

November 26, 2023

Dear Committee Members;

Further to my in-person testimony, I am writing to you as an advocate, professor, and Mi'kmaw woman in support of Bill C-21. I believe that we could go further in our collective efforts to protect Indigenous peoples and Canadians from gun violence now and in the future, but this Bill is an important step in that process.

With regards to my background, I have 4 university degrees, including a doctorate in law focusing on constitutional and Indigenous law. I have been a lawyer in good standing for 25 years, having worked 10 of those years with the federal government at Justice Canada in an advisory capacity for Indian Affairs, and also as a senior Director at Indian Affairs (as it then was) on lands, treaties and self-government. I have extensive experience and training in the area of laws and law-making. Part of my training from Justice Canada included statutory interpretation and legislative drafting.

I have continued in this work by researching, analyzing, and providing expert testimony on federal law and policy before Parliamentary and Senate committees, as well as before the Inter-American Commission on Human Rights and the various United Nations treaty bodies. This work includes submissions to the National Inquiry into Missing and Murdered Indigenous Women and Girls and the most recent Mass Casualty Commission on issues related to violence against women and Canada's human rights obligations to prevent this violence.

In addition to researching and publishing in relation to human rights, Indigenous-specific rights, federal law and policy; I have also specialized in the growing threat to public safety and national security from white hate groups – both formal and informal associations – including, but not limited to white nationalists, white rights groups, incels, KKK, Neo-Nazis and the threat from individuals who may not be formally associated with these groups, but who subscribe to these hateful views and may commit violence against women. This is in addition to the many men who kill women every year with guns. Setting the national security issues as they relate to white supremacists inside law enforcement, gun violence is an issue that needs to be addressed as a matter of public safety – especially for women and Indigenous women.

The issue of gun violence is one that is very important to me both personally as a mother, sister, aunty, and daughter, as well as in terms of my home community and the many First Nations across the country. My advocacy on behalf of Indigenous peoples' right to self-determination, and in terms of the research I conduct has been ongoing for more than 25 years. I have been specifically researching and engaging on public safety, violence against women and national security for 15 years, which includes the link between white hate groups and gun violence, with particular focus on who is at risk.

I am writing to implore the Senate to debate, review and pass *Bill C-21* with minimal amendments to ensure the safety of those affected by gun violence across Canada now and in the future. *Bill C-21* is the most advanced step forward in protecting Canadians against mass shootings, hate crimes, gun related femicide, and suicide that we have seen in a generation.

I believe that this Bill in its current form addresses substantive concerns from Indigenous peoples in Canada, and the concerns that many have when it comes to gun restrictions. After extensive review in the House, it effectively addresses recommendations from experts, inquests and inquiries, and the recommendations of the Mass Casualty Commission. The bill was drafted in its current form after dialogue and deliberation with a large number of stakeholders, and with specific advocacy from First Nations leadership and women's groups.

Given all this due diligence, I believe that the Senate can confidently affirm that the proposed legislation does the following:

- Improves screening and management of all firearm owners to reduce the risk firearms will be used in domestic violence, suicide or hate crimes;
- Explicitly recognizes the rights of Indigenous people to hunt and with the specific amendment which adds a non-derogation clause. While Indigenous firearm owners do have unique, constitutionally-protected rights to carry out their traditional activities, like hunting, it is also important to balance these rights with the obligation to ensure public safety. We must ensure that risks are managed in a way which minimally impairs the constitutional right to have firearms, with the goal of preventing suicide, protecting Indigenous women from domestic violence and protecting individual Indigenous peoples all over Canada from gun violence committed by non-Indigenous peoples and hate groups. Rather than amend the legislation there is the opportunity to specifically address issues for Indigenous hunters;
- Provides a definition of semi-automatic military style firearms to be prohibited going forward and includes measures to prevent manufacturers from circumventing the ban on firearms not reasonably used for hunting. This is prospective and does not affect use of these guns for hunting. Most of the firearms which were banned through Order in Council in 2020 were already restricted so making them to prohibited has no impact on hunting since restricted firearms cannot be used in hunting. In cases where non restricted firearms are banned through Order in Council, specific exemptions for Indigenous peoples in cases where the firearms are used in hunting can and should be incorporated.
- Will help stem the explosive growth of legally owned handguns in Canada - which are not used for hunting but are sometimes misused and diverted to crime, including hate crimes, representing a risk to public safety, and;
- Offers better controls on the import of firearms and measures to reduce smuggling; and
- Maintains sufficient support for Indigenous peoples in Canada and allows for regulations to be crafted with inherent, Aboriginal, and treaty rights in mind, to be developed in partnership with First Nations, Inuit and Metis governments.

