



Office of the Citizens' Representative
Province of Newfoundland & Labrador

**Citizens' Representative
Annual Digest**

April 1, 2010 - March 31, 2011

"...seeking fairness, finding solutions"



Office of the Citizens' Representative
Province of Newfoundland and Labrador

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October 27, 2011

The Honourable Ross Wiseman

Speaker
House of Assembly
Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6

Dear Mr. Speaker:

It is my privilege to submit to the House of Assembly and the citizens of Newfoundland and Labrador the Annual Citizens' Representative Digest. It provides statistics on complaints received, and describes the day-to-day work of the Office of the Citizens' Representative during the period April 1, 2010 to March 31, 2011.

Respectfully submitted,

Barry Fleming, Q.C.
Citizens' Representative



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Message from the Citizens' Representative

This is the fourth Annual Digest of the Office of the Citizens' Representative. The Digest provides me with an opportunity to highlight some of the work of my Office during 2010-2011. I think that 2010-2011 has been the most productive year in our Office's history. We have been able to tackle our workload in a timely fashion while dedicating resources for community engagement and outreach.

The most important work of any ombudsman office is the timely processing of citizens' complaints. Timeliness is a function of the complexity of the complaint, the expectations of citizens, and available resources. I invite readers to review the case summaries located at pages 11-18 to get a sense of the many and varied types of complaints we have processed during the year. We also include in the Digest summaries of the results of two systemic reviews conducted during the reporting period. We undertake these types of reviews when we are faced with a similar complaint from a number of citizens which deals with a government department or agency's policies and procedures. This differs somewhat from investigations prompted by individual citizens where the focus of our investigation is primarily on the relationship between the citizen and the public body. I have found little utility in attempting to plan a specific number of systemic reviews for any particular year. The decision to undertake such a review is best left after a determination has been made that a more fulsome evidence-gathering and analytical undertaking is required.

While we have made great strides in promoting the role and mandate of our Office, we must continue our efforts. This is particularly so given our Office's relative youth and the fact that we are not immediately identified as an ombudsman office. During the year, we have concentrated our efforts at reaching a variety of groups. We have attended most of the long-term care facilities on the Avalon Peninsula. We have given presentations to nine post-secondary institutions throughout the Province. We continue to provide information sessions to a variety of community groups. It is my hope that with time, the role and mandate of the Office of the Citizens' Representative will be known as an anchor for those adrift in the sea of public administration.

I am constantly aware of my obligations as lead investigator for the Whistleblowing Program within the House of Assembly. To that end, we have distributed an information booklet to all staff, members and statutory officers of the House of Assembly. We have also conducted a survey among those individuals about their knowledge and understanding of this program. The results are contained at pages 6-8 of the Digest.

In closing, I would like to acknowledge the creative and persistent work of my staff. I am continually surprised and impressed with their ingenuity in dealing with citizens' concerns. They are a pleasure to work with. We look forward to next year as we continue to work together to assist citizens in seeking fairness and finding solutions when dealing with the public service.

A handwritten signature in cursive script that reads "Barry Fleming".

Barry Fleming, Q.C.
Citizens' Representative

Our Role

The Office of the Citizens' Representative is an independent Office of the House of Assembly. It administers two programs: the provision of a province-wide traditional ombudsman office; and as the investigator for public interest disclosure or whistleblowing complaints filed under the *House of Assembly Accountability, Integrity and Administration Act*.

The majority of the Office's work is undertaken with providing a traditional ombudsman service. This entails the receipt of complaints from citizens about provincial government programs, policies and services. The Office attempts to mediate complaints and, in many cases, is able to obtain redress for citizens who have previously been unable to solve their problems within the provincial government departments, agencies, boards and commissions.

If a complaint cannot be resolved the Office will undertake a formal investigation. As part of this process, witnesses may be interviewed, documents gathered and a detailed investigation report generated. An investigation is a confidential, unbiased third party review of how a citizen was treated by a government department or agency. If the evidence suggests that the citizen was treated fairly, then an evidence-based explanation is provided as to why this is so. If the evidence suggests that the citizen was treated unfairly, then the Office will make non-binding recommendations which can ameliorate the problem.

As part of the ombudsman role, the Office can also accept complaints from members of the House of Assembly or from the Lieutenant Governor-in-Council. The Citizens' Representative can also initiate his or her own investigation without the requirement of a complaint from a citizen.

A collateral benefit of the ombudsman role of the Office is that it serves as a source of information about government programs for citizens. As well, each year the Office refers hundreds of citizens to other agencies when it lacks the legal authority to take their complaints.

