Presentation to Standing Committee on Public Safety and National Security

Re

Bill C-51 - *An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts*

Submitted

By

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I. INTRODUCTION

Thank you for inviting me to speak to your Committee today on *Bill C-51 – Anti-Terrorism Act*. I must first acknowledge that we are having this discussion on the traditional territory of the Algonquin Nation and this is not merely a polite acknowledgement. The state of Canada would not be possible were it not for the generosity, compassion, and political cooperation of the Indigenous Nations on Turtle Island. We were never conquered, nor were we defeated in any war. Canada's very sovereignty (*vis-a-vis* other states) rests entirely on the prior and ongoing sovereignty of our Indigenous Nations. In other words, the state of Canada could not exist without us – either practically or in law.

It is important that you all remember that the very power, rights and privileges you have sitting here as Canadian government officials stem entirely from the power, rights and privileges that we, as Indigenous Nations, shared with you. Were it not for the treaty and other good faith agreements between our Nations, you would not be sitting here today. The treaties signed in the Atlantic region, my traditional territory, were absolutely necessary to bring about peace. The scalping bounties placed on our heads for refusing to surrender our lands did not dissuade us. Canada simply could not have carried on with the settlement project without our peace treaties.

Today, those treaty and other good faith agreements form the very basis of Canada's democratic governing system. They are included in Canada's foundational document – *The Constitution Act, 1982*, and are further protected in numerous international laws, declarations, and conventions which Canada has supported, signed and/or implemented. Canada is not a legitimate state without the recognition, respect, and implementation of those agreements. While the numerous treaties and agreements have different wording, they all boil down to three main pillars of our Nations to Nation relationship: mutual respect, mutual prosperity and mutual protection. We have lived up to our end of the bargain by respecting your governments, by sharing all we had with you, and by defending you in your wars. Canada has failed to live up to its end of the bargain. It has failed to respect our sovereignty, failed to share the wealth, and instead of protect us, Canada continues to harm us.

Now, Canada places this anti-terrorism omnibus bill before Parliament without any discussion about its possible impacts with the First Peoples. You have failed to meaningfully explain, answer questions, consult, accommodate and get our free, informed and prior consent on a bill which goes to the very heart of our Nations to Nation relationship: the protection of the peoples of this shared territory. All of the beauty, wealth, and sustenance that the lands in Canada provide have belonged to, and been the responsibility of, Indigenous Nations since time immemorial. There is no other individual, group, community, or Nation more interested in national security, than those who have been protecting these lands since time immemorial – Indigenous Nations. Our governments - Canadian and Indigenous - have a shared responsibility to protect the lands, waters, plants, animals and people on our collectively shared territories within Canada. This includes national security concerns.

It would improve our Nations to Nation relationship immensely if you were all to remember that.

II. CRIMINALIZATION OF INDIGENOUS PEOPLES

Canada has a long history of criminalizing every aspect of what it means to be an Indigenous person. From the earliest days of contact, colonial lawyers and government officials attempted to categorize the territory on Turtle Island as *terra nullius* – empty lands not claimed by anyone.[1] They did this to dispossess our Indigenous Nations of our lands and in so doing, had to treat us as non-humans in order to justify any claim that these lands were not "claimed".[2] The vilification, suppression, and elimination of Indigenous identity, culture, and sovereignty became the overall policy objective of colonial governments.[3] And all of it was done legally – that is to say, with duly passed legislation enacted by colonial governments.[4]

The scalping bounties of 1756 are a good example of legalizing the murder of Mi'kmaw men, women and children in the name of settlement and national security.[5] It should be noted that these bounties were placed on our heads after we signed peace treaties.[6] Our elders tell us that our refusal to give up our sovereignty, identity, and lands meant we lost much of our population from scalping bounties.[7] National security, at that time, meant protecting colonial interests in Mi'kmaw lands, resources and trade routes – also known as economic and financial stability. But we resisted. We refused to surrender – despite the "legal" bounty on our heads.

From then on, colonial governments criminalized every aspect of Indigenous identities. Early versions of the *Indian Act* outlawed our ceremonies and dances.[8] So some of our Nations had to hide our regalia and practice our dances and songs in secret.[9] Criminals in our own lands, we knew we had to break the law to protect our culture for future generations. After separating our Nations into tiny, relocated communities called reserves, our traditional forms of government were replaced by *Indian Act* Chief and Council governing system.[10] This was the law, so Canadian officials would not deal with anyone but the legally-recognized governments. But many of our Nations resisted and maintained our traditional forms of government alongside the new ones. Our Mi'kmaw Grand Council remains our legitimate governing authority – despite the lack of legal recognition.[11]

When we tried to officially reject and resist these discriminatory laws, Canada used the *Indian Act* made it illegal for lawyers to represent Indigenous peoples or help us make legal claims.[12] To ensure that we could not gather with the rest of our larger Nations, our people were legally confined to small reserves. We could not leave reserves without an official pass from the Indian agent.[13] Our right to gather, to meet in assembly and advocate on our own behalf was legally prohibited. Similarly, any intermarriage with our treaty partners was outlawed and Indigenous women and their children lost their right to belong to and live amongst their communities.[14]

So, through legally debated and enacted legislation, we were prevented from leaving our reserves and engaging in our traditional subsistence economies to provide for ourselves. Over the years, federal and provincial governments enacted numerous laws and regulations to criminalize Indigenous peoples who hunted, fished, gathered or used natural resources within our own traditional, treaty, trapping or reserve lands.[15] Though our ancestors had hunted and fished since time immemorial, and despite the numerous treaties which promised to protect our right to hunt and fish, we were treated like criminals, arrested, charged and our gear seized. The only

alternative was to "skulk around the forest" like criminals in order to feed our families.[16] The only way to survive was to break the law to feed our families.

Many other aspects of our lives were outlawed – like our right to speak our languages, engage in our cultures, or be educated in our own traditional Indigenous knowledge systems by our elders. The *Indian Act* made it illegal for us to refuse to send our children to residential schools.[17] In fact, if we tried to run away, the RCMP would chase us and drag us back to those schools.[18] Even the forced sterilizations of some of our women and little girls were done through validly enacted legislation.[19] Although our languages were never officially outlawed, government policy was specific in its intent to "kill the Indian in the child".[20] Sadly, Canada too often killed the child through various forms of torture done by third parties including rape, physical and mental abuse, starvation, neglect, and allowing others to medically experiment on our children.[21] This was all done under the law. Our families often broke the law to hiding our kids from Indian agents.

