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# Standing Committee on Citizenship and Immigration

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EVIDENCE

**Tuesday, November 20, 2012**

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**Chair**

**Mr. David Tilson**



## Standing Committee on Citizenship and Immigration

Tuesday, November 20, 2012

• (0900)

[English]

**The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Good morning. This is meeting 61 of the Standing Committee on Citizenship and Immigration. It is Tuesday, November 20. We are studying clauses 308 to 314 of Bill C-45, which is budget implementation bill number two.

We have three guests before us today. One is in Washington: Mr. J. D. Gordon from the Center for a Secure Free Society.

Good morning, Mr. Gordon. Can you hear me?

**Mr. J.D. Gordon (Senior Communications Advisor, Center for a Secure Free Society):** Yes, I can, sir. Good morning, MP Tilson. How are you doing this morning, sir?

**The Chair:** Just great, thank you.

We also have two guests before the committee here in Ottawa.

First, Emily Gilbert is an associate professor with the Canadian studies program at the University of Toronto.

Good morning, Professor Gilbert.

**Dr. Emily Gilbert (Associate Professor, Director, Canadian Studies Program, University of Toronto, As an Individual):** Good morning.

**The Chair:** We also have Richard Kurland, who has been here zillions of times. I always enjoy it when he's here. I don't know where he stands on things, but I always enjoy his presentations. It's good to see you, sir.

Mr. Kurland is a policy analyst and lawyer, and he has been here before on Bill C-31 and the immigration backlog.

We'll start off with you, Professor Gilbert. You have up to eight minutes to make a presentation.

**Dr. Emily Gilbert:** Thank you. It's a pleasure to be here. It's my first time so I hope I do what's expected of me.

I have a few comments to make about the proposed legislative changes, which seem fairly innocuous and bureaucratic. When going through them, there didn't seem to be much to sink my teeth into to begin with, but further investigation suggested there are many things to be concerned about with these changes.

The reasons for the changes are not clearly set out in the legislation itself, but turning to the background document we get a sense that these changes are being proposed as part of the beyond the border action plan on perimeter security and economic competitive-

ness that was signed in December 2011 by Prime Minister Stephen Harper and President Barack Obama. The electronic system being proposed is to establish a common North American approach to screening travellers that will be in line with the electronic system for travel authorization, ESTA, that is already in place in the United States. Our ETA, electronic travel authorization, being proposed is very similar, I think, or is expected to be similar to the ESTA coming out of the U.S., so it's important to look at the relationship between these two processes.

I have several questions around the ETA being proposed, that we require a visa waiver for non-nationals travelling to Canada. The first questions are around the kind of information that will be collected.

Currently, carriers have to provide advance passenger information, which includes name, date of birth, citizenship or nationality, passport, and other travel documentation, as well as the passenger name record, which includes address, itinerary, and ticketing information. The question is what kinds of information in addition to this may be procured with the proposed ETA. There are big questions already around the ways information is being acquired and questions around its reliability.

Back in 2007 an Auditor General's report showed almost 40% of the passenger name record information that was being collected was not accurate. Another more recent report by the Canada Border Services Agency back in February 2012 also indicated great problems with the information being collected. This raises a big concern about the kind of information that is being collected already, and how this information may be used in this proposed new system.

The legislation also suggests an electronic processing system will be used, but it's not clear who will have access to this, whether this will be government driven, or whether the carriers will have access to it, and how this information will be shared among national agencies in Canada.

I'll turn now to the way the information may be shared with the United States. Since this is being introduced as part of the beyond the border plan, the big concerns are around the information sharing that may happen with the United States as a result of the ETA.

Again, the background paper identifies its aim is to establish a common North American approach to screening travellers. It's important to see what this means in light of the Canadian system around gathering information and how we understand visa waivers. Travelling may be coming more harmonized with that of the United States.

For example, we still have visa waivers for many former Commonwealth countries. Whether those will be sustained in the future or whether we will move more in line with the United States and their decisions around who requires a visa or not to enter the United States is yet to be seen. That's one concern, that as we move to greater harmonization around our processes, we'll also move to harmonization around the kinds of countries we require visas for.

Then there is the whole process around information sharing between Canadian and American agencies. The beyond the border agreement sets out the information that will be shared. A key component of the beyond the border agreement is that there be further information sharing between the two countries. There are big questions about how, when, and why that information will be shared, and under what circumstances it will be shared.

● (0905)

The American version, the ESTA, which was set up in 2007, is very vague regarding who has access to this information. The American version states:

Information submitted by applicants through the ESTA Web site is subject to the same strict privacy provisions and controls that have been established for similar traveller screening programs. Access to such information is limited to those with a professional need to know.

That's all they say, so it's not clear what that "need to know" is, how that's decided, and on what basis.

It does say that the Department of Homeland Security and the Department of State, as well as federal, state, local, tribal, and foreign government agencies can have access to this information. There's a question in the Canadian case as to whether we also will have these different organizations having access to the information, and whether we will be making this information available to the Department of Homeland Security or the Department of State in the United States. I think that's a big question around how the information will be shared across the two countries.

We have many examples in Canada of information sharing that has gone wrong. The case of Maher Arar is always brought up as one key example. The federal inquiry did reveal many problems with the way the RCMP acquired information and how it was shared. The United Nations cited this as an example of human rights infringement around the information sharing that took place.

Also, privacy issues have been identified as a key concern in the limited public engagement that there has been with the beyond the border agreement. Privacy issues have been number one in issues identified by the public vis-à-vis the beyond the border agreement.

None of these are clearly set out in the legislative changes that are proposed. There is no sense of how these will be addressed or taken care of, so again I think we need to be very careful about how these things will unfold.

The other question is around inadmissibility criteria. Again, there are questions of whether there will be harmonization around the criteria for allowing someone who is part of a visa waiver country to come to Canada. The Canadian and U.S. versions are similar to a great extent, but they're not exactly the same.

Again, the question is, will we be taking on these different kinds of rules that the United States has? For example, they specify mental health issues. We do not specify mental health in the current Immigration and Refugee Protection Act. Whether that is something that will be taken up is yet to be seen. There are examples of people already being denied crossing at the Canada-U.S. border because of mental health reasons. There are questions around how that information is being made available to border agents.

Between Canada and the United States, we have a joint statement of privacy principles that has been signed through this beyond the border agreement. Whilst this does set out a framework of common rules for approaching how we will share information in future, there is very little in terms of how this will deal with the distinct constitutional and legal frameworks that we have in Canada and the United States. It's very strong in principle and statement, but not very clear in terms of procedure.

Another big issue has to do with appeal and redress. There is no statement about how people will know why they are inadmissible if they are so deemed, how they will be informed about these reasons, and how they will make any kind of appeal or have opportunities for redress if they are not admissible to Canada under these new rules that are being introduced. I think that needs to be clarified in the legislation around appeal, which is something that we set out as due process in Canada—

● (0910)

**The Chair:** Professor Gilbert, we're over the time. Could you wind up, please?

**Dr. Emily Gilbert:** Okay. I will wind up right now.

I'll just say that there are many issues that are raised by these legislative proposals. The most important one, as I've tried to stress, is how this brings Canada and the United States closer together and what this will mean for information sharing between the two countries, how it will happen, when it will happen, and what conditions there are around that information.

**The Chair:** Thank you, Professor Gilbert.

Mr. Kurland.

**Mr. Richard Kurland (Policy Analyst and Lawyer, As an Individual):** Mr. Chairman, it's always an honour and a pleasure to be here in front of committee. Thank you.

**The Chair:** That's why we love you.

**Mr. Richard Kurland:** I'm going to build on Professor Gilbert's observations. Rightly she pointed out that consumer protection is a requirement here. Privacy must be guarded.

I wish to highlight a problem that I've seen here. I'd like to ring the alarm bell about another group that will be adversely impacted by the proposed law: members of Parliament. When members of Parliament begin their multi-year journey serving Canada, some are unaware that a large part of their time will be dedicated to mobility issues, immigration issues.

I wish to caution that the absence of a framework for individual redress of the kind that already exists in the United States will lead to more work at the offices of members of Parliament. There is no federal consumer protection law allowing individual redress. Where will people go? To their member of Parliament, and it will always be an urgent crisis situation. They can't make their flight, or their relative can't come, or they're stuck somewhere.

I wish to point out that if there is no User Fees Act connection, it will be the members of Parliament who will provide the service that should be provided under the User Fees Act. I'll say a quick word and I'll close shortly. The User Fees Act is a friend. There is no better ally to a member of Parliament than the User Fees Act, because that law sets a service standard. That service standard is triggered by doing nothing on the part of the consumer or the member of Parliament. It is a save-work act. If this legislation goes through not connected to the User Fees Act, this will be a make-work act for members of Parliament, so beware.

**The Chair:** You always get our attention when you speak.

**Mr. Richard Kurland:** Thank you, Mr. Chairman.

**The Chair:** Mr. Gordon, from Washington, thank you for appearing before us this morning. Sir, you have up to eight minutes.

**Mr. J.D. Gordon:** Thank you, Mr. Chairman. I would like to thank the committee for having me join you today for this important testimony. I'd also like to thank MP Rick Dykstra for his kindness and hospitality and Julie Lalonde Prud'homme for organizing this for us.

