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Wednesday, October 20, 2010

THE HONOURABLE DONALD H. OLIVER
SPEAKER *PRO TEMPORE*

CONTENTS

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THE SENATE

Wednesday, October 20, 2010

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

Prayers.

SENATORS' STATEMENTS

THE DUKE OF EDINBURGH AWARDS

PRINCE EDWARD ISLAND RECIPIENTS

Hon. Elizabeth Hubley: Honourable senators, every year approximately 37,000 young Canadians participate in the Duke of Edinburgh Awards. Founded in 1956 by His Royal Highness the Duke of Edinburgh, the awards encourage youth to be active and challenge themselves in four areas: community service, skills, physical recreation and adventurous journey. By setting and achieving goals, participants can earn bronze, silver and gold awards.

This year for the first time in Prince Edward Island, 13 Aboriginal youth participated in the awards.

I offer my congratulations on earning their bronze level awards to Amethyst Knockwood, Alisha Knockwood, Dion Bernard, Melissa Peter Paul and Joseph Schurman Peters from the Abegweit First Nation; Denise Bernard, Dustin Bernard and Brett Bernard from the Lennox Island First Nation; and Ebony Larkin, Bradley Cooper, Dana Panchuk and Chance Banks of the Native Council of Prince Edward Island.

These youth earned their award by participating in the Mawita'jik program. A project of the Aboriginal Women's Association of Prince Edward Island, this program works with Aboriginal youth, both on and off reserve, to help them explore their potential.

By partnering with the Duke of Edinburgh Awards, these young people were given a new opportunity to challenge themselves. I wish them every success in pursuing their silver award.

LONG-FORM CENSUS

Hon. Stephen Greene: Honourable senators, I rise today to praise the government's position on the long-form census. I praise the government's policy because I am a victim of the census police.

First, I am not one who takes to the filling out of forms easily. Therefore, when the last census arrived in its incredibly long form, I put it to one side. The one thing that saved it from the trash was that it was the census from my government.

There it sat for two, four, six — I do not know how many weeks. Then I received a letter reminding me to fill out the census form. The census form — where did I put that? I went through the first two or three pages and became more and more amazed and concerned at the kinds of questions I was being asked and their incredible detail. I thought about tossing the form in the trash but I put it to one side again.

A few weeks later, I received a telephone call from Statistics Canada reminding me about the census and informing me that I could face jail time if I did not fill out the form. I thought the person was nuts or having a bad day but obviously exceeding her authority. In any event, I made allowances for her craziness and dutifully went back to the form.

After looking through the form again, I decided not to answer all the questions. I felt that some of them were too personal, or at least some were not the business of my government to ask, so I signed the bottom of the form and sent it back.

A few weeks later, I received a notice that there was a registered letter for me at the post office. I had no clue why someone would send me a registered letter but registered letters are always bad news, so I worried about it. The letter was strongly worded and threatened me with jail time if I did not return a completed census. Included in the envelope was my partially completed census.

Honourable senators, I was mad. What kind of country was I living in that would make me a criminal for not filling in a government form? Frankly, thinking about this letter still infuriates me. Did this letter mean the government has a licence to ask me anything it wanted, and could throw me in jail if I chose not to answer? All I knew at that point was that I would not fill out that form.

When I arrived home, I asked my daughter, a teenager at the time, to fill out the form as a kind of game or project, and to make up any answers she did not know. She did so. I sent off the form and I did not hear from the census police again.

No one was happier than I with my government's new policy on the long-form census. The rights of individual Canadians are more important than the government's need for information.

DIVERSITY

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak on the importance of embracing difference. On Friday, October 15, I had the privilege of attending the tenth annual LaFontaine-Baldwin Symposium. This event was founded by our former Governor General, the Right Honourable Adrienne Clarkson, and is co-chaired by Mr. John Ralston Saul.

This year, the symposium attendees warmly welcomed His Highness Prince Karim Aga Khan who delivered an inspiring speech on the topic of pluralism. In his lecture, His Highness spoke about the Global Centre for Pluralism, which has been

established in partnership with the Government of Canada. He explained that this centre is one of the first institutions dedicated to tackling the question of diversity and pluralism in our world.

The Aga Khan went on to state that Canada was a natural home for this institution, given that Canada is particularly well versed in the importance of embracing difference and has an international reputation of perceiving diversity as a strength rather than a weakness.

Honourable senators, throughout my life in Canada, I have learned that it does not matter if someone is black or white; if they speak English, Italian or Punjabi; or if they worship in a church, mosque or synagogue. Being different does not hinder the ability to flourish in Canada.

I have never been more proud to be a Canadian than last Friday evening. I was especially inspired after hearing the Aga Khan state:

> What the Canadian experience suggests to me is that identity itself can be pluralistic. Honouring one's own identity need not mean rejecting others. One can embrace an ethnic or religious heritage, while also sharing a sense of national or regional pride.

As a woman of Indian origin, Ismaili Muslim faith, who was born and raised in Africa and who sought refuge in Canada, I have found great comfort in these wise words. Regardless of my complex identity, I have not only been granted the honour of identifying myself as a Canadian, but I have also been given the privilege of rising before all honourable senators today and representing my community and my province of British Columbia.

Honourable senators, the Aga Khan in his speech indicated:

> Pluralism is a process and not a product. It is a mentality, a way of looking at a diverse and changing world.

• (1340)

It is important for Canadians to acknowledge that although being home to the Global Centre for Pluralism is a source of great pride, it also brings great responsibility. We now have an obligation to show the rest of the world that embracing difference can help foster a better life for all.

I congratulate the Right Honourable Adrienne Clarkson and Mr. John Ralston Saul for making this year's symposium a great success. However, most important, I congratulate all Canadians for showcasing to the world that, as the Aga Khan said in his speech, "diversity has the capacity to inspire."

CITIZENSHIP WEEK

Hon. Yonah Martin: Honourable senators, this week we celebrate Canada's Citizenship Week. Canada is a unique place not only for its natural raw beauty but also for its diverse communities and people. From this diversity, we learn what it means to be Canadian. It is not only a right; it is a privilege to say, "I am Canadian." Some people may take the privilege for granted, but most hold a Canadian passport with pride and in extremely high regard.

Canadians are recognized around the world as tolerant, open-minded people, and Canada stands as a model of multiculturalism. Many Canadians have family and friends in other countries. We may travel or live abroad for a while, but one thing is certain: there is no better place than our home, Canada.

[*Translation*]

I am proud to carry a Canadian passport and to be a citizen of our great country.

[*English*]

Those fortunate enough to be born and raised in Canada, who know Canada as their only home, may not at times see Canada in its full splendour and beauty. However, new Canadians who fled to Canada from tyrannical regimes, or, like my parents, left in search of a more just society and greater opportunities for their children, treasure their new home and their new citizenship. They know that this privilege comes with responsibilities and freedoms they were not allowed to have in their countries of origin.

[*Translation*]

How can we show our appreciation for being Canadian? How can we strengthen our citizenship?

[*English*]

Honourable senators, what can each of us do this week and beyond? During this week, we can attend a citizenship ceremony in our community or perhaps host a reaffirmation ceremony. I encourage honourable senators to pick up a copy of the booklet entitled *Discover Canada: The Rights and Responsibilities of Citizenship*, or read it online if they have not done so already. It is a useful booklet for those preparing to become a new Canadian, and a worthwhile read for all Canadians.

Perhaps honourable senators may want to demonstrate Canadian hospitality by hosting a newcomer or visitor to our country. They may want to join a community host program, be a local guide and share ideas on what it means to be a Canadian. Those are only a few ideas to consider to become involved.

By participating and showing our genuine warmth and openness, people will learn and understand more about what it means to be Canadian. This special event does not stop at the end of this week but carries on during the entire year. Being a Canadian citizen is a year-long privilege and responsibility. This week is set aside to remind us not to forget our rights and responsibilities, our freedoms and privileges to be Canadian.

POST-SECONDARY EDUCATION

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I rise today to draw your attention to student concerns regarding post-secondary education in Canada.

On October 6, I had the privilege of meeting with two representatives from the Canadian Federation of Students, Michael Olsen of British Columbia and Katie Haig-Anderson of Manitoba.

During our meeting, the students shared with me the content of their report entitled *Public Education for the Public Good*.

The report focuses on issues pertaining to post-secondary education in Canada, such as the increasing debt load of students, the lack of a national strategy on education and the need for strong leadership and commitments from the federal government.

The report also details five key recommendations that the Canadian Federation of Students wishes to convey to the current government. The recommendations are the following: develop and implement a national vision for a high-quality and affordable system of post-secondary education; track success and measure results by increasing funding by $10 million to Statistics Canada's branch for the collection and analysis of post-secondary education statistics; reduce student debt by increasing the value and number of non-repayable grants available to students and by redirecting funds allocated to education-related tax credits and savings schemes to the Canada Student Grants Program, and allow graduate students to qualify for grants under the program; meet Canada's obligations to fund Aboriginal education by removing the funding cap on increases to the Post-Secondary Student Support Program, and by ensuring that every eligible First Nations and Inuit learner is provided adequate funding to attend post-secondary education; and foster innovation by increasing the number of Canada Graduate Scholarships to 3,000 and distribute the funding proportionately among the research councils according to enrolment figures.

Honourable senators, I believe we ought to consider seriously the recommendations of the Canadian Federation of Students to strengthen post-secondary education in Canada to meet the needs of the students and to be more competitive on the world stage.

EUROPEAN UNION BAN ON SEAL PRODUCTS

Hon. Dennis Glen Patterson: Honourable senators, I rise to draw your attention to progress being made by the Inuit of Canada in challenging the European Union in court. This August when the Senate was not in session, Inuit welcomed a decision of the European Court on August 19 that decided to suspend, pending further judicial deliberation, a proposed ban on the import of seal products to the European Union, which had been scheduled to come into effect the next day.

Honourable senators, Inuit — leading a coalition of Inuit and East Coast sealing plaintiffs — are taking on the EU, and intend to demonstrate that the proposed ban runs counter to their own European laws, as indicated by their own legal advisers.

When the EU court issued its ruling on August 19, national Inuit leader Mary Simon stated at the time:

> I would hope that the European Parliament would see fit at this stage to do the right thing and withdraw its legislation.

The proposed EU ban is poorly founded in fact, law or reason, pandering to myth and half-truth, and steeped in political hypocrisy and cynicism.

The proposed ban purports to offer Inuit some kind of exemption designed by EU officials to salve the European consciences with precious little grasp of the social, economic and cultural realities for Inuit. The exemption is based on past record and current appearances — an empty box.

It is also important to note that the Government of Canada has already lodged a complaint against the seal ban under the World Trade Organization rules. The Inuit lawsuit and the federal government's current WTO action not only are entirely compatible, they are also mutually supportive and beneficial.