Although some of these laws are no longer on the books, modern laws are still used to criminalize every aspect of our identity. For example, the Mohawks have traditionally engaged in the growth, manufacture and trade of tobacco. Today, because their lucrative business interferes with the economic aspirations of various corporations, their traditional activities are publically condemned by governments and non-native businesses as "contraband" and have been made illegal.[22] Standing up, as we have done since time immemorial, to protect the health of our lands, waters, plants, animals and people have also resulted in our beatings, arrests, prison terms, and/or deaths.[23] All of this done under duly enacted Canadian law. The crisis of murdered and missing Indigenous women and girls shows how unresponsive Canada is to use current laws to protect us – versus harm us.[24]

The criminalization of Indigenous peoples has taken a drastic turn for the worse. Now, even our very poverty - caused from our oppression, Canada's discriminatory laws, and the theft of our lands and resources - is a reason to criminalize us. Indigenous peoples are grossly over-represented in Canada's prisons systems and the Office of the Correctional Investigator Howard Sapers has been calling this a crisis for over a decade.[25] Our families who struggle to provide food and warm clothes for our kids, have their children stolen from them and placed in foster care at rates higher than during the residential school phase.[26] In Manitoba, 90% of all children in care are Indigenous.[27] Provincial officials use various laws and policies to legally rob our communities of our children.

Now, even the ways in which we resist such inhumane and discriminatory treatment has been labelled as "insurgent" and "a threat to national security".[28] The many ways in which we peacefully assert, live, and defend our sovereignty and autonomy; the ways in which we defend our Aboriginal, treaty and inherent rights; and the responsibility we have to protect the lands and waters we share with our treaty partners – are all now considered acts of "insurgency".[29] Under *Bill C-51*, our very voices will be criminalized. Our private conversations – one of the few ways left to comfort and support one another – will be criminalized. Stopping the clear-cutting of our forests, the strip-mining of our farm lands, or the contamination of our waterways, will all be threats to national security as they interfere with Canada's economy.[30]

III. PROFILE OF THE "NEW TERRORIST"

My name is Pam Palmater and I am a proud Mi'kmaw woman and daughter of a Mi'kmaw warrior and WWII vet (Frank Palmater), granddaughter of a Mi'kmaw medicine woman and healer (Margaret Jerome) and great granddaughter of one of the last traditional Mi'kmaw Chiefs (Louis Jerome) for my community, Eel River Bar First Nation. I have eight sisters, three brothers, and six beautiful children. I am a doctor, lawyer, professor, author, and speaker. However, my public reputation varies greatly depending on what end of the political spectrum you sit.

For most Canadians, they would look at my résumé and see someone with four university degrees, someone who works in respectable professions as a lawyer and professor, and someone who gives all of her free time to advocating for social justice for both Indigenous peoples and Canadians alike. As a lawyer, I am bound to uphold the law and have never been charged or arrested for any crime – big or small. I am morally and ethically bound to speak truthfully and based on the facts before me. I have never advocated violence, destruction or harm to anyone.

Yet, for those that belong to the radicalized, fringe, extremist right-wing part of society, like white supremacist groups, the former Sun News, or Prime Minister Harper's Conservative government, I am what is known as a threat to national security – the new domestic terrorist that PM Harper is trying to silence in *Bill C-51*. My résumé would read very differently depending on who is doing the reading – which is the core problem with *Bill C-51*. The current radicalized, Conservatives would get to decide what is "lawful" dissent, advocacy and artistic expression.

General Canadian Perspective	**Radicalized Right-Wing Conservative Perspective**[31]
Women's Courage Award in Social justice	"Radical"
DAL Bertha Wilson Honour Society Human rights advocate	"Whacko extremist"
UNB Alumni of Distinction Indigenous rights advocate	"Bad Indian"
Prize in Natural Res & Environment Law Environmental Activist	"Eco-terrorist"
YWCA Woman of Distinction Indigenous Women's rights	"Enemy of the people"
Top 25 Most Influential Lawyer (Human Rights)	"Top Five to Fear"
Canada's Top 23 Women Visionary Leader Treaty Rights	"Dangerous militant"
Idle No More educator promoting partnership between First Nations and Canadians	"looking for a race war"

The issue for me is not just how I am portrayed in the public by the government or the right-wing media. My biggest concern is how my right to privacy has been violated and how my activities, movements, speeches, and social media are monitored and reported on by government and law enforcement. Without *Bill C-51* having been passed yet, government surveillance of my activities and whereabouts is already occurring. In my Access to Information and Privacy (ATIP) request to CSIS, they explain that they have the right to prevent "subversive and hostile activities" against the Canadian state, but they don't explain how my activities warrant keeping a file on me. It's no surprise 95% of the documents they provided were redacted.

In my ATIP to Indian and Northern Affairs Canada (INAC)[32], they would not confirm the different ways in which they monitor me, except to say that since I am "an active voice in the conversation relating to aboriginal issues and affairs" they do conduct "analysis". INAC sent over 750 pages of documents as part of that ATIP request redacting numerous pages. Some of the documents included emails between department officials about my whereabouts, what provinces I was travelling to, where I was speaking, and the dates and times. One email indicates that my "security file" was allegedly destroyed in 2006 and they no longer had records or copies.

When I attend at gatherings, rallies, protests or other public or private events with a view to advocating on a particular issue, I often cannot make cell phone calls, send texts, or access my social media. At times, I am also prevented from accessing funds from any major bank on any of my accounts or credit cards. At certain protests, I can text or communicate with work colleagues and my children, but not other activists or Chiefs – even if they are at the same event. This makes staying organized and ensuring everyone's safety and comfort – including my own - very difficult when communications are blocked. It's bad enough the right-wing media calls me an "enemy" and posts maps of my house on television, but if I cannot call for help, that puts me at risk. I don't need to remind this committee of the staggering statistics on violence against Indigenous women and children in this country. Current enforcement activities should not make me more vulnerable in the interests of trying to interfere with my legal advocacy activities.