I recently participated in a Center for a Secure Free Society forum called "The Future of North America". We had it right there on Parliament Hill a few weeks ago. In fact, it was in that very room. We had Jim Gilmore from Virginia, a former governor; Roger Pardo-Maurer, one of my colleagues who is a former deputy assistant secretary of defense for the western hemisphere; Joseph Humire, the executive director of the Center for a Secure Free Society; John Carpay, from the Justice Centre for Constitutional Freedoms; and Candice Malcolm, who organized it for us there.

It's good to be back just three weeks later to formally testify on the same topics we talked about there, which had to do with border security, immigration, economics, security, and the balance between liberty and security.

The U.S., Canada, and Mexico are inextricably linked. Whatever happens in one happens in another. The U.S.-Canada border alone is five and a half thousand miles long, and seven thousand if we count Alaska. With trade amounting to \$1.5 billion a day and roughly \$500 billion a year, our bilateral trade remains one of the key factors in our shared prosperity.

That said, we also have shared threats in the form of transnational criminal organizations, non-state actors like al Qaeda and the homegrown terrorists it inspires, and state-sponsored terrorism like Iran and its proxy, Hezbollah.

The U.S. and Canada remain engaged in valiant efforts to stabilize Afghanistan, fighting off the Taliban efforts to reconquer the government and turn the country into a terrorist safe haven. Radical Islam remains one of our chief shared threats, as correctly noted by Prime Minister Stephen Harper.

We have been at war since 9/11, and it was not a war of our choosing. As long as we remain at war, the U.S. and Canada will remain targets of extremists. Plots are foiled continuously, and our law enforcement authorities must be right one hundred per cent of the time, given the severe consequences of mass terrorist attacks. Failure is not an option.

Also, we have to combat fraud, tax avoidance, human trafficking, and a shadow economy that immigration policy can help fix. The immigration policy remains a key component of strong security and fraud avoidance for both countries. Borders are important, and security at the borders is vital for us as well. It is the most obvious to the public. But so is the procedure for granting visas worldwide, monitoring who comes in, why they come in, how long they're here, and whether they leave.

The U.S. and Canada have made some mistakes in admitting terrorists and would-be terrorists into our countries. Algeria and Ahmed Ressay comes to light as a prime example. Here was a man who came to Montreal, Canada on a fake French passport in the early nineties. When it was discovered that it was a fake passport, he suddenly changed his story. He said that he was looking for political asylum, which was granted. Over the years he got involved in petty theft, crimes, and fraud. He eventually went to Afghanistan to join al Qaeda terrorist training camps at Khalden. Despite the fact that he went to terrorist training camps in Afghanistan, he was readmitted into Canada.

In 1999 he tried to cross the border. He did cross the border, actually, from Victoria, B.C. to Port Angeles, which is up in the Olympic Peninsula across from Seattle, Washington. He had a trunk full of explosives 40 times more powerful than a car bomb. His destination was Los Angeles airport. He planned to blow it up on the millennium, the "Millennium Bomber".

In the U.S. we've had problems, as well. Most of those 9/11 hijackers should never have been in the country to begin with. We even had a more recent problem. A young Bangladeshi man named Quazi Mohammad Nafis was in the United States on a student visa. He planned to blow up the Fed in New York. We've had problems both in the United States and in Canada about who we admit to our countries.

We also have problems at our border with Mexico, of course. It's a little bit of a different problem, but some of the same issues overlap. At the Mexico border, we've implemented a system called "strategic fencing" at the places where we absolutely have to have it because people come in droves. There's generally a three-tiered fencing system in certain parts along the U.S.-Mexico border.

We've also increased the use of sensors and cameras, recently including surveillance drones. That's been a successful program.

•(0915)

We've been able to dramatically reduce the number of people coming across the border illegally.

We hope this is never necessary on the northern border with Canada, particularly given our better cooperation, I'd say, with the Canadian government, and just the length of the border that we would have to do that for.

I have three recommendations.

Number one is to improve pre-screening overseas. We have to really determine who is coming to the United States and who is coming to Canada, because they affect both of us. When Canada admits people on a political asylum basis or, say, under a student visa, that has an impact on the United States, because they could easily cross the border. At the same time, we have \$1.5 billion a day in trade between our two countries, so we don't want to impede the free flow of goods between our countries. We don't want to make the border security checkpoints any more cumbersome. Pre-screening is the top recommendation I'd have.

The second recommendation would be to increase intelligence sharing. The U.S. and Canada have already shared a military command in the form of NORAD to protect our continent from the nuclear menace of the Soviet Union in days gone by. We still have NORAD and we still have a very strong military partnership and military alliance. I think information sharing between our two countries is absolutely vital.

The third recommendation I would have is that Canada take a whole-of-government approach whereby Parliament would have different committees to deal with not only immigration but also defence issues and trade issues and that they all come together and think about what is best for the country and for our continent to keep us secure. I think that the electronic travel authorization is warranted. I think it makes sense. It will help secure our countries and will help defeat fraud and ensure that people in Canada pay their fair share of taxes.

The last thing I would mention is that when I was the Pentagon spokesman for the western hemisphere, I served under Secretary Rumsfeld and Secretary Gates for four years at the Pentagon.

One of the primary things I did was speak for the United States government regarding what was happening in Guantanamo. I've been there some 30 times, and I have brought seven or eight Canadian press there at least a dozen times. I got to know some of their thoughts about terrorism writ large in our hemisphere. One of the cases that really struck me as odd was the Omar Khadr case, in that Omar Khadr and his family, called the "first family of terrorism" by many in Canada, were able to get into Canada and stay there even though they fundamentally didn't show any respect for Canada whatsoever. Khadr's parents would stay in Canada to have children so they could enjoy the free health care and take advantage of the largesse and the kindness of the Canadian government and at the same time would go back to live in places like Afghanistan and Pakistan because, as Khadr's mother would say, she didn't want her kids growing up to be like Canadians. It was actually quite offensive. Most people there have probably already seen the interview on CBC in which they talked about that. We can get into that later, but I think

Canada needs to take a hard look at who they admit and why they admit them. That way we'll be much safer as a continent.

Thank you very much.

•(0920)

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

We'll now have questions from the committee.

Ms. James is first.

**Ms. Roxanne James (Scarborough Centre, CPC):** Thank you, Mr. Chair.

Welcome to all of our guests.

Mr. Kurland, your statement was very brief, but I'm going to go in a different direction and ask you the first set of questions.

With regard to the electronic travel authorization and the fact that someone would be flagged as inadmissible, who would you think would be flagged as inadmissible?

**Mr. Richard Kurland:** There are a variety of classifications. For example, there are people who have a similar name or same name and a similar or same birth date. I'm thinking, for example, of someone with the last name Mohammed born January 1, 1985. People from some regions in the world don't have the same birth certificate documentation, and they will arbitrarily select a birth date that will be recorded in government systems. This necessarily means the system will generate a red flag for those kinds of files.

**Ms. Roxanne James:** Thank you.

You brought up an interesting aspect of how something could go wrong and someone could be completely innocent. Yesterday's witnesses actually testified that in most cases a red flag would be for criminals, people who lied, fraudulently represented themselves on documentation, and so forth.

Your particular instance brings up a good question. I'm going to ask you that question, because I think it's important. In previous sessions it was portrayed that the computer system that does the electronic travel authorization would be the final say, and that's not the case in this particular piece of legislation. In fact, unlike in the United States where there is a lengthy appeal and a huge expense, it would actually be a visa officer who would review the entire file of a person that you just indicated. Were you aware of that?

**Mr. Richard Kurland:** Even better, I've had clients go through the American system to test it out. I had to resolve their no-fly issues.

I am amazed at the efficiency and speed of the U.S. system. It's a government travel department in the United States, and you send, through their website, your documentation regarding your birth or your issue. They acknowledge it immediately. It's actioned within 24 to 48 hours.

•(0925)

**Ms. Roxanne James:** So this is their version of the ETA, which we're moving to.

**Mr. Richard Kurland:** It's their system, but they have service standards that we do not.

Yes, we're on the right track. There's nothing wrong with gathering an extra layer of tombstone information like this. It makes management of government and, in some instances, private sector, easier and cheaper. It's a good thing.

**Ms. Roxanne James:** Thank you.

One of the issues that has been a significant problem is residency fraud, although the electronic travel authorization is one piece of the puzzle that we're trying to solve.

I think you've testified on border securities and biometrics and so forth, which we're moving toward. Do you think this piece of the puzzle, the electronic travel authorization, will actually help to identify residency fraud cases?

**Mr. Richard Kurland:** No, and here's why. We're already collecting the identical information in more than one Canadian system, the advanced passenger information system, for one. Residency fraud is combatted these days through the matrix of memoranda of understanding that are signed with other countries where we actually exchange case-specific information to combat residency fraud. It's easy to do these days.

**Ms. Roxanne James:** Recently our government made an announcement, I believe it was in the summer, that we are actually going after some of these cases. I think there were 11,000 potential cases, 3,100 of which we're trying to revoke residency and citizenship and so forth.

I realize that electronic travel authorization is not the answer, but certainly if someone has been deemed to have participated in residency fraud and we've revoked their citizenship and so forth, the ETA, along with the use of biometrics, will certainly help to identify those people trying to get back into Canada.

**Mr. Richard Kurland:** It can, though with two caveats. It's sort of like tweeting. When you tweet or use social media, that information is captured by the world forever. Carved in stone is an old analogy; this is electronic.

