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

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**EVIDENCE**

**Thursday, December 2, 2010**

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**Chair**

**Mr. Merv Tweed**



## Standing Committee on Transport, Infrastructure and Communities

Thursday, December 2, 2010

• (1205)

[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 39, as amended, on committee business, resuming debate on the motion by Mr. McCallum. I think everybody is aware of the motion itself, and I have—

Pardon me?

**Mr. Sukh Dhaliwal (Newton—North Delta, Lib.):** Mr. McCallum had the floor.

**The Chair:** I didn't think he did.

**Mr. Sukh Dhaliwal:** He did.

**The Chair:** Mr. Watson.

**Mr. Jeff Watson (Essex, CPC):** On a point of order, Mr. Chair, are we maintaining the speakers list as it existed at the end of—

**The Chair:** I have the list—

**Mr. Jeff Watson:** Can you tell us who, in order—

**The Chair:** I don't think Mr. McCallum was on the floor. I think we were over here....

**Mr. Jeff Watson:** I don't believe that was the case either.

**The Chair:** The list that we kept over...I think we'll just start with that.

Mr. Trost.

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

I think this will be my last intervention on—

**Mr. Sukh Dhaliwal:** [Inaudible—Editor]...was.

**Mr. Brad Trost:** My memory is that I was up next, but I'm not going to—

**An hon. member:** [Inaudible—Editor]

**The Chair:** Go ahead.

**Mr. Brad Trost:** If it's a serious problem, I'm not going to absolutely stand on my right to be the next speaker, but as I said, this is going to be my last intervention on this debate.

The honourable member has brought forward three motions. I guess it is actually fortuitous that he will be speaking later on. There is something I fundamentally do not understand about his motions, including the one we're debating now:

That the Committee immediately produce an interim report to the House related to its study of the March 31, 2011 deadline for infrastructure stimulus projects and that the report read as follows:

The Committee recommends that the Government move immediately to extend the stimulus deadline by 6 months for all projects across Canada.

What I don't understand is that the honourable member moved another motion on the same day at the same time and that reads:

That the Committee hold a meeting on December 8, 2011, from 3:30-5:30 pm on the topic of the March 31, 2011 deadline for infrastructure stimulus projects and that municipal officials be invited to testify.

To my mind, there is a bit of a contradiction there in the motions. As I said, I'll ask the honourable member to explain this later on and to expand on why he has moved the two separate motions. Because it seems to make some sense to me that if we're going to do a report, with a conclusion, we should listen to all of the witnesses and all of the testimony that has been given before.

Now, it is very possible that we've heard all the witnesses and testimony that we need to hear on this. I'm of the view that we really don't need this December 8 meeting as well. But if he is moving for a December 8 meeting—and by my time, today is December 2—why would we do the report ahead of time? Why would we not wait until after the December 8 meeting?

My suggestion to the honourable member would be—because I do think he is serious about all of the motions he is moving here—that he amend or take off the table this motion we're currently debating and set it back, for after December 8. That would seem to make more sense to me, because it's very possible that if the motion for the December 8 meeting goes ahead and we actually have witnesses at the December 8 meeting, we'll get some information that will cause us to change our minds on his motion. It's possible that the witnesses may say something that may cause us to want to extend the deadline by three months, or we may not want to extend it at all.

I think it's unfair to call witnesses for a meeting and unfair to ask them to testify when we've already written our report. I realize this is a small report, and there could be other things one could add to that, but let's be realistic here: if you're going to have a report, you need to have all the witnesses listened to.

I'm actually going to ask the honourable member, when he does this, to table his motion. Then we could resume debating it after the December 8 meeting, assuming that one goes ahead, or at least after we see the results of the motion on December 8. How many more meetings there will be is a good question.

But I am not prepared to even consider any sort of report, let alone this report, until we know for sure that we've had all the meetings we're going to have and that there is no possibility whatsoever that we will see more witnesses. For me, it's a matter of simple fairness to the witnesses, and it's a matter of just basic common sense: you listen to all the witnesses before you have a report.

• (1210)

I hope the honourable member takes my suggestions into account. I hope he tables this one until after we've dealt with the other one, because while I think there are good points to be debated in all of his motions, perhaps he has the order of them mixed around. Perhaps he should reconsider the order of his motions and deal with them in a way that makes more logical common sense.

**The Chair:** Next I have Mr. Byrne, who's not here anymore, so I'm going to move to Ms. Brown.

**Ms. Lois Brown (Newmarket—Aurora, CPC):** Thank you, Mr. Chair. My intervention won't be very long.

When we were listening to witnesses, we had, first of all, the Association of Manitoba Municipalities. We also had the union of Quebec municipalities. I don't have it written in my notes, but I remember that one of them, although I would have to check the blues on this, specifically made the statement—perhaps it was the Federation of Canadian Municipalities and someone can correct me—that for some projects, it wouldn't matter what the length of the extension was, because they would never get them completed.

I have some concern that perhaps we've never heard from any of those projects and that there might be individuals and municipalities who would have a vested interest in seeing a longer extension on this. Perhaps we're shortchanging them if we don't listen to that group of people as well.

I don't know if the Federation of Canadian Municipalities could forward us some of those names or if they came from the Association of Manitoba Municipalities, but they specifically told us that there were some projects where it didn't matter what the extension time was. I think we need to hear from those people to hear about what problems they are facing, what the barriers are to getting this done, what kind of timeline they are looking for in order to get this accomplished, and if they would be willing to come and be a witness before this committee.

• (1215)

**The Chair:** I have Mr. Jean, Monsieur Guimond, and Mr. McCallum.

Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Thank you, Mr. Chair.

Quite frankly, I'm of the mind that we should get on to some other business. I have a few things to say, but after that I think we need to deal with these motions and then get on with Bill C-42. We have a lot of people here.

I do want to talk a bit about infrastructure investments and what we've done as a government. Certainly, since introducing our economic plan in January of 2009, we've invested approximately \$10.7 billion in federal funds toward more than 6,100 projects. It's

no small feat. If we look at the history of Canada, this is the first time this amount of action has ever been taken in relation to infrastructure stimulus revitalization.

I'm very pleased with that and I'm pleased with the fact that we've worked well with our provincial, territorial, and municipal partners. We've done a great job and they've done a great job in implementing the infrastructure rollout. For sure, \$30 billion has been invested; in fact, over \$30 billion has been invested by all of us. Our partners have even applauded us for the work we have done. They have indicated to us that this has been very important.

There are other things we've done. One, obviously, is making the gas tax permanent and doubling the amount. There are a lot of other things we've done with our partners, basically in listening to the FCM and others and building a truly national partnership with the provinces, the territories, and the municipalities.

When the Auditor General came out with her report, I was very, very pleased that she said the economic action plan is being delivered effectively. Her report actually says that the Government of Canada reacted quickly and effectively to design and implement the plan and fund eligible projects.

As of the end of September, provinces, territories, and municipalities reported that work was completed on about five times as many projects—that's right, Mr. Chair—under the infrastructure stimulus fund as they reported in March, so quite a bit has happened even since then.

