



House of Commons  
CANADA

## **Standing Committee on Transport, Infrastructure and Communities**

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TRAN • NUMBER 036 • 3rd SESSION • 40th PARLIAMENT

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**EVIDENCE**

**Thursday, November 25, 2010**

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**Chair**

**Mr. Merv Tweed**



## Standing Committee on Transport, Infrastructure and Communities

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•(1105)

[English]

**The Chair (Mr. Merv Tweed (Brandon—Souris, CPC)):** Thank you, and good morning, everyone.

Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting number 36. Pursuant to our orders of the day, the order of reference of Tuesday, October 26, 2010, we are studying Bill C-42, An Act to amend the Aeronautics Act.

Joining us here today, from the Ligue des droits et libertés, is Dominique Peschard; from the International Civil Liberties Monitoring Group, Roch Tassé; and from the British Columbia Civil Liberties Association, Micheal Vonn.

We welcome you, and I've been told that you have been advised as far as the time limits for presentations are concerned, after which we'll go immediately to questions and answers.

I'm not sure if anybody has decided who wants to start first.

Ms. Vonn, please begin.

**Ms. Micheal Vonn (Policy Director, British Columbia Civil Liberties Association):** Thank you, Mr. Chair, and thank you to the committee for the invitation.

I am appearing on behalf of the British Columbia Civil Liberties Association to express our opposition to Bill C-42. Commissioner Stoddart has already done a commendable job of outlining the privacy concerns of Bill C-42, and stressing that once released, Canadian information will be broadly disclosed for a variety of purposes.

As important as the privacy issues are, I suggest that they are something of a red herring. In following the discussion on this matter, we have been dismayed that the subject of U.S. secure flight itself and the grave rights violations involved in the overall program have been so little touched upon.

The committee has heard, we suggest, endless iterations on the theme of the rights of U.S. sovereignty to its airspace, but disappointingly little about the rights of Canadian citizens. It is our submission that in enacting Bill C-42, Canada will be complicit in a no-fly regime that does not comport to the rule of law. We say that the U.S. secure flight program violates international law and that subjecting Canadians to the secure flight regime through the mechanism of Bill C-42 violates the Canadian charter.

What is proposed under Bill C-42 is that Canada supply passenger information to the U.S. in order that passengers may be granted or

denied permission to transit U.S. airspace on the basis of unknowable and unchallengeable criteria. Every country in the world is, of course, sovereign over its airspace, yet the innovation that is being contemplated by the U.S. is, to our understanding, without precedent and essentially stands to completely subvert the current practice of global traffic and trade.

As Monsieur Caron from the Office of the Privacy Commissioner alluded to, the freedom to fly over sovereign countries is enshrined in international conventions. It is indeed possible for sovereign states to make rules regarding transit, and U.S. secure flight rules to deny travel permissions on the basis of their watch lists may be one of them. However, the analysis does not stop there. Travel watch lists are an increasingly important discussion in the international community.

The B.C. Civil Liberties Association recently published a paper on the United Nations Security Council's resolution 1267 regime, which is a watch list for individuals and entities subjected to international travel bans and asset freezes. The B.C. Civil Liberties Association says that the UN watch list violates international law and the Canadian Constitution for failure to provide due process, also known as natural justice.

There is some variation in the requirements of due process in different contexts, but it typically involves the right to an independent and impartial arbitrator, the right to know the case against you, and the right to be heard. These are familiar elements of what is called due process and are understood by virtually everyone as elements of basic fairness. Such rules are at the heart of our own charter and of instruments of international law, such as the Universal Declaration of Human Rights, which, to provide one example, states that:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The 1267 watch list is created—and these elements will be familiar to you—on the basis of secret evidence. An individual listed has no opportunity to make the case before the 1267 committee prior to being placed on the blacklist, there is no mechanism to review the accuracy of evidence, there's only very limited ability to participate in a delisting request, and there is certainly no opportunity to present one's defence or assert one's rights.

•(1110)

This regime is under a strident attack, ranging from a resolution by the Parliamentary Assembly of the Council of Europe harshly criticizing this regime to the striking down by the Supreme Court of the United Kingdom of domestic legislation implementing the 1267 regime in that country for—exactly as we put it—failure to comport to the principles of natural justice.

In our opinion, Canadian implementation of the 1267 regime is likewise a violation of both the Canadian charter and the Bill of Rights. This is relevant to our discussion of U.S. secure flight, because that program is even more devoid of due process protections and the rules of fundamental justice than the 1267 regime is.

Let me attempt to bring some clarity to this matter. I'm reading some of the proceedings, and there appears to be some confusion.

Canadians attempting to travel to many destinations in Europe, the Caribbean, and South America will be prevented from doing so on the basis of a secret watch list of a foreign country, which provides absolutely no form of process or redress. The highly unsatisfactory process, which attempts to provide some recourse to the scandalous number of false positives on that list, is not a mechanism of redress for people who are “correctly listed”. Some of these “correctly listed” people will be familiar to you as Canadians who have no criminal record and have been exonerated of any links to terrorism or terrorist organizations. My colleagues will be discussing those in more depth. For such people there is no redress, no process, no remedy.

As I listened to questions regarding how Canada will assist Canadians who are denied boarding by secure flight, I have heard no credible plan for repatriating and protecting Canadian citizens who will be denied permission to return to Canada and endangered by the smear of terrorism involvement while vulnerable in a foreign country.

In short, a bill that is being touted as a safety measure not only enables a program that quite frankly can nowhere provide evidence—

•(1115)

**The Chair:** Excuse me.

Go ahead on a point of order, Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** I apologize, but I'm hearing a lot of words, and I just want a point of clarification. We've heard “scandalous number of false positives”, “no process, no remedy”. I understood that there was an appeal process, first of all, for the U.S. system.

I haven't heard actual numbers, and I'm wondering if instead of using all these descriptive words, she could maybe give us some numbers on the false positives and things like that. It's just a point of clarification. It would be helpful.

**The Chair:** That's not a point of order. I'll ask the witness to continue, please.

**Ms. Micheal Vonn:** Thank you.

In short, a bill that is being touted as a safety measure not only enables a program that can nowhere demonstrate evidence support-

ing the claim that it demonstrably improves aviation safety, but it will also clearly be actively endangering the security of Canadians abroad.

As the Supreme Court of Canada has said in the Charkaoui decision, a process that may bring with it the accusation that one is a terrorist could cause irreparable harm to an individual.

We say that Canada must not be complicit with a program that defies the rule of law. The argument that purported security trumps all other constitutional considerations has no merit. There will always be a necessary weighing and balancing. The Supreme Court of Canada again said, in *Charkaoui v. Canada*, that “...security concerns cannot be used to excuse procedures that do not conform to fundamental justice at the section 7 state of the analysis”, meaning the section 7 analysis in the charter.

Fundamental justice is not an enemy of security; in fact, there is no security without fundamental justice. We urge Canada to work with our international partners to come to an agreement on aviation security programs that respect the rule of law.

Countries the world over are grappling with these issues. Secure flight represents what we believe is an unprecedented alteration of global travel, with vast implications for travel, trade, and tourism. The international community needs to be engaged.

As you will recall, Canada was not supposed to be in this position. We were harmonizing our security measures, and the development of our own no-fly list was supposed to prevent the imposition of the U.S. list. The pattern is very clear: the exemptions do not last. Obviously the next exemption will be to rescind the exception of Canadian domestic overflight.

The time to act is now.

Thank you very much.

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

Monsieur Tassé is next.

[*Translation*]

**Mr. Roch Tassé (National Coordinator, International Civil Liberties Monitoring Group):** First I would like to thank committee members for inviting us to discuss our concerns about Bill C-42. If this bill is passed, it will enable the authorities of a foreign country to decide in an arbitrary and discretionary manner who may board an aircraft, and to do so for the majority of international flights entering and leaving Canada.

In view of the many comments by travellers who have been prohibited from flying since the Secure Flight program has gradually been put in place in recent months, we can expect that, with the passage of Bill C-42, we will be seeing an increasing number of Canadians and visitors to Canada literally grounded, with no recourse or remedy, even though they have no intention of travelling to the United States.

[English]

Under the final rule of the international component of secure flight published in late October of 2008, airlines are required to transmit all passenger information to 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 basic API information, such as name, gender, and date of birth, but also all information contained in the reservation system known as PNR, or passenger name record.

After running a risk assessment for each passenger using data mining technology, 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 an enhanced screening requirement. 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. Furthermore, this information can be shared among at least 16 U.S. agencies and with foreign governments. 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, the Caribbean, and South America overfly American airspace.

Let me quote from an internal Public Safety Canada document obtained by The Canadian Press and dated January 26, 2009:

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.

During debate on second reading, Liberal MP Joe Volpe said, “This bill is a total abnegation of our sovereignty responsibility.” He is absolutely right. None of us in this room, even respected members of the Canadian Parliament, will be allowed to fly virtually anywhere in the world without the explicit consent of the United States. It creates the very real possibility that the charter rights of Canadians and their right to privacy will be violated by the legislation of a foreign country without Canada's being able to defend those rights.

