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Chair

Mr. Robert Oliphant

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• (1535)

[English]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I'm very happy to call to order meeting 62 of the Standing Committee on Public Safety and National Security as we begin our consideration of Bill C-23, an act respecting the pre-clearance of persons and goods in Canada and the U.S. My apologies for a late start.

Mona Fortier, welcome.

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you.

The Chair: What a pleasure to have you. I know you're substituting today. Have you been at a committee meeting before?

Mrs. Mona Fortier: Yes, I have.

The Chair: Then you're a pro.

Mrs. Mona Fortier: I've been to the ethics committee, but not this one.

The Chair: On behalf of the whole committee, welcome. Your experience with other committees can only go downhill from here.

Mrs. Mona Fortier: We'll see.

The Chair: Welcome, Minister Goodale, and Mr. Bolduc, and Ms. Wherrett, and Ms. Watkinson. Thank you for getting us started on our study.

I turn this over to you. The committee will have questions.

Do we have one presentation or two?

Hon. Ralph Goodale (Minister of Public Safety and Emergency Preparedness): There's one, I believe, Mr. Chair. I'll be here until 4:30 when I have another commitment, but the officials will be here for the second hour to provide further information about Bill C-23.

The Chair: Perfect.

Hon. Ralph Goodale: Naturally, I'm very pleased to be back with the committee to discuss this very important topic.

[Translation]

This is the system that, for 60 years, has allowed travellers in Canadian airports to go through American customs in Canada.

[English]

Pre-clearance allows Canadian travellers to get through the process of American customs and immigration while they remain in Canada. It saves travellers from having to wait in long customs

lineups once they arrive in the United States. It enables direct flights to U.S. airports that would otherwise accept only domestic travel, and it allows Canadians to complete American border procedures before departure while they are still under the umbrella of Canadian law and the Canadian Constitution.

[Translation]

In a nutshell, preclearance is good for travellers, for business, for tourism and the Canadian economy in general.

[English]

The advantages of pre-clearance are currently available to travellers at eight Canadian airports: Vancouver, Calgary, Edmonton, Winnipeg, Toronto Pearson, Ottawa, Montreal, and Halifax. What we're trying to do is to make these advantages available to more Canadians in more parts of the country, beginning with Jean Lesage airport in Quebec City, Billy Bishop airport on Toronto Island, and train routes out of Montreal and B.C.

We'll also be upgrading the limited operations that now exist at certain cruise ships and ferry terminals along the B.C. coast into full pre-clearance. We'll be pursuing the pre-clearance of cargo, and the implementation for the first time of Canadian pre-clearance operations in the United States for passengers moving in the opposite direction. To get this done, both Canada and the United States must agree to the terms of the expansion.

After several years of negotiation, the agreement was finalized in the spring of 2015. It was tabled in Parliament at that time. Legislation to implement it was adopted by the United States last year with unanimous bipartisan support. It is now up to Canada to enact our own implementing legislation, so that the expansion of pre-clearance and the benefits it brings can move forward. We introduced the legislation in June of last year and it is now, I'm happy to say, before your committee.

I know that certain concerns have been raised about Bill C-23, both in the media and in the House at second reading, so I want to take a few moments to address them, and I hope correct any misconceptions that may exist. To begin with, the new framework established by Bill C-23 is generally quite similar to the one that already exists under the pre-clearance arrangement that predates the current one back to 1999. Under both the old agreement and the new one, for example, U.S. officers in Canada may question travellers, examine and seize goods, and conduct frisk searches. Under both the new agreement and the old agreement, U.S. officers may detain a traveller if there are reasonable grounds to believe that he or she has committed an offence, with the requirement that the traveller be transferred to Canadian custody as quickly as possible. U.S. officers do not have that power of arrest.

Where there are differences between what exists now and Bill C-23, they are relatively minor. For example, under both Bill C-23 and the current framework, U.S. officers may detain a traveller for the purpose of a strip search and they must request a Canadian officer to conduct that search. The only distinction under the new legislation is that an U.S. officer could conduct the search themselves in the unlikely event that a Canadian counterpart is not available, and there are strict rules around the search procedure.

With regard to withdrawal from a pre-clearance area, both Bill C-23 and the current framework allow travellers to withdraw. The only difference is that under Bill C-23 a traveller could be asked who they are and why they are leaving the pre-clearance area, in order to prevent people from entering pre-clearance areas in a casual way to probe for security weaknesses and then trying to depart from that area undetected.

• (1540)

Bill C-23 is clear. Once travellers have declared their desire to withdraw, an officer may not unreasonably delay them. To understand this provision, it's important to keep in mind that the concept of reasonableness is used very widely in Canadian law; for example, section 8 of the Charter of Rights and Freedoms protects against "unreasonable search or seizure", the Customs Act requires that the search of newly arrived travellers be conducted "within a reasonable time", and the Criminal Code says that a person who is arrested "shall be taken before a justice without unreasonable delay". Generally, courts have understood reasonableness to mean that other people in the same situation would be expected to reach the same conclusion, or behave in the same way.

With respect to officer authorities, the term has been used to refer to generally accepted standards. In fact, when the existing pre-clearance law was being debated back in 1999, the NDP, at that time, argued in favour of adding the word "reasonable" to the section on the use of force as a way of limiting officer authorities. In other words, far from being vague or a licence for abuse, the requirement that travellers not be unreasonably delayed imposes a standard that is familiar in law and familiar to the courts. The bottom line is that travellers who wish to leave a pre-clearance area will be free to do so after answering a few basic questions about who they are, and why they are leaving.

Another concern that has been raised, both in the House and the media, has to do with whether eventual Canadian pre-clearance

operations in the United States would complicate boarding in the United States for people who are permanent residents of Canada. The answer in almost all cases is, quite simply, no. Permanent residents would be treated exactly according to the same procedure in the pre-clearance areas as they would at any other point of entry into Canada. The rare exception would be for a permanent resident with a major issue of inadmissibility such as serious criminality. Such individuals could still come to Canada, subject to the usual admissibility rules at an ordinary point of entry, but they may not be able to benefit from pre-clearance because Canadian pre-clearance areas at U.S. locations would not necessarily be equipped to deal with serious criminal cases.

I'm also aware of questions as to whether Bill C-23 might limit the use of technologies that help reduce wait times at the borders, such as automated passport control kiosks and mobile passport control applications. To be clear, our government is supportive of these technologies, and Bill C-23 does not restrict their use outside of pre-clearance areas.

With respect to the authorization to carry weapons, U.S. officers would only be authorized to carry the same weapons and the same restraints as Canadian officers do in the same environment. For instance, because Canadian border officers do not carry firearms when dealing with passengers in airport terminals, neither would American officers. The same rules apply both ways. This is part of the principle of reciprocity in the pre-clearance agreement, which also gives Canadian officers the same authorities in this regard as U.S. officers on American soil. In addition, Bill C-23 maintains that very strict limit on the use of force by pre-clearance officers that currently exists.

• (1545)

The pre-clearance agreement also stipulates that pre-clearance in both countries shall be conducted in a manner consistent with the laws and constitutions of both countries. This is really the fundamental point. The expansion of pre-clearance means more Canadians will be able to benefit from charter protections when they are crossing the border. Today a Canadian flying from Quebec City or taking the train from Vancouver to the United States must subject themselves entirely to American customs and immigration procedures on American soil, with no Canadian legal or constitutional framework.

This bill is essential to changing that. There will be more people at more locations, travelling in more modes of transportation, who will have the opportunity to pre-clear before they depart—in other words, while they are still on Canadian soil and under the umbrella of Canadian law.

I'll conclude on one final matter. At second reading the New Democrats moved an amendment to reject this bill, notably on the grounds of what the amendment called "the climate of uncertainty at the border". Let's be clear. Some 400,000 people cross that border on a daily basis, almost entirely without incident. Interestingly enough, statistics show that fewer Canadians—not more, but fewer—are being denied entry to the United States this year compared with last year. Nevertheless, I have met with the Secretary of Homeland Security and underscored my expectation, and I think the expectation of all Canadians, that travellers headed in either direction should be treated fairly, respectfully, predictably, consistently, and in accordance with law.

In fact, it is precisely with legislation like Bill C-23 that we can best reduce uncertainty for travellers. It establishes a clear legal framework that requires U.S. officers to adhere to Canadian standards when they are applying Canadian law, not just in the eight locations where pre-clearance currently exists but at many sites and in as many modes of travel as possible.

Ultimately the expansion of pre-clearance will make travel—and shipping, hopefully—to and from the United States faster and more efficient. It will provide significant benefits to the Canadian economy, it will enhance the protection of travellers' rights and freedoms, and it will only happen once we pass this bill.

Thank you, Mr. Chair.

The Chair: Thank you, Minister.

[*Translation*]

We are now going to begin the first round of questions.

Mr. Picard, you have seven minutes.

Mr. Michel Picard (Montarville, Lib.): Mr. Minister, good afternoon and welcome, to you, to the departmental officials and to some former colleagues.

When we talk about customs, most people think about the security matters it handles. We have just come back from a trip to Washington, during which we met with members of Congress. To our great surprise, most of them told us that Canadian customs cause them practically no problems. So security seemed to be a less pressing issue for them. That leads me to understand that the economic and trade dimensions of the pre-clearance program is the most important and has the most positive impact.