We must be mindful that the EU is currently lobbying Arctic states, including Canada, to increase the EU's influence in the circumpolar Arctic. Honourable senators, so long as the European Parliament sees fit to ban Canadian seal products, and in so doing, by extension, to destroy a way of life and livelihood for many Inuit, I believe that the Canadian government and this chamber should resist any further involvement of the EU in Canadian Arctic affairs. I call upon all senators, other parliamentarians and the Government of Canada to offer their full support for this timely and courageous stance by the Inuit of Canada.

[*Translation*]

ROUTINE PROCEEDINGS

MENTAL HEALTH COMMISSION OF CANADA

2009-10 ANNUAL REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2009-10 annual report of the Mental Health Commission of Canada, entitled *On Our Way*.

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

THIRD REPORT OF ABORIGINAL PEOPLES COMMITTEE—GOVERNMENT RESPONSE TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the government response to the third report of the Standing Senate Committee on Aboriginal Peoples, entitled *First Nations Elections: The Choice is Inherently Theirs*.

• (1350)

FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 3

FIRST READING

Hon. Gerald J. Comeau (Deputy Leader of the Government) presented Bill S-12, A third Act to harmonize federal law with the civil law of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

(Bill read first time.)

The Hon. the Speaker *pro tempore***:** Honourable senators, when shall this bill be read the second time?

(On motion of Senator Comeau, bill placed on the Orders of the Day for second reading two days hence.)

[*English*]

CANADIAN NATO PARLIAMENTARY ASSOCIATION

VISIT OF SCIENCE AND TECHNOLOGY COMMITTEE, MAY 3-6, 2010—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association to the Visit of the Science and Technology Committee, held in New York, Norfolk and Washington, D.C., United States of America, from May 3 to 6, 2010.

SPRING SESSION 2010, MAY 28-JUNE 1, 2010—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association to the Spring Session 2010, held in Riga, Latvia, from May 28 to June 1, 2010.

COMMITTEE ON CIVIL DIMENSION OF SECURITY AND SUB-COMMITTEE ON TRANSATLANTIC RELATIONS, JULY 9-14, 2010—REPORT TABLED

Hon. Jane Cordy: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canadian NATO Parliamentary Association to the Committee on the Civil Dimension of Security and the Sub-Committee on Transatlantic Relations, held in Missouri and Washington, D.C., United States of America, from July 9 to 14, 2010.

[*Translation*]

INTER-PARLIAMENTARY UNION

PARLIAMENTARY CONFERENCE ON THE WORLD TRADE ORGANIZATION, JUNE 24-25, 2010—REPORT TABLED

Hon. Mac Harb: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the Inter-Parliamentary Union to the 21st session of the Steering Committee of the Parliamentary Conference on the World Trade Organization, held in Geneva, Switzerland, from June 24 to 25, 2010.

[*English*]

QUESTION PERIOD

INDUSTRY

2011 CENSUS

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, today is World Statistics Day, proclaimed by the United Nations General Assembly to recognize the importance of statistics in shaping our societies by enabling governments, businesses and communities to make good decisions and policies for their citizens.

The Secretary-General of the United Nations calls statistics "a vital tool for economic and social development." However, Canadians sadly find themselves shut out of the international community once again. Instead of supporting the use of reliable statistics for Canadians, the Harper government has abandoned statisticians and policy-makers with their senseless abandonment of the long-form census.

In fact, the Statistical Society of Canada is marking World Statistics Day with an online video of a mock funeral for the mandatory long-form census.

In light of this international acknowledgement of the crucial importance of statistics in policy-making, will the leader admit, once and for all, that this decision was not made in the best interests of Canadians, that it was simply a bad decision, and agree to reinstate the mandatory long-form census?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for the question. I will absolutely not agree with what he has just said. As I reported in the Senate several times in answers to questions in the last few weeks, Statistics Canada does incredibly good work, gathering information on many fronts. I think they have done 80 surveys that are all voluntary. There is no evidence — in fact just the opposite — that this information, because it was voluntary, is somehow or other less valid.

We have a mandatory census that will be distributed. Three questions were added to it to meet the needs of the Official Languages Act. Nothing else has changed. The same long form will be distributed to Canadians with the same number of questions.

There are two differences. It will be more widely distributed, and we are asking Canadians to fill out this form in the interest of having data that complies with the rest of Statistics Canada. The only other difference is that we are asking Canadians nicely to fill out the form. We have every reason to believe that Canadians will, and we are not demanding that they fill it out under threat of registered letter and further harassment, as my colleague said a few minutes ago, and, in fact, jail terms.

Senator Cowan: Statistics Canada, to whom the leader referred in response to my last question, has issued repeated warnings over the last couple of days about bias and sampling errors that will occur in this census should her government insist on proceeding with the abolition of the mandatory long-form census.

Instead of the 94 per cent response rate which was achieved in 2006, Statistics Canada warned last week on their website that it expects only a 50 per cent response rate to the new voluntary National Household Survey. This adjustment from 94 per cent to 50 per cent takes into account the planned increase in the sampling amount that she has referred to and the sampling size, and also the $30 million that this government is spending to advertise its new form of household survey. It has adjusted for those two figures.

Statistics Canada tells us that this will lead to a serious risk in what they call a non-response bias. In their words, "the results are not representative of the true population."

The bottom line is what experts have been warning this government about for months, namely that this new household survey will produce skewed and unreliable or less reliable results. The leader has repeatedly told us, and told me on a number of occasions, that she is confident that Canadians will fill out the form voluntarily and that we will get even more people responding than was the case in 2006.

The leader is alone in that belief. The experts — the people at Statistics Canada, people who are working on behalf of provincial and municipal governments, on behalf of non-governmental agencies, and on behalf of charities from coast to coast to coast — disagree with her position. They clearly do not share her sense of confidence.

Statistics Canada, for the first time, has sided themselves not with the leader and her government, but with the people who have already criticized the decision the government has taken. Will she finally admit the mistake and reinstate this much needed long-form census?

Senator LeBreton: I am a great believer in people having the right to their opinions. I happen to disagree with what the honourable senator has said.

• (1400)

I repeat — and I believe I speak for a great number of people — that I have great confidence in the people of Canada that when they receive the household survey, they will fill it out honestly and fairly, and not as was the case my colleague mentioned earlier and not as was my own experience which I have mentioned. I have every confidence in the good citizenship and good intentions of fellow Canadian citizens.

I read in this morning's newspaper about what the honourable senator referred to. Let us trust the Canadian people and hear what they have to say about it before we jump to conclusions or prejudge a result that everyone is simply assuming. I continue to have great confidence in the Canadian public. I believe that many people support what the government has done, as we have sought fairness and balance. I repeat: I have great faith in the honesty and decency of my fellow citizens.

Senator Cowan: Honourable senators, let us take this a little further. Let us assume that Statistics Canada is correct. Let us assume that the leader's optimism is ill-founded. Let us find, when this has concluded, that the response is not greater than 94 per cent, which is what the honourable senator is expecting, but is somewhat closer to the 50 per cent that Statistics Canada is planning. What will the leader do then?

Senator LeBreton: I am one of those people who used to preach to my fellow workers not to assume anything. We know the old saying: Do not assume, because if you do, you will make an ass out of you and me. I do not think that I will answer questions based on assumptions.

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I wish to draw your attention to the presence in the gallery of our distinguished former colleague, Senator Trenholme Counsell.

On behalf of all honourable senators, welcome back to the Senate.

Hon. Senators: Hear, hear.

[*Translation*]

INDUSTRY

2011 CENSUS

Hon. Marie-P. Poulin: Honourable senators, I would like to continue in the same vein as Senator Cowan.

The distinguished Leader of the Government in the Senate just told us that she believes Canadians will voluntarily complete the long-form questionnaire sent out by Statistics Canada.

We know how important objective, factual, current information is to the men and women who have to make major decisions that will have an impact not only on legislation, but also on Canada's large corporations and small and medium-sized businesses.

I would like to know how the government reacted when the former Governor of the Bank of Canada, David Dodge, and four former Clerks of the Privy Council urged the Prime Minister and the Conservative government to reverse their decision, because this information is vital to the country's economic, social and cultural future.

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, as I reported in the Senate, the Governor of the Bank of Canada met with the Honourable Tony Clement, Minister of Industry, who is confident they can work together to deal with the concerns expressed by the Governor of the Bank of Canada.

I repeat and will continue to repeat that the government does not believe that Canadians should be threatened with fines, jail times and registered letters should they decide that this form is an invasion of their privacy and that the questions are overly intrusive. That is why we will continue to have a long-form questionnaire known as the National Household Survey. It will contain the same number of questions and will be more widely distributed. We believe that this is a fair and reasonable approach to find a better balance between collecting data while protecting the privacy of Canadians. All information gathered on the short-form mandatory census, including questions to satisfy the Official Languages Act, will also be helpful. As the honourable senator cited, other agencies and bodies rely on the data and material. They also rely on data and material collected from various other sources, including the 80 or 90 surveys done on a voluntary basis by Statistics Canada.

[*Translation*]

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, we learned last week that long- and short-form questionnaires were distributed to some 110,000 suburban households in Montreal, Quebec City and Red Deer in May 2009. The purpose of this exercise, which cost over $1 million, was to test the 2011 census mechanism. In fact, everything was in place just one month before the Conservative government decided to do away with the mandatory long-form questionnaire.

Can the Leader of the Government in the Senate tell us about this test, which cost over $1 million, and share the results?

[*English*]

Senator LeBreton: Honourable senators, I do not have that information, as the honourable senator quite rightly knows. This government believes that the long-form mandatory census was an invasion of Canadians' privacy. It asked overly intrusive personal questions. Statistics Canada is free to ask Canadians those questions, but this government believes that Canadians should respond to those questions on a voluntary basis and should not have to do it under threat of further actions by the government for refusing to answer questions that they deem to be an invasion of their privacy and overly intrusive.

The long-form household survey, as I have said many times before, has the same number of questions. Honourable senators can get over that because they know we have a long-form survey. The only difference is that we trust Canadians to fill out the forms accurately. We do not demand that they fill them out. As we know from many examples, Canadians used other means to answer them when they were under threat.

[*Translation*]

Hon. Jean-Claude Rivest: Honourable senators, you know that Statistics Canada has always maintained a relationship with statistics bureaus in the various provincial and territorial jurisdictions. Before making this unfortunate decision, did the Canadian government consult with the provincial governments, which have statistics bureaus, in order to assess the consequences the government's decision will have on the quality of research and on the results that will be obtained, not only at the federal level, but also for all the statistics bureaus in other jurisdictions in Canada?

[*English*]

Senator LeBreton: Honourable senators, Statistics Canada is an agency of the federal government and this is a decision for the federal government. People can quarrel with the decision, but the government is completely within its rights and the law to set the policy.

Hon. Jane Cordy: Honourable senators, my question is for the Leader of the Government in the Senate. Will the government remove the threat of prison for not completing the short form?

