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# **Standing Committee on Public Safety and National Security**

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**EVIDENCE**

**Tuesday, October 18, 2016**

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**Chair**

**Mr. Robert Oliphant**



## Standing Committee on Public Safety and National Security

Tuesday, October 18, 2016

• (1400)

[English]

**The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)):** I call this meeting to order. This is the 31st meeting of the Standing Committee on Public Safety and National Security.

Welcome to our witnesses today, who have come to help us with our study on the national security framework and revisions to a number of acts that we anticipate coming in the next while. Our study has just begun. We've had a couple of meetings in Ottawa. We're continuing now on the road with five meetings across the country this week. We're hearing from people who have expertise in the area of national security from a variety of perspectives. You have come to us either because the Library of Parliament has suggested you or because one of the political parties has suggested you. We're glad you're able to be here.

Tonight's meeting is an open-mike forum. We're hoping to have a number of citizens come and give their thoughts and ideas on changes, or not, to the national security framework.

We'll begin with 10-minute presentations. I think we'll start with the Centre for Military, Security and Strategic Studies.

David and Robert, you can divide your 10 minutes as you would like. Please go ahead.

**Dr. David Bercuson (Director, Centre for Military, Security and Strategic Studies, University of Calgary):** Thank you very much.

I will read from my prepared statement.

Canada's history of attempting to balance human rights against internal security stretches back to the late 19th century when Prime Minister John A. Macdonald hired a number of undercover detectives to keep watch on the Fenians. During the First World War, the Canadian government gave itself powers under the War Measures Act to literally suspend traditional British freedoms by cancelling habeas corpus, jailing German and Austrian Canadians, engaging in widespread press censorship, and greatly expanding the external security services carried out by the North West Mounted Police, which is now the RCMP, and the military.

There was wide banning of radical or anti-war publications and passage of an act giving the government power to deport British subjects for radical activities. Spying on labour unions and radical political parties such as the Workers Party of Canada, which was the legal arm of the illegal Communist Party, continued in the interwar period and was ramped up after the start of the Great Depression

when communist activities and labour organizations sparked fear in Ottawa that a communist revolution was just around the corner. Communist leaders and others were jailed, publications were banned, and street demonstrations were met with harsh measures carried out by federal, provincial, and local law enforcement.

In the Second World War, the long-established pattern continued, this time added to by the forced relocation of tens of thousands of Japanese Canadians from the west coast to the B.C. interior, and in some cases as far east as Ontario. Their property was seized and deportations to Japan were liberally carried out after the war ended.

During the Cold War, intense internal security continued, focused once again on communist and other radicals, particularly after the Gouzenko spy revelations with a special royal commission and the jailing of a number of Canadians with charges of espionage. One of these was a member of Parliament.

During the 1970 October crisis, the federal government once again invoked the War Measures Act to enhance its power to surveil, arrest, and detain suspected supporters of the FLQ. The vast majority of Canadians supported these measures.

Indeed until the passage of the Canadian Bill of Rights in 1960 and the adoption of the Charter of Rights in 1982, few Canadians seemed concerned about placing limits on government powers to surveil, arrest, and so on individuals whose activities were deemed to pose a threat to Canadian security. There were some civil liberties groups, church groups, and others who protested such actions as unduly repressive, but most Canadians still trusted government to do the right thing and related to government as patrons of a paternalistic and trusted institution.

For reasons too complex to enter here—of course I'll be glad to answer questions you may have—Canadians' views of government have evolved rapidly since the adoption of the Charter of Rights. Canadian society has evolved into a charter-based society. Most Canadians are now acutely conscious that they have rights and that efforts to abridge those rights had better be based on solid evidence of malfeasance by real enemies of our society.

The problem is that defining who those real enemies are has become much more difficult in the age of the Internet, because Canadians still believe an important distinction exists and must be protected between those who speak or write of ideas that many Canadians find intolerable and those who actively engage in espionage or violent means of undermining the foundations of our society.

After the terrorist attacks on the United States of September 11, 2001, this problem became even more acute. After terrorist attacks across Europe and even in Canada over the past decade and a half, efforts to maintain our traditional approach of innocence until proven guilty have been sorely strained.

We are now living in an age that presents us with a very difficult choice, privacy or security—not privacy “and” security, because we are way past that. How do we protect our traditional rights and freedoms in an age when some disaffected person needs only access to the Internet to become a perpetrator of mass destruction?

Our governments of both political stripes have been grappling with this very difficult issue since at least the passage of the Anti-terrorism Act of 2001. Having spent three years on the advisory council on national security, I was exposed to many of the issues discussed in the national security green paper.

• (1405)

The discussions of the advisory council were classified, and are probably still classified now, so I am constrained about what I can discuss. The one issue I can raise, because it has been widely discussed here and in other democracies, is the constant failure of intelligence and law enforcement agencies to share information so that someone, at least, can piece together the big picture before it is too late. At the same time, this need to share information can cut right across Canadians' privacy rights. Government must decide which is the greater evil: to share, with the possible violation of privacy rights, or to refrain, with the possible danger of attack.

From what I know of the world of technology and security, the problems we face today will only get worse with the advance of new technologies and the increased ability of bad actors to use cyberspace as a means of manipulating our political systems, gathering our private and secret information, crippling our infrastructure, stealing our intellectual property, and damaging our economies.

Yes, so-called lone wolf attacks must be guarded against to the best of our abilities, which will of necessity violate privacy rights, but the danger from cyberspace is far greater to all of us. We must not lose sight of that growing threat.

Thank you.

• (1410)

**The Chair:** Dr. Huebert.

**Dr. Robert Huebert (Senior Research Fellow, Centre for Military, Security and Strategic Studies, University of Calgary):** Thank you very much.

I have two points to make. I won't rehash what Dr. Bercuson has so eloquently brought before you in terms of the historical context.

The first one involves the ongoing challenges we face in terms of the ability of a long-term analysis of the evolving nature of the threat. One of the issues, of course, was that many of us who have followed the issues of terrorism and the manner that it is effected on Canada were struck by the ongoing difficulty we faced in even characterizing it when we first having the June 1985 attacks; of course, that was the Air India. Ultimately where this leads us to is this ongoing difficulty, partly because of the very nature of the issue

we're looking at—i.e. terrorism and the need for secrecy—but also the fact that we do not have a good infrastructure within Canada that will provide any means of ongoing analysis not only of the current threats but also of the ability to anticipate and try to react to coming threats.

This leads me to my second point. When reading the green paper, one is very struck that almost every scenario and every issue that is being talked about is either about radicalization or about dealing with an individual who obviously is in the context of the current security threat. The issue we have before us is that when we are talking about and looking at the long term, we need to have the ability to not only deal with the type of threats that we are facing today—they are real, and they are dangerous to Canadian security—but we also need to have the capability of anticipating the unanticipated.

We go through the context of trying to analyze and trying to provide some means of understanding of where the next issue is coming from. One can immediately start thinking of possible scenarios. As I was reading through the green paper, I tried to apply to some of the issues that we're dealing with, such as finance and radicalization. One sees, for example, in the United States some discussions about parts of the population not accepting the forthcoming election results. If this should give a re-rising to the militia movement that Timothy McVeigh was addressing, we of course can have a spillover effect into Canada that will go against the type of issues that we see before the green paper. One could conceive of a renewal of separatism—violent separatism, that is—where in fact we may have to deal with it.

The issue in my mind, going through the green paper, is where does it anticipate the type of threats that are not the immediate? How are we able to look at the issues so that we can say, okay, how can we consider and how can we give rise to this?

A related issue, and one that makes the green paper even more complex, is when we are dealing with state-based terrorism. We know from the various reports about the concerns that exist among some circles in Canada with the Chinese use of cyberterrorism and the issue of how we are able to deal with that. What this raises is another issue within the context of the green paper, and that is, how do we deal with alliances? Within the context of dealing with the issue of some of these suspected Chinese actions, and as we're seeing in the United States, Russian actions, we can only do so in the context of doing so with our allies and friends. This adds a complexity onto dealing with the secrecy; deals with evidence and all of the other issues, but it complicates it even more so.

**The Chair:** You have about one minute.

**Dr. Robert Huebert:** Yes.

What I would like to conclude on is that there is a need for a long-term capability, both within government and outside government, to be able to continually ask how we address the terrorism and the security threats of today, how we anticipate them into tomorrow, and how we do this with our allies and friends.

Thank you very much.

**The Chair:** Now we turn to Professor Randall.

**Dr. Stephen Randall (Professor, University of Calgary, As an Individual):** Thank you.

In the interest of full disclosure, I should mention that I'm also a senior fellow at the Centre for Military, Security and Strategic Studies—although we haven't consulted on this—and a former president of the Rocky Mountain Civil Liberties Association. Note, however, that I do not speak for either organization, but as an individual.

The green paper identified 10 thematic areas for consultation, and I wanted to try to touch on a few of those in the short time that I have. The past two decades or so have witnessed the development of an increasingly complex international and domestic security environment. Countries in the western world, in particular, responded in various ways to heightened security concerns, in many instances increasing the powers of security agencies and, in the process, testing the limits of constitutional protections for civil liberties.

In the Canadian case, we have seen in recent years the establishment of a number of new entities. We have the integrated threat assessment centre; the national security advisory council, external to government; the national security joint operations centre; and Bill C-51, the Anti-terrorism Act.

The current inquiry, if the green paper is our guide, focuses on terrorism and terrorism-related issues to the exclusion of other identified threats to Canadian security, including, among others that we have identified over the years, health pandemics, the impact of narcotics, narcotics trafficking, and natural disasters. National security 30 years ago was defined almost exclusively in military terms. That's no longer the case. Broad cultural, social, and economic factors have to be taken into consideration.

Let me touch on a few of the areas that the green paper identifies. First, let's look at accountability. I feel comfortable in saying that the current institutions and mechanisms in place in the Canadian context would appear to be adequate features of accountability. Of course, the devil is always in the details. It depends on how effective those institutions and agencies are in practice—from ministerial oversight and the judiciary down through parliamentary standing committees like this one.

