
NEWS RELEASE

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COURT OF APPEAL FINDS THAT GOVERNMENT HAS CLEARLY AND PROPERLY DETERMINED THAT THE PHYSICAL PUNISHMENT OF CHILDREN IS BAD

The Ontario Court of Appeal, in a decision released today, upheld the constitutionality of section 43 of the Canadian *Criminal Code*. But the Court affirms the findings made by the Ontario Superior Court of Justice that the following forms of physical punishment are unreasonable and that the reported cases that have acquitted parents despite such actions were wrongly decided: corporal punishment of very young children and teenagers, use of objects, slaps or blows to the head of a child, corporal punishment which causes injury.

The court found that section 43 did not infringe children's rights to security of the person under the Canadian *Charter of Rights and Freedoms*. In decision written by Justice Goudge, the court found that even if the section infringed children's equality rights under the Charter, it was a reasonable limit on those rights.

This section of the code justifies the use of corporal punishment by parents, teachers and those standing in the place of parents, for the purpose of correcting a child.

The appeal, commenced by the Canadian Foundation for Children, Youth and the Law in Toronto, was argued September 10-12, 2001. The Ontario Association of Children's Aid Societies intervened in support of the appeal. Opposing the appeal were the Attorney General in Right of Canada and the Intervenors, Canadian Teachers' Federation and Coalition for Family Autonomy.

Within the past 5 years, a growing number of children's services and advocacy organizations have requested the repeal of section 43. They include the Canadian Association of Social Workers, the provincial child advocates for Ontario, Saskatchewan and Manitoba, the Ontario Association of Children's Aid Societies, Defence for Children International, the Child Welfare League of Canada, Jewish Family and Child Service, and the Children's Aid Society of Metropolitan Toronto. Other organizations that support repeal include the United Church of Canada, the Canadian Nurses Association, the former City of Toronto, the City of North Vancouver, the Canadian Council for Reform Judaism, and the City of Toronto Public Health Department.

Counsel for the Foundation were Cheryl Milne, staff counsel for the Foundation, and Paul Schabas, constitutional lawyer and partner at Blake, Cassels & Graydon of Toronto. Paul Schabas and the firm provided *pro bono* legal services in the case.

Lawyer Cheryl Milne, staff counsel for the Foundation, states:

We are disappointed with the result. Although the decision says that the physical punishment of children is a bad thing, it fails to clearly recognize children as having rights in Canadian society. It stops short of saying that children are people too.

Paul Schabas comments:

Although section 43 remains in the Criminal Code and continues to deprive children of the full protection of the law of assault, the Court decision clarifies, and narrows the application of the defence of reasonable force. The Court states clearly that children should never be struck with a weapon, or in the head or face, and that any force which causes injury is wrong. This is now the law in Ontario and hopefully the circumstances in which the defence will be raised will be much more critically, and restrictively, applied.

Martha Mackinnon, executive director of the Foundation says:

The Foundation has always felt that a case of this importance will eventually be considered by the Supreme Court of Canada. The Foundation will review the decision and consider its options at its next meeting, but believes that this is one of the most significant cases to consider the rights of children in Canadian society.

The Court's decision is available on its website: www.ontariocourts.on.ca/appeal.htm.

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For more information contact Cheryl Milne at **Justice for Children and Youth** at (416) 920-1633, and Paul Schabas at (416) 863-4274.