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SPECIAL EDITION: SECTION 43 AND CORPORAL PUNISHMENT

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Message from the Executive Director

By Jeanette Lewis



With this special edition of the *Journal*, OACAS continues its advocacy on behalf of children. The evidence is clear that physical punishment of children is not only an ineffective approach to discipline but an approach that puts children at risk – of physical abuse, physical injury, emotional harm, behavioural problems such as aggression and mental health problems later in life.

However, Canadian law (in Section 43 of the Criminal Code) has justified using physical force against children for purposes of correction. OACAS was proud to be part of the constitutional challenge to this Section, because we believed we offered a unique and important perspective to the Supreme Court of Canada. The social workers of our member Societies are truly working on the front lines, trying to help parents provide good care and discipline for their children. When the law seems to support physical punishment – something we know puts children at risk – it is more difficult for our social workers to counsel, support and help parents find more positive approaches.

It was disappointing to all of us that the Supreme Court of Canada opted to uphold Section 43. However, the Justices did add some limitations. It is helpful to have a clear statement that the use of objects to strike a child is unacceptable, for example, although some of the other limitations set down – such as the use of force against a child with a disability – may be subject to further judicial interpretation.

In this special edition, we have collected articles examining this issue from several perspectives. You will find information about the risks of physical punishment, a detailed analysis of the implications of the Supreme Court's decision and ideas for parents about how to discipline in a more positive way.

As we continue to support legal changes, we believe that education continues to be essential. We hope this *Journal* will provide you with some thought-provoking ideas and information you can use in your own agency and your own community.

The Decision of the Supreme Court of Canada Upholding the Constitutionality of Section 43 of the Criminal Code of Canada: What This Decision Means to the Child Welfare Sector¹

by Marvin M. Bernstein

Introduction

On January 30, 2004, the Supreme Court of Canada released its decision in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*² upholding the constitutionality of section 43 of the *Criminal Code of Canada*. This is the section of the *Criminal Code of Canada* that justifies the use of corporal punishment³ by parents, teachers and those standing in place of the parents, where the force is reasonable under the circumstances and is administered for the purpose of correction. It provides:

*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.*⁴

This article attempts to examine the implications of this important Court decision, particularly for the child welfare sector and for the children, who will be directly affected. In this regard, it is the author's premise that while the Judgment will provide some measure of protection to children in selected circumstances and reduce the number of potential acquittals, it will ultimately have the effect of creating confusion and dehumanizing children, while maintaining them as second-class citizens, who can be legally assaulted on the assumption that 'a little violence is good corrective medicine'. Additionally, it will be shown that the Supreme Court of Canada Judgment is out of step with: current social science research evidence as to the harmful effects of corporal punishment; current international developments; and Canadian public opinion.

Chronology of Court Proceedings

In 1998, the Canadian Foundation for Children, Youth and the Law commenced an application in the Superior Court of Justice, as a public interest litigant, for a declaration finding section 43 of the *Criminal Code* to be unconstitutional. The primary basis for the challenge was

¹ This article is a follow-up to an earlier article: Bernstein, M., *Continuing the Constitutional Challenge to Section 43 of the Criminal Code of Canada*, (2002), OACAS Journal, Vol. 45, Number 3, at pp. 2-7 (available on the website of the Ontario Association of Children's Aid Societies at www.oacas.org). This article has been written for presentation at both the Association of Family and Conciliation Courts Conference in San Antonio, Texas in May 2004, and at the Ontario Association of Children's Aid Societies Conference in Toronto, Ontario in June 2004.

² 2004 SCC 4. The decision is also posted at www.lexum.umontreal.ca/csc-scc/en.

³ In this article, the terms "corporal punishment" and "physical punishment" are used interchangeably.

⁴ *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 43.

the legal argument that the defence infringed: the child's equality rights to full benefit and protection of the law under section 15⁵ of the *Charter*, the child's right to security of the person under section 7⁶ of the *Charter*, and the child's right to be protected from cruel and unusual punishment under section 12⁷ of the *Charter*.⁸ Reliance was also placed upon Canada's obligations under the United Nations Convention on the Rights of the Child.⁹ The Ontario Association of Children's Aid Societies (OACAS)¹⁰ was granted Intervenor status in support of the applicant's position. The Attorney General in Right of Canada opposed the application. The Canadian Teachers' Federation¹¹ and a coalition of groups calling itself the Coalition for Family Autonomy, which included Focus on the Family, REAL Women of Canada, Canadian Family Action Coalition, and the Home School Legal Defence Association were also granted Intervenor status to argue in favour of the constitutionality of the section.

In July 2000, Justice McCombs of the Superior Court of Justice¹² ruled that section 43 was constitutional and dismissed the application. The court, however, recognized the "growing body of evidence that even mild forms of punishment do no good and may cause harm" and stipulated some parameters for determining whether physical force was "reasonable under the circumstances," which derived from the evidence of expert witnesses on both sides, deemed by the Court to be in agreement.¹³

⁵ Subsection 15(1) provides that "Every individual is equal before and under the law and has the right to the equal protection and 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."

⁶ Section 7 provides that "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."

⁷ Section 12 states that "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

⁸ *Canadian Charter of Rights and Freedoms*, ss. 7, 12, 15(1).

⁹ *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3.

¹⁰ The OACAS is a voluntary membership organization that represents 50 of 52 Children's Aid Societies in the Province of Ontario.

¹¹ The Federation opposes the repeal of section 43, although its stated policy position is that teachers should not use corporal punishment on students.

¹² Reported at (2000), 146 C.C.C. (3d) 362, 188 D.L.R. (4th) 718, 49 O.R. (3d) 662, 36 C.R. (5th) 334, 76 C.R.R. (2d) 251 (Ont. S.C.J.).

¹³ It should be noted that the expert witnesses did not testify before Justice McCombs and thus no first-hand findings of credibility were made. Instead, the expert evidence consisted of affidavits, articles and transcripts of expert witness cross-examination occurring at an Official Examiner's office.

In September 2001, the Ontario Court of Appeal heard the appeal from the decision of Mr. Justice McCombs, involving the same parties and Intervenors. On January 15, 2002, that Court dismissed the appeal and again upheld the constitutionality of the section, stating that the objective of the section is "to permit 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 harm that such sanctions would bring to them, to their tasks and to the families concerned."¹⁴ The Ontario Court of Appeal further endorsed the parameters enunciated in the Court below for the delineation of "reasonable" corporal punishment.

After the Supreme Court of Canada granted the application for leave to appeal filed by the Canadian Foundation for Children, Youth and the Law, new Intervenors were added by that Court to the pre-existing list of parties and Intervenors. These new Intervenors were the Child Welfare League of Canada and the Commission des droits de la personne et des droits de la jeunesse.¹⁵ The appeal took place before a nine-Justice panel on June 6, 2003 and the Judgment was ultimately released on January 30, 2004.

The History and Past Judicial Interpretation of Section 43

The section 43 defence to the assault of certain enumerated classes of persons has existed in Canadian criminal legislation since the 1892 *Criminal Code*, which codified the English common law. The purpose of the section was to authorize the physical punishment of children, including spanking, hitting and slapping. The English common law, with its origins in Roman law, also allowed the use of corporal punishment by husbands against wives, by employers against adult servants and by masters against apprentices. The *Code* retained the right of a master to use such force on his apprentice, but this was removed in a 1955 amendment. The corporal punishment

¹⁴ Reported at (2002), 161 C.C.C. (3d) 178, 207 D.L.R. (4th) 632, 57 O.R. (3d) 511, 154 O.A.C. 144, 48 C.R. (5th) 218, 23 R.F.L. (5th) 101, 90 C.R.R. (2d) 223 (C.A.).

¹⁵ The Commission also represented the Provincial Child Advocates.

of criminals, by whipping, was permitted until 1972.¹⁶ In one appeal decision, the Court noted as an “anomaly” the fact that “corporal punishment of criminals is now prohibited while corporal punishment of children is still permitted.”¹⁷ As well, it is remarkable that section 44¹⁸ of the *Criminal Code*, which is an antiquated provision allowing a ship’s officers to use physical force against sailors to maintain order, was only fully repealed in 2003.

While section 43 of the *Criminal Code* has sometimes been referred to as “the spanking law”, this is really a euphemism, as this statutory provision has been used as a defence in cases where children have been physically or psychologically injured, often by means other than spanking. For example, section 43 has been successfully used in the past to gain acquittals in situations where children have suffered injuries after having been hit with a variety of implements – such as belts, paddles, extension cords, and even a hammer and a horse harness.¹⁹ In this respect, Chief Justice McLachlin, writing for the majority, expressed concern about the past interpretation and application of this provision:

It must be conceded at the outset that judicial decisions on s. 43 in the past have sometimes been unclear and inconsistent, sending a muddled message as to what is and is not permitted. In many cases...judges failed to acknowledge the evolutive nature of the standard of reasonableness, and gave undue authority to outdated conceptions of reasonable correction. On occasion, judges erroneously applied their own subjective views on what constitutes reasonable discipline – views as varied as different judges’ backgrounds. In addition, charges of assaultive discipline were seldom viewed as sufficiently serious to merit in-depth research and expert evidence or the appeals which might have permitted a unified national standard to emerge.²⁰

¹⁶ Greene, Sharon D., *The Unconstitutionality of Section 43 of the Criminal Code: Children’s Right to be Protected from Physical Assault, Part 1* (1999), 41 Crim. L.Q. 288; McGillivray, Anne, ‘He’ll learn it on his body’: *Disciplining Childhood in Canadian Law* (1998), 5 International Journal of Children’s Rights, 193-242.

¹⁷ *R. v. Dupperon*, [1985] 2 W.W.R. 369 (Sask. C.A.), at p. 376.

¹⁸ *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 44.

¹⁹ See list of acquittals for both parents and teachers at website for the Repeal 43 Committee at www.repeal43@sympatico.ca. See also SCC Judgment, *supra*, at paras. 153-170 (Dissenting Judgment of Justice Louise Arbour).

²⁰ SCC Judgment, *supra*, at para. 39.

Professor Anne McGillivray explains the historical derivation and current meaning of the word “spanking” as follows:

Corporal punishment was not about punishing children for misdeeds. Like breaking horses and hunting hawks, children’s wills were to be broken by assault to spur obedience, learning and right behaviour. The popular word for such assaults – spanking – comes from the German ‘spanken’ used in horse training in the 1700s. ‘Spanking’ has been used to describe everything from taps, smacks and slaps to paddling, caning, beating, whipping, belting, and everything between. It is a word without meaning.²¹

Decision of Supreme Court of Canada:

In a split 6-3 decision, the Supreme Court of Canada upheld the constitutionality of section 43 of the *Criminal Code*, but at the same time, strictly limited the legality of parental corporal punishment and completely prohibited the use of school corporal punishment, while maintaining the capacity of teachers to restrain or remove a student in appropriate circumstances.

