



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 030 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, March 13, 2012

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Chair

Mr. Kevin Sorenson

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• (1630)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone.

This is meeting 30 of the Standing Committee on Public Safety and National Security. Today we are commencing our consideration of Bill C-293, An Act to amend the Corrections and Conditional Release Act.

In our first hour today we welcome the member of Parliament sponsoring this bill, Roxanne James, MP from Scarborough Centre.

The members of our committee, Ms. James, certainly want to extend our congratulations for shepherding your private member's bill this far, to the committee stage. It's a significant accomplishment, I think, for any member of Parliament.

First of all, in the number of years that I've been here, I don't think I've ever had a private member's bill drawn. So if you're going to get one drawn to begin with, you're very fortunate. And then to be able to shepherd it this far... We commend you.

We would invite you to make your introductory statement. After that, if you'd be willing to field some questions from our committee, we would be very appreciative.

Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you very much to the committee members, through the chair.

First of all, as you've said, it's extraordinary to be a new member of Parliament and have my number drawn so quickly to be able to present a private member's bill. So I'm very excited to be here.

I'm going to start my comments with generalities, just some background information regarding Bill C-293, An Act to amend the Corrections and Conditional Release Act (vexatious complainants).

The purpose of this bill is very simple. It's going to correct a costly problem that currently exists in Canada's correctional system. It's a small loophole, but I think it's a point we need to address. We need to correct it so that the system will run more efficiently and effectively, as it was originally intended.

Some background information: Correctional Service of Canada receives approximately 29,000 grievances a year from various offenders across Canada. Out of a total of approximately 23,000 offenders in CSC custody, a small group of approximately 20 inmates file more than 100 grievances per year. In fact, this group accounts for a whopping 15% of all complaints filed. There are even

a few cases where offenders have filed in excess of 500, almost 600, grievances per year.

If you work out some of these numbers, it is approximately 10 complaints per week, or three complaints every two days. These sorts of complaints being filed, in excess of 500, are the ones I'm trying to target in this bill.

The increased volume of frivolous complaints significantly delays the process for other inmates to have their legitimate concerns heard. High complaint volume also ties up resources and has become taxing on our hard-working front-line correctional officers.

Bill C-293 will allow the Commissioner of the Correctional Service of Canada to label an offender as a vexatious complainant when the offender submits multiple complaints or grievances of a vexatious or frivolous nature and are not made in good faith. I truly believe that this bill will enable the CSC to minimize the impact of those who file such grievances, and it will ensure the grievance process maintains the integrity to accomplish the goals that it was originally intended to.

I'd like next to talk very briefly about the process that currently exists within the complaint process. If you've been in the House, you've heard that there are four levels to the complaint process. Actually, complaints may be resolved at any stage. However, inmates are the ones who get to determine if they are satisfied with the outcome of the decisions made by anyone at any stage.

The first level in the grievance process is called the complaint level. In simple terms, a prisoner fills out paperwork at the individual institution, which is then reviewed by the department or section manager, and if unresolved, it makes its way to the warden of that particular institution. For high-priority cases, the file will be reviewed in 15 working days, or, for regular cases, in 25 working days.

Correctional Service of Canada distinguishes high-priority complaints and grievances as those that have a direct effect on life, liberty, or security of that individual person, or that relate to the griever's access to the complaint and grievance process.

Once a complaint is reviewed, a decision will be made by the warden, who will either approve, approve in part, or deny the inmate's claim in full. Should the prisoner be unhappy with that decision, the prisoner has the right to appeal. This is where we get into the process of going through the different levels of the complaint process.

Where possible, complaint processing will occur at the lowest level. However, this means that the individual process can cascade three times, from the individual involved, to the department or section manager, and then to the warden, if the prisoner continues to appeal the previous resolution to the complaint.

While every effort is made to resolve an offender's grievance, it is apparent that the complaint level of the grievance process requires a great deal of resources to properly administer.

The second level in the grievance process occurs at the regional level. At this level, a grievance from the complaint level will be sent to the appropriate regional office where it will be assessed by the regional deputy commissioner. And again, the offender can appeal the decision if he does not like the answer.

The third level in the grievance process occurs at the senior regional level. Upon continued appeal, the senior regional deputy commissioner will review the grievance. This third stage requires that the senior regional deputy commissioner assess the original grievance and both first and second level appeals as well as the responses provided at the first and second levels of complaint.

I'd like to point out—because I think this is very significant to note—that grievances have been processed three times, with repeated and often redundant review, because prisoners control this entire appeal process. At this stage, grievances can be in the system for up to 150 working days and, as you can imagine, cause a significant administrative burden on our hard-working correctional officers.

- (1635)

The final level in the grievance process is the fourth-level grievance. If a decision is once again appealed, a grievance reaching level four means that the prisoner's claim will be sent to the commissioner of CSC. At this stage, grievances will again be approved, approved in part, or wholly declined. This will be a much shorter review because the commissioner's office will receive summaries from all other levels to assist in making a final decision. Furthermore, this timeframe is shorter because the commissioner's office has more staff and expertise at its disposal.

At this point I'd like to actually outline some of the problems our current system has.

First and foremost, the current system does not require that grievances are filed in good faith. I'd like to actually point to section 90 of the Corrections and Conditional Release Act that states:

There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the Commissioner.

I really think this is important to point out because a system that requires all complaints to be processed, regardless of merit, and allows the prisoner to control that system actually contradicts the original purpose of section 90, which is obviously to do a fair and quick resolution of legitimate complaints. If we want to make sure section 90 is effective, we need to make sure we can close this loophole.