We were also pleased to see that more than 61% of the projects are being constructed at least 30 days faster than originally forecasted. In fact, if we look at it even more deeply, 99% of the reported infrastructure stimulus fund and communities component top-up projects are now under way or completed. As we know, these projects put people to work when the economy needed it most and we are a shining example in the world of what a country can do when it comes together with its partners—provincial, territorial, and municipal.

But it's important to note that as the economic action plan winds down, a plan that was always intended to be targeted, timely, and temporary, and as projects complete construction, the Government of Canada has made a long-term commitment to continue to work with the provinces, territories, and municipalities—especially as can be seen, as I said, by the gas tax funding and what we've done there—to build world-class public infrastructure for the quality of life of Canadians and to make sure their quality of life continues to be so great.

The \$33-billion Building Canada plan complements that economic action plan, and I think all of us can see what we've done with our partners in that area. Where the economic action plan targeted the shovel-ready projects that could kick-start the economy, the Building Canada plan focuses on the longer-term projects that require more time to plan and build. This means that funding for these projects under the programs like the Building Canada fund will continue to flow past next March. Of course, Mr. McCallum's motion that is before us today deals with the economic action plan.

As well, this government increased the gas tax fund to \$2 billion a year and made it permanent, as I said, and that has been applauded by all the municipal group and by municipalities and provinces. Municipalities can rely on this funding and use it when they need it, whether that's as they receive it or at some time in the future. Of course, the Conservative government would not take that away, and hopefully no subsequent government would either.

Mr. Chair, I do have a press release that I would like to circulate among the members, but I would like to read out some parts of that. As was said this morning by the Prime Minister: "Canada's economic action plan is working. Our government expects that 90% of infrastructure projects will be done by the ambitious deadline that we set out".

Certainly, most groups, engineers, and economists have applauded us, because that was a short timeline in order to make sure we spurred the economy. Now, since July 2009, more than 420,000 net new jobs have been created across Canada, and about 23,000 projects are under way or completed. The government has provided \$16 billion to modernize public infrastructure, including roads, bridges, water, parks, transit, and recreational facilities.

I'm reading verbatim from the press release: "Today, we have extended the deadline for completion of economic action plan infrastructure projects by one full construction season, to October 31, 2011". Of course, that was said by the Prime Minister just a few minutes ago. "This will allow sufficient time for completion of the remaining projects," he said.

I would like to circulate this in both French and English, if I may.

• (1220)

Now, I would say bluntly that Mr. McCallum's motion, at this stage, is moot, I would suggest. The difficulty with it, of course, is that it's not accurate on what we have actually done this morning.

You've asked for a six-month extension. We've actually made it a seven-month extension. I don't know where else we could do a better job than what was proposed by your motion, but certainly I would suggest that we have done that. That has now been done, so as far as that motion goes, I would suggest that it's moot.

[Translation]

**The Chair:** Mr. Guimond.

[English]

**Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ):** To be sure that Mr. Jean will understand what I will say...we have very good interpreters, but there will be no filter between what I think and what I will say.

With this announcement that we have today, I realize why you were not available at 11 o'clock this morning and why the meeting was postponed to noon. It was because at noon, there was a meeting, a press conference in Mississauga, with Prime Minister Harper, Chuck Strahl, and a third minister. I think it was Mr. Clement. You knew that very well. This is the reason you mentioned that you were not available: because of the timing. That is the reason why you didn't want to discuss the motion of Mr. McCallum. As far as I'm concerned, that's a first strike.

Second, I realize why you asked to postpone every discussion on this motion for one more week. It was because you knew very well that there would be an announcement today at noon. Apparently, you had a good relationship with Mr. Laframboise. Well, check your references about me. As far as I'm concerned, this is the second strike, Brian.

Thank you, Mr. Chair.

**The Chair:** Mr. McCallum.

**Hon. John McCallum (Markham—Unionville, Lib.):** Thank you, Mr. Chair.

I kind of agree with Mr. Guimond about the behaviour on the government side, but I won't focus on that.

It's rare that the government does almost precisely what the opposition tells them to do. It will be entertaining to reread the arguments of the Conservative members from the last meeting or two as to why this was such a terrible idea.

But it's not costless, the fact that they delayed, because we proposed this—which is precisely what they've done, apart from one month—in mid-September, so as a consequence of delaying it until now, which is more than a month and a half, municipalities have had to spend unnecessarily on overtime because they were rushing to this arbitrary deadline. They were working around the clock in some cases. Because of this deadline, they had to bid for materials, pushing up prices.

The government has totally flip-flopped and has totally come around to our position. I guess I could say better late than never, but as a consequence of that delay, they have imposed unnecessary costs on municipalities and created unnecessary uncertainty for a longer period of time.

That's it.

I think Mr. Dhaliwal wants to speak.

**The Chair:** Mr. Dhaliwal.

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

I would like to commend the motions brought forward by my colleague, Mr. McCallum, even though they were actively opposed by the Conservatives, particularly by Ms. Brown, as I heard in the last meeting, who said that extending the deadline was not a fair process.

But in fact it was, and the government has finally listened to Mr. McCallum's great idea and has adopted it, and I would request that Mr. McCallum withdraw this motion now, because it has already been implemented.

• (1225)

**The Chair:** Mr. Jean.

**Mr. Brian Jean:** Thanks, Mr. Chair.

I do just want to say, Mr. Chair, that if you look at the record in the House of Commons, you'll note that I was speaking on oil tankers at 10:50 this morning, which actually went over to past 11. It was not my intention to do so to strictly avoid the meeting, but I will advise and I do want to let Mr. Guimond know that, first of all, I did extend an olive branch on the basis of what I understood at the time, which was, in essence, to delay this particular motion as to what was happening. But to be blunt, I'm not a minister, and I'm not privy to all the information. I just receive instructions, and for the most part I follow through with those instructions as to what I'm supposed to do.

But I will tell you one thing that I have done in my six years here—that is, never filibustered. I am not somebody who believes I should take up all of your time by sitting here and giving a 40-minute or two-hour speech if indeed it can be dealt with in some other way. Because I value your time too much, the same as I value all the members of this committee. We have a lot of things that we can do and a lot more important things than listen to somebody filibuster, which I don't like. Bluntly, I disdain it.

So from that perspective, Mr. Guimond, I understand that you have to take a position, the same as when I extended an olive branch and you refused it because you did not believe that was in the best interests of the people you represent or your party. It's the same as what I have to do because it's not in the best interests of the people I represent or my party, and I have to do that basically because I'm ordered to do it, but indeed, I would do it anyway, because I think it's best for the country. In this particular case, what was done was done, and I can't go back on that, but I can tell you that I did it out of respect for all the members here, because of their time. I really did that. Notwithstanding that, you have to do what's best for your party and the people that you represent, just like I have to do the best for the people I represent, and I will continue to do that.

I hope it doesn't sour relations between all of us. Bluntly, I think what has happened is that it was a motion of politics, not a motion of sustainability. The Bloc obviously asked a lot of questions over a long period of time in relation to this deadline. The Prime Minister has listened and the cabinet has listened, and we have not just extended it six months: we have extended it seven months.

I think that speaks to the volume and to the quality of this Prime Minister wanting to get things done in the best interests of Canadians. Whether that deals with a good relationship or a bad relationship is not really my issue, but I do hope that we can continue working together.

