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# **Standing Committee on Public Safety and National Security**

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**EVIDENCE**

**Thursday, March 15, 2012**

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**Chair**

**Mr. Kevin Sorenson**



## Standing Committee on Public Safety and National Security

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•(1535)

[English]

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

This is meeting number 31 of the Standing Committee on Public Safety and National Security, Thursday, March 15, 2012.

In our second hour today we will have time for some committee business. We have a budget and a number of other things to look at.

In our first hour today we're continuing our consideration of Bill C-293, An Act to amend the Corrections and Conditional Release Act (vexatious complainants).

We welcome back to our committee the John Howard Society of Canada. Catherine Latimer is here, as she is the executive director. We also appreciate having the Elizabeth Fry Society of Canada appear. Kim Pate is the executive director.

I welcome your opening comments, Ms. Pate. I'm not certain whether Ms. Latimer has any, but you certainly have been at this committee before. You understand that there will be some questions after. We appreciate your willingness to take them and to take the time to be here.

Ms. Pate, please begin.

**Ms. Kim Pate (Executive Director, Elizabeth Fry Society of Canada):** Great. Thank you very much.

Thank you for inviting us to appear. I'm sorry that we don't have a brief to present, just because of the timeliness, but we appreciate, even with a short timeframe, being called.

I bring comments on behalf of our organization, on behalf of our 26 members across the country who work with marginalized, victimized, criminalized, and institutionalized women and girls.

I want to start by saying that one of the concerns we have with Bill C-293 is that there are already provisions within the current legislation and policy that take into account the very concerns raised by the proponents of this bill. Under section 91, and in particular under subsection 74(4) of the regulations, there are already provisions that allow institutional heads to limit the abilities of prisoners who are seen as making vexatious or excessive grievances and to in fact stop that process. It also requires a review process. So it's not something that can be done for an indefinite period of time.

We would suggest that we continue that process. In fact, the presumption that those prisoners who want to have their situations reviewed could apply to the Federal Court for judicial review is in

fact not borne out at all in practice. We know that in fact with cuts to legal aid, the court challenges program, and the like, it's very difficult for prisoners to get access to legal aid, period, and certainly for any kind of purpose such as this, which is to challenge the process.

We know also that this concern has long been on the radar of the Correctional Service of Canada. In fact, in the women's prisons the majority of wardens actually encourage prisoners to put in grievances, because women are notoriously under-grievers, not over-grievers. Anything that would in any way suggest that there should be a limitation on that practice we would certainly not support. And we would caution against providing any excuse to limit those processes.

I point, of course, to the very fact of why we have a grievance process. Some of the recommendations were made following the deadly riots in Kingston Penitentiary. They followed up on the Swackhamer report, which actually resulted in the creation of the Office of the Correctional Investigator because of that very issue that there were so few opportunities for prisoners to seek any kind of redress. It was deemed that there was no legitimate access or avenue for redress, so the Office of the Correctional Investigator was established.

Also reinforced in 1992, with the introduction of the Corrections and Conditional Release Act, was the need for an adequate grievance process. Since then, we've had repeated reviews of this, both by the Correctional Service of Canada itself and by the Office of the Correctional Investigator. Most recently, in their 2007-08 annual report, they did a thorough review of this process and in fact encouraged a review to be done by corrections, which corrections did do. I'm sure you have a copy of the external review of the Correctional Service of Canada complaints and grievance process conducted by Dr. Mullan, of Queen's University, which was sought, paid for, and contracted by the Correctional Service of Canada. In it he recommends an overhaul and external oversight of the corrections grievance process, more support for the development of offender grievance committees, and assurances that staff know what the procedures are.

Certainly it has been my personal experience when going into the prisons on visits to have staff sometimes indicate that they don't know what the grievance process is. In fact, we have participated in doing some of that training from time to time.

In 1996 Louise Arbour, after reviewing the situation at the Prison for Women in Kingston, made a number of recommendations that have since been reinforced by both the Canadian Human Rights Commission and the Office of the Correctional Investigator. And they are supported by many within the Correctional Service of Canada. In her report she said:

It was striking that virtually all of the issues that have arisen in the course of this inquiry were raised in the first instance by inmates in complaints, grievances, and in some cases in letters addressed to senior Correctional Service officials.

They were largely ignored.

She indicated further that

...an inmate's version of events was treated as inherently unreliable, and that to grant a grievance was seen as admitting defeat on the part of the Correctional Service.

● (1540)

She went on to make a number of recommendations for external oversight as a result of those findings.

Similarly, in the work that Michael Jackson has done, both with and on behalf of the Correctional Service of Canada when he was asked to join their segregation review panel following the Arbour commission, he has made a number of recommendations about the need for an adequate and effective grievance process. I commend to you the section of his book, *Justice Behind the Walls*, from page 581 through to page 603, which talks about the need for overhaul. If you're not consulting with Dr. Jackson yourselves, I encourage you to at least refer to those recommendations.

The Canadian Human Rights Commission similarly found this process... They are in fact in the process of reviewing access of prisoners to that complaint process by virtue of some complaints that have been referred to the tribunal currently.

Just to summarize some of the concerns we've seen in preparation, not for this process, interestingly enough, but for some other initiatives with which we're involved... Notably, over the past ten years we have been involved—at the request of prisoners and supported by the Correctional Service of Canada—in a training process of developing resources for prisoners so that they know what their rights are. We have also participated in the training of staff in human rights issues.

We are about to do some upgrading of that training in some of the institutions. In preparation for that, we asked women prisoners to talk about why they're not filing grievances, because unless they're encouraged to by the institution, many of them don't. I'll quote for you some of the reasons that were provided to us, and then I'm going to end with some of the findings we've had around this process.

