

## **Criminal Code**

### **Bill to Amend—Second Reading—Debate Adjourned**

**Hon. Céline Hervieux-Payette (Leader of the Opposition)** moved second reading of Bill S-209, An Act to amend the Criminal Code (protection of children).—(*Honourable Senator Hervieux-Payette, P.C.*)

She said: Honourable senators, I rise today to speak once more about the bill to amend the Criminal Code (protection of children), now known as Bill S-209. The purpose of this bill is to protect children from corporal punishment by repealing section 43 of the Criminal Code, which 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.

This is a legislative provision that dates back to the 19th century.

It permits a practice that is outdated, barbaric and discriminatory towards our children. It condones the use of corporal punishment as a means of discipline. Were the same acts to be carried out against adults, they would be considered assault.

Before continuing my remarks, I wish to underline that this is the third time that I have tabled the same bill. The proposed legislation was also tabled in this chamber by Senator Carstairs in 1996. Moreover, similar bills have been tabled in the other place by several other parliamentarians since 1994. As we will see in a moment, much water has flowed under the bridge in the time between the tabling of my former bill and this one.

In the last session, the Standing Senate Committee on Human Rights was able, for the first time, to thoroughly study this issue. It tabled its report in this chamber without amendment. This report concludes that section 43 must be repealed, eliminated.

Last April, the committee tabled a report dealing with the effective implementation of Canada's international obligations with respect to the rights of children entitled *Children: The Silenced Citizens*.

In Chapter 6, the committee deals specifically with Canada's commitment to fight violence against children. It examines Article 19 of the Convention on the Rights of the Child ratified by Canada in 1991. Article 19(1) reads as follows:

States Parties — that includes Canada — 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.

I would add that Article 3 states: the best interests of the child shall be a primary consideration.

In two successive reports on Canada dated June 20, 1995, and October 27, 2003, the United Nations clearly indicated that, by maintaining in force section 43 of the Criminal Code, Canada was not respecting the terms of the convention it had signed.

A number of witnesses appeared before the standing Senate committee and, drawing on the Convention on the Rights of the Child, urged the federal government to repeal the defence under section 43 of the Criminal Code. Merv Berstein, Children's Advocate for the Province of Saskatchewan, said:

. . . it is time for Canada to step up to the plate or risk significant embarrassment on the international stage.

The Standing Committee on Human Rights was clear: section 43 of the Criminal Code must be repealed!

Honourable senators, it is our duty, as parliamentarians, to protect our children. We have been examining this issue in Parliament for 13 years now.

Several studies have shown that we must act. It has been confirmed that children under the age of five are the ones who most often undergo corporal punishment. How can they defend themselves? How can they know when their parents have exceeded reasonable force under the circumstances? To whom can they appeal? How many times must they be hit before a neighbour or a teacher notices? A great deal of time may pass before marks or bruises appear, and it may be then too late.

In 2004, Statistics Canada completed a study on the parenting environment and aggressive behaviour in children. The study involved 2,000 children and revealed that children two to three years of age living in punitive environments in 1994 scored 39 per cent higher on a scale of aggressive behaviour — such as bullying or acting spitefully — than children living in less punitive environments.

The difference, however, was even more marked six years later, in 2000, in the same children at ages eight to nine. Those living in punitive environments scored 83 per cent higher on the scale of aggressive behaviour than children living in less punitive environments.

So, only 17 per cent of the children had not become aggressive. Statistics Canada noted that this aggression carried over into adulthood in the form of aggression, delinquency, crime, poor school performance, unemployment and other negative aspects such as

depression. In other words, those who begin life in violence are unable to make positive contact with others, resolve conflicts normally and develop in a healthy way.

In 2005, Statistics Canada published a report entitled *National Longitudinal Survey of Children and Youth: Home environment, income and child behaviour*. This study looked at changes in punitive parenting practices in the home and observed changes in child behaviour. Children showed higher levels of aggressive behaviour when their parents were more punitive. They also showed higher levels of anxiety and lower levels of pro-social behaviour, the latter defined as actions that benefit another person with no reward for oneself, when parents were more punitive.

These data could scare even the most sceptical. A number of people have told me that they experienced corporal punishment and saw no effect. Some judges in Quebec even mentioned it in published judgments.