Mr. Minister, could you tell us what the economic advantages of an agreement like this are?

With the increase in pre-clearance, what improvements can we expect in terms of trade and the economy?

• (1550)

[*English*]

Hon. Ralph Goodale: Thank you very much, Mr. Picard.

The border between Canada and the United States is a remarkable institution. It's not without controversy sometimes, or difficulties, and we should always work very hard to reduce those controversies and difficulties to make the border work even better.

As I mentioned in my remarks, there are 400,000 people who go back and forth across that border every single day. In addition to that, there's \$2.5 billion in trade, two-way trade, that goes back and forth across that border every single day. That is a huge and valuable relationship. It is, I think it's fair to say, the longest non-militarized, most successful boundary line in the history of the world. It works for Canada, it works for the United States, and it needs to be safe and secure. It also needs to be efficient and expeditious.

Pre-clearance is one of the tools by which we can accomplish all of those objectives: safe, secure, efficient, and expeditious. We have it at eight airports at the moment for air travel moving south into the United States. What this agreement and this legislation seeks to achieve is to make it available in all modes of transportation, not just air, but make it available at a great many more venues and locations across the country, and make it available in both directions.

While our focus has always been on passenger travel, I think you're touching on one of the great potentials here, and that is the expansion of pre-clearance to include cargo where, instead of waiting in some of those long lineups with big trucks trying to get across the bridges into the United States when there's a lineup at the clearance point, you could actually envision a situation where the goods are loaded onto the truck at the plant or the factory, the truck is inspected at that point and sealed, and then, once it has pre-cleared at the factory, it can just go across the border without any further examination. It will take some time to develop that kind of system, but the agreement and this legislation contemplates that, enhancing the cross-border trade.

I'm very pleased to have heard Secretary Kelly, in his appearance before a congressional committee a few weeks ago, saying that he thought the Canadian border was a good example of a situation that was working properly, and he wanted to see that border become thinner, not thicker. He had some very complimentary words about Canada, Canadians, the border service operation, and so forth. That's a positive thing.

I wouldn't want to leave the impression that pre-clearance in cargo can be achieved simply. It's a big project to undertake, but the legislation and the agreement behind it allow for that eventuality to come about.

Mr. Michel Picard: We did discuss cargo with our colleagues in the U.S., and we understand that, on their side, they have a number of additional steps to go through, considering that they have to obtain the agreement or approval of a number of organizations.

Can you give us an idea of how things will happen after this bill goes through, if it does? What are the steps following the implementation of pre-clearance, U.S. into Canada, Canada into the U.S.? What are the challenges to getting cargo along?

Hon. Ralph Goodale: They're significant. We shouldn't pretend that this can be done without a good deal of negotiation and hard work and perhaps some further regulatory and legislative measures, especially in the United States. But what I'm pleased about is the very clear statement by both the Prime Minister of Canada and the President of the United States, when they met at the White House a few weeks ago, saying that this is a priority for both countries and they intend to get it done. It wasn't just a statement of objective, hope, or ambition. The two leaders committed themselves to getting this work done.

There have been some pilot projects that have been tested out to identify the kinds of issues that would have to be dealt with, so there is some work under way, but more needs to be done. I think, with the enthusiastic support of business leaders and exporters on both sides of the border, we can keep the momentum building toward a practical, effective solution.

• (1555)

Mr. Michel Picard: Thank you.

The Chair: Mr. Clement.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): Thank you.

Thank you, Minister, for making an appearance here. I think that's very important as we discuss this bill.

You may not be aware, but several weeks ago I had the occasion to be in London, in the U.K., with David McGuinty, at a Commonwealth inter-parliamentary conference on national security and cybersecurity. One of the themes that was common throughout all the jurisdictions that were represented there was the idea that for security measures to work, it was important that the population buy into those measures. You have to have that public support because we're asking a great deal when it comes to security measures, and in some cases the extraordinary aspects of that.

You did address this in your remarks, but I want to return to it a little. The primary concern that seems to have emanated from the bill has been the issue of U.S. officials detaining Canadians on Canadian soil. I'm giving you the floor to address those concerns. I think that seems to be one of the issues that has gained some traction in the public mind.

Hon. Ralph Goodale: It's an important issue, Mr. Clement. As you point out, for security and safety procedures to be respected and effective, the public has to have confidence that they are properly framed and properly applied. That's why the agreement and the legislation go to some length to lay out the rules and procedures so that it is clear in the law. That's one of the first questions I remember asking my officials when they presented me with the draft legislation: do you really need all this excruciating detail in the bill? Their answer was yes, because when you lay it out and specify it according to the terms of the agreement with the United States, then you've built the fence and nailed down the parameters of conduct.

The core point is that when American officers on Canadian soil are applying the law, they have to do so—and the bill is very clear in this respect—in a manner that is consistent with all Canadian laws, including the Bill of Rights, the Charter of Rights and Freedoms, and

the Canadian Human Rights Act. All of those are applicable. That is a clear distinction to what would be applicable if you did not have pre-clearance and you were simply doing the normal customs clearance in the United States, on U.S. soil, because it's then their framework that applies as opposed to ours.

Hon. Tony Clement: I guess one of the things you may be contemplating is that, should this bill be adopted by Parliament, there might be a need to have some public communications on this to stress this point. Is that reasonable?

Hon. Ralph Goodale: Yes, and training, Mr. Clement. There is already training under the existing pre-clearance arrangement that goes back to 1999, but those American officers who would be functioning in Canada would be trained.

Hon. Tony Clement: Trained by Americans or by Canadians...?

Hon. Ralph Goodale: By Canadians, by CBSA and others who would make it clear to them what the rules and provisions are of the Charter of Rights, the Bill of Rights, and the Human Rights Act. That creates the framework within which they function. They need to understand the terms of those fundamental laws, as well as the critical ways in which those laws may be different from the experience they may be used to in the United States.

• (1600)

Hon. Tony Clement: Minister, I have to keep rolling along here.

Hon. Ralph Goodale: Yes, go ahead.

Hon. Tony Clement: With respect to the marijuana legislation that the Government of Canada is pursuing, there have also been some concerns that because in the U.S. jurisdiction there's still a moral turpitude aspect to marijuana usage or marijuana conviction, this will still be an issue for Canadian travellers. Do you have any perspective on this issue?

Hon. Ralph Goodale: The American situation is complicated because, of course, the federal government in the U.S. holds the view that marijuana is and should be illegal, whereas a number of states have legalized it, and several more had referenda at the time of the election last fall where they indicated that is the direction in which they intend to go. The American situation is complex, but border arrangements are under federal jurisdiction, and it is the federal view in the U.S. that would prevail at the border.

What people should appreciate, though, is that importing and exporting cannabis today is illegal, and it will remain illegal under the new regime. In that sense, crossing the border with marijuana is an offence now and it would remain an offence in the future.

Mr. Clement, just to finish the point you were raising earlier, I would invite members to look specifically in the proposed law at subclause 10(2) and clause 11, which articulate very clearly the legal frame that applies to officer conduct.

Hon. Tony Clement: Thank you.

[Translation]

The Chair: Thank you.

We now move to Mr. Dubé.

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

Mr. Minister, thank you for being here today.

I would like to reply to the comments about our amendment. I would venture to say that the statistics on the numbers of people turned back at the border is cold comfort for those who feel dehumanized because of the colour of their skin or because of their religion. That is what we mean by a climate of uncertainty. Whether you like it or not, there is a perception, and it is extremely problematic.

I would also like to come back to the substantial issue in the bill. There is a lot of talk about the increased powers of the officers if someone leaves the preclearance area. I would draw your attention to subclause 33(1), which mentions information obtained from a traveller after their withdrawal from the preclearance area. It also reads: “otherwise authorized by law”. That is a concern. I would like to describe a hypothetical situation. We don't like doing that in politics, but I think it is important in order to illustrate our concerns and then to hear what you have to say about the matter.

Imagine that the President of the United States issues an order—as he has suggested in some media—that would allow the electronic devices of all travellers to be searched. Canadian case law is relatively silent on the matter of the rights Canadians have when they are asked for their passwords.

Recently, a decision was made and it rather favours security services. It does not favour the privacy of Canadians. You tell us that we are protected by Canadian law. But courts of law have already determined that our rights under the Charter are taken away in part when we cross the border.

Is that “otherwise authorized by law”? Do we consider that the President is “otherwise authorized in law” when he issues a directive to his officers to obtain information, that is to say, directives that exceed the limits of what someone who decides to leave the preclearance area can be asked?

[English]

Hon. Ralph Goodale: Mr. Dubé, first of all, I would make this point. If there are refinements, in the terms of the law, that the committee feels are appropriate, I hope members will bring those recommendations to my attention. As I said in the debate in the House, I am anxious to consider constructive ideas for improving the law. The constraint we have, of course, is the international agreement that already exists, and the legislation needs to be consistent with that agreement.

However, if there are ideas about where greater clarity is required, certainly bring those issues to my attention and we'll take a very serious look at whether they could be acceptable.

•(1605)

[Translation]

Mr. Matthew Dubé: Thank you.

[English]

Hon. Ralph Goodale: Can I just also make a point with respect to the departure from a withdrawal area? The behaviour of the officer needs to be reasonable. Again, that's why that word is there. If there is a pattern of behaviour that develops—and I've had this conversation with Secretary Kelly—that we find untoward.... We

have no reason to believe that would happen, but if it does happen, then we obviously have the recourse of raising these sorts of concerns with—

Mr. Matthew Dubé: Minister, if you'll allow me to interrupt you

Hon. Ralph Goodale: —the U.S.

