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Chair

Mr. Merv Tweed

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•(1105)

[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 number 34.

You'll notice that the notice has been amended. At the end of the last meeting we were in the debate and discussion on a motion from Monsieur Guimond. I hope that all members have the amended motion in front of them. I don't know if we need to reintroduce it, but I would ask you to read it and make sure that everybody is either comfortable or prepared to put forward their position.

I'll open the floor to further discussion on the motion as amended.

Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): I've just had a chance to read the new motion. First of all, I don't necessarily agree with passing the motion anyway. But if we are going to study the consequences of noise caused by airport operations in urban areas as well as all other problematics linked to the quality of life of the population, is that problematics linked to the quality of life of the population in regard to airports, or is it in regard to depression, crime, and all those other things that are there? It's not specific enough. First of all, I don't know why we wouldn't just study airport noise, if that's the issue, and see what other things relate to it. If it's airport noise and other issues that are brought forward, then let's study that.

But frankly, I've already agreed with Mr. Guimond that we'll study this as long as we can have extra meetings. As long as all these meetings that we have in relation to airport noise are extra and beyond the scope of the normal meetings of the committee, I have no problem with it. But frankly, I think what we're going to find, as I said before, is that this particular issue has been studied and studied, and what we're going to find after we hear from the department is that there really is not much that can be done about it, unless we want to shut down airports and quite frankly devastate the economy of this country.

I have had a chance to find both French and English of "The Economic Impacts of the Member Carriers of the National Airlines Council of Canada", and I believe that has been submitted. I do invite all members to read that prior to any study on noise or whatever else we're going to study in relation to that, because they will find the impact of airports on this country is quite dramatic. They are in a very sensitive position right now vis-à-vis the economy as it is. So I think we should keep that in mind on all issues.

But certainly what I would recommend at this stage is to amend the motion so it actually reads that we're going to be studying things relating to airports, or airlines or airways or airplanes, which is not clear—at least in English it's not clear. Then if you have the department here, listen to the department, listen to what they say about it, and then decide where to go from there. Maybe ask the department, is it noise or the yellow bricks of ice coming down? What are the issues that people complain about? We have the Canadian Transportation Agency that receives complaints, so why don't we invite them along with the department the first time and talk to them about noises or other complaints they receive, and then see where we go from there?

But as I said to Monsieur Guimond, if he wants to study this, that's no problem. As long as we do it at extra meetings, we'll agree to it.

[Translation]

The Chair: Mr. Guimond, go ahead, please.

Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ): I'm prepared to delete the words "as well as all other problematics linked to the quality of life of the population" in order to secure the committee's consent. My primary objective was to address the noise issue. If this wording receives the committee's consent, I can leave it that way. However, I won't tear up my shirt, particularly since it is new, over the issue of including the words "all other problematics".

I agree with Mr. Jean. I have no objection to us adding the following words at the end of the motion: "that the Committee report no later than December 15 and hold additional meetings". The idea is to find a way to coordinate our respective agendas. We could start the study right away. If you want us to set a date, it can be December 15. The committee can thus immediately start its work on the question, without mentioning the December 15 deadline. I'm flexible.

I want us to find a way to study it. We have to consider the list of witnesses who will be speaking on Bill C-42. I've spoken with other colleagues who also have concerns. We're holding two meetings a week, and we'll have to conduct the clause-by-clause consideration of this bill. So we won't have the option of holding additional meetings. That is my view.

•(1110)

[English]

The Chair: I have Mr. Dhaliwal and then I'll go to Mr. Jean.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair, for giving me an opportunity to speak.

Mr. Chair, as Mr. Jean mentioned, either we shut down the airports or we study noise. I don't think that's an issue. The issue is if Mr. Jean was recently in my part of the world, if he would have gone and listened to the people in Richmond, Surrey, Delta, and those local municipalities, he would change his view. The "my way or the highway" approach will not work because we have to incorporate the public input into what we are doing here as their elected representatives when it comes to quality of life. He raised this. The quality of life we are going to study is associated with the noise factors that we have. In fact, we are not going beyond the impacts of the airline noises, of the airport noises. That is exactly where I want to go.

I can tell you that it's quite a major issue, particularly for the municipalities that are abutting the airports. I don't think we should shut down this study. Whether we have it now or whether we have it when we come back in January, we don't have to rush to necessarily finish this by December 15. We are busy with some other things. I would love to see this done when we come back in January.

My other colleagues probably will have the same view.

The Chair: Mr. Jean.

Mr. Brian Jean: I agree with Mr. Dhaliwal in relation to some of his points.

Monsieur Guimond, I've looked at this and I recommend a change on it that would make a lot more sense. I'll read the entire thing:

Pursuant to Standing Order 108(2), that the committee study the consequences of noise and other negative issues caused by airport operations in urban areas linked to the quality of life of the population and that it report its observations and recommendations, including recommendations related to an appropriate regulatory response, to the House.

Is that satisfactory to you? All I've done is change the words around, but it I think it has a much better meaning and it's much more clear and precise, in English, anyway.

If that's satisfactory, I see no problem with it not going forward and I'm prepared to agree to any date that you would like, Mr. Guimond, as long as it's outside of the normal course of our business here.

The Chair: Monsieur Guimond.

[Translation]

Mr. Michel Guimond: Unless I'm mistaken, Mr. Jean referred to negative issues. Is that correct? Did you use the term "negative"?

I wouldn't want us to go on an airport hunt. I want noise to be regulated and for there to be appropriate regulation, consistent with Mr. McCallum's amendment, which concerns regulatory changes respecting noise management. However, I don't want to talk solely about the negative consequences of airports. I wouldn't want anyone to get the impression we would like to shut down the airports. An airport has to be seen as an instrument for economic development. A

number of companies come and settle in regions where there are airports. I don't like the expression "negative issues".

•(1115)

[English]

The Chair: Merci.

Mr. Jean.

Mr. Brian Jean: Let's just take out the word "negative" and just say "and other issues".

Mr. Guimond, I'd prefer just studying noise, to be honest. I think it would be much better to do that. If we want to study other things we can change it. We don't have to have a motion to that effect. Then I would just say let's take out "and other negative issues", which I put in after "noise"... "caused by airport operations in urban areas linked to the quality of life", but just take out "as well as other problematic". In English it doesn't make sense. It's just that in English it doesn't make sense at all.

Mr. Guimond, honestly, I'm prepared to set a meeting date right now, tonight if you want, if you want to study this, or next week, any night of the week. As far as I'm concerned, I'm ready to study anytime.

[Translation]

Mr. Michel Guimond: That's not a problem. I didn't introduce the motion to please my grandfather who died 50 years ago. There's a problem.

Mr. Jean, find out about me. I've been a whip for 10 years, and I've come into work at 6:45 every morning and left at 8:00 every evening. Don't think you'll be punishing me by adding additional meetings. It's so boring here in Ottawa that that's virtually all there is to do. I'm prepared to hold meetings night and day. I don't know whether you think you're punishing me. No, I'm quite ready. It's just that it's not possible this afternoon because I'll be catching a plane at 4:15 p.m. I won't be available this evening, but, after mass on Sunday morning, there's no problem.

[English]

Mr. Brian Jean: We hope to be able to spend time in the future.

The Chair: I'm going to take a big leap of faith and suggest that there seems to be acceptance of the subamendment to the motion. I would ask that we call the vote on it.

I will also ask that you leave it to the chair to organize, with direction from the committee members, when those meetings will take place.

Mr. Sukh Dhaliwal: We have to have a deadline of December 13.

The Chair: I'm not putting a deadline, but I will...

I'll speak to your offices before we fix the dates. But I will start setting them up as early as next week, with input from your offices, because it wouldn't be good to have a meeting with unavailability of members.

Go ahead, Mr. Byrne.

Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.): Just briefly, Mr. Chair, there's an issue that's been identified in certain airports and areas and regions. It does not seem to be a totally universal circumstance. Will we confine the witness list to those areas that have actually pre-identified where a noise problem potentially exists, or will we broaden this in the interest of inclusion? My point would be to target this at areas that have been pre-identified as having a potential noise issue rather than....

The Chair: As chair, I do get a lot of the letters that deal with that specific issue, and I do forward them, through the clerk. I think we can identify very closely where those issues are taking place. I will focus on that initially until I get further direction.

Mr. Byrne.