We know that Maher Arar is on the U.S. no-fly list. Several other cases in which Canadians have been denied boarding by the U.S., even for domestic flights in Canada, have also been reported. Those cases include several individuals who have been deemed by Canadian courts and commissions of inquiry not to pose a risk to the national security of Canada. They include Abdullah Almalki, Adil Charkaoui, and others I could talk about later. If Bill C-42 is adopted, even the rulings of Canadian courts won't be able to be enforced.

There are other concerns related to Canada's sovereignty. For example, half the cabinet members of the Bolivian government are *persona non grata* in the U.S., so if Canada were to invite one of those ministers for a diplomatic meeting in Canada, the U.S. could bar this minister from boarding a plane to attend the meeting at the invitation of Canada. The same could apply to refugee claimants,

who, even if admitted by Canada, could be denied the possibility of leaving their country by the U.S.

Other impacts on refugees and immigrants include the possibility of mistreatment abroad by third countries with whom the U.S. might share travel information. By adopting Bill C-42, Canada could become an accomplice in the U.S. rendition program, which is already responsible for the torture of Canadians in Syria and Egypt, among others. At the very least it would support Canadian complicity in a foreign government's program that violates due process and the principles of natural justice.

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

● (1120)

There are also serious concerns related to the huge number of passengers who are intercepted on false positives and who have no redress mechanism other than being told to change their names.

ICLMG has received testimony from many Canadians who have been intercepted as false positives on the U.S. list in Canadian airports and who have been told by Homeland Security that the redress mechanism known as TRIP could not apply to them because the incident did not occur on U.S. territory. Even if TRIP did apply, there is still no redress mechanism whatsoever if you are the real person on the no-fly list.

As you can see, the U.S. secure flight program will have a very harmful impact on Canadian travellers and on visitors to Canada. We call on you to oppose these measures. Canadians expect their government to protect the sovereignty of their country and uphold their rights. The rule of law and the charter of rights of Canadians cannot be sacrificed at the altar of short-term commercial interests.

● (1125)

**The Chair:** Go ahead, Monsieur Peschard.

[Translation]

**Mr. Dominique Peschard (President, Ligue des droits et libertés):** First I would like to thank committee members for this invitation to testify on Bill C-42. The Ligue des droits et libertés was founded in 1963 and is a member of the International Federation for Human Rights.

I would like to begin this presentation with two examples that clearly illustrate the consequences of a traveller monitoring system such as the Secure Flight program. My first example is that of Hernando Calvo Ospina, a Colombian journalist living in France. On April 18, 2009, Mr. Ospina was travelling to Nicaragua via Mexico for *Le Monde diplomatique*. Five hours before Air France's Paris-Mexico flight was scheduled to land, it was diverted to Fort-de-France, Martinique. The captain informed the passengers that the United States had not authorized the aircraft to fly over the country because one of the passengers constituted a threat to national security. Unknown to him, Mr. Ospina was on the United States' no-fly list. Mr. Ospina is a regular contributor to *Le Monde diplomatique* and has written a number of articles criticizing U.S. foreign policy and the CIA's role in Latin America. Mr. Ospina's prohibition has nothing to do with air security. The flight's co-pilot even went to see Mr. Ospina during the flight to verify that he was indeed the person targeted by the prohibition. In Mexico, Mr. Ospina was briefly questioned by Mexican authorities before taking another flight to Managua.

Another case I would like to discuss is that of Paul-Émile Dupret, a Belgian citizen who is an analyst for the European Parliament and who has conducted a campaign opposing the transfer of European travellers' personal information to American authorities. As his flight was on route to Mexico—his final destination was Sao Paulo, where he was travelling to attend the World Social Forum—the aircraft had to circumvent the United States because U.S. authorities were not authorizing Mr. Dupret to fly through American airspace.

These individuals clearly do not represent a threat to air security, and individuals like Mr. Ospina and Mr. Dupret could very well have been Canadian journalists or public servants travelling to Latin America.

As my colleagues before me mentioned, the Secure Flight program could have even more serious consequences. A number of Canadian citizens, such as Messrs. Arar, Almalki, El Maati and Nureddin, have been deported to places where torture is practised, or have been arrested and tortured in Middle Eastern countries based on false information transmitted to those governments. Canadian citizens who are originally from countries like Syria will, if their aircraft fly over the United States, be completely at the mercy of information that those countries would be able to forward to their destination country.

Lastly, with regard to the personal information that will be disclosed under the Secure Flight program, it is an illusion to believe that the information gathered will be protected and used solely for air security purposes. In July 2010, the *Washington Post* published a series of articles that painted a striking picture of the security structure that the United States put in place after September 11, 2001. The *Washington Post* surveyed 1,271 government agencies and 1,931 companies operating in the fields of counter-terrorism,

intelligence and territorial security. Of that sample, 850,000 persons, 265,000 of whom work in private enterprise, have access to information that has a "top secret" security rating.

In 2004, the Intelligence Reform and Terrorism Prevention Act established the Office of the Director of National Intelligence. The main purpose of that office is to improve intelligence sharing and to integrate it into the national intelligence program framework, which comprises 17 U.S. agencies operating in the intelligence field. The best known are the CIA, the Department of Homeland Security, the Defence Intelligence Agency, the FBI, the NSA, the armed forces, the Coast Guard and on. This enormous structure operates like a black hole that sucks in all information available to it but from which nothing can escape. It is an illusion to think that the information provided under the Secure Flight program will be protected, that it will be destroyed or that it could be corrected in the event of any error. On the contrary, that information will be added to the data bases of the U.S. intelligence agencies and will be compared with information held by all the agencies I've just mentioned to determine whether such and such a person should be prohibited from flying over the United States or even placed on another list.

• (1130)

Experience with the anti-terrorist surveillance list, which consists of approximately one million names in the United States, and with the no-fly list, which contains tens of millions of names, has shown that the names of thousands of innocent persons appear on those lists, and there is no recourse mechanism.

The United States has an insatiable appetite for new control measures that it wants to impose on the entire planet. In January 2010, the Secretary of the Department of Homeland Security, Janet Napolitano, addressed the International Air Transport Association. She called for greater cooperation by airlines and public authorities in four areas: information gathering and analysis, an increase in shared training, greater cooperation in passenger screening, higher security standards and the deployment of new technologies such as body scanners. Ms. Napolitano has made the same requests to the International Civil Aviation Organization.

Since September 11, 2001, numerous measures have been put in place by regulation in Canada in the name of security, such as the Passenger Protection Program through the Smart Border agreement. These measures were taken without public or parliamentary debate and have had the effect of undermining Canadians' rights and freedoms, without the individuals whose rights are violated having access to any recourse mechanisms.

Justice O'Connor's investigation of the Arar affair has shown to what extent the ill-considered sharing of information can have harmful effects. Four years after Judge O'Connor's report was tabled, we are still waiting for implementation of his recommendations for the introduction of a mechanism for monitoring security intelligence activities in Canada.

Bill C-42 raises some fundamental issues about Canada's sovereignty and the protection of Canadians' rights and freedoms. The Parliament of Canada has a duty to defend those rights, rather than submit to the United States' endless demands allegedly in the name of security. Canada should play an international leadership role in putting in place air security systems that are consistent with the rights recognized in the Canadian charter and international law.

Thank you.

[*English*]

**The Chair:** Thank you.

Go ahead, Mr. Byrne.

**Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.):** Thank you, Mr. Chair, and I thank the witnesses for their thoughtful presentations.

The committee is deliberating on two very important issues. One is the essence of preserving privacy while at the same time ensuring commerce, the well-being of the economy, and the ability of citizens to make informed consent. I'd like the witnesses to comment on this, Mr. Chair, if they could.

We're competing with an idea here. Citizens are aware that certain aspects of their personal information will indeed be conveyed to a foreign jurisdiction, yet they willingly choose to take that flight, knowing that it is a matter of law and a matter of a requirement by a foreign state exercising its rightful sovereignty. We've heard as a committee that it is indeed the sovereign right of the U.S. to require this information before allowing access to their airspace. In the interests of the Canadian citizens who would be involved, if they knowingly make this decision to board an aircraft knowing that this information will be conveyed, doesn't that imply informed consent? How does that meet with the tests or standards you described?

Ms. Vonn, could you begin?

**Ms. Micheal Vonn:** If we're going to move to consent, part of the problem with this notion is that you really have not had very many opportunities to do anything else in attempting to enact your mobility rights to move around the globe freely. If you haven't had due process and the rules of fundamental justice have not been engaged to deny you that right, the problem here is simple: if we make it known that you will be subject to a regime that my organization says does not comport to the rules of fundamental justice, saying that you have informed consent is a deeply problematic notion.

