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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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• (1530)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone. Welcome to the Standing Committee on Public Safety and National Security. This is meeting number 33, Tuesday, April 3, 2012.

Today we are going to continue our study of Bill C-293, an act to amend the Corrections and Conditional Release Act, vexatious complainants.

We have appearing before us today, from Kingston, Ontario, via video conference, Jay Pyke, the warden at Kingston Penitentiary, and Melinda MacCrimmon, the grievance coordinator at Kingston Penitentiary.

Welcome, folks. We're pleased to have you joining us today by video conference.

A little later on, at 4:30, we will go in camera and we will work on our draft report dealing with drugs and alcohol in prison.

I'm not certain if any of you have ever appeared before a committee. We're pleased to have you here today. The committee is looking forward to hearing what you have to say in regard to Bill C-293, and we would open the floor to you. If you would be willing to field a few questions after, we'd be very appreciative. Welcome here.

Mr. Jay Pyke (Warden, Kingston Penitentiary, Correctional Service of Canada): Thank you very much for the welcome.

Good afternoon, everyone. I'm pleased to be with you today. My name is Jay Pyke. As noted, I'm the warden of Kingston Penitentiary, or KP, as we refer to it most often down here. Joining me today is Ms. Melinda MacCrimmon. She's an experienced grievance coordinator at Kingston Penitentiary.

I'd like to first speak to you briefly regarding KP to give you a sense of institutional life and then address some of the challenges we face pertaining to the offender grievance process.

KP currently houses approximately 390 inmates. It's a maximum security facility that accommodates high-risk, high-needs offenders serving a range of sentences from two years to life. The inmates at KP are serving sentences for a wide range of offences. The majority of them have violent histories, significant mental health and physical health concerns, substance abuse problems, and behavioural issues, or a combination thereof.

At KP, my staff and I are committed to delivering a high level of service to offenders in terms of maintaining their safety and security as well as programs and services aimed to reduce the risk that they may pose to reoffend. Given the profile of KP's offender population, it's clear that a fair, expeditious, and accessible grievance process without negative consequence is vital to us. We recognize that the redress process must reflect the values of our democratic society. For CSC, this process provides the mechanism to test our decisions and to ensure that they're made in a manner that respects the dignity of all individuals, while recognizing that our first priority is to ensure the safety of staff, offenders, and society.

I understand you've already spoken to our commissioner, our director general of rights, redress, and resolution, and a senior analyst in offender redress at NHQ on the matter of Bill C-293.

From my perspective, CSC's complaint and grievance process has four key benefits. First, it provides offenders with a means of redress when they feel they've been treated unfairly or in a manner inconsistent with law or policy. Secondly, it contributes to institutional safety through the early identification and resolution of problems as they arise. Thirdly, it contributes to offender accountability by encouraging offenders to resolve problems through an appropriate means. Finally, the process ensures that CSC's decisions affecting offenders comply with the rule of law.

As you're likely aware, there are four levels of the process. The first two levels take place locally at the institution, consisting of the initial formal complaint, followed by a first-level grievance. The complaint is responded to by the immediate supervisor of the person whose actions or decisions are called into question. The first level is responded to by the warden.

Mr. Chair, the first level will be my area of focus today.

At KP, during the 2011-12 fiscal year, a total of 501 inmate complaints and grievances were submitted locally at the site. Of these 501 complaints, 86, or 17% of the total grievances, were submitted by just three offenders.

The grievances submitted by these three individuals can generally be characterized as lengthy, complex, and involving many subjects or issues. This fact makes the total number of issues grieved actually larger than the 17% would suggest because they require multifaceted responses.

Of the 86 grievances submitted by these individuals, two have been upheld. Three have been upheld, in part, owing to responses becoming untimely. The remaining 81 grievances were denied on the grounds that they had no merit.

As you can imagine, complaints of this nature place an incredible strain on institutional resources at multiple points of contact. The first point of contact is the inmate grievance coordinator, who's responsible for recording, assigning, monitoring timeframes, logging, and providing a response.

With regard to the three offenders I mentioned above, our grievance coordinators were often faced with the arduous task of checking for duplication of previous submissions and responses. Copies of these similar submissions are then placed into the review package for the benefit of the investigators so they do not reinvestigate an issue already responded to.

The next point of contact are the investigators themselves. Oftentimes at the middle management level it's consisting primarily of a correctional manager or a manager of an assessment and intervention. Each complaint must be investigated. The inmate must be interviewed and a response generated in a written docket to be provided to the inmate.

Remarkably, it only takes one offender to place a considerable strain on the process due to the significant amount of time required to investigate complex grievances. When investigating managers become bogged down by virtue of the volume of complaints, it ultimately leads to an increase in the time required to provide a proper written response to the inmate.

• (1535)

The impact of complaints of this nature, aside from slowing down the response capacity, is that they often create a great deal of frustration for the staff who continue to investigate complaints when they know there are concerns of merit related to them. What this means is that staff are less able to focus their time on investigating and resolving complaints that have actual merit.