Hon. Gerry Byrne: Mr. Guimond, that actually allows the committee to target its work to those regions and areas that have pre-identified a problem. I understand that in B.C. and Quebec, in particular, this is a very serious issue. It's less serious in other parts of the country. So if we have a broad-based study and call witnesses from Manitoba and Saskatchewan and so on, it will slow down and turn down the work of the committee and prevent testimony from those areas from being heard. That said, you will receive a lot of representation from areas that did not necessarily voice a concern before. As chair, you'll make sure that the witness list stays targeted towards those areas.

The Chair: Absolutely.

• (1120)

Hon. Gerry Byrne: Thanks.

The Chair: I'll call the question.

(Motion as amended agreed to) [See *Minutes of Proceedings*]

The Chair: Mr. McCallum, do you have a point of order?

Hon. John McCallum (Markham—Unionville, Lib.): I'm not sure that it's a point of order. It's a point.

This is a different issue, but it's a business item. I'm starting to get a little bit concerned about when we're going to see these municipal people on the deadline issue. I'd like to propose that we might have a meeting on that subject with some witnesses on Wednesday, December 1.

The Chair: Go ahead, Mr. Jean.

Mr. Brian Jean: At what time would that be?

Hon. John McCallum: It could be from 3:30 to 5:30, perhaps. I'm not fussy as to time, but I think we need some action on this front, because the time is passing by. I'm suggesting that a Wednesday supplementary meeting might be a reasonable proposal.

The Chair: Mr. Jean.

Mr. Brian Jean: How many meetings have we had so far on this—four or three?

The Chair: Prior to coming back, I think we had four, and I think we've had three since.

Mr. Brian Jean: So we've already had seven meetings on this particular issue. Maybe what we could do is deal with this at the steering committee and talk about it, because I'm not sure what witnesses you would have come forward and what additional

information they could provide to us. Is this some sort of follow-up you're suggesting? What witnesses are you recommending? We have had seven meetings. We only have how many in a year? How many meetings do we have in a year with this committee usually?

The Chair: I think what I'm going to do is perhaps call a subcommittee meeting for early next week to iron this out. We do have our guests here, and I think we can do a subcommittee meeting and make those arrangements that are suitable.

Mr. Jean.

Mr. Brian Jean: I just ask Mr. McCallum to actually provide an idea of who he would like to call so we have an idea of where we're going to go from here, because I thought we had exhausted that topic already.

The Chair: Okay. With that, I'm going to invite our guests to join us at the table today. We'll take a two-minute recess while they make themselves comfortable and then we'll move into the next order of business.

• _____ (Pause) _____
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The Chair: Thank you, and welcome back after that brief recess.

Just for the advice of the committee, business order number two, pursuant to the order of reference of Tuesday, October 26, 2010, is Bill C-42, an act to amend the Aeronautics Act.

I will advise the committee members that this is being video-recorded, just for your information.

Joining us today from the office of the Privacy Commissioner of Canada is Ms. Jennifer Stoddart, the Privacy Commissioner.

Welcome, and please proceed.

Ms. Jennifer Stoddart (Privacy Commissioner, Office of the Privacy Commissioner of Canada): Thank you very much, Mr. Chairman. I'm very happy to come before you today on this important question of use of personal information in airline security.

I'm accompanied by two people who have very relevant expertise. To my right is Carman Baggaley, a senior policy advisor who has worked for a long time in this area. To my left is Maître Daniel Caron, who is our legal counsel on this issue. I also have two other people accompanying me who have relative expertise in this area.

Honourable members, Bill C-42 is a very deceptively simple bill. It's certainly a short one. It only contains two sections and it does only one thing. It amends the Aeronautics Act to allow the operator of an aircraft that is scheduled to fly over a foreign state to provide certain personal information about the passengers on the flight to the foreign state when required to do so by the laws of the state.

Aviation security has always been important, but for reasons that we all understand it has become a priority in Canada and for countries around the world.

Since the terrorist attacks of 2001 and subsequent aviation-related incidents, we have witnessed the introduction in Canada of numerous aviation security measures, including the Public Safety Act, the implementation of the advanced passenger information passenger name record—recognized under the initials API/PNR program—and the passenger protect program, commonly called the Canadian no-fly list.

All of these measures give rise to privacy concerns. They have resulted in the creation of massive government databases, the use of secretive no-fly lists, the increased scrutiny of travellers and airport workers, and greater information-sharing with foreign governments.

However, the bill before you, Bill C-42, differs from the measures listed above in that it will not result in the introduction of any new domestic aviation security programs, nor will it involve the collection of additional personal information by Canadian government agencies. Rather, it will allow American or other authorities to collect personal information about travellers on flights to and from Canada that fly through American airspace. This in turn will allow American authorities to prevent individuals from flying to or from Canada.

Bill C-42 raises important sovereignty issues. We are not questioning the American government's authority to implement its secure flight program. International law is clear that a state's sovereignty extends to its airspace. However, the Canadian government has a duty to protect the privacy and civil rights of its citizens. Thus it's important that we understand how the secure flight program may affect Canadian travellers.

•(1125)

[*Translation*]

Before commenting specifically on Secure Flight, I would like to remind the committee that we have just had an exhaustive study of aviation security in Canada. The Major Inquiry into the Bombing of Air India Flight 182 devoted a whole volume to the subject.

The inquiry made two general recommendations that I think are germane to the subject: when selecting equipment and procedures for passenger screening, consideration should be given to individual rights, including privacy rights and the rights guaranteed under the Canadian Charter of Rights and Freedoms. Given the importance of the "no search, no fly" rule and the potential impact of security measures on individual rights, Transport Canada and the Office of the Privacy Commissioner of Canada should collaborate to devise tools and criteria to evaluate proposed security measures.

The Major Report also identified gaps or vulnerabilities in aviation security and it recommended that efforts to enhance security should focus on three areas: air cargo; airport security, particularly access to the airside and restricted areas of airports; and fixed base operations and general aviation—recreational and business aircraft that often operate in close proximity to major airports.

From our perspective it's noteworthy that the Major Inquiry did not recommend greater focus on passenger screening or collecting even more information about travellers. In fact, the report states that Canada's no-fly program has not proven to be effective.

With that context, I would like to highlight some of the significant aspects of Secure Flight, the American no-fly program. Air carriers, including Canadian carriers flying through American airspace, will be required to provide the Department of Homeland Security not only with basic identifying information—name, date of birth and gender—but also, "if available", additional information such as passport information and itinerary information. Since this information will always be available for international flights from Canada flying over the U.S. airspace, that full information will always be provided.

Although the Department of Homeland Security's Privacy Impact Assessment is somewhat unclear on this, our understanding is that information collected can be disclosed and used for purposes other than aviation security, such as law enforcement and immigration purposes.

DHS will retain this information for as long as seven days after the journey has been completed even for individuals who are not on the no-fly list. That period will be seven years for potential matches and 99 years for confirmed matches.

•(1130)

[*English*]

One important difference between the U.S. secure flight program and the Canadian program is that under the U.S. program the responsibility for checking passengers against the no-fly list rests with the Department of Homeland Security, not with the airlines as in Canada.

According to DHS, this will result in greater accuracy and therefore fewer false positives—for example, a similar name, but the wrong person. However, this means that DHS will collect personal information from Canadian travellers. The Canadian government attempted to have all Canadian overflights exempted from the secure flight program. It was unsuccessful, although overflights between two Canadian cities, like Montreal and Halifax, which may pass through American airspace, were exempted.

If Bill C-42 is passed, we believe the Canadian government has an important role to play in working with the American government and Canadian airlines to minimize the impact of the secure flight program.

These are our suggestions:

Ensure that the minimal amount of personal information is disclosed to American authorities. The secure flight program requires only three pieces of information. In particular, Transport Canada should work with the airlines to avoid excessive disclosures of personal information. On this point we note that the Aeronautics Act currently allows the Governor in Council to make regulations respecting the type or class of information that may be provided to the foreign state.

The government should also question the retention periods of seven days for no-match and seven years for potential matches. The U.S. is committed to collecting only personal information necessary for airline security.

The government should also negotiate robust and accessible redress mechanisms with the Department of Homeland Security for Canadians who are prevented from flying as a result of the secure flight program.

It should also make Canadians aware of the U.S. secure flight program and our passenger protect program to minimize the confusion that may result from the operation of the two programs.

These are my initial remarks.

Thank you for giving me the opportunity to make these observations on this legislation. I would be happy to attempt to answer any of your questions.