I appreciate that the idea of informing the public about what is going on is very important, but strictly speaking, I don't know that we've managed to elude the problem by simply giving information when the alternatives are really virtually negligible.

• (1135)

**Mr. Dominique Peschard:** Could I add a comment? It's very hard to know what we're giving consent to when you don't have any control over what the United States will do with that information.

From the previous testimony, including that of Commissioner Stoddart, and from my description of how the intelligence apparatus works in the United States, it's quite clear there are no guarantees to what use this information will be put and whether it can be corrected

or if it will be destroyed. The normal guarantees that should be in place when you give consent are not in place in this case.

**Mr. Roch Tassé:** I didn't notice that requesting consent would have to be so transparent, to say you're waiving all your rights and there's nothing Canada can do if you run into trouble. That's the only real transparent consent that would be required.

**Hon. Gerry Byrne:** However, wouldn't there be rules through the United Nations, who are signatories to certain conventions? And also, the actual U.S. law itself, if I'm not mistaken, does provide at least some legal basis for the use of the data.

I reckon that when a Canadian makes a credit card purchase via the Internet, they're never completely certain whether they're making that transaction in good faith. There is a certain amount of risk there. I know it's an extreme example, but I'm trying to test out the logic of the argument.

**Ms. Micheal Vonn:** I would just say, again, that I'm trying to move away from the notion of the privacy issue being in the forefront here. We do know exactly what this information is being used for. It's being used to vet Canadians or other passengers from Canada against a watch list that provides no form of redress. That's what we're trying to stress here.

The point is that you don't engage in a process whereby there is no form of redress, no means of understanding how you land on the list or get yourself off—none.

**Hon. Gerry Byrne:** Okay.

Mr. Chair, I'll switch my time to Ms. Crombie, if that's okay.

**Mrs. Bonnie Crombie (Mississauga—Streetsville, Lib.):** Thank you so much.

From your presentation, I see Bill C-42 as an example of U.S. Homeland Security extending its tentacles into Canadian sovereignty, and I see it as more extra-territoriality and abrogation of Canadian civil liberties. So I think we're all seeing the same thing.

What redress mechanisms exist for persons who are deemed inappropriate to fly over U.S. airspace?

**Ms. Micheal Vonn:** None. We're not aware of a single redress mechanism. We're trying to provide some clarity because we've heard about a mechanism, and as my colleague, Mr. Tassé, was pointing out, that mechanism has been instituted in the case of false positives. For example, you may recall a high-ranking member of the Canadian military who was on the U.S. no-fly list; that would be Bill Graham. We assume that was a false positive. At the time, we understand there was no mechanism, even for that. It was diplomatic channels that were employed there.

There is a mechanism now if you are the wrong Bill Graham, as we assume our Bill Graham was. But if you are the right Bill Graham, there is no mechanism. There is no way to know what the case against you is. There's no way to speak to it. There is no way to get yourself home to Canada if you cannot find a flight that is willing to take you over that airspace or find an alternative flight if you cannot. That is our point.

**Mrs. Bonnie Crombie:** Thank you.

Are there any other jurisdictions that have instituted this type of legislation? Are there countries, other than the U.S., calling for access to passenger lists if you fly over their airspace?

**Ms. Micheal Vonn:** We're not aware of any. We believe this is unprecedented. It's part of what has constituted this conundrum we're in and why it has received such pushback from the European parliament. Our colleagues in Europe have been calling for a review of exactly this kind of purported sovereignty over airspace and how it impacts international travel.

• (1140)

**Ms. Bonnie Crombie:** Surely they must have the same concerns over security as the U.S. would.

How long can the information be retained and what purpose—

**The Chair:** Ms. Crombie, I can come back to you in the next round. I'm sorry.

Monsieur Guimond.

[*Translation*]

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

Thank you for your presentations.

Earlier this week, on Tuesday, we met with Nathalie Des Rosiers, who submitted some proposed amendments to the committee.

I'm going to ask you three for some quick answers to my question. Even though you don't expressly say so in your presentations, I don't believe you're recommending that the committee amend the bill. Am I mistaken in thinking that you're simply asking that Bill C-42 be withdrawn?

**Mr. Dominique Peschard:** Yes, you've correctly understood. We're asking—and I can speak for my colleagues as well—for the withdrawal of Bill C-42, An Act to amend the Aeronautics Act. In reading Ms. Des Rosiers' presentation, I see that she says in her final remarks that her first choice is withdrawal of this bill.

**Mr. Michel Guimond:** She told us she had provided the clerk with amendments, but I have yet to see them. Would the purpose of the amendment be to withdraw Bill C-42? I don't know.

Mr. Chairman, will the clerk be sending us the amendments that Ms. Des Rosiers was to submit to her? We haven't received copies of them.

[*English*]

**The Chair:** I'm advised that we haven't received any as of yet.

[*Translation*]

**Mr. Michel Guimond:** Mr. Tassé, is your approach the same?

**Mr. Roch Tassé:** Yes. We believe the problem is political and diplomatic. Canada must resume negotiations together with its international partners, especially the Europeans who are also hampered by this situation. Canada is even more affected by the Secure Flight program than Europe. So it should exercise leadership, convene its partners and resume negotiations with the United States.

I know you're going to tell us that there are only a few weeks left before the Secure Flight program is implemented. We've nevertheless known for three years that this was coming. So Canada could

have exercised its leadership at the international level to negotiate even harder with the Americans. There is still time to do that. I believe the Europeans are very much open to that kind of partnership.

**Mr. Michel Guimond:** Ms. Vonn?

[*English*]

**Ms. Micheal Vonn:** I'm sorry, we cannot recommend any amendments. Simply put, even if we managed to change the number of data elements or we managed to change the potential retention period, or did any of those things, we are still subjecting Canadians to a regime that we say does not comport with the rules of fundamental justice. That cannot be amended through this bill.

[*Translation*]

**Mr. Michel Guimond:** Mr. Tassé, you emphasize the international nature of the flight prohibition. However, perhaps Canada shouldn't be leading the charge alone. It has a leadership role, but there need to be supporters. The European Union will also oppose this.

**Mr. Roch Tassé:** That's exactly what I said, Mr. Guimond. We have to develop a partnership, talk to our international partners and negotiate with the United States together.

**Mr. Michel Guimond:** In what forum should this issue be addressed?

**Mr. Roch Tassé:** I assume there will have to be numerous forums where the Canadians speak to the Europeans. We're negotiating a free trade agreement with Europe right now. A lot of committees are meeting. That's one example, but there are others.

• (1145)

**Mr. Michel Guimond:** Mr. Peschard, you talked about a Colombia journalist whose flight was diverted to Fort-de-France. I found that example astounding. People have wound up in Middle Eastern countries and have been tortured.

The fact is that, when you go somewhere, at some point you want to go home.

**Mr. Dominique Peschard:** First, to answer the question you asked me earlier, I would point out that there is an international UN forum on aviation issues. It is the International Civil Aviation Organization. That's the appropriate forum.

Furthermore, the names of known individuals who have been detained and tortured on the basis of false information have already been mentioned: Messrs. Arar, Almalki, Abou El Maati and Nureddin. Many Canadians originally from Middle Eastern countries are rightly afraid to go through the United States. They might feel safe taking a direct flight from Canada to Europe to get to the Middle East. However, if information about them were forwarded to American authorities, those authorities might let them travel but might provide information harmful to those individuals to countries where there is no rule of law, to Syria, for example. The consequences for those individuals could be very serious. In Canada, that kind of system would therefore constitute a threat to innocent people such as those I just mentioned.

[*English*]

**The Chair:** Mr. Davies.



**Mr. Don Davies (Vancouver Kingsway, NDP):** Thank you, Mr. Chairman.

While listening to the testimony, I was sort of writing down a summary, and this is what I've written down.

Bill C-42, if passed, will restrict our citizens' travel rights; it will offend Canadians' rights to privacy; it will quite likely contravene Canadian court decisions, including those of the Supreme Court of Canada; it will violate democratic principles, as Canadian citizens have no way to influence U.S. government policy to which we will effectively be subject; it will effectively cede to a foreign government, namely the United States, Canadian control over where Canadians can travel; it will violate our sovereignty; it will conceivably impair our diplomatic activities and conduct of foreign affairs.

Is that a fair summary of what you would see as the effects of Bill C-42 if it were to pass?

**Mr. Roch Tassé:** For the record, yes, it is.

**Mr. Don Davies:** For over half a century, Canadians have been travelling over U.S. airspace without having to suffer a violation of their rights to control their private information, without being forced to send their personal information to U.S. authorities and to ask for permission from the American government if they want to travel to Mexico, Cuba, or South America.

In that time, in over 50 years, the security record of Canadians travelling over U.S. airspace, to my mind, has been about as close to 100% as you're going to get.

Is there any factual basis to justify this legislation?

**Ms. Micheal Vonn:** I can answer that. This is something that the Privacy Commissioner of Canada has also alluded to. There is no empirical evidence that no-fly lists advance aviation security at all. There is no evidence of that.