Amending section 91, the labelling of vexatious complainants, as I've outlined, will improve offender access to section 90 of the

Corrections and Conditional Release Act, fair and timely resolution, which is central to the purpose of this bill.

Second, I'd like to point out that the current system is really a financial burden on the taxpayer. An incredible amount of resources and tax dollars are wasted when inmates are able to control a system that moves through four reviews and up to 150 days of processing time. We're all sitting here as taxpayers. I think we would want a system that works effectively, as was intended originally.

Another point is that allowing prisoners to file numerous frivolous complaints actually detracts from their ability to focus on what they're there for, which is their rehabilitation. I really believe that inmates should be focused on their correctional plan, the end result of which will mean their more effective reintegration into our society. Making a hobby of filing meritless grievances, I believe, makes a mockery of our correctional system and the entire grievance process.

Last, I'd like to point out that the present system creates a negative impact on the morale of staff involved in managing the grievance process. If you can imagine, inmates are continually filing grievances to cause trouble. You can imagine how people feel who have to deal with this on a daily basis, when they know their purpose is to actually deal with legitimate complaints.

I actually had an opportunity to tour and visit, with this bill, and front-line prison staff actually described the challenges of spending their time processing meritless complaints. It's also important to note that they truly believe that the complaint process, as it was intended, is absolutely a necessity within the prison system. Again, this bill is aiming to target just the frivolous, vexatious complaints, not the legitimate complaints that need to be heard.

When we talk about how we're going to fix the current system, I'd like to be very clear that this bill is, again, to target a very small number of inmates. It's not for the entire population, obviously.

Basically, in a nutshell, Bill C-293 allows the commissioner of Correctional Services Canada, or his assigned representative, to designate an offender as a vexatious complainant. Once this has occurred, the offender would be held to a higher standard of proof for future claims.

Again, this is going to target a small group of inmates.

Once an inmate is designated as a vexatious complainant, future complaints could be stopped at the first stage of the four-level process if the institution decided that the claim was vexatious and not made in good faith. In this regard, I believe that Bill C-293 will considerably improve how grievances are processed in our correctional system and it will allow legitimate complaints to be heard in a timely manner.

I also believe that Bill C-293 would help to make offenders more accountable, ensure greater respect for taxpayers, and take the unnecessary burden off the hard-working front-line correctional officers.

In closing, basically this bill is going to close a loophole, a costly loophole, in our Corrections and Conditional Release Act that has existed for a period of time. I think that once we close this loophole, the system is going to work much more efficiently and effectively, and as it was originally intended.

•(1640)

At this time, through you, Mr. Chair, I'd like to thank those members present who supported this bill and moved it to committee. As I said at the beginning, I'm quite excited about it, and I would now welcome any questions from the floor.

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

We'll move into our first round of questioning. On the government side, we look to Ms. Young, please.

Ms. Wai Young (Vancouver South, CPC): Thank you so much, Ms. James, for that excellent presentation outlining the various aspects of your new bill.

Congratulations, again, for being able to present such a new bill so early in your tenure as a member of Parliament.

I wanted to say that it's quite disturbing to me, and I think to most Canadians, to realize that 29,000 grievances are filed each year. You went through some of these statistics quite quickly, so let me just recap to see if I heard correctly. Twenty inmates are responsible for 120 complaints each year.

Ms. Roxanne James: Actually, that small group of inmates, roughly 20, can file in excess of between 500 and 600 complaints per year. The majority of them are filing over 100 complaints. I just want to really stress that there are a few who are actually filing more than 500 complaints per year. That's important to note.

Ms. Wai Young: We have small numbers of people, inmates, about 20, who are filing up to 500 or 600 complaints each year. By doing so, they're obviously clogging up the whole appeals and complaints system, as you so rightly outlined. This is a fairly extensive four-level complaints system.

I'd like to ask you how long this system, this complaints process, has been in place. Has it been in place for 20 years or 30 years, or whatever it happens to be?

•(1645)

Ms. Roxanne James: It's been in long enough for people to realize that there's a loophole that exists, and we need to close that loophole.

I went on with my speech for 10 minutes, but there are really a few key areas we need to look at. First and foremost, this bill deals with offender accountability. It's important to note that people who are paying a debt to society need to be accountable for their actions. They need to focus on their rehabilitation plans, and they really need to not be making a game of the system. Whatever the reason may be, they're making a mockery of the system. This bill is intended to close the loophole that currently exists. And I think it's important that through this committee, we get that process so that we can get this legislation to help our front-line, hard-working correctional staff.

Ms. Wai Young: I wanted to ask questions about two different areas. One is the process. As we know, we are modernizing many different appeals processes and different things that have been in

place within government operations and systems for a long, long time. Perhaps in this modern day and era there are more efficient and effective ways of doing that. That's one part.

The second part, then, is on the vexatiousness, I guess, of these... What we're looking at is a small group of people who are being impacted by your bill. It's not that we're taking the whole complaints process apart or that inmates won't have a complaints process that is obviously still fairly extensive.

Can you describe that a bit more? I understand that you were able to visit a facility and talk to the inmates and the corrections staff about this.

Ms. Roxanne James: Yes, I did, and thank you for the question.

I think it's important to note, and I mentioned it in my speech, that the staff I spoke to, the warden and assistant warden at the one particular institution, actually believe in and back this particular complaints process system. They understand that it serves its purpose and is absolutely needed, and they welcome the opportunity to resolve the grievances or the legitimate complaints. But they're very concerned, very concerned, about the fact that a small number of inmates actually abuse that system. They abuse that system and take away the opportunity to have other legitimate complaints heard and processed in an effective and efficient manner.

