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Chair

Mr. Daryl Kramp

Standing Committee on Public Safety and National Security

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•(0845)

[English]

The Chair (Mr. Daryl Kramp (Prince Edward—Hastings, CPC)): Good morning, colleagues and ladies and gentlemen. Welcome to meeting number 57 of the Standing Committee on Public Safety and National Security.

Today we are continuing our study of Bill C-51. We have witnesses here this morning and will have a second set later this morning, and then we will meet this evening for two more rounds of witnesses.

We are pleased to have our two witnesses today, who will each have up to 10 minutes for a presentation. After that there will be questions and answers.

We welcome Pamela Palmater, chair in indigenous governance, Ryerson University, Department of Politics and Public Administration. We welcome as well Steve Irwin, inspector with the Toronto Police Service.

Thank you both for coming here today and taking the opportunity to meet the committee and to bring forward your opinions, views, and perspectives on this bill.

We will start off with the opening statements.

Ms. Palmater, you have the floor.

Dr. Pamela Palmater (Chair in Indigenous Governance, Ryerson University, Department of Politics and Public Administration, As an Individual): Thank you for inviting me here today to speak.

I first want to acknowledge that we're on the traditional territory of the Algonquin Nation, and that's not just a polite acknowledgement. It's the very reason why all of you get to sit here today. Were it not for the cooperation, generosity, kindness, and political alliances, Canada wouldn't be what it is. Were it not for the peace treaties between our nations that are now constitutionally protected and form part of the foundational aspect of Canada, none of us would be sitting here today. I think that goes to the very heart of Bill C-51 and why I am opposed to it.

Canada has placed Bill C-51 before indigenous peoples without any information, analysis, details on how it will impact our nations, consultation, information, or consent from our part. It is a gross violation of our nations-to-nation relationship.

I don't have time to go through all of the technical legal details and problems with this bill except to say that I echo all of the concerns

that have already been brought and will be brought by the thousands of lawyers in this country, security experts, former prime ministers, and former Supreme Court of Canada justices. My main concern is how this bill would impact me, my family, indigenous peoples all over Canada, and our treaty partners, other Canadians.

Canada has a long history of criminalizing every aspect of indigenous identity. From the scalping bounties in 1949, which nearly wiped out my Mi'kmaq Nation, to the Indian Act, which has outlawed our culture and our right to educate our own children and even excluded indigenous women from our communities. Every aspect of our identity has been criminalized, both historically and into the present day. In every single instance, we've had to resist all of these laws, keeping in mind that these were all validly enacted laws. It was legal to take Mi'kmaq scalps; it was legal to confine us to reserves; it was legal to deny us legal representation. All of these things were law in Canada. We had to be criminals, in that we had to break the law in order to preserve our lives, our physical security, and our identities. We are being faced with this very problem again with Bill C-51.

Over the years, these laws have morphed into provincial and municipal regulations that deal even with our traditional means of providing subsistence—hunting, fishing, and gathering have all been so criminalized for indigenous peoples that we end up skulking around in the forest just to be able to provide food for our families. Every single court case that has been won at the Supreme Court of Canada has been a battle with indigenous peoples, who are trying to live their lives and exercise their rights and identities, facing some kind of criminal or regulatory charge.

In every single instance, we have been labelled as criminals and treated as criminals, and one need only look at the current prison population to understand that this is still the case; not just the case, but as Howard Sapers from the Office of the Correctional Investigator has indicated, a national crisis and embarrassment. And why is it? It's not because we're actually terrorists, not because we're more culturally predisposed to being criminals, but it's a direct result of Canada's discriminatory laws and policies. There have been endless justice inquiries, which have pointed to the infection of racism in our Canadian justice system. The Donald Marshall wrongful prosecution inquiry, the Manitoba justice inquiry, and the Ipperwash inquiry say that every aspect of our justice system, from the arresting officers, to the lawyers, to the judges, to the prison systems, overtly and systemically discriminates against indigenous peoples. That's our current reality.

Bill C-51 proposes to take that to the last and final step. All we have left now, as indigenous peoples, are our thoughts.

•(0850)

Our private thoughts will now be criminalized. It will now be possible to be considered a terrorist for storing alleged terrorist propaganda on our own personal computers. My declaration of sovereignty—and I'm going to say it before Bill C-51 passes—is that I'm part of the sovereign Mi'kmaq Nation. That kind of material on my computer could be considered terrorist and a threat to national security because it's a threat to Canada's sovereignty. Welcome to the new terrorist.

My name is Pam Palmater. I'm a lawyer, I'm a professor, I'm a mom, and I'm a social justice activist. I've won numerous awards for my work in social justice, women's equality, and children's rights. Depending on whose radicalized view you speak of, I have also been called a radical, bad Indian, eco-terrorist, enemy of the people, top-five-to-fear Canadian, dangerous militant, and whacko extremist.

My biggest concern isn't how I'm presented in the media or by government officials, I'm stronger than that. My biggest concern is how this impacts me right now, the level of government surveillance for a law-abiding, peaceful, social justice activist, who's never been arrested or convicted of any crime.

In response to my ATIP request to CSIS, they explain that they have a right to prevent subversive and hostile activities against the Canadian state, which is why they have a file on me. They don't offer me the courtesy of saying why I would be considered subversive or hostile. In fact, everything I do couldn't be more public.

In my ATIP request to Indian Affairs they would not confirm that they monitor me. They said that they do conduct an analysis of me and my activities because I'm an active voice. That analysis comprised 750 pages of documents that tracked all of my whereabouts, what provinces I was travelling to, where I was speaking, and the dates and times. They could not provide my security file because it was destroyed.

When I attend gatherings, rallies, protests, or public and private events, I often cannot make cell phone calls, send texts, or access my social media, my bank cards, or my credit cards. I can be at an Idle No More rally or protest and text my children, but I cannot communicate with the chiefs who are at the same protest. This causes me great concern for my safety. How am I supposed to help ensure the comfort and safety of the people at rallies and myself if I can't communicate with anyone? I don't have to remind this committee the staggering statistics and vulnerabilities of indigenous women in this country.

I contacted the RCMP as well. They never responded to my ATIP request. Individual RCMP officers at various events have confirmed that they were there to monitor me. At numerous protests I have been informed by RCMP and provincial police that I had to keep my protest peaceful. Sometimes they didn't identify themselves. At speaking engagements the host first nation would demand that any undercover RCMP, or Ontario, or other police officers identify themselves, and in many cases they did.

What's more concerning is the number of government officials that follow me around from speaking engagement to speaking engagement and often identify themselves when called upon to do so. Probably the most shocking is when I travel internationally in

countries like Samoa, Peru, England, and Switzerland only to be informed by local authorities that Canadian officials are there to monitor me. That's very frightening in a country where I have committed no crime, but to advocate peacefully on behalf of my people.

In the prairie provinces the RCMP are very active. They will often call ahead to the First Nations University of Canada where I'm speaking and ask them to identify what my target will be or where I plan my protest.

This isn't just a problem for me. We've all heard about Cindy Blackstock and others.

•(0855)

I'll skip to my recommendations, because I can see that I'm out of time.

Bill C-51 must be withdrawn. There is no way to fix it. There must be proper public information consultation, specific consultation for indigenous peoples, and a proper parliamentary study. Directing Justice Canada to rubber-stamp the bill as compliant even if it has a 95% chance of being overturned in court is not democratic.

We need an independent review body to report on the ongoing surveillance of indigenous peoples that will take complaints, do proper investigations, and offer redress.

Finally, we are in desperate need of a special first nation advocate to be appointed for any and all court processes in all provinces and territories whenever applications are made in secret for court warrants. This person would be an amicus, a friend of the court who would be independent and could speak to all of the various constitutional and indigenous rights at stake. This is absolutely essential, especially if Bill C-51 is to be passed.

The Chair: Thank you very much, Ms. Palmater.

We will now go up to 10 minutes with Inspector Irwin.

Inspector Steve Irwin (Inspector, Toronto Police Service): Thank you. Good morning. Thank you very much for allowing me to appear before this committee on behalf of Chief William Blair and the Toronto Police Service.

As stated, my name is Steve Irwin. I am an inspector with the Toronto Police Service. As of next month I will have completed 35 years with the Toronto Police Service. I'm currently seconded to the RCMP-led Integrated National Security Enforcement Team in Toronto, and I'm responsible for national security investigations in the greater Toronto area and throughout southwestern Ontario.

I started my policing career as a uniformed officer in Toronto, and have worked in homicide, sexual assaults, hate crime, intelligence, and in 1995 was the sergeant who started the anti-terrorism unit within the Toronto Police Service to address what we perceived to be a terrorist threat emanating from the first attack on the World Trade Center in New York City. Since 1995 I've had a lead role within the Toronto Police Service on terrorism-related issues.