Senator LeBreton: Honourable senators, nothing has changed with regard to the mandatory short-form census because it is sent to every household in Canada. The long form is not a census. It was always just a survey. It is a misnomer to call it a census, because only approximately 20 per cent of Canadian households received it.

• (1410)

We support the mandatory short-form census. What used to be called the mandatory long-form census was misnamed; it was a survey.

The Canadian public will continue to have the right to fill out the long-form census, those 60-odd pages with the intrusive questions that invade privacy, but we are asking them to do so, because we trust Canadians to fill it out honestly. We are not demanding that they fill it out, as the previous government did.

Senator Cordy: Will the threat of prison remain for Canadians who do not fill out the short-form census?

Senator LeBreton: Honourable senators, we did not change any of the requirements for the mandatory short-form census. That is a completely different issue. Senator Greene was talking about the long-form census. As the honourable senator knows, that is a completely different issue.

Senator Comeau: It is like income tax.

Senator LeBreton: That is correct; it is like income tax.

The mandatory short-form census is actually a census that is sent to every Canadian household. It collects information on language, population growth and origins that is very valuable to the government.

Senator Mitchell: Oh, oh!

Senator LeBreton: Senator Mitchell, the mandatory short form is a census. The long form was never a census; it was a survey, and we are properly naming it.

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, I would like to make a suggestion to the leader that might be helpful and that respects individuals' rights. I regularly fill out forms that take a great deal of my time. I do so to make sure we are buying good-quality products. Generally speaking, I am offered a prize for my troubles.

What prize should your government offer to Canadians who voluntarily participate? I would suggest a trip to the pool that you built for the G20, where they can go boating or spend a weekend with the opposition leader. In any event, there needs to be an incentive.

We have to trust Canadians. I can tell you one thing: this is a public duty. Canadians are not doing us a favour. They are doing this for other citizens. I fill out forms voluntarily and sometimes I receive samples of soap. I am simply trying to point out that by using the word "voluntary" and talking about a person's choice, you are suggesting that you do not believe that Canadians will carry out a public duty for the good of everyone and to allow us to plan federal, provincial and municipal policies.

For that matter, Madam leader, the short-form census could be just as much an invasion of privacy by virtue of the fact that people are forced to fill it out. I am not buying this theory. I am trying to help you with your theory of volunteerism. Would the leader agree to find an incentive to make volunteers volunteer more?

[*English*]

Senator LeBreton: The honourable senator just made my point. Senator Hervieux-Payette fills out surveys all the time on a voluntary basis. Trust a Liberal to look for an incentive to do anything.

We have all filled out the mandatory short-form census. It collects important statistics with regard to where our people live, population growth, language issues, et cetera. I do not think Canadians have to be offered an incentive to fill out a form. As I have said many times, I have great faith that Canadians will fill out the household survey when it goes out with a wider distribution base. It has the same number of questions as the previous mandatory long-form census, which should not have been called a census.

Senator Hervieux-Payette made my point. Canadians are more than willing to fill out surveys, and I am sure that they will be even more willing when they are asked nicely to fill out this survey rather than being told to do so.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS

Hon. Lillian Eva Dyck: Honourable senators, my question is for the Leader of the Government in the Senate.

On March 4, 2010, Finance Minister Jim Flaherty announced that the Government of Canada had promised $10 million to help address the human crisis in Canada concerning missing and murdered Aboriginal women. Honourable senators, it has been seven months since that announcement and honourable senators may be shocked to learn that none of the funding promised to address this national problem has been disbursed. Families of missing Aboriginal women have been waiting, living with pain and immense grief. They have been waiting far too long for government action.

Can the Leader of the Government in the Senate tell this chamber when the money promised for missing and murdered Aboriginal women will finally be disbursed so that Aboriginal families and communities will no longer have to live quietly in suffering?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, Senator Dyck is quite right; this is a very sad situation, which is why Budget 2010 committed to investing $10 million to address this problem. I believe this is the first time a government has ever made that kind of a commitment.

The Minister of Justice has been meeting with various sectors across the country including provincial and territorial justice systems, public safety agencies, policing and women's and Aboriginal groups.

I will be very happy to get an update from the Minister of Justice and the Minister of Indian and Northern Affairs on the status of this very serious file.

Senator Dyck: I thank the leader for that answer.

Native women's organizations are concerned that, if and when the money is finally disbursed, they will be unfairly put into a race against the clock because seven months of this fiscal year have already elapsed. They fear that if money is not spent within the fiscal year, the unspent money will have to be returned to the government.

Can the Leader of the Government in the Senate assure us that there will be a fair time allotment process so that recipient organizations or communities can continue to do their important work without fear that the rug may be pulled out from under them with regard to their funding?

Senator LeBreton: I wish to assure the honourable senator that those fears are unfounded. This was part of the budget process. The government is firm with its commitment.

Interestingly, the budget was strenuously opposed by the opposition in the other place and it took some time to get it through here as well.

When Senator Dyck is speaking with Aboriginal women's groups on this serious issue, I urge her to inform the groups that the government is extremely committed to disbursing these funds to help resolve this serious situation.

Senator Dyck: On April 21 of this year, Honourable Senator Lovelace Nicholas asked a question of the Leader of the Government about funding to the Native Women's Association of Canada with regard to the Sisters in Spirit initiative which was researching the issue of missing and murdered Aboriginal women. At the time, the leader responded by saying:

> The prudent way to proceed is to put some of this money to use in the communities and to work with our Aboriginal partners to resolve these matters, rather than to study what is known to be a terrible tragedy.

• (1420)

In other words, the leader said the government was tired of conducting research and wanted to do something active; they wanted to take action. It has been seven months and we do not see any action.

Which communities will be helped out with the promised funding? By the way, I am not in any way promoting fear-mongering with any of these organizations; I am simply trying to obtain answers.

Senator LeBreton: I absolutely understand and appreciate the honourable senator's motives and I do not question them for a moment, because she has worked extremely hard on these serious issues.

My words to our colleague, Senator Lovelace Nicholas, have not changed. I agree that there is only so much study that can be undertaken on a problem. There needs to be expenditure of funds to solve some of these problems.

I committed to the honourable senator in my last answer to obtain up-to-date information, because I know that my colleagues have been working on this serious issue on many fronts. I indicated to Senator Dyck that I will be happy to provide a full update for her as to what actions have been taken in the various communities, and what the various provincial and territorial governments have committed to. I will provide that update by written response.

[*Translation*]

STATUS OF WOMEN

VIOLENCE AGAINST WOMEN

Hon. Rose-Marie Losier-Cool: Honourable senators, my question is for the Leader of the Government in the Senate. We are all familiar with the disturbing statistics. Not a week goes by without reports in the media about some form of violence against women: rape, spousal abuse, murder and other gruesome crimes.

On November 25, 2008, the other place unanimously passed a motion to develop a violence prevention strategy to end violence against women.

Can the Leader of the Government tell us if her government has abided by the motion and developed such a strategy?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, it is obvious that violence against women is something that must not be tolerated ever. As I responded in the previous question, I can say only that the government, through our increased funding of money to combat violence against women in the Aboriginal community, has increased incredibly the amount of money expended through Status of Women Canada — money that is distributed into the communities.

Obviously, with the news we have been living with for the last little while, no person in their right mind would stand up and say that they would not support doing everything possible to end the scourge of violence against women.

VISITORS IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I draw your attention to the presence in the gallery of the participants of the eighth Canadian Parliamentary Seminar.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

Hon. Senators: Hear, hear.

ORDERS OF THE DAY

SENATORIAL SELECTION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Brown, seconded by the Honourable Senator Runciman, for the second reading of Bill S-8, An Act respecting the selection of senators.

Hon. Serge Joyal: Honourable senators, in the past four years, the government has introduced four different bills involving Senate reform, either in the Senate or the other place, which have dealt with either the length of term or the election of senators: Bill S-4 and Bill C-43 in 2006; Bill C-19 in 2007; and Bill S-7 in 2009. They all died on the Order Paper.

A fifth bill dealing with senators' tenure, Bill C-10, was introduced in the House of Commons on March 29 and is currently at second reading in the other place. Still a sixth one, Bill S-8, was introduced in the Senate on April 27, and establishes a scheme for the election of senators. The constitutionality of all six of these bills, based on section 44 of the Constitution, has been questioned by a large group of constitutional experts and scholars from universities across the country.

At least four provinces — Ontario, Quebec, New Brunswick, and Newfoundland and Labrador — have sent extensive briefs to the Senate supporting their common position, which is that any change that would alter the fundamental characteristics and nature of the Senate, and would impair its independence in providing sober second thought to legislation, is a constitutional amendment that requires the formal concurrence of the provinces under the 7/50 amending formula.

In view of this overwhelming testimony, the Standing Senate Committee on Legal and Constitutional Affairs recommended, with respect to Bill S-4 in 2007, that the question be referred to the Supreme Court for a ruling to determine the constitutional right of the Parliament of Canada to proceed with such a fundamental change. The government, however, refused. This refusal was despite the fact that the government has recently decided to refer the issue of its capacity to establish a national security commission to the Supreme Court for a ruling considering the clear opposition of Quebec and Alberta, and of reservations by Manitoba and British Columbia. The government seems to be of the opinion that it is important, if not essential, to clarify the jurisdiction issue for the stability of the stock market, but it does not think that the certainty of the legislative process in which the Senate plays an integral and essential role should be guaranteed. The issue is not a trivial one. If a change is made to the status of the Senate without the appropriate legal process, the validity of any legislation adopted by such an altered Senate will be null and void. This effect is no small matter.

The Canadian government chose to introduce this bill without any in-depth study or reflection on the introduction. Each of the bills introduced successively by the Canadian government were modified without any explanatory paper that demonstrated a convincing reflection on the role of Parliament and the role of its components.

Bill S-8, which is under discussion, is a strange if not bizarre legislative creature. In my opinion, Bill S-8 is a totally ultra vires bill and is invalid on at least three counts.

First, Bill S-8 is in open conflict with section 42 of the Constitution, which provides that "the method of selecting senators" falls under the 7/50 amending formula. In other words, it is not up to the Parliament of Canada, acting alone, to make changes that affect "the method of selecting senators."

The second count of invalidity centres on the long-recognized constitutional principle that the federal Parliament cannot delegate powers to the provinces. Each legislative authority is sovereign in its exclusive field of jurisdiction. This principle, in fact, is at the core of our federal structure of government.

The third count of invalidity contends that the legislature of a province cannot usurp or legislate in a field or domain of competence that is not allocated to it. In other words, a provincial legislature cannot act in areas that are clearly under the competence of the federal government or Parliament.

Each of these three counts of invalidity is substantive. Each needs to be more fully explained.

First objection is that Bill S-8 aims to change "the method of selecting senators" through provincial elections. Bill S-8 does not propose, as did its predecessor, Bill C-43, to select senators following a federal election under the supervision and responsibility of the federal Chief Electoral Officer, with financing rules based on those similar to the election of members of the other place. Rather than producing a federal electoral process, Bill S-8 has turned the tables around. It now assigns the whole electoral process to the provincial legislature and its lieutenant governor.

