

The “Spanking Law”: The Canadian Perspective

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Professionally and personally as parents, we do not agree that the hitting, beating, or spanking of a child is healthy respectful parenting or teaching. We believe that adult-child relationships will, one day, evolve to a state of being non-violent making the need for a “spanking law” redundant. Until then, we provide the following brief review of the Canadian Supreme Court ruling on spanking as a guideline for adults in care-provider relationships with children—“schoolteachers, parents or person standing in the place of a parent”.[1] Knowing the present Canadian legal perspective on corporal punishment serves as an educational tool that helps describe corporal punishment behaviors that would be considered “reasonable” or alternatively be considered as violence against the child and thus be viewed as illegal.

Differentiating Violent Acts from Respectful Caring:

Additionally, reviewing the Canadian Supreme Court ruling may be helpful to persons—children and adults alike—who experience confusion about what behaviors constitute violent actions versus respectful love and caring. Our working experiences also suggest that some persons who have experienced childhood violence—including persons who have survived ritual abuse-torture—often struggle to differentiate and disentangle acts of violence from respectful acts of caring love. One reason being that their childhood ordeals of physical and sexualized violence were commonly accompanied by distorted messages such as, “I’m beating you because I love you,” or “I’m beating you for your own good,” or “I’m teaching you about sex because you’re almost seven and you’ll be a woman soon.” Such distorted messages can and do cause grave emotional and psychological harm—creating confusion as to what constitutes violent acts or what constitutes respectful love and caring acts. As a result there can be a tendency to accept and normalize being treated violently.

For example, a teenager sought counseling support because she felt continuously unhappy in her dating relationship. When asked to describe this dating relationship she explained her relationship was non-violent but she was frequently in trouble with her boyfriend and that made her feel sad. On further questioning she stated her boyfriend hit her if she did something wrong or something he did not like. Adding, she knew her boyfriend loved her just as her father did when he whipped on her bare buttocks and told her he was beating was for her own good. Based on her childhood experience the teen had developed a firmly-held belief system that normalized and justified that she deserved to be beaten or hit whenever she was told she did something wrong and that these were acts of love. [2]

Also, violent acts accompanied by such distorted messages can create a conditioning response whereas the receiver of the violence—the victim—develops a need—a cognitive, emotional, psychological, and physiological need—to experience violent acts such as being whipped, beaten, burned, cut, or raped in order to feel loved—in order to experience “the proof” that they are loved and cared about. Without understanding or knowing a healthier norm the victimized person can become involved in a life-long series of violent relationships.

This conditioned need for experiencing the pain of violent acts can also trigger the victimized person to inflict Self-harming acts. Being so triggered can mean they “hear voices in their head” and feel in their body the physical sensations created by negative Self-attacking words and emotions. These stored experiential memories are a result of being subjected to ordeals of verbal and emotional violence. Emotional feelings such as Self-devaluation (worthlessness), Self-disgust and Self-hatred, negative Self-esteem, or verbal memories that replay negative messages such as “you’re good for nothing” (producing Self-disregarding emotions), or “you’re so stupid” (producing Self-doubting emotions) for example, can cause extreme emotional, mental, and spiritual pain and suffering. Inflicting Self-harming acts are frequently perceived as acts that take away the pain of negative Self-attacking words and emotions. Inflicting Self-harming acts can be perceived as a means of caring about ones-Self—“It helps me cope as it relieves the pain”. Or “it also gives me the proof that I exist”—which is a vital feedback message when a victimized person is feeling like a “nothing” or an “it”.

Perpetrators also teach—condition—the persons they victimize to inflict Self-harm. Self-harming conditioning keeps the victimized person from remembering, from talking and telling, and distorts their coping skills and belief system. For example, from our participatory “kitchen table” research project, in 1998, with persons who spoke of surviving ordeals of ritual abuse-torture, come the following insights:

When I was very little my father told me all the colors [bruises] made me pretty ... I learned to cope by banging or hurting my-Self thus bruising my-Self ... trying to do good for my father ... all I wanted was for my parents to say I did good but they never did ... I could never do good no matter how hard I tried ... being hit, beaten, raped, cut, or burned was all normal ... it was about being loved that’s what they said, “I love you.” I realize now these words are the same as outsider words but the behaviors are different ... being cared about in a healthy respectful way is opposite to what I was taught, told, and knew.