What if you have the misfortune to have as your residential address in this system an apartment in Montreal around the Olympic Stadium, an area that was known in the past to be the residential headquarters of Algerian-based terrorists?

**Ms. Roxanne James:** Is this someone who has already been found to have been involved in residency fraud?

**Mr. Richard Kurland:** Some of my former clients resided there, and because the address was similar—

**Ms. Roxanne James:** Were they guilty?

**Mr. Richard Kurland:** They were not guilty, but they got caught in the net and it took a while to get them out. That's what you have to guard against with this stuff.

**Ms. Roxanne James:** Thank you.

Can I ask how much time I have left?

**The Chair:** You have less than two minutes.

**Ms. Roxanne James:** I'm going to try to talk really fast.

Mr. Gordon, I'm going to direct my next set of questions to you. I thank you for sharing some of the stories. There was a passport that was discovered to be fake; he changed his story, turned to petty

crime, fraud, went to Afghanistan, joined al Qaeda, all of these things, and then lo and behold, he was able to come back through the border, to Canada, the United States, and so forth. I thank you for bringing that particular case to our attention.

As you indicated, there were cases where serious criminals have been deported. You didn't mention deportation necessarily, but there are serious criminals who have been deported, failed refugee claimants, and then they've been allowed to re-enter Canada. I'm not sure whether you have the same problems as well.

Do you believe the electronic travel authorization, the provisions in the perimeter agreement between Canada and the U.S., will help prevent foreign criminals from abusing Canada's generous immigration system?

**Mr. J.D. Gordon:** Yes, I do believe that. It's an excellent question.

I think the electronic travel authorization is one more tool that we'll have between the United States and Canada, and our law enforcement and immigration authorities, to help prevent the type of fraud we've seen, to help prevent people who should not be in our countries, who could pose not just a threat, but who could also take advantage of the kindness of our governments.

We've set up terrific societies in the United States and Canada. Many countries around the world do not have those types of societies because of the failures within their own governments.

The ETA is just one more tool that we have to keep our countries safe, to make sure we can help eliminate fraud, and to make sure people pay their fair share of taxes as well.

• (0930)

**The Chair:** Thank you.

Ms. Sims.

**Ms. Jinny Jogindera Sims (Newton—North Delta, NDP):** I want to thank all three presenters, two for coming in person. I know one's left the balmy coast of British Columbia to come here. I want to thank you for video conferencing with us today as well, Mr. Gordon.

We started the committee's study of this piece of legislation yesterday. Just so that everybody knows, the NDP supports the principle of electronic travel authorization systems. Just so we're clear, we're talking about electronic travel authorization systems for people coming to Canada as visitors, except U.S. citizens. That's my understanding of the way it's going to be applied.

At the same time as we support this, we also share some of the concerns of the Privacy Commissioner, who submitted a brief to our committee because she couldn't appear in person. Jennifer Stoddart has said in her brief that her office is concerned about the ETA program's lack of transparency and the degree to which the details of the program are deferred to regulation. Once again, we as parliamentarians are going to be asked to vote in the dark, without having the full road map in front of us. We share these concerns. We continue to have these concerns despite our discussions yesterday.

I'm not sure if you have read them yet, but I would like to get your take on some of her specific recommendations. I'm going to direct these questions primarily to Emily, but please, others, if you want to jump in, you will get an opportunity to do so as well.

Ms. Stoddart recommends that a privacy impact assessment be conducted well in advance of the implementation of the ETA. She recommends that in the interest of public transparency, these changes be codified in statute rather than in regulations, because regulations can be changed at the whim of a minister. She indicates that clarity is needed around information sharing between agencies and parliamentary oversight. She recommends that CIC should implement privacy training and policies so its workers understand the sensitivity of this information.

Do you concur with these recommendations? Do you have any of your own?

I'm going to throw the second question in there as well.

These small changes to IRPA are linked to the broader issue of establishing a common approach with the U.S. to the screening of travellers and implementing part of the beyond the border action plan.

Can you provide more background on the changing politics of the Canada-U.S. border, and what this will entail for Canadians with respect to mobility and privacy issues?

If we could start with Emily, that would be great.

I have a very limited time, so I would ask everybody to be succinct.

**Dr. Emily Gilbert:** Okay.

I think the recommendations that the Privacy Commissioner has made are excellent. They will take us to having some of those safeties in place around the concerns that I raised around information sharing and how people will have access to the information that's being used against them. I think that will help.

Questions around appeal and redress need to be made clear. As we've already heard, that could be added into those recommendations. That's something we should also be looking at.

Having more public debate on these questions to see how the Canadian public feels about these changes would also be useful. We haven't seen that happen, largely because this is rolled into an omnibus bill.

I'm losing my other point here, but there was another really good one and it will come back to me shortly.

In terms of the changing background around mobility, what we're seeing in North America as Canada and the U.S. work more hand-in-hand around security and immigration issues is that we have more hierarchical forms of mobility. Business people get expedited access across the border through pre-clearance programs like NEXUS that have been made possible through programs like NAFTA. Those people get to move more quickly. We have more and more people coming in on more regulated forms of migration, temporary labourers, who are much more scrutinized in terms of their ability to come to Canada and the conditions under which they stay. This is

just adding another layer in terms of the scrutiny that we are putting in place around people who are coming to Canada without any clear sense of its effectiveness.

The U.S. has had a similar program in place since 2007. I'd like to see the information that shows this is really addressing the concerns that have been raised by other people in this committee around things like terrorism, etc. As far as I know, there's no clear evidence that's the case.

● (0935)

**Ms. Jinny Jogindera Sims:** Richard, did you have anything to add?

**Mr. Richard Kurland:** This is no silver bullet for terrorism. I don't see a rational, logical connection.

On the other hand, the point is well served regarding consumer protection. Mischievously I will add that I see a growing trend between two classes of traveller: the frequent more wealthy NEXUS crowd, and the hoi polloi. To get around the concern about security, pay \$50 and go to the front of the queue, business class. For everyone else, it's economy, and we'll call you when it's time to board.

**Ms. Jinny Jogindera Sims:** Thank you very much.

**The Chair:** Point of order, Mr. Dykstra.

You're not going to attack Mr. Kurland, are you?

**Mr. Rick Dykstra (St. Catharines, CPC):** No.

Just for the record, just because someone has a NEXUS card, I don't think Mr. Kurland can assume that we're all rich.

**Voices:** Oh, oh!

**Mr. Kevin Lamoureux (Winnipeg North, Lib.):** That means you have one, Dykstra.

**A voice:** I know how much you make, and you are.

**The Chair:** We'll start the clock again.

**Ms. Jinny Jogindera Sims:** Okay, Mr. Dykstra, how much you make is not a point of order.

Minister Kenney previously announced that these changes would be part of the move towards an entry and exit information system with the U.S. Do you think that this is going to create some barriers, especially when we look at tourism? As we know, the requirement of a passport had a huge impact on our tourism industry. I know that in British Columbia we certainly felt it. Will this add another barrier?

I'm going to ask Richard and then Mr. Gordon to respond.

**Mr. Richard Kurland:** It certainly will. It's the closing of the Canadian box. Our entries and exits as Canadians ultimately will now be reported not just to the Canadian government, but, due to the matrix of information sharing, to other governments. I kept hearing from our witness in Washington the "tax" word raised again and again and again. I'll have more on that later.

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

Mr. Lamoureux.



**Mr. Kevin Lamoureux:** Mr. Gordon, I wonder if you could indicate if ESTA, which is an American program, requires any form of biometric information.

**Mr. J.D. Gordon:** It does not at this point, to my knowledge. To my knowledge, the ESTA is similar to what you're looking to have here in Canada. Australia has the same program.

As far as the point about tourism and whether it's a barrier, I don't think it would be a barrier. I don't really think you can equate an online form with getting a whole passport. Getting a whole passport is somewhat cumbersome. The online form doesn't appear to be cumbersome. I don't really think you can equate it to a barrier.

**Mr. Kevin Lamoureux:** Do you anticipate that the American government is going to be incorporating biometrics into the ESTA program?

**Mr. J.D. Gordon:** I haven't had any indication that they would at this point, though biometrics are being used right now by the United States for non-U.S. citizens when they enter at ports of entry. There's a camera. They take their picture and fingerprints.

Biometrics are very important to the United States. We're starting to use them, but I don't have any indication that they are part of the ESTA program or will be part of the ESTA program any time soon.

**Mr. Kevin Lamoureux:** Can you provide a copy of the information you actually collect with regard to the ESTA program? Mr. Chair, maybe it could be provided to you. Time is of the essence, because we're expected to pass this legislation which is being brought in through the back door in the budget bill sometime in the next 24 hours. I would be very much interested in what kind of information you collect from people through the ESTA program. Could you make that information available to us sometime in the next number of hours? Would that be possible?

**Mr. J.D. Gordon:** Yes, I can.

**The Chair:** Send that to the clerk, Mr. Gordon, if you could.

• (0940)

**Mr. J.D. Gordon:** Yes, sir.

**Mr. Kevin Lamoureux:** Ms. Gilbert, I'm wondering if you could provide some comments in terms of what you feel would be appropriate information to be collecting, given that we are going to have an ETA. What would provide you with some level of comfort?