The RCMP never responded to my ATIP. However, my suspicions that the RCMP and provincial police forces were monitoring and following me were confirmed by individual law enforcement agents on the ground. At numerous rallies or teach-ins during the Idle No More movement, under-cover RCMP and/or provincial police would seek me out, inform me of their presence, and impress upon me the need to ensure "my" protest was peaceful. At other times, the RCMP and/or provincial police did not identify themselves to me unless I specifically made a request to the crowd for them to identify themselves. Both government officials and law enforcement even attend my speaking engagements (public or private) and have informed me that they report on what I am saying. At several events, I specifically asked government agents who attended these events just to "report" on my activities to identify themselves. The usual suspects who introduce themselves to me are: INAC, Justice Canada, the RCMP and/or provincial police.

What is extremely concerning is the level to which they monitor, follow, or surveil my activities. I have attended many other countries like Samoa, Peru, England, Hawaii, and Switzerland to bring attention to Canada's treatment of Indigenous peoples. To my surprise, at several events,

Canadian legal or diplomatic representatives have either identified themselves to me as attending events to report on my activities, or were identified to me by local authorities. First Nations are often shocked when they see law enforcement attend community information sessions simply because I am giving the session. In some instances, especially in the Prairie provinces, the RCMP have been known to call ahead to the university, school, or First Nation where I am speaking to determine what my "targets" may be, or if I have planned a protest.

The most disturbing and shocking example is the level of surveillance when I am in Manitoba at events with Manitoba Chiefs. Aside from obvious police presence, the surveillance is sometimes done by third parties – corporations like those in the mining industry. In one instance, two large men followed myself and a Manitoba Chief around Winnipeg video-taping us and it was later confirmed they were two retired RCMP officers working as private security for a large corporation. In another incident, I was attending at a meeting with a Chief and several members of the community and we decided amongst ourselves to attend at a law office to try to meet with corporate parties with whom we had an issue over Aboriginal rights. As we arrived at the public building, the doors were locked and security told us they received "advance warning" that there were "angry and dangerous Indians" enroute. Neither I nor this Chief had ever committed a violent act or crime and we did not that day either.

This isn't just a problem for me. Other peaceful Indigenous activists like Cindy Blackstock of the First Nation Child and Family Caring Society[33], and Clayton Thomas Muller of Defenders of the Land[34], have also been wrongfully targeted. WikiLeaks documents shared with the media further implicated Canada for spying on Mohawks with illegal wiretaps.[35] But the problem goes much deeper than merely surveilling a couple of individual activists. Indigenous peoples collectively have been treated by government officials and law enforcement in ways which either directly or indirectly state or imply that we are dangerous, violent, criminals, radicals, militants, insurgents, and/or terrorists.

State agents that have or are currently surveilling Indigenous Peoples and First Nation communities (in addition to CSIS) include the following, but there are many more:

INAC Hot Spot Reporting System

RCMP Suspicious Incident Reporting

RCMP Integrated Security Unit

Integrated National Security Enforcement Team

Integrated Terrorism Assessment Centre

Canadian Forces – National Counter Intelligence Unit

RCMP Criminal Intelligence Aboriginal Joint Intelligence Group Reports

All of these groups have at some time monitored, surveilled and/or collected intelligence on First Nation leaders, organizations, and individual activists in some way. It has been demonstrated that these and other federal government bodies also interfere with First Nation politics and deny or reduce critical social funding in order to control First Nation leaders who do not cooperate.[36] In recent times, even Minister Valcourt has publicly labeled these Chiefs as "rogues" and "threats to national security".[37] Female leaders, traditional leaders, and grassroots activists are especially demonized and marginalized by this Conservative government and the media in favour of more moderate Chiefs.[38]

Government control of our Indigenous identities through law, policy, funding controls, and public propaganda has maintained our identities as heathens, pagans, and savages. The only difference today, is that we are more often described as criminals, insurgents, and terrorists. This self-serving ideology runs deep within federal and provincial governments and public at large. The following are just a few examples.

Department of National Defense Counterinsurgency Manual[39]

DND's manual lists Native Americans, like the Mohawks, alongside Islamic Jihadists, Hezbollah, Tamils, Mexican Indians and North Ireland's paramilitary groups as "insurgents". The manual goes on to describe them as "violent" and "radical" - treating them like a domestic terror threat. Although DND removed the specific reference to Mohawks in the final version of its manual, the current version still lists activities like: occupation, autonomy, cultural protection and political control – as "insurgency". In other words, the core activities of Indigenous Nations in asserting, living, and defending their inherent human rights to be self-determining have become viewed as "insurgent" and dangerous.

In reality, Indigenous Nations have been asserting, living, and defending their sovereignty and rights since contact. For many decades Indigenous peoples have fought to protect their rights by way of negotiations, meetings, letters, political persuasion, court cases and peaceful resistance. Our collective struggle to protect our peoples and our cultures has never focused on violence, despite all the violence committed against us by the Canadian state. There is no evidence to suggest things have changed from an Indigenous struggle to domestic terrorism – except in Canada's eyes.[40]

Canadian Defense and Foreign Affairs Institute[41]

CDFAI published a report on Security Issues in Northern Alberta which categorize the Aboriginal-rights movements as "violent resistance" to industrial development and list First Nations and environmentalists alongside "saboteurs" and "eco-terrorists" as "security threats". It is notable that their publication specifically excluded any threats which may be posed by external threats or "Islamic terrorists" and focused exclusively on Canadian citizens. The report appears to blame the Supreme Court of Canada (SCC) for rendering decisions in favour of First Nations rights for creating "fertile field for blockades". The report has a large number of fear-based assumptions, but lacks an evidentiary basis for their conclusions.

CDFAI's greatest fear if what it describes as a "nightmare scenario":

> *A nightmare scenario from the standpoint of resource industries in northern Alberta would be a linkage between warrior societies and eco-terrorists. Members of warrior societies would brandish firearms and take public possession of geographical sites, while eco-terrorists would operate clandestinely, firebombing targets over a wide range of territory.*[42]

Interestingly, after this report, the Idle No More Movement was born – the very nightmare scenario contemplated in this report. Instead of the nightmarish death and destruction predicted, Idle No More remained a peaceful unity between First Nations, environmentalists and a broad segment of Canadian society. No firearms were used, nor was anyone sneaking around blowing up things.