Mr. Matthew Dubé: Minister, my time is limited. If we go back to subclause 33(1), if we're looking at it, it says, “except for the purpose of maintaining the security of or control over the border between Canada and the United States or as otherwise authorized by law.”

In that situation, who's deciding whether to share that information? If someone decides to leave the pre-clearance zone because they don't like the way they're being treated, I read that section and I see a situation where, if any information is available on that person and the U.S. agent deems that it's suspicious, then that information gets sent back to the U.S. government, because it says, “except for the purpose of maintaining the security of or control over the border”. They might deem that this is exactly the case, even if we would not.

Hon. Ralph Goodale: Let me ask Jill Wherrett to respond.

Ms. Jill Wherrett (Acting Assistant Deputy Minister, Portfolio Affairs and Communications Branch, Department of Public Safety and Emergency Preparedness): As laid out in the legislation and the agreement, officers are limited. They can ask the person for their identity and their reasons for withdrawing.

Regarding the circumstances for the purposes of maintaining security of the border, an example might be if during the course of questioning a traveller were to provide false identity documents and upon the traveller's withdrawal the officer were to determine that the traveller was “border probing” in an attempt to find weaknesses that could be leveraged to carry out terrorist incidents. The biometrics captured prior to their request for withdrawal could be used in order to identify the traveller.

That's the reason for that type of wording—to maintain the security of the border.

Mr. Matthew Dubé: Thank you.

I want to go on to the question of firearms. We've talked a lot about MOUs, the memorandums of understanding, but those actually, as far as I understand, have no legal power. When we look at the text of the bill itself, what is preventing, in a designated zone, a designated U.S. agent from bearing a firearm? You've mentioned reciprocity and the MOUs, but there's no legal power there that can be enforced, is there?

Hon. Ralph Goodale: There is nothing either in the agreement or the legislation. There is no power or authority or right or privilege conferred on an officer of one country that is not equally conferred on the officer of the other country.

Mr. Matthew Dubé: I understand that.

Hon. Ralph Goodale: They exactly mirror each other.

Mr. Matthew Dubé: If we take Pearson airport, you've said that the principles of reciprocity being what they are, CBSA doesn't bear arms at Pearson because the police—

Hon. Ralph Goodale: Or at any other airport when they're dealing with passengers....

Mr. Matthew Dubé: What in the bill prevents an American agent in the appropriate designated zone from bearing arms?

Hon. Ralph Goodale: Canadian law.

Mr. Matthew Dubé: But the exemption to the Criminal Code is in this bill. They're allowed in the designated zone to—

Mr. Martin Bolduc (Vice-President, Programs Branch, Canada Border Services Agency): May I?

Hon. Ralph Goodale: I'll ask Martin to answer.

Mr. Martin Bolduc: CBP officers would operate under CBSA policy, and carriage, storage, and transport of firearms would be aligned with CBSA policies. They would not be able to do something with a sidearm that CBSA is not allowed to do.

Mr. Matthew Dubé: Is that explicitly stated somewhere or does it require regulatory change?

Mr. Martin Bolduc: It's clearly stipulated in an agreement we have with U.S. CBP that—

Mr. Matthew Dubé: Does that agreement have force of law?

Hon. Ralph Goodale: I'll examine the question, Mr. Dubé. My view is that it does. These are the rules, these people will be operating on Canadian soil, and they'll be operating according to the rules specified in the agreement and in the legislation. If it needs greater clarity, I'm happy to make sure we provide it.

The point about this arrangement being better than the alternative is important to bear in mind. If we did not have the agreement and the legislation, then all the rules would be written in and for the United States, because the whole process would take place in the United States on Canadian soil, according to their framework, with no international agreement and no Bill C-23. That would leave Canadians more vulnerable.

•(1610)

The Chair: Thank you, Minister.

I'm going to suggest that if either the minister or his officials thinks there's a document that would help answer that question, or if Mr. Dubé knows of a document that could be relevant, it would probably be helpful to the committee.

Hon. Ralph Goodale: I'd be happy to provide it, Mr. Chair.

The Chair: We're going to continue with Mr. Spengemann.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Thank you, Mr. Chair.

Minister Goodale, it's good to see you. Welcome back, and a warm welcome to your senior departmental staff as well.

Minister, on previous occasions you've characterized the task at hand for the field of public safety, for this committee, and for your work, as not trading off rights versus security, and as the need to do both—to be good on security and to fully protect Canadians' rights, including charter rights.

In this case, there is a third spoke in the wheel, which is trade and the movement of people. It's about business. It's about tourism. It's about family relationships across the border. In my own reading, I

discovered that in terms of pre-clearance, the cross-border relationship takes us back to 1952, some 67 years ago. While not all years had an agreement in place, it's certainly a relationship that operationally is deep and of long standing.

As you know, the committee travelled to Washington and, from our perspective, we want to echo the sentiments you described on the part of Secretary Kelly, which is really very positive feedback from congressional counterparts and also the DHS staff as to the nature of the border as it currently stands.

I want to ask you if you or the department have any statistics on the rate of incidents of withdrawal? You mentioned withdrawal from the process as one alternative to subjecting oneself to U.S. screening that one may disagree with. How many times has that actually happened? Do we have any numbers on that?

Hon. Ralph Goodale: It's very small. Let me see if my officials know.

Mr. Sven Spengemann: Or if not, could you undertake to...?

Hon. Ralph Goodale: We'll get the information for you, but on the issue of an intrusive search, for example, if I remember correctly, I believe the numbers for the last year show that there would not have been an incident of that kind—zero in the last 12 months.

Mr. Sven Spengemann: Okay.

Hon. Ralph Goodale: Similarly, I'm thinking of the circumstances in which a U.S. officer might think a search is necessary and the rules say that they cannot conduct that search themselves, that they have to contact someone at CBSA to do the searching. If you were to apply the new set of rules—slightly changed from what existed before—to the experience over the last 60 years or so, there would not have been one incident when there would have been a problem for a Canadian traveller.

I appreciate the concern of people who want to make this absolutely boilerplate in terms of the protection of Canadian rights and freedoms. We all want to achieve that objective, but the experience would suggest that the rate of incidents that could be considered untoward and actually invoke the provisions of the law would be very few and far between.

Mr. Sven Spengemann: Also, that's placed against very large net numbers—millions of border crossings per year of people—and then billions of dollars' worth of trade.

Hon. Ralph Goodale: Exactly.

Mr. Sven Spengemann: Yet Canadians may ask, how do we make sure that even for those cases where somebody is tempted to withdraw, we have proper mechanisms, and the system and process are integral?

This takes us slightly outside the legal ambit of this bill, but I want to ask you if you have some comments on the nature of oversight or the issues relating to oversight of this process, because trust in government here doesn't flow just to the Canadian government but also to the U.S. government as a component of the pre-clearance process. Do you have any comments on how that process could be overseen effectively?

Hon. Ralph Goodale: Ultimately, someone with a grievance would have recourse to legal proceedings, and that's, I guess, the ultimate protection.

I've had and have I think a very good working relationship with both the previous Secretary of Homeland Security and the current Secretary of Homeland Security. We are both determined that the experience at the border needs to be carefully monitored to determine if there are untoward circumstances that are happening, and before it would get to the point of somebody launching a legal action. Again, if you look at the experience of the last 60 years, that would not have happened very much, if at all.

Before you get to that kind of a situation, we need to have the kind of relationship where, if the U.S. has a problem with the way the Canadian system is operating, or if we have a problem with the way the American system is operating, we can simply communicate with each other and fix it. That's the kind of attitude that has built the kind of border that we presently enjoy, where it is the longest, non-militarized, most successful boundary relationship in the history of the world. Both sides dare not take that for granted. We both need to work at it to make sure that it continues to be safe, secure, efficient, and expeditious.

•(1615)

Mr. Sven Spengemann: Again, the committee's experience in Washington just recently was that the interaction, official to official, is strong and profound and positive, and basically, people are on the same page with the same vibe.

I want to ask if you could expand a bit on the issue of reciprocity. The bill captures the obverse of the predominant scenario, which is pre-clearance to go into the U.S. As to pre-clearance going into Canada, what are the plans there in terms of volumes and mechanisms?

Hon. Ralph Goodale: I have opened that conversation with Secretary Kelly, to get his suggestions or observations as to where we could start on the U.S. side. Would it be in some of those large northern metropolitan areas that are pretty familiar to Canadians: Boston, New York, Chicago, Seattle, those kinds of locations? Would it be more the snowbird locations? You could think of Scottsdale or West Palm Beach or areas like that.

We have to work at this together to see where it would make the most sense, where the volumes exist. There's a huge volume of Canadians who go in and out of airports like Fort Lauderdale, for example, in the middle of the winter, as there are in places like Scottsdale or Phoenix. However, there's a huge commercial value in having access out of places like Chicago or New York. There's a governmental value in a relationship, say, between Reagan airport in Washington and Ottawa.

Incidentally, Reagan is one of those airports in the U.S. to which we would not have direct access if it weren't for pre-clearance, because it is a domestic airport. It does not have the international clearance facility. If we couldn't get in there, if we could not pre-clear in Canada before we leave, we'd have to land at some other airport and then take a connection.

