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Chair

Mr. Mike Wallace

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● (0850)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): I call to order meeting number 4 of the Standing Committee on Justice and Human Rights. According to the orders of the day, pursuant to the orders of reference of Wednesday, October 16, 2013, we are considering Bill C-489, An Act to amend the Criminal Code and the Corrections and Conditional Release Act (restrictions on offenders).

As you see by the agenda, we have a couple of witnesses for the first hour, and then it's been indicated to me by a couple of parties here at the table that they'd be happy to go to clause by clause for the second hour. Then hopefully we will have some time at the end to discuss the future business of the committee.

Without further ado, I'd like to welcome our witnesses. From the Office of the Federal Ombudsman for Victims of Crime, Susan O'Sullivan, the Federal Ombudsman, is here. And from the Criminal Lawyers' Association, we have Michael Spratt, member and defence counsel.

We'll go as the order indicates on our agenda. We'll have Ms. O'Sullivan start for 10 minutes. The floor is yours.

[*Translation*]

Ms. Susan O'Sullivan (Federal Ombudsman for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime): Good afternoon, Mr. Chair and honourable members of the committee.

[*English*]

Thank you for inviting me here today to discuss Bill C-489, which seeks to further protect child victims of sexual offences and to help ensure that victims are not re-traumatized through unwanted contact with their offender.

I would like to begin by providing you with a brief overview of our office's mandate. As you may know, the Office of the Federal Ombudsman for Victims of Crime was created in 2007 to provide a voice for victims at the federal level. We do this through our mandate by receiving and reviewing complaints from victims, by promoting and facilitating access to federal programs and services for victims of crimes, by providing information and referrals, by promoting the basic principles of justice for victims of crime, by raising awareness among criminal justice personnel and policy-makers about the needs and concerns of victims, and by identifying systemic and emerging issues that negatively impact victims. The office helps victims in two main ways: individually and collectively. We help victims individually, by speaking with them every day, answering their questions, and addressing their complaints. We help victims collectively, by reviewing important issues and making recommendations to the federal government on how to improve its laws, policies, and programs to better support victims of crime.

I would like to begin my comments today on Bill C-489 by saying I support the intent of the bill and commend Mr. Warawa for his efforts to further recognize victims of crime within the Canadian system. This bill has two components that I will speak to today: the addition of further conditions under section 161 prohibition orders for offenders who have committed sexual crimes against children under the age of 16, and reducing or eliminating unwanted contact between victims and the offenders who harmed them.

With respect to the first section of the bill, I certainly support measures to protect child victims and the intent of this modification. There are, however, two areas I would like to flag for consideration. The first is the wording of bill, in that it prohibits offenders from coming within two kilometres of the dwelling of their victim in cases where a parent, guardian, or other person who has lawful care or charge of that person is not home. Clearly, the intent here is to protect the victim, both in terms of his or her safety and from further trauma. In reading various transcripts and debates of this bill, I have heard Mr. Warawa recount a story from his own riding of a family who felt constantly re-traumatized, knowing that the offender who harmed their child was living close by. It is important to note in these cases that it's not only the person directly attacked or harmed who suffers from the trauma of seeing or expecting to potentially see the offender, but often family members and other loved ones suffer. With that in mind, I would suggest that while the intent of this clause is to be commended, it could perhaps be made to go further to protect victims, by stating that offenders shall not be within two kilometres of the dwelling, period, regardless of the whereabouts of the parents or guardians.

We have had several similar cases at the office, including cases not related to children, where the proximity of an offender was a very serious source of anxiety, discomfort, and recurring trauma for a victim. In this fiscal year alone, since April we have had 10 cases of victims who have had concerns regarding the proximity of the offender who had harmed them, and of their own personal safety. Though I realize it may be outside the scope of the potential amendments of this bill, I would like to provide for the committee's consideration the point that many victims, not only those under the age of 16, could benefit from this clause and that it should be applied more broadly.

In addition, I would also like to raise for consideration that in a scenario where an offender is advised not to be within two kilometres of a victim's dwelling, especially where the offender has no prior knowledge of the victim's address or residence, he or she is going to have to be advised, to some degree, of where the victim lives. This point is not a minor one. While I absolutely support the intent, there are details contained here that provide for how an offender will be advised of which areas to avoid, and to what degree the victim's privacy and location can or will be protected. As such, it will be imperative that in the implementation and further elaboration of these changes, strict procedural safeguards be put in place to ensure protection of victims' privacy, especially in cases where an offender had no prior knowledge of the victim's address or residence.

The second part of this bill, which tries to eliminate unwanted and potentially traumatic contact between victims and the offender who harmed them, does an important job that is often lacking in our justice system: proactively considering and responding to victims' needs. While this condition could have been imposed previously, putting the onus on the releasing authority to consider the victims is, in my view, an important step forward. What is also important about this point is that it gives some judicial flexibility to allow contact where it may be desired: we cannot make assumptions on the behalf of victims. In reality, we know that the majority of crime is not carried out by strangers. According to the Department of Justice's multi-site survey of victim service agencies, using a one-day snapshot in 2006, 61% of sexual assault victims were a family member or former intimate partner of the offender. For violent offences, 80% of the victims were a family member or former intimate partner of the offender.

Furthermore, according to the survey, Canadians have a greater chance of being harmed by someone in their own family than by a stranger. Of homicides solved in 2009, 33.6% of victims were killed by a family member. With respect to contact with an offender, according to the Canadian Families and Corrections Network, roughly 30% of registered victims chose to stay in contact with the offender who harmed them. This is especially true when the offender is a family member.

When one looks at victimization with an understanding that it often occurs within a family context, the importance of providing some flexibility for restorative opportunities is key. What is unclear at this stage is what process would be in place for securing victims' consent for communication and whether that consent could be revocable at any time.

I would suggest that there must be a clear administrative process in place for victims to provide consent for communication and for victims to be able to revoke their consent at any time.

On this point, in reading the debates, I can see there have been some concerns about whether it is onerous to have judges provide in writing the reasons why they did not impose restrictions on the contact between the offender and the victim witness. In the case of judges, the option of reading their statement into the record does not unnecessarily limit the victims from obtaining this information, as court transcripts are available.

However, as you are aware, judges are not the only releasing authorities. In the case of an offender being released on parole on an unescorted temporary absence, or UTA, where the Parole Board of Canada has the authority, anything not provided in writing will not be discloseable to the victim, thereby reducing or restricting the information that victims have access to about the offender who harmed them and their own personal safety.

In the case of institutional heads as the releasing authority, no information is ever disclosed to victims except for the final decision, once rendered. This is a larger issue that my office is looking at. However, in respect of this bill, I believe that the institutional heads, otherwise known as wardens, should also be required to disclose to victims, in writing, the reasons for not imposing a non-communication order or geographic restrictions.

Victims should have the right and ability to know when these conditions have not been imposed and the reasons why in order to better understand how their safety has been considered and the risks they may face, including contact with the offender.

Finally, I have a couple of suggestions for amendments that relate to more technical issues with the bill. The first pertains to the absence of long-term supervision orders in the list of circumstances in which non-communication orders must be imposed. Long-term supervision orders apply to cases of sexually-based offences, including those against children. They are a special order imposed to allow for some supervision for up to 10 years following a warrant expiry of an offender who is deemed feared to reoffend.