Bill S-8 contains three "whereas" clauses and three other short clauses relating to the federal government, not more than one page, while the bulk of its 51 provisions outline the electoral processes that the provinces must adopt for the election of candidates to Senate seats. Those provisions are entitled "Framework For The Selection Of Senators."

• (1430)

However, before going into further detail regarding that framework to elect senators, the first question is does Parliament have the power to enact that kind of framework for the election of senators?

The Constitution provides a clear answer to that question and so does the Supreme Court ruling of 1979 known as the *Senate reference*.

Honourable senators, section 42 of the Constitution states quite clearly that the powers of the Senate and the method of selecting senators may be made only in accordance with the 7/50 amending formula.

The title of Bill S-8 is clear on its substance: "An Act respecting the selection of senators" and in French, "Loi concernant la sélection des sénateurs."

The bill does not hide its intent to provide for a different selection process for candidates to the Senate. As its summary states, it establishes ". . . a framework for electing nominees for Senate appointments . . ." Moreover, the bill establishes a statutory obligation for the Prime Minister to consider the elected nominees. The summary provides:

> . . . the Prime Minister, in recommending Senate nominees . . . would be required to consider names from a list of nominees submitted by the provincial or territorial government . . .

The last section of the bill, section 3, states it more forcefully:

> . . . the Prime Minister . . . must consider names from the most current list of provincial nominees elected . . .

It would not be up to the Prime Minister to look at that list and set it aside to pick nominees of his or her own choice. According to Bill S-8, on the basis of the electoral framework provided in the bill and implemented by a province or territory, the Prime Minister has a clear statutory obligation. The Prime Minister must consider those names. The courts have interpreted the word "must" in statute law. If the process provided in any act is followed in its entirety, the obligation that ensues is conclusive. In the opinion of the court, the word "must" is a common imperative. "It expresses command, obligation, duty, necessity and inevitability."

There is no doubt that Bill S-8 proposes a radical departure from the current practice whereby the Prime Minister has sole discretion in submitting any name for summons by the Governor General provided that the conditions of qualifications stated in the Constitution are met. No one would question that.

The intent of the bill is expressed in the very first "whereas" of the bill, and I quote:

> Whereas in 1987 the First Ministers of Canada agreed, as an interim measure until Senate reform is achieved, that any person summoned to fill a vacancy in the Senate is to be chosen from among persons whose names have been submitted by the government of the province or territory to which the vacancy relates . . .

The text of that "whereas" has a well-known constitutional history. It stems from the failed Meech Lake Accord of June 1987. As honourable senators are aware, two provincial governments failed to adopt the accord in their legislature within the prescribed limit of three years. Despite the sincere efforts made by its proponents, the accord failed in the end when both Manitoba and Newfoundland did not endorse it. The Meech Lake Accord proposed at its paragraph 4 that during the interim period of three years from 1987 to 1990, to fill vacancies in the Senate, the Prime Minister had to choose among the names that would have been given by the provincial government provided — and it is a major, if not inescapable, condition — that they were acceptable to the Queen's Privy Council.

Again, we all know that the Meech Lake Accord failed June 23, 1990, and that it was never proclaimed as the new constitution. It had no legal force or effect.

The Premier of Alberta, Don Getty, recognized it with sadness in a formal declaration on June 25, 1990. He said, "The dramatic gains that we would have obtained through Meech Lake are gone and it is a huge loss to this province." Premier Getty commented on Senate reform: "We just do not have the tools for it or the commitment."

Two years later, the federal government proposed a new accord to all Canadians through a national referendum; the Charlottetown Accord. The accord provided for an elected and equal Senate at sections 7 and 8:

> . . . that senators are elected either by the population . . . or by the members of the provincial or territorial legislative assemblies.
>
> Federal legislation should govern Senate elections, . . .
>
> . . . Senate elections be held as soon as possible, . . . at the same time as the next federal general election.

However, the Charlottetown Accord failed to be endorsed by six provinces. Even Alberta, which was so keen to act on Senate reform, voted 60.2 per cent against the accord, as did all three of the other Western provinces, with British Columbia having the highest opposition at 68.3 per cent. Consequently, as with the Meech Lake Accord, the Charlottetown Accord died and never had legal force or effect.

Let us return to Bill S-8. What does the very first "whereas" of the bill state? It declares:

> . . . any person summoned to fill a vacancy in the Senate is to be chosen from among persons whose names have been submitted by the government of the province or territory to which the vacancy relates;

The second "whereas" provides that those names submitted by the provincial government be determined by democratic election.

In other words, the first "whereas" of Bill S-8 restates the substance of the Meech Lake Accord and the second "whereas" restates the substance of the Charlottetown Accord.

The intention of the bill is clear. It is made up of the same constitutional substance as were the amendments in the Meech Lake and the Charlottetown Accords. Those two "whereas" clauses shed light on the understanding of the statutory obligation imposed by section 3 of the bill whereby the Prime Minister must consider names from the most current list of nominees selected through the process of provincial or territorial election.

Can we conclude otherwise that the nature of Bill S-8 is identical in pith and substance to those amendments that were contemplated in the constitutional accords of 1987 and 1992 and that they are, in fact, equivalent to a fundamental change in the method of selecting senators?

What did the Supreme Court have to say about such changes? The analysis of the nature of the changes contained in Bill S-8 has in fact been the object of a ruling by the Supreme Court of Canada in the Senate reference of 1979. The question put to the court by the Canadian government of the day following the contestation by some provinces of the capacity for the Parliament of Canada to enact the kind of changes contained in the form of Bill C-60 was the following:

> Is it within the legislative authority of the Parliament of Canada to adopt legislation altering the upper house of Parliament so as to change the method by which members of the house are chosen by providing for the direct election of all or some of the members of the upper house by the public?

The court unanimously answered:

> The selection of senators by a provincial legislature or by the Lieutenant Governor of a province would involve an indirect participation by the provinces in the enactment of federal legislation.

The court stated:

> The substitution of a system of election for a system of appointment would involve a radical change to one of the component parts of Parliament. As already noted, the preamble to the Act referred to "a Constitution similar in principle to that of the United Kingdom," where the Upper House is not elected. In creating the Senate in the manner provided for in the Constitution Act, 1867, it is clear that the intention was to make the Senate an independent body which could dispassionately canvass the measures adopted by the House of Commons. This was accomplished by providing for the appointment of members of the Senate with tenure for life. To make the Senate a wholly or partially elected body would affect a fundamental feature of that body.

The court was clear. The appointment of senators, currently the function of the Governor General, having some members selected by another body, the Lieutenant Governor-in-Council or selected following public election, is beyond the power of the federal Parliament. Hence, the introduction in 1982 of section 42(e) of the new Constitution, which states that "the method of selecting senators" is beyond the capacity of the federal Parliament acting alone.

Since the changes brought by Bill S-8 are in pith and substance of the nature of a constitutional amendment, they cannot be enacted by Parliament alone under section 4 of the Constitution. Such changes are covered by section 42 and require the concurrence of seven provinces totalling 50 per cent of the Canadian population. If the government wanted to initiate such a constitutional amendment, there is only one way to proceed, which is not the way of Bill S-8. The government has to introduce a formal constitutional resolution in the House of Commons or in the Senate and ask the concurrence of the provinces as provided in section 38 of the Constitution.

Our conclusion on the first count of unconstitutionality is clear. Bill S-8 in substance and form is ultra vires of the power of the federal Parliament.

The second reason why Bill S-8 is constitutionally invalid centres on the long-recognized constitutional principle in our federal system that Parliament cannot delegate any of its responsibilities to the legislature of a province.

What does Bill S-8 purport to achieve? Bill S-8 does not provide for a framework or selection of senators to a federally controlled process, one which former Bill C-43, introduced in 2006, proposed to enact.

• (1440)

The fundamental defect of Bill S-8 is that it is not a federal bill for a federal process under the control of federal authorities. Bill S-8 seeks to enact a framework for the legislature of the provinces and territories. In other words, the federal Parliament is using its legislative power to enact provincial legislation. The third "whereas" of the bill explains this provision:

> And whereas it is appropriate that a framework be established to provide guidance to provinces and territories for the text of legislation governing such elections;

There is no side door or quid pro quo to the meaning of the objective. The federal Parliament intends to adopt an act that clearly delineates, in all its details, the kind of act that the legislatures of provinces and territories need to adopt to elect senators. This shift of responsibility to the provincial legislatures is unconstitutional and the courts have said so for more than 130 years.

The seminal case on this issue is known as the *Lord Nelson Hotel Co, Ltd.* case, decided by the Supreme Court in 1950. The issues involved in that famous case are analogous to those at stake in Bill S-8. The Parliament of Canada then enacted legislation to delegate to the Nova Scotia Legislature the capacity to adopt legislation concerning matters that had not been assigned to it. The court stated clearly:

> The Parliament of Canada and the Legislatures of the several Provinces are sovereign within their sphere defined by the . . .

— Constitution.

> They can exercise only the legislative powers respectively given to them by sections 91 and 92 of the Act, and those powers must be found on either of these sections . . . . Under the scheme of the . . .

— Constitution —

> . . . they were to be . . . watertight compartments which are an essential part of the original structure.

This interpretation of exclusive and respective legislative authority for each level of government, whether federal or provincial, is almost as old as our own federation. In 1880, Justice Taschereau, in *Citizen's Insurance Co. v. Parsons*, stated that the:

> . . . Federal Parliament cannot . . . give, either expressly or impliedly to the local legislatures, a power which the Imperial Act does not give them. This is clear, and has always been held in this court to be the law . . .

In 1899, in the case of *C.P.R. v. Notre Dame de Bonsecours*, the court stated:

> I think we must get rid of the idea that either one or the other can enlarge the jurisdiction of the other or surrender jurisdiction.

Justice Kerwin, in the *Lord Nelson* case, stated:

> The Constitution divides legislative jurisdiction between the Parliament of Canada and the Legislatures of the Provinces and there is no way in which these bodies may agree to a different division. . . . To permit of such an agreement would be inserting into the Act a power that is certainly not stated and one that should not be inferred.

What Bill S-8 purports to achieve is the transfer of responsibility for electing Senate nominees to the provincial legislatures and lieutenant-governors, giving them sole responsibility over supervision and financing.

Bill S-8 contains a "text of legislation" — those are the very words of the bill — governing such elections for the provinces to enact. This technique of legislative delegation hurts the very core of our federal structure of government. The courts have long understood that the outcome of such an approach would be the destruction of the very division of power between the two levels of legislative authorities:

> For it is within the Powers of Parliament and of the Legislatures to confer upon each other by consent, a legislative authority which they do not otherwise possess . . . the same powers will naturally exist to enact laws affecting all the classes of subjects enumerated in Sections 91 and 92 of the Act.