If you think about the logic of this, what you're suggesting is that some people are too dangerous to fly, but simply are not too dangerous to arrest, even on the grounds of conspiracy or anything else.

It's a deeply problematic notion, and there has been no evidence that it actually does what it says it does. We've raised this issue, and various other people have raised this issue, time and time again.

When you ask yourself what this kind of program is good for, it's good for surveillance and control of where people may go, but there is no evidence anywhere that we have been able to find or indeed that anyone who we've asked has been able to find—and that includes the Government of Canada relative to its own no-fly list—that this substantially increases aviation security.

• (1150)

**Mr. Don Davies:** Specifically with respect to Canadians, if we go from Ottawa to Cancun or from Vancouver to Havana or anywhere in South America, we've been doing that for 50 years. There have been millions and millions of flights with millions and millions of Canadians.

Has there been one example—one—in all that time of a Canadian citizen travelling, touching U.S. airspace, and presenting a security problem in the United States that you're aware of?

**Mr. Roch Tassé:** There has not been to our knowledge. There was one incident over Quebec in the 1950s.

**Mr. Don Davies:** This is my last question. This government abolished the mandatory census this summer because they thought the state had no business asking Canadians to furnish information to them about how many bedrooms they have in their house, yet with this legislation, if I understand it, the government wants to have Canadians' information about dietary restrictions and medical restrictions, along with their e-mail address and where they're travelling to, sent not only to the state but to a foreign state.

Do you see any contradiction in that apparent desire to protect privacy, on one hand, and then give it away with such drastic consequences as maybe restricting Canadians' rights to travel wherever they want to in the world?

**Ms. Micheal Vonn:** Certainly, as a privacy violation, if we consider this on the basis of the potential consequences for the person involved, it could hardly be more dire than the situation that's facing us in Bill C-42.

**Mr. Don Davies:** Now, if Canadians are on this no-fly list—and we've already talked about the fact that you get on an American list—am I understanding this correctly that a Canadian may effectively be grounded and may not be able to travel where they want to in the world because of a decision made by a foreign government?

Also, that government may share that information with other states as well. So I don't know where that information goes in the world. It could be shared with Israel, Syria, Egypt, Britain. Is that correct? Is that one of the consequences of this bill that the Conservatives want us to pass?

**Ms. Micheal Vonn:** I believe that is correct. Certainly not only have people's liberty been impacted, but the aspect of their liberty that constitutes their ability to maintain their living, depending on where they're living, has also been imperilled on some occasions.

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

**Mr. Brian Jean:** Clearly we're enabling U.S. legislation that imposes obligations on people who are travelling in their airspace. It has nothing to do with Canadian law and putting a law in place that requires Canadians to do that.

**The Chair:** I'm sorry, that's not a point of order.

Please continue.

**Mr. Don Davies:** Thank you, Mr. Chairman.

So we have no security basis for this. We have no examples of any problems to fix, but we're talking about ceding massive control to foreign governments over something as vital as Canadians' right to travel where they want. And we can't even demonstrate that there's a problem to address.

Do I have that correct?

**Mr. Dominique Peschard:** I think that's a very good description. I don't think there is any proof, as has been mentioned, that these measures are necessary for air travel security. By accepting this legislation, Canada is saying we can't guarantee as a state that we can ensure the safety of our aircraft. We have to grant a foreign power the right to decide which people can board the planes. There's no historical proof that Canada has not been able to ensure the safety of its aircraft and has not assumed this role responsibly. So there's no justification.

It's not just a question of American sovereignty; it's a question of Canadian sovereignty. The sovereignty of the United States to ensure security does not extend to its capability of violating the rights of citizens of other countries. It's an international right to be able to leave your country and return to it, so this right cannot be violated with impunity by the United States, and we cannot accept that.

**Mr. Don Davies:** Do you know if there has been any attempt by the Canadian government to simply say no to the U.S. government—to say we're not willing to cede our sovereign control over our own citizens' right to travel, and we have to look for other ways to do this?

Do you have any information that the Canadian government has taken that position to defend Canadians' sovereign rights?

• (1155)

**Mr. Roch Tassé:** All we have in the case of ICLMG is correspondence exchanged with two or three ministers of transport in the last three years, and all have said the same thing: "We negotiated as much as we could and got an exemption for domestic flights."

That's all we know. You've heard that in this committee as well.

**The Chair:** Thank you.

Ms. Brown.

**Ms. Lois Brown (Newmarket—Aurora, CPC):** Thank you, Mr. Chair, and thank you to our witnesses for being here.

International law recognizes that a country has governance over its own airspace. Do you agree with that?

**Ms. Micheal Vonn:** Yes. I alluded to that a few times in my presentation.

**Ms. Lois Brown:** Yet you said in your presentation—and I think I'm quoting you correctly—that Bill C-42 violates international law. To me those two statements are diametrically opposed. On one hand, you agree that America has the right to govern its own airspace, yet you present to the committee that Bill C-42, which is complying with what the United States has the right to ask, violates international law. To me that seems like the two are diametrically opposed.

You also said that it violates the Canadian charter, and you're dismayed that there are grave violations, yet you say the U.S. has the rights to its own airspace.

I know that my colleague earlier was talking about the history of Canada, and that we've been able to fly over the United States for 50 years. But regardless of the history we have—and it's been a good history with our American neighbours—laws change and circumstances change. Since 9/11 we have seen America doing what it

needs to do in its own airspace, in its own territory, to protect its own citizens. They have the right to do that, do they not?

**Ms. Micheal Vonn:** I'm very, very happy to address the confusion you have flagged.

**Ms. Lois Brown:** Well, hold on just a moment. I want to read something here. In 2001, we had a then Liberal minister of transportation. It was Minister Collenette. I want to quote him. He said:

...[U]nder the Aeronautics Act, carriers are obliged to operate under the legislation of another country once they enter its airspace. Any sovereign state, whether the U.S., Britain or anyone else around the world, has a right to know who is coming into its country, whether by land, sea or plane.

In 2008, we learned, as did the rest of the world, that the United States was going to require this same information of anyone flying over its airspace, which we agree they have the right to do, because they govern their own airspace.

If I could just go to Mr. Tassé, if I may, you said that visitors to Canada will be stuck on the ground. I don't understand why that would take place. If someone flying from Europe enters Canada, and they want to return to Europe, I don't understand what the challenge would be. Why would they be stuck on the ground?

**Mr. Roch Tassé:** I was referring specifically to the real people who may be on the U.S. no-fly list.

**Ms. Lois Brown:** How many are there? Can you give us numbers?

**Mr. Roch Tassé:** The numbers have fluctuated in the U.S. In newspapers we've had figures of 70,000 names. We're not talking about false positives. We're talking about the real people who are on no-fly lists.

**Ms. Lois Brown:** Mr. Chair, if I may ask, could our witnesses present those numbers through the chair to the committee? I think that's very important to this discussion, and I would appreciate receiving that kind of information.

The other comment that was made, Mr. Tassé, is that it gives a foreign government, and I think I'm quoting you correctly here, the de facto right to decide who can fly to and from Canada. Why would that be the case? If people from Britain want to fly to Canada, how does that impede them? They're not flying over American airspace to get to Canada. How would that impact someone coming from any other jurisdiction, particularly Europe?

I understand that there's airspace over Hawaii and there's airspace over Alaska that belongs to the United States, so coming from that direction could be a challenge. But how is that going to impact them? How many people travel to the U.S. every year from Britain or other places, and how many of them fly through Canada?

• (1200)

**Mr. Roch Tassé:** Approximately 80% of flights between Canada and Europe fly over the United States. Most flights in Montreal have to circle the airport and go over U.S. territory. So all these flights would have to share information with the U.S. Somebody from Britain or France or Geneva would have to get the permission of the U.S. before leaving to come to Montreal.

**Ms. Lois Brown:** Okay. If you could provide those numbers to us, I think that would be very interesting.

**Mr. Roch Tassé:** These numbers were confirmed to us by the airline industry.

**Ms. Lois Brown:** Of course, the other question you talked about was refugees who are coming to Canada. I don't understand why they would be going through the United States to come to Canada. If they're coming to Canada, don't they usually come directly to Canada to claim refugee status?

**Mr. Roch Tassé:** People from all parts of the world coming to Canada have to fly over the U.S. Latin America is an example. We know that the standards in the U.S. for recognizing refugee status are way lower than Canada's. So Canada could recognize a legitimate refugee claimant from Colombia, and the U.S. would say that this person will not board a plane to go to Canada.