The Chair: Mr. McCallum.

Hon. John McCallum: Thank you for being with us today.

In respect of the minimal amount of information being passed to the U.S. government, are you suggesting that the Canadian government can have regulations to ensure that only the three basic pieces of information—name, date of birth, and gender—can be transferred to the U.S.? Is that what you're suggesting?

Ms. Jennifer Stoddart: Yes. I understand that this can be specified under the Aeronautics Act. My understanding is that they would have to specify whether they want Canadian planes to continue to fly over airspace in harmony with what DHS is asking for.

Hon. John McCallum: I think there's a distinction between things under Canada's control and things under U.S. control. That aspect would appear to be under Canadian control, and we can pass regulations to limit that transfer. But with respect to what the Americans do with the information, that is far less under our control. You seem to have concerns with the seven-day, seven-year retention periods, but what can we do about that? Once the information is transferred, they have it.

• (1135)

Ms. Jennifer Stoddart: They do. I'm simply recommending that the government take a position going forward that DHS attempt to shorten its retention periods of Canadians' information.

Hon. John McCallum: You also talked about the redress mechanisms. This is a question I asked the minister, and I didn't really get an answer. It's my understanding that the U.S. Privacy Act does not apply to Canadians. Are you aware of whether that's a fact?

Ms. Jennifer Stoddart: That is my understanding. Would you like to hear the details of how this applies?

Hon. John McCallum: Yes, I would, please.

Ms. Jennifer Stoddart: Allow me to ask our legal counsel.

Mr. Daniel Caron (Legal Counsel, Legal Services, Policy and Parliamentary Affairs Branch, Office of the Privacy Commissioner of Canada): Effectively, the U.S. Privacy Act does not apply to visitors or aliens, so it would not apply to Canadians. However, with respect to the secure flight program, the Department of Homeland Security has stated that it will mesh together the personal information of foreigners and Americans. This would seem to allow the U.S. Privacy Act to apply to non-Americans.

However, the Department of Homeland Security has also issued a final rule exempting a number of provisions of the Privacy Act in the light of the secure flight program. This rule applies to U.S. citizens as well as to Canadian citizens on an overflight. So the short answer, for all intents and purposes, is that the U.S. Privacy Act would not apply.

Hon. John McCallum: Does that not imply that the redress mechanisms in place are pretty weak, inadequate?

Ms. Jennifer Stoddart: Yes, certainly they are.

Hon. John McCallum: Where does this leave us?

I think these are important concerns. I guess you're not recommending one way or another way that we pass the bill. Or are you? Do you think these concerns are strong enough that we push back? What are you recommending that we do?

Ms. Jennifer Stoddart: Well, I'm recommending that you follow up on my own recommendations about how the government can mitigate this. Obviously, the recommendation of whether or not you adopt this bill goes to other considerations, such as economics, travel patterns of Canadians, and so on. But we must put this also into the context of a world in which increasingly a lot of personal information will be given out in order to board an airplane, either to the airlines or, in the case now, to DHS.

I think this is a pattern that is going to become more acute as time goes on, with the European Union looking at these kinds of measures, and with Canada itself having its own requirements for people who fly into this country, in terms of personal information, and so on. So the decision whether to push back or not I think rests with this committee, and on a variety of issues, as I understand.

From a privacy point of view, if the bill were to pass, there's still a very dynamic stance that the Canadian government could take in relation to this.

Hon. John McCallum: Okay. It's a pretty weak redress system, I think you've just agreed.

Do you think there is a role for the Canadian government, the federal government, to assist Canadians who may get caught up in this system, innocent Canadians? And if so, what could the federal government do to help such people?

Ms. Jennifer Stoddart: I believe generally there's a role for the government to assist Canadians who have problems abroad. If, for example, there's a false positive match—any incidents that we've heard of seem to be issues of false positive matches—I would think the Canadian government then could supply additional information, perhaps, to try to clear up the false positive match with the Department of Homeland Security's watch lists.

• (1140)

Hon. John McCallum: The minister told us that he'd had extensive consultations with you in your office. I'm wondering if in any of these consultations the government gave any thoughts or answers to your concerns as to how they would deal with the concerns that you have raised.

Ms. Jennifer Stoddart: Could I perhaps ask Mr. Baggaley to comment on that?

We did consult with the government generally, but I don't believe it had a large margin of manoeuvre.

Mr. Carman Baggaley (Strategic Policy Advisor, Office of the Privacy Commissioner of Canada): Yes, it was a joint meeting. In April we met with both Public Safety and Transport Canada officials together.

One of the issues that was discussed was whether legislation such as is now before this committee was necessary or whether there were other provisions in PIPEDA that would allow the disclosure. We recommended that for the sake of clarity it would be better to have legislation, as opposed to fitting it under some other exception.

We subsequently wrote the Department of Transport and the Department of Public Safety, in which we made four recommendations, and this was before Bill C-42 was introduced, one of which was to continue to press to limit collection, press to shorten retention periods, to negotiate more robust redress mechanisms, and finally, to limit the use and disclosure of personal information. So we had one meeting and we followed it up with a letter.

The Chair: Thank you.

Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond: Ms. Stoddart, thank you for giving us the benefit of your insight into this important bill.

You and the members of your team have probably understood that we have to strike a balance between air safety imperatives and the disclosure of personal information. It's not an easy line to draw. How far can we go? I'm very pleased to see that you have major concerns, particularly with regard to the information that would be provided.

When Minister Toews testified earlier this week—it was on Tuesday, I believe—he talked about information that would be disclosed, such as the person's name, date of birth and gender, but also, if available, other information related to that person's passport and itinerary. Under the U.S. Secure Flight program, there is also the condition introduced by the words "but also".

In the middle of page 4 of your brief, you make the following recommendation: "Ensure that the minimal amount of personal information is disclosed to American authorities..."

Without saying it so directly, you're suggesting that we amend the bill. You're advising us not to stick solely to the three areas. You say: "Ensure that the minimal amount of personal information is disclosed to American authorities—Secure Flight only requires three pieces of information."

On the previous page, you put the emphasis on certain aspects of the Secure Flight program, and you add the words "but also". What do you think the Americans are requiring? What do you recommend?

Ms. Jennifer Stoddart: They require three pieces of information in all cases, but where it is available, they require a set of other information such as passport number, the airline's internal numbers used to monitor the ticket, the passenger and so on. There are seven or eight elements, and we could read them to you.

In my opinion, the confusion stems from the fact that, for virtually all flights, although not all, all pieces of information are required. However, for all flights, they gather the three pieces of information required by the U.S. Department of Homeland Security, that is to say name, date of birth and gender. For example, if I travel on a friend's small personal aircraft to go fishing in Maine, that friend will not have to provide all the other pieces of information because he does not belong to a commercial U.S. airline. He will nevertheless have to state the names, dates of birth and gender of the people who accompany him.

• (1145)

Mr. Michel Guimond: All right. So you recommend that we stick solely to the three pieces of information, even in the case of the airlines that have more parameters. Is that correct?

Ms. Jennifer Stoddart: I don't believe that's possible. The statement means that the Secure Flight program requires three pieces of information in all cases. When the other information is not available, it is not necessary to provide it.

Mr. Michel Guimond: Obviously, since it's not available.

Ms. Jennifer Stoddart: That's correct. This may seem somewhat paradoxical, but in our work we often see institutions or businesses that, out of a desire to please, provide information that is not required. We saw that in the case of the Financial Transactions Reports Analysis Centre of Canada—FINTRAC—in our recent audit.

For the sake of prudence, we suggest, not that this be included in the act, but that, in the event the bill is passed, the government use its regulatory power to describe this in regulations so that it's accessible and well explained to everyone.

Mr. Michel Guimond: I asked the minister about how long the information would be kept. We're talking about seven days. In the second point on page 4 of your notes for remarks, you state: "Question the retention periods of seven days [...]" Is this something you're suggesting to us? Do you think seven days is too long a period?

Ms. Jennifer Stoddart: Yes, we find it very long. Given the speed of computers, we would expect a period of a few days, perhaps 48 hours. A period of seven days may mean that they want to use the information to conduct very thorough analyses, which is disturbing when the U.S. government accumulates information on Canadians.

Mr. Michel Guimond: I asked the minister what guarantee we had that the Americans would destroy that information after seven days. He answered that the guarantee was that the Americans had told him they would destroy it. What happens if they don't do it?

