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Chair

Mr. Merv Tweed

Standing Committee on Transport, Infrastructure and Communities

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● (1105)

[*English*]

The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)): I call the meeting to order.

Good morning, everyone. Welcome to meeting number 37 of the Standing Committee on Transport, Infrastructure and Communities. The orders of the day are that pursuant to the order of reference of Tuesday, October 26, 2010, we are examining Bill C-42, an act to amend the Aeronautics Act.

Joining us today are several witnesses. From the University of Ottawa, we have Mr. Mark Salter; from the Canadian Council on American-Islamic Relations, Ihsaan Gardee and Khalid Elgazzar; from the Greater Toronto Airports Authority, Toby Lennox; and via video conference in, I'm hoping, sunny San Francisco, on behalf of the Liberty Coalition, Mr. Edward Hasbrouck.

Can you hear us all right, Mr. Hasbrouck?

Mr. Edward Hasbrouck (Airline Reservation Data Expert, The Liberty Coalition): Yes, sir, thank you.

The Chair: Thank you.

I will just review the process. We'll have presentations of seven to ten minutes by our guests and by Mr. Hasbrouck. Then the committee will move to questions and answers.

I'm not sure who wants to start.

Mr. Salter, would you want to start us off? Thank you. Please begin.

Dr. Mark Salter (Associate Professor, School of Political Studies, University of Ottawa): First of all, let me thank the committee for this hearing and for my invitation.

[*Translation*]

I will make my presentation in English, but I can answer questions in French.

[*English*]

At least, I hope so.

I want to make two primary points about the current legislation before this committee. The first is that this act deals with two kinds of data and with the destinations of those data. The two kinds are API and PNR data. API is “advance passenger information”. That is the normal information that occurs on your passport: your name, your date of birth, your gender.

However, PNR information, which would also be required to be disclosed by airlines if this bill is passed, is much more far-reaching. PNR was originally a commercial system designed by the airlines to facilitate travel. It includes not only one's name and identification, but also fields for payment information, such as your credit card details; contact details, such as your phone number or home address; frequent flyer information; in some cases age, if the passenger is either young or elderly; special service requests, such as a meal request or a seating preference; special instructions; and blank fields that airlines and travel agents are able to fill in as they wish.

Governments want this information so that they can build profiles of not just risky passengers but safe passengers as well. Research clearly demonstrates that in the United States and the U.K., government agencies are trying to collect as much data about travellers as possible. Government agencies such as the UK Border Agency try to develop very sophisticated algorithms that predict not which individuals are dangerous, but what kinds of itineraries are dangerous.

For example, if there were a sudden death or illness of a Canadian citizen and a person rushed to the Ottawa airport and bought a ticket to Colombia, paid in cash, and had no baggage, that profile itself would be considered risky because of the reaction to the “underwear bomber” or to Richard Reid, who also arrived at the airport with no luggage for a long flight and paid in cash that day.

What worries me about this particular legislation is that the data not only go to the destination country but may go to all states that the airline might fly over. That, I feel, is the significant change that this legislation brings, and it worries me a great deal.

Flights that use the polar routes from Vancouver to Hong Kong would have to go over Russia and China. Are we suggesting that they are reasonable destinations for the passenger data of Canadian citizens? Flights that go to Colombia or Brazil must overfly any number of Latin American countries. Flights to Dubai must overfly most European countries and some Middle Eastern countries. Is the Government of Canada confident that the destination for their data can provide adequate protection? Are Air Canada and other air providers confident of that as well?

I understand that one of the reasons for this legislation is to get around the requirements of PIPEDA for Air Canada to provide such data. What worries me is that neither the government nor other agencies have put protection in place for data that will now go abroad.

I'm very heartened by the serious and complex debate in the House of Commons on this legislation, but while I don't want to contradict the parliamentary secretary to the Minister of Public Safety, it seems to me that on October 19 he refers to the ACLU's—the American Civil Liberties Union's—endorsement of the secure flight program. I assume from my own research that he is referring to a news release from 2005 that refers specifically to the change in the secure flight program in 2005 when they decided not to use commercial data services for the processing of PNR data. I would just like to point out that the ACLU has since changed its 2005 position and no longer endorses the secure flight program in the way that seemed to be implied on October 19.

● (1110)

The ACLU has argued, as I think we would all argue, that the no-fly list of the secure flight program in the United States is at best a very blunt instrument. There are more than one million names on the U.S. no-fly list, to the best of our knowledge. What the secure flight program does is automatically compare the names that are entered through API data against the multiple watch lists.

What concerns me is that PNR data adds a lot of extraneous data. It adds a great deal of cost, but provides us with no security benefit.

Let me make three points in conclusion.

First, I think it is dangerous to sacrifice our privacy and our freedoms for the dream of zero risk or perfect security. This particular measure does not provide additional security for the aviation sector, and it places an additional burden on Canadian citizens who are flying.

Second, Canada has set a high global standard for the use of PNR, in particular with the Canada-EU agreement relating to PNR matters. This agreement is praised by both Canadian and European data protection authorities because it has specific time periods for the disposal of data, it limits the data's use, and it limits in particular the individualization of that data. The information is rendered anonymous, which allows the security services to build up the profile without attaching it to any one individual. This has become one of the global standards for international treaties on PNR agreements, and we are moving away from that high standard with the passage of this legislation.

Third, the use of this commercial data, because it is created by airlines for their use, poses clear risks to privacy and no clear benefit. There is no reciprocity among any of the other countries. We are simply making Canadians more vulnerable to the security services of other nations, and we are doing so for countries that may not have the same robust privacy legislation or commitment that we have in Canada.

Canadians' data should not be hostage to the most paranoid regime that an air company chooses to fly over. The proposed change to these data protection regulations to include overflight states dramatically increases the vulnerability of Canadians' data while offering no means of redress or appeal.

We can assume that citizens know when they travel to a particular country that they are consenting. They know they go through a visa process and a border process, so they know their data is being evaluated. However, Canadians would have no way of knowing which of the countries they flew over would get their data, what would happen to their data, or how to appeal the use of that data. I think this is a dangerous change that poses clear costs but offers no benefit.

Again, thank you very much for the opportunity. I look forward to your questions.

The Chair: Thank you very much.

Who is going to go next?

Go ahead, sir, please.

Mr. Ihsaan Gardee (Executive Director, Canadian Council on American-Islamic Relations): Good morning. *Bonjour.*

I'd like to thank the committee for the invitation to appear before you today about Bill C-42, an act to amend the Aeronautics Act. I am joined today by Khalid Elgazzar, a member of the board of directors of the Canadian Council on American-Islamic Relations, or CAIR-CAN. CAIR-CAN is a national not-for-profit grassroots organization that continues to work, as it has for over 10 years now, to empower Canadian Muslims in the fields of human rights and civil liberties, education and outreach, and public advocacy.

Since the tragic events of 9/11, Canada has understandably placed a greater emphasis on public safety and national security. However, in some circumstances those measures were implemented at the expense of fundamental human and privacy rights.

For reasons we will explore, many Canadian Muslims have particular concerns regarding how the introduction of new security regimes seems to have had a disproportionate impact on members of our communities.

On its surface, Bill C-42 appears innocuous enough, consisting as it does of only two clauses with a single purpose: to permit airlines flying over a foreign country to share certain information with that country when required to do so by its laws, an act that is currently prohibited under Canadian privacy laws.

However, in our view Bill C-42 raises a number of serious concerns that we hope this committee and Parliament will address. Chief among these concerns is the potential impact that the secure flight program will have on Canada's sovereignty and on the protection of the privacy and human rights of its citizens. We've all seen from past cases how the lack of controls, caveats, or protections set on information shared with the United States has had disastrous consequences on the lives and livelihoods of Canadian citizens.

Finally, we are also concerned that the regime Bill C-42 would have airlines feed information into is one that lacks an adequate system of redress in the case of error or abuse.

With respect to the potential impact on sovereignty, Bill C-42, as it is currently written, will effectively cede the right of Canada to determine who is or is not permitted to travel to and from this country. An internal Public Safety document obtained under the Access to Information Act and publicized in January of this year stated: It is possible that Canadians overflying the United States could be denied boarding based on U.S. no-fly lists that were developed based on a lower U.S. risk tolerance.

In essence, many Canadians who wish or may be required to travel for personal, work, or emergency reasons will only be allowed to do so with the express permission of a foreign state, in this case the United States. U.S. government sovereignty, which extends over its airspace as indicated in international law, allows it to implement its secure flight program; however, the job of the Canadian government is or should be first and foremost to do its utmost to protect the rights of Canada's citizens.

With respect to the potential impact on privacy and human rights protection, aside from the issue of sovereignty, CAIR-CAN is concerned about the lack of consideration the existing legislation grants to the issues of privacy protection and potential human rights violations.