In a series of judicial limitations, which are discussed below, the Supreme Court of Canada has, in a majority decision written by Chief Justice McLachlin, considerably narrowed the scope of section 43 as a defence against the assault of children by their caregivers and teachers. She describes the purpose of section 43 in the following terms:

The purpose of section 43 is to delineate a sphere of non-criminal conduct within the larger realm of common assault. It must, as we have seen, do this in a way that permits people to know when they are entering a zone of risk of criminal sanction and that avoids ad hoc discretionary decision-making by law enforcement officials. People must be able to assess when conduct approaches the boundaries of the sphere that s. 43 provides.²²

Two of the dissenting Judges, Justices Louise Arbour and Marie Deschamps found that section 43 of the *Criminal Code* violated the *Charter* and should be struck down altogether. In the case of Justice Arbour, there was judicial reliance upon a breach of the child’s “security of the person” rights under section 7 of the *Charter*.

²¹ McGillivray, Anne, *Child Physical Assault: Law, Equality and Intervention* (2003), 30 Manitoba Law Journal, 133-166, at p. 135.

²² SCC Judgment, *supra*, at para. 19.

That section 43 is rooted in an era where deploying 'reasonable' violence was an accepted technique in the maintenance of hierarchies in the family and in society is of little doubt. Children remain the only group of citizens who are deprived of the protection of the criminal law in relation to the use of force...²³

Justice Deschamps additionally found a breach of the child's "equality" rights under section 15 of the *Charter*:

*By condoning assaults on children by their parents or teachers, s. 43 perpetuates the notion of children as property rather than human beings and sends the message that their bodily integrity and physical security is to be sacrificed to the will of their parents, however misguided. In the words of Dickson J....in *Ogg-Moss v. The Queen*, [1984] 2 S.C.R. 173, at p. 187, s. 43 creates a category of 'second-class citizens' that must suffer a 'consequent attenuation of [their] right to dignity and physical security.' Far from corresponding to the actual needs and circumstances of children, s. 43 compounds the pre-existing disadvantage of children as a vulnerable and often-powerless group whose access to legal redress is already restricted.²⁴*

A third dissenting Judge, Justice Binnie determined that while the use of corrective physical force under section 43 of the *Criminal Code* violated the child's "equality" rights under section 15 of the *Charter*, it was justified under section 1²⁵ of the *Charter*, except that no such justification existed in the case of teachers:

With all due respect to the majority of my colleagues, there can be few things that more effectively designate children as second-class citizens than stripping them of the ordinary protection of the assault provisions of the Criminal Code. Such stripping of protection is destructive of dignity from any perspective, including that of a child. Protection of physical integrity against the use of unlawful force is a fundamental value that is applicable to all.²⁶

Judicial Limitations for the Interpretation of the Justifiable Limits of Corporal Punishment

While upholding the constitutionality of section 43 of the *Criminal Code*, the Supreme Court of Canada has substantially narrowed the scope of section 43 as a defence against the assault of children by their caregivers

and teachers. In the Judgment, the Court has attempted to carve out several limitations or "a series of classifications and sub-classifications"²⁷ for assisting a court in deciding whether the physical force applied to a child was "reasonable under the circumstances." These judicial limitations can be summarized as follows:

- 1) Only parents may use reasonable physical force solely for purposes of correction
- 2) Teachers may use reasonable force only to "remove a child from a classroom or secure compliance with instructions, but not merely as corporal punishment"
- 3) Corporal punishment cannot be administered to "children under two or teenagers"
- 4) The use of force on children of any age "incapable of learning from [it] because of disability or some other contextual factor" is not protected
- 5) "Discipline by the use of objects or blows or slaps to the head is unreasonable"
- 6) "Degrading, inhuman or harmful conduct is not protected", including conduct that "raises a reasonable prospect of harm"
- 7) Only "minor corrective force of a transitory and trifling nature" may be used
- 8) The physical punishment must be "corrective, which rules out conduct stemming from the caregiver's frustration, loss of temper or abusive personality"
- 9) "The gravity of the precipitating event is not relevant," and
- 10) The question of what is "reasonable under the circumstances" requires an "objective" test and "must be considered in context and in light of all the circumstances of the case."

²³ SCC Judgment, *supra*, at para. 173

²⁴ SCC Judgment, *supra*, at para. 231.

²⁵ Section 1 stipulates that "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

²⁶ SCC Judgment, *supra*, at para. 72.

²⁷ SCC Judgment, *supra*, at para. 81 (terminology used by Justice Binnie in his dissenting Judgment).

Supreme Court of Canada Decision Out of Step with Current Social Science Research Evidence of Harmful Effects of Corporal Punishment²⁸

The Supreme Court of Canada decision is clearly out of step with current social science research, which has demonstrated the multiple harmful effects of corporal punishment. Not only are children who experience corporal punishment at greater risk of physical harm, but they are also at greater risk of emotional harm.

Corporal punishment is a risky and ineffective form of discipline to use with children. Parental reliance on corporal punishment is strongly linked to child maltreatment. A significant majority of physical abuse cases began as incidents of physical punishment, which escalated into injury. In the Canadian Incidence Study of Reported Child Abuse and Neglect (Health Canada, 2001), 69% of the substantiated investigations of physical abuse involved some form of inappropriate punishment.²⁹ In the Ontario Incidence Study of Reported Child Abuse and Neglect³⁰ (covering the period from 1993-1998), it was found that 72% of substantiated investigations of physical abuse involved inappropriate punishment. Additionally, over a 5-year period, the number of substantiated cases of physical abuse increased 90%, from an estimated 4,200 in 1993 to 8,000 in 1998. This is to be contrasted with a 44% decrease in substantiated sexual abuse during the same period, from 3,400 in 1993 to 1,900 in 1998. One possible explanation postulated for these different trends is the successful “zero tolerance”

approach to sexual abuse, compared to the confusing “more tolerant” approach to physical abuse, which is contributed to by the continuing existence of section 43 of the *Criminal Code*.

One court has described the link between physical punishment and the risk of physical abuse in the following terms:

As I see it, the problem with physical discipline is the difficulty of containing it, because it occurs at a moment of high tension. It seems to me that it is very difficult for a parent to administer gracefully and in a controlled way, a punishment process against someone when they are angry and upset and maybe even overly emotionally charged, as well as the victim of the punishment. Using restraint and caution in those cases can be difficult: people have different thresholds of temperament and different degrees of physical strength. It must be very difficult in this kind of confrontation for a parent to not hit a little harder, maybe use a little heavier implement, hit a little more often and maybe have poor aim and not hit the buttock.³¹

Even when children are not physically injured during these punishments, research has demonstrated that this is a potentially harmful form of discipline, which may result in serious mental and emotional consequences to children. Dr. Joan Durrant, a psychologist and professor at the University of Manitoba, and a leading expert on the issue of how Sweden has addressed the issue of corporal punishment, describes a meta-analysis of 88 studies on corporal punishment, concluding that “[t]he findings were dramatic.” Researchers found children who were physically punished had poorer mental health, less positive relationships with their parents, lower levels of moral internalization, increased levels of aggression, and increased delinquency and anti-social behaviour.³²

Although there is some possibility of a beneficial link between corporal punishment and short-term compliance,

²⁸ For a compendium of excellent resources regarding social science research, see: 1) Durrant, J.E., Ensom, R., & Wingert, S. (2003), *Joint Statement on Physical Punishment of Children and Youth (pre-publication edition)*. Ottawa: Coalition on Physical Punishment of Children and Youth (available on the website of the Children’s Hospital of Eastern Ontario, at www.cheo.on.ca/english/pdf/joint_statement_e.pdf); 2) the website of the Repeal 43 Committee at www.repeal43.org; and 3) the website of the Global Initiative to End All Corporal punishment of Children at www.endcorporalpunishment.org.

²⁹ Trocme, N., MacLaurin, B., Daciuk, J., Billingsley, D., Tourigny, M., Mayer, M., Wright, J., Barter, K., Burford, G., Hornick, J., Sullivan, R. & McKenzie, B., *Canadian Incidence Study of Reported Child Abuse and Neglect*, (2001), National Clearinghouse on Family Violence: Ottawa, ON.

³⁰ Trocme, N., Fallon, B., MacLaurin, B., Bartholomew, S., Ortiz, J., Thompson, J., Helfrich, W. & Daciuk, J., (2002), *The 1998 Ontario Incidence Study of Reported Child Abuse and Neglect*, (OIS 1998). Toronto: Centre of Excellence for Child Welfare, Faculty of Social Work, University of Toronto (conducted as part of the *Canadian Incidence Study of Reported Child Abuse and Neglect*, *supra*).

³¹ *Children’s Aid Society of Hamilton-Wentworth v. W. (C.)* (November 8, 1990), Doc. Hamilton-Wentworth C478/90 (Ont. U.F.C.) quoted in James G. McLeod, *Annotation*, 35 R.F.L. (3d) 284, ap.286.

³² Durrant, J.E., *Distinguishing physical punishment from physical abuse: Implications for professionals: Canada’s Children*, (2002), 9(1), at pp. 17-21(citing meta-analysis conducted by Gershoff, E.T., *Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review*, *Psychological Bulletin*, (2002), 128(4), at pp. 539-579).

this association is far from clearly demonstrated in research studies. The *Joint Statement on Physical Punishment of Children and Youth* summarizes this point in the following manner:

*Research findings on the association between physical punishment and immediate compliance are unclear. Of five studies that examined the relationship, three found that physical punishment can result in short-term compliance. However, its effectiveness in increasing compliance is questionable. In one of these studies, for example, an average of eight spankings was required in a short period to achieve children's compliance. This suggests not only that the short-term effectiveness of physical punishment is limited, but that the risk of its escalation is high.*³³

Some adults contend that they were spanked or physically punished and were not harmed by this. However, the research shows convincingly that people do well *despite* being spanked or physically punished, not *because of* it. We do not know how much better adjusted those people would have been, had they not been hit as children. Given the high rates of violence and depression in our society, we need to identify all of the factors that contribute to those problems and eliminate them from children's lives. In addition, adults are not always aware of personal harm, and the experience of corporal punishment changes personal definitions of what is appropriate and what is violent. It may also be true that they were not personally harmed, but this does not erase the fact that research has clearly established physical punishment as a risk factor for harm. By way of analogy, there are many adults who were driven in cars without car seats or seatbelts as children; that they survived without injury, however, does not mean this is a safe practice or that we should not have laws requiring car seats for small children.