Again, this bill is not targeting the whole population. The intent of this bill is to target the 20 inmates who are actually submitting these frivolous complaints on a regular basis.

Ms. Wai Young: How much more time do I have, Mr. Chair?

The Chair: You have two and a half minutes.

Ms. Wai Young: Opposition members have stated that your bill will punish offenders and at the same time will give corrections staff too much discretionary power. I would think that taxpaying Canadians would want to support our efforts to streamline the process and unclog the process, so to speak. In fact, I would think that some of the other inmates, who may be waiting in line to get their true complaints looked at, would be very supportive of this too. It must be very frustrating for them to be in a long line of 500 complaints or 150 days, etc.

Can you tell us your response to the opposition members' perspective?

Ms. Roxanne James: It's important to note that we're not penalizing anyone who is using the system for what it was intended to do. The purpose of the complaint process is for legitimate complaints. It's not to be used as a game by certain offenders. It's not to be used to cause undue administrative hardships. The purpose is not for that. To say that we're penalizing inmates is not the case. We're actually ensuring that legitimate complaints that are filed through this process are actually heard. We're actually benefiting the majority of the population currently in our institutions to make sure the complaints are heard and are resolved in a timely fashion.

With regard to your comments about taxpayers, I have to tell you that once I prepared this bill and had my first and then my second reading, I actually received many calls and e-mails from constituents in my riding in support of this bill. Anything that stands up for the real victims of crime or anything that makes sure the rehabilitation process is there for inmates to reintegrate into society...most constituents, I found, were in support of that.

•(1650)

Ms. Wai Young: Did you find, in terms of talking to your constituents, that most Canadians understand that these vexatious complaints place a very real and significant burden on Canadian taxpayers, and in fact that translates to time, resources, and funds that are not going towards programs or other supports within the correctional system?

Ms. Roxanne James: It's an interesting question, because I think most Canadians would not realize that there was a complaint process at all for inmates to actually use to resolve their issues within the prison system. Obviously, once I introduced this bill and started talking to my constituents and put the information out in my householders and so forth, I had questions concerning this that they did not know. If there was a loophole and it was a burden to the taxpayer, then it should absolutely be amended to correct that loophole.

The Chair: Thank you both very much.

We'll now move to Mr. Chicoine.

[*Translation*]

You have seven minutes.

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

Ms. James, thank you for coming to talk to us about your bill today.

With this bill, you seem to want to deal with vexatious complainants. Are the individuals affected the ones who repeatedly make unfounded complaints and want to discredit the correctional authority?

[*English*]

Ms. Roxanne James: When we talk about vexatious complaints, it could be one of the components of it. Someone who is a vexatious complainer is doing it for a purpose. They're not doing it to resolve a particular issue. It's a frivolous complaint that's intended to either harass or cause trouble within the grievance process, to clog up the system. I know that was a concern during my first and second reading, the terminology in regard to vexatious.

I want to expand on this a bit because I think there's been some misinterpretation between the term "vexatious complainant" and a "multiple griever". A "multiple griever" is someone who can submit multiple grievances or complaints through the process. It does not necessarily mean they're a vexatious complainant. It just means they have multiple grievances that they filed, and each and every one of them could be a legitimate complaint. Again, the vexatious complainant is someone who is doing it wilfully to abuse the system, to cause an undue hardship. They're making a game out of the entire complaint process.

[*Translation*]

Mr. Sylvain Chicoine: I share your opinion to a certain extent. It would be wise to exclude people who make frivolous complaints. However, we have some reservations about your bill because, among other things, it does not contain specific criteria for identifying a vexatious complainant. Consequently, the Commissioner could perhaps abuse this power.

People from the Office of the Correctional Investigator and some correctional officers have mentioned that more educated inmates are submitting a large number of complaints on behalf of other inmates. The fact that these inmates are considered to be vexatious complainants because they are filing grievances on behalf of others poses a problem.

Are you not concerned that, without specific criteria for identifying vexatious complainants, the Commissioner may deem them to be vexatious complainants? They do make many complaints, and they may be frivolous at times, but they are doing it on behalf of other inmates.

[*English*]

Ms. Roxanne James: Thank you for that question.

I just want to go back to the definition of "vexatious". I'm actually going to read you the definition of vexatious, so maybe that will help to clarify the parameters in regard to someone who makes a complaint. These are basically complaints that are not made in good faith. They could be done "to harass; to pursue purposes other than a remedy for an alleged wrong; or to disrupt or denigrate the complaint and grievance process". Those are the parameters for a vexatious complainant.

I also want to point you to proposed section 91.1 of the bill itself and to some of the changes with regard to this particular bill that I'm proposing, Bill C-293. I'm going to read this for you, because I want to reiterate that the commissioner is not going to be able to just designate someone. Things have to be written down. This has to be communicated back to the offender.

The steps include ensuring that, one, the offender receives written notice of the consideration; two, the offender is provided with all of the information reviewed by the commissioner of CSC; and three, the offender is given the opportunity to rebut the designation or present an alternative plan to address his or her needs.

I want to make it clear once again that this bill is only going to target a small number of offenders who are abusing the system. It is not intended to be and will not be used by the commissioner in any other fashion. I hope that has answered your question.

I know that you also actually mentioned someone filing complaints on behalf of others. As well, this should not impact that, because even though someone may be filing the complaint, the complaint should be logged under the original complainant or the offender who has raised that issue.

•(1655)

[Translation]

Mr. Sylvain Chicoine: An individual could make a frivolous complaint believing that it is legitimate. They could also make many complaints. We are concerned by the absence of fixed criteria for identifying who is a vexatious complainant. When referring to multiple complaints, does that mean 200 complaints? There are no criteria.

