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Chair

Mr. Garry Breitkreuz

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• (1530)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order.

This is the Standing Committee on Public Safety and National Security, meeting number 14, and we are today discussing the passenger protect program and the U.S. no-fly list.

We have three groups represented today: the Royal Canadian Mounted Police, the Department of Transport, and the Department of Public Safety and Emergency Preparedness.

We would like to welcome our witnesses this afternoon. We look forward to your testimony. When you begin, introduce yourself and tell us a little bit about yourself. We won't count it as part of your ten minutes.

This is only a one-hour meeting. I can't stay for the entire time, but that's not a problem; somebody will fill in here.

Have you decided who would go first, or should I just follow the order? Mr. McDonald will go first?

Mr. Gerard McDonald (Associate Assistant Deputy Minister, Safety and Security, Department of Transport): That will be me, Mr. Chairman. I will be making the only opening statement for the group, if that's okay, Mr. Chairman.

The Chair: For the entire group?

Mr. Gerard McDonald: That's correct.

The Chair: Okay, thank you very much. You may go ahead whenever you're ready. Please introduce everybody.

Mr. Gerard McDonald: Yes, I will. I'll introduce who is here with me today.

On my far right is Kristina Namiesniowski, the associate deputy minister for strategic policy in the Department of Public Safety and Emergency Preparedness. On my immediate right is Laureen Kinney, director general, aviation security, with Transport Canada. On my left is Chief Superintendent Larry Tremblay, director general, national security operations, with the RCMP.

I want to thank you for providing us the opportunity to speak to you today about the passenger protect program.

Since the December 25, 2009, incident that confirmed the continuing terrorist interest in targeting passenger flights, Canada, like our international partners, has been reviewing its aviation security programs. The prevailing approach to aviation security used in Canada, the United States, Australia, and other countries involves

the use of multiple layers, creating a robust system of defence against threats. As international partners strengthen existing security measures or develop new technologies and passenger assessment systems, it's important for Canada to keep pace with its international partners so that we are not a weak link and the global system remains strong. In this environment, we've continued to work to improve the passenger protect program and learn from our experience operating the program over the last three years.

The passenger protect program was established in June 2007 as a mechanism for preventing persons who pose an immediate threat to aviation security from boarding a flight. The program was designed after extensive consultation with stakeholders, including valuable input from the Office of the Privacy Commissioner. The program complements other layers of our system, including the physical screening of passengers and their bags, and the passenger protect program is targeted specifically on our core mandate, as its scope is focused on aviation security.

[Translation]

The Passenger Protect Program and the supporting Identity Screening Regulations involve a partnership between government agencies and air carriers. To briefly describe the program, Transport Canada, using information from the RCMP and CSIS, provides recommendations to the Minister of Transport, Infrastructure and Communities concerning individuals who may pose an immediate threat to a flight should they be permitted to board.

The list of these individuals who pose a threat, called the Specified Persons List, contains the name, date of birth and gender of each specified person, and is provided to air carriers. Under the Identity Screening Regulations, air carriers are required to check passengers against the Specified Persons List, prior to issuing the boarding pass. When a passenger's name, date of birth and gender match with an entry on the Specified Persons List, the airline contacts the Transport Canada Operations Centre, which is open 24/7.

An officer on duty will validate the match, make a decision on whether an emergency direction is required to prohibit the person from boarding the aircraft, or take any action required to ensure that aviation security is maintained.

Concerns about false positives, mistaken identity, and long delays were raised to the department before we implemented the program. These have not become issues. The procedures built into the program enable efficient resolution of airline calls about potential matches, leading to minimal delays.

The department verifies reports of delays to determine whether they are program-related. We have had only one instance where delays were due to the program, and we have worked with the individual to facilitate future travel.

• (1535)

[English]

Recourse for an individual denied boarding is available through the Transport Canada Office of Reconsideration. This office engages independent advisors to review the case and makes a recommendation to the minister on whether the original listing decision should be reconsidered. Individuals may also lodge complaints with other bodies, such as the Security Intelligence Review Committee and the Commission for Public Complaints against the RCMP. They may also apply to the Federal Court for a judicial review.

With any new program questions and challenges are not unexpected. These challenges, such as the case under judicial review, may be useful in determining ways of strengthening the program.

[Translation]

We have taken a number of steps to improve the program since its inception. For example, we amended the Identity Screening Regulations in September 2008, following consultation with stakeholders.

We removed the need for passengers who appear to be under 18 years of age to present identification. This amendment was based on a careful assessment of the regulations, taking into account the low risk persons younger than 18 represent, the difficulty in obtaining the required type of identification, and the potential for limiting mobility for domestic flights within Canada when the proper identification is not available.

Requirements were also changed regarding identification documents used at the boarding gate, facilitating boarding procedures. We strengthened the program by incorporating into regulations elements that were previously included in a memorandum of understanding entered into with each air carrier in the program. These include regulatory obligations on air carriers related to the appropriate use, access, and disclosure of information provided to them by Transport Canada in relation to the program. We also dealt with potential issues of non-compliance through amendments that allow Transport Canada's inspectors to issue monetary penalties to carriers for certain infractions against the Identity Screening Regulations.

[English]

The passenger protect program remains an important element of Canada's aviation security program and a key factor in maintaining our credibility in the area of passenger assessment. We will continue to look for ways to improve this security program, ensure the safety and security of passengers, and maintain the efficiency and competitiveness of Canada's aviation industry.

We would be pleased to answer any questions you may have.

Thank you very much, Mr. Chairman.

The Chair: Thank you very much. I appreciate that.

The usual practice at this committee, as you're probably aware, is to go around, with the various political parties asking questions and making comments, for about seven minutes each on the first round.

Mr. Kania, go ahead, sir.

• (1540)

Mr. Andrew Kania (Brampton West, Lib.): Thank you, Mr. Chair.

Thank you for being here today.

I support security, obviously. I'm looking for a system that is logical and that is fair to travellers, both travellers who are being screened and persons who frankly would never be screened or potentially on a list, so that they can go through expeditiously.

The first thing I want to ask about this specified persons list is how is it determined when somebody gets on this particular list? For example, I have constituents who have got on this list and who have difficulty flying, who have been stopped, and one of them was an eight-year-old boy. So how do people get on this list? The main point of this particular question is once they get on, if they shouldn't be on, what can they do to get off?

Mr. Gerard McDonald: Just by way of my first point, your problem with the eight-year-old boy, I would point out that there is no one on the list under the age of 18 years, as required by our identity screening regulations.

Mr. Andrew Kania: Let me stop you there. These persons were in Germany and the airline stopped them, screened them, and told that they were on the Canadian list and they were being stopped from coming back from Canada. I would like to know how that could possibly occur and how situations like that can be fixed. Obviously that's an error, and there must be some way....

I've not been able to get the Minister of Public Safety to respond yet, and I've not been able to in any way find a way to get them off the list, so I'm asking you, what do I do? Why do they have to come to a member of Parliament to seek assistance? What can they do to get themselves off?

Mr. Gerard McDonald: I don't know the specifics of that particular case, but I can tell you that if they were on the Canadian specified persons list, they would have been notified directly that they were on that list, and I am not aware that such a notification has taken place.

Mr. Andrew Kania: Let me ask this hypothetical. Let's say that the Canadians had decided to bar them because they were perhaps on the U.S. list. Do the Canadians just follow what the Americans say? Is that one possibility?

Mr. Gerard McDonald: No, it's not a possibility. The Canadian list is a sole list in and of itself and has nothing to do with the American list.

Mr. Andrew Kania: Does Canada follow the U.S. list?

Mr. Gerard McDonald: We do not.

Mr. Andrew Kania: Okay, fine. How are these constituents of mine supposed to fix this problem?

Mr. Gerard McDonald: The only redress we have at Transport Canada would be with whether they were on the specified persons list. If they were denied boarding because of being on the Canadian specified persons list, they would have received notification that they were on the list. If they did receive that notification, then they would be able to apply, through our office of reconsideration, for reconsideration of that determination.

Mr. Andrew Kania: Okay. Let's discuss this. It's indicated that this particular program is a secret program, and when somebody's name is added to the list, they're not told. Is that accurate?

Mr. Gerard McDonald: That is correct.

Mr. Andrew Kania: Why are they not told? Why is there not a method to allow somebody to, in essence, defend themselves if they're added to this list?

Mr. Gerard McDonald: Part of the reason for having the list is that we do not want people who may be a threat to aviation to know whether they are on the list or not so that we can keep them on their toes, as it were, with respect to whether they would use the aviation system or not.

If someone who is on the list attempts to board a flight and we make an emergency direction with respect to their boarding, they will be notified that an emergency direction has been made, notified that they are on the list, and given a summary of the reasons that they are on that particular list. Then they can apply to our office of reconsideration to get themselves taken off the list.

Mr. Andrew Kania: Once again, for innocent persons who are on this list and are barred from flying, would it not be better to let them know that they're on the list so that they can actually do something about it? How is it fair to innocent persons that they're not told?

Mr. Gerard McDonald: First of all, there has been no one stopped from flying who is not on the list.

• (1545)

Mr. Andrew Kania: That's never happened.

Mr. Gerard McDonald: That has never happened.

Mr. Andrew Kania: Okay. When you say "stopped from flying", what do you mean by that? I had constituents who were stopped from flying.

Mr. Gerard McDonald: You may indeed have had constituents who were stopped from flying; it would not have been because they were on the specified persons list.

Mr. Andrew Kania: There's an indication here that the border individual at the scene has the power to decide whether people are allowed to board a plane. Is that correct?

Mr. Gerard McDonald: No, that is not correct.

Mr. Andrew Kania: Then how does it work?

Mr. Gerard McDonald: A list of people who are on the specified persons list is provided to the airlines. Before every flight, the airlines will reconcile the people who are on their flight against the specified persons list. If there is a possible match, they will phone the Transport Canada operations centre, which is a 24/7 operations centre, to obtain further information about whether the person who

they feel is a possible match is actually a person on the list. In most cases, the time taken to resolve those questions is usually about three to five minutes, so it has never resulted in a case of delayed boarding.

Mr. Andrew Kania: There are, admittedly, false positives.

Mr. Gerard McDonald: Out of 600 calls we've received over the past three years, we've had two instances of false positives. In those two instances, neither of those people was denied boarding the flight.

Mr. Andrew Kania: Okay, now what about my constituents that were denied boarding their flight?