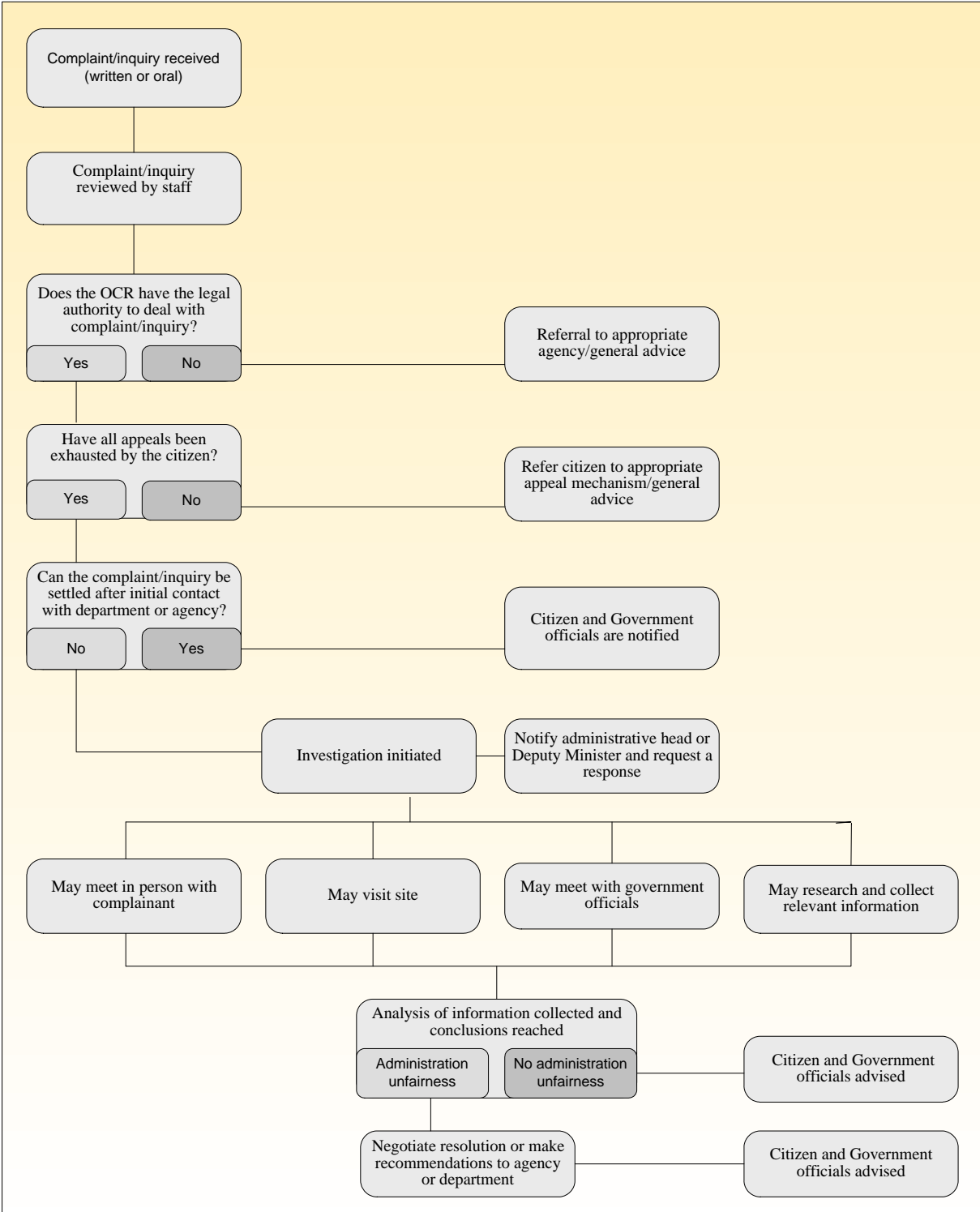
The Office does not have the legal authority to investigate:

- the House of Assembly or a committee thereof;
- the provincial Cabinet;
- Executive Council and its various divisions;
- the courts, members of the judiciary, masters of the court and justices of peace;
- awards, decisions, recommendations or omissions of arbitrators made pursuant to the *Arbitration Act*;
- matters in which there is an existing right of appeal or objections under other provincial legislation until such time as these rights are exhausted or the time to appeal has expired;
- refusal to provide access to information;
- matters falling within the jurisdiction of the Office of the Child and Youth Advocate;
- acts, errors or omissions of the federal and municipal governments and private citizens.

As an investigator under the *House of Assembly Accountability, Integrity and Administration Act*, the Office can receive public interest disclosure complaints from members, staff and statutory officers of the House of Assembly which allege that a person or persons have engaged in gross mismanagement of their assigned duties and responsibilities.

The Complaint Process

It is important for citizens to know what to expect with respect to the complaint process used by our Office. The following chart helps illustrate how complaints and inquiries are processed.



Public Education and Access Initiatives

In our 2008-2011 Business Plan under the *Transparency and Accountability Act*, we committed to continue the development and delivery of informative sessions about our Office's legal mandate and the investigation and mediation services we provide.

In 2010, we began a Seniors Outreach Program which included 72 completed visits to public and private long-term care homes in eastern Newfoundland. We distributed posters and brochures for use by residents who wish to discuss problems they may be having with provincial government services. This program will be expanded to include all areas of the Province in the coming years and will most often be incorporated into other work performed by our staff when visiting the regions.

2010-2011 also saw the commencement of our Student Outreach Program. Our staff attended post-secondary campuses, giving presentations and distributing promotional material. Visits took place at the following campus locations:

- College of the North Atlantic
 - Ridge Road Campus, St. John's
 - Carbonear Campus
 - Grand Falls – Windsor Campus
- Keyin College
 - St. John's
 - Grand Falls – Windsor
- MUN Student Centre, St. John's
- Eastern College, Mt. Pearl



OCR Investigator Juanita Dwyer with students at College of the North Atlantic, Grand Falls – Windsor Campus, Central Newfoundland

We also recognize the valuable work provided by community groups in our society. We gave presentations to the following groups:

- Buckmaster Circle Community Centre
- Froude Avenue Community Centre
- Virginia Park Community Centre
- Stella Burry Community Services



OCR presentation by Social Work Student Chris Carter at Stella Burry

In 2010-2011, we continued our traditional community outreach services by meeting with concerned citizens in Carbonear, Bay Roberts, Deer Lake and Corner Brook.

Good Governance Week

During 2010, the Canadian Council of Parliamentary Ombudsman joined together for a week of activities celebrating the ombudsman institution in Canadian jurisdictions. From October 18-22, 2010, we celebrated “Good Governance Week.”

During the week, we held our traditional networking event with the delegates from the various government departments and agencies that are our first point of contact when we initiate inquiries from citizens. Citizens often contact us with a variety of problems that need the attention of various organizations. We tweaked the networking session this year by inviting individuals from provincial and federal constituency offices, non-profit organizations and community groups. It proved to be a beneficial exercise in expanding the knowledge of all concerned about the role of a variety of organizations.

We also held an essay contest for Grade 6 students centered on what good governance means to them. The staff chose Ms. Kayla Warren of Legallais Elementary in Isle aux Morts as the winner. Kayla pointed to the general and critical services provided by the Province, and closed her essay with:

“I guess we should be thankful for all the things the government is doing for us because when I read the newspaper and watch the news and see how people have it in other parts of the world...we have a lot to thank the government for.”

Kayla’s essay can be viewed at www.citizensrep.nl.ca under the “What’s New” and “Good Governance Week” tabs.

Congratulations again Kayla!



Social held at the Office during Good Governance Week for departmental/ agency delegates

Education and Training

Our Office remains committed to maintaining high professional standards of investigative practice through ongoing professional development.

During 2010, our investigators attended a day-long training session with an internationally recognized expert in the field of ombudsman and administrative investigations. His session reviewed such topics as investigation planning, interview techniques, and report writing. This session also provided an opportunity for our staff to network with individuals from other local organizations responsible for conducting a variety of investigations.

