



House of Commons
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 012 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, April 27, 2010

—
Chair

Mr. Merv Tweed

Standing Committee on Transport, Infrastructure and Communities

Tuesday, April 27, 2010

● (0905)

[English]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): Thank you and good morning, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 12.

The orders of the day are pursuant to Standing Order 108(2), a study of aviation safety and security—security concerns.

Joining us this morning from the Canadian Human Rights Commission we have Ms. Jennifer Lynch, chief commissioner; Charles Thérout, director; and Monette Maillet, director.

Thank you, and welcome to our committee.

I know that you know the procedure, so I'll let you open with some remarks and then we'll move right to questions.

Ms. Jennifer Lynch (Chief Commissioner, Canadian Human Rights Commission): Thank you very much, Mr. Chair.

I am very pleased to have this opportunity to contribute to the committee's study on aviation safety and security.

As the chair mentioned, my colleagues joining me here today are Dr. Charles Thérout, who is our director of research, and Monette Maillet, who is our director of policy.

[Translation]

The best value that the Commission can bring to you as a witness is to provide our perspective on the human rights considerations that should be taken into account when developing and implementing national security tools and measures, such as profiling.

Terrorism and other threats jeopardize our fundamental right to life and security of the person. In a free and democratic society, the protection of the population must be of paramount importance.

[English]

The Canadian Human Rights Commission recognizes that safeguarding national security is a critical function of government. It also recognizes the expertise of security agencies in developing tools and measures for this purpose.

When national security and human rights are discussed, it is often suggested that we must give up one to have the other. I come to you today to express the position of the commission that both can and must coexist.

[Translation]

The mandate of the Canadian Human Rights Commission covers all federally-regulated employers and service providers. This includes the transportation sector and border services. The Canadian Human Rights Act prohibits discrimination in employment and in the provision of services based on 11 prohibited grounds of discrimination. These include race, colour, national or ethnic origin, religion and disability.

In the context of national security, the jurisdiction of the Commission would be triggered when it is alleged that a national security measure discriminates against individuals based on one or more of these prohibited grounds.

[English]

This is because the implementation of national security measures such as screening of airline passengers falls under the definition of service and is therefore within our mandate. Under section 5 of our act, it is a discriminatory practice in the provision of services to deny access to a service or to differentiate adversely in relation to any individual. However, not every measure that discriminates on the basis of a prohibited ground would necessarily be disallowed. The key is whether or not the measure is justifiable.

Paragraph 15(1)(g) of our act provides this exemption: it is not a discriminatory practice if an individual is denied services “or is a victim of any adverse differentiation and there is bona fide justification for that denial or differentiation”.

Human rights jurisprudence provides guidance for determining whether a measure that is discriminatory can be justified. The test would include looking at, first, the extent to which the measure is necessary; second, whether there are less discriminatory ways of achieving the same objective; third, the effectiveness of the measure; and fourth, the extent to which the infringement on human rights outweighs the benefits gained by the measure.

I will now turn to the issue of profiling. Where profiles are appropriately constructed and applied, the practice of profiling could have the potential to reduce the number of individuals who are identified for further screening. The use of profiling as a national security measure—for example, during screening at airports—raises human rights issues when the characteristics and behaviours identified in the profile are linked to one or more of the prohibited grounds. For example, profiling by identifying persons who have paid cash for a one-way ticket, do not check luggage, etc., is not linked to one or more of our prohibited grounds. On the other hand, identifying persons based on a certain race or ethnic origin would be.

[Translation]

As part of its mandate to develop and advance human rights knowledge, the Canadian Human Rights Commission initiated a research program on national security and human rights post 9/11. One report is the one you have before you entitled “The Effectiveness of Profiling From a National Security Perspective.” This report is a literature review of studies that have been done on the issue of profiling. It notes the general lack of scientific rigour in most of the studies reviewed. As a result, the authors recommend that further research be conducted on the use of profiling using a rigorous approach to development and validation that incorporates a solid evaluation component.

[English]

The report also mentions the challenges faced by any agency wanting to develop a scientifically based profile when the frequency of events such as terrorist attacks is very low. I must emphasize that the research has shown that there's no evidence to support the effectiveness of profiling where race or ethnic origin is the primary characteristic.

My key message to you today relates to the use of profiling as a tool in safeguarding national security. Such profiling could only be compatible with human rights principles when the characteristics used in the profile are based on demonstrable need, intelligence, and/or evidence, and documented effectiveness.

Currently, few security and law enforcement agencies are collecting data on the discretionary decisions being made by their front line personnel. There is a concern amongst many of our stakeholders that, in the absence of intelligence or evidence-based profiles, these officers may fall back on stereotypes and prejudicial assumptions in making such decisions. Absent the collection of relevant human rights-based data, it will be difficult for executive management to determine whether inappropriate profiling is occurring and to take corrective measures where necessary. For this reason, the collection of data should be a consideration at the design phase.

The Canadian Human Rights Commission has been and will continue to be available to provide support and expertise to agencies in the development of security measures and tools.

I would like to conclude with a few words about the importance of consulting with persons with disabilities to ensure that their rights are taken into account in the design of all transportation-related policies, programs, and structures. For example, our stakeholders have expressed concern that airplanes have been designed with cabins too narrow for personal wheelchairs and that the new full-body scanners are not accessible to people with certain disabilities, thus denying them the choice offered to other passengers. At this juncture in our history, at a time when Canada has just ratified the UN Convention on the Rights of Persons with Disabilities, I encourage all to make the principles of the convention a reality in everyday life.

I look forward to answering your questions.

● (0910)

The Chair: Thank you very much.

Mr. Volpe.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you, Mr. Chair.

Thank you, Madam Lynch, and to your colleagues for sharing your time with us today.

Madam Lynch, let me speak as just an individual Canadian. Forget about the fact that I might be a member of Parliament, other than it gives me the privilege of being able to ask a question.

I think most people are looking at this and saying, you know, here's somebody in human rights who is going to tell us whether there's been a violation of human rights as we go through the application of measures that are designed to protect us: would she not have to be an expert in the application of those measures before she offers an opinion on whether our rights have been or could be infringed?

Ms. Jennifer Lynch: The role of the commission in this instance, when we're talking about someone bringing forward a complaint, is for the commission to screen that complaint to determine whether or not it warrants further inquiry and whether or not it's in our jurisdiction. Consequently, if it is within our jurisdiction and it warrants further inquiry, we send the matter to the tribunal, which is an independent agency, ultimately for a hearing if the case does not settle or is not withdrawn.

Now, what we are is expert in the application of the Canadian Human Rights Act and in determining whether there has been some adverse differentiation amounting to discrimination on a case-by-case basis.

What we are doing now—we've been doing this since 9/11—is we have been working with the various communities involved and we have been helping them to become more knowledgeable and sensitized to the human rights aspects of the work that they're doing developing programs, policies, and structures.

Hon. Joseph Volpe: But, Madam Lynch, wouldn't you agree with me that while you might be looking at infringements of the act on a case-by-case basis, the government's retort to all of that would be that national security and everybody else's safety is not on a case-by-case basis? It's really what the word “national” indicates—namely, that there is a collective need for us to adopt this particular measure.

I think you mentioned, or at least alluded to, the point that human rights or individual rights are secondary to collective needs.

So what do you say to that when the government says, “We have to do this because of national security”?

● (0915)

Ms. Jennifer Lynch: As I said in my remarks, the two can and must be found to be compatible. In other words, we have to find ways to look after collective needs while we are respecting individual rights as well.

As I mentioned, section 15 of our act does provide that there can be justification for discrimination. Having said that, however, there are certain exigencies that have to be fulfilled before the tribunal would find there is justification.

Hon. Joseph Volpe: But the government says that the general public is looking to travel safely and efficiently, and the general public is making the decision; all we are is the interpreter of the general public's decision; the collective decision is security and safety first; we don't have to spend time thinking about whether the two can cohabit the same timeframe.