Mr. Gerard McDonald: Again, I don't know the circumstances with respect to your constituents, but I repeat, if they were denied because they were on the specified persons list, they would have been notified at the time that they were denied the boarding pass.

Mr. Andrew Kania: There are two things here. I'm running out of time, so I'll sort of do three at once.

I notice that there's a reverse onus provision for somebody to prove their innocence. Secondly, if they're not happy with the decision that's then reached, they can apply for judicial review in the Federal Court. So in essence, what's occurring here is you're making people prove their innocence. If they're not happy and they can't prove their innocence based on your standards, they have to hire a lawyer, go to Federal Court and spend that money. Wouldn't it be better to have some independent such as an ombudsperson or somebody who would look at this and make the decision at arm's length, rather than forcing them to spend money and go to Federal Court?

Mr. Gerard McDonald: I guess I would like to make a few points, Mr. Chair. One is that we are not saying that anyone who was on the list is guilty. What we are saying is that they're a threat to aviation safety. My second point is yes, judicial review is one recourse of action that a person may have if they find they're on the list, but they also do have access to our office of reconsideration, which does make available to them an independent reviewer who will review their case and make a recommendation to the Minister of Transport about whether or not their particular case should be reviewed. There are also other avenues open to them, as I mentioned earlier—the Public Complaints Commissioner for the RCMP and the CSIS body for review of their information.

The Chair: Thank you very much.

Ms. Mourani, please.

[*Translation*]

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you, Mr. Chairman.

Thank you all for coming.

Mr. McDonald, I would like to check something with you. You talked about the process when someone goes to the airport and reports to the airline company. The employee enters the individual's name and realizes that there is some kind of match between the name of the individual and the name on the list. The employee then requests verification to determine whether this individual is the same person whose name is on the list. The request is made to the Department of Transport. The Department of Transport makes the verifications and decides whether to authorize this person or not. In fact, the minister, the deputy minister or the person in charge decides whether or not to allow the individual to board the plane. Is that correct?

[English]

Mr. Gerard McDonald: Yes, that's correct.

[Translation]

Mrs. Maria Mourani: You also said that you did not use the American list, but rather the Canadian list. Is that right?

•(1550)

[English]

Mr. Gerard McDonald: That's correct, yes.

[Translation]

Mrs. Maria Mourani: If you do not use the American list, why are domestic flights—in Canada—diverted because they are flying over the United States? Why am I being told that people whose names are on the American list are being turned away? I have been told that Air Canada also uses the American list. However, Air Canada must refer to you. So you must automatically refer to the American list.

[English]

Mr. Gerard McDonald: No, as I repeated, we do not make use of the American list. The only instance when a flight in Canada may be diverted to Canadian airspace would be if it was an international flight that might come into American airspace. When it is in American airspace, it would be subject to American rules. So if there is potentially a person on the U.S. no-fly list who is going through the American airspace, the Americans may request that the flight not enter American airspace on its flight from an international destination to Canada.

[Translation]

Mrs. Maria Mourani: Why does Air Canada say that it uses the American list, that the American list is being used? I do not understand.

[English]

Mr. Gerard McDonald: I'm sure Air Canada would be using the American list, certainly for any people flying to the United States, because anyone flying to the United States would be subject to U.S. airspace rules and they would be required to use the U.S. no-fly list.

[Translation]

Mrs. Maria Mourani: I have another question for Mr. Tremblay.

What would prompt you to advise the Department of Transport to put someone's name on the list? What criteria do you use? Mr. McDonald said that these individuals on the no-fly list constitute a threat to aviation security but are not guilty.

So how do you identify these individuals? Is it based on religion or on whether or not they have a beard? What are the criteria? We hear a lot about racial profiling as well.

Chief Superintendent Larry Tremblay (Director General, National Security Criminal Operations, National Security Criminal Investigations, Royal Canadian Mounted Police): Thank you.

I would like to say at the outset that the RCMP does not put anyone's name on the list. The RCMP is part of a committee that makes recommendations. These recommendations are submitted to the Minister of Transport. In fact, the RCMP submits information to a committee, but does not make the recommendation. When the RCMP has information that an individual may represent a threat to air security, it bases itself on the activities of this individual. The only facts that we take into account are the individual's actions—

Mrs. Maria Mourani: The individual's actions—

C/Supt Larry Tremblay: —without any reference to religion, gender or membership.

Mrs. Maria Mourani: I have a document here from the International Civil Liberties Monitoring Group, the ICLMG. According to this document, many Canadian Arab Muslims are being targeted because of this list. It also states that many Muslim Arabs have been targeted as well.

The document also includes some facts pertaining to CSIS: since CSIS is unable to obtain information from certain youths in Canada's Muslim community because these individuals do not agree to become informants for CSIS, some of them have been put on the list as well. What do you think of that?

C/Supt Larry Tremblay: Mr. Chairman, I cannot speak about the activities of CSIS, but I can assert that, as far as the RCMP is concerned, the recommendations are based on actions, and only on actions.

Mrs. Maria Mourani: I have another question. You said that there were no minors on the list, Mr. McDonald. And yet, children have not been allowed to board the plane. I should not say: "not been allowed to board the plane". I will reformulate my sentence. The children are stopped and subject to an inspection because the name of these children have matched someone on the list.

I will give you an example. Mr. Alistair Butt, 10 years old, in Saskatoon, was going to take the plane from Ottawa with his father, mother and brother. These people were made to wait. An incident occurred a good week later. There is another Alistair Butt. I am talking therefore about false positives. This individual is a 15-year-old, living in the Ottawa region, and his name is on the no-fly list. He showed up at the Air Canada counter and wanted to take a plane between Montreal and St. John's. Another incident occurred.

These were children. You stated that the age is recorded. The name and the birth date. So I do not understand why these airlines are preventing children, with false positives, from boarding the planes.

• (1555)

[English]

Mr. Gerard McDonald: Again, I don't know the circumstances of those particular cases, but those delays in boarding would not have been a result of being on our specified persons list.

[Translation]

Mrs. Maria Mourani: Are false positives taken into account when we are dealing with children? When a child goes to an Air Canada counter, or to any other airline that must check names in order to see if there is a connection, is the check done in that case, to verify if their name corresponds to a name on the list?

[English]

Mr. Gerard McDonald: That would be an immediate indication. If the person is under 18 years of age, immediately we would know they're not on the list. If that information were communicated to us, we would communicate back to the air carrier directly that this person couldn't possibly be a match for a person on our list.

The Chair: Thank you very much.

Mr. Davies, please.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you for appearing before us today.

In June 2007 there was a joint resolution from Canada's privacy commissioners regarding the no-fly list. I'm sure you're familiar with that. I'm not going to read the whole resolution, but there are some very revealing parts that I wanted to highlight. It states, among other things:

The Aeronautics Act does not provide a clear or adequate legislative framework to support the Passenger Protect Program.... Transport Canada has not provided assurances that the Specified Persons List will not be shared with foreign governments or their agents...; The program involves the collection, use, and disclosure of excessive as well as sensitive personal information of travellers....

The program creates real risk of harm to individuals as a result of inaccurate or unreliable information, noting that the U.S. Department of Homeland Security recently acknowledged a significant concern about the quality of data and its underlying intelligence in U.S. lists...;

The resolution calls on the government to refer the passenger protect program to a committee for full debate and scrutiny. It calls on the government to enact legislative processes to govern the use of a no-fly list, and it calls on the use of the no-fly list to be suspended until these actions have been taken.

Have any of those recommendations been put in place, to your knowledge?

Mr. Gerard McDonald: I'm not sure about those specific recommendations, but I can point out that the Office of the Privacy Commissioner did do an audit of the program. That audit was conducted in November 2009, and concluded that the passenger protect program does indeed comply with the Privacy Act, the Aeronautics Act, and the applicable regulations in policies.

Mr. Don Davies: Okay, now I'm going to quote from a report released by the International Civil Liberties Monitoring Group. They said:

In 2008, Transport Canada's Office of Reconsideration asked two independent security advisors, Allan F. Fenske and Wendy Sutton, to review the complaint of a man whose name was placed on the SPL and barred from flying. In their report, dated October 28, 2008, Mr. Fenske and Ms. Sutton indicated the PPP is plagued

with serious problems, and its legal and regulatory framework needs to be reviewed.

Has such a review taken place, and if so, what was the result?

Mr. Gerard McDonald: I think we're constantly reviewing our practices and programs to try to improve on it as best we can. We have not undertaken any specific review with respect to the comments of the B.C. Civil Liberties Union, but we are in the process of doing a complete review of our aviation security regulations, which would comprise a review of the identity screening regulations, to which this program applies.

Mr. Don Davies: Okay, I want to be a little bit more focused, because this was Transport Canada's Office of Reconsideration that asked the two independent security advisors to review the complaint. Is that correct?

Mr. Gerard McDonald: Yes, that is correct.

Mr. Don Davies: They gave a report that said it's plagued with serious problems and the framework needs to be reviewed. I'm not talking about ongoing reviews that every organization does.

Was a specific review done to comply with that recommendation? That's what I'm trying to find out.

• (1600)

Ms. Lauren Kinney (Director General, Aviation Security Directorate, Department of Transport): There was a significant review of our processes, procedures, and our system in place when we received that report, and the issues raised were looked at. It's not something I can comment on in detail because it is a subject of litigation.

Mr. Don Davies: Is there a written report that's been produced of that review?

Ms. Lauren Kinney: No.

Mr. Don Davies: No.

Okay, I want to turn a bit to the U.S. secure flight program, which I'm more concerned about right now.

Recently, Canadian airlines have been told that they have to send API—name, date of birth, etc.—but also all information on the reservation system to the Department of Homeland Security within 72 hours of boarding a flight in this country. U.S. Homeland Security will then send a directive deciding whether or not a Canadian can board, or whether a passenger should be sent for secondary screening or banned from the flight.

We were told that Canada had secured an exemption for domestic point-to-point flights within Canada, even if it flew over the United States, but we're finding out now that there have been some incidents in which people were banned from flying even under those circumstances. There is a well-known case, I think it was Mr. Almalki flying from Windsor to Ottawa last year, who couldn't fly.

We're told that the U.S. secure flights program does not exist in that situation and that we have that exemption. Is that true? Do you know if that's true? Do we have that exemption?

Mr. Gerard McDonald: Yes, we do have that exemption.

Mr. Don Davies: Do you know why Mr. Almalki was barred from flying last year? Does anybody know why that is?

Mr. Gerard McDonald: I can't speak to that. That would have been a decision of Air Canada.