Two members of our staff had the benefit of attending a one-day workshop offered by the Gardner Institute at Memorial University of Newfoundland entitled *Information Gathering Using Professional Interviewing Techniques*. The workshop provided information about how to gather as much relevant information as effectively as possible when interviewing witnesses. Additionally, our administrative staff, who are our first contact with citizens, completed training in frontline leadership as designed by the Corporate and Member Services Branch of the House of Assembly.

Public Interest Disclosure

The Citizens' Representative is a named investigator of public interest disclosures, or whistleblowing complaints, within the House of Assembly. In this role, we continue to maintain a profile so as to provide an avenue for staff, members, and statutory officers who wish to file a complaint.

There were no disclosures or complaints registered with our Office during the reporting period. We were contacted by two employees of the wider public service, who had concerns that might have formed whistleblowing complaints had our program extended to their employment. They were not prepared to proceed with complaints under the *Citizens' Representative Act*, which could be utilized to investigate allegations of administrative unfairness, because that legislation does not specifically protect complainants from reprisals.

During March 2011, we distributed an information booklet and a confidential survey to 246 members and staff of the House of Assembly and its statutory offices to raise awareness of the Public Interest Disclosure Program, and to ascertain how well the program is known and understood. We provided all recipients with a self-addressed envelope to ensure they felt secure in the confidentiality we promised during the survey. The return rate was 27.2%. While this rate may seem low, it is in keeping with the averages experienced during the conduct of similar surveys in other jurisdictions.

The following chart outlines the responses to the questions contained in the survey.

Public Interest Disclosure Program Survey

Summary of Results - Questions 1 - 7

A total of 246 survey packages were sent to HOA staff; 2 packages were returned indicating unable to locate person. 27.23% surveys were returned; of that percentage 44.78% were returned using envelope and stamp and 3% returned the stamp; 22.38% offered comments on the program (Question 8)

		TOTALS		
		Yes	No	Unsure
Question 1: Are you in favour of a Public Interest Disclosure Program for the HOA?	→	92.50%	4.50%	3.00%
Question 2: Prior to receiving this package, were you aware of the Public Interest Disclosure Program for the HOA?	→	61.20%	38.80%	
Question 3: Prior to receiving this package, were you aware of how employees are protected from reprisals?	→	52.20%	47.80%	
Question 4: Over the past two years, have you witnessed a wrongdoing in your workplace?	→	17.90%	82.10%	
Question 5: Over the past two years, have you reported a wrongdoing in your workplace?	→	10.40%	89.60%	
Question 6: Would you be confident to report wrongdoing if the need arose?	→	71.60%	22.40%	6.00%
Question 7: In the event you reported wrongdoing, do you feel the HOA would support you?	→	67.20%	22.40%	10.40%
Question 8: Are there any comments you wish to make about the Program? (See attached sheet)				

The chart on the following page is a list of responses we received to an open-ended question seeking comments about the program.

Comments on the Program (Question 8):

- Not sure I'm protected from reprisal.
- Perhaps the survey results should be shared with Executive Council.
- Should eventually be applied to all of government as well.
- The sooner this Legislation is proclaimed to cover all of government...the better.
- Needs to be expanded to all of Public Service.
- I think the program is necessary, but I would still be fearful of reprisal and lack of support.
- Statutory Offices should be better monitored by the HOA so the Officers are more accountable from the start instead of relying on reports of wrongdoing from staff who are often afraid.
- "Wrong doing" may be too narrowly defined in the Act.
- Are potential staff covered under Labour Relations Act? If not, what recourse to political staff have?
- On page 5, explain how would someone be "protected from reprisal by law"?
- This is a very important program. Had it existed when the big spending scandal was happening, people could have reported suspicions without fear. The HOA should be beyond reproach. The P.Z.D.P. helps us all keep it that way.
- HOA should closely monitor the Statutory Offices so it's not up to the staff (who are fearful of losing their jobs) to report wrong doings.
- Re 6 & 7: I would certainly read more information and would need to become more familiar with the program before saying "yes" with confidence to both these questions.
- Most work places have unions and employees have negotiated wrong doings in their contracts. Most employees support each other as a united form. However, if there is a warrant for dismissal, there is always an arbitration procedure to follow.
- I feel the HOA would support me, however, I am not confident that the individuals responsible to work through the process with a staff person or persons are completely educated and aware of their role and responsibility.

We continue to promote the Public Interest Disclosure Program as an effective tool to discourage and ameliorate the effects of gross mismanagement. Members and staff of the House of Assembly are urged to contact the Citizens' Representative if they wish to discuss the program or file a complaint.

Own Motion Investigations and Systemic Reviews

During the course of our work, we sometimes deal with issues that affect a large number of citizens. An investigation into these issues requires a systemic review of the public service program, policy or facility, which gives rise to the citizens' concerns. The following two systemic reviews were concluded during the reporting period.

Department of Justice - Psychiatric Services in Provincial Correctional Facilities

Over the past several years, our Office has received numerous complaints from inmates and their families about the prescription practices of the psychiatrist retained by the Department of Justice at the provincial correctional facilities. Specifically, the complaints allege that the psychiatrist withdrew or tapered prescriptions of psychiatric medications which had previously been prescribed to inmates by physicians and psychiatrists prior to incarceration.

The investigation entailed a review of all complaints and inquiries received by our Office from inmates and their families. Numerous interviews were conducted, as was general research about the problems associated with mental health within prisons. Three psychiatrists, including the psychiatrist retained by the Department of Justice, were contacted for their opinions.

Our investigation concluded that the traffic of illegal drugs at the Province's correctional facilities pose a serious problem for corrections officials. The existence of this problem could not be a justification for what we found to be a breach of the inmates reasonable expectations to be treated fairly. We noted that those inmates suffering from physical ailments or disabilities were not deprived of the medications to treat those conditions which had been prescribed prior to incarceration. There was no justifiable reason for the different treatment experienced by those incarcerated who had previously and properly been prescribed psychiatric medications. The Department of Justice had been aware of the prescription practices of the psychiatrist since the comprehensive review of the correctional system in 2008. We concluded that to continue to retain the psychiatrist, the Department of Justice was in breach of section 37 of the *Citizens' Representative Act*.