This past fiscal year, one of three grievors referenced above submitted 35 complaints, 22 of which alleged harassment by staff. This volume led to the establishment of an external review committee. This three-person review committee was convened on my authority and consisted of an individual from the redress section at national headquarters, one from the redress section at regional headquarters, and a middle manager from a different site in the Ontario region.

Of the 22 complaints related to staff harassment made by this one offender, the committee was responsible for investigating a total of eight. In each circumstance, the committee found that the allegations of harassment were deemed to be without merit and were frivolous or vexatious in nature. This means that numerous steps and resources were invested at the institutional level to respond to an individual who consistently submits complaints and grievances that simply lack merit.

It's also significant to note that in the case of the three primary complaint or grievance submitters at KP, many of the complaints submitted were moved up by these offenders to the first-level grievance where a warden's response is required, despite clear responses being provided by the line managers I referred to earlier.

From my experience, it seems that for certain offenders there's an explicit intent to move the grievance to every level within the organization, regardless of the decision or rationale provided at the

lower level. Beyond a strain on resources at all levels of the organization, there are additional impacts at the site level. An example would be that because frivolous and multiple complaints and grievances slow down the complaint or grievance process at the local level, it negatively impacts and affects those inmates who do not abuse the process and who deserve a timely response.

Ideally, the complaints and grievance system is an important check and balance process for institutional heads, wardens. It allows the warden to ensure that the institution and the employees are adhering to the principles of our mission and to relevant law and policy that provides an important redress mechanism for offenders. CSC is committed to providing a redress system that is fair, expeditious, and accessible to all offenders.

With that, I'll thank you, and I would certainly be happy, as would Ms. MacCrimmon, to answer any questions you may have of us.

The Chair: Thank you very much, Warden Pyke.

We'll move into the first round of questions, and we'll go to Mr. Ryan Leef, please.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair, and through you to our witnesses, thank you very much for your testimony and your appearance here today.

Have you had an opportunity to read the proposed legislation at all?

Mr. Jay Pyke: I have.

Mr. Ryan Leef: Can you give me just a general comment on what your opinion is of the legislation, and to what degree do you think it may complement or hinder the current grievance process that you have?

Mr. Jay Pyke: I think the principles of the proposed bill are excellent in terms of some of the challenges we face that I've just referred to.

I may ask you to repeat the second part of the question, and I'm sorry for that.

Mr. Ryan Leef: I'm asking if you think the legislation will complement or hinder the existing grievance process that you already have.

Mr. Jay Pyke: I think, quite frankly, it will complement. It's not overreaching. I don't see it having a large impact overall. I think it will significantly help us in terms of becoming more efficient with weighing out the true legitimate complaints that are brought forward.

Frankly, we're speaking of a small group of inmates overall, at a site level over a national level. But I do feel this is a tool we're missing right now that is having a significant impact at certain sites across the country. I can certainly say that I feel it impacts at my site. So in essence I feel it would be a complement.

In terms of hindering...again, from what I've read, I don't see from my perspective or my position how it would be a hindrance to the challenges we currently face.

•(1540)

Mr. Ryan Leef: Under this legislation there are means to break the cycle of complaint. This legislation addresses multiple, frivolous, or vexatious complaints. Will this legislation reduce that behaviour? Do you think this will allow your staff to deal with legitimate complaints and focus on the inmate population in an efficient manner?

Mr. Jay Pyke: I feel that it would reduce the strain on the process. As for reducing their ability to submit vexatious or frivolous complaints, I think it would be a tool for doing that. How would we operationalize it in the bill? What lies at the root of the problem, other than a need to clog the system? There hasn't been a policy at the operational level developed for that. We have certain elements that we use for segregated inmates who have problems integrating into populations. We have motivational-based intervention strategies in which counsellors work with individuals of this nature. They suggest ways to express problems and fill their time. Sometimes it motivates them to get engaged in some of the available programming. This might be systemic, since criminogenic needs or dynamic factors have yet to be addressed. I believe it would help to reduce the occurrences and would give us an opportunity to work on a one-on-one basis with these individuals to try to stop the pattern.

With regard to the responses at Kingston Pen, most of the time they're held up in part because we have only a certain number of investigators. If I get frivolous or vexatious complaints in a large quantity, it affects the ability of the managers to resolve the problems at the lowest level, which is our goal in the complaint process. I think we could avoid a lot of transmittals to a grievance level if we addressed only the legitimate complaints.

Mr. Ryan Leef: Sometimes legislation changes inmate behaviour simply because they understand that there will now be consequences for behavioural choices, whether it's a rule change or a policy change. Presumably, if this bill were passed, there would be some education required to let the inmates know that there are now consequences for vexatious, multiple, frivolous, or bad-faith complaints. Do you think the passing of this legislation within your institution would have a positive impact right at the outset?

