



Office of the Citizens' Representative
Province of Newfoundland & Labrador

Citizens' Representative Annual Digest

April 1, 2018 - March 31, 2019

.seeking fairness, finding solutions

Table of Contents

Message from the Citizens' Representative	1
Our Role.	2
The Complaint Process.....	4
A Month in Review.....	5
Public Interest Disclosure	7
Individual Case Summaries	8
NL Human Rights Commission	
<i>Wrongful Complaint Dismissal</i>	8
<i>Allegations of Insufficient Investigation</i>	9
Eastern Regional Services Board	
<i>Enforcement of Fee Structure</i>	9
<i>Confirmation of Service Required</i>	10
Newfoundland and Labrador Housing Corporation	
<i>Working Through Cannabis Legislation and Policy Development</i>	11
<i>Accidental Property Damage</i>	11
Service NL; MRD	
<i>Wrongfully Fined</i>	12
<i>A Closer Look for Fair Assessment</i>	12
Department of Advanced Education, Skills and Labour	
<i>Income Support Program - Undetected Overpayment</i>	13
Department of Justice and Public Safety; Adult Corrections	
<i>Therapeutic Recording</i>	14
<i>Is a Presence Necessary?</i>	15
Department of Health and Community Services	
Medical Transportation Assistance Program	
<i>Opportunity to Appeal</i>	15
NL Prescription Drug Program	
<i>Working Together for Approval</i>	16

Table of Contents (Cont'd)

Eastern Health; Alternate Family Care Program
Policy Deficiencies 16

Central Health; Community Supports
Supporting Citizens to Safely Live at Home 18

Department of Fisheries and Land Resources
Fair Process for Competing Applications 19

Department of Municipal Affairs and Environment
Unenforced Illegal Infilling..... 19

Department of Transportation and Works
Unreasonable Delay 21
Reasonable Snow Clearing..... 21

Statistics 24
 Complaints/Inquiries by Department and Agency 24
 Complaints/Inquiries by Electoral District 25
 Complaints/Inquiries Non-Jurisdictional 26

Organizational Chart 27

How to Reach Us 28

Message from the Citizens' Representative

On April 17, 2019, the House of Assembly passed a unanimous resolution appointing me as Citizens' Representative for a six-year term, effective May 1. This was a tremendous honour for me and I thank the Members of the House of Assembly for their vote of confidence. When I walked into the Office of the Citizens' Representative as its first Investigator in March of 2002, becoming Citizens' Representative someday was about the furthest thing from my mind.

But, I fell in love instantly with the work. It is unique in a number of ways from most other career paths in public administration. Each day you come to work with the opportunity to help someone, including people in crisis. Each day you get an opportunity to influence government to act in a humanistic and equitable fashion, and conversely, you get to uphold bureaucratic successes: assuring public servants and the citizens of our Province that their government is treating people fairly.

2019 represents the 50 year anniversary of the House of Assembly receiving the Report of the Select Committee on the Appointment of an Ombudsman. The committee was chaired by MHA and former NTV broadcaster, John Nolan, and they did a great job advocating for the creation of what would become our forerunner Office of the Parliamentary Commissioner. At the time the report was written in 1969, the Ombudsman model was new in Canada, and the committee concluded that the Province needed a check against violation of citizens' rights under the law that "may be infringed upon either accidentally or deliberately by the inexorable and necessarily impersonal turning of the giant wheels of public administration." Fifty years later, this unique and highly adaptive Office continues to

act as a vanguard against these infringements, as well as serving as an investigative unit for wrongdoing within the public service and the House of Assembly.

I look forward to propelling further improvements and adaptations over the next six years, while staying true to the prosecution of our core mandate services and the budget we are given to perform them. I do so with enormous support from the staff, our colleagues within the House of Assembly Service, and the best practices of my federal, provincial and territorial counterparts.

This report is an accounting of our accomplishments and a statistical snapshot of our work during 2018-19. At all times material to this report my predecessor, Barry Fleming, QC, was the Citizens' Representative. Barry's second term expired during December of 2018, but he graciously agreed to an extension until his replacement was confirmed. Those who know Barry, know he isn't about to enter any sort of retirement. We all wish him well in his next chapter. I take this opportunity again to thank him for his mentorship, his inclusive leadership style, for showing us all by example how to effectively deal with parties in conflict, and for implementing the vast majority of internal policy and procedure we employ in this Office today.



Bradley J. Moss
Citizens' Representative

Our Role

For over 50 years, Canadian provinces, universities and colleges, and the federal government have relied on ombudsman services to mediate and investigate complaints. In 2019, Canada continues to be an active player on the forefront of the evolution of the ombudsman concept, as it expands further into the private sector.

Our Office opened in St. John's in February 2002. We serve the public, and the House of Assembly, in the classical parliamentary ombudsman role. In 2007, our mandate expanded with the passage of the **House of Assembly Accountability, Integrity and Administration Act**. Under Part VI of that Act we are tasked with the investigation of public interest disclosures of wrongdoing made by members and staff of the House of Assembly.

Since 2014, we have also been responsible for the government-wide whistleblower program. Under the **Public Interest Disclosure and Whistleblower Protection Act**, (PIDA), government employees have the right to confidentially disclose wrongdoing in their workplace that should be stopped or corrected in the public interest. The PIDA imposes penalties on anyone who commits a reprisal against persons who make disclosures, or who seek advice on the commission of wrongdoing in the public service. Previous reports relating to PIDA can be found on our website:

<https://www.citizensrep.nl.ca/>

As a non-partisan Statutory Office, we investigate public bodies based on complaints received from:

- citizens;
- whistleblowers;
- Members of the House of Assembly; and
- the Lieutenant Governor-in-Council.

The Citizens' Representative is also empowered to launch investigations in his or her own discretion, without a specific named complainant.

We recognize the value in resolving complaints at the earliest possible stage. We assume a mediation/facilitation function in cases which do not require the intricacies of a formal investigation. Public bodies under our jurisdiction generally agree with this approach, typically assigning personnel to liaise and open lines of communication with us in the interest of prompt resolution or settlement of complaints.

Over the last 17 years, we have acquired a broad knowledge of referral sources for citizens initially unsure of where to turn for help in resolving their problems. Staff endeavor to ensure the person who presents with a non-jurisdictional complaint is still provided with the contact information for the appropriate agency to deal with their concerns. Given the size of our referral network, we can often link the citizen directly with the person they need to speak with, and may further facilitate contact if the citizen has any barrier to access.

Our Investigators are skilled in effective self-advocacy and complaint-handling techniques, and frequently provide forms, telephone numbers, internet links and email addresses to individuals who need alternate avenues of redress.

