

Bill to Amend—Second Reading—Debate Continued

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tardif, for the second reading of Bill S-204, An Act to amend the Criminal Code (protection of children).

Hon. Donald Neil Plett: Honourable senators, a few weeks ago I received a phone call from my brother in British Columbia who was calling to catch up and see how things were going in the Senate. When I told him I would be speaking to Bill S-204, the anti-spanking bill, he was shocked. His reply to me was, "Shouldn't you be worrying about a fragile economic recovery rather than wasting taxpayers' dollars and time telling responsible parents how to raise their children?"

Honourable senators, I must say I tend to agree with him. However, since our democratic process allows for any and all private members' bills to be presented, I will spend the next 40 minutes of taxpayers' dollars and time trying to explain why we should not allow responsible parents, parents who have brought children into this world, to responsibly correct and discipline their children.

Bill S-204, an Act to amend the Criminal Code (protection of children), seeks to repeal section 43 of the Criminal Code. Section 43 of the Criminal Code reads as follows:

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.

In 2004, the wording of section 43 was interpreted and significantly narrowed by the Supreme Court of Canada. This decision narrowed the situations in which the defence in section 43 of the Criminal Code can apply, setting out limitations that are consistent with both the Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child.

As a result, the defence is now open only to parents who can show they use reasonable force within the circumstances and that the force was minor, resulting in nothing more than trivial and trifling effects on the child. As a result of this ruling, since 2004 in Canada, the defence has not been available to parents where there are any marks on the child, where an object has been used, where force is used on the child's head, or where the child is incapable of learning from the correction.

There are inherent dangers in repealing the defence in section 43 as part of a ban on corporal punishment. As a government, we are inappropriately crossing a line into where the government, rather than the parent, is now determining how to raise a child.

It is my view that the current law, which has been upheld by the Supreme Court of Canada, represents the best balance to protect children from abusive parents, while also allowing responsible parents the decision in how they choose to raise their children. I do not believe that an outright repeal of the defence for parents in section 43 will result in a better balance than that already achieved by the Supreme Court of Canada.

Honourable senators, repealing section 43 of the Criminal Code goes beyond taking away a reasonable, responsible parent's ability to spank; it takes away their ability to parent. By repealing section 43, general assault provisions of the Criminal Code would be applied to any parent, teacher or guardian who chooses to use force against a child without their consent. This means that a statutory defence based on reasonable correction could no longer be used.

Considering that section 265 of the Criminal Code prohibits non-consensual application of force and section 279 of the Criminal Code prohibits forcible confinement of another person without lawful authority, it raises a concern that by repealing section 43, the actions of parents would become criminalized if, for example, they physically put a child who is having a temper tantrum to bed or restrain an uncooperative child in a car seat.

Any person with small children will instantly realize how many times a day in the course of normal parenting non-consensual touching or the threat of it occurs. Ordinary everyday activities include dressing a child, feeding a child, getting them into a car, to school and back home, bathing a child and putting one to bed. Just think of a situation where a young child refuses to go to school. How is a responsible parent to get a child to school without picking up their child against their will and carrying them?

Honourable senators, this is not child abuse; this is normal, everyday, responsible parenting. The honourable senator in her speech to this chamber said:

Parents do not own their children. Children are individuals. Their protection should therefore take precedence over the protection of adults and over the imaginary risk of legal action against them.

...

The honourable senator is correct in that, yes, children are individuals, but they are underage individuals and not yet capable of independent existence or making adult choices. In our society, until a child turns 18 and becomes an adult, parents are responsible for the well-being and protection of that child. While parents are responsible for their children, they should have the choice in how to parent that child.

The honourable senator throughout her speech to this chamber suggested that by spanking a child, a parent is being violent. Disciplining a child has nothing to do with abuse or violence. In Bill S-204, the honourable senator has unfortunately lumped both child discipline and child abuse into the same category. There is a marked difference between an open-handed spank to a child's bottom, where one has explained to the child why they are being punished, compared to a closed-fisted punch to the face that leaves a bruise. The former is discipline; the latter is abuse.

Let me be clear: There is a definitive line between punishing a child and abusing a child. Parents who abuse their children should be subject to the full force of the criminal law, but responsible parents punish their children, not abuse them. By repealing section 43, we are blurring that line and risk unduly charging responsible parents with criminal offences.

By repealing section 43, we are inappropriately crossing a line into where the government would be determining how to raise a child, rather than the parent.