•(1545)

Mr. Jay Pyke: I think it would for the majority of offenders. But we're speaking of a small percentage of offenders. For those individuals whose responses have been subject to time delays, hearing something of this nature would be positively interpreted. They would know that the onus would be on the institution to demonstrate that we are becoming more timely in responding. That's usually how inmates interpret what something means. They figure out what is actually happening. So I think if we were timely at the outset, it would be well received.

I can only speak for my site, but the individuals who are responsible for complaints of a vexatious or frivolous nature are not generally well received in my population. Their issues aren't necessarily in keeping with the complaint-grievance process. Oftentimes they're standoffish with the inmate population.

So, yes, I think the majority would find benefit in it, as opposed to the small minority who are vexatious or frivolous complainers.

The Chair: Thank you very much, Mr. Leef and Mr. Pyke.

[*Translation*]

Mr. Chicoine, you have seven minutes.

Mr. Sylvain Chicoine (Châteauguay—Saint-Constant, NDP): Thank you, Mr. Chair.

Thank you for coming to testify before the committee. In your presentation, you identified three people who make the majority of the grievances submitted at your institution.

What type of individuals are they? Do they have mental health issues, or would one of these three people be acting for other offenders, submitting grievances on their behalf?

[*English*]

Mr. Jay Pyke: Thank you.

No. Quite frankly, two of them are very litigious individuals. They are not lower functioning; they are of average functioning, and I would argue that one is probably mildly above-average functioning. They are not representing anybody else. They really use this as a means to draw attention to or to focus on certain staff members—to call to attention that they may have had issues with them on the range, whether it is putting down a rule or making sure that policies and routines are followed.

I've reviewed the ones at our site and I can certainly say there are no lower-functioning ones there. I more often hear from our lower-functioning offenders through inmate requests, or what we refer to as "kites"—any kind of note on a piece of paper addressed to a manager or the warden. They put down their concerns and we take action on them separately from this process.

But the three at Kingston penitentiary are by all means normal-functioning individuals. They usually operate on their own; they don't operate in concert with other inmates. They don't usually have the support—and I can only speak to KP—of the general population.

[*Translation*]

Mr. Sylvain Chicoine: Thank you.

Bill C-293 indicates that, when the commissioner prepares to designate that person a vexatious complainant, he must first inform the individual that he is about to be given that designation. Then, if the person continues, he must inform him a second time that, from now on, he is a vexatious complainant and he must give reasons for his decision.

The bill also provides that the offender will, in certain conditions, be able to continue to submit grievances or request judicial review. As you said, that type of person is going to use all the recourse available. It seems to me that this creates a lot of paperwork, a lot of information exchanges, and so on. I don't have the impression that this will really unclog the grievance process.

What do you think about that?

[English]

Mr. Jay Pyke: I can't speak exclusively to the process because I don't have an operational process yet. I don't have something from a commissioner's directive to direct me to what the process would look like. I certainly have looked at it from the same proposal as you.

It would allow us the means to separate these inmates from the other inmates who are submitting genuine complaints and try to work with them, at least. I mentioned the MBIS, the motivation-based intervention strategies to try to sit down to root out the problem behind the submission of all these complaints and grievances. At this point I don't have a process to get to the root of what this is really about and what's driving it. They just continue to submit them.

The other significant impact is that this will allow us to prevent them from moving it on to the grievance process in our current system, where they can now take a grievance. They can actually grieve the fact that I've identified them as multiple grievors in our current process. So this policy will assist us in stopping them from moving it beyond the local institutional level to a grievance process.

Any inmate can pursue judicial review if they so choose. But I truly believe there is some merit to the process, in my experience.

I hope that answers your question.

• (1550)

[Translation]

Mr. Sylvain Chicoine: The decision maker—you, in this case—can already dismiss a vexatious complaint. Have you already applied that directive? Have you already used this power to dismiss certain complaints?

[English]

Mr. Jay Pyke: I have, on very limited occasions. What I'll say is that there's a lot of work that goes into naming somebody as a vexatious or frivolous complainant. I have to, one, basically answer the complaint or the grievance, and then, two, justify why it is that I am identifying this as a frivolous or vexatious complaint and submit it.

Again, the problem with the current process is that in turn they will turn around and grieve it to the next level, saying that they don't follow what I say as the warden, that they don't agree with what I say, and therefore they're going to go to the regional deputy commissioner and see what they have to say. If they don't like that, it will progress up.

I guess that's a big one for me: it's their ability to do that. Quite frankly, it's a bit of an arduous task to sit down with as many as you have.... Again, 500 is a significant number in a site where you have a lot of other operations going on at the same time. To sit down with these individuals and try to follow the letter of the current policy...I do find it rather time-tasking, and I'm not sure we're rooting out what we're trying to do.

I mean, they want a response. That's what motivates a lot of it. They want a response from the senior individuals and they're getting it. And now they're getting even more because I'm having to put more into explaining.

There's no merit to this, but all they care about, quite frankly, a lot of them—and it's my opinion—is the fact that they have a response from me. They've had to sit down and get a response from me.