MacDonald-Laurier Institute: Aboriginal Canada and the Natural Resource Economy[43]

A more recent report from the MacDonald-Laurier Institute also seems to suggest that First Nation struggles may turn into a dangerous insurgency and uprising. The report describes Indigenous young men as a "warrior cohort" and also makes the unsubstantiated claim that First Nations see the economy and infrastructure as vulnerable targets thus "strategic, co-ordinated First Nations actions against Canada's economy will occur." They describe the need to balance legitimate protest with "armed confrontations" and focus on the need to "disarm" the warrior cohort.

Although this report uses Idle No More as an example when speaking about "destructive national insurgencies", Idle No More was a peaceful movement. There is no evidence to suggest that the massive Idle No More movement was anything but peaceful. Most of the movement's activities involved teach-ins, round dances, and cultural events. There were no armed protests or lives lost during this movement. Idle No More was so massive because it was peaceful and focused on public education.[44] Indigenous peoples have never advocated anything but peaceful co-existence, respect for our autonomy, and the fair and just resolution of our claims.

There can be no doubt that Canada has embarked on a major policy initiative to construct an "Indigenous terror threat" to justify laws to prevent interference with the economy.[45] Canadian officials, law enforcement, corporate interests, and their wide array of consultants have used these ideas to publically vilify Indigenous peoples and engage in what appears to be illegal surveillance of our people. It seems clear that the goal of *Bill C-51* and related surveillance activities is to specifically counter Indigenous assertions of sovereignty, independence, and legal and political jurisdiction, as well as demands for justice around treaty implementation, land claims, and respect for Aboriginal rights. Recent court cases which confirm constitutionally-protected Aboriginal rights to Indigenous ownership of our lands and our right to stop resource development seems to have accelerated Canada's "national security" agenda. Canada does not have a terrorism problem, nor is Canada's national security at risk – at least not from us.[46]

The real issue is that Canada is fearful of the growing Indigenous resistance and demands to address inequality and a failure to address long-standing claims which may act as an impediment to unfettered use and destruction of Indigenous lands, waters and natural resources.[47] The initial violation of our privacy rights through unjustified surveillance activities is compounded when Canada shares this information with third parties, like energy companies.[48] We are not entitled to third party information about those companies, yet they are provided with personal, private and confidential information about us. Canada's law enforcement and intelligence agencies seem to act more like security for large corporations versus serving and protecting Indigenous peoples and Canadians. In other words, the rule of law is conditional on race.[49]

Despite all this, our resistance has always been and continues to be peaceful. It's the threat to Canada's economy that is at issue here, not any real threat of domestic terrorism or the lives of Canadians. How many Canadians have been killed on Canadian soil from terrorism? Yet, how many Indigenous women and girls have been raped, murdered or gone missing in Canada? How many Canadian women died at the hands of their husbands? How many serial rapists or serial killers have preyed upon us? Canada needs a major reality check when it comes to the clear and present danger facing the people living in Canada. I don't see a bill or funding identified to address the crisis of murdered and missing Indigenous women and girls. Canada does not seem to value our lives the same way.

At the end of the day, it was PM Harper's Conservatives who killed the economy by forcing reliance on fossil fuels, not First Nations.[50] The solution seems to be more about getting rid of PM Harper and the radicalized element of the Conservatives, than increased spying on First Nations. When all the facts are on the table, it is Indigenous peoples who have suffered violence, rape, murder, and "grave violations" of human rights at the hands of the Canadian state – not the other way around.[51] There is no need for this bill, or the further criminalization of our identities.

IV. *BILL C-51*

What follows is a brief over-view of my major concerns with regards to *Bill C-51* keeping in mind the following limitations on my analysis is limited by the extremely short notice period for preparation of this submission; the page limit for submissions; the lack of pre-introduction study time for the bill; the lack of public or First Nation consultation on the bill; and the failure by Canada to provide any background information related to the necessity of the bill. As a result, there was barely time to write this submission, and no time to conduct the detailed research and analysis it deserves, or to get it translated into all Indigenous languages.

Given that other expert witnesses have already addressed the complex, detailed technical problems with the bill and its practical operational problems, I will not repeat them here. I agree with their testimony and/or submissions specifically those of Craig Forcese and the Canadian Bar Association. My focus will be on how this bill will negatively impact Indigenous peoples and in that light, I specifically support the submissions of Grand Chief Stewart Phillip and Jessica Housty.

Bill C-51 is an omnibus bill creating and/or amending various pieces of legislation. Given the very specific and detailed legal analysis of the bill presented by other experts, my submission will address my concerns with the bill as a whole and will not break it down further into each proposed section for each individual statue being created or amended. This submission is as much for Indigenous peoples and Canadians as it is for Parliament – as you and Justice Canada already know this bill is unconstitutional.

(1) Bill C-51 Turns Canada Upside Down

Canada is self-described as a modern, liberal democratic state whose core governing document is the *Constitution Act, 1982*.[52] This constitution sets out the core jurisdictions of the federal and provincial governments and puts important limits on government power. Some of the relevant civil rights and freedoms include:

> 2.(b) Freedom of thought, belief, opinion, expression;
>
> 2.(c) Freedom of peaceful assembly;
>
> 2.(d) Freedom of association;
>
> 7. Right to life, liberty and security of the person;
>
> 8. Right to be secure against unreasonable search or seizure; and
>
> 9. Right not to be arbitrarily detained or imprisoned.

These rights, together with the rule of law as overseen by an independent judiciary, are meant to protect Canadians from arbitrary interference by government into the private lives of Canadians

and First Nations. These rights also ensure that there is some level of control over state actors who have the power of coercion – like the RCMP and military.[53] They act as a check on power and are supposed to ensure that the democratic vision for Canada never falls into a totalitarian or dictatorial state – but most importantly, that individual citizens are safe and secure from physical harm or arbitrary interference from the government regardless of their ideas, thoughts and associations.