In relation to where we are today, 911 taught us there are no rules or boundaries for terrorism. We were shocked into the reality that anything goes. We adjusted our stance and created anti-terrorism sections of the Criminal Code to address that threat from a law enforcement perspective. More recently we recognized there were gaps in our criminal laws to address the evolution of the terrorist threat that manifested through the first decade of this millennium.

New criminal offences were created and preventive processes were recommended to be reinstated in Bill S-7, which we know was passed into law, and all those sections are beneficial in both the prevention of terrorism and in holding accountable those individuals intent on committing terrorist offences.

I'm going to briefly address some aspects of proposals in Bill C-51 from a non-federal policing perspective.

Regarding the Criminal Code amendments, I've dealt extensively with the hate propaganda sections of the Criminal Code since being assigned to the Toronto Police Hate Crime Unit in 1993. I have considered the application of the hate propaganda sections in numerous cases involving individuals who have publicly preached or advocated for the use of violence in the name of religious, ideological, or political belief.

Unfortunately, the sections are too restrictive for those who are clever enough or counselled sufficiently to avoid divulging any criminal intent. With the current terrorist threat there is a definite need for the new offence of advocating or promoting terrorism. Many hate-mongers hide behind carefully spoken words that lure a growing, vulnerable, often younger, group of people to adopt an extreme radical view that condones or advocates taking up arms against those who have different beliefs.

It is crucial that those who have a criminal intent be faced with the consequences of criminal conduct. Equally it is important to have appropriate tools to address those who use terrorist propaganda to influence those same vulnerable people to adopt a radical view that leads to terrorist acts.

Through these new criminal offences, we will be able to prevent the growth of the terrorist entities and groups. Lowering the threshold of "will commit a terrorist offence" to "may commit a terrorist offence" provides law enforcement and the courts an important preventive tool that will offer those misguided, vulnerable people a path away from serious criminal conduct and the liability that comes with that.

The tools in the Criminal Code are helpful to law enforcement, but truthfully, in my experience, are not sufficient to address all aspects of the current evolution of threats to our national security, both in the form of terrorism and of espionage.

The proposed changes to the CSIS act I see as progressive. CSIS is involved many times before law enforcement and could easily disrupt activities sufficiently so as to mitigate threats. By no means am I suggesting that they would always employ disruption strategies, but certainly having the ability to do so independent of law enforcement could be very effective, essentially for further enhancing the security of Canadians.

In relation to Canada's Security of Information Act, I believe that consideration for provision to include non-federal police services as agencies.... Information that can be shared would be important for a number of reasons, including the major municipal, regional police, and provincial police services. They are frequently involved in intelligence investigations in the early stage of national security-related investigations that are not obviously national security ones in those early stages.

Furthermore, municipal, regional, and provincial police are the police of jurisdiction along much of our international border and at points of entry in international airports.

● (0900)

Often there are no RCMP officers working in the areas, and where they are, it is not on a 24-hour, seven-day-a-week basis, leaving the police of jurisdiction conducting investigations that are of national security in nature. Not having access to available information because they are not a federal entity creates a significant gap that could impact on the safety of the public.

Finally, the police of jurisdiction throughout this country regularly deal with "activity that undermines the security of Canada" as defined in clause 2 of the proposed act, including "interference with critical infrastructure" and "terrorism", and could find themselves dealing with "proliferation of nuclear, chemical, radiological or biological weapons", as well as "an activity that takes place in Canada and undermines the security of another state."

Respectfully, the RCMP in Ontario does not have the resources to always respond in a timely manner to incidents that could meet the definition and threshold stipulated in the act. I bring to your attention the fact that the RCMP performs the exact same municipal and provincial police duties in many communities in all provinces outside of Ontario and Quebec. It is only the fact that they are RCMP members that gives them access to the information that all other police officers in this country performing the same duties are excluded from.

In relation to the Secure Air Travel Act, consideration ought to be given to adding authority, including pictures and biometric information where available, for people on the no-fly list as aliases are not always known. That, I believe, is a significant gap.

Consideration ought to also include an inclusive list of non-federal police in clause 10, "Assistance to Minister", paragraph (f), as many international airports are policed by municipal, regional, or provincial police. That includes airports in Toronto, the Toronto Island Airport. Buttonville Municipal Airport in York Region is an example. Also, the Hamilton airport. London, Ontario, has an international airport. All are policed by municipal and/or provincial police initially.

In conclusion, the proposed changes in Bill C-51 are another step forward in closing the gap that leaves Canadians and the public exposed to being victims of criminal acts involving our national security. Admittedly, the balance between the freedom we enjoy in Canada and the security measures required to ensure that freedom is not without its cost to our individual rights and privacy.

In my reading of the proposed legislative changes, the authorities required for the new powers that prescribe oversight and mandated audits, combined with the safeguards already in place for the various government agencies, I believe provide necessary protection from abuses and will safeguard many of the issues raised by those who are against Bill C-51. Recognizing there is no single solution to address the current threats to national security, Bill C-51 certainly will provide better tools to prevent many of those threats from becoming realized in actual terrorist acts or acts of espionage.

I thank you for your attention, and I look forward to your questions.

• (0905)

The Chair: Thank you very much, Inspector Irwin.

We will now go to our rounds of questioning for seven minutes.

We will start with Mr. Falk.

You have the floor, sir.

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chairman.

Thank you to our witnesses, Ms. Palmater and Inspector Irwin, for joining us this morning. I enjoyed listening to your testimony.

This committee has heard a wide range and variety of opinions on the issue and the concerns. Probably without exception, we've heard from witnesses that there is a very real threat of terrorism to Canadians. Certainly Bill C-51 is an attempt to modernize the tools that law enforcement agencies have in dealing with this very real threat.

Inspector, you spoke of the evolution of threats. Certainly we've heard in the past that there's rapid advancement, evolution, and modernization of the things jihadi terrorists are using as weapons of their mission. I'm wondering if you could talk a little bit more about our need to keep pace with some of the modernized techniques that the jihadis are employing.

Insp Steve Irwin: Certainly.

There are two aspects to that. One is obviously our role as a nation with the international community and that we ought to be seen to be holding up our end.

There are events that have happened. We've seen Canadians go overseas and commit terrorist attacks against innocent people. I think

our reputation as exporters of marijuana is one we're well known for, and terrorism is not something that any of us, as Canadians, should be proud of.

In relation to the issue domestically—and again, from a municipal perspective, appreciating that I have a lot of knowledge on investigations that have occurred—there are many weapons available in society. The knowledge is there and available. The Internet has certainly opened up the realm. The world is on our computers and our smart phones. That provides knowledge on how to build weapons or use weapons that we wouldn't normally see, including things like motor vehicles or weapons of opportunity.

More important are the individuals who conspire, who start to adopt, and admittedly some of them feel disenfranchised, but they then look to further their beliefs.... Currently the jihadi issue is specifically dealing with radicalized Islam and those who believe in violence in the name of their religion.

That is ever present. When I think back to the Toronto 18—and that was something that was generated locally—that was inspired by individuals in a small group. We now see that people from all over the world are inspiring—and more than inspiring, in fact are teaching and providing tools for how to beat, to get around our systems, how to speak and not break the laws that are currently in place in Canada and, ultimately, to lure those mostly young and vulnerable people.

If we go back a few years, we were seeing that males were the predominant targets. We're now seeing in the media that there are a number of young females who are equally becoming lured and looking to join the cause overseas.

Our concern too is what they learn there. Certainly the teachings will be brought back, as we've seen recently in events here in Canada, and when they determine that Canada is a common enemy then that knowledge and weaponry will be used on us and that which is available to us.

• (0910)

Mr. Ted Falk: Thank you.

Last evening we heard from the sister of Warrant Officer Patrice Vincent.

She gave testimony to this committee. She talked about information sharing, and she talked about information being in silos that she believes prevented law enforcement from taking preventative measures that could in essence have saved her brother's life.

She also mentioned how corporations have realized that silos within a corporation don't foster a healthy environment, nor do they promote the advancement of the corporation. I've had experience and been involved with several large companies, and certainly the formation of silos is something we always combat.

Part of this bill addresses the whole idea of information sharing among law enforcement agencies and moving away from the silo environment that currently exists.

Can you comment a bit on how that would be a useful amendment?

Insp Steve Irwin: In fact, I think it's a crucial piece, even across the federal government. Having worked for the last four years with the RCMP, and having the same authority as an RCMP officer, it is challenging to get access to information in different government agency holdings that would in fact help to further a criminal investigation. Often it could also be used to stop a national security investigation; you get access to information that is held in another pillar that would stop further pursuit by individuals or groups that have been identified or about whom complaints have been brought to us.

It's interesting—and I spoke from a municipal perspective—at the federal level. I think it is absolutely crucial that information be allowed to be shared. But there has to be accountability for that. Respectfully, it's all of our rights. I think we need to consider that when we look at what safeguards are in place for sharing that information.

However, that information and those gaps are absolutely an issue, and certainly we are frustrated at times with finding legal means to get access to information that would assist our investigations and in fact help to prevent terrorist offences.