Ms. Jennifer Stoddart: If they don't destroy it—

Mr. Michel Guimond: Big Brother is watching us.

Ms. Jennifer Stoddart: No one will know. That's somewhat the problem with all the states that take action in fields that are not subject to standards of general inspection, if there isn't a UN committee that, in future, will look at what's in the data bases of all the world's governments. And yet, that's what we do for the development of atomic weapons. However, as the minister said, we have to believe them.

The Chair: Thank you, Mr. Guimond.

Mr. Bevington, it's your turn.

[*English*]

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

Thank you, Madam Stoddart, for joining us today.

We just received this document, which is the proposed regulatory framework for the information required. This came from the minister's office, and it clearly says that information from the passenger name record of the airlines will be included in the information required by foreign states. The passenger name record is slightly different from the three requirements. Would you not agree?

Ms. Jennifer Stoddart: Yes.

Mr. Dennis Bevington: That includes things like visa number, a whole mass of information—is that not correct?

Ms. Jennifer Stoddart: It does. I believe there are about 25 elements.

Mr. Dennis Bevington: There are 25 elements of information that would be included, and it clearly states in the proposed regulatory framework that that's what's going to happen. Any comments on that?

Ms. Jennifer Stoddart: I'm sorry I haven't been able to look at this regulatory framework. Could I get back to you on this?

If we're talking about Bill C-42, we're only talking about the possibility of giving any personal information in the case of a flyover. That wasn't clear, I think, from the present wording of either that act or PIPEDA. So it's just to make that absolutely clear.

• (1150)

Mr. Dennis Bevington: I'd ask that you review it.

Ms. Jennifer Stoddart: We have been furnishing advance passenger information and passenger name record information to the United States for quite some time now.

Mr. Dennis Bevington: You say in here "our understanding is that information collected can be disclosed and used for purposes other than aviation security, such as law enforcement and immigration purposes", the information given to the United States under this program.

Ms. Jennifer Stoddart: Yes.

Mr. Dennis Bevington: What's your basis for saying that?

Ms. Jennifer Stoddart: In something called "the rule", there is quite an extensive list of possibilities for DHS to share this with domestic and foreign governments of various types, international organizations, such as the World Health Organization, and so on. This is in American legislation itself.

Mr. Dennis Bevington: So they could share it with any country in the world? So you have 25 points of information with the passenger name record, you have visa records, you have access to all kinds of information. Is that not correct?

Ms. Jennifer Stoddart: Yes.

Mr. Dennis Bevington: And you can share this with anyone. The Department of Homeland Security can share it with anyone. Let's just get that established.

The minister said: "We indicated that passenger information should not be vetted against any list other than those used to maintain aviation security."

Certainly law enforcement and immigration don't seem to fit under aviation security, do they?

Ms. Jennifer Stoddart: No, they don't.

Mr. Dennis Bevington: What we have is the minister saying that we should not be vetted. So the minister is really only mouthing words here, because the reality is that this information can and will be shared with all kinds of people within the U.S. government, and also with any other foreign government they choose to share it with. Is that correct?

Ms. Jennifer Stoddart: My understanding from reading the rule is that it can be shared. They have the power to share it widely, but the extent to which it will be, I can't speak to that.

Mr. Dennis Bevington: We've been told there were three points of information. Now we're up to 28 points of information, and maybe some more, and maybe some linkages to other information through the passenger name record. Not only can it be shared with Homeland Security but also with the FBI, CIA, and any other agency of the American government, plus any other agency of any other government in this world. That's what we're giving up.

Were you privy to any threat or risk assessment done by the Canadian government to determine whether this information, this breach of Canadian privacy, actually has any basis in an assessment of what's going to happen on those aircraft?

Ms. Jennifer Stoddart: Not to my knowledge.

The thing I am aware of that most recently has been made public is the assessment of Mr. Justice Major at his commission, who has said generally that in the testimony he received about aircraft and airline security, the usefulness of passenger protect or do-not-fly lists or the use of personal information has not been established.

Mr. Dennis Bevington: Are you familiar with the Congressional Research Service report to Congress on data mining in Homeland Security, produced in December of 2007, indicating that there are many issues with data mining for determining a threat from passengers? The report indicated that most of this was not correct and would not produce results, and had the additional problem of what they called "mission creep", where the data collected would be extended to many, many other points of concern for the Canadians who are protecting their privacy?

Ms. Jennifer Stoddart: Yes, this is a problem generally with the gathering of huge amounts of data. Its usefulness has not been proven, and it is likely to be used again and again, often inaccurately.

• (1155)

The Chair: You have a minute and a half.

Mr. Dennis Bevington: Okay.

On accessible redress mechanisms, what would you suggest the Canadian government do for a passenger who wants redress? If you have a person going onto a plane and all of a sudden they get pulled off because of some information that is incorrect or inappropriately used by the American government, how would you suggest the Canadian government respond to that? Are we going to have a 1-800 number going directly to the foreign affairs department? What is it that we need?

Ms. Jennifer Stoddart: I think the Canadian government has the experience to look into that. I really can't say from my perspective what would be the most useful. Simply informing Canadians of the possibility of this happening now, if and when this law goes into effect, would certainly be one step, and perhaps giving them a place they can call. But they have to go through the American redress system, which is through the TRIP program. I understand this possibly takes from four to six weeks. I see no evaluation of what the overall outcome is in those cases. The problems can be serious.

The Chair: Ms. Brown.

Ms. Lois Brown (Newmarket—Aurora, CPC): Thank you, Mr. Chair.

And thank you, Ms. Stoddart. It's most interesting, and I look forward to reading this brief that's being presented to us.

I think first and foremost we all agree that the Canadian government is committed to airline security and that we want to ensure that safety and security are foremost. We also recognize a responsibility for ensuring privacy of information. But I do want to just read into the record a quote from 2001, from the then Liberal Minister of Transport, Mr. Collette, who recognized that, and I quote:

Any sovereign state, whether the U.S., Britain or anyone else around the world, has a right to know who is coming into its country, whether by land, sea or plane.

As you are aware, under the Aeronautics Act, carriers are obliged to operate under the legislation of another country once they enter its air space....

The reality is, the United States has made the decision to implement this. We have had several extensions over the last little while, and they have decided that January 1 is going to be the day that this gets implemented. So either Canadians are going to agree that we have to provide this information, or we are facing a very different set of circumstances as far as where our airlines are able to fly. Airlines that are headed to the Caribbean, for example, if they're coming from the west, are going to have to fly eastward across Canada, and then south, adding a tremendous cost to tickets. Individuals are going to have to make the decision whether or not that is what they are going to pay, rather than provide the information to the American government.

So I look at this and I say that as an individual I have self-identified. I have gone to the United States; I have applied for a NEXUS card; I am the recipient of a NEXUS card. So I have self-identified. My information is now, according to my NEXUS card, with the American government until 2016. I just received my card this year, and it's made things very, very rapid for me getting through the airport. Do you have any comments on that process?

When I shop at any store, many department stores today when I go in and I purchase something, they ask for my telephone number, and I give my telephone number willingly. Out of that information, if they do a reverse look-up, they know exactly where I live. They know fundamentally if I'm in a certain subdivision what my income level is. They are directing marketing information towards me all the time. So if I'm prepared to give that information there, or through my NEXUS card, why would I not want to give this to a government because I'm flying over their airspace and they have the right, if I want to fly over their airspace? Do you have any comment on that?

Ms. Jennifer Stoddart: I would just say, honourable member, that in your comments you've illustrated the wide variety of views on privacy and how personal notions of privacy are. Some people will not, now, go to the United States because they are worried about their privacy. Other people in fact take the kind of course that you do. Some people will not give their phone number when they purchase something; others will. So there's a variety of approaches to this, and I think that's one of the challenges that you have before you, that views on the effect of this legislation can differ widely.

• (1200)

Ms. Lois Brown: But certainly we have an agreement with the U. S. on how this information will be used. If we are looking at saying no to participating in this legislation, what impact is that going to have on our travel industry? What impact will it have on our airlines, for instance, in increased costs?

Ms. Jennifer Stoddart: I'm not particularly qualified to answer that, but I think an ordinary citizen could see that there would be a huge change not only in costs but in time if we have to fly around the United States to get elsewhere in the world.

Ms. Lois Brown: So we all do agree, though, that the United States has the right to put this in place. The United States has the right to recognize its own sovereignty. If we don't participate, are we disadvantaging our own society?

