



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 034 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, April 24, 2012

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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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• (1535)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, colleagues, and welcome to the Standing Committee on Public Safety and National Security. This is Tuesday, April 24, 2012.

We are picking up after a two-week break. We welcome each one of you back. It's good that in spite of the change in agenda and the change in voting times, you came out.

Today we are continuing our consideration of Bill C-293, An Act to amend the Corrections and Conditional Release Act (vexatious complainants).

At our meeting today we will hear from the Office of the Correctional Investigator. We have Mr. Ivan Zinger, executive director and general counsel, and Howard Sapers, the Correctional Investigator.

We look forward to your comments in regard to this bill. Even though we're starting a little bit late, hopefully we'll be able to go past 4:30. Because of the change in the agenda and the time, we'll probably just adjourn at that time, if that's all right.

All right, thank you.

Mr. Sapers, if you have an opening comment, we would love to hear from you.

Mr. Howard Sapers (Correctional Investigator, Office of the Correctional Investigator): Thank you very much, Mr. Chair.

As always, it's a pleasure to appear before you and your colleagues on the committee. I want to thank you all for the opportunity to discuss Bill C-293.

My executive director and general counsel, Dr. Zinger, is here as well. Dr. Zinger will speak briefly to the role of my office and how it is that we deal with offenders who file multiple complaints.

I'm then going to spend some time talking about the importance of having a fair, accessible, and expeditious internal grievance process. Finally, I'll offer some reflections on the Correctional Service of Canada's current internal grievance system and perhaps make some points for reform in the future.

With that, I'll turn it over to Dr. Zinger.

[Translation]

Dr. Ivan Zinger (Executive Director and General Counsel, Office of the Correctional Investigator): Thank you.

On an annual basis, our office receives approximately 6,000 offender complaints. In 2010-2011, the office's 18 investigators spent in excess a 370 days in federal penitentiaries and interviewed more than 2,100 offenders. Last fiscal year, the office received 20,000 contacts on its toll-free number, and conducted over 1,200 uses of force reviews.

The OCI can investigate complaints from federal offenders, independently of whether they have filed similar complaints using the internal complaints and grievance system of the Correctional Service of Canada (CSC). When appropriate, the office has the discretion to request that offenders exhaust the internal grievance procedure before we examine their complaints. If the subject of the complaint raises important or priority issues, such as involuntary transfer or segregation placement, we will generally investigate even if the offender has an outstanding grievance filed with the CSC on the same subject matter. If the complaint has merit, the office will make the recommendations to the CSC to resolve it in a fair and expeditious manner.

The office deals with the same clientele as the CSC. We also receive a large number of complaints from the same few multiple grievors that this bill would refer to as vexatious. Although the office has more latitude than the CSC to deal with multiple grievors, it is our policy to respond to all complaints regardless of source. This is based on our experience that even multiple grievors file complaints that legitimately require attention. It is also our experience that complaints made in a trivial, frivolous or vexatious manner or in bad faith are relatively easy to determine. Accordingly, these complaints require little in the way of substantive follow-up.

Our experience with multiple grievors suggests many often display symptoms associated with mental health disorders, including paranoia, narcissism or obsessive compulsive behaviours. In fact, their mental health issue may have been responsible in part for their offending pattern. Multiple grievors can be very erratic, difficult to deal with, obsessive or compulsive about details or paranoid vis-à-vis those in authority.

Labelling them vexatious complainants and attempting to stop them from complaining is not likely to work, as it does not address the underlying source of mental health or personality dysfunction. If prevented from using the internal grievance system, these offenders may simply shift their efforts to challenge their vexatious designation by way of judicial review or file their complaints to independent quasi-judicial bodies, such as our office.

•(1540)

[English]

Mr. Howard Sapers: Thank you, Dr. Zinger.

I've long been concerned about CSC's ability to provide a fair, accessible, and expeditious grievance system, as required by the Corrections and Conditional Release Act. In fact, my office was established in 1973 and has commented on the dysfunction of the internal grievance process every year since.

It bears reminding that my office was created in the aftermath of a bloody and deadly riot at Kingston Penitentiary in 1971. The commission of inquiry into that disturbance in 1971 concluded that the lack of a credible system to resolve inmate complaints was one of the major factors that led to that deadly confrontation.

My 2007-08 annual report provided a detailed review of the office's long-standing concerns regarding the Correctional Service of Canada's internal grievance system. Let me briefly summarize these concerns with respect to the legislative requirements for the Correctional Service to provide an accessible, fair, and expeditious inmate complaint process.

Over the years, my office has reviewed and investigated several complaints regarding inmate access to the internal complaints and grievance system. There is variation and inconsistency in the procedure for collecting complaints and grievances from locked boxes and in responding to high-priority grievances, such as segregation placements.

One of the most tragic cases involved the late Ashley Smith. Although all seven of her previous complaints regarding her conditions of confinement were rejected by the Correctional Service of Canada, Ashley made a final attempt, one month before her death, to improve her situation by placing one more complaint in a sealed envelope into the designated receptacle at Grand Valley Institution. Inexplicably, this high-priority designated complaint was only opened by the Correctional Service two months after Ashley died.

My office has raised persistent concern about the ability of the Correctional Service's grievance system to consistently render fair decisions. Extreme delays in providing responses to offenders can result in unfair decisions, even if the substance of the decision was correct. For example, taking six months or more to arrive at the conclusion that a segregation placement was unwarranted provides little relief to an offender that had to endure those conditions of confinement for that length of time.

As raised earlier, Ashley Smith initially filed seven complaints while in custody at Nova Institution. My final investigative report, entitled *A Preventable Death*, showed that all seven complaints were inappropriately designated as routine rather than high priority.