And by that I mean individual rights as opposed to collective rights.

Ms. Jennifer Lynch: Of course national safety does come first. However, I think maybe we're working on this concept in a different way. I'm talking—

Hon. Joseph Volpe: I'm just being an *agent provocateur*, that's all. I'm already on record as not believing the government, but I just want to hear your reaction.

Ms. Jennifer Lynch: What I'm expressing to you is our concerns over racial profiling. I'm not talking to you about national security, but rather, how we can engage and effectively have a secure nation while not discriminating unless it's justifiable to do so.

It's impossible, really, to give a blanket answer to your question—

Hon. Joseph Volpe: It's never possible to say you can discriminate. You can't. You never can. You can never justify discrimination. You're putting everybody who's innocent in the same barrel as those who are guilty but who share your same characteristics. That is the ultimate unfairness.

So I just find it a little troubling that somebody from the Human Rights Commission would actually say there is a moment in which there is cohabitation with individual rights and collective rights, as expressed by those who wield power and authority.

I just find that shocking, myself—period.

I think about those people—we have a diverse nation—who don't look like me, who might have a different texture of skin, who might dress differently. The more of those people you see who fit the profile, the more likely you are to say, well, in their case, it's justified for us to be as onerous as we're being.

I just find that difficult to appreciate.

Ms. Jennifer Lynch: Well, I'm sorry that you're shocked, sir, because we take our authorities from the Canadian Human Rights Act, which provides us with the requirement that we look at justification.

Also, there is section 1 of the charter, which guarantees rights and freedoms subject to such reasonable limits as prescribed by law and that can be demonstrably justified. We have both the charter and the Canadian Human Rights Act, which provide that in certain circumstances, discrimination can be justified.

The Chair: Thank you.

I'll have to go to Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chair.

Thank you, Ms. Lynch. I am glad that you are here today to talk to us about profiling. I will admit that, last week, I was rather taken by

surprise when one of the people in charge of Israeli security appeared before us. He openly told us that they do profiling based on body language and on behaviour. He said that they feel that scanners are useless. That is the message he delivered to us. We see the full-body scanner as one of the options available to individuals. They can choose between the body scanner or a physical search. Israelis operate in a way that's completely different from ours, and their country probably has the best airport security system in the world.

When you talk about profiling, you say that, if it is done, it must be done within the rules. There must be evidence to support this course of action. Profiling must be based on needs, evidence and tangible information, and its effectiveness must be monitored. Israelis worry about explosives, and they have not come across a method superior to that of using sniffer dogs. That is the reality of the situation. They target individuals through behavioural profiling. Once someone has been targeted, the security process is continued using officers, dogs, etc. That is the most effective method.

Is there even the remotest possibility of setting up such a system in Canada?

• (0920)

[English]

Ms. Jennifer Lynch: Sir, you have referred to the behavioural profiling done by the Israelis. Behavioural profiling is not one of the prohibited grounds of discrimination in the Canadian Human Rights Act. So a case such as that would not proceed to the tribunal for a hearing.

You've also mentioned that the Israelis also do not support the use of scanners. With the greatest of respect, we're not here as an expert on how CATSA should be doing its work.

[Translation]

Mr. Mario Laframboise: In Canada, we are trying to respect human rights, so even though we have introduced the full-body scanner, individuals are given the choice between being scanned or searched. The choice is a reflection of our respect for rights and freedoms. People can choose to be scanner or physically searched. In any case, there is no way around it.

These are technologies that do not meet Israeli needs. You say that body language profiling could be used. We could very well train all of our security officers or provide them with very comprehensive training to enable them to instinctively single out people who are acting strangely. That is what you're saying. Canadian laws allow for the use of these methods. Is that right?

[English]

Ms. Jennifer Lynch: What I am saying is that the type of behavioural profiling I mentioned in my opening statement—buying a one-way ticket, paying cash, not checking baggage and this sort of thing, or the way someone is acting, in a fugue, for example, at an airport—is not based on one of the prohibited grounds in the Canadian Human Rights Act. So we would not find it to be discriminatory if someone were given a secondary screening because they were in a fugue or had bought a one-way ticket.

Just to clarify, what the commission did is we commissioned an overall examination of the literature by a researcher, a consultant, who then gave us a report. And I am speaking from this report when I talk to you about the various concerns that have been raised.

When we are talking about racial or ethnic origin profiling—in other words, going to secondary screening because you're a member of a certain race—the research, the literature review, has noted a lack of scientific rigour in studies conducted to date about profiling overall, and has shown little scientific support for profiling at all, much less when it comes to infrequently occurring incidents, such as a terrorist attack, a school shooting, or this type of thing.

• (0925)

[Translation]

Mr. Mario Laframboise: How many complaints have you received? You receive complaints from Canadians. You can just give me a rough estimate.

[English]

Ms. Jennifer Lynch: We do receive complaints from individuals. I don't know if we have the number here of complaints we have received....

Yes, we have the number: we have received 12 complaints in the last few years that involve racial profiling.

There are currently two complaints before the Canadian Human Rights Tribunal that deal with the issue of profiling. One complaint relates to an aboriginal woman who felt that she was singled out for inspection when she was crossing the border due to her race, age, and sex. The other is by an individual who was denied boarding on an Air Canada flight from Vancouver to Victoria in 2004 because his name allegedly appeared on a security list. These two are before the tribunal now.

[Translation]

The Chair: Thank you.

Mr. Bevington, you have the floor.

[English]

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, Mr. Chair.

Thank you, Madam Lynch, and your fellow workers.

I am interested as well in some of the things the Israelis talked about. Here you suggest that profiles appropriately constructed could potentially reduce the number of individuals identified for further screening. But what the Israelis do is actually identify a number of people who don't need screening; they have trusted traveller cards. They've identified about 50% of the travellers through a process using a machine with a pre-set series of questions. The machine determines the appropriateness of the person for getting the trusted traveller card.

Do you see that as a system that would be easy to monitor for human rights issues? Plus, you have the choice of either stepping into the machine and getting a trusted traveller card or not. So how does that impact on human rights issues for any of the travellers?

Ms. Jennifer Lynch: Certainly we would welcome the opportunity to be engaged at the front end with any security organization

developing a screening technique. When we are involved at the front end, we are able to in effect give guidance as to whether or not—to use your example—the questions being asked in any way create a differentiation or discrimination.

Mr. Dennis Bevington: But fundamentally, if someone has the right to either refuse to go into the machine to get a trusted traveller card or not, does that change the nature of the human rights issue?

Ms. Jennifer Lynch: In this hypothetical, we don't know the questions being asked. What if the questions being asked were related to one of our eleven grounds of discrimination? One would hope not.

Mr. Dennis Bevington: Okay. So as long as they're not...and that's what would have to happen with those questions. They would have to be vetted in a way that would assure that.

I don't think we want to go into profiling again, because I think we went through that experience in the Second World War. We're still having to apologize for the great inconvenience and hardships that we applied to a whole bunch of people there. We've had that experience in Canada with profiling, and we've said that's not what we want to do.

Is that...?

• (0930)

Ms. Jennifer Lynch: With regard to racial profiling, correct; other types of profiling—as I say, such as behavioural profiling—would presumably not offend the Canadian Human Rights Act.

Mr. Dennis Bevington: Well, how close can you go, with behavioural profiling, so that it becomes ethnic or racial?

Ms. Jennifer Lynch: Again, on a case-by-case basis, we'd have to look at that.

Mr. Dennis Bevington: Yes, okay, but likely, if you're taking people out of the screening process by their choice to have themselves accredited, that would that be less likely to run into human rights issues than behavioural profiling when it comes to choices about how to proceed here?

