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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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● (0845)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, I call this meeting to order. We're at the Standing Committee on Justice and Human Rights, meeting 3.

According to the orders of the day, we're dealing with Bill C-489, An Act to amend the Criminal Code and the Corrections and Conditional Release Act (restrictions on offenders).

In our first hour we'll have the mover of this bill, Mark Warawa, the MP for Langley. Then we will go in camera for the second hour to deal with the individuals here to speak to this particular issue.

Mr. Warawa, welcome to the committee, and thank you for coming here to defend your bill. The floor is yours.

Mr. Mark Warawa (Langley, CPC): Thank you, Chair.

It is indeed a pleasure to be here. As we all know, the brightest minds of Parliament get appointed to this committee, so it's a real treat for me to be sitting before you.

The Chair: A little butter never hurts, Mr. Warawa.

The floor is yours.

Mr. Mark Warawa: I'm here to speak to my bill, Bill C-489, An Act to amend the Criminal Code and the Corrections and Conditional Release Act (restrictions on offenders), also known as the safe at home bill, to outline the needs this bill seeks to meet, and how it hopes to meet those needs.

I present this bill on behalf of my constituents in beautiful Langley and the thousands of young victims in Canada who've lived in anguish and fear of their offenders. I'm inspired by the victims' bravery and their courage to fight for the rights and protection of possible future victims.

The objective of Bill C-489 is fully in line with the desire of Canadians to keep our streets safe and to consider the rights of victims. I'm confident that all members of the Standing Committee on Justice and Human Rights will fully consider this bill and its operational impacts to ensure that it will function as intended and that its objectives will be fully achieved.

Bill C-489 came about as a result of victims and their families in my riding of Langley. You probably heard me share this story during the House of Commons debate, but I'll share it again. One of the brave victims' families has offered to let their story be used to help us better understand the seriousness of the problem and to better equip this Parliament to adopt needed legislative changes.

In Langley families have lived with stress and turmoil when the sex offender of their child was permitted to serve a conditional sentence, house arrest, in their neighbourhood. In one case the sex offender served his sentence right across the street from the young victim, and in the other case, right next door to the victim.

The victim of a sexual assault cannot feel safe in their home or their neighbourhood, the very place where they should feel the safest, when their offender is permitted to serve a sentence right beside them or across the street from them. Every time they saw the sex offender, not just the victim but the entire family was re-victimized. These families lived in anguish, and relived the assault, not knowing if the offender was watching them, looking for an opportunity to reoffend or possibly hurt somebody else.

We can't imagine how a parent can deal with regularly seeing the person who assaulted their child. They drive home to see the offender cutting the lawn or enjoying life by having a cold drink right across the street. How would that feel? The home and the neighbourhood they once loved was now the place they dreaded to be because their attacker was there. One family could not take the stress and turmoil that this caused anymore. They felt forced to move to a new neighbourhood. One mother asked me, “Why should we have to move from our home when we're the victims?” That's a good question, colleagues.

Everyone should have the right to feel safe in their own home. Victims of sexual assault are no exception. Victims believe that they have been forgotten and that their safety and well-being are not being considered when offenders are being sentenced. That's why Bill C-489 seeks to address this problem.

Mr. Chair, the circumstances in my riding are not isolated events. Statistics Canada last year reported that there were nearly 4,000 cases of sexual assault against children. That report also found that children were five times more likely to be sexually assaulted than adults. This is true for all types of sexual assault as well as other sexual offences. Children are among the most vulnerable members of our society and it's our role to advocate for justice on their behalf.

Sadly, in instances of sexual assault the safety of a young child is often compromised by someone from their community. In 2011 Statistics Canada found that of the police-reported sexual offences against children and youth, 50% were perpetuated by a friend or an acquaintance, and 38% by a family member. These statistics highlight the sad fact that about 88% of sexual assaults against children and youth are committed by someone known to the victim prior to the offence.

In these cases, not only is the victim suffering emotional and physical consequences, but also they feel betrayed; their trust has been betrayed. We cannot imagine the turmoil that these young children and youth and their families are experiencing.

● (0850)

It's no wonder that when an offender is permitted to serve a conditional release in the victim's neighbourhood, the victim and their family will be re-victimized every time they see the offender.

One of the strengths of C-489 is that it requires the courts to consider a geographic restriction on the offender.

I have received overwhelming support across Canada on this bill.

The issue of our justice system is not that the courts do not have the authority to order non-contact restrictions on the offender. The current law already provides the courts with the authority and the discretion to require conditions, such as a child sex-offender prohibition order, a probation order, a conditional sentence order, a child sex-offender peace bond, or part of a conditional release order pursuant to the Corrections and Conditional Release Act. These options already exist.

