

multiplied as was seen in the CYF “home” in Windrush Close, Mangere, in 2003, which appeared to practice violent, systematic, daily abuse.

Fifth, bullying in NZ schools now not only encompasses students against fellow students but also students against teachers and teachers against students. Here is another source of real, ongoing and systematic violence that could use the energetic attention of this lobby group.

Until NZ addresses the real, systematic and deadly violence of the abortion industry, the entertainment industry, CYF homes and government funded schools, it is ludicrous to target responsible parents and effectively turn them into criminals by repealing Section 59 of the Crimes Act.

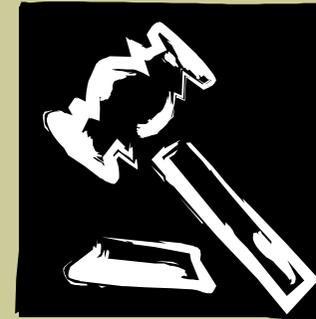


PO Box 9064
Palmerston North
New Zealand

Fax: (06) 357 4389
Email: family.integrity@extra.co.nz

Family Integrity

Spanking and the LAW in New Zealand



Have you got questions about the law and legal practice in New Zealand?...

- What does the law say in New Zealand?
- Can I legally spank my children?
- What about the UN Convention on the Rights of the Child?

Family Integrity

By Craig Smith, Family Integrity, 2004 ©

Table of Contents

New Zealand Law and Commentary

NZ Bill of Rights Act 1990 3

NZ Crimes Act 1961 3

New Zealand Education Act 1989 4

International Law and Commentary

United Nations Convention on the Rights of the Child 5

Declaration of the Rights of the Child 6

Disclaimer: Information contained in this brochure is the opinion of the writer. It is not intended as legal advice and should not take the place of legal counsel from a qualified, informed solicitor.

Email: family.integrity@extra.co.nz

Comment on UN Convention & Declaration

The anti-spanking lobby constantly refers to NZ's obligations under Article 19 of UNCROC (reproduced above) as a reason why NZ must ban the spanking of children by their parents. There are five major problems with this argument.

First, Article 19 condemns "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". Spanking, not only as Family Integrity defines it, but also as it is commonly understood by the majority of NZ parents, does not fall into the category of "violence, injury or abuse" (see the Family Integrity brochure *Spanking vs. Child Abuse & Violence*). This is again the anti-spanking lobby's attempt to impose on the rest of society their own particular narrow, illogical and inflexible view of spanking as indistinguishable from abuse and violence of the worst kind.

Second, the anti-spanking lobby do damage to their own credibility when they oppose the institution of spanking on the grounds that it may allow adults to be violent and abusive toward children while they appear to be completely unconcerned about the actual systematic violent **deaths** of 18,500 NZ children last year in this country's abortion industry. This very same UNCROC as well as the 1959 Declaration of the Rights of the Child recognise that children have rights from **before** birth. This is plainly stated in the preambles of both docu-

ments (see G & I above) and reinforced in the Declaration's preamble (H) and Principle 1 which say the birth status of a child is irrelevant to the guarantee of his rights entitlements. In addition, Article 1 of UNCROC defines the child with no reference to his birth status, and Principle 4 of the Declaration clearly states that a child's pre-natal care is to be a matter of international concern.

Third, the anti-spanking lobby do more damage to their credibility in that they apparently do little to oppose the gratuitous and graphic violence in the guise of entertainment on TV, video-games, DVDs and the like. The frightening effects these things have on youngsters is both well known and well documented (the school shootings at Jonesboro, Arkansas; Paducah, Kentucky; Pearl, Mississippi; Stamps, Arkansas; Conyers, Georgia; and of course, Columbine High in Littleton, Colorado; see *Stop Teaching Our Kids to Kill: A Call to Action Against TV, Movie and Video Game Violence* by Lt. Col. Dave Grossman and Gloria DeGaetano); yet this lobby group not only appears unconcerned about this real violence but targets some of the country's best families, those who are doing the most to rear settled, confident and responsible children, simply because they occasionally use spanking as a parenting tool.

Fourth, when government agencies intervene and remove children from their homes, not only can the removal itself be a source of trauma for the child, but real cases of abuse can be

Family Integrity

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.



Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Declaration of the Rights of the Child Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959

(H) *Whereas* the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

(I) *Whereas* the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before as well as after birth**,

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, **including adequate pre-natal and post-natal care**. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Email: family.integrity@extra.co.nz

Lex n [L.]: The Law

New Zealand LAW and Commentary

When it comes to spanking children by parents in New Zealand, many parents don't know what the law says. As a result, many parents either think spanking is illegal or aren't sure and so no longer dare to spank their children.

Thankfully, law and precedent in New Zealand are clear on the matter: Spanking is not illegal, and parents are at liberty to use 'reasonable force' when correcting the behaviour of their children.

Let us take a closer look at the laws themselves...

(B) Section 15:

"Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private."

NZ Crimes Act 1961

(C) Section 59 (used to say the following until it was repealed in 1990):

"Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances."

(D) Section 59 (Today this section reads as follows):

"(1) Every parent of a child and, subject to subsection (3) of this section, every person in the place of the parent of a child is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances.

"(2) The reasonableness of the force used is a question of fact.

NZ Bill of Rights Act 1990

(A) Section 9:

"Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment."

"(3) Nothing in subsection (1) of this section justifies the use of force towards a child in contravention of Section 139A of the Education Act 1989."

Family Integrity

NZ Education Act 1989

(E) Section 139A:

“No corporal punishment in early childhood centres or registered schools

(1) No person shall use force, by way of correction or punishment, towards any student or child enrolled at or attending the school, institution, or centre, unless that person is a guardian of the student or child.”

Comment on NZ LAW

(A) above protects NZers from cruel, degrading, or disproportionately severe punishment, but not from punishment per se. Spanking as Family Integrity defines it is not cruel, degrading or severe and neither is it a form of punishment. Therefore Section 9 of the NZ Bill of Rights Act cannot be used as an argument to ban parents from administering corporal correction or even corporal punishment to their own children.

(B) means people who see spanking as an expression of their religious practice are guaranteed the freedom to express their religious faith in this way as a right, unless of course their practice contravenes the provisions of Section 9 of the NZ Bill of Rights and/or Section 59 of the Crimes Act.

(C) shows that the old Section 59 of the Crimes Act had the intention of justifying schoolmasters who used reasonable



force toward children by way of correction. However, generations of school children will testify that they were punished, not corrected, virtually at the whim of schoolmasters and teachers for personal arbitrary reasons: to save face, in anger or to get back at an unruly child; but also for the most trivial of offenses and mostly to maintain control over the class. That is, it would appear that hundreds of schoolmasters were operating outside of the provisions of the Act in that they were administering punishment rather than correction. When S159A (see E above) was added to the Education Act in 1990, there was this tacit admission that this was the case in that this Section specifically banned the use of force for punishment.

(D) is the Section that the anti-spanking lobby wants to see repealed from the Crimes Act. This is actually a brilliant piece of legislation: it recognises that parents and those in the place of parents have a duty and responsibility toward their children to correct them. It

further recognises that the use of force is justified in many cases. The force used is hemmed about by two criteria: whether it is reasonable in the circumstances and whether it was used by way of correction. This gives any person in authority who is dealing with a suspected case of child abuse tremendous latitude to weigh up and judge both the actions that took place between the

International LAW

United Nations Convention on the Rights of the Child

PREAMBLE

The States Parties to the present convention,

(F) Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

(G) Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before as well as after birth**”,

Have agreed as follows:

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

parent and the child and the motivation of the parent’s actions.

It is the conclusion of Family Integrity that there are already enough statutes to deal with true violence and abuse when such cases come before proper authorities and that the present legislation very adequately safeguards the duties and responsibilities of parents from unnecessary intrusion and excessive intervention by the government and its agencies. The proposal to repeal Section 59 will leave all parents open to prosecution no matter how one defines force, since any use of any kind of force will no longer be justified. The result is that all those parents who understand and responsibly use



the institution of spanking will be classed effectively as criminals. The minority anti-spanking lobby is seeking to use the coercive power of the government to force all parents to accept its anti-spanking views. It tries to do this by equating spanking with the emotive issue of child abuse. All right-thinking people are totally against child abuse. But child abuse is not the same as spanking (see the Family Integrity brochure *Spanking vs. Child Abuse & Violence*). NZ law already recognises this. Therefore no change is required to the legislation.