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Wednesday, December 7, 2011

The Honourable NOËL A. KINSELLA
Speaker

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THE SENATE

Wednesday, December 7, 2011

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

THE LATE GRAHAM W. DENNIS, C.M.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, yesterday Nova Scotians gathered in Halifax to mourn the loss of Graham W. Dennis, who died on December 1 at the age of 84. For more than 57 years, he had been the sole owner and publisher of the *Halifax Chronicle Herald*, the largest newspaper in Atlantic Canada and one of the few remaining large, independent newspapers in Canada. As publisher, he described himself as "a humble peddler of papers." He also said, "I am not a writer, but I think I know what news is."

Graham Dennis devoted his working life to his newspaper, passionately defending its independence and promoting the best interests of his beloved Nova Scotia. The son and grandson of a senator, he was reported to have turned down an appointment to the Senate on three separate occasions for fear that such an appointment would jeopardize the independence of his newspaper, an independence that was, prior to his time, unknown in the long and colourful history of daily newspapers in Nova Scotia.

Mr. Dennis took over his newspaper in the days of telegraphs, typesetters and typewriters and guided it over many years into the Internet age.

While his contributions to our province received many public acknowledgments — appointment to the Order of Canada, induction into the Nova Scotia Business Hall of Fame, Red Cross Humanitarian of the Year and honorary degrees from a number of universities — he deserves to be honoured as well for countless acts of private kindness and generosity that are not part of the public record.

During this past week, stories of such selfless acts have been exchanged, becoming known for the first time to those who knew him best.

I know from my own experience that no appeal for a project aimed at strengthening Nova Scotia ever left him unmoved. It usually elicited prompt, generous and often anonymous support. Graham Dennis was a true gentleman whose courtly formality masked a kindness, a dry sense of humour and a sense of mischief that impressed all those who dealt with him in business and in the community.

Ten years ago, his plan for an orderly succession into a fourth generation of family ownership was dashed by the sudden death of his 30-year-old son William, probably my own son's closest friend. Despite this setback, he was proud to be able to maintain the tradition by completing an orderly transition to his daughter Sarah, who assumed the position of president and chief executive officer in 2009.

At the end of his long and productive career, he remained convinced, as I am, that the best days of our province lie ahead.

Honourable senators, Nova Scotia owes much to this remarkable man, and Nova Scotians will join me in expressing our deepest sympathy to his wife Gay, his daughters Heather and Sarah and his grandchildren.

THE RIGHT HONOURABLE BRIAN MULRONEY, P.C., C.C.

CONGRATULATIONS ON AWARD OF GRAND CORDON OF JAPAN'S ORDER OF THE RISING SUN

Hon. David Tkachuk: Honourable senators, on Monday I had the pleasure of attending a ceremony at the Japanese ambassador's residence. The event was organized to award the Right Honourable Brian Mulroney with the Order of the Rising Sun Grand Cordon. This is among the highest of decorations in Japan available to foreigners. This particular decoration is the first class of the nine classes available in the Order of the Rising Sun category.

The Order of the Rising Sun was established in 1875 by Emperor Meiji and was the first national decoration awarded by the Japanese. Past recipients include, amongst others, Lee Kuan Yew, the former Prime Minister of Singapore; and Malcolm Fraser, the former Prime Minister of Australia. In bestowing this award upon Mr. Mulroney, Ambassador Ishikawa noted that:

> Among his many accomplishments during his tenure as Prime Minister, the Right Honourable Brian Mulroney worked tirelessly to develop and strengthen bilateral relations between Japan and Canada. Most notably, he made the courageous decision to apologize on behalf of the Government of Canada and close a chapter in Canadian history that affected tens of thousands of Canadians of Japanese ancestry seven decades ago.

The ambassador was referring, of course, to the relocation and internment of some 22,000 Japanese Canadians during the Second World War. As a result of Mr. Mulroney's determination, what is known as the Redress Agreement was reached to restore the honour of Canadians with Japanese ancestry and provide them with compensation.

On September 22, 1988, Mr. Mulroney delivered a speech in the House of Commons marking this agreement. Both the Liberal and NDP opposition parties were in full agreement for what they lauded as a historic decision. Mr. Mulroney stated in his remarks in the house that day:

> I know that I speak for Members on all sides of the House today in offering to Japanese Canadians the formal and sincere apology of this Parliament for those past

injustices against them, against their families, and against their heritage, and our solemn commitment and undertaking to Canadians of every origin that such violations will never again in this country be countenanced or repeated.

As part of the Redress Agreement, the package offered to those Japanese affected by this deplorable policy included a payment of $21,000 to all surviving evacuees, a clearing of all criminal records of those Japanese who violated the War Measures Act by refusing to go to camps, a reinstatement of citizenship to the "repatriated" Japanese, a $12-million community fund and a $24-million contribution to the establishment of the Canadian race relations foundation.

In taking this historic step, former Prime Minister Mulroney opened the door to better relations between Canada and Japan and removed the sore point that had been plaguing their relationship for more than 40 years.

• (1340)

Mr. Mulroney went on to sign several agreements that further solidified our partnership, including the Canada-Japan Science and Technology Cooperation Agreement, the Canada-Japan Working Holiday Agreement and the establishment of the Japan-Canada Forum 2000. As a result of his tireless efforts on this front, the Emperor of Japan sought fit to award him among the highest of Japanese decorations.

Honourable senators, please join me in congratulating Mr. Mulroney, the recipient of this most prestigious and well deserved award.

FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS BILL

Hon. Lillian Eva Dyck: Honourable senators I was dismayed that Bill S-2 passed third reading in the chamber last week without much debate. I was expecting to be able to participate in its debate this week. While Bill S-2 does contain excellent provisions to aid Aboriginal women undergoing a relationship breakdown, Bill S-2 also contains a poison pill.

During the study of Bill S-4, the predecessor of Bill S-2, many witnesses stated that this bill unnecessarily infringes on the rights of First Nations.

The poisonous pill is contained in clause 20 of the bill. The provisions of clause 20 violate the rights of First Nation people to their reserve land. Reserve lands are set aside by the Indian Act specifically for the collective use of registered Indians, but in clause 20 of Bill S-2, a person who is neither a registered Indian nor a member of the band can be granted exclusive occupation of the matrimonial home and the land on which it is situated.

During the study of the bill by the Human Rights Committee, it was clear from Minister Duncan's comments to my questions that he was unaware that clause 20 could permit persons who were not registered Indians exclusive occupation of the matrimonial home and its land.

His departmental officials, Mr. Karl Jacques from Justice and Ms. Line Paré, Director General, Aboriginal Affairs and Northern Development, did not know that the bill will allow non-Indians to gain exclusive occupation of the home and its land. Clearly they were wrong about the bill's provisions. Clearly they did not know the wording of clause 20. How then can we believe Minister Duncan's statement that under Bill S-2, the assertion that a non-Aboriginal person could acquire ownership of reserve land is completely false, when he does not even know what is in the bill?

Honourable senators, while the government argues that this bill is necessary to protect Aboriginal women living on reserve from domestic abuse, the National Aboriginal Circle Against Family Violence does not think this bill should be enacted. Moreover, as I stated previously in my speech at second reading, the minister's representative made it crystal clear that we do not have to infringe upon the rights of First Nations in order to protect abused Aboriginal women and their children living on reserve.