There are a number of statutory restrictions on our jurisdiction. These are set out in Section 19 of the **Citizens' Representative Act** and include:

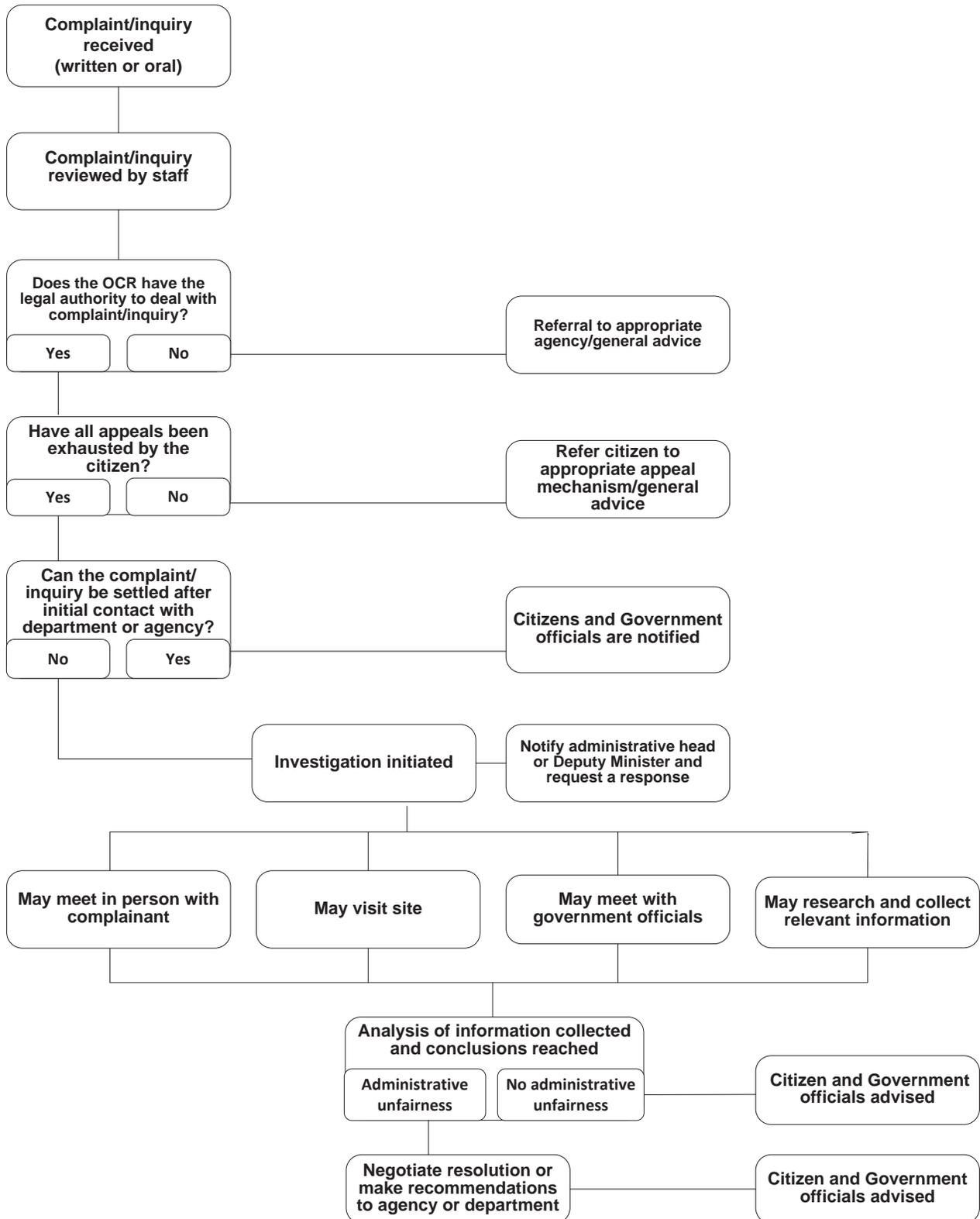
- the House of Assembly or a committee thereof;
- the Lieutenant Governor-in-Council;
- Executive Council and its various divisions¹;
- the court, the members of the judiciary, masters of the court, and justices of the peace;
- awards, decisions, recommendations or omissions of arbitrators made pursuant to the **Arbitration Act**;
- matters in respect of which there are existing rights of appeal or objection under another Act until such time as these rights are exhausted or the time to appeal has expired;
- refusals to provide access to information under the **Access to Information and Protection of Privacy Act, 2015**; and,
- matters falling within the jurisdiction of the Office of the Child and Youth Advocate; and
- certain matters relating to the administration of the **Personal Health Information Act** or a matter falling within a Commissioner's purview under that Act.

The **Citizens' Representative Act** also does not cover the acts, errors, omissions or decisions of the Government of Canada, or municipalities; nor does it authorize the investigation of private companies or private citizens.

¹The Executive Council is exempt from the **Citizens' Representative Act** but is subject to investigation under the **Public Interest Disclosure and Whistleblower Protection Act**.

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 to illustrate how complaints and inquiries are processed.



A Month in Review

Intake is an extremely important function in any complaint-handling organization. It covers a wide array of topics each month. To inform readers of the nature and volume of complaints at our intake stage, we select one month from the fiscal year to furnish examples of what we hear. The variety of complaints raised each month require staff to have a broad knowledge of the programs and services provided by provincial government entities. Additionally, complaints that are referred to community and other government entities and mechanisms at a municipal, provincial and federal level require even broader knowledge. Similar to the evaluation of each inquiry and investigation, referrals require assessment for appropriateness, the sharing of knowledge of the referral agency mandate and procedures, and often working with the agency to facilitate a connection with a citizen. The following is a cross section of allegations and issues raised by citizens in May 2018.

ALLEGATION	DEPARTMENT
Funding for unpaid graduate field placement	Advanced Education, Skills and Labour
Lack of mental health support/treatment	Justice and Public Safety - Adult Corrections
Concerns re: outcome of review of waste collection fee	Eastern Regional Services Board
Expiration date on Certification of Qualification (3)	Advanced Education, Skills and Labour - Apprenticeship & Trades Certification Division
Access to medical attention (4)	Justice and Public Safety – Adult Corrections
Privacy breach	Referral: Client Relations – Eastern Health and Information and Privacy Commissioner
Miscalculation of pension	Provident 10 (Out of Jurisdiction)
Arbitrary crushing of medication	Justice and Public Safety – Adult Corrections
Suspension of income support benefits	Advanced Education, Skills and Labour
Denial of financial support with medical transportation	Health and Community Services – Medical Transportation Assistance Program
Lack of flexibility regarding terms of transfer	Newfoundland and Labrador Housing Corporation
Use of safety checks disruptive to sleep	Justice and Public Safety - Adult Corrections
Application denied	Legal Aid Commission
Inadequate explanation of implications of policy upon receipt of Student Aid	Advanced Education, Skills and Labour
Complaint about physicians	Referral: College of Physicians and Surgeons
Eviction from private landlord	Referral: Residential Tenancies - Service NL and Newfoundland and Labrador Housing
Placement in cell with camera and lack of access to desk and chair	Justice and Public Safety – Adult Corrections
Former employee’s access to medical benefits	Eastern Health
Unfair treatment by staff	Justice and Public Safety - Adult Corrections
Suspension of income support benefits, request for appeal information	Advanced Education, Skills and Labour

A Month in Review (cont'd)

ALLEGATION	DEPARTMENT
Disagreement with placement assessment for Long Term Care	Central Health
Missed doses of medication	Justice and Public Safety – Adult Corrections
Misdiagnosis of medical condition	Referral: College of Physicians and Surgeons
Inappropriate application of strip search policy	Justice and Public Safety – Adult Corrections
Status of estate	Referral: Public Trustee
Discontinuation of psychiatric medication (2)	Justice and Public Safety – Adult Corrections
Negotiation of financial support for moving expenses	Advanced Education, Skills and Labour
Regulation of cannabis industry	Newfoundland and Labrador Liquor Corporation
Denied access to hospital for medical attention	Justice and Public Safety – Adult Corrections
Persecution by Federal Departments	Out of Jurisdiction
Unethical behaviour of non-profit Board (Health Research Ethics)	Health and Community Services
Lack of respect and professionalism by correctional staff	Justice and Public Safety – Adult Corrections
Disagreement with amount of NL Power bill	Referral: Newfoundland Power
Inadequate qualifications of kitchen staff	Justice and Public Safety – Adult Corrections
Physician refusal to send medical documentation by email – privacy	Referral: Information and Privacy Commissioner
Disagreement with placement assessment for Long Term Care	Eastern Health
Disagreement with disciplinary charge (2)	Justice and Public Safety – Adult Corrections
Arrears of rent	Newfoundland and Labrador Housing Corporation
Difficulty acquiring medical information about mother in hospital and Long Term Care	Referral: Client Relations – Western Health
Juice no longer provided with meals	Justice and Public Safety – Adult Corrections
Direct payment of rent and NL Power	Advanced Education, Skills and Labour
Privacy breach by public body	Referral: Information and Privacy Commissioner
No access to call lawyer	Justice and Public Safety – Adult Corrections
Request for contact information	Referral: Advanced Education, Skills and Labour
Denied access to health care policies	Justice and Public Safety – Adult Corrections

Public Interest Disclosure

The OCR is responsible for investigating allegations of wrongdoing under the following two pieces of public interest disclosure legislation:

1. Part VI of the **House of Assembly Accountability, Integrity and Administration Act** (“HOAAIA”). Part VI serves as a portal for employees and Members of the House of Assembly to disclose potential wrongdoing at the House of Assembly that they believe should be investigated in the public interest.

