

**THE CONSUMER ADVOCATE**

**ACTIVITY REPORT**

**2007 – 2008**

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## Message from the Consumer Advocate:

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I am pleased to present the 2007-08 Activity Report for 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 fluid and cursive, with the first name "Thomas" being more prominent than the last name "Johnson".

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.

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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## 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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## **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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## **Highlights and Accomplishments**

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### INSURANCE

Under the authority of section 61 of the Automobile Insurance Act and sections 3.1(8) of the Insurance Companies Act, I have been appointed as Insurance Consumer Advocate.

In accordance with the terms of that appointment specific project assignments for which the Consumer Advocate will be paid will be approved in advance by the Minister of Government Services.

During 2007, the Consumer Advocate was given approval to participate on 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 propose solutions to address these issues.

As the work of this committee is not a Public Utilities Board review matter, the Department of Government Services approves the Consumer Advocate's budget in relation to this matter and applicable invoices are tendered to the Department. The Budget approved in this matter was based upon an estimated time commitment of 45.5 hours by the Consumer Advocate, plus HST and photocopies/courier expenses, for a total of \$8,114.50.

The committee has met several times over the past fiscal year and is actively exploring practical solutions to the many issues facing the voluntary/non-profit sectors as it relates to insurance and risk generally. Recently, the Consumer Advocate has been assisting in the preparation of a Risk, Liability and Insurance Workshop which is being developed for the voluntary/non-profit sector across the province.

To the end of March, 2008, a total of 30 hours was expended in relation to these activities at a total cost of \$5,283.45, including HST and disbursements.

In addition to this initiative, the Consumer Advocate was also pleased to represent Automobile Insurance consumers insured through Facility Association in relation to an Application dated March 16, 2007 filed by Facility Association (Facility) with the Board of Commissioners of Public Utilities (PUB). The Application which sought the inclusion of a cost of capital provision in the proposed rates would have, as filed, resulted in an 8.4% increase (on a combined basis) to rates applicable to private passenger vehicles insured through Facility. The Application also proposed significant increases to interurban trucks, taxis, jitneys, ambulances, public buses and school buses insured through Facility. These rate increases were proposed to come into effect September 1, 2007.

Following the Consumer Advocate's intervention in this matter and following discussions with Facility's representatives, it was agreed that Facility would withdraw its Application. On July 27, 2007, the PUB, in Order A.I. 6(2007) approved the withdrawal of the Application and ordered Facility to pay the costs of the Board, including those of the Consumer Advocate, which were incurred in relation to the Application. The Consumer Advocate's costs of preparing a defence to the application, inclusive of the fees for professional services rendered by the Consumer Advocate and his legal counsel and all disbursements and HST was in the total amount of \$16,103.74. As indicated, these costs were paid by Facility to the Board as per Order A.I. 6(2007).

This concludes the report of the Consumer Advocate in relation to the Insurance Matters for the fiscal year commencing April, 2007.

### ELECTRICITY CONSUMER REPRESENTATION

During 2007 and 2008 the Consumer Advocate was pleased to represent general and domestic consumers of electricity in the province in connection with three review processes undertaken by Newfoundland and Labrador Hydro (NLH) respecting namely (i) the wholesale power rate design for Newfoundland Power, (ii) the rate design for industrial customers of NLH and (iii) the Rate Stabilization Plan. These review processes arose from an agreement mutually reached by the parties to NLH's 2006 General Rate Application entitled "Parties Agreement on Cost of Service, Rate Design and Rate Stabilization Plan". These reviews are ongoing at this time and involve the consideration of issues that are of importance to the electrical system generally and consumers, in particular.

The Consumer Advocate was also appointed to represent consumers interests in connection with Newfoundland Power's 2008 General Rate Application (GRA) which was filed with the Board of Commissioners of Public Utilities (the "Board") on May 10, 2007 for an Order of the Board approving, among other things, the rates to be charged as of January 1, 2008 for the supply of power and energy to its customers. Following pre-hearing procedures, oral testimony and oral submissions which were made on November 5, 2007, the Board released its Decision and Order on 19 December, 2007 in Order No. P.U. 32 (2007). Newfoundland Power's May 10, 2007 application sought an average increase of 5.3%. The rates finally approved by the Board took into account

the impacts of a negotiated settlement agreement which reduced Newfoundland Power's yearly revenue requirements to be recovered in customer rates by \$14.6 million. In the result, the rate increase approved by the Board was on average 2.8% effective January 1, 2008. Overall, the negotiated settlement approved by the Board helped bring about a measure of much needed rate stability for electricity customers. For instance, for residential customers the rate paid on January 1, 2008 was one percent higher than the rate paid on January 1, 2007. On July 1, 2007, rates had decreased by 2.9% for these customers by reason of the operation of the rate stabilization account. Accordingly, the net effect of the negotiated settlement was to keep rates relatively stable over one heating season to the next. The commitment of the Board to the use of pre-hearing alternative dispute resolution mechanisms was integral to the success achieved.