The Centre of Excellence for Child Welfare gathered the findings of several studies and found that children who are hit have a tendency to hit other children; 19 per cent were violent toward others. They had a tendency to adopt anti-social behaviour such as intimidation and bullying at school and 36 per cent of children who are physically abused have psychological or behavioural problems.

Lack of remorse was also observed because for punished children violence is a habitual form of conflict resolution. The centre also noted deterioration in parent-child relations. Even worse, a higher risk of depression, sadness, anxiety and despair was observed in the children.

The centre notes that 71 per cent of children who suffered physical violence had no evidence of physical scars. However, in 50 per cent of the cases investigators noted functional problems such as learning difficulties or developmental delays.

Last Monday, the education community in Quebec was shaken by a most unfortunate incident involving two children having a silly argument that degenerated into a real tragedy. One of the children was the victim of unbelievably bad luck and died of arrhythmia after being struck in the thorax. A similar tragedy occurred at a high school last spring. A young man died after being punched in the head. Unfortunately, young people in our schools are too quick to react with violence instead of dialogue.

In response to the news, Jacques Hébert, an authority in the field and professor at the École de travail social de l'UQAM, noted in a Montreal daily newspaper that, sadly, we tend to be more reactive than proactive when it comes to violence. In my opinion, honourable senators, one way of being proactive would be to address violence at its very source, by repealing section 43. By maintaining that provision, which introduces young people to brutality from a very young age, we continue to legitimize and maintain a culture of violence. Through this bill, we have the opportunity to take action. I urge all honourable senators to support the bill at this time.

I would like to extend my deepest sympathies to the families affected by these tragedies and to all the students who have had to endure the emotional distress.

Honourable senators, this year, Portugal, New Zealand and Holland have amended their laws to completely abolish the corporal punishment of children.

To date, 19 countries have responded to the United Nations with concrete measures: Sweden, Finland, Norway, Austria, Cyprus, Denmark, Latvia, Croatia, Germany, Bulgaria, Iceland, Ukraine, Romania, Hungary, Greece, the Netherlands, New Zealand and Portugal. Another 17 countries have made a public commitment to reform their legislation. What is Canada waiting for?

I invite you to consult the *Global Initiative to End All Corporal Punishment of Children* Web site on this topic. In October, this organization released a new report, *The Global Report 2007 — Ending Legalised Violence Against Children*, to follow up on the United Nations Secretary General's study on violence against children.

Professor Paolo Sérgio Pinheiro, the independent expert appointed to lead the UN study, refers in *The Global Report* to the target date of 2009 set by the study for the prohibition of all violence against children, including all corporal punishment. Surely this is not too much for children to expect. The study has made visible the scale and impact of this common form of violence in schools, care institutions and other places. How can adults, as human rights activists, parliamentarians, government ministers or officials tolerate its continued legality and social acceptance in so many states and in our country?

In May 2006, the World Conference of Religions for Peace, in cooperation with UNICEF, brought together leaders and experts from more than 30 countries with different beliefs: Buddhist, Christian, Hindu, Jewish, Muslim and so on. The delegates to the conference adopted a joint declaration to combat violence against children by calling on governments to pass laws to put an end to corporal punishment. This declaration was approved at the eighth Religions for Peace world assembly, which took place in Kyoto, Japan, in August 2006. It is important to note that 800 religious leaders from 100 countries attended the assembly.

As well, in Europe, all the members of the Council of Europe ratified the United Nations Convention on the Rights of the Child in 2005. The Council of Europe called for a campaign to make Europe "a corporal punishment-free zone for children".

In addition to the European countries mentioned earlier, it must also be underlined that the Supreme Court of Italy has also banned corporal punishment.

As you have just heard, things are changing internationally. It remains to be seen whether we can change things here in Canada. Honourable senators, I have nearly 10 years left in my mandate, but I want to wrap up study of this bill now, and I want to see it passed this year.

Over the past few years, the main argument against repealing section 43 has been fear that all parents who take physical action involving their children could be taken to court. Basically, the Department of Justice argued that parents could be charged for doing up their child's seatbelt without the child's consent. I thought that wearing a seatbelt was a legal obligation, not a way to punish children.