The Chair: Thank you very much, Mr. Falk and Mr. Irwin.

We will now go to Mr. Saganash for seven minutes.

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): Thank you, Mr. Chair.

Welcome and thank you to both of our witnesses this morning.

I want to start with Ms. Palmater. I've been in this business for more than 30 years as well. I've been called many names, too. All of our protests and challenges posed by aboriginal peoples in this country are always related to the economy. Resource development is, of course, an important aspect of all that.

The far-reaching proposed provisions in Bill are therefore somewhat of a direct threat to section 35 rights. National Chief Bellegarde recommended that we scrap this bill. You say that this bill must be withdrawn because it is not fixable. I happen to agree with that.

For 150 years in the history of this country, governments have always been adversaries of aboriginal peoples. We both know that. What we've always considered as rights issues has always been viewed or treated as police issues, or law and order issues, by successive provincial, federal, and municipal governments.

Will this proposed legislation make matters worse for indigenous peoples in this country, and why?

• (0915)

Dr. Pamela Palmater: Thank you for your question. It's an important one because, as I stated, it doesn't just impact indigenous peoples; it impacts the rest of Canada, including environmentalists, unions, women's groups, and children's advocates.

We have to get real about what the clear and present danger is here. How many Canadians have died from acts of terrorism on Canadian soil? Compare that with how many thousands of murdered and missing indigenous women and girls there are. Where is the Bill C-51 to protect them? How many husbands have killed their wives?

How many serial killers have we had? Yet, we are focusing on Bill C-51.

The problem is that this bill isn't really about terrorism. If you do an analysis of this omnibus bill, the focus is, just as you've said, less about being anti-terrorism and more about protecting the status quo in terms of power relations and economic relations. This new national security law focuses on threats to sovereignty, territorial integrity, diplomatic relations—of all things—economic stability, and critical infrastructure. All of these things are an essential part of the daily lives of Canadians and first nations. Passing this bill for any activity, any person, any purpose that threatens national security so defined as financial stability and territorial integrity makes us all suspects.

Canada won't even have to pass this bill; the terrorists will have won. What is terrorism? Fundamentally, it's the denial of life, liberty, and security of the person. If Canada goes ahead and takes those rights away, terrorists just have to sit back, job done.

We worked far too hard in our treaty negotiations, the development of the charter and the Constitution, and all of the international laws that protect core, fundamental human rights, to allow that to happen because we want to protect some corporate economic interests.

Mr. Romeo Saganash: Given that your access to information request has shown that you've already been surveilled for perfectly legal civic actions, is it reasonable to assume that if this legislation is passed, you could be viewed as a terrorist for the same lawful activities?

Dr. Pamela Palmater: Bill C-51 as currently written would capture everything under Idle No More. Imagine that. Grand Chief Matthew Coon Come of the Grand Council of the Crees offered a quote for my submission as well, to the effect that had their activities been done today as opposed to back then, the James Bay agreement would not have been negotiated. They would all be in jail. The Idle No More movement, which was a historical coming together of first nations and Canadians peacefully dancing, singing, and drumming, would now all be monitored—if not already, as the media has indicated—and maybe with arbitrary detentions.

All of these things are very frightening for this country. Keep in mind that the UN Declaration on the Rights of Indigenous Peoples protects us, grants us and recognizes international customary law that we can act autonomously, that we can occupy our lands. Under the Department of National Defence's manual, occupying our lands, advocating for our autonomy, and advocating for political rights are described as insurgency, alongside jihadists. It is no comfort that there is a proviso saying that lawful activity, lawful dissent, lawful protest, lawful art—whatever that is—won't be captured by this bill, because the second we do a round dance in the street without a permit, it very quickly becomes unlawful.

We have to remember—I already went over this—all of the very validly enacted laws that Canada has had that have ended up in the killing, murder, rape, violence, sterilization, and scalping of our people. Those were valid laws. The only way to protect ourselves was to act with unlawful resistance.

What we're saying now is that the clear and present danger to first nations and Canadians is environmental destruction and the contamination of our water. We have a right to defend our life, liberty, and security to protect our future generations. Under this bill, that will all be captured as a threat to national security and/or to be terrorism.

• (0920)

The Chair: Thank you very much.

Your time is up, Mr. Saganash.

We will now go to Ms. Ablonczy for seven minutes, please.

Hon. Diane Ablonczy (Calgary—Nose Hill, CPC): Thank you, Mr. Chairman.

I appreciate the witnesses coming forward and taking time to share their perspectives on this important bill.

I think it's important to consider what the bill says about activities that undermine the security of Canada. Clearly, we want to continue to secure our country as a peaceful place, a free place, and a place where privacy rights are protected as well.

The activities that undermine the security of Canada are listed in the bill in clause 2. There are nine of them, and I just want to read them because I'm going to ask a question about that.

First of all, there is activity that is:

(a) interference with the capability of the Government of Canada in relation to intelligence, defence, border operations, public safety, the administration of justice, diplomatic or consular relations, or the economic or financial stability of Canada;

Number two is:

(b) changing or unduly influencing a government in Canada by force or unlawful means;

Number three is the activity of:

(c) espionage, sabotage or covert foreign-influenced activities;

Number four is terrorism, and number five is:

(e) proliferation of nuclear, chemical, radiological or biological weapons;

Next is:

(f) interference with critical infrastructure;

Next is:

(g) interference with the global information infrastructure...;

Number eight is:

(h) an activity that causes serious harm to a person or their property because of that person's association with Canada; and

Number nine is:

(i) an activity that takes place in Canada and undermines the security of another state.

The clause goes on to say:

For greater certainty, it does not include lawful advocacy, protest, dissent and artistic expression.

Now, we want to get this right because we are facing a real and present danger. We know that jihadi terrorists have declared war on Canada. They've specifically targeted Canada. They've urged their

supporters to attack "disbelieving" Canadians "in any manner", and they vow that we should not feel secure even in our own homes.

I'm sure that all of us, regardless of our perspective on this bill, would not want those threats to be carried out.

I will start with you, Inspector Irwin. Do you believe that any of the activities that are listed in this bill would lead to activists, such as Ms. Palmater, being targeted by the activities of our security forces under clause 2 of the bill and the nine activities I have just read?

It's a tough one, I know.

Insp Steve Irwin: There's much that goes through my mind, having been to most major demonstrations in the city of Toronto, some here in Ottawa, and some in other parts of this province since 1993.

I will say that for our system to work we do need people to protest. We do need checks and balances in the system. We do need—and here I think of my early days in dealing with hate propaganda, and the importance of needing the Attorney General's consents on what is free speech—the same as the terrorism offences.

It's not for law enforcement, which tends to be hard-right leaning. It is government, and it is a sitting government that has Attorney General who consents. In many of these sections it's the Minister of Public Safety. That allows for the political piece to authorize and justify.

I trust that there are other criminal offences in the Criminal Code—we hosted a very robust G-8, G-20 in Toronto, in 2010—and there are sections of the Criminal Code that were looked at that might also fit into the definitions here.

I will say, in my experience—and now with my 22 years in intelligence, criminal intelligence, and national security—we are being more open and certainly more tolerant of a number people who have a difference of opinion and who take over streets. It's not being criminalized. Certainly there are many areas that I do not believe the security service is targeting.

I believe that it will require government and the powers that be to be very cognizant. To the issue of the first nations, I will qualify that when I started to prepare for this, I was really focused on that international jihadist threat. I appreciate the impact it has on domestic groups and individuals, and certainly first nation people.

• (0925)

Hon. Diane Ablonczy: Okay, thank you very much.

I wanted to give Ms. Palmater time to put her legal training and activist knowledge to work, to help us to understand how you feel that clause 2 activities might impact you.

The Chair: Ms. Palmater, we've already expended the time, but I will certainly give you an opportunity briefly to respond to that if you wish.

Dr. Pamela Palmater: Thank you for asking because as you probably know, I was a lawyer for Justice Canada, worked on legislation, and have taken training in legislative interpretation and regulatory drafting. That is why I was quite shocked this legislation ever made it here. The Justice Canada lawyers that I know would never have said this is anywhere near to being constitutional.

The problem is that list that you read is just a list. It's an example, some examples of what would be threats to national security. There is no limit on the threat to national security. That "any activity" means any activity.

My problem is that under the bill, who gets to decide? Clearly, it's Canada and independent law enforcement officers. What's happening here is that there are an infinite number of offences that are being created. It's not knowable. We have a right as citizens, as a basic tenet of law, to know the offence for which we're being charged and to be able to predict it in the future. We know that we aren't allowed to steal things, so we don't steal things, or we know there are consequences.

Under this bill it's literally anything. That's a problem in law and it certainly doesn't correspond with or would survive a constitutional or charter challenge, and I think that the former Supreme Court justices have been pretty specific about that.

Thank you.