Two further issues which arose out of the Newfoundland Power General Rate Application and Board Order but which were not concluded with the aforesaid Order were (i), a Retail Customer Rate Review and (ii), a formal inter-affiliate Code of Conduct for Newfoundland Power. The settlement agreement entered into by the Consumer Advocate and Newfoundland Power and approved by the Board proposed that a retail customer rate review be undertaken following the 2008 GRA proceeding. The purpose of the retail rate review is as follows:

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

The objective is to facilitate the exchange of information necessary to conduct a review of rate designs for Newfoundland Power's Domestic and General Service customers and to provide a mechanism for the participation of other interest parties in the process. If appropriate, new rate designs will be recommended for implementation by Newfoundland Power at its next GRA which the Board has ordered must be filed by no later than June 30, 2010. The parties have agreed to a process that spans the period 2007-2009 with a technical conference to be hosted by the Board in mid-2009.

Appropriate rate design is a matter of great importance to customers. The Consumer Advocate notes the Board's comments at p. 25 of its Order:

***“The Board agrees that it is an opportune time to commence a review of NP's retail rate designs. The proposed scope, objectives and processes will, in the Board's view, provide an open and transparent process to evaluate the rate designs in the context of current information and rate design practices. In particular the Board is interested in the ability of new rate designs to encourage increased energy conservation and efficiency. NP will be required to report on the progress of the review and as part of NP's quarterly reporting to the Board”.***

In light of the foregoing, the Consumer Advocate felt it to be both reasonable and necessary for the Consumer Advocate to participate in the retail rate design process on behalf of consumers and, accordingly, requested an extension of the GRA appointment to enable the Consumer Advocate to fully participate in the same. The Consumer Advocate is pleased to report that his appointment was indeed extended to allow participation in this review and the work of review continues at this time.

As regards the formal Inter-Affiliate Code of Conduct, issues surrounding inter-corporate relationships and transactions associated with Newfoundland Power and its affiliates have been considered in previous GRA's. However, in this latest GRA, the Board at the urging of the Consumer Advocate, agreed to undertake a process to be established by the Board in 2008 to formulate an appropriate inter-affiliate Code or Codes of Conduct governing each utility.

Consumer Advocate participation in this process is vital as consumers have a vital interest in ensuring that relations between regulated utilities are open and transparent and inter-affiliate transactions (which have the potential to adversely impact upon regulated ratepayers) deliver maximum benefits to ratepayers. It is worth noting that, for instance, the Board was not satisfied that Newfoundland Power (and its ratepayers) is being appropriately compensated for the value of services being provided to Fortis, or in the alternative, the value of executive services absent from NP. The Board stated as follows:

***“The Board is supportive of the development of an inter-affiliate Code of Conduct as proposed by the Consumer Advocate which, among other things, may appropriately resolve this question within a policy framework...”***

***The utilities will be invited to participate in a process to be established by the Board in 2008 to formulate an appropriate inter-affiliate Code or Codes of Conduct governing each utility. The Consumer Advocate will be invited to participate in this process which is expected to address many of the recurrent issues in a consultative and co-operative format”.***

The Consumer Advocate notes that the Board stated that a formal Code of Conduct developed in consultation with both the utilities will assist with regulatory accountability and oversight, provide proper guidance to the utilities in relation to these transactions, and protect the interest of ratepayers.

In light of the foregoing, the Consumer Advocate felt it to be both reasonable and necessary for the Consumer Advocate to participate, on behalf of the consumers, in the process aimed at formulating an appropriate inter-affiliate Code of Conduct governing each utility and requested an extension of the GRA appointment to enable the Consumer Advocate to fully participate in the same. The Consumer Advocate is pleased to report that his appointment was indeed extended to allow participation in this process.



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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.

Goal 1: By March 31, 2008 and upon appointment the Consumer Advocate will represent the interests of consumers of electrical utilities and insurance companies in the province of Newfoundland and Labrador

<b>Measure</b>	<b>Representation provided</b>
<b>Indicators</b>	<b>Results</b>
Obtained evidence for hearings in support of the consumer position at regulatory processes	The Consumer Advocate obtained and presented evidence as detailed under Highlights and Accomplishments
Attended pre-hearing conferences and meetings and public hearings held by the Board of Commissioners of Public Utilities	The Consumer Advocate attended all pre-hearing conferences, meetings and public hearings which arose from the activities as detailed under Highlights and Accomplishments
Prepared and delivered submissions as directed by the Board of Commissioners of Public Utilities to represent the interests of consumers.	The Consumer Advocate prepared and delivered all submissions as required arising from the activities as detailed under Highlights and Accomplishments

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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 rising cost oil burned at the Holyrood Generating Station, in particular, will continue to experience rate increases unless the world market price stabilizes.