Under the Bill C-42 regime, airlines overflying American territory would be obliged to share personal data with the U.S. government, an act that is currently prohibited by PIPEDA. This comes without any guarantees regarding how or with whom the U.S. might, at its own discretion, choose to use or share that data. These concerns are shared by officials in Canada's own Public Safety department, as was discovered through an Access to Information Act request.

As we know from cases such as that of Maher Arar, the unfettered sharing of information without any safeguards or adequate redress mechanisms can have disastrous and irreversible consequences. Given the price paid by Canadians such as Mr. Arar, who have suffered as a result of the indiscriminate sharing of information with foreign governments, it is imperative that this Parliament do everything possible to mitigate potential mistreatment abroad by third countries, some of which, as we know, do not share Canada's respect for human rights and civil liberties to the same extent.

Finally, with respect to an adequate redress system, as the Department of Homeland Security's own privacy impact assessment suggests, information that is harvested can be disclosed and used for purposes other than aviation security—for example, for immigration or law enforcement purposes.

Significantly, not only will airlines be required to provide DHS with basic information—date of birth, name, and gender—but also with other "if available" information linked to passengers, including meal selection, passport, and itinerary information. This could potentially open the door to racial or religious profiling.

● (1115)

Experts in security fields have testified that religious and racial profiling simply does not work, nor does it our enhance security. Without any assurances or agreements in place to prevent this kind of abuse, it can create or enhance the very real sense of fear felt by potentially targeted communities, such as Arabs and Muslims.

The mandate of the International Civil Liberties Monitoring Group's clearinghouse project is to document the impacts of no-fly lists, including so-called false positives. It has noted that "Many of the travelers who have been delayed are members of Middle Eastern or Muslim communities". Furthermore, the ineffectiveness of the DHS travel redress inquiry program, or TRIP, is acknowledged in a 2009 report by the U.S. DHS inspector general, who confirmed that in most cases the program has done little to improve the situation of those who have been the victims of false positives and misidentification.

The lack of a robust redress system within the watchlists upon which the secure flight rules will rely is illustrated today by the plight of citizens such as Adil Charkaoui and Abdullah Almalki. Deemed by Canadian courts or commissions of inquiry not to pose a risk to the national security of Canada, they still find themselves unable to fly as a result of being on U.S. watchlists.

In conclusion, Canadian Muslims remain unequivocally committed, like our fellow citizens, to finding the necessary balance between ensuring that the public safety and national security of our country and its allies is maintained while protecting Canada's sovereignty and the cherished privacy and human rights of her citizens.

Thank you for giving us the opportunity to comment on this legislation. We will be happy to take your questions.

● (1120)

The Chair: Thank you very much.

Mr. Lennox is next.

Mr. Toby Lennox (Vice-President, Corporate Affairs and Communications, Greater Toronto Airports Authority): Good morning.

[*Translation*]

My presentation will be in English, but you can ask me questions in French.

[*English*]

My name is Toby Lennox. I am vice-president of corporate affairs and communications for the Greater Toronto Airports Authority. I first would like to thank you very much for the opportunity to appear before you today to provide our perspective on Bill C-42, an act to amend the Aeronautics Act.

As many of you know, the GTAA is the private not-for-profit corporation that operates Canada's largest airport, Toronto Pearson International Airport. Toronto Pearson is truly a global gateway connecting our country with the rest of the world. We handle approximately one-third of Canada's air traffic in any year, and about 50% of all Canada's air cargo. This activity fuels Toronto Pearson's role as a critical economic engine for southern Ontario and, indeed, for Canada. We generate tens of thousands of jobs and billions in annual economic output, wages, and taxes.

In the past, Mr. Chairman, I have appeared before your committee on behalf of both Toronto Pearson and the Canadian airport community, and one consistent message that we have brought forward is that aviation security is critically important to our business. The security of North America's skies and the global air transportation system profoundly impacts the operations and financial health of Toronto Pearson, as well as all of Canada's economic and social interests. It is for this reason alone that we're presenting to you today.

While Canada's airports are not involved in the development or maintenance of no-fly lists and we do not gather, hold, or transmit the personal information identified in Bill C-42, we do support both your consideration and passing of this proposed legislation. We believe this legislation is consistent with international law, which explicitly outlines the right of any country to regulate foreign carriers entering that country's airspace, but in addition to this, we recognize the importance of this bill for two reasons.

First, as you have heard from our Canadian airline customers, inaction would result in significant operational hardships for airlines, and by extension and perhaps more importantly, this impact would reduce the selection of routes, services, and access for Canadians.

Canada was built upon air and aviation links. A large number of flights that depart Toronto Pearson every day are required to overfly the United States. If this bill is not passed, air services that currently overfly American territory—for example, flights to South America and the Caribbean—would no longer be feasible. For Canadian-sourced flights, it is simply not commercially viable, or indeed operationally viable, in some cases, to fly around American airspace. The impact on Canadian air carriers' passengers and the resulting negative impact on the economy is a very compelling reason to support Bill C-42.

The second reason for our support of this bill is that we believe it strengthens aviation security globally. As we have discussed with this committee before, Toronto Pearson believes that collectively we must find enhanced and efficient ways of identifying, assessing, and mitigating threats to security through holistic means. One of the key operational initiatives that we support is the enhancement of collaboration and intelligence-sharing. If we have learned anything from the cargo-bomb plot originating in Yemen and from the events of last December 25, it is that intelligence is one of our best defences against security threats. Bill C-42 provides one means for Canadian air carriers to work with our American neighbours to identify, detect, and deter terrorist threats.

When discussing aviation security, we believe it is important to frame the discussion not in terms of specific airports or even national terms, but in terms of the shared threats to our continent. We support the continued efforts of the Government of Canada and the United States to address common threats of terrorism while ensuring the free flow of travel and trade across the border.

Mr. Chairman, most will agree that the threat to aviation is real. We take this threat very seriously because we recognize that a security incident originating at our airport would likely result in crippling economic consequences. These consequences would surely extend beyond the borders of the Greater Toronto Area and would take years to remedy. We cannot afford to be reactive. We would like to ensure that security legislation and policies in Canada are developed from a proactive strategic perspective.

There are significant policy directions we feel the government should pursue to strengthen the effectiveness and coordination of aviation security, and Bill C-42 is at least a step in the right direction. We emphasize that this bill represents merely one step in a more comprehensive approach to aviation security.

We do acknowledge the privacy concerns raised by some with respect to the implementation of this amendment. In addition, we commend the committee for encouraging open debate on the merits of this bill.

● (1125)

We believe it is important to protect the civil rights of Canadians, and as such, we agree the information that is collected and disclosed to foreign governments should be handled carefully and only be used for the stated purpose of aviation security.

In conclusion, Toronto Pearson considers the safety and security of our passengers and air carriers to be of the highest priority. It is a key element in all we do, and we work diligently with our stakeholders to ensure Canada's aviation security program is holistic, integrated, and world class.

We encourage the committee to support Bill C-42 to ensure these very important amendments are enacted to support global efforts to combat terrorist threats to the North American aviation system. The bill will allow air carriers to continue to operate over U.S. airspace, which is critical to their operations as well as to the economic development potential for the Greater Toronto Area and for Canada as a whole.

I would be pleased to answer any questions the committee may have, both at this session and at any member's convenience.

Thank you.

The Chair: Thank you very much.

Mr. Hasbrouck, if you can hear us, you can present, please.

[*Translation*]

Mr. Edward Hasbrouck: Good morning and thank you. Please excuse me, my French is very limited.

[*English*]

I'm sorry I can't be with you in Ottawa, but I'm very grateful for the opportunity to contribute a U.S. perspective to the deliberation in this House.

I'm here on behalf of the Liberty Coalition, which coordinates public policy activities on civil liberties and basic rights in conjunction with more than 80 partner organizations from across the political spectrum. The Liberty Coalition does not, however, speak on behalf of those organizations, and my testimony today does not reflect the position of any single coalition partner.

My own particular expertise in airline reservation data is derived from more than 15 years of experience working with PNRs—passenger name records—in the travel industry and more recently working as an investigative journalist and an activist with the Identity Project, researching and documenting both what information is collected about travellers and how that information is used by both the government and private entities in the United States.

The U.S. government, which is to say the Department of Homeland Security, wants the information that would be made available by Bill C-42 for two purposes: for surveillance and for control of travellers. With respect to control, of course, this data would be part of the basis for the making of no-fly decisions and the issuance of secret no-fly orders to airlines.

Unlike the case in Canada, where someone denied travel is given formal notice of that decision and has rights to appeal it, those no-fly orders in the U.S. are entirely extrajudicial. No one in the U.S. has yet obtained court review by any U.S. court of a no-fly order. It is U. S. government policy not even to admit that they have issued such an order, and that includes those denying passage on flights overflying the U.S. that were not scheduled to land. Former Secretary of Homeland Security Michael Chertoff is on the public record as saying that he believed that no-fly decisions should not be subject to judicial review, and the current U.S. administration has done nothing to repudiate that perspective.