One of the things is that many women feel that even when senior staff are encouraging grievances... What I'm told by many wardens is that they want to see grievances, because they see it as the mechanism by which they can test the temperature of an institution. Many senior front-line staff—and when I say “senior”, I mean experienced front-line staff—will often say, similarly, that they would rather see a grievance than see any other kind of attempt, whether it's self-mutilation or suicide attempts, or, in men's prisons, more outward attempts like riots or other kinds of uprisings.

If there is a legitimate complaint and grievance process that can be used, then in fact it's more likely that prisoners will bring their issues forward. If in fact they're listened to and there are adequate responses, you in fact will see the temperature of an institution decrease. At these times when we're seeing overcrowding, particularly in the women's prisons—and we're likely to see more overcrowding in the men's prisons as well—I think this is an ongoing concern. It certainly is a concern for our organization. For those I speak to within the Correctional Service of Canada and within the Union of Canadian Correctional Officers, it's also a concern.

One of the concerns raised is that in fact their timeframes aren't often adhered to. What you may not be aware of is that those timelines have historically gone from five days to ten days, from 15 to 25 days, and from 60 to 80 days in the past several years in terms of the levels: the first level, the second level...so the local institutional level, the regional level, and the national level. Some grievances can take more than six months to achieve a final decision. When you have a serious situation, whether it's in segregation or with regard to serious issues around prison conditions, that is far too long.

So we know those are concerns. Staff are indicating that their concern is that their inability to meet those timeframes is not because of vexatious or excessive grievances, but because often there is not a culture of protection of human rights that will in fact keep them and the prisoners safe.

As well, the Correctional Investigator has found that most of the multiple grievors who do exist—most of whom are not actually in the women's prisons but in the men's—are actually individuals with significant mental health issues. So any change in legislation is not likely to appreciably change this issue of multiple grievors, because if they have mental health issues, then there are other issues around what probably needs to happen.

Similarly, as the Correctional Investigator has pointed out, things that are sometimes viewed as frivolous, whether it's food or clothing, are sometimes not seen as frivolous by individuals. Again, they can create huge concerns, particularly for those with mental health issues, whether those concerns are about dirty underwear, inadequate food, not getting access to hot food, or the like. Again, these are issues that need to be taken seriously, and the effects can be minimized.

● (1545)

In short, we recommend that rather than continue on this and expend important and valuable taxpayer dollars on this kind of enterprise, Correctional Service of Canada be supported to provide meaningful ways to implement things such as the recommendations made by Dr. Mullan in the 2010 report they requested and contracted for.

I'll leave with a final example. When Ashley Smith put in a grievance at the Grand Valley Institution, when she put in a number of grievances, none of them were responded to. The Correctional Investigator has documented that well in their report. Sadly, we'll likely also see a full chronicling when we go through the inquest. When her grievances were responded to, they were not responded to adequately or in a timely manner. Her final grievance about the conditions of confinement within which she was placed, filed three weeks before she died, in fact was never looked at until we urged it. Finally the Correctional Investigator demanded that it be retrieved. Three months after she died it was retrieved from the box in which it was placed, never having been opened.

So our concern is about the timeliness of grievances, and the fact that people may put in multiple grievances when they haven't heard, in a context where they may not be getting responses because either their grievances aren't taken seriously, or they're discouraged from filing them, or, as women have advised, they're told to withdraw the grievances. Or as in Ashley's case, when other women started filing grievances on her behalf they were told that they would be sanctioned if they continued to do that. Even though she was not receiving responses and they were trying to assist her in addressing her concerns, they were not able to.

When we sought to use the judicial review process, it was at significant cost to our organization. It took us almost three years to gain some of the very documents and information she was trying to seek through that complaint and grievance process and the information process generally.

So I caution this committee, very sincerely and seriously, to look at whether we need to be going down this road, or whether we should be providing mechanisms—particularly at a time when we're likely to see increased tensions within our prisons—for individuals to be able to bring forward their legitimate complaints in a timely and efficient manner, have them taken seriously, and have the assistance of those individuals inside who have the opportunity to lay these.

During the Canadian Human Rights Commission review they found documents indicating that when someone raised a very serious concern, such as in Ashley's case several years later.... At the time we had memoranda and electronic messages indicating that individuals who put in grievances, using the legitimate complaint mechanisms, might be considered to be not following their correctional treatment plan.

Clearly, that's not legal. It's not appropriate, and we would not want to see that kind of situation continue. In a context where we already have staff asking us to assist them with this training process, when we have Dr. Mullan urging a training process for correctional staff.... Our concern is that if this kind of discretion is placed in the hands of individuals who aren't trained, it may result in increased tensions within the prison, instead of complaints being resolved and the grievance system's being the safety valve it's intended to be.

Thank you very much.

• (1550)

**The Chair:** Thank you very much.

We'll go into our first round of questioning.

Mr. Rathgeber, go ahead.

**Ms. Catherine Latimer (Executive Director, John Howard Society of Canada):** I have a few comments to make.

**The Chair:** Oh, I'm sorry. I understood from earlier that you didn't.

**Ms. Catherine Latimer:** I didn't have anything to distribute to the translators.

**The Chair:** Oh, I see. All right. I misunderstood.

**Ms. Catherine Latimer:** I would like to reiterate that the John Howard Society of Canada, on whose behalf I'm pleased to be here today, echoes many of the concerns that Kim has raised about the need to have an effective, timely grievance process.

We also give quite a bit of credit to Correctional Services of Canada for their efforts to try to improve the grievance process, which is to some extent reflected in their contracting or commissioning David Mullan, who is one of Canada's leading authorities on administrative law, to take a look at the review process and how it could be improved. I agree with Kim's assessment that the overall recommendations should be taken into account and implemented, but he does also look specifically at the problem that seems to be being addressed by Bill C-293, which is the problem with multiple grievances.