During 2018-19, OCR received 0 disclosures under HOAAIA.

2. The **Public Interest Disclosure and Whistleblower Protection Act** (“PIDA”):

A report to the House of Assembly under Section 20 of the PIDA is required annually. The report covering the period April 1 2018 to March 31 2019 was tabled on July 15, 2019.

The OCR handled 6 inquiries under PIDA during 2018-19.



Individual Case Summaries

Case summaries allow us to expand on the specific course certain complaint files have taken through our complaint handling system. The following cases, selected by staff, outline a cross-section of the complaints referred, mediated and investigated during 2018-19.

NL Human Rights Commission (HRC)

Wrongful Complaint Dismissal

The NL Human Rights Commission (HRC) is an arms length government agency responsible for promoting and protecting human rights in this Province. The Commission is responsible for administering the **Human Rights Act**, investigating and resolving human rights complaints.

A citizen contacted our Office with questions relating to his human rights complaint that was rejected some five months after he lodged his complaint with the Commission. The citizen believed that his complaint had been accepted as it was assigned a file number, and a complaint form was drafted by the HRC for his review and feedback. Following provision of his feedback, the Commission advised there was no basis to accept a human rights complaint. The citizen alleged the process leading to the acceptance of his human rights complaint was flawed, as any feedback provided at this juncture did not change the facts. Furthermore, it was not clear why the complaint did not have any basis for acceptance at that time. The citizen was seeking answers as to why his complaint was rejected, and after that, an opportunity to submit additional information that may not have been available to those who dismissed his complaint. Ultimately, the citizen requested the complaint be accepted by the HRC.

The HRC provided the intake process that involves an initial review of the allegations following contact with an individual. After the review, the individual is notified whether the complaint is or is not accepted. If accepted, a complaint form is drafted and sent to the individual for their signature and once the signed complaint form is returned, it becomes an official complaint. In this instance, it was indicated that it only became clear that there was no reasonable basis to accept a complaint after receiving the final draft. The HRC acknowledged the citizen was not provided proper reasons for the non-acceptance of the complaint and committed to providing same in writing, accompanied by an apology. Further, the HRC indicated it would be clearer in communications with complainants and provide reasons when a complaint is not accepted.



The citizen made contact with the Commission and both parties notified the OCR that the complaint had been accepted for investigation. The complaint was eventually settled with the citizen receiving general damages and a letter of reference from the employer. The employer was also provided with Human Rights training.

The OCR was satisfied with the specific efforts taken by the HRC to address the citizen's complaint, and to improve the process of acceptance of complaints and communication of decisions to citizens reporting allegations of human rights violations.

A citizen contacted the OCR following dismissal of her complaint to the Human Rights Commission (HRC). It was her allegation that her complaint was not sufficiently investigated, and the complaint was wrongfully dismissed. It was specifically alleged that the investigation was incomplete as mediation did not occur; the citizen was not interviewed during the investigation process; and ultimately, the investigation resulted in the wrong decision without sufficient explanation of the outcome and reasoning.

Our investigation found that mediation had occurred with a formal proposal being submitted by the citizen for consideration through the HRC's Voluntary Resolution Path. The matter was not able to be successfully mediated and the citizen's complaint was then forwarded for investigation.

The evidence reviewed supported the position of the HRC that the citizen had many opportunities to comment and provide her side of the story. She was also provided with copies of all information provided by the Respondent to her complaint in addition to a case assessment letter that also invited an opportunity to provide additional information. We found that the information gathered through informal questioning of the citizen, in the absence of a formal interview or acquiring a formal statement, was adequate and appropriate given the context of the investigation. During the OCR investigation, there was no indication of any further evidence that could have been considered, that was not available during the investigation by the HRC.

The HRC presented, in response to the citizen's case assessment, that the evidence was insufficient to refer the matter to a Board of Inquiry or Commission Directed Mediation. The OCR found the decision to the citizen had clearly explained the lack of evidentiary basis to warrant referring the matter to a Board of Inquiry.

The OCR found there was no indication of any inadequacies or lack of due diligence in the HRC's investigative process that would lead to the identification of a breach of the **Citizens' Representative Act**.

One of the roles of the Eastern Regional Service Board (ERSB) is to implement the Provincial Solid Waste Management Strategy via the provision of waste management services. The ERSB is responsible for, among other things, the management of services in the eastern region, including curbside/roadside collection of garbage and recyclables, waste recovery facilities, bulk item pick up, and household hazardous waste events. The ERSB provides these services through its Eastern Waste Management Division.

A citizen complained to the OCR in relation to fees charged for the period of 2010 to 2017. The citizen alleged they were living out of the Province and were unaware of the service. Furthermore, the property was sold in 2014. In response, ERSB advised the file had been handled appropriately. ERSB referred to the **Regional Service Boards Act and Regulations** providing authority to charge fees, including retroactively, whether residents are aware of the service or not.

**NL Human
Rights
Commission
(HRC)**

*Allegations of
Insufficient
Investigation*

**Eastern
Regional
Services Board
(ERSB)**

*Enforcement of
Fee Structure*

ERSB
*Enforcement
of Fee
Structure
(cont'd)*

The OCR did not intend to question the authority of the ERSB to charge fees for providing its service; however, we initiated a formal investigation with respect to how ERSB enforces its fee structure retroactively.

Our investigation concluded the citizen was treated unfairly by ERSB on the following grounds:

- The citizen should not have been charged fees prior to June 27, 2012, as a court decision had previously prohibited ERSB from retroactively collecting fees before the legislation changed in 2012.
- The citizen should not have been charged after 2014 as the property had been sold.
- The citizen should not have been charged in general, as ERSB was unable to prove that the service was provided or even available to the property in question.

Our investigation also found that ERSB staff were not respectful in their communication with the citizen.

In light of our determination that the Eastern Regional Service Board breached s.37 of the **Citizens' Representative Act**, the following recommendations were made:

1. That ERSB waive all service fees invoiced to the citizen.
2. That there would be no penalty interest or court fees.
3. That ERSB improve its record keeping and documentation on citizens' case files including, but not limited to: hard copies of letters sent placed in a file and accurate and complete contact notes be kept, inclusive of dates.
4. Provide training for frontline staff in respectful and open communication with customers and the public and exhibit a commitment to efficient complaint handling by promoting a positive culture that does not summarily dismiss or minimize citizen complaints.

The OCR was disappointed that ERSB refused to respond to our Office with respect to our recommendations, and is notifying the House of Assembly of this fact.

