



New trial ordered for dad who spanked son, 6

Published September 15, 2011

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In what could be a precedent-setting case in Canada's spanking debate, the New Brunswick Court of Appeal ordered a new trial for a father who was convicted of assault for spanking his 6-year-old son in 2009.

A summer road trip to visit a museum in Fredericton turned ugly for the family of five when the boy started misbehaving, according to court documents that do not identify any of the family members.

The 6-year-old was arguing with his brother in the back seat of the car, unbuckling his seatbelt, throwing things and yelling, according to the father's version of the incident in the Court of Appeal's judgment.

When the boy did not stop misbehaving, the family pulled over in a parking lot where the father spanked the child — only two or three times, he said.

But witnesses called 911 after they said they saw the father hit his son at least 10 times.

From her nearby apartment, Millicent Boldon said she heard the boy yell, "You're beating me senseless. Stop. You're hurting me," according to the judgment.

Her brother, Jim Burns, said he witnessed a dozen "blows" before Boldon called the police.

The father successfully appealed his conviction because the original trial's judge failed to assess why the witnesses were more credible than him, the court of appeal ruled.

"In this case the trial judge's sole basis for convicting the appellant flowed from the duration of the punishment," Justice Richard Bell wrote.

This reopens Canada's debate over when spanking a child crosses from discipline to assault.

The Supreme Court of Canada ruled in 2004 that parents and teachers have the right to spank children between the ages of 2 and 12. "Reasonable corrective force" can be used, but blows with an object or hits to the head are not acceptable, the court determined.

Paul Schabas was the lawyer that fought to have this century-old law repealed.

While the court upheld the law because of concern about criminalizing parents, it suggested that anything beyond a "trifling and transitory" physical act is not covered by the defence, he said.

The New Brunswick case has the potential to be precedent setting, he added, because the court will have to assess the evidence to determine if the father's actions were indeed "trifling and transitory."

"Is a smack on the hand trifling and transitory? Maybe. Is a few taps on the bum, an old-fashioned spanking, trifling and transitory? I would've thought not," Schabas said.

But Dave Quist, executive director of the Institute of Marriage and Family Canada, said that spanking can be appropriate when used as an escalating form of discipline, administered in a calm manner.

"By withdrawing (spanking), we're limiting the number of tools a parent has in their tool box."

A limit of two or three strikes is what the court deems acceptable when it comes to spanking a child, Quist said.

"More than that, you'd have to question if you're achieving anything different."

Liberal Senator Céline Hervieux-Payette disagrees with Quist.

"If you do the same thing to your dog, you can be charged and you will be criminally responsible for violence to an animal," she said.

"So why would we allow violence to our children?"

She has tried three times to repeal Section 43, the law that allows spanking, with a private member's bill. She plans to try again in early 2012.

Psychotherapist and parenting expert Alyson Schafer said there are always other options for disciplining a child.

"Spanking is just a tidy way of assaulting a minor," she said. "For a lot of parents, it isn't that they have bad intentions, it's that they're bankrupt for other ideas."