Ms. Jennifer Lynch: I'm suggesting that behavioural profiling should not run into issues of discrimination. Racial profiling clearly would. And—

Mr. Dennis Bevington: If someone has a racial tendency not to look into somebody else's eyes because they consider that to be inappropriate behaviour, and that's part of the behavioural profiling, wouldn't you say there is a bit of a problem there?

Ms. Jennifer Lynch: Certainly there could be. That's why it's difficult to make blanket statements, and I'm reluctant to make a blanket statement.

However, what we...and I completely agree with you; we do not want to see racial profiling, and there is no scientific basis for such profiling.

Mr. Dennis Bevington: You don't like making blanket statements, but here you say, "Terrorism and other threats jeopardize our fundamental right to life and security of the person."

That must be based on some risk assessment. Is that not the case?

Many things fundamentally jeopardize our lives and security, but we don't put boxes around them because they're not that important.

Isn't there fundamentally some need for risk assessment within this whole question of human rights? Don't you, in order to actually determine whether an issue has impact on human rights, have to look at the risk assessment of the particular act?

We've had two bombings on Canadian airplanes in my lifetime. One of them was by a terrorist group; the other was for personal gain. Yet we don't profile people for personal gain when they're getting on the airplane, do we? Do we make those choices?

I'm trying to understand how we've come to a point where security has taken such a large part of our lives without correct and very careful risk assessment.

Ms. Jennifer Lynch: I certainly agree with you, sir, that the risk assessment applies to national security. We don't use the language of risk when we're talking about human rights, sir.

In terms of my general statements, of course, what I'm saying is that I'm reluctant to make general statements about matters that could come before the Canadian Human Rights Commission that could require us, in a specific set of facts, to make a certain determination.

I can't come before a parliamentary committee and make bald statements that might be used later to suggest that we have a leaning one way or the other. We have to look at each case on its facts.

On the other hand, the Canadian Human Rights Act has a quite lyrical purposive section that says that the purpose of this act is to give effect to the principle that every individual should have the right, equal with others, to make for themselves the life that they're able and wish to have, free from discrimination. It's certainly what inspires me and my colleagues every day.

To that end, where we have a large mandate, to be able to get ahead of the problem, to sit down with the organizations that are engaged in developing security measures, structures, etc., and help them to be sensitive at the front end to the questions they ask, the methodologies they develop, and the structures, as I mentioned, there will be a compatibility, there will be fewer complaints, and people will be able to make for themselves the lives they're able to and wish to have, free from discrimination.

The Chair: Thank you.

Mr. Watson.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for appearing.

Of course, we are engaged in a study of air security and safety. I appreciate your opening intervention and the recognition that there are threats to our national security. I think there's a certain amount of self-evidence to a statement like that.

Further in your intervention you say that security and rights can both be respected. The challenge with air safety is how to increase our productivity while maintaining security and charter compliance. I have a few questions along those lines and want to probe some of the things you talked about.

I want to start with the issue of behavioural analysis. Let me see if I can explore where this may touch on an area that, for example, may produce a justifiable discrimination.

If a security agency has credible intelligence of a specific threat that may involve country of origin....

Sorry, I'm complicating my issues here. Let me put behavioural analysis aside. Let me explore the issue of a justifiable discrimination based on one of the grounds.

If a credible piece of evidence contains country of origin that may imply a certain ethnicity emanating from that country, could that be deemed a justifiable discrimination with respect to security?

Yes or no...or can you explore that a little bit with me? I just want to see how that would be handled under the Canadian Human Rights Act.

● (0935)

Ms. Jennifer Lynch: Right. Well, in developing a measure that has a discriminatory impact, the onus is on the security and law enforcement agency to justify it—and I emphasize the word “justify”. Guidance has been provided by jurisprudence. The test includes looking at whether the measure is necessary, whether there are less discriminatory ways of achieving the same objective, the effectiveness of the measure, and the extent to which the infringement on human rights outweighs the benefits gained.

On the process, if we're talking about something that has happened and someone wishes to bring a complaint about it, they would file a formal complaint with the Canadian Human Rights Commission. We would first check to see if it was within our jurisdiction, and then determine whether it warranted further inquiry. If not, it would be dismissed; if yes, it would go to the tribunal.

Of course, within that we have a complete structure for dialogue mediation and that sort of thing, which can often create systemic change and policy change within organizations.

Mr. Jeff Watson: If I understand your intervention correctly, we're trying to avoid indiscriminate use of stereotyping simply because we think a particular ethnicity might be a higher risk. I was talking about the specific instance where there might be a credible piece of information. You'd referred to collecting data on discretionary decisions being made by front line personnel, and some other things.

Presumably the collecting of data would be the substantiation that there is a credible piece of intelligence to form the basis of a temporary use.... That's more what I was getting toward.

I guess we could move on to behavioural analysis, which would not be the same as involving, as you've stated, any type of racial or ethnic profiling. We're talking about somebody's behavioural characteristics—whether they are exhibiting stress, and those types of factors that might give rise to consideration for security.

You said that behavioural analysis was not a prohibited ground and therefore wouldn't be considered. But that's not the same as offering an opinion about whether you consider it should be a prohibited ground.

I don't know if you want to venture into that one or not.

Ms. Jennifer Lynch: Thank you. It's not anything we have ever looked at, and I certainly wouldn't want to offer an opinion without looking at it from many different perspectives.

Mr. Jeff Watson: Okay.

I'll move on to the trusted traveller program, which I think Mr. Bevington began to pick up on. The western hemisphere travel initiative in the United States forced a certain amount of compliance on Canadians travelling to the United States—programs like NEXUS air, NEXUS land, clearance as well, expediting travel for those who cleared a certain amount of security threat in pre-interviews and a process of questionnaires.

I presume you haven't seen what the U.S. questionnaire would look like, but what if this program were considered to be expanded to domestic travellers as a means of clearing a certain amount of domestic air travel? Could that be charter-compliant? If so, how could that be rights-compliant? Are you concerned about the accumulation and handling of information in trusted traveller programs? Does that pose rights risks for individuals?

● (0940)

Ms. Jennifer Lynch: With regard to your latter question, I think that's a privacy question you're posing. Certainly we've had dialogue with the Privacy Commissioner; however, with respect, I refer you to her for any comments.

Again, with the greatest of respect, I can't comment on something I haven't seen on whether it would or would not be charter-compliant.

As well, I hope this committee does understand that we're not security experts, we're rights experts. We do interact—of course that's our job—but we can't give opinions on the security aspects of the programs.

If we're going to give comments on the rights aspects, as I've mentioned to your colleagues, I would, with respect, need something much more specific.

The Chair: Thank you.

The last couple of minutes go to Ms. Crombie.

Mrs. Bonnie Crombie (Mississauga—Streetsville, Lib.): Thank you, Ms. Lynch. It's a pleasure to meet you.

I think what I'm hearing is discrimination if necessary but not necessarily discrimination.

I wonder if you might want to comment on this, and justifiable discrimination, because can't discrimination always be justified in the interests of national security?

Ms. Jennifer Lynch: No. I guess I could repeat myself, but the comment I made in my opening statement is that it can only be justifiable if it meets certain criteria. The work that we're doing is to meet with the security organizations and relevant departments to

engage in developing processes and measures that are not going to be, on their face, discriminatory.

Mrs. Bonnie Crombie: I understand; I understand. Let me move on, though.

The science of behavioural profiling—I did have a chance to read the report, which I found fascinating—is still in its infancy. We're still gathering information. I understand that Canada's in the lead, in fact, internationally on this behavioural profiling science, yet we have very few investigators.

Are we not concerned, since the science is still in its infancy, that there would be a tendency for those investigators to fall back on stereotypes and prejudicial assumptions?

In addition, could you comment on whether enough consideration—Mr. Bevington went there earlier—is given to cultural sensitivities? As we know, in some cultures it's inappropriate for a man and a woman to lock eyes. Will that not be taken as perhaps a sign of nervousness and hence that individual might be put in a different category as a result?