The recommendations he has made vary with the provisions in Bill C-293 in some fundamental ways. I think if you take a look at the variance there, I hope you would be persuaded that the approach of Professor Mullan is better in a number of ways. I bring to your attention two of those concerns.

One concern is that Professor Mullan focuses on multiple rather than vexatious grievors. He has a clear, quantifiable definition of what's multiple so he doesn't leave it to the discretion of a correctional official—who does have an active stake in this grievance process as well—to determine what's vexatious. Also from a review process, you're going to have much more difficulty finding that something is vexatious because it requires you to look at the motivation of the person who's putting forward the grievance, and that's a much more difficult case to make than simply looking at the quantum.

Also, the clear distinction between his recommendations and those that are in the bill relate to the remedy he's proposing, which is he is suggesting that multiple grievors be limited to a certain number of grievances per year, and that they have a stake in assessing which are the ones they want to proceed with and what priority to give those. That is, which 25 of the 180 that you have put forward do you give most credit to and most reflect your concerns? So the remedy goes to limiting the number and doesn't go to the evidentiary base, which is what you find in this particular bill, which is the grievor suddenly has to reach a higher evidentiary standard to make the grievance, which is questionable in terms of duty of fairness that all administrative procedures must follow.

I draw those particular elements to your attention. We would urge you to consider making some significant amendments and proceeding with the overall recommendations in Mullan's paper.

**The Chair:** Thank you very much.

We'll go into the first round of questioning.

Mr. Rathgeber, you have seven minutes.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses. It's good to see you both again.

Ms. Pate, I was not aware that a process was defined by statute with respect to grievances. With the assistance of technology, I've been able to find the provisions in section 91 of the act, and section 96.2, which states that the Governor in Council may make regulations.

I'm relying on your testimony whereby you said the regulations provide that the head of the institution can place some parameters with respect to vexatious and frivolous grievances. Did I understand that correctly?

**Ms. Kim Pate:** Yes.

**Mr. Brent Rathgeber:** It's in the regulations, and I can't find it.

**Ms. Kim Pate:** It's regulation 74, subsection (4). I read it.

**Mr. Brent Rathgeber:** Would it not have been...?

**Ms. Kim Pate:** Sorry. It's actually even.... It says a supervisor, so technically it wouldn't even necessarily need to be the head of the institution. It says:

A supervisor may refuse to review a complaint submitted pursuant to subsection (1) where, in the opinion of the supervisor, the complaint is frivolous or vexatious or is not made in good faith.

• (1555)

**Mr. Brent Rathgeber:** Sure. Now what this private member's bill seeks to do is to vest with the commissioner the discretion with respect to determining vexatious and frivolous complaints, so you take it out of the hands of the superintendent or the warden or the institutional head.

In my view, that ought to be supported by advocates such as you, because it appears to me that the grievances a prisoner would be filing are not going to be against the folks here in Ottawa who work for Don Head; they are going to be against people very close to them, perhaps the warden, probably even closer to them than the warden, the people who serve them potatoes on the trays, or the people who lock them in their cells at night.

Is it not a positive aspect of this bill to take that discretion out of the hands of the supervisor or the institutional head and vest it in the hands of the commissioner?

**Ms. Kim Pate:** I certainly think that the more it's reviewed up the chain is certainly beneficial. Absolutely.

The challenge would be how it would get to the commissioner. It's not outlined clearly, unless I've misread this process, and certainly if you could help me with that I would be happy to have you help me. For it to get to the commissioner, it would need to be a third-level grievance. Our concern was how would the first-level grievance, if

someone is already prevented from getting to that level, in fact end up getting to be reviewed by the commissioner?

**Mr. Brent Rathgeber:** We have not heard from the Office of the Correctional Investigator, and I don't know if we're going to.

Either of you may be able to help me with this. It appears to me that the express mandate of the Office of the Correctional Investigator is to investigate many of the types of complaints the prisoners are putting forward. In the status quo, where inmates ostensibly have unlimited ability to file grievances, do you not see duplicity with respect to the offices of Mr. Sapers?

**Ms. Kim Pate:** If in fact Mr. Sapers was not an ombudsman's office, that could be true, because they would have the ability to determine a course of action. In fact they don't have the ability to actually direct change, whereas the commissioner does, or the court would. So sometimes there will be similar complaints, but usually there are not. I'll leave it to the Correctional Investigator's office, because they would have a better sense of whether they're duplicitous. Actually, I shouldn't say that.

**Mr. Brent Rathgeber:** I didn't understand your answer. Are you saying that Mr. Sapers only writes reports, and he can't recommend specific action with respect to specific grievances?

**Ms. Kim Pate:** He can recommend, but not necessarily with grievances, only with the complaints that come to his office. Certainly sometimes there are complaints about the complaint process or grievance process not being followed through by the Correctional Service of Canada, as I understand it. And that's why he's made recommendations and why their 2007-08 report looked at grievances and that whole mechanism. But they don't have the authority to direct.

**Mr. Brent Rathgeber:** We have not heard from Corrections Canada yet, and I'm hoping that we're going to. I understand from the sponsor of the bill, Ms. James, who was here on Tuesday, that a very small group of inmates file approximately 15% of all the grievances that Correctional Services have to deal with. It occurs to me that both of your organizations, which strive for fairness and equality, among other things, would be moved to have a system that is more equitable. All prisoners ought to have equal access to file a grievance, as opposed to a few essentially jamming up the system.

We haven't heard from Ms. Latimer. Maybe you can comment on my suggestion about equality of prisoners.

**Ms. Catherine Latimer:** I'm happy to speak about the equality of prisoners.

For a grievance process to be effective, there are risks to a grievance process if it is abused. The challenge is determining what is abuse and what is fair use. In a prison system that can be a very challenging thing to do, because things that some of us would see as fairly incidental are fairly major to people whose entire lives are controlled and prescribed by certain people.