We recommended that, given the consistent and strongly held views of the Department's psychiatrist about what should be prescription practices in correctional facilities, the Department should retain a psychiatrist whose prescription practices reflect more closely psychiatrists in the general community. A full copy of our report can be found at www.citizensrep.nl.ca.

Department of Government Services – Registry of Deeds

Our Office investigated the concerns of seventeen citizens, all professional title searchers, who questioned the fairness of archival rules at the newly-opened Registry of Deeds and Companies on Elizabeth Avenue in St. John's.

The Registry is a central repository for documents relating to deeds, companies, condominiums, personal property, mechanics' liens, limited liability partnerships, co-operatives, lobbyists,

and limited partnerships. It holds over 4000 bound volumes dating back to approximately 1825, and it holds approximately 60,000 corporate records. Deeds from 1825 to 1980 exist in paper format only. For the years 1980-1982, records exist on paper and microfilm. All documents registered from 1982 can be viewed online.

The Registry first opened in the Confederation Building in the early 1970s and was moved to its new site in the former Newfoundland Liquor Corporation building on Elizabeth Avenue in St. John's in early March 2010. There are thirty-one employees at the new site. The building was retrofitted to accommodate the Registry. With the opening of the new site, the searchers were subject to a new set of policies and procedures.

Title search services by the citizens have been offered to the legal profession and the general public for approximately forty years, and they form an essential part of the residential and commercial real estate trade in the Province. Their employment is unique in that they spend the vast majority of their time working inside a public building, yet they are not employees of government.

The searchers raised a number of issues arising out of the introduction of new policies and procedures. They include the prohibition of food, drink, pens and backpacks from the new registry; the limited number of parking spaces; the temperature in the vault which stored older volumes of records; the prohibited use of certain office supplies; limited access to loose deeds (i.e. documents not yet recorded); the use of closed captioned television; and their inability to store maps on site. They also claimed that as important stakeholders in the use of the Registry, they were not adequately consulted when the new rules were implemented.

The Department was concerned generally for the health of its collection of documents and had to balance its commitment to preservation of these documents against both the needs of this unique group, and members of the general public who have a less heightened awareness of document handling practices than the title searchers. There have been past reports of members of the public cavalierly entering the Registry and altering documents, tearing pages out of volumes and being reckless when handling volumes. Yet, a two-tier system of rules for members of the public (searchers and citizens) would be difficult, if not impossible, to enforce.

After reviewing the history of the complaints, professional opinions, contacting registries across Canada, consulting with senior departmental officials, interviewing title searchers and Registry employees, taking stock of the building and its amenities, and considering each of the issues put forward, we recommended that the Department of Government Services should:

1. Post the rules (or a condensed version thereof) in a conspicuous place so that everyone entering the Registry is aware of the existence of the rules. In this way, the Department is appropriately communicating its expectations via notice to all users, frequent or infrequent.
2. As a courtesy to its regular users, install an unlocked, upright map storage locker in the research area.
3. Permit capped beverages and foodstuffs in proper containers to be stored in lockers in the building and removed at the end of each day.

4. Extend loose deeds access to 60 minutes per day, when necessary.
5. Re-establish a consultation committee formerly composed of searchers and government employees.

The Department agreed to implement three of the five recommendations. It would not consider the courtesy of a map locker for what it deemed “storage of personal reference materials” in the sizeable research area, nor would it allow capped beverages and foodstuffs to enter the main building out of concern for leakage, mould, and the necessity to check all lockers at the end of each day. However, the Department had installed a water cooler, and individuals with special dietary needs or medical conditions could also seek to amend their Locker Agreements through the Registrar to permit the storage of certain foodstuffs.

The Department is working to scan all holdings toward total online access, eliminating much of the need for the public to attend personally on the Registry. A copy of this report is available at www.citizensrep.nl.ca.

Individual Case Summaries

Each year, the Office of the Citizens’ Representative makes inquiries and conducts investigations based on complaints received by citizens against government departments, agencies, boards and commissions. When the Office cannot investigate a complaint because it falls beyond its legal ability as prescribed by the *Citizens’ Representative Act*, an attempt is made to direct the citizen to the appropriate agency or private company which can best deal with his or her issue.

The outcomes of inquiries and investigations are tracked closely and the following pages outline a sample of the resolutions and findings of our interventions. These cases give an overview of our work.

Miscommunication Cleared - Department of Human Resources, Labour and Employment

A gentleman, living in Central Newfoundland, contacted us expressing his frustration with trying to obtain travel funding for kidney dialysis. Three times per week he was forced to make return trips to a centre in Gander at a cost of approximately \$600.00 per month. When he previously received dialysis in St. John’s, the Department of Human Resources, Labour and Employment (“HRLE”) covered his cost; however, he alleged he was told he was ineligible when he returned to Central Newfoundland for treatment. The reason was that he was considered to be now living with a woman whose income had to be included in his financial assessment. He claimed that he was merely a tenant of the woman and obtained the necessary documentation to prove he was paying rent. Contrary to the gentleman’s understanding, we determined that his case was active and that HRLE was merely awaiting proof that he was renting. We facilitated communication between the citizen and the Department, and HRLE implemented the travel funding immediately upon receipt of the information.

She did the Time, but not the Crime – Department of Justice

A woman complained that she was billed by Fines Administration for \$500.00 for a conviction she had in 1984. She claimed that she had served time in prison for the crime and that the fine was in error. We contacted court administration and found that while she had been fined \$500.00 for failing to provide a breath sample, her incarceration was for an unrelated breach of probation. The woman accepted the finding and made arrangements to pay the fine.

Room for an Exception: Fresh Evidence Eliminates Debt – Eastern Health

A man met with two Investigators from our Office regarding a complaint against Eastern Health. He was billed \$3,600.00 for private room accommodations during a hospital stay. He maintained he did not remember signing the Preferred Accommodation Form which precipitated his stay in a private room as he was extremely ill when he presented at the Emergency Department.

We identified and contacted the attending physician who was the only one who could validate that the man was in no state of mind or body to sign the forms presented to him during the admission process. It was determined that the physician did have pertinent evidence. She provided information to us that confirmed the man's condition at the time. Our interim report was released to Eastern Health recommending that they adjust the account by reversing any current charges, and reimbursing the complainant's private insurance for any monies paid out on the man's behalf. Eastern Health accepted the recommendation and the complaint was settled.

