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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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• (1530)

[English]

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

This is meeting number 32 of the Standing Committee on Public Safety and National Security, on Tuesday, March 27, 2012.

Today we're continuing our consideration of Bill C-293, an act to amend the Corrections and Conditional Release Act, vexatious complainants.

Towards the end of today's meeting we have reserved approximately ten minutes in order to deal with some committee business. We'll go in camera for that.

In our first hour and 40 minutes we're very pleased to have, and to welcome back to our committee, Mr. Don Head, Commissioner of the Correctional Service of Canada. On the same panel, we have Michael Côté, director general, rights, redress, and resolution at Correctional Service of Canada; and Shane Dalton, acting analyst, offender redress.

I invite you, Mr. Commissioner, to give an opening statement explaining the department's position on Bill C-293 before we proceed to questions from members of this committee.

Again, we want to welcome you and thank you for appearing before our committee as often as you do. It's good to have you here.

Mr. Don Head (Commissioner, Correctional Service of Canada): Thank you, Mr. Chair. Given the time of year, I've been debating as to whether I'll declare you dependants on my income tax, I've been here so often.

Anyway, good afternoon, Mr. Chair and members of the committee. I'm pleased to have the opportunity to appear before you today to discuss Bill C-293, which would make amendments to the Corrections and Conditional Release Act to identify and manage offenders who could be considered vexatious complainants.

I'm joined this afternoon by Mr. Michael Côté, the Correctional Service of Canada's director general for rights, redress, and resolution; and Mr. Shane Dalton, acting analyst, offender redress.

I would like to begin by outlining the current offender complaints and grievance process and providing you with some facts and figures. I will then briefly discuss the impact on CSC should Bill C-293 come into force.

The complaint and grievance process provides offenders with a means of redress when they are dissatisfied with an action or

decision by a staff member. Providing offenders with a fair, impartial, and expeditious complaint and grievance process is mandated by law. It also has many benefits. Among these, it encourages offenders to deal with issues in a pro-social manner. It empowers them and provides another forum whereby their concerns can be heard and dealt with appropriately. The process can also be used as a monitoring tool to identify trends that are linked to increased tension or discontent among the inmate population.

This is a four-level process. Offenders must first submit a complaint to a correctional manager or their case management team, who will seek to resolve the issue at the lowest level possible. If this is not possible, the offender can submit a first-level grievance, which is responded to by the institutional head. Any grievances unresolved at the institutional level then proceed to regional headquarters, where the regional deputy commissioner is the decision-making authority. Finally, if the grievance cannot be resolved at the regional level, it's elevated to national headquarters, where a comprehensive review and analysis of the grievance is completed within the policy and research sector, and submitted to the senior deputy commissioner, to whom I have normally delegated my decision-making authority.

It should be noted that if an offender is not satisfied with the decision at any level, he or she can seek a legal remedy, normally through the Federal Court.

In fiscal year 2010-11, CSC received 28,858 complaints and grievances. This fiscal year we have received about 26,717 up to February 26, 2012. Last year 25 inmates submitted over 100 grievances each. They are the frivolous or vexatious grievors who are the focus of this bill. Within this group of 25 there are a small number who submit many hundreds, as in more than one per day.

By way of explanation, we consider "frivolous" to mean that the complaint was submitted with no serious purpose; "vexatious" encompasses grievances submitted for the purposes of harassment for their own personal means, or to disrupt the system. Both are equally disruptive and consume hours of analysis and review by my staff.

On the financial costs of the process, last year over \$3.8 million was dedicated to the salaries of the grievance analysts and operating costs. This year the figure is over \$5 million. This increased cost is because CSC has made significant investments in the offender grievance process in order to increase the potential efficiency and effectiveness of this program, as well as to provide adequate and appropriate resources.

Specifically, CSC recently launched a pilot program based on an alternative dispute resolution process, with approximately \$1 million of dedicated funds. An additional \$1 million was allocated to address the anticipated increase in offender grievances and the backlog of grievance responses at the second and third levels.

Should Bill C-293 come into force we believe it will be much easier for CSC to identify and manage these offenders. The Corrections and Conditional Release Act would be amended to allow us to create a specific policy that would provide a process required to identify an offender as a vexatious complainant. This internal policy would lay out the steps required to assess and identify an offender as vexatious, including how the offender would be notified of the decision.

•(1535)

Staff inside institutions, at regional headquarters, and at national headquarters will have more time to focus on offenders who do not misuse the system and ensure that high-priority grievances are addressed in a timely manner. It will limit the ability of vexatious complainants to monopolize the grievance process and attempt to use this very legitimate system for illegitimate means.

As the honourable member who sponsored this bill pointed out, these changes would also be of ultimate benefit to the vexatious complainants themselves. A single-minded focus on lodging complaints is counterproductive to the correctional process. Offenders' time would be better spent on following their correctional plan in order to better prepare them for release and ensure safer Canadian communities.

Mr. Chair, as I indicated previously, the complaints and grievance process is an important part of the federal correctional system. It provides vital checks and balances to ensure the Correctional Service of Canada carries out its mission and mandate while respecting the fundamental rights of offenders. We must take seriously any allegations that CSC has failed in this regard. Unfortunately, the efforts of a small number of offenders who abuse this process take precious time and resources away from offenders who avail themselves of the system with legitimate intentions.

This bill will hold to account those who disrupt a well-functioning redress mechanism. It would alleviate pressures in terms of time and resources and it would reaffirm the commitment of the Correctional Service of Canada to a fair, impartial, and expeditious complaint and grievance process as mandated by law.

Thank you once again for the opportunity to appear before you today. At this time I would be happy to answer any questions you may have of me or my staff.

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

We'll move right into the first round.

We will go to Mr. Leef, please, for seven minutes.

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

Thank you, Mr. Commissioner, Mr. Dalton, and Mr. Côté, for attending today.

We heard some testimony in the past when we were looking through this bill. There was concern about what the definition of

frivolous or vexatious would be. I have just a quick question then. I've read your explanation of it. Are you comfortable with that standard, that those definitions of frivolous or vexatious achieve the goals you want of identifying and reducing the number of those types of complaints?

•(1540)

Mr. Don Head: Yes. In terms of the definitions themselves, we're satisfied. We've used those definitions for several years now. They guide our managers at the site level. They guide our analysts in terms of preparing responses. I think for us the issue is not so much the definition—at least from our perspective anyway. We think the definitions are clear. It's the categorization of the actual complaints and grievances, against those definitions.

Mr. Ryan Leef: Okay, fair enough.

There was some question in the past meetings, as well, about what would actually constitute a frivolous or a vexatious complaint. We've heard a couple of minor examples. I was just wondering if you have a few examples that you could highlight to really illustrate what we're talking about here in terms of what would be frivolous—maybe an actual complaint, if you have one.

Mr. Don Head: Sure, I'll give you a few.

I personally have, throughout my career, dealt with complaints and grievances. I've dealt with them as a front-line manager in an institution, at the second level at regional headquarters, and at national headquarters when I was in the role of senior deputy commissioner. Here are some examples of frivolous grievances.

An individual complains about not getting access to the doctor in a timely way. We go back; we analyze that; we determine that, yes, there probably could have been something that could have been done differently; and we schedule that individual for the next time the doctor comes in. So for all intents and purposes the issue is dealt with.

The way the law is currently written, that individual, even though the issue has now been resolved, can still file a grievance and just complain about the fact that it wasn't resolved in a timely way by our own admission and carry it on to the next several levels in the grievance system. That type of grievance serves no purpose at all because the issue brought forward was identified as being a shortcoming by staff and was rectified, but now the offender is using the opportunity within the legislation and the policy to continue to just push a point through the various levels, and each level requires a response.

Mr. Ryan Leef: You've identified in your report that there are approximately 25 inmates who account for a great number of the complaints, and questions have been raised in the past that the characterization, or profile—for lack of a better word—of these offenders would be people with mental health issues, and inmates with no education who don't necessarily understand how to read and write and express their thoughts.