Where you have people with mental health issues who are coming back and not understanding that the grievance has been denied, or they are coming forward with something that looks pretty similar to something they've already brought forward, and it's preventing other grievances from being considered or delayed to such an extent that you get into problems, I think there does need to be some sort of remedial process. And I think that Professor Mullan did come up with some good ideas about how to deal with multiple grievances.

I think what I would find troubling is describing and labelling certain inmates as vexatious grievors. Multiple grievors are fine, because it doesn't necessarily label them with an outcome of whether there is merit to the grievance they put forward. But if you label them as vexatious grievors, you are already making a determination and running the risk that some of the legitimate grievances they may put forward may be not given adequate weight because of the label.

• (1600)

**Mr. Brent Rathgeber:** I know Ms. Pate is a lawyer. Are you are lawyer, Ms. Latimer?

**Ms. Catherine Latimer:** Yes, I am.

**Mr. Brent Rathgeber:** So you know that certainly in Alberta—

**The Chair:** Quickly, please.

**Mr. Brent Rathgeber:** —the civil courts have the ability to establish a litigant as a frivolous and vexatious litigant, and they need leave of the court to file a statement of claim.

Do you know if there is a comparable system in Ontario?

**Ms. Catherine Latimer:** I'm not that familiar with civil law, but I would assume there are measures against it, once having defended a set of—

**Mr. Brent Rathgeber:** As a final comment in my few seconds, it appears to me that if a civilian can be labelled a frivolous and vexatious litigant, a prisoner should enjoy the same equality.

Thank you, Mr. Chair.

**The Chair:** We're going to have to leave it at that. We're ten seconds over.

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

[*Translation*]

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

My thanks to the people who have come to testify today.

Ms. James, the sponsor of the bill, told us about what motivated her to introduce it. If I am not mistaken, she told us that, in the Canadian correctional system, 15% of the grievances were filed by about 20 people, either to pass the time, or for amusement, or to bring the prison administration into disrepute. If that is the case, perhaps there is room for measures to address it.

However, the Correctional Investigator, whom we have spoken with about this problem, told us that it was actually either to do with people suffering from mental illness, or people wrongly believing that the timeframe for getting an answer is 10 days, thereby filing complaints repeatedly. That is like the Ashley Smith case, who filed

her grievance over and over again because she had not received a reply.

Is it possible that most of those 20 or so people are filing grievances upon grievances because they do not get a reply within an amount of time that they consider reasonable, and not because they actually intend to file frivolous complaints?

[*English*]

**Ms. Catherine Latimer:** I think it's likely to be a variety of people. One of the things the Correctional Investigator has pointed out is that offenders who are better able to write, more literate, better educated, tend to file more grievances on behalf of some of the other inmates who have difficulty doing it for themselves. So there's a cadre of multiple grievors who are doing it because there are problems and they're capable of doing it and taking it on for other inmates. That's certain. The fact that they produce a number of them doesn't mean that they're illegitimate by any stretch of the imagination.

It's hard to determine why certain people are grieving more than others. It could also be that some have certain needs. I've been dealing with one gentleman who has multiple health needs. The correction system has difficulty catering to individual variances in needs. He's not getting his medication on time. It doesn't matter how many times he grieves and says he needs his medication at such-and-such an hour and he's not getting it—the system can't accommodate it. So he needs to keep grieving, because it's the only way that some attention will actually be attracted to that particular problem.

It's a chronic problem that the system has difficulty fixing.

**Ms. Kim Pate:** I would add that the report that was done for the Correctional Service of Canada indicated that it was between 10 and 15 prisoners, and they were all male, as far as I'm aware.

In the women's prisons, the woman I was mentioning during the human rights review—we had the documentation of it—was, as Catherine has indicated, a woman who was filing complaints on behalf of other women as well. She was particularly well-read, was educated, and knew the law and the policy, and would quote it back. She was actually told that she would stay at a maximum security level longer if she continued to file grievances.

Those kinds of situations are not, obviously, what was ever contemplated—nor would I suggest that anybody was supporting them—in this proposed legislation, but we certainly have those kinds of concerns about cases in which there are individuals who are raising situations.

In the women's prisons, the opposite is true. Anything that squelches.... Repeatedly we see, whether in our documentation or the Correctional Investigator's, the Human Rights Commission's, Louise Arbour's, Michael Jackson's, David Mullan's, that in fact the issue is that women tend not to grieve because they tend to be often coerced or pushed or discouraged from doing so. Even though the law is clear that you can't discourage it—there's a penalty under the CCRA for actually penalizing someone—the reality is that those sorts of things happen.

I'd say that the most tragic situation was the one we had with Ashley Smith.

•(1605)

[Translation]

**Mr. Sylvain Chicoine:** I mentioned the fact that some better-educated inmates have taken it upon themselves to file grievances for other inmates. Ms. James told me that, under her bill, it was not possible for better-educated inmates to be designated as vexatious complainants, given that their names would not appear.

Do you share that view?

[English]

**Ms. Kim Pate:** Certainly the experience we've had is that women have been seen that way. It's not all the time. It's not really common, but certainly it has occurred. It raises our concern with this legislation that in the case of those who are trying to stop the process or who may see it as being in their interest to stop the process.... That would certainly be a concern for us.

Again, there are a couple of women who have mental health issues who I know routinely will put in grievances. They are not illegitimate, but they are not necessarily things that can be solved by the grievance process. It may be things such as that she wants to have a visit. They are things that are heartbreaking to read. Most of the corrections people I know would never consider those people as ones they should be referring to as vexatious or frivolous grievors, even though there is nothing they can do through that process.