•(1545)

I concluded my investigation into Ashley's preventable death by stating:

The presence of a more timely, effective, fair and responsive internal complaints and grievance system within the Correctional Service could have significantly improved Ms. Smith's overly restrictive and dehumanizing conditions of confinement.

In my opinion, her complaints were inappropriately dismissed.

About 30% of inmate complaints are upheld—which effectively reverses the local or institutional decision that the complaint had no merit—at the second or regional level, or at the third or national level. This percentage is surprisingly high, and may account for the refusal of some wardens to uphold offender complaints at the institutional level. Wardens may find it more convenient to have their decisions reversed by regional or national authorities rather than to render decisions that may be unpopular with their own staff.

Over the course of several years, the Correctional Service of Canada has extended its timeframes for responding to inmate complaints significantly, virtually ensuring that the system is rendered unresponsive and ineffective. The current inmate grievance process is rooted in the 1977 *Report to Parliament by the Sub-Committee on the Penitentiary System in Canada*.

The timeline for the Correctional Service to respond to inmate grievances was initially set at ten working days for each of the four levels: 40 days from the initial filing to a written decision. In the late 1990s, CSC extended the timeframe from five to 15 days for priority grievances and from 15 to 25 days for other cases. More recently, CSC has attempted to address significant backlogs at the third or national level, to avoid being in constant non-compliance with its own policy, by once more extending the timeframes now from 25 to 80 days for routine grievances and from 15 to 60 days for high-priority grievances.

This means that today, a routine grievance can legitimately take, without any formal extensions, over 150 working days, or seven months, from initial filing to resolution at the third level. More importantly, in the instance of high-priority grievances, the number of days now exceeds 100, or almost five months. What is even more troubling is that if a formal extension is granted by the service, its policy states that the extra days for the extension are not to be counted. In effect, this means that a routine complaint can take one year, from start to finish, to wind its way through CSC's convoluted review levels and expanded timeframes. This is not safe or proper corrections.

As a result of the Ashley Smith investigation, I recommended that the Correctional Service immediately commission an external review of its operations and policies in the area of inmate grievances. The CSC eventually agreed, and commissioned Professor David Mullan from Queen's University to conduct an independent and expert review.

In his comprehensive 2010 report, Professor Mullan made 65 recommendations to fix CSC's grievance system. Despite being an excellent report, only a handful of his recommendations have been implemented to date, including a pilot project for mediators, some minor policy housekeeping, and some training.

Importantly, Professor Mullan also reviewed the issue of multiple grievors. All his recommendations in this area were limited to internal policy or operational changes. There was nothing identified—nothing identified—as requiring legislative reform. In fact, Professor Mullan only identified one issue requiring Parliament's involvement: the elimination of the second or regional level to shorten the overall processing of inmate grievances.

Concerns with CSC's management of its grievance system go well beyond how it deals with multiple grievors. In fact, I believe this bill detracts from the very real issues facing CSC. Bill C-293 sends a wrong message, as it trivializes inmate complaints and it reduces CSC's accountability.

Inmate concerns are a unique means to judge the professionalism and the humanity of our Correctional Service. Importantly, what can be viewed as frivolous can be rather significant upon review. What to most people would be very insignificant becomes, because of the nature of prison life, a matter of serious concern to inmates.

• (1550)

We should not be contemplating anything that would reduce CSC's accountability for operating a fair and expeditious grievance process.

Members here need to be reminded that there are already internal policy mechanisms in place to deal with frivolous and vexatious complaints. It appears rather heavy-handed, in my view, to use legislation where policy levers already exist.

I anticipate that Bill C-293 will not extinguish the concerns it seeks to address and will only add to, not subtract from, the Correctional Service's administrative burden. Expanding the law will not deter vexatious complaints. Good practice, good management, and implementation of CSC's existing policy would be more effective and less costly in the long run.

Grievances and policy compliance are the bread and butter of my office. In the last five years, we have received over 25,000 inmate complaints and have conducted more than 10,000 investigations. We deal with serial complainers, just as CSC does. We manage them within the existing legal and policy framework.

I encourage the committee to put this legislation on hold and expand its review to look at the entire CSC grievance system. My previous recommendations, and those of Professor Mullan, could inform legislative reform on the real issues confronting the Correctional Service. To that end, this committee could look at legislative reforms in the following areas: reasonable timeframes; the requirement for mediators; monthly mandatory face-to-face meetings with CSC parole officers; and eliminating the second, or regional, grievance level.

These proposals are far more likely to streamline the existing grievance process and enhance accountability than attempting to limit the access of a few multiple grievors. In an environment where use of force, inmate assaults, inmate injuries, self-harming behaviour, double-bunking, segregation placements, and lockdowns are all on the rise, it is important to remind Parliament that it may seem easy to dismiss inmate concerns, but history tells us that it can be dangerous and ill-advised.

Thank you again for your invitation. Thank you for your attention. I look forward to your questions.

The Chair: Thank you very much, Mr. Sapers.

We'll move to the first round of questioning.

We have Ms. Hoepfner, please, for seven minutes.

Ms. Candice Hoepfner (Portage—Lisgar, CPC): Thank you very much, Mr. Sapers and Mr. Zinger. Thank you for being here.

I just have a few short questions.

Mr. Sapers, are you familiar with how many complaints are filed with CSC each year? Are you familiar with that number?

Mr. Howard Sapers: Yes. Last year we had about 27,000 or 28,000 complaints.

Ms. Candice Hoepfner: Okay, how many are filed in your office?

Mr. Howard Sapers: We received, as I said, 20,000 contacts through our 1-800 number. We did hundreds of days worth of interviews. We conducted probably about 1,300 full investigations last year, and another 900 on the use of force.

• (1555)

Ms. Candice Hoepfner: I'm sure you're very familiar with the process at CSC to go through a complaint. Would you be able to describe for the committee how the process differs from your office with regard to dealing with a complaint?