It is possible to protect the rights of the First Nation band members to their land, and at the same time we can allow non-members and non-Indians exclusive occupation of homes on reserves by including provisions that make it absolutely clear that they cannot gain title to the land. The Lac La Ronge Indian Band for example, has non-band members and non-Indians sign a declaration of non-interest before a lease to reserve land will be granted. This is just one example.

Honourable senators, it could be concluded that under the guise of protecting abused Aboriginal women and children, the Harper regime is fast tracking Bill S-2, a bill that contains a poison pill that will allow non-Indians to break up reserve lands without the consent of the rightful owners, the First Nation people themselves.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before calling upon Senator Patterson, I would like to draw to your attention the presence in our gallery of Mr. William Vandekerkhove and Mr. Luke Vandekerkhove, two distinguished citizens of British Columbia, who are guests of our colleague, the Honourable Senator St. Germain.

Welcome to the Senate of Canada.

ATLANTIC SEALING INDUSTRY

Hon. Dennis Glen Patterson: Honourable senators, our Standing Senate Committee on Fisheries and Oceans is studying sealing, particularly the situation of the grey seal in Atlantic Canada. We have just begun our study and I do not want to prejudge the conclusions, but we have learned many interesting facts.

Mature grey seals eat two tonnes of fish each year. They are now about 400,000 of them in the Atlantic region. Sealers tell us they do not eat the whole fish and that often they just take a bite

out of the most tender part, leaving the rest to die. Although overfishing was responsible for the decline of our Atlantic cod stocks, commercial fishing has not been allowed since 1993. Now the seals are gobbling up what cod are left and they will be eating other commercial fish species and shellfish next after the cod are gone if we do not do something about it.

Since we started our study, we have been besieged by intemperate emails from all over the world, from people who believe the untruths that the Canadian seal hunt is cruel and inhumane. They threaten never to visit our country and say the seal hunt is Canada's shame.

With permits given by our Department of Fisheries and Oceans, they film seal hunting and then use the videos they make to raise a lot of money to pay themselves well and campaign against the seal hunt. Magdalen Islands sealers told us four anti-sealing groups raised $250 million to campaign against the Canadian seal hunt. They persuaded the European Parliament to ban the sale of seal products in Europe based on these lies.

In truth, Canadian sealers know how to hunt and kill seals quickly and humanely. They use a three-step process which ensures the seal is quickly stunned and bled, and that the brain is dead before it is pelted. However, anti-sealing groups perpetuate lies that we are still killing whitecoats — even though that has been banned since 1987 — and that seals are skinned alive. They raise money from gullible, ignorant people from all over the world to condemn our hunt and damage Inuit and their renewable resource economy in the process.

We also learned that five European countries are authorizing the killing of grey seals because their fish are being gobbled up by seals, as are our fish in Canadian waters. In fact, the same European countries that banned seal products from Canada in Europe are killing millions of muskrats and grey squirrels, wasting the meat and fur, and treating them like pests to be exterminated. This is not the Canadian way.

The grey seals in our waters can be harvested humanely and effectively as a valuable source of nutritious protein, omega 3 oil, attractive and valuable leather and fur, and, in the future, medicinal products like replacement heart valves. Although they are chewing up tonnes of our valuable and threatened fish stocks, I do not believe grey seals should be culled and wasted. They are not a pest, but a valuable resource that has been undervalued. If protest groups have their way, they will be of no value and only a cost to us to manage them.

I am proud that our government supports Canadian sealers, but I believe we must translate that support into doing a better job at educating the world about our humane and sustainable harvesting practices, and our ability to responsibly manage our renewable resources, and giving Canadian sealers access to those rich resources so we can use them to contribute to global food security.

We must responsibly, respectfully and humanely manage and not waste this abundant renewable resource.

[Senator Patterson]

FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS BILL

Hon. Sandra M. Lovelace Nicholas: Honourable senators, as a First Nation woman who has undergone divorce, suffered in an abusive relationship and who lives on a reserve, I see problems with Bill S-2 that I feel must be drawn to your attention. Due to the haste with which the bill was dealt with at third reading, I did not get a chance to make some remarks.

There are practical implications that make clause 20 unworkable. If non-band members, non-Indian spouses and partners are granted occupation by court order, they will also be entitled to other band services, such as education and health. Even if they are not band members, does that not also create new rights for non-members?

• (1350)

Is Aboriginal Affairs responsible for providing the band services to non-band members or non-Indians who have been granted exclusive occupation of the family home? Would non-band children of non-Indian, non-member spouses or partners be able to attend the band school on the reserve where the family home is situated?

If the spouse or partner is granted exclusive occupation under this section, will the non-band member children really be better off living on reserves when they are not eligible to attend schools and they are not able to participate in band cultures such as camps, sports and so on? These non-member children will not be able to learn the First Nation culture or be able to fully integrate with other band children because of the way bands are operated and funded.

Honourable senators, this bill will have consequences on daily life on the reserve. It will create divisions within the community that limit rather than help the welfare of non-band children living on reserves.

ROUTINE PROCEEDINGS

STUDY ON FEDERAL GOVERNMENT'S RESPONSIBILITIES TO FIRST NATIONS, INUIT AND METIS PEOPLES

THIRD REPORT OF ABORIGINAL PEOPLES COMMITTEE TABLED

Hon. Gerry St. Germain: Honourable senators, I have the honour to table, in both official languages, the third report, interim, of the Standing Senate Committee on Aboriginal Peoples, entitled: *Reforming First Nations Education: From Crisis to Hope*.

(On motion of Senator St. Germain, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

THE SENATE

NOTICE OF MOTION TO URGE GOVERNMENT TO HONOUR SECTION 47.1 OF THE CANADIAN WHEAT BOARD ACT

Hon. Wilfred P. Moore: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Senate urge the Government of Canada to honour section 47.1 of the *Canadian Wheat Board Act* which provides that the Minister responsible for the Canadian Wheat Board shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless
>
> (*a*) the Minister has consulted with the board about the exclusion or extension; and
>
> (*b*) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

HUMAN RIGHTS IN IRAN

NOTICE OF INQUIRY

Hon. Linda Frum: Honourable senators, I give notice that, two days hence:

> I will call the attention of the Senate to egregious human rights abuses in Iran, particularly the use of torture and the cruel and inhuman treatment of unlawfully incarcerated political prisoners.

QUESTION PERIOD

FOREIGN AFFAIRS

HUMAN RIGHTS IN NIGERIA

Hon. Jane Cordy: Honourable senators, my question is to the Leader of the Government in the Senate. Canada provides millions of dollars in assistance to Nigeria, a country where the Senate recently approved an extreme anti-gay bill that imprisons people who are involved in a same-sex marriage for up to 14 years and for up to 10 years in prison for those who witness such a union. This legislation demonstrates a total disregard for basic human rights. Prime Minister David Cameron of the United Kingdom recently threatened to cut aid to Nigeria if this legislation passes the lower House of Representatives and becomes law.

Could the Leader of the Government in the Senate update the Senate as to whether or not our federal Finance Minister plans to cut off assistance to Nigeria to express Canada's support for dignity for all individuals, in particular men and women who are gay?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I thank the senator for the question. Canada, as the honourable senator knows well, continually raises the need to respect all basic human rights. Recent events in Nigeria are extremely troubling. They represent an escalation of hateful laws already on the books. The government has called upon the Nigerian government and all governments to protect all of their citizens, regardless of sexual orientation. We will work through the Commonwealth and other forums to denounce laws like this in a bid to get them changed.