Terrorists target the safety and security of individual citizens to make political statements, engage in retaliation for alleged state wrongs, and/or other political or religious motives. The way in which they terrorize is to inflict fear in citizens and deny them their basic rights and freedoms, especially the right to life and security of the person. With *Bill C-51*, Canada purports to put all of Canadians' most valued rights and freedoms on hold in the name of counter-terrorism. Instead of enacting laws to fortify these constitutional rights and protect them from terrorists, Canada proposes to suspend these rights and make Canadians themselves all suspects of terrorism.

As a result, *Bill C-51* will turn Canada upside down. The terrorists' work will be complete without a single terror plot ever being hatched. The state of Canada will become the terrorizer and the terrorists can sit back and watch Canadians denied their basic civil liberties. If this bill is passed, then democracy as Canadians once knew it is over and the terrorists have won. Without a single organized terrorist attack in Canada, Canadians will have been stripped of all the rights they hold dear.

Welcome to our world. This is the nightmare that Indigenous peoples have been living for multiple generations without relief. Our whole identity and way of being has been criminalized and oppressed in the name of national security and economic interests.[54] It has caused us great suffering. This is not the world we want to share with you. This is not the vision of Canada we had when we signed treaties with you to share this land and protect one another. This is why so many of us are opposed to this bill. We want to work with Canadians to protect all our rights for all our future generations.

The following are my specific concerns re *Bill C-51*:

(a) The wording is over-broad at best and unlimited at worst. "Any person", "any activity" for "any purpose" is far too broad to meet any legal tests in relation to natural justice, administrative fairness or *Charter* rights. There is no specific terrorist target and as such all Canadians are captured in the net of potential suspects. It is no surprise that the legislation has been called "astonishingly broad" and a "radical departure" from current privacy laws.

(b) The powers granted to CSIS appear to be without any real limitations and have been described by security experts as "sweeping" in nature. The "carte blanche" afforded to federal intelligence and enforcement bodies, is apparent in the fact that most activities will never have to come before a judge to oversee the protection of constitutional rights. Even the judge's role, which is to uphold constitutional rights, will be twisted to

authorize the violation of constitutional rights. This is not how the constitutional system works in Canada.

(c) Canada purports to criminalize thoughts and ideas, instead of criminal actions which pose actual threats to the lives of Canadians. While we may not all agree with ideas which we view as radical, it is a basic human right to hold whatever views we choose –so long as they are not used to incite harm to others. This bill would make ideas criminal – even if they are never shared with the public or anyone else but merely stored on a computer. Worse, it would make our private conversations with one another subject to surveillance and even prosecution if our private conversations are radical enough. This is sounds more like Nazi Germany, than any semblance of a free and democratic Canada.

(d) The only limits to an otherwise complete violation of an accused terrorist's physical liberty, safety, and security appear to be bodily harm or sexual integrity – which leaves a wide range of torture practices open for use. Further, the period in which someone can be detained increases from three days to seven days – a long time to be tortured into admitting guilt. What makes this worse is that Canada's justice system is already infected with systemic and overt racism especially against Indigenous peoples, peoples of colour and immigrants. The expansion of state powers without first addressing the critical issues of oversight, review, protections, and redress mean that Indigenous peoples will likely be the targets of *Bill C-51*.

(e) The very introduction of this legislation without obtaining the free, informed and prior consent of Indigenous peoples is a constitutional violation. The failure to work jointly with First Nations to manage and protect this territory violates our constitutionally protected treaties. The unilateral assumption of jurisdiction is an offence to our inherent right to be self-determining and self-governing in this territory. The criminalization of our ways of life and only means of resistance to unlawful government actions, and the destruction of our lands and waters violates our rights as protected in the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Declaration on Human Rights Defenders* – both of which protect our right to defend our identities and cultures, our lands and resources and our autonomy and people.[55]

(2) Bill C-51 Targets First Nations

Bill C-51 is not really about combatting actual terrorism. The RCMP Commissioner admitted that current criminal laws would have addressed the lone shooter on Parliament.[56] The vast majority of legal and security experts appear to agree that there is no deficiency in the current laws requiring such a major departure from the current legal regime. What this bill does is create new law in relation to national security – a new law which is all-encompassing with limitless contemplated offences. Even the new law on national security is not being defined in relation to terrorism, but includes "any activity" that undermines sovereignty or territorial integrity of Canada.

Examples of security issues include (but are not limited to): diplomatic relations; interference with critical infrastructure; activity that causes harm to the property of an individual; economic stability or financial stability. No limit was placed on what could be considered a threat to national security as these were merely examples. There is no limit on what could be captured as a terrorist act. When this section is considered as a whole, it sounds less like an attempt to stop actual criminal terrorism, which is extremely rare in Canada, and more like anti-business disruption and anti-government dissent.

Harper's Conservatives appear to be more concerned about preventing disruption of the status quo – in terms of the distribution of power and wealth in Canada, than with protecting Canadians. When the bill is further analyzed, it becomes apparent that First Nations are the actual targets of their legislation. As explained in more detail in section II and III of this submission, the ways in which Indigenous identity, sovereignty, and autonomy manifest are now criminalized as threats to national security. Canada has a long history of criminalizing Indigenous peoples, and this legislation is no exception. The many ways in which we peacefully protect our lands and waters like public dissent, exposing federal and provincial corruption and illegal activities, litigation, international advocacy, public education campaigns and materials, can all be interpreted as forcing concessions from government – insurgency and threats to national security.[57]

The proviso that no "lawful" protest, dissent or advocacy by Indigenous peoples will be covered by *Bill C-51* is at best an illusion and at worst a lie. Indigenous leaders and activists have already been targeted by Canadian government and law enforcement officials with disastrous results. Canadian prisons have been over-populated by Indigenous men, women and children for decades. The former head of the Office of the Correctional Investigator, Howard Sapers concluded that the ongoing discriminatory treatment of Indigenous peoples which leads to their over-representation in prisons is "an ongoing crisis and embarrassment" and that the "inequitable and differential outcomes for Aboriginal offenders" are the direct result of federal policies – i.e. racism.[58]

The *Royal Commission on the Donald Marshall, Jr Prosecution* made a similar conclusion:

> *The criminal justice system failed Donald Marshall, Jr. at virtually every turn from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983. The tragedy of the failure is compounded by evidence that this miscarriage of justice could - and should - have been prevented… and is due, in part at least, to the fact that Donald Marshall, Jr. is a Native.*[59]

The *Manitoba Justice Inquiry* found that Indigenous peoples are over-represented in the justice system generally and in prisons specifically because "overt racism also exists in the administration of Manitoba's justice system".[60] Canada's treatment of Indigenous peoples have led to "cultural oppression, social inequality, the loss of self-government and systemic

discrimination", which results in "decisions are made within the justice system discriminates against Aboriginal people at virtually every point".[61]

The *Ipperwash Inquiry* which was brought about by the murder of unarmed Indigenous land defender, Dudley George, concluded that racism was a "widespread" problem within the Ontario Provincial Police and that racism in the police force must be addressed "comprehensively".[62] Part of the problem is that Canada does not take time to consider the investigations, research and conclusions of these independent commissions and the problem of racism in the justice system continues. For us, racism in the justice system works in the reverse as well.

