare on child sexual abuse educational programs.

In June 1988, the federal government announced that it would spend $40 million over the next four years on programs designed to reduce family violence. More than half of the money would be spent on creating new shelters for battered women and their children, while the rest would be allocated to research, counselling programs, education, and demonstration projects.

In March 1990, the federal government contributed $750,000 over three years to fund a national program for monitoring injuries to children. Ten hospitals will be compiling information about the nature and circumstances of children's injuries; the data will be analyzed by the federal Department of Health and Welfare.

In June 1990, the federal advisor on child sexual abuse, Rix Rogers, presented his report, *Reaching for Solutions*, to the then Health and Welfare Minister, Perrin Beatty. The report, based on across-Canada consultations that took place over a two and a half year period, called for a comprehensive, coordinated program to tackle the pervasive problem of sexual abuse of children. According to Mr. Rogers, there had been a 500% rise in child sexual abuse cases in the past five years, because of increased reporting of the incidents. *Reaching for Solutions* made 74 recommendations. Among other things, the federal government was urged to:

- designate a senior cabinet minister responsible for promoting and protecting the interests of children;

- establish a federal children's bureau with a mandate to deal with such issues as child abuse, poverty, day care, prostitution, pornography and children's rights and to coordinate the activities of the 75 government departments across Canada involved in combatting child sexual abuse;

- establish an aboriginal advisory expert committee to develop a plan to address child sexual abuse and related issues in native communities;

- enter into cost-sharing arrangements with the provinces to finance child sexual abuse programs;
- conduct widespread public legal education and information initiatives on the sexual abuse of children;
- set up task forces to combat child abuse in remote and rural communities; and
- amend legislation so that children under twelve testifying in sexual assault trials may be accompanied to the witness stand by an adult.

Mr. Rogers asked the federal government to respond to his report within six months. The Minister of Health and Welfare was appointed as Children's Minister in October 1990, when a Children's Bureau was created. The federal government indicated that it would act on elements of over 90% of the recommendations that come under the federal jurisdiction.

On 20 February 1991, the federal government announced that it was contributing $136 million over four years toward efforts to eliminate family violence from our society. Activities aimed at the elimination of child abuse come under the government's family violence initiative. Over the four-year period, a number of programs and projects are planned to heighten public awareness of the prevalence of child abuse, facilitate the development of effective prevention strategies, enhance the expertise of front-line workers, and improve the exchange of information and responses to and remedies for child abuse victims, their families and the offenders.

PARLIAMENTARY ACTION

A. 1974-1976: Report of House of Commons Standing Committee on Health, Welfare and Social Affairs

This Standing Committee studied "appropriate measures for the prevention, identification and treatment of child abuse and neglect." Its 1976 report, *Child Abuse and Neglect*, contained l5 recommendations including further consideration of section 43 of the *Criminal Code* and the use of central registries at the provincial rather than the federal level. The Committee also recommended amending the *Canada Evidence Act* to permit a spouse to give evidence in criminal cases. As there are mandatory reporting requirements in the provinces, the Committee felt it was unnecessary to provide for them in the *Criminal Code*.

B. 1978-1979: Study by House of Commons Standing Committee on Justice and Legal Affairs

Late in 1978, the subject matter of a Children's Bill of Rights was referred to this Committee. Child abuse was among the topics discussed at the hearings. No report was issued as Parliament was dissolved for the 1979 election.

C. 1977-1980: Report of the Standing Senate Committee on Health, Welfare and Science

The Senate approved, in March 1977, a study on "such experiences in prenatal life and early childhood as may cause personality disorders or criminal behaviour in later life." A section on child abuse was included in the report entitled *Child at Risk*. In addition, the Committee recommended a review of all the offences in the *Criminal Code* that are relevant to child abuse, including section 43. The Committee also recommended continued federal support of the national child abuse studies undertaken by the Department of National Health and Welfare as well as provincial, territorial and municipal support for local child abuse and crises information centres. Finally, the Committee recommended a variety of support services to assist parents and/or children identified as being at risk.

