

The Case on Discipline: To Spank or Not to Spank

The Canadian Foundation for Children, Youth and the Law v. Attorney General of Canada [2004]

Teacher Resource

Curriculum Links: Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

Legal Focus: Children's rights, Criminal law, Constitutional law

Estimated Time: 1 period

Overall Expectations:

- Identify the rights and freedoms outlined in the *Canadian Charter of Rights and Freedoms* and explain how to exercise them.
- Communicate legal knowledge effectively.

Specific Expectations:

- Explain the purpose of law in our community.
- Identify the legal rights and fundamental freedoms outlined in the *Canadian Charter of Rights and Freedoms*.
- Describe how a citizen makes a complaint concerning a violation of Charter rights.
- Demonstrate an ability to listen and read critically, find relevant information, and express and support opinions, using proper legal terminology.

The Facts of the Case

The Canadian Foundation for Children, Youth and the Law (CFCYL) is a group dedicated to the protection of children's rights. In November 1998, the CFCYL applied to the court for a declaration that section 43 of the *Criminal Code* is invalid as it legalizes the use of corporal punishment on children for the purpose of correction.

The basis for the challenge was that s. 43 was unconstitutional and violated many sections of the *Canadian Charter of Rights and Freedoms*. The challenge also relied on Canada's commitment to comply with the *UN Convention on the Rights of the Child*. They claimed that the law violated the *United Nations Convention on the Rights of the Child*, which attempts to establish an international standard of human rights for children all around the world.

Aside from the applicant (CFCYL) and the respondent (Attorney General of Canada), there were a number of groups that felt they had an interest in the outcome of this challenge. These groups

applied to the court for intervener status so that they too could participate in this case. Status was not granted to all applicants. The only group granted intervener status in support of this challenge was the Ontario Association of Children's Aid Societies. Parties opposed to this challenge that were granted intervener status were the Canadian Teachers' Federation and a group of organizations that joined forces to form the Coalition for Family Autonomy.

Trial Decision

This application for a declaration began in the Ontario Court (General Division), now the Ontario Superior Court of Justice. Justice McCombs ruled that s. 43 was consistent with the *Charter* and that it did not violate Canada's obligations under the UN *Convention on the Rights of the Child*. He dismissed the application. However, he suggested that federal Parliament should examine the use of reasonable force, as set out in s. 43, and come up with clearly defined parameters to guide teachers, parents, and caregivers.

Appeal to the Ontario Court of Appeal

In January 2001, the CFCYL appealed the decision to the Court of Appeal for Ontario. The court upheld the previous decision, stating the purpose of s. 43 was to allow parents and teachers to "apply strictly limited corrective force to children without criminal sanctions so that they can carry out their important responsibilities to train and nurture children without the harm that such sanctions would bring to them, to their tasks and to the families concerned". The appeal was dismissed.

Appeal to the Supreme Court of Canada

In March 2002, the CFCYL applied for leave to appeal to the Supreme Court of Canada (SCC). CFCYL's argued that the Ontario Court of Appeal made an error in law and did not give enough consideration to the expert evidence. The Supreme Court announced it would hear the appeal, and granted intervener status to those groups that had participated in the two previous hearings in the lower courts, as well as to two other organizations that applied for status, the Child Welfare League of Canada and the Quebec Human Rights Commission.

The Final Judgment

The Supreme Court of Canada held, in a 6-3 decision, that s. 43 was constitutional, upholding the previous decisions of the lower courts. The majority of Supreme Court Judges found that s. 43 did not violate children's *Charter* rights. However, it established some legal guidelines and limitations to be used when determining what degree of force would be considered "reasonable under the circumstances". The SCC held that spanking by parents is only acceptable for children between the ages of 2-12; that the use of objects such as belts or hitting on the head is not permissible; and that no child should be hit in anger or out of frustration. The SCC also added that teachers should not be permitted to strike students, but that limited force is allowed in order to restrain students during a violent outburst.