"I appreciate all the help you gave me, you have made my day. It is nice to know when things are stacked against you that there is someone in your corner."

Diplomacy 101: Memorial University

A parent contacted our Office alleging that his son, a student in a professional faculty at Memorial, had been treated unfairly by one of his professors. The son had received a failing grade for a group assignment that he participated in which meant that he would not be permitted to register for the upcoming semester.

Several meetings were held between Memorial staff and the citizen without resolving the problem. We entered into discussions with officials at Memorial. In good faith and in light of the circumstances of the group assignment, the University was willing to offer an alternate assignment to be written by the student. This would afford him the opportunity to make up the grade

"It must have been fate for me to see the small ad in the Western Star just days before we needed help and we really did not know where to turn."

which, in turn, would permit him to register for the upcoming semester. Our investigator liaised with the family and the offer was accepted. The assignment was completed on time and a passing grade was earned. The student was permitted to register and continue his studies.

Apology Issued – Department of Justice

Our investigator met with an injured inmate in hospital. He filed a complaint against the employees of the Adult Correctional Division of the Department of Justice alleging that they failed to provide timely medical attention for his injuries. We initiated a formal investigation. The Department simultaneously ordered an internal review. We agreed to hold our investigation in abeyance pending the review.

Once we received the report, we were satisfied that an in-depth, comprehensive investigation had been conducted by the Department of Justice. We agreed with their findings and conclusions on the delays incurred in seeking medical treatment for the inmate's injury.

Based on this and, at the inmate's request, we recommended that the Department apologize to the complainant. The Department acknowledged our recommendation and a letter of apology by the Department for the discomfort the inmate endured was forwarded to him.

Water Woes – Department of Transportation and Works

A couple owned property along a provincial highway, within a municipality. Development over the years began to divert natural water flow which ended up flooding sections of their property, including their home. They felt the provincial government should shoulder the blame due to improper drainage from the roadway.

Our investigation found that when the couple initially built their house, they had obtained all necessary permits and the approval of the Department to join a driveway to the existing provincial road. They complied with a request from the Department to install a culvert. Years later, their neighbours built a home and joined to the provincial road without obtaining approval from the Department or advice from them on steps necessary to handle water flow. Compounding the problem, the municipality issued building and occupancy permits for the neighbours' new home. Our investigation could not conclude that the Department was solely to blame, as the neighbours and the municipality bore the vast majority of responsibility. Our Office does not have jurisdiction over private individuals and municipalities.

The Department accepted a recommendation from our Office to implement a process, in conjunction with the Department of Municipal Affairs, to notify all municipalities of the requirement for the issuance of access permits by the Department prior to construction of any new accesses to provincially maintained highways.

Mobility Issue – Eastern Health

A gentleman contacted our Office after waiting for more than a month for a walker that had been recommended and approved for him. We contacted Eastern Health and spoke with officials from the Special Assistance Program. Within 72 hours, the gentleman confirmed that the walker had been delivered – and that he was a very happy man.

"I would have never gotten my (service) if it wasn't for you!"

A Diploma that's Worth Something – Central Health

A mature student had completed a training course in a medical-related field of study from a private college. She had previously obtained her high school equivalency diploma by correspondence. When she applied for a position with Central Health she was under the impression that the high school equivalency diploma would be recognized as sufficient. It was not until after she was interviewed that she was advised that the diploma would not be recognized.

She contacted our Office and an investigation was initiated. The results showed that there were others working in Central Health with diplomas obtained by correspondence. As she was

the only applicant, and the position was still vacant, our Office recommended that Central Health re-consider its position in the face of the evidence. It did and the woman began work soon after.

"Thank you for everything you did to resolve my problem. When no one else would listen to me, you went to work on a solution."

Barriers Cleared – Newfoundland and Labrador Housing Corporation

A woman was referred to our Office and presented with significant social and medical barriers that prevented her from taking steps toward replacing the badly malfunctioning sewage disposal system in her home. It did not appear as if she was on anyone's radar screen at all. We worked with the Newfoundland and Labrador Housing Corporation, a local health authority, and her physician, to build a case for qualification for a disability grant to rectify the problem.

Delays Frustrate Investigation – Department of Health and Community Services

A woman applied for a management position in the Department of Health and Community Services and was assured that the position was on a management scale. Unbeknownst to her, a union had applied to the Labour Relations Board two days before her job interview to include the position in a bargaining unit.

The woman accepted the management job, resigned her previous management position of fifteen years and went to work. She didn't find out about the union application for approximately six months. The position officially changed from management to bargaining unit four months after that. She came to our Office stating she had made an uninformed choice and that the lack of open, honest and timely communication had negatively affected her management career, salary and pension.

It took seventeen months for the Department of Health and Community Services to formally respond to our notice of intent to investigate. In the interim, the woman retired. The delay in response was indefensible and affected not only our ability to obtain answers, but crushed any opportunity to mediate a settlement. Our subsequent review concluded that the ineffective communication demonstrated between the Human Resources Division of the Department and the senior management staff responsible for the managing of the woman's position was ineffective. The Department had failed to inform the woman at the time of her interview that the position was subject to an application before the Labour Relations Board. After the Board ordered the inclusion of the position into a bargaining unit, it took the Department six weeks to inform the woman of the development. The woman was subsequently frustrated with the nature and timing of the Department's response to her requests for clarification about the future of the position. To its credit, the Department acknowledged that problems with communication occurred in this unique case. We recommended that the Department apologize to the woman. That recommendation was accepted and a letter of apology was subsequently issued to the woman.

"But I was Here First" - Department of Environment and Conservation

For fifteen years, a man had been leasing crown land in cabin country. He was given an opportunity to apply for a grant by the Department of Environment and Conservation and did so, only to find that he required an approved septic design from the Department of Government Services. Given the location of the cabin on his lot, and the percolation rate of the soil, the

only place to put the septic field on the plan was under a provincial road reserve, and this was prohibited. Compounding the problem of the location of the road reserve was the Department's approval of a lot adjacent to the man's for development, a new survey which changed his existing boundaries, the new neighbour's choice of where he wanted to put his cabin, and everyone's proximity to the regulated high water mark.

