Criminal Code

Bill to Amend—Second Reading—Debate Continued March 21/11

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. Nancy Ruth: Honourable senators, I speak to you as a colleague and as chair of the Standing Senate Committee on Human Rights. I want to tell you about our committee's report, which would support Bill S-204.

I see Bill S-204 as a first step in a new era of addressing family violence in this country. I wish the bill went further. I believe that the federal government should put in place a national strategy on the reduction of violence in families. I believe that we should treat families with respect. Respect does not tolerate any form of physical or mental violence in the home to anyone.

Our current laws do not protect reasonable chastisement of one spouse by another. Our laws on spousal violence used to favour those who had power over those who did not have power. Why should our law protect reasonable chastisement of a child by a parent when the parent has all the power?

Section 43 of the Criminal Code is from another time. It protects the power relationship when it should protect the child.

Since the Second World War, Canada has strengthened its laws on spousal violence, largely as the result of informed and relentless pressure from women affected by family violence. Family violence is a deeply rooted and common problem. It results in significant human and economic costs for individuals, families and our society.

Children, the most vulnerable, cannot undertake research, create grassroots resources and mount advocacy campaigns to change the law, which is so against them. Parliamentarians changed the law to protect spouses, and we should change the law to protect children.

I believe that as parliamentarians, we have to ensure that we take a systemic view of children and the use of force. We all have personal stories about corporal punishment in our families. The stories may be interesting, they may have happy outcomes or sad outcomes, but they should not govern whether we, as parliamentarians, consider corporal punishment in the home to be acceptable or not.

Taking the systemic view, Canadians live in a society that experiences and tolerates high levels of interpersonal violence in the home. The violence is often gendered and racialized; it takes advantage of the young and the old.

If we are serious about addressing this real and costly reality, we need to take a clear, consistent and comprehensive position on violence. We need to say that interpersonal violence is wrong in every instance; that there is no exception for certain categories of interpersonal violence, including the "light" version of disciplining children, the sort of thing the Supreme Court of Canada protected in the 2004 decision on section 43, minor corrective force of a transitory or trifling nature — it all causes some pain, discomfort or humiliation and it all leaves a legacy of justification for the next generation to continue to use it; and that there are positive alternative methods of relating and communicating for all of the situations in which violence has been the norm, including child rearing.

Canada signed the UN Convention on the Rights of the Child on May 28, 1990. We ratified it in 1991, and 20 years later, we are dealing with this same issue.

I commend to all senators the April 2007 report of the Standing Senate Committee on Human Rights entitled *Children: The Silenced Citizens*. Chapter 6 of that report focuses on violence against children. It points out that Article 19 of the convention:

. . . provides for a broad protection of children from abuse and neglect, holding that:

Art.19(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Canada could have reserved section 43 of the Criminal Code when it signed and ratified the convention, but it did not. I applaud Canada's historical reticence to use reservations to "pick and choose" amongst human rights. It was as clear then as it is today that section 43 of our Criminal Code violates the convention.

Why do we make human rights commitments and then ignore them or allow them to languish in some form of half-life?

I urge honourable senators to take their lead from *Children: The Silenced Citizens*, which recommended that the federal government take steps to eliminate corporal punishment in Canada by:

The immediate launch of an extensive public and parental education campaign with respect to the negative effects of corporal punishment and the need to foster enhanced parent-child communication based on alternative forms of discipline, and

Calling on the Department of Health to undertake research into alternative methods of discipline, as well as the effects of corporal punishment on children; and

Repeal of section 43 of the Criminal Code by April of 2009; . . .

The committee said April of 2009. Well, how about by April of 2011 — let us give it a try.

The report also recommended:

Calling on the Department of Justice to undertake an analysis of whether existing common-law defences — such as necessity and the *de minimis* defence — should be made expressly available to persons charged with assault against a child.

Parliament has a full capacity to exceed the standards of protection laid down by the Supreme Court of Canada. The court upheld the constitutionality of section 43 of the Criminal Code.

The fact that the court is not prepared to strike down a matter does not mean that Parliament is bound to maintain the provision forever. Parliament has the power to amend or repeal a provision that is constitutional, which Parliament determines should be changed. Indeed, when it comes to human rights and to equality, Parliament should hold itself to the highest standards of positive action contemplated by the provision.

Is this highest standard of positive action not what the government has held itself to in supporting maternal and child health? Bill S-204 holds Parliament precisely to that standard.

Earlier in this decade, Scotland adopted a wide-reaching National Strategy to Address Domestic Abuse in Scotland, and other countries have taken similar initiatives. The focus of this strategy was domestic violence against women. We are becoming more aware of all the aspects of physical and mental violence in the home with respect to the young and the old, with respect to women and girls and with respect to different racialized communities.

Canada has an extensive research and knowledge base on these issues. Canada has a track record of law reform and social service innovation. We remain, however, a country where violence in the home is deeply present, with violence begetting more violence.

It is time for a national strategy on violence in the home, and I urge honourable senators and the federal government to make this strategy a priority and start the strategy by passing Bill S-204.

(On motion of Senator Comeau, debate adjourned.)