³³ Durrant, J.E., Ensom, R., & Wingert, S. (2004). *Joint Statement on Physical Punishment of Children and Youth* (pre-publication edition). Ottawa: Coalition on Physical Punishment of Children and Youth, at p. 9 (available on the website of the Children's Hospital of Eastern Ontario at www.cheo.on.ca/english/pdf/joint_statement_e.pdf).

Supreme Court of Canada Decision Out of Step with International Developments

A) United Nations Convention on the Rights of the Child and Concluding Observations of the United Nations Committee On the Rights of the Child

The Supreme Court decision is out of step with both the principles stated in the United Nations Convention on the Rights of the Child and with the concluding observations of the United Nations Committee on the Rights of the Child, which is responsible for monitoring signatory nations' compliance with the Convention itself.

In her majority Judgment, Chief Justice McLachlin discusses the relevant provisions of the United Nations Convention on the Rights of the Child as follows:

Canada is a party to the United Nations Convention on the Rights of the Child. Article 5 of the Convention requires state parties to

'respect the responsibilities, rights and duties of parents or...other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.'

Article 19(1) requires the state party to

'protect the child from all forms of physical and 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.' (Emphasis added.)

Finally, Art. 37(a) requires state parties to ensure that "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." (Emphasis added.)³⁴

Nevertheless, it is perplexing that Chief Justice McLachlin fails to refer to the recent ground-breaking statements made by the United Nations Committee on the Rights of the Child,³⁵ strongly rebuking Canada, particularly since Justice Arbour refers to them³⁶ in her dissenting

³⁴ SCC Judgment, *supra*, at para. 32.

³⁵ Committee on the Rights of the Child, *Consideration of Reports by State Parties Under Article 40 of the Convention*, Thirty-fourth session, CRC/C/15/Add. 215 (October 27, 2003).

³⁶ SCC Judgment, *supra*, at para. 188.

Judgment. Although the Concluding Observations were issued after the appeal hearing, this fact did not prevent Justice Arbour from taking judicial notice of these Concluding Observations, which were made public well before the Judgment was released by the Supreme Court of Canada:

In its most recent Concluding Observations, the Committee expressed 'deep concern' that Canada had taken 'no action to remove section 43 of the Criminal Code' and recommended the adoption of legislation to remove the existing authorization of the use of 'reasonable force' in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed.

Committee on the Rights of the Child, Consideration of Reports submitted by State Parties Under Article 40 of the Convention, Thirty-fourth session, CRC/C/15/Add. 215 (2003), at paras. 32-33.³⁷

B) Supreme Court Decisions in Other Jurisdictions

While it is true that the Supreme Court of Canada decision may be seen as an improvement on what was there before, children are still, under this decision, denied the same protection against assault that adults take for granted. In essence, what we are left with is an untenable compromise decision that continues to justify child assault on the basis of “body mapping”,³⁸ “anatomical zones of protection” and “age delineation.” This can be contrasted with the unequivocal and courageous decisions of both the Supreme Court of Italy and the Supreme Court of Israel, which have declared all forms of corporal punishment to be unlawful:

On May 16, 1996, Italy’s highest court, the Supreme Court of Cassation in Rome issued a decision prohibiting all parental use of corporal punishment:

In any case, whichever meaning is to be reassigned to this term ['correction of children'] in family and pedagogic relationships, the use of violence for educational purposes can no longer be considered lawful. There are two reasons for this: the first is the overriding importance, which the [Italian] legal system attributes

³⁷ *Ibid*, at paras. 32-33.

³⁸ “Body mapping” is a descriptive term used by Professor Anne McGillivray; see, for example, McGillivray, Anne, *He'll learn it on his body: Disciplining childhood in Canadian law* (1998), 5 *International Journal of Children's Rights*, 193-242.

to protecting the dignity of the individual. This includes 'minors' who now hold rights and are no longer simply objects to be protected by their parents or, worse still, objects at the disposal of their parents. The second reason is that, as an educational aim, the harmonious development of a child's personality, which ensures that he/she embraces the values of peace, tolerance and co-existence, cannot be achieved by using violent means, which contradict these goals.³⁹

Four years later, on January 25, 2000, the Supreme Court of Israel issued a strong decision prohibiting all use of corporal punishment.

...The claim will be made that in our determination, we imposed on the public a differentiation that it cannot stand up to, that not a small number of ordinary parents among us, are using force that is not exaggerated on their children (such as a light blow on the buttocks or on the palm), in order to educate them and give them discipline. Are we saying that these parents are criminals?

The appropriate answer is that in the legal, social and educational conditions that we are in, we cannot reach a compromise on account of the risk to the welfare and well being of the minors. We must also take into account that we live in a society in which violence is spreading like a plague; permission for 'light' violence is liable to deteriorate into much more severe violence. We cannot endanger the physical and mental well being of a minor by any kind of physical punishment; truth has to be clear and unequivocal, and the message is that physical punishment is not allowed.⁴⁰

Growing Number of Countries Enacting Civil Law Bans of Corporal Punishment

There are now at least 11, but potentially as many as 13,⁴¹ enlightened countries/nations around the world that have

³⁹ See *Republic of Italy v. Cambria*, translated decision of the Supreme Court of Cassation, on appeal from the Court of Appeal of Milan, March 18, 1996 (also referred to on the website of the Global Initiative to End All Corporal Punishment at www.endcorporalpunishment.org).

⁴⁰ See *Natalie Baku v. State of Israel*, translated decision of the Supreme Court of Israel, January 25, 2000 (also referred to on the website of the Global Initiative to End All Corporal Punishment of Children at www.endcorporalpunishment.org).

⁴¹ See Durrant, J.E., Ensom, R., & Wingert, S. (2004). *Joint Statement on Physical Punishment of Children and Youth* (pre-publication edition). Ottawa: Coalition on Physical Punishment of Children and Youth (available on the website of the Children's Hospital of Eastern Ontario at www.cheo.on.ca/english/pdf/joint_statement_e.pdf.) where the authors have, in Appendix B, added Bulgaria (2000) and Ukraine (2002) to the list, but say “at least 11 nations” in the text of the *Joint Statement* because of the uncertainty regarding the interpretation of the explicit statutes in those 2 countries.

taken the step to ensure that children are protected, through civil law, against all forms of corporal punishment. These countries, which have clearly recognized the risks of corporal punishment, are: Sweden (1979), Finland (1983), Norway (1987), Austria (1989) Cyprus (1994), Denmark (1997), Latvia (1998), Croatia (1999), Germany (2000), Israel (2000)⁴² and Iceland (2003).⁴³ In Italy, the use of violence for child-rearing or educational purposes is no longer lawful as a result of a 1996 Supreme Court decision, but this is not yet confirmed in legislation. In addition, in Belgium in 2000, a new clause was added to the Constitution, confirming the entitlement of children in that country to moral, physical, psychological and sexual integrity, but that has not yet translated into an explicit ban on all corporal punishment, although such a ban is presently under consideration.

Supreme Court of Canada Decision Out of Step with Canadian Public Opinion

The Supreme Court of Canada decision is also out of step with the changing views of the majority of Canadians towards the removal of section 43 from the *Criminal Code*. A national public opinion poll,⁴⁴ which was conducted in August 2003 by Decima Research, found that 51%⁴⁵ of Canadians believe parents should not be allowed to use physical force as a disciplinary measure, while 69%⁴⁶ of Canadians believe teachers should not be allowed to physically punish children.

The public opinion poll findings also suggest that the number of Canadians, who agree with removing section 43 of the *Criminal Code* as a defence for parents, would increase significantly if certain contingencies were in

place. For example, the removal of section 43 would be supported by: 72% of Canadians, if guidelines were in place to prevent prosecutions of mild slaps or spankings; 72% of Canadians, if research showed that physical punishment was not effective and could be harmful; and by 80% of Canadians, if research demonstrated that it would decrease child abuse.⁴⁷

A recent Ipsos-Reid public opinion poll⁴⁸ showed that 57% of Canadian parents surveyed have not used corporal punishment at all. This finding would suggest that there has been a significant change in public attitude towards the use of corporal punishment, as previous polling, some 14 years earlier, showed that 85% of Ontario parents⁴⁹ had spanked or slapped their children at least once.

Implications of Supreme Court of Canada Decision for Child Protection Workers

The first implication of the Supreme Court of Canada decision for child protection workers is that they now have an obligation to understand the “new law”, and then, to make it clear to parents, parent-substitutes and teachers, where hitting for correction comes to their attention. In the context of the “new law”, child protection workers should explain that there have not been any legislative amendments to section 43 of the *Criminal Code of Canada* as a result of the Supreme Court of Canada decision – but rather a series of judicially imposed restrictions, which are now binding across our entire country.

⁴² Prior to Israel’s Knesset banning all forms of corporal punishment, there had been 2 earlier landmark decisions of the Israeli Supreme Court - the first in 1998, where the Supreme Court declared that the use of physical harm as an educational means was prohibited, and - the second in 2000, where that Court, in a decision that canvassed, at length, the law in Canada, determined that the physical punishment of children by their parents was no longer a defence to assault.

⁴³ This list can be found on the website of the Global Initiative to End All Corporal Punishment of Children at www.endcorporalpunishment.org.

⁴⁴ See the results of this poll at www.toronto.ca/health/ssl_background.htm.

⁴⁵ 58% of younger Canadians (ages 18-34) and 59% of women supported the removal of section 43.

⁴⁶ 76% of younger Canadians (ages 18-34) and 75% of women supported the removal of section 43.

⁴⁷ These percentages are taken from Durrant, J.E., Ensom, R., & Wingert, S. (2004). *Joint Statement on Physical Punishment of Children and Youth* (pre-publication edition). Ottawa: Coalition on Physical Punishment of Children and Youth (available on the website of the Children’s Hospital of Eastern Ontario at www.cheo.on.ca/english/pdf/joint_statement_e.pdf).

⁴⁸ Ipsos-Reid/CTV/Globe and Mail poll of Canadian parents conducted between February 24 and March 4, 2004, at www.ipsos-na.com/news/pressrelease.cfm?id=2117, where regional differences are also identified.