Mr. Don Davies: Okay.

It is the case, though, that Canada has to send information on flights to Homeland Security for flights that don't touch the U.S. If a Canadian is flying from Canada to Mexico, or Canada to South America, not even touching the States but flying over its airspace, Canadian airlines have to send information to Homeland Security. Is that right?

Ms. Kristina Namiesniowski (Assistant Deputy Minister, Strategic Policy Branch, Department of Public Safety and Emergency Preparedness): Perhaps I can attempt to answer the question.

The U.S. secure flight program is one that will apply to flights that fly within domestic United States, continental United States, as well as flights flying to the United States and flights that are flying over the United States. At this point in time, they have yet to implement the overflight provisions, so the flights that would leave Canada and fly to Mexico are not covered by the secure flight program, but that is imminent.

Mr. Don Davies: It's imminent. Can you confirm if Air Canada is complying with the secure flight program?

Ms. Kristina Namiesniowski: For any flights that Air Canada has that would fly within the domestic United States, my understanding is that the domestic implementation of that portion has happened and that they are in the process of moving towards the implementation of flights flying from Canada into the United States.

There are two programs in the United States. One of them is called APIS, and one of them is called secure flight. The APIS program is one that is used by customs and border protection, and it's very similar to a program Canada has where advanced passenger information, the passenger name record, is sent to the U.S. government, and it's sent for the purposes of customs and immigration admissibility, as people land in the United States and have to go through customs.

Mr. Don Davies: I want to interrupt, because I don't have much time. I'm sorry.

What I'm concerned about is Canadians who don't go into the United States. A Canadian who has no intention of going there, who wants to fly to Mexico City, could be barred not because of anything happening in this country but because an entity in the United States says they can't board that flight.

Do you have any position on that, or are you aware if the Canadian government has expressed any reservations in defence of Canadians in this country in that position?

Ms. Kristina Namiesniowski: The Canadian government has done a number of things. When the U.S. secure flight program was being contemplated, the U.S. government issued something called a notice of proposed rule-making, which is the process they use as they're moving towards the implementation of a program.

In response to that notice of proposed rule-making, the Canadian government made a number of overtures to the U.S. government. At that time, we sought a full and complete exemption from the entire application of the program. A number of other interventions were made by other countries, as well as other groups, some of which were in the United States.

As a result of Canada's intervention, the U.S. government made a determination that they were willing to give us the domestic exemption—so as you've mentioned, flights between two points within Canada. But at this point, they've been clear that they're not contemplating an exemption for the overflight provisions.

Mr. Don Davies: Has Canada responded to that decision?

The Chair: That will have to be your final question.

Ms. Kristina Namiesniowski: We had a number of conversations with the U.S. government, up to and including at the ministerial level, expressing our desire to be completely exempted, which did not happen at the end of the day. The U.S. government's decision is reflected in their final rule, which was issued in October 2008. So we are not exempted from the application of the overflight decision.

• (1605)

Mr. Don Davies: Thank you. I think I'm out of time.

The Chair: Thank you very much.

Mr. MacKenzie, please.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair, and thank you to the panel for being here today.

I think one of the problems we deal with in this whole area is that there are a number of different no-fly lists that get mixed in. So sometimes when a Canadian carrier in a foreign country turns somebody away, it's not necessarily because of the Canadian list that may exist.

I think most of us are aware that there's a UN no-fly list. The Americans have theirs. We have one. Other countries have their own. I think sometimes it all gets mixed in. If it's a Canadian who gets denied flight, it always seems to come back that there must be a Canadian reason for it.

I think Mr. Davies has brought up something that, as Canadians, we need to know and respect, and that is that the airspace above Canada—Canada being a sovereign country—is our airspace. We rule the skies above Canada, as does every other country theirs. So the Americans may have their rules about flying through their airspace that have nothing to do with landing in the United States.

Correct me if I'm wrong here, but the airlines get the list and it's up to them to follow through with the names that are on the list.

I think you indicated, Mr. McDonald, that we had two false positives in three years.

Mr. Gerard McDonald: That's correct.

Mr. Dave MacKenzie: Two false positives in three years would not seem to me to be an exorbitant number, but what we do hear about are a lot of others that probably relate more to the Americans, who may not have the descriptors and identifiers that are on our list.

I do believe you said it, and I read it, that we do not have people on there under 18.

Mr. Gerard McDonald: That's correct.

Mr. Dave MacKenzie: So if someone was on there who was 19, and a 13-year-old showed up with the same name, how long should it take or would it take to identify that somebody got the names together, but it's not the same person because the identifiers don't match?

Mr. Gerard McDonald: A case like that would seem to me to be dead simple and it would take a matter of mere seconds to make that determination. Our experience with the 600 or so calls we've received is we can resolve any questions or issues on an average of between three and five minutes.

Mr. Dave MacKenzie: And that's available to the airlines 24 hours a day.

Mr. Gerard McDonald: Yes, 24/7.

Mr. Dave MacKenzie: My friend Mr. Kania related an incident, and I know that it would be of great concern to a family that has an eight-year-old who couldn't get on the flight, but would Transport Canada maintain our passenger protect program? The Minister of Public Safety does not maintain that record, correct?

Mr. Gerard McDonald: It is Transport Canada that maintains the list. That's correct, the Minister of Transport.

Mr. Dave MacKenzie: I would suggest that Mr. Kania might write to the Minister of Transport to try to clarify the particular issue that exists.

Mr. Gerard McDonald: Certainly we would have no problem with that, but I would again note that if this person was denied boarding because of being on the specified persons list, it is our policy to ensure that they are aware that they are on the list if they are denied boarding, and they would be given reasons as to why they're on that list. If that was indeed the reason why this particular person was not boarded, they would have that information with them.

Mr. Dave MacKenzie: Could that person be on some other country's no-fly list and the identifiers have picked them up, even though they were going to be flying to Canada on an Air Canada flight?

Mr. Gerard McDonald: Anything is possible. The airlines maintain all types of different lists for flyers who behave badly on flights, for people who don't pay their bills, for any number of things, as well as other countries' no-fly lists. I can only speculate.

Mr. Dave MacKenzie: I think that's one of the other important things. Although countries have those no-fly lists, the airlines may have their own lists for a variety of reasons, including a couple of the things you mentioned there from an economic perspective, so that someone can't get on.

Mr. Gerard McDonald: That's quite possible, yes.

•(1610)

Mr. Dave MacKenzie: The other thing is I went through the Privacy Commissioner's report, and I did note in the one I saw, the more recent one, that the examination occurred in June 2007 to March 2009. Would that be the most recent of the Privacy Commissioner's reports?

Mr. Gerard McDonald: Yes, that's the only one.

Mr. Dave MacKenzie: Okay. What I did notice then when I went through it was that there were some other agencies that had concerns dealing with a previous report. I'm not sure where the other report came in, because the program is fairly new.

Mr. Gerard McDonald: Yes, the program is only three years old.

Mr. Dave MacKenzie: Would this have been the only Privacy Commissioner's report conducted on the program?

Mr. Gerard McDonald: Yes, there was only the one privacy audit conducted on the program.

Mr. Dave MacKenzie: So in this report ending March 2009, can you tell me in a broad sense, has the department identified within the department and corrected these issues that have been highlighted that may be of concern?

Mr. Gerard McDonald: Yes, we have.

Essentially I would point out, first of all, that the report itself indicated that adequate collection controls to protect personal information were in place, that acceptable controls for the use of personal information were in place, that controls for the retention of personal information were there, and that mechanisms were there to ensure that the specified persons list was accurate.

That said, there were four recommendations that the Privacy Commissioner made with respect to improving the program. The first was the indication that when the deputy minister receives a recommendation from the advisory group, the deputy minister should receive with it the full file.

The deputy minister is delegated by the minister to make the determination on whether someone is put on or taken off the list. When the program first started, the deputy minister was getting a summary of that file, with all the information being available to the deputy minister at the time if he should wish to avail himself of it. We've now changed that practice. When a recommendation goes up to the deputy minister, the deputy minister receives the full file and can review the full file before that determination is made.

The second item was with respect to the computer system that's used to maintain the list. The Privacy Commissioner felt that we should have formal accreditation and certification with respect to technology security. We felt we had done that. There was a bit of an issue there that we went back and forth on. To satisfy the Privacy Commissioner, we undertook to do an accreditation and certification of the security of the system, and that has now been done.

Third, the commissioner thought we should amend our identity screening regulations to require air carriers to report any privacy breaches, such as the list getting into the hands of someone who wasn't screened to see it. We actually have a provision in the regulations that makes sharing or distributing the list against the law, but the Privacy Commissioner thought we should also put the onus on the airline to actually notify us if that information had been shared. That is something we're considering as part of the regulatory review that I talked about.

The final item was that they thought we should enhance our oversight activities of the airlines and how they treat the list. We have accepted that recommendation and we have increased our oversight of the airlines.

The Chair: We'll have to come back to you.

Go ahead, Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you, Chair.

These lists are name-based. Do you also provide photographs of individuals who are on the list, or passport information?

Mr. Gerard McDonald: No.

Mr. Borys Wrzesnewskyj: Then it's strictly name-based.

Mr. Gerard McDonald: The only things on the list are name, date of birth, and gender.

Mr. Borys Wrzesnewskyj: If a clear record has been established that results in people being on this list, one would assume that photographs of these individuals would be available. Why wouldn't those be made available on the list for verification at ticket counters if a name pops up?

Mr. Gerard McDonald: It is because we want to keep that portion of the information within the federal government. We feel it's much easier to keep that information secure if we hold on to it. That is why we make our—

• (1615)

Mr. Borys Wrzesnewskyj: If you provide the details of the name, age, etc., of an individual, and the individual is standing right there, why wouldn't you provide a photograph to the ticketing agent or the boarding agent so that they could verify that this is the individual who is on the list? I don't quite catch that particular logic.

Let me move on. You said there have been two false positives that you're aware of. Those are people who were prevented from boarding—

Mr. Gerard McDonald: No. It was a false positive. The call came to our office; we managed to resolve those issues, and those people did board their plane.

Mr. Borys Wrzesnewskyj: Okay, but those were people who were on the list. How often have you had to remove people from a list who've challenged being categorized as a threat and challenged being on the no-fly list? Has that occurred?

Mr. Gerard McDonald: No....

Mr. Borys Wrzesnewskyj: To date, nobody has challenged the fact that they are on a no-fly list in Canada.