Would you not prefer to specify criteria, such as the number of complaints made, for clearly identifying these complainants rather than being vague and giving the commissioner complete discretion?

[English]

Ms. Roxanne James: I think it's important to note that it's not necessarily the number of complaints that are logged; it's the intent or the content itself of the complaint that is logged. It would be hard to put an actual number on it, for various reasons.

Again, I want to reiterate that under proposed section 91.1, the offender is going to receive written notice of the consideration, and please keep in mind that someone who is labelled as a vexatious complainant has filed probably several complaints. In many cases, they've been declined at the first level, then probably appealed, and declined at the second level, and then probably appealed. All of that information is recorded. It's kept on file. When the commissioner sees that information, he actually has all of that in front of him to make the proper determination. It's not just on a whim that he's giving this discretionary vexatious complaint label. He has the information to back up that decision.

[Translation]

Mr. Sylvain Chicoine: You mentioned in your presentation that the complaint process takes up many resources at the second and third levels. Could there be a lack of resources at these levels, which prevents the quick and effective resolution of the complaint?

[English]

Ms. Roxanne James: I think the bulk of the complaint processing is actually done at the first level, in many cases. Actually, in one of my speeches in the House on this I talked about the informal process of dealing with complaints themselves. Within the institutions, inmates will be hired to deal with complaints on a very informal basis. So a lot of the complaints, instead of actually making it to the actual complaints process—going through the paper- and computer-based system—will actually be dealt with on an individual, on-the-ground level.

Also, the correctional staff who I spoke to when I visited the institution indicated that in many cases they as well will deal with the issues to assist the inmate. So when we talk about going to the second and third levels, there is not necessarily as much paperwork and administration required. They're reviewing it, but again, a lot of the complaints are actually dealt with at the very first level, and a lot of them are sorted out and resolved.

Again, this bill deals with those complainants—a handful of 20 inmates—who are abusing the current system and trying to take it right through to the top to bog down the system.

The Chair: Thank you very much, Ms. James and Mr. Chicoine.

We'll now go back to the government side.

Ms. Hoepfner, please, for seven minutes.

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

I probably won't be using all of my seven minutes. I'll share it with Mr. Leef.

Thank you very much, Ms. James, for being here. I also want to congratulate you on bringing this private member's bill forward and bringing it to this stage.

I think the majority of Canadians would be very disturbed to hear that a small number of inmates can use this loophole to take advantage of what I think is a very generous process for them to make complaints.

I have a specific question regarding part of your bill. Proposed subsection 91.1(6) says:

The institutional head shall ensure that a plan is developed to assist any offender who has been designated as a vexatious complainant to break the cycle of complaints and first-level grievances.

We've done several studies, so we know about the correctional plan. We understand what a plan is. It's usually quite a large, extensive document.

You refer in your bill to a “plan”, and I was wondering if you could tell us your interpretation of that. I'm concerned about possibly creating more work for our correctional officers and any of the staff that would be involved.

Would you mind telling us your interpretation of that section, please?

•(1700)

Ms. Roxanne James: Thank you. I really appreciate that question.

When I read it and I went to the institution, I spoke with the wardens and they actually brought that up. When I went back and reread how the bill stood, I could understand very clearly why they were concerned with that particular terminology of the word “plan”, as Ms. Hoepfner mentioned.

Basically, within the correctional system a plan is multi-faceted, multi-paged, long term, administrative, and so on. The intention of this bill, and the way I had interpreted it when I put the bill together, was that it was going to be a very simple outline. It would be a generic document that would be used to assist inmates; it would not be an individual plan that would be hours or days or weeks in the making.

Again, it's a generic document that would be applied to all offenders to assist them in changing the direction of how they're logging their complaints.

Ms. Candice Hoepfner: Thank you very much.

I'll turn the rest of my time over to Mr. Leef.

The Chair: Mr. Leef.

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

Thank you, Ms. James, for coming today.

You talked a little bit about the 500 complaints an inmate can file in a year and that some of them are averaging around 100; the 20-plus are averaging around 100 per year.

Do you have a rough percentage—it doesn't need to be exact—of how many of those 100 complaints would be substantiated, and how many of the 100 from those 20 would be considered vexatious?

Ms. Roxanne James: I don't have specific statistics on hand. I understand there will be witnesses coming in after me—I believe the commissioner's coming in, but I'm not quite sure—on statistical information. I would suggest that you speak to them specifically on those statistics.

But you have to remember, if someone is filing 100 complaints—and I'm talking about that in this bill—then these are the ones who are filing the frivolous, unmerited complaints that are not made in good faith.

Again, these are the same inmates who are not letting it rest after the first decision. They are going to appeal and take it to the next level and so on.

Mr. Ryan Leef: Thank you.

Ms. Hoepfner touched on it a bit with proposed subsection 91.1(6). There is going to be a plan put in place. I'm wondering if you could comment quickly about the bill itself only impacting a small percentage of inmates.

When I read proposed 91.1(6), I see where it's trying to lead them to breaking that cycle. I see this bill as an effort to assist those inmates, as well as assisting legitimate complainants who are impeded by the overuse of the system by the inmates who are abusing it.

Could you touch on how this will actually help both groups of inmates?

Ms. Roxanne James: I think someone who is paying their debt to society should be focusing on their rehabilitation plans. They should not be spending their time filing complaints through the complaint process, bogging it down, and causing a real hardship on our hard-working front-line correctional officers.