[Translation]

**Mr. Sylvain Chicoine:** In your presentation, you briefly mentioned that there are no specific criteria that could help the commissioner to designate an inmate as a vexatious complainant.

Does that really concern you? Do you feel that is an omission that could cause mistakes to happen?

[English]

**Ms. Kim Pate:** I think there could be. If the commissioner had the capacity to review all of those issues, then I think, going back to Mr. Rathgeber's comments, it would be preferable that someone in national headquarters review all of them. That isn't our experience. Usually, the threat of being labelled a frivolous or vexatious griever happens at the institutional level. That's the authority the institution has right now. Whether it's the supervisor, the warden, or... Usually it's deemed to be the warden's designate who makes that recommendation. Women whom I've worked with, and in the past men whom I've worked with, will be told that if they continued to file complaints, they are at risk of being labelled in that manner.

[Translation]

**Mr. Sylvain Chicoine:** Professor Mullan's report indicates that attempts were being made to solve the problem with an ad hoc grievances committee, and he gave the Donnacona Institution as an example.

Do you know any more about the informal way in which that institution goes about handling grievances?

[English]

**Ms. Kim Pate:** I do not know how they are doing it in the Donnacona Institution. I know that in some of the women's prisons there has been a push by a number of the women and the administrations within the prison to develop offender grievance

committees, of which, in all of the time I've worked with women and in the time I worked with men in the institutions, there were very few, if any. Certainly, there has never been an offender grievance committee in the women's prisons; there have been in some of the men's. It may be that this is what is happening in the Donnacona Institution, though I'm not familiar with it.

**The Chair:** Thank you very much.

We will go to Mr. Leef, please.

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

Thank you to both witnesses for appearing here today.

Notwithstanding the importance of dealing with grievances and some of the issues you've raised, I think there's a bit of a temptation for us to get sidetracked away from the bill when we talk about timeliness of response to grievances, whether one, ten, fifteen, or forty of them. I think we all recognize here the value of the grievance process, the value of dealing with the grievances in a timely manner, and the importance this plays in the institution among the inmates and the correctional staff who work there.

I would like to focus on this bill. This goes back slightly to some of the things Mr. Rathgeber talked about, but I want to ask Ms. Latimer a question. You accurately stated that the fact that multiple grievances come in doesn't mean they are frivolous or vexatious, necessarily. Would you agree that if I were an inmate and I had 250 legitimate complaints that were upheld all the time, I should be able to submit those grievances and have them heard in a timely manner, and that I shouldn't be subject to a cutoff point for grievances, if I'm accurate in the grievances I'm making?

•(1610)

**Ms. Catherine Latimer:** Let me give you an example. Let's say that you were an insulin-dependent diabetic and you did not get your insulin in time every day, and you grieved once and they said "Fine, we'll try to make it better", but the next day it wasn't any better, and you still didn't get your insulin in time to avoid a reaction.

**Mr. Ryan Leef:** I wouldn't say so much that, because notwithstanding, there is obviously some time needed for administration to deal with certain things.

Let's say that I have 75 different issues and I launch 75 grievances, and all of them are upheld. Should I be limited after that point, if I have been successful in 75 grievances?

**Ms. Catherine Latimer:** No.

**Mr. Ryan Leef:** Part of what I'm driving at here is that you prefer the approach of Professor Mullan, but of course defining a fixed number of multiple complaints I think would be problematic, because that does limit legitimate complainants, if we did that.



What I find interesting about this bill—and very positive, actually—is the initial section that talks about what constitutes vexatious complaints. And I will preface that by saying not all vexatious complaints or the stipulations to prevent that from people actually are vexatious. It says “multiple complaints or grievances that are of...”. So they have to be multiple, for one, and either vexatious, frivolous in nature, or not made in good faith. So we need multiple in the first instance, and then they need to meet the condition of vexatious, frivolous in nature, or not made in good faith. I think that's positive.

When we look at the regulations, as has been pointed out, that's already somewhat permitted. This goes back to what's in the act and the regulations, but now we go back to what Mr. Rathgeber was saying: that now this bill seeks to take that out of the hands of front-line and supervisory staff in the correctional centre; has greater oversight; moves it up to the commissioner level; provides judiciary review; provides a mandatory assessment of the status of that designation, where it doesn't currently; provides an exemption where a decision-maker cannot refuse to hear something that might cause irreparable, significant, or adverse consequences. I think that doesn't exist in regulation right now.

Would you not agree that those three steps are very positive steps to protect the inmates in this grievance process that don't currently exist in the act and regulations?

**Ms. Catherine Latimer:** I'm still perplexed by how it will actually be carried out.

**Mr. Ryan Leef:** Maybe you could just answer that as to whether it's positive or not, versus how it's going to be carried out. I'll give you an opportunity to—

**Ms. Catherine Latimer:** It depends how you're defining vexatious—

**Mr. Ryan Leef:** Well, let's—

**Ms. Catherine Latimer:** No, it really does. I can't answer it unless you're telling me how you're defining vexatious.

**Mr. Ryan Leef:** Well, we could look at the dictionary and see what vexatious is. When we're talking about the commissioner of the Correctional Service of Canada, I think we could probably give him some latitude to use the professionalism and experience he has to utilize common standards for vexatious. I don't think we're going to create our own definition of vexatious, are we?

Let me ask this question again for you. Do you think providing regulation that currently does not exist to protect grievances from “irreparable, significant or adverse consequences to the offender if not resolved” is positive? Do you think a judicial review, if labelled as such, is positive? Do you think an assessment every six months, which currently doesn't exist, is positive?

**Ms. Catherine Latimer:** I think all those are positive.

**Mr. Ryan Leef:** Thank you.

We know there are complaints in the correctional environment, and I say this from experience as a deputy superintendent of operations in charge of a multi-level facility and a male and female facility. We do have a lot of complaints made that aren't legitimately in good faith—like my ice cream is too cold, those kinds of things.