Given the intent of this bill, I bring this forward for your consideration as an amendment to include long-term supervision orders within the bill going forward.

The second point relates to the clause that prohibits offenders from having any direct or indirect communication with any victim witness or other persons identified in the order, unless the victims consent to communication, or refrain from going to any place specified in the order.

In this scenario, because of the use of “or”, as long as the offender complies with one part, he or she would not necessarily be legally bound to comply with the other condition. I think it might be more effective to strike the “or” and replace it with an “and”, allowing for circumstances where both non-communication orders and geographic restrictions have been applied.

In summary, I support the passage of Bill C-489 and would encourage the members to consider the points that I have raised today in making some minor but important amendments to the bill.

I would like to close by emphasizing the critical importance of ensuring that victims' privacy and safety be a priority when the practical realities of implementing these clauses come to pass. We must absolutely ensure that in implementing these new measures the appropriate procedural safeguards are in place and that victims are considered and protected.

Thank you for your time, and I welcome any questions you may have.

● (0855)

The Chair: Thank you, Mrs. O'Sullivan.

The next witness is Michael Spratt from the Criminal Lawyers' Association. Michael, the floor is yours.

Mr. Michael Spratt (Member and Defence Counsel, Criminal Lawyers' Association): Thank you. Good morning, Mr. Chair, and good morning to members of this committee.

My name is Michael Spratt and I'm a criminal defence lawyer. I practise locally here in Ottawa at the firm of Webber Goldstein Abergel. I'm here today on behalf of the Criminal Lawyers' Association. As you may know, the Criminal Lawyers' Association was founded in 1971 and is made up of over 1,000 criminal lawyers with membership across Canada. It's a great pleasure to be here to provide our input on this important bill.

The CLA supports legislation that's necessary, fair, constitutional, and supported by the evidence. With those principles in mind I can say we certainly support the intent and the goals of the legislation, but I would like to discuss a few areas of concern that we have with regard to the wording, and then some potential implementation problems.

With that in mind, by way of example I'd like to deal specifically with clauses 1 and 2, dealing with section 161 orders and the mandatory probation conditions.

First, dealing with clause 1, the bill seeks to add the option of a geographical restriction between the offender and the victim. Clearly, there is nothing wrong with that in principle at all. The condition is not mandatory; it shall be considered and it may be applied. The Criminal Code indeed allows the judge discretion to add conditions or exceptions to that geographical restriction, which is a positive in our view.

I suppose the logical issue is where the two kilometres came from. I agree that having the option of imposing a geographical restriction such as this is important and is something that judges should consider. But if a judge can exercise discretion about exceptions and conditions, why can a judge not exercise discretions with the imposition of the actual number in terms of the geographical limitation? Certainly, some cases may call for a shorter distance, and some cases may call for a greater distance. Judges know the facts of the case, they know the circumstances of the offender, and indeed, under our sentencing laws, they must consider the input of the victim. These sentencing judges are people who are in the best position to impose the appropriate geographical restriction, whether that be 500 meters, one kilometre, two kilometres, or more.

Now, in our submission, there's always a problem with legislation that is overly specific and then applied generally. That can lead to some problems in both implementation and enforcement. The more flexible approach is the one that we support, and that is general legislation that then can be applied to specific cases through the lens of judicial discretion. A blanket two-kilometre boundary may be too large in small towns due to the size of the town.

There, of course, exists the problem in large cities too, that a two-kilometre radius may be too large, covering hundreds of thousands of people and many locations. That's especially true when we're considering that many programs that are located in urban areas designed to assist in rehabilitation of offenders, which is in everyone's interest, are often clustered together. One of the best examples of that is here in Ottawa.

The Criminal Code provides that judges will have the ability to add exceptions to the conditions. However, having a two-kilometre or a specific geographical radius, and then seeing that it's a problem and adding exception after exception to eliminate the problem is not an ideal solution. A situation like that results, quite frankly, in more error-prone sentencing with more uncertainty, and ultimately it makes the condition much more difficult to enforce at the back end. It would be preferable, in our submission, to utilize judicial discretion to cure those problems. Quite simply, judges should be able to impose geographical consideration that is supported by the evidence and demanded by the facts of the case. That geographical exception should not be decided in a vacuum, but in the courtroom itself.

Moving on to the probation conditions in clause 2, this clause directs a mandatory no-contact provision between the offender and the victim or witnesses or other people identified. Again, it's positive that there is an exception built into this mandatory order. Now, section 732.1 of the Criminal Code already allows for imposition of conditions such as this, although not mandatory in nature. In most cases, and as a busy criminal practitioner, I can tell you that these conditions are routinely imposed by the courts. For example, in domestic cases there is always victim input sought, and if there's a desire by the victim not to have contact, a no-contact condition is imposed. I've never seen the opposite happen.

● (0900)

In robberies, break and enters, frauds, and even thefts from big-box stores, there are almost always provisions that prohibit contact between the offender and the victim, whether that be a person or a big-box store. Even if a victim does want to have contact with the offender, what we see in the courts now is that a no-contact condition is still imposed, with the exception of cases where the victim provides a written and revocable consent.

Quite frankly, from my perspective given what I see in court, the proposed amendments are not completely necessary.

A more practical issue to consider is the language of the exception that is present in the legislation. The exception provides that the victim, witness, or other person gives their consent and that an exception can be built in. The question is, does the consent need to be provided when the condition is imposed, or can that consent be provided at some later date? For example, can the condition be that you don't have contact except with the person's consent, and that the victim can provide consent at the time sentence is imposed and then revoke it later, or alternatively, that the victim cannot provide consent until some later point? That's an issue that I feel needs to be clarified.

I take the latter approaches as probably being the correct interpretation. I'm assuming that the interpretation of the drafters is that the victim can provide consent or revoke their consent, not only at the time when the sentence is imposed but going forward. That seems to make sense since it provides flexibility and, ultimately, puts control in the victim's hands. It would eliminate the sort of absurd scenario of a victim providing consent at the sentencing time and then not wanting to have contact later, but not being able to revoke it because a condition is imposed. That is an interpretation point that may need some clarification.

Ultimately, what we're looking at is a Criminal Code that is already a very cumbersome and weighty statute. The question has to be asked, if these measures are being put into place, if the flexibility already exists, do additional conditions or mandatory conditions need to be added to the Criminal Code? Of course, that's a matter for Parliament. But in my opinion, judicial discretion and its exercise are already achieving a pretty good balance in that regard.

I'll now briefly talk about reasons. Subclause 2(2) requires the court to give written reasons. It's been said by some that courts aren't required to provide a reason for imposing conditions, but that's not entirely true. It's true that there is no statutory duty in this case built into the Criminal Code to mandate that reasons are applied, but there are common law duties and the courts are required to give reasons for important decisions. I would submit that departing from a mandatory condition, or using discretion not to exercise a condition sought by a prosecutor that relates to contact with victims, is the sort of situation that would require courts to give reasons at common law. In that light, I don't think that the amendment contained in subclause 2(2) is really necessary.

More practically to the point—and I appreciate there's a difference between parole boards and trial courts—when you're dealing with trial courts the requirement for written reasons is unnecessary. Oral reasons should be sufficient. There's no principled reason why written reasons should be required. I submit that if that proposed section is included, of course adding some extra statute saying that reasons are required isn't going to change the way things are done, but I'd suggest an amendment to allow oral reasons as well.

