

## **Criminal Code**

### **Bill to Amend—Second Reading—Debate Continued (March 4/08)**

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-209, An Act to amend the Criminal Code (protection of children).—(*Honourable Senator Comeau*)

**Hon. Ethel Cochrane:** Honourable senators, I am pleased to rise to address Bill S-209, which has been brought before us once again by Senator Hervieux-Payette. First, I would like to commend the senator for bringing forth this issue, as I am sure we can agree that the prevention of violence against children is a goal we all share.

I think it would be fair to say that every party, both here and in the other place, would wholeheartedly agree that we must never condone violence against children and that we have a responsibility to protect our children from violence. Indeed, Canadians from all walks of life expect that we, as parliamentarians, will stand up for those who cannot stand up for themselves. In the case of Bill S-209, however, I am concerned that we would be giving ourselves a false sense of security and would be failing all Canadians — but, above all, our children.

In my view, this bill is a knee-jerk reaction to a deeper issue. Senator Hervieux-Payette is proposing that if we just repealed one clause of the Criminal Code, violence against children would end in this country. If this were possible, I would throw my support behind Bill S-209 and embrace it in a heartbeat. However, this concept is overly simplistic; it is merely an exercise in political spin designed to side-step the real issues with regard to violence against children.

While I am eager to support legislation that positively impacts children, I cannot in good faith support the bill before us. Frankly, I believe that our children deserve better than this sort of political tinkering.

I want for one moment to take a look at the judicial history associated with section 43 of the Criminal Code. We are all aware that section 43 has been before the Supreme Court on a number of occasions in recent history. I hope that we would all defer to the wisdom of our Supreme Court justices to be able to make the right call, so to speak. I am certain that they have considered the issue with appropriate and thorough care, and would never pass any decision without taking a long and sober look at the issue and the application of law in this country.

Honourable senators, I think the reason they decided to continue to uphold section 43 is because they recognize the legal merits as well as the pragmatic effects of its application. For instance, the last time this issue was before the Supreme Court, which was back in 2004, they examined this very issue and once again decided to uphold section 43 of the Criminal Code. In reaching its conclusion, the court determined that section 43 did not violate a child's rights to security and equality. Further, the court determined that section 43 does not represent cruel and unusual punishment. They considered the actual wording of the clause and applied their decision based on the best interests of children and what is considered reasonable in Canadian society.

Moreover, section 43 applies not only to parents but to educators and those standing in the place of a parent. Therefore, the court had to consider that these people not only provide our children with dependable and safe environments, but they also incur the responsibility of providing them with the guidance and the discipline required to promote a healthy and safe childhood as they grow and mature into young adults.

Honourable senators, section 43 does not give parents or other adults the right to abuse children. If it did, I am sure that the Supreme Court would have struck it down long ago, and rightfully so. However, the fact of the matter is that the court recognized that section 43 protects parents, and specific individuals acting as parents, from criminal charges being laid for carrying out the reasonable restraint of minors in their care.

This brings us to the heart of the matter. If section 43 is struck down, as Senator Hervieux-Payette would prefer, we will find ourselves in a situation where the provincial courts would be required to charge parents with assault if they decide to discipline their children. Any time a parent buckles a reluctant child in a car seat, or removes a child in the middle of a full-blown tantrum from a shopping mall, church, playground, or any other place, the end result could very well be a criminal charge. Imagine having a criminal charge as a result of protecting or disciplining your child.

Ultimately, by repealing section 43, we will be creating a vacuum within the Criminal Code. Reasonable actions that are now protected under section 43 will no longer have protective status in the law. This, of course, would make it incumbent on the legal system to consider any reasonable restraint enacted by parents or guardians to be tantamount to common assault. Again, parents acting reasonably would be in danger of prosecution.

The assault provisions of the Criminal Code are enshrined through jurisprudence and capture a wide range of actions. The question that begs to be asked is do we really want to start throwing well-meaning parents into prison for disciplining their children? Does this not seem like the height of both arrogance and absurdity?

**Senator Segal:** Spare the rod, spoil the child.

**Senator Cochrane:** Honourable senators, I would like you to consider what this bill would mean for our schoolteachers.

(1550)

The Canadian Teachers' Federation, the national voice of over 240,000 teachers across the country, has looked into this matter and, by the way, they were pleased with the Supreme Court ruling in favour of maintaining section 43 of the Criminal Code. The organization opposes the use of corporal punishment and maintains that section 43 allows teachers to intervene, when appropriate and without fear of criminal prosecution, in situations that are commonplace in today's classrooms.

Among the situations they cite as examples are: protecting students and teachers when a fight breaks out at school; restraining students if necessary; escorting uncooperative students to the principal's office; removing disruptive students who refuse to leave the classroom; and placing a

young student on a bus who refuses to board the bus, particularly when on a field trip.

Honourable senators, if we pass this proposed legislation, which would mean that the protection afforded under section 43 would be gone, then in each of the situations I have just described, the teacher would automatically face assault charges.

**Senator Comeau:** Chaos.

**Senator Cochrane:** Honourable senators, as a former teacher I can tell you that students and teachers would be more vulnerable than ever. This matter concerns me greatly. I am sure Senator Cordy and other honourable senators who have taught in classrooms across the country can appreciate the seriousness of these concerns.

The implications of this proposed legislation could spiral down to the ridiculous, where an adult guardian could face criminal prosecution for buckling a child into a car seat. To dismiss these extreme examples as simple exaggerations fails to account for the accepted interpretation of the assault provisions of the Criminal Code. In repealing section 43, the provisions would operate in a vacuum. The assault provisions are well defined, and toying with them is ill-advised as it would reopen the assault provisions to further legal debate and frustrate genuine criminal proceedings.

Honourable senators, I urge you to practice common sense with regard to Bill S-209. Nobody wants to see any harm brought to our children. At the same time, nobody wants to see criminal proceedings being brought against well-meaning parents, either. Political expedience and manoeuvring should never be used to create a situation where we jeopardize the rule of law in favour of optics.

If we head down this road, then we head down a slippery slope of no return. I, for one, cannot do this. I ask all of you to heed this warning and oppose this bill. Bill S-209 will do nothing to improve the safety of our children. Instead, it will ensure that those entrusted with the safety of our children are efficiently and systematically prosecuted.

On motion of Senator Andreychuk, debate adjourned.