Teaching & Learning Strategies

1. Ask students to complete *The Big Question*. They should indicate their level of agreement with each statement by placing an X on the line and provide reasons for their answers in the spaces below. Have students share their opinions on these issues by doing a *Think/Pair/Share*.
2. Using a teacher- or student-centred reading strategy, review *The Facts of the Case*. After each paragraph, stop to clarify any points and check for understanding.
3. Review *The Relevant Law*. In this case, that includes law from the *Criminal Code of Canada*, the *Canadian Charter of Rights and Freedoms*, and the *UN Convention on the Rights of the Child*. Explain why each is important, different, and how they all work together in this case.
4. Divide the class into two groups (ideally, divide students based on their views for or against the repeal of section 43). Ask students to read *The Arguments in Court* for their respective sides and present them to the class. This is a good opportunity for students to take part in a brief and informal discussion/debate on the issue.
5. Ask students to read *The Final Judgment*. Instruct students not to look at this section until they have expressed their own opinions and speculated about the outcome of the case. Discuss the judgment as a class.
6. Have students review the *What's Your Opinion?* exercise. On a separate sheet of paper, have students write a brief letter (1/2 page) to the editor expressing their opinions.
7. Ask students to complete the *Check for Understanding* and take up the answers as a class.
8. Have students complete the *Reflecting* exercise either in class or for homework. Encourage students to discuss the questions before answering in the space provided.

Assessment & Evaluation

- *Think/Pair/Share*
- Class discussions
- *What's Your Opinion?* activity
- *Checking for Understanding* worksheet
- *Reflecting* worksheet

Resources

Ontario Justice Education Network
www.ojen.ca

- Landmark Case - The Spanking Case: Testing the Validity of Section 43 - *The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada*

Supreme Court of Canada Decisions - *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* [2004]

<http://csc.lexum.umontreal.ca/en/2004/2004scc4/2004scc4.html>

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Student Handout

The Big Question

Place an X on the line below to indicate your level of agreement with each of the following statements. Provide reasons for your answers in the space below.

1. Parents should be allowed to use physical force to discipline their children.

Strongly Disagree _____ Strongly Agree

Reasons: _____

2. Teachers should be allowed to use physical force to discipline or restrain students.

Strongly Disagree _____ Strongly Agree

Reasons: _____

The Facts of the Case

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What is a declaration?
When the court declares that a law or piece of legislation violates the *Charter*, the government must correct the problem.

the *Criminal Code* is invalid as it legalizes the use of corporal punishment on children for the purpose of correction.

The basis for the challenge was that s. 43 was unconstitutional and violated many sections of the *Canadian Charter of Rights and Freedoms*. The challenge also relied on Canada's commitment to comply with the *UN Convention on the Rights of the Child*. They claimed that the law violated the United Nations *Convention on the Rights of the Child*, which attempts to establish an international standard of human rights for children all around the world.

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Trial Decision

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Court of Appeal for Ontario

In January 2001, the CFCYL appealed the decision to the Court of Appeal for Ontario. The court upheld the previous decision, stating the purpose of s. 43 was to allow parents and teachers to "apply strictly limited corrective force to children without criminal sanctions so that they can carry out their important responsibilities to train and nurture children without the harm that such sanctions would bring to them, to their tasks and to the families concerned". The appeal was dismissed.

Supreme Court of Canada

In March 2002, the CFCYL applied for leave to appeal to the Supreme Court of Canada (SCC). CFCYL's argued that the Ontario Court of Appeal made an error in law and did not give enough consideration to the expert evidence. The Supreme Court announced it would hear the appeal, and granted intervener status to those groups that had participated in the two previous hearings in the lower courts, as well as to two other organizations that applied for status, the Child Welfare League of Canada and the Quebec Human Rights Commission.

The Issue

- Is it acceptable that s. 43 creates a defence to assault of children? Children are the only group in society that can be assaulted by a parent or teacher in the name of discipline? (Assault is not permitted for prisoners, detainees, etc.)

The Relevant Law:

Criminal Code of Canada

43. 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.