Oral reasons are given in very serious decisions about guilt or innocence. Oral reasons are sufficient when sentencing someone to lengthy penitentiary sentences. Oral reasons are a matter of record and should be sufficient. That's important in busy trial courts, where taking the time to reduce what one says in writing—indeed, those oral reasons are already transcribed—adds time and delays the process in a way that is really not desirable from any perspective. It is for that reason that I submit that oral reasons should suffice.

● (0905)

Having said all that, I think the intent and the goals of the bill are laudable. I think many of the measures the bill seeks to impose are already happening in our courts.

I would urge this committee to clarify some language in the bill and perhaps look at using judicial discretion, which is already built into some of these exceptions and provisions, to allow a more fine-tuned applicability to the facts of the case, which can take all facts into consideration at the front end.

Thank you.

The Chair: Thank you, Mr. Spratt.

Thank you both for those presentations.

We now go to our rounds of questions.

Our first questioner, from the New Democratic Party, is Madame Boivin.

[*Translation*]

Ms. Françoise Boivin (Gatineau, NDP): Thank you both for being here.

Everyone agrees that this bill is full of good intentions. However, the details pose a few problems. The government, the official opposition and the witnesses who appeared all said that applying the clause related to the two kilometres could be problematic. I appreciate your comments, and you will probably be pleased to know that amendments will be presented when we review the bill clause by clause.

Could you please comment further, Ms. O'Sullivan? We really appreciate the work you do. You are sort of like…

[*English*]

the poster child for the victims—and boy, do they need it.

[*Translation*]

A number of people have come to talk to us here, and we realize that what they are going through is not easy. The justice system can sometimes seem very cold, very inhuman to them, which is a little unfortunate. That's why any attempt to find a balance and give them more attention within the process is important. These people are often at a disadvantage and alone in the process; it isn't easy for them. These provisions may given them more security, but I'm not sure that they will feel like full participants in the process.

In your remarks, you said that this bill was giving more consideration to victims. Is that enough? What else can we do? We are trying to see what more we could do to help the victims feel that justice has been done for them.

● (0910)

[*English*]

Ms. Susan O'Sullivan: First of all, you've touched on some very important points. This is one bill before the committee. We do need to look very much in a broad lens at meeting the needs of victims of crime within the criminal justice system.

I am looking forward to seeing the victims bill of rights tabled—

Ms. Françoise Boivin: Me too.

Ms. Susan O'Sullivan: —but I want to acknowledge that this is just one piece.

I think what it's doing, and I certainly reflect on the comments of Mr. Spratt, is that people will say, well, they can impose at certain points already, but the difference here is that this proactive and mandatory rather than discretionary. This means that the participants in the criminal justice system will have to seek the input of the victims.

Ms. Françoise Boivin: I see it as being a bit like the victim saying, “Hello, we're here.” We talked with group of victims who said that sometimes everything happens and it's done, and they're left saying, “What the hell happened here?”

So it's as if it's saying, with this bill, “If you don't want to impose it, at least you have to tell me, the victim, why you are not doing so.”

I wanted to see if you were okay with the suggestion from Mr. Spratt concerning the oral at trial. We know that a lot of the decisions are rendered orally by the court. They don't take the time to write because they have so many cases.

What is your position on that?

Ms. Susan O'Sullivan: That's exactly why I identified those issues in my opening comments. We recognize that there are transcripts that come from a trial. I have no problem with that at all if they can have access to the transcripts.

There's usually a cost associated with the transcripts—

Ms. Françoise Boivin: Exactly.

Ms. Susan O'Sullivan: —so once again the victim will have to bear the burden of cost.

That would be the issue.

Ms. Françoise Boivin: That was my—

Ms. Susan O'Sullivan: So you can have the transcript if you can afford it. You'd have to look at either waiving all costs—

Ms. Françoise Boivin: So it's not automatic. If it's an oral decision by the court, the victim has to apply—

Ms. Susan O'Sullivan: They have to request the transcript. I have to be frank here. I don't know which courts charge or what, but I know there are potentially costs associated with that.

Ms. Françoise Boivin: How many cases, in your view, would this bill apply to?

Mr. Michael Spratt: The reasons provision applies only to proposed subparagraph 732.1(2)(a.l)(ii), so in exceptional circumstances. That would reduce the number of cases.

In a busy trial court that's dealing specifically with domestic pleas or domestic matters—and there's a court set up just for those things—there may be a handful of cases a day to which this applies. Sometimes judges write slowly. We certainly see that in the difference between appearances in the Ontario Court and appearances in the Superior Court, where more often the judge will write down the reasons while on the bench. If we're looking at adding five or ten minutes to a proceeding—

Ms. Françoise Boivin: They can't use an iPod and just tape it themselves and have it transcribed after, or whatever?

Mr. Michael Spratt: I suppose they could. It certainly would be advantageous to have a process or exception to allow victims to obtain court transcripts at no cost. That would be, I think, something very supportive.

There are some technological measures put in place right here in Ottawa that allow same-day access to the oral recordings and you can actually take them home for a very nominal fee. We're talking about a couple of dollars.

Ms. Susan O'Sullivan: If I could add one point, I think it's also important to clarify that we're talking about time in court here. This bill also talks about the parole board decisions and it talks about—if I may use the word “warden”—the institutional head. I think those have to be in writing, because, first of all, any Canadian can get a copy of the decision registry of the parole board, but the decision registry is not a transcript.

This committee may have heard me speak before about the inability of a victim to get a copy of the audio tape that's done at the time of that. I think it's critical in that case, as well.

When wardens make these decisions, as people are probably well aware, there is no transcript. Victims don't even have the same abilities to attend as they would at a parole board hearing. I just want to make sure I emphasize that in those two cases they should absolutely have that available in writing.

● (0915)

Mr. Michael Spratt: I think that is a well-reasoned position.

The Chair: We're well over time. Thank you very much for those questions and answers.

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

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Chair.

I want to continue on about the written responses. I think it's inherently clear that those need to be given for some of the reasons that haven't been mentioned either. For instance, when a judge decides not to put in a portion of a reasoning, I think it's incumbent on that judge to also give reasons as to why they're not doing that, because from the perspective of victims, it's not like they're in the court system every day the way lawyers or police officers who become accustomed to the rules and to understanding them are.

I wonder, Ms. O'Sullivan, if you could continue on with regard to the importance of written reasons, not only from the judge's perspective but also from wardens' perspective, from every perspective. I think it's very important to this bill that we hear not only why the reasons are going to be put in but also why they're not going to be.

Ms. Susan O'Sullivan: I thank you for that opportunity, because you've touched on something that's really important. First of all, when a person becomes a victim of crime, it may be the first contact they ever have with the criminal justice system, which all of us here know is complex and complicated. They need information if they're going to be involved with the criminal justice system. Part of that is information about what their rights are, what they can or cannot have within that access to information process.

Part of this is that by providing a written reason, they're going to have concretely why the condition was not imposed or have that information available to them. That's very important because this is about rebalancing the system. People will talk about a victim being a participant in the criminal justice system—not a party but a participant—which they already are through a victim impact statement. This is one more process that's going to keep a victim informed about why decisions are made. And whether they agree with that or not, at the end of the day, they will have been respected, their input will have been considered, and they will know why the decision is being made. They may not ultimately agree with it, but at least they and their input will have been considered.

