

Spanking and Disciplining Children

What You Should Know About Section 43 of the Criminal Code



Public Legal Education and Information Service of New Brunswick

Spanking is a form of physical discipline known as corporal punishment. Parents and experts alike often hold different opinions on whether spanking is an appropriate way to control a child who is misbehaving. The purpose of this pamphlet is to review recent Court decisions on the use of physical discipline towards children by parents and guardians. It provides general information on the topic and discusses Section 43 of the *Criminal Code of Canada*. It should only be used as an information resource as it does not contain a complete statement of the law in the area and laws change from time to time. Anyone needing specific advice on his or her own legal position should consult a lawyer.

Is spanking children against the law?

The law assumes that spanking a child to 'correct' the child's behavior is not against the law as long as the force used is reasonable. Section 43 of the *Criminal Code of Canada* provides a defence for parents, parent substitutes and teachers who used corporal punishment to discipline a child in their care and who have been charged with physically assaulting that child. This section of the *Criminal Code* is often referred to as "the spanking provision".

Does that mean it's all right to use physical discipline with children?

Not necessarily. There is often a fine line between spanking a child and physical abuse of a child.



If the force used slips into abusive, harmful or degrading conduct, it could result in a criminal charge or trigger a child protection investigation. There have been cases when parents or teachers have been charged with assault for spanking a child or using other forms of physical punishment. Over

the past several years, many provinces have enacted legislation to prohibit the use of corporal punishment of students by teachers.

Has Section 43 of the Criminal Code been challenged in court?

Yes, the Canadian Foundation for Children, Youth and the Law challenged the constitutionality of Section 43 in an Ontario Court. In July 2000, the Court upheld Section 43 and the judge dismissed the application. The Foundation appealed to the Ontario Court of Appeal and in September 2001 the Court again upheld the constitutionality of Section 43. The case was then appealed to Supreme Court of Canada, which is the highest level of court in Canada. The Supreme Court sets the standards that all other courts in the country must follow.

On January 9, 2004, the Supreme Court of Canada announced its decision in the case of *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*. The Court was not

deciding on whether corporal punishment is good or bad. They were deciding whether Section 43 of the *Criminal Code* violates Section 7 of the *Canadian Charter of Rights and Freedoms*. This section deals with security of the person. The Court decided that it did not violate the *Charter*. However, to ensure the best interests of the child, the Supreme Court ruling set boundaries on the use of force to discipline children.

Section 43

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.

Criminal Code of Canada

What 'boundaries' did the Supreme Court set for physically disciplining children?

The Supreme Court of Canada stated that:

- The force used must be intended to educate or correct the child;
- The force used must be to restrain, control or express disapproval of the actual behaviour;
- The child must be capable of benefiting from the discipline. In other words, factors such as a child's age and disability will influence the child's ability to learn from the use of force;
- The force used must be "reasonable under the circumstances" and not offend society's view of decency.

What is considered reasonable force?



Since 'reasonable under the circumstances' is a broad term, the Supreme Court created a definition in relation to child discipline. The Court interpreted reasonable force as "minor corrective force" which is short-lived and not harmful. The Court also set limits on what would be considered reasonable force. This means that Courts have an objective test to apply when deciding whether the use of force is reasonable. As well, expert advice and social consensus on the reasonable use of corporal punishment reduces the risk that courts will make arbitrary or subjective decisions.

What limits did the Court set on reasonable force?

The Court found that the following is not reasonable:

- Hitting a child under two years of age. It is wrong and harmful because spanking has no value with very young children and can destroy a child's sense of security and self-esteem. Children under two do not have the cognitive ability to understand why someone is spanking them.
- Corporal punishment of teenagers. It is not helpful and is potentially harmful to use force on teenagers because it achieves only short-term obedience and may alienate the youth and promote aggressive or other anti-social behaviour.
- Using objects to discipline a child such as belts, rulers, etc. This is potentially harmful both physically and emotionally.
- Slaps or blows to the head.
- Degrading or inhumane treatment.
- Corporal punishment which causes injury – (causing harm is child abuse).



In referring to teachers, the Court said that:

- "Teachers may reasonably apply force to remove a child from a classroom or secure compliance with instructions, but not merely as corporal punishment. Coupled with the requirement that the conduct be corrective, which rules out conduct stemming from the caregiver's frustration, loss of temper or abusive personality."

Can I get more information about this issue?



This pamphlet is intended to provide general information. Persons wanting to know more about corporal punishment may wish to look at **What's Wrong with Spanking-Positive Parenting Tip Sheet** (http://www.phac-aspc.gc.ca/dca-dea/publications/spanking_e.html), published by Health Canada, 2004. This

short pamphlet gives some tips on how to effectively discipline children without spanking.

As well, you may wish to read the case. A copy of this judgment, *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, is available online at: <http://scc.lexum.umontreal.ca/en/2004/2004scc4/2004scc4.html>

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