**Dr. Emily Gilbert:** Around what we should collect around an ETA?

**Mr. Kevin Lamoureux:** Yes.

**Dr. Emily Gilbert:** Yes. There's information that we already collect around name, all the stuff that's included in both the advance passenger information and passenger name record. I think that information is appropriate: the date of birth, citizenship, nationality, passport number, and other identification information that's being provided, I think that's fine.

My question is, how does it get used? There has been a big concern with people, particularly those of dual citizenship, whose place of birth is not the place where they reside and they have full citizenship in the place they reside. There are people who are falling through the cracks because of that. That's an instance where it may be appropriate to gather information around someone's place of birth.

How it gets used may raise questions if they are treated differently because they've been born in a place that's considered a country that's suspect, whereas they might live today in the U.K., for example. I think that's a big question about how the information gets here. It's not that we shouldn't be collecting information, but it's the use of the information, who gets to use it, who has access to it, how it's shared between Canada and the United States, and how it becomes carved in stone, as we heard Richard Kurland say, around how the profiles that are gathered around those people get construed.

**Mr. Kevin Lamoureux:** Finally, Mr. Kurland, I share the very same concern that you've said in terms of how this is going to be a massive make-work project for members of Parliament and their offices.

In the U.S. they seem to have a central depository government office that processes the appeals. We're talking about tens of thousands of potential individuals who are going to be turned down. Having said that, I wonder if you could comment in terms of the overall numbers that will be rejected through the system and how we can get them through a fair appeal.

**Mr. Richard Kurland:** The way to do it cheaply, effectively, without oversight, without monitoring control from this institution, is to connect this operation up to the User Fees Act because the service standard is set by law. If the affected department fails to deliver 90%-plus on the service standard, the law causes a loss of budget to that department and the department reports annually its production, its operational work. That's how you do it. That's how you can motivate departments to do this the right way within a specified timeline. That service standard is a political question, what's acceptable to Canadians to fix a file. It's really that simple. It's elegant.

**Mr. Kevin Lamoureux:** Is there a specific amendment that you can suggest that would actually put that into place? I'd be interested in moving the amendment.

**Mr. Richard Kurland:** It may be late in the game, Mr. Chair, but—

**The Chair:** Yes, it is late in the game. I'm sorry, but time's up. I gave you 30 seconds, too.

Mr. Weston.

**Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC):** Thank you, Chair.

I think it takes a British Columbian to come before our committee and say the right thing. Defending the rights of parliamentarians the way you've done this morning is astounding. We're all very happy for you. Thank you very much.

What you said, Professor Gilbert, just a minute ago, which is that it's not a bad thing to be gathering information, it's how you use it that's important, really struck me. That reminds me of C. S. Lewis, who wrote about first things first, and how a good thing in the wrong priority becomes a bad thing.

I'm going to direct my question to you, Mr. Gordon. If security is the most important thing that a government could provide its citizens and knowing that we all care about privacy, wouldn't you say that it's important to detect inadmissible people at the first available opportunity and ideally overseas before they even contemplate coming to our country or taking advantage of some of our programs and our legal rights in Canada?

**Mr. J.D. Gordon:** Yes, sir, I would agree with that very much. I think that pre-screening is vital. If you look at the recent case where we had Quazi Mohammad Rezwanul Ahsan Nafis in Bangladesh, here was a kid who basically got a student visa, came over to the United States apparently in good faith, but then he planned to blow up the Federal Reserve.

I looked at the website the U.S. embassy has in Dhaka and I saw the requirements for student visas. Basically they were the same as in Chile. My wife is Chilean; she came to the United States on a student visa. I looked at the U.S. embassy website in Dhaka and the U.S. embassy website in Santiago, Chile, and they were exactly alike. Basically the only requirement we have is economics. That should be our last line of defence, not the first line of defence.

I think both the United States and Canada have to have a mechanism where we pre-screen people overseas. By the time they're getting on a plane in Islamabad for the United States if they have bad intentions towards this country, it's too late. I think pre-screening is very important, sir.

• (0945)

**Mr. John Weston:** In fact, we heard from witnesses yesterday that in terms of pre-screening we're likely to be improving our tourism. That's something that's certainly important to West Vancouver—Sunshine Coast—Sea to Sky Country where I'm from, Whistler and that part of the world. If we could make our identification more predictable so that the problems, even problems that would be wrongly pointed out for people, could be first pointed out overseas and dealt with, we would have a smoother kind of tourism cycle. We would avoid letting in people who cost literally millions of dollars in terms of our country's processing fees after they're found to be inadmissible when they're onshore.

Would you comment on the economic side of having something like an electronic transport authorization?

**Mr. J.D. Gordon:** Yes, I would agree that there is an economic benefit. People in the United States are concerned about terrorism. I think people were very alarmed about the Toronto 18. Back in 2006, we had a group of young men, homegrown terrorists if you will, and they were plotting to blow up Parliament Hill, blow up buildings in Toronto. They even said they wanted to behead the Prime Minister.

That really scared a lot of people in the United States. They wondered what was going on in Canada. People weren't used to that kind of thing from Canada.

If you can screen people better, and ensure that people in the United States know that Canada's really paying attention to the threat of terrorism, that will only increase your tourism. My wife and I went to Whistler in 2010, and to Vancouver and Victoria, B.C. We had the time of our lives. It's a beautiful place.

I think more Americans would go if they understood that Canada was very serious about who they let into the country.

**Mr. John Weston:** Professor Gilbert, you've rung the bell. We've heard the concerns about privacy. I think we all share them. We also have to acknowledge that the sophistication of people who have malevolent ideas toward Canada is improving and increasing as well, so we ought to be improving our own detection methods as we go.

Do you think, if we can manage those privacy concerns, we're on the right track? The NDP has said that they agree with the basic principles of this ETA. What are your thoughts?

**Dr. Emily Gilbert:** I come back to the two points that it depends on what information is being gathered and how it's being used.

If the information that is to be gathered is exactly the same that's being gathered already, but being brought together through an electronic system, that seems to be straightforward enough.

If there will be additional information built into it at a later date, whether it's biometrics or other kinds of other information, I think that is a concern. I think there are questions around, for example, the U.S. form, which I have looked at online. It does ask questions around mental health issues. How will someone answer those kinds of questions? Will we be asking those kinds of questions on our ETA as they do on the ESTA? What will be the implications for those individuals as to how they answer those questions? Are they relevant questions?

I think it comes down to what information we are gathering, and then how that information will be used.

On the example that was just given, about the Toronto 18 as homegrown terrorists, this has absolutely nothing to do with that kind of situation. I think what we're doing is pretending to be more secure by doing our pre-screening offshore in an attempt to show the United States that we are being more attentive to terrorist issues without actually looking at some of the clear ways we could deal with these things.

**Mr. John Weston:** Let me interrupt and challenge you, Professor. I think we've all said that knowledge is power, and power in the wrong hands can be evil. The trick is to make sure we accumulate the knowledge or the information. With respect to offshore, clearly if we can stop the bad guys before they get here, there are advantages. Your point is well taken that meanwhile we have to apply the information correctly and properly.

Are we on the same page, then?

**Dr. Emily Gilbert:** Yes, I think so. I'm just trying to say that we shouldn't blur the two issues. The kinds of terrorism that have been identified in the previous comments are not the kinds of things we're dealing with in an ETA. That's off the table as far as this is concerned —

**Mr. John Weston:** And yet we may never know the kinds that we will avert—

**Dr. Emily Gilbert:** Absolutely.

**Mr. John Weston:** —if we are implementing our security systems in a proper and intelligent manner.

**Dr. Emily Gilbert:** Yes, that may well be the case, but we also need to be very clear that we are gathering relevant kinds of information and we're handling that information appropriately.

Gordon began by saying it's a balance between liberty and security. We often hear that we have to sacrifice questions of liberty in order to address security. I think that is a false proposition. I think we can always try to ensure the two, because I think ensuring our liberty is a form of ensuring our security.

**Mr. John Weston:** First things first, right? Security first.

**Dr. Emily Gilbert:** We have to look at these things carefully.

Again, going back to Ms. Stoddart's comments, it shouldn't just come down to rules and legislation. We should have a more fulsome discussion of the kinds of information we're looking for.

• (0950)

**Mr. John Weston:** Thank you.

**The Chair:** Thank you, Professor Gilbert.

Madame Groguhé is next.

[Translation]

**Mrs. Sadia Groguhé (Saint-Lambert, NDP):** I'm not ready, but...

[English]

**The Chair:** Sorry to catch you off guard. You moved to a different place. That's probably the problem.

[Translation]

**Mrs. Sadia Groguhé:** Thank you, Mr. Chair.

We spoke about inadmissibility criteria. Ms. Gilbert, you spoke about harmonizing those criteria. It seems to me to be an important and essential point because, when it comes to issuing an eTA, these criteria will have to be harmonized. Could you please specify what type of criteria we should have in common?

[English]

**Dr. Emily Gilbert:** Thank you.

I apologize, but I'm going to answer in English because my French is very rusty.

The kind of criteria that I think may move towards greater harmonization are things related to the questions they are asking on their forms, which are slightly different from the questions we are asking. For example, there may be harmonization around mental health issues. That is one clear example we may move towards. I don't know if that's the case, but that's something we need to consider.