In general, I think civilian oversight bodies work less well than ones established through Parliament, to which they must be responsible, and they must have teeth. Five years ago, I did a review for Public Safety Canada of civilian oversight bodies in the Americas. Civilian oversight organizations may have looked good on paper, but their access to information was generally limited and their recommendations were often ignored. In the final analysis, I'm more comfortable in ensuring that accountability resides in an elected parliament responsible to society.

My colleagues haven't touched on the issue of prevention and counteracting radicalization, so let me touch on that. Much of the focus here is on initiatives at the community level, involving education and mentoring. Certainly, my experience from my work in and on Haiti and Cambodia has been that empowering youth and women is a very constructive approach, but there are often cultural

factors that make it more difficult for women to take the lead in certain communities.

The committee asks, picking up on where the Kanishka Project left off this year, what areas might be considered for research priorities. I think these areas would include social work, education, clinical psychology, sociology, and, for more technical security issues, computer science and strategic studies.

On the issue of promoting alternative narratives, it's unclear who's to be entrusted to create and disseminate those alternative narratives. Is this to be a top-down government approach or a community-driven initiative? I think this is an area where considerable caution must be exercised. I'm thinking here of the sensitivity surrounding the debate on Canadian values.

With respect to threat reduction, one of the questions is whether the CSIS Act should be amended to make it clear that CSIS warrants must never violate the charter. It seems to me this is a very grey area. The charter is not sufficiently precise on some issues to make that kind of legislation absolute. What we need to strive for is consistency with the charter, not something that is absolute.

● (1415)

On information sharing, which my colleagues have touched on as well, the Privacy Commissioner has taken a very hard stance on the need to protect the privacy of individual citizens. It's difficult to disagree with that stance. However, I am uncomfortable with the notion that the hands of government agencies should be so restricted that they cannot meet their mandates effectively.

It seems to me more than ironic that Chinese and East European hackers and individuals are able to access seemingly what they want at will, but Canada does not have legal provisions for accessing IP addresses or provisions for dealing with communications providers under national security circumstances.

I'm told that the CSE is very strict on passing, to other Five Eyes organizations, material that it knows pertains to Canadians. The difficulty is that, by the very nature of the means of bulk collection on the Internet, you don't know the nationality of the sender of the messages that are intercepted.

Regarding the Security of Canada Information Sharing Act, the Privacy Act already allows personal information to be disclosed in some situations, including national security, but the information must be relevant to the recipient's lawful national security jurisdiction or responsibilities. The act explicitly states that “advocacy, protest, dissent, and artistic expression” don't fall within the definition of “activity that undermines the security of Canada”, but if violent actions take place that meet the definition of “activity that undermines the security”, they can't be considered to be advocacy.

Unless I read this incorrectly, it strikes me that this suggests that one can advocate the violent overthrow of the Government of Canada, but unless it actually happens, the law doesn't apply. I think there needs to be some clarity here. The problematic word is “advocacy”.

The next area, that of investigative capabilities in a digital world, I've alluded to with respect to the IP addresses and communications providers.

With respect to Criminal Code terrorist measures, we know the terrorism peace bonds and the change of the wording to "may" commit from "will" commit have been the most publicly controversial developments of the past several years because of concerns that actions in this area may result in the restriction of a citizen's liberty without a formal charge or court conviction. Clearly the threshold for obtaining recognizance with conditions and terrorism peace bonds must be very high. These are very legitimate concerns.

My own thinking has evolved over the past years, certainly since 9/11 and recent developments. Given the international situation and the current threat assessments, I am increasingly inclined to lean more toward advancing security, as long as reasonable safeguards are in place.

I would caution against the use of closed and secret judicial processes and the use of anonymous witnesses. In the 1990s Colombia tried the use of faceless judges and protected witnesses in order to keep them from being murdered. I don't think Canada is at that stage. I think we need to have more faith in our judicial system.

In conclusion, I think we all recognize how complex, sensitive, and controversial these issues are, but times and circumstances have changed over my all-too-brief 72 years. I certainly don't want to see the charter compromised, but I also don't want to leave society vulnerable to acts of terrorism because we lack the courage to confront the issues in a rational way.

Thank you.

● (1420)

**The Chair:** Thank you very much.

Thank you all for your timing. That was very good.

We will now begin a round of questioning. I should have mentioned to the public gallery as well that there are headsets available, partly to help hearing in the room, but it also does provide simultaneous interpretation. Members of the committee may be speaking in either official language.

We will begin with Ms. Damoff for seven minutes.

**Ms. Pam Damoff (Oakville North—Burlington, Lib.):** Thank you.

Thank you both for appearing before us today and providing us with the information that you have.

I want to start with the prevention that you brought up. Do you think we're investing enough resources, and when I say that, I mean financial resources, towards prevention?

**Dr. Stephen Randall:** First of all, I don't know how much budget has been allocated to that. I think you would also have to determine at what level we're looking at the financial commitments. If we're talking about federal allocation only, I think that wouldn't take into consideration what's happening at the community level with police, educational institutions, and community organizations. I think all of

those have to be taken into consideration, but I honestly don't know what the budget is that's currently allocated to prevention.

**Ms. Pam Damoff:** That leads into another question I have. It's to do with young people, in particular where they're living in poverty and may be attracted to gangs or a lifestyle because of their home situation or their... I shouldn't say it's their home situation; it's because of where they're living, they're living in poverty, and they're attracted to a certain lifestyle because of that. When you talk about the federal government, community agencies, provinces, municipalities, there's a lot of investment that can go to prevention, starting really young. Do you see a correlation between poverty and radicalization to violence, and do you think there's a need to be reaching out to kids at a younger age?

● (1425)

**Dr. Stephen Randall:** I think the answer to the last part of your question is absolutely yes.

I'm not sure that Canada is in the same situation, relative to the poverty and the marginalization, that a number of European constituencies are in with regard to the marginalization of youth. I'm not a specialist in the area of social work, and I don't want to venture too far into this, but I know from my colleagues in social work who are working with ethnic and indigenous communities, some of whom are the more marginalized segments of our society, that there is a need, clearly, to engage in educational activities that bring individuals more into the mainstream of the engagement with their communities.

In my presentation I alluded to the need to work with youth and women. The green paper also alludes to this. In 1993 I worked with the United Nations in Cambodia, and then again for the Asia Foundation. I did a report for them on their funding of NGOs in Cambodia in the elections. What we found, universally, was that the women's NGOs were by far the most effective. These were all funded internationally by various international NGOs. They were by far the most effective in terms of reaching out to the communities and changing—or influencing, shall we say—perceptions within those communities. If you want poverty, Cambodia certainly fits very much into that context, as does Haiti. I think it goes without saying that this is a reality there.

I don't think Canada is in exactly the same level of desperation. I don't think we have a Paris situation of marginalized Algerian Muslims, in particular. Could that develop in the Canadian context? Yes. But I don't think we're that desperate yet.

**Ms. Pam Damoff:** I met a group from Hamilton who were doing a lot of programming with young people who were turning toward gangs. They found that they were very successful in turning them away from radicalization, but then they had their funding cut, so they didn't have the resources to be able to do that.

To the gentleman from the Centre for Military, Security and Strategic Studies, you mentioned that we don't have good infrastructure in Canada. I'm just wondering, what is good infrastructure? What are some examples you can give us that we should be looking at?

**Dr. Robert Huebert:** I was referring there to the infrastructure on outside analysis of the changing security environment. For example, we used to have a government-based source of funding for, at the university level, what was known as the security and defence forum. That allowed expertise to be developed over at least a five-year period, if not ongoing. That was cut.

We've attempted to see a rise in some American-style think tanks. Some have been very successful. Dr. Bercuson, for example, is vice-president of probably one of the most successful think tanks that deal with this issue. However, they tend to be far and few in between. The Kanishka initiative was building up certain expertise.

What I'm saying in terms of the infrastructure is that as soon as we get outside of government—Steve mentioned some of the government-based threat assessments—and go to that independent thinking outside the box, we seem to move away from the ability to develop or support the type of expertise that takes longer than grants, in this particular case, of one or two or three years. When I'm talking about the lack of infrastructure, really I'm thinking in the context of where we seemingly have moved away from the willingness to fund something over a longer term, in substantial amounts of money, outside of government.

**Ms. Pam Damoff:** Would that be predominantly in academia?

**Dr. Robert Huebert:** You could get academics and you could also get practitioners—again, a variety of individuals. For example, going to Dr. Bercuson's think tank, you get ex-government officials working alongside academics. It's people with expertise in the field.

**Ms. Pam Damoff:** Can you give us any international examples? I only have about 30 seconds left.

**Dr. Robert Huebert:** Sure. You have American institutes like the Wilson Center and other types of think tanks like RAND that will be trying to think outside the box on rising threats. Those are two that immediately come to mind.

• (1430)

**Dr. Stephen Randall:** Could I just add briefly to this?

Some of you may be aware of the fact that a number of years ago there was a national initiative that involved Immigration and Citizenship Canada, the Social Sciences and Humanities Research Council, and a number of other federal agencies to fund projects on immigration and integration. This was a national project. There were several nodes across the country. It was to look very specifically at the ways in which educational institutions, social institutions, and social services responded to newly arrived Canadians making that adjustment to Canadian society. It was, I think, an extremely effective initiative.

**The Chair:** Thank you very much.

Mr. Miller.

**Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC):** Thank you very much, Mr. Chair.

Gentlemen, thanks for being here today. I enjoyed all your presentations.

Mr. Huebert, you started out talking about the green paper. You asked a couple of questions; one was about anticipating the immediate threat. Right after that you mentioned the Chinese use

of cyberterrorism, and you made the comment then that we need a long-term solution. Putting those three points together, could you enlarge on that a bit?

**Dr. Robert Huebert:** Absolutely. Thank you for the opportunity.

One of the challenges we're always facing within the Canadian context, which Dr. Bercuson touched on in some of his comments, is that we do have a tendency to deal with the threat that has just occurred. In other words, if we look back to Air India, it took us a long time to recognize that in fact it wasn't an Indian threat—i.e. from India. There were Canadian-based terrorists, we know, in terms of some of the attacks on editors within B.C., the attack on the former premier of B.C., and so forth. It took us a long time to think in that context.