While the consequences for anyone are very serious, including for those U.S. citizens trapped abroad who are currently unable to return home because they are not allowed to fly and have no other way to get back to the U.S, they are perhaps most draconian for refugees and asylum seekers. You should be very clear that the enactment of Bill C-42 would grant to the U.S. government de facto veto power over the ability of virtually anyone to obtain sanctuary in Canada, since in most cases it's impossible to get to Canada to make a claim for political asylum or refugee status without overflying the U.S., and that power of the U.S. would be exercised at the worst possible point: while a refugee is still on the soil of and subject to the persecution of the regime they are trying to flee.

While the U.S. is a party to the International Covenant on Civil and Political Rights, article 12 of which guarantees freedom of movement, it ratified the ICCPR with reservations that make it impossible to invoke or enforce it through any U.S. court. In the only instance in which the U.S. DHS has even acknowledged the formal complaints of the Identity Project that its policies, including no-fly and secure flight policies, violate the freedom of movement guaranteed by the ICCPR—the only time it's been acknowledged at all—the TSA took the formal position that the ICCPR does not apply at all to any measure undertaken for reasons of national security.

You should be clear that you are dealing here—unfortunately, I have to say—with a rogue state whose declared position is that its actions in this sphere are exempt from the norms of international human rights law and even from the treaties that it has ratified.

These data are also used for purposes of surveillance of travellers. It is not the case that the information is simply used to make a one-time decision about whether to let you fly. All of your PNRs, even if you are not deemed suspicious and are allowed to fly, will be added to the lifetime travel history and compilation of data already being kept about you as part of the automated targeting system. This includes, as Professor Salter alluded to, a wide range of information. We've been coordinating efforts by individuals in the U.S.—at least, by U.S. citizens, who have some rights in this regard—to request these records. They include, for example, such things as your IP address, who paid for someone else's ticket, what friend's phone number you gave because you were staying at their house when you reconfirmed your reservations, or, in the case of two people travelling together who made their same hotel reservations in the same PNR with their flight reservations, codes indicating whether, behind the closed doors of their hotel room, they asked for one bed or two.

● (1130)

So we're looking literally at data down to the level of intrusiveness of who is sleeping with whom, and of course there is also the opportunity to insert into these records free-text remarks—derogatory comments by a customer service representative who didn't like your attitude, and these sorts of things—that become part of your permanent dossier with the U.S. government.

Because of their secrecy, we have only a partial idea of what data are actually included in these records and an even less complete view of how they are used. As you probably know, the Privacy Act in the U.S. grants no rights whatsoever to foreigners, so there is no legal entitlement for Canadians to find out where these data have gone. Even for U.S. citizens, the DHS has been, I regret to say again, stonewalling requests. I have been obliged, after three years of attempts to get my own dossier and an accounting of the third parties to whom it was given, to bring a federal lawsuit, which is now pending, to find out what those records are.

So far as I know, nobody has actually obtained an accounting of the third-party disclosures of their PNR data by DHS, not even U.S. citizens. While some privacy impact assessments and diplomatic assurances have been offered, it's very important to understand that those are not embodied in any treaty or in any U.S. statute or regulation. They are not enforceable and they have no more weight than any other press release.

All that said about the uses of data by governments, Bill C-42 would authorize airlines to provide these data to the U.S. and other governments. However, this may not actually be necessary, because in most cases the data are already stored in the U.S. and are already accessible to the U.S. government, with or without the permission, or even the knowledge, of the airline.

The vast majority of travel agents and tour operators in Canada, as around the world, do not store their own data. Even if you make a reservation with a Canadian travel agency to travel on a flight that doesn't overfly the U.S., or even within Canada, in the vast majority of cases that reservation is, from the moment of its creation, stored in a computerized reservation system or global distribution system based either in the U.S. or in Europe, but with offices in the U.S. from which all of that information is available.

So it's already possible for the U.S. to go to that CRS or GDS with a national security letter, order them to disclose the entirety of the PNR, order them to conceal the fact that this has happened, and even order them to deny it if asked by the airline, the travel agency, the tour operator, or the individual to whom these data pertain.

You're not being asked to provide this personal information directly to the U.S., Canadian, or any other government; you're required to provide it to an airline, which is going to provide it to other commercial partners or outsourcing providers, so it's also important to understand that these commercial entities that have the data in the U.S are subject to no privacy law whatsoever, absolutely none. They are utterly free to sell this data, use it for any purpose, or transfer it to any third party anywhere in the world. They are not obligated to obtain permission or even to disclose it to the data's subject.

I think there are grave questions as to whether the outsourcing of PNR storage to CRSs and GDSs in the U.S. by Canadian travel agencies and tour operators complies in any respect with PIPEDA, and nothing in Bill C-42 addresses this problem.

● (1135)

While it is not for me as someone speaking to you from San Francisco to tell Canadians what laws you should enact in your country, I certainly hope you will not follow the bad example set by the United States in turning the commercial infrastructure of the airline industry and the travel industry into a permanent infrastructure of surveillance and control of our movements, but that you will use this opportunity to take a much closer look at whether the existing norms and data flows of the industry—particularly the routine and systematic outsourcing to utterly unregulated data aggregators in the form of the CRSs and GDSs in the US—comply with existing law or require further legislation or enforcement action.

I'd be happy to answer any questions from the members.

The Chair: Thank you very much.

Mr. McCallum, you have seven minutes.

Hon. John McCallum (Markham—Unionville, Lib.): Thank you, Mr. Chair, and thank you all for being with us today.

I think we're living in a kind of “two solitudes” world. We get the airlines and their representatives saying it would be an unmitigated economic disaster if the law is not passed, and they make passing reference to privacy concerns. Then we have the converse: that privacy or human rights are the issue, and there is little reference to the economic side.

What I've been trying to do is think of possible amendments to the bill that would not produce an economic disaster but would, at the same time, address some of the privacy concerns. One of them—and this is in reference to Professor Salter—would go some way in addressing your concerns. If the addition of third countries other than the U.S. to the list—none has asked, I believe, so far—were to require parliamentary approval rather than be done by order in council, I think that would go some way.

Now, having listened to you and Mr. Hasbrouck, I see that there is the issue of the two kinds of data. There is advance passenger information, which is minimal, and there is PNR, or passenger name records, which are extensive. I understand that the bill right now would allow or permit airlines to hand over the PNR data. Am I correct in my understanding?

Also, what would you think if we could somehow amend the bill so as to limit the information transferred to the more minimal advance passenger information?

● (1140)

Dr. Mark Salter: Thank you.

I think you are correct in pointing to the U.S. as the one who demands that information now. I think also that Canada has shown itself capable of negotiating well, both with the United States and with the EU, on PNR and other matters relating to aviation security. For example, the way that Canada checks its hold baggage is radically different from the U.S. standard, yet we still manage to maintain our independent way of checking our own bags, so there is clearly space within the aviation field to negotiate with the United States.

It seems to me that you have pointed to a very productive amendment, which is to say explicitly that API information is minimal and meets the requirement of secure flight, whereas PNR is large, open-ended, and superfluous, and could lead to the kind of profiling or misuse of data about which we are all so concerned.

Hon. John McCallum: Would you comment, Mr. Hasbrouck?

Mr. Edward Hasbrouck: I'd like to speak to that.

Unfortunately, API data include the record locator for the PNR, and as long as the U.S. government gets the record locator, they can go to the CRS or GDS and retrieve the entirety of the PNR in secret, without the airline even knowing and without any recourse. In effect, regardless of whether the U.S. retains or gets all or any part of the PNR, as long as they have the API data with the record locator, they have in effect access in perpetuity to the entirety of PNR. For that reason, I don't think that amendment would have the effect you might desire for it.

Hon. John McCallum: Well, that's unfortunate.

I'm not well versed in these technical matters. Would they necessarily get the record locator, or could they be deprived of it?

Mr. Edward Hasbrouck: Even without it, it requires only a trivial amount of extra computer processor time to retrieve the PNR from the reservation system through a name and flight number or other information. I don't think it's possible to separate it out. As long as the CRS is in the U.S., the data already reside in the US. I don't think it's possible to separate out the API data from the ability of the U.S. government to get the entirety of the PNR.

Hon. John McCallum: Maybe I could ask Professor Salter a question about Mr. Hasbrouck's testimony. Again, this is something I had not heard of. Are you saying that with the data outsourced by Canadian travel agencies to U.S. entities, the U.S. government can get their hands on all of this anyway?

Dr. Mark Salter: That's right.

Air Canada and all travel agents make their reservations through global distribution systems such as Galileo or Sabre. When you access Expedia or other online travel sites, you're getting into that system. Those systems are housed, I'm going to say, in Colorado, but perhaps Mr. Hasbrouck can correct me. They are housed in the U.S., so they will be subject to the U.S. Patriot Act and will be subject to searches in the U.S.

Hon. John McCallum: Does that mean these travel agencies are violating Canadian privacy law, if not necessarily knowingly ?

Dr. Mark Salter: I am not a lawyer. I could not make that determination. I would say that—

Hon. John McCallum: I mean the effect of it.