There may also be harmonization in terms of countries that are eligible for visa waivers and countries from which we require visas. There are some significant differences between Canada and the United States, particularly for Commonwealth countries and many in the Caribbean. We don't require visas from them. Currently that is a big difference from what the U.S. requires of those countries. I think we'll see harmonization in that way.

Also, I think there will be the information sharing that happens through the information that's collected. Again, we don't know the

full extent of that, and I think that's something we need to have further clarification on before we move forward.

[Translation]

**Mrs. Sadia Groguhé:** Thank you.

I was already wondering, but the more I hear from our witnesses, the more questions I have.

You said that a public consultation could become necessary to adopt this project. I fully agree with you, because with the electronic travel authorization, we are targeting security, of course, but is it the right tool?

There was also discussion about using biometric parameters. Could this approach not be used? We could perhaps move more in that direction. I would like to hear your comments on this. In terms of security, is the electronic travel authorization really the tool that will best allow us to live in a secure environment?

Mr. Kurland and Mr. Gordon, you are welcome to answer as well.

**Mr. Richard Kurland:** It opens the door to these approaches, effectively.

Furthermore, in my opinion, it is clear that the Americans are putting pressure on us to introduce this type of system. Is this enough justification for Canada to adopt it completely? We heard testimony from other people. It is positive overall. It could really improve the effectiveness of our two systems, in Canada and the United States. So, why not? I like what Professor Gilbert said: we need to protect people's privacy, but aside from that, why not?

**Mrs. Sadia Groguhé:** Ms. Gilbert, do you have any comments?

[English]

**Dr. Emily Gilbert:** Again, I'm all for sharing. Sharing is a great principle. We're taught it from early days when we're children in kindergarten. As I've said before, sharing is good, but I think we need to know how we're going to share that information, who is going to have access to it and for what reasons, and how it's going to be used.

• (0955)

[Translation]

**Mrs. Sadia Groguhé:** Mr. Gordon, do you want to add anything?

**Mr. J.D. Gordon:** Good morning. I'm sorry, but my French is not very good.

**Mrs. Sadia Groguhé:** Please, my English isn't very good, either.

[English]

**Mr. J.D. Gordon:** I think information sharing is critical between the U.S. and Canada, because whatever happens to one impacts the other. Basically, our countries have already had a very close relationship military to military and law enforcement to law enforcement. We have the joint command at NORAD, and we cooperate through NATO together.

I think we can share information together. Anything we can do together to help keep both countries safer is going to be a good thing.

[Translation]

Thank you.

[English]

**The Chair:** Thank you.

Mr. Menegakis.

**Mr. Costas Menegakis (Richmond Hill, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses for appearing before us today.

What we are talking about is an extra tool in the tool kit to identify people prior to boarding a mode of transportation and coming to Canada. Security of Canadians is our priority. With all due respect, it trumps the privacy of foreigners. They have a choice as to whether or not they fill in the ETA before they come to Canada. If they don't want to fill it in, they don't come. Once we implement the system, that will be the system. For us and for Canadians, it is paramount that their security be protected. When we identify those people ahead of time, it facilitates the system for legitimate people, law-abiding citizens from other nations who come to our country.

Here's what Pierre Sabourin, the vice-president of the operations branch of the Canada Border Security Agency, said:

With the ETA system, we will have the ability to inform the airline, before the flight has left, to not board that passenger....

There are security advantages: people who would be deemed inadmissible would not be coming to the country. There are also advantages from a refugee perspective, which is that we will get fewer refugee claims.

I want to direct my first question to Mr. Gordon.

What do you think the consequences will be if Canada does not implement the ETA?

**Mr. J.D. Gordon:** It would be damaging to the country. It's just one more tool that we have to fight terrorism and also to fight fraud. If Canada does not pass the ETA, we're going to maintain the status quo, and the status quo is that we're vulnerable. As long as radical Islam remains at war with the United States, Canada and the west, we are vulnerable. I think the ETA is going to be vitally important. It's just one more tool to help keep us safe, in both Canada and the United States.

**Mr. Costas Menegakis:** The Canada-U.S. border is, I believe, the longest border that two nations share anywhere in the world today. There are obviously some security threats that could result for both Canada and the United States.

Can you give some examples of people who have slipped through the cracks, which Canadian officials could have prevented if we had had the ETA in place at the time?

**Mr. J.D. Gordon:** I'd say the most notorious one would be Ahmed Ressam, who I mentioned earlier. Here's a guy who came to Montreal on a fake French passport, and then when it was discovered it was fake, he just changed his story. He said that he was a political refugee. Then someone out of the kindness of their heart decided to give him refugee status in Montreal. Then he had over a decade of malfeasance in Canada, in Montreal. Then he decided he wanted to go to the jihad. He went to Afghanistan, trained in the Khaldan terrorist training camp, and came back to Canada. I don't know how he even got back in, because there was an arrest warrant for him even before he left. Here is a guy who was going to bomb LAX with

a car bomb that was 40 times more powerful than a typical car bomb. This one guy could have destroyed LAX.

That's one good example. All we really need is one good example of a fact to say any measure we can take is going to be good for us.

This is not very intrusive. I've heard the privacy argument. I do agree with the one point that we should have training for the officials who are charged with reviewing this information. That's about the only one I agree with.

Yes, anything we can do to keep our country safer, to prevent people from slipping in who shouldn't be here, I think we should do.

• (1000)

**Mr. Costas Menegakis:** Thank you.

Mr. Kurland, would you not agree that currently there's a limited capacity to screen individuals travelling to Canada from visa-free countries?

**Mr. Richard Kurland:** That's the crux of this.

**Mr. Costas Menegakis:** Would you agree or disagree with that?

**Mr. Richard Kurland:** It's a key point. I certainly agree and more. T

his is the new group. Visa-free countries don't require contact in advance of arrival to Canada. This system will effectively put a semi-visa on people who are travelling visa-free. It pushes the enforcement border from our ports of entry at the airports back across the sea.

**Mr. Costas Menegakis:** Thank you.

How's my time, Mr. Chair?

**The Chair:** You're out of time.

Mr. Opitz.

**Mr. Ted Opitz (Etobicoke Centre, CPC):** Mr. Gordon, as we know, there are a lot of financial costs as well as other costs associated with the entry into Canada of inadmissible individuals. When Pierre Sabourin, the vice-president of the operations branch of CBSA appeared before this committee on a security study, he said:

The average cost of a removal to CBSA is about \$1,500.... If we have an escorted removal where we need to have CBSA officers and sometimes medical attention, that can go up to \$15,000.

Could you tell us, from your experience in the U.S., how ESTA has cut down on the costs of admitting inadmissible people to the United States? Can you talk about the cost savings in terms of the resources needed to deal with inadmissible individuals who have entered the U.S.? Would you say that the ETA will help CBSA officers to do their jobs better and guard our shared borders?

**Mr. J.D. Gordon:** Yes, sir, I would agree that the ETA will help in reducing costs. I think you've made the point about the high costs in Canada of removing an individual. When it's a forceable removal, the costs skyrocket. I think the U.S. has had a parallel type of cost.

It's much more inexpensive to keep a person out at the port of departure, whether that's in Pakistan or anywhere around the world. It's much, much cheaper to keep them out rather than have them get in and wind up in trouble or associate with people like the homegrown terrorists we talked about. I think it's much cheaper at the point of departure than it is at the point of entry.

**Mr. Ted Opitz:** Sir, do you have experience with these types of systems in other countries?

**Mr. J.D. Gordon:** Not a lot. I have been to Australia, and I'm a little familiar with what they do there. They have a system similar to the ESTA in the U.S. and to the ETA. I would say that I'm familiar with those systems in the U.S. and Australia. I've been to about 100 countries. I was a commander in the navy. I lived overseas for 10 years in Europe, Asia, and Latin America, but I'm not as familiar with their systems.

Clearly, the U.S. and Canada are at the forefront of screening mechanisms. I think we're doing well, but I think there is room for improvement. I think the ETA will improve the systems for security in both countries.

**Mr. Ted Opitz:** Thank you.

Mr. Kurland, to my friend Costas' point, I think he's absolutely right that the safety and security of our people trump the privacy concerns of foreign individuals who want to come to this country, because they do have choices and they can decide whether or not to come here.

Notwithstanding that, I've had constituents who have been caught on lists because they had similar names and birthdates. Going forward as this process expands, do you think that introducing biometrics and other data like that somewhere down the road will help resolve a lot of those issues?

**Mr. Richard Kurland:** I think Mr. Menegakis is bang on in his analysis. It's Canada first. We still have a duty to strangers. To paraphrase prophet Ibrahim, remember, you too were a stranger in a strange land. Our obligations do extend beyond our borders to protect strangers. The protections will be there. The law as framed will allow us to protect all of us if we're properly resourced.

**Mr. Ted Opitz:** How much time do I have left?

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

**Mr. Ted Opitz:** Rick, do you have any other questions?

**Mr. Rick Dykstra:** Thanks.

I want to pursue that a little further. One of the anomalies that has been pointed out, and Ms. Gilbert, you mentioned this, is that there's no acknowledgement of what the cost savings have been. I'd like to think that most of us are safe drivers, but it doesn't mean that we can quantify how much money we've saved the insurance companies because we've been safe drivers.