ERSB
*Confirmation
of Service
Required*

A citizen made a complaint about being charged a waste management fee for a travel trailer that was parked on land not owned by the citizen, but was considered by the ERSB to be a permanent structure on the land. The citizen presented that the trailer was merely being stored on the land during the off-season and was not being used for habitation. He applied for an exemption, but was turned down by the ERSB. The denial was based on the position that the **Regional Service Boards Act** provides the authority to charge fees to "persons who occupy real property, either as owners or tenants of the property."

The OCR initiated a formal investigation of the matter. ERSB provided evidence that the trailer appeared to be set up for habitation as it had

an attached patio, electrical connection and a water connection. ERSB provided further evidence that although the citizen was not the owner of the land, a relative was. Furthermore, the citizen was paying for the electrical connection to the property. ERSB, however, could not provide any evidence that the waste collection service for which it was charging, was actually available to this property.

Our Office agreed the ERSB had the authority to charge a fee to the citizen. Our investigation, however, found that ERSB should not be charging a fee to this citizen if no curbside collection service was being provided to the property. We determined that once it is established that the property is receiving the weekly curbside pickup in the same manner as other property owners in the area, then it would be appropriate for a fee to be charged. We identified a breach of the **Citizens' Representative Act** and our Office recommended the ERSB waive all fees charged to the citizen. It should only start billing when there is confirmation that the property is being serviced with the curbside pickup.

ERSB maintained that the overall approach was to implement a system that everyone needs to pay his or her fair share and has a responsibility for the environment. There is no requirement to prove use of the services in order to charge a user fee. ERSB disputed the findings in our report and would not waive the fees.

Newfoundland and Labrador Housing Corporation (NLHC) has a mandate to develop policy, planning, delivery, administration and evaluation of an array of social housing programs as well as the maintenance of their housing portfolio. NLHC maintains a Rental Housing Program, owns, and administers social housing units throughout the Province.

A tenant of NLHC contacted our Office with concerns that NLHC was not adequately addressing the issue of a neighbouring tenant's use of marijuana. The citizen noted that the smoke was aggravating allergy issues within the family.

Our inquiry verified that NLHC was indeed responsive to the issues raised by the citizen and satisfactory actions were undertaken to address the issues. This complaint was made prior to the legalization of recreational marijuana, which came into effect on October 17, 2018. On a broader level, NLHC advised as legalization came closer, policy staff had a heightened awareness of how it would be responding to these concerns and others emanating from legalization as cannabis policy continued to develop on a national level.

A tenant of NLHC contacted our Office in frustration after a contractor accidentally punctured a hot water line during renovations to the family's former NLHC rental unit. The accident resulted in damages to the family's property. The tenant believed that NLHC should provide financial compensation for the damages incurred.

ERSB

Confirmation of Service Required (cont'd)

Newfoundland and Labrador Housing Corporation (NLHC)

Working through Cannabis Legislation and Policy Development

NLHC

Accidental Property Damage

NLHC

***Accidental
Property
Damage
(cont'd)***

Upon inquiry, the OCR was advised that NLHC strongly recommends that tenants obtain insurance for personal property. Such insurance protects tenants from loss of belongings due to theft, fire, flood or other disasters. While the tenant did not have tenant insurance in place, NLHC was able to negotiate a settlement with the contractor involved and provided compensation to the tenant.

Service NL (SNL)

**Motor
Registration
Division (MRD)**

***Wrongfully
Fined***

The Motor Registration Division (MRD) is a branch of Service NL. Its main responsibility is the testing and issuing of driver licences and issuing of vehicle registrations. MRD interfaces with the Department of Justice, Fines Administration, specific to fines issued under the **Highway Traffic Act, 1990**, attached to driver licences and vehicle registrations issued by the MRD.

A citizen contacted our Office upon receipt of correspondence from MRD informing him of outstanding fines incurred under the **Highway Traffic Act, 1990** and a Notice of Suspension of his licence. The correspondence caused concern and confusion for the citizen. The citizen indicated that he did not have any outstanding fines, and he no longer owned the vehicle that acquired the fines. The citizen stated that MRD was notified months earlier that the car had been sold and, therefore, ownership was transferred to another individual.

Upon our inquiry, MRD consulted with Fines Administration and confirmed fines had been added to the citizen's driver profile in error. This error resulted in the automatic suspension of his licence and a formal letter generated from MRD. Fines Administration identified the error and corrective action was taken to transfer the fines to the correct driver profile. Unfortunately, Fines Administration did not contact MRD to advise of this activity. Likewise, the citizen was not advised of the error and corrective action taken.

Service NL committed to issuing formal correspondence to the citizen with an explanation to resolve his concern and confusion.

SNL; MRD

***A Closer Look
for Fair
Assessment***

The Motor Registration Division (MRD) has authority to issue Accessible Parking Permits. To obtain such a permit, a citizen must have an Accessible Parking Permit Application completed by a physician or nurse practitioner.

A family member, whose elderly parent lives with a cognitive impairment, contacted our Office following information from the MRD that the circumstances of the parent did not meet the eligibility criteria for a permit. The family member presented safety risks as the parent, while mobile, was not able to walk any significant distance. The parent's cognitive impairment provided a further safety risk when dropped off alone to facilitate parking for the family member. The family member presented the cognitive impairment should fall within the eligibility criteria for an Accessible Parking Permit.

Three of the criteria defining eligibility for an Accessible Parking Permit on the actual application are quite specific to impaired mobility, lung disease and cardiac conditions, while the fourth and final criteria broadly states: “Has a visual or other impairment which requires specialized access to ensure safety.” After initiating an investigation, MRD advised “other impairment” could include such conditions as bowel problems, psychiatric issues, small children with severe disabilities other than mobility, etc. The broad use of “other impairment” was intentional to allow for the discretionary approval of a permit following a review by the MRD’s medical staff, medical review officer or medical consultant.

Following the initiation of our investigation, the Department advised the specific circumstances presented were satisfactory to meet the definition of “other impairment” and the family was encouraged to have the application completed by the treating specialist to ensure an Accessible Parking Permit was issued without delay.

The Department of Advanced Education, Skills and Labour (AESL) provides financial benefits and other services to eligible low income individuals and families to assist in meeting daily living expenses through the Income Support Program.

A citizen contacted our Office stating AESL had approved a rate of income support that was in excess of his actual eligibility at the time of his application for benefits. He continued to receive benefits beyond his entitlement for several years, despite having verified his circumstances on several occasions. The citizen alleged that AESL had failed to identify the overpayment in a timely manner. It was further alleged this delay resulted in financial hardship as he was now a pensioner on a fixed income.

There are occasions in which a recipient of income support may receive benefits that exceed the amount of the determined eligibility. The **Income and Employment Support Regulations** provide that when an overpayment has accrued, the amount of the overpayment may be recovered. The circumstances of the case determined the overpayment was the result of a departmental error, without any fault of the citizen. The governing legislation, regulations and policy supports the recovery of an overpayment, even if the overpayment was due to an administrative departmental error.

As part of our investigation, we reviewed and considered the processes and mechanisms AESL has in place to reduce the prevalence of administrative errors and reduce overpayments. This included a review of the intake application process and the review process. In this particular situation, the overpayment was undetected during the intake application process, which includes a pay authorization process, and was undetected during two separate review processes.

SNL; MRD

*A Closer Look
for Fair
Assessment
(cont'd)*

**Department
of Advanced
Education, Skills
and Labour
(AESL)**

**Income Support
Program**

*Undetected
Overpayment*

AESL

Income Support Program

Undetected Overpayment (cont'd)

Our investigation found that AESL failed to identify the overpayment in a timely manner. The investigation also raised concern with the effectiveness of the intake application process and the review process which should mitigate administrative errors by AESL. Overall, we had concern with error detection and error rates caused by departmental error.