Over the course of the following months, our Office brought together the cabin owners and brokered an agreement to alter the course of the road reserve to not only accommodate the wishes of the owners, but the requirements of the Department. Changing the course of the road reserve allowed the man's septic design to be approved, and both grant holders received their Crown titles in early 2011.

"Without your intervention, we feel confident to say that there would not have been a positive outcome."

"Sorry Sir, but your Card has been Rejected" – Department of Health and Community Services

A man was approved to receive financial assistance for his prescription medication, based on his net income and his drug costs. Under the provincial program, the higher the drug costs relative to income, the more assistance was available. The plan has a specific threshold in order to be eligible, and the amount the beneficiary pays (the co-pay amount) fluctuates with drug costs.

The man was using his drug card from 2008 to 2010, but his co-pay amount changed several times within this two-year period. In September of 2010, his card was cut off. He alleged this decision was unfair, and that he was being harassed by the Department. He could not understand why he could no longer use his drug card.

After receiving file documentation provided by the Department and researching the Newfoundland and Labrador Prescription Drug Program ("NLPDP"), it became evident that the man was being treated in accordance with well defined criteria. His income was relatively steady, but his drug costs were fluctuating, leading to the fluctuating co-pay amounts. In September of 2010, his drug costs dropped significantly and he was no longer eligible under the plan.

Our investigation did not find any evidence that the man was being harassed or treated unfairly by the Department. He was encouraged, however, to re-apply under the plan due to an anticipated increase in his prescription drug purchases. The NLPDP Office indicated that they would be happy to meet with him and provide ongoing advice and guidance on his eligibility for assistance.

Ticket to Ride – Department of Human Resources, Labour and Employment

A woman was concerned because she was unable to reach a contact in the Department to confirm whether or not her medical transportation had been approved.

We contacted our designate in the Department and were advised that transportation had been approved and, in fact, an arrangement had been made with a taxi company to provide transportation as required. She was grateful that our Investigator was able to confirm that arrangements had been made.

Road Safety Paramount – Department of Government Services

A citizen was upset that he was being requested by the Motor Registration Division (MRD) of Government Services to complete a road assessment for the continuation of his driver's license. He alleged that there was an anonymous, vexatious report given to the RCMP which prompted a request from MRD that he submit a medical report regarding his ability to drive. The citizen indicated that the medical report completed by his doctor proved that he was fit to drive. He felt that he should not have to complete the road test and questioned whether MRD had the right to request it.

Our investigation found that a report was received by the MRD from a Peace Officer regarding an alleged driving incident the citizen was involved in as the operator of a motor vehicle. The *Highway Traffic Act* requires that there is mandatory reporting to the MRD by a Peace Officer in such instances. Upon MRD's receipt of medical information provided by the citizen's physician, it was appropriate that the Medical Review Officer of the MRD consult the Canadian Council of Motor Transport Administrators (CCMTA). The policies of CCMTA state that "the possible side effects of required drugs such as tranquilizers and sedatives must be of concern." The information from the citizen's medical chart indicated a history of treatment with drugs with side effects such as restlessness and sedation, headache, nausea and drowsiness, muscle stiffness, nervousness, dizziness and blurred vision.

Further, the *Highway Traffic Act* provides that MRD has the legal right to request that a citizen provide a medical report in relation to the citizen's ability to continue driving and also that a citizen undergo a driving examination to assess ability to continue driving. Our Office was unable to identify any unfair treatment in relation to the MRD request for the citizen to complete a road assessment.

"While, of course, I do not agree with (OCR's) findings, I accept the ruling. I really do appreciate the extent to which your office examined the issue and explanation behind the rationale."

A Place to Call Home – Newfoundland and Labrador Housing Corporation

At 82 years old and on a fixed income, a woman was renting her own apartment but had received a 3 month notice to vacate as the home was being sold. At the time she received this notice she had completed an application to NLHC for a housing unit. She contacted our Office when she had not heard from NLHC regarding the status of her application and had indicated that she found her own rental accommodations and paid a \$500.00 deposit for it. She was concerned about how she would manage this financially given the large increase in rent in St. John's and surrounding areas.

Our inquiry determined that NLHC was in the process of identifying a unit for the woman. Following this inquiry, a Tenant Relations Officer visited her and verified her suitability in relation to ensuring the accommodations were appropriate for her needs. She subsequently accepted a unit in the city.

No Time to Wait – Department of Human Resources, Labour and Employment

A father contacted us on behalf of his globally delayed daughter who was in receipt of financial services from Eastern Health, and was required to apply for further assistance under the

Income Support Program of Human Resources, Labour and Employment as she had reached her 18th birthday. He indicated that no one had advised the family of this requirement, which had caused a lapse in her financial support and also in her drug card coverage. He attempted to fill his daughter's prescriptions but was advised that drug card coverage had been suspended. The problem facing the man when he contacted our Office was that his daughter needed medication for the following morning.

He indicated that all paperwork was completed for his daughter's application for Income Support and would be submitted within 24 hours. Given the fact that his daughter required medication, we suggested that he contact the Department of Human Resources, Labour and Employment to request emergency short-term assistance with a drug card. He was advised of the HRLE after-hours service in the event that he was not able to reach any resolution that afternoon.

Upon further contact, he indicated that he was able to acquire an emergency drug card from the after-hours service for a two-day period and was able to acquire his daughter's medication. A thirty day supply was granted to allow sufficient time for the Income Support application to be completed.

"To all of you who believed in us, trusted us and helped us...we thank you. It has already made a huge difference in our family's life."

A Father's Nightmare – Eastern Health (Child, Youth and Family Services Division)

A man contacted our Office indicating that he had been the subject of two investigations by the Child, Youth and Family Services Division of Eastern Health (CYFS). The first investigation resulted from an allegation of underage drinking at his house. The second investigation resulted from an allegation that his teenage son had taken his father's car and was involved in an accident. Both allegations were referred to CYFS by the same person (the referral source). In both cases, the allegations could not be confirmed and, as a result, CYFS concluded that the man's children did not need protective intervention.

The man believed he was treated unfairly for a number of reasons. The allegations of underage drinking resulted from photographs posted on Facebook, yet CYFS refused to view the photographs or ask for copies from the referral source. A home visit was conducted by CYFS and the man and his children were interviewed. The CYFS Social Worker asked for three references and, as a result, others in the community found out that he was being investigated by CYFS. The man also claims that he had trouble getting CYFS to respond to his inquiries. The man also requested a letter indicating that the two investigations concluded that the complaints against him were unfounded, but CYFS refused to provide him with this letter.