Mr. Gerard McDonald: Yes, there is one case before the courts right now where a person has challenged being on the list.

Mr. Borys Wrzesnewskyj: So there is a case. So there is a precedent for it. But you don't inform people if they're put on the list. You said that previously.

Mr. Gerard McDonald: That is correct. They're only informed if they try to board a flight.

Mr. Borys Wrzesnewskyj: There's a committee that establishes this.

Mr. Tremblay, are you part of that committee?

C/Supt Larry Tremblay: No, sir. A member from within my office is.

Mr. Borys Wrzesnewskyj: I wasn't clear. It's a sit-down with the minister. Is that correct?

C/Supt Larry Tremblay: No, sir. A member of the RCMP and a member of the service and a member of Transport Canada make up that committee. Based on the deliberation within that committee a recommendation is made to Transport Canada, who takes that recommendation to—

Mr. Borys Wrzesnewskyj: Who within Transport Canada is the final decision-maker?

Mr. Gerard McDonald: That responsibility has been delegated to our deputy minister.

Mr. Borys Wrzesnewskyj: So the deputy minister makes this decision.

It's interesting, because we value our fundamental freedom of movement. We're placing a restriction on people's ability to have that freedom of movement. We have a bureaucratic system that acts as judge and jury with no ability of individuals to respond.

Here's where the problem is. I heard your comment that we want to surprise them, catch them at the counter. There's no criminal charge in this. Let's take a look at these potential circumstances. You said this information is shared with many third countries.

Mr. Gerard McDonald: Excuse me, no, I did not say that. We do not share the list with any other country.

Mr. Borys Wrzesnewskyj: So it is not shared.

Mr. Gerard McDonald: It is not shared with any other country.

Mr. Borys Wrzesnewskyj: So it's strictly shared with airlines that would have their ticket counters in these countries. So let's say somebody was boarding a plane from Syria to Canada, coming to Montreal, and they're prevented from boarding. They raise a fuss. The ticket agent has to call authorities. What would they tell the authorities there why the person has been prevented from boarding the plane?

Mr. Gerard McDonald: It's a hypothetical situation, so I wouldn't know what the ticket agent would tell the person if they were denied boarding.

Mr. Borys Wrzesnewskyj: What I'm getting at is the fundamental principle.

The Chair: Wrap it up.

Mr. Borys Wrzesnewskyj: Just the fundamental principle that you're judged guilty and a freedom is impinged upon with no opportunity to either clarify or agree that perhaps there is good reason.

The Chair: Okay, we'll have to continue that discussion later.

Mr. Rathgeber, I've got an indication you're sharing your time with Ms. Glover. Is that right?

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): That's correct. I only have one question.

How do you handle the situation of individuals with multiple names? Certainly my name is fairly uncommon and Mr. Wrzesnewskyj's name is fairly uncommon, but I happen to know three individuals named Don or Donald Davies. What criteria are you using for common names and people who share names?

• (1620)

Mr. Gerard McDonald: Again, we use the three pieces of data that are first given to us. One is the name, one is the date of birth, and the third is the gender. So while there may be many common names, people with the same date of birth are far less common, although I would certainly note that it's not impossible. If the name and the gender and the date of birth all match, the call would then be placed to us. We have more information on these individuals on file and then we can converse with the airline to determine whether or not the person who is standing in front of them is indeed the person who is on the list.

Mr. Brent Rathgeber: What type of identification do you require for date of birth?

Mr. Gerard McDonald: A government-issued piece of identification.

Mr. Brent Rathgeber: Thank you.

My friend Ms. Glover has some questions.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

I want to welcome you all here as well.

[*Translation*]

It is a pleasure to have you here at our committee.

[*English*]

I am very glad we take security on our aircraft seriously, particularly when we look at incidents like Christmas Day. It is becoming more and more apparent how the threat of terrorism can affect all of us. We have unfortunately lost some Canadians in terrorist attacks. I am glad we do have some measures in place to protect our security.

We've dealt with hypotheticals a lot today. I would like to ask some direct questions, but I'm not sure whether you're permitted to answer them. So please feel free to tell me if you are not.

How many people are on our passenger protect specified persons list?

Mr. Gerard McDonald: That is something I can't answer.

Mrs. Shelly Glover: Okay, thank you.

The other questions I have are specific to some questions already asked.

Mr. Wrzesnewskyj asked a question about photographs. Do you have photographs of each and every one of the people who are on the specified persons list?

Mr. Gerard McDonald: We do have photographs of some, but not necessarily all people who are on the list.

Mrs. Shelly Glover: Very good.

I used to work in law enforcement, and we too do not have pictures of every single person we deal with. So given that you don't have pictures of everyone, it would be impossible to look at a picture and use that in every case as another identifier. I just wanted to help make sure we cleared that up.

There is one case that you suggested is before the courts at this time.

Mr. Gerard McDonald: That's correct.

Mrs. Shelly Glover: While this is being debated in court, is that person still restricted and on the specified persons list?

Mr. Gerard McDonald: I can't comment on whether people are on or off the list.

Mrs. Shelly Glover: Okay, not that person, but less specifically, if individuals, after having been reviewed the first time by the panel, decided to use their discretion to take their case before the courts, would they be removed from the specified persons list while they were pursuing an avenue in court?

Mr. Gerard McDonald: The only way to be removed from the list is for the minister to remove them from it.

Mrs. Shelly Glover: Okay.

I'm having a hard time understanding. I'm concerned, obviously, in the interim about whether we are ensuring that people who are a threat are not permitted to travel, even if they are seeking resolution in a court. But it sounds as though that's perhaps a question you can't answer directly.

I am also concerned that there's some miscommunication about the American list process and our list process. I believe there may have been a situation Mr. Kania is trying to deal with in regard to his constituent that may not in fact have been a Canadian-based problem. I do hope that his constituents, through his assistance, find an answer to that.

I think there have been some suggestions, but it seems clear to me that our list does not contain the names of children.

Mr. Gerard McDonald: It does not.

Mrs. Shelly Glover: So I am confident that the eight-year-old was not prevented from boarding a Canadian flight because of our list. I just want to make that clear. I'm convinced, given what you've said, that this is in fact the case.

Also, Air Canada, for example—

The Vice-Chair (Mr. Don Davies): Mrs. Glover, you're over five minutes. Perhaps you could just wrap up your question and we'll let the witness answer.

• (1625)

Mrs. Shelly Glover: Who from the airlines has access to this list? How do you keep that access as narrow as possible?

Mr. Gerard McDonald: They have people designated within their organization, with the appropriate security clearances to handle the list.

Mrs. Shelly Glover: So they have security clearance. They are special, so to speak.

Mr. Gerard McDonald: That's right.

Mrs. Shelly Glover: Thank you.

The Vice-Chair (Mr. Don Davies): Monsieur Desnoyers.

[*Translation*]

Mr. Luc Desnoyers (Rivière-des-Mille-Îles, BQ): Thank you, Mr. Chairman.

Welcome.

My first question is for Mr. Tremblay.

You made reference to a committee that studies the names of people that should be put on the list.

C/Supt Larry Tremblay: That we recommend, sir.

Mr. Luc Desnoyers: How many people are on this committee?

C/Supt Larry Tremblay: Three, sir.

Mr. Luc Desnoyers: Three people: one from the RCMP, one from...?

C/Supt Larry Tremblay: —from the Canadian Security Intelligence Service, and one from Transport Canada.

Mr. Luc Desnoyers: What criteria does the committee use to recommend to the minister that such and such a person's name should be put on the list? I imagine that if the person is a member of a terrorist organization, you would make the recommendation.

C/Supt Larry Tremblay: Yes, sir.

To be more specific, once again, I would say that the determining factors for us would be this person's actions. And by "actions", I mean that it is only an issue of participation in a group, an organization. It may be a person who has a history of activities that represent a threat to aviation security. It could also be someone who has demonstrated the intention of endangering aviation security. Or, once again, it could be someone who is involved in an activity that encourages threats to aviation security.

Mr. Luc Desnoyers: As far as profiling is concerned, you choose these people, and one could be a terrorist, there could be someone who has committed a crime or again someone who has committed some kind of offence, more or less.

C/Supt Larry Tremblay: It could be someone who has committed an offence that represents a threat to aviation security. It is not just an issue of having committed a crime; there has to be a connection between the crime and aviation security.

Mr. Luc Desnoyers: There are therefore just those three criteria.

C/Supt Larry Tremblay: Those are the only generic criteria, yes. In fact, we are talking about a person who has proven that they represent a threat to aviation security, or who is considered as such by the committee.

Mr. Luc Desnoyers: You referred to actions. Could you give us an example? You must certainly have taken several into consideration. The lists are important.

C/Supt Larry Tremblay: I am not certain that I could go so far as to provide those kinds of precise details.

A person who represents a threat or who has already uttered verbal threats towards an airline or concerning a given flight would be considered as a person who represents a threat.

Mr. Luc Desnoyers: That is a person who could be considered to be dangerous.

C/Supt Larry Tremblay: It would be a person who has already taken action against someone else and who would have proven they always have the intent and ability to represent a threat.

Mr. Luc Desnoyers: Are those the only criteria, or are there others?

C/Supt Larry Tremblay: Those are the criteria that I have just defined.

Mr. Luc Desnoyers: Therefore, it could not be a person who does not have a criminal record.

What is a terrorist organization in your opinion?

C/Supt Larry Tremblay: By definition, it is a group that takes violent action in order to further its own ends or to achieve its goals.

Mr. Luc Desnoyers: Could you give us an example?

C/Supt Larry Tremblay: An example of violence would be a terrorist attempt or planting a bomb, for religious or political reasons.

Mr. Luc Desnoyers: There could therefore be targeting of religious organizations, or organizations—

C/Supt Larry Tremblay: It is not an issue of organizations but of individuals.

Mr. Luc Desnoyers: You are talking about individuals who belong to a religious organization.

C/Supt Larry Tremblay: I am talking about individuals who, through their actions, have proven that they represent a threat.

Mr. Luc Desnoyers: You were just talking about organizations.

C/Supt Larry Tremblay: It is not the organization—

Mr. Luc Desnoyers: A person who works for or acts on behalf of a religious organization could be targeted.

C/Supt Larry Tremblay: It could be a religious organization or some other organization.

Mr. Luc Desnoyers: Could unions be targeted?

C/Supt Larry Tremblay: No, unions would not be targeted.

Mr. Luc Desnoyers: On the other hand, a union member could be targeted.