Senator Cordy: The leader is right that Minister Baird did say that Nigeria should ensure equal basic rights for all of its citizens, and he also said that Nigeria must protect all Nigerians, regardless of their sexual orientation. He stated that Canada would continue, as the leader said, to make this point in the most forceful of terms through the Commonwealth and other forums. I would hope that everyone in the chamber would agree with Minister Baird's comments.

Perhaps the leader can explain to us how those forceful terms will be used to ensure equal rights for Nigeria. We can all say we will use forceful terms, or say this or do that. I am just curious how we will put forth enough pressure so Nigeria will, in fact, not pass this legislation, not let it go through the House of Representatives and not have it become the law. I am wondering if the leader could explain to us the means rather than just saying it. What forceful terms can we actually use?

Second, will Canada follow the lead of Prime Minister Cameron of the U.K.? In 2009-10, between bilateral and multilateral aid agreements, Canada actually gave Nigeria over $49 million. Following the lead of Prime Minister Cameron would certainly be an incentive to ensure that the citizens of Nigeria have basic human rights if we were to suggest that perhaps not enough aid would be forthcoming to the government of Nigeria.

Senator LeBreton: Honourable senators, I will take that question as notice and ascertain exactly what the next steps are. I believe that the Canadian government, this government and previous governments, has a very good record of taking action in those countries in the world where people are under oppressive regimes. I will take the honourable senator's question as notice, seeking notice as to exactly what the next steps are.

• (1400)

VETERANS AFFAIRS

PAYMENT OF DEATH BENEFITS

Hon. Wilfred P. Moore: Honourable senators, my question is for the Leader of the Government in the Senate. We learned from the Canadian Press last week that a human rights tribunal has suddenly rejected a complaint from a fallen soldier's family after

Veterans Affairs decided to recognize Corporal Matthew Dinning's girlfriend as his common-law spouse, making her eligible to receive his $250,000 death benefit.

The complaint focused on the discrimination displayed towards the families of soldiers who were single at the time of their death not being eligible for the death benefit. Only spouses of troops who die in combat are eligible to receive this stipend. There is much suspicion that the move by Veterans Affairs was aimed at dismissing similar complaints from four other families whose sons were single when they were killed in combat; and more families are expected to come forward with similar complaints.

Beverley Skalrud, mother of fallen soldier Private Braun Scott Woodfield, has launched a human rights challenge against this discriminatory practice as a matter of equity and fairness. When speaking to reporters she asked: "Was the life of my son worth less than a married soldier?" That is what it meant to her, and that is also how I interpret this practice that the government instituted in 2006. Is Ms. Skalrud's pain any less? Does she miss her son any less? Of course not.

Given the inherent discrimination found in the application of this policy, will the government save these grieving families the additional stress of pursuing this matter before the human rights tribunal by committing today to extend the death benefit to all soldiers and not just the married ones?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. I am familiar with the Dinning family and knew Matthew Dinning's mother quite well. Every death of every soldier who serves our country is to be severely mourned. I have read in the newspapers the comments of the families of the single soldiers. I will take the question as notice and obtain a definitive response from the Department of Veterans Affairs.

Senator Moore: Thank you. In the tribunal's decision — and this is the manner of the decision that ended perceived discrimination — the commission's communication director stated:

> The question is still an important one and has yet to be addressed. Entitlement to these benefits in similar situations remains an issue.

I acknowledge that the stipend was increased; however, under the old system, the money went to the spouse or another beneficiary designated by the soldier. In the absence of a beneficiary, the stipend went to the estate. Again, I ask the leader why the government went out of its way to change that practice and ensure that the new practice is applied in a discriminatory fashion. I await the response of the leader because, in all fairness, this should be tidied up. A soldier is a soldier. I would hope that the minister and her government will approach this matter and deal with it accordingly.

Senator LeBreton: Honourable senators, since we came to government, the Department of Veterans Affairs has worked very hard in a number of areas to improve the treatment of our veterans. We have a new class of veterans coming out of Afghanistan, but certainly, honourable senators, when I refer the question to the Department of Veterans Affairs, I will make them well aware of the honourable senator's comments: "A soldier is a soldier."

[*Translation*]

PUBLIC SAFETY

LONG-GUN REGISTRY

Hon. Claudette Tardif (Deputy Leader of the Opposition): Yesterday we commemorated the sad anniversary of the murder of 14 young female students in 1989 at École Polytechnique in Montreal. The long-gun registry, which was developed in response to this tragic event, is supported by police officers, health care professionals and many victims' and women's rights organizations. In light of this day of remembrance and action on violence against women, why is the government refusing to give police officers the tools they need to prevent other similar tragic events, as the Canadian Association of Chiefs of Police has called for?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, the tragic events of December 6, 1989, are etched in the memories of all. I remember well what I was doing and where I was on December 6, 1989: I was working in the office of former Prime Minister Mulroney, and it was a bitterly cold day. Everyone was horrified by the actions of Mr. Lepine against the female students at École Polytechnique. Two years after that event, I was in the office of Mr. Mulroney when December 6 was designated a national day of remembrance.

The Honourable Rona Ambrose, Minister for Status of Women, has worked extensively on the issue of violence against women and has increased massively the amount of funding expended to combat this terrible situation. When the gun registry was passed through the Senate in the mid-1990s, I was on the public record as saying that the money anticipated being spent for the gun registry would be much better spent on border security and on homes for battered women. It is part of the public record.

The long-gun registry targeting duck hunters, farmers and sports collectors has proven not to be a useful tool. Proposed legislation will make its way eventually to this chamber that will abolish the long-gun registry. I pointed out earlier today in an interview that the real problem lies in illegal guns coming across our borders. I also pointed out that this country has very strict gun control laws. People cannot simply buy a gun and walk away. No matter what kind of gun they choose, people require a firearms acquisition certificate and must go through a police check. The registry does not change any of those strong laws.

As I have told honourable senators many times, I was raised on a farm, where we had shotguns and rifles. My father was a law-abiding, upstanding citizen, and I would not have wanted a situation where he would have been deemed a criminal because he did not register the rifle or the shotgun.

[*Translation*]

Senator Tardif: Madam leader, why do you refuse to recognize the value of at least keeping the data already in the long-gun registry for the purpose of preventing other tragic events like the one we commemorated yesterday?

[*English*]

Senator LeBreton: Honourable senators, the guns used in the tragic incident in Montreal on December 6, 1989, were semi-automatics with the huge ammunition clips. That is not the type of gun in the long-gun registry; we are talking about hunters, farmers and gun collectors. There has been a moratorium on the long-gun registry, and the information is faulty and incomplete. We made a commitment many times to abolish the long-gun registry, and part of the registry is a list of the people on it.

• (1410)

The information is incomplete and not accurate. As I have pointed out many times in this place, I know many police officers and no police officer enters any facility without assuming that there are guns on the other side of the door. They do not need a long-gun registry to tell them that.

[*Translation*]

Hon. Céline Hervieux-Payette: I have a supplementary question. How can the leader forget that statistics show that the long-gun registry helps save 400 lives every year? The fact is that the number of crimes committed using legal, registered firearms has gone down. This registry can make the difference when the police must intervene.

Could the leader explain why the lives of 400 Canadians do not matter, when it is obvious that saving a single life because of the gun registry would make a difference?