Holyrood presents a significant challenge. The operating costs associated with the aging facility as well as the increase 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 PUB. 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 states 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.

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. In these instances, 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

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

From March 28, 2007 to and including March 6, 2008, the Consumer Advocate billed as follows:

(i)	Professional Fees -	\$4,650.00
(ii)	Disbursements (copies, couriers) -	25.62
(iii)	H.S.T. on Fees and Disbursements -	<u>607.83</u>
	Total	\$5,283.45

#### B. Consumer Advocate's Participation in Relation to Application by Facility Association

From April 3, 2007 to and including May 11, 2007, the Consumer Advocate billed as follows:

(i)	Professional Fees of the Consumer Advocate	\$6,045.00
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(ii)	Professional Fees of Legal counsel to the Consumer Advocate	7,387.50
(iii)	Disbursements (copies, couriers and binding, etc.)	693.59
(iv)	H.S.T. on Fees and Disbursements	<u>1,977.65</u>
	Total	\$16,103.74

### Electricity Consumer Representation

#### A. Review Processes arising out of NLH's 2006 GRA

The Consumer Advocate's work in relation to these Review Processes has been billed twice; initially covering the period from March 16, 2007 to October 5, 2007 and subsequently covering the period from December 5, 2007 to April 16, 2008.

In respect of the initial bill dated October 9, 2007, the Consumer Advocate billed as follows:

(i)	Professional Fees of the Consumer Advocate	\$10,943.00
(ii)	Expert Consultation Services	25,990.00
(iii)	Expert Consultant's Travel Costs and Disbursements	6,008.97
(iv)	Courier, Copy Charges	93.56
(v)	H.S.T. on the foregoing (i) to (iv)	<u>6,024.98</u>
	Total	\$49,060.51

In respect of the subsequent bill dated May 30, 2008, the Consumer Advocate billed as follows:

(i)	Professional Fees of the Consumer Advocate	\$6,525.50
(ii)	Expert Consultation Fees	7,935.00
(iii)	H.S.T. on (i) and (ii) above	<u>1,897.87</u>
	Total	\$16,340.37

B. Newfoundland Power Inc. 2008 GRA

In respect of the foregoing General Rate Application which was filed at the Board on May 10, 2006, the Consumer Advocate rendered the following bills:

September 18, 2007

This bill was in relation to disbursements incurred by the Consumer Advocate for expert consultants' professional fees and copying charges:

(ii)	Disbursements	\$102,713.85
(ii)	HST	<u>\$14,379.94</u>
	TOTAL:	\$117,093.79

October 19, 2007

This bill was in relation to professional fees of the Consumer Advocate and legal counsel to the Consumer Advocate, and to a lesser extent, disbursements incurred:

(i)	Professional fees of the Consumer Advocate (*from June 6, 2006 to August 31, 2007)	\$90,272.00
	[*Note – from June 6, 2006 to April 20, 2007 fees were \$883.50]	
(ii)	Professional fees of the legal counsel to the Consumer Advocate for April 20-August 31, 2007	\$38,295.00
(iii)	Disbursements (couriers, copies)	\$4,327.61
(iv)	HST on (i) to (iii)	<u>\$18,605.25</u>
	TOTAL	\$151,499.86

November 28, 2007

This bill was in relation to professional fees of the Consumer Advocate and legal counsel to the Consumer Advocate as well as disbursements;

(i)	Professional fees of Consumer Advocate (from Sept. 2, 2007 to Nov. 28, 2007)	\$63,232.25
(ii)	Professional fees of the legal counsel to the Consumer Advocate (from Sept. 2 to Nov. 28, 2007)	\$48,075.00

(iii)	Expert consultants fees	\$29,559.29
(iv)	Disbursements (copies, couriers, binders, etc.)	\$2,820.10
(v)	HST on (i) to (iv)	<u>\$20,116.13</u>
	TOTAL	\$163,802.77

March 19, 2008

This bill was in relation to matters arising out of the GRA, including but not limited to the Decision and Order and certain work in connection with the negotiated agreement as respects the retail rate study:

(i)	Professional fees of the Consumer Advocate (from Dec. 5, 2007 to Dec. 20, 2007)	\$2,898.50
(ii)	Disbursements	\$4.25
(iii)	HST	<u>\$377.36</u>
	TOTAL	\$3,280.00