The Chair: Excuse me, Ms. Palmater, you are well over the time.

Thank you very much.

We will now go to Mr. Easter, please.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Thank you to both witnesses for your presentations today, and for both of your efforts out there beyond your appearance at the committee, one of policing and one of legitimate public dissent that profiles issues. I think that both are important in a democracy.

Starting with you, Ms. Palmater, you've mentioned the need for a special first nations advocate. I'm making an assumption here, but I expect that relates to the section in the bill where CSIS can apply for a warrant to do certain things.

I take it from your comments that you're suggesting that if the bill goes through, there needs to be an amendment in that area that would allow for special advocates, in this case first nation ones, who would be able to provide the other side of the argument before a judge as to whether or not a warrant is granted.

Am I correct in that? Do you want to expand on that a little bit?

• (0930)

Dr. Pamela Palmater: Just to be clear, I'm saying that there is no way at all to save this bill.

Hon. Wayne Easter: I understand that.

Dr. Pamela Palmater: My recommendations were about how to address the problem right now. We have a crisis right now, because first nations are being targeted by police officers and the government at large. If this bill were to pass and they added this provision for a special first nations advocate for all of these core processes, that wouldn't stop first nations from being targeted to begin with. That's like trying to provide compensation to murdered indigenous women after they've already been murdered. It's too little too late. So I don't think it would be effective to counter all of the rights violations currently existing under Bill C-51.

Hon. Wayne Easter: Coming back to the request, one of the problems with the current bill has to do with when CSIS goes to a

judge. The Minister of Justice called this judicial oversight. It's not. It's the traditional authority that has allowed CSIS to do certain things. There are some who feel you need balance before the judge who makes that decision. That's what I'm trying to target here. Would there be better balance if you had a special advocate with first nations expertise in cases where CSIS was asking a judge for that warrant to do certain things?

Dr. Pamela Palmater: I think there would be more balance than there currently is in the bill, keeping in mind that this bill also turns the working of our justice system and our constitution on its head. The role of judges is in fact to uphold the constitution and charter rights and not to find ways to get around them. So asking them to undo all of their training or the way we govern ourselves.... Even having the first nations advocate isn't going to really address the core problem.

Hon. Wayne Easter: I hear what you're saying. Thank you.

Inspector Irwin, you did say there's a shortcoming in the bill, especially as it relates to airports. I'll ask two questions together if I may. Can you outline perhaps a little more specifically the shortcomings you see for police or local jurisdictions that are handling the situations at airports? I think you mentioned Toronto Island and Hamilton. There are lots across the country.

Second, you talked about the hate propaganda issue, and I know you've had some experience with that. There's fear among those out there who are opposed to this bill that hate propaganda will basically give authorities the ability to seize almost every computer in the country. How do you balance that? Does the bill balance that in terms of the need to prevent propaganda from radicalizing certain individuals and then creating further problems in and outside the country? How do you balance that against protecting people's use of information?

Insp Steve Irwin: I'll address the first question as succinctly as I can.

For instance, at Pearson International Airport, if you were to have outside of regular business hours a late flight leaving—and Peel Regional Police are the police of jurisdiction—and there's information that comes from a family member that someone's travelling to go to join a terrorist entity in Syria, that requires immediate action, but the person is not flying under his or her own name, and there may be other information held within different government agencies. Peel Regional Police would not have access to that and it could frustrate the process—and respectfully, Peel Regional Police at the airport might not be as intimately aware of national security issues and the laws surrounding them.

So those are some of the gaps that we see. Pearson is certainly a great example of an airport where you have a municipal or regional police service, a non-federal police service, as the first responder.

To the second issue, it's interesting because with hate propaganda, there has been much concern for many, many years about free speech. People have made public announcements and statements that might walk the line of hate propaganda, and relatively few charges have ever been laid because of the protection of the Attorney General consents. Advocating terrorism offences is similar. Certainly I think back to a book, *The Turner Diaries*, which is described as hate propaganda but is not illegal to possess. It is illegal to sell or distribute it, and when a major bookstore many, many years ago was bringing in that book because there was a demand for it, I ended up in a meeting with representatives from the book industry, the government, and customs. I see that the law is there. There are protections in place, but they're important because there are certain jihadist leaders—and some of them are dead—who have videos of their teachings that the often radical converts are following and that lead them to go from just a radical point of view to a criminal, extreme view, and terrorism.

So it's important that we try to address that. We also have religious leaders in communities—and not strictly in the Muslim community—who have stood up and preached or advocated support for what I would say is terrorism elsewhere, and there is no accountability. There is no stopping them, and it certainly has impacted on the national security of the Canadian public.

● (0935)

The Chair: Thank you very much, Mr. Irwin.

Now, for five minutes, Mr. Garrison, please.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much, Mr. Chair.

Thank you to both the witnesses for being here today.

One of the concerns that we have in the NDP about this bill is not only does it potentially threaten rights but it might also not be effective.

As reported in the media, we had Edward Snowden speaking at Upper Canada College via a webcam from Russia, and he said a very interesting thing. He said that when you collect everything, you understand nothing.

Inspector Irwin, you raised the question of resources glancingly in your presentation, and I guess the concern that Snowden was expressing and that I would also express is that if we spread that net so broadly, we risk the focused efforts that we need to deal the real threats to Canada. So my question to you is, how do you feel about that broadening of the net combined with the constricted amount of resources available?

Insp Steve Irwin: When I first came to intelligence in 1993, everything came into the Toronto police intelligence unit on a piece of paper and then we got faxes, then email, and then we got web access. I carry three BlackBerrys. The information out there is overwhelming.

I don't disagree that if the net is too broad it becomes of lesser or little value, but I also look and wrestle with—and I'm pretty technologically advanced, and certainly have lots of younger people who are—how important the information is because of the small threats.

I spent four and a half years in sexual assault in Toronto in the early days before we were so connected, chasing an unknown Scarborough rapist. Those gaps and the criticism that came from them is important for us to consider.

Justice Campbell wrote a report about information not being shared. It's interesting because of the reams and reams of information. I can think of a murder I worked on, the murder of a young girl in Toronto, which took 10 years to solve, and of the DNA evidence coming online. That information can be overwhelming and we should be careful in how much we collect, and then what we do with it is equally important.

I think there are threads that can help solve or prevent crime that have to be assessed and used to protect our public. I think that's important, but I always wrestle with the collection of everything. It overwhelms us very quickly.

● (0940)

Mr. Randall Garrison: Thank you.

I know you've been working in the terrorism field for a very long time, so I want to ask you about anti-radicalization efforts either by the Toronto Police Service or in the greater Toronto community, and what activities you're aware of and whether you think those are adequate, or whether we need more emphasis on the anti-radicalization work.

Insp Steve Irwin: It's interesting, and I've certainly equated the terrorist threat and criminal radicalization, criminal extremism. That to me is no different from a gang problem we have in Toronto. I remember many years ago that we wouldn't admit to having a gang problem, but clearly there's a gang issue.

The radicalization into extremism and terrorism is not unlike it would be of those going street gangs, or certain other organized criminal groups. Within Toronto we've expanded to include radicalization. Many young people are just being led down the path. I say respectfully to elders that maybe in their day it was about going to California and joining the Hare Krishnas, which was not criminal and was not an issue. But what lured those young people there? What's luring them into terrorism, into that criminal extremism toward terrorism?

So we have expanded within the Toronto police. I also know that the Government of Canada, Public Safety Canada, has gone across the country countering violent extremism. They initially partnered as a pilot program with Toronto to expand the Toronto role. I know that across the country it certainly is a live issue. There are numerous... and it's international. I got an email from a peer in Australia who is coming here to Ottawa in May and who then wants to come to Toronto to look at exactly that. We're all struggling with it. It's a challenge, and with respect, the police are not the only ones and not necessarily the best ones to deal with it, because much of it is in the pre-criminal space and we need community groups and professionals who can better help us.

The Chair: Thank you very much, Mr. Garrison.

You have a point of order Mr. Garrison?

Mr. Randall Garrison: Yes. In the way we are conducting these hearings, we regularly get, as we have this morning, three questions from those who are supporting the bill, the Conservatives and the Liberals, and then fewer questions from those who are opposing the bill. I wondered whether the committee would consider granting Ms. May an opportunity to ask a question at this point.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): I appreciate

The Chair: Excuse me, Ms. May, you don't have the floor. Mr. Garrison, if one of the opposition or government members wishes to give up their time and forgo their round of questioning, and if we have the consent of the committee, that can happen. Otherwise, there is no other way.

Does any member wish to give up their time for Ms. May?

Some hon. members: No.

The Chair: Do I have support for this?

That is not happening.

Thank you.

Ms. Elizabeth May: Could I ask for a recount? It seemed as if only three—

The Chair: Excuse me, Ms. May, you do not have the floor.

We will now go to Mr. Payne for about a minute and a half, sir.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Chair.