[*English*]

Senator LeBreton: Honourable senators, there are no actual statistics to back those figures up. The fact of the matter on the long-gun registry — and I have heard the reference that it is only part of a database — is that frontline police officers, many of whom we have in our own caucus, have indicated that they and their fellow police officers, when they were in the force, entered no facility without assuming they were facing firearms on the other side. The registry, incomplete as it is, would not have provided that information. Police officers instinctively, as a matter of course, enter every facility assuming that there is a firearm on the other side of the door.

I know that it is in the interests of some people to confuse Canada's very strict gun laws; they are strict, and they were all brought in by Conservative governments. You cannot acquire a firearm in this country without applying for a firearm acquisition certificate and having a police check.

Quite some time ago, a colleague of ours, Senator Ron Ghitter, put on the record of the Senate the long, drawn-out process that was required to acquire a firearm. I would recommend that honourable senators look that up in the records of the Senate and familiarize themselves.

To say that 400 lives have been saved by the long-gun registry is not borne out by the facts. The real danger is illegal guns smuggled into this country as part of the gun and drug trade. That is the real danger to our society, and that is why we should be strengthening our laws like we are proposing to do in Bill C-10, which is before us now.

[*Translation*]

Senator Hervieux-Payette: The minister did not answer my question. Even though I know it is not part of her vocabulary, we are talking here about prevention by avoiding putting firearms in the hands of people with bad intentions.

A person would think twice before taking a knife and going after someone with a gun, particularly if the person with the gun might have mental problems.

I would like to come back to the incident that occurred at Concordia, in which I was involved. A person who had been in prison for a number of years was given a firearm licence. In this case, the law was not followed because a number of people could have intervened and prevented him from acquiring a firearm.

We must also not forget the incident at Dawson College. I do not understand the current government's reaction to the concerns of all Quebecers — not just Quebec senators but all Quebecers. They are concerned about this decision. We still do not understand the logic behind it.

You have often talked about cost. Those who are familiar with the administration of this act will tell you that it is police investigations that cost the most, not computerizing the data related to firearms owners. Cost is not the issue.

What we are talking about is prevention. I would like to remind the honourable senators of an incident that occurred in the Prime Minister's home province, where four RCMP officers were killed by a person with a firearm. And then, once again, last weekend, two other RCMP officers were attacked.

The Canadian Police Association and all the other police associations are begging you to keep the registry as is. Abolishing the registry will not help the police ensure that people with mental health problems or those seeking revenge will not be able to acquire a firearm.

I would therefore like the leader to explain to me the reasoning behind this decision, when the gun lobby that is running the show in the United States is in the process of making its way into Canada by means of this bill.

[*English*]

Senator LeBreton: The honourable senator's wild imagination gets the best of her sometimes. No law, as much as we would like it to be, will ever prevent some crazy person from doing harm to others or themselves. There is no law in the world that can prevent that.

There are very stringent gun laws in this country, and the restricted guns are registered.

The long-gun registry would not have prevented any of the incidents. As a matter of fact, if the honourable senator claims — and I am not sure of her facts — that these people were registered, the long-gun registry surely did a lot of good, did it not?

The fact is it was a very expensive registry that did not prove to be effective. It targeted innocent, law-abiding citizens instead of the criminals who smuggle guns into this country. Of course, the financial information is not all that reliable, but it would have been far better if we had spent the $2 billion that was spent on this registry to increase security along the borders to keep illegal guns and drugs out of our country, or to provide funds for many programs that are necessary to combat family violence.

AGRICULTURE AND AGRI-FOOD

CANADIAN WHEAT BOARD

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate. A few moments ago, the Federal Court judge ruled that the government had breached the Canadian Wheat Board Act by introducing legislation at this time without holding the plebiscite that was required by section 47 of the act.

Will the minister agree with me that it is appropriate that we should suspend the hearings of the Standing Senate Committee on Agriculture and Forestry until this matter, which is now the subject of a judicial decision, is dealt with? Presumably the government will want to appeal that decision; is it not appropriate to hold further legislative action until there is a final judicial determination?

Hon. Marjory LeBreton (Leader of the Government): No, it is not appropriate, honourable senators. Parliament has the right to propose new legislation and make changes. We are disappointed with the ruling from the Federal Court, and the honourable senator is correct that we will appeal the decision.

While the Wheat Board itself wants to use the courts to continue to delay marketing choice and freedom for our farmers, we do not agree. We will continue with our plan to pass legislation to give our farmers marketing freedom. Farmers will have the choice of marketing their own products. The other choice, of course, is to avail themselves of the services of the Wheat Board.

• (1420)

Senator Cowan: Honourable senators, many of us have practised in the courts, and we have lost cases. Our clients are disappointed when they lose, but they also have to respect the decision. They have the right to appeal, but in the meantime they cannot say that they are disappointed in the results but that they will carry on as if the case never happened.

Surely this government is not saying that it is above the law. Our courts are here to interpret the laws we make. If you do not agree with the decision of the court, you have the right of appeal, the same right that any citizen has. Surely the leader is not saying that the government has a right that is over and above the right that ordinary citizens have. Surely they have to respect the law and respect the decisions of the court as ordinary citizens do.

Senator LeBreton: This is an age-old debate over the rights of Parliament or the rights of the courts. In this case, the court has ruled on a piece of legislation that we have not even passed through Parliament.

The fact of the matter is that the government and all parliaments have the right to bring in legislation. If that were not the case, we would have laws before us that would, despite many things that have been changed over the years, still be the law of the land because they were passed years ago. That is why we have legislation, to change laws and to bring in new ones. In this case, the government believes Parliament is acting entirely within its rights to bring in new legislation. The bill is before the Senate right now, before committee, and we believe, as a duly elected, legislative government, that we have the right to bring in legislation that we promised over and over again to Canadian wheat farmers.

Senator Cowan: You also promised that you would respect democracy and give farmers the right to vote, which you did not do. That is precisely the point.

The court has said, as the legislation says, that before you can introduce this legislation, you have to have a plebiscite. I suggest to the leader that the government had every right to bring in a bill to change that section, but they did not do so. They chose to ignore the section and to bring in a bill that did precisely what that section said the government could not do.

Does the leader respect the decisions of our courts, or does she not?

Senator LeBreton: In this case, I think I made it pretty clear that we are disappointed with the decision of the Federal Court judge. The government will, of course, appeal the decision. In the meantime, the government feels it is within its rights to move forward on legislation that we promised. The legislation has made it through one of our houses of Parliament. It is currently before this house of Parliament, and we are hopeful that it will be passed before we adjourn for Christmas. By the way, many Western Canadian farmers have appeared before the committee, I am told, and they were here in great numbers when the bill passed through the House of Commons. From what I am told, those farmers were very, very happy that finally, after all of these years, they would have the freedom to market their own product.

The short answer is that the legislation is on track. It has been through the House of Commons, and it is now before the Senate. The government believes we are within our rights to bring in any piece of legislation. Once it is passed by Parliament, it will be brought into law.

Senator Cowan: That is why we have courts. Courts determine rights. When there are disputes between citizens, or between citizens and the government, if those disputes are unable to be

resolved through extra-judicial means, then cases are brought before courts. I think everybody understands that. Everybody, apparently except the leader and the government that she represents, understands that in this land we have the rule of law. The rule of law says that we respect the decisions of the courts. We may disagree with them; we may be, to use your term, "disappointed" with the decision. That is what the appeal courts are for. Surely the logical thing to do is to put this on hold until it can be determined by a higher court. I am sure that in an important case like this, the Supreme Court of Canada would expedite a hearing, and then we would know for sure whether the leader's view or the Wheat Board's view of the law is correct.