Would that be a fair characterization of the 25 inmates who you deem to be frivolous or vexatious complainers? Is it correct to say that they either have mental health issues or that they're under-educated to the point that they don't understand what they're doing?

Mr. Don Head: No, I don't think it as simple as that, categorizing in that way. Are there some who have some mental health issues? Yes, there are some. There are some well-educated individuals who fall into this category. We actually have a very good profile of the types of individuals who have been filing these grievances.

I'll take a few seconds to add a couple more stats, which I think will be relevant. Although we're talking about 25 offenders who have filed 5,215 of the 28,000 grievances I talked about, or about 18% of complaints and grievances, those are individuals who have filed more than 100 grievances. If I back the scale up a bit, and talk about individuals who have filed more than 25 grievances in a year, it's 136 inmates who file 9,857 grievances, for a total of about 34% of all the grievances filed. And that's 136 inmates out of a total of 6,213 inmates who filed grievances in the fiscal year I'm talking about. So 2.2% of the offenders are filing more than 25 grievances a year, which account for 34% of all the complaints and grievances that we get.

• (1545)

Mr. Ryan Leef: Thank you.

In the conditions in the bill—I'm assuming you've read parts of them—there are a few that put obligations on the commissioner, and I'm assuming some of those are delegated to a degree. Proposed section 91.3 says:

The offender who has been designated a vexatious complainant by the Commissioner under subsection 91.1(2) may seek judicial review of this designation.

You'll assess the status of the offender every six months, and there are a couple of other conditions that are placed on the commissioner when this designation is met. Do you think that any of those conditions are too onerous? Do you think you or your delegated staff will have any trouble meeting the obligations that are outlined in this legislation, so that this procedure is still fair?

Mr. Don Head: Mr. Chair, I'm very dedicated to my job, and I will meet any obligation that Parliament defines in the legislation, one way or another.

In terms of the numbers, does it create an additional workload? Yes, it does. Anything that gets added is an additional workload. But there are opportunities. This committee could even consider an amendment to allow me to delegate that authority, as I can now for third level. That's a possibility. But if there is no change or amendment to that, I can definitely manage the process as defined in the bill.

The Chair: Thank you, Mr. Leef.

[Translation]

Mr. Chicoine, the floor is yours for five minutes.

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

Gentlemen, thank you for coming to share your comments on the bill. I have several questions that will probably not take too long to answer.

Pursuant to paragraph 25 of Commissioner's Directive 081, regarding offenders' complaints and grievances, the decision-maker—who is the prison warden in most cases—can reject a vexatious

complaint. That directive also provides for rejecting the entire grievance or portions thereof. That makes it possible to reject only the vexatious part. Is that correct?

[English]

Mr. Don Head: Under our current policies we can do that, but nothing stops the offender from then moving that complaint to a grievance, and moving it up the chain.

[Translation]

Mr. Sylvain Chicoine: Under paragraph 29 of that same directive, a grievor can be declared a multiple grievor, and paragraph 34 makes it possible to give priority to urgent complaints submitted by multiple grievors. Is that correct?

[English]

Mr. Don Head: Yes, and that's what our staff do now.

[Translation]

Mr. Sylvain Chicoine: That's excellent.

Section 74 of the Corrections and Conditional Release Regulations also makes it possible to reject a vexatious grievance. Is that right?

[English]

Mr. Don Head: That's right, and as I mentioned earlier, we can turn down a complaint, but that does not stop an offender from then filing a grievance.

Although they can be turned down at the complaint stage by a manager, the offender can disagree with that and then immediately move it to the first-level grievance and all the way up to a third-level grievance.

[Translation]

Mr. Sylvain Chicoine: Paragraph 33 of directive 081 also stipulates that a designation must be reassessed every six months. The bill sets out the same requirement. Can you confirm that?

[English]

Mr. Don Head: In terms of the current practice? Or are you talking about the amendment to the bill?

[Translation]

Mr. Sylvain Chicoine: I am talking about both. I think the bill mentions a six-month period, as does the directive.

[English]

Mr. Don Head: Yes.

[Translation]

Mr. Sylvain Chicoine: Finally, the only new aspect of this bill is the fact that the commissioner will designate an offender as a vexatious complainant. Everything else seems to be already included in the legislation and the regulations, as well as in directive 081. Is that indeed the case?

[English]

Mr. Don Head: No. The way I have read the bill is that with the designation, the offender would not be able to move something that would have normally been stopped under our current policy at a vexatious complaint level. Currently, they can move that to a grievance.

Under the current bill, that would not be the case. If an individual is tagged as a vexatious complainant or griever, they would then not have the ability to move it forward unless, the way the bill is proposed, they sought leave to do that or to have it managed in a different way. So there is a significant difference between the current policy and what's proposed in the bill.

• (1550)

[Translation]

Mr. Sylvain Chicoine: Absolutely, but they could still be refused for being designated as vexatious complainants. All those complaints can nevertheless be rejected by the warden.

Mr. Don Head: Yes, that is possible.

Mr. Sylvain Chicoine: Would you not feel more comfortable if clear decision-making criteria were established? The bill says nothing about the number of complaints; it only states that a complainant could be designated as a vexatious complainant. It could be a matter of only one or two complaints.

Would you not feel better if somewhat stricter standards provided you with a bit more guidance in designating a vexatious claimant and if, for instance, there was a set number of complaints that person would have to have submitted?

[English]

Mr. Don Head: I would actually be reluctant to have anything that was driven by a specific number. It would allow certain individuals to just keep flooding the system until they got to that number. I don't see that being practical. I think that with the kinds of definitions we've used.... Also, for us, one of the things we have been looking at very carefully are the criteria that the Federal Court and other provincial courts apply in terms of determining a vexatious litigant—looking at those kinds of parameters as opposed to something that's guided by a number.

[Translation]

Mr. Sylvain Chicoine: The Mullan report pointed out problems in terms of rendering decisions within the timeframes set out in directive 081. Many complaints that could be seen as vexatious are actually repeated complaints for the Correctional Service of Canada to respond to those complaints within the established timeframes.

Wouldn't the problem be partially resolved if the Correctional Service of Canada was meeting the timeframes? The report went as far as to recommend that timeframes be shortened in order to expedite the process.

[English]

Mr. Don Head: No. It's more than just the timeframe issue.

For us, we do have vexatious complaints and grievances that.... Just to go back to the definition I shared in my opening comments, we do have offenders who file what we consider vexatious complaints, for the purposes of harassing staff. It's not unusual for certain individuals to send us grievances that make their way all the way up to the third level that say "I want the warden fired". That's the essence of their grievance. Or, because staff members are doing their job on the range, they will claim that they are being harassed by the staff member. They will name every staff member on the shift and file a grievance for every staff member.

These are more than a timeframe issue. These are purpose-driven complaints and grievances that are meant to target individual staff members.

[Translation]

Mr. Sylvain Chicoine: Wouldn't it have been better to introduce a bill that would address the general issue of complaints management? I am saying this because, the Mullan report, for instance, also states that there are too many levels, and it implies that the second level is completely useless.

If the second level were removed to allow the prison to be more independent and even to appeal to the commissioner's office, wouldn't the bill be more adequate?

[English]

The Chair: Thank you, Mr. Chicoine.

Mr. Don Head: That's a piece of a larger formula; it's more than just that. You have to look at these types of complaints and grievances separately from the other, legitimate ones.

The Chair: Thank you.

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

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

Thank you to all the witnesses.

Mr. Head, the proposed bill uses and we have talked about two terms somewhat interchangeably; those two terms are "complaint" and "grievance". We use them almost interchangeably in this committee, and I'm not entirely certain that as a matter of law they are.

Does your service distinguish between a complaint and a grievance?

Mr. Don Head: Yes, we very much do.

For us, a complaint is the beginning of a discussion around an issue. Ideally, we would like to see, when an offender has a complaint about something, that it's resolved at the lowest level possible in the organization—resolved with the front-line staff member or front-line manager. If it can't be resolved, or if the offender inmate is not happy with that answer, then they can bring forward a grievance, which then has some very specific timeframes attached to it.

• (1555)

Mr. Brent Rathgeber: Does that trigger the right to a hearing?