The phenomenon of murdered and missing Indigenous women and girls can be attributed in part to a failure by law enforcement to give full protection of the law to our women and girls.[63] More frightening are the findings of Human Rights Watch which details stories of rape and abuse by the RCMP on these vulnerable women and girls.[64] Even a provincial court judge, David Ramsay plead guilty to sexually assaulting Indigenous girls as young as 12.[65] The RCMP were also implicated in this case but refused to investigate their members.[66] Recently, CEDAW found Canada guilty of "grave violations" of the human rights of Indigenous women and girls for failing to protect them and because of Canada's discriminatory laws and policies.[67] But still, no action by Canada to address the racism within the justice system.

(a) Do we have cause to be concerned that *Bill C-51* will target Indigenous leaders and activists?

Yes. AANDC Minister Bernard Valcourt already confirmed that the "rogue" Chiefs who form part of the Confederacy of Nations represent a direct "threat" to "national security" and the "safety of Canadians". As a result, we know at least 50+ Chiefs who will be targeted without ever having committed a crime. The leaked RCMP report identified the "anti-petroleum movement" which would include peaceful activists and/or scientists like David Suzuki, environmental protection groups, university students, and alleged extremists" like Indigenous peoples who have been and will be targeted as threats to national security.[68]

(b) Will *Bill C-51* will lead to an increase in government surveilling lawful Indigenous activists?

Yes. My personal case detailed in section III of this submission, plus that of Cindy Blackstock, and Clayton Thomas Muller are evidence that law-abiding, peaceful activists are already targets of government and law enforcement monitoring, surveillance, reporting and analysis. The broadening of the activities which are considered terrorism or threats to national security will naturally include the majority of Indigenous peoples simply by virtue of who we are.

V. INDIGENOUS VOICES

While Parliament gave us no time to canvass the views of all Indigenous leaders and grassroots activists, the following represents a cross-section of views from across the country made specifically for this submission:

Chief Semaganis from Little Pine First Nation in Saskatchewan[69]

"There are many breaches of our treaty relationships that would occur if this bill is to move ahead. It takes away all ability for First Nations to represent and protect their people, their sovereignty, their environment and in many ways our overall existence. Canada has labelled us as terrorists and a threat to the general safety of all of Canada. The big concern is that according to Canada's self-proclaimed role as a fiduciary agent. Our interests are paramount to their very own interests.

We must bring to the forefront what the treaty relationship is really all about. Once that is defined, then we must define what fiduciary obligation means. Canada is again being an ignorant ass by ignoring the Treaties, the Constitution and their own Charter of Rights and Freedoms. They have consistently used their so called legislations to enslave and subjugate First Nations across this land. To believe that they won't do that now is stupidity. This is a manipulated smokescreen that facilitates the ongoing theft of our share of the riches of this land."

Assembly of Manitoba Chiefs Grand Chief Derek Nepinak[70]

"Treaties brought the original peace here… As long as there is treaty and the pipe carriers of treaty, Indigenous people will always protect the safety of our families collectively. We're not the ones to be worried about…"

Mathias Colomb Cree Nation Chief Arlen Dumas (Manitoba)[71]

"Canada has never ceased trying to portray us as dangerous savages and never truly acknowledged our contributions to Canada through peaceful treaties. We will never stop defending our sovereignty, our lands, and our people - no matter what legislation is passed. We have no choice but to protect the rights of our future generations which now include our treaty partners - Canadians. That shouldn't make us criminals in our own lands."

Nova Scotia Native Women's Association President Cheryl Maloney[72] expressed deep concern about *Bill C-51* and our children in foster care being made into young offenders:

"Our fear is these kids will be searching for culture and acceptance and may find it in Indigenous stands on rights and environment. Our empowerment of our youth has been around movements which increase vulnerabilities to this legislation."

Confederacy of Treaty Six First Nations Grand Chief Bernice Martial (Alberta)[73]

"The Chiefs of the Confederacy of Treaty Six First Nations are very concerned about the implications of Bill C-51 (Anti-Terror Legislation) on the free speech and political expression of the Nations of Treaty No. 6 in the defense of our traditional lands and territories.

Our ancestors entered into Treaty No. 6 in September of 1876 at Fort Pitt and by entering into Treaty No. 6 we agreed to peacefully co-exist with the subjects of Queen Victoria with the understanding that through this mutually beneficial Nation to Nation Treaty our Peoples would be provided for "for as long as the sun shines the grass grows and the waters flow". As Indigenous Peoples who entered into Treaty No. 6 not only do we have Inherent Rights granted to us by the Creator but on top of those we also have Treaty Rights agreed to in perpetuity by Queen Victoria. According to our Treaty understanding handed down from generation to generation not only does Treaty No. 6 recognize our inherent, exclusive authority and jurisdiction over our lands and Peoples it also guarantees our traditional way of life including but not limited to the promises of full social and economic advantages guaranteed by the Queen.

These understandings include our inherent authority to determine our relationship with the Crown and to respect agreements that we have made among ourselves including but not limited to the Protocol for Bilateral Discussions Respecting Treaty Six that was signed on May 11, 1997 at Alexander First Nation by the Chiefs of Treaty No. 6 and the Minister of Indian Affairs.