I think this proactive way of making sure that people explain that reason is going to help victims understand. It really is about Canadians' confidence in the criminal justice system that victims be respected as part of this process.

Mr. David Wilks: Along those lines, Mr. Spratt, as Madame Boivin mentioned, there is an amendment coming forward with regard to geographical restriction.

Touching on that, and you mentioned this in your commentary with regard to support services for those who may be caught within that geographical restriction, you would also agree that the judges normally put in an exception to the rule, that if the accused needs to get help within that area there is an exception to the rule. Is that correct?

Mr. Michael Spratt: That's correct. I think the practical point is that when you have the geographical exception where two kilometres, for example, might be overly broad because of those services that we've talked about, the problem arises when multiple exceptions are needed to make that geographical condition reasonable and appropriate. When you have those multiple exceptions, it adds a lot of uncertainty to the sentencing process.

I'm sure from a victim's standpoint, it adds a lot of uncertainty as well. I'm seeing the person asking, “Is it falling under an exception?” And this is to provide certainty. From a police officer's perspective, it provides a lot of uncertainty about enforcement.

From an accused's perspective, it also opens them to a deprivation of liberty and an arrest for something that they're doing lawfully. They're within their boundary, there's an exception; usually they're arrested first, brought to court, and then prosecuted. If they can show that they have fallen into the exception, then there will be an acquittal and there will be a recognition that this wasn't appropriate action.

It's all that comes before it that is undesirable.

● (0920)

Mr. David Wilks: I wanted to touch on disclosure as well.

Ms. Sullivan, you had brought that up. It always becomes an issue on disclosure with regard to how far you go with it, especially from a police perspective. Sometimes police officers are not given the same information from the perspective of disclosure as the victim might get, as the courts might determine what the police can get. It becomes very troublesome for the police from time to time on disclosure issues.

From the perspective of this bill and the involvement of disclosure to the victims, it would seem to me that there needs to be some involvement by the police, other than the investigation, that would allow them also to have understanding of the final decision of the courts so that they are not interpreting what the sentence is as opposed to what the real sentence is. That's where I get back to written reasons from the courts.

I'm wondering if you could speak to some of the concerns you had around disclosure.

Ms. Susan O'Sullivan: I think what I wanted to highlight was that certainly from the courts there is a transcript that could be available—although written, obviously, would be preferable. But I really want to emphasize, when it comes to a decision by the parole board and by the head of the institution....

Right now, for example, if there's a decision by the warden on a UTA, the victim won't get the final decision. They won't get the reasoning behind that. But to them it's important to know that the people who are making these decisions have considered their safety and their risk.

I can tell you, from talking to victims across this country, that they are unsure of how these authorizing decision-makers are making those decisions and how they are factoring in their safety.

Mr. David Wilks: If I can just intervene—

The Chair: No, you can't.

Voices: Oh, oh!

The Chair: But a good try.

Mr. David Wilks: Oh, I was trying; I was watching you, you know.

The Chair: Thank you very much for those questions and answers.

Our next questioner is from the Liberal Party of Canada, and it's Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): It sounded so good coming from David, I was almost going to give him some of my time. But I guess I won't.

Thanks to both of you for coming in and for your good presentations.

Mr. Warawa indicated in his testimony that there are thousands of victims. There's no question that there are thousands of victims, but with this particular bill, in and of itself, do either of you have any idea of the numbers we're looking at? How many people will be impacted by this bill?

Mr. Michael Spratt: I don't have a number that I can pull out. What I can tell you is that in some respects, the bill won't have much of an impact. It's already being done, from my perspective.

What I can tell you from my experience in court, and our members' experience in court, is that there may be some cases, and there always are some exceptional cases, where the appropriate conditions aren't imposed, whether it just hasn't been considered or it hasn't been raised by the defence or by the crown attorney. These conditions are routinely imposed, and I see them in case after case.

We're talking about a large number of people, both accused and victims and witnesses and related parties, who will be affected by these conditions. But to some large extent they are already affected by the intent of these conditions, because they are imposed on a routine basis.

Ms. Susan O'Sullivan: What I can tell you is there are approximately 6,000 to 7,000 registered victims of offenders who are in a federal institution.

The other thing I can say is that when it comes to a victim's lens, for them it's not a matter of numbers but a matter of their involvement with the criminal justice system—whether they have they been respected and whether their safety and risk was considered when these decisions were being made.

Hon. Wayne Easter: I don't think there's any question that people were personally affected where the judicial conditions were not in place. Yes, they're impacted and impacted heavily.

As to the legislation itself, it would be useful for us to know exactly what we are looking at. You said there are 6,000 to 7,000 victims registered. But are we talking about 100, 50, or less than that when we consider whom this bill is going to apply to? As responsible legislatures, we should know that and we don't. That's one of the problems.

In your estimation, judges now have the authority to impose these kinds of conditions. We heard a witness last Thursday in camera, and we've heard from others. The reason for the bill is that, for whatever reason, judges don't impose conditions. In some cases, if you're looking at a victim across the road from the offender. I have to shake my head and wonder how a judge could allow that to happen. Why does that happen, do you have any idea? It seems ridiculous to me that an offender would be across the road from a victim and a victim's family.

● (0925)

Mr. Michael Spratt: There are some occasions where the issue isn't addressed. I take it that you've heard about some of those cases. I can tell you that the crown, at least in the cases I've dealt with and that I've heard of, always asks for these conditions and they're always considered by the judge. So I'd be very interested in seeing a transcript of those cases. I'd like to see if the crown attorney didn't mention it, or if there were reasons given, or why it wasn't imposed. I think that evidence should be obtained.

There are cases where offenders and victims live in close proximity to one another. In such cases, using judicial discretion to craft the conditions necessary to ensure the safety of the victim and the absence of contact requires a careful balancing. Certainly, it's in no one's interest to render an offender destitute, to put him on the streets, to remove him from his community, from his support system, from resources that could be used to rehabilitate him.

Now, there are some exceptional cases. There are cases where victims and offenders may live in close proximity. It's in those cases where judicial discretion has to be honed. We're blessed with a good judiciary and with a well-funded, competent, intelligent prosecution service. Between the submissions of the crown, judicial discretion, and a full knowledge of the offender's circumstances and the victim's input, it's up to the judge to craft the conditions necessary to make sure that the offender isn't put into a situation where he loses his home, his family, his support, or his employment. That's not to anyone's benefit. Through judicial discretion, even in those cases where they reside close together, conditions can be put in place and crafted to make sure, I submit, that there's a balance of interests.

Hon. Wayne Easter: In the court system, we have either oral or written justifications. But let's go back to these warden or parole board decisions where we don't have these justifications. The victims don't know the thinking behind the decisions. Does this bill go far enough in that regard?

Mr. Michael Spratt: I think so. I want those reasons as well. I didn't always get those reasons when those conditions were imposed on the clients that I represented. I think everyone deserves reasons. People who make these decisions are under a duty to provide reasons. We have that in our courts through oral reasons and transcripts and audio recordings. Certainly, when those decisions are being made by parole boards, wardens, or other members of the justice system, I think all parties are entitled. Victims, the community at large, and the offender are all entitled to reasons and justifications for imposing them.

The Chair: Thank you very much for those questions and answers.

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

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

Thank you to our witnesses for being here today.

