The Case on Discipline: To Spank or Not To Spank:

The BIG Question

Place an *x* on the line to indicate your level of agreement with each of the following statements. Provide reasons for your decisions in the spaces below.

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

Justification: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Justification: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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The Canadian Foundation for Children, Youth, and The Law v Attorney General of Canada (2004):

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 forty-three of the *Criminal Code* is invalid as it legalized the use of corporal punishment on children for the purpose of correction. .

The basis for the challenge was that section forty-three 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 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 Teacher’s Federation and a group of organizations that joined forces to form the Coalition for Family Autonomy.

What do you infer was the verdict in this case?

Trial Decision:

This application for a declaration began in the Ontario Court (General Division), now known as the Ontario Superior Court of Justice. Justice McCombs ruled that section forty-three was consistent with the *Charter* and that is 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 section forty-three, 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 that the purpose of section forty-three 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 the Supreme Court of Canada (SCC). CFCYL 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 and the Quebec Human Rights Commission.

The Final Judgement:

The Supreme Court of Canada held, in a 6-3 decision, that section forty-three was constitutional, upholding previous decision of the lower courts. The majority of Supreme Court Judges found that section forty-three did not violated 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 shall 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.

Reflection Questions:

1. What is “reasonable force under the circumstances”
   1. In families?
   2. In the classroom?
2. Do you agree with the Supreme Court of Canada’s guidelines? Why or why not?
3. In either case, what changes to these guidelines would you suggest?
4. Section forty-three, also known as the defense 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 over a century? What can be done to make sure that are laws are keeping up with society’s changing values and beliefs? Who would be responsible for updating laws?
5. Should laws exist to shape societal values, or should they exist to reflect them? Or, put metaphorically, should laws shape or mirror societal values? Answer this question in the form of a paragraph with three justifications.