● (1630)

C/Supt Larry Tremblay: A person's religious or political affiliation is not a factor. We take into consideration the person's activity, without taking into account their religion, nationality or political allegiance.

Mr. Luc Desnoyers: What sort of activity or allegiance might you be talking about?

C/Supt Larry Tremblay: It is not a question of allegiance. Once again, we are referring to a person's activities.

Mr. Luc Desnoyers: For example, a person who has religious beliefs—

[*English*]

The Vice-Chair (Mr. Don Davies): Monsieur Desnoyers, I'm sorry, but your time is up. Could you just wrap up very quickly, and then we'll let the witness answer?

[Translation]

Mr. Luc Desnoyers: What would be the activities that this person...

We sometimes have the impression that it is arbitrary. I know of cases of people who had a clean slate or record, to my knowledge. One was targeted over a period of nine months, and then, his name disappeared from the list. I was there, and the Air Canada staff told him that his name was on a list.

[English]

The Vice-Chair (Mr. Don Davies): Monsieur Desnoyers, I'm sorry, but you're over time. Please let the witness answer.

Mr. Gerard McDonald: The only organizations that would indicate that a person may be considered for the list would be recognized terrorist organizations. Al-Qaeda is a perfect example. A person is a known member of al-Qaeda, has experience in bomb-making, perhaps, and actually attempted to blow up an airliner ten years ago—this is all hypothetical. That may be a good candidate for someone to put on a specified persons list.

The Vice-Chair (Mr. Don Davies): On behalf of the entire committee, I'd like to thank the witnesses very much for their very helpful testimony.

We will break for two minutes to allow our next round of witnesses to take their chairs.

• _____ (Pause) _____

•

• (1635)

The Vice-Chair (Mr. Don Davies): I ask everybody to please resume their seats and we'll get the proceedings back under way.

I'd like to welcome all the witnesses to the Standing Committee on Public Safety and National Security. I understand that each of you has been told of our procedures. To go over it, each one of you will have a presentation that you can make to the committee for up to ten minutes and then we will proceed with questions.

I understand we're going to begin with Madame Bernier on behalf of the Privacy Commissioner's office.

Ms. Chantal Bernier (Assistant Privacy Commissioner, Office of the Privacy Commissioner of Canada): Thank you very much. I am accompanied by Carman Baggaley, who is a senior policy analyst with our office.

We are very pleased to be here today. We are happy to discuss the implications of certain Canadian aviation security measures in relation to privacy. We commend you for addressing this issue. We would argue that the challenge of integrating privacy and security comes to a head most acutely in the context of aviation security.

Aviation security measures affect us all. They put our personal information in the hands of the most powerful authorities in the land. The risk of misuse that comes with any collection of personal information is all the more consequential in that context. The one message I would like to leave with you today is that effectiveness of security and protection of privacy are not at odds; they both reside in a streamlining of collection of personal information to what is strictly relevant and necessary.

To apply this approach we must look at Canadian values as enshrined in the Charter of Rights and Freedoms and in the Privacy Act. On the basis of these documents as well as on the basis of the case law that interprets them some criteria emerge on how to define how far the government can go in limiting privacy in the interest of security. These criteria may be summarized in four main points: First, the right to privacy is a fundamental right that cannot be infringed upon unless it is demonstrably necessary in the interest of the public good; second, it follows from this that the collection of personal information can only occur when it is proven necessary and it must be proportionate to that necessity; third, that necessity must be assessed on an ongoing basis by verifying that the collection of personal information is indeed effective and necessary in relation to the identified necessity; fourth and finally, it must be demonstrated there are no less privacy-invasive alternatives to meet that necessity.

This lens ensures that we both respect the right to privacy in analyzing security measures and that we duly take into account the security needs that must be met.

• (1640)

[Translation]

I will apply this lens to two aviation security measures currently in use: firstly, the Advanced Passenger Information Program and Passenger Name Record; and secondly, the Passenger Protect Program.

Let us first discuss the Advanced Passenger Information Program and Passenger Name Record. Airlines are required to provide the Canada Border Services Agency with passengers' personal information in advance of their arrival in Canada, as well as the passenger name record, which shows the passenger's travel itinerary. In both cases this information is retained in the Passenger Information System, or PAXIS, for a minimum of three and a half years. Our office expressed concerns about the program from the beginning, and in response the following privacy controls were incorporated into the program: the retention period for the personal information was reduced to what was deemed strictly necessary; we obtained that a progressive depersonalization process be implemented, so that after 72 hours the information on a passenger's identity is separated from his or her travel information; and finally, the use of the personal information is strictly limited to the fight against crime and protection of national security.

Although we are satisfied with these changes, the necessity of collecting such personal information and the safeguards required to protect the information still need to be reviewed.

[English]

Moving to the passenger protect program, as you know, and you have just discussed, we have taken an interest in this program. In fact, we audited it most recently. We have found a few areas in which we felt improvements could be made, although we have also found that Transport Canada generally uses adequate measures to protect the personal information within its control.

As you have heard, all of our recommendations have been accepted, and all of them either have been implemented or are being implemented.

Finally, I know you are also interested in the secure flight program. On this matter, at this point, I will only say that it is a U.S. government program and is therefore outside our jurisdiction. However, we will work with Transport Canada and Public Safety Canada to review any measures the Canadian government will implement in response to secure flight.

[Translation]

In closing, I wish to stress the importance of integrating privacy into aviation security measures, to the benefit of both security and privacy, by limiting collection of personal information to what is strictly necessary and justified in a free and democratic society.

I will be happy to take your questions.

[English]

The Vice-Chair (Mr. Don Davies): Thank you.

Ms. Vonn.

Ms. Micheal Vonn (Policy Director, British Columbia Civil Liberties Association): Mr. Chairman, committee members, thank you very much for having us. My name is Micheal Vonn and I'm a policy director and a lawyer with the B.C. Civil Liberties Association.

These prepared remarks are meant to complement those of the International Civil Liberties Monitoring Group. I'm going to be discussing the passenger protect program, and my colleague Mr. Tassé is going to be discussing secure flight.

I'm looking forward to perhaps endeavouring to sort out some of the Byzantine elements of which list constitutes what kind of restriction. Let me just give you a brief overview of where we are with the Canadian no-fly list.

Passenger protect, as you've heard, was coming into force in June 2007. The regulatory impact analysis statement of the identity screening regulations of that piece of legislation explicitly cites the push from foreign governments in developing this program, specifically noting that this program was supposed to be a significant step towards achieving the goal of developing a comparable approach to passenger assessment, which the security and prosperity partnership had identified as a significant goal. Passenger protect was meant not only to dissuade the U.S. from its repeated threats, starting in 2005, to impose the U.S. no-fly list on all Canadian air flights crossing into U.S. air space; it was also meant to curtail the domestic use of the U.S. no-fly list by airlines in Canada.

The B.C. Civil Liberties Association wrote to Transport Canada in 2006 regarding this use by Canadian airlines, most notably Air Canada's U.S. no-fly list vetting for domestic flights within Canada. A response came back, and this is the quote:

Transport Canada has no regulatory or legislative authority in place to prevent Air Canada from taking this action. However, we are of the understanding that once the Canadian program is in place, Canadian air carriers will be in a position to end this practice.

Not only do we submit that it is relatively unthinkable that Transport Canada has no authority to prevent passengers on domestic Canadian air flights from being subjected to a watch list of a foreign government compiled on the basis of secret information, but, further, that the practice of vetting domestic passengers against

the U.S. list has indeed not stopped with the introduction of our own program. We have, as it were, the worst of both worlds.

While the passenger protect program is by no means as notorious as the U.S. counterpart, it is nevertheless deeply flawed and very likely unconstitutional, in our submission. The program is ostensibly built on the 2004 amendments to the Aeronautics Act that were introduced via the Public Safety Act in 2002. The key provisions are entitled "emergency directions", and those provide authority to the minister, or the minister's delegate, to make an emergency direction when the minister is of the opinion that there is an immediate threat to airline security or safety. An emergency direction lasts for 72 hours.

Of course, the program we are discussing right now is called a no-fly list. If you are wondering how a person is vetted months or years in advance as being, as per the legislation, an "immediate" threat to aviation security, it was explained to me thus: a person is considered a generic threat, and then they become an immediate threat the minute they try to get on a plane.

If you find that definition strained or rather semantically bizarre, I suggest that it is the kind of rhetorical round peg trying to be smashed into a square hole that is the signature of passenger protect. It seems infinitely more likely that one of the reasons we cannot notify people about their inclusion on the specified persons list is that it does not accord at all with the notion of the 72-hour provisions in the Aeronautics Act that provide for immediate threat.

The Public Safety Act was certainly debated, but there has never been any parliamentary debate on the creation of a Canadian no-fly list. Regulations were passed and guidelines were drafted so that the program that is supposedly authorized on the basis of emergency directions looks somewhat like—you heard the outline—an advisory group represented by Transport Canada, CSIS, and the RCMP that reviews names submitted by the RCMP and CSIS for inclusion on the list. This list is nowhere accounted for in the statute.

Passengers are required, as we've been told, to show government-issued ID to find out whether they have a match on this list. If a match is made, the airline staff must immediately inform the minister's office, or their delegate, who decides whether to issue this emergency direction.

● (1645)

That person who it has been decided will not board an airplane has recourse to the Office of Reconsideration, which uses independent external advisors, although I should just note that the person has no immediate recourse, of course, for getting on the plane. The Office of Reconsideration has external advisors for the review of this application, and they make a recommendation to the minister. Bare-bones outline—you've heard that.

Since its inception, there have been serious and persistent concerns about the legality and practices of this program. To begin with, the legislative scheme itself does not add up to the program. There is no provision for a list, as I've highlighted. There is such a profound disconnect between the enabling legislation, the regulations, and the actual program that it purports to authorize that numerous legal opinions maintain that the program may not even be found to be prescribed by law for the purposes of the charter.

Even if this vague and disjunctive legislative scheme were to be found prescribed by law, there are yet other charter hurdles to pass, including the one that I'm going to suggest is the primary one, which would be section 7 of the charter.

Concerns about procedural fairness include the minister's discretion, which is virtually unfettered. The audit by the Privacy Commissioner's office found that these unsurprisingly—and we've heard this before—were decisions that were not reviewed, but rubber-stamped. We've been told that the deputy minister, who is the delegate, now has the entire file. It still just strains credulity to believe that this entire file is going to be reviewed while the airline is on hold for the decision.

