

## **Criminal Code**

### **Bill to Amend—Second Reading**

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Carstairs, P.C., for the second reading of Bill S-209, An Act to amend the Criminal Code (protection of children).

**Hon. Sharon Carstairs:** Honourable senators, I rise today to speak to Bill S-209, which in various forms has been before this chamber for nearly 10 years.

In Senator Wallace's comments, he referenced legislation in New Zealand. However, despite his comments that we need to examine this legislation more carefully, in reality the whole of clause 1 in this legislation has been entirely modeled on the New Zealand legislation, trying to ensure protection for parents so that behaviour whose primary purpose is to protect children from harming themselves is ensured in this legislation. One just needs to read clause 1 of this bill. It reads:

. . . is used only for the purpose of

- (a) preventing or minimizing harm to the child or another person;
- (b) preventing the child from engaging or continuing to engage in conduct that is of a criminal nature; or
- (c) preventing the child from engaging or continuing to engage in excessively offensive or disruptive behaviour.

All of that proposed legislation in fact comes from the New Zealand model. When he asks us to look further at the New Zealand model, I am afraid I am somewhat confused because I do not know what else we could incorporate from the New Zealand model that we have not already done.

Senator Wallace was correct when he said that the changes that were made to this bill at committee stage were never seen by those people who had given witness to this bill. Perhaps that can be done when this bill goes to committee this time round.

Senator Wallace also addressed the decision of the Supreme Court of Canada of 2004 and took some satisfaction with this decision as ameliorating section 43 of the Criminal Code. Unfortunately, while I believe the Supreme Court of Canada tried to do the best they could with this legislation, it has, according to some experts, had very unintended consequences.

Dr. Joan Durrant, a professor at the University of Manitoba who specializes in children's issues, has said that the decision of the Supreme Court has actually led parents to believe that they have more rights as a result of this decision because the Supreme Court, these parents believe, has now given them blanket permission to spank their children.

I do not believe that this was the intention of the Supreme Court of Canada when it made the decision it did, but if that is how parents are interpreting it, then it is very sad indeed.

The other issue that I have found very problematic of the judgment of the Supreme Court of Canada is that of the ages set by the judges. They said in their decision in 2004 that one should not use corporal punishment on a child under two and one should not use corporal punishment on a child over twelve. With

the greatest respect to our Supreme Court — and I have wonderful respect for our Supreme Court — I do not understand the difference between the behaviour of a child who is one year old — 364 days — and the behaviour of a child who is two, one day older; nor do I understand the difference between the behaviour of a child or the maturity of a child who is 12 years old as opposed to a child who is 13 years and one day.

I think that is an extremely unfortunate aspect of what the court had to say. I cannot find any magical maturity that occurs in one day. We all know that children mature at very different rates, that one 12-year-old is not like another 12-year-old, and that one 13-year-old is far less mature than another 11-year-old. That is the nature of the way that children grow in our society.

It is difficult for me, honourable senators, to understand why Canada has chosen to violate the United Nations Declaration on the Rights of the Child, which prohibits corporal punishment. I also am quite frankly stunned when I read constitutions like the one in Ethiopia, which specifically forbids corporal punishment of children in the constitution of the country and yet, in our country, we still permit it; we still have section 43 of the Criminal Code.

Honourable senators, it is 2009. Many European nations prohibit corporal punishment and, believe it or not, chaos among their young children has not resulted. They have abolished corporal punishment and they have replaced it with other forms of discipline.

I spent 20 years of my life teaching children. I believe in discipline. I disciplined my children in the classroom. I disciplined my own children, but I did not believe it was necessary to hit them. Of course, my oldest daughter always said to me: "Mom, you didn't have to hit us. All you had to do was use the voice." Besides that, it was not considered necessary to use a form of corporal punishment.

Yes, honourable colleagues, children do need to learn discipline, and they particularly need to learn self-discipline, the discipline that comes from within. Adults need the same kind of discipline. In my view, all we teach by hitting a child is that if you are bigger and stronger, and therefore you can hit, then when I get to be bigger or stronger, I can hit. I do not think that is the message we want children to learn. I want them to learn that, no, you do not get your way because you are bigger and stronger and you use your fists, knees, feet, arms or hands, or any other way, to inflict corporal punishment on another human being.

It is time, honourable senators, for this legislation to be changed and for Canada to enter 2010 as so many other nations throughout the world, without our citizens having the right to hit their children.

**Some Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

(Motion agreed to and bill read second time.)

**Referred to Committee**

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

(On motion of Senator Carstairs, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.)