The Chair: Thank you, Mr. Chicoine.

We'll now move to Ms. Hoeppepner, please, for seven minutes.

Ms. Candice Hoeppepner (Portage—Lisgar, CPC): Thank you very much, Mr. Chair.

I also want to thank the warden, as well as Ms. MacCrimmon, for being here and for providing this information.

For Canadians listening to this, I think it's obvious that at the time this complaints process was set up, it was set up with the best of intentions in mind and in good faith that it would be used for the right means. You've indicated why you appreciate a complaints process and how it helps you do your job and helps offender accountability, and I think all of us recognize that, but as we're listening to some of the things that you're telling us, and we've heard other evidence from other witnesses....

For any common-sense Canadian, I think, making these changes is really a no-brainer. It's really hard to believe that.... I know that it's our job in that we have to look at bills completely and make sure we see the impact and if there are unintended consequences, but I think when we look at the simplicity of this bill and what it does, it really makes sense. I cannot imagine the frustration that you and the correctional officers must feel in having to deal with some of these complaints. When I hear about inmates....

I'm sorry, sir, but there are 390 inmates in the facility where you're the warden?

Mr. Jay Pyke: That's correct.

Ms. Candice Hoeppepner: So there are 390 individuals who are convicted criminals and who obviously don't know how to operate within the confines of Canadian law, and they are generating 501 complaints. The frustration level must be very, very difficult.

We've heard some concern from opposition members that if an inmate is designated as a vexatious complainant there could be a risk of one of your correctional officers taking advantage of that, and then maybe—I'm not sure, I don't know what the hypothetical would be—doing something wrong to this inmate because they would know that they have no way of complaining—

• (1555)

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): On a point of order, Mr. Chair, no one on this side has said anything remotely like that.

The Chair: All right—

Mr. Randall Garrison: We can speak for ourselves on this, and I would appreciate it if the member—

The Chair: Okay. Well—

Ms. Candice Hoeppepner: I could find the quote, but anyway, there has been that suggestion.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Mr. Chair, I think the point that was raised was what the safeguards are in case somebody found that their hands were tied—

The Chair: It's not off your time, Ms. Hoepfner.

Mr. Francis Scarpaleggia: Yes, Mr. Chair, that's your ruling.

I think the question was a good-faith question. It was to say, well, what are the safeguards in the case of somebody being labelled a vexatious complainant, and then 99.9% of the time—

The Chair: Okay. I think I'm getting the point.

I think the question has come up, but maybe not so much as a direct quote, that “this is what would happen”. The question has come up, so just as long as you know and Ms. Hoepfner knows that it wasn't as a matter of fact that this is exactly what will happen.... But it was questioned as to whether or not it could happen.

Ms. Candice Hoepfner: Mr. Chair, thank you very much, but I do.... I've been at every one of these meetings.

The Chair: Well, if you have the quote, then quote, but—

Ms. Candice Hoepfner: I do. It was Mr. Scarpaleggia—

An hon. member: [*Inaudible—Editor*]

Ms. Candice Hoepfner: Yes. He said—

Mr. Francis Scarpaleggia: It was a hypothetical—

Ms. Candice Hoepfner: This is my chance to ask the question.

Mr. Francis Scarpaleggia: And I think she should be allowed. I'm—

The Chair: So on a hypothetical, then?

Ms. Candice Hoepfner: Yes, and Francis can—

The Chair: Thank you. Point taken.

Ms. Candice Hoepfner: Thank you very much.

I can read it. He said:

What happens if you have somebody who hasn't been acting in good faith, as you say, and they're labelled a vexatious complainant, and then a couple of days later a guard does something? Knowing that the person has been labelled and their hands are now tied, a guard decides to take advantage of the situation and really give it to the offender.

And I—

The Chair: So the question is, what happens then?

Ms. Candice Hoepfner: Right. My question to the warden, if I could continue—

The Chair: Yes, your time starts again.

Ms. Candice Hoepfner: Thank you very much.

What would your response be to that? Now we're talking about correctional officers who have actually proven not only that they obey the laws of the land and that they contribute as citizens but also that their professions are of the highest integrity and that they perform their duties with the highest integrity.

Is there ever that concern? Maybe you could link it to the review process, which happens every six months. I'm wondering how you feel about that six-month timeframe.

Could you speak to that? Thank you.

Mr. Jay Pyke: Thank you for recognizing that. I am proud of my staff. I'm very partial to the public service values they demonstrate daily.

I guess that would be my first response. As the warden, I like to believe we follow the public service values in essence, in principle, and in practice. That said, I know we're dealing in hypotheticals here. I caught that clearly, I think, given what I heard. Hypothetically, if we were to have wrongdoing...I guess for me, from my experience—I've been a correctional officer, and I've been on the floor and supervised that group—there's never one correctional officer operating by himself, especially in a living unit situation. You always have at least two officers down a living unit. You always have at least one other officer “vestibuling” that living unit. There are always three individuals, in general terms—in a maximum environment, which is my experience—related to any inmate contact in those contexts.