Justice Taschereau added:

> It is a well settled proposition of law that jurisdiction cannot be conferred by consent.

In other words, Bill S-8 proposes a "text of legislation" governing the election of nominees for the provinces to enact, even though this principle is contrary to the long-standing interpretation of the courts that each level of government is restricted to act within the confines of its exclusive field of authority under section 91 and section 92.

In *The Law of the Canadian Constitution*, third edition, W.H.P. Clement, a noted constitutional scholar, writes:

> Provincial legislation which, *ex hypothesi*, requires federal legislation to support it is not legislation at all.

The corollary is also true, as Justice Taschereau has concluded in the *Parsons* case:

> The powers of the federal authority cannot, to such an extent, be dependent upon the consent and good-will of the provincial authorities.

In other words, the federal Parliament cannot delegate its legislative authority to the provincial legislature even though they would accept to enact the proposed "text of legislation," just as the federal Parliament cannot be dependent upon the consent and the goodwill of the provincial authorities to fill Senate seats in the manner it deems appropriate.

However, there is still more implied in Bill S-8. Bill S-8 proposes to have the nominees elected under provincial legislative authority. The question is this: Does the federal Parliament have authority to legislate for the establishment of an electoral process to select Senate nominees? As mentioned earlier, such a proposal is equivalent to a fundamental change in the method of selecting senators, and it is clearly beyond the capacity of the federal Parliament.

Then the trick is, if the federal Parliament cannot legislate on its own to establish such an electoral scheme, can it not subcontract it to the province by offering to appoint the nominees that are elected through a process that the federal Parliament seeks to establish through Bill S-8? This scheme is a shell game — hiding the pea under a different shell. This principle is at the core of the objective of Bill S-8.

The federal Parliament cannot push or invite the provinces to act on its behalf or for its own purposes when the Constitution does not allow it to do so directly. The courts have already put their finger on such a scheme and have repudiated it.

In 1936, the Manitoba Court of Appeal held as follows:

> Neither the Dominion nor the Province can delegate to each other powers they do not expressly possess under the B.N.A. Act.

In other words, if the federal Parliament cannot legislate on such a scheme of electing the senators, it cannot subcontract it to the provincial legislatures and incite them to do so by a commitment to appoint their elected nominees according to an electoral process already defined by the federal Parliament and for future enactment by the provinces.

Bill S-8 is legislating an election scheme for the provinces to enact. This bill is strange on legislative grounds. The federal Parliament, which consists of the Queen acting by and with the advice of the Senate and the House of Commons, would enact a "text of legislation" to provide the legislative text to provinces and territories, which thereafter would be adopted by another legislative authority of a different constitutive existence, that is, the lieutenant governor with the consent of the legislature.

In such a twist, federal law becomes provincial law, adopted under a different legislative authority. The court in the *Nelson* case has been adamant on the issue:

> The exercise of delegation by one for another would be an incongruity . . .

— in federal organization —

> . . . for the enactments of a State are of its own laws, not those of another state.

In plain words, a delegation of responsibility implies a delegator capable to delegate and a delegatee capable to accept. The Supreme Court has clearly and definitely stated that the federal Parliament can no more delegate a legislative responsibility to the provincial legislature than can the provincial legislature accept on its own the delegation of legislative authority. Such jurisprudence from Canadian courts fully answers the second count of constitutional invalidity of Bill S-8.

The third constitutional objection to Bill S-8 is that the legislature of a province cannot legislate in a field or domain of competence that is not allocated clearly or that falls under one or the other paragraph enumerated in section 92 of the Constitution Act, 1867. To be clear, without the formal constitutional amendment, provincial legislatures have no jurisdiction to enact legislation to establish an electoral scheme to elect Senate nominees.

Let me be clear. The Senatorial Selection Act of Alberta, first adopted in 1989 and amended in 2000, and Bill 60 of Saskatchewan to similar effect adopted in 2009 but not yet proclaimed, are of no constitutional validity, being ultra vires of the power of provincial legislatures.

The premise of Bill S-8 lies in the fact that the legislature of Alberta enacted a bill in 1989 for the election of senators for the province to fill a vacated seat for Alberta. Once elected, they are referred to as "senators in waiting."

The origin of the Alberta act stems from the Meech Lake Accord of 1987. Let us recall that at the time of its signature, it was provided that until the accord comes into force within three years, that is, becomes part of the Constitution of Canada, the government of a province "may submit the names of persons to fill a vacancy and those summoned shall be chosen from among whose names have been submitted."

By those words, the provinces have no obligation to provide names. However, once names have been given, a person among those names would be recommended to the Governor General for appointment, provided the name "be acceptable to the Queen's Privy Council for Canada."

It was paragraph 4 of the Meech Lake Accord. There was no mention in it of an election process from which the name of such a person should be provided, and discretion was still left to the Queen's Privy Council to determine if that person was deemed acceptable. The accord mentions no criteria of any sort to determine such acceptability. It was left entirely to the good judgment of the Queen's Privy Council. That section of the Meech Lake Accord was meant to be enforced during the three-year period of its ratification until June 23, 1990.

• (1450)

Before the accord came into force, the Government of Alberta at the time introduced legislation entitled the Senatorial Selection Act, which was adopted in August 1989, one year before the Meech Lake Accord lapsed. The Alberta act contained three "whereas" provisions which gave the overall intent of the act.

The first "whereas" recalled the position of Alberta in relation to the Triple-E Senate.

The second "whereas" referred specifically to the Meech Lake Accord, and the opportunity for the government of the province to submit names of persons to fill vacancies. However, it should be noted that the discretion left to the Queen's Privy Council in the accord was omitted from the "whereas." It is not mentioned anywhere in the Alberta act.

The third "whereas" goes way beyond the text of the Meech Lake Accord by providing for the election of senators, an issue which was not even mentioned in the text of the Meech Lake Accord.

The Alberta act continues with the establishment of an electoral scheme to elect senators-in-waiting under the sole responsibility of the provincial legislature. Those same "whereas" provisions were kept in the new Alberta act, which was adopted in 2000, and in Saskatchewan's Senate Nominee Election Act, which was adopted in 2009 but not yet proclaimed. Those acts offer the same intent in the two opening "whereas" provisions.

As one realizes by the historical background of those two acts, the Meech Lake Accord never committed to transfer the responsibility to provide for the election of the respective senators to the provincial legislature. There might have been talk, but the text of the accord never refers to such a constitutional amendment. Moreover, the commitment of the federal government to appoint persons to the Senate whose names would have been submitted by provincial governments only lasted during the ratification of three years and certainly ceased to have any effect when the accord collapsed in June 1990.

Beyond June 1990, no provincial government could claim to expect that the names of persons it would submit should be appointed. It could mount public objections, make multiple statements, lobby or use pressure of whatever sort, but such claims have no legal legs to stand on.

Moreover, the Senatorial Selection Act adopted in Alberta in 1989 and in Saskatchewan in 2009 has no legal base with regard to the Meech Lake Accord and, thus, have absolutely no effect.

The evidence is that everything had to be renegotiated in the Charlottetown Accord of 1992, but the Charlottetown Accord was also rejected by a majority of Canadians in a national referendum held on October 26, 1992, including Alberta, with 60.2 per cent; and Saskatchewan, with 55.3 per cent. Any commitment to which the federal government might have subscribed in those two accords has become null and void and is of no legal effect.

Let us ask another question. Since there is no constitutional authority granted to the provinces because those two accords failed, does the Constitution Act, 1867 allocate to the provinces, in section 92, the jurisdiction necessary to enact legislation providing for the election of Senate nominees? This is the crux of the question.

Let us put it in simpler terms. Did the Fathers of Confederation want to give to the provinces, in section 92, the jurisdiction necessary for the provinces to enact an election act for senators? We do not think that anyone with a minimum knowledge of the Confederation debate could doubt for one instant the intent of the Fathers of Confederation on the nature of the Senate. Would it be an elected body or an appointed body? There can be no doubt about the answer to this question. The intention of the Fathers of Confederation was to have an appointed Senate, not an elected one. As a matter of fact, our institutional forerunner, the Legislative Council of the Parliament of the United Canada, was made into an elected body in 1856, well before Confederation. The ensuing problems between the two elected chambers at the time were well known to the Fathers of Confederation. They did not want to continue to extend such a system in the new federal Parliament.

Would the Fathers of Confederation have been so unwise and careless as to have left the back door open so that, one day, the provinces could restore an elected Senate?

The Supreme Court has had an opportunity to consider the nature of the Senate and its essential character as an appointed body. In the Senate reference of 1979, the court stated:

> In creating the Senate in the manner provided in the act, it is clear that the intention was to make the Senate a thoroughly independent body which could canvass dispassionately the measures of the House of Commons. This was accomplished by providing for the appointments of the members of the Senate. . . .

Considering the intent of the Fathers of Confederation and the court interpretation of the appointed nature of the present Senate, can we again identify in section 92 of the act any heading that would give the provinces the legislative capacity to enact election schemes to elect persons for Senate appointments? When one considers the 18 headings of section 92 and the scope they entail with regard to the past court decisions, there is not even the smallest opening left for the provinces to enact such legislation.

There is no way that the federal Senate can be part of the constitutional power of a province. There is no constitutional base in the Constitution Act, 1867 upon which to draw the conclusion that a provincial legislature could have the competence to enact legislation for senatorial election.

Let us take another example: judicial appointment. Section 96 of the Constitution is entitled "Appointment of Judges." It states:

> 96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province . . .

Could we make a parallel reasoning and contend that a legislature could enact a bill providing for the election of nominees for judges to be appointed by the federal government for that province? Raising this hypothesis illustrates the kind of outcome one might expect if one were to contend that provincial legislation can wade into any federal field of responsibility.

Section 24 of the Constitution Act, 1867, entitled "Summons of Senators," states:

> 24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; . . .

By legislating to elect senators-in-waiting to occupy a seat in the Senate, both the Albertan and the Saskatchewan legislatures have attempted to make laws in relation to a matter "assigned exclusively to Parliament or the Government of Canada and consequently prohibited in their provincial legislatures."

On several occasions, the Supreme Court has established the limits to the legislative initiative open to each level of government in our federation. As recently as in 1998, in the Reference re the Secession of Quebec, the court unanimously defined the scope of the principle of constitutionalism in the following manner:

> That purpose would be defeated if one of those democratically elected levels of government could usurp the powers of the other simply by exercising its legislative power to allocate additional power to itself unilaterally.

The meaning is clear. A provincial legislature cannot usurp the powers of federal Parliament or government by adopting legislation to unilaterally give itself additional power that it does not have constitutionally.