The Bill also effectively addresses several crucial considerations raised in debate, including:

### **Risk versus Utility for Legitimate Purposes**

Indigenous peoples need access to hunting rifles and shotguns to exercise their right to hunt. However, Indigenous peoples do not hunt with military style assault weapons or large capacity magazines.

As a separate issue, while smuggled guns by Canadians are a major problem with respect to some forms of violence, guns that are legally owned or have been diverted from legal gun owners are also part of the problem. This goes beyond Canadian gangs and smugglers. Available research shows that legally owned firearms or guns diverted from legal owners are the firearms most often used in domestic violence, suicide, and the murder of police officers and mass shootings. Rates of gun crime are also generally higher in rural communities, where there are more firearms.

### **The Risks of Guns to Indigenous Communities and Indigenous Women**

Guns especially present a specific threat to Indigenous peoples given the issue of murdered and missing Indigenous women and girls. Noting the previous testimony of now Senator Michele Audette, a Commissioner at the National Inquiry into Murdered and Missing Indigenous Women and Girls, who warned us that: “The availability of firearms is an important factor that harms Aboriginals’ health... It is no surprise that the increase in the number of homicides nationally is mainly explained by the increase in the number of firearm homicides.

It is important to remember that this is not just a matter from Indigenous men, but the statistics show that the majority of partners with Indigenous women are non-Indigenous. For me, the solution may be found in the communities themselves, with practical measures that help reduce access to firearms, so that they would not be used for anything other than hunting, for the protection of communities by First Nations police or community safety officers for example, and would not be used to commit violence against humans, or to take one’s own life or that of others.”

For this reason, I am a proponent of in-depth, detailed, ongoing, and repeated background checks for everyone, and not just a criminal background check, but details including whether have they been inciting violence online, whether they abused their former spouses, and potential suicide risks. I am also in favour of the confiscation of weapons, at least on an interim basis, when men are arrested, detained, investigated and/or charged with violent crimes, including and especially domestic abuse for example, and I believe we could have avoided many of the casualties in Nova Scotia had that been the case. The regulations provide an opportunity to ensure that the circumstances of Indigenous rights are respected, protected and implemented.

### **Anti Indigenous Hate Crimes**

We know all too well, given the tragedy of killing of Colten Boushie, and the acquittal of Gerald Stanley, that, as Eleanor Sunchild expertly pointed out in her previous submissions on firearms legislation, that racial profiling and stereotypes become fatal considerations without responsible firearms legislation. The killer, for example, said that he owned handguns to shoot coyotes – not a legal purpose for owning handguns. While a detailed investigation was lacking, there is evidence to suggest that in many parts of Canada, individuals are legally acquiring handguns by claiming to be collectors or target shooters. Anti-Indigenous racism can be found nationwide, but is particularly acute in the Praire provinces – something admitted by rural farmers in online forums.

While recognizing legitimate activities such as hunting as well as the rights of Indigenous peoples, an effective gun control regime requires regulation that is designed to reduce these risks by prohibiting firearms where the risk outweighs legitimate utility.

