

**THE CONSUMER ADVOCATE**

**ACTIVITY REPORT**

**2008 – 2009**

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**Message from the Consumer Advocate:**

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I am pleased to present the 2008-09 Activity Report of the Consumer Advocate.

Given that my role as Consumer Advocate encompasses both insurance matters and matters pertaining to the representation of general and domestic electricity consumers of the Province, I shall deal with each separately in this Activity Report.

As the Consumer Advocate, I am accountable for the preparation of this report and the actual results achieved.

A handwritten signature in black ink, appearing to read "Thomas Johnson". The signature is written in a cursive style with a large, prominent initial "T".

Thomas Johnson, B.A., LL.B.  
Consumer Advocate

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## **Introduction/Overview**

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In accordance with section 117 of the *Public Utilities Act, RSNL 1990, Chapter P-47*, the Lieutenant Governor in Council may appoint a Consumer Advocate to represent the interests of domestic and general service customers in response to applications from public utilities. In accordance with section 61 of the *Automobile Insurance Act, RSNL 1990, Chapter A-22* the Lieutenant Governor in Council may appoint a consumer advocate for the purposes of a matter before the Board of Commissioners of Public Utilities. Finally, in accordance with section 3.1(8) of the *Insurance Companies Act, RSNL 1990, Chapter I-10*, the Lieutenant Governor in Council may appoint a consumer advocate for the purposes of a review by the Board of Commissioners of Public Utilities. Section 3.1(1) of the *Act* provides that the Lieutenant Governor in Council may by order direct the board to conduct a review of any aspect of insurance in the province on the terms and conditions that may be specified.

Appointments of consumer advocates are *ad hoc* in that each application or review, as the case may be, results in the appointment. Recently the Government of Newfoundland and Labrador has agreed to appoint the consumer advocate prior to the filing of the application where practicable. The Board of Commissioners has encouraged, in appropriate cases, a pre-application process whereby information concerning the nature of the application can be shared and details concerning the hearing process to be undertaken can be agreed. This approach aims to reduce the length of hearings and make the application process more efficient.

The Consumer Advocate utilizes his private legal offices and legal office staff in performing his duties. In performing his or her duties the Consumer Advocate may retain such experts and consultants as may be reasonably required. The costs of the Consumer Advocate are initially borne by the Board of Commissioners of Public Utilities and subsequently charged to the public utility or insurer(s) making the application or involved in the review as the case may be.

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## **Mandate**

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In accordance with the rules as may be prescribed by the Board for the particular matter before it, the scope of participation may extend in appropriate cases to participating in all pre-hearing procedures, reviewing the application and evidence filed in support thereof, preparing requests for information, retaining and instructing necessary experts, cross-examining witnesses, calling witnesses on behalf of the interests of consumers and making final submissions to the Board.

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## **Vision**

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A regulatory environment in which consumers are well-served and are afforded fair and reasonable treatment in accordance with the legislation and provincial policy pertaining thereto and sound public utility practices, as appropriate.

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## **Highlights and Accomplishments**

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### Insurance

Certainly a major highlight of this year was the elimination of the 15% provincial Retail Sales Tax (RST) on insurance premiums. This was announced on April 22, 2008 and was much welcomed by consumers. The elimination of the tax had been called for by business groups, consumer groups and the Consumer Advocate over a lengthy period.

Prior to the tax's elimination, the RST had applied to insurance premiums for property and casualty insurance policies (which includes insurance in respect of vehicles, homes and businesses) therefore its elimination had a beneficial impact on individual businesses, municipalities and the voluntary sector. The RST had imposed an inordinate burden on consumers in the province, relative to consumers in the rest of Canada.

During the past year, the Consumer Advocate also continued his role as a member of the Voluntary/Non-Profit Sector Insurance Committee which was initiated following Government's consideration of the Public Utilities Board's Insurance Review. The mandate of this committee, which has received ministerial approval, is to identify risk and insurance issues of relevance in the voluntary/non-profit sectors and matters related thereto, and to propose solutions to address these issues.

There were no hearings or reviews for which the Consumer Advocate was appointed in the last year.