Could you just start with CSC?

Mr. Howard Sapers: It doesn't take us a year. That's one way it differs.

Ms. Candice Hoepfner: Are there different requirements?

Mr. Howard Sapers: The legislation that establishes my office, the CCRA, the same legislation that establishes the Correctional Service of Canada, gives me full discretion in how I deal with complaints. So I do have more flexibility, as we mentioned in our comments.

The Correctional Service of Canada has established, in fact, a four-level system. The Correctional Service of Canada, though, has never fully implemented all the options it has for dealing with inmate complaints.

Let me give you a couple of examples. If an inmate makes a complaint to a correctional manager on the floor of an institution, that can be dealt with rather informally. The warden has the ability to refer it to an outside panel. The warden also has the ability to ensure that an inmate committee is established within the institution. The correctional manager also has some discretion in terms of trying to informally manage that, and of course, we know from Professor Mullan's review, that there can also be expanded use of mediation as an informal conflict resolution process.

Instead, what we see are many complaints not being dealt with until they are well beyond the timeframe. They then generate a second complaint, the complaint being about the lack of response, which is then dealt with at the next level. Typically, that will not be dealt with at the next level in an expeditious way, generating less satisfaction and more complaints, which then create backlogs at the third level.

It is this continuous pattern of not dealing with matters at their lowest level, immediately, that in fact makes the problem so much worse.

Ms. Candice Hoepfner: I don't want to put words into your mouth, but it sounds as if you're telling this committee that the reason CSC is having to deal directly with the issue of frivolous, vexatious complaints that go to the level they are at is basically.... You're blaming CSC and the way that it deals with complaints.

Mr. Howard Sapers: Well, if you take a look at any of the reports from my office, from 1973 forward, you'll see that we've passed comment on the ability or the inability of CSC to meet its legal requirement to have a fair and expeditious grievance process. That system is dysfunctional, and it's dysfunctional for many reasons.

Even multiple grievors may have multiple legitimate grievances. Grievances that may be frivolous and vexatious can be dealt with within the existing policy framework. We get them, too.

Ms. Candice Hoepfner: You testified that you have greater latitude. I think that was your wording. You are able to deal with frivolous and vexatious complaints in a different way from CSC.

We heard the specific example of "My ice cream is too cold." I'm wondering if you could just describe how CSC, when it has legal obligations to go through a certain process when it's a complaint like that.... How would you be able to deal with that type of complaint versus how CSC would be able to deal with it?

Mr. Howard Sapers: You know, there's a problem with taking examples like, "My ice cream is too cold", and "My light bulb is too hot", because I can tell you that we deal with some cold ice cream and hot light bulb complaints as well.

If you've been given your meal through a slot in the door of your cell, and you have a wooden popsicle stick, in effect, to eat your ice cream, which is a treat inside the institution—

Ms. Candice Hoepfner: And outside, I may add. It's a treat everywhere.

Mr. Howard Sapers: —and you can't eat it because you can't get into it, it can generate a complaint, just like it can generate a complaint if you're sitting on the top bunk of a cell designed for one, and your head is mere inches away from a light bulb that you can't control, and can't turn on and off. You may complain in the middle of a July afternoon that your light bulb's too hot. So taking these things out of context is very misleading.

We receive those complaints. We review them in context and we make a decision about how we proceed. A correctional manager or warden could do the same thing.

If I were a warden dealing with a multiple frivolous complainant, I think I would ensure there was a mediation process and an active inmate committee. I would refer to that process and I would allow that process to do what it's supposed to do, which is to, frankly, bleed off many of those complaints and take them out of the formal system.

• (1600)

Ms. Candice Hoepfner: What we've heard, not only from wardens but from the commissioner, is that the process doesn't allow that kind of flexibility. I think you even cited Mr. Mullan's report. He talked about the issue of frequent users—he called them frequent users:

For some of these frequent filers, the objective seems to be nothing other than a desire to frustrate the system and even grind it into the ground.

So now we're not talking about the context you described, people who truly have a bright light bulb or truly cannot eat their ice cream, which I guess would be a legitimate complaint. He's talking about those who have no other desire than to frustrate the system and grind it into the ground:

The time and energy expended on this activity also jeopardizes the ability of these offenders to comply with their correctional plan and, more generally, to come to terms with their situation.

I would add that I think it also takes away time for legitimate complaints.

I think what we're saying is that there's a problem. The Mullan report recognizes there's a problem. We're talking about the very far extremes. We're not talking about individuals who truly believe their ice cream is too cold and they would like someone to address it or truly believe they have a light bulb that's too bright.

I understand what you're saying. We don't want to take those out of context. I think at the same time, we want to try to give tools to CSC. It appears you have those tools.

The Chair: Very quickly.

Ms. Candice Hoepfner: Mr. Zinger, in your testimony, you said that your office "has more latitude than the CSC to deal with multiple grievors". We'd like to be able to give CSC that same ability.

The Chair: Thank you very much, Ms. Hoepfner.

We'll now move to the opposition, to Mr. Garrison.

Mr. Garrison, congratulations on your new appointment here.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much.

Perhaps Mr. Sapers would like to answer the question that was just posed to him. I'd certainly allow him to take part of this time to do that.

Mr. Howard Sapers: I wouldn't mind making a comment or two. We also recognize that there are multiple grievors who take up a lot of time. There are also frivolous grievors. We get them, as I've mentioned. My contention is, and my experience demonstrates, that CSC has the tools they need to deal with them.

If you read the rest of Mullan's report, you'll see there's an underutilization of inmate committees, outside panels, and mediation. There is clearly frustration in the system. Because of the way the service is operating the system, inmates will add complaint to complaint to complaint because they're not getting their complaints resolved; they're not getting answers. The issue isn't whether or not there are frivolous complaints. The issue is not whether some inmates try to frustrate and damage the system. That's not the issue. The issue is how the service responds to them.