Canadian Charter of Rights and Freedoms

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

United Nations Convention on the Rights of the Child

The principles of the Convention that are most relevant to this case are:

- every child has the right to have its basic needs fulfilled
- every child has the right to express its opinions and be respected
- children have the right to be protected from abuse and exploitation

The Arguments in Court

CFCYL and Supporting Interveners:

- Section 43 creates an environment where violence towards children is accepted as a matter of discipline and has allowed people to be found innocent even after hitting kids with belts, paddles, sticks, and other objects.
- Criminal law plays a big role in setting acceptable standards of behaviour in society. Allowing s. 43 to stand sends a message that it is ok to hit a child as long as it is "reasonable" and for "correction".
- Children are being discriminated against because of their age and have suffered serious harm at the hands of the people who are supposed to protect and nurture them.

Attorney General and other Opposing Interveners:

- Approximately 75% of parents in Canada use physical discipline with their children. Eliminating s. 43 won't change attitudes regarding physical punishment.
- Parents need to use physical force sometimes. Eliminating s. 43 would result in parents being prosecuted for removing a screaming child from the mall or trying to put an uncooperative child in a car seat.
- Physical force is sometimes needed to maintain order in schools. For example, removing a child from a classroom, leading a student to the principal's office, getting a child's attention, and guiding a child to line up. These behaviours would be considered assaults if not for s. 43.

The Final Judgment

On January 30, 2004, the Supreme Court of Canada ruled that s. 43 was constitutional, upholding the previous decisions of the lower courts. The majority of Supreme Court Judges found that s. 43 did not violate children's *Charter* rights. However, they did establish some legal guidelines to use when determining how much force would be considered "reasonable under the circumstances". The Supreme Court of Canada said:

- that spanking by parents is only acceptable for children ages 2-12 years;
- that the use of objects such as belts or hitting on the head is not permissible;
- no child should be hit in anger or out of frustration.

The Supreme Court of Canada also added that teachers are not allowed to hit students, but that limited force is allowed in order to restrain students during a violent outburst.

What's Your Opinion?

People have very strong feelings and opinions about this issue. Assume that the case was just resolved and has been on the news and in the newspapers every day. On a separate sheet of paper, write a brief letter to the editor of your local paper saying why you agree or disagree with the court's decision.

If you agree with section 43, explain why and use one example to support your position on this issue. Also, include any other guidelines or limitations you would include to protect children.

If you disagree with section 43, explain why and use one example to support your position on this issue. Also, include any ideas or ways that parents and teachers would control unruly children.

Checking for Understanding

1. What does CFCYL stand for?

2. Section _____ of the *Criminal _____* of Canada was challenged as unfair because it allows for children to be _____ as a means of discipline.

3. CFCYL claimed that s. 43 is in violation of documents in two branches of the law, one constitutional and one international. What are those documents?

- _____
- _____

4. A declaration is one of the possible remedies to a constitutional challenge. How does a declaration work?

5. Intervener status allows people or organizations to:

6. This legal proceeding began in the Ontario Superior Court of Justice. The first appeal took place in the _____ and the final appeal was in the _____.

7. Which of the following guidelines did the Supreme Court of Canada introduce?

- Spanking is only acceptable for children aged 2-10. **TRUE/FALSE**
- The use of a belt or hitting on the head is not acceptable. **TRUE/FALSE**
- If you hit your child when you are angry and apologize, it's ok. **TRUE/FALSE**

Reflecting

1. What is ‘reasonable force under the circumstances’
 - a. in families?

- b. in the classroom?

2. Do you agree with the Supreme Court of Canada’s guidelines? Why or why not?

3. What changes to these guidelines would you suggest?

4. Section 43, also known as the defence of reasonable correction, first appeared in the *Criminal Code of Canada* in 1892. Since that time it has only been amended once, removing the master and apprentice relationship from the wording. Is it acceptable for a law to go virtually unchanged for well over a century? What can be done to make sure that our laws are keeping up with society’s changing values and beliefs and who would be responsible for updating laws?