Ms. Jennifer Lynch: I read the report the same way that you've read the report, and that is that there is a concern about a complete lack of scientific evidence and that because law enforcement agencies are not collecting data about responses on the front line, there isn't even a foundation to start with in order to determine whether there is profiling. There is a certain assumption that there is some profiling, and if so, has it been effective, etc.

What the literature has been able to determine is that in cases such as school shootings and terrorist attacks, there is such a lack of frequency that this kind of profiling has even less chance of being effective. Also, there is this chance of terrorist acts of substitution. In other words, while we're profiling males of a certain race, they substitute females suddenly—this sort of thing.

● (0945)

Mrs. Bonnie Crombie: I'm running out of time, I know.

The Chair: I have to end it there, I'm sorry.

Mrs. Bonnie Crombie: I just want to know if there's a better way.

Ms. Jennifer Lynch: Is there a better way?

Mrs. Bonnie Crombie: Yes, a better way than behavioural profiling; because that seems to be the direction we're going.

Ms. Jennifer Lynch: Again, I would be very pleased...

I know that you'd like me to give you an answer. I'm not a security expert. As for the ways, I can't comment. As for the rights being affected by those ways, I'm always pleased to come before the committee to comment.

The Chair: Thank you very much.

I'm sorry that we don't have more time, but perhaps we'll do this again.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): On a point of order, Mr. Chair, the witness described that discrimination, I think, was justifiable under certain circumstances.

I was wondering if she could refer the committee to what those circumstances would be. Quite frankly, I don't understand where they would be acceptable under any circumstances. Based on the paper "The Effectiveness of Profiling from a National Security Perspective" from the Canadian Human Rights Commission, I just would like to have more clarification on that. I do not accept that as a premise. I would at least like to be referred to some documentation to support her claim.

Ms. Jennifer Lynch: Yes. I can certainly understand—

Mr. Brian Jean: I'm not asking a question, because I'm not allowed to.

Ms. Jennifer Lynch: Oh.

Mr. Brian Jean: What I'm asking is if you could give the chair any of those things.

Ms. Jennifer Lynch: Yes. It's section 1 of the charter, section 15 of the Canadian Human Rights Act.

Mr. Brian Jean: I'm familiar with both, but I'm not familiar with where they suggest discrimination is at all acceptable in Canada, or justifiable. That's what I would ask that you refer to the chair.

The Chair: If I could just ask you to maybe just send me a note through the clerk, I'll share it with the committee members.

Ms. Jennifer Lynch: Certainly.

Thank you.

The Chair: Thank you very much.

We'll take a two-minute break, then we'll invite our other guests to the table and get back to it.

• (0945) _____ (Pause) _____

• (0950)

The Chair: Thank you, and welcome back.

We are continuing with our study of aviation safety and security, safety management systems for the aviation industry.

Joining us today from the Air Canada Pilots Association are Paul Strachan, president; and chairs Barry Wiszniowski and Tim Manuge.

From the Air Line Pilots Association, we have Al Ogilvie and Dan Adamus.

I think you've been here often enough to know the routine, so I'll ask you to make a brief presentation, and then we'll move to questions and answers.

Captain Paul Strachan (President, Air Canada Pilots Association): Thank you, Mr. Chair.

As you mentioned, my name is Captain Paul Strachan, and I am the president of the Air Canada Pilots Association. I hail from

Winnipeg, Manitoba. I spent a ten-year career as an air force pilot before commencing my commercial career, and I have been flying for about 22 years.

With me here is Captain Tim Manuge. He is the chair of the ACPA security committee. Tim is from Halifax, Nova Scotia, and spent 20 years as an RCMP reserve officer and 36 years now as a pilot.

Next to him is Captain Barry Wiszniowski, hailing from Drumheller, Alberta. Most of us live in Barrie now, though. He worked for eight years as an air force aircraft maintenance engineer and 24 years now as a pilot. Interestingly, he is also an aviation accident investigator, and he is the chair of our technical and safety division at the Air Canada Pilots Association.

Our organization represents the largest group of professional pilots in the country, some 3,000 men and women who fly Canada's mainline fleet. Obviously, if you are following my slide presentation, then you know intuitively that we fly tens of thousands of people on a daily basis—in, we are very proud to say, a very safe fashion, and often in very trying circumstances. Our environment is one of the harshest on the planet, in fact, in terms of aviation, so we are proud of that record and we believe we carry a lot of international credibility as a result. So we can offer the committee a unique perspective on issues pertaining certainly to aviation safety and to aviation security as well, and that is what we would like to highlight for you today.

I will briefly make comments on SMS as it pertains to the industry; on flight times and duty times, a matter of interest and a matter of concern for us for most of the last couple of decades; and aviation security, which has already been discussed this morning.

ACPA's number one priority is safety. It is our first and foremost responsibility and we take it very seriously. We maintain a full-time division of our organization dedicated solely to technical and safety issues, of which Captain Wiszniowski is the chair, and we spend a lot of time and effort separating the activities of our technical and safety division from our representational and industrial activities as the certified bargaining agent for the Air Canada pilots. So we jealously guard that credibility and we're very careful not to mix the two. Our security committee works closely with several government agencies on the issue of aviation security in support of those issues.

If I may, looking first at safety management systems, the Air Canada Pilots Association supports the SMS initiative. We have a mature relationship with our employer. I think it would be fair to say that many, if not the majority, of the advancements in aviation safety within the industry within the last 30 to 40 years stem from that relationship between Air Canada and its pilots group, both this one and its predecessor.

In that mature and cooperative relationship, SMS works very well. Other carriers do not necessarily enjoy the same robust relationship with their employer, so that is a caution for the committee. ACPA believes that strong oversight from the regulator remains required in an SMS environment.

Flight time and duty time regulations: this has been a matter of some interest recently, but you can see from our first slide that it has been in fact a matter of interest for quite a long time. Our current flight time and duty time regime was developed in the 1960s, in fact before seat belts were mandatory in automobiles. It was cosmetically amended in the mid-1990s, and a lot has changed since then. There has obviously been rapid advancement in aircraft technology, allowing aircrafts to fly higher and much farther than they have in the past, and obviously the scientific knowledge surrounding fatigue and those physiological factors that are a reality in any industry, but certainly in ours given those changes, has evolved as well.

If you look at our slide on the effects on performance of fatigue versus alcohol, it captures a good parallel there between hours of wakefulness and relative tracking performance on the Y axis versus blood alcohol concentration. This derives as a result of the work of a pre-eminent research scientist in Australia by the name of Drew Dawson.

• (0955)

Canada trails the world, unfortunately. ICAO has recently called on member states to update their flight time and duty time prescriptive regulations to be based upon science. Europe has already changed its own some time ago. The U.S. is in the process of implementing changes to their regime. Unfortunately, we here in Canada are now proposing a CARAC process to commence sometime this summer. CARAC is kind of like baseball in that after you hit the ball, it takes a couple of years to get to first base. And there's obviously no guarantee at the end of that process that any effective change will result.

We don't believe this looks good on any of us, whether we be regulators, airlines, or operating pilots. It's far past time for Canada to amend its regime, and we're here to help you do that, to help the government move forward, and the regulator to bring those amendments into place, because currently we are not compliant with the ICAO stipulations.

The next chart is probably the most visually grabbing. On the X axis are hours of the clock from 1 to 24, and on the Y axis are hours on duty, limitation of hours on duty, from nine at the bottom up to 14 at the top.

You can see there's a green line on here, in between the U.S.A. Aviation Rulemaking Committee, the United Kingdom's CAP 371, and the European operations regime. The green line is the contract we've negotiated at the bargaining table for our regime. But they're all approximating the same thing: they recognize that those back-of-the-clock hours are not times of day when we perform to the highest of our abilities.

Now, clearly—as I say, we've negotiated this—safety should not be negotiable. What we need is a regulator to set a level playing field for all parties to live by, based on that evolution in science that has occurred and on how much more we know about it today.