Mr. Don Head: It triggers a more formal process, in terms of documentation that's followed, the guidelines setting timeframes, categorization of the issue—

Mr. Brent Rathgeber: Do complaints or grievances have to be filed in any specific form, or can I just write something out on a piece of paper, hand it to one of the officials, and have that constitute filing a complaint?

Mr. Don Head: We have specific forms, but we've made it clear that at the end of the day an offender can submit it basically on a piece of paper, if they don't have access to the form for some reason or if there weren't enough copies on the range. It can take the shape of a formal document that we have in place or a piece of paper that then triggers the rest of the process.

Mr. Brent Rathgeber: In law, specifically in labour law, "grievance" has a very specific definition in terms of what it triggers by way of a response. I asked this a second ago, and you started answering, and then I asked you about forms. Does the filing of a formal grievance trigger the right to some sort of hearing?

Mr. Don Head: It triggers the right for the offender to put forward their case. There are a couple of occasions at the lower levels when the offender, once they've filed a grievance, can ask that the matter be referred to an inmate grievance committee or to an outside review board at the first level. A grievance would trigger those kinds of opportunities as well.

Mr. Brent Rathgeber: If the grievance is filed against a specific official from the Correctional Service of Canada, is that individual allowed to attend and represent himself or herself?

Mr. Don Head: There isn't a formal hearing, such as in a board room, but what would happen is that the individual who is responsible for investigating the matter would get the viewer perspective or the story of the particular staff members named.

Mr. Brent Rathgeber: Statistically, you have 28,800 complaints and grievances. Would you be able to break those down as to how many are complaints and how many are grievances?

Mr. Don Head: Yes.

Mr. Brent Rathgeber: Do you have that number handy?

It appears to me that the grievance is something that you take quite a bit more seriously in terms of your response.

Mr. Don Head: Yes.

We take it all very seriously and we try to encourage inmates to work with our front line supervisors and managers to resolve a complaint so that it doesn't become a formal grievance. It's part of the reason that we've implemented this pilot project around alternative dispute resolutions.

Mr. Michael Côté (Director General, Rights, Redress and Resolution, Correctional Service of Canada): The number of complaints so far, in percentage terms, is that 71% are submitted at the complaint stage. Then it goes to the first level. About 11.6% are escalated up to that level—

Mr. Brent Rathgeber: Oh, I missed this. In order to file a grievance, must it have first been filed as a complaint?

Mr. Michael Côté: That's correct.

Mr. Brent Rathgeber: Okay.

Do you keep statistics as to how many of these complaints and grievances are successful? By successful, I mean that the filer has received some sort of satisfaction and that the commission has done something to remedy the alleged complaint or grievance. Do you keep those stats?

Mr. Don Head: Yes.

We have stats for all the levels, but I'll give you an example of the third level, which is my level or that of my delegate, who is the senior deputy commissioner.

At the third level, 32% of the grievances that came to the third level are either upheld or upheld in part. Actually, the vast majority of those are upheld in part. They're usually upheld in part because the timelines at the lower levels were not met and the inmate has made that part of the grievance. We end up upholding the fact that they had a late response.

But 55% of those that come to the third level are denied, and some 20% are rejected for various reasons.

• (1600)

Mr. Brent Rathgeber: How does this system overlap or interact with the office of Mr. Howard Sapers, the Correctional Investigator? I've always been of the view that it was his job to investigate complaints against the service.

Mr. Don Head: He can investigate basically anything he wants. He may get complaints from inmates directly that do not come through either our complaints or grievance system.

That's why if you try to compare numbers in his annual report with our statistics, they will never match. He's dealing with the complaints that come in; under the law, though, my staff and I are responsible for responding to the grievances of offenders. He's responsible for responding to complaints that come directly to his office.

Mr. Brent Rathgeber: Do I have any more time?

The Chair: You have 30 seconds.

Mr. Brent Rathgeber: Thank you very much.

The Chair: We'll now move back to Mr. Scarpaleggia, please, for seven minutes.

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

Welcome again, Commissioner and guests.

Is there an external review committee as well?

Mr. Don Head: There is the opportunity under the regulations for a grievance to be referred to an inmate grievance committee. Right now, we only have six active in our 54 institutions. As for an outside review board, which is sometimes made up of citizens advisory committee members, there are only nine that are active in the 54 institutions we have across the country.

The inmates are not asking for them to be referred to the inmate grievance committee or to the outside review board.

Mr. Francis Scarpaleggia: It's up to the inmate to decide whether he or she wants to take this complaint either to an inmate review board or an external committee—is that right?

Mr. Don Head: For the most part it is, yes.

Mr. Francis Scarpaleggia: Of the 25 inmates who are filing 100 or more complaints, is that—

Mr. Don Head: That number includes complaints and grievances.

Mr. Francis Scarpaleggia: Is it grievances as well?

What percentage of them would you say are from perhaps psychologically distressed or mentally ill inmates who are not doing this for fun, if you will?

Mr. Don Head: Based on the current cohort of 25 we're talking about, we didn't find anything on their files that suggested that any of them had significant mental health problems.

Mr. Francis Scarpaleggia: There were no mental health issues with these people?

Mr. Don Head: No. There may be some minor mental health issues, but they're not showing up as acute mental health cases.

Mr. Francis Scarpaleggia: Okay.

Given the large number of complaints and/or grievances from each of these 25, would the complaints all tend to be similar for each individual?

How many complaints can you possibly have? Would it be something like "My dinner is too late" or "My dinner is too cold"? Someone mentioned a possibility I hadn't thought of, that maybe their medications—insulin, for example—were not arriving on time.

The range of potential complaints and grievances must be fairly limited, I would think.

Mr. Don Head: Actually, you'd be surprised at what people can complain about.

I think a member of this committee used an example of somebody complaining in the past about their ice cream being too cold. That was a real complaint. We've had complaints in which individuals have said that their egg was too small.

You know, when you have 24 hours of time on your hands in a day, it's amazing what people will come up with.

Mr. Francis Scarpaleggia: There's a wide range for each of those complainants.

Mr. Don Head: Yes, and again without trivializing all of them, some legitimate complaints and grievances come forward. We're obviously always concerned, and that's why we prioritize or make urgent things around life, liberty, and safety issues.

Mr. Francis Scarpaleggia: How would you investigate a complaint like "my egg is too small"?

Mr. Don Head: Other than having the egg produced, we would look at the menu for the day. We'd look at the quantity of eggs that were produced, realizing that chicken eggs come in varying sizes in the carton that you and I buy, and there's a chance his egg was a little smaller than Mr. Côté's or Mr. Dalton's who are next to him. At the end of the day, that may have been the luck of the draw. Those are sometimes simple to resolve by saying not much can be done about that, but because of the way the law is written right now, when we give the answer back to the offender saying we can't do anything about it, the meal met the dietary requirements, etc., he can be unhappy with that answer and then immediately file a second-level grievance.

• (1605)

Mr. Francis Scarpaleggia: Would something like that get all the way up to your level?

Mr. Don Head: Yes. I've responded to small eggs, cold ice cream kinds of—

Mr. Francis Scarpaleggia: But by the time it gets to your level, I would imagine you have a form response for this kind of thing.

Mr. Don Head: Given the fact that after a final-level grievance decision an offender can make the decision whether they want to pursue this in Federal Court under a judicial review, we go through the same documentation as if it were a life, liberty, security issue.

Mr. Francis Scarpaleggia: How many complaints or grievances would make it to a Federal Court review?

Mr. Don Head: Over the last five years there have been about 160. In the last three years we've been averaging about 17 a year. Most of those are found in favour of the crown or are dismissed. Very few are upheld by the Federal Court.

Mr. Francis Scarpaleggia: Could a so-called trivial complaint make it to Federal Court?

Mr. Don Head: It's quite possible, yes.

Mr. Francis Scarpaleggia: Who would fund that kind of case on behalf of the complainant?

Mr. Don Head: We do. I have to pay for my justice department lawyers to argue those cases. We have to go through determination as to whether we're going to fight it or mediate, whatever the case may be.