When I became a mother I parented, for awhile, like I had been parented by beating, hitting, and spanking my children. Because I was still in relationship with my perpetrator parents I listened to my

mother tell me to beat my kids when they didn't toilet train until I came to question this form of parenting. When I made the connection that the violent childhood I had endured was not the norm that's when I started the extremely difficult work of changing my parenting behaviors to being respectful and non-violent towards my children.

The Canadian Supreme Court Process:

The position of the Supreme Court parties was that the Canadian Foundation for Children, Youth and the Law, argued that section 43, Correction of Child by Force, of the Canadian Criminal Code was in violation of children's *Charter* rights to security of the person (Charter section 7), to equality (Charter section 15), and that it constitutes cruel and unusual punishment (Charter section 12). [3] The Attorney General of Canada argued that section 43 reflected a fair balance between the interests of children, parents, and Canadian society. Although the federal government does not condone the physical discipline of children, neither does it support the criminalization of parents, teachers, and other caregivers for disciplinary conduct or for physically correcting a child as long as the physical force used is reasonable in the circumstances and takes into account the needs and best interests of children.[4]

The Canadian Foundation for Children, Youth and the Law, Inc. is an advocacy organization that believes children and youth must be recognized as individuals under the law. It operates a non-profit legal aid clinic under the title, Justice for Children and Youth, providing legal representation to low-income children and youth in Toronto and vicinity. Additionally, it gives summary legal advice, information and assistance to young people, parents (in education matters), professionals, and community groups across Ontario.[5] Joining in the anti-spanking campaign were the Ontario Association of Children's Aid Societies and the Child Welfare League of Canada, for example.

Backing the federal government's position was the Coalition for Family Autonomy, a collection of the following lobby groups: Focus on the Family (Canada), Home School Legal Defense Association of Canada, REAL Women of Canada, and Canada Family Action Coalition. And, the Canadian Teachers Federation although they stated they did not support corporal punishment they feared that if s. 43—the "spanking law"—was overturned they could face criminal assault charges for physically restraining an unruly student.

The Supreme Court of Canada Ruling:

The issue before the Supreme Court of Canada was whether section 43 of the Criminal Code of Canada was unconstitutional. On January 30, 2004, in a 6-3 judgment, the Supreme Court released its decision in reference to s. 43 of the Criminal Code (Corporal Punishment) in the case of the *Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada*, which

concerned the use of force by parents and teachers to correct a child. The Supreme Court of Canada upheld the so-called "spanking law", s. 43 of the Criminal Code, which was first enacted by the federal government more than a century ago in 1892. However, its decision imposed new legal boundaries on the use of "reasonable" physical force to discipline children.

Reasonable Force versus Unreasonable Force:

The Court's ruling at least sets out some guidelines as to "reasonable" acts versus acts that are considered unacceptable or harmful to children. This ruling, thus, provides guidelines for parents and for teachers concerning the use of corporal punishment by classifying actions as **reasonable** or **not reasonable**.^[6]

For Parents:

Not reasonable force means that:

- (a) Corporal punishment for children under the age of two is not reasonable and is harmful to them as it has no corrective value given the limits of their cognitive development;
- (b) Corporal punishment of teenagers is not reasonable and is harmful because it can induce aggressive or antisocial behaviors;
- (c) It is not reasonable to use implements or objects such as belts, straps, or rulers, etc., due to the physical and emotional harm the use of such objects cause;
- (d) It is not reasonable to strike a child on their face or head due to the harm these physical acts can cause; and,
- (e) Corporal punishment must not be inhumane or degrading or harmful and there must be no lasting bodily harm.

Reasonable force means that;

- (a) A parent can only use "minor corrective force of a transient and trifling nature",^[7]
- (b) Corporal punishment must be for "educational" or "corrective" purposes and not be motivated by anger, frustration, or abusiveness; and,
- (c) Inflicting corporal punishment must be limited to the use of the open hand.

For Teachers:

Teachers can use limited force to restrain unruly students, for example, to remove them from a classroom or to break up a fight but they are not to hit the student. The Canadian Teachers Federation agreed with the court ruling as corporal punishment is not a practice they endorse in Canadian public schools.