### Electricity Consumer Representation

Over the past year, there were no General Rate Applications filed by either of the regulated Utilities.

The Consumer Advocate also had an ongoing participation in the Retail Customer Rate Review being carried out by Newfoundland Power Inc. emanating from its 2008 GRA proceeding. The purpose of the review, which is ongoing, is as follows:

1. to review existing retail rate designs;
2. to review potential rate designs;
3. to consider whether rate designs should be mandatory or optional;
4. to develop a time bound action plan for implementation of the rate design recommendations.

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## Activities

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### Issue 1: Representation of Consumer Interests

The representation of consumer interests when applications from public utilities are received is largely determined by the nature of the application. Applications may request, for example, a rate increase, a pricing restructuring, or an increase in return on investment for capital expenditure. The development of any response to an application requires that the Consumer Advocate solicit advice from consultants with respect to the information required to make an informed argument. Consultants with an expertise in energy supply, regulatory practice and principles and cost of capital/finance are invaluable when assessing the necessity for changes sought by electrical utilities. In matters of insurance, consultants with experts in actuarial science and cost of capital/finance are typically required.

Objective: Upon appointment the Consumer Advocate will represent the interests of consumers of electrical utilities and insurance companies in the province of Newfoundland and Labrador

Measure	Consumer Interests represented
Indicators	Results
Obtained evidence for hearings in support of the consumer position at regulatory processes	The Consumer Advocate obtained evidence in support of the consumer position in relation to the Capital Budget Applications of the 2 regulated utilities as well as an Application pertaining to a Corporate Tax change which affected Newfoundland Power Inc.
Attended pre-hearing conferences and meetings and public hearings held by the Board of Commissioners of Public Utilities	There were no pre-hearing conferences and meetings or public hearings held by the Board of Commissioners of Public Utilities.
Prepared and delivered submissions as directed by the Board of Commissioners of Public Utilities to represent the interests of consumers.	Submissions were filed to represent the interests of consumers in respect of each of the 2 Capital Budget Applications, the Corporate Tax Application of Newfoundland Power and the Inter Affiliate Code of Conduct.

As stated in the 2008-11 Activity Plan of the Consumer Advocate, the Consumer Advocate will report on this objective and indicators again in 2009-10 and 2010-11.

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## **Discussion of Results**

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Over the past year, there were no General Rate Applications filed by either of the regulated Utilities. However, the Consumer Advocate did intervene in each of the utility's Capital Budget Applications with a view to ensuring that the capital expenditures proposed were properly tested and scrutinized in keeping with consumers' legal right, as enshrined in the power policy of the Province, to least cost, reliable service.

The Consumer Advocate also participated in the process of developing a formal Inter-Affiliate Code of Conduct for Newfoundland Power (NP). At NP's last GRA, the Public Utilities Board at the urging of the Consumer Advocate, agreed to undertake a process to formulate an appropriate inter-affiliate Code of Conduct. The parties to this review have provided their respective input to the process and it is ongoing at this time.

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## **Opportunities and Challenges Ahead**

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The Consumer Advocate expects that in the foreseeable future there will be both challenges and opportunities facing consumers, particularly in the electrical sector.

Electricity consumers have faced significant increases in the cost of electricity over the past several years. Those consumers whose rates are influenced by the cost of oil burned at the Holyrood Generating Station, in particular, will continue to be susceptible to rate impacts.

Holyrood presents a significant challenge. The operating costs associated with the aging facility as well as any increases in oil prices combine to exert rate pressure. In addition, Holyrood poses significant environmental challenges. In the Energy Plan, the Provincial Government has stated its intention to replace Holyrood generation with electricity from the Lower Churchill through a transmission link to the island. However, should the Lower Churchill Project not proceed as anticipated, scrubbers and precipitators will be installed at Holyrood. This will involve considerable cost.

On August 12, 2008, Newfoundland and Labrador Hydro filed its 20-Year Capital Plan with the Public Utilities Board. The Plan presently anticipates that capital expenditures to maintain the existing systems will rise to an average of \$54 million over the next five years and to an average of \$58 million, expressed in 2008 dollars, over the next 20 years. It is important to note that the 20 Year Capital Plan does not include additional capacity to address future energy requirements. Newfoundland Power's 2009 Capital Budget Application sites that the company plans to spend approximately \$343 million in plant and equipment through 2013 with nearly 60% of planned expenditures to focus on the replacement of deteriorated, defective or obsolete electrical equipment.