Even where such non-contact conditions are currently imposed, the need in our justice system is that the courts are not required to consider imposing such conditions. Furthermore, the courts are not required to provide reasons for not imposing these conditions. As a result, non-contact conditions may simply fall through the cracks and victims and their families are left wondering why their protection and well-being was not taken into account.

The aim of C-489 is clear: to ensure well-being and safety for victims, their families, and witnesses from convicted offenders, and to enhance the level of confidence that victims have in our justice system. This bill would help to ensure that victims feel that their concerns for safety are being heard and considered. It would achieve this objective by requiring that whenever an offender is convicted of a child sex offence, the sentencing courts must consider imposing specific restrictions on the offenders to protect the victim, the victim's family, and the witness. They must consider it. They would not be required to impose this, but they would be required to consider this as an option. These measures would ensure greater safety and peace of mind so that the victim would not be re-victimized by seeing their offender.

More specifically, C-489 would amend section 161 of the Criminal Code to require the courts to consider restricting the offender from being within two kilometres of the victim's dwelling house, as well as imposing conditions to prohibit the offender from being alone in any private vehicle with a child under the age of 16.

Because of Bill C-10, the Safe Streets and Communities Act, current provisions in the Criminal Code already prohibit the offender from contacting any person under 16 years of age. I am agreeable to removing proposed paragraph 161(1)(a.2) because it's no longer needed.

The bill would also amend sections 732.1 and 742.3 to require the courts to impose restrictions on probation or conditional sentences to prohibit an offender from communicating with any victim or witness, or from going to any place identified in the order. Although these conditions would be mandatory, the court would be given discretion to decide not to impose them if the victim or witness consents, or if the court finds exceptional circumstances. In either case, written reasons would be required to explain that finding and the reasons. They would be shared in a written report.

Bill C-489 also proposes to amend recognizances or peace bonds against individuals who are reasonably feared to commit a future child sexual offence. Specifically, it proposes to amend section 810.1, peace bonds, to require a court to consider imposing conditions prohibiting the offender from contacting any individual or going to any place named in the recognizance. Here again the courts would have the discretion not to impose these conditions where there is consent from the victim, or where there are exceptional circumstances.

● (0855)

Colleagues, last, Bill C-489 proposes to amend section 133 of the Corrections and Conditional Release Act to require decision-makers under that act to consider similar conditions.

Currently under the CCRA, Parole Board of Canada tribunals and corrections officials are authorized to impose conditions on an offender when they are being released into the community under parole, statutory release, or temporary absence orders. As with the bill's other proposed amendments, the releasing authority does not have to impose the condition if there are exceptional circumstances, or if the victim consents. These two exceptions ensure that the provision is flexible enough to accommodate the types of circumstances that will undoubtedly occur in practice.

Where the releasing authority does find that exceptional circumstances exist, reasons for making that finding must be provided in writing explaining how it came to that conclusion. I believe this requirement would ensure that the victims, their families, and witnesses better understand the Parole Board's decisions.

Mr. Chair, there is no question that Bill C-489 would increase public confidence in our justice system by strengthening the tools of our courts to consider the safety and security of victims and their families. It would accomplish this by amending the Criminal Code and the Corrections and Conditional Release Act to prevent released offenders from contacting victims. or from being near the victim's home.

I hope the Standing Committee on Justice and Human Rights will act to enhance public safety by holding offenders accountable, by considering the impact of sentencing on victims and their families, making victims feel safe in their homes and their neighbourhoods. I ask for the support of all honourable members seated here in reviewing this bill and getting it passed into law as soon as possible so that young victims and their families will feel safe at home.

As I've said before, I am open to amendments. If you have any questions on the amendments, I'd be open to answer them. I've already talked to a number of you and there are some tweaks that have to be made to the bill. I am open to those.

● (0900)

The Chair: Thank you, Mr. Warawa.

We are going to questions now. Our first questioner from the New Democratic Party is Madam Boivin. As a reminder, these are five-minute rounds.

Ms. Françoise Boivin (Gatineau, NDP): I didn't forget.

[*Translation*]

Thank you for being here, Mr. Warawa.

Thank you also for your bill.

[*English*]

The Chair: Hold on. Put in your earpiece, Mr. Warawa. This won't go against your time, Madam Boivin.

Ms. Françoise Boivin: Excellent. I was simply thanking you for being here, Mr. Warawa.

[*Translation*]

Thank you for your bill.

We, the members of the NDP, were very pleased to support it at second reading. Now we will be examining it more in depth, of course. It is often in examining the details that we see that certain small corrections need to be made.