Dr. Mark Salter: Yes.

Hon. John McCallum: Mr. Hasbrouck has something to say. Yes, Mr. Hasbrouck?

Mr. Edward Hasbrouck: I am not a lawyer and I'm not a Canadian, but I am very concerned about whether Canadians and the Privacy Commissioner of Canada are aware of this. I think there is deep need for serious investigation of potential PIPEDA violations in this routine industry practice.

Hon. John McCallum: I suppose, Professor Salter, I'm asking you to agree or disagree with Mr. Hasbrouck, because it seems that we're almost wasting our time in trying to protect privacy if this very extensive information goes automatically to the U.S. and is accessible by the Department of Homeland Security. They seem to be getting even more than they'd be getting under this legislation already.

Dr. Mark Salter: But they would be getting the same information that they get under this legislation, and it would be done directly rather than indirectly. I think the argument you could make would be that this legislation automates the transfer of the data directly to the U.S., and so removes any number of legal or procedural obstacles that accessing the data through the GDS or through Sabre or Galileo would present, thus making that invasion of privacy much easier.

● (1145)

The Chair: Thank you very much.

Go ahead, Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ): Thank you, Mr. Chair.

My first question is to you, Mr. Salter.

But I first want to say, just like my colleague, Mr. McCallum, that this is a very sensitive matter because we have at play both economic interests and human rights issues. In other bills, things are not as clear-cut.

Mr. Salter, the U.S. seem to be determined to go ahead with their demands. You acknowledge that Canada is simply responding to an American requirement. What should we say to airlines such as Air Transat? Perhaps Mr. Lennox, from the Pearson airport, can also tell us what he thinks. What can we say to a carrier such as Air Transat when they tell us they will not be able to serve Central Canada or offer flights from Winnipeg, Calgary and Edmonton to Cancun and other southern destinations?

During the weekend, I thought about another aspect of the problem while talking to someone. Large carriers could say that they will bypass U.S. airspace and that they will take the Atlantic or Pacific air route to go south. However, this is not a Cessna taking off, it is an Airbus 380 or some other large chartered aircraft with passengers piled up like sardines. At takeoff and landing, they have to fly through U.S. airspace. What are we going to say to these carriers?

Dr. Mark Salter: Thank you for this question.

I guess we could answer that one of the responsibilities of the Government of Canada is to fight for the economic interests and the safety of Canadians.

We can answer the U.S. by saying that we have a different approach of law and risk as well as a different understanding of national security, that we can exchange information that is required for trade, flights and things like the secure flight program, but that we reject their overly rigorous and ambitious demands.

[*English*]

Let me state it in English to make sure I have been clear.

Canada may push back against the United States and say that we will offer them the minimal information required to meet their security demands while having a different sense of risk and a different understanding of national security.

[*Translation*]

Mr. Michel Guimond: What exactly is the minimal information you are talking about?

Dr. Mark Salter: Personally, I think it is the API data.

Mr. Michel Guimond: What do you mean by "API data"?

Dr. Mark Salter: It is the Advance Passenger Information, which only includes the name, the date of birth and the sex of the passenger. It also includes the record locator because the U.S. Secure Flight Program uses an automated system that compares this information to the contents of their database.

I fully agree with our American colleague, Mr. Hasbrouck, that this extensive U.S. list is causing major problems. I am also sensitive to the trade requirement. I think a balance should be sought by sending this minimal information to the United States.

● (1150)

Mr. Michel Guimond: Does Mr. Hasbrouck have access to our interpretation services?

[*English*]

Mr. Edward Hasbrouck: Yes, I have.

[*Translation*]

Mr. Michel Guimond: Last week, we met representatives of rights and freedoms organizations. They told us the information would be shared by 16 U.S. agencies. Can you confirm that? We were also told that the information sent to the United States would not necessarily be kept in one place and that 16 other groups would be able to use it.

[*English*]

Mr. Edward Hasbrouck: There is no legal constraint, once that data reaches the U.S., on what other agencies within the government, what other foreign governments in third countries, or what commercial entities it could be shared with.

Perhaps I might bring in a perspective. I've been following this debate, and it is not happening only in Canada. For example, I testified at similar hearings before the European Parliament earlier this year, and I think part of the answer to what can Canada do, which has been raised in discussions by the European Parliament, is that if this data is to be transferred, there should be enforceable guarantees as to what happens to it in the U.S. There should be constraints on both how the data can be used and to whom it can be transferred, and there should be enforceable rights of judicial redress.

Given that it does not exist in current U.S. law, one way for Canada to pursue this issue would be to not simply and unilaterally amend your laws to comply with non-negotiable demands by the U. S. but to enter into genuine negotiations for a binding international treaty with its own self-enforcing redress provisions. That's a possible way to pursue this issue.

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

Go ahead, Mr. Bevington.

Mr. Dennis Bevington (Western Arctic, NDP): I want to take that a little bit further, because we have to deal with this law today and in this month. Perhaps there's some sense that we should look at an end date for this law so that we can accomplish the negotiation, or put this government up to carrying on a negotiation, with the United States to effect some kind of treaty in that regard. That may be one way to work around this situation.

I'll open it up to Mr. Salter to answer that.

Dr. Mark Salter: I think that Mr. Hasbrouck points rightly to the EU negotiations with America on PNR data, and then the EU-Canada negotiations. Canada and the EU managed to have an international treaty on the exchange of PNR data that was praised by data and privacy authorities precisely because it limited the use and anonymized the data, which meant you took the name off from the records. You could still use the information for the creation of profiling, but you couldn't use it for individuals. It was also praised because the data were disposed of.

I think that that's definitely a possibility.

Mr. Dennis Bevington: Mr. Hasbrouck, would you comment?

Mr. Edward Hasbrouck: Yes, I would definitely concur in that.

I think one of the advantages to treaty negotiations is that a binding treaty would have to be ratified by the U.S. Senate. The unfortunate fact is that because these matters have been undertaken extrajudicially by the Department of Homeland Security, we have never, even as U.S. citizens and voters here, had the opportunity to be heard or to see a Congressional vote on these issues. I think moving this into the realm of negotiations for a binding treaty would also be moving the debate in the U.S. out of the realm of the internal, secret, standardless, decision-making of the Department of Homeland Security and back into a more appropriate realm here in the States, and that would be a very good thing.

● (1155)

Mr. Dennis Bevington: Mr. Hasbrouck, I didn't really get an answer to this question from other witnesses: when it comes to U.S. laws and regulations on sharing information with other countries on overflight, what does the U.S. law say?

Mr. Edward Hasbrouck: U.S. law says nothing. They can do anything they want.

Mr. Dennis Bevington: Are you saying airlines are free to share any information that they have with Canadian authorities?

Mr. Edward Hasbrouck: That's correct. There is no general privacy law affecting the commercial sector, travel agencies, or airline reservations systems in the U.S. They can use the data for any purpose. They can sell it. They can share it around the world. They don't have to tell you what they're doing and they don't have to get any permission. Once you allow data to be transferred for any reason to anybody in the U.S., you've let the cat out of the bag. It's completely unregulated.

Mr. Dennis Bevington: This is again just a general question. Would you think that there's a responsibility here for the government to provide some kind of redress system within this law for passengers who are impacted by the sharing of this information with another country? I'll open it up to everyone.

Dr. Mark Salter: That brings up the question of sovereignty perfectly, because there is no way for Canada to require other countries to have a redress mechanism for our citizens. Our ability to provide redress stops at our border. One can think of the case of Maher Arar in this regard. He remains on the American no-fly list despite repeated attempts by the Canadian government to get him off that list in the face of reports by the government.

I'll let my colleagues speak to that.

Mr. Ihsaan Gardee: I would echo Professor Salter's concern about the lack of redress. As he rightly pointed out, if this bill must pass, it is in this area that we should be looking to work with our EU partners to try to negotiate robust and accessible redress mechanisms for Canadians who are prevented from flying as a result of secure flight.

The Chair: Go ahead, Mr. Lennox.

Mr. Toby Lennox: I'm just the simple airport guy at the end.

The point that I would like to make has been touched upon already. It is that right now there is a time issue concerning both Bill C-42 and the issue about U.S. sovereignty and U.S. demands with respect to what it is going to do with respect to its airspace. I believe Mr. Hasbrouck referred to the non-negotiable demands of the United States. Trying to make that balance between personal privacy and human rights versus the very real commercial economic issues is very difficult, and it sometimes defies legislative timetables.

The issue is whether we are able to have a conversation with the Americans and with others about issues of terrorism, security, and privacy and personal information. I think we have to pursue that. Perhaps a sunset clause may be appropriate.

There is a very real prospect that if you're going to be flying, you are going to be distorting travel routes in order to accommodate something that actually has nothing to do with aviation. In order to get to Mexico, you will have to fly out over the Gulf of St. Lawrence and then down the coast of the United States. That is just not something that's practical or feasible. If you're telling me that this is going to happen in short order, I can tell you that the impact on the industry is going to be considerable, although, at the same time, we as an industry do not make light of the very real concerns that have been raised at this table.