We also have had that difficulty making the mindset change when the Cold War ended, getting into the fact that we are facing some of these types of internal threats. It's always that anticipation of being able to look ahead in the context of where some of these threats are that don't fit within the examples of what we are specifically trying to face.

When we start talking about the Russian ability to hack into, say, the Democratic Party and what that then means in terms of a security threat to western liberal interests in North America, and when we start thinking about the Chinese ability to hack into businesses, is that within the context of any of the examples that the green paper gives? Are those the individuals of radicalization? No, of course not. But this is where we need to be thinking in terms of going beyond what we're dealing with right now.

**Mr. Larry Miller:** Just to enlarge on that, are you saying that the green paper will not deal with that or are you just worried that it may not?

**Dr. Robert Huebert:** “May” not, because once again it's dealing with the specifics of probably what we're going to have to do on each of these issues. Once again, as soon as it goes beyond the specifics of the individual, and the focus is of course on the radicalization and the treatment of individuals within Canada, but as soon as we start getting cross-boundary, when we start talking about someone who's outside but perhaps operating with someone within Canadian boundaries, that's where it becomes more difficult, in my view.

**Mr. Larry Miller:** Thank you.

Mr. Randall, I have a whole lot of points here that you touched on. One caught my attention; you mentioned cultural practices that make it hard for women to participate, I think you said.

**Dr. Stephen Randall:** To take leadership roles.

**Mr. Larry Miller:** Leadership roles, that's right; I was trying to write while you were speaking.

Right after that you also mentioned promoting alternative values...?

**Dr. Stephen Randall:** The green paper refers to the need to promote alternatives to the radical vision. My question was, who will generate that alternative vision or those alternative values? I was expressing some concern about the sensitivity in Canadian society over testing people on their adherence, if you wish, to Canadian values, which has been a debate, as we know, for the last several months in Canadian politics and society. Will it be a top-down initiative in creating that alternative vision for potentially radicalized young people, or will this be developed at a community level? One can anticipate the kind of reaction that one would get from a top-down initiative in creating an alternative scenario or alternative vision.

• (1435)

**Mr. Larry Miller:** I'm trying to wrap my head around how radicalization and having Canadian values, whether you live in Canada or intend to live in Canada, are necessarily connected. In some cases, yes, they will be, but would it not be fair to say not always—or most of the time not always?

**Dr. Stephen Randall:** Oh, not always; I was simply drawing from the green paper itself, which argues that there is a need to create that alternative vision. I'm expressing the view that it's necessary to do so, but to do so with caution, and to be careful about from whence that vision derives.

**Mr. Larry Miller:** Okay.

I want to move on to something else that I think is important, although all of it's important. You made the statement that you're uncomfortable that authorities may not be able to have the powers to carry out their mandate. You started off by speaking about the Privacy Commissioner's comments on this. He has quite a dislike for this. It's a concern of mine as well. Should Canadians have to expect that we may have to give up a little bit of our privacy in this different world that we live in, different from 10 or 15 years ago, in order for authorities to have the proper powers?

I would just like you to enlarge on that comment you made.

**Dr. Stephen Randall:** I can do so, but only very briefly. I think I was trying to suggest that, yes, there are times when some compromise of charter rights may be necessary. That relates to the question about whether the CSIS Act should be revised or not to make it absolutely consistent with the charter. I alluded to the issue of access to IP addresses and access to information through communications providers as well. Many countries in the world already provide their security agencies with that capacity.

I think we also know that the national security agency in the United States is able to collect any information that our security agency is, whether it's shared with us or not, internationally. So our privacy has, frankly, already been compromised.

**Mr. Larry Miller:** You said you were very concerned with peace bonds. Could you enlarge a little bit on what you would like to see there that would be better?

**Dr. Stephen Randall:** I'm not comfortable with secret hearings. I'm not comfortable with the notion of witnesses, individuals who are charged with offences, who cannot be confronted by the witnesses who bring testimony against them. It's a basic principle of natural justice, is it not? I think we need, therefore, to have more faith in our judicial system in dealing with national security matters.

**Mr. Larry Miller:** Thank you very much.

**The Chair:** Mr. Dubé.

[*Translation*]

**Mr. Matthew Dubé (Beloeil—Chambly, NDP):** Thank you, Mr. Chair.

[*English*]

While you gentlemen put on your headphones, I'll start my questions in English and then go back to French.

Mr. Huebert, you talked about the importance of having to share information with our allies. While we recognize the importance of that, some of the concern comes from protecting Canadians and their rights in the hands of foreign entities, even when they're allies. For example, even with our American friends, the protection that exists for non-Americans is just not sufficient to guarantee that the information will always be as protected as we would like.

The other issue that comes up, in particular with Bill C-51, is one that we've been raising in the last couple of weeks. It pertains to information sharing with consular services, for example, between consular services and CSIS. This idea of a ministerial directive potentially opens the door to the use of information obtained under torture.

How do you reconcile the need to work with our allies, and the fact that we also want to make sure that Canadians have the protection that they won't necessarily be afforded in other legal jurisdictions?

**Dr. Robert Huebert:** You've hit on what, for many of us, is one of the most challenging issues whenever we are dealing with information sharing with allies. We're not speaking of a hypothetical. We've seen instances where in fact we have had information gathered from the use of torture amongst allies. We have seen Canadians...in terms of some of the worst practices brought forward. Having said all of that, then we have this issue of balancing it against the ability to convince our allies to work with us, that we are trustworthy, that we can take the information.

Part of the difficulty—you can hear the hesitancy in my voice—is of course how far do we have to go to ensure that in fact we are able to protect, to avoid these types of circumstances that we know have happened? By the same token, how do we ensure that our allies, at the operational level we're working at, have the trust in Canadian abilities to work with them?

To a large degree, the system works at its very best when you have the trust and the respect between the various officials. The problem we face on the outside is that, quite frankly, we're not able to evaluate what creates the best-case scenario and where in fact the problems arise. It's very difficult for me to say that here is a silver bullet that allows us to ensure that the Americans, the Brits, the Australians, and the Japanese are trusting our information and willing to work with us, but by the same token we are able to avoid some of these worst entities that in fact we know have occurred in that context.



I'm giving you a very unsatisfactory answer in saying that I don't have an answer. Once again, I think being aware of the fact that it is not a black and white situation is about the best I can offer, unfortunately.

•(1440)

[Translation]

**Mr. Matthew Dubé:** Dr. Huebert, I want to address another point you brought up earlier.

There is the identification of new long-term threats and the fact they couldn't always be anticipated. Separatist groups in the United States were mentioned—

[English]

Are you okay with the translation?

**Dr. Robert Huebert:** No, I'm sorry, the headphones aren't working.

**Mr. Matthew Dubé:** Okay. I'll do it in English.

**Dr. Robert Huebert:** No, no. You can go ahead. If I hold it down, it works.

**Mr. Matthew Dubé:** Great.

[Translation]

You mentioned groups in the United States.

[English]

It's good now? Okay.

[Translation]

I'll use the example of the War Measures Act invoked in Quebec, in 1970, or of Bill C-51.

If we're unable to identify threats because we're not aware of them beforehand, shouldn't we be worried that we'll cast too wide a net and people who may not have anything to do with the threats will be caught in that net? In 1970, in Quebec, a wide net was cast for the FLQ, but it resulted in the arrest of people who had done nothing wrong and who were simply militant sovereignists.

Isn't this situation a concern? How can we identify long-term threats without falling into this type of trap?

[English]

**Dr. Robert Huebert:** This is probably also one of the most difficult issues when we're thinking about it. For example, I think in the current situation, we're seeing a lot of concern about some of the extremists in terms of the environmentalist groups. We're hearing that the attacks that have occurred on several of the pipelines may have caused significant human damage, and environmental damage, ironically enough. By the same token, you do not want to do anything that in any way places those individuals who are concerned about environmental policy and take opposition to any government position to be included.

I think, to a very large degree, once again, it's the issue on the operational side of ensuring that the individual operators in this context are clear. In other words, I don't think, looking at our experience, it is protected by any specific writing where you sit down and say, "We'll do so much of this type of enforcement, this

type of bringing in"; rather, it's a matter of ensuring that with the oversight....

This is the part that I think works very well within the proposed changes in terms of having parliamentary oversight. When the operators are doing their jobs and being properly funded, you do have an ability with parliamentary oversight. I agree with my what my colleagues have said. I'm much more comfortable with a parliamentary oversight. You have the ability to ensure that the net is not being cast too far. By the same token, there is not the sense of penalty among the operators that when they do cast it too wide, you don't have the opposite reaction where their hands are slapped and then they don't look. It's that balancing act that has to be continual.

[Translation]

**Mr. Matthew Dubé:** Thank you.

My last question is for you, Dr. Randall.

You discussed concerns regarding the protection of privacy and the fact various organizations shouldn't be prevented from carrying out their work. Yet, we think organizations such as CSIS, for example, bear the burden of proof. They must show they need these powers. In the context of Bill C-51 and under other circumstances, the organizations failed to show the usefulness of having these powers. Some even argue that it's more a lack of resources that prevents the authorities from carrying out their work in the fight against terrorism.

To justify requesting such broad powers, don't you think they should show the usefulness of the powers in a more tangible way?

•(1445)

[English]

**Dr. Stephen Randall:** These are interesting questions and problems as well. Very broadly, to come back to what you were also asking a moment ago, there's always a danger of casting the net too broadly. I think the United States currently does that. I think that's a very serious problem. In terms of information sharing, we do not want to ever have another Maher Arar case. This was a problem of information sharing, as you know, between CSIS, the RCMP, and the United States. It's fine to share information with allies, but one has to be very careful about which information one is sharing with them.

As far as the other issues are concerned, as I said in my presentation, I'm increasingly.... You alluded to the 1970 situation in Quebec and Montreal, and you're absolutely correct. The net was cast very wide. I had friends who were detained in the course of that process. I suspect that David may well have experienced some of that as well.