As Dave Quist, the Executive Director of the Institute of Marriage and Family Canada,

commented:

. . . we must ask ourselves, "Does the state have a role in the raising of our children?"

I believe that the state only has a role in limiting society's "rights and freedoms," if those "rights and freedoms" are deemed to be harmful to society and its members. There is no evidence that the state needs to interfere in this issue.

We must also be very careful in the conclusions drawn from research and studies done on punitive child punishment. In her speech, the honourable senator references several recent studies that claim that force is ineffective and even harmful in child rearing. Unfortunately, more often than not, these studies confuse correlation with causation, and have methodological problems. Also, these studies do not often offer a clear distinction between spanking and physical abuse, thereby skewing their conclusions.

The honourable senator mentioned in her speech to this chamber on June 10: ". . . a very broad study carried out by Statistics Canada, which indicates all the negative effects which I discussed in a previous speech."

What the honourable senator failed to mention about this study is that the study itself says:

It should be noted that these findings do not prove that punitive parenting practices caused aggressive behaviour, anxiety, or limited pro-social behaviour in the children.

The paper entitled "A Review of the Outcomes of Parental Use of Nonabusive or Customary Physical Punishment" in the *Medical Journal of Pediatrics* concludes that:

The most important finding of the review is that there are not enough quality studies that document detrimental outcomes of nonabusive physical punishment to support advice or policies against this age-old parental practice. Only 30 relevant journal articles were found from 1974 through 1995, an average of less than 1 1/2 per year. Next, many of the studies had methodological weaknesses, and the stronger ones were more likely to find beneficial outcomes of physical punishment. A particularly pervasive weakness was that no prospective or retrospective study controlled for the original frequency or severity of child problem behavior, which would be like studying cancer recurrences following radiation treatment without taking into account the severity or existence of the original cancer. More quality research is needed on nonabusive physical punishment. Public and private agencies should make quality research on the broader topic of parental discipline a top priority.

How parents use discipline tactics may be more important than which ones they consider off limits. Effects of physical punishment, as well as nonphysical punishment, probably depend on when and how parents implement it, its role in their overall approach to parental discipline, and the overall parentchild relationship. Other aspects of parental discipline may be more important indicators of dysfunctional parenting than whether parents spank or not.

Also, in the 2009 Akron Law Review, Jason M. Fuller of the University of Akron School of Law published an article entitled: "The Science and Statistics behind Spanking Suggest that Laws Allowing Corporal Punishment are in the Best Interests of the Child." In this article he outlines

some of the issues with current spanking research, as follows:

. . . many spanking opponents begin their research with a conclusion, not a hypothesis. For instance, Dr. Murray Straus admits that his goal is to prove that spanking, 'by itself has harmful psychological side effects for children and hurts society as a whole.' Moreover, a review of spanking research suggests that eighty-three percent of the corporal punishment articles in clinical and psychosocial journals are 'merely opinion-driven editorials, reviews or commentaries, devoid of new empirical findings.'

When scientists begin their research already having formed a conclusion it's more likely that their bias 'will be confirmed, not amended or rejected, by the ensuing evidence.' Indeed, spanking opponents have been known to design studies that peculiarly suit their bias; they have been known to address problems with their research only in endnotes that few people read; and they have been known to simply not report data that are inconsistent with their hypothesis.

Throughout the honourable senator's speech she erroneously claims that spanking is "child rearing violence" and the violent application of force. I believe the honourable senator has misunderstood our current laws. As previously mentioned, since 2004, parents can no longer use the defence under section 43 of the Criminal Code where there are any marks on the child, where an object has been used, where there is force used on the child's head or where the child is incapable of learning from the correction. Under the current provision, technically speaking, "corporal punishment" of children is prohibited under Canadian law. Further, Webster's dictionary defines violence as "exertion of physical force so as to injure or abuse." With this in mind, it is quite clear that the honourable senator has failed to distinguish between child abuse and child discipline.

Abuse is when a parent intends to injure or harm a child; discipline is when a parent intends to guide a child's development, making it possible for them to learn from the experience and to take responsibility for their actions by showing them boundaries of what is acceptable or unacceptable behaviour. The *Sioux Star* commented in an editorial: "are we that dense as a society that we can't tell the difference between a corrective spank and abuse?"