One of the cornerstones of our relationship and understandings has always been a meaningful attempt at parity and full disclosure by both parties. That is why the Nations of Treaty No. 6 West are very disappointed and apprehensive about how we as Indigenous Peoples will be portrayed when we stand up to defend our rights to our lands and territories when we see projects that are being proposed and rammed through your unilateral processes without our Free, Prior and Informed Consent as set out in Treaty No. 6 of 1876 and various International Instruments including but not limited to the United Nations Declaration on the Rights of Indigenous Peoples especially Article 19.

We as the Chiefs of our Nations are not comforted by the proviso in section 2 of Bill C-51, which provides:

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

Through past experience we are of the view that it will be your government who will define what "lawful" advocacy, protest, dissent and artistic expression is, and especially in consideration of the 2014 federal Tribal Council Policy which provides:

> **Tribal Council funding cannot be used for any costs related to supporting advocacy or political activities. (Page 8)**

It is the position of the Chiefs of the Nations of Treaty No. 6 that Bill C-51 is once again a unilateral piece of legislation that gives your government new tools to continue the domestic

neo-colonial repression of our Nations in a further attempt to push forward your agenda to silence the voice of our Peoples.

This is totally unacceptable and we are putting your government on notice that the Confederacy of Treaty Six First Nations do not accept this violation of our inherent authority guaranteed by Treaty which has been affirmed not only by your Constitution under Section 35 but also various International Instruments including the United Nations Declaration on the Rights of Indigenous Peoples passed by the UN General Assembly on September 13, 2007. It is ludicrous in this day and age that on one hand your government apologizes for the wrongs that it has done to successive generations of our Indigenous Peoples through the residential school system and yet turns around and continues to make unilateral decisions in breach of agreed upon processes that are part and partial of that reconciliation process. That is just wrong especially in light of the commitments made by the governments of Canada (both federal and provincial) less than a year ago at the 7th and final gathering of the Truth and Reconciliation Commission in Edmonton, Treaty No. 6 Territory on March 27 – 30, 2014.

We will take whatever action our Nations and Peoples deem necessary to let the International Community know about this flagrant violation of our Sacred Covenant known as Treaty No. 6 of 1876. We as the Chiefs of our Nations are not comforted by the proviso in section 2 of *Bill C-51*... once again a unilateral legislation piece of legislation that gives your government new tools to continue the domestic neo-colonial repression of our Nations in a further attempt to push forward your agenda to silence the voice of our Peoples."

Serpent River Chief Isadore Day (Ontario)[74]

"The foundation of the First Nation / Canada relationship is based on the Spirit and Intent of Treaties - treaties are an ultimate trust relationship.

FN's have clear cause for concern when it comes to all *Bill C-51*.

1) Imposition of any legislation that infringes upon the ability to protect treaties is a breach of that very treaty. The fears about this legislation run to the core of a broken relationship; in which democratic society is anyone in a broken relationship not able to assert protest?

2) The bill provides powers that have very blind and covert means of spying on persons, groups and even nations - in this case, Canada has the ability to infringe upon the privacy of anyone for anything that Canada deems as a threat; somehow there is so much wrong with that level of violation.

3) The issues that surround the removal of funding, the removal safeguards, the imposition of omnibus legislation has frustrated the relationship between the Federal government and the First Nations, who extended a hand and permitted entry on this place now known as Canada, and now with BillC51, we fear not only the covert and unilateral threat of loss of privacy; but we also fear suffering the same fate as the unarmed peaceful protester Dudley George in 1996, who lost his life to this country's law enforcement - for protecting a burial site."

Grand Council of the Cree, Grand Chief Matthew Coon Come (Quebec)[75]

"The historic James Bay Agreement which represents a solid treaty between Cree, federal and Quebec governments would not have been possible without the determined peaceful advocacy of the Cree people. Under similar circumstances today, Bill C51 would criminalize the Cree and treat them as terrorists in their own lands. In so doing, Bill C51 violates our Aboriginal, treaty and inherent rights and should be withdrawn.

Bill C51 runs rough shod over the constitutionally protected rights of Indigenous peoples and Canadians alike. In an unprecedented moment in history, both treaty partners are threatened with the loss of their civil liberties and other rights under the guise of an impending terror threat. What makes this law different is that terrorism now includes threats to the economy, infrastructure, sovereignty, territory and private property. Indigenous peoples defense of their sovereignty, lands and resources would be in direct conflict with this legislation simply for being Indigenous. Now Canadians who stand alongside us in protection of these shared lands can be captured under Bill C51 as well. Bill C51 violates the rights of Indigenous peoples and Canadians and should be withdrawn."

First Nations Child and Family Caring Society Cindy Blackstock[76]

"Overall, I believe that the incidence of terrorism are extremely rare and thus do not legitimate broad-sweeping violations of freedom of speech, freedom of association and privacy that are impugned by C-51. Based on my own experience of government surveillance, I would make the following observations:

1) The current mechanisms for reporting/investigating suspected cases of illegal government surveillance are untimely and wholly inadequate. Although I greatly appreciated the Privacy Commissioner investigating my situation, the reality is that the investigation took over a year and even when the Privacy Commissioner found Canada's surveillance to be a breach of the Privacy Act there was no binding remedy to ensure Canada stopped. I also applied to the Human Rights Tribunal to hear allegations that Canada's surveillance amounted to retaliation counter to the Canadian Human Rights Act. It took two years for the Tribunal to rule that it would hear the retaliation claims and even though the case was heard in 2013 the ruling is still outstanding. The Canadian Government said it was implementing the Privacy Commissioner's recommendations but refused to sign a legal undertaking indicating it was following her recommendations. I would recommend an independent office with binding authority be set up to invigilate any surveillance powers exercised by the government that are not subject to a warrant. Such an office must inform the public about how to make complaints, the complaint investigation procedure and investigation results/remedies.

2) There needs to be a body that can issue injunctions stopping the federal government from conducting surveillance or sharing information pending the investigation.

3) Access to Information and Privacy laws need to be updated to account for contemporary communication technology and to allow for cross-departmental applications given the new

provisions of C-51 allowing departments to share information on individuals. Also these offices need to be adequately resourced to ensure they are able to manage the influx of complaints likely to flow from this law.

4) There is a UN Declaration on the Rights of Human Rights Defenders. Canada has signed this declaration and thus how will it ensure that surveillance is not to infringe the protections enumerated under the Declaration?