We're looking at the options, and they're interested in the discussion.

The Chair: I'm afraid I need to end it there.

Thank you, Minister and Mr. Spengemann.

Mr. Miller, you have five minutes.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thank you very much.

Minister, it's always great to have you here, and thanks to staff for coming.

I think the issue at hand, pre-clearance, has been covered fairly well, and I'm fairly comfortable that we're heading in the right direction there.

However, Minister, screening in general is something that came up in another avenue, and it's to do with the safe third country agreement. I think everyone is aware of the illegal immigrants, illegal refugees, whatever you want to call them or term them, who are entering, basically at will, especially in Emerson, Manitoba, and in Quebec, and I'm sure in other parts. It's probably going to get worse.

Minister, when CTV first publicized it, my phones were inundated with people. Basically what it looked like was that instead of the RCMP saying, "Look ma'am, look sir, you're not crossing here. I'll have to turn you back", or even directing them to a regular border crossing, if I can use that term, that never happened.

People can't get their heads around why security forces would be standing there and all but inviting them in. I guess on behalf of Canadians—and I'd like to know the answer too—why aren't they being turned around, or at minimum directed to head to the next border crossing? For example, with Emerson, Manitoba, I'm not sure exactly where that is from there, but I'm sure there's one that is not too many miles away.

•(1620)

Hon. Ralph Goodale: It's right at Emerson, just a half a block west of town.

Mr. Larry Miller: Then that makes it even more bizarre.

Hon. Ralph Goodale: Mr. Miller, the Canadian law on this point is very clear.

We do not have a wall that is a physical barrier to the border. When someone steps across that border in an irregular fashion, they do not get a free ticket to Canada. They are arrested. They are apprehended by the RCMP. They are fingerprinted. All of their biographical and biometric information is taken. In terms of screening, that is done against the databases we have in Canada, and also databases elsewhere around the world. Is there any immigration flag? Is there any criminal flag? Is there any terrorist issue that can be raised?

Mr. Larry Miller: We're all aware of that, Minister.

Hon. Ralph Goodale: Your question was about screening. They are screened in every case.

Mr. Larry Miller: The problem is, Minister, why aren't they directed to that crossing, which you say is blocks away, and come in the normal way and get in line? There is no such thing in most people's minds, mine included, as a refugee from the United States. It's just not there. It's laughable to suggest it is, so why aren't these people, at the very minimum, told to get in the queue and what have you?

It's frustrating to Canadians, and basically we're turning out to be the laughingstock of the world for how it happens like that.

Hon. Ralph Goodale: I'm not sure about the laughingstock comment. With regard to the situation at Emerson, at Lacolle, and in southern British Columbia, where there have been a few border crossings, the fact of the matter is that this has been examined very carefully with personal visits, physical visits, by the United Nations High Commissioner for Refugees, and it has commented that the behaviour of Canadians has been exemplary both in the application of Canadian law and in the implementation of Canada's international treaty obligations.

Mr. Larry Miller: I used the term "laughable" and said it's frustrating to people in the queue because I have been working with a young Asian family that is going through the process. They have relatives here, and they've worked with us for coming up to two years since their application went in. They're saying, "We're doing it the way we're supposed to do, yet others are getting in ahead of us."

Hon. Ralph Goodale: They are "getting in" to be arrested. They are apprehended, and then they have to make their case before the IRB. If they cannot make a justifiable claim to being asylum seekers and the IRB turns them down, they are deported.

The Chair: I'm going to need to end that questioning there.

I'll just remind the committee—I gave Mr. Miller some leeway on this—that our topic today is Bill C-23. The minister will be back with us on estimates and that will be quite a freewheeling discussion. I did give a little leeway on that. It's not on our topic, but I ask—

Mr. Larry Miller: What I asked was on topic, Mr. Chair.

The Chair: I think you did your best to be on topic. I'm just giving a little notice that this is about pre-clearance. The minister will graciously be attending another meeting and we will have lots of time to talk to him about that.

[*Translation*]

We will continue now with Mr. Arseneault.

Mr. René Arseneault (Madawaska—Restigouche, Lib.): Thank you, Mr. Chair.

My thanks to the minister, Mr. Bolduc, Ms. Wherrett and Ms. Watkinson.

My questions will be about part 1 of Bill C-23, which deals with preclearance by the United States in Canada and with the powers of American officers in preclearance matters.

I am well aware that clause 9 could not be clearer: Canadian law applies. Subclause 10(2) stipulates as follows:

[An American] preclearance officer is not permitted to exercise any powers of questioning or interrogation, examination, search, seizure, forfeiture, detention or arrest that are conferred under the laws of the United States.

He just can't.

I am also well aware of clause 11, which tells us that an American preclearance officer on Canadian soil must work in accordance with Canadian law, including the Canadian Charter of Rights and Freedoms. So I know all that. I am fully aware that a Canadian preparing to travel to the United States will have all his rights as a Canadian respected in a preclearance area on Canadian soil.

With all that, let me put my lawyer's hat on. In all humility, I can say that lawyers have a talent for finding tiny irritants. I have found one in subclause 22(4). Though we know that Canadians' rights will be respected, subclause 4 of clause 22, tells us the following about preclearance officers:

A preclearance officer may conduct the strip search if they have reasonable grounds to suspect that the conditions under paragraphs (1)(a) and (b) are still met ...

This is the most intrusive kind of search, but he can conduct it if a border services officer declines to conduct it.

Subclause 22(2) says that, if an American preclearance officer wants a strip search to be conducted, he must ask a Canadian officer to do so. However, in paragraph 22(4)(a), we see that an American preclearance officer can conduct a strip search if a customs officer declines to do so.

There is nothing else in the paragraph. How is it to be interpreted? If a Canadian customs officer is present, sees that there are reasonable grounds but is not in agreement and will not strip search a person, how will things end up under this provision?

•(1625)

[*English*]

Hon. Ralph Goodale: Mr. Arseneault, first of all, welcome to the committee. I think this is the first time we've had the opportunity to have an exchange.

The one change in this section compared with the existing arrangement is that if a Canadian officer cannot be reasonably available, then the American officer can proceed with the search.

There are two things about that. I have spoken with the chief executive officer, the president of CBSA, to make the very strong point that Canadian officers need to make themselves available. This legislation contemplates that kind of collaboration and service. If there is a problem, as I indicated earlier, you take this rule, apply it over the last 60 years and it's not likely that this problem would have arisen at all.

However, if it arises, then CBSA should respond—and quickly—to the circumstances to make sure that the spirit of the law is respected. If, in some very unlikely circumstance, the CBSA cannot respond, then the search could proceed, but it would be according to Canadian rules, not American rules. The provisions of the charter apply, and the respect for human rights, and so forth. As well, it has to be reported on after the fact so that the details, if necessary, can be fully examined.

We've tried to make sure there's a very strong fence built around this provision so that the rights of Canadians would not be affected in an undue way.

[*Translation*]

Mr. René Arseneault: Yes.

You said earlier—

The Chair: You have 10 seconds left.

Mr. René Arseneault: Ten seconds?

In that case, thank you very much.

The Chair: I am sorry; that's how it works.

[*English*]

I can give one minute to Ms. Watts.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): I'm good. I know Matthew wants to...

The Chair: Ms. Watts, are you giving your minute to Mr. Dubé?

Ms. Dianne L. Watts: Yes.

•(1630)

Mr. Matthew Dubé: Thank you very much.

Minister, I wanted to ask one last question on the strip search issue. I feel highly uncomfortable when we draft legislation on something that is unlikely to happen or has never happened. That's usually not how we want to proceed.

Are there any concerns at all with some of the language used, especially when we think of the LGBTQ community and things like that. There are transgender Canadians who might be touched by this, especially given that American rules and regulations for an American officer might not be the same as what we would demand of the CBSA.

Hon. Ralph Goodale: Both border services agencies have a set of rules about how to properly respect transgender issues. Since this activity would be happening in Canada, it would be the Canadian rules that would apply. Obviously, we will be vigilant to ensure that the rights of people travelling through a pre-clearance facility in Canada are properly safeguarded and respected.

Mr. Matthew Dubé: Is there any openness to amending so that there would be no instance where there would be the absence of a Canadian officer if a strip search were to occur, as is the case under the current framework? Is that change really necessary? Is it part of the agreement?

Hon. Ralph Goodale: It's reflected in the agreement, yes. It is.

[*Translation*]

Mr. Matthew Dubé: Thank you.

[*English*]

The Chair: Thank you, minister. Time flies, and thank you for getting us off to a good start.

We know officials will stay. We will suspend for three or four minutes while we allow the other officials to join us at the table.

Hon. Ralph Goodale: Thank you, Mr. Chair.

• _____ (Pause) _____

•

•(1635)

The Chair: We're going to continue.

I was so excited to see our new MP here that I forgot to welcome our substitute analysts to the committee. Both Dominique and Tanya are away today, and they arranged to have substitutes. Lyne Casavant has been an analyst on this committee before, which is quite good for me because I remember her and she remembers me. Maxime, we don't know.

Welcome to Maxime Charron-Tousignant. Thank you for being here. It's a pretty easy gig today.

Thank you also to the officials for joining us. I don't believe there are any more presentations. You're here now for our questions.