But I think on the whole, coming back to the contemporary situation and the threat of domestic and international terrorism, Canada is not threatened to the same extent as a number of other countries and a number of other societies are. Therefore, I think there's a greater reason to be rational and careful—

**The Chair:** I need you to come to a conclusion pretty quickly.

**Dr. Stephen Randall:** I'm sorry. I'll stop there.

**The Chair:** Sorry. We're well over time.

Mr. Mendicino.

**Mr. Marco Mendicino (Eglinton—Lawrence, Lib.):** Thank you, Mr. Chair.

Thank you, gentlemen, for your testimony today.

Professor Randall, would you agree that one of the most effective ways to prevent radicalization to violence often lies within the community itself?

**Dr. Stephen Randall:** My one-word answer to that is yes.

**Mr. Marco Mendicino:** Notwithstanding your agreement, there are some impediments or barriers to the success of that. You mentioned two groups of people, youth and women, two very significant and vital components to any vibrant community.

Let me ask you a few questions about youth. Would you agree that to engage full participation amongst youth, we should find ways to promote or foster a higher performance registration within the academic process within schools?

**Dr. Stephen Randall:** I'm not sure what you mean by a higher level of registration within the schools.

**Mr. Marco Mendicino:** I mean so they will stay in the school.

**Dr. Stephen Randall:** Yes. British Columbia and Alberta both have had fairly high dropout rates in the high school context. I think continuing involvement in educational institutions is important, but I think equally important is what happens after 3:30 or 4 o'clock in the afternoon.

**Mr. Marco Mendicino:** Do you see a gap there that can be addressed?

**Dr. Stephen Randall:** There's a huge gap there. Kids who are in school between 8 o'clock in the morning and 4 o'clock in the afternoon are less likely to be getting into difficulty than are those who are not in school.

**Mr. Marco Mendicino:** What kinds of programs in the context of counter-radicalization should we be looking at after school?

**Dr. Stephen Randall:** It comes out of police clubs. It comes out of the mosques. It comes out of church organizations. It comes out of social clubs. It comes out of general athletic clubs. It comes out of parents. Let's face it, parents are not entirely irrelevant in this process.

**Mr. Marco Mendicino:** You mentioned parents. I've spoken with a number of parents in my community. Within the ethnic communities, they will say that when they try to access conventional community organizations or hubs for support, there is a bit of reluctance because of a difference between the values or norms within their community and those within the broader community.

When we talk about how we overcome the barriers to getting women fully engaged within any efforts to prevent radicalization or violence, what suggestions can you offer there?

• (1450)

**Dr. Stephen Randall:** It's particularly hard in the Muslim community. We know that to be the case, not exclusively but frequently, in that context. I think it has to come out of the community itself. It's not something we're going to be able to

legislate or deal with in a top-down manner. It has to come out of the families, and it has to come out of the communities.

**Mr. Marco Mendicino:** What sensitivities should government actors and public stakeholders be exhibiting to overcome those barriers? I'm really trying to drawing on your expertise, since you have worked abroad.

**Dr. Stephen Randall:** Well, you really need to pose that not to a historian but to a social worker. I'm not going to give you a very professional response to that question, but I'll give you a very personal response to it.

When I was a kid, I belonged to a local police club. This was in a semi-rural area outside of Toronto. I never got beat up so much in my life as when I belonged to that social club. Why? Because it attracted all the local toughs from the community. So I would add that there's a downside to community activities as well.

**Mr. Marco Mendicino:** How do we remove that stigma? It's funny, because there's a lot coincidence in that anecdote with regard to what I hear from those priority communities who I think become the focus of a lot of our concerns to prevent radicalization and prevent violence. I think part of it is reconciling the stigmas that get attached to conventional police services and personnel, and other government or state actors.

How do we square that circle? How do we build trust and goodwill with those ethnic communities and any community that might be the focus of this effort?

**Dr. Stephen Randall:** I think you have to try to identify the leaders within those communities and let them take the lead.

I'll come back to the context of Haiti. One of the reasons the Brazilians were so successful in rebuilding Haiti, until the disastrous earthquake, of course, in 2010, was that they worked with the local community and sought out the people who were self-identified as the leaders within that community. I think you have to start there.

Again, I don't claim any expertise as a social worker. I know from one of my colleagues and social workers working with the Vietnamese community here that this is very much the way in which they proceed.

**The Chair:** You have one and a half minutes.

**Mr. Marco Mendicino:** My question is to the panel. There was a comment made about how civilian oversight has not been particularly helpful in the past. There are some who are advocating precisely for a sort of civilian oversight in a super SIRC where we would have civilians with the subject matter expertise.

Do you see any value in having a super SIRC, or are you more in favour of seeing the committee of parliamentarians develop its own subject matter expertise because it's accountable to the House of Commons?

**Dr. Stephen Randall:** I think the primacy should be on Parliament in this respect. There's no reason to exclude civilian oversight committees, but if they're going to be established, they have to have clear guidelines and they have to have teeth.

**Mr. Marco Mendicino:** Professor Huebert or Professor Bercuson, do you have anything to add?

**Dr. David Bercuson:** I don't think civilian oversight works, because in this situation we're not dealing with criminal matters, we're dealing with security issues. Much of the evidence that is going to be used by the security agencies is going to be secret evidence.

**Mr. Marco Mendicino:** Do you not see that there has been any value in either the reports or recommendations submitted by SIRC or —

**Dr. David Bercuson:** I see some overall general value. I don't see any specific value whatsoever, because if I were a member of one of these committees, there's just too much stuff that I could never get to see, so then what's the point?

**Mr. Marco Mendicino:** So it's about access to classified information.

**Dr. David Bercuson:** Yes, and you must keep some of this information secret. You can't pretend that the criminal procedures we use are applicable to procedures that we would use in cases of apprehended terrorism or actually terrorism. We can't.

**Mr. Marco Mendicino:** Thank you. I think the chair has been very generous with the clock.

**The Chair:** Thank you.

Ms. Watts, you have a five-minute round.

**Ms. Dianne L. Watts (South Surrey—White Rock, CPC):** Thank you very much.

I appreciate all the comments. There are a couple of things I want to touch on. It struck me in listening to the general public, not only through this process but through other processes in my job formerly as a mayor, as well as a member of Parliament, that it comes down to threat and the understanding of what that means. Last night as well, when we were in Vancouver, there was a clear understanding that a lot of people don't think there is a threat; they think there is an organization that just wants to spy on them.

It's about having an educational process and an understanding that other countries, whether it's China, Russia, or the U.S., are hacking into systems that have more information than CSIS would probably have, and that there are individual people who are selling on the market all this information as it comes through. I need you to speak to how we frame what the threat is.

I heard that with the cybersecurity, and also the national security threat around narcotics. In British Columbia, 600 people are dead since the beginning of the year. That's coming in from China and Mexico. That is a threat.

I need you to talk about how that's framed up and how we bring that education and language to the general public.

• (1455)

**Dr. David Bercuson:** I'd like to jump in on this one. We have to look at threats as, in a sense, an arc of issues that impact on the safety of society. You can start on one end with pandemics and on the other end with war. Somewhere in between you'll get criminal activity, narco-terrorism, and cybersecurity, and in many cases they're all linked. In fact, there are groups out there who are using cybersecurity to get information to steal intellectual property from

companies to sell to other countries and so on and so forth. That's the way we have to see it.

I want to go back to something Rob said at the very beginning. The Calgary Police Service here has been doing a lot of work on radicalization. They have a conference every year. They talk to security experts and so on and so forth, but they are too focused on radicalization. That is not a criticism. It's a friendly suggestion, and I've made it directly to them.

If we look at what radicalization has actually achieved in this country, the answer is that a small number of people have been hurt, yes, and a small number of people have been killed. It's not the most important threat to the country. The most important threats to the country lie outside the realm of radicalization, and we are not putting enough emphasis on that.

It's like a huge bauble. Every time there's another incident, and there will be, as there was in Ontario this summer, because some individual is sitting somewhere right now in front of a computer screen and radicalizing himself—probably himself—that's not as much of a threat, for example, as stealing intellectual property from a Canadian company on the west coast that is leading the world and doing so much with satellite communication. For the moment, that name is slipping my mind.

That intellectual property is valuable to the whole country. It generates jobs and it generates taxation wealth and so on and so forth. If the intellectual property of that company is stolen by someone outside of Canada, that does a great deal of harm to our economy, and it may even have ramifications that will lead to violence and so on and so forth. We have to look at this as a whole. There's a whole sky out there and there's a whole ceiling in this room, and radicalization is one little part of it.

That's my answer to your question.

**Dr. Robert Huebert:** Once again I agree with everything David has said here, but I would add that there's also a larger political issue that comes to the forefront. That is, what we've seen over time is the tendency of the leading political parties of the day to basically frame the threat in a certain context, and it's like “we've done it, it's done, it's over”, and—

**Ms. Dianne L. Watts:** You tick the box.

**Dr. Robert Huebert:** —we check off the box.

There is a need to have a willingness to understand that events change. In fact, the government has to be willing to admit that they don't fully understand what the threat is. For example, just in today's discussions, we've heard people focus on poverty as a major source of radicalization, when in fact we have to be very careful of that, because there is some evidence that certain types of terrorists will actually be coming from the middle- and upper-middle-class students. It's not so much about poverty but about marginalization.

Once again, within a political system, there needs to be a willingness to be flexible and to actually somehow take it in a more bipartisan or tripartisan manner in saying, “We don't know, but we have to be open.”

**Ms. Dianne L. Watts:** Right, and—

**The Chair:** I'm afraid I need to—

● (1500)

**Ms. Dianne L. Watts:** I'll be quick.

The other premise is that, as Canada goes out and works with and supports our allies, we've actually brought this threat home. I don't personally subscribe to that, but there is that mentality out there.

For anyone, can you quickly comment?

**The Chair:** In 15 seconds.

**Dr. David Bercuson:** In 15 seconds: we must rely on our partners because we don't have the capabilities ourselves. That's why we're in NATO. That's why we're part of the Five Eyes. There may be a downside to it in certain ways, but the upside is so massive that it counterbalances any potential ill effects.

**Ms. Dianne L. Watts:** Perfect. Thank you.

**The Chair:** Very good. Thank you very much.

We don't have time for another five-minute round, so that comes to an end.