That said, you talked about thousands of cases. Do you know what kind of impact this bill would have, and on how many files, approximately? Do you have any statistics on that? We know the statistics for offences of a sexual nature, for instance, but how many files do you think would be impacted by the bill?

Do you think that the courts have sufficient means to deal with this? Will this increase their workload? I am somewhat concerned about access to justice, because it takes time. Will this type of bill slow the process down, or will it on the contrary, fit in very well and very easily with the type of orders that were analyzed previously?

[*English*]

Mr. Mark Warawa: I think that's a very good and important question.

First of all, we do not have statistics specific to how often conditional sentences are being used that end up with house arrest right in the vicinity of the victim. We know that in 2012 there were 4,000 reported sexual assaults against children. Not all sexual assaults are reported. These are police-reported calls, so the number of actual assaults is much higher.

If you create an atmosphere in the sentencing and the administration of that sentencing that provides a healthy environment for the victim and the offender, I believe the actual workload to deal with that situation would be less if the sentencing is ideal. People want justice and they need justice. You need healing for the victim, but you need healing for the offender to get at the root causes of why they committed the offence and how we prevent them from committing any future offences. If it can deal with those root causes and put them in an environment where that can be dealt with appropriately, and the victim and their family can heal, I think the workload would actually decrease.

Ms. Françoise Boivin: You definitely don't want the victims to be scared, which I find is one of the objectives. It's to live in peace through the whole process.

[*Translation*]

Your bill raises certain concerns with regard to the kilometres rule. This may be very practical in a large city like Toronto, Gatineau or Montreal, but perhaps not so much in certain small villages where the two-kilometre rule may pose certain problems. Did you have this analyzed, from the perspective of a person's right to live in a location of his choosing? How will this work, practically speaking?

[*English*]

Mr. Mark Warawa: Yes, and that's another very good question. Thank you.

When I first started working on Bill C-489 about two years ago, shortly after meeting one of the families, I came up with the distance of five kilometres. As we started drafting the bill, I found that was much too large in a normal circumstance, so it was scaled back to two kilometres. Then, as you point out, in some smaller communities two kilometres may be way too restrictive and totally impractical.

I've seen a suggested amendment to the bill that the committee will be dealing with, which is that it be two kilometres or a distance deemed appropriate by the courts. It gives the courts the discretion. They look at it. In some cases five kilometres may be deemed more appropriate by the court, or it may be much less, depending on the size of the community. Each situation is unique. The courts would maintain their discretion.

● (0905)

Ms. Françoise Boivin: Thank you.

Do I still have a bit of time?

The Chair: You have 30 seconds.

[*Translation*]

Ms. Françoise Boivin: The term “exceptional circumstances” worries me somewhat, because it may be difficult to determine from one court to another. In a few years, we may want to make this more specific. Did you also have that concept analyzed?

[*English*]

Mr. Mark Warawa: Regarding the term “exceptional circumstances”, it would be up to the courts to determine what are exceptional circumstances, but I think we all agree that it's important that the courts have discretion. We cannot mandate “thou shalt” or say “these are going to be the sentences in all conditions”, so I believe we've provided the courts with that discretion.

Ms. Françoise Boivin: Thank you.

The Chair: Thank you for those questions and answers.

Our next questioner is Mr. Dechert from the Conservative Party.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Mr. Warawa, thank you for bringing this bill to Parliament.

As have all members of Parliament, I certainly have spoken to many of my constituents who constantly express a concern about confidence in the justice system. Obviously, we want all citizens to have the greatest level of confidence in our justice system, and this is a bill that I think will enhance that. Often I hear from people who don't think victims are properly protected. They feel that the system is a revolving door and that it favours the perpetrators more than it protects the victims and the law-abiding citizens. Most of us believe that justice must not only be done but be seen to be done, and I think this bill would help in that sense.

When I was previously on the justice committee about two and a half years ago, we heard the story which I think you referred to in your opening remarks. It was about a young woman who very bravely brought forward her story about being sexually abused by a neighbour. She went through all the difficulties of a trial and giving evidence. That person was convicted and was then given a conditional sentence. On the same day that the sentence was handed down, she came home from court and saw him out on the front lawn of his house across the street cutting the lawn.

That so devastated her sense of self-respect and self-worth—she had gone through all of this effort to bring that person to justice and there he was in the same place where he'd been for years while he was abusing her—that she then attempted to commit suicide, which I think was just devastating to all of us. Thankfully, she was unsuccessful in that attempt and is well today and able to tell her story.