I think by stopping them from doing so, by labelling them as a vexatious complainant, it's going to address the issue of them using it as a tool or a game, almost like a petulant child would do. I think labelling them, providing them with the plan, the generic document that says why they've been given this designation and what they need to do to prove that when they file legitimate complaints they will be heard... But in the future they're not going to be able to file complaints that have no merit.

Additionally, of course, this also is going to allow legitimate complaints to be processed more efficiently. The time that would be spent with complaints that are of no merit could be spent on actually dealing with those that need attention.

Mr. Ryan Leef: Thank you.

In terms of the vexatious complainants, do you think this will help case workers and correctional officers deal with particular

behavioural traits that the complainants might have, which actually lead them to be vexatious, frivolous, or constant complainants?

Ms. Roxanne James: You may be right on that one. I think when we talk about the complaints process itself and its original purpose of allowing legitimate complaints to be filed...this is not the venue to have an outlet. This is not the venue for someone to get their frustrations out. As you said, there are other tools that could be used or should be utilized to assist that inmate in dealing with other issues, but certainly not through the complaints process.

The Chair: You have 40 seconds.

Mr. Ryan Leef: Thank you.

This may be something better asked of Corrections Canada itself—and I know the intention of the committee isn't to sit here and listen to my testimony—but what you're talking about really resonates with me as a former deputy superintendent of corrections. I'm fully aware of the situations that have gone on inside the correctional centres with these sorts of things.

Do you have any examples? I could list all day long some of the examples of vexatious, frivolous, and onerous complaints that have come in. Do you have any specific examples that might highlight to the committee some of the nature of the complaints that are actually brought forward?

• (1705)

Ms. Roxanne James: Complaints could be simply, “My light bulb is too hot”, “My potato is not the right size”, “My milk is too cold”. These are things that you would expect a child to complain about, trying to get attention from a parent or a peer. Those are some of the examples. I actually have a specific example. I probably will not have time to talk about it, but perhaps someone else will ask me about it.

The current process, I just want to note as well, allows someone to file the same complaint over and over again while one is still in the process. Again, you can see that where someone is not happy with getting something resolved as quickly as they think it should be, they're just going to log another one, and then another one, and then another one.

That is a particular example I actually did hear first-hand.

Thank you.

The Chair: Thank you.

Mr. Scarpaleggia, please.

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

I'm just wondering where the idea for this bill came from. When did you first present it? Was it in this Parliament?

Ms. Roxanne James: Yes. As I have mentioned, I was newly elected on May 2. I actually ran three consecutive times for the Conservatives in my riding of Scarborough Centre. I recall campaigning on “tough on crime” policies. My father was a police officer with Metro Toronto, so this type of bill is right up my alley. It's where my interest lies. It's where I see we need to make changes.

Being 22 on the list of private members bills...I was very excited when my name was drawn. Obviously I wanted to deal with an issue that I was interested in and one where I could make a change.

Mr. Francis Scarpaleggia: It's not an obvious issue for somebody, even for someone who's interested in being tough on crime. Until I saw your bill, it never occurred to me that this might be a problem.

Did you have an experience that alerted you to this problem, or was the idea suggested by the minister's office?

Ms. Roxanne James: Actually, as I said, when my number, 22, was called, I was very excited. I started talking to some of my colleagues, some of the other MPs I've known. I was a candidate for three elections, so I obviously know quite a few members of Parliament. Several colleagues to whom I spoke indicated that they had visited jails and that this issue had come up before. That's why I started looking into this particular issue, to see whether there was something I could do.

I'm not trying to make this bill sound as if it is a huge bill. This bill seeks to address a very small loophole. I'm not trying to paint the sky green when it's currently blue.

Mr. Francis Scarpaleggia: No, no.

This is a bill that is very process heavy. Just trying to understand the process is difficult to visualize. I understand there are four levels, but it's hard to visualize its practical application.

Take, for example, one of the vexatious complaints that you mentioned, the inmate saying his milk is too cold, or whatever it is. How does that kind of complaint actually work its way through the system? Does it wind up on the commissioner's desk? Obviously it's frivolous, one would think. I just don't understand how it comes up the system.

Ms. Roxanne James: To address that particular question, I mentioned that within the institutions themselves there are inmates who are hired to deal with them—an informal way of dealing with complaints. If someone were going to complain about their milk, or they didn't like their dinner, or the light bulb, you would think they would actually address that issue through someone like that, a very informal process. I think anyone in this room would not want to log a formal complaint and have it go through an appeal and all that other business.

What happens in particular in most institutions is that there is a formal process: the complaint process. An inmate will actually log a complaint. It's dropped into a box. The box is picked up. The complaints are logged. It's dealt with at the very lowest possible level. It can actually go up to the warden within that first level, depending upon whether the inmate likes the resolution from the very first person who reviews that particular complaint.

Again, if they don't like the answer from the—

Mr. Francis Scarpaleggia: Are you telling me that somebody is coming forward with a complaint like “My potato is not the right size” and taking it all the way up to the level of the commissioner?

• (1710)

Ms. Roxanne James: Well, that's why I'm here, actually. That's why I'm—

Mr. Francis Scarpaleggia: No, but that's what has happened?

Ms. Roxanne James: I'm not stating that particular instance.

Mr. Francis Scarpaleggia: Or it's something as frivolous?

Ms. Roxanne James: Well, if it were actually being dealt with in an informal process, or being resolved at the first level, then it wouldn't actually be a reason to address the changes in this particular bill.

Mr. Francis Scarpaleggia: So these complaints are working their way through the system, and somebody is putting in a lot of time and energy to appeal a verdict at levels one, two, and three that the potato is the right size. Somebody is really going through the paperwork to do this.