Mr. Francis Scarpaleggia: An internal review of the complaints process was done in 2009. Why was an external review done subsequently?

Mr. Don Head: Partly in response to issues that the Office of the Correctional Investigator raised about whether our internal review was biased or not, I agreed with no hesitation to ask for an external review of our process. Our internal review looked at a slice. We asked to have the external one look at it more widely, with the intent of identifying whether we could make some major systemic changes to make it more effective.

Mr. Francis Scarpaleggia: Were there some suggestions for major systemic changes? Did the 2010 external audit support the 2009 internal audit?

Mr. Don Head: For the most part, yes. Some procedural pieces came up in the audit review. In terms of the external review that Professor Mullan had done, he identified some things for us to consider, including what we're doing now through the pilot—

Mr. Francis Scarpaleggia: Do you think mediation could work?

Mr. Don Head: Yes, we are finding in the early stages. We have ten institutions right now that are doing ADR—alternative dispute resolution—and about 34% of the cases since November have been resolved through ADR. So we're happy with that.

The Chair: Thank you.

We'll now go back to the opposition. Mr. Garrison, please.

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

Thank you to the witnesses, in particular Mr. Head for appearing here multiple times. We always find your testimony valuable.

I think I'm going to fall into the same trap I discussed about this bill, that it tends to take our attention away from the larger contributions of a complaint system to a well-run correction system. I talked before about how this helps identify problems within institutions. It helps relieve pressure by providing an outlet for those grievances, and it does help settle individual problems. By focusing on this small group, we tend to veer away from those positive contributions. Having said that, I'm going to do that myself.

You said something interesting. You said that you have a profile on the 25, I believe, and I'm presuming also on the 136 that are the most prolific. Have you assessed any patterns to the causes there, and have you explored solutions or programming to address them?

Mr. Don Head: We looked at each of the cases. We've identified factors that are mostly unique to each individual. I'll just give you an example.

There is a case we had several years ago. An individual who was doing a very long sentence had basically done many of the programs that he could do earlier on in his sentence, now had basically time to do, and decided to start to fill his time by writing two or three grievances a day. There really wasn't much in terms of programs we could do for him. We needed to find other things to occupy his time. When we did that, then he just found things that he didn't like about how his day was being filled, and he started to complain and grieve about those activities.

We know there are some individuals who have made it their *raison d'être* to flood the system, to keep the system occupied with these kinds of grievances. There's not much we can do. A couple of these individuals were relatively high-functioning individuals, well-educated individuals, and they made a very concerted effort to flood the system. This proposed bill, or something along these lines, will help us to deal with those individuals.

Your earlier comment, from my perspective, is right on: for the vast majority of offenders who have complaints, there's some legitimacy somewhere there. Most of it is being dealt with at the complaint stage, either giving offenders more information or correcting something, or setting them on the right path to resolution. It gives us an indicator if there are certain issues developing in a specific institution. But if our time is being taken up with those very few who are flooding the system with a significant number of frivolous and vexatious grievances, we're not able to serve the vast majority of offenders who may have some kind of legitimate issue.

• (1610)

Mr. Randall Garrison: Of those who are filing a large number of complaints, do you find serious complaints mixed in with the what you call frivolous and vexatious? Or would you find simply 100% of them frivolous and vexatious?

Mr. Don Head: The odd time there is something in that mix or in that list that has some merit, but nothing I would say that would be of absolute concern from a life, liberty, or security perspective. It's usually something from a procedural perspective that wasn't followed with that individual or his case. But the odd time there is something in there that ends up being upheld, or upheld in part, more than just an issue related to timeframes not being met.

Mr. Randall Garrison: In using some kind of system like the bill proposes, where there's no volume threshold, do you see any danger that you might cast a kind of pall on the whole complaints system? In other words, people who have legitimate complaints might be reluctant to file some of those complaints for fear of being labelled and designated.

Mr. Don Head: No. Again, the vast majority of offenders who have filed complaints file fewer than ten a year. I think our average across the country is maybe four to four and a half complaints in a twelve-month period.

When you think about living in an environment where your day is very regimented, is controlled by others, four times a year where you might think you have a grievance about the way somebody managed you doesn't seem out of the norm. I don't think that's going to change anything for the vast majority of the offenders. Really, our read of this bill is targeting those 25 to 136 offenders who are submitting more than two a month.

Mr. Randall Garrison: Once these 25 or 136 are designated, then what happens with these people? Won't they simply turn to other methods of disrupting the system, if that's what you seem to be saying is the main goal?

Mr. Don Head: That's a good question. Depending on how this bill takes final shape and the processes that are in place, there's still going to potentially be the opportunity for them to bring forward issues. How they get reviewed or the frequency with which they get reviewed is yet to be determined.

Mr. Randall Garrison: Thank you.

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

Ms. Hoepfner.

Ms. Candice Hoepfner (Portage—Lisgar, CPC): Thank you very much to all three of you for being here.

As I'm listening to this I'm shaking my head and thinking that a lot of Canadians outside of the Ottawa bubble would be shaking their heads, rightly or wrongly, because we have a process whereby convicted criminals can tie up the system by complaining that their egg is too small or their ice cream is too cold, and that process can go all the way to you, Mr. Head, and it possibly could go to court.

When we have people around this country.... Whether it's health care, education, food, housing, we know the challenges that law-abiding Canadians face. And hearing that we have a system in place.... I would just say, Mr. Head, that you are a much more patient man than I am a patient woman. I would really have very little patience for that, so it's good that you're doing that job.

I'm wondering if you could tell me how front-line officers react when they have to deal with this kind of.... And let's be clear, we're not talking about just one vexatious complaint. This bill would address individuals who make multiple vexatious complaints or grievances. Can you please tell us how front-line officers feel about the ability of inmates to do this, and how they feel about this bill?

• (1615)

Mr. Don Head: Thank you. That's a really good question.

This committee has heard me speak volumes before about how proud I am of my staff. They are ultimate professionals in terms of the job they have to do, day in and day out.

It is a challenge for them, whether it be the front-line correctional officers, parole officers, program delivery officers, nurses, and other staff who are sometimes the target of these multiple vexatious and frivolous grievances. It takes a toll, because in the vast majority of investigations into those complaints and grievances.... The staff have done their jobs, they've done them well, and they continue to act as professionals. But when you have certain individuals who continually file grievances against them....

You can imagine, given your previous profession, what it would be like to have a couple of citizens constantly filing grievances about the way they thought you interacted with them. At some point you step back and start to feel, "Am I doing a good job? Is this the job I want to be in? Is this the kind of environment I want to be in, where individuals are allowed to get away with making those complaints?" And there's really no recourse to their filing those in a frivolous and vexatious manner.

Ms. Candice Hoepfner: Are you saying the correctional officers who would be the target of these vexatious complaints really have no way of defending themselves, even in the sense of clearing their good names?

Can you give us an example, without actually giving us any names, of a vexatious complaint that was made against a specific correctional officer? Was that correctional officer able to defend himself or herself and able to come out of the whole process with head held high, or would it have been demoralizing in many ways?

Mr. Don Head: I'll use the example of a maximum security institution. A good example is when an inmate is playing the radio and turns up the volume. They do that for all kinds of reasons. Security problems are created when that happens. The staff member will go down the range and ask the offender to turn down the radio. The offender refuses. The staff member then gives an order to the inmate. The inmate refuses. Then the inmate can potentially be internally charged for refusing an order.

The inmate's recourse then is to file a complaint, a grievance. In those cases a grievance would normally be denied, assuming that the officer interacted with the inmate in an appropriate manner. But if the inmate doesn't like that, they can file a second-level grievance and a third-level grievance, and each time we go back to the staff member and ask them to explain why they did the job they were supposed to do.

You can imagine, if you get an offender who then waits for you to show up on every shift and watches your every move and then puts in a complaint, and then a grievance on that, it really is demoralizing for the front-line staff member—knowing that when he or she comes on and is on that floor to protect the safety of the inmates and the safety of his or her colleagues, to protect, ultimately, the safety of Canadians, the offender is writing up a complaint or grievance on every step he or she is taking. It does become demoralizing after a while.