The criteria we've heard discussed is not only non-exhaustive, it is vague, and quite frankly, legally non-binding. There is no legal status to the "guidelines" for criteria for the advisory group.

Various charter rights are at issue. These have been hinted at, but the central one, as I say, is section 7—"life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". The implications of being denied the ability to get on an airplane are always deeply serious, but nowhere more dire than the implications that have been suggested: when a person who has been unaccountably labelled a security threat is stranded in a foreign country and denied the ability to board an airplane to come home to Canada.

The passenger protect program is being legally challenged right now, as you've heard. The challenge is a very telling snapshot of the problems with this program. The challenger did apply to the Office of Reconsideration, and those independent reviewers agreed with the assessment that this is probably not a legal program. They were concerned about the discretion that was unfettered; they were deeply concerned about the vague, selected, and incomplete evidence that was provided in terms of the application of those decisions, and the independent reviewers did recommend to the minister, as per the legislation, that this name be removed. That decision was undertaken to not do that very thing, so it was summarily dismissed.

In conclusion, let me just state my main points in this very brief submission. The government has repeatedly failed to produce one shred of evidence to support the proposition that no-fly lists increase aviation safety or security. The current system was effectively implemented through stealth, never debated, never spelled out, nor seemingly even envisioned in the enabling statute. The legislative misfit of this program is so pronounced as to make it doubtful whether it is even prescribed by law for the purposes of the charter, and even in meeting this hurdle we have serious charter considerations.

It has long since passed the time to end the silent bureaucratic implementation of security programs that so deeply affect the rights of Canadians. This matter is even more pressing than I'm suggesting because of the even more invidious rights violations that are on the horizon due to secure flight.

• (1650)

The Vice-Chair (Mr. Don Davies): Thank you, Ms. Vonn.

Monsieur Tassé.

[*Translation*]

Mr. Roch Tassé (National Coordinator, International Civil Liberties Monitoring Group): Thank you, Mr. Chairman.

My name is Roch Tassé, and I am the national coordinator for the International Civil Liberties Monitoring Group. Thank you for having invited us to appear today.

[*English*]

First, I would like to mention that ICLMG shares all the concerns expressed by my colleague here from BCCLA with regard to the passenger protect program, especially that it was introduced through the back door without any adequate legislative basis, without any discussion in Parliament, and very likely in violation of section 7 of the charter.

However, I would like to focus my presentation today on the new U.S. secure flight program. While the Canadian passenger protect and the U.S. no-fly list that we've known so far have made life miserable for many airline passengers and unbearable for others, the incremental introduction of the U.S. secure flight program over the last few months raises even more dramatic concerns and could literally ground many Canadians and visitors to Canada who have no intention of ever travelling to the U.S.

The avowed aim of secure flight is to shift pre-departure watch list responsibilities from airline operators to the U.S. Transportation Security Administration and to remove the secret watch list from the hands of airline companies. Under the final rules of the international component of secure flight that were published in late October 2008, airlines are required to transmit all passenger information to the Department of Homeland Security and U.S. Customs and Border Protection 72 hours before departure for all flights to and from the U.S., as well as for all flights that overfly U.S. territory. This includes not only the basic API information such as name, gender, and date of birth, but all information contained in the reservation systems, known as PNR, passenger name records.

After running a risk assessment for each passenger using data-mining technology, the Department of Homeland Security in turn issues a boarding pass result back to the airline. The result instructs the airline to issue a boarding pass, deny permission to travel, or issue enhanced screening requirements.

These regulations give the U.S. access to a whole subset of information on air passengers who are not entering the U.S. but merely overflying its airspace. The program gives the government of a foreign country a de facto right to decide who gets to travel to and from Canada, since the vast majority of Canadian flights to and from Europe and all the flights, of course, to Latin America and the Caribbean will overfly U.S. territory.

According to an internal document from public safety that was obtained by Canadian Press last December, the U.S. has provided Canada an exemption only for domestic flights that transit the airspace of continental U.S. between two Canadian airports or locations. Let me quote from page 9 of the document. This is Public Safety Canada saying this:

Canada will be subject to the Secure Flight Program by late 2009, although officials at Homeland Security have confirmed that they would consider granting an extension if there were assurances that Canada is pursuing a comparable program. There are a number of concerns that the Secure Flight Program poses for Canada.

Secure flight affects both passengers and airlines. Airlines will be compelled to share personal data with the U.S. government—an act that is currently prohibited by the Personal Information Protection and Electronic Documents Act. 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 lower U.S. risk tolerance. There are also no guarantees how the U.S. will use the information it obtains from carriers overflying its territory.

The document goes on to recommend that, to address these concerns, Canada should develop a more robust program, known as the air passenger assessment system, that would meet the comparability test of secure flight.

This raises numerous concerns and questions with regard to the amount of information that will be collected on travellers, the standards and criteria to be applied to put a person on the list, and the number of people who will be added to the list to satisfy U.S. requirements. Also, the document makes no references whatsoever to the legislative basis required to implement such a program.

The secure flight program became active on January 27, 2009. When it is fully established, it will encompass more than 70 U.S. airlines and roughly 150 foreign airlines. As of March 31, 2009, the program had grown to include 74 U.S. airlines and 19 foreign airlines in some way. Of those, the secure flight program assumed watch list matching for five foreign airlines. Air Canada is most likely one of those five airlines already using secure flight.

• (1655)

In an e-mail sent to the *Montreal Gazette* last February, a spokesperson from Air Canada admitted for the first time that “For flights to and from the U.S. as well as flights overflying the U.S., we are obligated by law to enforce the U.S. no-fly list.”

So it would seem that Air Canada is already violating PIPEDA, Canada's privacy regime. There are grave consequences for Canada's sovereignty here. It creates a very real possibility that the charter rights of Canadians and their rights to privacy are being violated by the legislation of a foreign country without Canada being able to defend those rights and the rights of Canadians. Several cases have already been reported when Canadians have been denied boarding by the U.S. even for domestic flights in Canada. That includes the case of Abdullah Almalki, who, after having his name cleared in

Canada by the Iacobucci inquiry, was denied boarding on an Air Canada flight between Toronto and Windsor last December. He was told by Air Canada that he was on the U.S. no-fly list.

In this case, not only did Air Canada violate PIPEDA, it did not even take into account that there is an exemption in the secure flight program for purely domestic flights that overfly U.S. airspace.

There are other concerns related to Canada's sovereignty. For example, half the cabinet of Evo Morales in Bolivia are *persona non grata* in the United States, so if Canada were to invite one of those ministers for a diplomatic meeting in Canada it is ultimately the U.S. that would decide if that minister has the right to come to Canada after being invited by the Canadian government. The same could apply to refugee claimants from Colombia, who, even if they were admitted by Canada, could be denied the possibility of leaving their country by the U.S.

Disclosure of personal information to the Department of Homeland Security on passengers travelling to certain destinations, particularly Cuba, could lead to very unpleasant consequences. For example, this information could be used to identify Canadian companies that do business with Cuba or penalize travellers who have visited Cuba by subsequently refusing them entry to the U.S. How will Canada ensure that the U.S. does not use the secure flight program to apply its Helms-Burton Act, which imposes penalties on foreign companies that do business with Cuba?

And what about the precedent created by the secure flight program? How would Canada, or the U.S. for that matter, react if the same measures were imposed by North Korea or less friendly countries? There are also serious concerns related to the huge number of passengers who are intercepted as false positive and have no redress mechanism, other than being told to change their names.

ICLMG has received testimony from several Canadians who have been intercepted as false positives on the U.S. list in Canadian airports and have been told by the Department of Homeland Security that the secure flight redress mechanism could not apply to them because the incident did not occur on U.S. territory?

Finally, the published regulations are extremely worrisome, both for what they state, as well as for what they fail to address. There is nothing outlining the applicable standards or how decisions will be made to issue these new travel credentials, nor are there any mechanisms for travellers to find out why they are denied permission to fly, and none of these decisions are subject to any due process or any judicial review.

As you can see, the secure flight program will have or already has had a very harmful impact on Canadian travellers and visitors to Canada. We call on you today to strongly and quickly oppose these measures. Canadians expect their governments to protect the sovereignty of their country and uphold their rights.

Thank you.

• (1700)

The Vice-Chair (Mr. Don Davies): Thank you.

Mr. Kania, for seven minutes.

Mr. Andrew Kania: I'd like to discuss the creation of the analysis of the current system in light of what the best overall system is, based on empirical evidence, in terms of what actually works. We have a system now that in essence is secretive because people are placed on the list and they're not told they're placed on the list. They'll find out they're on the list if they're barred when they go to the airport. Then if they happen to be barred, they have a reverse onus to prove their own innocence, and then they are forced to go to court if they don't get the appropriate decision. The gentleman who was here earlier seemed to think there was independent oversight because eventually they'll go to the minister. Obviously that's not logical.

First, would it not be better to have a system whereby persons were told if they were on the list? At least then they would have an opportunity to defend themselves. And second, there would not be a reverse onus that they had to prove their innocence, but the reverse, under our laws. Third, if they did not get the result they were happy with, if they thought it was unfair, they would be able to go to an independent person, arm's length from the government, call it what you wish, an ombudsman, etc., so they could get a remedy without having to spend thousands of dollars going to court.

I'd like you to comment on that, please.

Ms. Micheal Vonn: I can make a couple of preliminary comments on that.

It actually seems, as I have indicated in my comments, that what's really at issue here is trying to ram the passenger protect program into these provisions that were never actually envisioned to encompass the program, which is why we don't actually give notice to people.

People can get notice of the passenger protect program. It's easy, and this is always what happens with security measures when you say how we'd go about doing this would be top secret. If I were on the passenger protect program, I wouldn't be able to get my boarding pass electronically. That would be my heads-up. If we are actually concerned about giving people too much notice, we already have a provision for finding out whether you're likely on the list or on it de facto.

As you were suggesting, the kinds of procedural protections that would be in place and that you have outlined would absolutely go a huge way toward making the system fairer. Another important thing, though, is that we actually home onto the criteria of what constitutes an immediate threat. Right now we have the notion that some people are too dangerous to fly but apparently not dangerous enough to arrest, even on conspiracy charges. We have a Criminal Code that allows us to actually arrest people for planning, and the concern about the efficacy of this program is very much what happens in the U.S. with the no-fly list: they don't put anybody who's really bad on the list because they don't want to give them a heads-up. Ergo, what's the list for? Nothing.