Our investigation cited a breach of the **Citizens' Representative Act** as AESL failed to identify the overpayment in a timely manner which resulted in an unreasonable financial burden placed on the citizen. We disagreed, however, that the citizen was left in a position of financial hardship based on the repayment agreement in which AESL exercised discretion in recovering the overpayment at a low rate lower than the rate.

AESL cited its limitations to confirm the number of overpayments created as a result of administrative error. AESL accepted our recommendation that the Department undertake a more detailed examination of errors to determine their underlying cause.

Department of Justice and Public Safety
Adult Corrections

Therapeutic Recording

Adult Corrections is a Division of the Corrections Branch of the Department of Justice and Public Safety. Adult Custody in the Province is comprised of five correctional facilities and two detention centres that provide services and programs for sentenced, remanded and detained offenders. Programs and services are delivered to assist offenders in reintegrating into the community following release from custody.

The OCR received a complaint that an inmate at Her Majesty's Penitentiary (HMP) was receiving unfair treatment as a request to use a voice recorder for therapeutic purposes had been denied by administration. The citizen had a speech impairment and it was stated that the voice recorder would enable support with his articulation, speech and communication. The allegation was two-fold in that the approval for supportive, therapeutic purposes was not approved, but also the decision was unfair as similar recorders were being used by other inmates at HMP to record music, thereby giving the appearance of inconsistent decision-making.

The OCR commenced a formal investigation of the matter. The Department reconsidered the previous decision and decided to allow the voice recorder to be used by the citizen. The citizen was released from custody prior to the change in decision, however.

The Department further committed that a policy analyst would work with Adult Corrections and the medical unit at HMP to develop a policy for similar requests. The policy would ensure fairness and consistency in decision-making, while maintaining its responsibility to ensure safety and security in the prison environment.

Consideration of the safety and security of inmates and staff is paramount in the daily operations of provincial correctional facilities. As well, in the context of a therapeutic association, the confidential relationship between physician and patient extends to inmates and the institution's licensed practitioners.

An inmate from a correctional facility contacted our Office alleging unfairness with the practice of having a correctional officer in the room during video conference sessions with a psychiatrist. The inmate was informed this protocol was in place for safety and security reasons. The inmate stated he was uncomfortable discussing issues with the psychiatrist while a correctional officer was present and able to listen to the conversation. Furthermore, he questioned any security issues as it was a video conference and he was not in the room with the psychiatrist.

Our Office contacted prison officials to confirm and discuss the security concerns, and the appropriateness and efficacy of the practice wherein a correctional officer is present during video conferencing medical appointments. Prison officials reviewed the practice following the inmate complaint and agreed that having a correctional officer in the room during these types of video conference sessions was not necessary. The OCR was advised a change would be implemented to have a correctional officer positioned outside the door of the video conferencing room, thereby affording the inmate privacy during a psychiatric consultation.

The Medical Transportation Assistance Program (MTAP) provides financial assistance to beneficiaries of the Medical Care Plan (MCP) who incur substantial out-of-pocket travel costs to access specialized insured medical services which are not available in their immediate area of residence and/or within the Province.

The basic principles of administrative fairness purport that citizens are entitled to a full and fair opportunity to present their case to the decision-maker.

A citizen complained to our Office having attempted to appeal a decision by MTAP. The citizen was previously denied a claim under this program. Evidence was presented to confirm submission of an appeal of the decision; however, following a reasonable amount of time, a response from the Department was not received. The citizen alleged the Department denied him a full and fair opportunity to be heard.

The OCR made a preliminary inquiry with the Department to determine the status of the appeal, to discover the Department did not have any record of receiving an appeal from the citizen. The documentation for the appeal was resubmitted and the Department subsequently approved the claim.

Adult Corrections

Is a Presence Necessary?

Department of Health and Community Services (HCS)

Medical Transportation Assistance Program (MTAP)

Opportunity to Appeal

**Department
of Health and
Community
Services (HCS)**

The Newfoundland and Labrador Prescription Drug Program (NLPDP) provides financial assistance for the purchase of eligible prescription medications for those who reside in the Province.

**NL Prescription
Drug Plan
(NLPDP)**

*Working
Together for
Approval*

Following a denial by the NLPDP for coverage of special authorization medication, a senior citizen contacted our Office for assistance. We initiated communication with the NLPDP and found that important medical information was missing to support the approval of the medication under the provisions of the Program. The NLPDP completed a review of the file and a pharmacist within the Program reached out to the citizen to discuss what was required. With consent from the citizen, the pharmacist was able to facilitate a process to ensure availability of the required medical information to further assess the request for special authorization.

Eastern Health

**Alternate
Family Care
Program**

*Policy
Deficiencies*

Residential options are available to adults with disabilities who meet program criteria and are unable to reside with their family. One such option is the Alternate Family Care Program, offering private homes which have been approved by the Regional Health Authority for the purpose of providing room and board, supervision and personal and social support for up to two unrelated adults with intellectual disabilities in a family atmosphere.

An operator of an Alternate Family Care (AFC) home filed a complaint with our Office against Eastern Health because they believed the decision to revoke their approval to operate as an AFC provider was unfair.

The primary focus of our investigation was to determine whether the process Eastern Health followed was fair to the citizen. Our investigation determined that Eastern Health followed the rules of procedural fairness throughout the decision-making process. The evidence demonstrated how the decision to revoke the AFC home approval was reached and it further substantiated the steps that were followed before, during and after the decision was made. Despite these findings, assessment of the decision by Eastern Health in light of the Provincial Alternate Family Care Program Operational Standards (2007), and Eastern Health's policy Investigation of Abuse and Neglect, provided the following shortcomings:

1. Eastern Health's policy on Investigation of Abuse and Neglect was in draft format and had not been formalized. The draft policy indicated it has not been revised since 2009.
2. The **Adult Protection Act** proclaimed on June 30, 2014, may have implications for Eastern Health's draft policy as it relates to residents of AFC homes.
3. The Investigation of Abuse and Neglect draft policy states the social worker "will complete a screening document". Eastern Health stated the screening document referenced in the draft policy was not an actual "form". Upon review of the draft policy, it is apparent the intent of the policy was to use an

actual document for screening purposes. Furthermore, the evidence suggested inadequate documentation of the screening/assessment process used to substantiate the decision-making of one relevant investigation.

4. Eastern Health's draft policy required that caregivers would be provided with written notification of the outcome of the investigation within two weeks. The evidence supports that this did not happen in the 2016 investigation.
5. The Investigation of Abuse and Neglect draft policy was not always consistent with the Provincial Alternate Family Care Program Operational Standards, specifically within its Guidelines to follow in establishing policy on the investigation of Abuse/Neglect:
 - When the investigation is completed, the caregivers will be advised immediately as to whether the RHA considers the complaint to be substantiated. The decision will be confirmed in writing from the Chief Executive Officer or designate. The letter will include an offer to discuss the issues with caregivers.
 - The investigation of a complaint and the assessment of the home for continued use must be dealt with as two separate issues. Following the completion of the investigation the social worker responsible for the home will assess the suitability of the home for continued use in the program.
6. While meetings with the AFC caregiver were documented, no meeting minutes were available.
7. As required by the Provincial Alternate Family Care Operational Standards, Eastern Health had no formal policy on orientation and training.