In a document entitled *Children and corporal punishment: "The right not to be hit, also a children's right"*, Thomas Hammarberg, Commissioner for Human Rights, refuted such arguments. He said:

. . . the definition and ban of corporal punishment should not be seen as excluding the positive and fundamental concepts of discipline or education. The development of every child requires guidance and directions from parents, relatives, teachers or other adults.

Parenting and caring for children, especially young children, demands frequent physical actions and interventions to protect them. These situations should be distinguished from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children. The law in all States, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people.

Honourable senators, as I have said before, repealing section 43 will not cause problems for parents who do things to protect their children or who, on rare occasions, may lose patience with them. I would point out that common law defences such as necessity and *de minimis* are still in effect in Canada.

With respect to the defence of necessity, the Supreme Court has reiterated its application on many occasions. This principle recognizes that there are emergency situations where the law does not hold people accountable if the ordinary human instincts overwhelmingly impel disobedience in the pursuit of self-preservation or the preservation of others.

The Canadian Bar Association, in a 1992 study entitled *Principles of Criminal Liability: Proposals for a New General Part of the Criminal Code of Canada*, bases its reasoning on K. R. Hamilton's paper, "De Minimis Non Curat Lex", which gives the following justifications for a *de minimis* defence: first, the application of criminal law must be reserved for serious misconduct; second, an accused must be protected from the stigma of a criminal conviction and from the imposition of severe penalties for relatively trivial conduct; third, the courts must be saved from being swamped by an enormous number of trivial cases. I want to remind honourable senators that the existing process in Quebec allows this distinction to be made between serious and trivial cases.

Furthermore, I want to remind you that the provinces are responsible for the administration of criminal justice and they have specific guidelines to follow before making accusations. In Quebec for example, a multisectoral agreement on the social and

judiciary response procedure has been created. There are five essential steps in the decision-making process: first, the reporting of abuse to the director of child protection; second, liaison and planning; third, investigation and assessment; fourth, decision making; and fifth, action and information of partners.

In referring to the Swedish model, the Human Rights Commissioner said:

In Sweden, the primary purpose of banning corporal punishment was to alter public attitudes towards the use of physical force, to set a clear guideline for parents and to promote earlier and more supportive intervention in child protection matters.

Public support for corporal punishment has decreased dramatically. In 1965 the majority of Swedes were in favour of it. A recent study shows that just six per cent of those 35 or younger, which would include the parents of young children, said they were in favour of corporal punishment, even the gentlest kind.

Practices have also changed: of those who grew up after the ban, only 3 per cent reported that they were slapped by their parents and only 1 per cent reported that they were hit with an object. In addition, and this is important, the mortality rate due to violence is very low among Swedish children.

In Sweden, awareness of violence against children has been heightened and there has been an increase in the number of assault cases reported; however, fewer parents were charged, social workers intervened less often and fewer children were placed in foster care.

Honourable senators, Canada is ready to put an end to violence against our children. Your colleagues who are members of the Standing Senate Committee on Human Rights decided that section 43 of the Criminal Code should be repealed.

I now also have economic support for this change. In 2003, the Law Commission of Canada assessed the economic costs of all forms of child abuse in 1998 alone. It was estimated that the legal, social services, education, health, employment and other costs attributable to violence against children totalled approximately \$16 billion. The abuse of children is devastating not only for individuals but for society as a whole.

To date, 271 organizations and many distinguished Canadians have signed the Joint Statement on Physical Punishment of Children and Youth, initiated in 2004 by the Children's Hospital of Eastern Ontario (CHEO). To allow corporal punishment is to allow violence against citizens and to admit that they are not full-fledged citizens. To prohibit corporal punishment sends a clear message that violence against children is no longer tolerated.

In closing, I wish to underline the exceptional work of some people who are wholeheartedly devoted to this cause and with whom I have worked over the years. I

wish to commend Corinne Robertshaw, from an organization known as Repeal 43 Committee; Ron Ensom, from the Children's Hospital of Eastern Ontario; Joan Durrant from the Department of Family Social Sciences at the University of Manitoba; and Dia Mamatis, a research consultant with Toronto Public Health.

Honourable senators, end discrimination against children. Respect their right to life, security of the person and physical integrity. Senators will no doubt recall that, last April, a Quebec school board was offering "courses in managing difficult children", dubbed by the press "Spanking 101". Honourable senators, end this madness, vote for Bill S-209.

On motion of Senator Cochrane, debate adjourned.