What I'm saying is that there's a conversation that is difficult to have in this timeframe, but we also have to recognize that we are dealing with Americans and with Americans' right to deal with security, whether we agree with it or not. With respect, they're not asking us for our opinion about what they do with the privacy information. That is a conversation we have to push, but I would stress the very real operational concerns that we have with respect to the impact of not following Bill C-42.

The Chair: Go ahead, Mr. Hasbrouck.

Mr. Edward Hasbrouck: While it's tempting to say that this is simply a matter within U.S. sovereignty, as I alluded to earlier, even within the realm of its sovereignty, the U.S. is a party to the ICCPR. While that treaty cannot be invoked by private citizens in U.S. courts, I think it is entirely appropriate and proper for other parties to that treaty, such as Canada, to raise questions with the United States as to whether what is being demanded by the U.S. is consistent with the quite detailed standards that have been adopted by the UN Human Rights Committee for measures that implicate the right to freedom of movement guaranteed by article 12 of the ICCPR.

I would not be so ready to say that Canada has to cede to the U.S. the power, within its own territory, to abrogate its commitments to black letter international human rights treaty law. I think this is the kind of discussion that could go on in the context of diplomatic negotiations over existing treaty commitments as well as for a possible future treaty in this area.

● (1200)

The Chair: I have to stop that you there. I know there are other comments, and perhaps you can respond during the question-and-answer period.

Mr. Watson is next.

Mr. Jeff Watson (Essex, CPC): Thank you to our witnesses for appearing today.

I want to ask a very quick question right away, and then I'll move to a different line of questioning.

The BC Civil Liberties Association appeared before this committee. They took the position that Bill C-42 should not be proceeded with unless or until the United States changes its own internal legal process to include the redress mechanism. Are any of the witnesses present at the table today taking that position?

Dr. Mark Salter: No. I think that it's a serious matter of concern, but I think there are ways to address it other than by trying to compel something that's—

Mr. Jeff Watson: Mr. Gardee, Mr. Elgazzar, what are your positions?

Mr. Khalid Elgazzar (Member of the Board of Directors, Canadian Council on American-Islamic Relations): I think if it were at all possible to avoid enacting it in its current state, yes, we would encourage that. However, we are not ignorant of the commercial realities that are at play as well.

Mr. Jeff Watson: Would you comment, Mr. Lennox?

Mr. Toby Lennox: Obviously I don't agree that we should wait for a redress mechanism. You just don't. It's not in the cards at this point.

Mr. Jeff Watson: All right. In a sense we've gone to the 30,000-foot level with Mr. Hasbrouck's suggestion of international negotiations around some sort of a binding treaty with binding guarantees in it. I want to come back down to ground level again about what Bill C-42 is.

First of all, it's a technical amendment to ensure Canadians don't face any undue delays with respect to their travel plans. I will remind you that we've had a lot of talk about how there should be negotiations. I have to remind those who are listening today, and perhaps our witnesses as well, that Bill C-42 actually follows a process of negotiations that has been ongoing with the United States since 2008. The minister testified before this committee, for example, that we did obtain an exemption with respect to the final rule for overflights that originate domestically in Canada, fly over U. S. airspace, and then land in Canada, so we have had some negotiation with the United States. The decision with respect to bringing in Bill C-42 was based on the reality that those negotiations were not going to produce an exemption for international overflights, and we are facing additionally the implementation deadline at the end of this calendar year. That may represent to some a bit of a Hobson's choice, but it is a reality nonetheless.

I want to get Mr. Lennox onto the record just a little bit.

We've had a lot of discussion over here on the issues of privacy. I want to come to the GTAA and its place and position with respect to the economy. We've just come through a very difficult global recession. You may want to talk about the impact to airports, airlines, and tourism industries as well as about the recovery. We have heard some good news with respect to Air Transat recalling 110 employees, for example, but the economic recovery is fragile. There is competition from U.S. airports. Can you talk about the context, economically, for your industry?

Mr. Toby Lennox: Sure, I'd be happy to.

I take your point that in fact Bill C-42 has been preceded by tremendous discussions. These are large and agonizing questions, because they're balancing human rights and security, and one would assume that the conversation will continue. The fact that you're having this discussion here is testament to the will to have that conversation.

I will tell you that we are very much in competition with both the American carriers and American hubs. The effect of something like Bill C-42 would be to strengthen the American border airports immediately. After all, if I can fly to Cancun out of Buffalo and avoid some long detour that is going to cost me more money, I will do just that. The immediate reality is that the advantages American airports close to our border have already would only be amplified.

● (1205)

Mr. Jeff Watson: They have been investing in a lot of these airports near the border as well.

Mr. Toby Lennox: They have, absolutely.

That said, we are working very hard in a very competitive field to try to attract different types of traffic out of the United States.

One of the things this really underlines, and I think it's very important for us to recognize it, is that the North American aviation industry is in fact one. Yes, it respects the borders, but in fact what we're starting to find is that Americans are connecting through Toronto because of the advantages it has for flying abroad. If we start distorting that too much, that advantage would be lost.

I'm not asking you to sacrifice human rights at the altar of economic issues. What I'm saying is that this is just an ongoing conversation.

Mr. Jeff Watson: We heard testimony from the airline industry that they directly employ approximately 35,000 Canadians. There are others presumably tied to it. I'm thinking of fuel suppliers, parts manufacturers, maintenance and repair, and overhaul.

Mr. Toby Lennox: I can just speak about Pearson. There are 42,000 people who work at Pearson airport.

Mr. Jeff Watson: Were there layoffs during the recession, by the way?

Mr. Toby Lennox: We had to engage in some layoffs. There were some contractions. Air Canada has about 11,000 people working at Pearson. WestJet has well over 1,000. We are a dynamic employer and we want to be able to make sure we continue to be. That's very much our mission.

Mr. Jeff Watson: So your viability is tied to the economic viability of the airlines as well.

Mr. Toby Lennox: Absolutely.

Mr. Jeff Watson: Let's go back to the reality we're facing here. We have a deadline.

I will add one other point about Bill C-42 that I think is important for the conversation here, and you can agree with me on it or not, Mr. Lennox. It allows the airlines to be compliant with the Chicago convention of 1944, whereby air carriers are obliged to operate under the legislation of another country once they enter its airspace.

Mr. Toby Lennox: Yes.

Mr. Jeff Watson: We are facing a deadline at the end of this year. That's when the U.S. intends to implement this. The question is really about compliance or non-compliance.

I think we've heard from Mr. Hasbrouck's testimony that notwithstanding efforts.... If I can encapsulate what we've come to today, it's maybe that if there are attempts to amend the bill, while amending it may make an expression, it may have no functional ability to actually prevent this kind of information from being obtained and used by U.S. authorities. Is that a fair enough encapsulation of what we've come to here today?

Mr. Hasbrouck, maybe you could start.

Mr. Edward Hasbrouck: I think that's true. Given the way data flows and the location of the data, the U.S. government has the ability to access the data. They're going to continue to access these data regardless of what you do, unless you take rather concrete action to prevent the data being transferred to the U.S. in the first place.

I think this may have more to do with whether Canadians feel a perhaps false sense of reassurance than whether they are actually protected in any way, unfortunately.

The Chair: Mr. Dhaliwal is next.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair.

My question is to Mr. Salter, Mr. Gardee, and of course Mr. Lennox as well.

The way we see it right now, we are already transmitting the data, as most of the people have said, either directly or indirectly. Now the U.S. is asking for this Bill C-42. What should be the minimum amount of data required for security purposes? That's all I would like to know from you today.

● (1210)

Dr. Mark Salter: The API data, the advance passenger information that includes name, date of birth, and gender, is sufficient for the American secure flight program. I agree with the longer-term consequences that Mr. Hasbrouck speaks of, but that's the minimum that's required.

Mr. Ihsaan Gardee: We would agree that the secure flight program only requires those three pieces of information. What we would be recommending is that Transport Canada work with the airlines to avoid excessive disclosures of personal information. Currently the Aeronautics Act allows the Governor in Council to make regulations respecting the type or class of information that can be provided to other countries.

Mr. Sukh Dhaliwal: What is your opinion, Mr. Lennox?

Mr. Toby Lennox: I'm afraid that as the airport authorities do not collect data like this, I'm not very equipped to answer that question. I would defer to my colleagues here, who are suggesting API information, but I'm afraid it's not information that we collect, so I'm unfortunately not able to speak.

Mr. Sukh Dhaliwal: Would you comment, Mr. Hasbrouck?