However, the disturbing consequence following from the Alberta Senatorial Selection Act was the ensuing decision taken by Premier Stelmach of Alberta on Thursday, April 29, 2010, whereby he unilaterally postponed the forthcoming election of senators-in-waiting, taking by surprise all proponents and supporters of Senate elections in the province. Through a cabinet decree, the premier extended the terms of its existing senators-in-waiting by three years, that is, until 2013, after the terms run out this coming December. The Alberta press was very critical, denouncing the decision by stating that this illustrated the Alberta government's fear of the Wildrose Alliance Party winning the election. An article in the *Edmonton Journal* stated that "to do otherwise would be to widen the democratic deficit, not close it. To do otherwise by not calling the election would be to offer Canadians more proof that for too many Conservative politicians the definition of democratic deficit is simply a time when we do not get our way."

Some Hon. Senators: Hear, hear.

Senator Joyal: Honourable senators, is this the kind of thinking that Bill S-8 invites the provinces to enact in bringing new ideas and modernizing the institution of the Senate of Canada, to quote from the text of the former Bill S-4?

The argument alleged by the sponsor of Bill S-8 that the Alberta legislation has not yet been contested in the Canadian court system does not give it any more validity. It is not by appointing a senator-in-waiting for an Alberta seat that the federal government has cured the fundamental defective nature of the Alberta Senatorial Selection Act. The precedents here are of no value to cure the ultra vires nature of that act. Even if 10 or 20 senators-in-waiting would have been appointed in the past, this would not have made the process of their election valid. One has only to remember the decision of the Supreme Court of Canada in 1985, declaring null and void after almost 100 years all legislative activities of the Manitoba legislature in relation to the use of official languages. Time and numbers are of no healing value. What is null and void remain always of no effect and can only create uncertainty and deception in the end.

• (1500)

It is not by inviting the provinces to act legally, by circumventing the Constitution, that the political objective of an elected Senate will be reached. The Constitution of our federal state contains a clear demarcation of legislative authority. The election of senators cannot be achieved by ignoring the legal framework that defines the nature of our system of government. The Constitution guarantees the certainty, reliability and trust that Canadians enjoy under our rule of law. One would expect another measure of statesmanship and transparency in the process to transform our institution of Parliament so fundamentally. Constitutionally, this approach is doomed to fail.

Honourable senators, I have not addressed the institutional aspect of making the Senate of Canada an elected "provincial" chamber as provided in Bill S-8. I would need just as much time to review the overall implications of transforming the Parliament of Canada so fundamentally.

Make no mistake: to have two elected chambers in the same legislative process would have numerous and profound consequences. To enumerate some of them to persuade you that such a proposal needs sober second thought, here are five elements of concern. First, according to Bill S-8, there would be the introduction in the Senate of members who could be, for the large part, elected members for provincial rather than federal parties. In other words, the composition of the Senate would resemble that of 10 provincial legislatures. The political allegiance of senators would then be to their own provincial political parties. In any debate of federal legislation, amendments and votes, the elected senators would take the position of their alter ego in provincial legislatures, whether on the side of the government or that of the official opposition. Would that make Canadian Parliament more effective and the country more united? To ask the question is to raise a thousand questions that need to be seriously reviewed.

Second, if the Senate becomes a house of provincial parties, should the Senate have the equivalent powers in relation to legislation to those of the House of Commons, minus the budget bill and constitutional change?

Third, would such a house become easily fractured with no majority and become the ploy of interest groups with no bearing for the sake of Canada as a whole?

Fourth, how would adjustments be made between the federal parties represented in the Commons and the provincial parties in the Senate, when the groups operate independently from one another with different provincial election acts? For example, financial contributions range from $9,300 in Ontario, open to corporate donations; $3,000 in Quebec, with no corporate donations; $15,000 in Alberta, $30,000 during an election year; and no limits in Saskatchewan and New Brunswick.

Are we making the Senate more effective, representative of a better federal state, or are we not bringing the cat into the pigeon's house?

Such an initiative would bring radical change to the structure, dynamics and distribution of power between the two houses of Parliament. Is the initiative of Bill S-8 so innocuous and of such limited substance that these changes can be brought without constitutional amendment?

That is certainly not the view held by several provinces. At the request of the Leader of the Opposition, three provinces clearly stated their position. Then New Brunswick Premier, Shawn Graham, wrote the following on April 9, 2010, to the Leader of the Opposition in the Senate with respect to Bill S-8:

> It remains the view of our government that holding election for senators and adjusting the tenure of office without addressing other more pressing concerns regarding the nature of the institution, including its size, composition and powers relative to the House of Commons would give the illusion but not the substance of democratic reform.

The Minister of Intergovernmental Affairs of Ontario, Monique M. Smith, wrote the following regarding Bill S-8 on April 20, 2010, last spring:

> As you know, real Senate reforms require constitutional change, and we do not think it would benefit Ontario or Canada for Parliament to be launched into a discussion on Senate reform that could lead to broader potentially divisive constitutional negotiations. We do believe, however, that changes to the Senate require the consent of the provinces and that unilateral federal action is unconstitutional.

[*Translation*]

On March 31, 2010, Quebec's minister of intergovernmental affairs, Robert Dutil, wrote the following about Bill S-8:

> Senate reform, as proposed by the federal government, would change the fundamental characteristics of that institution. Accordingly, such a change is beyond the power of Parliament acting alone. We believe it is vitally important that Senate reform, and the subsequent impact on all federal institutions and on the balance of relations within the federation, be debated in the appropriate constitutional context.

[*English*]

As one realizes, to quote former Senator Michael Pitfield in the foreword of the book *Protecting Canadian Democracy*, the initiatives contemplated in Bill S-8 are of untested consequences. He said the following:

> In constitution-making it is important to bear in mind that the first step in reform is almost never the final step.

He continues:

> Because a government is a large system with an overall equilibrium of its own, any change in one place is bound to have repercussions elsewhere — sometimes in surprising and far-off places, sometimes with far-reaching and even contradictory effects.

Honourable senators, we cannot proceed with Bill S-8 without guarantees of its constitutionality. Moreover, the changes that Bill S-8 would implement cannot be adopted by this chamber without a complete study of their substance, of their impact on our federal system and of the overall consequences they would have on the federal-provincial quality of our country.

Hon. Hugh Segal: Will the honourable senator take a question?

Senator Joyal: With pleasure.

Senator Segal: I thank Senator Joyal for accepting a question.

Honourable senators, I was struck, if I may say so in the preamble to my question, by three aspects of senator Joyal's argument, that I found profoundly troubling. I ask, whether on reflection, might Senator Joyal also find them profoundly troubling.

The first is that even though we are the only federation in the world that has its constitutional court, the Supreme Court of Canada, and our second chamber appointed solely by one level of government, does Senator Joyal not think any constructive effort

that is constitutional to improve on that circumstance might be in the interests of the federation and the survival of this country over the long haul? Other federations have come to similar decisions.

The second part of my question is with respect to the Senatorial Selection Act of Alberta, which is one of the provisions that led to my seatmate being with us, the only individual in this chamber with a direct multi-hundred-thousand vote plurality, sending him in this chamber to the consideration of the Prime Minister for appointment. There has been no constitutional challenge of that act, despite its so-called controversial nature, as our good friend has pointed out in his analysis. Does Senator Joyal not think that the burden of proof with respect to that constitutionality should be on those who might challenge it and take it to the courts? The absence of such challenge, although the provision exists for any jurisdiction to have done so, indicates that on a de facto basis it has been accepted as democratically feasible and appropriate.

Third, on various occasions in his analysis and very thoughtful speech, he made the assertion that Bill S-8 changes the way our Constitution provides for the appointment of senators. One of the reasons I would argue he might consider this bill going to committee for thoughtful analysis and interpretation is that many of us would take the view that the right of the Prime Minister, by instrument of advice to His Excellency, to appoint a senator is in no way diluted, diminished, diverted or reduced by this bill. All this bill does is create the radical, insane proposition that the people of a province might be given the chance to democratically express a view as to who might be on the list from which the Prime Minister would make a recommendation to His Excellency or Her Excellency, as the case may be.

• (1510)

On the basis of that difference of opinion, would the honourable senator not be of the view that the great Liberal Party, committed as it has always been to the future of Canada, not in ways with which I agree but nevertheless sincere, would benefit from participating in moving this bill to committee so that Canadians could hear his arguments, could hear contrary arguments, and could have the kind of thoughtful analysis that stopping the bill before approval in principle would deny the country?

Does he not in any way worry that the many efforts, to which he made reference quite graciously at the outset of his comments, to reform this place having been frustrated, set aside, diluted, allowed to die or referred in some kind of spiritual way to the Supreme Court for further analysis, might create the impression, perhaps unfairly, that the Liberal Party remains a centralist, status quo, anti-democratic, anti-federal, anti-cooperative federalism institution working against the survival of Canada if they take his advice on this issue?

The Hon. the Speaker *pro tempore***:** I regret to inform Senator Joyal that his time is up. Would he like to ask the house for more time to respond?

Senator Joyal: Yes.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Five minutes.

The Hon. the Speaker *pro tempore***:** Honourable senators, is it agreed that Senator Joyal can have five more minutes?

Hon. Senators: Agreed.

Senator Dallaire: He can have how much time? No one says absolutely five minutes. It could be ten minutes.

The Hon. the Speaker *pro tempore***:** Senator Comeau, did I correctly hear you to say "five minutes"?

Senator Comeau: Yes.

Senator Joyal: I would like to thank Senator Segal for his three questions, and I hope to answer all three of them.

First, is it not strange that we are one of the only federations in the world in which appointment to the Supreme Court bench and the upper chamber lies solely in the hands of one level of government? Canadian constitutional history is full of proposals for changes to the Supreme Court of Canada. My honourable colleague will remember Quebec's five proposals in the Meech Lake Accord for changes to the process for appointments to the Supreme Court that would have given Quebec some guarantees it was seeking. There were also provisions to that effect in the Charlottetown Accord.

The problem is not that this or another Parliament did not want to proceed with that. In fact, in those days there was a consensus in Parliament to move with the Meech Lake Accord and Charlottetown Accord. The problem was that Canadians rejected them for reasons other than that specific amendment, but the overall result was that they were lost. As I said, they were not lost because only Quebec or only Ontario refused. Six provinces voted to put it in the Clarity Act in a clear way.

On the second question, those changes have to be well thought out. One thing puzzles me about the six bills relating to Senate reform that we have seen pass like trains in the last four years. When the Blair government in Britain wanted to reform the House of Lords, they appointed the Wakeham Royal Commission. Some may think that royal commissions take a century to come forward with recommendations, but that is not true. The Wakeham commission came forward with recommendations for substantive reform within a year and a half of its formation.

There was the intellectual capacity under the leadership of Lord Wakeham to make proposals to allow for serious and rational debate on changes. Moreover, in the three years following the tabling of the Wakeham report, the then government published three different white papers on different aspects of reform of the House of Lords. In the end, they were able to achieve some of the reforms, albeit not all.

At least they now have a statutory commission for appointments.