Just to remind the committee who is here, we have from the Department of Public Safety and Emergency Preparedness, the acting ADM, Jill Wherrett. From CBSA, we have the vice-president of the programs branch, Martin Bolduc; as well as deputy executive director and general counsel, Julie Watkinson. From the Department of Transport, we have Tom Oommen. From the Department of Justice, we have Erin McKey.

We are going to continue.

Monsieur Arseneault, you will get another round now.

•(1640)

[*Translation*]

Mr. René Arseneault: Thank you, Mr. Chair.

Good afternoon again, ladies and gentlemen.

Good afternoon, Mr. Oomen and Ms. McKey.

My questions will be somewhat technical.

I assume there is a practical way for an American officer, a preclearance officer on Canadian soil, to deal with a traveller who is opposed to a strip search. In airports, is there a way for travellers to find out what rights they have? Is a procedure in place? Is there an agreement between Canada and the United States in that regard?

[*English*]

Ms. Jill Wherrett: There are a couple of points to highlight. As Minister Goodale mentioned, U.S. officers will be trained in the procedures used by Canadian officers, in terms of the standards for detaining people for the purposes of a search, so there is training.

In terms of individuals who are being requested to undergo a search, they will be informed of their rights in terms of the right to seek legal counsel and the right to be taken before a senior officer. So yes, there is training and also information provided to the traveller.

[*Translation*]

Mr. René Arseneault: My question was mostly about the rights of travellers to be reminded that they are protected by the Charter and that they have the right to speak to a supervisor. If I understand correctly, training will ensure that officers will inform passengers of their rights. That is what I understand.

This fascinates and interests me. It is positive to learn that, according to the department's statistics, no traveller has complained about a strip search in the last 12 months. No one has complained about a strip search and there have been no problems at the checkpoints. Is that really the case?

[*English*]

Ms. Jill Wherrett: As for the specific figure that Minister Goodale mentioned, we had asked our colleagues at U.S. Customs and Border Protection and CBSA to look at their statistics for the last year, and there were no cases in the past year where U.S. Customs and Border Protection had asked CBSA to undertake a strip search. Of course, the only possible venue right now is for CBSA to undertake the search.

[*Translation*]

Mr. René Arseneault: That is really interesting.

The statistics are really for 12 months?

[*English*]

Ms. Jill Wherrett: Yes. That's correct.

[*Translation*]

Mr. René Arseneault: People often travel overseas, to other countries. The United States are not overseas, but they do not speak the same language as in French-speaking Canada. Are the officers required to make sure that all passengers can be served in Canada's two official languages, since they are still on Canadian soil? Have we arranged for a requirement like that?

[*English*]

Ms. Jill Wherrett: There are no specific provisions around that in terms of U.S. officers. The same provisions that apply currently in pre-clearance apply to the U.S. officers, so there is no requirement for them to provide services in a variety of languages.

Martin, could you speak to that, in terms of further detail on some of the practices?

[*Translation*]

Mr. Martin Bolduc: That practice is already in place. American officers are already active in a number of airports in Canada and they deal with passengers with limited bilingualism or who are unilingual francophones. That is one of the practices already in place. We have no knowledge of any incidents in terms of language.

When selecting officers, U.S. Customs and Border Protection gives priority to those who are able to converse in French. I have come across American officers stationed in Canada who were able to speak French.

Mr. René Arseneault: How much time do I have left, Mr. Chair?

[*English*]

The Vice-Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): You have two and a half minutes.

[*Translation*]

Mr. René Arseneault: I will use 30 seconds and then I will share the rest of my time with my colleague, Mr. Picard.

In practice, can a Canadian who enters the preclearance area immediately read a description of his rights, or something of the sort, in both official languages?

Mr. Martin Bolduc: All the signage in the American preclearance area is in both official languages, but American officers do not have to be bilingual.

Mr. René Arseneault: I understand that.

I will yield the floor to my colleague.

Mr. Michel Picard: Thank you.

I will be brief. People who enter the preclearance area have the right to change their minds, to turn around and go home.

We have some concerns about the fact that American customs officers are still able to question those people. I recognize that they are still in Canada, but we wonder what rights they have and how they are protected in terms of the information they provide.

What happens with information that affects intelligence or privacy?

What information can the officers keep?

● (1645)

Mr. Martin Bolduc: Mr. Chair, I am going to let my colleague, Ms. Wherrett, answer that question, but first, I would like to give you a bit of background.

Today, people coming to a Canadian airport to get on an American flight first go to the airline ticket counter and provide their travel documents. The documents are

[*English*]

“swiped”—I don't have a better term for that.

[*Translation*]

The biographical data are captured by the airline, transferred to American customs and blended with the prior information on the travellers.

Second, travellers go to a screening point to get through security. Third, they go to an American officer. This decision is not taken lightly. People go through a number of steps before they get to an American officer.

I will let my colleague tell you about the ability to withdraw

[English]

Ms. Jill Wherrett: I'll just elaborate on that. As Minister Goodale stated, there are limited authorities in terms of questioning a traveller upon withdrawal. Again, it's to ascertain their identity and their reasons for withdrawing. The expectation is that there would be a limited set of questions. Those questions would be responded to, and in most cases the traveller would move on.

To add to what Martin said, most of us can picture the airline context, where it's quite controlled and people have already provided a great deal of information before they decide to withdraw. But the agreement and the bill were designed to deal with the other modes of travel as well, where you are dealing with a different kind of context—pre-clearance at a land border, for example. Again, it's to recognize these different situations and to ensure that a fairly minimal set of information can be obtained in order to alleviate concerns around probing the border for weaknesses.

Mr. Michel Picard: Thank you.

The Chair: Thank you.

Mr. Clement, you have seven minutes.

Hon. Tony Clement: Thank you.

I want to talk about cargo for a second. Obviously, this is an important aspect of cross-border trade. The bill, as I understand it, is not focused on that.

The prior, Conservative government established a pilot project for truck cargo pre-clearance at the Pacific Highway port of entry. I'm wondering if there are any plans to move forward with a broader rollout of that kind of initiative.

Ms. Jill Wherrett: As you mentioned, there was a cargo pre-clearance pilot under the beyond the border agreement. The initial testing phase was done in B.C., and there was a second phase in Ontario.

At this point, there are no specific sites identified for cargo pre-clearance. We are beginning to explore, within Canada and in discussions with U.S. colleagues, our objectives for cargo pre-clearance, some of the legal or procedural requirements, and specific sites where cargo pre-clearance may make sense. Ultimately, as with pre-clearance generally, it is driven by the economics of where it makes sense economically and where it's feasible in terms of border operations.

The short answer is that no specific sites have been identified yet.

Hon. Tony Clement: What's the next step on that? Is it identifying another site?

Ms. Jill Wherrett: The present Prime Minister committed last year to explore the terms and conditions for cargo pre-clearance and to explore possible pilots. That's what we are looking at right now with the U.S.

Hon. Tony Clement: Going back to the travellers for a second, my understanding is that about 12 million passengers per year are pre-screened. Do we have any projections for what that number would be under the new legislation?

Ms. Jill Wherrett: That's correct. It is about 12 million per year. I don't believe we have any projections. I'll turn to my colleague from Transport to double-check on that.

Mr. Tom Oommen (Acting Director General, Surface Transportation Policy, Department of Transport): The number of passengers pre-cleared has been growing at the same rate as passengers headed to the U.S. That follows economic changes. The value of the dollar has a big effect. It tends to be quite responsive to economic factors such as those, but year on year there has been steady growth in passengers that—

Hon. Tony Clement: Is that 2% or 3%, or it's hard to say?

Mr. Tom Oommen: I can't give you an exact number.

● (1650)

Hon. Tony Clement: Maybe get that to me if you have a chance.

Mr. Tom Oommen: Yes.

Hon. Tony Clement: Another aspect of this is the cost for Canadians of air travel because of surcharges, and airports such as Pearson with their surcharges as well. It actually drives Canadians, at least those close enough to the border, to use U.S. airports. Buffalo is a common one for the GTA.

Do you have any projections on whether this bill will reduce the cost of air travel for the average traveller?

Ms. Jill Wherrett: We don't have specific projections on that. There are two points to make in terms of the agreement.

The agreement does provide for cost recovery for new pre-clearance operations, so the eight existing airports are protected from cost recovery unless there's some kind of extraordinary request for special services outside of the normal operating hours of pre-clearance operations. In terms of new sites, there are provisions for cost recovery. Similarly, if CBSA were to go to the U.S. and do pre-clearance, there would be cost recovery for operations.

Those discussions are happening now. They are site-specific, in terms of discussions between the U.S. and the individual pre-clearance sites for pre-clearance in Canada. But one of the pieces of work the Canadian government is doing is to work closely with the U.S. to ensure that we understand the framework for cost recovery that they're applying and to keep costs as low as possible for the traveller.

Hon. Tony Clement: Has the Government of Canada done any studies on costs to Canadians? My understanding is that we rank 124th in the world in terms of cost competitiveness in air travel. Have you done any independent studies on that? Is it something your department is seized with?

Mr. Tom Oommen: The government is concerned about the cost of travel, air travel in particular. That isn't specifically related to pre-clearance, though. That's pretty much a separate issue.

Hon. Tony Clement: Yes, but if we're doing cost recovery...? I'm all for pre-clearance, believe me, but I'm also concerned about being cost competitive when it comes to air travel for Canadians. It's a topic that you might want to consider.