D. 1981: Report of the House of Commons Standing Committee on Health, Welfare and Social Affairs

In 1979, the Canadian government established the Canadian Commission for the International Year of the Child. At the end of its mandate this Commission presented the *National Agenda for Action*, which contained numerous recommendations including "that section 43 of the *Criminal Code* be immediately examined in depth by the Minister of Justice with the object of eliminating discrimination against children." There was also a recommendation that "the federal government enact legislation to protect children against all forms of sexual exploitation." Subsequently, the House of Commons Committee considered the recommendations and called in witnesses to comment upon priority areas. Its report, tabled 7 July 1981, stated that "the official sanctioning of such physical punishment of children is a major contributing factor to the very serious problem of child abuse in Canada." Thus, the Standing Committee recommended that section 43 of the *Criminal Code* be repealed immediately.

E. 1982: Bill C-53 – An Act to amend the Criminal Code in relation to sexual offences and the protection of young persons

Clause 31 of Bill C-53 would have amended the *Canada Evidence Act* so that a spouse would be compelled to give evidence against the other spouse in the case of child abuse. The new provision was broader than previous recommendations since a spouse would be compelled whenever a child was a victim, not only in the case of his or her own offspring. Clause 6 would have amended sections 166, 167 and 168 of the Criminal Code by adding new sexual offences. Protection was to be provided to young males as well as to young females. The types of conduct included in legislation were to be expanded to include more than sexual intercourse. Moreover, the penalties would have been more onerous if a parent or guardian were involved. Finally, a new provision was added, section 168.2 which prohibited child pornography. On 28 July 1982, the Justice Committee concluded consideration of Bill C-53, without dealing with the sexual misconduct and child pornography provisions.

F. 1982: Bill C-127 – An Act to amend the Criminal Code in relation to sexual offences and other offences against the person

On 27 October 1982, Parliament passed Bill C-127, which enacted the substance of Bill C-53, with some modification of the sexual assault provisions and without the provisions dealing with sexual misconduct and child pornography.

G. 1986: Bill C-113 and Bill C-15 – An Act to amend the Criminal Code and the Canada Evidence Act

On 10 June 1986, Bill C-113 was given first reading. This legislation was an attempt to combat sexual abuse of children by introducing tough penalties for sexually touching a child under 14 years of age, for inviting the touch of a young person, for soliciting or procuring the services of a prostitute under 18 or for living off the avails of a juvenile prostitute. The *Canada Evidence Act* would also have been amended to allow children under 14 in certain circumstances to give unsworn evidence without corroboration or by means of videotape. Because of the prorogation of Parliament, this bill died but the substance was reintroduced on 29 October 1986 as Bill C-15 and

was given second reading on 4 November 1986. The Legislative Committee for Bill C-15 reported back to the House with several technical amendments on 28 April 1987 and the bill was given Royal Assent on 30 June 1987.

H. 1993: Report of the House of Commons Standing Committee on Justice and the Solicitor General

The 1988 *Criminal Code* amendments respecting sexual offences against children required that a Committee of the House of Commons review the child sexual abuse provisions after four years in operation. On 11 May 1992, the Committee received an Order of Reference to undertake the study.

Between April and June 1993, the Committee heard and received written submissions on the issue of child sexual abuse from academics, legal practitioners, child advocates, government officials, front-line agencies and community organizations. In its 9 June 1993 report, the Committee made recommendations that relate to both legal and administrative reforms.