The current legislation, regulations, and policy framework give CSC the ability to deal with them without adding a legislative burden, which I believe is going to make it more difficult. It's going to add another layer. It's going to create more expense. It's going to generate judicial reviews. It's going to tie up wardens' hands in terms of designating and then justifying the designation of being frivolous or multiple or vexatious.

This is not going to address the problem. Somebody who is making multiple complaints because they perhaps have a mental health issue, because they're compulsive, is not going to stop because you've changed the CCRA.

The Chair: Mr. Garrison, you have another five minutes.

Mr. Randall Garrison: Thank you, Mr. Sapers, for that response.

I'm very happy to see you emphasizing a fair, accessible, and expeditious internal complaint and grievance system. We, on this side, have tried to raise the idea that this is one of the things that contributes to a well-run corrections system. It contributes to rehabilitation. It reduces tensions inside the institution. It has many positive aspects. We feel, as you mentioned, that this bill perhaps is misdirected by focusing on those few.

I'd like to ask if you've done any analysis of those who have filed multiple grievances with you or your organization. How do you deal effectively with those who file multiple grievances that you believe to be either frivolous or vexatious? Can you give some indication on how you would deal with those?

Dr. Ivan Zinger: It's true that we do have more latitude. We do have more discretionary authority. We have the authority to simply not even entertain a complaint. We can dismiss it right away, but we don't. We provide a response to every complaint.

We do receive a fair amount of these types of grievances from a few multiple grievors, but for us they are very easily dealt with. It's not that difficult to entertain. If it's frivolous and vexatious and it's made in bad faith, we provide the answers right away. The only difference the service has is that under the regulation if the offender is not happy with whatever response they get, they can then raise it to the next level, and then raise it all the way up to the commissioner's level.

In terms of actual work for the service, it's the same. They simply have to rubber stamp the decision made initially that the complaint is groundless. That doesn't take much work. They have to get the paper up the chain, but it's not very administratively cumbersome. I would say that's the only difference.

For us what is more important is to make sure that, at the institutional level, everything is in place to deal with those legitimate grievances in a fair and appropriate and timely way. All your energy, just like Professor Mullan said, should be focused at the institution. With the assistance of mediators, grievance coordinators, and grievance clerks, as well as inmate committees and outside review boards, the service has everything it needs to achieve a much higher level of resolution at the institutional level.

• (1605)

Mr. Randall Garrison: Thank you very much.

We've talked about the Mullan report and its recommendations. Without asking you to speculate on anybody's motives, why haven't these proceeded? Are there obstacles in those recommendations that have prevented their implementation?

Mr. Howard Sapers: The simple answer is no. There are 65 recommendations. There are implications in terms of implementing all of them, and there are some timing issues, but there's no particular obstacle that's stopping movement.

Mr. Randall Garrison: They don't require either legislative change or significant new resources or...?

Mr. Howard Sapers: The only real legislative issue is the issue around the multiple levels and the recommendation to eliminate the second level, or the regional level, which I frankly don't have any issue with.

Mr. Randall Garrison: Coming back to the bill specifically, I'm concerned about the perhaps unintended consequences of this bill. One of those I think you've touched on. You say that you often require people to exhaust the internal grievance process before you will deal with their complaint more extensively.

With this new bill in place, if someone is designated under this act as vexatious or frivolous and therefore has a higher standard to meet, would you consider that as having exhausted the internal process and would they automatically come to you?

Mr. Howard Sapers: Frankly, we would have to deal with that on a case-by-case basis. When we have a multiple griever we may get to the point where.... I've done this twice, actually. I have written to an offender and put them on notice that we will only accept complaints from them in writing, or we've negotiated with them. In fact, my intake staff are brilliant at this. They'll negotiate and say, "Please only call on the first Monday of the month and I'll give you time on the first Monday of the month."

There's a way of managing these. We would have to deal with those on a case-by-case basis.

Now, what this creates, of course, is a whole new category of complainant, and that is a complainant whose issue is being designated as frivolous or vexatious. We would then have to manage that as well.

Mr. Randall Garrison: So there is—

The Chair: Very quickly, please.

Mr. Randall Garrison: So there is a significant chance that this would increase the workload of your office, as well as CSC's.

Mr. Howard Sapers: Yes.

The Chair: Thank you.

We'll now move to Mr. Leef, please, for seven minutes.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair.

I did hear you talk a little bit about some of the flexibility that you enjoy in your office. That, in my mind, definitely differs from the Correctional Service of Canada.

I have had the opportunity, as the deputy superintendent of a correctional facility in the territory, to work closely with inspections and standards offices. I can say that I think they reply to every single complaint that they receive as well. However, I was privy to seeing those responses, and a large part of them were simply one-line responses that said, "We have received your complaints. We deem them to be without grounds. Thank you very much." Or they said, "It was determined that the you failed to go through the front-line process that you can avail yourself of in the correctional centre"—done deal.

So I think when you suggest that the only difference between the process you have and the role you play and your ability to respond, compared to what front-line officers have to do.... I would say that probably every front-line correctional officer in the country would take exception to your remark that the only difference outlined is what you suggested there. I can highlight a number of differences in terms of that complaint and grievance process, one of which is the fact that front-line staff, officers, wardens, and deputy wardens have to deal with the inmates every single day.

It's a very different picture when you're dealing with a complaint and you have to deal with the inmate individually or with the inmate population, than it is if you're outside of the institution and just send letters saying, "Well, we found this to be frivolous and we're not going to deal with it." I'm sure you can appreciate that there is an absolutely different operating relationship between the front-line staff and the inmates when a one-line letter comes from you as an officer, or a one-line letter comes from you as an oversight body outside of the correctional centre.