I suggest to the leader that it is irresponsible and incomprehensible that the government would say that it and it alone is above the law and is entitled to say it is disappointed in the decision it has gotten from a court and will, therefore, ignore it. How can that be?

Senator LeBreton: First of all, you are quite right; we are disappointed by the decision of the Federal Court judge. We are appealing the decision, but I do believe that Parliament and the legislative body have the right to move forward with legislation they promised. We could argue the validity of the Wheat Board's so-called plebiscite. Certainly, all of the evidence that we have, and I think all of the evidence that has been presented thus far as the bill came through the House of Commons and is now before the Senate, is that farmers do support this legislation. The government believes that we are within our rights to bring forward legislation. That is what we are doing.

We do believe that we have to provide some market certainty for our western grain farmers. As I have pointed out before, the western grain farmers will have the choice, and I think, in a free and democratic society, it should be their choice to market their product directly. If they wish to stay within the confines of the Wheat Board, that is their right as well.

I do not think that the government should in any way be impeded in its ability to put forward legislation before Parliament because Parliament, I do believe, is supreme. I believe the process is partway through Parliament, and we should allow the process to continue.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, pursuant to rule 27(1), I would like to inform the Senate that when we proceed to Government Business, the Senate will address the items in the following order: Motion No. 1 concerning the Speech from the Throne, consideration of Bill S-4, No. 1, and Inquiry No. 1 and Inquiry No. 2.

[*English*]

SPEECH FROM THE THRONE

MOTION FOR ADDRESS IN REPLY ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Comeau, seconded by the Honourable Senator Di Nino:
>
> That the following Address be presented to His Excellency the Governor General of Canada:
>
> To His Excellency the Right Honourable David Johnston, Chancellor and Principal Companion of the Order of Canada, Chancellor and Commander of the Order of Military Merit, Chancellor and Commander of the Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.
>
> MAY IT PLEASE YOUR EXCELLENCY:
>
> We, Her Majesty's most loyal and dutiful subjects, the Senate of Canada in Parliament assembled, beg leave to offer our humble thanks to Your Excellency for the gracious Speech which Your Excellency has addressed to both Houses of Parliament.

Hon. Anne C. Cools: Honourable senators, I rise to speak to the motion for the Address in Reply to His Excellency Governor General David Johnston's very first Speech from the Throne of June 3 last. I thank him. I also congratulate our colleague Senator Claude Carignan on becoming the Deputy Leader of the Government in the Senate. I also thank Senator Gerald Comeau for his good service in that role over the last five years. I also thank his wife, Aurore, for her support of him. I would like to take the opportunity to thank all senators' wives and husbands for their support of us because by their faithfulness to us, they, too, serve.

Honourable senators, today I wish to speak to the *lex parliamenti*, the law of parliament, that vast body of law that governs all our business and actions here, that shared law that is jointly held by the whole Parliament, the Senate, the House of Commons and the Queen. The Queen is the actuating and enacting power in our constitution. I shall speak also to Her Majesty's *lex prerogativa*, the law of the prerogative, from which the law of parliament is granted and derived. It is at the juncture of these two branches of law and their proper observance that Parliament works well. Failure to observe this law results in bad practice. The defining characteristic of responsible government is unity and harmony between the constituent parts of the Constitution. Walter Bagehot called it fused powers.

Honourable senators, today I shall speak to two parts of the *lex*, at the juncture of the *perogativa* and the *parliamenti*. One is supply, and the duty of the houses is to vote supply for the dissolution period. The other is the direct vote on "want of

confidence" which, though the result may be the same, is different from other confidence votes, such as on the budget, on the Throne Speech or even on supply. A direct vote on "want of confidence" is a house vote on a motion for a single proposition which states solely, that is without giving cause, that the house has no confidence in the Crown's servants, the Queen's advisors, her ministers.

• (1430)

I assert that direct votes on "want of confidence" and votes on "contempt of parliament" are two different parliamentary instruments, invoking two different parliamentary powers, to two different ends. They are two different parliamentary proceedings on two different propositions; two different questions. They must not and cannot be combined as a single question, in a single motion, as on March 25, 2011 in the other place. Simply put, there are questions of contempt and there are questions of confidence, but there is no combination confidence-contempt question. The law of parliament does not function like McDonald's with combos to suit every taste.

Honourable senators, ministry changes as immediate consequences of Commons votes and the modern direct vote on "want of confidence" date to 1782. Such motions, once addresses to the king — this is an address I am speaking on — were grand statements of the causes of the house's discontent with the ministry.

However, by 1841, by Robert Peel's motion, the present form of the direct vote on "want of confidence" was established as a procedure for removing an unwanted or obnoxious ministry. By this form, the house, without stating any reason whatsoever, directly declares that it has no confidence in the sovereign's ministers. This unique motion petitions the sovereign to change his ministers, that is, to rid his council and his presence of these ministers, because their continuance in office is at variance with the Constitution.

When the house carries such a motion, the rule is that a defeated prime minister immediately resigns, and the ministry with him. We hear a lot of nonsense about confidence votes triggering elections. The rule is resignation, not an election. There is but one exception, but one alternative, to a prime minister's immediate resignation of office, which is the sovereign's royal dissolution of parliament and his royal appeal of the house's decision against the ministry to the sovereign constituent body, the people, an election. By this royal absolute power of dissolution and writs of election, the sovereign will take the sense of the country. He will submit the house's adverse decision against his ministers to the people, for their decision on the house's decision. The election vote is the people's judgment, another absolute power, on the house's judgment.

Honourable senators, in his 1869 book *On Parliamentary Government in England*, volume 2, Alpheus Todd recorded a defining precedent. At page 405, he wrote that dissolutions are justified and necessary:

> . . . whenever there is reason to believe that the House of Commons does not correctly represent the opinions and wishes of the nation.

Alpheus Todd, quoting Earl Grey, continued:

> Upon this ground, ever since 1784, 'it has been completely established, as the rule of the constitution, that when the House of Commons refuses its confidence to the ministers of the crown, the question whether, in doing so, it has correctly expressed the opinion of the country, may properly be tested by a dissolution . . .'

Dissolution, this prerogative tool, this absolute power of the sovereign, should be used sparingly to truncate the natural life of a parliament, especially in minority government situations.

In his decision to dissolve, the Queen's representative — the sole and singular representative of all the people — must employ forbearance and sagacity. His sole concern is always the interests of the people, the common good, the public good. Alpheus Todd, citing William Ewart Gladstone in another precedent, in volume 2 at page 410 wrote:

> He argued that there were two conditions necessary to justify an appeal to the country by a government whose existence is menaced by an adverse vote in the Commons. 'The first of them is, that there should be an adequate cause of public policy; and the second of them is, that there should be a rational prospect of a reversal of the vote of the House'.

Honourable senators, it is well settled that prime ministers have no right to a dissolution, even though some experts repeat that they do, as if repetition can make the untrue true. A prime minister defeated in an adverse vote of confidence is a politically and constitutionally weakened prime minister, whose power to advise is impaired. For dissolution, he must prove to, or convince a governor general that he and his ministry represent public opinion, and that the house does not. He must convince a governor general not to insist on his and the ministry's immediate resignation, but instead, that they should be continued in office and be granted a dissolution to face an election as a ministry. There is a mortal conflict between the house and the ministry. One or the other does not properly represent Her Majesty's subjects. One or the other must go. One or the other must be dissolved forthwith.