I want to sneak in one question here.

Professor Randall, you indicated when you were talking about threat reduction that you were less concerned about an infringement upon charter rights than you were about consistency in the application of that infringement of rights. A big thing we're looking at is finding a rebalancing, perhaps, of rights and security, and that is kind of critical right there.

**Dr. Stephen Randall:** Yes, and I don't envy you trying to really balance those two.

**The Chair:** That's why I have a smart committee.

**Dr. Stephen Randall:** That's the elephant in the room, in many respects. I think the word we're going to have to use is “normally”, in that the CSIS Act, the way in which security measures take place, should normally be consistent with the charter. But there will be circumstances under emergency conditions, such as the equivalent of a 9/11, heaven forbid, in the Canadian context—

**The Chair:** Beyond section 1?

**Dr. Stephen Randall:** Yes, beyond section 1.

**The Chair:** Okay.

If you have done any writing on this, and you wanted to submit anything to the committee on how that could look, that would probably be helpful.

**Dr. Stephen Randall:** Well, look, the charter guarantees protection against unreasonable search or seizure. How do you define “unreasonable” in the middle of a crisis? It also guarantees that an individual cannot be arbitrarily detained or imprisoned. How do you define “arbitrarily” under emergency circumstances? It comes back to your question about 1970, to some extent.

**The Chair:** It may be like beauty in the eye of the beholder.

**Dr. Stephen Randall:** Yes.

**The Chair:** Thank you very much.

We'll pause and switch panels.

● (1500)

(Pause)

● (1505)

**The Chair:** Thank you very much for joining us.

As I said earlier, this is our third meeting on this tour going across the country. Our committee is examining the national security framework and looking at where we stand, and what Canadians are concerned about with respect to various pieces of legislation that have been passed over a number of years.

I didn't mention this earlier, but a green paper has been issued by the Minister of Public Safety and Emergency Preparedness. We obviously have that paper, and have it as part of our work, but we're not limited to the green paper. Ours is a fairly broad look at the national security framework. We'll certainly be channelling into that minister, if not other ministers, with our hearing results from Canadians across the country. We have had a couple of meetings in Ottawa. We are on the road this week, and then we'll continue meeting in Ottawa after this finishes as we continue our study.

Let's begin with Regena, for a 10-minute round.

**Ms. Regena Crowchild (Councillor, Tsuut'ina Nation):** Thank you.

*Dadanast'ada. Sizi naituigokoo at'a.*

Good afternoon. My name is Regena Crowchild. I'm a member of council with Tsuut'ina Nation, and with me is Terry Braun, who is our legal counsel. On behalf of Tsuut'ina Nation, I thank you for the opportunity to appear before you regarding the study of Canada's national security framework.

Tsuut'ina supports action being taken by the federal government to deal with terrorist activity. However, this action cannot be taken in a way that infringes on the inherent and treaty rights of first nations.

On September 22, 1887, Chief Bull Head, on behalf of the Tsuut'ina Nation, entered into Treaty No. 7 with the imperial crown. We were sovereign peoples. We had a right to self-determination, we had our territories, we had our laws, we had our language, and we had our culture, tradition, and spirituality. Treaty No. 7 was a peace and friendship treaty. Our peoples agreed to share our territories with the newcomers to the depth of the plow and to live side by side without interference. The Tsuut'ina Nation would continue as a sovereign nation.

Almost from the day of making the treaty, we have been fighting to protect our treaty and inherent rights as a sovereign nation. At times, this fight has taken place by way of demonstrations and protests on the freedom of speech. Notwithstanding section 35 of the Constitution Act of 1982, in which existing aboriginal and treaty rights of the aboriginal peoples are recognized and affirmed, first nations continue to have to fight to protect our inherent and treaty rights. While we hear this Government of Canada saying that they wish to develop a nation-to-nation relationship and that they wish to develop a relationship that affirms and protects inherent and treaty rights, we continue to wait.

First nations continue to have to take matters to court. Look at the Northern Gateway Pipelines project. In June of this year, the Federal Court of Appeal overturned Canada's approval of the Northern Gateway project. In the decision, the Federal Court of Appeal agreed with the first nations that Canada had failed to fulfill its constitutional duty to consult.

Unfortunately, court action is not always possible. Many communities, our communities, continue to live in poverty, so that when a decision needs to be made as to whether to feed, clothe, or shelter the community or to take a matter to court, the decision is usually very easy.

For most communities, the only way to get the attention of the federal government is by way of demonstrations. While the Anti-terrorism Act is legislation that was introduced by the Harper government, or the Conservative government, the Liberal government has not taken meaningful steps to address the concerns that have been raised by first nations. Almost immediately upon the introduction of Bill C-51, first nations raised concerns about a lack of consultation on this legislation that clearly impacts first nations.

As explained by the Supreme Court of Canada in *Haida*, when precisely does the duty to consult arise? The foundation of the duty in the crown's honour and the goal of reconciliation suggest that the duty arises when the crown has knowledge, real or constructive, of the potential existence of the aboriginal rights or title and contemplates conduct that might adversely affect it.

● (1510)

Our first concern is the lack of consultation as is required by the federal government. Our second concern is the legislation itself.

Quite honestly, the act feels like a return to the past, to past legislation that held Indians liable to imprisonment if three or more Indians, acting in concert, made a request to an Indian agent or a servant of the government that was deemed to be a breach of the peace.

The act, as we read it, applies to any activity that undermines the sovereignty, security, or territorial integrity of Canada, or the lives or the security of the people of Canada, and includes a broad list of activities that can be used to suggest that just about anything could be deemed to be in contravention of this act.

One of the few ways that first nations can protect our rights is by coming together. We need to look no further than Idle No More. Idle No More was a call to all people to join in a peaceful revolution, to honour indigenous sovereignty, and to protect the land and the water. Are these people terrorists? Are first nations who come together to stop damage to our ecosystems by preventing clear-cutting by forestry companies terrorists? Are first nations who come together to protect the land and the water from exploitation by profit-driven oil and gas companies terrorists?

While we have heard that this isn't the intention of the legislation, there is a long history of Canadian governments creating laws to restrict the rights of first nations. Just look at the Indian Act to understand why first nations are suspicious as to the intention of any legislation enacted by the federal government. Or more recently, look at the First Nations Financial Transparency Act. Notwithstanding both the Government of Canada and here in Treaty No. 7

territory, the Government of Alberta has suggested that they would be reviewing legislation that may infringe on the inherent and treaty rights of first nations. First nations continue to wait.

Minister Bennett stood before the United Nations assembly and confirmed that the Government of Canada was a full supporter of the United Nations Declaration on the Rights of Indigenous Peoples. Yet we are here today, and in my humble opinion, nothing material has been done.

I do not intend to go line by line through the declaration, but I will direct this committee to a few articles from the United Nations Declaration on the Rights of Indigenous Peoples. Article 3:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

To be clear, first nations have a right to self-determination, to freely determine their political status, to freely pursue their economic, social, and cultural development; the right to autonomy or self-government. As the Anti-terrorism Act is currently written, it does not recognize these rights of first nations. As the act is currently written, it does not recognize the inherent and treaty rights of first nations.

● (1515)

I wish to close by again referring to the Declaration on the Rights of Indigenous Peoples. Article 19 states:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Not just with this act but with all legislation and policies, the Government of Canada has an obligation to consult and co-operate in good faith with first nations, and must obtain their free, prior, and informed consent.

*Siiyigas*. Thank you.

● (1520)

**The Chair:** *Meegwetch*. Thank you.

Mr. Zekulin, you have 10 minutes.

**Mr. Michael Zekulin (Adjunct Assistant Professor, University of Calgary, As an Individual):** I would like to start by thanking the committee for the opportunity to come here and present today.

While Canada faces a great number of potential threats to its national security, I will be spending my opening remarks trying to impress upon you the very real challenges that exist, and in my opinion will be intensifying in the near future, related to the issue of home-grown terrorism and radicalization.

Obviously this is a very complicated and multidimensional issue that requires a tremendous amount of time—greater than we have here—to discuss in detail. Before I begin, I would, however, also like to make the following general but important point. While the focus of my statement here refers to the threat posed by Islamist-inspired groups and individuals, as someone who studies terrorism I can assure you that the threat posed by individuals or groups willing to use violence in pursuit of any number of political or ideological goals remains very real.

That being said, I do believe that currently our greatest concern remains groups such as ISIS and a resurgent al Qaeda, and that this threat, and the threat it poses to Canada and our allies, will actually be increasing in the near term.

I would also like to implore you to think about the threat not as a manifestation of any one group but instead the ideas that they espouse. Make no mistake about it: ISIS, as we understand them today, will be defeated. But the ideas that drive them and other like-minded groups will continue. It is likely that in the next few years we will see a different version of ISIS, much like we witnessed with al Qaeda following the Afghanistan war, and the emergence of new groups that share the ideology of ISIS. This is why we must make their ideas the focal point in our strategy. This is how we successfully degrade and ultimately defeat ISIS and groups that may emerge in the future. You must accept the reality that the ideas espoused by groups such as ISIS will continue to resonate with a very small segment of our population. We must confront these ideas and neutralize them. We must do our best to challenge their being introduced, slow their dissemination, and prevent their entrenchment into our society.

In my opinion, the Canadian government has not done enough in its efforts to address these concerns. The problem is that not only has our failure to address them left us vulnerable today, but more importantly it will be a contributing factor to the severity of the problem in the future. An absence of physical threats or attacks in the present should not be taken as an indicator for the future. Ideas spread by these groups and individuals may be here and may be incubating. They may be the basis for attacks in the future.

You need to understand the complexity that underlies this issue and the larger interplay between the ideas espoused by these groups and the dangers they pose. We are obviously concerned about those individuals who adopt these ideas and then choose to pursue violence. To be clear, we know that cognitive radicalization, the adoption of radical ideas, does not necessarily lead to behavioural radicalization, the pursuit of violence on those ideas. In fact, we know that the number of individuals who escalate from ideas to violence is actually very small.