⁴⁹ Lenton, R.L., *Techniques of child discipline and abuse by parents*, Canadian Review of Sociology and Anthropology, 1990, Vol. 27(2), 157-184, as referred to in Durrant, J.E., Ensom, R., & Wingert, S. (2004). *Joint Statement on Physical Punishment of Children and Youth* (pre-publication edition). Ottawa: Coalition on Physical Punishment of Children and Youth (available on the website of the Children’s Hospital of Eastern Ontario at www.cheo.on.ca/english/pdf/joint_statement_e.pdf).

Parents and parent-substitutes should be told that there are now various strict limitations on the use of corrective corporal punishment, which have been imposed by that Court.⁵⁰ For example, they should be told that hitting children with objects, on the head, or under the age of 2 and over the age of 13, or with a disability are all criminal offences. Teachers should be told that they can no longer use corrective corporal punishment on children, although the use of reasonable restraint or removal is permissible. In this regard, the Supreme Court of Canada has made no distinction between public and private schools. How to advise children, who are at risk of physical harm, of their rights will not be easy – but they must be taught about their legal entitlement to enhanced bodily integrity within these new parameters. In this regard, Corinne Robertshaw, the Founder of the Repeal 43 Committee, has commented on the importance of clarifying the law not just for parents, but also for children:

The need for children...to know what, if any, force is allowed seems to be overlooked. This is an important omission [by the Supreme Court of Canada] because we know that many children suffer months of assault before their injuries or deaths but do not ask for help. They do not know that such assaults are criminal and appear to assume that injuries and beatings are a normal part of childhood. Five year-old Farah Khan and [six] year-old Randal Dooley might not have suffered appalling deaths if corporal punishment were clearly illegal and if they had learned at Kindergarten and school that it is not allowed. They might have mentioned these assaults to teachers or neighbors and, if reported, their deaths could have been prevented.⁵¹

Although child protection workers should advise strongly against *any* hitting for correction, they will have to explain that “minor, transitory and trifling force” is still legal for the defined age group, if pressed for an explanation on the current state of the law. This is a major practical difficulty with the decision. Child protection workers may or may not find it difficult to explain what is “minor” – for example, if such force is being used frequently over a long period of time, does it cease being “minor”? The Supreme Court of Canada decision does not address this point; nor does it address the potential for psychological harm in using minor force, since it appears to refer to

“bodily harm” only, although causing emotional harm, or the risk thereof, may still infringe provincial child protection legislation.

Another difficult area for child protection workers is the prohibition against any hitting of a child “because of disability or some other contextual factor.” Physical disabilities may be obvious, but what about emotional or behavioural disabilities? For example, it is not clear whether Attention Deficit Disorder and hyperactivity are “disabilities or contextual factors.”

A further problem is the ability of the child protection worker to assess whether the physical punishment was “corrective”, which rules out “conduct stemming from the caregiver’s frustration, loss of temper or abusive personality.” Child protection workers should expect to be called to give evidence in criminal proceedings on this issue. This particular court limitation is enigmatic because it seems to imply that most incidents of corporal punishment occur in an entirely rational and thoughtful context. However, Dr. Joan Durrant has commented, in respect of this limitation, that “[p]arents don’t hit their kids when they are happy with their behaviour. They hit them when they are frustrated. Why else would they hit them?”⁵²

Another very real implication of the Supreme Court of Canada decision for child protection workers is the need to eradicate the misconception that the Court has now conferred upon parents a kind of immunity to physically punish their children as they see fit. Child protection workers should stress that the Judgment should not be taken as a license to hit one’s children and that the Court has actually criminalized a greater number of parental behaviours, which result in the infliction of physical punishment upon children. In fact, it may be prudent for child protection workers to advise their clients that the scope of the new definition is still unclear and that parents run the risk of contravening the criminal law if they cause “bodily harm” by leaving marks on a child or if they do anything that has that potential.

⁵⁰ See the composite list, which appears earlier in this article.

⁵¹ See Repeal 34 Committee website at www.repeal43.org/constitution.html.

⁵² Email communication to the author, dated April 19, 2004.

In view of the Supreme Court of Canada's list of limitations relating to the "reasonable" use of "corrective" corporal punishment, child protection agencies will need to consider developing, at the local level, protocols with the police, prosecutors and other community partners, who have a role in protecting children from physical harm and family violence.

It is also critical for child protection workers to make it clear to the public, and to professionals alike, that the decision of the Supreme Court of Canada has not eroded the mandate of child protection services and that the grounds upon which a child could be found in need of protection⁵³ prior to the decision continue to apply. This is particularly important since all Canadian Provinces and Territories prescribe a duty to report to child protection services, whenever a person has reason to believe or suspect, as the case may be, that a child has been abused or neglected. As it is, this statutory reporting duty is not generally well understood and does not cast as broad a safety net as one might hope. By way of example, a survey of a representative number of Torontonians in September 2003 found that:

*Nearly half of Torontonians do not know what circumstances warrant a call to a children's aid society about a child in need of protection. Although 88 per cent of survey respondents agreed that individuals have a legal obligation to report child abuse and neglect, 43 per cent reported that they were either unsure or did not know what situations of abuse or neglect to report. Furthermore, only 55 per cent would make a report if they suspected a child was being abused or neglected.*⁵⁴

The complexity and layering of the Supreme Court of Canada decision will also make it difficult for child protection workers to interpret the proper scope of physical discipline to their clients and to the community at large. In an article by Carole-Anne Vatcher, she points out the impracticality of a compromise position with respect to section 43 of the *Criminal Code*:

*The only legal decision that will enable us to effectively address physical abuse in child welfare settings is the striking down of Section 43. Any amendment or interpretation of the law that condones the hitting of children leaves front-line workers in the same quandary: having to make fine line distinctions and engage in absurd discussions with clients about which body parts of children are OK to hit, and turning a blind eye to the emotional and psychological effects of corporal punishment. Eliminating section 43 does not mean that every trivial case of slapping a child will require CAS intervention. The decision to open a case can still be based on the current Eligibility Spectrum.*⁵⁵

The need for child protection workers to explain permissible corporal punishment according to "who may use physical punishment, on what ages, body parts and capacities of children, with what force and in what circumstances"⁵⁶ is a significant challenge. Of all of these court-imposed limitations, the most difficult distinction to explain is that based upon age delineation. Why is it permissible to hit a child at age 2 years of age, but not a day earlier? Why is it permissible to hit a child on the day before he or she turns 13, but not on the next day? These arbitrary age distinctions are simply illogical, but will, by necessity, become part of the dialogue between child protection workers and clients, as well as other community partners.⁵⁷

Corinne Robertshaw has remarked that the Supreme Court of Canada failed to appreciate that child protection legislation, by itself, cannot adequately protect children:

Like the majority, Justice Binnie held that s. 43 was needed for 'keeping the heavy hand of the law out of the home.' He also justified the section on the basis that children are protected under child welfare legislation and that this protection is more important than ending s. 43. Justice Deschamps disagreed, stressing that child protection laws cannot compensate for infringing a right as basic as the right to physical security. Where children are at risk of harm, this is the point at which the disapproval of the criminal law is necessary. There is 'no delicate

⁵³ Every Canadian jurisdiction contains a definition by which a child can be found "in need of protection", which includes grounds based upon actual physical or emotional harm, or the risk of such harm. See: Bernstein, M., Kirwin, L., Bernstein, H., *Child Protection Law In Canada*, National Loose-leaf Publication (Toronto: Carswell 1990).

⁵⁴ Press Release of Children's Aid Society of Toronto, Catholic Children's Aid Society of Toronto and Jewish Family and Child Services, dated October 8, 2003, at p. 1.

⁵⁵ Vatcher, Carole-Anne, *Corporal Punishment of Children...The Current Law, The Constitutional Challenge, and Implications for Future Social Work Practice*, OACAS Journal, October 2000, Vol. 44, No. 3, at p.9.

⁵⁶ Durrant, J.E., Ensom, R., & Wingert, S. (2004). *Joint Statement on Physical Punishment of Children and Youth* (pre-publication edition). Ottawa: Coalition on Physical Punishment of Children and Youth (available on the website of the Children's Hospital of Eastern Ontario at www.cheo.on.ca/english/pdf/joint_statement_e.pdf).

⁵⁷ These age delineations seem to be premised on the Court's notion that children must be capable of learning from physical punishment.

*balancing act,' she said, between these federal and provincial laws. In his reliance on child protection laws, Justice Binnie does not seem to appreciate that child welfare legislation essentially comes into play only **after** a child has been harmed, and only **if** the harm is reported. Its role in **preventing** harm is partly undermined by s. 43's justification of physical punishment.⁵⁸*

The decision of the Supreme Court of Canada also does little to address the confusion concerning the rights of parents to use physical discipline in respect of their children. In this regard, section 101 of the *Child and Family Services Act* states:

No service provider shall inflict corporal punishment on a child or permit corporal punishment to be inflicted on a child in the course of the provision of a service to the child.⁵⁹

Under these provisions, an Ontario child protection worker has a legal duty both to prevent foster parents from using corporal punishment on children in their care and to prevent parents in the community from using corporal punishment on their children when such families are receiving CAS services. Nonetheless, the conflict between the provisions of the *Child and Family Services Act* and the *Criminal Code of Canada* creates confusion, even though the foster parents or parents in the community, as the case may be, could still use section 43 of the *Criminal Code* as a defence that would take precedence over the *Child and Family Services Act*. This permission versus prohibition confusion surrounding the use of physical punishment is nicely illustrated in the *Joint Statement on Physical Punishment of Children and Youth*:

...If the foster parents use physical punishment on their biological children but spare [their foster child], all of the children receive mixed, confusing and stigmatizing messages. All involved in this situation – the [foster] child, the foster parents' biological children, the foster parents themselves and the child welfare professionals involved – are challenged in these perplexing situations to try to make sense of the permission versus prohibition confusion. If the child were subsequently adopted, her adoptive parents, like other parents, would not be

forbidden by provincial or territorial statute or by child welfare agency policy from using physical punishment on [their child]... This inconsistency sends a very confusing message to parents and caregivers – and children and youth – regarding young people's rights to security and legal protection from physical assault.⁶⁰

Within this contradictory legal landscape, it is essential that child protection workers continue to speak with parents and other caregivers about whether physical punishment actually works and whether there are other effective non-violent disciplinary strategies.