Ms. O'Sullivan, you may have heard that when we last considered this bill we heard from the parents of a victim. It was very moving testimony about a victim who was abused over a long period of time. The victim found the courage to bring that offender to justice. After a few months of incarceration he was allowed to return to his home, which was right across the street from her. Every day, she saw him. Every day, her parents saw him.

For me, and I think for others on this committee, the testimony we heard really brought home the issue of how the offence impacted not only the victim herself but also other members of the family, and how there's this healing process that the victim, the family, and others in the neighbourhood have to go through after an offence like this is committed.

What do you think of the argument that we hear from some people, as we heard from Mr. Easter and others, that the system works okay most of the time? How many people does it really impact? If it's not a large number of people that this legislation is going to help by making it an absolute requirement for the court to consider the impact on the victim of the location of the offender, then why bother?

From the victims who you speak to, what's your view of that argument?

● (0930)

The Chair: Before you answer that question, I want to caution members of the committee that we were in camera for that.

You didn't mention any names or anything, which is fair, but just be careful about what you say to members in public.

Thank you very much. Go ahead.

Ms. Susan O'Sullivan: I have the same challenges when I speak to the victims I deal with, but I will deal with the issue of proximity, and that's what we're talking about when offenders are released back into a community. As I've indicated, in the last fiscal year alone, we've had 10 complaints with regard to this.

Obviously, that's hugely devastating, and it's not just.... As I said in my opening comments, it's very reflective of the fact that this impact goes beyond the victim. It goes to their family and could go to other members close to them as well. That's the impact of this.

I think what's important about the bill before us is that it makes it so that the decision-makers must consider the victim's safety. It's not discretionary; they have to consider it. It leaves the flexibility in there if a victim in fact wants to look at different restorative measures.

I think you've hit on something that's really important here. We need to start ensuring that the legislation considers victims' input, that their needs are considered in relation to these decisions that are being made, and that they have the information as to why these decisions are made, when they are made, and what are the reasons behind them.

Mr. Bob Dechert: Do you have a view on whether the system works well most of the time? How does it impact victims in those few cases where it doesn't, where the court system doesn't work?

Ms. Susan O'Sullivan: Well, the impact is huge, obviously. If we want healthy and safe communities, that means we balance them and look after all of the people in our communities. If we, as people involved in the criminal justice system, have a victims lens on it and consider their input and their needs, obviously that's going to be helpful for the families to know.

Here's what we deal with when people come to us. They ask, “Did they even consider the risk and my safety?” They're the same kinds of questions that I know perhaps.... They ask how the decision got made that the offender was being released, either around the block or across the street, in close proximity, and the impact on them....

At least now we're going to have it so that they must have a look at this. They must be proactive. They have to state in writing why they're making these decisions, so that information is going to be available. That means they have to talk with the victims. They have to seek their input about their concerns and their safety. Then they're assured that their safety is being considered. I think this is a hugely important step.

I do have some statistics. For example, I made a recommendation to include and look at the long-term supervision orders. I can tell you that as of April 15, 2012, the courts have imposed 768 long-term supervision orders. Of those, 71% are for a period of 10 years. There are currently 680 offenders with long-term supervision orders. Of these, 463, or 68%, have at least one current conviction for a sexual offence.

I also have data from the Stats Canada report on adult criminal statistics in Canada in 2011-12. In 2011 and 2012, probation was the most common sentence in adult court, at 45%. It says that 45% of the sentences were for probation and 4.6% of sentences were conditional sentences.

They use these numbers, if I have this correct. I do have my research person behind me. Is it 110,885? Would that be the number...?

There is some data available through that. I am quoting a Statistics Canada adult criminal statistics report. There is data around that, but I still want to balance those comments with this: it's really about how a victim of crime proactively knows that their safety is being considered when these decisions on release, particularly back into the community, are being made.

● (0935)

The Chair: You have one minute.

Mr. Bob Dechert: Thank you.

When you speak to victims and others in our society about their faith in the justice system, and they hear stories of victims and offenders being put in close proximity to each other and of the continuing traumatic impact on a victim, what does that kind of story do to the faith that people generally have in our justice system? Do you think that this piece of legislation will help to restore—

Ms. Susan O'Sullivan: I think this is one piece. I think we have a lot of work to do in ensuring that people....

When people report crime, they want to be involved in the criminal justice system. They need to have faith that the system is going to consider their needs, that it's respectful and will treat them with dignity. It's going to give them that information, allow them to feel that their input is considered, that they feel protected, and, ultimately, supported.

So this is a piece that is going to go some way in doing that.

The Chair: Thank you very much.

Thank you, for those questions and answers.

Our next question, from the New Democratic Party, is from Madame Péclet.

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

Thank you very much to the witness for your testimony.

[*Translation*]

I would like to start by addressing a fairly important point that wasn't covered in the last few questions. It has to do with the communication of information. The clause stipulates that the person must not be within two kilometres of any dwelling-house where the victim resides. But, Ms. O'Sullivan, you said in your remarks that there was no system of communicating information and, as a result, there were problems regarding privacy. You wondered how that could be resolved.

Should victims give their consent so that the court can communicate that information? How could that be done?

[*English*]

Ms. Susan O'Sullivan: You've raised a very good point.

As I've indicated, there have to be some procedural safeguards in place, particularly when the offender does not know the address of the victim.

We're a very broad and expansive country. As has been pointed out by many people here, we have small rural communities, northern communities, fly-in communities, and large urban communities. If a range is to be put in, one example is that written consent could be given in advance by the victim, saying they are fine with the two-kilometre boundary. I think that you could broaden the radius.

These are some of the procedures that would have to be considered, particularly when the offender does not know the victim's residence. I think everyone here agrees that this is common sense in cases where an offender is moving back in across the street.

My concern is that we make sure that with whatever procedural safeguards are put in place, there is also a process that considers the victims.

Mr. Michael Spratt: From my experience, I can tell you that an offender is never told where the victim is residing. That's counter-productive, and that's not done.

There are provisions that can lead to some very confusing situations. For example, if he doesn't know that the victim is within the two-kilometre radius of where he is, it can lead to enforcement problems and other issues.

What is routinely done in probation orders is that a probation officer or the police are informed of the offender's address. If he changes his address, he has to inform the authorities. Certainly, that's information the police would know, probation officials would know, and it can be communicated to the victim as well.

When you look at these measures, which are very well intended, I don't want anyone to think that I mean that the system works right most of the time and we don't need these measures. These measures may correct some imperfections and examples of imperfections that have arisen in the system; however, if they're not carefully thought out and properly applied, they can create other imperfections as well.

That's the balance that needs to be struck, and that's what my comments are geared to.

Ms. Ève Péclet: The intent of this article was to make the

● (0940)

[*Translation*]

…accused not approach the dwelling-house where he knows or should know that the victim lives. Furthermore, if the victim does not know exactly where the person resides, but knows the person lives in the neighbourhood, that might cause some stress.

How do you think this should be done? Should the victim know where the person resides as well? How should that overlap in the whole system? In general, should the victim have access to information? I'm not talking about specific cases here.

[*English*]

Ms. Susan O'Sullivan: One example I've given is that it requires the victim to consent in advance to the information that's being shared with the offender. That's simply one example that could be implemented. I use that as an example because that would ensure that the victim is comfortable with the parameters.