• (1705)

Mr. Andrew Kania: I'd like to know what evidence there is that this system actually works. What evidence or studies show that this system actually protects air passengers in an effective manner, in comparison to some other potential system, such as screening the "good" passengers so that more efforts can be put on the passengers who may be risks or are unknown?

Mr. Roch Tassé: We don't have statistics in Canada, but according to what Homeland Security or the FBI has published—I'm not sure which of the two, so I'd have to go back to my files—only about 2% of the people on the list have been intercepted, and the list in the U.S. is huge. We're talking tens of thousands of people. Not a single one of those persons was intercepted for being a terrorist threat or a threat to aviation. They were criminals with outstanding warrants, so the U.S. list has been used for giving the police more powers to get after regular criminals.

Ms. Micheal Vonn: As to aviation security, we've asked several times, which is why you would hear the language that the representative from Transport Canada was using about this being part of a multi-layered holistic program. It's because the actual evidence for this program is virtually non-existent. The Privacy Commissioner's office has asked for evidence of the efficacy of such a program; it does not exist that we're aware of.

Mr. Andrew Kania: If they're maintaining the current system, would you agree with me that at a minimum there should be a new mechanism added whereby persons would be able to appeal to an independent person who would make a determination, rather than having to go to court or rely upon the minister?

Ms. Micheal Vonn: We believe that the system is deeply flawed and that improvements are welcome, absolutely.

Mr. Andrew Kania: Would you support that improvement?

Ms. Micheal Vonn: I would have to vet that to our entire group, but it is an improvement, absolutely.

Mr. Andrew Kania: Madame Bernier, I think you indicated that all the recommendations in your report were implemented—

Ms. Chantal Bernier: Or are being implemented.

Mr. Andrew Kania: Fine.

My question is on the false positives mentioned in your report. How have the false positives been fixed?

Ms. Chantal Bernier: We issued our report just a few months ago. So far we have worked with Transport Canada to see how they will fix that situation. We intend to do a follow-up to make sure they fix it, but we're giving them time to actually do that. We intend to check up with them again to see that every recommendation has been accepted and is therefore implemented.

Mr. Andrew Kania: From that I take it that at present you are not aware that it has been fixed.

Ms. Chantal Bernier: I am not personally aware of how they have fixed it. We have received assurance that they were fixing it.

Mr. Andrew Kania: Your conclusions are in paragraph 84. You have four different conclusions here. You say there are "some important privacy vulnerabilities that warrant Transport Canada's management attention", and you list four. These are very significant and serious, so the same question will apply for each one of them, since you indicated they are in the process or that they had been fixed—

The Vice-Chair (Mr. Don Davies): Mr. Kania, you have 30 seconds.

Mr. Andrew Kania: Whether you can finish now, or maybe you can advise the committee through correspondence, I would like to know how these have actually been solved.

Ms. Chantal Bernier: Absolutely. We will be happy to get back to you as to exactly how they have been solved. Yes, for sure.

The Vice-Chair (Mr. Don Davies): Madame Mourani, you have seven minutes.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chairman. Ms. Bernier and Mr. Tassé, I thank you for being here today.

I would like to ask Ms. Bernier a few questions. In your report, I did not read anything about evaluations of the criteria for the recommendations. Perhaps I misread it. What leads the RCMP and CSIS to decide to recommend to the department that the name of some person be added to the list?

• (1710)

Ms. Chantal Bernier: In fact, it is not our role. This verification was focused on measures intended to protect the personal data that was gathered. We did not study the effectiveness of the program. In fact, we agree entirely with our colleagues that its effectiveness has not been demonstrated, and it should be. We are therefore expecting a position on this issue to be developed over time. It must be evaluated. It is not up to us to assess the criteria that are used.

Mrs. Maria Mourani: This was not part of your mandate. Could this mandate be given to you?

Ms. Chantal Bernier: As I said at the outset, we deal with all privacy issues that come under those four main criteria, which include effectiveness and need. In our opinion, the program must continue to be observed from that perspective. Over time, we will have to assess whether or not that is appropriate. If not, that means we are talking about a breach of privacy, which is not acceptable.

Mrs. Maria Mourani: I agree with you entirely.

Mr. Tassé talked about the Secure Flight Program. He said that the Department of Public Safety was going to create a similar program. What do you think of all that? If I understand correctly, the airline companies will send all of the passengers' data to the Department of Homeland Security in the United States and to the Department of Public Safety. They would decide who could fly or not. Is that correct?

Ms. Chantal Bernier: I have not yet received the proposed Canadian measures to adjust to the Secure Flight Program. However, I have received assurances from Transport Canada and the Department of Public Safety that they will send us this information so that we can study it. We will do the necessary analysis at that time. However, I think it is important to note, for the purposes of this discussion, that the sovereignty of a state extends to its air space. We will have to study the issue in that context.

Mrs. Maria Mourani: I wanted to speak to you about Canadian sovereignty. It is funny that I, as a sovereignist, should raise the issue of Canadian sovereignty. I feel that every state should be sovereign. I feel that with the American list and all of the Secure Flight concepts, Canadians are not sovereign on their own territory. They cannot come and go as they wish, because the American list is used by the airline companies, even for domestic flights that overfly American territory for a few minutes. That is unacceptable for a state.

Ms. Chantal Bernier: If I understood correctly, domestic flights that only fly over American territory for a brief period are not affected. What we are discussing, for the near future, are flights that spend a much longer time over American territory. We would be talking about a destination outside of Canada. We will be analyzing the issue in terms of privacy rights, together with the Department of Public Safety and Transport Canada.

Mrs. Maria Mourani: I have been told that currently, domestic flights have been rerouted because a person is flying over the United States in order to go to another Canadian province. They are asked not to board the plane.

Mr. Tassé could perhaps tell us about examples that appear in the report.

Mr. Roch Tassé: I mentioned the case of Abdullah Almalki who, last December, was not allowed to board a plane bound for Windsor from Toronto. Air Canada clearly explained to him that this was because his name appeared on the U.S. list. I imagine that the flight crossed Detroit airspace. So Mr. Almalki was unable to give a speech at the annual meeting of the Canadian Council for Refugees.

There is also the case of Adil Charkaoui who, last fall, was escorted by two Canada Border Service Agency agents as he toured eastern Canada. He was wearing his GPS ankle bracelet, and he made it to Halifax or Saint John, I forget. On the way back, the plane was ordered to turn back to Saint John or Halifax, even though Mr. Charkaoui was accompanied by two agents from the Canada Border Services Agency. He was told that it was because his name appeared on the U.S. list.

It seems, once again, that Air Canada was using the Secure Flight list. The passenger information had been sent and the plane was turned back, despite the fact that the Canadian government, that is, the Canadian Border Services Agency, had authorized the flight to go ahead. The government's agents were even with Mr. Charkaoui. This was before the Federal Court made its ruling.

• (1715)

Mrs. Maria Mourani: These cases show that Canada's sovereignty has been sorely tested by the U.S. list.

My other question is about minors. I have heard of these cases. The minors were allowed to board their flight, but they were searched.

[English]

The Vice-Chair (Mr. Don Davies): Madame Mourani, *trente secondes*.

[Translation]

Mrs. Maria Mourani: I questioned the department's officials a little earlier. They seemed to indicate that minors are normally not searched. However, there are cases, like the one involving Alistair, for instance, who could not go anywhere because his parents were afraid of his taking the plane because of the risk of exchanges with other countries. His parents were afraid. What do you think of this? Are there minors on the list? What's going on?

Ms. Chantal Bernier: The official from Transport Canada told us there were no minors on the Canadian list. I haven't seen the list, but I am assuming that what he said is true.

Mrs. Maria Mourani: Oh, you have not seen the list.

[English]

The Vice-Chair (Mr. Don Davies): I'm going to ask my questions from the chair, if I might.

I have to say I'm disturbed. I'm very disturbed by this U.S. secure flight program and I'm not entirely sure what the answers are, but what I hear the witnesses saying is that we don't really have any clear basis for even having such a program. There's been no evidence that's really demonstrated that Canadians need to provide this information, that there's any valid security concern that will come from it.

We risk complete abdication of our sovereignty to a foreign government that will determine where Canadians travel pretty much anywhere. And Canadians have no real redress to challenge this. There's no democratic accountability of the U.S. regulatory authorities to Canadians. There's no way for Canadians to challenge the decisions. We have no idea in any way what criteria would be applied by the U.S. authorities to deny a Canadian an opportunity to travel to Mexico, South America, or Europe.

But I do think that my friend Mr. MacKenzie has made one valid point, which is that this is U.S. airspace and they control it. And even though that disturbs me, I'm wondering how we get around that. If the U.S. demands that we provide this information to them as a condition of flying through their airspace, do you have any suggestions for us as to how the Canadian government ought to proceed in the face of such a demand?

Ms. Micheal Vonn: This is the political and diplomatic dilemma. Yes, indeed, we have sovereignty over our airspace, but every other country does as well. So I think the point here, as little as it suits me to discuss with parliamentarians what parliamentarians should do relative to diplomatic relations, is that surely this an issue the world over.

What we've seen in the kind of security hysteria since 9/11 is none of these things getting smaller. They only get bigger. The rebalancing around security and liberty only appears to be happening in one direction and it seems to us time that we reached out to our allies the world over who are also facing these kinds of dire sovereignty issues to formulate some alliances and to look for some international solutions to these dilemmas instead of letting them be driven by, as we sometimes euphemistically put it, the international forum, but we actually know where that is coming from. So that's my immediate suggestion.

The other thing is of course we need to let Canadians know what's happening. There is so little awareness around these kinds of issues, and if we're going to lobby this country to try to maintain a view of what sovereignty means in terms of these issues, then first we have to have some awareness.

The Vice-Chair (Mr. Don Davies): I take it you would like to see the Canadian government take a more robust position with the American administration in order to have this program scrapped, I suppose. Would that be your advice?

• (1720)

Ms. Micheal Vonn: Certainly that is ideal. I'm suggesting that we would be on a good footing, I think, with countries the world over who are facing these same dilemmas relative to the mobility rights of their citizens.

The Vice-Chair (Mr. Don Davies): Do you happen to know if the situation operates in reverse? Is Canada requiring American airlines to provide information about American citizens to Canadian airlines for any flights originating in the United States that may fly over or into Canadian airspace?

Ms. Micheal Vonn: I've never heard any suggestion that we have, or how it might be vetted if we were to do so.