I'd like to pass my time over to Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): I was just very concerned to hear from you, Ms. Palmater, that you think this bill literally covers everything. I'm not sure you quite understand that this bill is actually five separate and distinct parts. What you are referring to is actually under the proposed information sharing act. The purpose of that act is simply to allow one branch of government to push information out to a national security agency when that information is pertinent to the national security and safety of Canadians. So it actually has nothing to do with the amendments that are found in part 5 of this bill that relate to CSIS. It has nothing to do with the changes to the Criminal Code in another section of this bill. It's actually a stand-alone.

There are safeguards in this. I'd like to thank the inspector for bringing that up. You clearly said it. There are adequate safeguards in this legislation and you are in support of the information sharing aspects, but I'd like to ask the inspector a question with regard to warrants.

Why is it necessary for police and law enforcement to get warrants?

Insp Steve Irwin: Privacy laws prohibit the sharing of information. We then need to look to the courts to get judicial authority, or some judicial body, not always the courts.

Interestingly we've had some situations recently where, if we don't believe that we have a criminal offence but we need information that's in a holding, which in fact will support it and stop the investigation, we can't apply for judicial authority to get access to

information that would actually stop an investigation from continuing.

● (0945)

The Chair: Thank you very much. Your time has expired now.

At this point we will certainly thank our witnesses for coming in for this first hour.

We will then suspend for two minutes while we change our witnesses.

● (0945)

(Pause)

● (0945)

The Chair: Okay colleagues, we will reconvene now.

For the second hour we have three witnesses, whom we certainly welcome. In order from left to right the chair acknowledges, from the Union of British Columbia Indian Chiefs, Grand Chief Stewart Phillip, president. Welcome, sir. As individuals, we have Robert Morrison and also Wesley Wark, visiting professor, Graduate School of Public and International Affairs, University of Ottawa.

Thank you all for coming here today. As per the routine orders of this committee, you will have up to 10 minutes for an opening statement. After that there will be questions as per the order established within the committee, and answers from the witnesses.

For opening statements we will start off with Chief Phillip.

You have the floor, sir.

Grand Chief Stewart Phillip (President, Union of British Columbia Indian Chiefs): Good morning, everyone.

Wai xast skelhalt ipsi nuxsil. Echa es quist Ascasiwt.

In our nsyilxcen language, that simply means: Good day, my friends and relatives. My traditional name is Ascasiwt.

I want to begin by acknowledging the fact that we're on unceded Algonquin territory,

I want to thank the committee for the opportunity to be here this morning.

I want to commend Pam Palmater for her outstanding presentation here this morning. I want the committee to know that I certainly support pretty much everything she presented to the committee.

I don't have a detailed brief. I'm not a lawyer. I will start by reading a press release that we issued under our organization, the Union of BC Indian Chiefs. I may make a few comments about the bill itself, but I will rely on the exchange of questions to give further expression to our concerns.

With that, this press release is dated February 20, 2015, and it states as follows:

Anti-Terrorism Act Bill C-51 Will Infringe on Indigenous Title and Rights

(Coast Salish Territory/Vancouver, BC – February 20, 2015) This week, the Harper Government introduced Bill C-51, Anti-terrorism Act, 2015. Bill C-51 will radically and dangerously expand the powers of Canada's national security agencies and greatly infringe upon the rights of all citizens without making us any safer or secure.

Grand Chief Stewart Phillip, President of the Union of BC Indian Chiefs stated "The Union of BC Indian Chiefs believes the sweeping scope of Bill C-51 directly violates the ability of all Indigenous Peoples to exercise, assert and defend their constitutionally-protected and judicially-recognized Indigenous Title and Rights to their respective territories."

"It is absolutely appalling that as Indigenous Peoples protecting our territories we may be faced with the many insidious, provocative and heavy-handed powers that are granted by this omnibus Bill C-51. The Harper Government has dramatically changed internal government practices, policymaking structures and decision-making processes to serve an explicit natural resources development agenda. We have witnessed the gutting of environmental legislation, clamp-down of scientific analysis and comprehensive surveillance programs of Indigenous and environmental opposition," said Grand Chief Phillip.

Grand Chief Stewart Phillip concluded "As an act of civil disobedience, I was arrested at Burnaby Mountain because I believe mega-projects, like Kinder Morgan and Enbridge pipelines, do not respect the Indigenous laws and inherent authority of Indigenous Peoples to protect their territories, land and waters from the very real potential and increased risk of oil spills and increased coast tanker traffic along our coast. I believe under the draconian measures of Bill C-51, I would be identified as a terrorist. Regardless, I will continue to do what is necessary to defend the collective birthright of our grandchildren."

● (0950)

That public statement pretty much captures the essence of our grave concerns about Bill C-51, and I know that we stand in good company, in that at least four former prime ministers, several former Supreme Court justices, hundreds of academics and luminaries, the Canadian Bar Association, and other groups across this country—other human rights groups, civil rights groups, civil liberties groups—have all spoken out in opposition to this bill. The criticism is pretty much to the effect that this bill was cobbled together in the heat of political expediency, and it reflects many fundamental flaws and gaps.

Along with other indigenous leaders, including the National Chief of the Assembly of First Nations, Perry Bellegarde, we also call for the scrapping of Bill C-51 and call upon the Harper government to entertain a process that is more inclusive, that takes the time necessary to ensure that the constitutional and human rights, the civil rights, of all Canadians are taken into serious consideration in putting together a bill of this nature.

We believe that Bill C-51 is less about jihadist terrorists being under every bed or in every closet in every bedroom across this country and more about increasing the output of the tar sands and facilitating the heavy-oil pipeline proposals across this country and the megaproject agenda of the Harper government. It will serve to severely undermine the constitutional and human rights of indigenous peoples, rights that are certainly reflected in the declaration of indigenous rights that was embraced by the vast majority of countries in the United Nations. It certainly flies in the face of our constitutionally enshrined rights, and it most certainly flies in the face of our judicially upheld rights by the highest legal authority in this country, namely the Supreme Court of Canada.

Most recently the Tsilhqot'in decision, the Chief Roger William decision, stated very clearly that as indigenous peoples we have an inherent responsibility to our future generations to ensure that the environment and resources of our territories are kept intact for future generations. You can see that the Government of Canada has other notions vis-à-vis energy development in this country with respect to pipeline proposals from sea to sea to sea.

Those essentially encompass the concerns we have. I agree wholeheartedly with Pam Palmater and her recitation of the oppressive and repressive legislation over the last several hundred years that has attempted to sever our cultural and spiritual connection to our lands and territories, to our culture and language.

I believe there is sufficient and adequate provision under the Criminal Code and the current national security apparatus to accomplish the same goals that are reflected in Bill C-51. Like the national chief, I too have brought the most recent report. It's a 44-page report from the RCMP security service critical infrastructure intelligence team, which I believe is a broad association of national security organizations.

● (0955)

This shows you how diligent the government is at suppressing indigenous rights in this country.

The Chair: Thank you very kindly, sir.

Now, for your opening statement, Mr. Morrison, sir.

Mr. Robert Morrison (As an Individual): Thank you, Mr. Chair and committee members.

I've come here not only as an individual but also in terms of the prior role that I had with the government before I retired. A few years ago it was determined that there really wasn't any overarching coordination to ensure intelligence collaboration within the federal government. As a result, I was seconded to the Treasury Board Secretariat from the RCMP to be the director general of the information sharing environment in 2012.

As a result of that, I was there to establish a program for intelligence sharing across Canada. The program, which we called the ISE Canada, was to collaborate with agencies like CRA, CIC, DND, RCMP, CSIS and others. After eight months, due to the priorities of the Treasury Board Secretariat with the Shared Services Canada initiative, the funding was withdrawn, but I could just give you an example of one project I worked on while I was there.

It was a pilot project. I worked with two different agencies on a 400-kilometre stretch of the border between Canada and the United States. What we wanted to do was share intelligence files between the two agencies in a controlled environment, the control being that one group was in one room, the other in another room. What we wanted to do was to demonstrate whether both parties knew what investigations each was working on, as they said they did, or were there some missing links between the two agencies.

This was a very small, controlled environment, and what we found was that there were over 40 files that both of these organizations had no idea the other organization was working on. There were things like organized crime, gang involvement, importation of drugs, guns, and weapons importation. What it demonstrated was that although we thought we were sharing information, we really weren't doing a very good job of it.

The proposed anti-terrorism Bill C-51 will enable the creation of a Canadian information sharing environment. This program will increase security for Canadians by supporting intelligence and information sharing within government and supporting provincial, territorial, and municipal agencies.

Sharing information in a manner that is consistent with the Canadian Charter of Rights and Freedoms and with the protection of privacy will enable intelligence partners to support information sharing initiatives nationally and internationally with the right information to the right person at the right time.