The Chair: Thank you very much.

Madame Morin.

[*Translation*]

Ms. Marie-Claude Morin (Saint-Hyacinthe—Bagot, NDP): I would like to begin by thanking Mr. Head for appearing before our committee again.

Thank you. Your testimony is appreciated. I want you to confirm something for me. As Bill C-10 will finally become law, the prison population will probably increase considerably. We know that there will be more issues with complaints management because there will be more people in prison. Can you confirm that?

• (1620)

[*English*]

Mr. Don Head: I've been in front of so many committees over the last little while I can't remember what I've told to what committee.

The population projections we put together back in 2008 have not come to fruition. The growth in our population is significantly less than what it has been. There has been an increase, but nowhere near what our projections were four years ago.

[*Translation*]

Ms. Marie-Claude Morin: Aren't you concerned that preventing prisoners from complaining may result in more prison violence, which would be exacerbated by the increase in the prison population?

[*English*]

Mr. Don Head: I'm not overly concerned about this. The way this bill has been proposed and the way we've read it, depending on the number range there, between 25 and 136 inmates could potentially be deemed as vexatious grievors. That works out to maybe a maximum of two inmates per institution, at best.

As far as the kinds of concerns you're raising, I'm not overly concerned about them. Once we designate those individuals, we'll obviously need to have the staff continue to work with them. There's another issue behind why they're doing that. We want the staff to spend time working on that, as opposed to all the frivolous and vexatious complaints they're bringing forward.

[*Translation*]

Ms. Marie-Claude Morin: Apparently, Quebec's Donnacona prison is a model for other prisons in terms of complaints management. They have an informal complaints management process. According to the Mullan report, 45% of grievances are settled through a somewhat more informal process—either by inmate committees or through co-operation.

Why can't the Correctional Service of Canada adopt that approach by using existing directive 081?

[*English*]

Mr. Don Head: We are. That's why we've implemented the pilot project in ten institutions—the alternative dispute resolution. On the overall legitimate complaints that are coming through, we believe that with an ADR approach, an informal resolution process, we'll deal with the vast majority of complaints.

As Mr. Côté pointed out earlier, about 71% of all the matters brought forward are resolved at the complaint stage. This is good. We want to continue to resolve them at the lowest level possible. If they're going on to the first-level grievance, second-level grievance, and third-level grievance, there's potential for a larger problem. We want to resolve things at the lowest level. Our pilot project is intended to build on the very point you've raised.

[Translation]

Ms. Marie-Claude Morin: Do I have any time left, Mr. Chair?

[English]

The Chair: You have a minute.

[Translation]

Ms. Marie-Claude Morin: Wouldn't you prefer to have a more comprehensive bill that applies to all prison complaints? Wouldn't you benefit more from that kind of an approach?

[English]

Mr. Don Head: From my perspective this is one of the key problems. If we're able to address the issue of frivolous and vexatious, I believe there are other processes in place to deal with the normal grievances that are not filed in a multiple way by offenders. We can manage them. But the amount of time and energy we have to spend on these vexatious and frivolous grievors and grievances takes away from the time we have to deal with the others.

I have to say I'm actually pleased with the thrust of the bill, because it focuses on a specific problem area. If it were broader than that, it still wouldn't allow us to address the root issues that we know exist in our system.

The Chair: Thank you very much.

We'll now move back to the government side, and to Ms. Young.

Ms. Young, you have five minutes.

Ms. Wai Young (Vancouver South, CPC): Thank you so much for being here. Your presentation was excellent in terms of the information that you provided.

You said something just now about there being a cause behind people filing vexatious complaints. I'd be interested in knowing your thoughts around that.

In addition, when Ms. James presented her bill, proposed subsection 91.1(6) states that "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." So, first of all, what do you know, or what research have you done into how and why you manage this? Secondly, do you have any thoughts about how you're going to put some processes in place to deal with these vexatious complaints? Thirdly, if so, will this develop another system that you are then going to have to implement, manage, etc.?

• (1625)

Mr. Don Head: That is a very good question.

If the bill were not as prescriptive, there would be possible ways of getting at the frivolous and vexatious issue, which is a problem for us. The overall intent of the bill, from my perspective, is a very good one. But because of the way it's laid out there, we have to do some

thinking, and put in some processes that can be dealt with in a different way.

In terms of your first question, there are some root issues behind why these inmates are putting in these complaints. They usually do not have anything to do with the actual words they're putting on paper. It's because their time isn't being filled properly. That's our responsibility. We need to get them more engaged in programs or activities.

But under the current system, I don't have anything to persuade them to go that way when they can just continue to write about that. They can then put in a complaint against my staff that they're being harassed to go into programs, and then I've got to deal with that complaint, and those three levels of grievances.

One of the things this bill does is allow me to give that designation to certain individuals—albeit they have to meet the criteria of being persistent and not just doing this one time—and then we can work on what needs to be done, in terms of trying to get them focused on the things they need to focus on, in order that they can return to the community as law-abiding citizens.

Ms. Wai Young: Do I have more time, Mr. Chair?

The Chair: Yes, you do. You have another two minutes.

Ms. Wai Young: What I'm hearing you say—and maybe I'm picking this out of your words or something—is that in fact this bill will give you a tool to use to break the cycle of vexatious complaints, which some inmates are obviously consumed with.

What I'm hearing you say is that then you're in a cycle of complaints upon complaints, because they're going to complain about the earlier complaint upon the earlier complaint. This then gives you a tool to use to break that cycle, and hopefully get these inmates the attention and help that they need.

Mr. Don Head: Very much so. You did hear me correctly. Right now, under the existing legislation, regulations, and our policy, we can deem something to be a frivolous and vexatious complaint, but the offender can disagree with that, and then take it to a grievance. Under the scheme that is being proposed here, I have a tool that will allow me to stop that process, and then to start to work with the offender in a different way.

Ms. Wai Young: In other words, instead of a negative, spiraling complaints process where people are not able to break out of that because they just continue, you then have an effective tool to use to break them out of the cycle, and do something more positive with their time while they're in incarceration.

Just another quick question, if I still have the time, Chair—

The Chair: Make it really quick.

Ms. Wai Young: —and that is around the price of all of these complaints.

You had quoted numbers of around \$5 million this year. Of course we still need to have a system in place for legitimate complaints. Nobody is talking about getting rid of that. So if you were to take out these vexatious complaints, what is the percentage, in terms of the \$5 million in total? How much of it do you think it would be in savings that you could use for something else?

Mr. Don Head: In grosso modo terms, in looking at the 25 individuals filing more than 100 complaints a year, in terms of following the process defined in this bill, I would say it's between \$250,000 and half a million dollars a year, just with those 25 individuals.

•(1630)

The Chair: Thank you.

[Translation]

Ms. Boivin, you have five minutes.

Ms. Françoise Boivin (Gatineau, NDP): Thank you very much.

I want to thank the witnesses. This is absolutely fascinating. I do not claim to be an expert on this topic, and I am here replacing one of my colleagues, but I have a few questions off the top of my head.

I worked as a lawyer in labour law, especially in the area of collective agreements and grievance adjudication. The major dilemma is always deciding which process works the best and is the most effective and fair for everyone involved. I have always advocated the most direct processes. You have the first, second, third and fourth levels. Eventually, there's no end to the never-ending process, and you often go around in circles.

I know that my colleague Mr. Chicoine asked this already, but I'm not sure I heard your answer properly. Wouldn't it be better to reduce the number of levels in order to become more effective? If there were fewer levels, you would be less bogged down by all the complaints you receive.

[English]

Mr. Don Head: No. Again, to be clear, and I apologize if I wasn't clear before, I think as we go forward there are going to be more opportunities for us to look at how we can be more effective and efficient. That may include looking at whether it's possible to reduce some levels, but that needs to come in concert with a few other pieces, including this.

Ms. Françoise Boivin: So one doesn't exclude the other—

[Translation]

Mr. Don Head: Yes, exactly.