It recommended that the specific *Criminal Code* offences dealing with child sexual abuse be retained in their present form and that the Department of Justice actively defend from constitutional attack provisions allowing complainants to give their testimony from outside the courtroom via closed circuit television or from behind a screen. In order to minimize the trauma experienced by child victims and witnesses, the Committee recommended that the federal government work with the provinces to expedite the prosecution of child sexual abuse cases, to ensure adequate court preparation and professional training, to develop policies to make court rooms more child-friendly, and to develop a code of ethics for dealing with child witnesses. The limitations of effectively treating and rehabilitating sex offenders in correctional facilities that also house inmates convicted of non-sexual offences, led the Committee to recommend that the Solicitor General consider the feasibility of incarcerating and treating convicted sex offenders in separate correctional facilities with programs specifically designed for them. Given that those with a propensity to abuse children may be attracted to employment or volunteer activities involving contact with children, the Committee also recommended that a Parliamentary Committee study the feasibility of a national child abuse register. Finally, in light of the outstanding constitutional challenges to provisions of the law, the Committee recommended a further review of the child sexual abuse legislation in five years.

I. 1993: Bill C-128 – An Act to Amend the Criminal Code and the Customs Tariff

On 13 May 1993, Bill C-128 was given first reading. The legislation made it an offence to make, distribute or possess "child pornography." In addition to sexually explicit visual representations of anyone who is or is depicted as being under the age of 18, the definition of "child pornography" includes any written material or visual representation that advocates or counsels sexual activity with anyone under 18 that would be an offence under the *Criminal Code*. The *Customs Tariff* was also amended to prohibit importation of child pornography into Canada. The House of Commons Standing Committee on Justice and the Solicitor General reported back to the House on Bill C-128 on 15 June 1993 and the bill received Royal Assent on 23 June 1993.

CHRONOLOGY

1891 –	Toronto was first Canadian city to establish a Children's Aid Society.
1893 –	Ontario passed first *Child Protection Act* in Canada.
1959 –	United Nations Declaration of the Rights of the Child.
1965 –	British Columbia established first child abuse registry.
1973 –	National Ad Hoc Advisory Committee on Child Battering, established by Minister of National Health and Welfare, recommended mandatory reporting, more funds for preventative services and for research and development and a national coordinating office.
1976 –	House of Commons Standing Committee on Health, Welfare and Social Affairs tabled report *Child Abuse and Neglect*.
1980 –	Senate Committee on Health, Welfare and Science tabled report *Child at Risk*.
1981 –	Minister of Justice and Minister of National Health and Welfare appointed a committee on sexual offences against children and youth to report within two years.
1984 –	Report of Committee on Sexual Offences Against Children (Badgley Report) made public.
June 1986 –	Federal government introduced Bill C-113 to combat the sexual abuse of children and to allow uncorroborated evidence by children in court.

October 1986 – The government reintroduced legislation on the sexual abuse of children under Bill C-15.

May 1987 – The government introduced Bill C-54, which would have prohibited the depiction or use of children in "pornography". The bill died when the 33rd Parliament came to an end on 30 September 1988.

June 1987 – Bill C-15 received Royal Assent.

August 1987 – The Minister of Health and Welfare appointed Rix Rogers as special advisor on child sexual abuse.

November 1989 – The United Nations adopted the first Convention on the Rights of the Child.

June 1990 – Rix Rogers, Special Advisor on Child Sexual Abuse, presented his report *Reaching for Solutions* to the Minister of Health and Welfare.

October 1990 – The federal government appointed a Children's Minister and created a Children's Bureau. The Bureau coordinates the activities of various government departments involved in policy-making and programming related to children.

May 1993 – The government introduced Bill C-128, which made it an offence to make, distribute or possess child pornography.

June 1993 – The House of Commons Standing Committee on Justice and the Solicitor General tabled report *Four-Year Review of the Sexual Abuse Provisions of the Criminal Code and the Canada Evidence Act* (formerly Bill C-15).

June 1993 – Bill C-128 received Royal Assent.

November 1994 – In November 1994, the federal government implemented a system to enable organizations and agencies that work with children to screen potential employees or volunteers for previous child sex offences.

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