She said: Honourable senators, on November 30 last I spoke to the history of the law of parliamentary privilege. Today, I shall speak to the relationship between Parliament and the courts of law. This relationship has its origins in the undivided High Court of Parliament, where the task of the judges had been to advise the King and his council.

In Canada, appeals to the Judicial Committee of the Privy Council, to the Parliament of the United Kingdom, were ended in 1947 when the Supreme Court of Canada became the final court of appeal in Canada. The Parliament of Canada was unaffected, retaining its powers of a court of record, its *lex et consuetudo parliamenti* remaining the Grand Inquest of the nation.

The Supreme Court in Canada is a creation by statute of the Parliament of Canada, the Supreme Court of Canada Act. The powers and authority of the Supreme Court are determined by this statute.

The relationship between the courts of Canada and the Parliament of Canada did not change in 1982, despite the many legalists, on and off the bench, who insist that with the enactment of the Charter of Rights, the locus of power somehow shifted from Parliament to the courts. This premise is erroneous and insufficient, and merits greater debate in the Houses of Parliament.

Parliament, through the cabinet, appoints judges and removes them. The only body in Canada that is authorized to discuss and adjudicate the behaviour of a judge is the Parliament of Canada. Section 99(1) of the Constitution Act, 1867, states in part:

> ....the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Parliament has demonstrated enormous restraint, forebearance and grace in the exercise of this power; and the offending judges exercised wisdom and usually resigned before the resolution was tabled. Section 99(1) of the Constitution is mindful that the appointment of judges and their removal are matters of much gravity.

In 1869, on the question of the gravity of appointment of judges, Sir John A. Macdonald said:

> I have always laid down with respect to the judiciary, the principle that no amount of political pressure shall induce me to appoint an incompetent or unworthy judge.

There is no doubt that "constitutional society" acted deliberately, constitutionalizing good behaviour as the tenure of judicial office. In 1883, on judicial conduct, the Honourable Edward Blake, former minister of justice, said:

> There is no function of ours of higher importance or greater consequence to the public weal than the function that we hold of enquiring into or censuring, or dealing with the conduct of the Judiciary.
>
> I am not one of those who at all object to this great, this highest court of all, this grand inquest enquiring by proper means into the conduct of the judges. As I have said, I believe that to be our highest, our most important and also our most delicate function.

For generations, Parliament has treated judicial behaviour and judicial activity with great care. Parliament expects that the judiciary will treat Parliament and its laws with reciprocal care. Parliament expects that no court will truncate its functions. On this relationship of Parliament and judicial functions, Sir William Anson, in his book *The Law and Custom of the Constitution*, said:

> ...the courts have no claim to substitute their judgement for that of the legislature...

As regards this relationship, Justice Willes in *Lee v. Bude and Torrington Junction Ry Co.*, 1871, said:

> ...and we do not sit here as a court of appeal from Parliament.
>
> We sit here as servants of the Queen and the legislature. Are we to act as regents over what is done by Parliament with the consent of the Queen, Lords, and Commons? I deny that any such authority exists.
>
> The proceedings here are judicial, not autocratic, which they would be if we could make laws instead of administering them.

Further, Alexander Hamilton, in *The Federalist Papers* wrote:

> The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body.

Parliament commands the purse, the executive commands the sword. The judiciary commands neither the sword nor the purse. The courts have "neither force nor will, but merely judgement." When courts of law exercise will, they enter into the realm of politics.

Judicial institutions in the Canadian Constitution are creations of the legislature. The organization, financing and administration of the courts are by legislative statutes. Even the procedure and rules of the courts are provided for by statutes of the legislature.

On the issue of judicial independence, Peter Russell, in his book, *The Judiciary in Canada*, says:

> In the Canadian system, constitutional conventions play a particularly important role in regulating the relationships among the different branches of government — including the relationship of the judiciary to the legislature and the executive. In this respect the Canadian Constitution draws heavily from the British constitutional tradition. 'In Britain', wrote S. A. de Smith, 'the independence of the judiciary rests not on formal constitutional guarantees and prohibitions, but on a mixture of statutory and common-law rules, constitutional conventions and parliamentary practice'...