I also think they should invite people like me who have actually experienced documented cases of government surveillance that have been found to be unlawful (by the Privacy Commissioner)."

V. RECOMMENDATIONS

(1) Bill C-51 must be withdrawn.

There is no other workable alternative than to withdraw the bill and start over. There are not enough amendments that could be made to this omnibus bill to correct all of the deficiencies and properly study the interaction between all the laws impacted. This would give the federal government time to do the following:

(a) a proper public information and consultation process;

(b) a specific consultation process for Indigenous peoples;

(c) a proper Parliamentary study of any new legislation; and

(d) consider a broader, more representative range of additional witness testimony.

Debate around the balance between fighting actual terrorism and the need to protect our rights is fundamental to moving forward. Directing Justice Canada to rubber stamp *Bill C51* as compliant with the *Charter*, even if it has a 95% chance of being over-turned in court, is not democratic.

The long list of those opposed to the bill, from all political and ideological stripes, should be a strong warning that Canada should slow down and take the time to address actual terrorism legally and effectively, without also terrorizing its citizens in the process. Many Canadians and experts are echoing many of the concerns expressed by Indigenous peoples: four former Prime Ministers, 100 law professors and other academics, the CBA representing 36,000 lawyers, former Supreme Court of Canada justices, former CSIS officials, numerous security experts and various human rights groups, unions and Amnesty International.

Information sharing is not benign as many in society believe. It can and has caused great harm and personal injury to individuals. Four former Prime Ministers confirm the risk of human rights abuses in the name of national security:

> "… experience has shown that serious human rights abuses can occur in the name of maintaining national security. Given the secrecy around national security activities, abuses can go undetected and without remedy. This results not only in devastating personal consequences for the individuals, but a profoundly negative impact on Canada's reputation as a rights respecting nation."[77]

Indigenous peoples have every reason to be worried about this bill. This is why it should be withdrawn. Allow the proper legislative process to unfold so that critical mistakes can be avoided – like the loss of life, liberty or security of Canadians and First Nations.

(2) Independent Review Body to Report on Surveillance of Indigenous Peoples

An independent review body should be struck to investigate the extent of the current monitoring and make determinations about any rights violations and how to better protect the privacy rights of Indigenous peoples. The details on what information is currently being shared, who has access, for what purpose, for how long, how the information is stored, and when and if it will be destroyed, should be shared with Indigenous peoples subjected to government monitoring.

There must be a process in place whereby individual Indigenous peoples, communities and their representative organizations can access any surveillance, monitoring or reporting files in their name by any and all government agencies. Individuals and groups should be afforded an opportunity to know why they are being monitored, an opportunity to make submissions, and have specific rights in relation protecting their private information. They should also have an opportunity to file complaints and access redress for rights violations including, but not limited to, compensation and injunctions.

Cindy Blackstock, a victim of government surveillance explains the rationale behind establishing such a body and why current processes are inadequate:

> *The current mechanisms for reporting/investigating suspected cases of illegal government surveillance are untimely and wholly inadequate. Although I greatly appreciated the Privacy Commissioner investigating my situation, the reality is that the investigation took over a year and even when the Privacy Commissioner found Canada's surveillance to be a breach of the Privacy Act there was no binding remedy to ensure Canada stopped. I also applied to the Human Rights Tribunal to hear allegations that Canada's surveillance amounted to retaliation counter to the Canadian Human Rights Act. It took two years for the Tribunal to rule that it would hear the retaliation claims and even though the case was heard in 2013 the ruling is still outstanding. The Canadian Government said it was implementing the Privacy Commissioner's recommendations but refused to sign a legal undertaking indicating it was following her recommendations. I would recommend an independent office with binding authority be set up to invigilate any surveillance powers exercised by the government that are not subject to a warrant. Such an office must inform the public about how to make complaints, the complaint investigation procedure and investigation results/remedies.*

(3) First Nation Special Advocate

There needs to be a Special Advocate appointed for all court processes in all provinces and territories wherever applications are made in secret to a court for warrants, wiretaps and related surveillance authorities against Indigenous peoples. This person would be a lawyer – a legal expert in constitutional law, human rights, Aboriginal rights and related international rights of Indigenous peoples who would act as an *amicus* – i.e. a friend of the court who could speak to Indigenous rights, freedoms and liberties at stake.

The inclusion of an amicus is extremely important not only under current processes, but under any potential anti-terrorism law which contemplates expanding the number of secret court applications and the expansion of surveillance on Indigenous peoples. These positions would have to be adequately funded, appointed by Indigenous peoples themselves and have independence from government interference or influence.

This recommendation is desperately needed to help counter the current justice system which is infected with racism against Indigenous peoples. Any measures which would help act as a system of checks and balances against this racism is needed until the problem is addressed. Despite the numerous justice inquiries, reports, commissions, investigations and court cases which highlight this crisis in the justice system, Canada has done little to address it. This therefore makes Indigenous peoples vulnerable to being targeted before Bill C-51 is even passed. As a result, counter-measures are needed to combat racism in the application, interpretation, administration or enforcement of laws in Canada.

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JSD (DAL)	Doctoral thesis on constitutional law, Aboriginal and treaty rights and legislation in relation to Indian status, membership & citizenship
LLM (DAL)	Master's thesis on Aboriginal and treaty rights, international law and constitutional law re Aboriginal border crossing rights
LLB (UNB)	Specialized in Aboriginal, natural resources & environmental law
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Law Society of New Brunswick (1998)

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University of New Brunswick - **UNB Alumni Award of Distinction** – 2015

A Bold Vision - **Canada's Top Visionary Women Leaders**: Top 23 – 2014

Canadian Lawyer Magazine's **Top 25 Most Influential Lawyer** - Top 5 Most Influential Lawyer in Human Rights – 2013

Dalhousie Law School - **Bertha Wilson Honour Society** - 2012 (Inaugural Inductee)

Women's Courage Award in Social Justice – 2012

YWCA - **Woman of Distinction Award** in Social Justice – 2012

Justice Canada - Deputy Minister's **Team Achievement Award** – 2002
Justice Canada - **Group Merit Award** – 2001

SELECTED PUBLICATIONS:

Books:

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