One could question the way that has operated due to various situations that I will not go into here, but those who are interested certainly know of them. At least they now have a body for appointments that seems to have made the House of Lords more legitimate than it was when appointments were the sole prerogative of the Prime Minister.

It is possible to move forward when one takes the right course of action to provide for intelligent debate — not intelligent design. I think that we have put the cart before the horse. We have had six bills in the last four years, each one different from the others, each one changing something different, but the explanation and the reflection do not seem to be tangible. In my opinion, we should be reflecting on that on both sides of this house.

Finally, as I stated in my opening remarks, at least four provinces questioned the constitutionality. That was not me, not Senator Fairbairn, Senator Fraser, nor any other senator. Among them were my own province, Newfoundland and Labrador, and New Brunswick. If in 2008 the government had put forward the question of the constitutionality of the Alberta Senatorial Selection Act, we would have today a framework for moving ahead. As long as we move around in the dark, we will have to find our way by feeling for the walls and, in the end, we will not be sure of reaching the door. That is what concerns me.

Hon. Bert Brown: Honourable senators, I thank Senator Joyal for his long speech.

The Hon. the Speaker *pro tempore***:** Senator Joyal's time is up, so it is not possible to ask a further question. If Senator Brown speaks now, it will have the effect of closing the debate.

(On motion of Senator Cowan, debate adjourned.)

SAFE DRINKING WATER FOR FIRST NATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Brazeau, seconded by the Honourable Senator Lang, for the second reading of Bill S-11, An Act respecting the safety of drinking water on First Nation lands.

Hon. Charlie Watt:

[*Senator Watt spoke in Inuktitut.*]

Honourable senators, I thank the government for making clean drinking water for First Nations a priority. We all agree that the right to clean drinking water is important to all Canadians, and we want legislation that addresses this issue.

My concern with Bill S-11 is the impact of clause 4(1)(r) on the rights of Aboriginal peoples in this country. In particular, regulations under this act would abrogate or derogate from our constitutionally protected rights under section 35 of the Charter.

• (1520)

It is my role as an Aboriginal senator to bring these elements to the attention of honourable senators as we study this bill.

The special trust relationship and the responsibility of the government to Aboriginal peoples must be our first consideration in determining whether the legislation can be justified. We must ensure that fair resources are available and that the Aboriginal nations in question are properly consulted at the earliest stage.

This issue of trust is a delicate matter. At the tip of the iceberg, Aboriginal leaders are wondering why this legislation is being introduced. It appears to be about water quality but the wording of it has many in the Aboriginal community questioning whether there is more to this legislation than meets the eye.

Aboriginal leaders have asked me about the justification for this bill. We are concerned by the wording of this particular bill because it takes a position that is very different from the recommendations made by the Standing Senate Committee on Legal and Constitutional Affairs in their 2007 report titled *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights*.

In this report we are reminded of the scope of section 35 rights, as we are from the *Sparrow* decision of the Supreme Court of Canada. This report is an excellent overview of the responsibility of the Crown.

I am also concerned because this bill seems to contradict the recommendations in the 2007 report of the Standing Senate Committee on Aboriginal Peoples on the subject of safe drinking water in First Nations communities. In this report on the issue of resource allocation, Dr. Harry Swain, Chair of the Expert Panel on Safe Drinking Water for First Nations, said his personal conclusion is that if we want to see the completion of what has been a fairly considerable national effort to get good water on Indian reserves, then we should worry about the basic resources first and about a regulatory regime later.

On the point of consultation, the Supreme Court of Canada has elaborated on the legal requirement for this study to consult. As we consider Bill S-11, it seems that clause 4(1)(*r*) suggests that the Crown contemplated that the forthcoming regulations might have a negative or adverse affect on Aboriginal rights or titles protected under section 35.

Honourable senators, I am troubled by the precedent we are setting. The way I see it, the government is venturing into provincial jurisdiction and outside of parliamentary scrutiny with this bill. On the issue of section 35 rights, I again refer honourable senators back to the Standing Senate Committee on Legal and Constitutional Affairs report, which says:

> This approach appears to establish a precedent for dealing with non-derogation of Aboriginal and treaty rights as a regulatory matter rather than addressing the issue explicitly in legislation, with obvious implications for Parliamentary scrutiny.

On this note, I would like to state for the record that I have met with Assembly of First Nations representatives and received written correspondence from those who are alarmed by the actions of this government, actions which seem to be forcing them into a serious agreement with a yet-unknown third party without adequate consultation.

I remind those who are new to this chamber that Aboriginal peoples have struggled for generations to achieve legitimacy at the negotiating table. We take the issue of consultation and respect seriously.

Although I do not often speak of this, honourable senators, Aboriginal leaders carry a tremendous burden; their communities and their families have paid dearly for our involvement in political life. My involvement in the repatriation of the Constitution is one of the highlights of my career; the James Bay and Northern Quebec Agreement is the other. In both of these proceedings I was honoured to negotiate on behalf of my people, but I did so at great personal expense.

Honourable senators, although those issues may seem old news to some, the embers of those political battles still burn in the hearts of those who negotiated with the government. Some of us have lived through the bitter and violent days of negotiations. We made advancements for our people, at a cost.

Although we have achieved much, it appears that Aboriginal people still have less respect from the government and we still do not enjoy the same equality provided to other Canadians. The fact that this bill contemplates abrogating Aboriginal rights through regulation that will not be scrutinized by Parliament is an embarrassment to Canadians and it is offensive to Native leaders. Once again it seems that government is trying to out-muscle us in a publicly humiliating way.

Honourable senators, as I conclude my remarks, I would suggest that we have many potential problems with the bill in its current form. We are not working from a position of trust, we have not heard any solid justification for this bill in any of the government's own reports, there is no provision for the resources in this bill and the consultations with the First Nations were weak. I repeat: they were weak.

Honourable senators, it is our duty to ensure that Aboriginal and treaty rights are protected. We must insist on the cooperative framework between the Government of Canada and First Nations because that is the Constitution we live with today.

(On motion of Senator Mitchell, debate adjourned.)

• (1530)

[*Translation*]

GOVERNANCE OF CANADIAN BUSINESSES EMERGENCY BILL

SECOND READING—DEBATE CONTINUED

Leave having been given to revert to Senate Public Bills, Item No. 8:

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-205, An Act to provide the means to rationalize the governance of Canadian businesses during the period of national emergency resulting from the global financial crisis that is undermining Canada's economic stability.

Hon. Céline Hervieux-Payette: Honourable senators, I rise today for the second reading of Bill S-205, a bill that will restore Canadians' trust in corporations that have received government assistance, bailouts or support, and that will ensure that directors act solely in the best interests of those who have provided the financial assistance: Canadian taxpayers.

Bill S-205, An Act to provide the means to rationalize the governance of Canadian businesses during the period of national emergency resulting from the global financial crisis that is undermining Canada's economic stability, will limit to $500,000 the remuneration paid to officers of corporations receiving federal loans.

The financial crisis that started in 2008 caught people off guard despite all the obvious warning signs. This event demonstrated a number of things: first, that our economy and the global economy are interconnected; and second, that some people's lack of accountability and greed gave some individuals free rein to turn a profit at the expense of hundreds of millions of people who lost their homes, their savings and their jobs. The government must therefore assume its responsibilities and help these people and businesses keep their jobs. Canadians should not have to pay for the mistakes of profiteers.

At a time when Canadians are angry with their leaders for not doing enough to prevent the crisis and are demanding, with increasing insistence, that the government and the private sector be more transparent and accountable, they deserve the assurance that their hard-earned money will be put to good use and benefit Canada as a whole.

[*English*]

Accountability and transparency are two concepts that are frequently used in these hard times and they represent the type of values we must install in all spheres of our life, whether it be in this place, our government and institutions or the private sector. Bill S-205 seeks to reform corporate governance to restore both corporate and consumer confidence in the economy. Many important international organizations have commented on the link between corporate governance and the performance of a company. In 2005, during the sixth Global Forum of Reinventing Government organized by the United Nations, Chul-kyu Kang, then Chairman of the Korea Free Trade Commission, said in a paper entitled *Market Economy and Corporate Governance — Fairness and Transparency for Sustainable Growth*:

> According to various experimental studies, ethical management has shown positive influence on business performance. Companies, which ensure high-level of ethical treatment, have seen improved productivity and profits for giving more motives and encouragement to their staffs to work harder.

Honourable senators, we must remove the negative stigma associated with the government taking on the responsibility of enforcing positive changes in the private sector. The government, like other governments in Europe and the United States, can and

should take every possible step to improve ethical corporate governance. Responsible corporate citizens can play an important role in our society and our economy. We must create terms for which they hold respect and will abide by certain moral standards and lead by example in good and bad times.

[*Translation*]

According to Mats Isaksson, Head of Corporate Affairs at the OECD:

> . . .when there is a very weak link between pay and performance it is obviously a case of poor governance.

People who lost billions of dollars were still paid annual salaries of over $20 million. He added:

> When looking at various models for compensation, boards should explicitly ask themselves if the company's compensation model is aligned with prudent risk taking and the long term objectives of the company.

Like some of its G8 partners, Canada needs to take measures to create a climate of greater financial responsibility. We need to follow the examples of the United States and Germany, which have taken measures to cap incomes of company executives at $500,000 U.S. or 500,000 euros if their business has been bailed out with taxpayers' money. Bill S-205 would follow that lead and cap, at $500,000, the remuneration of company executives running Canadian businesses that have been saved, bailed out or helped.

Our economic well-being is closely intertwined with that of the United States. We should not hesitate to impose these rules on businesses that receive public monies. This bill is a commitment to fixing the moral problems that led to this mess we are in, which required the use of pension funds to pay the bill. Strong business governance must become one of our priorities. Other countries have understood this, and it is time that we did too.

I can already hear some of my colleagues crying foul and wondering about the poor executives who run their business well and respect the deadlines for reimbursing their debt to Canadian taxpayers. Bill S-205 also proposes to limit executive bonuses to one third of their salary or stock options, which would allow for good performance to be reasonably rewarded. In addition, by not allowing excessive bonuses, we are working towards restoring public confidence and making people understand that stock options and bonuses are a privilege to be earned, not a right, and that this privilege must not negatively impact the real owners, namely, shareholders and those who helped bail out the businesses in trouble.

[*English*]

European countries were hit hard by the economic crisis and, like Canada, were forced to question whether our current capitalist model was to blame. The European Commission was mandated to study how to reform the financial system in order to avoid a future crisis. We know that we do not need another crisis. Allow me to read two passages from one of their green papers entitled *Corporate Governance in Financial Institutions and Remuneration Policies*:

> Strengthening corporate governance is at the heart of the Commission's programme of financial market reform and crisis prevention. Sustainable growth cannot exist without awareness and healthy management of risks within a company.

The paper continues:

> Although corporate governance did not directly cause the crisis, the lack of effective control mechanisms contributed significantly to excessive risk-taking on the part of financial institutions.