I think this bill addresses specifically that type of situation, so on my behalf and on behalf of the people I represent in Mississauga, I want to thank you.

You mentioned some statistics in your opening remarks. Could you tell us about your understanding of the statistics around sexual assault in Canada, especially with respect to child sexual assault? What's happening with that? Are we seeing more reported cases or fewer reported cases every year?

Mr. Mark Warawa: Actually, one of the increases in criminal offences is sexual assault against children. I do not have an opinion on what is causing this increase, but the victims are often hesitant to report this because of a number of factors. It could be shame or guilt. It could be threats from the offender to the child that if the child tells anybody, there will be harm done to these family members.

There are a number of different circumstances why a number of the offences are not reported, but to see now a dramatic increase is quite shocking. We need to get to the root of whether there is an actual increase in the number of offences or whether there is an increase in the number of offences that are being reported. Perhaps that is an issue for this committee to deal with in a future study.

My bill is specifically regarding how we manage these offenders. I believe the safest and most appropriate way to create a just society and a safe society is to ensure that there would be a bubble zone, a restricted area so that the offender would not knowingly be going in any area where the victim is.

The time for a victim to heal can be very long. The term “very long“ is very general, but it could be years and years. The victim may never fully recover. Every time they see their attacker, the offender, it may trigger fear and anxiety. Each of us has our memories, and they last a long, long time. We need to give the victim the time to heal. That's why not only does it deal with this bubble zone during the warrant period, but possibly after, if it's deemed appropriate by the courts to have a peace bond.

Thank you for your question.

● (0910)

Mr. Bob Dechert: Those statistics are okay.

Briefly, tell us how this responds to the fears of victims during the parole process. How would it give a voice to victims during the parole process?

Mr. Mark Warawa: Of course, as we know, the sentencing is generally from the courts, and then it has to be administered by Corrections Canada, and then the Parole Board after that. It would be required by the courts to consider this, but also for the other administrative bodies to make sure that the victims are being considered when the offender is being released.

At two-thirds of the sentence the person will be released unless they present a very extreme safety concern to the public under the Corrections and Conditional Release Act. They are getting out. They are being prepared. Corrections Canada is preparing them for that release date, that statutory release. Actually, most will apply and can apply to get out at one-third of the sentence.

This all is now being required by these administrative bodies to consider the victim and how that release back into the community is going to affect the victim.

The Chair: Thank you for those questions and answers.

Our next questioner, from the Liberal Party, is Mr. Easter. You have five minutes, Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): I would like to go back to that last question on the parole conditions. Are you saying the same considerations that apply to the court in terms of conditions would apply to parole conditions in terms of distance, etc.?

Mr. Mark Warawa: Yes.

Hon. Wayne Easter: I do think the intent of the bill is fine.

I want to go back to the same point the NDP raised. You said in your remarks that there are thousands of victims, and there are 4,000 cases against children according to Stats Canada. Do you have any numbers on how many people who would be impacted by this bill specifically have found themselves in a situation of having the offender within two miles of their residence?

Mr. Mark Warawa: No.

Hon. Wayne Easter: You don't have those figures. I'll lay it out. I have problems with the exaggeration by government and by members of your party on how they perceive these bills are going to do so much for public safety. That's why I asked the question and asked about the numbers. We don't know.

Yes, there are thousands of people. Mr. Dechert's case and your case involving the two incidents are terrible cases; there's no question about it. We want to prevent re-victimization and reassure people that they will not be re-victimized and that families are not living in fear, but to say this bill is going to have an impact on the public safety of thousands of people when there may be only ten I think is exaggerating.

We agree with the intent of it. I just want to make that point. In terms of court decisions at the moment, these restrictions can already be imposed by a judge. Is that correct?

● (0915)

Mr. Mark Warawa: That is correct. They are not required to consider them. They could be imposed.

Hon. Wayne Easter: The impact of this bill would be that a judge would have to consider them. What would be the process for accommodating that? How would we know that a judge has taken this into consideration in his or her final decision? What would be the process for doing that, other than telling them they have to do it? How would the victim know there has been that consideration?

Mr. Mark Warawa: Thank you for the question. The Criminal Code of Canada would be amended. It would apply to every jurisdiction across Canada, and sentencing judges would be required to consider this. At this point they're not required to consider the impact on the victim.

The initial thought with the bill was that this bubble zone would be required, but that would remove the discretion of the courts. That would be one extreme. At this point they're not required to consider the victim. That's what exists now, which is, I believe, one extreme of the paradigm. Requiring the courts to do this would be the other extreme. I think the balance in the middle would be that courts and the administrative bodies after the courts would all be required to consider the impact on the victim. Right now the victims do not have to be considered.