Clearly, in cases where the victim and offender know each other and know where each other lives, a radius is pretty straightforward. The challenges arise when.... Let's take this city, for example. You have a population base of roughly 900,000. If you put a two-kilometre radius on that, you could potentially target an area for the offender, who may wish to reoffend, about a smaller area where the victim may reside. But the victim may be comfortable with saying, "I'm comfortable, if you tell them that they're not to be within this radius".

I think one option is to seek consent from the victim as to what information can be shared in advance of its being shared with an offender. I realize there are people who perhaps have more experience than I do in the implementation of boundaries. For example, I know that in other countries boundaries are imposed in some situations. My concern is only that there be those appropriate administrative and procedural safeguards in place.

The Chair: Thank you very much for those questions and answers.

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

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

Susan, you raised a number of points that I think this committee needs to consider. With respect to some language issue, when you're talking about the amendments to the Corrections and Conditional Release Act, where it says it's that "or", I take it you think that we should be putting forward an amendment to either remove the "or", which I think works, or change the "or" to an "and" to make it clear that they have to do both—not communicate and refrain from going to the place, because when you leave the "or" in, it seems like if you do one, you're okay.

I think you're suggesting we have a drafting error in the legislation that needs to be fixed.

Ms. Susan O'Sullivan: Yes.

Mr. Kyle Seeback: Michael, do you agree with that—

Mr. Michael Spratt: Yes.

Mr. Kyle Seeback: —that it's somewhat unclear how it's drafted?

Mr. Michael Spratt: I think it's somewhat unclear. It looks like it's not necessarily completely the same as....

Yes, you're right, it's in the other one, too.

Mr. Kyle Seeback: It's in all of those sections.

Mr. Michael Spratt: Removing the "or" and leaving it open to impose both, or just impose one, would provide flexibility and remove the situation where someone says "I complied with one, but not the other".

Mr. Kyle Seeback: Yes, I agree.

The second thing I see, Susan, is that when you're talking about the parole board or any other releasing authority, you're saying that the written reasons need to be constrained, effectively, to the Corrections and Conditional Release Act. You're saying that's where we have a problem with oral reasons being given.

Ms. Susan O'Sullivan: Or no reasons being given.

Mr. Kyle Seeback: Or no reasons being given.

Ms. Susan O'Sullivan: For example, if a registered victim chooses to attend a parole hearing, and they attend, there's a lot of emotion in many cases as well. For example, they may want to ask to listen to the audio recording that was made, next week or something. They can't do that, because it wasn't made for those purposes.

The only thing that they can get in writing is a copy of the Decision Registry, which is not a transcript. If, in fact, the reasons given for the decision are not in the Decision Registry, then they wouldn't have access to that. They need to be provided that information in writing. So CCRA changes, yes.

Mr. Kyle Seeback: I'm not trying to interrupt you, but I have such a limited amount of time and I want to get this right, because we're apparently going to clause-by-clause study right after this.

Right now, with the legislation as it is, it's saying that if the releasing authority makes the decision saying they're not going to impose these conditions, they have to provide written reasons.

Ms. Susan O'Sullivan: Yes.

Mr. Kyle Seeback: I take it you support it as it's drafted for the releasing authority.

Ms. Susan O'Sullivan: It has to provide written reasons to the—

Mr. Kyle Seeback: Yes.

Ms. Susan O'Sullivan: Yes.

Mr. Kyle Seeback: Because my understanding is that we might amend that to say they can put it on the record, which is effectively oral reasons, I think you would prefer that it stay as written reasons.

● (0945)

Ms. Susan O'Sullivan: For CCRA, yes, because how would they get the wardens. They don't have access to that.

Mr. Kyle Seeback: Exactly.

There is one other thing I want to move to very quickly. When I review section 161 and the proposed amendments to it—and Michael, you would know, section 161 dealing with "Order of prohibition"—my review of the legislation is that there's no requirement for a judge to give any reason why they are not going to impose those conditions. We've put that in the other sections, but we didn't put that in section 161. So if a judge chooses not to impose a geographic condition under section 161, they don't have to refer to it at all, as this legislation is currently drafted.

To my mind we should be asking for a similar thing, that a judge at least put that on the record to show that they turned their mind to that geographic restriction. This would address some of the concerns we heard from people on Tuesday. They said, "It happened. It wasn't considered and no one talked about it. How's that possible?" Would you be supportive of requiring a judge to at least put on the record why that was not imposed?

Mr. Michael Spratt: Let's put it this way: I wouldn't be opposed to it. I don't think it adds very much because, in my experience, if a prosecutor asks for a condition and if the judge is considering these conditions, as they must, reasons are given. At least in the cases I've personally experienced and—

Mr. Kyle Seeback: Right. We know of at least one case where it wasn't though.

Mr. Michael Spratt: Yes, and it would be very interesting to see why not, to order the transcript and see what was said about it and see what the prosecutor said about it. In my experience, prosecutors are very diligent about making sure—

Mr. Kyle Seeback: I agree. My wife's a crown attorney: they're very diligent.

Voices: Oh, oh!

Mr. Kyle Seeback: I'm putting that on the record.

Voices: Oh, oh!

Mr. Kyle Seeback: Susan, what do you think?

Ms. Susan O'Sullivan: I think anything that provides victims with more information about why decisions are made is a good thing. Particularly if Mr. Spratt is saying they do that on a regular basis anyway, having it on record and available to victims makes sense.

Mr. Kyle Seeback: If they do it anyway, then what's the problem with having to give an oral reason? That's my view, sort of. It's about making sure that it happens. If they do it anyway 99% of the time, let's get it to 100%.

Mr. Michael Spratt: Yes, and that's always good. It always has to be counterbalanced against the weightiness—

Mr. Kyle Seeback: I agree.

Mr. Michael Spratt: —both in terms of content and the actual weight of the Criminal Code. We're all expected to know the laws. The more we put in there that we may not need to put in there, the more difficult it is for that principle we all accept to actually be true.

The Chair: Thank you very much for those questions and those answers.

Just before we suspend and switch over from the Department of Justice and our clerks who need to come here, can I get a motion to approve the actual budget that paid for the flights for those who came here to be witnesses?

(Motion agreed to)

The Chair: Thank you very much.

With that we will suspend for two minutes.

● _____ (Pause) _____ ●

● (0950)

The Chair: We're back in session.

I welcome Mr. Douglas Hoover, the counsel for the criminal law policy section of the Department of Justice. Good morning, and thank you for joining us.

We have our clerks here to help us through the clause-by-clause piece. We are going to do clause by clause, as a number of parties indicated that they're interested in doing so today.

(On Clause 1)

The Chair: We need somebody to move the first amendment to clause 1. There's a government amendment, G-1.

Just for the information of all committee members, we have checked and all of the amendments—I think there are six of them in front of us—are admissible. So none of them are going to be ruled out of order.

Who would like to speak to the amendment?

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): I believe everyone's received copies of the amendments in both French and English. Am I correct? So I don't propose to reread the amendment, but I propose to give the reasoning. Is that okay?

The Chair: Yes, absolutely.

Mr. Robert Goguen: You don't want to hear me talk when I don't have to, right?

The Chair: Not really.

Mr. Robert Goguen: Exactly.

In clause 1, the first change in this amendment would add the words “or any other distance specified” of the victim “or of any other place specified” immediately after the words “two kilometres” in proposed paragraph 161(1)(a.1) of clause 1.