It will enable effective and responsible intelligence sharing by driving collaborative intelligence initiatives, so it will be accurate, timely, reliable, proactive. What I'm talking about here is suspicious activity reporting. For example, we have an oil refinery where the company reports a hole in a fence. The municipality next door has a laundry and dry cleaning facility that had a break-in the night before and 40 uniforms are stolen that all belong to that oil refinery. The next municipality over had a large theft of fertilizer. We start putting these pieces together, and then add onto that an intelligence agency has a report from an informant that Mr. A was talking about causing some damages to an oil refinery. If we look at each one of those independently it really doesn't mean much. But when you start putting the pieces together, it means a lot.

It will enable efficient sharing through standards and shared technology to address common intelligence sharing needs. What I'm talking about here is accuracy. I'm talking about ensuring that the databases are accurate. It will improve nationwide decision-making through secure and trusted sharing between partners, being proactive, accurate, timely, and reliable.

It will protect the privacy rights of Canadians by developing a strategy for information sharing and protection. When I talk about protection, I'm talking about accountability, to have an independent third-party, non-partisan expert group of individuals to be the oversight group that monitors the information sharing.

I was in an airport on the weekend when the weather came in. I was in the interior and was stuck there for eight hours. It was a very small airport and had a small coffee shop. I was sitting there and there were only two plugs in the wall, and a fellow beside me used one for his computer and I used the other one. I started talking to him. He is a retired school teacher from a very small community, and he brought up Bill C-51 and said that he certainly didn't agree that they're going to share every piece of information with every single person in Canada.

•(1000)

I happened to mention I was coming here today, and I said "Well, that's not quite true. Some people have looked at the act and dissected small pieces of it, but when you look at the whole information sharing act, you'll see that there is accountability built in, that everyone wants to make sure that the information is shared in a manner that is accountable and responsible."

The creation of the Canadian ISE program will achieve the following outcomes: it will support the Minister of Public Safety and Emergency Preparedness to ensure effective coordination of Canadian intelligence information in the security or intelligence communities; establish an ISE senior level inter-agency advisory group to enable governance related to information sharing standards and initiatives; establish a cross-government ISE privacy accountability committee to ensure information or intelligence sharing privacy compliance with the legislation; promote information sharing culture across all partners through training and support

initiatives; support Canadian participation in Beyond the Border and other information sharing initiatives; develop a national strategy for information sharing and protection; encourage the use of data standards among all agencies; support and encourage provincial, territorial, and municipal involvement; demonstrate successes by involving agencies in projects to identify information and intelligence gaps and inefficiencies; and identify leaders in business process, operations, standards, architecture, security, access control, privacy protection, and accountability.

Bill C-51 will ensure accurate, timely, and reliable information sharing while protecting the privacy of our citizens.

Thank you.

•(1005)

The Chair: Thanks, Mr. Morrison.

Professor Wark, you have the floor, sir. Welcome back.

Mr. Wesley Wark (Visiting Professor, Graduate School of Public and International Affairs, University of Ottawa, As an Individual): Thank you, Mr. Chair, and members of the committee. It's dangerous to ask an academic to speak for only 10 minutes. I'm going to read from a prepared text.

I thank you for this opportunity to address the committee on the important matter of Bill C-51. This is the second occasion in which I have testified in this House on omnibus anti-terrorism legislation. The first occasion took place nearly 14 years ago during the debate over Canada's first anti-terrorism legislation, Bill C-36.

Times have changed. We now live in a post-al Qaeda age, but the fundamental issue that we struggled with as a society in 2001 remains the same in 2015, that being how to meet security threats in such a way as to maintain a necessary balance between the powers given to security and intelligence agencies and the protection of democratic rights, including privacy rights. The 2004 national security strategy was aptly entitled to reflect this challenge of securing an open society.

Let me begin by saying that we are hobbled in our analysis of this bill by three things. One is the absence of any update by the government of its counterterrorism strategy, which was last produced in August 2014 before the recent cycle of terror attacks, including those in Canada in October 2014; in Sydney, Australia in December 2014; and in Paris in January 2015.

A second is the absence of any inquiry report into the tragic events of October 2014 that would help us understand any legal, operational, or analytical deficiencies that might have contributed to the failure to prevent those attacks.

The third deficiency is the lack of any substantial explanation for the need for the individual parts of the bill, either in the language of the bill itself, in the brief backgrounders prepared by the Department of Justice, or in statements made by the government that have referred in boilerplate language to the evolving terrorism threat and the need for new capabilities to meet it.

The evolving terrorism threat can be considered to have three dimensions, namely, the threat posed by jihadist terrorist groups engaged in insurgency campaigns abroad to seize territory and build state-like capabilities; the campaign of individual homegrown jihadists to inflict violence in the domestic sphere; and the connecting tissues between these threats, which are the foreign fighter problem and the broader issue of cyber incitement. Bill C-51 addresses two of these three strands and does so in a tactical, as opposed to a strategic, way.

I would divide the bill into three baskets. First, those elements that can genuinely advance security capacities in a reasonable and proportional way. Second, those that do not advance our security capabilities or fail to maintain the vital security rights balance. Thirdly, those parts of the bill that deserve to be put on hold for deeper reflection and not be rushed into law before the summer recess.

In the first basket of appropriate security enhancements I would place the proposed information sharing act, part 1 of the bill; the proposed changes to Canada's no fly list, part 2 of the bill; and selected components of part 3 of the bill concerning amendments to the Criminal Code with respect to peace bonds, preventative detention, and the dismantling of websites conveying terrorist propaganda.

To be sure, parts 1, 2, and 3 of the bill would greatly benefit from some detailed amendments, in particular to bring greater clarity, heighten their efficacy, reduce their over-breadth, and bolster the security rights' balance. I have respectfully suggested some key changes that could be made to the bill in the detailed brief I submitted to the committee.

The provision that I would argue should be abandoned in its present form concerns the criminalization of the promotion and advocacy of terrorism. While such a criminal sanction might be emotionally satisfying, as currently presented in the bill it operates as a remove from the commission of a terrorist act and is in effect a speech crime. In addition I would argue that the operational burden on our national security agencies tasked with investigating such speech crimes is not commensurate with the likely payoff. We must understand that security and intelligence capabilities are finite and must be carefully deployed to maximum benefit.

Provisions I would put on hold for further study include parts 4 and 5 of the bill. We need to have a proper conversation about security certificates, which are the subject of part 5. In the time I have remaining, Mr. Chair, I will focus only on part 4.

•(1010)

Part 4 of Bill C-51 gives CSIS explicit and broad lawful authority to engage in disruption or threat diminishment operations. I think many Canadians do not understand that CSIS already conducts forms of disruption operations associated with their intelligence collection mandate and that such operations were reviewed some years ago by the Security Intelligence Review Committee.

The SIRC study summarized in its 2009-10 annual report noted that the CSIS director had testified in Parliament in May 2010 that disruption operations should principally be left to the RCMP. Whether or not the current CSIS director would disagree with his

predecessor and why is not known. SIRC recommended two things: the creation of appropriate internal policy controls for CSIS disruption operations and the provision of strong ministerial directives. Whether these recommendations were accepted and acted upon is not known, but I think it would be important for this committee to satisfy itself about this matter.

I would also urge that CSIS disruption powers be focused on operations abroad against Canadians, under appropriate controls. A domestic lead on disruption or threat diminishment should be left to the RCMP where it currently resides, and where I think it belongs. The RCMP has developed important capacities in this area through its inset teams, through front-line policing, and through community engagement or outreach programs.

In conclusion, Mr. Chairman, it should surprise none of us that first drafts of complex legislation may not be perfect. It is vital that parliamentary consideration be aimed not only at improving the bill and ensuring that it balances security imperatives and rights protections, but also at ensuring to the greatest degree possible a Canadian social consensus. If these are not difficult enough goals, it is important as well to be very clear about what is missing in the bill and will need to be addressed another day if not provided for in amended legislation.

The missing pieces include the need for greater measures for intelligence and security accountability; greater mandated government transparency in regard to national security; and acknowledgement of the secret elephant in the room, which is the counterterrorism mission and capabilities of the Communications Security Establishment, whose enabling legislation passed with the Anti-terrorism Act in 2001, and which desperately requires fixing, from my perspective. It is also important to understand that Bill C-51 does not address a critical need, which is improvements to Canada's threat assessment capability. It is no good sharing a great deal of information, no good having new powers to collect new kinds of information, if you can't make sense of it through a robust threat assessment capability. Finally, of course, there's the issue of new resources to match new powers about which the government has been so far silent.

Thank you.

•(1015)

The Chair: Professor Wark, thank you very kindly.

I thank all of our witnesses for their testimony here today.

We will now go to our rounds of questioning. We will start with a seven-minute round.

Mr. Payne, you have the floor, sir.

Mr. LaVar Payne: Thank you, Chair.

Thank you to the witnesses for coming to provide your input on this very important bill.

We had a few witnesses here yesterday. I want to cite a couple of remarks from them.