Child protection workers should be conversant with the large amount of research conducted on physical punishment. This research shows overwhelmingly that children who are physically punished are more likely to develop problems than those who are not physically punished. These problems include lasting physical injuries, increased anxiety and depression, as well as heightened aggression and antisocial behaviour. Physical punishment *might* stop a child from doing something *right now*, but over the long term, it can contribute to more serious problems.⁶¹ For those child protection workers wishing to inform themselves as to the risks that physical punishment – as opposed to appropriate discipline – poses for children, the Centre of Excellence for Child Welfare has compiled a helpful checklist of various negative developmental outcomes linked to the use of physical punishment:⁶²

Child protection workers may also wish to know, and be able to advise their clients, that the Canadian Paediatric Society, in a Position Statement, entitled “Effective discipline for children”, dated January 2004, recommends “that physicians strongly discourage disciplinary spanking

⁵⁸ See Repeal 43 Committee website at www.repeal43.org/constitution.html.

⁵⁹ *Child and Family Services Act*, R.S.O. 1990, c. C.11, s. 101. The child protection laws in British Columbia and Manitoba also contain provisions prohibiting corporal punishment by foster parents – see *Child, Family and Community Service Act*, R.S.B.C. 1996, c.46, s. 70(1)(e); and *Foster Homes Licensing Regulation*, Man. Reg. 17/99, s. 29.

⁶⁰ Durrant, J.E., Ensom, R., & Wingert, S. (2004). *Joint Statement on Physical Punishment of Children and Youth* (pre-publication edition). Ottawa: Coalition on Physical Punishment of Children and Youth (available on the website of the Children's Hospital of Eastern Ontario at www.cheo.on.ca/english/pdf/joint_statement_e.pdf).

⁶¹ Written communication from Joan Durrant.

⁶² Durrant, J.E. & Ensom, R., *Information Sheet on Physical Punishment of Children*, (available on the website of the Centre of Excellence for Child Welfare, at www.cecw-cepb.ca), at pp. 1,2 [based upon the *Joint Statement on Physical Punishment of Children and Youth*, *supra*.]

and all other forms of physical punishment.”⁶³ In an excellent brochure recently prepared by Dr. Joan Durrant for Health and Justice Canada, there is a simply expressed explanation as to why spanking does not work:

Spanking is not an effective form of discipline, even though some people may think it is.

Spanking can lead to anger and resentment and can cause children to lose trust in their parents. Spanking teaches that hitting others is okay. In the long run, spanking makes children's behaviour worse, not better.

*Never spank! It simply doesn't work – for the child or the parent.*⁶⁴

Child protection workers should also be familiar with the need to educate their clients as to the purpose of discipline and the range of effective non-violent disciplinary strategies. Unlike the purpose of physical punishment – which is to inflict pain and discomfort upon children to correct their behaviour – the purpose of discipline⁶⁵ is to help children learn self-control and self-discipline, instill caring values, protect them from danger, and help them develop a sense of responsibility. The *Joint Statement on Physical Punishment of Children and Youth*⁶⁶ provides a long list of valuable resources for parents, while the Centre of Excellence for Child Welfare has compiled a very useful list of constructive non-violent methods for guiding children's behaviour.⁶⁷ In addition, the Children's Aid Society of London-Middlesex has

prepared a very instructive package on “positive parenting”,⁶⁸ while the recent brochure authored by Dr. Joan Durrant and distributed by the National Clearinghouse on Family Violence,⁶⁹ describes not only the non-violent ways for parents to help their children behave appropriately, but also the resources where parents can go for professional and community-based support.

Next Steps

Now that the Supreme Court of Canada has upheld the constitutionality of section 43 of the *Criminal Code*,⁷⁰ the next steps would be:

- 1) to provide public education as to the new limitations in the law regarding the use of corrective corporal punishment and as to the availability and efficacy of courses that promote the use of non-violent and positive parenting strategies;
- 2) to develop effective protocols/initiatives for child protection workers to work collaboratively with the police, prosecutors and other community partners, who have a role in family violence prevention and in protecting children from physical harm – this could include, but is not limited to, local public health units, women's shelters, daycare centres and educational settings; and
- 3) to continue to advocate for the parliamentary repeal of section 43 of the *Criminal Code*.

While it would be optimal if there were to be a complete civil ban on corporal punishment in the child protection legislation of each Canadian Province and Territory, this

⁶³ Canadian Paediatric Society, *Position Statement on Effective discipline for children*, Paediatric Child Health, Vol. 9, No. 1, January 2004, at p. 40.

⁶⁴ See National Clearinghouse on Family Violence (Ottawa: 2004), *Nobody's Perfect: What's Wrong with Spanking?* (Copies can be obtained by phoning 1(800) 267-1291, or accessing the website at www.hc-sc.gc.ca/nc-cn).

⁶⁵ Canadian Paediatric Society, *Position Statement on Effective discipline for children*, Paediatric Child Health, Vol. 9, No. 1, January 2004, at p. 38, where “effective discipline” is defined as meaning “discipline applied with mutual respect in a firm, fair, reasonable and consistent way. The goal is to protect the child from danger, help the child learn self-discipline, and develop a healthy conscience and an internal sense of responsibility and control. It should also instill values.”

⁶⁶ See *Joint Statement on Physical Punishment of Children and Youth*, *supra*, at Appendix A (Sample resources for parents and caregivers).

⁶⁷ Durrant, J.E. & Ensom, R., *Information Sheet on Physical punishment of Children*, (available on the website of the Centre of Excellence for Child Welfare, at www.cecw-cepb.ca), at p.2 [based upon the *Joint Statement on Physical Punishment of Children and Youth*, *supra*.]

⁶⁸ See Children's Aid Society of London-Middlesex, *Positive parenting...Guidelines for parents*, (available on the website of the Ontario Association of Children's Aid Societies, at www.oacas.org/resources/parentingpkg/index.htm).

⁶⁹ See National Clearinghouse on Family Violence (Ottawa: 2004), *Nobody's Perfect: What's Wrong with Spanking?* (Copies can be obtained by phoning 1(800) 267-1291, or accessing the website at www.hc-sc.gc.ca/nc-cn).

⁷⁰ In retrospect, the timing of the appeal was unfortunate because a number of events occurred after the hearing of the appeal on June 6, 2003 and did not form part of the evidentiary record, which was before the Supreme Court of Canada - 1) the release of the Decima public opinion poll results; 2) the release of the Concluding Comments regarding Canada from the United Nations Committee on the Rights of the Child; 3) the release of the report of the Canadian Paediatric Society discouraging the use of physical punishment; and 4) the completion of the authoritative *Joint Statement on Physical Punishment of Children and Youth*.

must be preceded by a repeal of the criminal law defence to assault, set out in section 43 of the *Criminal Code of Canada*. Without the removal of this criminal law defence, prohibitions in civil child protection legislation will always be only partly effective. The prohibition on corporal punishment by foster parents in the Ontario *Child and Family Services Act*⁷¹ is an example of a civil ban that has only a limited effect because it is contradicted by section 43 of the *Criminal Code*.

Preparation for the various appeals in this case has contributed to the compilation of a substantial body of research and expert opinions on this topic, which would be very helpful in making a case for parliamentary repeal. In addition, the results of the Decima and Ipsos-Reid public opinion polls and the Concluding Comments of the United Nations Committee on the Rights of the Child would be highly persuasive.⁷² The three dissenting Judgments from the Court also provide many helpful statements that could be used to good advantage.

It is also important to keep the issue of the risks of corporal punishment in the public eye, so that it can serve as an opportunity to educate the public as to the importance of non-violent positive parenting and the realities of current social science research.

Conclusion

Although Canada has taken a progressive stance on numerous social and human rights issues, it is seriously lagging behind on the issue of respecting the fundamental dignity and human rights of children and youth. This muddled and tepid approach to the issue of corporal punishment has unfortunately tarnished Canada's reputation internationally.

It is time for our legislators to repeal section 43 of the *Criminal Code* and to recognize the status of children as persons, entitled to be treated with respect and dignity, and as individual rights-holders. In this way, we will be giving effect to the following observations made by Peter

Newell, a leading international expert on the issue of corporal punishment and the *United Nations Convention on the Rights of the Child*, whose comments were also quoted by Justice Binnie in the Supreme Court of Canada decision:

Childhood, too, is an institution. Society, even in those areas like education, which are supposedly for the benefit of children, remains unsympathetic to them. All too often children are treated as objects, with no provision made for bearing their views or recognizing them as fellow human beings. Children – seen but not heard – face the double jeopardy of discrimination on grounds of age, and discrimination on all the other grounds as well. Giving legal sanction to hitting children confirms and reflects their low status...

*...The basic argument is that children are people, and hitting people is wrong.*⁷³

About the Author

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⁷¹ R.S.O. 1990, c. C.11, s. 101.

⁷² The Decima and Ipsos-Reid public opinion polls and the Concluding Comments of this U.N. Committee were technically not part of the evidentiary record before the Supreme Court of Canada, arising subsequent to the hearing of the appeal on June 6, 2003.

⁷³ SCC Judgment, *supra*, at para. 108, citing Newell, Peter, *Children Are People Too: The Case Against Physical Punishment*. London: Bedford Square Press, 1989, at pp. 2,4.

Distinguishing Physical Punishment from Physical Abuse: Implications for Professionals

By Joan Durrant

Most of us can count physical punishment as one of our childhood experiences. In past decades, most parents believed that it was a necessary means of gaining compliance and it was not unusual to witness spankings and slappings of children by angry parents in public places. Such acts were taken for granted as a normal part of parenting and intervention by a stranger was almost unheard of.

Today, physical punishment is much less visible. A cultural shift has taken place in Canada that has increased its social undesirability as a method of child discipline. It is less common today to witness public spankings. And it is more likely today that parents will express discomfort with their use of physical punishment. However, Canadian law still sanctions this practice⁷⁴.

This contradiction contributes to many professionals' uncertainty about advising parents about this method of discipline. Should they suggest to parents that it is acceptable to give a child a mild spanking? Should they tell parents that it is sometimes necessary to slap a two-year-old's hand? Should they imply that it is understandable to strike a child when all else fails?

These questions strike at the heart of an issue that arises frequently for any professional who works with parents, particularly parents of young children. The issue is whether physical punishment can be viewed as a normative, relatively harmless and justifiable act of discipline that can be distinguished from physical abuse. Is it possible to draw such a line? Are they completely separate phenomena? In order to answer these questions, it is helpful to begin by examining our definitions of physical abuse.