This amendment would still require courts to consider the geographical restriction of two kilometres, but would allow the courts to impose greater or lesser geographic restriction where it is reasonable to do so. For instance, it may be inappropriate to impose a two kilometre prohibition where an offender lives in a small town. Such a restriction would effectively prohibit offenders in such cases from returning to their homes. In other cases a greater geographic restriction than two kilometres may be appropriate. Now this somewhat addresses the concern of one of our witnesses, who I think was on track.

The second proposed change to this condition would amend proposed paragraph 161(1)(a.1) of clause 1 to delete the reference to the requirements that the offender knew or ought to have known that the victim is or could reasonably be expected to be present unless a parent or guardian is also present.

That's troublesome from an enforcement point of view and from an informational point of view. As introduced, this part of clause 1 would make the enforcement difficult, because it does not provide the offender with a realistic ability in many cases to comply with the condition. Alleged breaches would be difficult to prosecute, and it does not provide sufficient certainty to ensure the victim will be protected by the conditions.

The second new condition that Bill C-489 proposes to add to section 161 is prohibiting the offender from being in a private vehicle with a child under 16 years of age without the parent or guardian.

In essence, the government proposes to delete this, given that paragraph 161(1)(c) of the Criminal Code—which recently came into force in August 2010 with Bill C-10—already addressed this issue to prohibit any unsupervised acts with a child under 16 years of age. It's already addressed, so it's not necessary.

The Chair: Are there any comments on amendment G-1?

Madam Boivin.

Ms. Françoise Boivin: I always have a comment.

I appreciate the amendment. Honestly, you just saved us a lot of hours of writing stuff. Thank you very much.

I think everybody recognized the same problem with the way it was written, and the motioner, Mr. Warawa, was already receptive to the idea.

I think it's better written now, so that's excellent.

The Chair: Thank you.

Mr. Seeback.

Mr. Kyle Seeback: I support the amendment, obviously. I think it does help.

But because I don't want to move on and miss my chance to speak, I'd add that my concern is what I raised during my intervention with respect to our amendments to subsection 161(1), in that we don't have anything in the legislation that would require a judge to give reasons, oral or otherwise, if they chose not to impose a geographic restriction. To me, this is one of the very important elements of this legislation.

I'm concerned that we're going to miss something by not looking at some kind of amendment. I've created my own amendment that I think would fill that gap, and I wanted the opportunity to discuss with Mr. Hoover whether or not it would be something we could consider. My view is that we want to get this legislation right. It's important. I don't think—

The Chair: Does your amendment apply to clause 1?

Mr. Kyle Seeback: It applies to clause 1, yes.

The Chair: Okay, thank you.

Mr. Kyle Seeback: You know, I don't think anyone is going to look at this section of the Criminal Code for a long time. Mr. Hoover, what I'm thinking is that if we were to add, in section 161, something to the effect that if the court makes a decision not to impose the prohibitions under subsection 161(1), it shall state the reasons for the decision on the record.

That mirrors the language we have in the other sections, not requiring it to be in writing, but addressing the issue that was raised by the witnesses who came on Tuesday, who said that if the geographic restriction were not imposed, not mentioned at all by the judge, then suddenly it's over and they're left standing there saying, "What's happened?"

Do you think an amendment along those lines would address those concerns?

The Chair: Mr. Hoover.

Mr. Douglas Hoover: In the first place, if we look at how section 161 is currently structured, the court is required to consider all of those particular conditions in a case where the offender has been convicted of the prerequisite sexual offence against a child.

I think it would be highly unusual—I'm not saying it wouldn't happen, but it would be very unusual—for a court not to impose a condition and state why orally.

Mr. Kyle Seeback: It happened in the case of the witnesses who came to testify at committee.

Mr. Douglas Hoover: Well, I have no knowledge of exactly what happened there. Again, I think mistakes are made in courts; that's why we have appeal provisions. I don't know if that's an appealable issue or not. Judges are human. But certainly, in my view and my experience....

Section 161 is designed to ensure that courts address these particular issues. Courts are very good at addressing them in general, certainly, and it would be very rare that they would make a mistake. In my view that would be considered to be somewhat inconsistent with how we would expect it to function in the courts.

That being said, again, in a rare instance it may happen that the court just neglects to impose a condition and not state on the record why they didn't do it. Would it make sense to require them to state on the record? I have to agree with the previous witness. I don't know that it would add a lot, and I think it may have a detrimental impact in the sense that when we start piling on requirements for a court to do this, this, this, and this, it can become confusing, and they spend more time checking the code and making sure they're within the scope of what they're required to do as opposed to exercising their discretion properly.

I'm not saying it's a horrible thing to do. We haven't really given it a lot of thought. When we were given the draft bill to review, we looked at what the bill does and where perhaps it needed some improvements for consistency and clarity. That wasn't one of the issues that we took a close look at.

All I can suggest is that I agree it wouldn't have a huge impact. Would the mistake possibly be made anyway, even if you had that amendment? And what would be the effect of the mistake, at the end of the day, if you had that amendment? What would the court do afterwards? I think it would be an administrative error, and there wouldn't be an appeal, although I suppose the victim could possibly try to press for an appeal of the condition.

I'm not sure what the effect would be.

The Chair: Thank you very much.

I've allowed a little flexibility on this, but we are going to deal with amendment G-1. If you want to move your own amendment separately, you're entitled to as a member. Then we'll decide whether or not it's in order.

Monsieur Goguen, on G-1.

Mr. Robert Goguen: I raised my hand before Mr. Hoover completed his explanation. I guess in essence both he and Mr. Spratt are saying that the system works at 99%, and the amendment certainly wouldn't preclude a human error of omitting to state it in the record, so on the basis of not cluttering the code....

I appreciate Kyle's seeking to get it to 100%, but 99% is pretty good. So let's leave it at that.

The Chair: Thank you.

Madame Boivin.

Ms. Françoise Boivin: I tend to agree.

Also, on a point of principle,

[*Translation*]

It wasn't even in the initial bill. We just finished hearing from the witnesses. No one asked that question before the end. It would bother me a little to focus straight away on this issue without any details other than just Mr. Hoover's answer. His answer gives us the overall consequences of this sub-amendment, if there is a sub-amendment. It's a matter of principle. We already have to come up with amendments that are still within the scope of the bill, and if we also have to start cleaning up the entire Criminal Code as we do our study, we will never finish. For that matter, we too would have a lot of ideas about that.

I'll limit myself to what's before us. Otherwise, we might have to think about these issues even more before we open that door.

● (1010)

[*English*]

The Chair: Thank you very much.

Is there anything further on amendment G-1?

(Amendment agreed to)

(Clause 1 as amended agreed to)

(On clause 2)

The Chair: There is an amendment from the government side, G-2.

Mr. Goguen.

Mr. Robert Goguen: Clause 2 of the bill would require sentencing courts to impose, as part of all probation orders, mandatory conditions prohibiting an offender from communicating with a victim, witness, or other person identified in the order unless that person consents to that contact, or unless the court finds there are exceptional circumstances for not doing so. In the latter case, the courts would be required to provide written reasons for the decision.

The government motion would amend this clause in two ways.

First, it would add a subsection to clause 2 to require, where the victim or other person provides consent to any contact, that consent must be given in writing or in some other manner approved by the court. The reason is this simply clarifies the nature of the consent and ensures certainty that the victim's consent was in fact given in any subsequent proceeding.