Honourable senators, this decision, an absolute power, rests absolutely with a governor general, whom a prime minister should approach in fear and trembling of majesty. In this a prime minister is a supplicant, not a potentate. Alpheus Todd again states in volume 2, at page 409, wrote:

> In the House of Lords, Earl Grey denied the right of ministers, on being defeated in the Commons, to ask the crown for a dissolution of Parliament, unless there was strong reason to believe that the House of Commons had misrepresented the feeling of the country.

Remember, the present form of the direct vote on "want of confidence" replaced impeachment, attainder and other hefty methods to remove miscreant ministers from the sovereign's councils.

Honourable senators, in responsible government, "want of confidence" proceedings engage the high representative and high political powers of the house — political not partisan — to control the Queen's choice of ministers who are responsible to the house, and who are and must be members of the house; either house. In this, the lower house acts in its representative and political role. The goal of politics is the unity and harmony between the constituent and sovereign parts of the Constitution, between the representatives in both houses, the represented — that is, the people themselves — and their Queen. Votes on "want of confidence" are the high and pure politics of representation, in which these three sovereignties, in their distinct representative roles, unite to choose the members of the lower house and the members of the ministry, that is to create responsible government. The common good of the people is supreme. Many will come to know the difference between the common good and ambition, which St. Augustine called the *libido dominandi*, the lust for power.

Honourable senators, in Sir Edward Coke's words, we are the high and most honourable court of parliament. In Lord Bolingbroke's words, we are the grand inquest of the nation. In either house, a finding of contempt of parliament is a criminative proceeding. By this, the house assigns guilt to clearly identified persons, for offences committed against the house and, or, its members, by those persons. Such proceedings may also prescribe a remedy or punishment adequate to the offence. Contempt of parliament proceedings engage the penal and judicial powers of the house as a court, wherein each member is a judge, sitting in judgment, using the principles and practices that attend accusations in Her Majesty's courts. In this court, unlike other courts, accusations and findings proceed by debate, motions and votes, in which each member takes part. In addition, the two houses hold parliament's high superior powers, not held by the inferior courts, such as impeachment, attainder and even to proceed by bill and legislation to their goals and ends. We are the highest court in the land. That is why, in this place, Senate appointments with life tenure stand on the legal ground that they do.

Honourable senators, it has been the invariable practice of both houses not to entertain criminative charges against any person except upon the ground of some distinct and definite basis. It is also well established that criminative responsibility and liability are regarded as essentially personal in character and include the ability to form intent, will and actions. Criminative accusations and proceedings should clearly identify the incriminated by name. Other parliamentary principles and practices include the right of the impugned or the accused to meet the charges or accusations and to make a full and sufficient defence, in person or by counsel, at the bar of the house or as the house may choose. We call this due process, natural justice and fair play. The mind of parliament is a common law mind, well stocked with well-honed principles and practices. It is also well settled that the judicial and the political should not be united and that the one should not be used to achieve the other.

• (1440)

Honourable senators, on a supply day, and under the rubric "business of supply," last March 25, days before March 31, the most critical day in the annual supply cycle, and though supply had not been voted, a single motion combining a question on "want of confidence" with a question on contempt was moved and carried in the other place:

> That the House agree with the finding of the Standing Committee on Procedure and House Affairs that the government is in contempt of Parliament, which is unprecedented in Canadian parliamentary history, and consequently, the House has lost confidence in the government.

Honourable senators, the term "the government" does not identify a person and is not a legal person, as a corporation is. It is a vague, aggregate term that includes the Queen and every single file clerk in every department. In both houses, members often use the words "the government" to mean "the ministry," or interchangeably with the words "the ministry." That may be just fine in debates, and even in some "want of confidence" motions, but not so in rigorous, strenuous, criminative proceedings, like contempt of parliament. These engage the high powers of parliament and owe high duties to the impugned or accused, the more so when they are holders of Her Majesty's high offices of state, engaging the public interest. The house could not have intended to incriminate the many thousands of government employees in its finding of contempt of parliament. That no precedent could be found in Canada, Britain or Australia for finding "the government" in contempt should have been a hint that some were worshipping at the wrong altar.

Honourable senators, I had said that there is no "combo" confidence-contempt of parliament question. The election results prove this. On election day, May 2, the represented, the people, ruled. They sustained the ministry, the very ministry condemned by the house, and reversed the house's judgement absolutely on both counts, that is, both the non-confidence and the contempt of parliament. Elections are about the people's individually held electoral franchises, granted by their sovereign's prerogative and not easily tampered with. Jowitt's *Dictionary of English Law*, Volume 1, page 831, defines "franchise" as:

> . . . a liberty or privilege.
>
> At common law, a franchise is a royal privilege or branch of the Crown's prerogative, subsisting in the hands of a subject, either by grant or by prescription.

The electoral franchise, that is, the qualification of persons entitled to elect members to the House of Commons, is Her Majesty's instrument by which her subjects share in Her Majesty's government. They share in her absolute royal powers, in majesty. The election vote reversed, overturned and vacated the contempt finding. The electoral franchise, the direct vote on "want of confidence," and the House of Commons grew up together. As political and social phenomena, they developed together. The direct vote on "want of confidence" became precedent because it expressly defines the question that the Governor General will put to the people. I conclude that the combo motion set no precedent and was simply a bad practice.

Honourable senators, I turn to parliament's founding principle, the national finance, the public spending, "the control of the public purse," over which —

The Hon. the Speaker *pro tempore*: Honourable Senator Cools, I regret to inform you that your 15 minutes have expired. Are you going to ask for more time?

Senator Cools: Yes, thank you.

The Hon. the Speaker *pro tempore*: Five minutes is granted.

Senator Cools: — over which, since 1678, the House of Commons has claimed pre-eminence. The House of Commons has claimed pre-eminence over the national finance since 1678. Last March, days before March 31, Her Majesty's most needy date in the annual supply cycle, the house was dissolved without completing its necessary business of voting supply, even though there had been no disagreement on supply and the confidence defeat was not on supply. Though the supply bills were in hand, the other place was focused on the "combo" motion and did not vote supply to defray the ordinary expenses of Her Majesty's public service and administration during the imminent dissolution period. Canada is unique in this, and was, and I believe still is, the only Commonwealth country where elections take place without supply being voted before. The absurd result is that the house gives a blank cheque to the very ministry it has condemned and forces that very ministry to appropriate money from the Consolidated Revenue Fund without the house's authority, that is, without the house's pre-eminence. This is done by Governor General's Special Warrants under the Financial Administration Act.

Honourable senators, just after dissolution, April 1, the first day of the new supply year, was the date of the first of two Special Warrants, which totalled $24.5 billion. These sums are too large to be justified as a proper use of these Special Warrants. For some time, the house had known that a majority was intent on crystallizing a dissolution, and on election readiness, which should include supply readiness. The house has a duty, as does the Senate, to vote supply for Her Majesty's needs during dissolution when the house is unable to sit. It has the procedural tools to do so. By contrast, last March the Senate was ready and awaiting those supply bills, under the leadership of Senator Day and Senator Gerstein, chairmen of our National Finance Committee. They were waiting and ready to receive those supply bills.

Honourable senators, governing is a trust of the sovereign, sworn to in her coronation oath. The whole of responsible government, with its political party system, is to enable the sovereign to carry on that trust, the business of serving her people, through the public service and the public administration. To not vote supply is to compromise Her Majesty, not the ministry. I think we can honestly say that all agree that Her Majesty's ministry should treat her employees and creditors fairly and should pay her bills judiciously.