Excessive risk-taking by corporations can be reduced with strong corporate governance and remuneration policies that are proportional to the accurate financial health of corporations. Bill S-205 requires the creation of remuneration committees to ensure that remuneration will be no more than 20 times greater than the annual average industrial wage as calculated by a famous institution, Statistics Canada, and by examining the book value of the corporation for the current fiscal year compared to its book value for the preceding fiscal year.

• (1540)

In the last 20 years, the gap between workers and managers, honourable senators, has increased dramatically, up to 240 times in some corporations.

These checks and balances are right on the money. They are good for business, good for Canadians and reinforce the fact that corporations indebted to the federal government must act in the best interests of their companies, their employees, their shareholders and the Canadian people.

[*Translation*]

Since the crisis started, world leaders have come together to seek greater cooperation in stabilizing the financial system at G8 and G20 summits and the World Economic Forum. Canada participated in these meetings, but has yet to do its homework and to show leadership in reforming the financial sector. One thing is perfectly clear: Canadians want the economy up and running again, they want the money they loaned to struggling companies to be paid back, they want global business culture to become more accountable and transparent, and most importantly, they want more fairness between workers and management.

Honourable senators, it is possible that we weathered the economic crisis better than others, at least in some respects, but that does not mean we are less vulnerable to the abuses being committed around the world. The longer we take to fix these endemic problems in the financial system, the longer they will persist. Publicly traded Canadian companies must be held accountable to Canadians. Our population is aging, and Canadians need the job security that comes along with sound management practices. As we saw with Nortel, a poorly managed company can make a real mess. Those who chose to invest some of their savings in securities for retirement want to be sure that no publicly traded company will act irresponsibly.

[*English*]

The Canadian taxpayer has invested over $70 billion in bailout funds and needs to be reassured that regulations are imposed on companies who have received some of this money. Bill S-205 proposes realistic and achievable regulations that will foster better corporate governance, restore faith in the private sector and assure a stable economic recovery.

Some of my colleagues opposite might be of the opinion that Canada should not force regulations upon the financial and private sector at the risk of choking any form of economic recovery in this country or abroad. Honourable senators, let me be clear. Bill S-205 is not aimed at reducing the private sector's ability to create jobs, stimulate innovation and improve communities. It aims to send a warning that all that incompetence and greed will not be rewarded by this government, by any other government or by the Canadian taxpayer.

[*Translation*]

The regulations I propose for companies that receive money from the federal government would cap officers' salaries at $500,000 or, as I said, roughly 20 times what the average Canadian worker earns, prohibit bonuses or stock options worth more than one third of the officer's salary, so one third of $500,000, prohibit directors — people who sit on boards of directors and who currently can sit on several boards at once — from sitting on more than four boards at the same time, and require them to invest in the corporations they direct. These rules will change the culture of irresponsibility and greed that shook the global economy, ruined families and left thousands unemployed.

I would like to quote someone who talked about how countries needed to take action to reform the financial sector instead of just talking about reform. This person said that:

> . . . an agreement to act is just a start. It is acting on the agreement that matters.

Those words were spoken by none other than the Prime Minister of Canada, Mr. Harper, when he addressed the World Economic Forum in Davos, Switzerland, last January.

Bill S-205 will force Canadian companies that received loans from the federal government to lead by example. Canadians deserve to know whether their investments have paid off and whether the money they loaned is being put to good use. Bill S-205 will require these companies to report on the benefits their officers receive, whether for travel, entertainment, living expenses or personal benefits such as health insurance and, in some cases, exotic trips to attend board meetings in locations that generally are warmer than our country. This measure is aimed at deterring officers from abusing their privileges and putting an end to hypocritical behaviour at the expense of workers, whose hours, salaries, and benefits get cut, if not their jobs outright.

[*English*]

Business cannot go on as usual. The invisible hand of the market has slapped us right in the face. Public monies cannot and should not be used to enrich company directors who line their pockets with cash as their companies continue to sink into the abyss.

I think mainly of a former Canadian jewel, Nortel, whose former employees now are left with nothing. Pensions are gone; disability insurance is gone; jobs are gone; and, of course, for all the shareholders, their money is gone. All the while, executives were walking away with million-dollar bonuses and golden parachutes.

Honourable senators, even my personal hairdresser lost half her pension by investing in Nortel. This situation cannot go on, and Canadian families should never have to live through similar ordeals. The responsibilities of board members and officers must be made clear, especially when the federal government becomes a major creditor.

[*Translation*]

Honourable senators, supporting this bill means that you support the role of the private sector in our economy. When public monies are involved, there must be responsibility, accountability and economy. This will help companies restructure effectively, survive, thrive, and pay back their monetary and moral debts.

[*English*]

Honourable senators, Canada has the opportunity to take a leadership role in reforming the global financial system in Canada to foster growth while promoting fiscal responsibility. The pen might be mightier than the sword, but actions speak louder than words. Supporting this bill is morally the right thing to do because the state of the economy is everyone's business, and I feel that we owe this bill to them.

Hon. Hugh Segal: Will my honourable friend take a question?

Senator Hervieux-Payette: With pleasure.

Senator Segal: I wonder if Senator Hervieux-Payette might share her best advice with us on the instruments of execution and enforcement that she thinks might be the best way to put this legislation into effect, should it pass.

For example, if the government of the day has a program of providing loans and assistance for research and development, or loans and assistance for environmental innovation — whatever might be the goal of a program — and publicly traded companies in the federal jurisdiction are encouraged to apply and they apply, would they, upon receipt of the loan or prior thereto, have to satisfy the federal Crown through an attestation or through a contractual agreement that they have met, prior to receiving the funds, all the terms and conditions that she has argued for in this piece of legislation?

Will the federal government need a special audit capacity to determine whether the status quo ante had changed, whether the status quo as provided for by the corporation, continued appropriately in response to the legislation?

• (1550)

Finally, corporations run into financial difficulty, for whatever reason — good faith or misfortune, for instance. I think she would agree many corporations ran into difficulty because lines of credit evaporated in 2008; it was not necessarily because they had done anything bad but because others had played with the system in a way that she has accurately described as unhelpful and inappropriate. Would she then move those kinds of companies in that circumstance into this category on a retroactive basis?

I am just trying to understand because in the end, if the bill passes, somebody will have to draft regulations. Those regulations will have to be realistic and manageable. For those of us who are trying to understand the bill in its full depth, any advice the honourable senator might give us with respect to that implementation process would be most helpful.

Senator Hervieux-Payette: I thank the honourable senator for the question. First, I come from the telecommunications world, so I am more familiar with the sector. A great deal of money was invested in the telecom business. I can go back to the disaster of Nortel because they received millions of dollars in incentives to develop new products and so on. Most of the time, such products did not reach the marketplace.

I remember the CEO of that company saying that the federal government was very badly run. The next thing we knew, the company submitted flawed financial statements to the shareholders and probably to the government. For three consecutive years, the financial statements did not reflect the corporate situation.

When the honourable senator refers to the major funding that the federal government provides to the private sector to innovate, my experience is that the accountability of these monies can be improved. I can see that we provide a lot of money for research at the first stage and very often we never see it again, and nothing emerges from such investment.

I am talking about Canadian taxpayers' money compared to people who are in a publicly traded company. We saw the bubble burst in the 1980s when everything in the high-tech sector blew up. I do not want a third phase because I do not think our economy can support it.

I am saying that if they do everything outside of government money — no BDC, EDC or Innovation Fund — and they go on their own with the private sector, they can pay their executives as much as they want. However, we also have to remember that most of our publicly traded companies are financed with pension funds. All these pension funds have put money away. I do not think that many of the directors who were appointed did their jobs, so I want the directors to be more responsible at the remuneration committee level. I want to close the gap.

We have seen countries like Argentina going in the same direction as Canada. There, you have the very poor and the very rich, with a very small middle class. To keep the middle class investing in shares and pension funds and to continue investing in the marketplace, we need to protect these investments and we need these managers to be accountable.

My $500,000 cap is something for debate and discussion, but this is what Ms. Merkel and Mr. Obama did, and of course I inspire myself. However, to say that from 1980 to 2010, we went from about 40 times the average salary for executives to 240 times, I think we need to reflect on that and see how we can limit that type of increase.

Senator Segal: Will the honourable senator accept a further question?

Senator Hervieux-Payette: Yes.

Senator Segal: I share with the honourable senator a profound anxiety about the gap that has developed between the people working on the floor with relatively well-paid industrial wages and the compensation level for those who are at the senior levels. I think that gap is a huge problem for the health of capitalism going forward.

I want to understand whether the honourable senator is referring to what Chancellor Merkel and President Obama did relative to companies that had been in trouble and for which the state stepped in to provide liquidity, hopefully for a shortened period of time. Is the senator also referring to companies that would avail themselves of normative government programs, grants and loans while they were in a state of health, while the government programs existed?

Would the senator want to impose the same restrictions, which make very good sense in the former case, on those other companies who may be participating? I think, for example, of a great Quebec and Canadian company, Bombardier. In order for it to appropriately compete with the aerospace industry around the world, it will have to avail itself of BDC and EDC financing in the normal course, and I am delighted to see them get it, quite frankly.

Would it be your view that if they were recipients of that type of program, until the money was paid back, the rules in your legislation should apply to the way they manage their affairs, even within the context of needing to have the very best executives and design engineers in the world so that the superb product they produce continues to excel worldwide?

[*Translation*]

Senator Hervieux-Payette: Indeed, what I am proposing would apply to more than just companies we saved from bankruptcy. Consider the automotive sector, in which our government had no choice but to invest. Whether we are talking about the CAA in Quebec or any other business in Canada, when taxpayers' money is invested, I do not see why the senior management would go beyond the limits I have proposed, for the simple reason that those are more or less the salaries paid to the people who give these grants — presidents of corporations such as BDC, EDC and other organizations. They are also competent executives. I am quite certain that they do not take pleasure in having to help a company grow and in doing business with an executive who is asking for millions of dollars to expand but who, at the same time, is paying himself or herself 10, 15 or 50 times their salary.

I would simply say this: if companies are not receiving public funds, their presidents and CEOs can continue paying themselves $20 million a year if they like. However, when the government has to intervene and invest in those companies, I think we must be accountable to taxpayers and pension funds. It is the government that makes the rules. I think it would show greater responsibility on our part if this applied to all public companies. I would not include private corporations in this, because they get their funds elsewhere.

However, in this case, whether it is a question of innovation, modernization or general funds for the sector, for example, for the forestry industry, which has been struggling, we want to take companies to the next level to make them more competitive. I think this bill will reassure Canadian workers who pay taxes, and at the same time, help ensure that these people are working in the best interest of the company, and not only in their own personal interest.

(On motion of Senator Comeau, for Senator Gerstein, debate adjourned.)

(The Senate adjourned until Thursday, October 21, 2010, at 1:30 p.m.)

CONTENTS

Wednesday, October 20, 2010

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