Well, we've heard here.... And I don't have these; maybe it's a better question asked of Correctional Service of Canada staff. But you've had experience in the correctional environment, so you would know or maybe you would have access to it. If these are 20 people making 500-plus complaints, do you know the stats now, because this is a small pocket of people we're dealing with? Do all 20 of them have mental health issues?

• (1615)

**Ms. Catherine Latimer:** I don't know the 20, and I would assume not. I would assume, as I mentioned before, that some of them are acting on behalf of inmates who are less capable of filling out grievances and raising them. I would think some of them are suffering from paranoia.

**Mr. Ryan Leef:** If those grievances that they were doing on behalf of other people were legitimate, good-standing grievances, that would be fair to allow them to do that, wouldn't it?

**Ms. Catherine Latimer:** Yes.

**Mr. Ryan Leef:** I would agree with you on that, but if they're frivolous, vexatious, and in bad faith, is that still reasonable to allow them to do that on behalf of others?

**Ms. Catherine Latimer:** Again, I'm caught up with the definition and who makes the determination.

**Mr. Ryan Leef:** Again, I talked about that. If Mr. Norlock says to me, “Mr. Leef, you're good at writing. My ice cream is too cold. Can you file a complaint on my behalf and please spell out that my ice cream is too cold?”, do you think that's a reasonable thing for me to take on as an inmate who has effective writing skills on his behalf, and do that over and over, multiple times?

**Ms. Catherine Latimer:** But what if his ice cream was always coming in a melted form? What if his desserts were always...? First of all, they don't get desserts any more.

**Mr. Ryan Leef:** But you're moving away from.... Now you're saying what if it's legitimate. If it's legitimate, I give you that; then grieve away. But what I'm saying is we're talking about frivolous, vexatious, bad-faith complaints. I'm not talking about legitimate complaints; that's good news, and I would allow that.

**The Chair:** Our time is up, but I will read to you....

We have had the benefit of hearing some of what were vexatious complaints, in the opinion of Ms. James, who moved this bill. The definition that she gave, and which the commissioner is directed by in his directive, is as follows:

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.

There still is a certain latitude that they have. There is a decision they're going to have to make. But it is confined to the question whether it is harassment—is this a harassing—

**Ms. Catherine Latimer:** I'm more comfortable with a complaint being seen as vexatious than with the person who's making the complaint being designated as vexatious.

**The Chair:** Got you.

Mr. Scarpaleggia, please.

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** You mentioned something about external reviews. What did you mean by that?

**Ms. Kim Pate:** Several recommendations have been made at different times. Louise Arbour made recommendations for external oversight where there are serious concerns such as what occurred at the Prison for Women, extensive use of segregation, the things that have since been repeated and most notably recently been documented and made public through the death of Ashley Smith. She recommended that where there is correctional interference with the legitimate carrying out of a sentence, there be mechanisms for those cases to be reviewed for judicial review.

**Mr. Francis Scarpaleggia:** I'm sorry, I'm not a lawyer, but how does this relate to vexatious complaints? Are you suggesting or is someone suggesting that rather than having the supervisor or even the commissioner make the decision, some kind of external review body would either make the decision or review the decision? I agree with you, it's not practical to go to the court. There aren't the resources for the inmate to do that, and so on.

Can you envisage some kind of system where even before it would get to the commissioner a committee would look at it, with a chance of reversing the supervisor's decision?

I suppose there's a problem there, because if a supervisor is overridden too many times, his or her authority is diminished within the institution. And no doubt these are institutions that have a component, necessarily, based on authority and so on.

I'm concerned about two things. One, there's no real appeal mechanism other than going to Federal Court. In that regard it's like Bill C-31, which is an immigration bill, which I won't get into. There's always that way: you can go to court. But it's not practical necessarily.

The second question I have is let's say someone is vexatious, truly vexatious, is complaining non-stop about something or other and is labelled a vexatious complainant. All of a sudden maybe the guard now knows that this person is vulnerable because he or she can't really complain as easily any more. So they get into some kind of rivalry, where now the person who was labelled a vexatious complainant for good reason is actually the subject of some kind of recrimination or has a legitimate complaint.

Under the bill, as I understand it, the person can still make a complaint, but the evidentiary standard is higher. What does this mean, that the evidentiary standard is higher? If somebody says the guard is not letting him or her out on time to go to the prison yard, how do you prove that? What does it mean? What kind of additional proof would be required? This is all undefined.

I don't know if you would like to comment on that.

• (1620)

**Ms. Kim Pate:** I share those concerns in terms of how you would define it. Right now, as Louise Arbour said, as the Human Rights Commission said, as virtually everybody who has reviewed this has

said, that's an ongoing concern. It's usually the prisoner's word against the staff.

I'll just take Ashley Smith's case again, because all this is about to come out publicly. When it was documented that she was out of control, and then you view videotapes that showed just the opposite, it's hard to imagine how.... She might very well have been deemed a vexatious griever had she had the opportunity, or had her grievances been taken seriously. In the end, she hardly filed. She didn't file that many. And the ones she did file were pretty serious grievances. But they weren't taken seriously anyway.

Your concern about how you get a mechanism for review is very legitimate. Our concern is that the law already provides for all of the kinds of reviews that.... Mr. Leef talked about the fact that you can review someone who has been labelled a vexatious griever. There's nothing precluding that right now from happening. Anything that would increase the standard for the ability of prisoners to actually argue this.... I don't know how they could legitimately ever be able to do that.

**Mr. Francis Scarpaleggia:** I think there's a six-month review of the person's designation as a vexatious complainant. I'm not quite sure who would do that review. I'll have to look at the bill again. If someone on the other side knows, maybe they could inform me.