Hon. Wayne Easter: Let me come back to the smaller community scenario, because there may not be that distance if the offender's primary residence is closer. Actually I don't have a problem if the offender's primary residence is within half a kilometre of the victim's residence. I don't have a problem if they can't live there anymore. They committed the offence, so if they have to move somewhere else, that's too damned bad. I don't have a problem with that, so I think we ought to be careful with proposed item 732.1(2)(a.1)(i), because you'd basically be asking for the victim's or the victim's family's consent if it's within a closer range. I think we ought to be careful there, because if you're in a small community, a community like mine, you'd have difficulty getting two kilometres away. However, if the offences occurred, and one of the conditions was a distance of two kilometres, then I don't see why if it's a small community you would give the offender that option. It's too bad he committed the offence, but now he'll have to move somewhere else, and that's his problem. We don't want to re-victimize the victim.

Where are you on that?

The Chair: Please make it a very quick answer, Mr. Warawa.

Mr. Mark Warawa: I think the bill reaches that balance where it would require the courts to consider that. If the offender has circumstances....

In one of the rulings, the courts ruled that it would allow the offender to be less of a risk if they were able to serve their sentence at home with their family as their support group. That's why house arrest was given in that circumstance in Langley.

Your suggestion is that the offender should have to move when we consider the impact on the victim, and I would agree. The offender could have had their family relocate with them during that warrant period away from the victim. Why should the victim have to move? Why would you destroy the neighbourhood of a victim and a family in favour of the offender?

I would agree that we need to consider the victims, not the offenders.

The Chair: Thank you for those questions and answers.

Our next questioner is Monsieur Goguen from the Conservative Party.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you very much for bringing forth this important piece of legislation. Obviously, this plays right into our theme of wanting to give the victims a voice and basically balancing the interests of victims versus those of the offenders.

I'm very pleased to hear that the Liberal Party agrees with the intent of the bill, but this is not a statistical exercise. Frankly, isn't it enough if one person is victimized? Ask yourself, what if that one person happened to be your child? Enough said.

You've obviously put an awful lot of study into this issue. I'm wondering if you could share with us what your study has revealed. What are the types of damages that are caused, whether they be psychological, physical, or even monetary, by incidents like those you're trying to cure?

● (0920)

Mr. Mark Warawa: As I highlighted, the healing process can be a lifelong issue for a victim and a victim's family. If it requires moving, there is huge expense involved. That family may or may not be able to afford the cost of relocating their whole family, but for a family to survive, you cannot ask them to stay in a situation where they are being reoffended day after day after day. They have to feel safe. They have to have an opportunity to heal.

There potentially could be huge costs financially for a family. If the courts were required to consider that, I believe it would make our society much safer. It's very difficult to calculate what those costs would be, but if you give victims an opportunity to heal, then the cost to our medical system.... Allowing the person to heal and to become a productive citizen in Canada I think is in everyone's interest.

Mr. Robert Goguen: To take up Mr. Easter's point, I think he's correct. I mean, if you're in a small community and somebody has to move, it should be the offender, obviously, who bears that burden. To paraphrase his words, tough luck; that would be the prospect.

Mr. Mark Warawa: Yes, I would agree.

Mr. Robert Goguen: Obviously, to balance the interests of the victim and the accused, the court retains a certain jurisdiction in imposing conditions, as of course the parole board does. Could you reiterate how you feel that, despite this discretion, the victims would have a voice? How would it initially make them feel safe in their communities? How would it help? Where would they have input? Could you highlight that for us?

Mr. Mark Warawa: At this point in our justice system, the offender would have a lawyer, a legal counsel appointed to them, to defend them through the process. What about the victim? We have a defence lawyer appointed to protect the rights of the offender. We have a prosecuting lawyer, and we have the court system to make the judgment. What about the victim? Does the victim have any opportunity for counsel, for input? No, they don't.

With this new structure, Bill C-489 would require that the courts and the administrative bodies consider the victim. What would happen administratively is that they would be required to consider this. I think it would work itself out that they would contact the victim to say what it is they're considering and would the victim be okay with that. The victim, or the guardian or parent, if the victim is a minor, would then give their consent as to whether they could live with that.

There could be a sentencing and administrative process that works for everyone, but the consideration of the safety and well-being of the victim has to be paramount. I believe it's a good balance.

The Chair: Thank you for those questions and answers.

Our next questioner is Madame Péclet from the New Democratic Party.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you very much, Mr. Chair.

Thank you very much, Mr. Warawa, for answering our questions.