In addition, there is the ongoing challenge associated with General Rate Applications which generally seek to recover more revenue from consumers, whether for reasons of

operating cost increases, rate of return requirements or other causes. These requests for rate increases place considerable pressure on those consumers already struggling to pay their electricity bills.

With these and other challenges, there are also opportunities. Both utilities have embarked upon respective reviews of wholesale and retail rate designs. In Order. No. P.U. 32 (2007) the Board, as previously noted, expressed its interest in assessing the ability of new rate designs to encourage increased energy conservation and efficiency. This will be a focus of the Consumer Advocate . In addition, the utilities' recent joint effort as it relates to the June, 2008 filing of a Five-Year Energy Conservation Plan: 2008-2013 represents an opportunity for further advancement, as appropriate, following Board review and oversight of the Plan.

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## **Financial Statements**

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Upon appointment as Consumer Advocate, the Consumer Advocate prepares a budget for the approval of the Minister of Justice in matters pertaining to electricity. For matters pertaining to Insurance, the Minister of Government Services has budget approval authority. Once the budget has been approved, the Consumer Advocate, in matters of electricity, renders detailed statements of account to the Public Utilities Board which pays the account. For matters of insurance involving a public hearing or PUB involvement, the same process is followed. However, on occasion the Consumer Advocate will be appointed to intervene or participate in a non-PUB insurance related matter, in which case the Department of Government Services both approves the budget and pays the account. Separate audited financial statements are not required of the Consumer Advocate. Expenses paid through the PUB are included as a separate line item in its budget, which is audited by a private auditor. Expenses paid through the Department of Government Services are included in the Professional Services section of its budget and audited financial statements are a requirement at the government level and are made public through the Public Accounts process.

As the Consumer Advocate's role encompasses both insurance matters and matters pertaining to the representation of general and domestic electricity consumer of the Province, it is appropriate to treat each separately in this section.

### **Insurance**

#### **Consumer Advocate's Participation in Relation to the Voluntary-Non-Profit Sector Insurance Committee**

(i)	Professional Fees	\$1,030.75
(ii)	Disbursement (copies, couriers)	\$ 45.00
(iii)	H.S.T. on Fees and Disbursements	\$ 139.85
	Total	\$1,215.60



## **Electricity Consumer Representation**

A. Process to Address Corporate Tax Reductions Subsequent to 2008 Arising from Order No. P.U. 10 (2008)

For the period from June 13, 2008 to March 25, 2009, the Consumer Advocate billed as follows:

(i)	Professional Fees	\$6,703.75
(ii)	Disbursements (including consultant costs)	\$1,907.35
(iii)	H.S.T. on (i) and (ii)	\$1,119.45
	Total	\$9,730.55

B. Capital Budget Application of Newfoundland and Labrador Hydro for the period from August 12, 2008 to December 29, 2008, the Consumer Advocate billed as follows:

(i)	Professional Fees	\$16,678.00
(ii)	Professional Fees of Counsel To Consumer Advocate	\$13,440.00
(iii)	Disbursements	\$ 606.24
(iv)	H.S.T. on (i), (ii) and (iii)	\$ 3,994.15
	Total	\$34,718.39

C. Capital Budget Application of Newfoundland Power Inc. for the period from July 11, 2008 to November 12, 2008, the Consumer Advocate billed as follows:

(i)	Professional Fees	\$11,175.50
(ii)	Professional Fees of Counsel To Consumer Advocate	\$ 3,330.00
(iii)	Disbursements	\$ 230.8
(iv)	H.S.T. on (i), (ii) and (iii)	\$ 1,915.73
	Total	\$16,652.10

D. Inter Affiliate Code of Conduct for Newfoundland Power Inc.

(i)	Professional Fees	\$4,293.50
(ii)	Disbursements	\$ 40.25
(iii)	H.S.T. on (i) and (2)	\$ 563.39
	Total	\$4,897.14