Ms. Roxanne James: The problem we have right now with the act itself is that it does not require that the complaint is logged in good faith. That's the issue that I seek to address in this particular bill.

Mr. Francis Scarpaleggia: Okay, but how do you...?

For example, there have been suggestions—just to address Mr. Chicoine's point, if I understood it correctly—that there doesn't seem to be in your bill a set of criteria for judging if a complaint is vexatious. Maybe you've answered this and I missed it, but I've seen other proposals....

For example, I think there was a proposal out of the Mullan external review of 2010 that a person should be labelled a vexatious complainant if they filed more than 100 complaints and grievances in a year. Is that the kind of thing you're looking at to...?

I mean, it's very hard to say that they made the complaint in good or bad faith.

Ms. Roxanne James: Yes.

Mr. Francis Scarpaleggia: It's a bit of a subjective evaluation—or it can be; I'm not saying it always will be.

Ms. Roxanne James: Actually, it has nothing to do with the number of complaints. You mentioned that they filed 100 complaints in a year. Every one of those 100 could be legitimate complaints. This bill does not seek to go after any of those complaints.

They would be considered more of a multiple griever. This bill deals with a vexatious complainant who is abusing the system, who is seeking to harass the people who actually deal with the process itself. They're doing it without good faith. It's a meritless complaint.

Mr. Francis Scarpaleggia: But who decides that? Who decides if it's good faith or bad faith?

As another question, what is the difference between a vexatious complainant and, you said, a multiple complainant?

Ms. Roxanne James: A multiple complainant—“multiple griever” is actually the terminology—would be someone who files multiple complaints or grievances. It could be 100; it could be 500.

Again, that's not the same as a vexatious complainant. A multiple griever is someone who files multiple complaints. Each and every one of those complaints could be a legitimate complaint and would be heard through the process.

The vexatious complainant is someone who is doing it not in good faith. It's a meritless complaint. It's frivolous in nature, and the intent of it...it's actually the content or the intent of the actual complaint.

I actually read through the definition of vexatious—I hope it was noted down by everyone around the committee—and that's really the terminology of the type of complaint.

Mr. Francis Scarpaleggia: 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. What happens then? Can they—

The Chair: You'll have to give a very quick answer.

Ms. Roxanne James: If someone has been labelled as a vexatious complainant and they have a legitimate complaint, that complaint will still be heard. I want to make that perfectly clear. This is not to tape someone's mouth up. This is to actually make sure they're filing legitimate complaints. They're just held to a higher standard of proof. Once they've proven it's a legitimate complaint, then that actual complaint will be heard.

The Chair: Thank you, Ms. James.

We'll now move into the second round. This is a five-minute round.

Mr. Garrison.

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

Welcome to the committee, and welcome to the club of “three times lucky”. Many of us around the table are in that same situation.

I'd like to ask you what you think the contributions of a complaint system are to an effective corrections system. You talked about the purpose of complaints, but what do you think an effective complaint system contributes to the corrections system?

Ms. Roxanne James: I think it's important that offenders, if they have an actual complaint, a legitimate complaint that needs to be addressed, have a method to be able to express that and get that particular issue resolved. So the complaint process....

As I stated, when I visited and had a tour of the particular institution, and I spoke to the warden, the assistant warden, and the warden from another institution while I was there, they actually spoke of the merits of this complaint process, that it actually assists the inmates.

Additionally, many of the inmates might be incarcerated for various reasons. This actually teaches them that they can go through a particular process and have their issues heard, without dealing...or going to other extremes.

• (1715)

Mr. Randall Garrison: As someone who has worked a lot in the criminal justice system, I see something missing there. There are a couple of other things most people would recognize as contributing factors. One is an awareness of problems within the institution before they become more severe. An effectively functioning complaints system will allow the administrators and staff in

corrections to know of upcoming problems. This can also function as a release of pressure and help reduce levels of conflict and violence by providing an effective complaint procedure. With that context missing from your question, I worry about your focus on the vexatious complainants rather than on improving the system.

Ms. Roxanne James: I'll give you one out of two. The first point you make is valid. It is one of the purposes of the complaint process in the institution, and it was spoken of when I was on my tour, that it is to serve the purpose that you stated.

The second thing, though, I disagree with. The complaint process should be used for legitimate complaints, not as an outlet or a means of venting. There are other things offenders can be doing besides filing a complaint. I think it's also important to note, and you spoke about it being a release.... If there is a legitimate issue within an institution that is going to affect the safety of a particular inmate and they issue a legitimate complaint or a grievance to have that heard and to have it resolved...if the system is bogged down by frivolous complaints by people who are just abusing it or taking advantage of it, to either harass or as a game, they are actually taking away valuable resources from the offenders who actually have legitimate complaints that need to be dealt with in a timely manner.

Contrary to what you're saying, I believe by improving the system and closing this loophole we're going to help the majority of offenders get their legitimate complaints heard and processed, and actually provide a safer prison system at the same time.

Mr. Randall Garrison: But if you look at the Mullan report of 2010, it identified a problem other than a vexatious complaint, namely, a lack of resources and staff to deal with mediation and informal resolution of complaints. Vexatious complaints make up a very small number of the complaints overall. Why wouldn't you focus on a bill that would provide a mediator in every prison for informal resolution of grievances? Wouldn't that improve the system?

Ms. Roxanne James: Well, I'm not sure what number you were on the private member's list, but that's certainly something you could put forward.

Mr. Randall Garrison: I'm not far behind you.

Ms. Roxanne James: I wanted to deal with a loophole that's a burden to taxpayers. I wanted to deal with a loophole that is causing our system to be ineffective. I want to deal with this loophole to make sure that offenders are held accountable and that we support our victims, as opposed to the criminals who want to abuse the system we've provided for them.