Salim Mansur, a professor, said there is no freedom without security. He also said that we're in a global war and that that war has changed dramatically.

Professor Davies was here as well. He made some very important comments, noting that terrorists are real and that borders are meaningless. He said that the Internet lone wolf and other changing realities are happening and that terrorists tactics are changing very quickly. He believed that bill addresses some of these issues.

Finally, I just want to make a comment regarding what the sister of Patrice Vincent said, that silos have created a bit of a problem as well.

That's where I really want to go, Mr. Morrison. As I understand, you have a fair amount of experience. I wonder if you could touch on some of those experiences you've with information sharing and the protection of Canadians.

Mr. Robert Morrison: I retired from the RCMP after 35 years, most of it on the intelligence side. I was also a liaison officer, a diplomat, in Islamabad, Pakistan. When I was there I was responsible for 17 countries, including Afghanistan and other "stans", the UAE, Saudi Arabia, Iran, Iraq. I was there to develop and work with intelligence agencies in an effort to share information. That was in 2002.

I've been a guest speaker at a Middle East law enforcement policing function on intelligence information sharing. I was a guest of the Greek government in 2003, prior to the Olympics, on intelligence sharing internationally. As the director general of the information sharing environment, I worked a fair amount with the United States and EUPOL, looking at different ways in which we could effectively share information while being safe, secure, and of course, ensuring the privacy of Canadians.

My experience is fairly worldwide, and I have been retired for only two years.

Mr. LaVar Payne: It sounds as though you're still not retired.

Mr. Morrison, one of the main concerns about this legislation involves information sharing: that the scope of the definition of activities that undermine the security of Canada is too broad and the language used too vague, which could lead to excessive sharing. I know you have made some comments on that matter in your opening remarks, but we still have conspiracy theories about it coming from certain witnesses and groups across the country.

Is there any clarification you could offer to this committee with respect to the purpose of the act and how you expect it should and would be used along with oversight mechanisms?

Mr. Robert Morrison: When I first started with the ISE, I embedded some staff members from the Office of the Privacy Commissioner to help and guide us. From reading the proposed new security of Canada information sharing act, I know that it is implied that there will be strong oversight. It is specific in that it will be done by, I believe, independent, third-party, non-partisan experts much like SIRC, to make sure and to audit all the information that is being shared. The Officer of the Auditor General is also, under the act, going to be reviewing the files to ensure that there is compliance with our privacy concerns.

I think people may just have taken snippets of the bill and not have reviewed the entire bill.

I see it as a necessity. I don't know how many people have said to me in the past month or two: "Do you mean we don't share information with everyone? We don't do that? I don't understand."

• (1020)

Mr. LaVar Payne: Thank you.

There was a recent article about a fisherman opposed to oil tankers, film makers documenting civil disobedience, and journalists advocating an independent Quebec. It asks, what do these groups have in common? It states that each would have been charged with terrorism under the Conservatives' draconian Bill C-51—this is what has been reported—which would criminalize any action deemed to be a threat to the economic and financial security of Canada or Canada's diplomatic relations.

This sort of information, I believe, is being spread by the opposition and media. Do you believe it to be a true statement? Do you believe that CSIS and the RCMP would have the time or desire to have government agencies provide them information about protesters or that they would act upon it if there were no reasonable grounds to investigate?

Mr. Robert Morrison: Absolutely not. I have heard some of the testimony. I have listened to the testimony over the last several weeks. It was funny that the individual I made mention of in the airport was telling me that he was a protester against some logging companies and what not—it's a small area—and I just mentioned to him that the intent of the act was specific, that it was terrorism, not the protests that he was talking about.

Mr. LaVar Payne: I agree. The legislation seems very clear with respect to information sharing and the need for it to be relevant to national security, and I think that's what you are touching on.

Could you comment on the importance of having a framework in place that encourages information sharing related to national security, as distinct from the silos that have often existed?

Mr. Robert Morrison: The reluctance to share information is also a historical issue. That's another battle, to encourage people to share information when they should and to do so in a timely manner.

I think what you're talking about is a culture that we have to change in order to fight terrorism. We are finding that small pieces of information are so relevant, yet we don't share them at the time. It is important to develop a strategy that trains not individuals but agencies, and which has some oversight so there is accountability with the different agencies so that they share information when they should and not share it when they shouldn't.

The Chair: Thank you, Mr. Payne. Your time is up now, sir.

Thank you, Mr. Morrison. We'll let you continue at another opportunity.

We'll go now to Ms. Ashton.

You have the floor.

Ms. Niki Ashton (Churchill, NDP): Thank you very much, and thank you to our witnesses.

Thank you, Grand Chief Phillip, for joining us today. It's an honour for our committee to hear from you. Thank you for making the trek from the the west coast to share your testimony.

Grand Chief Phillip, as you alluded to in your presentation, you have been on the front lines of first nations' fight to defend their territory and inherent rights. I feel that today is a bit of a snapshot in which we get lost in the weeds around the focus on the international, rather than looking at the very negative impact this piece of legislation will have on our domestic reality—particularly on indigenous leaders, members of indigenous communities, and others as well who are opposing this government's agenda. Do you believe that the goal of Bill C-51 is to instill fear in you and other indigenous leaders, and even to criminalize the kinds of positions you have been taking on behalf of your people?

Grand Chief Stewart Phillip: Thank you for the question. The short answer is yes. The longer answer is absolutely yes.

I don't think there's any doubt in our minds that the real intent of Bill C-51 is to coerce and intimidate indigenous peoples away from defending and protecting their hard-fought international rights expressed in the UN Declaration on the Rights of Indigenous Peoples, our section 35 rights in the constitution of this country, and the hard-fought battles through the Supreme Court of Canada.

This bill will criminalize pretty much everything that has brought us to this point in our history, in terms of being able to assert our rights and ensure that our interests are fully protected. As I know you have heard in previous presentations, much of our history would have been lost if this legislation had been introduced 40 years ago.

I have been involved in these issues for more than 40 years. I served as chief of our community for 14 years, and for 10 years before that I was a member of our council. This is my 16th year as president of the Union of B.C. Indian Chiefs, and I'm the chair of our tribal council. I'm 65 and I have 14 incredibly beautiful grand-children whose future I am gravely concerned about, given the direction in which this country is moving.

● (1025)

Ms. Niki Ashton: Thank you.

Earlier we heard powerful testimony from Pam Palmater about the surveillance she has been a target of. We are also aware of other indigenous activists who have been targeted. We also know of Cindy Blackstock, a social worker who has put forward a case to the Canadian Human Rights Tribunal about the underfunding of child welfare for first nations children in our country. We know that she has been under surveillance by government departments. There is a long list of very recent examples of surveillance, including one uncovered in 2013 showing that the National Energy Board was working with CSIS and the RCMP monitoring activist groups ahead of the Northern Gateway pipeline hearings.

Grand Chief Phillip, should we all be very concerned as Canadians about what this bill would mean in terms of exacerbating the kind of surveillance of first nations people that already exists?

Grand Chief Stewart Phillip: Again I think the short answer is yes. The work I do is political advocacy, and Bill C-51 talks about criminalizing public expression of political advocacy work itself. Obviously our leadership is going to have concerns about what this bill represents to our rights to freedom of speech, freedom of assembly, and freedom to publicly express our world view as it relates to the environment and our traditional territories.

We're gravely concerned and, again, we're absolutely convinced this is less about jihadi terrorism in this country and more about facilitating and promoting the tripling of the output of the tar sands.

Ms. Niki Ashton: Thank you.

Do you think this piece of legislation is out of touch with Canada, certainly post the Tsilhqot'in case with the courts recognizing inherent title and what that will mean for first nations across the country who have been fighting for this position to be recognized.

I've heard from activists who have said that the recognition of first nations' inherent title at the court level and the first nation activism that will come from that will only be targeted by this bill. Do you think this government is out of touch with the courts and the direction that first nations will be taking from here on in?

Grand Chief Stewart Phillip: Yes, absolutely.

In British Columbia, the Supreme Court decision in the Tsilhqot'in case repudiates forever the notion of *terra nullius*, the doctrine of discovery, and indicates very clearly that our aboriginal title, rights, and interests are territorially wide in scope, as opposed to the tired arguments that have been brought forward by Canada and British Columbia in terms of small spots.

Our jurisdictional interest is territorially wide, which puts us on a collision course with major resource development projects, which are the heart and soul of the Harper government. Bill C-51 talks about threats to the financial and economic stability of the country, which puts that under the shadow of this very abstract and broad notion of what represents terrorism. Again, we're gravely concerned about this.

● (1030)

The Chair: Thank you, Ms. Ashton, your time is up now.

We will now go to Mr. Norlock for seven minutes, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Chair, and through you to the witnesses, thank you for appearing today.

Mr. Morrison, I think Canadians would surely be interested in how, internally, the RCMP and CSIS.... You've called yourself an intelligence officer and some people want to call you a spy, and I think there's a difference and you might want to explain why you think you're one or the other or both.