Ms. Jennifer Stoddart: Again, I can only tell you what the privacy implications are, and they are quite significant. I think other witnesses could tell you what would be the implications, what would happen if you didn't implement this legislation.

But on the right of the United States to do this, could I ask our legal counsel just to talk briefly about the international convention on which the United States is basing its actions?

Mr. Daniel Caron: We're not questioning the ability of the United States to put in place the secure flight program. I think it's international conventions, and international law recognizes that a country's sovereignty does extend to the space above its territory. International conventions recognize certain freedoms, the first being the freedom to fly over a sovereign country. That freedom is affected by the secure flight rule, but there are, as with many rules, exceptions. One of the exceptions to the freedom is that a sovereign country is able to make laws with respect to its territory.

So we're not questioning the fact that the United States has thought it wise to put into place a secure flight program. From our perspective, it's just that a U.S. program will have an incidence on the privacy rights of Canadians to overfly the territory.

Ms. Lois Brown: Just as a comment, I know that many of the constituents of Newmarket–Aurora already travel to Buffalo in order to access other travel patterns and sometimes lower tickets. So they are already providing that information when they are getting on a flight in Buffalo. I think it's probably the same from Montreal down to Plattsburgh. So many Canadians are already providing this information and I think we need to take that into account.

The Chair: Thank you.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, sir.

I would like to welcome Madam Privacy Commissioner Stoddart and your associates here.

Madam Commissioner, I don't think any Canadian disagrees that safety and security is foremost to us as Canadians and citizens of the world. But on the other hand, to you, the commissioner who takes care, on behalf of Canadians, of the privacy rights and civil rights of Canadians, these are equally important. Not everyone is as fortunate as Ms. Brown and I, who are able to carry this NEXUS card, who are able to provide that information to the U.S. authorities. We're concerned about ordinary, innocent Canadians who can be a target of these laws. I can see that.

You mentioned that similar names will be an issue. When we talk about seven days and redressing the issues in four to five weeks, I don't think, personally, it's acceptable. How would you feel if you were in that lineup and you, being an innocent Canadian, are denied

the right to travel? I'm concerned about that. Are you concerned about people?

• (1205)

Ms. Jennifer Stoddart: I'm very concerned about that, and there are many documented cases of people who have been denied the right to fly at Canadian airports for reasons that they have never understood.

Mr. Sukh Dhaliwal: On the other hand, now we're seeing that we're passing this law here for a secure flight program. The airline should be able to share this information with the U.S. Do you suggest that we should have a law here in Canada, that we should be able to control the destiny of Canadians when it comes to that information and those privacy laws?

Ms. Jennifer Stoddart: Yes. Well, I think we do have a general law for the commercial context, as we're talking about airlines giving information. This is PIPEDA. What we are looking at here is an exception to PIPEDA for clarity for the business world, which really doesn't know how to interpret some sections, particularly in the case of overflying rather than landing in another country. We do have that law. It's generally recognized as a basically appropriate law, and what we're looking at here is a specific exception where there would be no consent. The airlines would not have to get consent.

Mr. Sukh Dhaliwal: The other issue you raised is that today we are talking about states—you know, it's a democratic state; but tomorrow it might be another country that might be asking for similar information, where there's no public safety, no democracy.

Are you concerned that the current legislation might cause problems in the near future?

Ms. Jennifer Stoddart: The only states I have heard of that are moving to this overflight information request are the United States. There's some talk about it in the European Union. These are two entities that have very robust democratic institutions. If a non-democratic country were to ask for that information, I believe either the regulations would be changed or the act would be changed, depending on what is necessary. But for the moment, as I understand, that's hypothetical.

Mr. Sukh Dhaliwal: You mentioned the European Union. They are trying to renegotiate with the U.S. when it comes to the secure flight program. Do you believe Canada should follow a similar path to renegotiate with the U.S., to make sure when we put this law in perspective the privacy and civil rights of Canadians are our utmost priority?

Ms. Jennifer Stoddart: Yes. On my recommendations, I basically suggest that Canada keep making representations—strong representations—to the American government about issues such as the length of time for keeping Canadians' information, the efficacy of the redress system, and so on. I hope this will be an ongoing point in the Canadian and American dialogue in the future.

The Chair: Thank you. I have to end it there.

Monsieur Gaudet.

[Translation]

Mr. Roger Gaudet (Montcalm, BQ): Thank you, Mr. Chairman. Thanks to the witnesses as well.

Explain to me why the Americans want this act.

Ms. Jennifer Stoddart: Sir, I'm not an air security expert, but, as a citizen, I understand that the Americans think there is currently a threat to the integrity of the United States' borders stemming from aircraft that avoid inspection by U.S. authorities since they leave foreign countries and are supposed to land in a foreign country.

For example, U.S. security officials fear that such an aircraft may be forced to land in 2011, or may constitute a bomb that could explode anywhere in the United States, particularly near large cities. I believe that was the plan of the individual who was carrying a bomb in his underwear and who was aboard an aircraft that was to land in Detroit last year. I believe that's the model for—

• (1210)

Mr. Roger Gaudet: What's important are airport searches, where a person shows up at customs. They have to know that my name is Roger Gaudet, that I'm going to... What are the three pieces of information they require?

Ms. Jennifer Stoddart: They request the name, date of birth and gender.

Mr. Roger Gaudet: That's it. For me, it's May 26, 1945, and I'm a male. If they don't do the right checks at customs, what's the use of having my name? Usually, all those who have been arrested because they wanted to commit wrongful acts at an airport were not known. I have no objection to them knowing my name, but why do they want to know that? It seems to me that most of those who kill themselves at the same time don't give their names and don't have a very long criminal record.

Ms. Jennifer Stoddart: I'm not an air security specialist. We're told that people's personal information is being gathered, among other things, to establish travel patterns and links between individuals. They're trying using increasingly sophisticated mathematical formulae to profile potential terrorists. However, as I told your colleagues, there is no proof that will be effective.

Mr. Roger Gaudet: When will that information be transmitted to the Americans? When tickets are purchased or when passengers go through customs?

Ms. Jennifer Stoddart: I don't exactly know, but my colleague might perhaps be able to answer that question.

[English]

It's before they take off.

Mr. Carman Baggaley: Yes, that's a very good question.

Aviation security is always explained in terms of having different layers. There are several layers that already exist. As you quite rightly point out, you're screened before you get on the airplane. Your baggage is checked. In addition, there's already a program that provides that information is provided to American authorities if you're landing in a city in the United States. The secure flight program is layered on top of that.

It's a fair question to ask whether this additional layer will add any additional security. But as Commissioner Stoddart has pointed out, it's difficult for us to make the judgment about whether this new layer is providing any additional security. The American government believes that it will provide additional security. It's not readily apparent what that would be, but we're not aviation experts.

The Chair: Merci, Monsieur Gaudet.

We'll go to Mr. Jean.

Mr. Brian Jean: Thank you, Mr. Chair.

Thank you to all the witnesses for coming here today.

That's a very interesting position on this, and I understand why you've taken that position, because of course that's your job. You're to lean one way, whereas reality leans the other way, in my mind. And this reality, of course, is about the Americans, the United States, having sovereign airspace.

If I had an acreage on a lake, and people wanted to go to the lake, and they had to enter onto my private property to go there, I would say to them that they could go on my private property and go to the lake, but they would have to provide me with their name or their phone number, or whatever information I decided, because it's my property. That's fair to say, isn't it?

Ms. Jennifer Stoddart: Yes.

Mr. Brian Jean: In this case, of course, it's the United States' sovereign airspace.

I had an opportunity to meet with Air Transat last night, and they're quite concerned about this particular bill. They advised me in no uncertain terms that if this bill was not passed, and they had to either take a big detour or not fly, they'd be out of business. In fact, the word that I think was used was "bankrupt". They'd be bankrupt if they had to fly around and this bill was not passed by January 1.

Obviously, I don't think anybody in this room, including you, wants to see a situation where the Canadian airline industry is bankrupt. Is that fair to say?

• (1215)

Ms. Jennifer Stoddart: Yes, I think nobody wants to bankrupt Canadian airlines.

Mr. Brian Jean: Great.

I understand the issue of protecting the privacy rights of Canadians. I am kind of interested, though, to note that, really, to fly into American airspace is not a right. To fly over it is not a right. It's a privilege, just like it's a privilege to get a driver's licence, for instance. The Supreme Court has made that decision very clear: it's a privilege to get a driver's licence, not a right to get a driver's licence. And I think it's very good of the United States to actually grant the request of this government, which is an exemption for some of those flights.