In terms of recourse, further to the complaint process, there's the correctional manager who's assigned to the living units themselves, who oversees the living units. I guess if an inmate were to be subjected to an issue of that nature, one recourse would be to approach the correctional manager, who's on the unit daily, to indicate there had been an altercation or a problem.

There's an assigned correctional officer, too, or a parole officer who's also part of the case management team for that inmate. The inmate could also approach a member of the case management team to indicate that there had been a concern.

Ultimately, they can pick up the phone. They can call the Office of the Correctional Investigator. Its ombudsman role is outside of our CSC functioning, period. The Office of the Correctional Investigator certainly could investigate a complaint of that nature as well.

That's what I can think of off the top, but I would think there are several measures of recourse or checks and balances in there. There have certainly been allegations of wrongdoing, which have been investigated through internal investigations, fact-finding investigations, that have been disciplinary in nature at times. Again, individuals of this nature would be designated due to the frivolous nature of complaints, so the process would be to determine whether there was merit to what was being put forward. That would be where we'd start it.

• (1600)

Ms. Candice Hoepfner: Thank you.

How much time do I have?

The Chair: You actually have another minute and a half.

Ms. Candice Hoepfner: Thank you very much.

Can you comment? I know in the bill there's a provision that the designation would be reviewed every six months. I'm wondering how you feel about that. Is that too soon? What are your thoughts on that timing?

Mr. Jay Pyke: I'm actually quite fine with the six-month timeframe. I think it's another check and balance for us as well. It allows us to see whether what we have tried to put in place with these individuals has had any kind of impact, and whether it has worked. It allows us to keep track so they don't become lost, so it's another check and balance that way.

It's a limited recourse block, if you will, or prevention from moving on in the system. I think it helps keep us, quite frankly, honest and paying attention in relation to what we've done under the legislation.

Ms. Candice Hoepfner: Part of the bill talks about a plan for a vexatious complainant. We've heard from the woman who introduced the bill that there is some concern with that terminology. We heard it from the commissioner as well.

Would you have some concern with that as it relates to the correctional plan? Would it be misinterpreted as a larger document than was intended?

Mr. Jay Pyke: Yes, I think we'd definitely have to operationalize at the institutional level. And I'm sorry I keep saying operationalize, but I mean in no uncertain terms, through a commissioner's directive, we would have to know the plan and the parameters around the plan. We use the plan a lot in our system, whether it be the correctional plan or something like that. I think this might be something that would operate in concert with the correctional plan, but it's altogether separate in terms of what we have framed in here.

Again, this is a concept right now. We haven't had discussions related to what this would look like in real play, so I can't speak specifically to it, but I will say that I think it could work.

The Chair: Thank you very much, Mr. Pyke and Ms. Hoepfner.

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

Mr. Francis Scarpaleggia: Thank you very much.

Thank you for joining us, Mr. Pyke.

Just to set the record straight, we believe that corrections officers are individuals of the highest integrity, that they do subscribe to the values of the public service, and that they are, by and large, decent individuals. The question I asked a couple of meetings ago was not to suggest that an officer would commit an act of physical violence. It was more to explore whether it would be possible, if there weren't sufficient checks and balances, for a situation of personal rancour to develop, which you know can happen in human relationships.

But you actually provided some important information that had not been provided to this point, which is that there are some significant checks and balances. For example, we didn't know that correctional officers were accompanied by other correctional officers and so on and so forth.

Just staying on that point, but looking at it slightly differently, Commissioner Head actually acknowledged this point last week. Under this bill, if somebody were to be designated a vexatious complainant and then actually did have a legitimate urgent complaint, which can happen, what sort of safety valve would there be so that one would know that this legitimate complaint, which could involve life, liberty, and security, would in fact be brought to your attention? Make no mistake, we don't want to see the resources

of the warden, the institution, or the department monopolized by complaints that aren't legitimate.

Under the bill as it's presently drafted, do you see a check to make sure that, out of 100 vexatious complaints, if number 101 is actually a serious one affecting life, liberty, security.... Are there safeguards to ensure that it would get your attention and that it would be acted on?

• (1605)

Mr. Jay Pyke: Thank you.

Again, I'm speaking in hypotheticals somewhat here, because I don't have in front of me what it would actually look like. I do understand the principle, which is that all complaints that would be brought forward would be heard, related to the plan. I'm sorry that I'm speaking ambiguously about a plan; it's because I'm not sure what the plan would look like.

But I do feel that my understanding of it is that they would still get the opportunity to present a complaint. It's that they would have the absence of being able to move it on to a grievance process unless it was deemed merited by the review. So to speak to how we would review the 101st complaint to determine whether it's.... I can only speak to the process that may be in place with these individuals related to demonstrating where the merit is. I mean, what is the merit? Maybe it's in conjunction with the Officer of the Correctional Investigator, where they've also submitted a third-party concern or complaint and I've received a call from the Office of the Correctional Investigator indicating that they have a concern as well or that there's merit to it.