Moving on, would you agree or disagree, Mr. Sapers, with the commissioner's comment that the people who are filing multiple, combined with vexatious and frivolous, complaints—so they're not just multiple, and not just vexatious, but multiple and vexatious or frivolous as a pairing—are "educated", "high-functioning", and have made a "concerted effort to flood the system"? Would you agree with that or not?

•(1610)

Mr. Howard Sapers: Let me first go back to your earlier comments, because I'm not sure that I fully appreciated them or understood them.

There are many differences between what my office does and what an internal standards and practice officer does. There are also many differences between what my staff do and what a front-line correctional officer does. There are legislated requirements and obligations on Correctional Service staff, and legislated requirements on my staff.

So I'm not entirely sure of what your point was, but I will say this. My staff are also front-line workers who spend days inside institutions meeting with inmates and staff, and who have thousands of contacts with inmates face to face. It would be a mischaracterization of the work of my office to suggest that we do a paper review and write a one-page letter or a one-sentence letter. That's not our process. It may have been the process you were used to—

Mr. Ryan Leef: You've never done that, sir?

Mr. Howard Sapers: It may have been the process that you are used to. It's not the way our process works.

Mr. Ryan Leef: So you've never written a one-line response to any complaint—

Mr. Howard Sapers: Personally, no, I never have.

Mr. Ryan Leef: And we wouldn't find that in your office? We wouldn't find a response that would be just a one-line reply?

Mr. Howard Sapers: We had 20,000 contacts. I suppose there might have been one, but it wouldn't have been certainly our normal practice, and it wouldn't have been the standard response. Your suggestion that my staff are not front line and don't have that

experience or that accountability I think is a wrongly made suggestion.

To move on, I would say that many of the multiple complainants that we deal with are, in fact, intelligent. I'm thinking of one gentleman in particular who was also a published scholar with significant academic training. It doesn't, however, take away from his mental illness. So again, I'm not sure that these are mutually exclusive.

Mr. Ryan Leef: Right, but his characterization of the very specific people who we were talking about—and he narrowed it down to a very small number of what were deemed to be multiple and vexatious or multiple and frivolous—as educated, high-functioning, and who have made a concerted effort to flood the system, would you agree or disagree with that?

Mr. Howard Sapers: I don't know which cases he was referring to. There are probably about three dozen people in the system who might fit the profile of multiple and vexatious in terms of the number of complaints and the substance of their complaints. The Correctional Service has not produced any kind of a psychological profile of those offenders, so I'm not sure on what basis anybody would conclude about the mental health of those three dozen individuals.

Mr. Ryan Leef: Would you agree or disagree with the commissioner's statement that a small number of offenders who abuse the process take precious time and resources away from offenders who avail themselves of the system with legitimate intentions?

•(1615)

Mr. Howard Sapers: There is a small number of offenders who burden the system. My advice to the commissioner has been to deal with those administratively, so that he can address the more legitimate complaints in a more expeditious manner.

Mr. Ryan Leef: The commissioner also feels that it would alleviate pressures in terms of time and resources and would reaffirm the commitment of the Correctional Service of Canada to a fair, impartial, and expeditious complaint and grievance process, as mandated by law when he's referring to the bill itself. Would you agree or disagree with that, then?

Mr. Howard Sapers: Clearly, the commissioner and I disagree on whether a legislative change is required to do that. I think that's already implicit in the law as it's written.

Mr. Ryan Leef: Mr. Zinger, I think you made a remark, and excuse me, if it wasn't you, then it was Mr. Sapers. Do you recall saying that—

The Chair: Quickly. You have 30 seconds.

Mr. Ryan Leef: —if this legislation went through, wardens may make review decisions essentially to placate staff and have it overruled. Do you have any examples of wardens currently making review decisions simply to placate their staff and alleviate the burden of decision-making?

Mr. Howard Sapers: Yes, it was my comment, and yes, I do. Probably the best evidence I can share with you is simply to look at the number of complaints that are then upheld at the third or the national level once they have been denied at the regional level. We often will find that as complaints move through the chain, it's really headquarters that will finally take a stand and apply a more firm policy lens to the complaint.

The Chair: Thank you, Mr. Sapers.

We'll now move to Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Mr. Chair.

Welcome back, Mr. Sapers and Dr. Zinger. It's nice to see you again. You've shed a lot of light on this process, I believe, because it does seem very complex and it's hard to get, I find anyway, a real grip on it.

As I understand it, the advantage you have really is that, first of all, and correct me if I'm wrong.... When I say the advantage, I mean the advantage you have in terms of dealing properly with complaints is that it is what you do full time, whereas I imagine in a correctional facility setting, the person dealing with the complaint, that's not his core or her core business, if you will. It's actually probably an annoyance to them in some way and they'd rather just get it out of the way, deny the complaint, let it be appealed to go to a higher level, and just get on with the work of managing the facility. So there's that, I think. Would you agree that this is one of the distinctions?

Mr. Howard Sapers: I think that's a fair characterization. It is, in fact, our business. Correctional officers' primary business may be something else; it may be security or it may be something else, yes.

Mr. Francis Scarpaleggia: Right. But that's not their.... Their hearts are not really in it, probably.

I mean, you're both very committed to this, to the protection of—

An hon. member: On a point of order, you have no idea what their hearts are really in.

Mr. Francis Scarpaleggia: I said “probably”; it's just because it's not their core concern.

The Chair: Go ahead, Mr. Scarpaleggia. It's not a point of order.

Mr. Francis Scarpaleggia: The other advantage you have is that after studying a complaint, if you determine it's vexatious and it's not warranted, you can ignore it. Am I correct?

Mr. Howard Sapers: The legislation allows for that. What we typically do is get back in touch with the offender and tell them that we're not going to proceed.