These individuals, however, are only one part of a larger concern. Beneath the very small number of individuals who adopt these ideas and are willing to commit violence, there potentially exists a larger number of individuals who, while not yet willing to pursue violence

and who may never arrive at that point, nonetheless support or assist others who might. Further beneath that group exists a possible third group of individuals we might label as sympathetic to the ideas, and while not violent or even supportive of these groups or individuals, they instead remain quiet.

I should also be clear in stating that supporters and sympathizers do not need to be active or willing participants. For example, a group of individuals operating in a neighbourhood may be able to intimidate others to offer support or stay quiet. The result, nonetheless, is the same. It allows a safe space for these individuals to operate.

Again, please allow me to be very clear on this point. I'm in no way suggesting that this is an accurate representation of what we currently face here in Canada. I do not believe there is any significant number of individuals who fit into these categories here in Canada, but offer the following qualification: "at this point".

I'm simply suggesting that our failure to take this threat seriously today creates conditions in which the scenario I have identified could become a reality. Your current point of reference, should you require one, would be places such as Brussels, and France more generally. The success of a very small number of individuals wanting to target civilian populations with violence becomes increasingly possible due to this larger logistical, supportive, or sympathetic segment of the population.

• (1525)

The task before this government is a challenging one. To try to help you understand the complexity of this phenomenon and how we might proceed to addressing it, I would suggest that you think about it as three separate components that are all intertwined with one another. Each one needs to be addressed individually, but in addressing each one of the parts, the sum together helps us mitigate the threat posed by this phenomenon. I will also caution you at this point that there is very little tangible agreement on how we accomplish these goals. There remain tremendous disagreement and debate about each one of these components and the best way to address them. However, this can no longer be used as an excuse to do nothing.

The first aspect of this threat is the one that is most pressing right now: safeguarding Canada and Canadians against those who are intent on harming us, and willing, today. Government reports indicate that this number is currently around 160 individuals. These are individuals who law enforcement and intelligence agencies have identified as significant concerns here and now. This is where governments must make legislative choices about the threat. What do we do with these individuals? How can we keep tabs on them and ensure that they cannot launch attacks?

This is also the danger zone. We cannot be spending all of our time and effort in this space because doing so means we are on the defensive and playing catch-up. Over time we want to shift the focus to the other two components of this phenomenon, which I will quickly outline for you now.

In addition to the clear and present threat, the two additional aspects that need to be addressed are, unfortunately, where government has left a lot to be desired.

The first of these is the preventative component, otherwise known as counter-radicalization. This is where we need to focus on challenging or providing alternative narratives to those presented by these groups. Essentially, it is about starting discussions, encouraging open debate and conversations, and providing a counterweight to the messages these groups are using to attract individuals. Absent this effort, we are not participating in this debate for hearts and minds. This creates a vacuum in which these groups are the only voices individuals may be exposed to. This allows for the possibility that their ideas take hold and, over time, solidify.

The link between prevention and the current threat is straightforward. If we prevent individuals from adopting these ideas or provide counter-perspectives before the ideas become hardened, fewer individuals may graduate to potential violence. Again, these efforts will not prevent every individual from adopting these ideas but through them we seek to minimize the number who may progress towards the next stage. We want and, more importantly, need the number of 160 to decrease to a more manageable number. An increase in this number will quickly stretch resources beyond our ability to keep tabs on all of them, allowing for the possibility that some will slip through the cracks. Again, Brussels is under water.

Canada lacks a preventative strategy. We continue to hear that the office of counter-radicalization will emerge, but this idea has been circulating for several months, maybe even years, without any meaningful implementation.

The third and final aspect pertains to the idea of deradicalization, what we do with individuals who have travelled to join groups or who have become radicalized. This term is also problematic, because it implies that you can change someone's ideas. The term most readily employed in the terrorism literature now is "disengagement". Discussion of it focuses on ways to prevent individuals from potentially acting on their ideas or actively spreading them.

ISIS is likely nearing defeat, and individuals, including Canadians, may begin returning home. In addition, there's a real possibility that some of these fighters may have children with them. How will Canada welcome them, and what will we do with them? A framework for this reality needs to be prepared. Will Canada pursue a criminal justice approach or a social work approach? Will it be different for different individuals? Who decides, and how? Failing to start investigating this third component will, once again, leave us vulnerable in the future as we react with knee-jerk policies in a potential time of crisis.

In closing, we need to do a better job on preventative measures to ensure, moving forward, that fewer people might become threats to our national security. In addition, we need to start preparing for the eventual return of individuals who have travelled abroad. While it is true that not every one of the individuals who return will pose a threat of attacking Canada or Canadians, the ideas they bring with them may be disseminated, and they, in and of themselves, are part of the concern.

The government needs to be more proactive in addressing longer-term challenges and must immediately implement some meaningful counter-radicalization efforts.

Thank you.

• (1530)

**The Chair:** Thank you very much.

Professor Nesbitt.

**Prof. Michael Nesbitt (Professor of Law, University of Calgary, As an Individual):**

Hi. I want to thank you very much, first of all, for having me here. I think this is a wonderful initiative. I don't envy you your task, but I do appreciate that you're undertaking it.

[*Translation*]

Thank you. It's truly an honour to be here with you today.

[*English*]

I'll do my best to keep this under 10 minutes. The first thing for me, the hardest thing, was coming up with a topic to discuss here today. I come to this both as an academic in law but also having spent almost 10 years in government, both in Foreign Affairs and the Department of Justice. A number of the issues in the green paper are fairly close to me, having seen both intelligence and evidence and having dealt with listing procedures and terrorist financing.

Let me discuss what I think are the two critical issues that will have to be dealt with in this round of hopefully what amounts to changes to the legislation and approach in Canada. This will be from a lawyer's point of view, because that's what I am.

The first is Bill C-51's unprecedented grant of authority for CSIS to move beyond its traditional role as an information-gathering and analysis agency to one that's authorized to conduct disruptive activities, including specific authority for charter-infringing and unlawful activities.

The second, to take a contrary position to what I understand you heard earlier, is the desperate need for better review and oversight—I'll be a stickler about the difference between those two—of Canada's national security bureaucracy. I say this based on my experience as a lawyer and policy adviser within Ottawa's civil service as much or more so than I do as an academic. Too often the effectiveness of our bureaucracy is limited by the fact that decisions are made within the bureaucracy and information is passed up to ministers and reviewed, if at all, in departmental silos. Cross-cutting issues can evade cross-cutting review and oversight, and frankly they can evade cross-cutting solutions.

Let me be clear that review and oversight are not solely about protecting against possible abuses or correcting mistakes, though this is obviously very important. Sometimes human rights and security can be mutually reinforcing rather than a tug-of-war. Review and oversight are desperately needed to improve the coordination and effectiveness of our institutions in responding to national security threats.

In this regard, parliamentary review of national security matters of the type that's now been proposed is a crucial first step and gets us in line with our Five Eyes allies, but it alone isn't sufficient. Internal review of national security operations that stretches government-wide is needed. Greater formalized central coordination—I'm talking about oversight here—or the possibility thereof, for example in the hands of the NSA, is also needed.

With that in mind, I want to spend the remainder of my talk on the first element that I mentioned, Bill C-51's amendment to the CSIS Act to grant the department disruptive powers. In particular, I'm going to focus on three troublesome aspects of this new disruptive power: first, the authority to breach the charter; second, the authority to conduct unlawful activities; and third, what I see as, in practice, the limited opportunity for an independent party, particularly the courts, to review the legality of CSIS's behaviour.

To be very clear from the outset, I don't necessarily take issue here with the objective of the new disruptive powers nor with the specific determination that CSIS must have such powers. To my mind, we the public simply don't have enough information to make a determination on that ground. As a result, my concerns will relate more to the scope of the grant of power as it was legislated.

I'll move to the first aspect, the authority to breach the charter. This is perhaps the most clear-cut of the issues, to my mind. CSIS's new authority to breach any charter provision so long as it obtains a warrant is fairly clearly unconstitutional. No other body in Canada can obtain prior authorization to breach the charter, let alone any section of the charter. Such authority is completely unique and is found nowhere else in Canadian legislation for very good reason; as I said, it's probably unconstitutional.

This authority has been compared to a couple of provisions that I understand have come up, one being the section 8 warrant procedures and the other section 9, arbitrary detention. I'm going to argue that these are very different animals.

Let us be clear that when police have a warrant judicially authorized, it's done to confirm the reasonableness of the proposed search and seizure; quite the opposite of authorizing a charter breach,

in the normal circumstances with police, the normal warrant process confirms that police are indeed acting legally and in compliance with the charter. It was brought up earlier what reasonableness might mean. Well, it is actually really clear in law and fairly easy to determine. That is, you have reasonable grounds to make the case out of sufficient evidence, you go to a judge, and the judge confirms that for you.

•(1535)

To put it another way, the process is meant to ensure the prevention of charter breaches in the first place, not to authorize future breaches. The same is true of section 9 of the charter, on arbitrary detention. You get an arrest warrant. The warrant process is there to ensure that the detention will not be arbitrary; it is not to authorize a future arbitrary detention.

Moreover, this normal process only applies to section 8—and as I said, section 9—because the section 8 right is qualified by the term “unreasonable”, and again, section 9, by the term “arbitrarily”. Yet CSIS is nevertheless empowered to request authorization for a breach of any section of the charter.

The other argument I've heard is that section 1 of the charter provides for “reasonable limits” to charter rights—which it does—so the CSIS warrant process is really no different from this. However, section 1 requires that the government legislate, first, specifically and clearly when introducing legislation that might breach the charter. It's then incumbent on the government to articulate the specific objective, its scope, and its limitations. An open-ended invitation to judges to undertake this legislative process *ex parte*, so with only government lawyers present, and in camera, so in private, to determine when and how state actions might infringe the charter is, once again, a very different animal. My suggestion would thus be to remove from the CSIS Act the authority to breach the charter.

I'll move to my second concern, the unlawful activities. Under its new disruptive powers, CSIS is authorized to conduct unlawful activities. Such a power in this case is not without precedent: the Criminal Code does authorize police in certain situations to conduct unlawful activities, mostly undercover operations. Yet again there are striking differences in practice, even if the wording sounds similar as between the two provisions.