**Ms. Lois Brown:** What part of American sovereignty, then, are you not recognizing?

**Ms. Micheal Vonn:** May I answer the questions that were directed to me, please?

Certainly, as I say, there seems to be some confusion here. The notion that a country is sovereign over its territory cannot be confused with other aspects of international law, and other aspects of international law include the right to fundamental justice. Within your space—

**Ms. Lois Brown:** Ms. Vonn, if I may say—this is my seven minutes, I think—the fact of the matter is that people have a choice. They have the choice to not travel. They have the choice to not fly at all. If that is a personal choice an individual makes, he or she is respecting American sovereignty over their airspace. They can make the choice not to go. But what you're doing is precluding me from being allowed to go there if I choose to give the information. And as a person who has already gone to the effort of obtaining my NEXUS card, I have already willingly provided my personal information to them, in the same way that we had to provide our passports.

There was a great hue and cry when the American government said that Canadians coming across the border were going to have to provide passport documentation. And now my dad, who's 91 years old and no longer carries a passport, cannot go with me to Vermont to visit my daughter, who is currently a resident there—

**The Chair:** I have to stop you there, Ms. Brown. I'm going to give Ms. Vonn an opportunity to answer.

**Ms. Micheal Vonn:** Thank you.

The idea that international law recognizes nothing but sovereignty is a grave error. International law requires that sovereignty be exercised in conformity with the rules of fundamental justice. As a sovereign nation at international law, you are not allowed to subscribe to any arbitrary regime that you wish. International law requires that you comport with certain standards.

If the exercise of U.S. sovereignty enacts a regime that does not adhere to international legal standards, which is what I am saying, then they are in breach of international law regardless of their sovereignty. Canada's enactment of a bill complicit in this breach is going to be challenged through the Canadian courts on the grounds of both international law and the charter. That is my clarification.

**The Chair:** Ms. Crombie.

**Mrs. Bonnie Crombie:** I thought Mr. Davies hit the nail on the head when he said that the government believes it's intrusive to ask citizens to submit basic information about themselves in a census, yet it is willing to allow a foreign government access to more detailed information about its citizens—their addresses, medical conditions, dietary restrictions and preferences, e-mails, and frequency of travel. Do you see this as a bit ironic?

•(1205)

**Mr. Dominique Peschard:** It shows that the information required goes beyond the need for security. When people want to go to the United States, it's quite normal that the United States have proof of their identity.

But why do you need all this information on people who over-fly the United States? The reason is that it's part of an immense information-gathering process that is going on through the different agencies of the United States, in which information ends up in banks, in data mining, and in putting people on lists.

**Mrs. Bonnie Crombie:** How long can this information be retained, and for what other purposes can it be used?

**Mr. Roch Tassé:** I believe the Privacy Commissioner has already answered that. Right now the retaining period is seven days. Within minutes, once the information is in TSA, it can be shared with a whole spectrum of agencies. By the time the TSA raises it, the FBI and 16 other agencies have this information in their databases.

**Mrs. Bonnie Crombie:** I thought it was 7 to 99 days, up to three months.

**Mr. Roch Tassé:** It depends. If you're the real person, it's 99 years. If it's a false positive, it's seven years. For a regular passenger who is cleared, it's seven days. But even seven days, in the computer age, is a long time. Before TSA erases your file, it can be copied by the 16 other agencies that are part of the Homeland Security system.

**Mrs. Bonnie Crombie:** If this legislation is passed, would it not impose an undue bureaucratic burden on the airlines to provide each country in its flight path with their passenger list and other information? Passenger lists aren't updated until the moment the plane is boarded and has taken off, right?

**Ms. Micheal Vonn:** I'm unable to speak to industry's burden on that score. Certainly, one of the things that has been raised has to do with required communications. If there are any difficulties, airline traffic grinds to a halt. So if the smoothness of those channels is interrupted, we can expect to see some difficulties.

**Mrs. Bonnie Crombie:** I'm sharing my time with Ms. Minna.

**Hon. Maria Minna (Beaches—East York, Lib.):** Is anyone else doing this kind of thing? Are European countries sharing this kind of information? Does this kind of legislation exist anywhere else that anybody is aware of?

**Mr. Dominique Peschard:** No, it doesn't. One of the issues that has to be considered is that the United States is setting a precedent with this system. If they can invoke their sovereign rights to set up a system like this, what prevents China, North Korea, or Iran from invoking the same rights?

You can imagine the kinds of rights violations it would lead to if this is set up as a model for a worldwide system.

**Hon. Maria Minna:** Yes?

**Ms. Micheal Vonn:** There are international conventions that have been signed onto, we believe, including—I'm sorry I didn't check this ahead of time—those that the U.S. has signed onto, that guarantee freedom to fly over sovereign nations. So our understanding is that the global travel regime has been very influenced by those and that this is unprecedented.

**Hon. Maria Minna:** Has the United States enacted similar legislation within its government to share U.S. flight information with any other country? Are they going to do the same for other countries? Do they have the same kind of legislation there now?

**Ms. Micheal Vonn:** Certainly I'm not aware of any at this—

**Hon. Maria Minna:** So it's only for inbound, but it is not to be shared. That's an interesting point. I don't mean with us, but not with anyone else, right? They don't have this kind of legislation in the U.S.?

**Ms. Micheal Vonn:** No. I'm not aware of any other country making a demand for that information.

**Hon. Maria Minna:** Do I still have time?

**The Chair:** You can ask one more question.

**Hon. Maria Minna:** There was one other question I wanted to ask, and maybe it's more of a statement; I'm not sure. The problem is that some people travelling will be afraid to take a flight. In a way, I think we are grounding certain types of people. So Canadians of certain races or with certain backgrounds will be too afraid, knowing that their name is on that list and that they could be picked out, either by a false positive or in any other way or for any other reason, if they were flying over the U.S.

Does this not also affect our race relations laws by indirectly creating a fear factor and a grounding factor for certain groups in our society?

• (1210)

**Mr. Dominique Peschard:** Yes, because these lists are not set up on the basis of factual evidence proved before a court of law against certain individuals, but on the basis of data mining and profiling. When you engage in this sort of process, obviously the profiling will be detrimental to certain groups of people.

**Hon. Maria Minna:** So our charter rights and race relations laws would also be affected very directly in this case. This is another interesting thing that I was thinking about.

The fact that the U.S. potentially could share this with other countries is another aspect. Do you know if anyone has done a constitutional test on this bill? Does it pass our constitutional muster? It seems to me that this bill probably wouldn't pass our constitutional rights if it were put to the test. Should it be referred to the Supreme Court? Has anyone thought about that?

**Ms. Micheal Vonn:** I hadn't thought about the notion of a reference, but certainly I was highlighting the 1267 regime, because there's very likely to be a court case on that matter. If we make the comparison, as I was attempting to do, between the constitutional issues engaged there—and, again, Canada is complicit because we have domestic legislation that implements it—and if that were to fail, then very clearly on the standard of comparison this bill would also fail.

**Hon. Maria Minna:** So maybe we need to do—

**The Chair:** I'm sorry, Ms. Minna.

**Hon. Maria Minna:** I'll come back to it.

**The Chair:** Monsieur Gaudet.

[*Translation*]

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

I have two or three brief questions. I'm going to put my first question to Mr. Tassé, who is at the International Civil Liberties Monitoring Group.

When the Americans decided on this program, did you complain to the U.S. Congress or Senate?

**Mr. Roch Tassé:** We are a Canadian organization. Secure Flight has been put in place in the United States solely for the United States, for the moment. We therefore did not intervene in the United States. The answer is no.

**Mr. Roger Gaudet:** So no one talked to the Americans when they put their program in place?

**Mr. Roch Tassé:** The American Civil Liberties Union is currently challenging Secure Flight in the United States within its own borders.

**Mr. Roger Gaudet:** I have another question. Do you think Canada has a list of malefactors, like that of the Americans?

**Mr. Roch Tassé:** The airlines currently have the list. They're the ones doing the surveillance.

**Mr. Roger Gaudet:** The Canadian airlines?

**Mr. Roch Tassé:** Yes, the Canadian airlines—Air Canada, for example. That's why they have not yet had to send the information to the United States, since they have the list. With Secure Flight, they won't have the list any more. They'll have to send passenger information to the Department of Homeland Security in the United States. It's the Department of Homeland Security that gives directives to the airlines, that determines whether such and such an individual may board the aircraft. Legally, this is the first time we're sending this information to the United States.

We also have a number of examples of people who have previously been intercepted in Canada, even on domestic flights, and who were told that they were on the U.S. list. So Air Canada is probably already sending information illegally to the United States, even though this bill has not yet been passed.

**Mr. Roger Gaudet:** Have you met the Europeans to discuss their decision? They don't seem to be much in agreement on this bill with regard to the American Secure Flight policy.

**Mr. Roch Tassé:** We haven't met with the U.S. government. However, we have partners in the civil liberties field with whom we constantly speak. There is considerable objection in Europe, even in the European Parliament. There is a lot of concern.

Earlier, in the same connection, I said that, if Canada developed a partnership with the Europeans, there would be a real chance that we could bring pressure to bear on the United States—not alone, but with international partners.

**Mr. Roger Gaudet:** Thank you.

[*English*]

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** Thank you, Mr. Chair, and I thank the witnesses for coming today. I'm very interested in what you have to say.