Mr. Francis Scarpaleggia: Yes—whereas the person in the correctional facility doesn't have that option, really. I guess they have to deal with it, however much time that takes, and then if the inmate is not satisfied, he or she can appeal it and so on.

Essentially, this legislation seems to be trying to give the people inside the correctional facility the same option that you enjoy, which is to ignore a complaint that is vexatious. Now, it's quite possible that your judgment about whether it's vexatious or not is a better judgment because you do this full time, but essentially it seems to be trying to build a flexibility into the system.

My concern is that a vexatious complainant may have a legitimate complaint from time to time, and I'm just not so sure that, within the institution, the people dealing with these complaints have maybe the training or the ability in other ways to really weed out what is a threat to life, liberty, and security, and what is a vexatious complaint.

I know the intent of the bill is to still allow a vexatious complainant to be able to be heard if it's a serious matter, but do you think that within the institutions these decisions could be made wisely and uniformly across institutions in Canada?

• (1620)

Mr. Howard Sapers: I'm going to try to answer your question, but it's going to be a little indirect. I will try to get there quickly.

What happens inside a correctional institution doesn't really have a parallel in the outside very much. The relationship between the kept and the keepers is one of constant negotiation. The ability of the staff to deal with the relationships with inmates varies across institutions and across time.

The inmates will try to push and test, and staff will do their best to use their authority appropriately and lawfully, but it doesn't always happen in the way it's designed on paper to happen. So when you get somebody making a complaint, many first-level complaints are dismissed and that's the end of it. They don't all go forward to the second and third levels.

Sometimes you have a complaint made about a guard. You have a complaint—about discrimination, harassment, abuse, use of force—about a correctional staff person. Those complaints need a different set of eyes to look at them. Those are often the kinds of complaints that will be dismissed at the first level, will then go to the second level, and then may ultimately end up at the commissioner's level.

So we're not talking about a situation where it's just that you don't want to take no for an answer. We're talking about a situation that happens within a context of a power relationship that is, as I said, constantly being negotiated. Part of that negotiation has to do with this give and take about what is or is not considered to be a legitimate grievance at a point in time.

Mr. Francis Scarpaleggia: But do you believe in that setting, the way it works now, if this bill were in place...? You gave an example with Ashley Smith, where these were legitimate complaints and they weren't dealt with.

Do you think, after someone has been designated a vexatious complainant, that someone within that institution hearing the complaints, charged with dealing with the complaints, will be able to weed out what is a serious threat to life, liberty, and security versus what falls in the category of a typical vexatious complaint from that inmate?

Mr. Howard Sapers: My fear is that if we do anything legislatively to reduce Correctional Service Canada's accountability to deal with complaints in a legitimate way, we will be doing a disservice to the rule of law within our correctional institutions. It is very important that complaints be seen at the outset as being legitimate until they're disproved. You shouldn't make the assumption at the outset that you're dealing with somebody who's frivolous or vexatious, even if they may have a history of multiple complaints.

Mr. Francis Scarpaleggia: You mentioned that there is flexibility within the system as it exists now. Are you talking about the idea of appointing mediators and coordinators who could basically deal with the inmates the way you do, which is to negotiate a little bit? If every institution had a coordinator and a mediator, maybe there would be better interaction, and things might be cut off at the pass. Is that what you're saying?

Mr. Howard Sapers: Opportunities exist for informal conflict resolution that are currently not being utilized, or are being underutilized.

The Chair: Thank you, Mr. Sapers.

We'll move back to the second round.

Ms. Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you very much, Chair.

I would like to thank Mr. Sapers and Mr. Zinger for having testified before us today. Your comments are greatly appreciated.

I have several questions for you. I am new to this file since I started only yesterday. I read the Mullan report and heard your presentation. I am curious about several things.

Mr. Zinger, in your presentation, you mentioned that multiple grievors are often people who suffer from mental health problems. In your opinion, how could we best help these complainants, given that Bill C-293 is intended for multiple grievors? Do you have any solutions to suggest?

• (1625)

Dr. Ivan Zinger: I believe so. I think we have failed to adequately emphasize the fact that it is often difficult and frustrating to try to solve the problems of multiple grievors. It is as frustrating for the Correctional Service as it is for us. We certainly do not wish to underestimate the problem. On the other hand, this is part of our job. We realize that many of the people who file tens if not hundreds of grievances have mental health issues. I am not saying that they are psychotic, schizophrenic or anything like that. Often we are talking about personality disorders. Merely identifying them will not put an end to their compulsion to try and file complaints and get answers to their multiple questions, whether they are legitimate or not.

There is no doubt that for us, the implementation of grievance coordinators and mediators could play a very significant role in the management of individuals who file so many grievances. Within the mental health services, more effort could be made to support these people, in order to try to reduce or negotiate the type, frequency and nature of these complaints. There are several things that could be done within the service to solve the problem.

Ms. Rosane Doré Lefebvre: You mentioned mediation, which could be of interest in the case of this kind of grievor. In the Mullan report, it says that only one prison uses an internal mediator; I believe it was at Donnacona. In the 65 recommendations in this report, it is suggested that the presence of a mediator would be useful for dealing with the complaints. Do you think that having one mediator per penitentiary could facilitate the resolution and processing of these kinds of grievances?

Dr. Ivan Zinger: One of the recommendations that the service accepted did in fact concern mediators. A pilot project was developed in 10 institutions across the country. They funded the establishment of a mediator, a coordinator and a grievance clerk. We recommend that every penitentiary in the country, without exception, make the same effort and that the same kind of team be established.

Ms. Rosane Doré Lefebvre: Is the process functioning well in the 10 institutions up until now?

