

JUDICIAL DECISIONS IN WHICH PARENTAL ASSAULTS HELD REASONABLE UNDER S. 43 - 1990 TO 2001

	Case Citation	Child's Age & Sex	Child's Misconduct	Punishment	Charge	Trial decision	Appeal decision	Judges Comments
1.	R. v. Dunfield 1990 103 NBR (2d) 172 New Brunswick	Girl, 9	Did not finish lessons	Struck on arm twice with ruler which broke. Other bruises on body but no proof inflicted by accused.	Common assault foster mother	Guilty	Acquitted	Hyperactive child: Difficult to manage
2.	R. v. Wheeler unreported Yukon, 1990, Faulkner J. No.191	Boy, 7	Stealing school lunches	About 12 slaps on wrist with open hand. Bruise on hand and wrist	Common assault foster mother	Acquitted	No appeal	Punishment causing bruises not necessarily excessive
3.	R. v. Laframboise, 8 WCB (2d) 202, Merredew, J 1990 Vol 10 T.L.W. NO. 37,12 Ont Cosgrove, J.	Boy, 13	Boy slammed door after being slapped for being "disruptive"	Slapped and struck on buttocks and legs several times with piece of wood	Common assault father	Guilty conditional discharge	Acquitted	Trial Judge failed to consider the "subjective nature" of s. 43 defence. A strict construction of s.43 is incorrect
4.	R. v. Olsen 1990 Ont. O. J. 3248 Unreported Loukedelis	Boy, teenage	Took mother's car without consent. Had previous conviction for theft.	Knocked off bike, punched and kicked "a few times" causing swollen eyes and nose bleed	Assault causing bodily harm by mother's male friend with her consent	Acquitted	Guilty absolute discharge	Trial judge erred in holding assault "reasonable"
5.	R. v. Goforth (1992) 98 Sask. R., 26	Boy, 8	No info	A "spanking or whatever you want to call it" causing bruises and discolouration	Common assault father	Acquitted	Upheld	No evidence of community standards needed
6.	R. v. L.A.K. (1992) 104 Nfld. And P.E.I. R.. 118 NFLD.	Girl, 11	Gestures with "obscene connotation"	Struck once with belt causing bruising on leg	Common assault father	Acquitted	No appeal	No hospitalization or disfigurement resulted. While "perhaps a little distasteful" force is authorized by law

7.	R. v. Vivian Unreported BC, 1992, Leggat, J. No. 2190	Girl, no age given	Disagreement during discussion	Grabbed by hair and head pushed into cupboard door	Common assault step- father	Guilty	Acquitted	Trial judge girl was not “insolent” but step-father had “honest-belief” that she was
8.	R. v. K.(M) 1993 16 CR (4th), 121 Manitoba Ct. of Appeal	Boy, 8	Opened a bag of seeds contrary to instructions. Seeds caught in baby’s throat	Kicked on buttocks, hit on shoulders several times leaving imprint of sweater on skin	Assault bodily harm father	Guilty conditional discharge	Acquitted	“Well within range of generally accepted punishment – mild compared to what I received”
9.	R. Atkinson (1994) 9 WWR 485, Manitoba	3 children age 2-3	No details given	Hit with belt on “diapered bottom” and upper thigh. One child hit on chest with open hand. Evidence of other injuries but no evidence caused by foster mother	Common assault foster mother	Acquitted	No appeal	Belts have potential for injury & child should not be hit on chest but no description of belt. Life and limb not endangered.
10	R. v. W.L. 28 WCB (2d) 476, 1995 Ontario	Boy, 13	Told stepfather to “shut up” during course of argument	Struck in mouth with open hand causing swollen lip	Common assault stepfather	Acquitted	No appeal	Blow to head dangerous but injury force unreasonable. Cases going back to 1899 cited in support.
11.	R. v. D.W. 28 WCB (2d) 348, 1995 Alberta	Boy, 4	Child yelling	Slap on face the left imprint of hand while child suffering from ear infection	Common assault father	Acquitted	No appeal	Slap to head not per se excessive force. Hyperactive child.
12.	R. v. Pickard Unreported BC, 1995, de Villiers, J No. 2861	Boy, 15	Annoyed father by intentional noise	Grabbed and wrestled to ground, punched in neck and grabbed by hair. Pain for some days and bruise on forehead.	Assault causing bodily harm father	Acquitted	No appeal	A hard body blow was necessary for a “submissive response” and to correct the boy.