I have had an opportunity to listen to what you said. You talked about rights, that mobility around the world is a right, and sovereignty. You also mentioned the right to mobility, the right to fly, that fundamental justice is infringed upon, that the rights of Canadians are violated, that there's no form of redress, that it violates aspects of international law and fundamental freedoms, and that the rights of Canadians are violated.

I mean, wow, that's amazing what you're saying, but I don't agree with you.

I'm a lawyer, and I notice, Ms. Vonn, that you're a lawyer. You were called to the bar in B.C. in 2004?

•(1215)

**Ms. Micheal Vonn:** That's a six-and-a-half-year call. I believe so, yes.

**Mr. Brian Jean:** Yes, in 2004.

Did you ever practise?

**Ms. Micheal Vonn:** I practised for a very short time in union side labour law before I joined the B.C. Civil Liberties Association as the policy director.

**Mr. Brian Jean:** How long did you practise for?

**Ms. Micheal Vonn:** Probably six months.

**Mr. Brian Jean:** Did you ever practise international law?

**Ms. Micheal Vonn:** I certainly did not, but—

**The Chair:** Order.

Ms. Crombie, on a point of order.

**Mrs. Bonnie Crombie:** Mr. Chairman, I'm wondering what the relevance is to challenge the witness on her legal training rather than on the issues she's presented today.

**The Chair:** Mr. Jean, on the same point of order.

**Mr. Brian Jean:** She's referred to international law. She's referred to it as a witness here, in my mind as an expert talking about the violations of international law. We find out she's been practising law for six months in union law. She has no international law experience.

I think it's very relevant, but I would like to have my opportunity to ask—

**The Chair:** That is not a point of order.

Mr. Byrne, on a new point of order.

**Hon. Gerry Byrne:** I think that as committee members we should all be cognizant of the fact that we asked for this witness. The same is true that points of debate should not be made through points of order. Whomever we call as a committee, it's our choice to call someone as a committee. If we call them, it's because they have a particular point of view that we want to have shared with the committee.

I don't know if it's relevant to be challenging credentials at this point in time. If there was a challenge to be made, it should have been made before the witness was called to appear before us.

**Mr. Brian Jean:** Before we heard the testimony?

**The Chair:** Monsieur Guimond, on the same point of order.

[*Translation*]

**Mr. Michel Guimond:** Yes.

I agree with my colleague Mr. Byrne, for the good and simple reason that, when the witness invited is an expert witness, we have to examine his or her expertise. These people are testifying and sharing their experience and interests with us. This could be a Canada volleyball champion who is interested in civil liberties and is working at her association.

I was letting Mr. Jean speak and ask his questions. He was putting his remarks in context. However, following Mr. Crombie's point of order, he said he was assessing whether she was actually an expert. And yet we didn't invite her as an expert witness.

[*English*]

**The Chair:** That's not a point of order.

I will ask Mr. Jean to move forward with questions of our witnesses, please.

**Mr. Brian Jean:** Thank you very much, Mr. Chair.

One of the witnesses mentioned a scandalous number of false positives. I know Ms. Brown did talk about that, and I'm looking forward to the numbers. I understand there are about 10 billion travellers a year to the United States. Now, 10 billion is a lot of travellers and a lot of entries, and I'd like to see the percentage ratio between the scandalous number of false positives versus how many people are travelling.

As I was saying, I did have a chance to study international law in Australia, and I did the Jessup Moot, an international mooted competition.

When you were talking about the rule of law, you said this violates international law, and I asked my staff to get a definition for me.

The definition of the rule of law states:

That individuals, persons and government shall submit to, obey and be regulated by law, and not arbitrary action by an individual or a group of individuals.

I don't see how this particular law that is going to be put in place by the United States violates the rule of law and the definition.

It goes further to say:

In a political system which adheres to the paramountcy of the rule of law, the law is supreme over the acts of government and the people.

It goes on further to say:

That people should be ruled by the law and obey it.

I go further to say:

The law in our society is supreme. No one - no politician - no government - no judge - no union - no citizen is above the law. We are all subject to the law. We do not get to pick and choose the laws we will observe and obey. Each of us must accept the rule of all laws, even if we have to hold our noses when complying with some of them.

I want to refer you to the charter. I have a copy of it in front of me that talks about—

• (1220)

**Mr. Don Davies:** Mr. Chairman, I have a point of order.

**The Chair:** Mr. Davies, on a point of order.

**Mr. Don Davies:** I'm sorry. I don't want to interrupt Mr. Jean, but he quoted from something and I didn't understand where he was quoting from. I think it would help the committee if we had the source of that quote.

**Mr. Brian Jean:** I can table this. It has several definitions of the rule of law from the Internet, and it refers to each of the different quotations and where they come from.

**The Chair:** I would ask you to have it translated and tabled at a future date.

**Mr. Brian Jean:** Certainly, I'd be more than happy to.

As you know, subsection 6(1) of the Charter of Rights and Freedoms says:

Every citizen of Canada has the right to enter, remain in and leave Canada.

Of course, that's what you're referring to, but international law is such, with Canada—it's different from the United States—that when we sign a treaty, it actually becomes domestic law. As you're aware, we signed the treaty of 1944, the Chicago convention, which actually gives other countries supreme right over their airspace.

Section 6, if I might paraphrase, should read that “Every citizen of Canada has the right to enter, remain in and leave Canada”, as long as the sovereignty of other nations is respected and obeyed. That's really what the law means when you take it into context with the Chicago convention, which as Canadians we have to, because international law applies, once we ratify it, as Canadian law. It's different in the United States.

Now, my questions.

As you can tell, I don't agree with you. I think the U.S. has sovereignty over its airspace, just like Canada does. In fact I think this actually strengthens Canada's sovereignty over our own airspace.

Do you know why I say that? You said it weakens it. Well, of course it strengthens it. There is no question that the foundation of international law is based on the sovereignty of state. There's no question that's what international law is all about: the sovereignty of each individual state.

With us ratifying and giving the ability for the United States...and confirming that they have the ability to control their own sovereign airspace, certainly that gives Canada the same ability to have

sovereign rights over its airspace. I just wanted to talk about that a bit.

I appreciate your coming here today. And I appreciate your concerns, but let's say we've had negotiations with the U.S. for two to three years. We've got some exemptions—the only country in the world to get these exemptions, is my understanding, of having that ability to fly over their airspace. What would you recommend we do? We're at the end. The U.S. has said they're not going to negotiate anymore. What else would you suggest we do? That's my first question.

My second question—because I know I'm going to be cut off and I won't have enough time—is have any of you three individuals travelled to the United States in the last three years? Have you provided everything the customs officials at the border have asked you for?

**Mr. Dominique Peschard:** I had no choice.

**Mr. Brian Jean:** Exactly.

**Mr. Dominique Peschard:** That doesn't mean I agree.

**The Chair:** Ms. Vonn or Monsieur Tassé, I would ask if you want to respond.

**Ms. Micheal Vonn:** That is simply a dizzying array of matters to address.

If I could first address the reputational point, I certainly did not bring myself before this committee as an international law expert. I specified that I was drawing upon our report in the UN Security Council's 1267 regime and the rule of law in Canada. This is the report. I'm happy to table it with the committee. I can give that to you. As I say, I made no representations along those lines.

The point about international law being founded in sovereignty, I suggest, is deeply problematic. If we're going to discuss this notion of what constitutes the rule of law, the leading case in Canada is *Roncarelli v. Duplessis*, which says, simply put, that the law cannot be arbitrary. The way we ensure that is by having due process. This is iterated throughout the international instruments and our own Constitution.

I can appreciate that we have a disagreement about this particular legal point. By the way, I won the Wilson Moot, which is about the equality provisions of the Canadian charter. I'll just put that on the record. If we're having this dispute...this matter has come up before Canadian courts previously and is going to come up in a very analogous case, as I say, very soon.

The point here is, relative to what we must do and how we must do it, what do you suggest? We have been iterating time and time again that we need to work at an international level with our international partners. We're under tremendous economic pressure. That has been stated.

It would have been much preferable to have had this work undertaken some time ago. The argument that the exception is going to last in Canada is certainly problematic if we consider the track record thus far of the security harmonization between the two countries.

So we're deeply concerned that Canadians are going to have to deal with this either through domestic courts or, now, through diplomatic channels, which would be preferable. I think that's a quick scoop of the various issues that were raised, which could possibly be addressed in this forum.

• (1225)

**The Chair:** Thank you.

Is there anyone else?

Ms. Crombie.

**Mrs. Bonnie Crombie:** Thank you, Mr. Chairman.

Ms. Vonn, I just want to apologize to you that you were invited here to be an expert witness and then your credentials were seemingly challenged.

My question to you is this. If security interests are foremost, why wouldn't the Canadian government request a reciprocal right to have access to the passenger lists of individuals travelling from the U.S. over Canadian airspace? Surely we have security concerns as well.