[English]

Ms. Françoise Boivin: —it could still be done. Because it seems a pretty heavy process, in my opinion, at this point in time, especially considering the type of grievance or complaint that sometimes you're getting. I do hope you don't have four *paliers* for somebody who has cold ice cream. I would be really pulling my hair out.

That being said, when I read the law—because it's always interesting to read the law—and you look at subsection 91.1(2)

[Translation]

proposed, you see that it says the following:

The Commissioner may designate an offender as a vexatious complainant when, in his or her opinion, the offender has submitted multiple complaints or grievances that are of a vexatious or frivolous nature, or not made in good faith.

I want to begin with my question. How do you think you, in your capacity as commissioner, will go about this? How many complaints

constitute multiple complaints? The wording “vexatious or frivolous nature, or not made in good faith” is used.

I want to go back once again to my experience as a lawyer in labour law. In the area of evocation, when we would be talking about behavioural concepts “of a vexatious or frivolous nature, or not made in good faith”.... In life, one of the most difficult things to prove is bad faith because people's good faith is always presumed.

I am trying to see how these new powers will help you and whether you will not instead be bogged down, under proposed clause 91.3, when faced with a mountain of appeals for judicial review of your decisions.

Is the system being modified and weakened through another system? That is sort of what I think about when I read this kind of legislation.

[English]

Mr. Don Head: Those are very good questions. I have a couple of responses.

I'll deal with your latter questions first. In terms of weighing down, given that this is a very significant decision being made in terms of an individual who's under the care of the state, I actually see within my organization—whether it rests with me or if I'm able to delegate it to my senior deputy commissioner—that it's the right level for these kinds of designations.

Again, based on our current numbers, I would see anywhere between 25 and just over 100 a year that could possibly be deemed to meet these criteria, and I think that warrants the most senior review within the organization, given that these people are under the state's care.

In terms of differentiating, I imagine, based on your previous career in terms of labour law, you would know when one side is bargaining in bad faith. It's just so evident to you. I've got over 34 years in corrections now, and a lot of my senior managers have many years as well. It's one of those things you can tell. At the end of the day, we're going to have to justify our decisions, because they could go to judicial review. They're going to have to be well documented, knowing that they could be subjected to judicial review, and we've got a lot of experience in that area in terms of the concept of duty to act fairly, the rule of law. So I feel comfortable that we're able to determine and distinguish frivolous and vexatious from a good grievance, for lack of a better word.

•(1635)

The Chair: Thank you very much.

We'll now go back to the government side. We're going to Mr. Leef.

Mr. Ryan Leef: Thank you, Mr. Chair.

I'm looking at the legislation again. This kind of ties into one of the questions Ms. Young was asking.

Proposed subsection 91.1(3) says, “When the Commissioner commences his or her consideration of a vexatious complainant designation for an offender, he or she shall”, and then it lists a couple of subsections. One of them says, “give the offender an opportunity to rebut the possibility of such designation” and also to “present an alternative plan or means to address the offender's issues”. That says to me that if you levy that designation on the offender, you have to give the person an opportunity to at least present an alternative plan or a means to deal with their issues.

In your opinion, would that potentially eliminate the next step of having to ensure that a plan is developed to assist the offender, which is found in proposed subsection 91.1(6), which you talked about? It could create some onerous conditions or some in-depth planning to decide how and where you would go about that. If the offenders were able to come forward with an alternative plan, most likely with the assistance of a case manager or a front-line officer, would you see that as being possible so that you would not have to invoke that subsection?

Mr. Don Head: That's quite possible, given the way it's prescribed there. It could lead to the possibility that an offender would propose an approach to dealing with the issues that we would deem much more palatable, much more acceptable, than a complaint and grievance process. That would become, again, for lack of a better word, sort of the behavioural contract between the institution or the case management team and the inmate in terms of the issues he or she may have.

Mr. Ryan Leef: Would you see that as sort of a possible first-step recommendation or perhaps a policy item? When you're going through the steps and looking at somebody being deemed vexatious or a frivolous complainant, that might be something you would suggest downward, right at the outset, to case management, as an example. You would say, “I have to give the inmate an opportunity to rebut the designation or present an alternative plan, and I strongly encourage you to work with that person now to engage in that alternative plan, for me, so that we don't need to initiate subsection 91.1(6)”.

Mr. Don Head: Again, that's one possible approach. One of the things we would do, regardless of how the bill proceeds, and whether or not it is amended, is reinforce at our orientation for all inmates who come into the system the proper use of the complaint and grievance system, what could happen if they file for a list of vexatious grievances, and what they should be doing, if they have issues, in terms of working with the front-line staff and their case management teams to avoid getting into a situation of being deemed a vexatious griever.

Mr. Ryan Leef: I want to go back now to Ms. Hoepfner's line of questioning on the impact on front-line staff.

With respect to vexatious complaints about staff, have you seen complaints that would be not just disingenuous complaints against staff but threatening, vulgar, and in bad faith? They might get to a point that erroneous allegations might even reach into criminal allegations that prove to be frivolous, vexatious, and in bad faith. If so, what impact have you seen that have on your front-line staff?

• (1640)

Mr. Don Head: We've seen some like that, on a regular basis, from some of our more repetitive submitters and multiple grievors.

The language they use, the suggestions they put forth in terms of what people should be doing to themselves, are totally inappropriate and are inconsistent with the kind of attitude and behaviour we're expecting them to change. It's the kind of attitude or behaviour that's led them to be incarcerated. So it is a problem. Again, at the end of the day, an offender can put in such a complaint or grievance. We can investigate it. We can find that it's totally unfounded. We can issue a stern letter.

How does a staff member feel good about that? You've been subjected to a review, knowing that it's unfounded. You've been treated in a very disrespectful way, and at the end of the day, there are no significant consequences. As the system stands right now, the offender can start that process again tomorrow and file another complaint and another grievance.

The Chair: Thank you, Mr. Leef.

Ms. Hoepfner.

Ms. Candice Hoepfner: Thanks very much, Mr. Chair.

Mr. Head, I'm just going to go back to proposed subsection 91.1 (6) of the bill. When Ms. James testified, she indicated to us that when she referred to the point that the “institutional head shall ensure that a plan is developed to assist”, etc., she did not intend it to be a large and onerous document. She was actually concerned—and I think there may have been some wardens who expressed some concern—that using the term “a plan” could lead to that kind of assumption, because we talk about correctional plans, etc.

Can you please comment on that and let us know if you do have any concerns with that wording in the bill? Have you heard any concerns from institutional heads?

Mr. Don Head: Thanks for that question. It actually is a concern for us. It goes to my earlier comment.

Again, I find the intent of the bill absolutely bang on, and it will help us out. The prescriptive nature in terms of the ways it's laid out there I think potentially could create some problems for us. On the language around creating “a plan”, my concern about looking forward in that, whether it's a separate plan, or whether it's part of the correctional plan, is that this will be something where, if the offender has the right, then, to go for judicial review around the designation there, we know the courts will look to the law.

They'll look to the letter of the law. If they see the word “plan”, they're going to look for a plan, so that is a concern for us in terms of a sort of a procedural step that we're now going to have to put in place and that we don't have in place now.

Ms. Candice Hoepfner: Okay. Thank you for that.

You also talked about a grievance analyst.

I'm assuming, Mr. Dalton, that you're a grievance analyst. Is that correct?

Mr. Shane Dalton (Acting Analyst, Offender Redress , Correctional Service of Canada): Yes, I am.

Ms. Candice Hoepfner: Can you just tell us very briefly—I probably just have maybe three minutes or so—a little about what your day-to-day job is like? What do you do in terms of the grievance process? What's important, what's working, and what do you have to deal with when it comes to frivolous or vexatious complaints?

Mr. Shane Dalton: By and large, in regard to what any of us analysts do, we'll get a file, and depending on what the issue is, it varies in thickness. Some of them are very small and some of them are very large. The first thing we're going to do is look at everything in the file, see what the issue is, and determine where we fall in terms of policy and what kinds of operational concerns we're looking at.