Honourable senators, the confederation fathers constituted the Senate as the federal house, to embody the confederation. They vested it with a larger role in the national finance than was then ascribed to the United Kingdom House of Lords. They wanted Senate and federal oversight in the national finance, in the raising of taxes in one region to be spent in another. Appropriation of money by Governor General's Special Warrants cannot replace appropriation by parliament and was never intended to do so. The House of Commons may vote supply, or it may deny supply for good and debated reasons. However, it simply cannot neglect its duty of supply, nor can it drag the Senate's role in the national finance under it. The Senate's role in the national finance is not so easily dismissed.

Honourable senators, in closing, I would like to ask the Governor General to reassert these principles and to insist, as other viceregals have in the past, on supply before dissolution. Simply put, no supply, no dissolution. No dissolution without control of the public purse.

Honourable senators, these are both difficult matters, but I shall be revisiting the particular matter of supply. My plan is to visit this in the near future. I have already had discussions with several senators. I will give a more fulsome speech on the use of Governor General's Special Warrants over many years and the history of them, which is a very valid and old history, and also the fact that too many have now become so habituated to the availability of Governor General's Special Warrants that they no longer insist that the house complete its necessary business prior to dissolution.

• (1450)

In the near future, I shall speak in a fulsome way on this subject and shall do so in the form of a motion asking the National Finance Committee to study this important matter. Her Majesty simply cannot be compromised. Her Majesty's employees and creditors must be treated fairly and justly. Both houses have the proper tools to do this.

Last March, honourable senators, had the houses sat another 24 hours, the supply bills could have been passed. Few senators know much about the supply process, but that March period is an extremely deadly time in the supply process. I intend to explain all of this in that speech.

This is an address to His Excellency. As honourable senators know, an address is the mode of speaking to the sovereign. Since we are speaking directly to His Excellency, I thought it might be useful to record some of these principles and to urge their close observation. I thank honourable senators for their attention.

The Hon. the Speaker *pro tempore*: Further debate? Are honourable senators ready for the question?

Hon. Senators: Question.

The Hon. the Speaker *pro tempore*: It has been moved by the Honourable Senator Comeau, seconded by the Honourable Senator Di Nino, that the following Address be presented to His Excellency, the Governor General of Canada — shall I dispense?

Some Hon. Senators: Dispense.

The Hon. the Speaker *pro tempore*: Are honourable senators ready to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and Address in Reply to the Speech from the Throne adopted.)

[*Translation*]

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I propose that the address be engrossed and presented to His Excellency the Governor General by the Honourable the Speaker.

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

[*English*]

POINT OF ORDER

Hon. Joan Fraser: Honourable senators, I rise on a point of order. A moment ago, I may have missed something. I believe that I heard His Honour ask if honourable senators were ready for the question; but I did not hear him call the vote.

Did you actually call the vote, Your Honour?

The Hon. the Speaker *pro tempore***:** I think I did. Perhaps I could ask the table. My recollection is that I said:

> Are honourable senators ready for the question?
>
> It has been moved by the Honourable Senator Comeau, seconded by the Honourable Senator Di Nino, that . . .
>
> Is it your pleasure, honourable senators, to adopt the motion?"
>
> Carried.

That is my recollection.

What is the will of the Senate?

Some Hon. Senators: Agreed.

Hon. Anne C. Cools: Honourable senators, I believe that there were two motions. The first motion was on the address; and the second motion was for the engrossing. There were two distinct propositions.

The Hon. the Speaker *pro tempore***:** Yes, there were.

(On motion of the Honourable Senator Carignan, ordered that the Address be engrossed and presented to His Excellency the Governor General by the Honourable the Speaker.)

[*Translation*]

POVERTY IN NEW BRUNSWICK

NOTICE OF INQUIRY

Leave having been given to revert to Notices of Inquiries:

Hon. Fernand Robichaud: Honourable senators, I give notice that two days hence:

> I will call the attention of the Senate to the 2009 poverty reduction strategy of New Brunswick.

[*English*]

RAILWAY SAFETY ACT
CANADA TRANSPORTATION ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Eaton, seconded by the Honourable Senator Rivard, for third reading of Bill S-4, An Act to amend the Railway Safety Act and to make consequential amendments to the Canada Transportation Act, as amended.

Hon. Terry M. Mercer: Honourable senators, I am pleased to rise today at third reading of Bill S-4, An Act to amend the Railway Safety Act and to make consequential amendments to the Canada Transportation Act, as amended.

We all know that safety should be the upper most concern for any industry; and the railways are no exception. This bill achieves a well balanced approach to improving the safety of Canadians. What strikes me is the level of cooperation that has gone into getting to where we are today. Stakeholders from industry, like the Railway Association of Canada and CN Rail; the labour force, like Teamsters Canada; and the Department of Transport have all worked towards this common goal. I applaud their efforts. The process has been quite thorough and lengthy — from February 2007 until now. However, the Minister's Advisory Panel's 56 recommendations and the additional 14 recommendations provided by the Standing Committee on Transport, Infrastructure and Communities of the House of Commons have resulted in a good bill.

The Standing Senate Committee on Transport and Communications heard from many witnesses, all of whom support the bill's intent and some of whom wanted to see changes. However, I believe that all stakeholders involved in rail safety agree that the bill will accomplish what it sets out to do; and I agree.

Honourable senators, as I stated in my remarks at second reading, mechanical failures, unsafe employee practices and bad management could result in tragedy. We have a duty to ensure that rules, regulations and best practices exist in order to prevent such tragedies. How does the bill do this? Quite simply, as we have gone through an extensive review of the merits of this bill

already, it requires all companies to: obtain a safety-based railway operating certificate indicating compliance with regulatory requirements for safety; apply and maintain a proper safety management system, which includes a dedicated executive who would be accountable for safety; and adhere to proper safety rules and regulations or face increased administrative and judicial fines. There is also the provision in the bill to protect whistle-blowers who should be able to report wrongdoings without fear of repercussion.

I mention that again because I believe it is one of the most powerful tools anyone should have in order to enhance safety. Since such a process already exists at Transport Canada, I thank Senator Eaton for moving the amendment that makes this clause more effective.

Honourable senators, we often ask ourselves in this place: Could this bill be better? Some would argue no, as my honourable colleague did so well just the other day. However, I would like to highlight one concern that the bill does not address. While realizing that future development around or near railways lies within provincial and/or municipal jurisdiction, it should still be incumbent upon the federal government to ensure that everyone is at the table.

A report was issued by the Transportation Safety Board of Canada concerning a CP Railway freight train derailment in September 2010. This accident damaged 500 feet of track and caused minor injuries in a small spill of dangerous goods. A review of the report reminds us that the minister's independent advisory panel from 2007 indicated that municipalities and landowners, including the railways, should consult during the design and planning stages for land use and non-railway works near railway lines.

In fact, the advisory panel recommended that:

> The *Railway Safety Act* should be amended to require the developer and municipalities to engage in a process of consultation with railway companies prior to any decision respecting land use that may affect railway safety.

The report also indicates that the issue of new development near railways is a multi-jurisdictional challenge since land-use planning and development is both a provincial and a municipal responsibility, while the major railways and their right-of-ways are federally regulated. As Transport Canada maintains it has limited authority to follow through on the intent of the recommendation, it did not pursue this as a legislative amendment to the Railway Safety Act.

• (1500)

While recognizing this — and, indeed, Senator Eaton did point this out — I would implore the department to consider how it could facilitate better cooperation between all levels of government when it comes to railways and safety.