**Ms. Kim Pate:** It says "The institutional head shall ensure a plan is developed to assist...".

**Mr. Francis Scarpaleggia:** Do you get a sense that vexatious complaints are gumming up that system?

**Ms. Kim Pate:** I don't get that sense. I think that in situations where there have been individuals who have laid excessive complaints—and only a couple have been brought to my attention previously—they have been dealt with.

**Mr. Francis Scarpaleggia:** I guess if you're always complaining that your ice cream is too cold, it's a form complaint, and I would think that you'd get some kind of a form response every time.

**Ms. Kim Pate:** The types of complaints I'm more familiar with are about being strip-searched when the law doesn't provide that someone should be; being denied access to programs someone needs access to in order to complete their correctional treatment plan; being placed in segregation without receiving the requisite paperwork; being held in segregation for extended periods and not being provided with access to their cell effects or the entitlements they have; being denied access to the yard when they should have it; being denied access to ceremonies if they're indigenous prisoners; or, in Ashley's case, being denied access to even knowledge of what the correctional treatment plan was for or of how she would get out and being denied assistance to actually have her conditions of confinement reviewed.

**Mr. Francis Scarpaleggia:** The other thing is the recommendation by Dr. Mullan that there be a cap on the number of complaints. Mr. Leef brought up a good point, which was what if all these complaints were valid? If you're putting a cap on them, then obviously you're somehow violating the complainant's rights. But in real life, in real practice, if there's a cap of—I don't know—200 a year, what are the chances, really, that all of these will be legitimate complaints? There are only a certain number of things that can occur in a prison environment. A complaint has to be about food or about confinement.

Theoretically I take Mr. Leef's point, but in practice I would think that if somebody hit the cap then the chances that all of these were legitimate would probably be slim to almost nil, I would think.

**The Chair:** Thank you, Mr. Scarpaleggia.

You can give a very quick answer, if you want to.

**Ms. Kim Pate:** I don't see anywhere that he actually indicates a cap. He does mention in one case a figure of 300, but I'm....

**An hon. member:** No, it says there were—

• (1625)

**The Chair:** Okay, thank you.

We'll now go to the New Democratic Party, please.

[*Translation*]

Ms. Morin, you have five minutes.

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

I would also like to thank Ms. Pate and Ms. Latimer for joining us today.

Earlier, we were briefly talking about people with mental illnesses and about frivolous complaints. But some things may seem frivolous to us, but they may not be seen that way by someone dealing with a mental illness.

Is it possible that this bill may no longer allow us to identify people with mental illnesses who need help? And is that something that itself could prevent tragic accidents like the one involving Ms. Smith, for example.

[*English*]

**Ms. Kim Pate:** I suppose there's always a potential that it could happen. It's a concern right now that too often the complaints aren't taken seriously in those sorts of situations.

[*Translation*]

**Ms. Marie-Claude Morin:** Okay.

[*English*]

**Ms. Kim Pate:** Catherine has a correction. She found the part. Dr. Mullan said he would consider a multiple grievor as someone who, on a rolling monthly basis, "has filed more than one hundred complaints and grievances during the previous twelve months".

I don't want to misstate this.

**The Chair:** Please continue, Ms. Morin.

[*Translation*]

**Ms. Marie-Claude Morin:** Thank you.

Bill C-10 will be in effect soon, so the prison population will inevitably increase, as will the problems of dealing with complaints.

Does preventing inmates from filing complaints run the risk of causing reprisals and violence in prisons and possibly endangering public safety? Is that a theory you would confirm?

[*English*]

**Ms. Catherine Latimer:** Certainly the Ontario ombudsman, who has seen.... Ontario prisons have seen an increase in population base, in many cases. Over the last 18 months or so, he has seen a significant increase in complaints about violence against inmates, either by other inmates or by guards. He is doing a very detailed investigation of the violence within the Ontario corrections system.

It's pretty well known that if you increase the density of inmates and the numbers that are going to be double-bunked, you're going to see more violence problems.

**Ms. Kim Pate:** One mechanism that already exists in law, as we've mentioned, is the grievance committee, which hasn't been put in place. The law provides for a committee to be set up with equal numbers of prisoners and equal numbers of staff. They could then review complaints and assess whether in fact they are seen as legitimate to proceed forward with.

It strikes me that enforcing or encouraging that mechanism to be put in place in all of the institutions, particularly as there are more numbers and fewer job opportunities, would provide a way for people to have some training around this process: how to do legitimate complaints, how to have their concerns raised.

You met some of the women, at the forum the other day, who have been through that kind of process. I mean, those are skills that are transferable. When you get into the community, you can then advocate on your own behalf.

It strikes me that this might be a mechanism that could be supported—to have the complaint and grievance committees set up in all of the institutions and provide a more fair process.

[*Translation*]

**Ms. Marie-Claude Morin:** Yes, the Mullan report raised the question of dealing with some complaints a little more informally. It said that about 45% of complaints could be resolved in that way and they would not necessarily have to go up a level in the hierarchy. That would ease the process a great deal.

Basically, as I discuss this with you, I am coming to the conclusion that perhaps it is the grievance system that needs to be reformed in its entirety. It is not a question of dealing with marginal cases, but of reforming the complaint system for the prison population as a whole.

[English]

**Ms. Kim Pate:** It certainly has been the subject of our recommendations for a number of years, as well as Louise Arbour's and many of the Correctional Investigator's. Certainly it would be beneficial to see a shoring up of that process to assist in having prisoners be able to serve their sentences in a way that is lawful and follows the rules.

● (1630)

**The Chair:** Thank you very much, Madame Morin.

We'll now move to Ms. Hoepfner, please, for at least three minutes.