These deficiencies rendered the process to revoke the citizen's approval as an AFC home provider as unreasonable, and therefore in breach of section 37(1) of the **Citizens' Representative Act**. As a result of this finding, the OCR made the following recommendations:

1. That Eastern Health formalize and update its policy on the Investigation of Abuse and Neglect, ensuring it is reflective of any applicable statutory requirements under the **Adult Protection Act**.
2. When completing an investigation of an allegation of abuse or neglect in an AFC home, Eastern Health develops a systematic

Eastern Health

Alternate Family Care Program

Policy Deficiencies (cont'd)

Eastern Health

Alternate Family Care Program

Policy Deficiencies (cont'd)

method of improved documentation of the entire process, including screening and assessment.

3. That Eastern Health ensures that its policy on the Investigation of Abuse and Neglect be consistent with the Provincial Alternate Family Care Program Operational Standards, specifically, the points in the Guidelines to follow in establishing policy on the investigation of Abuse/Neglect mentioned above.
4. That Eastern Health, as required by the Provincial Alternate Family Care Program Operational Standards, develops a formal policy on orientation and training.

Eastern Health accepted these recommendations and reported they had developed a plan for implementation.

Central Health

Community Supports Program

Supporting Citizens to Safely Live at Home

Central Health provides health and community services to approximately 20 per cent of the Province's population. It is the second largest health region serving a population of approximately 94,000. The geographical area served by Central Health includes 177 communities and encompasses more than half the total landmass of the island.

The Community Support and Residential Services Division of Central Health offers a diversity of supportive programs and services across the region, aimed at providing individuals with the opportunity to live as independently as possible within their community. The focus is on helping individuals access the supports they need to overcome barriers, enhance independence and improve quality of life.

A citizen contacted our Office with concern for her aging mother. The mother had been in receipt of home support services under the Community Support Program, which in turn, allowed for financial support for her medical transportation, medical supplies and equipment (oxygen) and dispensing fees for medication. Upon reassessment, Central Health determined there was no continued eligibility for home supports. The citizen presented that this decision resulted in her mother's health deteriorating. The daughter further explained the "snowball effect" of the decision in that her mother was no longer eligible for financial support towards the previously mentioned costs that improved her quality of life. The combined monthly cost of these expenses resulted in her total expenses exceeding her monthly income, making these medical necessities inaccessible to her.



The OCR initiated a formal investigation, which prompted a further review of the previous assessment by the management of the

Community Supports Program. This subsequent review acknowledged the existence of a minimal need of the citizen's mother. It was determined that a care provider was meeting the minimal need, and to prevent undue hardship towards the mother, an exception to the policy allowed for the provision of the additional medical expenses.

The Department of Fisheries and Land Resources oversees the Province's natural renewable resources of fisheries, aquaculture, forestry, agriculture and agrifoods. The Department is responsible for supporting the advancement and development of the Province's fishing, aquaculture, forestry and agriculture industries.

The Land Consolidation Program is designed to provide an opportunity for non-farm landowners and retiring farmers to sell granted (freehold) land to the Provincial Government. This will allow the Government to make it available to existing farmers, part-time farmers or new entrants aspiring towards commercial farming who are in need of additional land.

A citizen complained that a competition for land under the Land Consolidation Program was not conducted fairly as the land was allocated to a competing application. The complaint was refuted by the Department as it maintained that all policies and procedures were followed appropriately. Our Office commenced an investigation of the application process only, and did not include analysis of the actual evaluation and decision made in awarding of a successful applicant.

During our investigation of the application process, the evidence demonstrated the appearance of an expedited timeframe for the competition which we found was not adequately explained by the Department. There was no evidence, however, to suggest the expedited timeframe had any impact on the integrity of the decision made. We ultimately found the citizen's application was not evaluated any differently than the other competitors, therefore, the Department did not contravene the **Citizens' Representative Act**.

The Department of Municipal Affairs and Environment (MAE) supports the economic, social and environmental sustainability of municipalities, communities and regions through the delivery of various programs, services and supports. MAE is responsible for environmental protection and enhancement through implementing water resource and pollution prevention regulations and policies, as well as coordinating environmental impact assessments of proposed development projects and managing impacted sites.

Community Supports Program

Supporting Citizens to Safely Live at Home (cont'd)

Department of Fisheries and Land Resources

Fair Process for Competing Applications

Department of Municipal Affairs and Environment (MAE)

Unenforced Illegal Infilling

**Department of
Municipal Affairs
and Environment
(MAE)**

***Unenforced Illegal
Infilling
(cont'd)***

A citizen made a complaint to our Office alleging inaction by MAE in responding to an environmental violation. The citizen presented that a neighbour had illegally infilled a portion of a lake, thereby extending the property into the lake. Upon receipt of a complaint by the citizen, MAE completed an internal investigation and determined the infilling was illegal and proceeded to direct the neighbour to have the fill removed. Five months following this order, MAE determined the neighbour was not complying with the direction provided and a Ministerial Order was then issued. The Order clearly outlined the legal consequences for failing to comply with the conditions, which included a fine for conviction. The citizen stated that after repeated contact with MAE, the violation still was not corrected.

The citizen was concerned with the alleged delay by the Department to his numerous inquiries to which MAE indicated the situation was being reviewed by their solicitor and this was the reason for the delay. It was alleged that the delay and lack of enforcement, as well as the lack of communication to his inquiries, was unreasonable and was causing ongoing harm to the environment.

Our Office conducted a comprehensive investigation of this complaint. Upon review of the evidence, we determined MAE did not fulfill its role in protecting the environment in this case. We found the Department has the benefit of clear, concise legislation that provides the necessary enforcement powers to protect the Province's environment. Despite this, MAE was still unable to remedy an illegal act that was potentially an on-going environmental risk. We concluded that if MAE does not follow through on enforcing orders and addressing non-compliance, it potentially sends a signal to the public that they do not have to comply with legislation in place for environmental protection. Such lack of action has the potential to undermine the public's confidence in the ability of the Department to protect the environment.

In light of these findings, we made the following recommendations:

1. To immediately fix the illegal infilling as per the authority granted to the Department in the **Water Resources Act**.
2. To address ongoing communication problems with legal staff that result in significant delays.
3. To solidify a coherent, consistent plan of action in the case to deal with non-compliance that is in line with the **Water Resources Act**.

MAE accepted and addressed the second and third recommendations; however, it maintained that a risk assessment was done and that the

violation was not serious enough to escalate the violation further. It indicated that it does not plan to continue with enforcement of this violation. The OCR disagreed with the position of MAE and further advocated that it immediately escalate its enforcement of the Ministerial Order issued for the illegal infilling until it is fully resolved as per the authority granted in legislation. No further action was taken and we are notifying the House of Assembly of this fact.

MAE
*Unenforced Illegal
Infilling
(cont'd)*

The Department of Transportation and Works (TW) is responsible for the construction and maintenance of the provincial highways; the provision of the provincial ferry services; management of the provincial government fleet of light vehicles and heavy equipment; operation and maintenance of the provincial government air ambulances and water bombers; and construction and management of provincial government buildings.

**Department of
Transportation
and Works
(TW)**

*Unreasonable
Delay*

A citizen alleged TW refused to provide information and updates to his inquiries in relation to an ongoing land expropriation and compensation issue. This issue was concerning land that was expropriated by the Province for the construction of a provincial highway.

Our Office conducted a fulsome investigation of the allegations. Although it was clear there were delays in the process for the citizen receiving a decision, our investigation found no evidence that the citizen was treated unfairly or that the Department's actions were unreasonable. TW provided evidence and documentation to show the delay was due to waiting for a third party consultant's report as well as issues related to changes to municipal by-laws. The department also provided emails that demonstrated staff were diligent in the pursuit to resolve the issue. There was no evidence of any intentional delay of the proceedings. The dispute was also resolved with a settlement agreement between both parties during our investigation.