Mr. Randall Garrison: I'm not far behind you on the list, and I do have a private member's bill coming forward in two weeks.

Ms. Roxanne James: I look forward to it.

Mr. Randall Garrison: I'll look forward to your support.

Ms. Roxanne James: I'm not sure.

Mr. Randall Garrison: Can you tell us if you have any information about the profile of vexatious complainants, who they might be?

Ms. Roxanne James: It can vary.

Mr. Randall Garrison: I mean statistical information or any formal profile from Corrections Canada.

Ms. Roxanne James: I do not have statistical information on hand, and I certainly don't want to rhyme off something I'm not comfortable.... I don't have the hard statistics in front of me. I believe you're having further witnesses come in on this particular bill, and that's a question I would probably ask you to direct to someone else who would have that statistical information in front of him.

Mr. Randall Garrison: I think you'll find that there are two main causes of vexatious complaints: mental illness and poor integration into the corrections system. The view tends to get put forward that these are just people who have nothing to do but complain, when it's actually a function of other problems, such as integration.

The Chair: That's a good point.

Thank you, Mr. Garrison. We'll leave it at that.

We'll go back to Mr. Leef.

Mr. Ryan Leef: I wanted to build a bit on what Mr. Garrison was saying about a functioning complaint process. Would you agree that a functioning complaint process is one that doesn't contain frivolous, vexatious, and multiple complaints?

Ms. Roxanne James: Absolutely.

Mr. Ryan Leef: In respect of injecting a mediator into the correctional system, wouldn't you agree that, by and large, the interaction between front-line correctional staff and inmates serves as the best program service and mediation process, and that the lowest-level grievance resolution process would be between the inmate and the front-line officer?

Ms. Roxanne James: Yes, I would agree with that, and that's exactly what I heard when I visited the institution. The warden said that they try to communicate with the inmates on that lowest level. They try to build those relationships. So, yes, you're absolutely right.

• (1720)

Mr. Ryan Leef: I think we can all accept the reality that some vexatious and frivolous complaints come through that are levied in bad faith and might stem from mental illness or poor integration. I don't think on this side of the House we would accept the fact that 15% of the total complaints coming from 20 people represent an insignificant or small number. I would say that's very significant and interesting.

From my experience as a deputy superintendent of operations and a former front-line correctional officer, I saw a number of complaints come through that had nothing to do with mental illness and had absolutely everything to do with manipulation and boredom. They had everything to do with just trying to play with the system. There were complaints like, "It's snowing outside and you need to do something about that", or "I don't like the colour of the mitts you provided us". We did hear complaints. I collected them and was just amazed that this always occurred. There were complaints like, "My ice cream is too cold". You mentioned complaints about the milk being too cold.

Because officers don't satisfy...or aren't able to mediate when it's an irrational complaint, it's very difficult to mediate that complaint. It moves up the chain after it's signed off, from one level to another level. These are the kinds of complaints that actually do reach the superintendent and the deputy superintendent. For them to get to the commissioner's level—now we're really talking about an overblown

problem here. Even for a complaint to get to a senior correctional officer level, never mind the superintendent level, up to a commissioner for an oversized or undersized potato is not contributing to a functioning complaint process, as Mr. Garrison would like to have and that all of us would like to have.

Would you agree with that?

Ms. Roxanne James: Yes, I agree with you. You took the words right out of my mouth.

There is not much more I can add to that statement. I think it's important to reiterate one more time that complaints can be in the process for up to 150 days. When you think about a complaint that your potato is too small, your milk or ice cream is too cold, or whatever, these are the complaints that Bill C-293 seeks to address, for obvious reasons.

When we take a look at the actual act, the original intent was to process legitimate complaints in an effective and efficient manner. This bill seeks to make sure that happens.

Mr. Ryan Leef: Thank you.

How much time do I have?

The Chair: You have two minutes.

Mr. Ryan Leef: Great.

We've heard a little bit more about the clear criteria. You talked about the intent and content of the complaints. Would you agree that the environment in which a complainant makes a complaint is important? The discretion we provide front-line officers and supervising officers reviewing these things is very important, given the wide range of environmental and contextual situations that corrections officers face in a day-to-day situation. Prescribing adherent variables in such a dynamic environment would be next to impossible and really wouldn't serve to deal with the intention of your bill. Do you agree?

Ms. Roxanne James: Yes, I agree with that. You touched on it as well in your statement. Front-line correctional officers at the very lowest level will try to deal with complaints on a one-on-one basis. They don't want to see them go through the system. They want to make sure they are resolved.

People who are taking them to the next level and appealing them are getting the same answers at every level, but they're pursuing them to bog down the system. These are not legitimate complaints.

Mr. Ryan Leef: Going back to proposed subsection 91.1(6), which deals with trying to break the cycle of those vexatious complaints, I think that's a commendable section of the bill. It's not designed to hit them hard, but to actually help them move on as productive inmates within the correctional environment, and then productive members of society.

The Chair: Thank you, Mr. Leef. We'll leave it at that.

We'll now go back to Madame Morin for five minutes.

[Translation]

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

First, I would like to thank you for coming here today, Ms. James.

With respect to your bill, there are a few things that have been bothering me since the start of our meeting.

We know that the complaint system was established to prevent riots or other violent protests. In fact, I am concerned that inmates will be prevented from making complaints. Could this not spur them to use more violent means to revolt? This could endanger guards, support staff, other inmates and public safety. What do you think about this situation?