After a thorough investigation by this Office, it was determined that the man was treated unjustly and unreasonably by CYFS. Specifically, our Office concluded that CYFS should have reviewed the Facebook photographs; they should have adequately addressed the man's inquiries; they should have provided him with a letter as per his request; and they should have informed him that the provision of references was not mandatory.

As a result of these conclusions, our Office recommended to CYFS that: they write a letter of apology to the man; they develop a letter or template to be used for informing those parents who request confirmation that no further investigations of referrals are required after an initial

assessment of the referral; and they provide the man with written confirmation that it was determined that no further action was necessary. Child, Youth and Family Services agreed to develop a template letter to be used in advising parents that no further action was required. It also agreed to provide such a letter to the man and to issue an apology.

"Thank you again for all your help, and especially for your kind support. Believe me when I tell you that sincerely, if it hadn't been for (staff member), I don't know what I would have done."

To Build or not to Build; Department of Environment and Conservation (Lands Branch)

A woman complained to our Office that her daughter and son-in-law were unable to obtain the appropriate approvals to build on their land. The couple had purchased private land, but title to the land was questioned as there was no one in the area old enough to sign an affidavit confirming title. As a result, the couple had to apply to Crown Lands for a Quit Claim. This process took approximately eighteen months and resulted in a ten meter buffer zone at the front of the lot due to a roadside river (referred to by the complainant as a ditch). Due to this buffer, the couple was required to apply for a permit to install a driveway. Without the driveway, they had no access to their land. They applied for this permit in August of 2010, but were informed by Crown Lands that they may not get approval until the spring of 2011.

A site visit took place and numerous photographs were taken of the area. The river was identified as a small stream running the entire length of the road and emptying into the ocean.

We made contact with Crown Lands and it was determined that the ten meter buffer is required under section 7 of the *Lands Act*. After reviewing the matter, Crown Lands confirmed that the couple had applied for an access easement and that the application had been registered and had been referred to various departments and agencies for comments and recommendations. At the suggestion of Crown Lands, the couple contacted these departments and agencies to ask when they would be able to respond to the referral. In January of 2011, they were informed by Crown Lands that all information had been received and the approval was forthcoming. On February 8, 2011, the couple contacted this Office to indicate that they had received approval and the issue was now resolved.

Statistics

During 2010-2011, our Office received a total of 325 complaints and inquiries of which 24 were non-jurisdictional. Non-jurisdictional complaints often require some time to ascertain jurisdiction and/or to properly refer the citizen to an appropriate agency. The following tables offer information on what public bodies were subject to complaints and where the complaints originated. As well, we list the nature of the complaints received from all correctional facilities.

**Complaints/Inquiries by Department and Agency
April 1, 2010 – March 31, 2011**

Central Health	3
College of the North Atlantic	2
Eastern Health	23
Child, Youth and Family Services – Division of Eastern Health	10
Eastern School District	2
Education	7
Environment and Conservation	7
Finance	2
Fire and Emergency Services - NL	1
Government Services	13
Health and Community Services	7
Newfoundland and Labrador Medical Care Plan – Division of Health and Community Services	1
Human Resources, Labour and Employment	53
Justice	10
Provincial Correctional Facilities (see chart on complaints)	77
Labour Relations Board	1
Labrador Health	2
Memorial University	5
Municipal Assessment Agency	1
Newfoundland and Labrador Arts Council	1
Newfoundland and Labrador Housing Corporation	46
Professional Fish Harvesters Certification Board	1
Public Service Commission	2
Western Health	6
Workplace Health, Safety and Compensation Commission	13
Workplace Health, Safety and Compensation Review Division	5
Total Complaints & Inquiries by Department and Agency	301

Provincial Correctional Facilities' Complaints (by Subject)

Conduct of Staff	<ul style="list-style-type: none"> • Alleged disrespectful conduct X 2 • Alleged harassment • Alleged mistreatment • Alleged "stole canteen order" • Alleged assault X 3
Conduct of Persons Outside Correctional System	<ul style="list-style-type: none"> • RNC • Solicitor • Physician
Facilities Management	<ul style="list-style-type: none"> • Temperature on unit • Moisture / mold on unit • Air quality X 2
Inmate Committee	<ul style="list-style-type: none"> • Delay in meeting with correctional officials
Lockdown	<ul style="list-style-type: none"> • Duration of lockdown • Fairness of lockdown
Mail Policy	<ul style="list-style-type: none"> • Mail opened prior to delivery to offender • Delay in receiving magazine subscription
Medical	<ul style="list-style-type: none"> • Institution refusing to transport to hospital • Refusal / delay re: medical attention X 11 • Refusal / delay re: dental • Refused access to psychologist • Medication terminated by psychiatrist X 3 • Unable to access dentures • Delay in replacing leg cast
Placement within Institution	<ul style="list-style-type: none"> • Segregation (suicide watch) • Segregation (disciplinary) • Segregation (overcrowding) • Overcrowding on unit • Placement in "dry cell" without water • Cell allocation • Placement on hostile unit X 3
Privacy	<ul style="list-style-type: none"> • Correctional Officer's presence in medical examination room
Programming	<ul style="list-style-type: none"> • Deficiency in aboriginal programming
Property	<ul style="list-style-type: none"> • Medication missing after transfer • Jacket destroyed by police dog • Missing clothes X 2 • TV, clothing, documents and hygiene items missing • Loss of other personal items
Release	<ul style="list-style-type: none"> • Institution has miscalculated release date • Temporary absence denied • Delay in appointment with classification officer
Sanitation / Hygiene	<ul style="list-style-type: none"> • Issuing worn sandals to inmates • Lack of toothpaste, shampoo, soap • Denied access to clothing room • Denied shower • Six weeks between haircuts
Telephone Access	<ul style="list-style-type: none"> • Adding eligible callers to list X 4 • Prohibitive cost for long distance calls to spouse • Prohibitive cost for long distance calls to clergyman • Prohibitive cost for collect calls to family • Privileges revoked X 2
Television	<ul style="list-style-type: none"> • Loss of privileges X 2
Transfer	<ul style="list-style-type: none"> • Delay in transfer to federal correctional centre X 3 • Conditions of transfer between institutions • Protesting intra-provincial transfer