That red line across the top represents the current Canadian aviation regulations. This is based on two pilots, so it's not going into depth in terms of ultra-long-range operations and things like that, but those are things we need to discuss as well.

Perhaps most astounding in this chart is that, if you can imagine, a pilot today could be on call from five o'clock in the morning until nine o'clock in the evening, and receive a call for work and report for work prior to nine o'clock in the evening and operate to the limit of that red line.

So Canada needs leadership, and it has to come from the regulator. When we have approached the regulator on this, as we've done several times in the last couple of decades, they have told us that we didn't have any Canadian data and that we needed to collect it.

So we set about doing that, and we are collecting data, but of course anything we might collect is both tainted and flawed. It's tainted de facto because people automatically assume that there's some sort of industrial agenda here. If you flip back to the chart, you'll see very quickly that there is no industrial impact to our members whatsoever. We've negotiated what approximates what the regulatory regime should be, so this is a warm-water issue for our members. It's the right thing to do from a public policy perspective.

To level the playing field, again, we offer you our assistance and support, but we need a responsive process most of all, and the CARAC process is not that. We're looking at years down the road before we effect any change. The data is there. The science is there. Other jurisdictions have moved. So we strongly support rapid movement on this. We certainly don't want another accident in Canada attributable to pilot fatigue. That's body-bag safety policy, and we don't want to see that here.

On security issues, recent events, including the bombing attempt in Detroit of last Christmas, have revived fears again. We welcome the government's focus on improving security, particularly on behavioural pattern recognition. We feel that this must be done in ways that don't discourage travel by the innocent public, because doing so is simply rewarding terrorism. So we have to find responsive means to address the real threat. From our perspective, we do see problems with the current security structure. However, we seek to make a constructive contribution. The point of the exercise is not to apportion blame but to improve the Canadian aviation safety regime, and we're anxious to participate and assist in that endeavour.

Technology is only one part of it. When you think about it, there are two sides to the sphere. One side of the sphere is keeping bad things off planes, which we've spent an awful lot of time doing, but we haven't really paid a lot of attention to keeping bad people off planes.

And really, those things aren't all bad; they're only potentially bad. They have to be in the hands of a bad person in order to be a threat.

So we're happy to hear that we're going to be paying more attention to keeping bad people off planes as opposed to just bad stuff.

• (1000)

We are in fact finalizing a lengthy study on the state of the Canadian aviation security regime. We expect that a final copy should be ready in about a month's time.

We would be happy, Mr. Chair, to provide the committee with a copy of that, should it be interested.

If you could indulge me, Mr. Chair, could my colleagues perhaps each give you a one-minute brief comment before we sum up?

The Chair: Very briefly.

Capt Paul Strachan: Thank you, Mr. Chair.

Tim.

Captain Tim Manuge (Chair, Security Committee, Air Canada Pilots Association): Mr. Chairman, distinguished members, thank you for the opportunity.

Captain Paul here indicated that we're finalizing a white paper on security, which we've been authorizing from the security committee. We hope there will be viable recommendations for your consideration. These mostly stem from discussions with our members on a daily involvement on the front line of the airline industry, from discussions with other pilots, both domestic and internationally, and from attending many of the international security conferences.

In the interests of brevity, I'll confine my remarks quickly to outlining a couple of main concerns that we have from the ACPA security committee.

In the aftermath of 9/11, we recommended that a single federal government department be responsible for civil aviation security. This did not occur. Currently, civilian airport authorities, crown corporations, and numerous other bodies all own parts of the aviation security program in Canada. We have carefully assessed the system as to the way it now operates, and we reaffirm our recommendation for a single federal government department to manage the aviation security in Canada.

Second, the position is that we need to fight terrorism through proactive intelligence-gathering and good police work. I cite a very strong case here of the liquid bombers in England in August 2006. They were not brought down as a result of screening. They were solely brought down as a result of good investigative work, good intelligence, good police work.

As a part of the proactive effort, we are also very much in favour of the behavioural pattern system using behavioural pattern

recognition techniques; however, we are opposed to it being implemented and utilized by CATSA.

Frankly, we believe this may cause more problems than it resolves. Behaviour pattern recognition is a complex program. It requires experience, and operators who are intuitive and can establish trust within the airport community.

Finally, we're anxious to see affirmation of several recent government reports, including the Auditor General's report on airports, the RCMP criminal intelligence report—called the “SPAWN report”—and the CATSA review, which all basically state that ground crew access to air terminals remains a pre-eminent threat. ACPA supports additional scrutiny in all ingress and egress points at airports and the screening of these employees, their company equipment, trolleys, and bags.

Those are our major concerns. More specific measures will be spelled out in our white paper, as mentioned.

Thank you very much for this opportunity.

• (1005)

Captain Barry Wiszniowski (Chair, Technical and Safety Division, Air Canada Pilots Association): Good morning, Mr. Chairman, and other panel guests.

I'm in charge of the technical and safety division for the Air Canada Pilots Association. We have 3,000 professional pilots who have input into what we do each and every day. Each one of those pilots is the subject-matter expert. They're the front-end users of their system. We're the ones who know about the backside of the clock, the window of circadian low, when we're working with our flight and duty times.

Our group is the only association in Canada that is collecting data on fatigue. This came from several meetings that we had with Transport Canada saying that there was no data.

We could fill this room with CDs full of fatigue-related data, and yet it has not been recognized in Canada.

ICAO annex 6, amendment 33, says that flight and duty times shall be based on scientific data. That's where we want to go. That's where we're looking to move. In December all the pilot groups, including ourselves, have sent a letter to the minister, from 7,000 of the 11,000 commercial pilots in Canada, recognizing that fatigue is a significant safety issue.

We want to move forward on that, and we're willing to help you.

I'll defer to the panel.

The Chair: Thank you.

Dan.

Captain Dan Adamus (President, Canada Board, Air Line Pilots Association, International): Thank you, Mr. Tweed.

Good morning, members of the committee.

My name is Dan Adamus. I'm here representing the Airline Pilots Association, International. I'm the president of ALPA's Canada board. I'm a pilot with Air Canada Jazz, and have been for 25 years.

With me today is Mr. Al Ogilvie. He is ALPA's government affairs representative in Canada.

We appreciate the opportunity to appear before you today to express our views on aviation safety and security. I'll take the opportunity to speak to SMS and security issues.

ALPA represents more than 53,000 professional pilots who fly for 38 airlines in Canada and the United States. As our members' certified bargaining agent and as their representative in all areas affecting their safety and professional well-being, ALPA is the principal advocate for pilots in North America. ALPA therefore has a significant interest in all issues affecting aviation in Canada, and is here today to speak to you about ALPA's experience with safety and security matters.

We support the effective implementation of safety management systems in aviation companies that are regulated and certified by Transport Canada. ALPA has embraced SMS as the next great leap forward in advancing aviation safety. We see it as a comprehensive corporate approach to safety that involves both management and employees.

You may ask why ALPA so strongly supports SMS. We do so for many reasons. It clearly establishes accountability for safety at the highest levels within a company. It provides for the reporting of safety occurrences and information without fear of retribution. It requires employee involvement and a formal risk assessment and decision-making process, to name but a few.

Under SMS, a company is not able to ignore a safety issue by saying they are compliant with applicable regulations. If a safety hazard is known or has been identified, a company is required to do a risk assessment and make a conscious decision on what mitigations are required to deal with it.

SMS clearly establishes responsibility for safety where it belongs, and that's with the aviation industry. The traditional method of safety oversight, which is based on detailed technical inspections, may appear to take on the role of operational safety insurance, and that may allow the aviation industry to lapse into thinking and believing that safety is the government's responsibility.

We believe these provisions are absolutely essential to the success of a company's SMS, and can explain our position as follows.

To proactively address safety issues, data is required.