The second part of the amendment would amend subsection 2.1 of clause 2 to require the court to state on the record, instead of providing written reasons, its decision for not imposing a condition prohibiting an offender from communicating with a victim. Written reasons in a court are not provided in many cases, and to require written reasons would result in unintended and unnecessary administrative delays and cost. Moreover, the motion's proposed approach is consistent with other Criminal Code provisions, such as where discretionary conditions are currently imposed under subsection 83.3(1), recognizance; subsection 110(3), weapons prohibitions; and subsection 719(3.2), credit for time served.

The Chair: Thank you, Mr. Goguen.

Are there any questions or comments on amendment G-2?

Yes, Mr. Kellway.

Mr. Matthew Kellway: Could I ask about the issue of revocability of that consent?

The Chair: You can ask Mr. Hoover if you have questions.

Mr. Matthew Kellway: I don't know who I want to ask, but I am concerned about a victim being able to revoke that consent. Is that provided for in the amended clause?

Mr. Douglas Hoover: I don't believe that would be necessary, in the sense that consent is a matter of fact in determination. It would only become an issue if there were a charge laid and if there were evidence that the consent was revoked. I think it would probably have to be in writing, and again the amendment is clear to make sure it's clear whether or not there was consent in writing. So if the defendant could produce, in writing, the fact that the consent was revoked in whole or in part, and he is within that parameter, then there would be no basis for the charge or conviction.

Certainly, in my view, in the way the motion is worded, it is revocable.

The Chair: Thank you very much.

Is there anything further on the amendment?

(Amendment agreed to)

(Clause 2 as amended agreed to)

(On clause 3)

The Chair: We have amendment G-3.

Mr. Goguen.

Mr. Robert Goguen: Clause 3 proposes to amend the conditional sentence provisions of the Criminal Code in the same manner that the bill proposed to amend the probation provisions in clause 2. For the same reasons, we are proposing to amend clause 3 to require the consent of the victim, witness, or other persons to be given in written or in some other manner approved by the court, and to require a court to state on the record, instead of providing written reasons, its decision for not imposing a condition prohibiting an offender from communicating with a victim.

The Chair: Thank you.

Are there any questions or comments on the amendment?

Mr. Wilks.

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

I need a little clarification from you here with regard to the testimony that was just given by Ms. O'Sullivan and Mr. Spratt. It has to do with the text just above lines 33 through 35, where both of them had indicated the word “or” be replaced with the word “and”. I don't know if we're there, but that's a problem.

The Chair: I can't do anything about it. The committee needs to amend things if they'd like to, and then we have our clerk decide whether....

Mr. Hoover, you heard that testimony. Could you speak to that issue?

Mr. Douglas Hoover: Yes, I think you have to look at the context of the provision as a whole. Certainly, the rule of interpretation is what is plainly meant by the language in the provision. So if you read the provision within the clause as a whole, I think it is fairly obvious that it's not intended to imply one or the other. The word “or” is often used in the Criminal Code to provide choices, and if you read it so that it says clearly that you can do this or you can do that, but not both—they have to be mutually exclusive—there would have to be some other language to indicate that.

Certainly, as we read the provision and the motion, the court could do one or the other, or both.

The Chair: Okay, that is the Justice department's interpretation.

Mr. Douglas Hoover: Again, it's up to the courts to interpret what the intent is, and certainly they would look at proceedings of this committee, for example, and the discussion in Parliament if there were some ambiguity. But generally speaking, I think the “or” is interpreted quite liberally.

The Chair: Thank you very much.

Are there any further questions on amendment G-3?

(Amendment agreed to)

(Clause 3 as amended agreed to)

(On clause 4)

The Chair: We have amendment G-4.

Mr. Goguen, are you speaking to this one, too?

Mr. Robert Goguen: Yes, this amendment is required by what we perceive to be a drafting error. The fourth government amendment proposes two changes to clause 4. Clause 4 would require a court hearing a section 810.1 peace bond against individuals likely to commit a child sexual offence to consider imposing a condition prohibiting contact with any person, or going to any place unless there is consent or there are exceptional circumstances not to impose such a condition.

The government motion to amend clause 4 would delete altogether the exceptional circumstances exception, given that the non-contact condition is already discretionary. As is in the case of all conditions imposed under a section 810.1 peace bond, every condition imposed under a peace bond has to be justified as necessary in the circumstances.

The motion to amend clause 4 also proposed to delete the requirement of the court to provide written reasons, given that all peace bonds are required to be provided in writing and filed with the court.

The Chair: Thank you, sir.

Are there any questions or comments on this amendment?

(Amendment agreed to)

(Clause 4 as amended agreed to)

(On clause 5)

The Chair: We have amendment G-5.

Mr. Goguen.

Mr. Robert Goguen: Actually, we've pretty much rewritten clause 5 to make it consistent with the Corrections and Conditional Release Act.

This government motion would amend clause 5, which deals with conditions imposed as part of the conditional release of an offender from a federal penitentiary under the authority of the Corrections and Conditional Release Act. As introduced, clause 5 proposes to amend the CCRA to ensure that the releasing authority has the power to impose non-contact or geographical conditions to restrict offenders.

While current legislation and policies authorize the Parole Board of Canada and Correctional Services of Canada to impose special conditions and instructions to manage an offender's risk in the community, there is no specific obligation to consider the input of victims in establishing appropriate conditions.

The proposed government amendment would ensure additional emphasis in legislation to victims' needs and consideration of the conditions that would be appropriate to protect a victim or others. We've heard Ms. O'Sullivan talk about their security.

The releasing authority would be obliged to impose reasonable and necessary conditions on offenders, including non-communication or geographic restrictions, if a victim or other person has provided a statement regarding the harm done to them, the continuing impact of the offence, and safety concerns or comments on the possible release of the offender.

The Chair: Thank you, Monsieur Goguen.

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: I simply want to check with Mr. Warawa because it's completely different.

I'd be curious to know what you have to say about it.

[*English*]

The Chair: Mr. Warawa, I'll let you answer that.

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

I support the amendment.

Ms. Françoise Boivin: So the changes in the amendment satisfy you? I think it's better written too, but just to make sure. That's excellent.

The Chair: Okay.

Are there any other questions on the amendment?

Seeing none, all those in favour?

(Amendment agreed to)

(Clause 5 as amended agreed to)

The Chair: Now we have a clause 6—a new clause. It's presented as an amendment or new clause by the government.

Mr. Goguen.

Mr. Robert Goguen: This proposes that the bill come into force three months after royal assent. Obviously, it's to give lead time for the correctional authorities and the administration preparing the reforms. Of course, the provinces with the administration of justice will want a little lead time as well to put in place the changes required.

The Chair: Madame Boivin.

Ms. Françoise Boivin: Have you validated with the officials that the three months is ample time?

Mr. Robert Goguen: Yes, it should be good.

Ms. Françoise Boivin: That's excellent.

The Chair: Are there any other questions on the amendment or new clause?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you very much for that.

I will be reporting this back to the House likely either Monday or Tuesday by the time we get the paperwork. I'm not here tomorrow. That will happen.

Thank you, Mr. Hoover.

Thank you to our clerks for that.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, can I propose we move in camera at this point to deal with future business?

The Chair: There's a motion to move in camera for future business.

(Motion agreed to)

The Chair: We will suspend for a few minutes as we clear the room.

We'll be back to deal with future business in two minutes.

[*Proceedings continue in camera*]