Dr. Ivan Zinger: Definitely, the Correctional Service of Canada is very encouraged by the preliminary results and intends to carry out an assessment of the pilot project, probably over the course of the next year.

Ms. Rosane Doré Lefebvre: How long has this been in place?

Dr. Ivan Zinger: The pilot project has been underway for just under a year.

Ms. Rosane Doré Lefebvre: Does that mean that they have dealt with more grievances internally with the mediators?

Dr. Ivan Zinger: It resulted in a decrease in the number of grievances and sped up the administration of those complaints. Those are the preliminary results.

Ms. Rosane Doré Lefebvre: Thank you very much.

[*English*]

The Chair: Thank you very much, Ms. Lefebvre.

We'll now move back to Ms. Hoepfner and Mr. Leef, who will split the time.

Ms. Candice Hoepfner: Thank you very much. I'm going to try to be brief.

First of all, I think Mr. Leef actually articulated the difference, which you then went on and explained as well.

In prisons, we're talking about, I think your words were, the kept and the keeper, as opposed to your job, which is to be the ombudsman. Your job is to receive complaints. The guards and the officials in prisons are, in so many ways, keeping the inmates safe and being part of their rehabilitation. They obviously play a completely different role than the role you play, and I think that's the point Mr. Leef was trying to make.

In relation to that, what I would like to make sure I'm clear on is that you believe that it's valid that you have the ability to receive a complaint and just decide that it is vexatious, that it is not a valid complaint, and that you're going to write a letter, whether it's a one-line letter or several lines. You'll write a letter and say that this is not a valid complaint and you won't be moving further ahead with it, whereas CSC officials, you believe—and again, there's some difference of opinion on the process CSC has told us they are obligated to go through—have other options. What you're saying is that you think they should use mediation and go through a variety of steps as opposed to just being able to say to an inmate, "That is an invalid and vexatious complaint."

You're able to do that, but CSC should not be able to. At the same time, they're the ones who are actually dealing with these inmates on a day-to-day basis. I don't think you would want to try to say that what you're doing compares at all to what a guard is doing. Am I hearing you correctly? Are you saying that they shouldn't have the same abilities you have?

• (1630)

Mr. Howard Sapers: I think you're absolutely hearing me correctly. CSC should not have the ability to be dismissive of inmate complaints. CSC is required to be accountable for dealing with inmate complaints.

CSC's job is not to add to the punishment imposed by the courts. CSC's job is to administer a sentence according to the rule of law.

CSC staff have ultimate authority over the lives of the thousands of men and women in custody. Absolutely, you want the most accountability you can have in that kind of situation. Why would you want any less accountability in a situation where somebody has absolute control and authority over somebody else's life, up to and including the use of deadly force? So absolutely, there are legislative differences, and I think those differences are there for a reason.

Ms. Candice Hoepfner: Do you think your ability to dismiss a complaint means that you're not accountable?

Mr. Howard Sapers: My ability to dismiss a complaint is rooted in the role of the ombudsman and gives me independence and discretion. We're not talking about accountability for complaint handling. We're talking about accountability for conducting yourself according to the rule of law. CSC has a different legislative mandate than my office does or the parole service does or the police service does, and that mandate requires them to be accountable.

Ms. Candice Hoepfner: But it's the mandate and the legislation—just as with your job and the parameters around your job—that provide the accountability.

Mr. Howard Sapers: That's right.

Ms. Candice Hoepfner: Should anyone suggest that you're not, they're—

Mr. Howard Sapers: We conduct ourselves within the legislation. I suggest that CSC should, as well.

Ms. Candice Hoepfner: They do, as well.

Thank you. I'll pass it over to Mr. Leef.

The Chair: You have two minutes.

Mr. Ryan Leef: I feel that we're losing sight a little bit of what the bill was designed to do, which is really to allow the commissioner to deem people multiple frivolous and vexatious complainants, and that alone. I don't think anybody disagrees with the oversight and the function of correctional staff, wardens, and the rule of law.

It was interesting when you talked about the number being upheld at that third level of grievance. We'll recognize that there are probably some issues with the grievance process itself. But wouldn't it provide additional security, oversight, protection, and complete fairness in the process, if those things were moved up to the commissioner level versus being sat on at the warden level? If we were giving the warden level, or even lower levels, the opportunity

to deem somebody frivolous and vexatious, I could see the concerns you're raising.

Don't you think moving this right up to the commissioner level is a positive step?

Mr. Howard Sapers: The simple answer is yes, within that context. The problem is with the premise; that is, I think it's an inappropriate process. If it has to be done, should it be done by the commissioner? Sure. The real question is, should it be done? My suggestion is that it shouldn't be.

Mr. Ryan Leef: Obviously you and the commissioner disagree on that point. It reminds me of a comment I heard. I don't have the stats exactly accurate, but I think it makes a point economically. It says that two out of every three Canadians have a mental health issue, and if your buddies seem normal, it's probably you.

My point is that we introduce the concept that inmates may have mental health issues. We know that the inmate population has a higher level of mental health issues, but it doesn't mean they can't reason between frivolous and vexatious. It doesn't mean they can't function and understand, and that when they launch complaints of sexual harassment or sexual assault or very damaging and demeaning comments against staff, they don't fully appreciate and understand what they're doing. They can very well have mental health issues, but they can also fully understand and appreciate what they're doing. I think those are the things we need to highlight, protect staff from, and stop.

If you or your staff were subject to frivolous, vexatious, and vile complaints of that nature—only so someone could get personal satisfaction from either clogging the system or attacking you—you'd want control over that.

• (1635)

The Chair: Thank you, Mr. Leef. Unfortunately we don't have time for an answer.

[*Translation*]

Mr. Rousseau, you have five minutes.

Mr. Jean Rousseau (Compton—Stanstead, NDP): Thank you very much.