Thank you.

The Chair: That did come up in Washington on our trip. I've made notes on American officials' suggesting that they've already been asked about expanded border services on a cost-recovery basis that would cost Canadian travellers more, because it would be passed on. It was raised on our trip. I could see a little bit of the light going off in their eyes in terms of more cost recovery. If they were to provide those same services on their own soil in a non pre-clearance operation, they would be doing it in those airports.

Now, I could argue that you're going to get charged by an airport in either end of your destination. I think there's some work, though, that needs to be done on that.

Hon. Tony Clement: I agree with what you just said. The point is that we're already non-competitive. We're 124th in the world in terms of cost competitiveness, so this has a disproportionate impact on Canadian travellers because we're so non-competitive right now.

The Chair: Yes, go ahead.

Ms. Jill Wherrett: That certainly is factoring into the discussions we're having with the U.S. to make sure that a fair and clear cost-recovery model is applied, but it also factors into the decisions, finally, about whether a site will undertake pre-clearance. It has to be economically viable for the operator of the facility, for the air carriers that the cost would be passed along to, and ultimately, for the passengers. That will certainly factor into whether pre-clearance operations would start in a particular site.

Hon. Tony Clement: Thank you.

The Chair: Mr. Dubé.

[*Translation*]

Mr. Matthew Dubé: Thank you, Mr. Chair.

Can anyone tell me how many changes to regulations will be made as a result of this agreement? They are not in the bill, of course.

• (1655)

[*English*]

Ms. Jill Wherrett: I can't speak to, specifically, how many regulatory changes will be required, but there will be regulatory changes required in relation to both part 1 and part 2 of the act. Part 1 is U.S. operating pre-clearance in Canada, and part 2 is Canada operating pre-clearance in the U.S. Some of the examples of the types of regulations that would be required under the act would be regulations to authorize persons, or the categories of persons, who would have access to pre-clearance areas. We will need regulations for that in Canada, and to establish conditions for that access. We need regulations on how to authorize how detained goods would be disposed of. Then regulations will be created or amended to permit CBSA to administer its various acts and regulations on an extra-territorial basis. There's a long list of acts that CBSA administers.

I don't know, Martin, if you want to add anything to that. That's quite an extensive exercise.

[*Translation*]

Mr. Martin Bolduc: According to the analysis that my colleagues have done, the CBSA's pre-clearance activities on American soil will mean amendments to about 200 regulations.

Mr. Matthew Dubé: I don't want to add to your workload, but it is important for us to fully understand the changes beyond the bill that we are studying. Can you commit to providing us with a list of the regulations to which amendments will be made?

[*English*]

Ms. Jill Wherrett: We are still exploring that right now. I think we could provide you with a general outline of the types of areas where regulations will be required.

Mr. Matthew Dubé: Yes, please.

[*Translation*]

My other question is about the costs, but from a different angle than my colleague was looking at when he asked his question.

People in Quebec City are very happy with the news, but they are concerned about who will have to pay for it. The airport authority has said that it is disappointed to find out that it has to foot the bill whereas, in Montreal, the bill was paid by someone else.

Can someone tell us who is going to pay to install the facilities and what impact will that have on the customers?

[*English*]

Ms. Jill Wherrett: As I mentioned, the current pre-clearance operations are protected from cost recovery. That was one of the elements in the negotiations over a number of years. The U.S. is pursuing global pre-clearance, and they're applying cost recovery in all their operations. In fact, they're obligated to by Congress. Cost recovery is being applied to any of the new sites that are under discussion. Ultimately, it will be again the decision of the airport authority as to whether it makes economic sense for them to pursue pre-clearance and to explore for themselves what kinds of arrangements they may need to make in order to ensure that those costs can be covered.

Mr. Matthew Dubé: Maybe this question is better suited for Transport Canada. Is there any study being done of whether or not the federal government will be at all involved in helping alleviate those costs for some of the airports that maybe think it's disappointing that Montreal and Toronto didn't have to pay them, but they're getting tapped in that sense?

Mr. Tom Oommen: Just to break it down, there are two fundamental kinds of costs. There's the infrastructure costs, and that's for building equipment and counters and that kind of stuff. All facilities have in the past paid for those, and all facilities in the future will continue to have to pay for those. Those have always been facilities-based.

Where the new agreement makes a distinction is between the existing airports that have had pre-clearance operations, and the new operations. There, in that case, it's for the new facilities. They also have to recover the cost of the U.S. CBP officers' time, so that's the difference.

Certainly, what's open to any facility that has an interest is to apply through the normal means to either federal or provincial authorities for various programs to pay for the infrastructure costs in particular. Normally, the way these things proceed is that the operating costs are covered through either putting it directly on passenger tickets, to a certain extent, or maybe recuperating it from other fees like parking fees, for instance. Operating costs are normally covered by facilities.

Mr. Matthew Dubé: Okay.

[*Translation*]

Mr. Arseneault talked about official languages. When you travel to the United States, you understand that the reality is that they speak a different language, of course. Where that may become important is when a person leaves the preclearance area and then becomes subject to interrogation. A certain level of French is necessary to put them at their ease in the delicate situation they are now in, given that they perhaps left the preclearance area because they thought they were being treated inappropriately. Being interrogated by an American or Canadian customs officer is quite different from having a beer on the beach in Florida.

Are steps being taken to make sure that Canadians who speaks only French, or who prefer to speak in French, are comfortable in a more thorough interrogation when they leave the preclearance area?

• (1700)

[*English*]

Ms. Jill Wherrett: As Martin mentioned earlier, signage would be in both official languages, so travellers would be able to understand what their rights and obligations are in both official languages.

That takes us back to one of those factors in terms of the unreasonable delay and the discussion around that. There are a number of factors taken into consideration in making sure that the traveller is not detained for an unreasonable length of time, and one of them would be language barriers. That would be something, again, that CBP would need to look at in the withdrawal context.

As Martin said, as they look at the officers they bring to Canada, they do look at language, so that's something they'll need to look at in terms of ensuring capacity.

[*Translation*]

Mr. Matthew Dubé: Is it possible to include that element in the bill specifically as one of the reasons for which a delay would no longer be reasonable, without contravening the agreement?

[*English*]

The Chair: A very short answer, please....

Ms. Jill Wherrett: It's certainly something we could look at in terms of factors that could be included.

The Chair: Thank you.

Ms. Damoff.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you very much for being here.

As was mentioned, we were in Washington last week, and it was expressed to us how anxious they are that we deal with this

legislation. Our process is much different from the American process in terms of passing legislation, the whole committee process, and the way things work here aren't completely understood there.

I did have a question when we were talking about the cost of pre-clearance because it was mentioned to us when we were there that Pearson has already requested additional pre-clearance. Would that be on a cost-recovery basis, the new officers at Pearson, or would that be covered under the old agreement?

Ms. Jill Wherrett: It would depend on the nature of the services being requested. Again, it's case by case in terms of those kinds of requests. They'd have to look if it's outside of normal pre-clearance operating hours, or if it's to reflect the growth in travellers that we spoke about earlier. It really does depend on the type of increase that's being requested.

Ms. Pam Damoff: The way they spoke it was to deal with the growth in travellers, and they wanted to expand the size of the pre-clearance they had.

Ms. Jill Wherrett: I can't give you a precise answer to that because it does depend on the details of what's being requested, and ultimately there will be a discussion with U.S. Customs and Border Protection, which is something we'll be monitoring closely. It's ultimately a discussion between CBP and Pearson.

Ms. Pam Damoff: Going back to the education part of it, you've indicated that the Americans will receive training on our charter and legislation. Is that a one time training, or is it ongoing training that happens with these officials? Do they arrive on Canadian soil, get trained, and then away they go for however many years they're working here, or is there a program to provide ongoing training to them?

Mr. Martin Bolduc: The initial training would be provided by CBSA, but they would also be receiving training from CBP. Any officers who get a posting abroad receive training from CBP as to the country they're going to, and so on and so forth. If there were to be any significant changes to the operating environment, yes for sure, we would provide those updates in a regular fashion to U.S. officers.

Ms. Pam Damoff: We don't provide ongoing training. It's a lot to absorb when you're starting a new position and understanding the nuances of our charter versus their—

Mr. Martin Bolduc: Agreed. That's probably the most significant difference between U.S. CBP and CBSA, the legislative and legal framework. As for normal procedures, there are a lot of similarities, but it's something we will look into, if needed.

Ms. Pam Damoff: I'm not worried so much about the procedure part of it as I am making sure they have knowledge of Canadian law, and the charter specifically. I don't think that's something that's legislated anyway.

Mr. Martin Bolduc: I think you make a good point. It's something we can include.

• (1705)

Ms. Pam Damoff: That leads me to my next question. This is being governed by an agreement that has already been signed, so how much leeway do we have in amending this bill before us right now?

Ms. Jill Wherrett: That's a somewhat difficult question to answer. It would really depend on the nature of the amendment. That's simply the answer. There are certain things that are clearly spelled out in the agreement, so it would depend on the nature of the amendment proposed whether it was consistent with the agreement or not.

Ms. Pam Damoff: As we work through this, I guess that would be a question I would have for the clerk later, as to how the process will work to make sure it.... How will we know what falls within the agreement and what doesn't?