Mr. Edward Hasbrouck: I don't think, if I were in your place as part of your House, or if I were a Canadian traveller, that I'd want any of these data transferred to the U.S. unless and until the U.S. is party to a binding treaty or makes substantial changes to its laws. I think it is quite clear that the secure flight program is in violation of U.S. treaty obligations under article 12 of the ICCPR and should be completely withdrawn. We have argued this point to the U.S. government, but because of the U.S. reservations we are unable to raise this point in U.S. courts,

Mr. Sukh Dhaliwal: Quite a few constituents of mine have come to me because they face challenges when they go through the Canadian airport security process. Could you tell me some of the special challenges that Muslims or other minorities face from security guards these days?

Mr. Ihsaan Gardee: Some of these challenges have been documented in the high-profile cases, but some of the information collected through the International Civil Liberties Monitoring Group's Clearinghouse project clearly shows, from the people who have been responding, that they face various difficulties and delays. There is secondary screening, and so forth, and they could even have to change their travel plans or have their travel plans cancelled and not be able to travel on flights, for example, from Halifax to Toronto. These are challenges that they face.

Mr. Sukh Dhaliwal: Thank you.

I will pass it on to Mr. Byrne, please.

Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.): Thank you, Mr. Chair.

This is to Mr. Edward Hasbrouck.

The American experience can indeed be helpful to us. You indicated in your opening remarks your fear that significant data information—everything from hotel reservations to the particulars therein—will be available and will be held as part of a profile.

Here is the question I have for you, sir. We're told that the default position, which we're led to understand is a solid one, is that information will be held for a length of time. There are three categories. In one it's assessed as “no threat determined”, and the information is immediately jettisoned; if there is some standard of threat, it is held for up to seven days; and if there's a defined threat, an actual terrorist identification, it's held for up to 99 years.

Are you suggesting to us, based on the American experience, that we should not have confidence in that default administrative protocol, a protocol not bound in legislation but in administrative practice? Is that what you're telling us?

Mr. Edward Hasbrouck: Yes, that's right. The very limited and censored dossiers that we have been able to obtain for U.S. citizens contain complete PNRs going back years, even when there is absolutely no indication whatsoever that any threat was found, although of course the threat assessments and profiles themselves have, in all cases, been kept secret from the people against whom they're being used. Even in cases where there's absolutely no reason to suspect the least threat, we see those complete PNRs routinely being kept for years. Whatever assurances have been offered are entirely non-binding at this point.

● (1215)

The Chair: Thank you.

Go ahead, Monsieur Gaudet.

[*Translation*]

Mr. Roger Gaudet (Montcalm, BQ): Thank you, Mr. Chair.

My question is to Mr. Lennox.

Personal information is sent to airlines. Are these companies working for the FBI or the CIA? What do they do with this information?

[*English*]

Mr. Toby Lennox: I would have to defer to Mr. Salter on this one. As I said, the airport authority is not actually the one collecting or remitting airport data, so I would have to defer to someone else.

Mr. Salter, is that...?

[*Translation*]

Dr. Mark Salter: Can you please repeat the question?

Mr. Roger Gaudet: The question is simple. We have been talking about this matter for several weeks. Why do airlines keep this information instead of the FBI or the CIA? This is what I cannot understand.

The airlines seem to be acting as if they were the FBI or the CIA. Why do they keep this information? On 9/11, it was four U.S. airliners that crashed. So can you explain to me why airlines instead of the FBI or the CIA are collecting and keeping this information? The airlines get the information and then pass them on. It is like a wheel.

I cannot understand why the airlines keep this information when they are not responsible for security.

Dr. Mark Salter: I fully agree with you and share your concern about the privatization of this government responsibility.

[*English*]

to gather up or collect security data,

[*Translation*]

and to do security analyses and policing.

I think Transport Canada created the list so that when airlines get a message from the ministry about a security threat, they can immediately transfer the file to Transport Canada. I think this is an excellent process.

[*English*]

I think governments see these data as an opportunity to do more surveillance, so I think you're right to be suspicious. I think the government should own up and take its own job, as it were.

[*Translation*]

Mr. Roger Gaudet: I think the information should go to qualified people. I do not know of any airline that is qualified in the classification of people and that can say that an individual is or is not dangerous. The CIA has the capacity to do these things. I cannot imagine why anyone would agree to let an airline have and keep all this information and perhaps use it for commercial purposes.

You say we are going to have a good bill. I am definitely not sure about that.

[*English*]

Mr. Edward Hasbrouck: If I might comment on that, there is a great interest from the airline companies in using the data for commercial and marketing and data mining purposes.

That was made very clear to me a couple of years ago when I was at an International Civil Aviation Organization seminar in Montreal on this question. At this seminar the representative of IATA, the airline trade association, came before the assembled governmental representatives and said that they, as airlines, would be happy to collect whatever data governments would like them to collect as long as, one, they were reimbursed for their costs in collecting it, and two, having passed the data on to government, they got a free ride to keep and use the data themselves for commercial and marketing purposes.

There is, in fact, at least in the U.S., an entire industry of third party data mining and data analysis companies that look at these PNR data for a variety of commercial, marketing, and operational purposes for the airlines.

● (1220)

Mr. Toby Lennox: Let me intrude for a moment.

The air carriers collect the information, and I agree with you that they, like a whole host of companies, use the data they collect for their marketing purposes, but the point we're talking about is that at least in Canada the data they are collecting can only be shared with anybody else provided they get the consent of whoever is providing it.

The range of information that an air carrier is going to generate from an individual passenger that is relevant to the air carrier's purposes is presumably legion. It goes right from how big they want to make their aircraft to the range of the seat, etc. The issue we're talking about here is that it's the air carrier that actually collects the API—they're required to by statute—and that it is therefore they who have to share it with the Americans, but we have to be careful. Some information that air carriers will be using for their own purposes is protected under Canadian law by PIPEDA. The question is what exemptions we are going to grant for that information, and that is an excruciatingly difficult question. I completely agree with that.

The Chair: *Merci*, Monsieur Gaudet.

Mr. Gaudet, I'm sorry, but your time's up.

Go ahead, Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair, and thank you, witnesses. I'll be sharing my time with Ms. Brown.

I do want to do a very quick recap, if I may. Let me know at the end of it if I'm wrong.

The airlines collect two kinds of data, the API and the PNR. The PNR number is included in the API. The PNR data, for the most part, consist of commercial information that you would give an air carrier. I would submit that it's fair to say the U.S. is collecting these data to protect their borders and citizens and that there's no nefarious intention in the collection of those data. I think most people would agree. That is, of course, disputable and debatable, and some don't naturally see that as an issue.

Even if we do restrict all the PNR data, I also understand that because the PNR number is on the API, under the Patriot Act—I understand it's under the Patriot Act—the U.S. has the legal right to access the PNR data without a warrant and without any restriction in the United States, and they already do. Am I correct, pretty much, so far?

Mr. Edward Hasbrouck: Yes.

Mr. Brian Jean: Yes, so my perspective on what we've heard so far is that no matter what we do as a committee at this stage, they're still going to have access to all the PNR information anyway.

My first question is this: how long has the U.S. government been collecting PNR data? How long have they had the data available to them? Mr. Salter, do you have information on how long they've been collecting these data?

Dr. Mark Salter: I don't, not specifically. They've certainly been empowered since the passage of the U.S. Patriot Act.

I think the question is whether the government wants to make this easy for the U.S. government or make it difficult—that is, whether or not it wants to send PNR data to the United States with our direct blessing for them to use this commercial information for security purposes. We don't have to say it's nefarious; we only have to admit that their security culture is different from Canada's, as the case of Maher Arar attests, right?

Mr. Brian Jean: I fully understand.

Dr. Mark Salter: The only question is whether we'd give it to them with a bow on or whether or they'd have to go through the GDSs.

Mr. Brian Jean: Quite frankly, I think Canadians want us to keep them safe, and they want to stay safe when they fly. For me, that's the only issue. I don't care about bows; Christmas goes by in my family pretty quickly.

How many years that you're aware of have they been collecting these data, and what has happened as a result? Did anything that you're aware of happen negatively to any people as a result of the collection of PNR data? Has it been years? It's not been a decade, obviously, but it's probably been seven years.

Dr. Mark Salter: Yes.

Mr. Brian Jean: They've been collecting the PNR data for seven years. We've known they've been collecting Canadian customers' PNR information for seven years, and what's happened as a result? Have there been any negative consequences that you're aware of?

Dr. Mark Salter: Yes. We can document the restriction of the ability for Canadians to legitimately travel because they have been put on the U.S. no-fly list in a way that prevents redress. What we are doing is adding to that potential population of restricted Canadians, because they are now submitting data not only if they fly directly to the U.S., but also if they overfly it.

● (1225)

Mr. Brian Jean: I understand.

Dr. Mark Salter: There's another question you have to ask: what is the security that's been provided? That's not clear to me.

Mr. Brian Jean: I understand, but it's already happening. It's been happening for seven years, so no matter what this committee decides at this stage, the U.S. government is going to continue to have the legal right to collect the PNR information. That's what I'm getting at.

I'll give the floor to Ms. Brown.

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

Mr. Lennox, my question is to you, if you don't mind.