Part of prevention is also looking back in terms of what the general acceptance and safety levels are, and how people are feeling psychologically about whether they're safer today or whether they were safer 10 days before September 11, 2001. I'd like you to clarify and perhaps explain that quantifying these types of issues isn't necessarily all that easy.

●(1005)

**Dr. Emily Gilbert:** Yes, I would agree absolutely, which is why we need to discuss them and talk about the ramifications of the kind of information being gathered and how it's being used. That's the only way we will know how these security measures are impacting us in terms of security. If we leave it to bureaucratic decisions and legislation, we won't know.

With cars, we've implemented different kinds of security mechanisms, like seat belts, that were not required before, but there's a limit to what people will endure before they decide not to drive their car. It's harder to understand that in terms of these kinds of security measures, which is why we need to discuss the details around what information is being gathered and how it's being used, so we can make knowledgeable decisions about that.

**Mr. Rick Dykstra:** But you're—

**The Chair:** Thank you.

Ms. Sitsabaiesan.

**Mr. Rick Dykstra:** I think I'll get another chance at that.

**Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP):** Thank you, Mr. Chair.

Mr. Kurland, you were the only one who mentioned the user fees, so I'd like to ask you a question. What do you think is the purpose of exempting services for the ETAs and biometrics under the user fees?

**Mr. Richard Kurland:** For me, when I first read it, it was straightforward. This is a way for Canada's public servants to foist the heavy lifting onto someone else: members of Parliament. It's as simple as that.

**Ms. Rathika Sitsabaiesan:** Following up on the User Fees Act, how will parliamentarians be able to scrutinize these fees if they're exempt from the ministerial reporting requirements through the User Fees Act?

**Mr. Richard Kurland:** The fees will be reported. It's the service standard that's at the heart of evil for public servants when dealing with the User Fees Act. The User Fees Act will allow for the normal collection, reporting, and monitoring of the funds for this service. That's not the issue. It's not about profit or loss, or amount of the fee. It's the service standard. It's a one-page law, a very rare, private member's bill that went the whole nine yards.

**Ms. Rathika Sitsabaiesan:** Does it make sense to have the meat of the ETAs in regulation rather than in legislation?

**Mr. Richard Kurland:** That's a tough one.

The principles are there. The principles are right. What we can do moving forward is take the benefit of expert witness testimony and move it forward at the regulatory phase. Maybe some meat is here, but I suspect the freezer is full when we come to the regulatory process.

**Ms. Rathika Sitsabaiesan:** The regulations can be changed at whim. This is a cooperation agreement between the President and the Prime Minister. We want to make sure that the two countries are happy with the security of our perimeter moving forward. If the parameters we're setting are set in regulation and the minister changes and then on a whim decides to change the regulations, how comfortable do you think both countries would be in the perimeter security?

**Mr. Richard Kurland:** Well, no person is safe when Parliament's in session, of course. What Professor Gilbert pointed out is that the key in this is what questions are going to be asked. What information is going to be stored? Would it be mental health issues? That's something that would be prescribed by regulation, that type of form, and that's where the problem is. The only thing at this level is the User Fees Act fiasco.

**Ms. Rathika Sitsabaiesan:** Professor Gilbert, you touched on the same issues that the Privacy Commissioner outlined as well with the very personal nature of some of the questions, for example, mental health disorders.

If I suffered from depression sometime in my life, now I need to disclose that to a foreign government of a country I would like to visit. What impact would my bout with depression have? Depression is classified as a mental disorder. We were looking at questions on the U.S. application, and it says "ever" in the past. If Canada is trying to harmonize with the U.S. and we ask the same type of questions, how would that impact on somebody's ability to visit family here in Canada?

•(1010)

**Dr. Emily Gilbert:** It could have a huge impact. It may have an impact depending on how you answer it. The question is framed on the ESTA on whether you might pose a threat. If you say no, but you have a history of depression, that may be used in terms of inadmissibility in the future because you seemed to be fraudulent on your application even though there is no harm. It could have all kinds of layers, both in the first visit and return visits. I think we have to be very careful about those kinds of questions. I think there would be big implications around them.

**Ms. Rathika Sitsabaiesan:** Thank you.

The last point is about the need for cost savings all the time for building efficiencies. The Auditor General's reports time and time again since 2008 or 2007 have been calling for harmonization and integration of resources, training, and solidifying the agency's ability to enforce the existing legislation. That's harmonizing and integrating CBSA and CIC services. Would that help with cost savings?

**Dr. Emily Gilbert:** There may be some cost savings brought about by more interoperability around those kinds of things, but I think we have to be careful about what is also lost by those forms of deeper integration. We have to be very clear that it's not just about cost; it's not the only bottom line, but also we have to look at other questions raised here about privacy issues and so on in those kinds of agreements as well.

**The Chair:** Thank you, Professor Gilbert.

Mr. Leung.

**Mr. Chungsen Leung (Willowdale, CPC):** Chair, I'll give my spot to Mr. Dykstra to follow up with his question.

**The Chair:** Sure.

**Mr. Rick Dykstra:** Thanks.

Ms. Gilbert, I think we were coming to the same conclusion in a way, that it is critical and important to understand what questions are going to be asked, based on what the purpose of the ETA will be over the next number of years. I and I think everyone would acknowledge that.

As a ministry official, Mr. Linklater made it painfully obvious to all of us that not only had the ministry met previously at great length with the Privacy Commissioner, but as we move forward in this process, they are going to continue to meet with her and her office. The process upon which we will come to our regulations will be in close consultation with her and with her office. I know that doesn't necessarily change your opinion.

I don't know whether you had a chance to see the committee hearings yesterday, but the ministry has gone to great lengths, not only to meet with the Privacy Commissioner, but in terms of detailed research and understanding how this program would work, to meet with officials in the United States as well as Australia.

You mentioned statistics, and I think it's important to relay a couple of them. There have been questions regarding what's going to happen to tourism and how tourism is going to be impacted. Are fewer people going to come to a particular country because an additional piece of, and yes, we'll call it security, has been implemented? What is the impact on tourism?

The World Travel and Tourism Council did an impact assessment of the visa facilitation on job creation, and also with the ETAs. It's fascinating, and perhaps you'd like to comment on it. Obviously, I'm not expecting you to have read this, but there are some really good statistics here:

The ETA program was rolled out to qualifying origin markets over several years beginning in 1996. 21 source markets for which data were available were examined and outcomes were observed over the three year period after ETA was rolled out for each origin market. Actual arrivals averaged growth of 7.9% per year...over the respective three year period following the roll out of ETA for each country....

From an overall perspective, we do have Australia, for example, post its implementation in 1996, which experienced an increase between 8.9% and 9.8% in tourism. There is some proof there may actually be a connection, at least according to the World Trade Council, between a foreigner's visit to a particular country and that foreigner or tourist having a clear understanding that because of the ETA program the country actually may be safer to visit, and therefore, it moves up on their list as their first or second choice for destination sites.

I'd like to get all three of your comments on that, in terms of the overall potential of how that further feeling of security may enhance someone choosing our country as a destination.

•(1015)

**Dr. Emily Gilbert:** I'm happy to start.

That's an interesting figure, but I'd like to unpack it a bit.

I can't remember what year Australia had the Olympics, but that would also have been conducive to a rise in tourism. There are other things that also impact on increases. It's good that their travel authorization would maybe not impede those kinds of growth, but I think we have to be careful. I think we would also want to see if the increases were across the board, from all countries, as they had been previously, or if some people from some places no longer had similar kinds of access.

Tourism is one piece of the puzzle, but everyone keeps coming back to the question of security. What is our real interest here? Is it trying to ensure security, or are we talking about tourism now and the consequences there?

**Mr. Richard Kurland:** If you look at the data from travel and its variations, there are only two things that cause people to go or not to go to a place. It's money and time.

An electronic system is timeless. There will be a fee involved. Will that impact? The experience says, yes, it's going to impact, but will it be a significant impact? Probably not.

**Mr. Rick Dykstra:** Mr. Gordon.

**Mr. J.D. Gordon:** I would agree with your premise, MP Dykstra. It could increase tourism in Canada. As we saw in the example of Australia, when they implemented their program, which was similar, tourism did increase. I think that with tourism, perception is everything.

Professor Gilbert mentioned that this ETA had nothing to do with the Toronto 18. Maybe it didn't technically, but with tourism, perception is everything. If people in the United States are worried they're going to get blown up in Canada because of what's going on there, they're not going to want to go. If Canada is taking visible steps to have an ETA to increase their security, to make sure they know who's coming to their country, who's leaving, when they're there, that perception is going to make a big difference. They'll say that Canada has taken steps to address a problem, so it's a good place to go and they're not worried about it.

To the extent that you've mentioned how Australia actually benefited from the ETA, I think Canada could see the same type of benefit.

**Mr. Rick Dykstra:** I know it's interesting from my perspective. I agree, Ms. Gilbert, that in every decision that is made and in every result, a varying degree of factors have to be taken into account. You wouldn't have to be a mathematician to figure that out. One of the concluding remarks of the council was that these results show that the ESTA program did not have a negative impact on tourist arrivals from visa waiver countries, despite the perception of a more restrictive policy.

I think about that in a very pragmatic way, as I'm sure many of us do around this table. When I decide to get on a plane to visit a destination, time and money are two of the priorities I think about, Mr. Kurland. Another is that there are countries in this world that I have not travelled to and will not travel to because I'm concerned about my and my family's safety. I'm sure all of us make those same determinations. I would like to think we put ourselves in a stronger position as a country when we tell those who are visiting here that

we are very concerned about Canadians' safety, but we're also concerned about their safety when they are here.