The Vice-Chair (Mr. Don Davies): In preparing for this session, I pulled some articles. There was a very good article by Becky Akers from March 17, 2010, in the *Ottawa Citizen*. She points out in this article that at the U.S. government's behest, U.S. airlines have refused boarding to children, Cub Scouts, singer Cat Stevens, Senator Ted Kennedy, and Representative John Lewis, who is a Democrat from Georgia. These are the types of people who have been grounded as a result of the Department of Homeland Security and the U.S. Transportation Security Administration instructions.

Do you have any concerns that a list that is furnishing this information may be used for political reasons, in addition to security?

Ms. Micheal Vonn: We have those concerns, absolutely, and they're shared by our colleagues at the American Civil Liberties Union. The concern about political profiling, along with racial and religious profiling, is real. The people you described in that list very much echo the people who complain to us about Air Canada's domestic use of the U.S. list. They include librarians, pastors, and retired persons.

Yes, we are absolutely convinced that these people are not legitimate security threats that we're dealing with. When they're not false positives, we have recourse to these other kinds of profiling that we're concerned about.

The Vice-Chair (Mr. Don Davies): Madame Bernier, I believe you heard the testimony earlier when I was asking departmental officials about the original concerns of the Privacy Commissioner from June 2007. It was quite a litany of very serious concerns about the Canadian no-fly list and the program. One of the responses was that the Privacy Commissioner cleared the program in 2009, at least according to the officials. I may not be doing justice to the evidence that I heard, but that was my understanding.

Can you tell me if it is the current position of the Privacy Commissioner's office that the Canadian no-fly list and this program are fine as far as you're concerned?

Ms. Chantal Bernier: No, I can't, because we have never analyzed it in its entirety. We still have outstanding issues. One of the first paragraphs of the audit specifies its scope, and it's a limited scope. It is to ensure whether the personal information was properly and securely held.

However, as I've mentioned before, we consider that the effectiveness of the program is still an outstanding issue, that it needs to be addressed, that the authorities are accountable to justify it, and that if its efficiency is never demonstrated, then the privacy invasion it entails needs to be put in question.

The Vice-Chair (Mr. Don Davies): Thank you.

Go ahead, Mr. Rathgeber. You have seven minutes.

Mr. Brent Rathgeber: Thank you, Mr. Vice-Chair, and thank you to all the witnesses for your appearance and for your evidence here this afternoon.

Ms. Vonn, you indicated in the last round of questioning that you believe there is very little awareness among Canadians as to these deficiencies in this current system, as you describe them. Why do you believe that is the case? Why do you believe there is so little awareness among Canadians? Tens of thousands of Canadians fly every day. Why is there so little awareness?

Ms. Micheal Vonn: I'm referring to the fact that the U.S. no-fly list is going to be de facto imposed on Canadians for a raft of reasons and is in fact imposed now for various means. I suggest that the confusion we were seeing in this committee has to do with which list is which, and who's who, and what the Canadian no-fly list is. When these people are stopped, do we read about it in the newspaper? What does that mean? Is it Canada, the U.S., Liberia? Where is it from?

There is such a Byzantine complex of systems right now. I do not believe, and every radio call-in show that I've been on in relation to

this subject convinced me, that Canadians do not know what is going on.

● (1725)

Mr. Brent Rathgeber: Do you really believe it's a lack of awareness, or do you believe it's a lack of concern? What I mean by that is that Canadians don't share your concern, and I believe and would suggest to you that the vast majority of Canadians, when forced to form a balance between national security and individual security of airline traffic and their privacy rights will err on the side of caution and promote their security interests over their privacy rights.

Ms. Micheal Vonn: I would suggest there has been a shift away from that notion, which has been demonstrated through various studies after 2001. When you simply put it at privacy, you're right, but of course it's so much more than that.

We've been discussing, and I keep hammering on this notion—it's section 7—of the security of the person being stranded in a foreign country and not being able to get home, not being able to fly within your own country. We are not just talking—and believe me, I'm a privacy advocate—about privacy being minimized here. We are not just talking about privacy. We're talking about the most imperative security of the person you can imagine.

Mr. Brent Rathgeber: But certainly security of the person is also imperilled if one is on an airplane and another individual gets on that airplane carrying explosives. That, too, imperils the security of the person. You will agree with that.

Ms. Micheal Vonn: Absolutely.

No one is suggesting that appropriate, proportionate, efficacious security programs should not be employed on airplanes. There is now not one iota of evidence that no-fly lists are any of those things.

Mr. Brent Rathgeber: You talked about Canada's alleged threatened sovereignty—I'm paraphrasing you a little bit—and the legal vacuum that you believe is created by an inability to connect the dots between the legislation and the regulations. Am I more or less paraphrasing what you said?

Ms. Micheal Vonn: That's correct.

Mr. Brent Rathgeber: You're a lawyer, as am I. Are you familiar with the Chicago Convention of 1944?

Ms. Micheal Vonn: No, what is it?

Mr. Brent Rathgeber: It is a treaty to which Canada and the U.S. are signatories. I'm not an expert on international law, but I know from my perfunctory reading of the Chicago Convention of 1944 that 52 states plus Canada signed a treaty that's still in force today, which states that each country maintains sovereignty over its individual airspace but determines who can enter its airspace.

I know we have only a couple of minutes left, and we're not going to be able to get into a full international law debate, but you'll certainly agree with me that the ability to sign binding treaties is an aspect of the sovereignty of a nation.

Ms. Micheal Vonn: Oh, absolutely. No one is disputing that the issue here is not that. And as I've said, Canada has sovereignty over its airspace, as does the U.S.

What is being asked for is a complete reverse of what is the standard norm. And as I have said, none of these things ever rebalances in the other direction. We have only seen this go in the direction of increased securitization and militarization.

So insofar as we have never seen this enforced in this manner, we should be concerned, and we should use our sovereignty to suggest our displeasure.

Mr. Brent Rathgeber: Okay.

The last high-profile incident occurred just before New Year's, when an individual boarded an airplane in the Netherlands and flew over international airspace, probably over the airspace of either France or England, and landed in Detroit, thankfully without incident. And you all know the incident I'm talking about.

My question is to Mr. Tassé from the International Civil Liberties Monitoring Group. Yours is an international organization, and you know this is an international problem. It's not just Canadians who are forced to balance privacy rights against national security and security of individuals on airlines. Is there a model? Is there some other international model or some other country that is doing this better than Canada is, or are all the sovereign states dealing with an imperfect solution to a very serious problem?

Mr. Roch Tassé: In other countries, first of all in the U.K., I believe measures such as a no-fly list have been legislated, contrary to the situation in Canada, where it was put in place through the back door.

We're not an international organization. We're a Canadian-based organization.

• (1730)

Mr. Brent Rathgeber: I'm sorry.

Mr. Roch Tassé: So we know we need measures for security, but any measures for more security have to respect due process and the principles of fundamental justice. People have the right to know the evidence against them, and they have the right to have this evidence in order to defend themselves. There are no such mechanisms in the passenger protect program, and there are even fewer in the secure flight program.

If Canada plans to develop a new program to mirror the secure flight program to deal with this issue of sovereignty, we have to make sure it is legislated, that it is debated in Parliament, and that we hear the opinions of Canadians and the representatives of Canadians in this House, which has not been the case with the passenger protect program.

Mr. Brent Rathgeber: Okay, so you're a Canadian organization but you monitor international civil liberties?

Mr. Roch Tassé: Yes.

Mr. Brent Rathgeber: Is there a country that has that right, based on your monitoring?

Mr. Roch Tassé: To the extent that it's legislated and meets the principles of fundamental justice, that could be acceptable.

Mr. Brent Rathgeber: What country could I look at?

Mr. Roch Tassé: There are probably no models. Even the U.S. secure flight program, even the domestic.... It was legislated in

Congress, but in my opinion it does not meet the requirements of fundamental justice.

Mr. Brent Rathgeber: Right. Thank you.

The Vice-Chair (Mr. Don Davies): Thank you.

And thank you for ending right on the seven-minute mark, Mr. Rathgeber. Well planned.

Mr. Brent Rathgeber: I'm not that efficient.

The Vice-Chair (Mr. Don Davies): On behalf of all the members of the committee, I'd like to express our appreciation to all the witnesses for their very helpful testimony. Thank you again.

[*Translation*]

Mrs. Maria Mourani: Mr. Davies, given all the work we have accomplished today, given the fact that we met with these people and the people from the RCMP, the Department of Transportation and Public Safety, I believe we must send a brief report to the House, as we intend to do with regard to the issue concerning female inmates. I think this is fundamental. This issue shows there are major weaknesses and breaches with regard to Canada's sovereignty and human rights. It is essential that we write a report on the matter.

The Clerk of the Committee (Mr. Roger Préfontaine): Is that a motion?

Mrs. Maria Mourani: Yes. We can do this in a friendly way, otherwise I will make a formal motion.

[*English*]

The Vice-Chair (Mr. Don Davies): Before I hear from Mr. McColeman, might I consider that to be a notice of motion? And then we would be prepared to consider that at the next appropriate meeting.

[*Translation*]

Mrs. Maria Mourani: Yes, this is a motion.

[*English*]

The Vice-Chair (Mr. Don Davies): The chair will accept it as a notice of motion.

Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): I note that on the notice of meeting this was a briefing. And this was, again, pre-determined in our scheduling process as we came back into session. Certainly this briefing today was very significant, but I don't think we'd be doing anyone any favours by making a report based on the little amount of time we have had to consider it and to listen to other people who would like to weigh in on it. Just to take what we have, a valuable but small amount of information, and write a report, to me, is not doing anybody any justice. This was a briefing, not a study.

The Vice-Chair (Mr. Don Davies): Mr. Kania.

Mr. Andrew Kania: Just briefly, that's argument for the motion. So if the notice of motion has been accepted for the next day, then I think we would discuss it fully then, wouldn't we?

Mr. Phil McColeman: Procedurally, if that's the right thing to do, I'm okay with it. But I'm not in agreement that we should be writing a report based on the briefing we had today.

The Vice-Chair (Mr. Don Davies): I'm going to agree with Mr. Kania that it's a notice of motion.

Mr. McColeman, it may be a valid point of debate that may cause the committee to vote against the motion, but I don't think it goes to the validity of whether the motion can be made or not. So I'm going to rule that the motion is in order and encourage the members to bring those points to debate when it's appropriately moved.

•(1735)

Mr. Phil McColeman: Thank you.

The Vice-Chair (Mr. Don Davies): Seeing no further business before the committee, I declare the meeting adjourned.

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