Strategies to enhance safety need to be data-driven.

In the absence of accidents, the right kind of data is required.

Human and organizational factors create errors or hazards that remain largely undetected until the right set of circumstances results in a bad occurrence.

An organizational climate where people feel free from negative consequences when reporting errors, deficiencies, and hazards is essential to obtaining all the data that is available.

Therefore, a reporting program must provide confidentiality and immunity from discipline to be effective. Of course, exceptions would be a wilful or deliberate act, gross negligence, or a criminal act.

It's been ALPA's experience that most companies initiating safety management systems have fully embraced the concepts, adopting a safety culture from top to bottom. Some do not. We have heard expressions of concern regarding protections from punishment and for confidentiality in reporting.

In some situations, personnel who bring forth safety concerns or self-report incidents have still been subject to disciplinary action. The effect is that employees cease to self-report, which stifles the flow of data, thus defeating the very premise of the safety management system.

In these instances, the company has the SMS on paper but has failed to change its culture.

Just to be clear, ALPA supports the effective implementation of an SMS, but our experience shows that a company may be technically compliant but not embrace the underlying concepts. Such an SMS is not an effective SMS.

Even with effective safety management systems, it is still the minister's responsibility to provide comprehensive and effective oversight and to take the appropriate measures when necessary.

● (1010)

When it is apparent that a company does not fulfill its obligations under an SMS, we believe traditional oversight should be utilized rather than the SMS audit system.

ALPA understands that Transport Canada has delayed implementation of SMS for 703 and 704 operators, and is in agreement with the decision. It is a relatively simple matter to legislate the requirement of an SMS, but you cannot legislate the culture change required for an effective SMS. Therefore, taking the extra time for education, encouragement, and mentoring of these operators will be beneficial in the long term, as ALPA believes a voluntary, confidential, and non-punitive reporting program is an essential element of an effective SMS.

Switching to security, today I would like to speak to behavioural recognition techniques, the air travellers security charge, and cargo security funding.

Pilots who fly commercial aircraft are on the front line, and for the last quarter century or so have lived through the evolution of a security system that has seen its share of challenges in meeting threats to aviation safety. Aviation security screening has long focused on the interdiction of threat objects such as guns, knives, and improvised explosive devices. The weapons of choice for attacking aircraft have evolved over time, and the methods for concealing these weapons continually change. The one constant for all would-be attackers, however, is hostile intent.

Current screening procedures are predicated on two general assumptions: every passenger poses an equal threat with limited exceptions; and the primary focus of screening is to identify objects that could be used to harm individuals and/or the aircraft.

As a result, when terrorist tactics change, and/or a different weapon or threat object is used, the security system is reactively adjusted to that new object or tactic. Over time, inadequate responses to the problem have the effect of creating a patchwork of band-aids. Accordingly, we need to shift our resources to identify the person who poses the threat in order to prevent intended malicious acts.

The present security screening philosophy must be altered to embrace two principles. The vast majority of passengers are trustworthy and pose very little or no threat to the flight. The only means of providing genuine security is to positively identify known, trustworthy passengers; process them in an expeditious manner; and concentrate our finite, high-technology behavioural screening resources on the small percentage of passengers whose trustworthiness is unknown or in doubt.

Such a proactive security system aims to defeat the terrorists by anticipating future threats. It would be much more effective and efficient than current security protocols, and reduce security-related inconvenience and delays for the vast majority of the travelling public while protecting passenger privacy to the maximum practical extent. Therefore, ALPA supports the recently announced initiative to introduce the concept of behaviour recognition techniques and a trusted traveller program.

ALPA has continuously objected to the air travellers security charge being imposed on the airline industry, and reiterates its objection to the recent 50% increase in those charges. I've been before this committee over probably 15 years, and I think this comes up almost every time.

The aviation industry is an integral part of the economy in this country. It ties our country together. Canada's aviation infrastructure is a benefit to all Canadians and Canada, and it should not be subjected to unique user fees. Aviation security is of national interest, not one restricted to the airline industry or its passengers. Its cost, like policing or national defence, should be borne by all Canadians rather than through user fees.

Did those who lost their lives in the World Trade Center on 9/11 have anything to do with aviation? Again, aviation is of national interest.

Charging air travellers to recover the cost of security imposes an extra burden on our airline industry. Our airlines operate on unprecedentedly thin margins, and the imposition of another tax on them will further discourage air travel. It may take only another

unforeseen circumstance, such as the recent European experience with volcanic activity, to end the operations of another carrier. In recent history we have seen Zoom Airlines and more recently Skyservice cease operation. The last thing air carriers need is an additional tax by another name.

● (1015)

ALPA has long been a proponent of one level of safety and security, not differentiating between passenger and cargo operations where safety and security are concerned. Therefore, we are heartened to see that the budget did allocate an additional \$37.6 million over two years to implement a comprehensive air cargo security regime. These funds are much needed, as there is a stark difference between the security afforded passenger operations and that protecting all cargo operations.

Even at large hub airports, access to all cargo operations is much too open. Inadequate threat assessments are used to identify potential insider threats, and security procedures training for pilots and other critical personnel is largely absent. These and other problems plague all cargo operations and must be addressed.

In conclusion, ALPA has been monitoring your hearings and listening carefully to the opinions and positions of the various organizations and individuals who have appeared before you. We're pleased to see much interest in and positive feedback to aviation safety and security issues.

I want to take this opportunity to thank you, the members of the committee, for your time and your efforts. Although you do not always agree on the solutions, I'm pleased to see your continued efforts to enhance aviation safety and security for all Canadians.

I appreciate the time today and would be pleased to answer any questions you may have.

Thank you.

The Chair: Thank you.

Mr. Volpe.

Hon. Joseph Volpe: Mr. Chair, I'd like to share my time with Mr. Kania.

You know, we want to discuss the implementation of the SMS system and of course some of the security measures that have been put in place. I've noted that all of the witnesses who have come forward have objected to the additional tax that's being placed on air travellers.

We've learned that now the government is going to raise some \$3.2 billion over the course of the next five years in order to cover some of the additional investments—that's another word for taxes—on air travel.

But if I could, I'd like to go back to two issues. First, every time you've come here, you've supported the implementation of an SMS system. And on every occasion you have said that you wanted greater input by the regulator; you wanted an active regulator. That's my word, but that's how I've interpreted what you said.

I note here from some of the notes that everybody else has that the SMS system essentially began in about 2001. Over the course of the next six years, there were staged introductions and anticipation that the industry would begin to take care of itself.

Then, contrary to one of the key elements that all of you have always maintained be there, sometime after 2006 we started to see a reduction in the numbers of inspectors by the regulator, so much so that the Canadian Business Aviation Association was, as you know, decertified for the purposes of establishing an SMS system.

You know, this is what bothered me. It irked me when I heard you talk about how the industry should take control. The Transportation Safety Board found that Transport Canada assessed the CBAA in 2006 and found that its monitoring and quality assurance was inadequate, and yet Transport Canada closed its assessment of CBAA without having approved a corrective action plan.

So my question is how far can we trust the industry, of which you are a part?

• (1020)

Capt Paul Strachan: Thank you, Honourable Mr. Volpe.

As I said, our organization enjoys a very mature relationship with our employer. And certainly our employer has been around for an awfully long time; we've been at this for about three quarters of a century. We work very cooperatively with our opposites in Air Canada flight operations. In fact, it's very much a cooperative approach between our two groups.

In our experience, SMS has been almost seamless. For our organization, it didn't materially change the culture or the structure from what it was before. But we're one example. I think there are many others in Canada where the same might not be accurately said.

So certainly in those situations there must be an outlet from the SMS process if one party to the process—or both parties—feels it's not working. There has to be some arbiter, some final arbiter of results, stemming from recommendations that arise out of the system.