As we saw in the makeup of the advisory panel, the cooperation among all stakeholders resulted in where we are today. I see no reason why we cannot also expect and demand the same level of cooperation from all three levels of government not only for land surrounding railways, but also for new crossing development and the shutting down of old crossings as well. Indeed, work is currently under way in this regard and I encourage more of it.

Lastly, honourable senators, I would like to thank all of those involved in getting the bill to this stage, especially Senator Eaton in her diligence. I would also like to thank all the witnesses who appeared before the committee in order to lend their views on the bill.

I encourage good debate on the merits of the bill in the other place as the bill moves to its next stages.

The Hon. the Speaker *pro tempore***:** Is there further debate? Are honourable senators ready for the question?

Hon. Senators: Question.

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

Hon. Senators: Agreed.

(Motion agreed to and bill, as amended, read third time and passed.)

[*Translation*]

LIBYA

INQUIRY—DEBATE CONCLUDED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Carignan calling the attention of the Senate to the deplorable use of violence by the Libyan regime against the Libyan people as well as the actions the Canadian Government is undertaking alongside our allies, partners and the United Nations, in order to promote and support United Nations Security Council Resolution 1973.

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I believe that everyone who wanted to speak to this issue has had the opportunity to do so. I therefore suggest closing the debate.

(Debate concluded.)

BUDGET 2011

INQUIRY—DEBATE CONCLUDED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Carignan calling the attention of the Senate to the budget entitled, *A Low-Tax Plan for Jobs and Growth*, tabled in the House of Commons on June 6, 2011, by the Minister of Finance, the Honourable James M. Flaherty, P.C., M.P., and in the Senate on June 7, 2011.

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I believe that everyone who wanted to speak on this matter has had the opportunity to do so. I suggest closing the debate.

(Debate concluded.)

BOARD OF DIRECTORS MODERNIZATION BILL

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 Cowan, for the second reading of Bill S-203, An Act to modernize the composition of the boards of directors of certain corporations, financial institutions and parent Crown corporations, and in particular to ensure the balanced representation of women and men on those boards.

Hon. Rose-Marie Losier-Cool: Honourable senators, you are certainly not surprised to learn that I support the objectives of Bill S-203 presented by my colleague, Senator Hervieux-Payette.

This bill would ensure the balanced representation of women and men on boards of directors, thus reflecting the composition of the population in general and the workplace in particular.

This bill would guarantee a minimum 40 per cent representation of each sex on boards of directors. It is not the parity that I would hope for, but it is much better than the current situation.

Women represent 50 per cent of the population and almost 50 per cent of workers. Women make a clear majority of purchasing decisions and are behind the market forces that govern the activities of our private enterprises. Therefore, I find it quite logical that women should hold an equivalent proportion of seats on the boards of directors of these enterprises.

Yet women currently do not even hold 15 per cent of those seats, and barely 3 per cent of them chair the boards. Honourable senators, if we were talking about men, this flagrant disparity would have been corrected a long time ago. Women are currently under-represented in senior management positions and on boards of directors and have been for far too long.

I completely agree with Paul Tellier, who says that decision making at senior levels will never be optimal as long as those decisions are made by a crushing majority of men. Mr. Tellier, the former Clerk of the Privy Council and CEO of various corporations, is the co-chair of the Prime Minister's Advisory Committee on the Public Service. He knows what he is talking about.

After all, is it still necessary to point out how much better women are at managing people and money? Just think about the vast majority of women who manage the family budget and family crises. Look at the many financial scandals in the business sector in recent years and the second recession in four years we are heading toward. Why refuse the incredible talent and expertise of women when we need them right now?

[*English*]

I draw your attention to a fascinating special report published in last week's issue of *The Economist* dealing specifically with women in the workforce. Of particular interest was an article entitled "Top Jobs: Too many suits and not nearly enough skirts in the boardrooms."

The article echoes the worrisome statistics quoted by Senator Hervieux-Payette. In it, we learn that women hold no more than 10 per cent of board positions in Europe, compared to about 16 per cent in the United States. These numbers are a far cry from the ideal 50 per cent.

The same article talks about a study by McKinsey, the global management consulting firm. One paragraph begs to be placed on the record. Let me quote:

> McKinsey in 2007 studied over 230 public and private companies and non-profit organisations with a total of 115,000 employees worldwide and found that those with significant numbers of women in senior management did better on a range of criteria, including leadership, accountability and innovation, that were strongly associated with higher operating margins and market capitalisation. It also looked at 89 large listed European companies with high proportions of women in top management posts and found that their financial performance was well above the average for their sector. Other studies have come up with similar findings.

[*Translation*]

My colleague's bill is nothing new. She herself says that a number of countries already have or are going to enact legislation imposing better representation of both sexes on boards of directors. In Canada, Quebec, which always does things differently, already has such legislation. Why does the rest of country not follow suit?

• (1510)

During her speech on November 17, Senator Frum opposed the quotas provided for in the bill, saying that the imposition of such quotas, and I quote:

> . . . could make a candidate's gender . . . the most essential criterion in selecting that individual as a board member.

In a speech that same day, Senator Ruth spoke about affirmative action, which has been around since 1983 in the federal public service. Affirmative action means that when presented with candidates with equivalent competencies, the employer must hire a woman.

Honourable colleagues, affirmative action, which is itself a form of quota, did not lead to the hiring of incompetent women. It led to the hiring of women who were at least as competent as the competent men applying for the same competition.

Bill S-203 will go a bit further than affirmative action, by requiring that at least 40 per cent of positions on boards of directors be reserved for women. An argument that bothers me is that having these quotas will prevent companies from hiring competent men. This argument seems to imply that there are not as many competent women as there are men.

A similar argument was made against requiring candidates to be bilingual before occupying senior positions, since it was said that this could lead to the hiring of less competent candidates than if unilingual candidates were considered.

I would like to reassure my colleagues who believe that imposing quotas would be detrimental to women by undermining their professional credibility among their peers. This is like asking, "Was she appointed to the board of directors because she is a woman or because she has the required competencies?"

Unfortunately, this argument assumes that the shareholders would be able to appoint incompetent women to their company's board of directors. As I am sure you will agree, honourable senators, doing so would make no sense for the company and it would fail in the medium term.

Bill S-203 could create a problem if the pool of candidates did not include enough qualified women — you will notice here that I said "qualified women" and not just "women." What would the company do then?

This scenario should remain hypothetical if the company conducted an effective recruitment process before the shareholders' meeting. There are more and more qualified women in the upper echelons of their field, either within the company in question or elsewhere.

Just as I still do not believe that there was no bilingual accountant who was qualified to be the Auditor General, I do not believe that there is a lack of competent women to occupy seats on boards of directors.

Some advocate voluntarism; however, we need only consider the pay equity fiasco and just how little progress was made in this regard until legislation was passed. If those laws had not been created, the women who benefited from them would still be being paid pitiful wages compared to men. If voluntarism failed so miserably for something as simple as a secretary's pay, then why would it work for something as highly coveted as a job as a senior executive or member of a board of directors?

In conclusion, Senator Hervieux-Payette's Bill S-203 is a step that will bring us closer to true equality between men and women. I therefore encourage you to support the objectives of this bill, even if it means sending it to committee for fine-tuning.

(On motion of Senator Carignan, debate adjourned.)

(The Senate adjourned until Thursday, December 8, 2011, at 1:30 p.m.)

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