**The Chair:** Mr. McCallum.

**Hon. John McCallum:** I guess Mr. Jean doesn't personally filibuster, but he instructs his colleagues to do so, as happened at the last meeting, so I think it's a fine distinction.

**Mr. Brian Jean:** I said I disdain it. I didn't say I don't do it.

**Hon. John McCallum:** Anyway, I will withdraw the motion, Mr. Chair.

**The Chair:** Thank you, Mr. McCallum.

Mr. Bevington, you have the last comment.

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

I didn't really want to speak on the motion, but since we've seen now the action of the government, I think it's incumbent on us to consider what that action has meant to the municipalities. The failure to move forward with this extension has probably led many municipalities into a situation where they're in winter works now, where they're going to be spending more money than they would normally have had to in order to accomplish the work.

If we'd had some indication of this a little earlier... I think that's the problem that has been created with this delay in this announcement, which I was confident that at some point in time we would see, because at some point in time this government would have to act logically. I'm glad to see that it's finally caught up to that. But that still doesn't mean the municipalities have not suffered through this process. I think that's the case.

Mr. Chair, I first spoke about this issue in February 2009 in the House of Commons, when I questioned Minister Flaherty on the deadline. The issue has been around since they put the program in place. I think this government's reaction has been very slow. It has been very difficult. I have to commend this committee for the work it has done, because it has recognized the importance of this and has helped to put the pressure on the government to make this change.

• (1230)

**The Chair:** Thank you.

Is there further discussion?

I think we'll take a one-minute recess, invite our guests to join us, and move into clause-by-clause.

Mr. Jean.

**Mr. Brian Jean:** I was just wondering, in the spirit of collaborative unity, we have another motion with Mr. McCallum. If Mr. McCallum wants to address it, I can address it now and provide him with some information.

I did some research based upon what I saw the motion to be, and I know that all members, including the Bloc, of course, are interested in that motion. That would be the motion in respect of expenses. I think it was originally motion number one.

I think we need unanimous consent to go ahead with it at this stage, but if we can, Mr. Chair, I promise you, from the government's perspective, anyway, that it would be very quick—in fact, two minutes.

**The Chair:** Is everybody okay with that?

**Hon. John McCallum:** That's fine.

**The Chair:** Is everybody okay with that? All right. We'll proceed to this motion by Mr. McCallum:

That the Committee request the Department of Transport to provide the Committee with all documentation, both paper and electronic, related to the \$32,885 that the Minister of Transport, Infrastructure and Communities' office spent on professional and special services in the fiscal year 2009-2010, and that this information be provided to the Committee in both official languages within five business days.

Mr. Jean.

**Mr. Brian Jean:** I have a breakdown that I can give to all members. It's in both official languages. They can review it, and we can deal with the motion at a later date, just to save time, because there may be more questions coming out of it. I have that right here in front of us.

**The Chair:** We will need to have Mr. McCallum's approval to defer the motion now that it's on the floor.

**Mr. Brian Jean:** Yes, it's up to him. There might be further information. It might be more instructive for him, but whatever he wishes.

**Hon. John McCallum:** I have two points. I'd like to leave the motion on the table so that we can return to it, depending on what we are about to receive here. Second, the third motion, I would withdraw.

**The Chair:** Thank you.

The information is being circulated on the second motion that I just read. It will remain on the table for future discussions after the information has been digested by all parties.

Now I will invite our guests to join us at the table, please.

While you're moving to your chairs, I'm just going to introduce you.

Obviously they're here to give us some advice and input if there are questions from the committee. Joining us from the strategic policy branch, we have assistant deputy minister Kristina Namiesniowski, and Caroline Fobes, executive director and senior counsel. Also, from the Department of Transport, we have Isabelle Desmartis, director of security policy.

Welcome.

If everybody has the bill in front of them, we will move to clause-by-clause. We will postpone clause 1, the short title, and move to clause 2, where we are sitting with several amendments.

(On clause 2)

**The Chair:** The first one is amendment NDP-1 on page 1 in your package.

I will open the floor to Mr. Bevington.

**Mr. Dennis Bevington:** Mr. Chair, this amendment deals with the countries that are involved in this information transfer and it clearly identifies *the* country that is involved in this information transfer. What the clause does, of course, is ensure that the information we have had ample evidence on within this act...it has considerable privacy concerns. The experts who have testified on this have indicated to us that this is something they do not recommend in this bill. So what we've done with this is limit to simply the one government that is making this part of demands upon the Canadian public in the overflights, and that's the United States government.

**The Chair:** Thank you, Mr. Bevington.

Taking the advice, as I do almost all the time, I have to suggest that the amendment is inadmissible. It runs contrary to the principle of the bill. The limitation of the provisions in Bill C-42 with regard to its application to only one foreign state is contrary to the principle of the bill and therefore inadmissible. If there is disagreement with

my decision, you can challenge it, but other than that there is no debate.

• (1235)

**Mr. Michel Guimond:** Can we speak first?

**The Chair:** There is no debate.

**Mr. Dennis Bevington:** I will challenge that.

**The Chair:** Mr. Bevington has challenged the chair's ruling.

Therefore, I will advise other members that if the ruling of the chair is overturned and amendment NDP-1 is adopted, there will be a conflict with BQ-1, BQ-2, and BQ-3, and we would not be able to proceed with those amendments.

I will ask Bonnie to record the vote on the decision of the chair.

(Ruling of the chair sustained [See *Minutes of Proceedings*])

**The Chair:** The ruling of the chair has been sustained and therefore we will now move to the second amendment, proposed by the Bloc, BQ-1 on page 3.

I will ask Mr. Guimond to present it.

[*Translation*]

**Mr. Michel Guimond:** Thank you, Mr. Chairman.

This amendment is relatively simple. In the interest of transparency, we would like the list of countries to be public. In this way, if this is set out in the regulations, then the public, the airlines, everyone will be able to know if there are additions or removals.

[*English*]

**The Chair:** Is there comment?

Mr. Jean.

**Mr. Brian Jean:** Mr. Chair, I'm just wondering if the officials can confirm for us if this amendment is basically redundant, because it's already clear on lines 9 and 10 of the bill that only the information prescribed in regulations can be shared. Wouldn't it be redundant to have it in the legislation?

**Ms. Caroline Fobes (Counsel, Legal Services, Department of the Solicitor General (Public Safety and Emergency Preparedness)):** Yes, that's correct. We already have a provision in the Aeronautics Act that it would be done by regulation so—

**Mr. Brian Jean:** So in fact it would actually—

**Ms. Caroline Fobes:** —it wouldn't add anything. It would be redundant.

**Mr. Brian Jean:** And actually add confusion, in essence?

**Ms. Caroline Fobes:** Yes.

**Mr. Brian Jean:** So we already have in the Aeronautics Act exactly what the Bloc is proposing.

**Ms. Caroline Fobes:** Yes.

**The Chair:** Monsieur Guimond.

[*Translation*]

**Mr. Michel Guimond:** Where is that specified, Madam?

**Ms. Caroline Fobes:** It is in subclause 4.83(3) of the Aeronautics Act.

**Mr. Michel Guimond:** Very well.

**Ms. Caroline Fobes:** This is what it says, in the English version:

(3) The Governor in Council may make regulations generally for carrying out the purposes of this section, including regulations:

- (a) respecting the type or classes of information that may be provided; or
- (b) specifying the foreign states to which information may be provided.