I can only speak to what I know, what I've seen, and what my understanding is. My understanding is that it would still be seen at the complaint level. To speak to how we would determine in fact, in no uncertain terms, that there's no merit...that would be my question as the institutional head to the investigator. How do we determine there's no merit? If it's against a particular staff member consistently, I'd have to see what the investigation report related to that concern produces to me.

I can't speak specifically to it. My apologies. I just don't know operationally what exactly it would look like.

Mr. Francis Scarpaleggia: How does this bill really save your time? You said you're still dealing with the complaints. It's just that they don't move on to a higher level, which saves somebody's time, I guess. But how does it really save your time if you're still dealing with the complaints?

Mr. Jay Pyke: It's because, quite frankly, from the warden's perspective, I'm the first-level grievance. So for my office, it does save considerable time, because I'm not reviewing the first-level grievance procedures from there on out.

The plan would be a key part of it in terms of how we would limit the moving on of this process, or what the inmate may have to demonstrate in terms of there being warrant and merit to what they're bringing forward.

I guess, for me, it would definitely assist in terms of the first-level grievance, which is my level, in that it wouldn't move on. Quite frankly, there are genuine first-level grievances submitted at the site level that become untimely owing to some of the more frivolous complaints submitted that move on to the grievance.

So I do feel that at the grievance level, from the first level—which is mine—on, it would be of benefit. I can't speak to, until we roll it out, if it rolls out, what the plan we're referring to would look like in terms of what the actual realized benefit would be. Again, I don't have enough information.

Mr. Francis Scarpaleggia: Right. You don't know yet.

You have the power now to designate someone a multiple complainant. What powers do you have under that designation?

The way I understand it is that if somebody's designated a multiple complainant, you can't ignore the complaint but you can sort of put it aside if you feel you don't have the resources to deal with it in a timely manner. Is that true? Is that how it works?

Mr. Jay Pyke: Yes, it's—

Mr. Francis Scarpaleggia: Have you used that process?

Mr. Jay Pyke: I have not used that process. I've been part of a management team that has used that process in terms of multiple-griever status.

For me, it relates to, yes, we can limit them to, I think, two a month. It's a quantitative measure. It's statistical in nature. It actually doesn't speak to the nature of the grievance or the complaint; it just speaks to the number of grievances and complaints that are being put forward.

You know, I don't think we're solving anything with the current policy. What it's doing is...I'm basically saying to the inmate, “You can continue to submit ten grievances a month. I will in essence answer two a month. But I have a responsibility to answer all of the grievances submitted in time; I'm just setting a timeframe whereby you will only get two responses back”—

Mr. Francis Scarpaleggia: It's the edict of the workload there, yes.

Mr. Jay Pyke: Yes.

The Chair: Thank you, Mr. Scarpaleggia. Your time is well over here.

[*Translation*]

Ms. Morin, you have five minutes.

•(1610)

Ms. Marie-Claude Morin (Saint-Hyacinthe—Bagot, NDP): Thank you, Mr. Chair.

First, I would like to thank our witnesses for being here this afternoon.

My first question is about the complainants in the prisons. Could you confirm that some of them have mental health issues?

[*English*]

Mr. Jay Pyke: Yes. Again, I can speak to my institution, but I have a population where 50%-plus routinely use mental health

services and have some kind of diagnosis related to mental health concerns.

Truly, of my complaints and grievances, there is a group generated by persons who suffer from mental illness.

[*Translation*]

Ms. Marie-Claude Morin: Could you also confirm that the vexatious complainants may be people who might have a mental health issue, basically, people who would need help? Could that also be the case?

[*English*]

Mr. Jay Pyke: It could if we saw the nature of the complaint and reviewed it. It doesn't apply, I can say, to KP's current three that we're referring to. You know, it certainly could be a heads-up if we were to receive a complaint or a grievance that seemed out of the usual or...

I can tell you, as the warden, that oftentimes I'll get inmate requests that certainly flag for me that there's some concern here with this individual. It will be referred to psychology.

But in my experience at Kingston Pen, which has been about 13 years, I can say that I certainly haven't seen it used as a mechanism. It's not something we would turn a blind eye to, obviously, if there was a concern suggested in the grievance or the complaint, but it's certainly not something we've come across on a routine basis, in my experience.

The Chair: Madame Morin.

[*Translation*]

Ms. Marie-Claude Morin: In this bill, we are indeed talking about a plan to correct the situation of offenders who are vexatious complainants.

As the warden of an institution, could you potentially design that kind of a program for your penitentiary? Have you thought about that?

[*English*]

Mr. Jay Pyke: Thank you.

Again, while I am not responsible for developing national policy, I certainly have given it some thought. I know I keep referencing, and I have referenced, the idea of the motivation-based intervention strategies as well as correctional programs in terms of cognitive thinking skills and problem solving. So their actual correctional plan might involve participation or active participation to address the dynamic needs. The hope would be that it would remedy and also be part of the plan, so that if they followed it, then at the six-month review we'd look at that as a positive to say, “Okay, you've held up your end of this plan, so I'm absolutely willing in good faith to re-review.”