My first question has to do with the first provision, which is at the core of the bill. It states that the offender may not be within two kilometres of a dwelling where the victim is present. You know this bill, it is your bill. You wrote the following words “where the offender knows or ought to know”. I don't know if you consulted the House of Commons legislative drafters, or if you consulted organizations. What would be the scope of the words “knows or ought to know”? Who will determine how the person ought to know this? Will the court provide him with the information? Will it be his responsibility? Should he know this? If so, how will the Crown or the court determine that he ought to have known this, what criteria will they use? Would it, for instance, have to satisfy the criterion of "reasonable grounds to believe", or would it be the criterion of "beyond any reasonable doubt"? How should this obligation to know be interpreted by lawyers, judges, and here, by members of Parliament?

● (0925)

[*English*]

Mr. Mark Warawa: That's a very good question. Thank you.

It is a conditional sentence that we're talking about. The courts would be required to consider imposing conditions, this bubble zone, and non-contact. The offender would know, or should know, that this is where the victim, the child or youth, will be.

In 88% of sexual offences, the victim knows the offender. It is often a person in an authority position over the victim. There's a relationship. The offender often knows the victim, and where the victim lives, works, and goes to school. In situations where it's obvious that the offender knows this, then the courts would be able to say—

Ms. Ève Péclet: Would the criteria be the relationship of the person? Let's say it's a family member of a friend. What would be the criteria to determine that he should have known? Is it friends or family? This is what we're trying to find out. If he's in a relationship with the child or the family, would that be the criteria taken into consideration by the courts?

Mr. Mark Warawa: Mr. Chair, the courts deal with this language already. It's already in the Criminal Code. It's commonly used.

The courts and the administrative bodies would determine whether this offender knew or should have known. If the offender is driving down the street and the offender and the victim see each other in a car, in that case the offender would not have known the victim was out on the street. That would be a legitimate defence. However, if the offender were a swimming coach of the victim and went to the pool to do some laps at the same time he used to coach that person, and the victim was practising at that time, then the offender should have known.

I'm giving two scenarios. It would be up to the courts to determine if the offender breached the conditions of release. Again, the courts have the discretion to make sure that justice is done.

Ms. Ève Péclet: Taking into consideration that Montreal is a big city, two kilometres is not a lot. Let's say “should have known” is different from “known”. Let's say someone lives in Montreal and used to coach the victim but didn't know he was living two kilometres away from the victim. The criteria here is two kilometres. As I said, Toronto, Vancouver, Gatineau, and Ottawa are big cities. The criteria is two kilometres. Is it “should have known” that he would live in the same city within two kilometres? Is it reasonable doubt, or beyond reasonable doubt?

Do you know what I'm saying?

Mr. Mark Warawa: I understand.

Ms. Ève Péclet: Thank you very much.

Mr. Mark Warawa: I'll repeat that it's up to the courts to determine whether there is a breach of the condition.

● (0930)

The Chair: Thank you very much.

Our next questioner is Mr. Wilks from the Conservative Party, for five minutes.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Mr. Chair, and thank you, Mr. Warawa, for being here today.

This is near and dear to my heart, my having investigated many of these crimes over my time as a police officer.

I wanted to touch on the part of the bill that deals with re-victimization. Could you explain what your thinking is with regard to re-victimization and how this bill would answer those things? Then maybe we can go from there.

Mr. Mark Warawa: It's a very difficult part for me, because I have not walked this path that I hear about when victims share from their heart what it was like after a day of work to go back home to their neighbourhood and see the person who assaulted their child enjoying life, cutting the lawn, seemingly living a life with little consequence of what they had done.

I can't identify because I have not experienced that, but the stories we hear are heart-wrenching. It's the same for the victim. If they inadvertently see the offender, their attacker, they relive it. There are these little triggers; there are words and visual triggers that bring back these memories. It's important that we protect these victims as much as possible and provide an environment for them to heal so they are not re-victimized, because they will be.

The parents will struggle. They will hurt along with their child. Every time the child hurts, the parent will hurt. It's all part of this re-victimization, which is a very sad situation.

Mr. David Wilks: When drafting this bill, Mr. Warawa, and the consideration around it on conditional release, it seems to me as though this is one of those offences to which house arrest would not be applicable. There are many that could be, and I can think of some, but sexual assault is not one of them.

Was there consideration when drafting the bill to amend the Criminal Code through section 742 to not allow for house arrest as a condition of release? What I mean by that is when a person is sentenced to less than two years, and the judge determines the person can play out their sentence in the comfort of their home, was there some consideration to not allow that to occur?