It is already there. There is no need to include this directly in the section.

**Mr. Michel Guimond:** Just a minute, I am going to get a copy of the bill.

[*English*]

**The Chair:** The place she is referring to is actually in the Aeronautics Act, not in the amendments package.

Do you have a copy we can share?

**Ms. Caroline Fobes:** Sure.

• (1240)

**The Chair:** Monsieur Guimond, she has a copy of the act.

Thank you.

**Ms. Caroline Fobes:** Just to note as well,

[*Translation*]

that at line 19 of subclause 4.83(1) of the bill, to which changes are being suggested, it clearly says "in accordance with the regulations".

It is therefore specified in that section.

**Mr. Michel Guimond:** I will withdraw my amendment. I believe it is very clear subclause 4.83(3) says the following:

(3) The Governor in Council may make regulations generally for carrying out the purposes of this section, including regulations:

Then, paragraph 4.83(3)(b) says: (b) specifying the foreign states to which information may be provided.

**Ms. Caroline Fobes:** That is correct.

**Mr. Michel Guimond:** Very well.

[*English*]

**The Chair:** Technically we need the consent of the committee to do that.

Is it withdrawn?

**Some hon. members:** Agreed.

(Amendment withdrawn)

[*Translation*]

**Mr. Michel Guimond:** Everyone acknowledges that I am a model of flexibility.

[*English*]

**The Chair:** Absolutely, and we'll make note of that in the final report.

The next amendment, by the most generous Monsieur Guimond.

**Voices:** Oh, oh!

[*Translation*]

**Mr. Michel Guimond:** Very well.

[*English*]

**The Chair:** It is BQ-2 on page 4.

[*Translation*]

**Mr. Michel Guimond:** Let us see if Ms. Fobes will once again pull a rabbit out of her hat.

A rather large number of witnesses who work in the area of civil liberties shared with us their concerns with regard to the breadth of the personal information to be supplied. Even Ms. Stoddart's comments were along those lines.

The avowed purpose of this amendment is therefore to limit the information supplied to the following: the surname, first name, sex, date of birth and flight number of the person.

[*English*]

**The Chair:** Comments?

Mr. Jean.

**Mr. Brian Jean:** Yes, Mr. Chair. I actually listened to the same witnesses and had the same concerns that Monsieur Guimond did on this. The reality is that it's fine to have those concerns in Canada, but the difficulty is that the purpose of this bill is to amend it so that we can provide to the foreign state information of people who are actually flying or within that foreign state.

The difficulty is that the U.S. law is clear on the information elements required for the U.S. to allow foreign air carriers into their airspace. If we limit the data elements to a smaller list, as is proposed by Monsieur Guimond, the airlines would not be in compliance.

That's what I understand, anyway, and correct me if I'm wrong, please. The airlines would not be in compliance with the U.S. law that actually specifies what data elements are to be listed. Then, as a result, if this particular clause and amendment are carried as proposed by Monsieur Guimond, the likely result would be that these Canadian carriers would not be granted access to U.S. airspace.

Because if I'm clear on the research that I've received, the U.S. law data elements require: name; date of birth; gender; a redress number so that they can redress it; passport number; passport country of issuance; the expiration date on the passport; foreign airport code, so place or origin; port of first arrival; airline carrier code; flight number; date of departure; time of departure; date of arrival; scheduled time of arrival; reservation control number; record sequence number; record type; passenger update indicator; and travel reference number.

Is that list exhaustive or is there more? That is the list that is required by the U.S. legislation to allow air carriers in, am I correct?



**Ms. Kristina Namiesniowski (Assistant Deputy Minister, Strategic Policy Branch, Department of Public Safety and Emergency Preparedness):** Mr. Chairman, that is the list that's prescribed in the U.S. secure flight rule. As the member has indicated, the first three elements of that list are mandatory. If the other information is available to the air carriers, then they are obliged to turn that over.

**Mr. Brian Jean:** To my way of thinking—and I'm not an airport expert or an airline expert—the rest of the information would be known to the air carrier, because they couldn't, obviously, offer the services without that information and, as a result, they would be required by U.S. law to provide that information.

If we actually support Monsieur Guimond's amendment in this case, then we're not in compliance with U.S. law. As a result, the likelihood is that they would.... Even though we're making steps on this bill, if we limit it to not apply to U.S. law or to not be in compliance with U.S. law, they're not going to allow our aircraft through their airspace. That seems like a fairly straightforward situation, doesn't it?

Sorry, but the mike can't hear you nod.

• (1245)

**Ms. Kristina Namiesniowski:** I was going to say yes, Mr. Chairman, that would be the situation.

I think it would place air carriers in a very difficult situation. They would have to choose between respecting the U.S. law, which would allow them access to their airspace, or they would be in a position where they would have to make a decision about whether or not they complied with Canadian law that then wouldn't allow them to access U.S. airspace. It puts air carriers in a very difficult situation.

**Mr. Brian Jean:** Mr. Chair, I'm just wondering now if there is other information. As I say, I'm not an expert.

We've heard from witnesses, but is there other information that they provide air carriers that's not included on this list?

**Ms. Kristina Namiesniowski:** Other information that's provided to air carriers?

**Mr. Brian Jean:** For instance, Visa numbers.... I'm just thinking of what happened with Winners and some of those situations with data that was provided and obviously corrupted and was available on the public domain for a period of time. Is there additional information that air carriers would have, other than this? I think they would. I'm an Air Canada frequent flyer, so there would be more information that air carriers get from us—Visa numbers, what kind of meal we prefer, and things like that—correct?

**Ms. Kristina Namiesniowski:** I can't speak to what air carriers actually have in their possession because I'm not familiar enough with how they do their business.

**Mr. Brian Jean:** Well, they do. I know that because they ask me every time what meal I would like or where I would like to sit. So they have that information.

Would we actually be able to technically transfer that information to the U.S.? How do they transfer it? It's done by data; it's done by computer. I understand that there's not an operator sitting there and keying in 180,000 entries every day. It's done by data. To generate

data from one field to another, you need a computer program that will allow it to go to those fields. Are you following me?

**Ms. Kristina Namiesniowski:** Yes, I am following you.

**Mr. Brian Jean:** So for this other information they collect, such as what meal I like, or whether I like to sit by a window or a door, or whatever the situation is, can that information actually be communicated to the U.S.? What I guess I'm asking is about the time-limited nature.... Is the information limited to the information I just read off, to that list, or does that other information get shared by the airlines with the U.S. government?

I don't want the U.S. government to know what my Visa number is—not that I have enough room on it. I simply don't want them to know what it is, or what meals I like, or where I like to sit in airplanes. Is that information going to be transferred to them or is it limited to those things I read out?

**Ms. Kristina Namiesniowski:** Mr. Chairman, to the best of my knowledge, the only information that air carriers would be transmitting to the U.S. government is the information that is prescribed in the secure flight rule.