Domestic threats in the U.S. and Canada from White nationalist groups that promote hate, incite violence, both in person in their little groups with outsized online presence, is rising in Canada. My research shows that this development is considered a domestic threat both here in Canada and the U.S. Its rise has been so precipitous that many of us don't believe that the government is fully prepared. Gun control is one concrete way that a government can address this threat to national security. The White nationalist movement is sometimes hidden under the guise of the so-called populist movement, and sometimes they will call themselves far-right conservatives, but they often align themselves with the gun lobby itself. In that lobby, you have a mix of White nationalist leaders.

According to all of the data we've collected on these cells in Canada, they incite violence against a variety of groups. One group could be anti-Muslim, and another group could be anti-women and the Black community. The one common denominator in all of these cells is being anti-Indigenous. The threat to these groups from white hate groups and gun violence is not about whether they currently comprise the majority of gun-related deaths or injury, but the fact that they have done so, and represent a growing threat that has not yet been fully analyzed or addressed. Adding guns to the mix, especially the sadly popular military style assault weapons with large magazines, is a recipe for future disaster, not unlike those seen in other countries like our neighbour the USA.

Canadians are among the most active in online right-wing extremism, which includes spreading racist, white supremacist and misogynistic views, and plotting acts of violence. One study, led by the U.K.-based Institute for Strategic Dialogue (ISD) think-tank, identified Canadians as among the most active online and creating the most content of radical, hateful views than any other country.<sup>1</sup> That should be a particular concern [when it comes to the link between online extremism and White hate groups and gun violence](#).

Pat King, currently on trial for his involvement in the trucker protests sat in court wearing a t-shirt with Odin on it. A reference to the notorious Soldiers of Odin white supremacy group linked to major hate crimes internationally. Jason LaFace, an organizer for the convoy in Ontario and National President of Soldiers of Odin Canada, had previously publicly shared anti-immigrant sentiments and made statements against the Black Lives Matter movement and the LGBT community.<sup>ii</sup> King was also prohibited from owning firearms but still acquired handguns<sup>iii</sup>. While many protestors came in peace without these associations there were a series of incidents involving the confiscation of caches of firearms. Their close connection to extreme elements of the gun lobby cannot be overstated.

They are different from traditional terrorist groups, which tend to be larger in nature, more identifiable and have been on the radar of anti-terrorism law enforcement, whereas these smaller groups are much harder

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<sup>1</sup> Davey, Hart, Guerin, "An Online Environmental Scan of Right-Wing Extremism in Canada: Interim Report" (2020), online: <https://www.isdglobal.org/wp-content/uploads/2020/06/An-Online-Environmental-Scan-of-Right-wing-Extremism-in-Canada-ISD.pdf>.

to find in the online noise of online hate, which is why we need strong screening as well a ban on firearms not reasonably used for hunting and serve no legitimate purpose.

While not all gun owners have links to extremists, Canada needs to keep pace with the threats before the threats overtake Canada. Firearms are often used in hate crimes against racialized and other identifiable groups. The murders of six and injury of 19 Muslims at the Islamic Cultural Centre of Quebec City, is only one example of what happens when those who hate have easy access to guns. We can never forget that it was the mass shooting of 14 women at École Polytechnique in Montreal that pushed the conversation of gun control back onto the agenda.

The one target common to all right-wing extremist groups in Canada are “Aboriginal peoples” and the killing of Leo Lachance is just one example. Leo Lachance, a Cree man from Whitefish reserve, was shot and killed by a white supremacist, Carney Nerland, in Prince Albert in 1991. Nerland was a member of the Ku Klux Klan and leader of his local Aryan Nation group who got off with a plea bargain, claiming a misfire. Allowing hate groups, who condone lethal violence, to arm themselves with handguns and military-style assaults rifles, represents a significant public safety threat.