The purpose of spanking is not to injure or abuse a child and should not be violent. Its purpose is to discipline a child for misbehaviour. Spanking should only be one part of a clear and consistent style of child discipline. I do not believe it should be the only form of child discipline. It is my belief that spanking should be controlled, structured and done in private. Spanking should not be done with malice or rage. It is about conveying a message: You have crossed the line; your behaviour is not appropriate. The reason for spanking should be explained. I believe it is very important to explain to a child why they are being punished before spanking them. Spanking should also not be used to humiliate a child. It is my opinion that it should not be done in public, it should be done in the privacy of the home.

Honourable senators, in my time of a little over a year here in the Senate, I have taken note that there are a few senators who use personal stories to augment their speeches while addressing this chamber. In keeping with that tendency, I intend to make a few personal comments of my own and relay three short stories.

When my oldest son was 4 or 5 years old, he did something that I thought warranted a spanking. This would be the first time that he would be spanked, so as a young father I wanted the

discipline to go just right. I took my son to our bedroom, sat on a chair with my son on my knee and explained to him that what he had done was wrong and, as a result, I would have to punish him by means of a spanking.

At this point my son was looking up at me with tears welling up in his eyes and he said to me, "Dad, I understand that you have to punish me, but I have to tell you one thing first." My feeling was that he should have an opportunity to defend himself, so I said, "Sure, son, what is it?" At this point he reached up, put his arms around my neck and said, "Dad, I just want to tell you that I love you." Needless to say, he did not receive a spanking that day. I am still not sure quite why he did not grow up to become a politician.

The next time he did something that warranted a spanking he tried this act again; however, it did not work this time. Generally speaking, I did not have to spank my oldest son very often in his life. I only used spanking as a broader way to discipline. However, the few times I did, it definitely did not have any adverse effects on him and definitely worked as a suitable disciplinary measure. Today he is a proud parent of two wonderful children and, in my opinion, has no psychological problems.

I do not believe that spanking has the same disciplinary impact on all children. As a parent you have to vary disciplinary measures for each child. For instance, my youngest son has a much different personality from that of my oldest, as was shown one day when I came home from work and my wife was quite upset with him. He was also about 4 years old at the time, had gone into the bathroom, pulled all our towels and linens down and strewn them across the bathroom floor. My wife said he was now refusing to pick them up and that I needed to deal with it.

I took my son by the arm, led him into the bathroom and told him quite forcefully that he needed to clean up the mess he had made. He looked me square in the eye and let out a defiant "no." At this point, I took him by the arm a bit more forcefully and again instructed him to clean up the mess, and if he did not I would have to spank him. He again looked me in the eye and exclaimed "no."

At this point I felt I now needed to spank him and proceeded to take him over my knee and give him a few swats on the behind. He began to cry. I again instructed that he needed to clean up the mess he had made. He still refused, so I put him back on my knee and spanked him a few more times. By this point we were both crying.

After I was finished, I again instructed him to clean up the mess. "No," he replied. By this time I am at my wit's end and I am thinking what am I going to do to make this child listen. I decided I would have to try something else. I looked at my teary eyed son and said, "Son, if I help, will you pick up this mess with me?" He instantly replied, "Yes, Dad, I will."

Honourable senators can see from this illustration that while spanking may be appropriate punishment for one child, it may not be for another. This is not to say that he got away in the future without spankings, but now he and his brother are successfully running a heating and plumbing company in Landmark — a little plug for my community. He and his wife are now expecting their second child. I am hoping it is a boy. He is not an advocate of spanking and they have a very well behaved and disciplined son.

Now I will go to a story about myself. When I was about 12 or 13 years old, I went to watch a

local football game at my schoolyard. Being a teenager, I was not satisfied with simply watching the game, so I, along with a few other boys, decided we needed some cigarettes. There happened to be a house that was on the schoolyard and, knowing that the owner smoked, we decided to break in and steal some.

A few days after this incident, while I was coming home one evening, I was walking by my father's plumbing and heating supply store. He came out and instructed me to come into the store. Once inside he asked me if I knew anything about a local break-in where cigarettes were stolen. At this time I knew that the jig was up and admitted to my crime.

My father told me that he was going to give me a spanking. He told me to get onto a furnace that was on display so I was higher up and he could get better traction. He told me before he started that it was going to hurt him more than it would hurt me. After a sound spanking, he then made me go and apologize to the owner of the house and make restitution. I am not sure which was worse, the spanking or the apologizing.