**Mr. Sukh Dhaliwal:** Can you clarify...?

**The Chair:** I will clarify. I am getting it translated. I got it late yesterday from the Homeland Security people. I'll read it, to clarify that if I may, but I am also waiting for translation. I'm told that it will be ready early Monday. It says, "Secure Flight does not collect or receive any other personal information such as address, phone numbers, credit card numbers, or meal or seat preferences". I think it's very clear that they do not collect that information.

The letter I'm quoting from, for the information of members—and as I say, I will share it—is from Mr. David Jacobson, who is the ambassador.

Mr. Bevington.

**Mr. Dennis Bevington:** Mr. Chair, and perhaps to the witnesses as well, we received a proposed regulation that was given to us a number of meetings ago and indicated quite clearly that the passenger name record would be one of the items shared. So has the government now gone back on that particular proposed regulation?

**Ms. Kristina Namiesniowski:** Mr. Chairman, as I've indicated already, the only information that would be provided to the U.S. government pursuant to the secure flight program would be name, date of birth, and gender, which some could describe as passenger name record.

**Mr. Dennis Bevington:** It's clearly identified in the proposed regulation that was distributed here at a meeting. Are you the one who would be engaged in making these proposed regulations?

• (1250)

**Ms. Kristina Namiesniowski:** Mr. Chairman, we would be the officials within the Government of Canada who would be working on the development of the regulations. I think what is being referred to is the proposed regulatory framework that was shared with the committee at the start of the deliberations around Bill C-42. I can read for you from the document. It talked about regulations concerning information required by foreign states.

There's a reference to the particular bill before the committee today. It talks about the information that would be made available to the U.S. government, and it talks about schedule 1, information about passengers and crew. Schedule 2 makes reference to information from the passenger name record, and says that it's the same as the above, and the "same as the above" is all the elements that the previous member read into the record: passenger name, date of birth, gender, redress number, passport number, passport country of issuance, passport expiration date, etc.

That's what the proposed regulatory framework stated.

**Mr. Dennis Bevington:** Well, if you pass on the passenger name record to a foreign state, would that foreign state have the availability of that information through other sources?

**Ms. Kristina Namiesniowski:** It's not a passenger name record per se, as is the case with advanced passenger information that is sent in relation to countries where aircraft land in countries of destination. What is being referred to here is the name, date of birth, and gender of the individual.

**Mr. Dennis Bevington:** That doesn't answer my question. My question was, would the United States, in possession of the passenger name record, have access to all the information in the passenger name record?

**Ms. Kristina Namiesniowski:** I'm not sure I understand the question.

**Mr. Dennis Bevington:** Have you followed the testimony presented to this committee in the past few hearings?

**Ms. Kristina Namiesniowski:** We have reviewed the testimony given by various experts who have appeared before the committee.

**Mr. Dennis Bevington:** Did you follow the testimony given by the American airline data information expert at the last meeting?

**Ms. Kristina Namiesniowski:** I did not review the testimony from the last meeting.

**Mr. Dennis Bevington:** So you're not really up to speed on this, then.

**Ms. Kristina Namiesniowski:** So I would not be able to answer the question because I'm not quite clear on what the member is getting at.

**Mr. Dennis Bevington:** Well, I—

**The Chair:** I might be able to, if I can read from this letter. I wish I could have had it translated more quickly. Nonetheless, it says, "Secure Flight collects only the personal information necessary for effective watchlist matching: name, gender, birth date, and if available, a passport number to help ensure accuracy in our checking".

My understanding is that if the airlines have the passport number, they do share it. If they don't, they don't share it. But it's not collected.

Mr. Jean.

**Mr. Brian Jean:** I was just going to say, so in relation to—

Sorry. If Mr. Dhaliwal...?

**The Chair:** Go ahead.

**Mr. Brian Jean:** So obviously anybody who is flying to a foreign state is going to need a passport. I think that's now the regulation across the world, is it not? I believe so, if it's to a foreign state. So it's just those domestic flights that may be overflying the U.S.: passengers may not have a passport because they've used another form of ID.

**Hon. John McCallum:** They're exempt.

**The Chair:** Mr. Dhaliwal.

**Mr. Sukh Dhaliwal:** Mr. Chair, it's even more confusing now.

You say that this is not the information they require. They mentioned the things they require: name, date of birth, and gender, along with passport information if it's available, right? On the other hand, the witnesses on the other side are not even sure what information will be transmitted through the regulation.

The amendment brought by Mr. Guimond makes sense—

It is Mr. Guimond, isn't it?

**The Chair:** That's correct.

**Mr. Sukh Dhaliwal:** It makes sense, because at least we've carved that information in stone. If it meets the requirement under American law, then we should put that into our own bill. That makes sense. It means that in future they're not asking for information that might not even be required; are the airlines transmitting the information that they have with them without consulting this law, which is carved in stone here?

• (1255)

**The Chair:** Mr. Guimond.

[*Translation*]

**Mr. Michel Guimond:** Mr. Jean stated that a passport is required in all the other countries, and I would like to clarify that that is not true.

Perhaps you do not go South, for example, to the Dominican Republic. Perhaps you rather go to Dubai or such locales. The Dominican Republic does not require that you present a passport upon arrival. A simple ID card with a photo is sufficient. I am giving you the example of the Dominican Republic, but the same applies in other destinations.

[*English*]

**The Chair:** For clarity, and using your example, Mr. Guimond, if you were flying to the Dominican Republic, you would not have to provide a passport and therefore that information would not be transferred to the Americans.

Mr. Jean.

**Mr. Brian Jean:** I was just going to say, Mr. Guimond, I actually asked it in a question, and I said, "Isn't it...?" But I have been to the Dominican Republic and they didn't ask for a passport. I thought now that the new laws were in, most countries were, but I stand corrected. I'm not sure of the state of the law, but I understood that this was the case. But certainly I was asking a question.

**The Chair:** Mr. Bevington, do you want to follow up on that or are you okay?

Dennis?

**Mr. Dennis Bevington:** Mr. Chair, I think what we we need, really, is to have these witnesses examine the testimony given at the last meeting and report back to us so that we can actually get some clarity on this particular situation. Quite clearly, if the information is available to the Department of Homeland Security in another fashion, then we are giving them the right to that information unless we clearly state what information it is that this government and the Canadian people who overfly the United States are required to provide, and nothing more.

That, I think, is the point we were getting at with all the testimony we got from the privacy people. Without some clarity on the part of the department about what kind of information actually will be transferred with each passenger who overflies the United States, I can't really make a decision about anything here, Mr. Chair.

**The Chair:** Go ahead, Mr. Jean.

**Mr. Brian Jean:** I was just going to respond to something Mr. Dhaliwal said. If what he's saying is that it makes sense to be able to not fly over the U.S., then I think he's right, because the difficulty is that if we don't adhere to U.S. law, we're not going to be flying over the U.S. It's clearly indicated by the officials that if we don't, it's likely that they won't allow us to do so. If we adopt this amendment, then we're not going to be able to. From one side, I understand, as I think Mr. Bevington said, that what we should provide to them in this law is only what U.S. law requires. Is that what you were saying, Mr. Bevington?