Physical Abuse as Physical Injury

Perhaps the most common way of distinguishing physical punishment from physical abuse is by the presence or

⁷⁴ Section 43 of the Criminal Code of Canada states that "every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of a correction with 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."

absence of physical injury (e.g., National Clearinghouse on Child Abuse and Neglect Information, 2000). By this definition, if a child has been cut or bruised, abuse has taken place. Without visible injury, the conclusion may be drawn that the parent's act was within the range of appropriate punishment.

While injury clearly indicates that maltreatment has occurred, there are several problems with this definition. First, it implies that there is a qualitative difference between the acts that result in injury and the acts that do not result in injury. In reality, however, most acts that we define as abuse are the same as those that we define as discipline; whether or not they result in injury is often a matter of chance. Whether or not bruising occurs, for example, depends on the part of the body struck, the size of the child, and the child's physical vulnerability to bruising. So, where one parent's non-injurious slap may be considered trivial, another parent's injurious slap of the same intensity would be defined as abusive.

The second problem with this definition is that the absence of injury cannot be equated with the absence of abuse. Pain and injury are not necessarily synchronous. For some children, a spanking that does not cause injury can cause substantial pain. And acts that cause intense discomfort, such as requiring a child to hold a sitting position without a chair or forcing a child to remain under a cold shower, may leave no visible injury.

Third, an exclusive focus on the child's physical state ignores the psychological dimension of the child's experience. Acts that leave no lasting physical signs may result in significant psychological harm. Over the past few decades, a large body of research has accumulated on the psychosocial correlates of normative physical punishment. Recently, a meta-analysis of this literature was conducted (Gershoff, 2002 in press). In this analysis, physical punishment was defined as acts that do not result in physical injury (e.g., spanking, slapping). Eighty-eight studies were reviewed.

The findings were dramatic. All of the 12 studies investigating the association between physical punishment and mental health found that physical punishment is

associated with poorer mental health in children. All of the 13 studies examining parent-child relationships found that physical punishment is associated with poorer quality of those relationships. Thirteen of fifteen studies documented a relationship between physical punishment and lower levels of moral internalization in children. All of the 27 studies examining the relationship between physical punishment and increased levels of child aggression found a positive relationship. Of 13 studies investigating the relationship between physical punishment and increased delinquency and antisocial behaviour in children, 12 found a positive relationship. Therefore, virtually the entire body of literature on physical punishment indicates that it places children at risk for psychosocial difficulties, rendering the injury criterion an inadequate means of distinguishing between appropriate and inappropriate punishment.

Physical Abuse as Parental Intent

It could be argued that the parent's intent can differentiate abuse from normative discipline; that parents who are disciplining their children intend not to harm them, but to teach them. While it may be true that most parents who administer physical force to their children do not intend to harm them, this description also applies to most parents who do harm their children. A number of studies have demonstrated that the majority of incidents of child abuse began not with a desire to injure the child, but as attempts at discipline (Gil, 1970; Kadushin & Martin, 1981; Parke & Collmer, 1975; Trocmé et al., 2001). In a study of substantiated cases of nonsexual abuse by parents in the US, the abuse "almost invariably" (p. 249) occurred within the context of a disciplinary interaction (Kadushin & Martin, 1981). "In most instances, parents had a deliberate, explicit disciplinary objective in mind in involving themselves in the interaction culminating in abuse. Their instrumental intent was to obtain a modification of the child's behavior which they perceived as needing changing" (Kadushin & Martin, 1981; pp. 250).

In a national study of all cases of child physical abuse reported during a two-year period in the United States, the most common type of abuse (63% of cases) involved "incidents developing out of disciplinary action taken by

caretakers” (Gil, 1970, p. 126). More recently, findings of the Canadian Incidence Study of Reported Child Abuse and Neglect revealed that 69% of substantiated cases of child physical abuse occurred in the context of physical punishment (Trocmé et al., 2001). In her meta-analysis of the physical punishment literature, Gershoff (2002 in press) found that parental use of physical punishment was associated with an increased likelihood of child physical abuse in 10 out of 10 studies examining this relationship.

Vasta (1982) has suggested that parents may have an instrumental goal when they decide to use physical punishment. They are likely to have learned this response through previous patterns of reinforcement; that is, the child stops misbehaving when struck. They may not intend to harm the child physically and expect that their actions will produce positive results. But their heightened arousal levels (i.e., frustration, anger) “independently act on the intended degree of physical punishment to produce responses involving a dangerous or injurious level of force. What begins as an act of physical discipline, thus, becomes an act of interpersonal violence” (Vasta, 1982, p. 135).

In the majority of cases, perpetrators of physical abuse believe that they have exercised their right to physically punish the child and that their behaviour was justified (Dietrich, Berkowitz, Kadushin, & McGloin, 1990; Gil, 1970; Peltoniemi, 1983). Therefore, parental intent is not a useful criterion for distinguishing normative discipline from physical abuse.

Physical Abuse as a Violation of Social Norms

Some might argue that Canadians share a common understanding of appropriate versus inappropriate physical punishment, and that parents and professionals can recognize abuse as a deviation from this identifiable social norm. In reality, however, no such objective norm exists. Rather, our definitions of what is “normative” come from our own experiences; we tend to construct our reference points in terms of our own parents’ behaviour. A judicial ruling from a 1992 Manitoba case illustrates this phenomenon. The judge in that case ruled that repeated kicking, slapping and punching of a child was “well within the range of what has been accepted by

parents in this province” and that the discipline administered was “mild indeed” compared to what the judge himself had experienced as a child (*R v K (M)* [1992], cited in McGillivray, 1993).

Individuals who received severe physical discipline as children tend to grow up to believe that their experiences were normal (Anderson & Payne, 1994; Buntain-Ricklefs et al., 1994; Kelder et al., 1991; Knutson & Selner, 1994; Payne, 1989; Ringwalt et al., 1989; Rohner, Kean, & Cournoyer, 1991; Straus, 1994). Perhaps the most revealing demonstration of the range of acts that can be perceived as normative comes from a study of 11,660 adults (Knutson & Selner, 1994) who were asked about their experiences of severe physical punishment in childhood and their perceptions of having been abused. In this study, 74% of those who had received severe physical punishment (e.g., punching, kicking, choking) as children did *not* view themselves as having been abused; 49% of those who had been hit with more than 5 different types of objects did *not* view themselves as having been abused; 44% of those who had received more than 2 different types of disciplinary injuries did *not* view themselves as having been abused; and 38% of those who had required 2 different types of medical services for their injuries did *not* view themselves as having been abused.

Our norms are constructed relative to the environment in which we were raised. Each social worker, nurse, teacher, physician, police officer, lawyer, and judge will decide whether a particular incident was abusive largely on the basis of his or her personal norm. In a study of cases acquitted under Section 43 of the Criminal Code of Canada⁷⁵, McGillivray (1998) found that there is no criterion used consistently in the courts to distinguish physical punishment from physical abuse – not lasting injury, nor use of implements, nor the part of the body struck, nor parental anger, nor the body part struck, nor the child’s age. Social norms exist only in the eye of the beholder.

⁷⁵ McGillivray, A. (1998). ‘He’ll learn it on his body’: Disciplining childhood in Canadian law. *International Journal of Children’s Rights*, 5, 193-242.

What Can Be Done to Resolve this Dilemma?

Professionals will continue to be called upon to advise parents on the “appropriateness” of their disciplinary practices. In order to respond, they may find themselves drawing arbitrary boundaries and, thereby, giving mixed messages to parents. They may hear themselves, for example, suggesting to parents that slapping a child’s face is not acceptable but spanking a child’s buttocks is acceptable. Such a message communicates to parents that the administration of physical force is an appropriate means of behaviour change, giving professional approval to the very practice that they want to discourage. What can be done differently?

Giving Clear Messages at the Individual Level

The most effective means of resolving this dilemma is to give a clear message that the use of any physical force with children is an inappropriate method of behaviour management. Unambiguous messages lead to exploration of constructive alternatives and assist parents with establishing inhibitory controls on their own behaviour.

Changing parental attitudes can be critical to preventing harm to children. It has been demonstrated that the more strongly parents approve of corporal punishment, the more likely they are to use it and the more harshly they administer it (Moore & Straus, 1987). Indeed, parents who approve of physical punishment have a child abuse rate four times higher than that of parents who do not approve of it (Moore & Straus, 1987). Lenton (1990) found that the likelihood of maternal use of violent discipline increases with a belief in the “necessity, normalcy and goodness of physical punishment” (pp. 173). Therefore, professionals can address a key ingredient in the emergence of abuse by clearly communicating that physical punishment is an inappropriate and potentially harmful act.

Professionals also can provide information on alternative ways of responding to parent-child conflict that are constructive and associated with positive child outcomes. They can inform parents about normative child developmental stages to reduce many parents’ tendency to perceive the drive for autonomy as defiance. They can help parents to identify ways of reducing stress at

challenging times of the day, of managing their anger, of preventing conflict. They can assist parents in finding effective ways of communicating with their children that model respect and optimize their children’s compliance.

By focusing parents’ attention on prevention of misbehaviour, empathy with the developing child, and problem solving rather than punishment, professionals can help parents to build their parenting competency. Parents become most punitive when they feel most powerless (Bugental, 1987). By strengthening parenting capacity, professionals can reduce parents’ felt need to exert physical control and prevent many incidents of physical punishment and its escalation.

Giving Clear Messages at the Organizational Level.

A large and growing number of professional organizations have issued policy statements communicating that they do not endorse the use of physical punishment. As organizations that serve children and work to reduce risk in children’s lives, they actively discourage the use of physical punishment and advocate alternatives that enhance children’s physical and psychosocial well-being. These organizations include the Canadian Association of Social Workers, The Canadian Mental Health Association, the Canadian Nurses Association, the Canadian Society for the Prevention of Cruelty to Children, the Canadian Teachers’ Federation, the Child Welfare League of Canada, the American Academy of Pediatrics, the American Public Health Association, and the American Academy of Child and Adolescent Psychiatry.

Such statements provide a clear guideline to the organizations’ members, as well as to parents and the general public. With a clear standard in place, members are delivered from the struggle of assessing the appropriateness of a given act and provided with support for giving unambiguous advice to parents.

Giving Clear Messages at the National Level.

As of this printing, nine national governments have made clear statements regarding physical punishment. In each of these nations, the law states explicitly that physical punishment is not permitted. These nations are

Germany, Latvia, Croatia, Cyprus, Austria, Finland, Denmark, Norway and Sweden. In addition, judicial rulings in Israel and Italy have declared physical punishment to be unlawful in any form. The purpose of such laws is to erase the hypothetical line between physical punishment and physical abuse. Professionals are able to give clear messages to parents and, thereby, reduce risk of harm to children.