Hon. Joseph Volpe: That means, from what I gather and from what I've interpreted as what you and others have said, that you want a greater presence by the regulator. In fact, you actually want the regulator to come back into the collective agreement, especially as it relates to the issues about pilot fatigue and the number of hours you're allowed to travel, to be on call, and to do all kinds of things.

It's troubling; I think the general public might be tempted to ask you a question. It sounds a little flippant, but it's a legitimate question. You have a room full of documentation about the perils of pilot fatigue. I'm assuming you also have a room full of information regarding other threats to security. How serious is one relative to the other? Which is more a danger to the travelling public: pilot fatigue or the risks that are documented, in part by the popular press and in

part by a government determined to spend more money on national security?

Capt Paul Strachan: I don't think we should incite public alarm. Our industry is one of the safest on the planet, and we take a lot of pride in that. I think we've contributed a great deal to where the industry is today.

You refer to industrial activity. Again, I would like to make it clear to the committee that this organization would never presume to use the pulpit of this committee to drive an industrial agenda. Perhaps there are others who would, but we would never do that. We are here because we feel there are several important public policy issues that need to be addressed.

That said, we are the subject matter experts, as my colleague Captain Wiszniowski has told you. In that respect, I don't think there are many Transport Canada regulators, as you call them, who are about to come and observe our line operations and comment with the same level of expertise or experience that every one of our 3,000 pilots already has. I don't think that's where we're looking for increased regulatory presence. What we're asking the regulator to do is to regulate the structure within which we operate. There seems to be, given the timelines, as you've been apprised, some institutional inertia within the directorate around these issues. That's why we're here.

Thank you.

• (1025)

The Chair: You have 10 seconds....

I'll come back to you.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: Thank you, Mr. Chair. Thank you, gentlemen, for appearing before the committee.

Captain Strachan, the fatigue issue is very important. Transport Canada was working on reports on that subject, but they have been set aside and are not a priority. We were told that there is a shortage of pilots. Is there really a shortage of pilots? That is hard for me to believe after you and Mr. Adamus talked about all those shutdowns earlier. A number of airlines have ceased operations. Is there a shortage of pilots in Canada?

[English]

Capt Paul Strachan: Go ahead.

Capt Dan Adamus: Worldwide, yes, there is a shortage of pilots. In Canada and North America we're holding our own. It seems that every time we get to the point where perhaps we need to start hiring, another airline goes into receivership. So right now, I'd say in North America we're holding our own. However, the future does not look that good. On one of the driving forces behind this, a representative from IATA spoke at a conference we had over in northern Africa a couple of weeks ago, and indicated that one of the main reasons young individuals are not getting into this industry is because of the remuneration and the fact that it's not the job that it used to be, with the longer hours.

So it's just not an attractive industry to be in. You could make a lot more money getting into other professions that take a lot less schooling.

[Translation]

Mr. Mario Laframboise: That's good news. I am glad that you have the numbers to back up your claims. Transport Canada wants to start discussions in June and wants a report to be drafted within two years. Captain Strachan, you say that you would be prepared to submit to the committee the studies you have on fatigue. Is that right?

[English]

Capt Paul Strachan: Yes, absolutely, Mr. Laframboise. We are eager to bring these matters forward and to support the activities of this committee or any other government agency in forwarding those key agendas.

[Translation]

Mr. Mario Laframboise: Wonderful.

These are no doubt very lengthy studies, so you will naturally need some time. It would be easy for me to ask you to submit them to us, but you probably need to explain them first. Do you have experts working for you who would be able to come and provide us with an explanation of the studies?

[English]

Capt Paul Strachan: Yes, I believe we could provide excellent expert support to any government effort, and we're eager to do so.

[Translation]

Mr. Mario Laframboise: For the other countries, we...

Yes, Mr. Wiszniowski.

[English]

Capt Barry Wiszniowski: Thank you, sir.

Part of the ICAO recommendations at the working groups were that the flight and duty times be based on scientific data. As Captain Strachan mentioned earlier, our flight duty times were written in 1965. There was a slight change when the ANOs came into effect in 1969 and again in 1996, when the change to the flight and duty times came about.

With reference to the CARAC process for flight and duty times, I pulled off the Internet yesterday the CARAC working group status from 1994 to present. In section III, the flight and duty time working group was established in 1996, and there has not been a final report presented to the CARAC decision-making group. There are no

regulatory initiatives tabled to the technical working group, and the file remains open.

An e-mail that I received last week from Transport Canada says that the CARAC file 2100-51-6-3, dated December 1996, will be removed from the website during the next scheduled update because it doesn't pertain to a national deliberation working group.

On June 28 of this year, the CARAC process is reinitiating the flight time working group, but we want to make sure that we recognize that our rules do not have any scientific base to them as they are today. You can see that by the 14-hour flat line on the top of the graph, because it doesn't account for circadian lows, backside of the clock, or time shift. A number of parameters aren't there.

We've been collecting the data. Our data is based on what Air New Zealand has been doing. We're attending international conferences and working groups trying to move this forward. As Captain Strachan said, it doesn't affect our association, because we're basically following the bell curve of every other jurisdiction in the world except Canada.

In a meeting we had last week at which ICAO and IFALPA were present, we saw that Canada's regulations are better than those of only two other countries in the world: one is Bulgaria and the other is Gabon, in west Africa.

So where are we? We have to move our regulations forward, and that's what our purpose is here.

There should be one level of safety. Whether you get on an Air Canada flight or a northern carrier flight, whether you're someone working off the coast or anywhere in Canada, every Canadian should expect to have the same level of safety.

We know that accidents are going to happen; we don't want another fatigue-related tragic event to occur before we say we should have done something. Our association is doing as much as we can, and now we're putting it back to your expertise and the government's expertise to see where we're going to move from here.

• (1030)

[Translation]

Mr. Mario Laframboise: Okay.

So you are saying that nothing has been done to remedy the situation since 1996.

Capt Paul Strachan: Yes.

Mr. Mario Laframboise: So, you do not have confidence and do not wish to get into discussions because you want results. Is that it?

Capt Paul Strachan: There is no confidence in the CARAC process.

Mr. Mario Laframboise: Clearly, our committee feels that a way to proceed in this matter would be to start a study right away that would produce results. That is what you suggest.

[English]

Capt Paul Strachan: We need an expedited process. We're not reinventing the wheel, Mr. Laframboise. The data are there and the science is there. Almost all other jurisdictions have already moved on this; in some cases, they did so years ago. It's a glaring shortcoming in our industry right now. It's widespread knowledge not only here within Canada, but also around the world.

[Translation]

Mr. Mario Laframboise: Mr. Adamus, you are saying that if we were to solve the problems of work schedules or fatigue, young people would perhaps feel more inclined to become pilots. Is that what you are saying?

[English]

Capt Dan Adamus: That's certainly a possibility. The actual profession itself is not a profession that young kids aspire to anymore. It used to be; when I was growing up, I wanted to be a pilot from the get-go, but that doesn't happen anymore.

We were talking about the CARAC process and how Transport Canada is going to be looking at flight and duty times. The U.S. recently did the same thing. They have a rule-making process as well, which takes a number of years, but instead of putting it through that normal process, they saw an urgency to it, fast-tracked it, and wrapped up their deliberations within eight weeks. We're still waiting for the FAA to come out with a new rule, but they did their studies in eight weeks.

The Chair: Mr. Bevington.

Mr. Dennis Bevington: Thank you, Mr. Chair.

Thank you to the witnesses for coming here.

In some ways it appears that we're playing one thing against the other here. We have a security charge going in, \$7 or \$8 per passenger per flight. At the same time, we're slowing down the implementation of these very needed regulations to deal with pilot hours.

What's the best investment for the government to make? Is it to step up the regulations on pilot flight and duty times, or to invest in doubling up our available security system with these scanners at the airport?

Capt Paul Strachan: Thanks, Mr. Bevington.