• (1725)

[English]

Ms. Roxanne James: I think when we talk about the current complaint process, the original intent was to deal with legitimate complaints. The ones you are talking about—complaints that deal with a particular issue that's going to affect the life, liberty, or security of an individual inmate—would actually be included in that. If you think of a handful or maybe 20 inmates across Canada bogging down the system with complaints that are frivolous, that are without merit, they're actually preventing the ones that are legitimate, that need to be heard, that could result in that situation you just talked about, from being addressed or heard in a timely manner and resolved.

I think this bill is actually seeking to do exactly what you're concerned about. Again, the complaint process should be and was originally intended to be for legitimate complaints, rather than a method or a game used by a certain group of inmates.

[Translation]

Ms. Marie-Claude Morin: We are talking about legitimate complaints and, during our discussion, there was mention of frivolous complaints, inmates' intentions and making a game or a mockery of the system. I am certainly not talking about milk that is too cold or any such thing. However, who would have the authority to decide if a complaint is frivolous and to deny it? How far can an unfounded complaint go?

[English]

Ms. Roxanne James: An unfounded complaint that's made—a frivolous complaint, one without merit—can actually go right up to the top. That's the problem we have with the current system: it has a loophole that does not require grievances to be filed in good faith. That's the particular issue that this bill seeks to address.

[Translation]

Ms. Marie-Claude Morin: I do not want to know to what level a complaint can be taken. I would like to know what constitutes a vexatious complaint and what constitutes a legitimate complaint. At what point can we say that a complaint is without merit? A little earlier you spoke about milk that is too cold and potatoes that are the wrong size. What criteria must be added to ensure that a complaint is deemed to be vexatious?

[English]

Ms. Roxanne James: I think that through my answers I have talked very specifically about the definition of vexatious. It deals with the content or the intent of someone who files a complaint. It's to harass, to abuse the system, to bog down the system, and so on. So when we talk about legitimate complaints, those are complaints filed that are not without merit.

I think common sense around this table dictates that a complaint that a potato is too small is not a legitimate complaint. I want to reiterate that there are inmates who are hired within each institution to deal with complaints and to help assist prisoners deal with those types of issues. If an inmate decides to actually file the complaint through the formal complaint process—you know, they drop that complaint in the box, it's heard, it's read, it's filed, and it's put in the computer—the hard-working front-line correctional officer will try to deal with that complaint as well.

So if someone complained—let's say we're using the potato example—I would think someone from that institution would talk with that inmate to try to resolve that particular issue. Again, the current system allows that inmate to actually control the entire system. If they don't like the answer, they don't like being told that their potato is not too small, they're going to appeal it and take it to the next level.

Those are the types of complaints this bill seeks to address.

[Translation]

Ms. Marie-Claude Morin: I would like some clarification about vexatious complaints. The explanation is unclear; I find it very subjective. Is there not a risk that legitimate complaints will be denied?

[English]

Ms. Roxanne James: Absolutely not. Keep in mind that labelling someone as a vexatious complainer is done by the Commissioner of CSC. He or she has at hand all of the information on that particular person: the complaints they have filed, the resolution or lack of resolution, the fact that someone has appealed it. They have all that information at hand. They're not going to have the discretion simply to label any inmate as a vexatious complainant.

Again, this bill is going to seek to address that small loophole we need to close to make sure our system actually works the way it was intended to.

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

Mr. Norlock you can have a quick question, and then I see our clock shows close to five-thirty.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): This is just something that may have been missed, not to comment on the suggestion that we are all automatons of the minister's office. I would just like to go through proposed subsection 91.2(3), which says:

A decision-maker may not refuse to hear a complaint or grievance that would result in irreparable, significant or adverse consequences.

So there is a protection there.

The next protection I noticed is in proposed section 91.3, where it says:

A vexatious complainant...may seek judicial review of this designation.

There is actually an appeal process so that if someone disagrees with the vexatious complaint nomenclature, they can appeal, and there is a provision that sets out in legislation an offender's right to seek the review of the commissioner's decision to designate him or her a vexatious complainant in Federal Court.

If you wanted to you could expand on that, or perhaps you actually have covered that particular part of it.

• (1730)

The Chair: Thank you, Mr. Norlock.

Ms. Roxanne James: Yes, thank you for actually bringing that to this meeting.

It is important to point out that there is an alternative route to the formal complaint process within our institution, and that is through judicial review. That is a method that is still available to anyone who is labelled a vexatious complainant. Again, the provisions in those sections, the various points, actually do allow someone who has been labelled as a vexatious complainant to still have a legitimate complaint heard if it deals with life, liberty, security, and so on.

So there's no need for this committee to be concerned that an actual issue of importance will not be dealt with. That will still occur.

The Chair: Thank you very much.

Although your bill does not define "vexatious" or "frivolous", I do note that the commissioner understands what it means. The

Commissioner's Directive 081, which was just amended or looked at in December 12, 2011, defines what vexatious or frivolous is:

Vexatious or not made in good faith: where the decision maker concludes on the balance of probabilities that the overriding purpose of the complaint or grievance is:

- a. to harass;
- b. to pursue purposes other than a remedy for an alleged wrong; or
- c. to disrupt or denigrate the complaint and grievance process.

So although you have not given us the dictionary definition of vexatious, certainly that term is well known in corrections circles, especially by the commissioner, because it is defined in his directive.

I think our time is up. I see the clock just hitting 5:30.

We want to thank you for being here today and doing such a good job in defending your private member's bill. I'm certain that you will be following it as we continue to hear from other witnesses in regard to the bill.

Thank you very much.

Ms. Roxanne James: Thank you.

The Chair: Thank you to all. We are adjourned.

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