**Ms. Micheal Vonn:** It also raises that point—why other countries don't consider this needful in terms of their security interests—as one aspect of this, and of course it raises the point about the exception. I'm afraid the exception of Canadian overflights domestically is incredibly vulnerable if the argument is supposedly that this is needful for security.

Simply put, it either shows that it is not needful that we have an exemption or that the exemption will be vulnerable if they insist upon that point. So we are in a very sticky place relative to something that is completely Canadian, relative to Canadian sovereignty, which is our ability to transit our very large country, geographically located where it is with air transit passages as they are.

**Mrs. Bonnie Crombie:** Just for the record once again, I'm sure you don't know the number, but what percentage of Canadian flights travel over U.S. airspace from Canada? I believe that domestic flights are exempted. Is that correct?

What percentage of flights would be impacted? Often domestic flights fly into the U.S. as well, but I believe those have an exemption in this proposed legislation.

**Mr. Roch Tassé:** You would have to ask people from the industry for precise numbers and percentages. All we've been told is that 80% of flights between Europe and Canada in both directions do overfly the U.S., and we know that for all Latin American and Caribbean—

**Mrs. Bonnie Crombie:** That's the case for all flights to Latin America, of course—

**Mr. Roch Tassé:** Of course.

**Mrs. Bonnie Crombie:** —and Central America as well, and God knows where else.

That's terrific. Why hasn't the U.S. requested this type of agreement from the European nations?

**Ms. Micheal Vonn:** Of course, passenger information for Europeans who are coming to the United States is required.

Our understanding—and again I'm not prepared to say that we have any particular inside knowledge, but this is according to media reports, and so on—is that the U.S. will be looking to branch out and of course to make its secure flight program applicable to many other countries, including members from Europe, but their Parliament is kicking back on this. This is the subject of media reports in the United States, which say the European Parliament is objecting mightily on the basis of the privacy concerns and the mobility concerns that have been raised here.

**Mrs. Bonnie Crombie:** Certainly the European carriers would cross over American airspace to come to Canada, or could.

My final question—and my colleague will probably jump in as well—is this: what is the appropriate body to have this kind of discussion for this type of legislation? Should it be at the UN?

[*Translation*]

**Mr. Dominique Peschard:** The International Civil Aviation Organization is the UN agency that deals with civil aviation.

[*English*]

The International Civil Aviation Organization is the organization that deals with civil aviation for the United Nations and would be an appropriate forum for the discussion.

**Hon. Gerry Byrne:** There was some reference to tabling some documents. Also, there was some discussion earlier in the committee from Ms. Vonn about appropriate international instruments and international law.

For the benefit of our researchers and our reporting, would you be able to provide to the committee any applicable international legal references over and above what you've volunteered already, Ms. Vonn? Can any of the other witnesses help guide us, as parliamentarians, to better understand international obligations that Canada has signed on to that are applicable to this particular environment?

• (1230)

**Ms. Micheal Vonn:** We would be most pleased to consult with our staff counsel, Carmen Cheung, who wrote this particular report. I'll ask if she has materials that she believes would be relevant that she would be happy to forward through the association. I don't have my colleague here to make that reference now, but I'm happy to look.

**Hon. Gerry Byrne:** I'd ask, through you, Mr. Chair, if you would accept those materials and forward them to the researchers so that we can get a compendium of international references.

**The Chair:** I would ask that you submit the materials to me through the clerk. We will provide translation services and move it out to our committee members.

Go ahead, Mr. Watson.

**Mr. Jeff Watson (Essex, CPC):** Thank you, Mr. Chair, and I thank our witnesses for appearing today.

I'll state right off the bat that I'm not a lawyer. I don't think I know the first thing about law. I went the route of being an assembly line worker at Chrysler for six and a half years. I want to try to understand the argument that you're putting forward and ask a couple of questions.

If I understand correctly, the nub of your concern is that there is no mechanism for redress in the U.S. law for Canadians or other internationals who might be subject to the no-fly list. Do I understand that correctly, or have I missed it?

**Ms. Micheal Vonn:** No. The nub of the issue here is that you are subject to a denial of permission to travel on the basis of nothing that you can know about and nothing that you can challenge before an arbitrator that doesn't exist.

**Mr. Jeff Watson:** So there's no domestic legislative solution to your concern. Is that also correct?

**Ms. Micheal Vonn:** To that concern there isn't a domestic one.

**Mr. Jeff Watson:** Right, and no court in Canada could address that concern as well.

**Ms. Micheal Vonn:** Not relative to that concern, but as I say, why the issue here would come before a Canadian court is because you need legislation in Canada that will fit with this. That's the conduit through which a Canadian court becomes seized of this.

**Mr. Jeff Watson:** Correct. I understand that.

The U.S. has been clear that the international overflight provisions will be enacted at the end of this year. If there is no complementary legislation that connects to their process—and you would also love to see some sort of redress mechanism in their own internal law—I'm presuming that the net result would be that flights will be denied permission to go over the United States' airspace. Is that a reasonable conclusion to come to?

**Ms. Micheal Vonn:** I'm sorry; I have no insight into what the United States might choose to do in those circumstances.

**Mr. Jeff Watson:** Well, I presume they will deny overflight of their airspace if there's no compliance with respect to the law.

That being the case—and again, I don't know an awful lot about the law—is that a restriction of our charter mobility right to leave our country? Is that a fair argument to make, or not? If they deny access to us, that in effect acts as a restriction on my right to leave the country. It doesn't eliminate my right to leave the country, but it does restrict it. Is that a fair argument to make as well, or not?

**Ms. Micheal Vonn:** It's an interesting argument. I'm not sure if it actually holds.

• (1235)

**Mr. Jeff Watson:** I'm not a lawyer, so—

**Ms. Micheal Vonn:** Yes. The idea that Canadians would be denied the ability to transit that space because Canada, if it decided that it was unable to do so because it could not simply—

**Mr. Jeff Watson:** If we decided not to pass Bill C-42, for example, which is what you're recommending, the United States could conceivably deny us the right to travel over their airspace. I presume I have a mobility right to leave my country. It would be a restriction.

I was hoping to get some insight from you on that. Again, I'm not a lawyer.

If I have any time left, Mr. Jean might be able to take this.

Thank you very much. I appreciate this.

**The Chair:** You have one minute.

**Mr. Brian Jean:** Thank you very much.

I want to say first, Ms. Vonn, that I was not attacking your credibility. I heard a lot of references to international law, and I was trying to understand where that information and expertise came from.

I understand your reputation. I saw some other interesting things. In an interview on August 27, 2010, you expressed concerns about data mining. I think that's part of your expertise. In fact you said:

The federal government and many provincial governments have been busily creating a privacy Chernobyl in-waiting with their relentless push for database "interoperability".

What did you mean by that? Did you mean they're collecting information like driver's licence information, and social insurance number information, and it's creating a long-term problem? What did you mean?

**Ms. Micheal Vonn:** I'm not sure which particular databases I'm referring to in that interview. It certainly has nothing to do with—

**Mr. Brian Jean:** You said federal and provincial.

**Ms. Micheal Vonn:** Right. In order to make that answer complete, it would be very long.

What I'm referring to is the push towards what's sometimes called e-government, or the horizontal government movement to integrate government databases. It has been an express push in the federal government, and it certainly has been an express push in the Government of British Columbia.

This is not a new thing, and we're very concerned about it. I'm just not sure how it's relevant to the topic we're dealing with at the moment, because I'm talking about Canadians.

**The Chair:** Thank you.

I have to interrupt there. We have committee business that we have to deal with. It will give us a brief moment to take a break.

I thank our guests for being here and providing us with information that will help us. We're all trying to make good legislation, and we appreciate your input. Thank you very much.

We're going to take a short recess to say farewell to our guests. Then we'll be back with committee business.

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\_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1245)

**The Chair:** Thank you, and welcome back.

Just before we move to the motions of Mr. McCallum, I would ask members to get out their pens and pieces of paper.



We discussed some alternative times for the committee to meet in regard to Air Canada issues, airport noise, and the maintenance contracts. Based on the information we've received, the dates available to do this would be Wednesday, December 1, from 3:30 to 4:30, and Tuesday, December 7, from 3:30 to 5:30. So with the committee's endorsement, I will send out the invitations and hope we can respond.

I know, Mr. Guimond, you have provided a couple of names that we'll contact as well, in regard to the noise issue.

I also want to advise the committee that the minister's office has reported back to me that the way his schedule is, he can offer to be here on Monday, December 6, from 3:30 to 4:30, for the supplementary estimates. Now I know that time didn't work for everybody when we sent the list out, but I would ask if you could respond back to Bonnie and advise us if you can or cannot make it, and then we'll advise the minister whether we have enough people, first for quorum and second for the minister.

Mr. Jean.

**Mr. Brian Jean:** I just want to advise the committee that when the minister's staff did deal with this issue, I understand he was actually busy that day as well, but he is making changes to his schedule to accommodate us. He just has a very hectic schedule right now and that's the first day he has available.