Sitting by my dad's hospital bedside just a few weeks ago, days before he passed away, we were visiting and I reminded him of this incident and asked if he recalled the spanking. He said he most certainly did.

I then asked him if he still believed that the spanking had hurt him more than it had hurt me. At this time, with a smile on his lips he said, no, he did not think it had.

I am curious, honourable senators, how many of you received a form of physical discipline growing up? How many could say that this has emotionally scarred them or that they developed some violent disposition as a result? Looking around this chamber, I would say that most of us appear reasonably normal.

In my opinion, and in that of many Canadians, a parent should be free to decide how to discipline their child, as long as it is reasonable and not abusive.

In January 2004, on the night before the Supreme Court was due to rule on the legality of section 43 of the Criminal Code, a survey was conducted by SES-Sun Media of 1,000 people across Canada, gathering their current opinions on the use of force, such as spanking, by parents to discipline a child. This survey found that 64 per cent of the people surveyed supported the use of force such as spanking by parents to discipline a child. Only 7 per cent of respondents supported criminal charges for parents who spanked their children. This survey clearly shows that Canadians want responsible parents to have their own choice in how they choose to discipline their children.

Part of the problem in Canada is that there are extensive inconsistencies in our criminal justice system with regard to youth justice and parental responsibility. By repealing section 43 of the Criminal Code, we risk creating even greater inconsistency. On the one hand, three provinces — Manitoba, Ontario and British Columbia — currently have legislation in place that provides parental liability for actions committed by their children. These parental responsibility acts make parents civilly liable for any property damage caused by their children.

The Civil Code of Quebec also has a provision that deals with parental liability, where parents are

liable for reparations, where there is injury, whether it be bodily, moral or material in nature, caused by their children. These provincial laws convey a message that parents have a responsibility over their child's actions.

Yet, on the other hand, one can get an abortion anywhere in Canada without parental consent. This conveys the opposite message, that parents have no place in their children's business.

An article in *Today's Family News* states:

Meanwhile, *Canadian Press* reported that Quebec Superior Court Justice Suzanne Tessier ruled on Friday that a divorced custodial parent had no right to deny his 12-year-old daughter permission to go on a three-day class field trip to mark her graduation from elementary school. His actions were meant to punish her for posting inappropriate photos of herself on the Internet after he had repeatedly warned her not to.

With her mother's backing, the girl challenged her father's actions in court, as she needed both her parents' consent in order to go on the field trip. Tessier found that keeping her from going was unduly severe punishment, as the girl and her parents are already caught up in a bitter custody battle. The father has vowed to appeal the decision.

National Post columnist Lorne Gunter called Tessier's logic "dumbfounding." "Here is a father," he wrote, "who has full-time custody struggling to keep his daughter from getting caught up in the whole world of Internet predators, while also dealing with all the issues of discipline and conflicted loyalties that arise from divorce, and now the court has made his task far more difficult."

The irony, as the *Ottawa Citizen* suggested, is that his behaviour ought to be applauded by those who oppose the use of even "reasonable force" to discipline a wayward child.

"This was hardly an instance of cruel or arbitrary authority. There was no abuse involved, not even close," it stated. "The father, it seems, used clear and consistent warnings, letting his child know that there would be consequences for inappropriate behaviour. This is how you raise responsible children who understand the results of their actions. It is an approach to discipline that should be encouraged, not outlawed by the state."

By repealing section 43 of the Criminal Code, we further risk eroding parental responsibility. It is not the government's place to decide how responsible parents choose to raise their children. I do not feel it is our place to tell responsible parents how to raise their children. Parents have a duty to fulfill their responsibilities to their children, and responsible parents do just that. Responsible, loving parents want what is best for their children, and want to raise productive members of our society. Responsible parents need and deserve to have room to parent, without the state looking over their shoulders. They deserve the choice in how they choose to raise their children.

The honourable senator suggested we follow Sweden's example of 30 years ago and prohibit the use of force in child-rearing. To quote an article from *Newsmax* written by Theodore Kettle:

A study entailing 2,600 interviews pertaining to corporal punishment, including the questioning of 179 teenagers about getting spanked and smacked by their parents, was conducted by Marjorie

Gunnoe, professor of psychology at Calvin College in Grand Rapids, Michigan.

Gunnoe's findings, announced this week: "The claims made for not spanking children fail to hold up. They are not consistent with the data."