Again, I certainly don't speak on behalf of the commissioner or the policy personnel at NHQ, but I have given it some thought. I do think there are certain mechanisms we could absolutely use that would be very positive in that regard.

[*Translation*]

Ms. Marie-Claude Morin: I won't ask any hypothetical questions; instead, I'll talk about a situation that might arise.

Let's suppose that the prison population is growing. This type of bill, which would prevent certain inmates from complaining, wouldn't it create some violent situations? Not being able to complain, the inmates would use other methods.

Do you think, for example, that this could damage the atmosphere in your institution or in other institutions?

[English]

The Chair: That's a good question.

Mr. Jay Pyke: I think, quite frankly, it would help, because if I have an increased number of general population inmates, the likelihood of them being vexatious or frivolous grievors is statistically low based on what we know of these individuals. I think the absence of it could be bad in the sense that if my timeframes are already slow and my population increases by 10%, that puts on a further strain. If, for example, an offender submits on average four complaints a year, those complaints that are frivolous or vexatious will bog down the system. In the absence of those, we're better positioned to meet the timeframes in the legislation for the new offenders coming in, which to me means there is less likely to be a pre-incident indicator in terms of concern. They're not hearing from managers. They're not getting any leverage related to their complaints. I quite frankly, given my experience, see it as a benefit the other way. With regard to violence in institutions, we have a whole variety of checks and measures related to those indicators.

I hope that has answered your question.

•(1615)

The Chair: Thank you, Madame Morin.

Thank you, Mr. Pyke.

We'll now move back to Mr. Leef.

Mr. Leef, go ahead, please.

Mr. Ryan Leef: Thank you.

Sir, you mentioned in your report that a lot of the complaints create a great deal of frustration for staff who have to continue to investigate complaints when the merits of those complaints are a concern. I want to shift over to the staff who are the subject of a complaint. Do you notice any impact on staff who are the subjects of these frivolous complaints? Do they have increased levels of stress and frustration?

Mr. Jay Pyke: Absolutely. I'll speak, if I can, to the eight complaints of harassment submitted by one inmate, with regard to which I brought in the external review group. Those complaints create a lot of anxiety for these individuals. They see personnel come from national headquarters and regional headquarters and from outside of the site, and their immediate reaction is, "What have I done wrong?"

I've spoken to these individuals subsequent to the review to indicate that it's about transparency. I can tell you there is angst that goes with being subjected to any type of review, and any of us would have it if we felt we were doing our job and all of a sudden we had an outside review come in to sort of peel the onion or look at everything.

So, yes, it absolutely creates stress.

It has a tendency to create animosity at times between, obviously, the offender population and the staff involved. It affects morale. Really and truly it affects the morale of those individuals, for some more than others. Some are absolutely okay with it. They say, "Hey, they can ask and I'm okay." Others take it quite personally. They feel that it's a process under which they could be doing their job and still be subjected to what they feel is an unfair review or unfair supervision when they're simply carrying out their duties.

I can tell you from first-hand experience and first-hand conversations with those individuals that it absolutely can impact morale, and it can impact their interpretation and their everyday job.

Mr. Ryan Leef: From your experience, from what you know, would that contribute to an increased level of leave—stress, sick, or other? Would it lead to a certain degree of decrease in motivation for those staff to work directly with the specific inmate who has laid the complaint, and perhaps even with the greater inmate population in general?

In turn, if that's the case, would it have an increased cost overall to the institution in terms of both the human and the financial resources?

Mr. Jay Pyke: It's an excellent question.

I don't have any quantitative statistics to support what I'm about to say. I'm sorry.

Does a person who is impacted and has increased stress use their leave? Will they use sick leave or have an increase in sick leave? Sure. They certainly have that ability. I can only speak for myself as a person. If I feel stressed, if I feel the work environment is a bit poisoned, am I more apt to seek assistance or take some time off? Absolutely.

The other thing is that we have an employee assistance program within the service. It's confidential, so I don't know how many of the staff might seek assistance from the employee assistance program. I'm not privy to that information. That would be a big piece. I would think that absolutely it would be a resource utilized that I'm just simply not aware of.

Mr. Ryan Leef: Okay.

We've been talking a fair bit about the grievance process. When you hear there are 500, that averages over one a day. Can you give us a quick backgrounder on it?

I'm assuming that each grievance doesn't come with just one piece of paper. Can you give us some indication of how thick some of these files can actually get in terms of the in-depth investigation that's required? It's one thing to say that we have one grievance a day, but can you maybe give us some perspective on the volume these grievances can actually reach for you and your staff?

•(1620)

Mr. Jay Pyke: Okay. Quite frankly, Melinda oftentimes puts the dockets together, and I know she's probably anxious to speak. But I will say that some of those files can get incredibly large. The problem in regard to the docket is that we have to put together prior investigations, because oftentimes they'll try to re-grieve or re-complain on a similar issue. We actually include prior investigations in the document so that we don't end up reinvestigating something that we've already provided an answer to.