**The Chair:** If members can, please notify Bonnie, the clerk, even by the end of today, so we can advise the minister and he can go ahead with his plans.

Ms. Crombie.

**Mrs. Bonnie Crombie:** I just have a question, Mr. Chairman. On which date, the 1st or the 7th, will we address airport noise?

**The Chair:** What I'm going to do is ask the departmental officials to come in first, and we're going to try to deal with two or three of the issues that were brought forward, i.e., the maintenance contracts and airport noise.

The second meeting I would designate for airport noise, simply because we can then confirm our witnesses.

Monsieur Guimond.

[*Translation*]

**Mr. Michel Guimond:** Mr. Chairman, through you, I am confirming to the clerk that the date of Monday, December 6, to meet the minister works for the Bloc Québécois, as well as Wednesday, December 1 and Tuesday, December 7 for the noise study; that works as well.

• (1250)

**The Chair:** Thank you.

**Mr. Michel Guimond:** The clerk didn't hear me: she's speaking with the NDP researcher. She can read the blues.

[*English*]

**The Chair:** She has it marked down, so you're in.

**Mr. Michel Guimond:** Anyway, she's a woman and she's able to do—

**Some hon. members:** Oh, oh!

**The Chair:** Yes, to multi-task, absolutely.

I would ask Mr. Davies if he could pass that on and just confirm.

Mr. Byrne, could you also just confirm if you would have a member or two available.

**Hon. Gerry Byrne:** I will definitely do that.

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

If I could have that information by the end of today, it would certainly make it easier to schedule witnesses.

Mr. Watson.

**Mr. Jeff Watson:** I just have a brief question. If that meeting gets scheduled, will it be a full committee meeting or a reduced quorum meeting?

**The Chair:** It will be a full committee invite, but we would have to have quorum of five members to begin the meeting. I think it would be—

**Mr. Jeff Watson:** Okay.

Some will be in transit at that point, but if it's a full committee, we would then have to make arrangements to find somebody else to substitute.

**The Chair:** I think it would be somewhat disrespectful to invite the minister and not have our committee members show up.

**Mr. Jeff Watson:** Fair enough.

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** I was just going to confirm the dates, Mr. Chair. I'm more than happy to defer to Ms. Brown. I didn't really understand. We have—

**The Chair:** We have Wednesday, December 1, and Tuesday, December 7, for the Air Canada issues that were presented. The minister will attend on Monday, December 6, from 3:30 to 4:30.

**Mr. Brian Jean:** That was my question, because I don't know if we have enough time to deal with the ACPPA issue.

I just want to confirm something with Mr. Guimond in relation to that issue. You talked about air cargo last time. It's not in relation to air cargo, but in relation to the employees and the obligations of Air Canada under ACPPA. Is that correct, just to confirm that with you?

[*Translation*]

**Mr. Michel Guimond:** Yes.

Thank you, Mr. Chairman. You talked about Air Canada's issues. I'm listening to you live and, perhaps as a result of my level of bilingualism, I couldn't follow you.

The noise—that isn't necessarily Air Canada. You mentioned Air Canada's issues, noise and maintenance. A distinction has to be drawn between the two. Even if the committee meets in camera, I wanted everyone to draw the distinction.

As I've had occasion to mention, I was expecting—

[*English*]

**The Chair:** Mr. Guimond, we're not in camera, just so you know.

[Translation]

**Mr. Michel Guimond:** All right.

Oh, oh! I maintain what I said.

[English]

**The Chair:** Just for clarification, when I mentioned Air Canada issues, I meant the maintenance and the ACPPA, but also that the noise issue involves the entire industry.

[Translation]

**Mr. Michel Guimond:** Perfect.

To answer Mr. Jean's question, I think we should start on December 1, by having a meeting of...

At the briefing session on Wednesday, December 1, from 3:30 to 4:30 p.m., the officials could brief us separately on both subjects. Personally, I think that, if we invite officials, we won't have enough time in one hour for two briefing sessions.

[English]

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** *Exactement*, that was my position, that there's not enough time. In fact, I thought if we were going to have the first hour for officials on noise and the second hour on ACPPA, then after that we could call in Air Canada to answer the questions regarding ACPPA, and also, possibly, at the same meeting, we could have Air Canada or an airport come in immediately thereafter to talk about the noise issue.

I was wondering if we could maybe talk about that right now, Mr. Chair, in respect of who we'd want from the industry as far as airport noise is concerned. I know that noise at Vancouver and Montreal was an issue, and of course the airlines possibly might be an issue too. So I was hoping to hear from other members about what witnesses they could propose for that, so we could deal with that now and the clerk could get on with ordering that. We could do that immediately after the officials came.

Does that sound all right, Monsieur Guimond?

• (1255)

**Mr. Michel Guimond:** Excellent.

**The Chair:** Ms. Brown.

**Ms. Lois Brown:** On that point, Mr. Chair, are we just going to be investigating the larger airports or are we going to look at some of the smaller ones too? I know that in the Toronto area we have two private airports, one at Toronto Island and another Buttonville, where the airport is to close. But there certainly have been issues of noise. So I'm wondering if Mr. Guimond is looking at having the study considering more than just the larger airports. Is this going to be a comprehensive study?

**The Chair:** If I may, I think my understanding was that we were going to expand it to include all airports, because obviously every jurisdiction has challenges.

**Mr. Brian Jean:** And that is another question. I think there's also Turtle Lake in Quebec, an aerodrome. I'm not sure, but there are others, and we possibly might want to consider not just airports but aerodromes as well.

The other option, of course, is that I understand that the CTA does collect complaints and we possibly might want to bring them in, or at least notify them that we're going to be talking about this, and they might give us some specifics on noise complaints, where they are getting most of them and things like that. Doing that might eliminate the clerk's issue of finding places that actually have substantive complaints on the issue.

**The Chair:** Mr. Guimond.

[Translation]

**Mr. Michel Guimond:** The answer to my colleague Ms. Brown's question is in the very wording of the motion. I referred to airports in urban areas. I didn't draw a distinction between several hundreds of thousands of passengers above and below. The criterion is airports in urban areas.

[English]

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** What did you think of my suggestion about the CTA and bringing them in?

**The Chair:** I take it that I have the direction of the committee.

Ms. Brown.

**Ms. Lois Brown:** Just in relation to the meetings, Mr. Chair, at one point we had Wednesday, December 8, under discussion. Is that one now off the calendar altogether?

**The Chair:** December 8 is part of the three motions we have before us.

**Ms. Lois Brown:** I am definitely not available that afternoon. I think my staff had relayed that I was, but I'm definitely not available.

**The Chair:** Mr. Mayes.

**Mr. Colin Mayes (Okanagan—Shuswap, CPC):** I looked at my calendar and I have some challenges too with that same date. So I just have a little bit of a concern.

**The Chair:** I think your office has already declined. You aren't on my list.

Monsieur Guimond.

[Translation]

**Mr. Michel Guimond:** I don't know whether we'll start debate on Mr. McCallum's motion right away. We may not have time because I have a meeting that starts at 1:00 p.m.

I also have an availability problem for the meeting on December 8.

However, my question was about a completely different matter. Are we going to try to schedule another visit to Bombardier before the holidays?

I know we have no control over the weather or the roads. Until I got the call from Ms. Pelletier, I drove from home and the roads were in very poor shape. I understand that no aircraft could land at Rivière-du-Loup airport. I know the Bombardier people were disappointed, but we can't control winter or the weather.

Do we plan to go there before the holidays?

[English]

**The Chair:** We have been in contact with Bombardier, and it is putting forward some dates when it could be available. Based on what I've heard so far, I think to do it before the new year is going to be very challenging. But we are waiting to hear back from Bombardier.

Mr. Jean.

**Mr. Brian Jean:** I'd just like to say, Mr. Chair, based upon our success rate in the past to visit Bombardier, maybe it would be simpler to bring the plant site to us.

**The Chair:** Mr. Byrne.

**Hon. Gerry Byrne:** In light of the time, could we have the notice of motion formally adopted by the committee before we adjourn today, so that we can address the matter at a future meeting?

**Mr. Brian Jean:** I don't think there's any need at all to deal with that. It's a 48-hour notice on any motion; we've received 48 hours'

notice and it's on the agenda, as far as I'm concerned. Is that not the case?

**The Chair:** We have another committee coming in, so we will defer this motion until the beginning of the next meeting. We will advise our guests to allow some time.

If I may, I might ask to have it near the end again, because I do not like bringing guests in and not having them be heard. I'll allow more time, if that's—

● (1300)

**Hon. Gerry Byrne:** Mr. Chair, I understand that in terms of a procedural point of view, the mover of a motion can call the motion at any point in time. Is that correct?

**The Chair:** Absolutely. He could bring it forward—

**Hon. Gerry Byrne:** At the beginning of the meeting.

**The Chair:** This meeting stands adjourned to the call of the chair.

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