In Sweden, where the criminal defence for parents who use physical punishment was repealed in 1957 and where an explicit ban on the practice was passed in 1979, the results of a national effort to prevent child physical abuse are dramatic; between 1976 and 1996, no more than four children died as a result of physical abuse (see Durrant, 2000). Clearly, many factors have contributed to this remarkable achievement (see Durrant & Olsen, 1997), but it seems fair to conclude that a clear societal message that any use of physical punishment is inappropriate has been an important factor in reducing harm to children in Sweden. This message is the foundation of wide-spread parent education programs aimed at optimizing child health and well-being which are implemented as a key tool in child abuse prevention.

As of January, 2002 Section 43 of the Criminal Code of Canada has been upheld in the face of a constitutional challenge in the Ontario Superior Court and in the Ontario Court of Appeal. Therefore, Canadian professionals still must struggle with the notion of "reasonable force" or appropriate physical punishment. Even in the face of this law, however, it is possible for professionals to make a clear statement to all parents that physical punishment is unnecessary, not beneficial to children or to the parent-child relationship, and that it is a high risk behaviour.

Conclusion

It is important to recognize that most parents do not want to strike their children. Virtually all parents feel regret after such an incident, and most believe that physical punishment is not an effective route to increasing compliance, learning, or respect for the parent (Durrant, 1996). Providing support to these parents is a constructive and proactive means to improving parenting

skills and preventing child maltreatment. If such an effort prevents even 10% of child physical abuse cases in Canada, we will see more than 1,500 fewer cases of abuse each year (estimated on Trocmé et al's (2001) findings regarding the incidence of child physical abuse in Canada). It is time to make the message clear.

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Summary

Currently in Canada, the physical punishment of children is permitted by law, yet its social undesirability continues to grow. As a result, many professionals struggle with advising parents about this practice and with drawing a distinction between physical punishment and physical abuse. In this article, three commonly used criteria for demarcating abuse are examined – physical injury, parental intent, and social norms. It is demonstrated that none of these criteria can adequately distinguish normative from abusive punishment. It is concluded that professionals can better protect children and support parents if they provide unambiguous messages about the risk of harm associated with the use of physical punishment.

The Hit List

*By John Hoffman
Originally published in Today's Parent
April 2004*

“**W**hen spanking your child, we suggest you provide him with a written (and duly notarized) explanation. That should cover you.”

What's left to say about the spanking law controversy? In case you've been down in Texas looking for weapons of mass destruction, last January Canada's Supreme Court upheld Section 43 of the Criminal Code. That section provides parents who spank their children with a defence against assault charges, so long as the punishment was delivered with “reasonable force” for the purpose of “correction.”

Although I'm a non-spanker by philosophy, I can't say I'm surprised at the decision. However, those who hail this as a victory for those who believe the state has no business in the “woodsheds” of the nation, should think again. From what I can tell, if police and lower courts follow the fairly clear guidelines in the Supreme Court judgment, we actually have criminalized some forms of spanking.

I find myself imagining a letter that the Justice Department will have to send parents of one-year-olds.

Dear Parents:

Congratulations! You and your child are approaching a milestone. In one short month, little [insert name here] will enter the “spanking years.” That is, he/she will be mature enough to learn the lessons imparted via appropriate corporal punishment. You see, according to expert testimony verified by the highest court in our land, babies under two cannot understand that the purpose of a spanking is to correct their behaviour. But at the age of two, a higher consciousness kicks in and children can understand that while it's not OK for them to hit other people, it's OK for their parents to hit them.

We don't actually recommend spanking, but your government feels obliged to tell you of your constitutional rights. Mind you, there are some

caveats. You can't hit your child with a, an, um... thing. No belts, rulers, electrical cords, paddles, canes or rolled-up newspapers. And you can't hit them on the head. We think the shoulders might be OK. The court wasn't quite clear on that. And you can't hit them very hard either, not enough to hurt. At least, any harm you inflict can be no more than trivial and transitory, according to the courts. That probably means don't leave a mark, but we're not sure.

Oh, and one more thing: You can't actually be mad. If you're angry when you spank a child, according to the Supreme Court, all that wonderful correctional benefit is lost. We suggest you provide your child with a written (and duly notarized) explanation. That should cover you.

So, bottoms up. (Sorry, we couldn't resist.) We'll be sending another note in 10 years to remind you that it's almost time to stop. That's because spanking makes teenagers aggressive. We wouldn't want that; they might hit back. But rest assured, if your teen does become aggressive, all that spanking you did between the ages of two and 12 had nothing to do with it.

We'll warn you in plenty of time so you can work up to what we are sure will become a rite of childhood passage: the ritual "Last Spank."

We'll sign off now because we don't want to interfere. After all, the state shouldn't be sticking its nose into family life, should it? We just thought we'd lend you a — ahem — helping hand.

**Sincerely,
Your Federal Government.**

Ok. So I'm being a bit silly. However, while I think it's good, in a way, that the courts have narrowed the definition of spanking, there's something about this whole exercise that seems a little absurd. You can spank a child at 11 years, 11 months, but not 12 years, one month. Why bother at all? We don't try to define a legal hit, for any other age group. We just say that all unwanted touching is illegal and make a number of reasonable exceptions.

I think we should be able to do that for 2 to 12 year olds too. And perhaps this Supreme Court ruling will force the government to redraft this part of the criminal code or try to make a whole new law which tries to balance child and parental rights. This isn't over yet. Stay tuned.

Positive Discipline Ideas for Parents

Adapted from “Yes, You Can!” a booklet in the Parenting for Life series written by Holly Bennett and Teresa Pitman

Check Your Discipline Methods

How can you tell if you are using positive discipline? You can evaluate your approach by asking yourself: Do I ...

- teach appropriate behaviour
- avoid violence or physical punishment
- allow my child to continue feeling positive about himself
- keep our parent-child relationship strong
- keep in mind my child’s stage of development, individual personality and needs

Good discipline is based on a strong parent-child relationship, and here are some ways to enhance it:

- **Loving touch.** Give your child hugs; cuddle up close while you read a story. Physical affection is always important to children, even when they get old enough to be embarrassed by hugs in public. Don’t embarrass them, but show your affection in small ways, like a pat on the back
- **Time together.** Spend some time alone with each child when you can give him your undivided attention. It doesn’t have to be a long period of time – maybe ten minutes a day as you are tucking him into bed
- **Respect your child’s feelings.** Even if they don’t seem very rational to you, they are real to your child. One mother said, “I used to get really angry when Jeremy was scared of monsters under the bed – until the day he killed a spider for me. My fear of spiders isn’t rational, either, but it sure doesn’t help if people make fun of me for it”
- **Be trustworthy.** If you make a promise – say to take the family swimming tomorrow – do your best to keep it. If you’re really not sure, it’s better not to make the promise
- **Apologize.** Nobody is perfect! Saying “I’m sorry” when you make a mistake or lose your temper will let your child know that you care about her feelings

- **Have fun together.** When you enjoy each other and play together, you rediscover how special your child is. Those good feelings will help you both handle the tough times

Discipline that Teaches: Your Positive Discipline Tool-box

Of course, even with a strong relationship between parent and child, there will be plenty of discipline issues to deal with. The positive methods described below have been used and found effective by many parents.

If you have been relying on spanking or other punishments to control your child, he or she may be confused at first by these new approaches. You may feel that they aren't working, because the child's behaviour doesn't improve right away – in fact, it might even get worse at first. It will take time for you to learn to use these ideas effectively, and for your child to adapt to them, so don't give up. The rewards are worth it.

Catch Her Being Good

How would you like to have a boss or supervisor who was quick to point out every mistake you made but never noticed when you did something well? Now think about how good a positive comment or a compliment can make you feel. Your child is just the same.

When you appreciate your child's good behaviour, it encourages him to keep trying. But to help your child learn, your praise should be specific. If you say to your son, *"You're such a good boy,"* he won't know what he's done that you approve of. Is he 'good' because he used his napkin, didn't fight with his sister at the table, or because he spilled soup on his shirt? He can't tell. He learns more if you say, *"You really remembered your table manners tonight, that was great."*

It's also important to be honest – children are very good at knowing when adults are 'faking it.' And overdone or phony praise can backfire: a child may become dependent on constant praise, or give up trying to do a good job because you seem delighted even with sloppy work. A simple, sincere word of appreciation, or a specific comment on the neatly made bed and tidy desk, will 'ring

true' with your child and help her to discover the satisfaction of a job well done.

Some positive comments you might use:

- *"That was a good idea you had to take turns with the ball"*
- *"You've been working hard in here - you got most of the toys picked up and all the clothes. Why don't I help you clean the rest of your room, and then we'll have lunch"*
- *"That was a really long wait at the bank. Thanks for being so patient"*

Should you reward good behaviour?

For most children, the best reward is knowing they have pleased their parents. Reward programs can sometimes help children learn new skills or change their behaviour. But they must be used with care:

- Rewards work best if they are used for a limited time to help with a specific problem
- If the child is not capable of the desired behaviour, reward systems can be very stressful. For example, if a two-year-old is offered treats for using the potty – but really can't manage it yet – she may want the treats desperately and be very upset
- Structured reward programs (sometimes called 'behaviour modification') are often more successful if parents get some advice from an expert – perhaps a school counsellor or child psychologist

Describe the Behaviour, Not the Child

When we're angry or disappointed, our reaction is often to criticize or make accusations: *"You're so inconsiderate!"* or *"How could you be so stupid?"* But hurtful comments don't help a child to learn from his mistakes. Children (and adults, too) learn from us better if we stick to the facts:

- what they did wrong
- the behaviour you expect or prefer
- how you feel
- When you correct your child's misbehaviour, you might say something like this:
"You may not play ball in the living room! Balls belong outside or in the basement"
"You didn't let me know where you were, and I was

worried. You must call home before going to a friend's after school"

Real Life is the Best Teacher

You're getting your son ready to go outside and play in your yard. It's cold and there is snow on the ground, but he insists that he doesn't want to wear his mittens. What do you do? You might consider doing nothing! Pretty soon his bare hands will get cold enough that he'll come back in and ask for mittens. You could even say, as he goes out: "If you get cold, I have some mittens here in the closet."

That's called 'natural consequences.' Your child has made a choice – not to wear mittens – and then he gets to see how it works out. This kind of real-life experience is very often the best teacher.

Of course, as a parent, you have to protect your child from danger, so you can't let him do things that could hurt him. (If your two-year-old wants to play on the street, for example, you can't just let her experience the natural consequences!) You also have to prevent things that will hurt others or damage property.