Let us discuss the bill. It is said the commissioner will now have the discretionary power to decide whether or not a complainant is vexatious. Do you not believe that this discretionary power will mean that some kinds of detainees will be categorized and stigmatized? Will the system allow for any other remedies for those who are designated?

Dr. Ivan Zinger: The Correctional Service of Canada already has a procedure for the designation of a vexatious person. A process for prioritizing complaints already exists. Currently, there is talk of including this procedure in the bill rather than simply having it as a Correctional Service of Canada policy.

There is one problem. When an offender is designated as a vexatious complainant by the commissioner, that person may still file new complaints. These complaints must in any case be subject to an assessment as to their merit by the decision-maker, who is often the prison warden.

All of that entails work, particularly as the bill indicates that an offender designated as a vexatious complainant must file documentation to demonstrate the merit of the complaint. We can therefore expect that among these offenders, some will continue to file complaints and appeals. They can also appeal the judicial review, which is much more expensive to administer for the Correctional Service of Canada, because it has to pay for lawyers.

Mr. Jean Rousseau: Pardon me, Mr. Zinger. I have a question that is perhaps more for Mr. Sapers.

Is the system not indeed too congested and burdensome? I work in the area of labour law and dealing with grievances requires very rapid responses in the workplace in order to settle problems. If there are more than 20,000 complaints filed per year in the prison environment, this is a problem that must be dealt with. Is there no way of dealing with backlog in this context by trying to relax the procedures and make them more flexible?

Dr. Ivan Zinger: I agree with you entirely. That is why we must try to maximize informal solutions at the institution level by giving Correctional Service of Canada the tools it needs in order to get the most benefit from this solution.

If a complaint truly is frivolous and vexatious, they must respond to it. That takes a certain amount of time and is part of the Correctional Service of Canada's work. If a complaint gets further along in the process, it can be resolved very quickly. If it is the subject of a judicial review, the courts and tribunals will certainly not be in a good position to respond to those kinds of things. I entirely agree. Complaints must be resolved at the lowest level and as informally as possible.

We have also indicated that the Correctional Service of Canada must capitalize on the information it has on all complaints. If there are 28,000 complaints per year, we must try to see if there are not systemic problems and try to fix them. For example, if there are some 15 or 20 complaints on the lack of access to a dentist, we must try and solve the problem rather than taking in 15 or 20 complaints and trying to settle them one at a time. You have to try and resolve the problems on a systemic basis.

• (1640)

Mr. Jean Rousseau: You also spoke about mental health issues. I imagine that alcoholism and drug addiction must also cause some problems. Is the major problem in the prison environment not that we don't go after the real problem, which is mental health of prisoners and their rehabilitation?

[English]

The Chair: Go ahead, Mr. Zinger.

[Translation]

Dr. Ivan Zinger: The Correctional Service of Canada has established that approximately 35% of people entering penitentiaries are suffering from mental health issues and require either psychological or psychiatric treatment. You are quite right to say that this is probably one of the most serious problems the Correctional Service is currently facing.

Mr. Jean Rousseau: Thank you very much, Mr. Zinger.

[English]

The Chair: Thank you.

I want to thank you for coming. Before we part, I would just like to get a little better understanding of how the process works with the Correctional Investigator.

Our commissioner said that last fiscal year CSC received 28,858 complaints and grievances. Would some of those that came through CSC be passed to you, or is there a separate way that offenders—because you do advocacy on behalf of the offenders, and you take their complaints—have to bypass the CSC? Is there any way then that they have to get those complaints to you, Mr. Sapers?

Mr. Howard Sapers: As an ombudsman's office, we are not an office of last resort. So an inmate in fact may file a grievance through the Correctional Service of Canada grievance process. They may contact my office. They may contact the Office of the Official Languages Commissioner or the Canadian Human Rights Commission as well. They may contact the college of physicians and surgeons if it's a complaint related to health care. Each one of those complaint resolution offices or processes has its own protocol and process.

In our office, we receive the complaint. We review the merits of the complaint. We determine whether or not we have to proceed to an investigation. We conduct the investigation. We come to a conclusion. If it's founded, we make a recommendation to implement a change.

The Chair: He also said in his notes:

...last year there were 25 inmates who submitted over 100 grievances each. These would be the frivolous or vexatious grievors who are the focus of this Bill. Within this group of 25, there is a small number who submit many hundreds—as in, more than one per day.

So they are constantly submitting these grievances. Even if some of these grievances did not go through the exact system we have now, could those grievances still be brought to your office?

Mr. Howard Sapers: They could still be brought to my office. In fact together, the commissioner and I could probably name those 25 individuals, because they are well known to both our offices. One of the issues, though, is that there is a confusion in the labels that are being used, because an individual may be frivolous, may be a multiple griever, and may be vexatious. It's even possible to be all three, but they're not synonymous so a multiple griever may have multiple legitimate complaints. A vexatious griever may be a one-time-only griever, but the grievance could be vexatious.

The Chair: Have there been cases then...? Say this legislation was to pass and those same complaints did make it to your office, where you could look at some of them and you would understand they were probably on the vexatious list, could you then still advocate on their behalf back to CSC?

It is possible.

Mr. Howard Sapers: It's possible for us to receive a complaint from somebody who's been labelled. Correspondence and communication between an inmate and my office is privileged, so an inmate who may have been labelled under this legislative scheme would not be prohibited from contacting my office.

The Chair: Thank you very much.

There still would be an opportunity for them to have their grievances voiced, although CSC, which may be concerned about the time and the effort for those ones who are putting in more than one per day, could say, "We don't want not to listen to grievances. It's just that these are getting a little ridiculous." There still is that opportunity.

Thank you very much. I wanted to know that. I needed to understand that.

I very much appreciate your being here, and thank you, committee.

With that, we are going to adjourn.

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