**Mr. Sukh Dhaliwal:** That's what I said.

**Mr. Brian Jean:** It's what Mr. Dhaliwal said.

**Mr. Dennis Bevington:** Also, I have an amendment to try to deal with the issue of general information that commercial air—

**Mr. Brian Jean:** That was my question. If that's fine, I would have to speak to the officials. I'd like to hear from them in relation to this, but is it a difficulty to say that we will provide only what U.S. law requires and nothing more? Would that be a possible amendment so that it complies with what the U.S. is requiring but also protects the personal data we do not want them to get? I wouldn't think they'd want any additional information because, bluntly, I can't imagine how much information that would be on a daily basis.

**Mr. Dennis Bevington:** Just to clarify that point, why are we concerned about this information? Why are we concerned about any information given to a foreign government? It is because of the process of profiling through data mining. That's clearly been identified by the European Union as a huge concern. What we are attempting to do here—and I'm sure that this committee has talked about it and has discussed it—is limit the volume of information provided to any foreign government because of the processes that are used with that information.

We have no ability to ensure that our passengers are not subject to data mining and through that process to profiling based on data rather than on actual events in those particular passengers' lives or on their particular circumstances. The European Union has clearly identified this process as something we have to avoid, so if we do not address that issue within this law, we are opening Canadians to that process, and we haven't narrowed it down to the point where we can keep the information to precisely what the U.S. wants.

I have another amendment. I know that probably we'll have some difficulty with this amendment.

• (1300)

**Mr. Brian Jean:** Can we talk about it later?

**Mr. Dennis Bevington:** We can talk about it later.

**Mr. Brian Jean:** My question here is to the officials.

**The Chair:** I want to ask the officials to respond, and then I have a list of people who want to comment.

**Ms. Kristina Namiesniowski:** Perhaps, Mr. Chairman, I can offer two comments. The first is that it would be fully the government's intention to prescribe by regulation exactly the type of information that would be permissible for air carriers to share with the U.S. government. It would be fully our intention to state exactly what type of information that would be, and it would be identical to what is being requested pursuant to the U.S. secure flight program—no more, no less.

I think the other point I might offer, Mr. Chairman, is that in our discussions with the U.S. government leading up to their finalization of the U.S. secure flight final rule, they have been quite clear with us that the purpose of this program is for aviation and national security and that the information they collect is for that purpose. They run it against their no-fly list, and where there is no match against their no-fly list, that information is not retained after seven days. They don't keep it. They dispose of it.

I recognize that there are potentially concerns about the length of retention periods, but I think it's up to them to defend their retention periods and the reasons that they feel they need to have a certain length of time. What they've indicated to us is that they feel that it gives them sufficient time to do what they need to do from the perspective of aviation and national security.

**The Chair:** Mr. Dhaliwal is next.

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

I would like the witnesses to clarify the mandatory information that will be required to be communicated to you. The airlines will have lots of information about every passenger. As Mr. Jean mentioned, they will have the choice of meals, the passport number, their address, their seating arrangement, and their companion. All that information is available to the airlines through frequent flyer programs. I would like to know what mandatory information would be disclosed under the regulations you are proposing and the law that the U.S. wants us to make. That is clearly what should be enshrined either in this legislation or in your regulations.

**Ms. Kristina Namiesniowski:** Mr. Chairman, the U.S. secure flight rule indicates that full name, date of birth, and gender are mandatory elements that must be provided. The rule also goes on to state that if certain types of information—and we read that out earlier—are possessed by the airlines, then that too must be provided. It's not “should” be provided; the rule specifies that it “must” be provided if it's within the possession of the air carriers, but it does not include information such as seat selection, meal preference, and that type of information. It is information that relates to redress number, passport number, passport country of issuance, expiration date, and the information that was read out previously by one of the committee members.

**The Chair:** Go ahead, Mr. Watson.

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

I have probably two or three questions to ask on this. We have been talking about a lot of information here. Just so I understand, does amendment BQ-2 match what the U.S. law or the final rule currently requires an airline to provide, or is this amendment more restrictive?

• (1305)

**Ms. Kristina Namiesniowski:** It is more restrictive than as described in the rule, Mr. Chairman.

**Mr. Jeff Watson:** If this is passed and the limitations are placed in law, if an airline then does not provide the information requested by the United States, they are in non-compliance with U.S. law and could be denied overflight. Second, if they provide the information in order to gain overflight, they are contravening Canadian law.

In terms of airline non-compliance, if something is spelled out in regulation as opposed to legislation, I'm presuming there's less of a concern if the United States changes their information requirements and an airline is suddenly contravening Canadian regulation as opposed to a Canadian law. Do you follow where I'm going with that? Is that clear?

**Ms. Kristina Namiesniowski:** I think, Mr. Chairman, that as government officials we would be concerned also if the airlines did not follow the regulations as prescribed.

**Mr. Jeff Watson:** I'm not suggesting that. I'm looking at outcomes. Obviously, at some future point the Americans could require more information in exchange for overflight than they are currently asking for. I'm just trying to get at what situation the airline could find itself in if it is in contravention of Canadian law versus contravention of a rule. I suppose I'm looking at a penalty or an outcome for contravening a Canadian law versus a regulation. Presumably it would be non-compliant in some fashion. Either a law or a regulation would be out of step with the United States.

I'm not suggesting that neither is unimportant. Is it a fair degree worse if we have restrictive law and they're now non-compliant with Canadian law? Would that be a much more egregious situation? You guys are not going to answer that, are you?

**Ms. Caroline Fobes:** I can just say that a regulation is a law of Canada. Whether it's in legislation or regulation, you would hope that they would meet the requirements.

**Mr. Jeff Watson:** Okay. That's fair enough.

**The Chair:** Thank you.

Monsieur Guimond is next.

[*Translation*]

**Mr. Michel Guimond:** Ms. Namiesniowski, it is worrisome, when you mention that any other information that the airline might have could be...

When we show our passport in a country that requires it upon landing, the airline company, before take-off, asks to see our passport in the airport of departure.

In my case, it is not so bad. I, Michel Guimond, was born in Chicoutimi, Quebec. However, if my name was Dhaliwal or if my name was Arab-sounding... If the act does not guard us against the racial profiling that the Americans might do, then they could say that they would do a double and a triple check of all Arab-sounding names. That is where the danger lies.

My amendment is based on the statement made before us by Minister Toews. I will read you a short six line paragraph, which is at the bottom of page 8 of the French version. Mr. Toews stated the following to us:

The final rule stipulates that airlines are required to provide each passenger's full name, date of birth and gender to the Transportation Security Administration before departure for all domestic and international flights landing in the U.S., as well as those that fly over U.S. air space.

When I drafted this amendment, I had the Minister's speech beside me. I added the flight number, because this whole thing has to, in some way, be linked to an airplane. I added: "must provide the flight number, the surname, first name, sex and date of birth".

Where is the problem? The Minister told us that the final rule of the Secure Flight Program...

You worry me when you say that we could provide any other information, not just information stating that the person had chicken rather than steak 15 times over the course of his or her 15 last flights. Let us stop being silly here; we do not have any time to waste.