A family contacted the OCR alleging unfair treatment as TW had a practice of snow clearing their private driveway. It was the position of the family that the practice of snow clearing had, and continued to cause damage to their property. It was alleged that ice plowed from their driveway had caused damage to a vehicle, damage for which TW did not adequately answer for, and that the practice interfered with the family's ability to park in their driveway. The family stated they maintain ownership of the driveway; TW had not acquired the property by expropriation or other means. It was the desire of the family to have TW cease snow removal in their driveway.

TW
*Reasonable Snow
Clearing*

**Department of
Transportation
and Works
(TW)**

***Reasonable Snow
Clearing
(cont'd)***

TW advised the road in question (50 metres long) had been in the inventory of maintained roads for many years and had been paved by TW. It was noted that while snow clearing had been provided on the road for many years, TW did not have any record of acquiring the land on which the road lies. Upon this discovery, it was decided that snow clearing would continue for the winter season and that it would move forward with expropriation in the future. Another resident at the end of the road had been accustomed to receiving snow clearing services and TW did not want to leave that resident stranded.

Following investigation, the OCR found that the practice of snow clearing by TW was oppressive to the family who initiated the complaint. It was also determined that the failure of TW to address a claim of damages to the family's vehicle was unreasonable.

The OCR was challenged, however, to offer the recommendation as desired by the family, to cease and abandon its historical practice of snow clearing the driveway in any capacity. Such a recommendation would give rise to an allegation of unfair treatment by the other resident benefitting from the practice. Likewise, any other method of snow removal raised safety concerns for the general public and TW staff operating snow clearing vehicles. To recommend that TW commence the process of expropriation would be unfavourable to the family and not the best option for TW. These potential recommendations had the propensity to create an undesired outcome. The recommendations made to resolve the matter of snow clearing remained broad to provide flexibility for TW to create a strategy for implementation:



1. The Department maintain a continued awareness of the practice of snow clearing the private driveway and an ability to respond to issues as they arise, with an eye to mitigating any further adverse effect on the family.
2. At any time that a potential claim for damages to property, as a result of Departmental actions is raised with the Department, appropriate direction and process is to be provided to the citizen to file an official claim. Such a claim for damages will be investigated, regardless of how much time has elapsed since the alleged damage. The issue of the passage of time is to be considered in the process of the investigation, not in the assessment of whether a claim will be accepted and investigated.

TW committed to working with both homeowners to provide snow clearing service to the best of their abilities in a manner that is reasonable, efficient and safe for the public as well as the equipment operators. It further advised that any citizen who advises of a claim

of damages as a result of departmental actions will be provided with appropriate direction and process for filing a claim with the Insurance Division of the Department of Finance, regardless of the time elapsed between the alleged incident and the notification of damages. The investigation will then be handled by the Insurance Division. The family was encouraged to proceed to contact the Insurance Division in the event they wished to pursue a claim on their vehicle.

**Department of
Transportation
and Works (TW)**

*Reasonable Snow
Clearing
(cont'd)*



Statistics

During 2018-2019, the OCR received 702 complaints and inquiries. The following tables illustrate the origin of the complaints we received and which government departments and agencies were concerned. 625 jurisdictional complaints and inquiries are in the table below; 77 non-jurisdictional complaints and inquiries are listed on page 26.

Complaints/Inquiries by Department and Agency April 1, 2018 – March 31, 2019

Department / Agency	Complaints / Inquiries
Advanced Education and Skills	11
Income Support Division	47
Central Health	8
Central Regional Service Board	1
Children, Seniors and Social Development	19
College of the North Atlantic	2
Eastern Health	25
Eastern Regional Waste Management Authority	4
Education and Early Childhood Development	2
Finance	1
Fisheries and Land Resources	5
Health and Community Services	18
Newfoundland and Labrador Medical Care Plan - MCP	1
Justice and Public Safety	29
Correctional Facilities	369
Human Rights Commission	3
Memorial University	2
Municipal Affairs and Environment	3
Newfoundland and Labrador English School District	3
Newfoundland and Labrador Housing Corporation	26
Newfoundland and Labrador Legal Aid Commission	8
Newfoundland and Labrador Liquor Commission	3
Public Procurement Agency	1
Public Service Commission	1
Service NL	11
Tourism, Culture, Industry and Innovation	1
Transportation and Works	3
Western Health	7
WorkplaceNL	10
Workplace Health, Safety & Compensation Review Division	1
Total Complaints and Inquiries	625

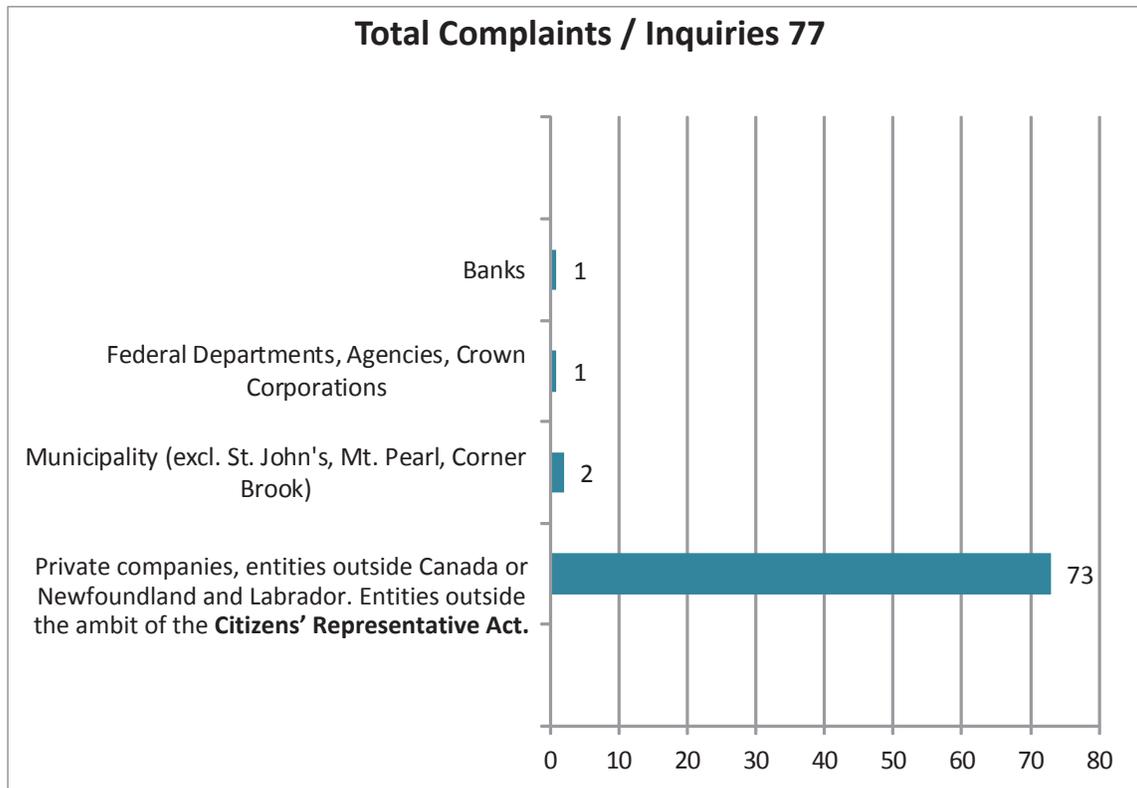
**Complaints / Inquiries by
Electoral District
April 1, 2018 -
March 31, 2019**