What we're trying to accomplish here isn't just a vision or a decision based on adding a line of bureaucratic detail. It's a very pragmatic and practical way of inviting people to our country, saying they are welcome to come here. On the other hand, if folks are going to visit this country, there's a very minimal amount of research or filling out a document.

Heck, every time I travel anywhere else in the world, I need to fill out a form as I sit on the plane coming back to Canada. When you look at that, especially from the United States, I find those questions to be extremely detailed and personal. Did I buy any cheese? I wonder whose business that is as I'm responding to this. I fill out the questionnaire and I hand it in. It goes to the CBSA official. I don't know what happens to that document. I don't know how long it sits there, five years, four years, three years, or two months. I think I have a sense of security when I fill that out. I understand no one is bringing anything into the country that could harm me or the country.

• (1020)

**Mr. Richard Kurland:** I apologize, Mr. Chair, but I must add that I would feel safer in that plane knowing the occupants had been pre-screened.

**Mr. Rick Dykstra:** We will move on.

A couple of the areas of concern brought forward, and Ms. Gilbert highlighted them, are the four recommendations made by our Privacy Commissioner Jennifer Stoddart. The first recommendation is that a PIA of the ETA program be conducted well in advance of implementation. Our officials acknowledged yesterday that would definitely happen. They said it on more than one occasion. The second recommendation is, "as public transparency is a critical principle for such a broad-based program, we recommend that specific data elements, uses and retention periods for the program be codified in statute."

As we discussed yesterday with ministry officials, I understood that process would be ongoing. I don't know if that's going to satisfy every one of your concerns. You have highlighted them as questions that we definitely should pay attention to from a regulatory perspective. I wonder if there are perhaps one, two, or three that you would highlight for us that you think we need to pay attention to on the regulatory side.

**Dr. Emily Gilbert:** You are asking me specifically?

**Mr. Rick Dykstra:** Sorry, not to put you on the spot, but you have highlighted areas of concern a couple of times. I wondered if a couple stood out for you. Ministry officials are obviously listening to these hearings as well. Their ability to understand what witnesses think should be included would be extremely helpful.

**Dr. Emily Gilbert:** Again, the extent of the information sharing with the U.S. is something that needs to be clarified. Also, the U.S. does not have a privacy commissioner comparable to ours and they are figuring out how those discussions are going to take place. If we have recommendations coming from Canada, how will those be addressed in a situation where the information is shared? I would like that to happen, as well as some more clarification around appeals and redress if there are mistakes around identification and so on.

It's true that we have heard a couple of people say that as we are Canadians our first responsibility is to Canadians. We also are responsible for protecting human rights that extend beyond Canadians to people who are coming into Canada who have been denied access to Canada, maybe for very good reasons. We need to be clear about why that has happened and then make it clear that if a mistake has happened, there is a mechanism for appeal or redress.

**The Chair:** Thank you, Professor Gilbert.

Ms. Sims and Ms. Freeman, go ahead.

**Ms. Jinny Jogindera Sims:** I just want to follow the line of questioning that Mr. Dykstra started a few minutes ago and pick up on a comment made by my friend, Richard.

Richard, as you said, this particular piece of legislation is not a magic bullet to solve any fears of terrorism. First, as you know, we don't even really know what data is going to be collected. We presume name and birthdate will be the minimum.

The other big concern we have is that, as you said, that which we desire for ourselves we also want for others, especially when it comes to our liberty and freedoms, and privacy is one of those issues. I'm one of those people who travel a lot and don't have an access card because I don't want to share a lot of my data, not that I have anything to hide, but I don't know where else it is going to go.

For me, one of the major concerns we have around privacy issues is that first, we don't know what data is going to be asked for, so it's hard for us as parliamentarians to go one way or the other. The second one is ministry officials who were here were very informative and upfront with their responses. Every time we asked whom this data would be shared with, they said that it would be shared with nobody at this time. You know that whenever you hear "at this time", it's going to go somewhere fairly quickly. That remains as a major concern because other people will ask why you can't share a name and a birthdate, but we don't know if that's the only information that's going to be selected.

I'm also hearing a lot of confusion about citizenship fraud and all of those things. This piece of legislation is not going to address citizenship fraud. None of us wants to see citizenship fraud. We all want to see that cleared up.

For me the question always goes back to what we are trying to achieve with this piece of legislation. If it is simply to have that biodata, birthdate and name, don't we already have that on the passports? A person cannot enter our country without a passport. If it's somebody entering without a passport, ETA isn't going to stop them. What is it we're trying to achieve here if everything we need is on a passport, can be read off a passport, can be stored and is stored?

• (1025)

**Mr. Richard Kurland:** We're doing a favour for our best friend in the world to the south. That's what's going on here. There's nothing wrong with that. We're harmonizing the layer of information exchange as a favour to the United States of America, and presumably, it's not a one-sided deal.

**Ms. Jinny Jogindera Sims:** That is the only reason you can see for doing this. It just boggles my mind.

The other bit that I really like, and I want to thank you too, Mr. Kurland, is for your appreciation of the workload in my office. I can tell you that about 95% of it already tends to be related to immigration, and you know where my riding is, in Newton—North Delta. I really want to thank you for that because whenever you have pieces of legislation that don't have things specified in the statutes, that are left over in the regulatory stage and to the whim of others for interpretation, we do get that confusion.

I am going to pass it back to Mylène.

**Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP):** Do I have any time, Chair?

**The Chair:** We always have time for you. You have about two minutes.

**Ms. Mylène Freeman:** My big concern would be accessibility to these applications. For me, an electronic application in an electronic kiosk at the passport office isn't extremely accessible. Would you share that concern? Doesn't it keep out of the loop people who aren't very electronically literate? How can we solve that problem?

**Dr. Emily Gilbert:** In the U.S. version it is possible to get a third party to enter your information, so that's both something that could help people, but also a danger to be concerned about if that is going to be happening. Who gets to register? Is it only individuals who are travelling or can you register a group as you can with the ESTA? That's a big issue. In the U.S. version as well there's a payment of \$14 attached that has to be paid by a credit card. That's another impediment, not only the access to the computer, but having a Visa, MasterCard, American Express, or other credit card.

**Mr. Richard Kurland:** These are some of the safeguards. What about mischief? What if someone puts wrong information into that system using your name? Occupy something or other will put in the names of a lot of people if they want to disrupt the system. We need safeguards against that.

**Ms. Mylène Freeman:** That's exactly where I was going to go next. How can we prevent third party fraudulence?

**Mr. Richard Kurland:** It can be done by introducing the User Fees Act and stopping all those problems from appearing on the desks of members of Parliament like you.

**Ms. Mylène Freeman:** Following from that, I think yesterday it was the Citizenship and Immigration officials who said they were taking out the user fees in order to make it more flexible.



Would you have something to say to that to finish up? I think the chair is telling me I'm done.

**Mr. Richard Kurland:** Flexible for whom, is my question.

**The Chair:** Thank you. We've come to the end.

Mr. Gordon, thank you very much for your presentation and comments. The same to you, Professor Gilbert.

Mr. Kurland, as I think the Beatles once wrote, don't ever change. You bring life to our committee.

We will suspend.

• (1030) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1030)

**The Chair:** We will continue with Bill C-45. There have been no amendments that the clerk has received from any member of the committee, but that does not preclude members of the committee from giving us an amendment now. If there are amendments, we'd have to give time for Mr. Méla, who's going to advise us as to whether the amendments are appropriate or not. Even that's a little strange, because ultimately, only Mr. Rajotte can determine whether an amendment is in order because he's the chairman of the finance committee, so we'll play that one by ear.

However, if we're going to communicate with the finance committee, that must be done by four o'clock today. We have Ms. Welbourne and Mr...

• (1035)

**Mr. Alain Desruisseaux (Director General, Admissibility Branch, Department of Citizenship and Immigration):** It's Desruisseaux.

**The Chair:** Mr. Desruisseaux and Mr. Oommen are here, not to make presentations, but to answer your questions about amendments or any last-minute items that we haven't dealt with. I would prefer it be only with amendments.

Those are my introductory comments.

**Ms. Jinny Jogindera Sims:** Thank you very much.

First, Mr. Chair, let me start off by saying how much the opposition appreciated the government side facilitating the hearings we've had over the last two days. It was an example of how, when the will is there, both sides can really work together. It is why the committee stage is so very critical to the parliamentary process. I mean it sincerely that this was much appreciated. I say a big thank you to everyone for facilitating that.

As you've said, the NDP has submitted no amendments, and we don't plan to submit any during the meeting today. We've raised specific concerns about privacy and the impact on tourism of the proposed ETA in the omnibus budget bill. We've also raised concerns about the fact that so much of the stuff is going to be in regulation and the fact that the fees are excluded from the parliamentary oversight they need to have. Our amendments will be going directly to the finance committee. They will reflect some of the concerns we have expressed here.

It was an unusual process we went through here, where one advisory committee asked other advisory committees to discuss this.

Even though we could deal with amendments here, they would have no power, because the only committee that has the authority to deal with amendments to the omnibus budget bill is the finance committee. We thought that rather than have duplication, that's exactly where the amendments should go, so that's what we are doing.