Complaints/Inquiries by Electoral District April 1, 2010 – March 31, 2011

Bay of Islands	5
Bellevue	2
Bonavista North	2
Bonavista South	5
Burgeo & La Poile	3
Burin – Placentia West	2
Cape St. Francis	5
Carbonear – Harbour Grace	8
Conception Bay East & Bell Island	4
Conception Bay South	6
Exploits	3
Ferryland	5
Fortune Bay - Cape La Hune	1
Gander	3
Grand Bank	2
Grand Falls – Windsor – Buchans	4
Harbour Main	9
Humber East	2
Humber Valley	6
Humber West	7
Kilbride	2
Labrador West	1
Lake Melville	7
Lewisporte	1
Mount Pearl North	2
Mount Pearl South	1
Other Provinces	9
Placentia & St. Mary's	2
Port au Port	5
Signal Hill – Quidi Vidi * ¹	72
St. Barbe	5
St. George's – Stephenville East	13
St. John's Centre	17
St. John's East	10
St. John's North	17
St. John's South	14
St. John's West	17
Terra Nova	5
The Isles of Notre Dame	3
The Straits & White Bay North	1
Topsail	4
Trinity – Bay De Verde	3
Trinity North	2
Unknown * ²	22
Virginia Waters	6
Total Complaints & Inquiries by Electoral District	325

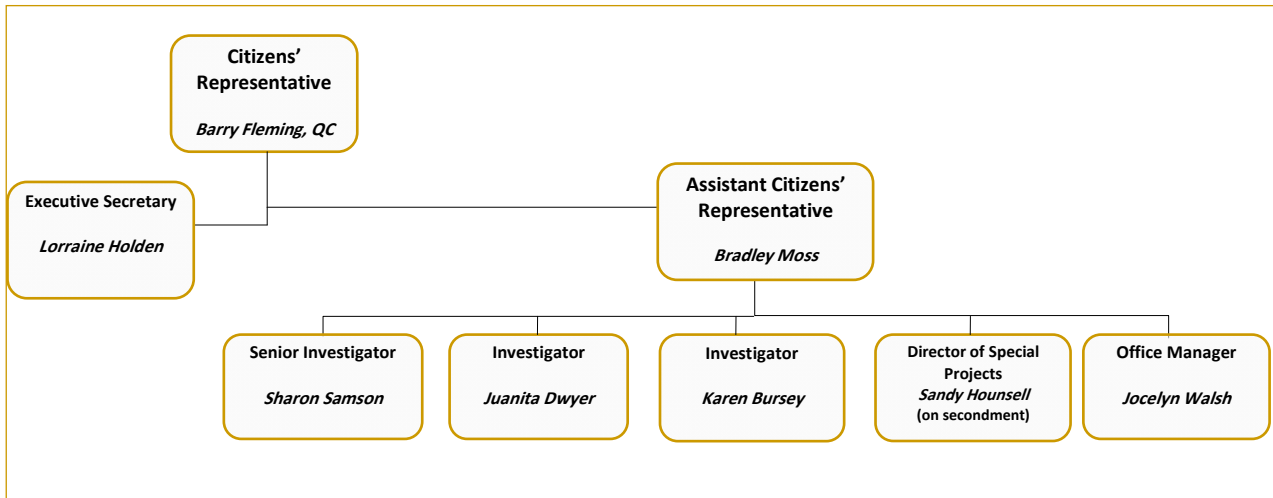
Note 1 The higher volume of complaints emanating from the District of Signal Hill-Quidi Vidi is a result of the location of Her Majesty's Penitentiary.

Note 2 Out-of-province, out-of-country, no fixed address, systemic investigations.

**Complaints/Inquiries Non-Jurisdictional
April 1, 2010 – March 31, 2011**

City of St. John's	1
Executive Council	1
Federal Departments, Agencies and Crown Corporations	6
Municipality (Exc. St. John's, Mt. Pearl and Corner Brook)	1
Newfoundland and Labrador Dental Board	1
Other	7
Private Companies/Corporations	5
Royal Newfoundland Constabulary	2
Total Complaints & Inquiries Non-Jurisdictional	24

**Office of the Citizens' Representative
Organizational Chart**



Kudos

Since 2002, the Office of the Citizens' Representative and the Office of the Premier have worked together to give recognition to select public servants who demonstrate a commitment to the principles of fairness and good governance. Nominated by our staff, these individuals many times go the extra mile to ensure that citizens are treated in a timely, professional and equitable manner, or they act promptly on the requests for information our Office makes every year across many departments and agencies.

For this reason we give them "kudos" for a job well done. Each will receive letters of acknowledgment and congratulations from the Citizens' Representative and the Premier for their personnel files.

John Sparkes (Newfoundland and Labrador Housing Corporation – Corner Brook). John has established a reputation for an accessible and open approach when dealing with the housing issues affecting our most marginalized citizens. He has shown an impressive willingness to conduct necessary field work and policy review to find flexible solutions to those who seek fairness through our Office.

Colin Rogers (Environment and Conservation - Gander). Colin demonstrated the quintessential traits of a professional public employee when facilitating a negotiated settlement to a protracted and contentious land dispute. He not only had a firm understanding of the evidence which prompted the dispute, but also the policies and legislation which governed any possible resolutions. He demonstrated an ability to empathize with all parties and, once identified, worked hard to conclude a result which satisfied all interests.

How to Reach us

Staff

Barry Fleming, Q.C.	Citizens' Representative
Bradley Moss	Assistant Citizens' Representative
Sharon Samson	Senior Investigator
Juanita Dwyer	Investigator
Karen Bursey	Investigator
Sandy Hounsell	Director of Special Projects (on secondment)
Jocelyn Walsh	Office Manager
Lorraine Holden	Executive Secretary

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In Person

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20 Crosbie Place
St. John's, NL

On Facebook

Office of the Citizens' Representative – Newfoundland and Labrador

A scenic view of Cape Spear at sunset. The foreground is dominated by large, dark, jagged rocks. The ocean is a mix of white foam from breaking waves and a deep blue-grey color. In the background, a dark, forested cliff rises against a sky filled with heavy, dark clouds, with a hint of sunset light on the right side.

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