Over the last little while, I've answered predominantly grievances from grievors who have a tendency to submit multiple grievances. Essentially, the process is always the same. We look at the issue as it stands, as the inmate would present it. We're going to look at where our policies lie in terms of what we're supposed to be doing. Then it's really a question of matching it up. If the inmate himself is grieving something about operational concerns, we'll see what those operational concerns are as laid out in our policies. We'll verify to see that those concerns have been met. Then we'll respond to the grievance accordingly to make sure that it all matches up.

Ms. Candice Hoepfner: Do you actually see every complaint, or only when it...? If a complaint is dealt with at the lowest level, it wouldn't come to you. Is that correct?

Mr. Shane Dalton: No. It would have to be escalated through the various levels. I work at the third level, so for it to reach me, depending on the nature of the complaint.... Certain complaints can be submitted directly at higher levels, depending on their nature, but if you look at your more typical complaint, it would start off as a complaint, then escalate to the first, then to the second, and then eventually we'd respond to it at the third.

•(1645)

Ms. Candice Hoepfner: Would you be able to give us two examples, one example of a legitimate complaint that has come through your office, and one of a multiple vexatious complaint, just so we can hear what it is and what you're dealing with?

Mr. Shane Dalton: Legitimate complaints are anything you can think of, anything from.... By and large, a lot of these legitimate complaints deal with explanations. A lot of the time it's not so much that what is being done is necessarily incorrect; it's that the offender maybe doesn't understand why it's being done. That's by and large what these responses are: an explanation of where our policies are and the background behind what the front-line staff is doing. I mean, legitimate complaints can be anything.

As for your vexatious grievances or grievances that are not made in good faith, the commissioner referred to a bunch of them. The ones that I see are along those same lines. They are things where there's not.... You can often find it by looking at what the inmate is asking for; by and large, these are things that don't present an actual remedy.

Ms. Candice Hoepfner: So there's no explanation for why the ice cream is so cold, except that it's a frozen food.

Mr. Shane Dalton: It could even be something where it's not "This ice cream is cold"; it could be anything to the extent of "This is

ice cream. I don't like it." There's nothing that precludes them from complaining about anything. So anything you can think of can fit into that bracket.

The Chair: Thank you, Ms. Hoepfner, Mr. Dalton.

Monsieur Chicoine again.

[*Translation*]

Mr. Sylvain Chicoine: Thank you, Mr. Chair.

I just thought of a possibility. Let's say the bill became law and a complainant was designated as vexatious. I assume there are complainants who may be hated by the staff because they complain repeatedly.

Wouldn't there be a risk of those complainants being somewhat mistreated, with staff knowing full well that they will not be able to complain? It wouldn't be the majority. Only a small minority would probably do something like that, but wouldn't there be a risk of staff members taking their revenge and mistreating certain complainants, knowing they won't be able to submit a complaint?

[*English*]

Mr. Don Head: No, it's a good point. The way the bill's laid out, there is a bit of check and balance in looking at whether a serious life, liberty, or safety issue is raised by the offender and then is able to be activated and pursued.

The other avenue always available to any inmate, even under this scheme, is that if such a situation has happened, the inmate can make a call to the Office of the Correctional Investigator, and the Office of the Correctional Investigator could then investigate such a complaint.

[*Translation*]

Mr. Sylvain Chicoine: For example, a prisoner may complain that the potatoes are too small. In that case, he could be given only two or three small potatoes. That's the kind of situation I am talking about. I have another example. For instance, a mistreated prisoner may be hit over the head.

Isn't there a risk of recourse becoming limited? I perceive a risk when it comes to that, though obviously not a life-threatening one. The habit of complaining is being exaggerated. The offender submitted a complaint, which may have been frivolous in nature. From that point on, that offender will no longer be able to complain, but he will have reason to.

[*English*]

Mr. Don Head: No. And again, I feel confident that through the checks and balances, even the way it's proposed in the bill, the life, liberty, or security issues would be dealt with, and the fact that the offender could as well make the complaint to the Office of the Correctional Investigator. Again, if it were a serious liberty issue, for example, the offender could immediately seek some kind of judicial review of the matter.

To be honest, I really don't care if they're complaining about the size of their potatoes, as long as they're getting fed and it's meeting the dietary requirements, maybe meeting religious dietary requirements, that those things are being met. If you have a smaller potato today than Mr. Côté or Mr. Dalton, unfortunately, that was the luck of the draw, or the luck of the scoop, whatever it was.

• (1650)

[Translation]

Mr. Sylvain Chicoine: I want to go back to an answer you gave to Mr. Scarpaleggia. You said that 44% of complaints had been resolved since November, following the implementation of one of Mr. Mullan's recommendations.

Which recommendation were you talking about, and under what circumstances was it implemented? I would like you to talk about that again because I find it beneficial.

[English]

Mr. Don Head: We've implemented the alternative dispute resolution pilot project in ten institutions. In those ten institutions, we've been monitoring the number of complaints that have come forward. Overall, 34% of those dealt with through the ADR process—the local, mediative, informal kind of resolution approach—have been resolved. The other 66% have been resolved in other ways, through the normal complaint and grievance process. The 34% resolved through alternative dispute resolution we see as encouraging.

It's still early days. I think we're running the pilot for 18 months. We're into month five now.

[Translation]

Mr. Sylvain Chicoine: The result seems encouraging.

[English]

Mr. Don Head: Yes, exactly.

At this point, we don't have enough data to say whether this is going to have any impact on what would be deemed as frivolous and vexatious grievances. We tend to think that at least with that core 25, this probably won't change anything. For the rest of the offender population, it will help to get far more expeditious decisions, which is really what we're trying to get at.

Going back to one of the earlier questions, it's like anything, even labour law. If you tinker with one little thing, you can create a whole bunch of problems. Rather than tinkering with one thing, we're trying to make sure we have all the pieces lined up. Your suggestion earlier, if we can compress the number of levels, that's a solution, but if you do that in isolation of the three or four other pieces we have, we could end up creating more processes with more time, energy, and money being spent.

We're trying to look for the right continuum for both, for what we call legitimate grievances and for those that fall into the frivolous and vexatious category.

The Chair: Thank you very much.

We'll now move back to Mr. Rathgeber and Mr. Aspin in a split.

Mr. Brent Rathgeber: Thank you, Mr. Chair.

I have a supplemental question. I was wondering if you could tell me if there exists such a thing as a cellblock lawyer, or individuals who file grievances on behalf of other inmates. Is that a phenomenon you're familiar with?

Mr. Don Head: Yes, there are jailhouse lawyers, cellblock lawyers. There are individuals who are like that. Some profess to know things but are not really helpful. There are others who have some training and who actually teach certain individuals how to present a complaint or a grievance in a legitimate way.

Mr. Brent Rathgeber: Was that part of the problem with some of these individuals who have been identified as vexatious complainants? Are some of them relying on the advice of others who, in an attempt to be progressive or disruptive, take matters on that have no merit? Is that part of the problem?

Mr. Don Head: There may be some of those, but most of the individuals we know are acting on their own behalf.

Mr. Brent Rathgeber: The bill only talks about complainants. It doesn't talk about individuals acting for other complainants. But you don't see that as a problem....

Mr. Don Head: No, there are a few individuals who get involved in those kinds of things, but the 25 we're talking about act on their own volition.

Mr. Brent Rathgeber: I understand Mr. Aspin has a question.

Mr. Jay Aspin (Nipissing—Timiskaming, CPC): Thank you.

Mr. Head, in your deputation you mentioned that \$3.8 million was dedicated to salaries for grievance analysts, and this year it was something in excess of \$5 million. You go on to say that should Bill C-293 come into force, you believe it would be much easier for CSC to identify and manage these offenders. Could you estimate what kinds of savings would be involved?

Mr. Don Head: For those 25 we're talking about right now, we estimate anywhere between a quarter million to a half million dollars in savings.

• (1655)

Mr. Jay Aspin: So that's just one portion?

Mr. Don Head: Yes.

Mr. Jay Aspin: What would this be in total?