One need only look at the shooting death of unarmed Indigenous youth, Colten Boushie or the recent shooting of another Native youth, Kristian Ayoungman as prime examples of why there needs to be stricter gun control, especially on the Prairies. Both of these shootings are reported to involve elements of anti-First Nation racism, something that has been prevalent on the Prairies for decades. It wasn't that long ago that the Neil Stonechild Inquiry brought the practice of “starlight tours” to the forefront. This is the practice by police of detaining a Native man, driving him out of town and abandoning him there. Racism is lethal for Indigenous peoples, and easy access to guns by those who hold racist views increase the risk.

Clearly, this is one place where the threat to Indigenous people from the pro-gun lobby outweighs the gun lobby's disingenuous concern for Indigenous hunting rights. For the most part, Indigenous peoples need and want firearms for hunting rather than for sports shooting or collecting and the links between extreme elements of the gun lobby and racist groups cannot be overlooked.

### **Clear and Fixed Definitions for Semi-Automatic, Military Style Weapons**

The law contains a clear definition of military style semi-automatic firearms, consistent with laws in major industrialized countries. This provision, combined with the long-standing approach of prohibiting specific firearms through orders in council, will help ensure that firearm manufacturers are not able to circumvent the goals of the ban on semi-automatic military style firearms by making slight modifications to features or rebranding guns which are effectively semi-automatic military-style firearms.

### **Controlling the Sale, Import and Transfer of Restricted Weapons**

The law also includes a ban on the import, sale, and transfer of handguns. Handguns are supposed to be restricted weapons, available only to well-vetted individuals for specific, legitimate purposes. Legally owned handguns have been used in high profile mass shootings and guns diverted from legal owners fuel the illegal market with tragic consequences, [as occurred in the Danforth shooting](#).

## **Respecting Indigenous Treaty Rights**

I know that Indigenous peoples in Canada have real concerns with this bill, especially concerning their ability to hunt on their traditional lands. I have long been an advocate to protect Indigenous inherent, Aboriginal, treaty and land rights as well as our collective sovereignty, jurisdiction and law-making powers. I believe that the federal government should work with First Nation government on a nation-to-nation basis to work out the details of the future regulations and any future amendments to gun laws.

Gun laws and safety measures are not in competition with Indigenous rights, but can strengthen each other. Indigenous peoples, especially Indigenous women and girls, have a right to be safe from gun violence. In early 2023, Bill C-21 was revised to change the language surrounding the prohibition of commonly used hunting rifles and shotguns, that are used by Indigenous peoples.

The law has introduced specific non-derogation provisions to unequivocally address Indigenous Rights. In other words, despite what the gun lobby might suggest, non-derogation and non-abrogation means this law will not detract from constitutionally-protected Indigenous rights.

72.1 (1) The provisions enacted by this Act are to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.

(2) In subsection (1), Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982

The gun lobby acts as though there is a right to bear arms in Canada, but this is not the United States. The Supreme Court of Canada held—via the historic *R v. Hasselwander* case—that no such right exists. In fact, the only people with constitutionally-protected rights to bear arms are First Nations whose treaties and Aboriginal rights guarantee them the right to hunt and own rifles. But no one hunts with semi-automatic military weapons. So, this has never been about hunting.

## **Amendments**

Bill C21 is critical in terms of protections against the use of guns against people and for non-hunting purposes. The bill as a whole is not worth jeopardizing over amendments.

It is also important to recognize that even within Indigenous communities there are gendered perspectives on this issue.

## **Now is the Time for Swift Action**

No single piece of legislation is going to solve all our problems; it must be accompanied by a strong commitment to implementation. Bill C-21, in its current draft, is a culmination of the best recommendations that will ensure better public safety outcomes for Canadians. Canadians want to feel safe. That cannot happen if hate groups are allowed to buy handguns and military style semi-automatic weapons.

Thank you for your consideration. I believe that we are aligned in our goals to protect Canadians against gun violence and support Indigenous peoples in Canada in their sovereign and constitutionally-protected rights of self-government and hunting.

Signed,

A handwritten signature in blue ink, consisting of a stylized 'P' followed by a long horizontal line.

Dr. Pam Palmater

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