**Ms. Candice Hoepfner (Portage—Lisgar, CPC):** Three minutes?

**The Chair:** Well, you get five, but we're going to....

**Ms. Candice Hoepfner:** Okay. Thank you very much.

I want to thank both witnesses for being here again.

Two days ago we heard from Ms. James on this bill, so we started to get a bit of a sense of where the concerns were. There did seem to be some concern from the opposition that this bill could possibly give too much power to the commissioner, which he could possibly abuse; that was suggested.

In fact, one of the members was talking about this scenario:

What happens if you have somebody who hasn't been acting in good faith...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.

Is that something that you would be concerned with as well? Are you concerned that our correctional officers may take advantage of this and, if given the opportunity, as this member said, "really give it to the offender"?

**Ms. Kim Pate:** I think in any kind of human service there's always a risk that some individuals will act inappropriately. As an overall concern, would it be a concern that people would purposely go out to harm others? No. But we have far too many examples—Ashley Smith is another one—of where a mentality can intervene that, sadly and tragically, results in people being treated in inhumane and unfair ways.

**Ms. Candice Hoepfner:** So you would share that concern—

**Ms. Kim Pate:** I would share the concern that it could be a possibility.

**Ms. Candice Hoepfner:** —that it could be a possibility that a correctional officer would—

**Ms. Kim Pate:** Most of the correctional officers I know, and I think most of them in the system, would support the grievance process and would support the need for that and for people to have legitimate means. There certainly are always exceptions to that.

**Ms. Candice Hoepfner:** Thank you.

**Mr. Francis Scarpaleggia:** Can I just clarify the statement that—

**Ms. Candice Hoepfner:** You don't want to let me just finish?

**Mr. Francis Scarpaleggia:** Oh, okay.

**The Chair:** We're just finishing up.

**Ms. Candice Hoepfner:** I just want to make a very quick point.

Thank you for that. I think that would lead to my next comment.

All of us support the complaints process. I think it will be interesting when the commissioner comes, to hear exactly how the process works. But as I read this bill, individuals actually even have the latitude to make some vexatious complaints, which actually gives room for people who may be having a mental illness issue, or they might have an issue that might not seem valid to us, but to them it is. It gives room for that because this bill doesn't say if you make one vexatious complaint, which by the way, according to Webster's, says, "Denoting an action, or the bringer of an action, that is brought without sufficient grounds for winning, purely to cause annoyance to the defendant." So that would be the definition of vexatious according to Webster. This bill actually allows individuals to do that. It actually allows for some vexatious complaints. It does not allow multiple complaints or grievances that are vexatious, frivolous in nature, or not made in good faith.

I don't understand, and I really would like to understand, because I know both of you are advocates for inmates. I think I told you before that I volunteered for many years at Stony Mountain, and I believe a lot of hope and healing can come to prisoners. I just see this as such a good, positive bill that actually would give more room to people who are making legitimate complaints, like the ones you referred to when you said that when you hear about complaints, it's about people not having a plan or not having access to treatment. Those were all complaints that should be addressed. I guess I just don't understand.

It would be so refreshing to have applicants come in to say this actually is a good step forward, that there's more work that needs to be done, but it's a positive step. It's sometimes disappointing that it takes so much to get that positive feedback when I think we really are trying to do the best thing in terms of our correctional system. This complaints process should be strong. It should be something inmates know they can count on and that they won't be penalized. I think this does that.

I hope you look at this again, and that we could count on your support for this bill.

**Ms. Kim Pate:** I think it's unfortunate that this is how our interactions are heard. I think the law already does provide for that. I think the sentiment of wanting to shore up the complaint and grievance system is not necessarily communicated in this bill. In fact that could be communicated in a very different way by providing recommendation through cabinet, perhaps—not that it's my job to tell anybody how to do their job, but to encourage them to shore up that process rather than spend a lot of time and energy and money on a new bill.

**Ms. Candice Hoepfner:** Do you see anything positive in being able to stop multiple vexatious and frivolous complaints? Do you see anything positive in that?

● (1635)

**Ms. Kim Pate:** We have never spoken against that.

**Ms. Candice Hoepfner:** Okay, so that is a positive step.

**Ms. Kim Pate:** It doesn't need legislation. We already have the legislation. So we're not in any way opposed—

**Ms. Candice Hoepfner:** Okay, so your opposition would be on who is making that determination, now that it would be the commissioner.

**Ms. Kim Pate:** No. The concern is that we already have the provisions in law. The commissioner could do it, or he or she could delegate it to a supervisor. They could have the mechanisms in place. The problem is the mechanisms aren't there in place to ensure the protection. The concern we have about the grievance system is not with vexatious complaints, it's with all the complaints that aren't being dealt with. So it's not a reflection of not supporting—

**Ms. Candice Hoepfner:** It's not this. You're actually speaking about something completely different in terms of legitimate complaints not being dealt with in a timely manner. But you do agree, then, with the concept of being able to label somebody as a multiple vexatious complainant?

**Ms. Kim Pate:** We've never spoken against that. The problem is that this bill isn't required to do that. So we'd rather not see a waste of the taxpayers' dollars.

**The Chair:** Thank you very much.

I think you've given us an opportunity to come with some good questions to the commissioner, so we appreciate that. Some of the points you just made.... We can ask about the process when the commissioner appears.

Also, on behalf of the committee, or actually on behalf of myself, I guess, we would like to apologize to both of you. My understanding is that we had to change rooms after the confirmation was sent to Ms. Pate and Ms. Latimer, and there was no update sent to them. So when you came here running and huffing and puffing, we appreciate that you did everything you could to get here as quickly as possible. We will take the blame for that.

Thank you for being here.

We are going to suspend momentarily, and then we will go in camera to deal with committee business.

*[Proceedings continue in camera]*

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