That being said, my amendment is consistent with what the Minister told us.

• (1310)

[*English*]

**The Chair:** I think I have three more names on it.

I'm going to read again from the letter I received:

To be specific:

Secure Flight Passenger Data is screened against Terrorist Screening Database Records (TSDB, the U.S. Government's consolidated consolidated terrorist watchlist, including the No Fly and Selectee lists).

Secure Flight Passenger Data is also screened against significant public health records issued by the U.S. Centers for Disease Control and Prevention.

Secure Flight Passenger Data is shared for aviation security/national security purposes upon confirmation of positive matches to either the TSDB or CDC records.

In very limited circumstances which are considered on a case-by-case basis, Secure Flight Passenger Data may be shared with other law enforcement agencies under 5 U.S.C. 552(b)(7) of the Privacy Act. Sharing under this exception is for specific law enforcement situations.

They do put a tag line in here that:

Any information shared is limited to an individual or limited group of individuals for specific investigative purposes related to terrorism or national security. Since the inception of the Secure Flight program, TSA has provided information about a traveler to federal law enforcement officials on only three occasions to further a terrorism or national security investigation.

I think the intent of suggesting this is the fact that if you aren't on a list, or you don't match, as was stated earlier, your name is taken off the list immediately. The fact that they've only advanced information three times would suggest in my mind—my mind only—that they are handling the information as appropriate.

I have Mr. Jean next.

**Mr. Brian Jean:** Mr. Chair, I didn't really understand Mr. Guimond's argument in relation to the minister and I'd like to hear from him again after my intervention. It was going a bit fast and the translator.... I didn't really understand.

I want to mention as well, on the information I have, that I still haven't heard an answer to my question from some time ago, when I asked if we can put into our law only what is required by U.S. law so that no additional information is shared. That's the first question I have.

Second—and I was surprised here, because I was concerned with what Mr. Guimond said about racial profiling, etc.—I notice that nowhere do they ask for place of birth. Is that the case, or am I missing it?

**A voice:** It's in the passport.

**Mr. Brian Jean:** *Oui, oui*, but they don't ask for the passport either. They ask for passport number, name, birthdate, and gender, but according to the information I have, the U.S. doesn't see the passport until they come to the gate, and they don't ask for the place of birth beforehand. I'm just suggesting that since 75% of the 9/11 people came—

[*Translation*]

**Mr. Michel Guimond:** You do not show your passport at the access door; you show your passport upon registering your luggage. Before registering your luggage, you show your passport.

**Mr. Brian Jean:** Yes.

**Mr. Michel Guimond:** The information regarding place of birth is contained in the passport. The airline can have it and can therefore provide it to the Americans.

Truth has its rights.

[*English*]

**Mr. Brian Jean:** I understand, but my point is that from what I understand, that's not one of the things the U.S. is asking for and it is not one of the things that will be transferred by the data. That's my point, Mr. Guimond. I was just interested to see that place of birth, even though it's on the passport, was not one of those things that the airline is required to share with the U.S. government.

However, I'd like an answer to my first question, because then, of course, we would comply with U.S. law in relation to that particularly.

Second, am I missing something in relation to place of birth? Saudi Arabia is an example. A majority of the 9/11-involved people were from Saudi Arabia, and obviously they're not even asking for that here. It would seem to indicate to me that the U.S. is not doing at least that type of profiling based on place of birth.

● (1315)

**Ms. Kristina Namiesniowski:** Mr. Chairman, perhaps I can offer a couple of comments.

With respect to what will be transmitted by air carriers to the U.S. government, again I reiterate that it would be the government's intention to prescribe by regulation exactly what type of information could be transmitted, and that would be information that is identified by way of the U.S. secure flight final rule. Therefore it is information that is required by the law of that foreign state.

In terms of that information, does that information require that air carriers provide the country of birth of the individual? No, it does not. The information that is mandatory is full name; date of birth, but not location; gender; redress number; passport number; passport country of issuance, which could very well be different from an individual's place of birth; passport expiration date; and passport name record locator.

**The Chair:** Mr. Guimond—

**Ms. Kristina Namiesniowski:** Actually, I'm sorry; I misspoke. Passport name record locator is not information that is required to be provided under the secure flight program.

**The Chair:** I have to follow the list. I have Mr. Bevington, Mr. McCallum, and Monsieur Guimond.

**Mr. Dennis Bevington:** I think we all realize the nature of the information that is available. Are you familiar with the Patriot Act in the United States?

**Ms. Kristina Namiesniowski:** Yes, Mr. Chairman, I am.

**Mr. Dennis Bevington:** Quite clearly the United States, in terms of any aliens in that country, has the ability to collect information from any source. Isn't that correct? There are no privacy restrictions on any foreign traveller in the United States.

**Ms. Kristina Namiesniowski:** Mr. Chairman, I'm not an expert on U.S. legislation, but what I can offer is that in the discussions we've had with the U.S. government, they've been very clear with us that the intention of this program is aviation and national security.

They've also indicated that they believe that the interpretation of some with respect to the Patriot Act is much broader than what is actually permitted under the Patriot Act. What they've indicated to us in relation to this program and how the information would be used is that it would be used for the purposes of watchlist matching. If there is no match, then that information would be dispensed with after seven days.

They've also indicated—and I think, Mr. Chairman, that you read from the letter provided by Ambassador Jacobson—that in certain limited circumstances, when an investigation potentially links to somebody whose personal information is shared and in the hands of the Transportation Security Administration and there is a connection to aviation security or national security, that information could potentially be shared; however, as I understand it, there are guidelines around that, and as you indicated, Mr. Chair, it has only happened three times since the secure flight program has been in existence.

**Mr. Dennis Bevington:** For the counsel, is there anything in any of the negotiations that have taken place with the United States that would actually fetter the United States in acquiring information on a Canadian passenger?

**Ms. Caroline Fobes:** What do you mean by “fetter?”

**Mr. Dennis Bevington:** I mean anything that would limit the U.S. in accessing any information available to them through the Patriot Act on any Canadian citizen overflying the United States. “Fetter” means that the United States actually would be under obligation, not simply under agreement under the terms of a letter from an ambassador or an understanding reached during a discussion. It would be something that would actually fetter their ability to collect or share this information.

**Ms. Caroline Fobes:** What you're saying is the secure flight program would be subject to something else.

**Mr. Dennis Bevington:** Yes, it would be subject to an arrangement made with Canada on the provision of information and the nature of information on Canadian citizens overflying the United States.

**Ms. Caroline Fobes:** We don't have such a privacy protection or data element agreement or treaty. The EU and the U.S. have one that they've been negotiating for a number of years, but we have to remember that Secure Flight is about grabbing information temporarily, matching it against watchlists, and then destroying it if there's no match.

• (1320)

**Mr. Dennis Bevington:** Let's view “temporary” in the age of computers. Let's view seven days in the age of computers. We have computer information on the Sabre system in the United States and in the Galileo system with the Department of Justice in the United States. There is information on someone's name. How quickly is it possible to collect all the information attached to the name of a Canadian citizen who is travelling on an overflight of the United States? How quickly, in this modern day of communication and integrated computer systems, can a complete profile on an individual be created?