Mr. Mark Warawa: Yes, and the scenario you share is probably a very likely scenario. Two years less a day will be managed by the provinces. It's not federal time. For provincial governments there's consideration for the cost of incarceration and administration. The easiest way is to allow the offender to serve their sentence at home under the condition that they do not contact their victim, that they don't see them, don't phone them, don't e-mail them, that they have no contact with them. Maybe this is the reason this happened.

To have house arrest and to permit this re-victimization hasn't, I don't think, in the past been seriously considered, maybe not considered at all. The major change in Bill C-489 is that they would now be required to. Whether it's the federal parole board, the Parole Board of Canada.... If it's two years or more, it's federal; if it's two years less a day, then it's provincial, as you know. All administrative bodies would be guided by this change. It would be in the Criminal Code of Canada. They would have to consider the impacts of the sentencing on the victim and the victim's family.

The Chair: You have one minute, Mr. Wilks.

Mr. David Wilks: Thank you, Mr. Chair.

Again, I think the important part of your bill and any bill that comes to this committee when it comes to victims is that we focus on the victim first. I think for some time we've tended to be more concerned about how we are going to rehabilitate the offender. Although that is an important part of the system, the more important part is how to ensure the victims move forward in life.

I come back to house arrest. I'm somewhat concerned because from the perspective of helping the offender get the help that he or she may need, if they need it, seems to be lacking.

Could I have a short response?

● (0935)

Mr. Mark Warawa: Yes, I would agree that the focus has to be on the victim. The example I used earlier was that the offender has counsel to consider the offender's rights, well-being, and appropriate sentencing. The offender has counsel, but the victim and the victim's family have no counsel. They are seen as observers in the system, and they now need to be considered. They would be part of the system and their healing would have an opportunity to happen. Thank you.

The Chair: Thank you for that question and answer.

From the New Democratic Party, Monsieur Jacob.

[*Translation*]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Mr. Chair.

I thank Mr. Warawa for being here to answer our questions.

My first question has to do with section 5 of the bill, which imposes mandatory conditions—for instance not communicating with a victim, and refraining from going to a specific location—on offenders who have been convicted and are serving their sentence. Will the bill be retroactive?

[*English*]

Mr. Mark Warawa: No. If this becomes law, it would apply to offences that occur after this becomes law, so it would not be retroactive.

[*Translation*]

Mr. Pierre Jacob: Do the new obligatory conditions add a punishment in the sense of clause 11(h) of the Canadian Charter of Rights and Freedoms, which forbids punishing an offender again, i.e. “(h) if finally found guilty and punished for the offence, not to be tried and punished for it again”?

[*English*]

Mr. Mark Warawa: Thank you for the question.

I believe this is within the charter. The importance of allowing the courts to consider each situation and the sentencing to be on the merits of that situation would be maintained. The courts have the discretion to make the ultimate decision of appropriate sentencing. The change with Bill C-489 is that the courts would have to consider the impact on the victims because, at this point, they're not required to. That's the major change. After the courts have made those sentences, those administrative bodies would have to again consider the impact on the victims.

I think your question was whether it would withstand a charter challenge. Every piece of legislation, particularly within the justice committee, has to be looked at through that lens. This has been looked at by the experts, and I believe it's very much in line with the charter and would withstand a charter challenge if necessary.

[*Translation*]

Mr. Pierre Jacob: If I understand correctly, adding new obligatory conditions does, according to you, constitute a punishment as defined in paragraph 11(h) of the Canadian charter.

I have a question on the scope of Bill C-489. Does it also apply to young offenders?

[*English*]

Mr. Mark Warawa: Yes, it does apply to young offenders. Maybe I could clarify. What is mandatory would be that the courts consider. One of the amendments I've seen proposed in consulting with you members is that the clause that requires a two-kilometre bubble zone around the victim be amended to two kilometres or what is deemed appropriate by the courts. We have to have that amendment, and I'm very supportive of it, because again, the courts have to have that discretion.

That is what is mandatory, not the two kilometres, but what the courts deem to be appropriate, and that they consider it.

● (0940)

[*Translation*]

Mr. Pierre Jacob: I have a final question for you. You referred to the fact that judges have discretionary power, and I am glad about that. However, what did you have in mind when you talked about exceptional circumstances in reference to the condition that offenders are forbidden to communicate with victims? Can you provide concrete examples of exceptional circumstances to the committee?

[*English*]

Mr. Mark Warawa: That again would be a key word for the discretion of the courts, if the courts deemed that house arrest was appropriate in that situation.

