

Criminal Code

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 Joyal, P.C., for the second reading of Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence).

Hon. Donald Neil Plett: Honourable senators, I'm sorry that I need to do this at this late hour of this late time of the week, but unfortunately, I am at day 15. I do want to speak to this, which I was hoping I would never again have to do, and hopefully this will be my last time, but I will speak to it, and I will be brief.

Honourable senators, I do not agree with much of what Prime Minister Pierre Elliot Trudeau ever said. However, I do agree with this comment that he made: "There's no place for the state in the bedrooms of the nation." I also believe that there is no place for the state in the homes of loving parents raising their children in a responsible and caring manner.

I rise today to speak, hopefully for the last time, to Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence). While I have spoken on this legislation more times than I care to count, as we have now dealt with legislation that quite literally concerns life and death, it really puts this bill into perspective.

Bill S-206, An Act to amend the Criminal Code (protection of children against standard child-rearing violence), 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.

To summarize, section 43 provides a defence to parents, caregivers and teachers against a charge of assault when they use reasonable physical force to correct a child's behaviour.

"Assault" is broadly defined in the Canadian Criminal Code to include any non-consensual use of force against another person. This can include non-consensual touching, threats and forcible confinement. Section 43 of the Criminal Code provides important protection for parents from criminal liability and flows from the parental duty

to protect and educate their children. It is a limited defence to the non-consensual application of force to a child.

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 used 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 the 2004 ruling, 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.

Furthermore, teachers, the ruling stipulated, may not use corporal punishment under any circumstances. The Supreme Court of Canada held that educators may only use reasonable corrective physical force to maintain order or enforce school rules such as removing a child from a classroom.

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. 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.

This bill has been called "the anti-spanking bill" by many, but, colleagues, this goes well beyond taking away reasonable, responsible parents' ability to spank. It takes away their ability to parent. By repealing section 43, the general assault provision of the Criminal Code would be applied to any parent, teacher or guardian who chooses to use force against a child without their consent.

Any person who has raised small children will understand how many times in one day, in the course of normal parenting, there is non-consensual touching or the threat of it. Ordinary everyday activities: dressing a child, feeding a child, getting them into the car, to school, back home, and bathed and put to bed. Just think about the situation where a young child refuses to go to school. How is a reasonable 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 parenting.

(1540)

In one of her speeches in the chamber, Senator Hervieux- Payette had this to say:

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. 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.

In proposing this bill, the honourable senator has unfortunately lumped child discipline and child abuse into the same category. Many of the studies cited by the senator also lump spanking or minor corrective physical discipline with child abuse, and confuse correlation and causation, skewing any conclusions.

There is not a senator in this chamber who condones parental "violence"; however, I would assume that most of us have been the recipient of some physical discipline and I do not believe any of us endured psychological harm as a result.

I have spoken to many Canadians about this issue, and not only do they believe that this bill is a tremendous waste of time, but they think it is harmful, and they agree that a parent should be free to decide how to discipline their child as long as it is reasonable and not abusive.

Among those Canadians is Ms. Julia Stickel of Calgary. In April of this year, Ms. Stickel wrote a letter to me stating her opposition to Bill S-206 that was endorsed by 1,264 other Canadians. The letter is broken down into several points that summarize Ms. Stickel's opinion.

First, Ms. Stickel emphasizes the fact that this law would criminalize a majority of Canadian parents. She points out that according to a 2005 study, 70 per cent of mothers of preschool children in Ontario and in my home province of Manitoba said that they have spanked their child.

Ms. Stickel raises another question: If we are to repeal section 43, where will the legislation of parental action end?

Sweden was one of the first countries to impose a ban on spanking. Today, with the absence of any parental protections within their Criminal Code, it is now illegal for parents to send a child to their room, since this is considered "using force."

Ms. Stickel also references the fact that Senator Hervieux- Payette stated that eliminating spanking will eliminate violence since, she claims, spanking causes children to learn violence.

Dr. Robert Larzelere reviewed the effects of Sweden's spanking ban in 1979. He found that physical child abuse by relatives against children under age 7 increased 489 per cent between 1981 and 1984. He also found that criminal assaults by children under age 15 — born after the law — increased 519 per cent, compared to a 219 per cent increase by 15- to 19-year-olds — who were 0 to 4 when the law was passed — a 133 per cent increase by 20- to 24- year-olds, and only a 53 per cent increase by 25- to 29-year-olds.

Senator Hervieux-Payette's statements before this chamber in regard to Bill S-206 have been riddled with logical fallacies. For instance, the honourable senator claimed that "repealing section 43 will not criminalize parents, as I have often heard. Instead, repealing section 43 will protect parents."

As hard as I have tried to wrap my head around this statement, it seems that common sense would dictate that holding parents criminally accountable for disciplining their children would be punishing them, not protecting them.

Colleagues, child abuse of any kind is the most abhorrent behaviour that takes place in this country. It is also illegal. Those who perpetrate violence against children should feel the full force of the law, and in Canada they do. If we want to consider measures that would help prevent child abuse or increase penalties for perpetrators who take advantage of children, I would be happy to explore those. This bill does not do that.

Colleagues, it is time to put this issue to bed once and for all. I encourage you to keep section 43 of the Criminal Code intact — to protect reasonable, loving parents from the risk of criminalization. I urge all colleagues to vote against Bill S-206.

(On motion of Senator Fraser, debate adjourned.)