You spoke earlier about the economic impact that we're going to see at our major airports if this bill is not passed. Specifically, I have a lot of people in Newmarket-Aurora who work at the airport, and a lot of people in my riding make use of Toronto Pearson International Airport. I suppose I'm looking at the three major airports that I would consider would be impacted the most—Vancouver, Toronto, and, I expect, Montreal.

People who would be seeping over the border to take advantage of American airports such as Buffalo, Seattle, or Plattsburgh already have to give this information to the American government regardless, so at this point it's a matter of inconvenience for my constituents if they have to either travel to Buffalo or take a flight that is going to go out to the Atlantic or to the Pacific and head south when they want to go to the Caribbean. Have you any estimates of the impact that will have on the economy in the Toronto area?

Mr. Toby Lennox: Fortunately, I haven't really had to look into that abyss.

You're exactly right, and it's not restricted, by the way, merely to those three airports: 75% of the Canadian population live within 200 miles of the Canadian border, so any airport within that distance that is offering any kind of service that would be impacted by this is going to suffer a leakage across the American border, and it will happen very quickly. Right now roughly 10 million passengers are flying out of Pearson airport to the United States, and another slightly more than 10 million are travelling internationally. We include the Caribbean when we calculate that. It would also include central and....

To my way of thinking, if you're flying directly to the United States, those 10 million people are probably not really at risk, because you're already providing the API information because you have to land there. Where I get concerned, and where our greatest opportunity for growth lies, is in the traffic that is going to South America, Asia, and Europe. You just simply make it easier for Canadians to go through the United States to do this because you've distorted the air routes over something that really doesn't have anything to do with aviation. As a result you're bolstering Buffalo, Bellingham, and Burlington.

I would say that airports across the country are threatened by leakage. It's something that would be happening across the country, not merely at the large airports, but I take your point.

The Chair: Thank you very much.

With that, I will thank our guests for being here today. To our long-distance guest, thank you. We appreciate your input, and hopefully you'll see some of that reflected in what we're trying to do here. Thanks very much.

We're going to take a three-minute recess while our guests clear the room. Then we'll get back to the committee business on the docket.

● (Pause)

●

● (1230)

The Chair: We will resume.

Before I recognize Mr. McCallum, I want to note that I have passed out the calendar. I want us to make sure to note that on Wednesday, December 1, the extra meeting from 3:30 p.m. to 4:30 p.m. will be with Transport Canada officials with regard to noise and issues related to ACPPA.

The minister will be here on December 6 from 3:30 p.m. to 4:30 p. m. on supplementals, and there will be other witnesses on Tuesday, December 7, from 7 p.m. to 9 p.m. I'm suggesting one hour with Air Canada on ACPPA and one hour with Nav Canada on airport noise.

I know it is a tight timeframe, but originally I think we had discussed that we would do clause-by-clause consideration on December 2. Some amendments are in, and we're asking you to get amendments to the clerk as quickly as possible.

I'm really not going to entertain much discussion until the end of the meeting, because we have Mr. McCallum's motion to deal with. It's on the order of business.

I put that out there for you to look at. We can have this discussion at the end.

Go ahead, Mr. Bevington.

● (1235)

Mr. Dennis Bevington: Mr. Chair, you raised the issue of these amendments, and I'm concerned that the timeframe of the meeting may leave us no time at the end for discussion. We've had witnesses here today. I think we're looking at some other amendments that might come forward out of these witnesses, so we do need some more time for amendments.

The Chair: Well, we'll have to have a subcommittee meeting to decide that, because I think we have determined that we would move into clause-by-clause study on December 2.

Mr. Dennis Bevington: Well, you've got two days—

The Chair: I understand that it's pushing.

Mr. Dennis Bevington: You've also got December 7 there for civil aviation security as well.

The Chair: That is an extra meeting. It's outside our regular meeting.

Mr. Dennis Bevington: If there are extra amendments required that can't be dealt with in this timeframe, with the agreement of the committee we could bring them forward for that meeting.

The Chair: I think we can have that discussion as a subcommittee. I just wanted to put it out there for people. I know that we're pushing a deadline with amendments and with this clause—

Mr. Dennis Bevington: Another amendment came up.

Ms. Lois Brown: Has the minister confirmed yet?

The Chair: When we last.... As far as I know, the minister is confirmed, yes.

Ms. Lois Brown: That's taking place on the Monday.

The Chair: Absolutely, yes.

When we last left, Mr. McCallum wasn't here, but we were in discussion on his motion.

We have three motions. The first one deals with the documentation, paper and electronic, but I'll let Mr. McCallum take the floor.

Hon. John McCallum: Thank you, Mr. Chair.

There are three motions, but first I'd like to move the one that is number two on this piece of paper. Perhaps I'll just read it.

The Chair: Go ahead, Mr. Jean, on a point of order.

Mr. Brian Jean: My understanding is that the motions are already moved. They come to the floor in the order they were brought to the committee, and number one is in relation to the amount of the money from the minister's office, $32,885. I understand that's the motion before us right now.

The Chair: I'm told that because it hadn't been moved at the last meeting, procedurally Mr. McCallum can introduce whatever motion he wants.

Hon. John McCallum: Thank you, Mr. Chair.

The motion that I'm introducing reads as follows:

> That the committee immediately produce an interim report to the House related to its study of the March 31, 2011 deadline for infrastructure stimulus projects and that the report read as follows:
>
> The Committee recommends that the Government move immediately to extend the stimulus deadline by 6 months for all projects across Canada.

I think, Mr. Chair, the motion speaks for itself. There are many municipalities out there with projects that won't be completed. They don't have certainty and they can't do their planning, so we think that the simplest and most sensible thing to do is to grant a blanket extension of six months for all municipalities. It won't mean that the government is committing any more money than it already has, and it's not as if unemployment is going to drop dramatically in the next six months.

For all these reasons and more, we think it is a good idea, so that is the proposal before the committee.

The Chair: The motion by Mr. McCallum is as put.

Is there any debate?

Go ahead, Ms. Brown.

Ms. Lois Brown: Mr. Chair, I question whether the federal government has the right to make that kind of recommendation, since our contracts were municipal and provincial. Unless we have agreement from all levels of government, I'm not sure the federal government has the right.

Effectively what we're asking them to do is break our contract. We had a contract with the provinces that their money would come to the table—one-third—and the municipalities are also part of that contract.

Effectively what we're trying to do is unilaterally break a contract by making this recommendation, and I'm not sure we have the right as a committee to do that without consultation.

● (1240)

The Chair: Go ahead, Mr. Trost.

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

In all my experience on committees, I have tended to believe that reports should be based upon the testimony of witnesses, and while I wasn't here—I've only been a member of the committee since this fall—the testimony that I've heard in regard to this matter doesn't seem to back up my colleague's recommendations.

I think back to when we had SARM, the Saskatchewan Association of Rural Municipalities, here before us. We talked about how Saskatchewan had effectively had the toughest, most difficult season in things that could get in the way. Not only did they have the elections for municipal government, which has been cited as a problem in the rest of the country in getting the projects done, but we also had the most difficult construction weather in the whole country this season. We had considerably more rain and considerably more weather-related problems.

It has been noted in other parts of the country that there were shortages of manpower and material. Well, Saskatchewan had that problem, too. When it comes to construction, we're basically tied up in part of the oil sands. We have the same demand for road construction, for heavy construction, that comes from Alberta and that area. I know it may seem a little strange to other members around this table whose constituencies have gone through a recession, but my constituency has a labour shortage, and when you have a labour shortage, it's difficult to get these projects done. I should know; I've been working with friends of mine on some private projects, and it's tough.

But amazingly, Saskatchewan appears to have got almost all of theirs done. Saskatoon, which had one of the more difficult situations, is down to two projects that may not be 100% completed. One is in the southern part of the city and is 60% completed; the other is in my constituency, and it is 90% completed.

If Saskatchewan doesn't need a six-month extension—and this was the testimony we heard here from the representatives of SARM, and I heard similar testimony from Manitoba representatives and others—then I don't see why we would go against a large amount of testimony that we had here.

The other reason I would not support this recommendation comes down to a basic element of fairness. I represent 34 municipal governments. On top of that, there are two Indian reserves in my constituency. Not all of them have the same resources when it comes to accessing municipal funds, equipment, or engineering resources. The rural municipal governments in my constituency are particularly disadvantaged, yet they played by the rules.

Actually, one of the problems is that whenever these infrastructure programs come up, they all have to bid through the same engineering firms to try to get their projects done, so it's difficult. We didn't bend the rules when it came to submitting bids; we didn't bend the rules to start. When you're a smaller municipality, you have to bid everything out, so you're disadvantaged vis-à-vis the larger ones that have their own workforces.

Fundamental fairness is at stake here. We did not change the rules so that they would give advantage to the smaller municipal governments at the beginning, yet now, because of the six-month extension, we're doing something that will assist the larger municipal governments. They always had access and could push the line a little more aggressively. They didn't have to build in as much room to manoeuvre and as much room for problems arising, because they have access to their own crews and their own equipment, which they own and possess.