**Ms. Caroline Fobes:** You have to remember the purpose of the collection of the information. It's been documented. Ms. Namiesniowski has talked about her discussions with the U.S. It is collected to be matched against certain watchlists and certain health lists. That is the purpose for which it is collected. When we are assisting them by changing our laws, all we're doing is lifting a privacy restriction that's in PIPEDA so that the airlines can comply with the law of the foreign state, the U.S. That's all we're doing.

The airlines will be sharing information so they can continue business. That information is only going to be shared for specific purposes. If there is a potential match, it will be saved longer, and if there is an actual match, it is up to 99 years, but this isn't throwing information holus-bolus into the web of systems they have in the U.S. This is for a specific purpose. It's for overflights and it's to know who is on that plane.

As to why they ask for these data elements, one of the purposes is to reduce the number of cases of mistaken identity. Mr. Guimond was talking about people with certain names and racial profiling. This is actually to guard against that. They want to have certain information so they can be sure that person is the person they have on their list.

**Mr. Dennis Bevington:** Why then is the European Union so worried about profiling through the collection of data on individuals? Why is the European Union, in many documents produced by noted experts in these fields—documents that deal directly with the nature of the agreements being ironed out between the U.S. and Europe—saying that this is a concern? Your argument just doesn't follow in the context of what is happening in the world of information. That's the problem we have.

We've had evidence in front of this committee that French journalists have been put on a list because of publications they have put out. We have a situation that is of grave concern to a lot of Canadians. We need to understand exactly how this information is going to be used. That is the basis of what all the privacy people have told us. They don't like this bill. They don't think it's appropriate. They don't think it gives enough safeguards to Canadians, and I don't understand where you see these safeguards being added.

Is your department dealing with the privacy concerns of Canadians? How are you guaranteeing that what you're doing is going to keep those privacy concerns in line? You haven't shown me anything.

Were you privy to the negotiations with the United States over this? Are you one of the people in the department who would have been sitting with the U.S. officials to negotiate this arrangement?

**Ms. Kristina Namiesniowski:** Mr. Chairman, I can offer that over the course of the last four years we've had a number of discussions with the U.S. government. I think, certainly, that it is the view of the government that one of the ways to protect the privacy rights of Canadians is to be explicit in the regulations about the type of information that would be provided, and to be explicit that it would be no more and no less than what is required on the part of the U.S. government as prescribed by their law.

• (1325)

**Mr. Dennis Bevington:** To be more specific, were you engaged in the negotiations that gave us the exemption on domestic overflights?

**Ms. Kristina Namiesniowski:** Mr. Chairman, I was part of the discussion that led to the exemption that Canada received for domestic overflights.

**Mr. Dennis Bevington:** Can you give us some information about why the U.S. position changed on that particular aspect of this deal, and why they would not give us a complete exemption, as they are empowered to do under the final rule of their particular law?

**Ms. Kristina Namiesniowski:** Mr. Chairman, I think you have to go back to the beginning about why this rule was put in place in the first place.

There was work done by the 9/11 commission. That commission came out with decisions that called for the repatriation of the no-fly lists from the hands of the air carriers into the hands of the U.S. government, because up until that point air carriers around the world were running the U.S. no-fly list, making a determination as to whether individuals who potentially would be boarding that aircraft would be on the list or not, and then trying to resolve the situation if there was potentially a match with the U.S. government. This led to various people missing planes, false positives, and that sort of thing, so there was a decision on the part of the U.S. government to accept the recommendations of the 9/11 commission and repatriate the no-fly list into the hands of the U.S. government.

They went through their process to develop the final rule. There was a notice of proposed rule-making that came out. It provided people with an opportunity to offer representation around the content of that rule. Canada did do that. We had various discussions with the U.S. government about seeking an exemption to the application of the rule. The decision at the end of the day was to provide an exemption for Canadian domestic flights, i.e., flights that fly within Canada but fly over U.S. airspace.

Further to 9/11, as individuals will recall, it was airplanes that flew into the World Trade Centre. The U.S. government was very concerned about that sort of activity happening again. The rule applies to the continental U.S. They worry about having planes that fly over major population centres, but domestic flights in southern Canada that go over the northern United States do not fly over major population centres. This is one of the reasons they gave us the exemption for Canadian domestic flights—

**Mr. Dennis Bevington:** You did not answer—

**The Chair:** I have to interrupt. There are others on the list. We can come back if you like.

**Ms. Kristina Namiesniowski:** —and that's why they didn't want to go for overflights.

**The Chair:** I'll put you back on the list.

Mr. McCallum is next.

**Hon. John McCallum:** If we go back to the amendment proposed by the Bloc for a minute, I think the origin of it is very clear. In his speech the minister only mentioned those three things—name, gender, and...what was the other?

**Mr. Brian Jean:** Birthdate.

**Hon. John McCallum:** Yes, it was birthdate. Naturally the Bloc took that as gospel, but the minister, it seems, neglected to say that airlines are required to provide passport number and country if they possess it, and they will possess it.

I think the only difference of substance between Mr. Guimond's list and the required list is the passport information, plus the redress

number, which is to the benefit of the passenger. I don't think it's worth being out of compliance with United States law for the sake of a passport number and country.

I'd like to make one other point and ask for confirmation from the witnesses.

I have here a list of the items of information that will be required in the regulations, which have not yet been officially drafted. It's that list you read earlier. My assumption is that the items you will include in the list will be the minimum required to be compliant with U.S. law. Is that correct?

**Ms. Kristina Namiesniowski:** It's the minimum and the maximum, Mr. Chair.

● (1330)

**Hon. John McCallum:** So will it be illegal for airlines to provide any additional information beyond what is on the list?

**Ms. Kristina Namiesniowski:** We would prescribe by regulation the information that airlines would be required to provide, and it would be identical to what is contained in the U.S. secure flight program.

**Hon. John McCallum:** So if an airline had something else, such as a Visa card number, it would be illegal for them to give it to the U.S. if it wasn't on the list in the regulations? Is that correct?

**Ms. Kristina Namiesniowski:** Yes, Mr. Chairman.

**Hon. John McCallum:** It would.

The last point I'd like to make is that if that we pass one of our Liberal amendments, it would say that before any regulatory change is made, it would have to have parliamentary oversight and approval. Our intent originally was that it would not be possible to add some third country, some country other than the U.S., by order in council. It would have to come back for parliamentary scrutiny and approval. My understanding is that if the United States were ever to change its list of required information—let's say it added something—that could not be done by order in council, by regulation; that amendment or addition to the list would have to come back to Parliament.

Is that your understanding of our amendment, which is on page 11? If that is true, it would give me more comfort. I wouldn't want to see a whole lot of new information added to the list without the need for parliamentary scrutiny.

**The Chair:** Before I let you answer that—in fact, I'm not going to let you answer it today—I think you should look at the amendment and maybe make comment on it.

Seeing that it's 1:30, I'm going to adjourn the committee, and we'll resume this debate. I know there's a question about minimum and maximum and definitions. We'll take it from there when we resume on Tuesday.

Thank you, everyone. Have a nice weekend.

The meeting is adjourned.







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