Those who were physically disciplined performed better than those who weren't in a whole series of categories, including school grades, an optimistic outlook on life, the willingness to perform volunteer work, and the ambition to attend college, Gunnoe found. And they performed no worse than those who weren't spanked in areas like early sexual activity, getting into fights, and becoming depressed. She found little difference between the sexes or races.

Another study published in the Akron Law Review last year examined criminal records and found that children raised where a legal ban on parental corporal punishment is in effect are much more likely to be involved in crime.

A key focus of the work of Jason M. Fuller of the University of Akron Law School was Sweden, which 30 years ago became the first nation to impose a complete ban on physical discipline and is in many respects "an ideal laboratory to study spanking bans," according to Fuller.

Since the spanking ban, child abuse rates in Sweden have exploded over 500 percent, according to police reports. Even just one year after the ban took effect, and after a massive government public education campaign, Fuller found that "not only were Swedish parents resorting to pushing, grabbing, and shoving more than U.S. parents, but they were also beating their children twice as often."

After a decade of the ban, "rates of physical child abuse in Sweden had risen to three times the U.S. rate" and "from 1979 to 1994, Swedish children under seven endured an almost six-fold increase in physical abuse," Fuller's analysis revealed.

"Enlightened" parenting also seems to have produced increased violence later. "Swedish teen violence skyrocketed in the early 1990s, when children that had grown up entirely under the spanking ban first became teenagers," Fuller noted. "Preadolescents and teenagers under fifteen started becoming even more violent toward their peers. By 1994, the number of youth criminal assaults had increased by six times the 1984 rate."

In closing, honourable senators, I would like to simply say that I thought I would go a step beyond just citing what adults have to say, so I thought I would ask a ten-year-old girl for her perspective on spanking.

My ten-year-old granddaughter was visiting not so long ago and, as she was sitting on my knee, I mentioned to her that she was such a sweet and well-behaved girl, helping her grandmother around the kitchen, helping her mother with her younger siblings, and so on. My granddaughter looked me in the eye and said, "Grandpa, I have not had a spanking in almost three years." I explained that no now she was too old to get a spanking. She replied, "Oh, no, I am not. If I do not behave, I still need to be spanked." I countered with, "Well, maybe a timeout would be better." She said, "No, timeouts are not scary and they have no merit."

I asked my granddaughter if she would write me a letter outlining her views, and she agreed. The

following is the exact wording of a 10-year old. This letter was given to me in a sealed envelope at our Thanksgiving dinner table; even her parents had not read the letter.

To whom it may concern:

My name is Emily Summer Plett. I am the daughter of Brad and Cynthia Plett, granddaughter of Senator Don and Betty Plett. I live at Camp Cedarwood. I am 10 years old and currently in grade 6. I love children and helping people such as the elderly. I can't wait until I am old enough to babysit and one day become a mother.

When I become a mother I want my kids to be disciplined. I want them to do good in school, to be able to get a job, to be responsible and be good citizens. To discipline a child it is important to punish disobedience. There are different ways of punishing a child. While, for one, a time out would work, another might feel pushed away and left alone, and might at this time even plan to escape or pay his parents back.

I remember when my mom or dad would give me time outs. I would think how mean they were for sending me to my room all alone, instead of thinking about what I had done wrong. I think spanking is the most effective way of disciplining a child because the child will know that it hurts to do the wrong thing, and when he grows up he won't have to pay the consequences. For example, if a kid goes and steals from a friend and you spank him, he will know not to do that again.

Spanking is also a quick way of dealing with a problem and the kid can forget about it and go back and play. But parents should never spank without a reason. As I said before, for some kids it works to take something away or ground them, but others won't learn unless it physically hurts. Therefore, parents should be allowed to choose the proper punishment for their children and spanking should not be disallowed.

I hope you have a great rest of the year!

Sincerely,

Emily Summer Plett

Honourable senators, does this sound like an abused child or someone who has not learned well? This sounds more like the words of a well-adjusted 10-year-old.

In closing, let me reference one more comment from the honourable senator's speech where she quotes Alice Miller, a French philosopher and sociologist:

When you nurture a child, the child learns to nurture. When you reprimand a child, the child learns to reprimand. When you warn a child, you teach the child to warn others. When you chew them out, that is precisely what they learn to do. When you mock them, they learn to mock. When you humiliate them, they learn to humiliate. . .

I will simply add to that, when you discipline your child in love, you teach the child to discipline in love.