I think there's a fundamental fairness question. If everyone had known from the beginning that the rules were going to be fudged, different projects would have been submitted. It's very possible that different projects would have won the bidding. That would be the second objection I have.

Let me summarize. First of all, I do not believe that witnesses' testimony backs up what is being moved in this report or what is being stated by the honourable member. Second, I don't think fundamental fairness is addressed. Those would be my two fundamental objections to this report.

● (1245)

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Trost.

Mr. Dhaliwal is next.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

I would not agree at all with Mr. Trost, because in fact it's his own government and his own minister who brought in the statement that they're willing to extend the date project by project, municipality by municipality. What Mr. McCallum is bringing in this motion is very fair, because in this way, the government will not—

The Chair: Mr. Jean has a point of order.

Mr. Brian Jean: I just want to clarify.

Mr. Dhaliwal said that he is going to extend project by project. I think what he said was that they're going to be “fair and reasonable” and look at it project by project.

Is that what you meant, Mr. Dhaliwal? I'm just not sure, because I think he said “fair and reasonable,” and they're going to look at it project by project.

I just want to make sure we're on the same page.

Mr. Sukh Dhaliwal: That's exactly right. We're on the same page.

What Mr. McCallum brings in takes all the politics out. We know the projects went into those municipalities where the Conservative ministers are in power, and that's all on the record. Now we do not want those municipalities where right now there are no Conservative MPs sitting—

The Chair: Mr. Jean has a point of clarification.

Mr. Brian Jean: Did Mr. Dhaliwal just say that the Conservative ministers are in power, and all the infrastructure money went to Conservative ministers' ridings?

I want to know, Mr. Dhaliwal, just to clarify.

The Chair: It's not a point of anything; it's debate.

Mr. Byrne has a point of order.

Hon. Gerry Byrne: I simply want to point out that I am not aware of any term or reference to a “point of clarification” in any of the standing orders or as a matter of convention within Parliamentary procedure. That does appear to be a point of debate.

The Chair: I think I ruled accordingly.

Continue, Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

In fact this is a very fair motion that Mr. McCallum has brought in, and it's very well thought out. Every municipality and every project that's not finished gets equal treatment.

As Ms. Brown said earlier, all we are saying is that we are not tearing up any contract. All we are doing, Mr. Chair, from the federal side is giving a go-ahead so that extending the date does not put undue pressure on municipalities, which only collect 8¢ on the dollar in taxes.

I support Mr. McCallum and would ask honourable members to support Mr. McCallum instead of filibustering the meeting.

Thank you.

The Chair: Go ahead, Mr. Mayes.

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

All of these funding programs that—

Ms. Lois Brown: On a point of clarification—

The Chair: We don't have "clarification". If there's a point of order, you can raise a point of order.

Ms. Lois Brown: On a point of order, Mr. Chair, I just want to assure my colleagues across the table that indeed I had the pleasure of making announcements in many opposition-held ridings.

The Chair: I have to stop you there; it's debate.

Continue, Mr. Mayes.

Mr. Colin Mayes: Thank you, Mr. Chair.

All these funding programs have specific guidelines. They are agreed to among the partners, whatever the level of government, or, as in this case with the stimulus money, through the partnerships with the municipalities and the provinces. I would be really concerned if all of a sudden we extended the terms of that agreement, because it would set a precedent such that in the future there would be nothing to stop various members from deciding that they should extend the program because the municipality they represented didn't do their due diligence and make sure that the project was completed. They could decide that there would be a lackadaisical type of attitude towards these funding programs.

We have to have structure. There has to be discipline in government to properly manage the affairs of taxpayers' dollars and budget cycles. There's that consideration for the provinces in this case, and for the municipalities. Our Minister of Finance has set out a plan for the stimulus; it would finish by March 31 so that we can pursue a further plan to address some of the deficit challenges we have as a government. I'm just concerned about the precedent this would set.

The other thing is, what is the magic number of six months? Why not three months, why not five months, why not a year? All of a sudden we've thrown it out there that there will be a six-month extension for the completion of these projects. There's no logic behind it. The minister has reported to the House that when there are challenges, he is listening to those challenges and working with our partners, but ultimately it's important to stick to the guidelines in the agreements we have established with the provinces and the other partners in this funding of the stimulus money.

I was a mayor before. If every time we applied for funding from the senior levels of government we weren't compelled to meet those deadlines and use the money that the agreements entailed, it would give you an attitude that you could just about do anything. I don't think taxpayers would feel this is the proper way to run their business. You couldn't do it in the private sector; I don't think we should do it in the public sector. We have those disciplines in place.

Once again, I want to get back to the fact that this sets a precedent. What is going to happen down the road with these guidelines set out with these funding programs? I can't understand where we're going with this.

As I said, I'd like to know from the presenter of this motion why it is six months and not three months or a year. Where did this magic number come up? Is there a detailed construction plan that says that all these things will be done in six months' time? Are we going to be dealing with this again? It's a cycle, and I would not want to get going down that road because, frankly, it would prove that we are incompetent in putting forward these funding programs and adhering to the guidelines we set initially.

Thank you Mr. Chair.

● (1250)

The Chair: Monsieur Gaudet is next.

[*Translation*]

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

First of all, whether the work is completed tomorrow or in six months, the cost to the government is exactly the same.

Second, I am always interested when I hear someone talk about fairness. We know that in the last budget, the government invested close to $10 billion in the auto industry, which is concentrated in Ontario, as well as about $200 million in the forest industry throughout Canada while 60% of forest activities take place in Quebec. This is a very selective interpretation of fairness.

I am going to be very candid now. When it is equal for everyone, Quebec's money is as good as Toronto's or B.C.'s.

I think Quebec is entitled to its share. I cannot imagine people talking to me about fairness this afternoon. This gets on my nerves. If you can say these things, Mr. Trost, you do not know what fairness means. When things go your way, you are all for it. Otherwise, you are opposed.

Under the circumstances, I will vote in favour of the amendment.

Thank you, Mr. Chair.

[*English*]

The Chair: *Merci.*

Go ahead, Mr. Watson.

Mr. Jeff Watson: Thank you, Mr. Chair.

I have a few points to make on the particular motion as presented.

First of all, it's my opinion that it's premature to have a report, precisely because the testimony of the witnesses has in fact been quite mixed. There have been some who appear to have a very bona fide and perhaps significant problem with it; there have been others who do not.

Second, the witnesses' testimony has been mixed as to what the resolution should be. Not everyone agreed that there should be a blanket exemption, or a blanket exemption for six months.

We also haven't heard from other witnesses who may entirely disagree. We haven't heard from the mayor of Windsor, Ontario, where, for example, projects are ahead of schedule or on time. I don't know the answer to the following question, because I haven't asked him, but were he to appear, would he agree with the idea that there should be a blanket exemption for six months? We don't know, but it's possible there are witnesses yet to come who could entirely disagree with that proposed remedy.

We also haven't heard from witnesses who were ahead of schedule and under budget, and who have already been approved for additional ISF projects to be completed by the same deadline. What are their thoughts? There are municipalities in that situation. They're spending surplus because they were in fact ahead of schedule or on time. Would they agree with such an interim report?

Mr. Chair, if the majority of members of the committee have already precluded hearing those types of witnesses—and they are out there—and have already come to the conclusion about what the remedy should be, then why should we even consider Mr. McCallum's next motion, which would be to have more meetings? Why not just conclude, forget an interim report, and have the committee give a final or concluding report? I think the testimony yet to come is just as important as the testimony we've already heard. It should give us a report, at the end of the day, that's based on the fullness of testimony.

So I'm not prepared to support this motion, and certainly not as it's written. I'm going to oppose it, and I think I have given good reasons to oppose the motion at this particular time.

● (1255)

The Chair: Go ahead, Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond: Thank you, Mr. Chair.

It may have been better to postpone the vote on this motion to next week. I seriously thought about it and I remembered that since the House resumed on September 20, I asked the minister several questions both personally and on behalf of my party. We have heard municipal union representatives from almost all regions of Canada, including two from Quebec, who were requesting an extension of the deadline.

There was a problem in Quebec due to a lack of information. Minister Courchesne, president of the Quebec Treasury Board, came to meet with Minister Strahl who has all the required information to make a decision. I think the situation has now matured enough and that the motion should be passed. We have to stop beating around the bush. Municipalities need to know if the deadline will be extended or not.

After careful thought, I have decided to support the motion, so

[*English*]

I put the question.

The Chair: Regrettably, you can't call the question when we have other people on the list. I still have four or five names. It's 12:59, and we have a committee setting up at one o'clock.

I'm going to adjourn the meeting and continue this debate at the next meeting. I must advise committee members that it will interfere with what we had planned for December 2.

We'll continue this debate before we move to clause-by-clause consideration.

Hon. John McCallum: Are you saying that this would be the first order of business?

The Chair: It's on the floor. It has to be.

The meeting is adjourned.

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