Once again, I cannot express enough how much we all appreciated the ability to discuss and debate and to hear witnesses. I'm hoping it's a sign that we're going to continue to work like that on this committee.

The chair, as you know, takes suggestions at his will. My suggestion would be that the chair report to the finance committee that we have undertaken a study, outline what we heard, and inform them that amendments will be submitted by the official opposition, because we don't plan to bring them forward here.

With that in mind, if nobody else has amendments, we would be quite prepared to adjourn.

**The Chair:** I think, Ms. Sims, that others may wish to say something.

**Ms. Jinny Jogindera Sims:** That's why I didn't move to adjourn.

**The Chair:** Mr. Lamoureux.

**Mr. Kevin Lamoureux:** Thank you, Mr. Chair.

To a certain degree, I appreciate that we have been able to deal with one aspect of the budget bill. It would have been a horrendous mistake had we not had the opportunity at least to review what we have a responsibility to study.

Having said that, I also believe that it was a mistake for the Minister of Finance, working with the Minister of Citizenship, Immigration and Multiculturalism, to have put this in the budget bill. I believe it would have been better as a stand-alone bill. That way, we would have done much more due diligence. There would have been more accountability and transparency about what the bill was going to do.

We need to recognize that this is going to have an impact on hundreds of thousands of people throughout the world, and I'm not convinced that the due diligence that's necessary has been done. That is a message that should be communicated.

We heard some fairly strong statements on incorporating the User Fees Act into what the ETA is all about, thereby guaranteeing a standard of service that would be much more acceptable. I'm thinking specifically of those individuals who will be denied. We're talking about tens of thousands of individuals worldwide who would be denied. We learned that from committee presentations.

I was quite concerned when the department officials came before us and they were not able to provide what I thought was basic information. We should have a sense of how much this is going to cost to implement. We are walking away from this committee not having any sense of those costs. That is the reason we don't know what the fee is going to be. We are going to allow passage of a substantial piece of legislation. Hundreds of millions of dollars will be collected, but exactly how much we don't know.

I'm not convinced that's the best way for legislation to pass. We know that now because we had presentations at the beginning of the committee and those types of questions were not answered. One would have thought that those types of questions would have been answered.

In the dying moments of a presentation, one of the presenters asked a profound question: what about those individuals who might want to create mischief for others? We are underestimating that aspect. The potential for mischief is phenomenal, yet we have had no discussion or dialogue on that issue.

As opposed to trying to talk at great length, I will draw my remarks to a conclusion by saying that much has been lost by our not doing the type of job we should have done had the bill come before the committee as a separate piece of legislation. It is a very dangerous road the government is taking, incorporating so much legislation that should be stand-alone legislation. It is not healthy for democracy. It's not healthy in many different ways. From my perspective, those types of comments need to be brought to the floor.

Realizing the politics of things, I hope that if these comments are not brought to the floor, my committee colleagues from all sides of the House will recognize the importance of what I have attempted to say and bring it up within their own caucuses.

● (1040)

With that, Mr. Chair, the Liberal Party will also not be introducing any amendments at this stage.

Thank you, Mr. Chair.

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

Mr. Dykstra.

**Mr. Rick Dykstra:** Through you, Chair, I have a couple of questions for our officials. They came all the way down here and it's not only for that reason, but the fact that they're here allows us to ask a couple of questions. I don't intend to take very long.

At the outset, I want to say that I do agree with Ms. Sims' comments in terms of our ability to undertake a specific study for a period of time about an impact that our ministry is going to have on the budget and is going to have on those who travel to this country. Obviously it's a step in the direction with respect to some more advanced security.

I do, however, disagree with Mr. Lamoureux's comments. This is our ability to process an issue that was directly in the budget. I've been here for seven years. The process that we undertook over the last two days was as in-depth of a review as I've ever done on a piece of legislation that was included in the budget. Clauses 308 to 313 are a very small part of the budget bill, and yet we allocated six hours' worth of committee time to reviewing five clauses.

There was mention about the politics, and there's always going to be disagreement from a political perspective on the government's decision to move forward with a budget and what is included in that budget. I understand that. I agree with that. It's part of the Westminster model of Parliament.

The other part that I acknowledge is our ability to study this regardless of which party to which we belong. This actually came to

committee and we were able to review it to this extent. The officials were engaged in this process. This will give the Minister of Citizenship and Immigration a better understanding of how important this issue is to the committee members and members of Parliament regardless of which party they happen to come from.

I'm glad they're here at the conclusion of this study for a couple of reasons. They were able to listen to the observations that many of us made and also to the testimony of our witnesses. I also want to get a response on a couple of things.

From a privacy perspective, we received the letter from Ms. Stoddart. I heard both Maia and Les speak yesterday at great length about the care and concern they have around privacy issues. Perhaps, Maia, you could reiterate the importance of the work that you will do with the Privacy Commissioner and how you will proceed in terms of next steps.

● (1045)

**Ms. Maia Welbourne (Director, Document and Visa Policy, Admissibility Branch, Department of Citizenship and Immigration):** As we indicated yesterday, we've made a commitment to work very closely with the Office of the Privacy Commissioner. We will do so recognizing that we're not planning to implement the ETA until 2015. There is a significant amount of time to work to develop the responses to her concerns and we will certainly do so.

I would note also that it is a requirement to produce a privacy impact assessment as part of the project and leading towards regulatory amendments. We will certainly do that in close consultation with her and her office. I would also note that privacy impact assessments are made public. All of our responses and how we are intending to address the concerns that have been raised will be public.

**Mr. Rick Dykstra:** I don't want to say the other two are minor points, but I don't think they will take as long.

Yesterday, Mr. Linklater indicated, and you may have as well, the cost of this has not been determined. The process of going to Treasury Board is not unlike any other standard budget item. The budget gets passed. The allocation of funds as to what is going to happen is passed through that budget. How those funds are actually spent with respect to implementation must all go to Treasury Board to be passed to ensure that every ministry is spending each of the dollars exactly as outlined, and that gives the process.

While the fee isn't outlined in the budget, certainly the process upon which the fee will be determined is not unlike other ministries that have to go to Treasury Board for approval to spend the money that they've been allocated.

I did hear Les say yesterday, and I thought you did as well, but perhaps you could confirm that the costs are going to be similar to what other countries are expending in terms of what the charge is.

● (1050)

**Ms. Maia Welbourne:** Yes, in terms of the fee established, we expect that to be very competitive with what both the U.S. and Australia charge. It's correct in terms of the Treasury Board process. We are still going through that process, and until that process is complete, we don't, in essence, have final costs and therefore the ability to set the fee.

**Mr. Rick Dykstra:** Part of the reason you are going there under this process is that you are determined to make this a cost recovery item versus an expense in another budget line.

**Ms. Maia Welbourne:** That's right. Our intention is to fully cost recover.

**Mr. Rick Dykstra:** I have another concern, and Mylène brought this up in her questioning, and Mr. Lamoureux alluded to it. I don't know how much time we spent talking about this yesterday, but it was a question that was asked of the witnesses, and I think it's a fair question to ask you as officials today.

What sorts of parameters are you thinking about leaning towards, understanding, in terms of someone being able to use someone else's identity while filling out the application, or attempting to hurt someone else's chances of travel by trying to interfere with their personal information?

**Ms. Maia Welbourne:** It's a risk. We will identify the information that's being requested as part of the application to minimize those kinds of risks. For instance, a person has to submit not just their name but also other personal information and their passport number. The moment that discrepancy has been discovered, that would end.

**Mr. Rick Dykstra:** It wouldn't be able to proceed any further.

**Ms. Maia Welbourne:** Yes.

**Mr. Rick Dykstra:** Thank you.

Just to conclude, Ms. Sims may be shocked to hear me say this, but I will agree with her motion, her direction. I think it's very consistent with what other committees have done.

The only other piece, Chair, you may want to add to it, is the ministry's acknowledgement in the letter that they will indeed be responding to and working with the Privacy Commissioner's office as we move through this process.

**The Chair:** Ms. Sims.

**Ms. Jinny Jogindera Sims:** Thank you very much. I just want to say as a final point that we appreciated this process.

We would have liked it if there had not been an omnibus budget bill that's the size of a phone book with all kinds of legislation in it, but I do appreciate that this committee got to take a look at it. However, I still want to put on the record that in Parliament, as an MP, I will not get an opportunity to vote on it as a separate entity. It will be buried in with many other things.

With that and the fact that nobody has amendments, I would like to move adjournment, Chair.

**The Chair:** Mr. Lamoureux first.

**Mr. Kevin Lamoureux:** Just a very quick comment and then I am quite happy with that.

Did the department consider incorporating it into the User Fees Act at all, and if not, why not?

**Ms. Maia Welbourne:** As Mr. Linklater stated yesterday, really the driver for seeking an exemption from the User Fees Act was based on the fact that the User Fees Act was intended to promote transparency for fees set that affect Canadians. This is not the case in this instance. It is a fee that will apply to foreign nationals.

We also have the ability already in our act to set fees for foreign nationals through regulation, so we have an authority that exists. More importantly, as Mr. Linklater stated, it's about flexibility. The ability to establish and then adjust a fee in a responsive manner is very important so that we can adjust to any changes over time.

**The Chair:** Seeing no requests to speak further, this meeting is adjourned.

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