However, I wonder if you could tell us how on a daily or a frequent basis we Canadians can be relatively assured that you keep within the bounds of the legislation that governs your actions. How does the review body, SIRC, enter into that regime of making sure that you keep within the bounds of the exercise of your authority vis-à-vis the law and legislation?

Mr. Robert Morrison: In response to SIRC, for example, which is the independent review committee for CSIS and the RCMP, they have a review committee with expertise in the activities of CSIS. So when they're auditing the CSIS files, investigations, and the sharing of information, they understand what they should and shouldn't be doing. Rather than a review committee that might be made up of academics or those who might have expertise in other areas, they're picking people who are experts within that field. They understand what is lawful and what is reasonable, and when they have questions, they can conduct an audit. They can audit both the RCMP and CSIS.

You've had a lot of experts come here to talk about information sharing. I would propose exactly the same type of oversight of information sharing, with such experts on the review committee, to ensure that under the information sharing act, it stays within the same limits as the SIRC or as the RCMP, as they're accountable.

Mr. Rick Norlock: Part of my question was this on a daily or frequent basis. I know that police officers go on courses and that their supervisors and others tell them about recent court cases that affect the way they do their jobs, how they should do their jobs, and what they need to keep up with daily. Each agent with CSIS or officer with the RCMP would report to a superior, who would ensure that they're adhering on a daily basis to their governing legislation. Can you tell us how that functions, how that works to ensure that members of the RCMP and CSIS are kept within the bounds of the legislation governing them?

Mr. Robert Morrison: Certainly. As a field agent or as an individual who was working on a street-level intelligence-gathering process, they would report first to their first supervisor. Depending on what job they were doing, they would report daily to the supervisor as to what actions they'd taken. That supervisor would be accountable to another level of supervision. The levels of supervision would go up until there was an overall commander responsible for that investigation or that project they'd been working on.

Daily reports would come in. The overall officer or person in charge would review what had happened by all the different investigators who were working that day to ensure that they were compliant with the processes for whatever job they were doing, whether in information sharing or in an enforcement action with regard to a judicial request. They would be reporting daily through supervision levels.

As well, each organization would have its own internal audit process. They call it quality assurance. They might not do so daily, but they would review that to ensure that if there were any changes in legislation or any changes in processes, the supervisors would be well aware of those and they could pass that information down to the investigators.

Mr. Rick Norlock: Thank you very much.

In your preliminary 10-minute speech to us, you indicated that in one particular case there was a 400-kilometre stretch of border you looked at or examined and that you found some 40 instances of information sharing. I wonder if you could give us examples, because they would provide us with a clear view of what the legislation would be able to do to overcome those obstacles. If this legislation were passed, how, specifically, would it aid those agencies to make sure that each understood what the other was doing, and how could that contribute to better enforcement of the laws and regulations we have?

• (1035)

Mr. Robert Morrison: Well, one instance I gave you was the example of an individual who was involved in organized crime, a gang member. That gang member frequently crossed the border, back and forth, and the people at the border had no idea. The information sharing act will allow the organizations to share information proactively so that they will be able to say they know who that individual is. The next time they have an interaction with that individual, they'll have information based on the sharing of information from the other agency.

Mr. Rick Norlock: Thank you very much.

In your time with CSIS and the RCMP, did you observe or feel there were any systemic prejudices in your organization with regard to any individual groups? Or would I be correct in saying that would happen only where there was criminality in any group or cadre of Canadian persons?

Mr. Robert Morrison: I have vast experience over 35-plus years of dealing with different law enforcement agencies internationally, and I would say I've never seen that. As well, I would encourage indigenous leaders to be part of the governance when we start developing what is going to be shared in the information-sharing act.

Mr. Rick Norlock: Thank you.

The Chair: Thank you very much, Mr. Norlock.

Mr. Easter, go ahead for seven minutes, please, sir.

Hon. Wayne Easter: Thank you, Chair.

Thank you to all three witnesses for coming.

Mr. Morrison, you said that you had worked for the federal government—I didn't catch the year, but I think it was in 2012 or that it ended in 2012—on the whole information-sharing act aspect. I do agree with you on the point that information, whatever it is, has to be accurate, timely, and reliable, especially in the area of counter-terrorism.

You said that the funding was withdrawn. Can you name the program and when that happened?

Mr. Robert Morrison: I was seconded to Treasury Board Secretariat, and the funding was withdrawn as the Treasury Board was just starting the Shared Services Canada initiative. That was a higher priority at the time.

Hon. Wayne Easter: One of the things that I think we, and a lot of people, are increasingly concerned about, which I didn't expect to come forward at this committee, is resourcing. It's important too. The Minister of Public Safety had said that there will be no new financial resources required to do the things that are required under this act. If there are no new resources, in my view, the job won't get done.

We know now there are cutbacks in the RCMP to the point that they're having to move personnel from criminal investigations to anti-terrorism investigations. I say that just to raise the point that funding is an important issue for us to be able to do what needs to be done in dealing with terrorism analysis.

Mr. Wark, I went through your long submission as well. I do appreciate your work and the fact that you've outlined in there a number of recommendations. In your longer paper you do talk about—and you mentioned it as well in your remarks—the elephant in the room being the CSE.

Can you expand on that somewhat? CSE is certainly not mentioned in the bill, as you say in your submission, but how important is it that all the elements related to public security and national safety be looked at for accountability and oversight reasons, the whole combination?

It's not just enough to do SIRC when you're talking of a bill of this magnitude. Can you perhaps expand on that.

• (1040)

Mr. Wesley Wark: Thank you, Mr. Easter.

My comments regarding CSE being the secret elephant in the room really refer to the fact that CSE is one of our leading national security intelligence agencies, with a three-part mandate, as you will know. It includes foreign intelligence gathering; cyber-security, a cyber-security mission and a third part, which is assistance to law enforcement and security agencies in Canada.

I think what we will see with Bill C-51, if it passes in either unamended or amended form, is that CSE will be deeply engaged by the various new provisions in Bill C-51 under the third part of its mandate, in which it really relies on the lawful authority of other agencies to conduct the collection of electronic information, whether at home or abroad. I think in a way that is leading CSE into a secret space where it shouldn't be left, in terms of Canadians' understanding of the significance of its role.

The second thing I would say briefly—and I mentioned it both in the longer brief and in the prepared statement—is that CSE's enabling legislation was passed in 2001 as part of the Anti-terrorism Act. I commented on that enabling legislation at the time and raised questions about it. It was an experiment, enabling legislation, and I think it's an experiment that hasn't passed the test of time, as successive CSE commissioners have complained over and over again that there are aspects of the legal authority under which CSE operates that are simply insufficient, particularly with regard to ministerial authorizations.

I think Bill C-51 presented us with an opportunity to update and amend CSE's legislation, an opportunity that has, to my mind,

puzzlingly not been seized by the government, and it's left Canadians not appreciating how crucial its role is in the counterterrorism field.

Hon. Wayne Easter: Thank you.

I would submit that Bill C-51 still does present us that opportunity, if government backbench members—there's not a member of the executive here—stand up in their own right stand at this committee and allow amendments, because that can happen. Bills can be improved. It's only in recent Parliaments that we have seen bills go through, with witnesses not being listened to, and the resulting bill being the same as the one that came to committee. That's unacceptable in a democracy like Canada's.

In any event, related to the CSE, I have here the report of the U. K.'s Intelligence and Security Committee of Parliament. This is one of the possibilities that was looked at for proper oversight of all their intelligence agencies. In the report, the chair says, “The Committee sets its own agenda and work programme” and “takes evidence from Government Ministers, the heads of the intelligence Agencies” and security agencies, etc.

Would that concept at least be helpful in bringing some satisfaction that there is proper parliamentary oversight of all our security agencies and give Canadians some confidence that, on the one hand, security agencies are doing their job using the authorities they have under the law, but also, on the other hand, not overreaching and using the law for things that might impact on civil liberties and freedom of expression?

The Chair: Just a brief response, please.

Mr. Wesley Wark: Very briefly, I'm very much a fan of the British model, the Intelligence and Security Committee of Parliament, which has now been in existence for a number of years. Its powers were recently expanded.

If we were to adapt such a model to Canadian needs, it would not only fill a huge gap in the current accountability regime, which is the inability of Parliament to successfully scrutinize security and intelligence activities in this country, but it would also provide for a kind of strategic level look at the whole range of intelligence and national security activities, which is also currently absent from our accountability system, as Justice O'Connor understood in volume II of his report in the Arar inquiry.

• (1045)

The Chair: Thank you very much.

Thank you, colleagues.

To our witnesses, on behalf of the committee, thank you very kindly for taking the time and making the effort to come here today.

The chair will make one quick note. We will meet again this evening, of course. Our timing could be a little suspect due to the voting requirements, but we will meet regardless, for two hours, immediately after the votes.

The meeting is adjourned.

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