Mr. Don Head: We haven't costed all of that out. Part of the problem with trying to do an expanded cost is that because we have the alternative dispute resolution process going on, if we realize some savings and I give you a number now, it might be different in the future. We focused on the 25 individuals who are filing more than 100 grievances a year, and we're able to say that, based on those individuals, we don't think the alternative dispute resolution process is going to have an impact on them. Therefore, the cost savings is between a quarter million and half a million dollars.

Mr. Jay Aspin: This alternative dispute resolution process, is it to partially offset difficulties in this area?

Mr. Don Head: Yes, in part. It's meant to help us out with our overall grievance system. We want to be more timely, more expeditious in giving responses. We want to find solutions at the lowest level possible, as opposed to the present system in which they come up to the second and third levels. For these 25, those individuals we call hard-core grievors, I'm not convinced that the alternative dispute resolution process will have any impact at all.

The Chair: Thank you, Mr. Aspin.

We'll now move to Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: The 25 who seem to be the core of the problem must be pretty angry individuals.

Mr. Don Head: I wouldn't necessarily call them angry. They're dedicated, bored. They are dedicated to what they're doing, but they're not necessarily individuals we see acting out in a violent way.

Mr. Francis Scarpaleggia: You saw where I was going with that.

Why are you against the idea of following the suggestion of Dr. Mullan on multiple grievors? He suggested that if you're designated a multiple griever you would have to confine yourself to a limited number of grievances or complaints. In other words, you'd have something like a complaints budget. We know that budgeting instills a sense of responsible choice, so why are you dismissing the idea of a cap?

Mr. Don Head: It's partly because of the administration behind it. We'd have to start now to keep score of how many per individual.

These numbers that I've given you throughout this afternoon are numbers we've had to extract through our system. We've had to put in place significant coding systems to be able to track this. If we put in another set of numbers, so you have whatever the number, 50 a year or 25 a year, that you can bring forward, that means I have my staff tied up in terms of counting grievances for offenders. What happens when you get to the 25 mark, and the 26th one happens to be a situation that does fall under life, liberty, and security? Then we're back into the normal process anyway. So it becomes an administrative burden for us.

Mr. Francis Scarpaleggia: I don't really understand that. It's just an extra column in the spreadsheet.

So you're saying that if somebody is designated a vexatious complainant, this will not prevent them from making a legitimate complaint that is related to life, security, and something else. How do you ensure that this won't be the case, that somehow they won't be cut off from making a legitimate complaint? How does that process work? Are there certain definitions of life, liberty, security?

Mr. Don Head: Yes. There's been some very good jurisprudence over the years in terms of what are more significant kinds of grievances, the concept of the duty to act fairly. For example, we know, just off the top, that a significant issue in relation to being placed in segregation is a significant liberty issue. If there is something around there, it's going to require a look at it; it's going to require us to examine that situation.

In this case, what we initially envision if somebody is deemed to be a vexatious griever—again, for that relatively small number across the country—we're going to have to just monitor the nature of the complaint, as opposed to starting the whole process of

investigation at the complaint stage and at the various levels of the grievance stage.

• (1700)

Mr. Francis Scarpaleggia: If they've been designated as a vexatious griever, basically their whole ability to appeal anything is shut down. So how could they appeal the fact that they have a liberty, life, security complaint that is not receiving its fair evaluation or that is not being acted upon, that they've been shut down? What if at that particular institution they just happen to have a bad management group, or whatever? It could happen anywhere. They're stuck, would you not say?

Mr. Don Head: Again, we have to work out some of the details around how that flagging would work in the institution for those individuals on those kinds of cases so that the warden becomes aware of that.

Mr. Francis Scarpaleggia: So it hasn't been worked out yet. I guess that's the point I'm trying to make.

Mr. Don Head: No, but one of the other safeguards I mentioned earlier is that this offender can pick up the phone and call the Office of the Correctional Investigator right away.

Mr. Francis Scarpaleggia: That's a good point.

The Chair: Very quickly.

Mr. Francis Scarpaleggia: Now, Dr. Mullan said there needed to be a significant enhancement of training provided to correctional officers. Also, I think the 2009 audit said the definition of "vexatious complaint" was not clear enough. Could you comment on those two things?

Mr. Don Head: Actually, I'll let Mr. Côté have a chance. He hasn't said anything this afternoon. I'll let him comment on that.

Mr. Michael Côté: With regard to the training, we did look at that. We went to learning and development and developed a whole package for our correctional officers with regard to possibly training them on the grievance process.

Mr. Francis Scarpaleggia: What about the definition of "vexatious complaint"? The chair read the definition the other day, which sounded pretty complete to me, but there was an issue about that.

Mr. Michael Côté: Well, with the training we will go through all the processes as well as the definitions for those terms.

Mr. Don Head: One of the things that Mr. Côté and his staff have done in conjunction with our learning and development staff is develop, for lack of a better phrase, a knowledge management portal where people can go and get information as to what are the processes to be followed, what are the definitions, what are the timeframes. So there's greater access to front-line staff around these kinds of questions. Again, that's a direct follow-up to Professor Mullan's recommendations.

The Chair: Thank you.

I don't think—

Ms. Candice Hoepfner: I have just a small one.

The Chair: Okay, very quickly.

Ms. Candice Hoepfner: This is just in response to Mr. Scarpaleggia's concern that anyone who'd been designated a vexatious complainant would not have the ability to make further complaints.

I think it's actually quite clearly laid out in proposed section 91.2:

An offender who has been designated as a vexatious complainant shall, when submitting a new complaint or grievance,

—which means they are completely allowed to—

provide the institutional head with additional material, as required by the institutional head, to establish the merits of his or her complaint or grievance.

It just means that this would be an extra step that they would have to take. They would still be able to make complaints even after being designated a vexatious complainant, correct?

Mr. Don Head: It's going to become an issue of definition now, because if we deem them a vexatious griever in trying to stop that, allowing them to keep doing it is basically the same system that we have now.

Again, this is one of the things that is, I think, in the prescriptive nature of the way that's laid out right now, actually problematic in terms of getting to the point we need to get to.

Ms. Candice Hoepfner: Okay. Thank you.

The Chair: Thank you for that clarification.

I just have one little quick question, although maybe it has been dealt with.

I think you see the spirit of what this bill is trying to do. The person who drafted the bill is here, and the government has recognized that there is a problem there, in corrections, with vexatious complaints. On the other side of it, there's a real concern that all of a sudden we're going to be throwing people into a position where now they've been branded as a vexatious complainer and it's going to limit them down the road.

Are there any concerns you have with this bill? Is there anything we could do to make it better?

As I recall, the government in debate said that an amendment would come forward that may allow you to delegate another individual. Certainly that isn't going to mean that multiple people out there will have the opportunity to do this, but if that amendment

were to carry, there would be one person delegated to perhaps work through all these vexatious complaints. Is that because of time, or what?

• (1705)

Mr. Don Head: If that kind of amendment came forward, it would basically be enabling language, so I would make a decision at some point on whether I would delegate or not.

Having that kind of language there is actually helpful just in terms of thinking this through and looking at the number of individuals. Maybe in the early days I wouldn't delegate that; I would keep that under my own authority. As time went on and we built up the right knowledge base in terms of managing that, I might delegate that to one person in each region, which may be my regional deputy commissioners, who are assistant deputy ministers. So that kind of amendment would be helpful.

The other thing I would suggest to the committee for consideration is to look at stepping back a little bit from the prescriptive nature of the way the bill is proposed. Again, the intent of the bill is going to help us out tremendously, but in the prescriptive nature—the way it's laid down right now—there are some administrative issues that could be problematic for us going forward.

I think the committee has actually talked around some ideas that might be helpful in terms of keeping the intent and addressing the very significant issue we have without being as prescriptive in the legislation.

There is also an opportunity through regulation. I would see some of the steps being more in the regulation than in the act, with the act being the sort of overarching piece that allows us to get at this problem.

The Chair: All right. Thank you very much.

Not seeing any other questions, we'll just suspend for the rest of the time and move directly into committee business.

Committee business is in camera. That means each member of Parliament is allowed one other staffer with them, if they so choose.

Thank you again, Mr. Commissioner.

[*Proceedings continue in camera*]

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