"We were having a real struggle every morning to get Tara to school on time. Finally I just let her go along at her own pace, without nagging. She was ten minutes late, and she had to stay in for recess to make up the time. After that, mornings were much less of a problem - she found out that being late wasn't very pleasant."

We can't always allow children to experience the results of their choices. But often we move in too quickly, when allowing the child to try something might provide a better learning experience.

Logical Consequences

Logical consequences help children understand the link between their behaviour and its results, and encourage them to take responsibility for 'fixing' their mistakes. Not all lessons can be learned from natural consequences. Some natural consequences are too dangerous to risk. Others may not be very effective: if your child jumps on

the couch and ruins the springs, she probably won't care about the damage as much as you do!

"Megan wanted to paint, so I gave her paints, water, and plenty of paper. But when I came back, she was painting on the wall. As calmly as possible, I reminded her that she was only supposed to paint on paper. Then I put her paints away and told her she had to help me clean the walls. It probably took longer with her helping than it would have if I'd cleaned up alone, but I think it helped her learn about responsibility."

In these situations, you might want to create some 'logical consequences' instead. Many parents withdraw privileges, like TV time or outings, to punish misbehaviour. That is one kind of consequence, but logical consequences are quite different.

How do logical consequences work? Imagine you have a family rule that bike helmets must be worn when biking - but your ten-year-old rides home from school bare-headed. You might say, "Chris, you know it's dangerous to ride your bike without a helmet. Since you've chosen not to ride safely, you will have to walk. I'm putting your bike in the garage until Monday. If you decide you're willing to wear the helmet, you can have it back then."

Thinking of an appropriate logical consequence can be a challenge. It needs to be something you can enforce. Sometimes parents will tell a child that if she runs in the store or yells at a friend's house, they will go home. But if you really need to get some shopping done, or really want to visit with that friend, it becomes too hard to follow through. Instead of logical consequences, you are left with empty threats. Then the child begins to think you don't mean what you say.

Logical consequences:

- should be closely related to what the child has done
- should help the child learn about responsibility
- should not be humiliating or painful
- should fit the child's stage of development

Whenever possible, logical consequences should also:

- be explained in advance
- happen right away, not hours or days later
- give the child a chance to try again after the consequence

Remember, too, that consequences are a way of learning, and learning doesn't have to hurt. Parents sometimes want the consequence to seem like a punishment. But the point of effective discipline is not to make children suffer – it's to teach them about the results of their behaviour.

If four-year-old Kylie dashes ahead into the parking lot, the consequence might be that she has to hold your hand: "because if you don't walk safely by yourself then I have to keep you safe." That may upset her – but even if it doesn't and she walks beside you happily, she is still learning about safety rules. You don't have to look for a harsher consequence.

Teaching with logical consequences requires more thought than simply punishing a child might, but it is much more effective.

"Jessica, my 12-year-old, was always coming home late for supper, and I was getting really frustrated trying to keep hers warm or hold up the whole family until she got there. Now I just serve supper at 5:30, and if she doesn't come until later, she has to reheat it herself and eat alone. She's still late once in a while, but it's definitely improved."

Time-Out and Time-In

If your child is biting, hitting or fighting with other children, she might need some time out to calm down.

"When David came home from school, he was like a bear – grouchy with everyone and picking fights with the younger kids. Finally I told him he needed a 'time out.' He went up to his room and after a few minutes I took him up a snack. Then he told me about the rough day he'd had at school. By the time he came down, he was okay again."

Children, like adults, sometimes need to be alone. But children don't always recognize the signs, and may need help from their parents to take a 'time-out.' You can tell your child, "I think you need to be alone right now," and then look for the best way to achieve it. You can:

- suggest she go to her room or to another room in the house
- ask him to sit on a couch or chair
- suggest that she go for a walk or go outside "for some fresh air"
- walk out of the room yourself (perhaps taking any other children with you) and leave him alone

Some parents have a 'time-out' chair where the child is expected to sit. This may turn into a power struggle, as the parent tries to force the child to sit in the chair. It may be better for you to be the one who leaves for a few minutes so that it doesn't turn into a battle.

How long should a 'time-out' be? Remember that the goal is to help your child learn self-discipline and to manage his own behaviour. Because of that, it's often better to have your child decide how long he needs. You might say, "You can come out when you can play with Kanchana without biting," or "Tell me when you're ready to let other people talk, too, and we'll come back." If your child just walks into his room and comes right back out, that's okay. However, if his behaviour doesn't change, you may have to call another 'time-out' or look for a different solution.

You may find that your child goes to his room, gets interested in his toys or books, and doesn't come down for a long time. That's okay. He just needed some time alone. As he gets older, he'll learn to recognize that need by himself.

"When we went to pick Bianca up from camp, the counsellor told me that Bianca had gone for a walk by herself almost every afternoon. She told me later that living with all those kids in one cabin really got to her sometimes, and going for a walk helped her deal with them."

Sometimes what children need is not a ‘time-out’ but a ‘time-in’ – a little time alone with a parent.

“I babysit two other kids during the day, and Noah doesn’t always get along with them very well. When he started pulling Rosina’s hair, I guessed he needed a little more time and attention from me. I put on a video for Rosina and Jeffrey, and sat with Noah on the couch. I gave him a hug and told him I knew it was hard to share me with the other kids. Pretty soon he went off to watch the video with the others, but it seemed to help. They didn’t fight for the rest of the day. Whenever he seems to be getting too rough with the other kids, I try to find a way to spend a little extra time with him, and it really works.”

Time-in isn’t meant to be a punishment. It’s another way of helping a child get control of himself or feel more secure, so that he can behave better. It’s not always easy to know what will work with a particular child or in a particular situation. Sometimes you just have to try something and see what happens. For example, if your four-year-old has a tantrum and is lying on the floor yelling, you might sit close to her and try to help her calm down, perhaps by patting her back or talking gently. But if that seems to infuriate her more, you could try just walking away and leaving her alone – some kids cool down more easily without an audience.

You can have it when...

One of the goals of disciplining children is to help them learn to be responsible. A positive way to encourage responsible behaviour is to link privileges or activities your child enjoys to completion of her work:

- *“When you finish clearing the table, you can watch TV”*
- *“When we get the vacuuming done, we’ll all go out for dinner”*
- *“Put your toys back on the shelf and then we’ll read a story”*

This approach is more positive, and usually more effective, than threatening to take away privileges. Think about what happens when you say “Because you didn’t clear the table after dinner, you can’t watch TV tonight.”

You know you will have a rather angry evening as you try to prevent the child from watching TV, and you’re already annoyed because you had to clear the table yourself. If you leave the dishes on the table and just remind the child that he can watch TV as soon as the dishes are cleared, both of you will feel happier.

When you use this technique, you are also teaching your child a self-motivating skill that she can use herself as she grows older: “I’m going to study this chapter, and then I’ll go for a bike ride.” It is important, though, that the reward is something that the child really wants. If you say, “When you finish clearing the table, you can have your bath,” the dishes may sit there all evening!

“I was concerned that Kareem wasn’t doing his homework and I didn’t want him to end up with bad grades in school. So I decided that he had to show me his completed homework every night before he could go out with his friends or watch TV. It actually worked very well because I would ask questions about what he’d done and I think he got more interested in it that way.”

Choices for Children

Allowing young children to make simple choices often encourages them to be more co-operative, making life more pleasant for all of you. As the parent, you are in charge and you do make the final decisions. One of the skills children need to learn, though, is how to make good choices, so that they will be prepared for the more difficult decisions they will face as they get older. Your task as a parent is to offer gradually more complex choices that are within the guidelines you find acceptable.

For example:

- “Yesterday my preschooler said she didn’t want to go to the babysitter’s. I just asked, ‘Which of your animals do you want to take with you today?’ She picked out a teddy and headed off happily.”
- A three-year-old could choose to have brown sugar or raisins on his oatmeal (but not “anything

he wants” for breakfast if you’re only prepared to make oatmeal).

- A seven-year-old could choose what to wear to school from her drawer of winter clothes (but not her summer shorts or party dress).
- Three older children could get together and decide who will do the dishes, who will do the sweeping and who will put out the garbage (but all those tasks need to be done).

From Choices to Negotiation

As children get older, they can be more involved in decisions. Negotiating is a very useful problem-solving skill that your child will use throughout her adult life. A simple way of negotiating is to let the child choose when he’ll do something (if that’s possible).

“I felt like I was always nagging my son about his chores. Finally I said, ‘Matt, I really need you to cut the lawn. When could you commit to have it done?’ He said he’d get it finished by 7:30. He did, too!”

Some families organize regular family meetings, and these are a good time for negotiating issues like rules, chores, and allowances. Children are much more likely to follow rules if they have had some input into them and understand the reason for them. And they sometimes come up with creative solutions that really work!

Choices should be:

- within the child’s capability
- within limits you find acceptable
- compatible with health and safety
- real – if you can’t accept one of the child’s options, don’t offer him that choice

Negotiating also means allowing for exceptions and being flexible. If your child normally goes to bed at eight o’clock, you might negotiate letting him stay up until nine for a special TV show or to go to a party. Part of the deal might be that he sets out his clothes and school supplies for the next day before he goes to bed, since he’s likely to be more tired in the morning.

When you treat your child’s opinions with respect and consideration, you set an example for her to follow with other people. Giving your children choices, involving them in decision-making, and negotiating with them will help them learn skills they will need as adults.

“My son wanted to go to a movie alone with his friends. I felt they were too young. We talked it over, and made a deal – I drove them, and waited to make sure they got in okay. And I was waiting at the door when they got out. But they got to sit on their own.”

What Works for You?

Remember, to guide your child’s behaviour you can:

- Praise good behaviour
- Describe the behaviour you want
- Let natural consequences teach your child
- Use logical consequences
- Give time-out
- Give time-in
- Delay a privilege until responsibilities are met
- Offer a choice
- Negotiate an agreement.

There is no instant solution to every situation. Children are “a work in progress” and will make mistakes, just as you do. Positive approaches to discipline help them learn and you will feel good about the relationship you have with your family.

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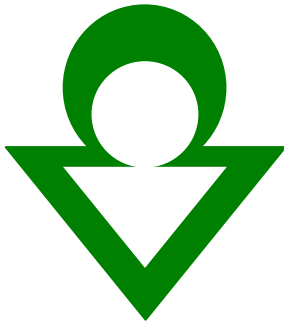
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