First, police power is constrained by about four pages of legislation in the Criminal Code, including specific limitations on the type of unlawful activity such as the loss of or serious damage to property, and the requirement to file a specific report on the unlawful activity as well as detailed annual reports on unlawful activities. The CSIS Act does not offer anything close to the same protection, does not require any reporting, and does not limit the scope of what unlawful activity might be in the same way that the Criminal Code does.



Although I'm not convinced one way or the other that there needs to be authority for CSIS to engage in unlawful activity, if CSIS makes to you a specific and compelling case that such authority to conduct unlawful actions should remain in the CSIS Act, then many of the protections and limitations that apply to the police under the Criminal Code should be introduced to the CSIS Act as well.

That brings me to the third difference between the exercise of police powers and the exercise of CSIS's disruptive powers. When police act, they act with the goal of making an arrest. The result is that the situation goes to court, and police warrants and the exercise of police power is challenged by the defence and reviewed by the courts. If there's a mistake, it can be appealed. In other words, if there are defects with the police actions or the warrants, or the issuance or authorization of the warrants, then the courts are available to review and correct the behaviour. This is why we have judicial review.

CSIS is in a very different situation. Even if their actions do become known, by their own admission and given their mandate, CSIS activities are highly unlikely to form part of a criminal prosecution and thus unlikely to be challenged in the same way as police activities. The idea is for one to be public, the other to be secret. As excellent a job as SIRC does, it is not an adequate substitute for layers of judicial oversight and adversarial challenge, particularly in these circumstances.

Again, there's a solution available, or at least a partial one. That is, a so-called special advocate—and this would be taken from the Immigration and Refugee Protection Act—responsible for providing a challenge function to CSIS requests, should be specifically built into the CSIS Act. The idea would be to compensate for the fact that CSIS warrants are a different animal from police warrants in that they're unlikely to be challenged by a defence lawyer at a criminal trial, they're unlikely to be reviewed by a court, and the subsequent implementation of a warrant by CSIS is unlikely ever to be reviewed by a court or made public. That is to say, as soon as the warrant process has been done, there is no oversight of the CSIS activity to ensure their subsequent activity complies with the original warrant.

With these inherent differences in mind, the special advocate would need authority not just to challenge the warrant, but to follow up on CSIS action to ensure the subsequent compliance with the terms of the judicial warrant, and, where abuse or a mistake is suspected, request subsequent judicial review. Again, to be really clear here, my primary concern is an innocent mistake or misunderstanding, either by the warrant-authorizing judge or in the execution of the warrant. Where matters are serious, where rights are affected, and the pressure of national security is great, innocent mistakes will be made. That's okay: but we need an opportunity to review them.

• (1540)

Thank you very much.

[Translation]

I'll listen to your questions in English or French, but I'll answer in English.

**The Chair:** Thank you.

Ms. Damoff, you have the floor.

[English]

**Ms. Pam Damoff:** Thank you.

Thanks to all of you for being here today.

Ms. Crowchild, I'd like to start with you. We haven't had anyone from the indigenous community testify before us yet, so we all really appreciate your being here and providing that perspective.

When Pam Palmater provided testimony in 2015, she talked about the need for any legislation to do with this issue to acknowledge the treaties and first nations sovereignty. I'm wondering what your thoughts are on that and also how we incorporate first nations in decision-making, if we are incorporating first nations sovereignty in anti-terrorism legislation, because it's not there right now. Do you understand what I am asking?

**Ms. Regena Crowchild:** I think I do. We're both talking sovereignty. Pam's talking sovereignty and so are we. We are sovereign nations. We were sovereign nations as we entered into treaty. In our treaties, Canada, the imperial crown, promised that they would protect our lands and protect us. They had a relationship with us as indigenous peoples, the first peoples of this land.

So when Canada legislates their acts, they need to take into consideration their fiduciary responsibilities for the first nations of this land, of Turtle Island. In order to do that, Canada must consult with the indigenous peoples and give them fair chance to comment and to discuss the issues that they are going to legislate, so that there is proper understanding and there's co-operation with both parties.

**Ms. Pam Damoff:** She had suggested that certain departments be excluded under information sharing, specifically Indian Affairs—we've changed the names now, but I'll use the names she used—Health Canada, Fisheries and Oceans, environmental agencies, NRCanada, and CRA. Obviously, in her opinion, those departments wouldn't be part of...or there wouldn't be a need to share information.

Do you have any thoughts on that?

**Ms. Regena Crowchild:** The state of Canada needs to address the issues with the chiefs of the treaty nations. I'm only speaking for the treaty nations—that includes treaties one to 11—that have entered into treaty with the imperial crown. That's how Manitoba, Saskatchewan, Alberta, part of B.C., and Ontario are now part of Canada. Canada needs to address these issues with the treaty chiefs and not just through the departments, because our chiefs represent the peoples who are the rights holders, and that process has always been left out.

**Ms. Pam Damoff:** What role do you see for those chiefs in this consultation process? You're here today, which is wonderful. As we're developing this framework, what role do you see for the chiefs in being part of that?

**Ms. Regena Crowchild:** The chiefs need an opportunity to review the intents of the legislation, so they have an opportunity to bring forward any concerns or issues that Canada needs to address. Then there can be proper understanding between the two parties. Our peoples will ensure that our treaty and inherent rights are not being infringed upon.

**Ms. Pam Damoff:** I had a conversation a few years ago with a former regional chief. He expressed concerns about first nations youth being radicalized because they were living without hope and becoming marginalized.

Do you have any comments on that as well?

**Ms. Regena Crowchild:** From the way Canada has treated indigenous peoples, it is obvious that we are oppressed. It is obvious that our people are beginning to have a lack of hope because Canada is not living up to the responsibilities under our treaties and not recognizing our treaty and inherent human rights, per se. We've been saddled with legislation that totally interfered in our lives when it was not supposed to, and that was not intended at the treaty-making. We needed to look at....

We've been fighting. As I said earlier, ever since the treaty-making, our peoples have been fighting to try to protect the treaty and inherent rights. We've been saying it to deaf ears—telling people, telling the various governments and the various parties that form the Government of Canada, yet we are still in the same situation. Yes, our peoples begin to lose hope.

As you know, the way Canada has treated indigenous peoples through the residential school era, the sixties scoop, and infested blankets, they wanted to get rid of us. They wanted to get rid of our peoples. We weren't even allowed to assemble. We weren't even allowed to leave the reserves without a permit, in previous years. We are beginning to wonder, are we going back to that stage? Is Canada bringing us back to that, even after they have made political promises? They have gone to the UN; they are signatory to the international covenant on human rights, yet they come back and treat us as if we are not human and we don't have treaty and aboriginal rights.

Yes, there is lack of hope amongst our peoples. It's up to Canada to sit down with the treaty indigenous chiefs and address these issues for a resolution. Our treaties were peace treaties, and we need to move forward and live in harmony with each other, side by side, without interference, and recognize each other's rights.

• (1545)

**Ms. Pam Damoff:** Thank you very much.

Mr. Nesbitt, we heard testimony last night that the government already had the powers it needed, so what was given in Bill C-51 wasn't necessary. Do you have any comment on that?

**Prof. Michael Nesbitt:** Do you know what powers, specifically?

**Ms. Pam Damoff:** It was that in order to combat terrorism, we already had what we needed, and what was added through Bill C-51 was powers that weren't needed. That is generally what a number of people have come forward to say.

**Prof. Michael Nesbitt:** As you know, it's a huge bill. Making that omnibus statement in response to that bill.... I could pick up on a couple of examples.

For example, the advocating terrorism provision, which was put into the Criminal Code, is either unconstitutional or unnecessary, in my mind. That is to say, we already had hate speech provisions and facilitating groups provisions. We already had counselling offences, which could include counselling terrorist offences, etc.

To the extent that it adds something to the code, it would be terribly broad, which to my mind would make it unconstitutional. There certainly are provisions that were added where, I think, the powers were already there. It's more about starting to use them in ways they haven't been used. This gets you back to your intelligence versus evidence problem—we have very few criminals prosecuted, particularly in terrorist financing, but also in all other areas of terrorism. Part of the problem, apparently, is how to get the evidence to actually do the prosecutions, rather than enact new powers to prosecute.

**The Chair:** Thank you, Mr. Nesbitt.

Mr. Miller, go ahead.

**Mr. Larry Miller:** Thank you, Mr. Chair. I'll be splitting my time with my colleague Ms. Watts.

Thank you to the witnesses for being here.

Ms. Crowchild, a number of things you brought up really don't have anything to do with what our study is on, the national security framework, but I have to respond to them, and I have a question for you, because you brought them up.

You talk about treaties broken and the residential schools. I totally agree with you, and every Canadian, I believe, would support the fact that there is no doubt that your people have been wronged in the past. The previous government apologized for the residential schools issue. You can't change what happened. It was a terrible black mark on Canadian history, no doubt about it. But we have to go forward, as you say, to live in harmony. The previous government settled more treaties in the time frame than any other government in history, and I presume the present government is working on that same timeline. I support that the treaties that were broken have to be negotiated and settled. I'm fully there.

A former colleague of mine, a native MP from northern Saskatchewan, worked hard to make huge changes to the Indian Act. I consider him a good friend. I know he was frustrated at times. Negotiations between the government and your people never made much headway. But I do agree that in order to replace it, you must have something to replace it with. We haven't been able to come up collectively with something there, so I think that should continue on.

The social and cultural aspect I totally support. I'm very proud of my Irish-Scottish roots, as you are of your native ancestry. But we're both Canadians first and what have you.

On self-government, I think most of us support and believe in the fact that you should have self-government, providing that you can fund it yourself, with the exception of seed money and the regular grants that other municipalities in Canada get.

I was also a councillor, I was a mayor. You're on council. I don't know whether you've been chief or not; that doesn't matter. The point here is that with the first nations accountability act, every other municipality or city or province that deals with the federal government has to be accountable for any monies they get from there. Can you explain to me or tell me why first nations communities that get money from the federal government shouldn't have to be accountable for it in the same way?

• (1550)

**Ms. Regena Crowchild:** First of all, the reason I brought up these other issues like the Indian Act and so on is because the lady asked if there was a lack of hope amongst our people.