I want to go back to the issue of having bilingual officers. We can't make the assumption that everyone who arrives at the airport is bilingual. They could speak only French. I suspect that already happens, except that there are going to be different rules in force now. What happens to that person who arrives at a pre-clearance destination speaking only French and they encounter an English-only American border services person?

Mr. Martin Bolduc: I cannot speak to the specifics of how a U.S. officer deals with that. I could explain how a CBSA officer would deal with that.

In interaction with a traveller, you want to make sure that there is an understanding. In those cases where we have somebody who presents himself or herself in front of us, who cannot speak either of our official languages, then we have translators available and have the ability to reach out to those people to make sure there is a clear understanding.

Ms. Pam Damoff: I'm talking specifically about someone who does speak one of our official languages and has a U.S. officer who doesn't speak French, so they don't have the right to withdraw any longer. It seems like it would be challenging communicating but could easily lead to a misunderstanding when there's a lack of being able to communicate in the same language.

Is there any ability to bring in a Canadian officer who does speak French to assist with that?

Mr. Martin Bolduc: I'm sure the U.S. officer would make sure there is somebody that could translate and that the traveller has an understanding of what's happening in the line of questioning. I think it's something we can look into discussing with U.S. authorities.

Ms. Pam Damoff: I only have about 30 seconds left, so I'm just going to say that recently I flew from Billy Bishop to New York. Of course, they don't have pre-clearance there. It had been a long time since I had actually flown having to go through customs on U.S. soil.

Of course, I'm in the same line as people who were coming from the Philippines and many other countries. I think it was an extended delay we had in New York going through customs compared with what we go through at Pearson. I'll leave it at that. That's my seven minutes.

The Chair: Thank you.

Ms. Watts, you have five minutes.

Ms. Dianne L. Watts: Thank you.

I have two things I would like to address. I have both the Peace Arch border crossing and the Douglas border crossing in my riding. This relates to the beyond the border pilot project.

What I heard was that the project was under way and it came to closure. Now you're looking for other pilot projects. What were the outcomes of that, and why are you looking at other pilots when you have already done a pilot and you already have the information I'm assuming you would require?

Ms. Jill Wherrett: The purpose of those pilots was more to test the concept of cargo pre-clearance. It was a pre-inspection pilot where we were doing pre-inspection in Canada with still the potential need to go to secondary inspection in the U.S.

Those sites were chosen because they have a significant amount of traffic and for other factors like that, but it isn't necessarily where we would end up having pre-clearance. It was really to test the concept and how it operated, so each element about those pilots was testing different aspects of that.

• (1710)

Ms. Dianne L. Watts: Right. I know that at the Douglas border the lineups with the trucks are just horrendous, and it's been very problematic on that side of the border. I understood, as well, that the minister was saying it would take some time to get all of those things worked out.

Will you actively pursue pre-clearance of cargo?

Ms. Jill Wherrett: Yes. As the minister mentioned, both the Prime Minister and President have committed to pursuing cargo pre-clearance. The minister also mentioned there are a number of complexities to work out. We have to look at where cargo pre-clearance ultimately makes sense, but that is something that both countries have committed to doing.

Ms. Dianne L. Watts: Okay, and has that work begun?

Ms. Jill Wherrett: Yes. We've been in discussions with the U.S. over a number of months in terms of what our objectives are. In terms of cargo pre-clearance, both countries are looking at what kinds of legal authorities or other authorities they would require and also talking about potential pilots, potential sites for cargo pre-clearance.

Ms. Dianne L. Watts: Excellent. Perfect. I think we need to go down that road for sure.

My next thing is with CBSA, and I've always had a good working relationship. I was very pleased to hear, when we were all in Washington, how highly your counterparts speak of the relationship, the working relationship—

Mr. Martin Bolduc: Thank you.

Ms. Dianne L. Watts: —so I really wanted to relay that to you because we heard that on numerous occasions, and it was very clear that they really appreciated the work.

I'm going to try not to get too far off the topic, but one of the things that your U.S. counterparts did have some concerns about was the removal of visas for Mexicans. They've implemented certain measures to try to mitigate some of the serious issues that will unfold from that. Are you involved in that or are you removed from that, and how is that working?

Mr. Martin Bolduc: I can't speak to the specific measures they would have put in place. What I can tell you is that we've had discussions with the U.S. They shared their concerns, and we're trying to reassure them, first of all, that people need to get an eTA to fly to Canada.

Our officers are trained to discover non-genuine visitors, which occurs daily, and those people either withdraw their request to enter Canada or are sent back. When I ask colleagues at Customs and Border Protection how many instances they have encountered of Mexican nationals who would have flown to Canada and made their way to the U.S. in between border crossings or at a port of entry, the number was very small. That reassured me that the measures we have in place are working as they should be, and our officers are doing a good job.

Ms. Dianne L. Watts: I appreciate the fact that they don't want these people coming back into the U.S. The only thing is that probably most of them want to remain in Canada. That's why I'm asking the question.

As I said, the working relationship is really good, and if those working relationships will continue on that front, because, as I said, it was identified as...

Mr. Martin Bolduc: Thank you for the feedback. As you said, it's a solid relationship, so when there are issues, nobody is shy of picking up the phone and calling the other side to seek advice or to work collaboratively.

Ms. Dianne L. Watts: Perfect. Thank you.

The Chair: Thank you.

Mr. Picard.

[Translation]

Mr. Michel Picard: Thank you.

I am going to share my time with Mr. Arseneault.

Additional checks normally mean additional costs for companies, either in time or in money. At the time of NAFTA, the Customs-Trade Partnership Against Terrorism program, or C-TPAT, for example, required a certain number of additional procedures to be adopted. Normally, that increases delivery costs for transportation companies. Basically, that goes against the economic objective of the program.

Is the preclearance of cargo going to involve new programs? Are your current programs enough for transportation companies not to be responsible for adopting new measures in order to comply with the requirements of this new program?

Mr. Martin Bolduc: We are not anticipating the establishment of new programs. As you know, we tried to harmonize our programs across the border so that both countries recognize the advantage that we are giving to a company. So the goal is to continue along those lines, not to add more measures that would increase the cost for companies or more demands that would make the process more complex. We actually want to simplify it.

• (1715)

Mr. Michel Picard: Thank you.

Mr. Chair, I am going to give the rest of my time to Mr. Arseneault.

Mr. René Arseneault: Thank you.

I am reassured when I read clause 29 of the bill.

My question goes to Ms. Wherrett or to Ms. Watkinson.

I am reassured by the fact that travellers can leave the preclearance zone at any time, unless they are detained under this legislation. So that leads me to clause 14.

[English]

When we read subclause 14(1), it says:

14 (1) If a preclearance officer has reasonable grounds to believe that a person has committed an offence under an Act of Parliament, the officer may, in a preclearance area or preclearance perimeter,

(a) detain the person;

[Translation]

In terms of the equivalent in the French version, it says that an officer may detain someone if there are reasonable grounds to believe that the person has committed an offence under "*une loi fédérale*", a federal act. When it says a federal act, it can also mean an American act, because there are also federal acts in the United States. That scares me a little.

I am sure that it is a problem with the translation, but I'd like to hear your comments. Then I will tell you about my concerns.

[English]

Ms. Julie Watkinson (Deputy Executive Director and General Counsel, Canada Border Services Agency): Certainly. The intent is that only if there's suspicion of a Canadian offence would there be the ability to detain.

[Translation]

Mr. René Arseneault: So we should see subclause 14(1) as referring to an offence under a federal act that is Canadian.

Ms. Julie Watkinson: Yes.

Mr. René Arseneault: Here is the danger. If someone has committed an offence under American legislation anywhere on the planet, he or she could be detained by an American customs officer in Canada. That's the kind of detrimental impact subclause 14(1) could have. You are saying that the intention is clearly that we are talking about an offence under Canadian legislation.

[English]

Ms. Julie Watkinson: That's correct.

[Translation]

Mr. René Arseneault: Thank you.

That was my question.

The Chair: Is that all?

Mr. René Arseneault: Yes.

[English]

Mr. Larry Miller: Thank you very much.

Thanks, Ms. McKey and Mr. Oommen for joining us.

My riding butts up to international waters, but I don't have any major bridge crossings. I found Ms. Watts' questions very interesting, and I think there were some other ones with regard to some of these trial projects to speed up the process of goods that are crossing. With jobs and the economy hinging big time on that, I'm still not clear why, with those trial projects they had, we're not implementing it full time. Could somebody enlarge a little more on that?

Ms. Jill Wherrett: Sure. There are a couple of reasons.

As I said, part of the reason we did the pilot projects was to test the concept to see how it worked. We learned a lot of value from the specific project we did in Ontario, but also that some of the benefits in efficiencies can also be achieved through technology. It's important to look at what we can do through existing technology, what might require infrastructure changes that are fairly complicated, because you can speed up traffic moving to a bridge through pre-clearance, but ultimately if the infrastructure at that bridge is limited, there's a limited amount you can do in moving traffic quickly.

The other point is that we don't now have the authority to implement cargo pre-clearance under the current act. Those were pilot projects. Again, we require the legislation to move forward with cargo pre-clearance.

Mr. Larry Miller: Are you getting any inclination in any way, Ms. Wherrett, that the government is going to implement that legislation?

Ms. Jill Wherrett: It would require passage of Bill C-23 on the Canadian side, and our looking at the different opportunities for cargo pre-clearance.