You're asking for a hypothetical example. If the offender was a young person who did something very stupid and there was a great degree of remorse, if the offender was actually a minor and their guardian was taking full responsibility, if it was realized why the offence took place—maybe it's access to the Internet—and if there was an agreement with the victim's family and the offender's guardian to manage this appropriately, then in that case maybe house arrest would be an appropriate sentence. Again, it's up to the courts. They have total discretion. On “exceptional circumstances”, they would have the opportunity to say what circumstances are exceptional.

The Chair: Okay.

[*Translation*]

Thank you very much.

[*English*]

Thank you for those questions and answers.

Our final questioner for this witness is Mr. Seeback from the Conservative Party.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Mark, this is a great bill. One of the things we often talk about at this committee is that it's not only that justice is done, but it's the perception that justice is done. When you've spoken to victims who have gone through this, and certainly for the person who comes home and sees the offender across the street cutting the lawn, do those people feel that justice has been done in the circumstances?

Mr. Mark Warawa: A resounding no.

Mr. Kyle Seeback: I think that's important. We forget sometimes when we're here as parliamentarians that people lose faith in the justice system when they see this, and that is a bad thing for any society, so I think this is going to help.

One of the things Mr. Easter was talking about is how victims would know that this has been considered. I suspect your answer to that would be quite clearly that, number one, a crown attorney would make the submission that these things should happen. I know from my experience with the justice system that victims go to all these hearings, so the crown attorney will make the submission that one of these prohibitions should be in place. If the judge doesn't do it, they have to give written reasons as to why they are not doing it.

To me, that's quite clearly how the victim would know. Would you agree with that?

Mr. Mark Warawa: I would.

It's often not the victim but the victim's parent or guardian who would be at those court hearings to hear what the courts are doing as the defence and the prosecution are presenting their cases to the judge and talking to the judge, and then the court's discretion and consideration.... They have to be involved with this.

Now, with these changes, I think they would actually be consulted, as opposed to just being there as observers and hoping to be there at the right time. These considerations, the cases, and the dealing with the courts in these situations are not done all in one day at a specified time. It could be months, and repeated and repeated over time, so it's very stressful for the families and the parents of the victims.

Mr. Kyle Seeback: I don't know if you can answer my question, but when I look at the amendments you're putting in for subsection 161(1), the order of prohibition, one thing I notice is that you have not included what you have included elsewhere, which is that if the courts decide not to impose these sanctions, they would give written reasons.

Do you have an explanation as to why that's not there in section 161, which is the two kilometre prohibition? Would you consider an amendment to add that?

● (0945)

Mr. Mark Warawa: Yes.

Colleagues, if you believe there are amendments needed to strengthen the bill or to provide clarity to the bill, I welcome them. I think we're all on the same page in that we want to protect the rights of victims and give a clear requirement that the courts consider the rights of the victims. If any amendments need to be made to strengthen the bill, I welcome them.

Mr. Kyle Seeback: That's great. Thanks very much.

The Chair: Mr. Easter, on a point of order.

Hon. Wayne Easter: Yes, we'll call it a point of order.

The Chair: Well, that's the only reason you're getting the floor, my friend. If it's not a point of order, you don't get the floor.

Hon. Wayne Easter: Mr. Warawa said that there were a number of tweaks. From that I take it that somebody has amendments.

The Chair: Yes, that is a point order.

Hon. Wayne Easter: Could we have those?

The Chair: The clerk has informed me that thus far from the government side there have been six amendments submitted. We have a meeting on Thursday with more witnesses. I will be asking for the committee to provide any other amendments they wish, and on another day we will deal with those amendments as well as the clause-by-clause consideration. There will be an opportunity for all parties to submit amendments.

On the same point.

Ms. Françoise Boivin: On the same point.

If you already have them, it may accelerate the process if we see them in advance. As I told my colleague yesterday, there may be questions we won't ask the witnesses if we have those amendments. It might clear it up, and at the same time, we wouldn't be doing work for no reason.

The Chair: The amendments have already been submitted to the clerk, so the clerk will circulate them to the committee members before the next meeting.

That was a very good point of order, Mr. Easter.

Thank you, Mr. Warawa, for defending your bill.

The next section has a number of individual witnesses. We are going to go in camera, as they have requested.

I need consent from the committee on one other item.

I, and another member of this committee, have two young people here with us today from Big Brothers Big Sisters of Canada. I asked the witnesses coming up if they were okay with these young people being in the audience for in camera. They were okay with that, so I would need unanimous consent to allow these young people to be here.

Some hon. members: Agreed.

Hon. Wayne Easter: I have two interns here. Are they allowed as well?

The Chair: That's fine. Thank you.

We'll suspend for two minutes while we go in camera.

[*Proceedings continue in camera*]