Section 43 – Criminal Code of Canada

* + 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.

**Canadian Foundation for Children, Youth and****the Law v. Canada** [2004] 1 S.C.R. 76

The Canadian Foundation for Children, Youth and the Law (the "Foundation") seeks a declaration that this exemption from criminal sanction:

(1) violates s. 7 of the *Canadian Charter of Rights and Freedoms* because it fails to give procedural protections to children, does not further the best interests of the child, and is both overbroad and vague;

(2) violates s. 12 of the *Charter* because it constitutes cruel and unusual punishment or treatment; and

(3) violates s. 15(1) of the *Charter* because it denies children the legal protection against assaults that is accorded to adults.

Judgements:

For s. 7

Section 43 of the *Criminal Code* does not offend s. 7 of the *Charter*. While s. 43 adversely affects children's security of the person, it does not offend a principle of fundamental justice. First, s. 43 provides adequate procedural safeguards to protect this interest, since the child's interests are represented at trial by the Crown. Second, it is not a principle of fundamental justice that laws affecting children must be in their best interests. Thirdly, s. 43, properly construed, is not unduly vague or overbroad; it sets real boundaries and delineates a risk zone for criminal sanction and avoids discretionary law enforcement. The force must have been intended to be for educative or corrective purposes, relating to restraining, controlling or expressing disapproval of the actual behaviour of a child capable of benefiting from the correction. While the words "reasonable under the circumstances" on their face are broad, implicit limitations add precision. Section 43 does not extend to an application of force that results in harm or the prospect of harm. Determining what is "reasonable under the circumstances" in the case of child discipline is assisted by Canada's international treaty obligations, the circumstances in which the discipline occurs, social consensus, expert evidence and judicial interpretation.

For s. 12

The conduct permitted by s. 43 does not involve "cruel and unusual" treatment or punishment by the state and therefore does not offend s. 12 of the *Charter*. Section 43 permits only corrective force that is reasonable. Conduct cannot be at once both reasonable and an outrage to standards of decency.

For 15(1)

Section 43 does not discriminate contrary to s. 15(1) of the *Charter*. A reasonable person acting on behalf of a child, apprised of the harms of criminalization that s. 43 avoids, the presence of other governmental initiatives to reduce the use of corporal punishment, and the fact that abusive and harmful conduct is still prohibited by the criminal law, would not conclude that the child's dignity has been offended in the manner contemplated by s. 15(1). While children need a safe environment, they also depend on parents and teachers for guidance and discipline, to protect them from harm and to promote their healthy development within society. Section 43 is Parliament's attempt to accommodate both of these needs. It provides parents and teachers with the ability to carry out the reasonable education of the child without the threat of sanction by the criminal law. Without s. 43, Canada's broad assault law would criminalize force falling far short of what we think of as corporal punishment. The decision not to criminalize such conduct is not grounded in devaluation of the child, but in a concern that to do so risks ruining lives and breaking up families -- a burden that in large part would be borne by children and outweigh any benefit derived from applying the criminal process.