Mr. Larry Miller: Okay, so it will be fully covered under Bill C-23 if—

Ms. Jill Wherrett: Yes. The Canadian legislation gives us the legislative basis that we need to do cargo pre-clearance. On the U.S. side, they've continued to say that they may need some other provisions, whether they're legislative or other kinds of agreements. Just as we have with all of the individual pre-clearance sites, we have the framework legislation, but then we have individual agreements to provide for the operations of pre-clearance at those sites.

Again, there may be some specific operational types of agreements that we would need in order to run cargo pre-clearance at different locations.

• (1720)

Mr. Larry Miller: You also mentioned technology, and of course, we have to keep up with that. With regard to the new Gordie Howe International Bridge that is going to be here eventually, I take it by your comments, then, that any new technology that can be implemented while that's being done will be implemented at the time of construction. Is that a fair assumption?

Ms. Jill Wherrett: I can't speak to the specifics of the new bridge. I don't know, Tom, if you can speak to that.

Mr. Tom Oommen: For the Gordie Howe International Bridge, the planning right now that's going forward is for the customs to be at the typical places, so classic clearance as opposed to pre-clearance.

Mr. Larry Miller: Okay, but why not both?

Mr. Tom Oommen: That's not to say that in the future you couldn't do cargo pre-clearance. Right now, the way it's being set up is with the U.S. customs plaza on the Canadian side and the Canadian customs plaza on the U.S. side, which is your standard set-up for classic clearance.

Mr. Larry Miller: Is there any hesitation from the American side on this? Are they basically good with it, or do they have any specific concerns that you haven't mentioned?

Ms. Jill Wherrett: With pre-clearance generally...?

Mr. Larry Miller: Yes.

Ms. Jill Wherrett: They're very enthusiastic about pre-clearance. As I mentioned, they have a global pre-clearance strategy. They are rolling out pre-clearance. They have it in a number of other countries now. I think, if I'm not mistaken, it's in seven or eight other countries.

Mr. Larry Miller: So that shouldn't be an issue.

Ms. Jill Wherrett: They are very keen on pre-clearance, and they see it as very important for their security to push at the border.

Mr. Larry Miller: Okay. Thank you.

That's all I have, Mr. Chair.

The Chair: Mr. Spengemann, and then, Mr. Dubé, you'll get another round.

Mr. Sven Spengemann: Thank you very much, Mr. Chair.

I will join the chorus for a moment on cargo pre-clearance and say that, first of all, in light of the current currency environment, I think it's crucial that we don't lose our competitive advantage vis-à-vis exports to the U.S. You're not the department that's monitoring the economics most closely. There are others. There are colleagues of yours who do that. However, is it your sense that it's an equally hard push from the corporate sector in the U.S. and Canada, or are Canadian voices louder in terms of the need or the interest in making this happen?

Ms. Jill Wherrett: I don't really have a sense of that at this point because we're still in fairly early days. We've certainly had some interest expressed to us, but I don't have a sense that it's stronger on either side.

Mr. Sven Spengemann: From your perspective, are you aware of or in possession of any economic studies that have looked at this problem and sort of taken a view of the net opportunity that exists for us, appreciating the fact that there are multiple bottlenecks? Even if we pre-clear, if trucks get stuck on the bridge, logistically that's an issue.

Just from the pre-clearance side, what would the economic opportunity be if we had it in place in all the different areas that would lend themselves to it?

Ms. Jill Wherrett: We've looked generally at the economic benefits of pre-clearance writ large. I don't know that we've drilled down into the specifics of cargo pre-clearance at certain sites, but we need to make a business case for cargo pre-clearance in different facilities and different locations, so that would be required.

I don't know if there's anything you want to add, Tom.

Mr. Tom Oommen: There was a question asked earlier about why we aren't pushing ahead with cargo pre-clearance now. Besides the fact that the agreement isn't in force yet, the other issue is, of course, that we have to learn how to do cargo pre-clearance. We don't have the decades of experience that we have with traveller pre-clearance. We have to learn how to secure loads. We have to learn how to make sure that we've done the necessary checks but haven't gone overboard, hence the importance of continuing to do pilots and of identifying new cargo pilots that build on the Pacific Highway and the Peace Bridge pilots that were done before.

We still have things to work out and to figure out. I think that once we've been through a round of those cargo pre-clearance pilots, we'll have a much better idea of, first, the economic opportunities and, second, what the actual costs of establishing cargo pre-clearance are.

Mr. Sven Spengemann: Thank you for that.

I'm going to switch gears and take you to clause 24. I have a question on X-rays. Under what circumstances would an X-ray search be the only alternative to effectively search a traveller? I'm thinking particularly, with respect to the backdrop of my question, of vulnerable segments of our population, including pregnant women and potentially people who are compromised because of existing medical conditions.

How often do we actually do X-rays? Are they required? Are there technologies that are really going to minimize, if not eliminate, cases where we have to resort to X-rays?

• (1725)

Ms. Jill Wherrett: I think I'll turn to Martin, who can speak to the actual details of when those kinds of searches are required in the CBSA context, which would be similar to the CBP context.

To be clear, in the legislation, those searches cannot be undertaken by an officer. They have to be undertaken by X-ray technicians with the consent of a physician, so it requires a physician's consent.

Mr. Sven Spengemann: I appreciate that.

Ms. Julie Watkinson: The traveller has to consent as well.

Ms. Jill Wherrett: As well, yes.

Mr. Sven Spengemann: Presumably, refusing consent means not being able to travel, or are there backstops? Are there alternatives to X-rays?

Mr. Martin Bolduc: An officer would have to believe that you had contraband inside of you. If I had contraband inside of me, I would not give you my agreement for an X-ray, and if I had nothing, then I would consent. It does not happen very often. I could provide the committee with statistics, if we compile them. I would have to confirm, but it's not something that's very common.

Mr. Sven Spengemann: If you have a pregnant female passenger with a suspicion of contraband, and hypothetically there is no contraband but she refuses, is the only alternative at this point for her to withdraw from the pre-clearance area?

Mr. Martin Bolduc: That's a very specific case. I would have to think about it. If we were to conduct that search, I've seen instances where we detain people up to 24 hours to do a bowel movement.

Mr. Sven Spengemann: So that's a third option. Okay.

Mr. Martin Bolduc: It could be, yes, and again, those cases are very specific.

Sorry about that, just before dinner, but it is the reality.

The Chair: That's our time.

Mr. Dubé, you have three minutes, if you would like.

[*Translation*]

Mr. Matthew Dubé: Thank you, Mr. Chair.

I have two final questions for the witnesses.

I would like to know who is giving the training we talked about earlier. The minister tells us that it is CBSA and other organizations. Can someone tell us who the other organizations are? Is there a list of the organizations that train American officers?

Mr. Martin Bolduc: We do not have a list like that, but it can be organizations responsible for airport security, the RCMP or CSIS. It's something that we could find.

The U.S. Customs and Border Protection also provides training for officers assigned here.

Mr. Matthew Dubé: Is that listed somewhere?

Mr. Martin Bolduc: No, I do not have a list.

Mr. Matthew Dubé: Okay.

[*English*]

It's essentially on an almost ad hoc basis, if there's no formal list or anything like that. If it's not codified somewhere, I'm not clear how that works.

[*Translation*]

Mr. Martin Bolduc: I can tell you that CBSA provides training, but there is no complete list of the other organizations that provide it.

Mr. Matthew Dubé: So basically, training is provided as needed.

Mr. Martin Bolduc: We could look for it.

Mr. Matthew Dubé: My last question deals with the locations in the United States where Canada will have preclearance.

On a trip I made to the United States, the people I asked said that it was not really part of the discussions. That surprised me. I asked the minister the question and he told me that it would be decided a little later.

Mr. Bolduc, you and your colleagues are involved in who will go where and other details like that. I don't know whether these discussions are still ongoing and whether we will soon find out the locations in the United States.

[*English*]

Ms. Jill Wherrett: Martin, you may want to speak to that as well, but that's part of the work that lies before us in terms of establishing where pre-clearance might make sense in the U.S.

Again, it's economically driven. The U.S. has a process where they put out a call for pre-clearance applications and it's the airport authorities who apply. Similarly, for Canada to operate pre-clearance in the U.S., it would need to make sense for those airport authorities and for CBSA, because of course, while there is cost recovery, there are also costs incurred in going to the U.S. and operating pre-clearance.

[*Translation*]

Mr. Martin Bolduc: As the minister mentioned, we are discussing that issue with our American colleagues through a working committee. It depends on the volume of passengers leaving from American airports, on where we have the most return on our investment, and on whether the airport authorities have the space to build a preclearance area for us. Those are the things we are going to look at.

Our American colleagues are very open. In the discussions, they were ready to give us details about their tendering process. They are calling for tenders and airports are submitting them. That is how they

are working at the moment. It's something that we can learn from. American customs have been operating abroad for 60 years, while Canada is taking its first steps in the area. We could certainly learn from their experience and their expertise.

• (1730)

Mr. Matthew Dubé: Thank you.

The Chair: My thanks to the officials and the other witnesses who have appeared before us today.

[*English*]

Thank you not only for today, but for bringing this bill along to this point. We will continue to do our work over a pretty compressed time period to get it back to the House as quickly and as appropriately as we can.

Thank you, everyone. We will see you on Wednesday.

The meeting is adjourned.

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