What I'd like to talk about a bit is my understanding of this system in the United States, because of course it is a system that is their sovereign right to decide upon. My understanding is that the information they will receive will be, by requirement, name, birthdate, and gender, as has been mentioned, but also other information that we're prepared to actually give an airline, any airline, a low-cost airline or whatever the airline is. They get a VISA number and what other information there is and provide that to the United States, if available. The administration will keep that information for seven days, but in fact nobody sees that except for a computer. My understanding is that for the first seven days, that analysis to see whether the name is linked with any other name is done by computer. I understand why, because of course there are tens of thousands of names that are going to go on that list every single day. But that's actually vetted by a computer system.

If the computer marks it as a positive or a possible positive, they will keep that information for seven years, if indeed it has a possible link to a terrorist or something like that. And if it is a terrorist, they'll keep it for 99 years, and I hope they keep it forever, bluntly, in my mind, because I don't want terrorists, obviously, to keep Canadians unsafe and cause the immense expense they have. As far as I'm concerned, those people who are going to be on the list for seven years or 99 years, they can keep that forever, because I want to be safe when I fly, because I fly a lot.

I just don't understand what the issue is. I understand that you're balancing privacy against the right of the United States to have us fly over, but I don't understand what you're suggesting as far as an option that is realistic.

Ms. Jennifer Stoddart: I don't think, honourable member, that I am trying to say to you to vote or not vote for this particular piece of legislation. If you look at my remarks, I'm commenting on the privacy impact of it and suggesting at the end that if it were passed, there are additional measures or positions the Canadian government would take.

Mr. Brian Jean: Again, we're subject to the United States and we have a choice: provide your name and fly or else fly north, fly east, or fly west, but you're not going to fly over their space. Really, our option is at the behest and the complete discretion of the United States. Really, what we are doing with this bill is enacting something that we have to do if people want to fly.

Ms. Jennifer Stoddart: That's right: if they want to fly over the United States, these are the conditions.

Mr. Brian Jean: Okay.

So really, we have no choice as far as putting forward this legislation is concerned. In your analysis, the reality is—

Ms. Jennifer Stoddart: Again, you're the members of Parliament. I'm only advising you on the privacy implications of this.

Mr. Brian Jean: Okay. But if we are prepared to give our information to a store, as Ms. Brown said, to an employee who works at that shop—who can use that information as well, obviously.... In fact, anybody who works for that airline or anybody who works for a travel agency who has that information could share it with whoever they want. Here, we're suggesting that we're going to provide that information to the United States' administration, which is obviously doing this for one purpose and one purpose only, in my

mind. I don't really think they care about me and they're not going to sell my information to a marketing company from whom I'm going to get all those telemarketing calls. They're doing it simply to keep everybody secure and safe.

You may not understand why this is keeping people safe, but I understand why they want to keep it for seven days. I'd want to keep it for seven days too, because when I fly, sometimes I go to Australia, and it takes two or three days to get there, and you don't even know what the person is doing.

They want to keep track of it so that they can do an analysis afterward, in case something happens.

You're nodding your head affirmatively.

Ms. Jennifer Stoddart: Well, I think that's a plausible explanation. The problem is, we don't know exactly why they're keeping it seven days. There could be, for example, a sliding scale.

Mr. Brian Jean: Doesn't it really make sense that they keep that information for seven days? First of all, there are going to be tens of thousands of pieces of information. It's going to be a lot of information. But if something happens in two days and they have erased it after 24 hours, they don't have it, so they don't know what's going on, or if something happens in three or four days, which is definitely plausible, as with what we've seen with the underwear bomber and the people who were involved in 9/11. We needed that information, and if we had that information, we could have gone back in time and made sure other people wouldn't be able to do exactly what they did, because we'd know where they were flying from. We would know where they're coming from and what they were doing.

I for one am very hopeful that this legislation passes, because I think it's very important to keep North America—our perimeter—and the citizens within that perimeter safe from these types of people.

● (1220)

The Chair: I have to interrupt there.

Mr. Byrne.

Hon. Gerry Byrne: Thank you, Mr. Chair.

We seem to be having a ground-level discussion in a tug of war between privacy and the public good. I think we can all come to an agreement that there is a value to privacy and a value to being able to protect voluntary decisions versus involuntary decisions.

I'd like to ask the Privacy Commissioner, are there any specific amendments that you would suggest for Bill C-42 that are within the Canadian purview? We've noted that there are things that are in our control and there are things that are not in our control. The sovereign right of the U.S. to maintain integrity of its own airspace is not in our control.

One, for example, would be on the issue of passenger notification. I think we currently use the U.S. law. It's U.S. rules that would enable or require Canadian passengers to be notified that their information is being shared with the U.S. government. Should there be an amendment, or should there be consideration of having Bill C-42 amended to include a requirement that the Canadian airlines share this information with their passengers, or is that already available in some other context?

Ms. Jennifer Stoddart: I hadn't considered suggesting an amendment to this rather simple bill in which in fact only a few words are being changed to clarify the overflight issue. But I recommend, in one of the recommendations that I make, that the Canadian government specifically inform travellers so that there won't be shock and confusion at the airport in January, if this is passed. This is when the United States is going to implement secure flight rules for overflights: January 2011.

We suggest that there be an information campaign so that people are aware of their rights, aware of what's happening to their personal information and of such rights of redress as they may have—which are limited, we agree. I don't think this needs to be in an amendment to the law; it could possibly be in regulations, which I mentioned. That might be a way. The honourable member, Mr. Bevington, brought up a regulatory framework that I haven't had a chance to look at. But I would not think that the law itself is the ideal place to put this.

Hon. Gerry Byrne: There's nothing in Canadian law requiring the airlines, once they receive the information from their Canadian passengers and before they transmit it to the U.S., to notify the Canadian passengers that this information is indeed being transmitted. Is that correct?

Ms. Jennifer Stoddart: That would be the effect of this bill. It doesn't need consent and it does not need, as I understand it, notification per se to the passengers.

Hon. Gerry Byrne: Well, to require consent would be to nullify the legislation in some respects, I think. But the notification aspect seems pretty consistent with the norms and values that Canadians hold dear on privacy issues, or at least when exceptions to privacy issues occur, and this seems to be fairly traced as an exception, which would require notification as to a voluntary.... Right now the circumstances are for voluntary notification, aren't they?

Ms. Jennifer Stoddart: Yes. But again I think it's recommended that the government inform passengers generally. I think airlines probably could in specific cases.

Are you asking whether it should be written into the law?

Hon. Gerry Byrne: That's basically my question.

•(1225)

Ms. Jennifer Stoddart: Honestly, we haven't considered that question in detail. I would tend to say that this is the kind of thing that is usually left either to regulations or to government policy.

Hon. Gerry Byrne: That's understood. Would you endeavour—I ask you this through the chair—to provide some further analysis, after the committee stops today, as to what may be considered as potential amendments to Bill C-42 and do so with some haste, because there is a time sensitivity to this issue?

And for the issues that you don't necessarily propose to be amendments to the legislation itself, what are specific regulatory issues that must be addressed by the Department of Transport in drafting its regulations and requirements under this bill?

Could you convey that through the chair for the benefit of the committee? Again, haste is an issue here, because of course there is the deadline.

Ms. Jennifer Stoddart: Yes, we understand.

Hon. Gerry Byrne: Thank you. That would be very much appreciated.

The Chair: Time is up.

Before I go to Mr. Mayes, I have one question. I think it's very general, and maybe you can't answer it.

Do you know or do you believe that Canadians even understand how much information they give up, no matter what transaction they partake in, particularly with an airline or when travelling to another country?

Ms. Jennifer Stoddart: No. I think one of the challenges of my office is to make Canadians aware of how much of their personal information is now going around the globe. It's given up every time they make a purchase, particularly in the online world. We have done consulting on various aspects of this. It's an ongoing educational and policy challenge for us to deal with the explosion in personal information and the fact that people are unaware of the implications of what they do now.

The Chair: Is there any instance that you can think of in which the information that has been presented by the traveller to any jurisdiction, the U.S. or another country, has been shared publicly with any other organization? Is there a "for instance"?

Ms. Jennifer Stoddart: By publicly, do you mean between public entities?

The Chair: I mean taken and used for other purposes.