The other thing with some of these fellows is that they'll actually put three complaints in one docket. One might be on staff performance, one might be on health care, and one might be on admissions and discharge. They're all under one docket. The coordinator actually has to break down each one of those issues in the file and create a file for each one as it relates to what the complaint is. So very much so....

The Chair: We'll now move to Mr. Sandhu, please, for five minutes.

Mr. Jasbir Sandhu (Surrey North, NDP): Thank you for being here, Warden Pyke.

I'm looking forward to coming out to see you in person sometime.

Mr. Jay Pyke: Excellent.

Mr. Jasbir Sandhu: For the record, the official opposition believes that the CSC should be investigating and resolving complaints that have actual merit.

Warden Pyke, how do you determine what complaint has actual merit?

Mr. Jay Pyke: Well, quite frankly, that's the initial purpose of the investigation. As the docket comes in, if it's related to health care issues, for example, and they're indicating that they've put down to see the doctor and they haven't been able to see the doctor in a month's time or the likes.... As we investigate, we would go to the health care area and inquire with the nursing staff or the chief of health care as to whether this individual has been seen or an appointment has been made.

Oftentimes it may come across that, yes, he's listed for the doctor, or he's listed for an appointment. The clinic is.... Some of these fellows have been inside for quite a long period of time. As Canadian citizens, we recognize that things aren't immediate sometimes. The clinic only runs on certain days. So there's merit to his concern in terms of the timeframe, but the reality of it is that the information hasn't been relayed properly to him in terms of the timeframes or what's involved.

The frivolous or vexatious ones surface after we've done a bunch of investigating, unfortunately, and have determined in no uncertain terms that there is no merit. The example would be that the harassment complaints increase in number. That's very concerning to me as the warden; all of a sudden I have a whole bunch of harassment complaints on staff from a particular inmate.

You can be in an external review. They review everybody independently. They're not known to the institution. They're not part of any kind of institutional culture. What comes back is no, there was no merit to what was being put forward there, other than the fact that

the inmate was told to get off the phone at lock-up time and was locked up and the like.

I don't know if that answers your question.

Mr. Jasbir Sandhu: Warden, I'm going to stop you there, because I have follow-up questions and I only have five minutes.

Would you agree that if we find out after investigation if a complaint is merited or not...?

Mr. Jay Pyke: No, I believe that the purpose of the investigation is to determine, at that point, whether there's merit. That's how we form our response: is there merit to it?

Mr. Jasbir Sandhu: Right.

Mr. Jay Pyke: If there's merit, we will uphold it, or uphold it in part. If there's not....

Mr. Jasbir Sandhu: Right. So you spend a lot of time investigating and finding out whether or not a complaint has merit.

My follow-up question would be this. If it takes a lot of resources to determine if a complaint has merit, and those are the ones we should be investigating, the merited ones, would you say that...?

You said in your statement that this puts a lot of strain on your staff, investigating these frivolous complaints and all that, but the investigation would actually happen before a complaint is determined, or a lot of resources are already spent before a complaint is actually merited or not merited.

Would you say it's a lack of resources on your part, less resources for you to function, to figure out whether these complaints are merited or not?

Mr. Jay Pyke: I actually...you know, it's the initial investigation where there's the investment in resources. We would treat everybody as having merit initially. What we find is that after numerous investigations—I referred to three of them in my statement—and often in cases of tens or twenties, there's an absence of merit here.

So I think how we would go about looking at those cases, in terms of putting an additional onus to demonstrate merit before we move forward with an investigation, is the key piece to that part of the proposed policy.

•(1625)

Mr. Jasbir Sandhu: So the resources are already expended.

You also mentioned this in your brief:

It is also significant to note that, in the case of the three primary complaint/grievance submitters at KP, many of those complaints submitted were moved up by the offenders to the first-level grievance....

Can you tell us how many?

Mr. Jay Pyke: No, I'm sorry. I can certainly provide that information to the committee. I know we're on a very tight timeframe. I don't have it right before me, but I can certainly submit it to the committee.

Mr. Jasbir Sandhu: How long does it take for you to look at a complaint? Does it take hours, minutes...?

Mr. Jay Pyke: It depends on the nature of the complaint. After it's filed in the complaint process, I get that docket in terms of what work's been done up to that point. Depending on what's said in the grievance as it proceeds to the next step, it can certainly entail...

Again, I'll reference the external investigation: that was my response based on the concerns.

The Chair: Thank you very much.

I see our time is up. We want to thank you for appearing before our committee today. We thank you for being there, both of you,

answering our questions, and making your submission to our committee.

Mr. Jay Pyke: Thank you.

The Chair: Members, there may well be some bells coming. We aren't 100% certain, but there could be, so we want to move into the next portion of our meeting as quickly as possible.

Thank you.

[Proceedings continue in camera]

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