**Mr. Larry Miller:** No, no, that was in your presentation.

**Ms. Regena Crowchild:** Yes. But anyway, there is lack of hope.

Yes, I'm a member of council for Tsuut'ina Nation. I brought up the transparency act because we are targeted as indigenous peoples. We have no problem with being transparent to our peoples. We hold general meetings with the public, with our peoples, every three or four months and sometimes more. We deliver our budgets. We explain. We give progress reports to our peoples with respect to the monies being spent from our budget. We provide an audited statement to our peoples. That includes the funding we get from outside and our own source funding. We do that.

**Mr. Larry Miller:** My question, though, Ms. Crowchild—

**Ms. Regena Crowchild:** I know. I'm getting there.

With the government, when they provide us with grants, we have no problem. We submit those annually. We submit our audits annually. Whatever the federal government wants to do with those, it is up to them if they want to post them. Now they are asking under Bill C-27 that we submit consolidated statements that include our own source funding. We do not want to be in a position where the whole of Canada...once they are on the web, that for 10 years we have to account to the public on our own funding.

**Mr. Larry Miller:** Okay, fair enough. I would only point out that every other municipality has to declare that stuff in the same way, and I can't get my head around why not. One of the reasons the native accountability act came up, Ms. Crowchild, is because of situations like what happened in Attawapiskat, which is probably the best or worst example. But the last time I checked, 81 chiefs in Canada made more than the Prime Minister of Canada, and a couple of them were right around or just under \$1 million. That's why it came up.

With that, Mr. Chair, I will turn my time over to Ms. Watts.

**Ms. Regena Crowchild:** Is it a question of—

**Mr. Larry Miller:** Well, we only have so much time, so—

**Ms. Regena Crowchild:** I know, but I'd like to reply.

Is the question of why people are questioning why we do not want to provide our consolidated statements because our peoples tend to earn more money compared with mayors and other people who are entitled to have their own companies, and who have other ways, means, and measures to support their income...? We, the chiefs and councillors of the first nations, are within our communities 24/7, working with our nations, without businesses or outside sources.

**Mr. Larry Miller:** Respectfully, so is every other elected person.

Ms. Watts, it's your time.

**The Chair:** Ms. Watts, you have one minute left.

**Ms. Dianne L. Watts:** Okay.

You mentioned, in terms of addressing the ideas and ideology, that we should make that a focal point. Can you explain to me how you begin to change ideology that has been entrenched for generations?

• (1555)

**Mr. Michael Zekulin:** The ideology you're talking about is a particular mutation in a specific ideology. What do I mean by this? There are lots and lots of people.... You'll notice I use the term "Islamist", not "Islamic", making the distinction between the religion and Islamism, which is a political ideology. Even within those who subscribe to Islamism, still only a very small part will pursue violence to achieve that end.

In terms of this idea that it's been around for a very long time, I'm not entirely sure that's accurate, in the sense that, yes, you will always have some people who are basically saying, "We need to use violence to achieve our political end." What I'm saying is that in a place where groups like ISIS, and before them al Qaeda, and groups that will come after them...they're hitting home that very small segment, and we are not standing up. It's not just a religious narrative. There are all kinds of other motivations or gateways that would lead people to choose this type of behaviour or action. If you want to focus on the religious one, then that's where you have to actively get in there, have that debate, and provide that counter or alternatives.

Again, it's not like it's ingrained everywhere in everybody. This is something they work very hard at crafting, disseminating, and targeting toward specific audiences they feel are vulnerable.

**The Chair:** Thank you.

I need to end there. That's eight minutes.

**Ms. Dianne L. Watts:** I think there's a difference between within Canada and outside of Canada.

**Mr. Michael Zekulin:** We can talk about that, if you'd like.

**The Chair:** Mr. Dubé.

[Translation]

**Mr. Matthew Dubé:** Thank you, Mr. Chair.

Professor Nesbitt, I want to speak briefly about something you wrote last December, I believe. You said that gaps in information sharing before the adoption of Bill C-51 were perhaps, contrary to the design of the bill, a cultural rather than an institutional issue. In other words, maybe the various organizations simply didn't like sharing information or were a bit territorial.

I want to know whether this is still the case, and, if applicable, whether it shows these powers were not necessarily required. I also want to know whether the same philosophy can be applied to our relations with our allies or with other countries. We already had systems in place with the United States, for example, but the issue was more cultural, as you said.

[English]

**Prof. Michael Nesbitt:** It's a great question.

A number of factors go into it, but let me say this by way of analogy. I'm drawing on my experience now within government.

Say you have a group of people who are taught from when they are hired that everything they do is really important, and it's really important that they keep it secret. They can't tell their wives. They can't tell their husbands. They can't tell their partners. They can't talk about it to anyone. You grow up in a culture where you can't tell any information to anyone. And, of course, we have this inherent idea, I think as humans, that what we do is important. So it's really secret and it's really important.

Then you give the opportunity to people to share information, and what is their default position? In my experience—this is accurate, right?—if you have an access to information request to CSIS, it will be injurious to national security, most of it. If you give one to Foreign Affairs, it will be injurious to international relations. You have the cultural human response to the job that these people have.

Beyond that, there are factors within the government itself that increase that. If I'm at the lowest level and I'm responsible for determining whether information should be shared within a group, my default position is that if I share it I might get in trouble, but I know I'm okay if I don't share it and go back to it. My default position is going to be conservative about it. Then, if I push that up to my boss, well, my boss likely isn't going to undermine me. Their position is going to be to ask whether there is anything else in there that we should keep private.

So you have this inherent cultural secrecy, which I think is very much human nature. It's very natural. But if you want to talk about information sharing meaningfully, permissive actions, as were taken, as you mentioned, in Bill C-51, to say you can now share misses most of the boat. Most of it is not that you can share but will you share; are you willing to share; is the culture there to allow you to share.

I'd add one other thing, which is that being able to share allows you to address the, quote, known unknowns. However, you still have the unknown unknowns. That's where if you had a provision that would, for example, require CSIS to share evidence with the RCMP, then I think you start to address the unknown unknowns, which is that no one has to know that I have to ask for the information, or that someone else is working on something else with a secret that I have to tell them about. It's rather that I'm required to share the information.

• (1600)

**Mr. Matthew Dubé:** But I guess my question, just from a technical point of view, is there was nothing preventing that from happening prior to Bill C-51.

**Prof. Michael Nesbitt:** I mean, there would be small things. To give you one example, FINTRAC, the financial analysis group for terrorist financing, for example, or money laundering, doesn't really share any information with Foreign Affairs. If you wanted that to happen, Foreign Affairs has a number of regulations—

**Mr. Matthew Dubé:** But that's very specific, and it doesn't touch the very broad scope that Bill C-51 prescribed.

**Prof. Michael Nesbitt:** That's right. It—

**Mr. Matthew Dubé:** Sorry, go ahead.

**Prof. Michael Nesbitt:** No, I was just going to agree with you.

**Mr. Matthew Dubé:** Okay.

Councillor Crowchild, thank you for your comments. I particularly connected with the mention of Idle No More. When this debate was happening over Bill C-51, there was a lot of concern over information sharing, for example, with the Department of Aboriginal and Northern Affairs and CSIS. The example of Cindy Blackstock came up, in terms of what's been shared and the RCMP doing surveillance and stuff. Is this still a concern when it comes to first nations wanting to dissent and protest to protect their treaty rights?

Just before you respond, my second question is this. How can we make sure we're respecting first nations as part of this process that we've taken on in reviewing the national security framework, to make sure we don't keep repeating these mistakes that you have so eloquently described?

**Ms. Regena Crowchild:** Your first question was again?

**Mr. Matthew Dubé:** It's whether communities are still concerned over information being shared and the impact that has.

**Ms. Regena Crowchild:** We are concerned with what is being done. Are we going to be held as terrorists, are we going to be labelled as terrorists, because we are expressing our concerns, through speeches, through demonstration rallies, which are all peaceful, on how to address our issues?

In the legislation, it appears that it is wide open; you can interpret it in any way. If we go against what anyone in the government is saying, we could be labelled as a terrorist because we're trying to protect our rights. That's the only way we get the attention of the government, no matter who it is, through rallies and through peaceful marches. We're not violent people. Most of us want to maintain the peace that was entered into with our treaties. That's what we want to do. We just want to live side by side in harmony, as I said.

With regard to the second question, one of the biggest things that happens is this. If you look at the treaty and inherent rights, the Government of Canada tends to define them themselves, without talking to us, without trying to find a way to address the issues or to understand our perspective. Even the courts said to give liberal interpretation and to look at oral history because we have an oral history. Canada will never know if they don't talk to us, if they don't try to find out what these issues are, and what are our inherent and treaty rights. You'll never find out. You can't continue to define it.

I remember years ago one of the MPs—God bless her soul—said she was an expert on Indians: she lived a few miles from the reserve. Does that make you an expert? That was said in Parliament. I've been around for a long time. I've noticed how the governments of Canada have failed to sit and really talk and listen to the indigenous peoples.

I have to say that I commend all of you. You're not just sitting there looking at your texts or something else. When we make presentations to government officials, whether it's with Alberta or with the federal government, most of them sit there looking at... what? A couple of them were watching hockey games one time when we were making a presentation. That just shows us that they don't listen.

We need to talk. You need to talk to our leadership. When it comes to treaties, you need to talk to the treaty Indians and not organizations. They're not rights holders. Treaty indigenous peoples of treaties one to 11 are the rights holders, and those are the people you need to talk to. It's been very difficult for us to get.... We've

invited the Prime Minister and we've invited the Governor General to sit and talk about these issues so we can begin discussing this nation-to-nation relationship that you want to renew with our peoples. We are still waiting. I hope you will bring that message back to Canada and to the rest of your MPs.

Thank you.

● (1605)

**The Chair:** Well said, and I believe well heard.

To me, by the way, you're more interesting than the average hockey game.

**Voices:** Oh, oh!

**The Chair:** I'm afraid we've come to the end. It's five minutes past the hour.

We'll reconvene at 5:30 p.m.

The meeting is adjourned.

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