Ms. Jennifer Stoddart: I think, Mr. Chairman, the classic case is Maher Arar, who was flying back to Canada from Tunisia, as I remember, and changing planes in New York, where he was detained and eventually sent to Syria on the basis of his personal information, which had been shared with the American authorities.

The Chair: Thank you.

Mr. Mayes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

I just have a legal question that occurred to me. If a Canadian flight were flying over U.S. airspace and there was a terrorist aboard who took control of the plane and brought the plane down and there were damages and fatalities, would the American citizens who had losses be able to sue their government because they didn't do due diligence to ensure that their airspace was safe? In other words, if we didn't pass this and the Americans told us to just go ahead and that they weren't going to worry about it, are they taking on the legal responsibility and liability of not protecting their airspace?

Ms. Jennifer Stoddart: I think I'll ask my counsel to answer.

Mr. Daniel Caron: I don't think I'll be of much assistance. I'm not an expert in U.S. law, U.S. civil liability, or the liability of government, so I'm not sure that I can help with answering that question.

Mr. Colin Mayes: The question really is, do Canadians' rights to privacy trump the American right to security and safety? That's the issue. I think there's an obligation on the American government to ensure the safety of their airspace to their citizens, and I don't think they're asking something that is unreasonable.

Ms. Jennifer Stoddart: Given the American legal system and the facility of litigation in the United States, in comparison with Canada, I'd venture to say that there would be nothing to stop a court case in the United States, if there were some failure of airline security. But how it would end up, I couldn't predict.

Mr. Colin Mayes: I'm going to share with Mr. Trost.

Mr. Brad Trost (Saskatoon—Humboldt, CPC): Thank you, Mr. Chair.

I'm sitting here thinking of the irony of all this. We're looking for three pieces of information to give to the U.S. When I book my ticket with Air Canada, they get considerably more information than the U.S. government is looking for and they keep it for considerably longer than seven days. They know everything: my flight details back to whenever I enrolled in Aeroplan. So I have to say I think there's a certain irony there. We're more concerned about what the U.S. government is going to do with this than we are about the information held by Air Canada or other airlines, which, while well-behaved, are more vulnerable than other organizations.

Let me make a suggestion that could meet people's privacy needs. I think only the rare individual would be concerned about this. I believe most of my constituents would be more outraged about paying an extra 50 bucks, 100 bucks, or 200 bucks on their flights to the Caribbean than they would be about giving up three pieces of information.

What do you think of the suggestion that airlines be required to notify passengers—they could do it on their tickets—of what information is being given away and where it is going? There could be a website where people could follow up if they had more questions. There would be almost no extra cost if they put it at the end of an electronic ticket. It would be a few more words to type up, a cheap little website, and then it's user beware.

Would something like that satisfy your concerns? Again, knowing my constituents, I'm sure that 99.99% of them are going to be more worried about a rise in fares to the Caribbean. It's going to be one in a thousand who will actually be concerned, because of ethnic history, background, or personal circumstances. Would something like that satisfy your concerns and still not change the cost structure?

● (1230)

Ms. Jennifer Stoddart: I don't think it goes to the heart of my concerns, which are about giving information to a government database in another country. That's the basic issue.

Mr. Brad Trost: But they're getting less information than Air Canada and using it for less time.

Ms. Jennifer Stoddart: But there's a difference in power. Air Canada doesn't have the same power over Canadian citizens that the

United States may have over Canadians who find themselves in the U.S., or flying over it, or even being extradited. Air Canada doesn't have that power.

But to answer your question, I think it would be an excellent idea. I think transparency is always the best approach in dealing with people's personal information. I would favour telling them when they purchase tickets that these elements of information are going to be disclosed to such and such country that they will be overflying. For the moment, it's only the United States.

Mr. Brad Trost: Thank you, Mr. Chair.

The Chair: Thank you. That concludes the round of questioning. I'd like to open the floor for one more four-minute round.

Mr. Bevington.

Mr. Dennis Bevington: Thank you, Mr. Chair. I appreciate the chance to have a little more time on the question side. I'll just refer to my notes, because you got ahead of me on this.

So what we see is that the U.S. government will analyze passenger data and respond to airlines with no-board decisions or requests for extra screening. Has the government explained to you what this extra screening would entail and which direction it could go in?

Ms. Jennifer Stoddart: Perhaps my advisor has received an explanation as to what that would entail, not me personally.

Mr. Carman Baggaley: No, it hasn't been explained to us by the Government of Canada what that would entail, and perhaps, in fairness, it wouldn't be the Government of Canada that would be doing the extra screening. But one of the issues that arises is the extra screening could involve questions in order to determine whether or not the person trying to board an aircraft or acquire a boarding pass is in fact the same person who is on a watch list or a no-fly list. That could include asking questions that would help determine whether or not, to use the famous example, this is the Edward Kennedy that's on the watch list, or is it in fact the late senator, who experienced significant problems.

There is a historic problem with the American no-fly list of confusion over names, and some of the additional screening would be to resolve that. The screening could also be questions about where you intend to travel and what your future travel plans are.

● (1235)

Mr. Dennis Bevington: So we've determined that the U.S. can use this information in any way it wants. Would the U.S. be within its rights to refuse an overflight to a person, under its zero tolerance laws in the United States, where any person in Canada who has a drug offence is therefore subject not to enter U.S. space? Would that mean that those people would not be able to get on that plane to overfly the United States?

Mr. Carman Baggaley: I know that, for example, in our no-fly list there's a process by which names are added. I don't claim to know what the process is in the United States to add people to the no-fly list. There is some scrutiny of this list, and this may or may not provide you with some comfort, but there is a study that was done by the Department of Justice in the United States in 2007 that looked at the no-fly list. The positive thing is that there is some scrutiny. When they looked at the no-fly list in 2007, it had approximately 70,000 names on it. They found that a significant proportion, roughly half, shouldn't have been there. So there is some scrutiny. There are some checks and balances.

Mr. Dennis Bevington: My question would more within the law as it exists. With a plane flying over the United States, under this law and under their law, would the U.S. need to identify the reason why they took a person off a plane?

Mr. Carman Baggaley: My understanding is no. And that is the same as Canada's no-fly program, that there is no requirement to identify why, merely that you cannot board the plane because you're on the list. They will not give you a boarding pass. There is no requirement to explain why they will not give you a boarding pass.

The Chair: I have to stop you there.

I now go back to Monsieur Gaudet.

[*Translation*]

Mr. Roger Gaudet: Thank you, Mr. Chairman.

I'm in favour of security. That's not a problem for me. The fact that my name is provided doesn't trouble me; I have nothing to hide. However, I get the impression that it's mainly organizations like the FBI, the CIA, the Royal Canadian Mounted Police and INTERPOL that have that in hand, not airlines like Air Canada, which will transmit all that information to the Americans. I don't have any objection to my name being forwarded to the FBI. Do the CIA, the FBI and all those agencies communicate with each other? They're supposed to know everything. The last time they let one board—I don't remember in what country that was—they knew him. The problem is that some of them hadn't done their job.

They usually manage to know everything that's going on by means of these systems. They know that Roger Gaudet and Jeff Watson aren't a problem. They've known us for many years. If we were in their sights, they would know what kind of people we are. That's why I have no objection to giving my name. I simply wanted to say that I think all these stakeholders know the people who are actually dishonest.

I would like to hear your comments on that subject.

Ms. Jennifer Stoddart: Yes, they are the specialists, but errors can occur.

Mr. Roger Gaudet: Yes, of course. I agree with you.

[*English*]

The Chair: Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you.

Madam Commissioner, I'm not sure whether I heard it right. At one point, did you mention that the secure flight program has not proven to be effective?

Ms. Jennifer Stoddart: I was quoting—I hope accurately—Mr. Justice Major's inquiry into the Air India disaster of 1982. In that, looking at various aspects of aviation security, on one hand he noted that there has been no conclusive proof up till now that this constant and intense scrutinizing of passenger name information against watch lists has prevented further airplane disasters. On the other hand, he called for increased screening of baggage, cargo, cargo planes, non-commercial flights, areas around airports, airport personnel, and so on. It was in that context that I was quoting the Major inquiry.

Mr. Sukh Dhaliwal: Okay.

If we take the other approach, you said the government should play a role in making Canadians aware of this new legislation and the new requirements that are coming into effect. Would it be better if the government took the no-fly list and contacted those people to inform them beforehand?