13.	R. Peterson (1995) 124 DLR (4th) 758 Ontario	Girl, 5	Fighting with younger brother. Shut car door on his hand.	Pants pulled down, put over trunk of car in public parking lot and spanked 6 times.	Common assault father	Acquitted	No appeal	Community standards may not be relevant. S. 43 doesn't deal with them. Court is not a court of social justice. Court's job is to apply the law.
14.	R. v. M (W.F.) Alberta 1995 41 C.R. (4 th), 330 Ct. of Appeal	Girl, 12	No details given	Ordered to remove slacks and underpants and spanked on bare buttocks	Sexual assault stepfather	Acquitted on basis that spanking was simply discipline	Upheld with one dissent	Dissenting Judge held that forcing 12 year old girl to strip for spanking violated her sexual integrity and was a sexual assault
15.	R. Kootenay Alberta, Reported in The Province Mar. 27 & 29/95 Wambolt, J.P.	Girl, 11	Burned cheese on stove	Struck several times with belt	Common assault triple amputee mother	Acquitted	No appeal	None reported
16.	R. Mills Alberta, Reported In Ottawa Citizen Dec 30/96 Abbot, J	Boy, no info	No info	Hard slap to head in parking lot	Common assault mother	Acquitted	No appeal	Boy like a "wild Indian"
17.	R. v. J. (O) 30 WCB (2d) 1996, Ontario	Girl, 6	Refused to go to school	Spanked twice with hand and twice with ruler. Bruising and red marks.	Common assault mother	Acquitted	No appeal	Deliberate disobedience requiring correction. Reasonable standard of force "elusive".

18.	R. v. Morton Unreported 1998 Nova Scotia	Girl, no info	Fighting with siblings	Spanked 5-10 times with a stick	Common assault father	Acquitted	No appeal	“Controlled correction”
19.	R. v. James 38 WCB (2d) 48 Ont. 1998	Boy, 11	Swore following argument with father	Slapped on face leaving marks	Common assault father	Acquitted	No appeal	No clear test but previous decisions show this is allowed by s. 43
20.	R. v. N.S. 1999 OJ 320 Ontario, Karam, J Unreported	Boy and girl under 12	Not given	Strapped with horse harness on at least 2 or 3 occasions leaving welts during childhood in 1970s and 1980s	Assault bodily harm and assault with a weapon laid after children became adults	Acquitted	No appeal	Raising welts does not amount to bodily harm; bruises: merely transient” In view of s. 43, “insufficient evidence” of assault with weapon where there was “progressive discipline, which included warnings”
21.	R. Bell 49 WCB (2d) 507, Ontario 2001	Boy, 11	Suspicion he had stolen candy	Struck with belt 2 or 3 times. Bruise on thigh in shape of buckle	Assault with weapon	Guilty	Acquitted	S. 43 does not restrict discipline to what is appropriate or proportional or that it must be a last resort. Pain and a “trifling” bruise is not unreasonable
22.	R. v. C. (G.) 51 WCB (2nd) 417, NFLD 2001	Girl, 14	Returned after curfew	Struck with belt 3 or 4 times in 1984 across thighs causing welts or bruises	Assault with weapon father Charges of sexual assault against other daughters	Acquitted (Guilty on sexual assault charges)	No appeal	Judge’s “personal view” is that using a belt is “always unreasonable” but case law recognizes this as reasonable in these circumstances and Parliament apparently sees this as being acceptable

JUDICIAL DECISION IN WHICH TEACHER'S ASSAULTS HELD REASONABLE UNDER S. 43 – 1992 TO 2000

	Case Citation	Child's Sex & Age	Child's Misconduct	Punishment	Charge	Trial Decision	Appeal Decision	Judges Comments
1.	R. v. Harriott (1992) 128 NBR (2d) 155 New Brunswick	Boy, 14	Disruptive	Grabbed by head and shaken, pushed into seat	Common assault	Acquitted	No appeal	"Grave concern" expressed about "corrective action by contact with child's head".
2.	R. v. Funder Unreported Que. 1993 Ct. of Appeal, No. 238	Boy, 14	Indulging in "horseplay" during lesson	Hit on head with book	Assault causing bodily harm	Guilty	Acquitted	Injuries minor
3.	R. v. Condon (1993) 102 NFLD & PEI Reports 142 NFLD	Boy, no info	Persisted in calling teacher nickname	Grabbed boy by the shoulder and when boy pushed back, teacher "struck boy in throat area as a reflex"	Common assault	Acquitted	No appeal	"One blow only – no permanent injury"
4.	R. v. Plourde (1994) 140 NBR (2d) 273 New Brunswick	2 boys, 14	Objected to way teacher pushed other student	1 boy pushed out of room causing marks on back and arm, 2 nd grabbed and slapped on head	Common assault	Acquitted	No appeal	Insolent behaviour. Respect for authority important.
5.	R. Bouillon Unreported Que. 1993, Decoste, J No. 000493-938	Boy, 15	Talking in class	Grabbed by hair and head pushed onto desk.	Common assault	Acquitted	Upheld	Teacher's action may be disgraceful, but it was not excessive.
6.	R. v. Swanson Unreported BC, 1993, Gordon J, No. 2945	Boy, 13	Talking in shop class	Hit n head with hammer causing pain and possible small bump	Common assault	Acquitted	No appeal	Head injury benign. No threat to health.