Irrespective of the Federations opinion Ducan Thorne (2004) and Paula Simons (2004) write specifically about the situation in the province of Alberta where 15 school boards still rely on the strap whereas schools boards in 30 other Albertan school districts have banned the use of corporal punishment. The city of Edmonton's public and Catholic school boards banned corporal punishment in 1990 but some private schools in this city were, at the time of the Supreme Court ruling, still allowing the use of the strap. All schools will, be informed of the changes in the law.[8]

At least eight Canadian provinces and territories have already banned corporal punishment according to Ducan Thorne.[9] In our home province of Nova Scotia the Nova Scotia Department of Education, in their published *School Code of Conduct* manual, stated that the use of corporal punishment was not an appropriate response to any type of student misconduct and is specifically forbidden.[10]

There may be other schools in Canada where the use of the strap is still a reality. We hope the Supreme Court ruling will make these schools aware of the legal definition of corporal punishment and the use of "reasonable" force imposed on teachers.

The Law and How it Pertains to Religious or Ethnic Culture Groups:

The Court's ruling removes the freedom of religion or ethnic cultural norms as an excuse for the beating of children as the court clearly found "... that religious freedom cannot trump the rights of children to security of the person." [11]

In conclusion:

From our perspective spanking is a violent action that is in violation of the child's human rights and an abuse of adult power—by position, by size, by privilege, and by role.

References:

[1] Greenspan, E. & Rosenberg, M. (2004). *Martin's Criminal Code* (s. 43. pp. cc/100-cc/101). Aurora, ON: Canada Law Book.

[2] This example is a composite of teen-dating violent relationships taken from persons Jeanne counseled.

[3] Greenspan, E. & Rosenberg, M. (2004). *Martin's Criminal Code* (pp. CH/11-CH/23, CH/52-CH/55, CH/56-CH/58). Aurora, ON: Canada Law Book.

[4] Justice Department Canada: Fact sheet provides a summary of the case available online at: <http://www.scc-csc.gc.ca> and see http://www.canadiancrc.com/Child_Abuse_webpage/Supreme_Court_Case_Spanking.htm

[5] Justice for Children and Youth, Canadian Foundation for Children, Youth and the Law, 415 Yonge Street, Suite 1203, Toronto, ON, Canada, M5B 2E7, Tel: 416-920-1633, Fax: 416-920-5855, Ontario Toll Free: 1-866-999-JFCY (5329), info@ifcy.org or at www.ifcy.org

[6] Brown, J. (2004, January 31). Top court upholds parents' right to spank kids. *The Chronicle Herald-The Mail Star*, p. A1-A2; CBS News (Associated Press) US. (2004, January 30). Canadian Court Spanking Kids OK. Downloaded August 20, 2004 from CBSNews.com; Habid, M. (2004, January 31). Reaction mixed on spanking law decision. *The Chronicle Herald-The Mail Star*, p. A19; Simons, P. (2004, January 31). Spanking decision restrained by common sense. *Edmonton Journal*, p. B1, B9; Thorne, D. (2004, January 31). Supreme Court takes strap out of teachers' hands. *Edmonton Journal*, p. A1, A10.

[7] Brown, J. (2004, January 31). Top court upholds parents' right to spank kids. *The Chronicle Herald-The Mail Star*, p. A1.

[8] Simons, P. (2004, January 31). Spanking decision restrained by common sense. *Edmonton Journal*, p. B1, B9; Thorne, D. (2004, January 31). Supreme Court takes strap out of teachers' hands. *Edmonton Journal*, p. A1, A10.

[9] Thorne, D. (2004, January 31). Supreme Court takes strap out of teachers' hands. *Edmonton Journal*, p. A1, A10.

[10] Nova Scotia Department of Education. (2001). School Code of Conduct p. 7. E-mail: studentsvcs@ednet.ns.ca or www.ccrsb.ednet.ns.ca/students/conduct.pdf

[11] Greenspan, E. & Rosenberg, M. (2004). *Martin's Criminal Code* (s. 43. pp. cc/100-cc/101). Aurora, ON: Canada Law Book; Simons, P. (2004, January 31). Spanking decision restrained by common sense. *Edmonton Journal*, p. B1, B9.

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