Electoral District	Complaints / Inquiries
Baie Verte-Green Bay	4
Bonavista	2
Burin - Grand Bank	1
Cape St. Francis	2
Carbonear - Trinity - Bay de Verde	11
Conception Bay East - Bell Island	6
Conception Bay South	15
Corner Brook	25
Exploits	2
Ferryland	1
Fogo Island - Cape Freels	3
Fortune Bay - Cape La Hune	1
Gander	9
Grand Falls – Windsor – Buchans	12
Harbour Grace - Port de Grave	8
Harbour Main	9
Humber - Bay of Islands	2
Humber - Gros Morne	4
Labrador West	1
Lake Melville	25
Lewisporte - Twillingate	12
Mount Pearl - Southlands	7
Mount Pearl North	8
Mount Scio	11
Other Provinces	9
Placentia - St. Mary's	1
Placentia West - Bellevue	2
St. George's – Humber	2
St. John's Centre	9
St. John's East - Quidi Vidi *1	275
St. John's West	8
Stephenville - Port au Port	26
Terra Nova	69
Topsail - Paradise	3
Unknown *2	92
Virginia Waters - Pleasantville	2
Waterford Valley	17
Windsor Lake	6
Total Complaints and Inquiries	702

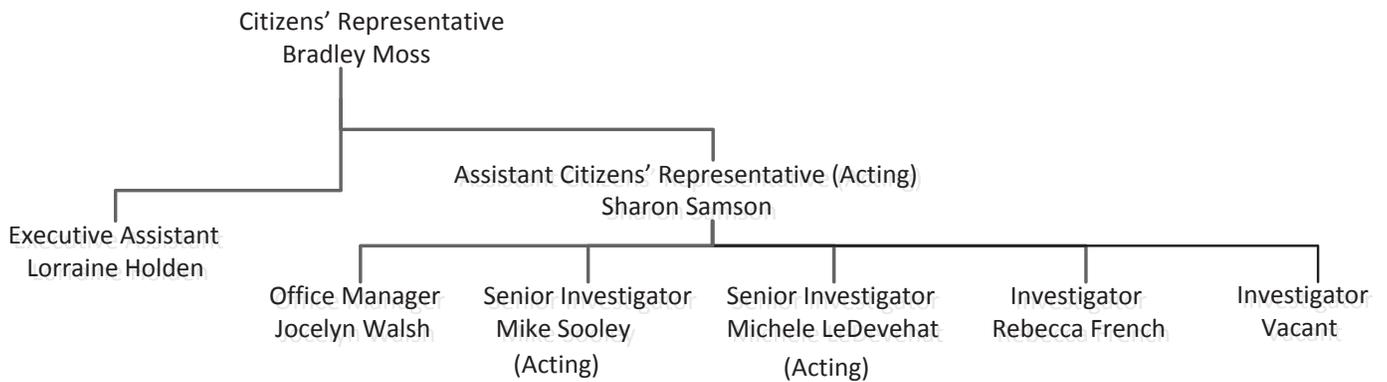
* Note 1: The higher volume of complaints emanating from the District of St. John's East - Quidi Vidi is a result of the location of Her Majesty's Penitentiary.

* Note 2: Out-of-country, no fixed address, systemic investigations.

Complaints/Inquiries Non-Jurisdictional April 1, 2018 – March 31, 2019



Office of the Citizens' Representative Organizational Chart



How to Reach Us

Staff

Bradley J. Moss	Citizens' Representative
Sharon Samson	Assistant Citizens' Representative (A)
Michele LeDévêhat	Senior Investigator (A)
Mike Sooley	Senior Investigator (A)
Rebecca French	Investigator
Vacant	Investigator
Jocelyn Walsh	Office Manager
Lorraine Holden	Executive Assistant

On the Internet

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By Phone

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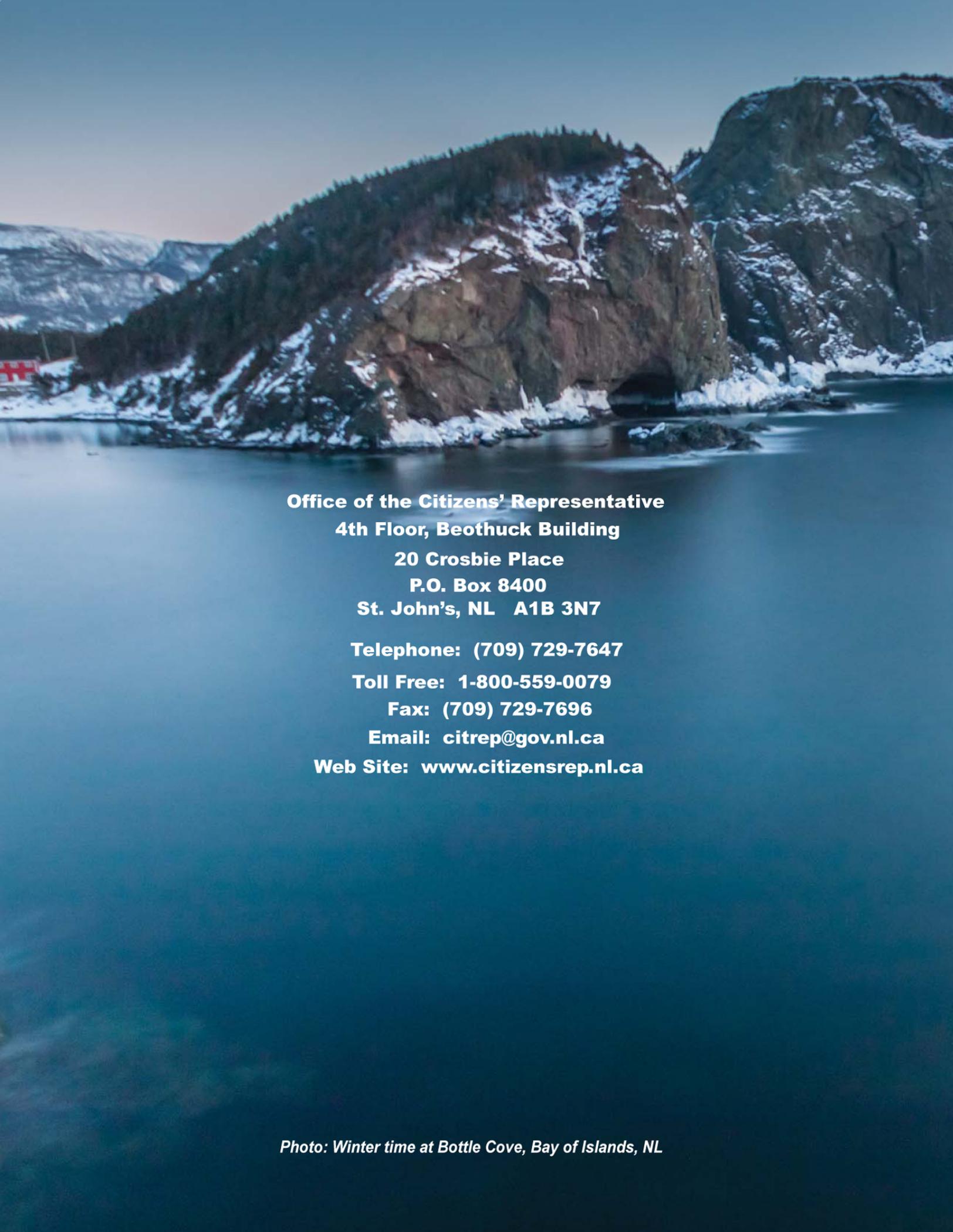
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In Person

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On Facebook

Office of the Citizens' Representative – Newfoundland and Labrador



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Photo: Winter time at Bottle Cove, Bay of Islands, NL