● (1240)

Ms. Jennifer Stoddart: Well, many people have called for that, but the government replies that it's the nature of national security not to tell people if they're on the no-fly list. I believe even if you're stopped in the airport, as my colleague just said, you will not be told exactly why you are stopped or why you can't take the plane. From what I understand from national security experts, to tell the person who has been stopped why he or she is being stopped is to reveal how much the government does or doesn't know about what they may or may not be doing. So it's all very secretive.

Mr. Sukh Dhaliwal: But that's what bothers me. As your colleague mentioned, and you repeated, the government should not disclose why that person is being stopped at the airport. So then there should be no redress, because if this person does not know why they are being stopped or are not being allowed to fly, how can that person come in their own defence to redress those situations?

Ms. Jennifer Stoddart: Yes, that's absolutely the problem, and this has been pointed out. It has happened that people who have gone through the office of redress in Canada have not had a very satisfactory experience, from what we understand.

Mr. Sukh Dhaliwal: Basically, then, you feel that there will be no redress for the people who are being stopped at the airport?

Ms. Jennifer Stoddart: We are not aware of significant cases of correction under the Canadian office of redress, but I'm not quite up to date on that. We're doing an audit of that next year—we did one last year—so I'd be able to tell you a bit more in the future about how that's working. It had just started to work when we audited it, so I don't remember that there were conclusive results on that particular issue.

Mr. Sukh Dhaliwal: There was also one member of Parliament who was on the no-fly list. So those people will be the victims of these new requirements then?

Ms. Jennifer Stoddart: Some of them, as was mentioned, may be able to, certainly in the case of a false positive. Many of us have the same name as somebody somewhere else in the world. If you can clear that up, then you can obtain redress. But if it's something that has to do with your actions or your associations or something, then you may never be able to clear it up.

Mr. Sukh Dhaliwal: Thank you.

The Chair: Thank you.

Mr. Jean.

Mr. Brian Jean: Thank you, Mr. Chair.

You mentioned that there were some unsatisfied redress issues. Are there two or three a year of those, or one or two? I know you just started, but you just said there were a couple.

Ms. Jennifer Stoddart: I don't have them in mind right now. I'd have to get back to you.

Mr. Brian Jean: I'm just curious. Is it less than ten?

Ms. Jennifer Stoddart: Yes. It's a very new program. I can't answer your question now, but I will get back to the committee.

Mr. Brian Jean: I wanted to identify that issue, though, because my understanding is there were less than ten, there were a couple. And that's out of 100 million people who fly in Canada every year. It just seems like a—

Ms. Jennifer Stoddart: Yes, my recollection is there are so few that it's hard to draw clear conclusions. There is some anecdotal evidence, including a study done by some unions and civil liberty groups, that people of certain ethnic origins have been stopped so many times that, to all intents and purposes, they avoid flying now. As I say, that's anecdotal. Those are individual interviews, so you don't know what percentage. Even people with a certain type of name or ethnic origin have been stopped.

Mr. Brian Jean: Of course that will not be tolerated by anybody in this place, so certainly we would appreciate hearing any kind of information that would suggest this, because that would not be tolerated in Canada, generally, by anyone.

I do understand you oversaw a number of investigations. There are a couple that I was interested in because I shop at Winners sometimes, and HomeSense. But you oversaw the investigation in relation to the U.S. retail giant TJX. What did you find that fell down there? Because I liken it to the same thing. I would much prefer trusting the U.S. government with my information, with all of their checks and balances, than Winners, for instance. So what was the fall-down on that?

• (1245)

Ms. Jennifer Stoddart: Very simply, the issue was that T.J. Maxx, the parent company in the United States, took a business decision not to move to the industry-mandated higher level of encryption for its transmission of personal information around the use of credit cards because it didn't think it was a huge risk. Well, it was a huge risk, and I think the bottom line was it cost them \$35 million in redress, particularly to banks.

Mr. Brian Jean: I understand the U.S. has spent a lot of money on this new system that they have. In fact, my understanding is they're using the latest technology in relation to their encryption data

and all of their other collection of data for this particular system we're talking about.

You're nodding your head affirmatively.

Ms. Jennifer Stoddart: I don't know, but I would presume that American government national security transmission goes to the highest standard of encryption available, which T.J. Maxx consciously decided not to do.

Mr. Brian Jean: But they've changed their mind now, haven't they?

Ms. Jennifer Stoddart: Yes.

Mr. Brian Jean: You are active with the Canadian Bar Association. Does that make you a lawyer?

Ms. Jennifer Stoddart: Yes.

Mr. Brian Jean: And I notice you kept referring to your counsel as Daniel Caron. Is that Dr. Daniel Caron?

Mr. Daniel Caron: No.

Mr. Brian Jean: Is that your father? Or is that somebody else?

Mr. Daniel Caron: I don't know. I'm sure there are a lot of Daniel Carons.

Mr. Brian Jean: Well, you're a very famous author and teacher, according to my information here, so congratulations on that.

Mr. Daniel Caron: All right. I'll take it.

Mr. Brian Jean: I was curious about your reference to the United States and to foreigners coming into the country.

My understanding of the law in the United States is that indeed once a foreigner comes into the United States, they are afforded the same protection as a citizen—in fact, identical protection and the same protection. So wouldn't it be fair to say that a Canadian landing in the United States or coming into American space would have exactly the same protections as Americans and the same redress? I was a personal injury lawyer, so I understand the negligence aspect of what Mr. Mayes was suggesting. Wouldn't they be afforded the exact same protections as an American, and in fact the same ability to sue if their information was shared with others?

Mr. Daniel Caron: I'm just talking about the application of the U.S. Privacy Act and the rights that are contained under the act, and that generally does not apply to visitors or aliens.

With respect to the secure flight program overseen by the Department of Homeland Security, because they have exempted a number of sections of the Privacy Act to apply to the secure flight program, neither Americans nor Canadians, nor other visitors or aliens, will benefit from certain protections of the U.S. Privacy Act. And although U.S. citizens would have a right to judicially review certain decisions of the DHS, Canadian citizens would not have the ability to do so.

Mr. Brian Jean: That's not my information.

Mr. Daniel Caron: That's how I understand it.

Mr. Brian Jean: I'd appreciate a follow-up in relation to that, because that's very important. That is not my information and that's not my understanding of the law. In fact, I do understand they have actually exempted some of those parts of the privacy laws in the United States, but my understanding is we are afforded exactly the same protection under those laws that a U.S. citizen would have. So I'd appreciate that follow-up.

Those are all my questions. Thank you, Mr. Chair.

The Chair: Thank you.

If I may, I just have a follow-up question. One of the challenges we're seeing right now and I think most MPs are probably hearing about from constituents is the background checks. What they're asking these people to provide is their name, their sex, and their date of birth, which is basically what we're talking about here. I think the reason they're asking for the date of birth is that people can change their names; it's tougher to change your date of birth. We're actually finding people who are caught up in that, in the sense that they have the same birth date and same year as a felon. So it creates a challenge.

Is that not similar to what we're seeing with the request from the Americans to fly over their airspace? Is that not just a very simple way of identifying people, or at least shredding the unnecessary follow-ups that take place? If you can match a birth date and the year, that may well be worth exploring a little further to identify who the person really is. Is that not what they're asking for in a similar vein?

Ms. Jennifer Stoddart: Again, I'm not privy to how the United States runs its security program, but my understanding is that it's not

just to see who's an immediate threat, but to try to prevent threats by looking at patterns of people who may be overflying the United States. For example, one thing that seems to come out is that before someone does something drastic, they make several dry runs at it to check out the defence system. So I think the wish to identify those flying over their airspace is related to that, to see how to prevent those studying what they can do to attack American national security from the air.

● (1250)

The Chair: But if you're obligated to provide that birth date and year, and that attaches you to someone with a criminal record, they're not going to let you fly once to do a test run, are they?

Ms. Jennifer Stoddart: Well, if they're on a commercial airline, then they'll have all the other elements, and they'll probably then run it against the address and perhaps go back into other databases. Maybe you have done this before, prior to the overflight program, so they would have other information about you and could distinguish between you and the same person with your name but who is in fact a felon.

The Chair: Thank you.

With that, I thank our guests for being here today.

On Tuesday we commence again. I would ask everybody to pay attention to the memos that we will send out over the next day or so in regard to a subcommittee meeting and planning for future meetings outside of our regularly scheduled meetings.

The meeting is adjourned.

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