We're sensitive to economic realities, as is this committee and certainly the government, but in respect of these two issues, I don't think there's an option. I don't think there's a choice. I mean, safety and security should not be economically driven issues. Although we have to be sensitive and find the smartest ways to implement the things we need to implement, I don't think that implementation is an option.

We need effective ways to do both.

Mr. Dennis Bevington: You've said that you're disadvantaged by the costs of security. In Canada, our security system is very expensive compared with the other countries in the world. Where are the options that we have to reduce those costs and provide effective security? That's what we're trying to do here with that.

In terms of the safety on planes...which I consider to be the highest priority. You just have to look at the statistics to see how many Canadians have died as a result of safety issues on aircraft vis-à-vis security issues on aircraft. So what we want to do for safety is very important as well.

Why would we not put our efforts into increasing the safety on aircraft?

• (1035)

Capt Paul Strachan: I can't imagine one, but I will defer your question to my colleague Captain Manuge. I think he has some creative ideas. You asked about possible contingencies, what sorts of things we can look at. Tim, I think, has some ideas that might well interest you.

Capt Tim Manuge: Mr. Bevington, we have a white paper coming out on security, which we'll submit to the committee for your review.

Mr. Dennis Bevington: Okay, we'll wait for that.

Capt Tim Manuge: I think we have a number of low-cost solutions to the security side.

Here's an interesting fact; we sit on the AGAS committee, the advisory group to aviation security, which is hosted three times a year under Transport Canada's auspices. In that, they've had Revenue Canada come in to talk about the security fee that's collected. They can't tell us where the security fee goes: it goes into general coffers.

If we were actually able to have it isolated out from the general revenue coffers and kept on its own, we'd probably have a better understanding of exactly all the costs, where they're going, and how much that security fee will pay toward the resolution of any issues we have in implementing new programs.

Mr. Dennis Bevington: Yes.

I heard some conflicting testimony about cockpit doors on aircraft, whether they are truly secure. We've heard evidence that they can stand up to a grenade blast. I've also heard that security forces have shown how they can kick them in.

What's your opinion on the nature of the hardened cockpit doors on aircraft?

Capt Tim Manuge: Ideally, the security doors as they are right now—the “fortress doors”, which are what they're referred to—are made with Kevlar, in essence to stop a bullet from entering into the flight deck area and harming or injuring any pilots. The ideal situation, as El Al has done, would be to establish a secondary door. Currently, that's being explored with the FAA in the United States. We sit on the panel exploring that aspect.

The ideal, again, unfortunately relates to cost. If it were implemented or approved, that would be a good reduction of security risk. If we knew where the security fee was going, then that security fee could pay for that cost.

Mr. Dennis Bevington: Once you secure the cockpit, don't you agree that then the risk assessment for an aircraft changes completely?

Capt Tim Manuge: Oh, no question.

Mr. Dennis Bevington: No question; so if you then have small metal objects, the use of scanners to direct...and we've had evidence they're good for identifying ceramic knives, those sorts of things, but then their effectiveness is reduced, because of course there's no threat to the aircraft because there's no access to the cockpit.

Is that not the reality of it?

Capt Tim Manuge: It is, sir, you're right. And we like to look at it as a layered approach. By establishing certain layers, if one layer fails, you have another layer that will back it up.

Mr. Dennis Bevington: But remember, we're also talking about trying to reduce the cost of our system appropriately, so that it works for us.

Capt Tim Manuge: Absolutely.

Mr. Dennis Bevington: If we're doing things that are redundant because other things have been accomplished within the aircraft, is that not an area where we should be looking at readjusting the security envelope?

Capt Tim Manuge: I couldn't agree with you more. Again, though, I'd bring back the issue of where the security fee is being allocated. If we don't know how much is in the bank account, how do we know how to set up the budget to be able to address the layers of that security that we want to address?

Capt Barry Wiszniowski: Sir, let me answer the first part of your question, about where we should spend. Canada is not compliant with ICAO on the flight and duty time issue.

Mr. Dennis Bevington: Yes. I agree entirely on that one.

When it comes to SMS, we had an incident last October with Air Canada in which they were diverted from Toronto to Winnipeg. A number of regulations were under question there: hot refueling, de-icing, these types of things.

What enforcement action was taken by Air Canada after that event occurred?

Capt Paul Strachan: Thanks, Mr. Bevington.

We talked a little bit earlier in this room about industrial agendas. I won't delve into that, but I will say that I am personally familiar with the incident in question. I presume that you are as well. An aircraft was operating quite late in the evening into Winnipeg, and the runway became disabled by another aircraft, which made the airport unusable. The diversion to Grand Forks, while not ideal, in and of itself is not an issue; that's standard operating procedure.

• (1040)

Mr. Dennis Bevington: Why would you not have gone to Regina or Saskatoon?

Capt Paul Strachan: Well, clearly, that is one of the takeaways out of the SMS investigation afterwards, to examine the process of assigning alternates to aircraft.

We do it based on a risk assessment as well; it may not be a scientific one. But there's no reason at that time of night, given the weather conditions as they were, to expect that the Winnipeg airport would be closed. An aircraft becoming disabled on the runway is a pretty unusual circumstance.

Once the aircraft is diverted to Grand Forks, North Dakota, several issues come into play.

By fluke, the aircraft had departed with an unserviceable auxiliary power unit. Now it was sitting on the ground in Grand Forks with the inability to deliver power to the aircraft for the refueling process without some internal source of power. At that point, it means an engine, because that's all that's left.

Normally what would happen is that our crews would disembark the passengers and we'd carry on in normal fashion. However, in this instance there was a U.S. Customs and Border security guard standing at the bottom of the jetway saying "There's absolutely no way on earth that anybody is getting off that aircraft right now". So it's a sort of a Texas standoff from that.

It's interesting to note that the manufacturer of the aircraft, the A320, in fact publishes a procedure for "engine on" refueling. It's not incorporated into our normal operating procedures; however, faced with the situation they were faced with, I think our crew did an exemplary job of operating as safely as possible in a situation that almost nobody could contemplate. You can't write regulations for every possible situation that's going to occur. In the circumstances, as they always do, our crews did an excellent job in the situation with which they were faced.

There has been some speculation—

Mr. Dennis Bevington: [*Inaudible—Editor*]...enforcement action—afterwards, I mean.

Capt Paul Strachan: As I said, it all comes out of the SMS system.

Now, if those results, before they're even finalized, are going to make their way to places such as the Standing Committee on Transport, Infrastructure and Communities, then that's going to go back to what my colleague was referring to before: undoing the advancement of the safety culture in this industry by something on the order of about 30 to 40 years, for sure.

The Chair: Thank you.

The bells are ringing, which signifies a vote.

My comment would be that it seems ironic that any aircraft on Canadian soil or over Canadian ground would have to go to the U.S. as the alternate airport, rather than to Regina, as Mr. Bevington said. It just strikes me as odd that we would send them south instead of further west or east to land on Canadian soil, where passengers can disembark and not be inconvenienced in the way that they were.

Capt Paul Strachan: It can be because of issues such as the operating hours of the airport, the weather conditions forecast at Brandon, Regina, or Saskatoon. So many variables can come into play. It's difficult to....

The Chair: Yes, but protocol would suggest that it should be a Canadian airport as first choice, at least in my mind.

Capt Paul Strachan: That would normally be the first choice. In fact, Winnipeg is unique in that sense, because it is kind of isolated.

The Chair: Brandon.

Capt Paul Strachan: Brandon—although we'd love to come and see you—might not be best capable of handling us, sir.

I will tell the subcommittee that after the vote, we have booked the room across the hall. It will be about a 15-minute meeting, so right after the vote we'll return across the hall.

Voices: Oh, oh!

Thank you very much for your time today. I appreciate it.

The Chair: With that, I'm going to adjourn the committee.

The meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
<http://publications.gc.ca>

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
<http://publications.gc.ca>

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>