7.	R. v. Gallant (1994) 110 NFLD & PEI Reports 174 P.E.I.	Boy, 11	Disruptive behaviour by boy with discipline problem	Slapped in face to get boy "back to reality"	Common assault	Acquitted	No appeal	No risk of injury to head
8.	R. v. Whalen (1994) 118 Nfld & PEI R 331, NFLD	Girl, 11	Talking in class "insolent"	Slammed book on child's desk, hitting arm	Common assault	Acquitted	No appeal	Action justified for "cheeky" girl.
9.	R. v. Graham (1995) 151 NBR 81, (1995), 39 CR 4 th 339 New Brunswick	Girl, 9	Refused to do assignment and argued with teacher	Lifted from seat and struck on buttocks with open hand leaving red mark for 24 hours	Common assault	Acquitted	Upheld	Trial judge's reference to Bible and "trip to woodshed" acceptable; policy documents on punishment irrelevant.
10.	R. v. Wetmore New Brunswick 1996, 172 N.B.R. (2 nd) 224	4 boys, 16 to 18	Rude and disrespectful	Karate chops to shoulder, arm and face	Common assault	Acquitted	Upheld	Instilling respect, even through fear, is acceptable
11.	R. v. Godin New Brunswick (1996) 172 NBR (2d) 375	2 boys, 10 and 11	Fighting each other	Both hit in face with hand	Common assault	Guilty	Acquitted	No injuries. Decisions dating from 19 th century cited with approval.
12.	R. v. Spenard Unreported Ont., 1996 Donnelly, J	4 boys, 8 to 10	Breach of classroom rules	Slapping, pushing, grabbing over 10 year period	Common assault	Acquitted	No appeal	Discipline develops character. Injured dignity has corrective potential.
13.	R. v. Ocampo 36 WCB 479 1997, Ont.	Various pupils about age 9	Disobedience	Pinched nose, hit leg with pointer Slapped head Slapped face	5 counts common assault	Acquitted	No appeal	Reasonable force. School board policies on corporal punishment do not affect s. 43
14.	R. v. Park (1999) 178 NFLD & PEI Reports 194, Nfld.	Girl, 9 Mental age of 6	Resisted getting into snowsuit by kicking and screaming	Slapped on leg Whether fingerprint marks caused by slap not proven	Common assault	Guilty	Acquitted on appeal	Slap had a "salutary effect on behaviour"

15.	R. v. Holmes Nreported No. 555- 010267-998 Aug 31, 2000 Que. Lapointe, J	Boy, 13	Fooling around in gym class	Lifted off ground by chin and head in wrestling hold by 260lb. teacher	Assault causing bodily harm	Acquitted	May be appealed	No objective evidence of actual harm
16.	R. v. Skidmore Unreported No. 8414 /99 June 27, 2000 Ontario Nosanchuck, J.	Boy, 13	Ignored instructions not to kick volleyball in gym class and continued “horseplay” contrary to instructions	Grabbed by arm and throat, pushed against wall. Accidentally hit on head with clip board	Common assault	Acquitted	No appeal	Teacher showed “incredible restraint” and should not have been prosecuted.
17.	R. v. Couette Unreported No. 1055 (Ql) Ap. 17, 2002 Quebec Landry, J	Boy, 12	Disruptive boy with learning disabilities & serious behaviour problems	Aimed kick at boy, grabbed by throat, open-handed blow to stomach	Common assault	Acquitted	No appeal	No serious injury. Teacher acted to obtain respect & affirm his authority

The purpose of this table is to show the kind of assaults on children approved by section 43 of our Criminal Code. It is not to advocate prosecution as the appropriate way to deal with these cases. If in fact s. 43 were repealed as we propose, these criminal prosecutions would be unnecessary because the question of whether such assaults were “reasonable” or for “correction” would no longer be relevant. Repealing the section would give a *clear and unambiguous* message that assaults on children were no longer legal. This would *reduce* the need for these prosecutions. Instead, counselling and education in alternative methods of discipline could be offered to parents and teachers; with criminal prosecution used only as a last resort where this approach fails or where prosecution is warranted by the nature of the assault. The information available on assault charges against parents and teachers is limited because these decisions are rarely included in law reports or newspapers. Where assaults are reported, the information given does not always include the facts needed to complete the table.

Repeal 43 Committee
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