



**Office of the  
Citizens' Representative**

***2010-2011  
ANNUAL PERFORMANCE  
REPORT***

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September 30, 2011

### Message from the Citizens' Representative

I am pleased to submit the Office of the Citizens' Representative Annual Performance Report for 2010/2011. In keeping with the planning cycle, this report will outline our successes in achieving our mandate pursuant to our 2008-2011 Business Plan, and will discuss the results of not only the 2010/2011 fiscal year, but also the outcomes of Business Plan itself.

For the purposes of this Annual Performance Report the Office of the Citizens' Representative has been categorized as a Category Two entity pursuant to the *Transparency and Accountability Act*.

As Citizens' Representative I am accountable for the results reported herein and any variances from the goals outlined in the 2008-2011 Business Plan.

A handwritten signature in black ink, appearing to read "Barry Fleming".

**Barry Fleming, Q.C.**  
Citizens' Representative

## OVERVIEW

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OCR provides parliamentary Ombudsman services for the province of Newfoundland and Labrador. In traditional Ombudsman fashion, it endeavours to mediate and investigate issues of concern to citizens of Newfoundland and Labrador with respect to their contact with the decisions, acts, errors and omissions of the provincial public service. It also investigates public interest disclosure complaints (whistleblowing) as mandated by Part VI of the *House of Assembly Accountability Integrity and Administration Act*. Barry Fleming, Q.C., is the Citizens' Representative. OCR has a staff of seven including:

- an Assistant Citizens' Representative (male)
- one Senior Investigator (female)
- three Investigators (2 female, 1 male)
- one Office Manager (female), and
- one Executive Secretary (female)

In 2010/2011, the OCR received 325 complaints/inquiries. It closed 299 complaint/inquiry files. Contained in these 299 files were 5 recommendations to Government, all of which would have come as the result of formal investigations. In addition, the OCR made 8 recommendations to Government, via the Department of Justice, on reform of the *Prisons Act*.

To accomplish its work, OCR had a budget of \$802,000 for 2010/2011.

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## **Lines of Business**

In fulfilling its mandate, the Office of the Citizens' Representative provides the following lines of business.

### ***1. Investigation and Mediation of Complaints***

The Office of the Citizens' Representative ensures that citizens' complaints and matters referred to it by the Lieutenant Governor in Council, the House of Assembly, or on its own motion are:

- a. investigated and mediated in a timely, thorough, and objective manner;
- b. mediated to the satisfaction of all stakeholders if possible;
- c. reported upon in a concise and easily understood format;
- d. when appropriate, are subject to recommendations which would ameliorate the cause of the complaint and/or improve the overall provision of public service by departments and agencies.

### ***2. Investigation of Whistleblower Complaints***

The Office of the Citizens' Representative accepts complaints of gross mismanagement from designated individuals against members and employees of the House of Assembly, its Statutory Officers, Speaker and Clerk, and ensures that:

- a. subsequent investigations are carried out as expediently and informally as possible;
- b. all parties are treated with procedural fairness;
- c. investigations and subsequent reports are thorough, unbiased and fair.

# MANDATE

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The Office of the Citizens' Representative ("OCR") derives its mandate from two legislative enactments. The mandate flowing from the *Citizens' Representative Act* includes:

- The receipt and independent investigation of complaints of unfairness from citizens;
- The investigation of matters referred to it by the Lieutenant Governor in Council, the House of Assembly or otherwise determined by the Citizens' Representative of requiring investigation;
- By implication, the mediation of citizens' complaints when possible;
- Reporting the results of the investigations and recommending responses when appropriate.

The mandate flowing from the *House of Assembly Accountability Integrity and Administration Act* includes:

- The receipt and independent investigation of complaints relating to public interest disclosures (whistleblowing) from public employees against members and employees of the House of Assembly, its Statutory Officers, Speaker and Clerk.

## HIGHLIGHTS AND ACCOMPLISHMENTS

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In the fall of 2011 the Office of the Citizens' Representative ("OCR") will release its 2010/2011 Annual Digest. The Digest will outline in greater detail the ongoing work of the Office in relation to case studies, complaint statistics, outreach, educational initiatives and other topics of interest.

In addition to its regular investigation and mediation work, the key highlights and accomplishments of the OCR during 2010/2011 include:

- Establishing a senior's outreach program to public and private long term care homes.
- Submission of a Special Report to the House of Assembly on Psychiatric Services in Provincial Correctional Facilities.
- Sponsoring our second annual Good Governance Week to celebrate, with our Canadian counterparts, the Ombudsman institution. Good Governance Week activities included our second student essay contest, and hosting a networking event for department and agency designates and OCR staff.
- At the invitation of the Department of Justice, the submission of an official response to the Department's consultation discussion paper on reform of the *Prisons Act*. Our review produced eight recommendations, half of which were included in the new *Correctional Services Act*.
- Establishing a post-secondary student outreach program.

# **PERFORMANCE COMPONENT**

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Fiscal 2010/2011 represents the final year of OCR's first planning cycle as a Category 2 entity under the *Transparency and Accountability Act*.

In its inaugural three year Business Plan, OCR set out the following vision statement:

**Vision:**

A citizenry confident in a public service that is fair and grounded in integrity and good governance.

**1. Report on the Mission Statement**

The inaugural plan also outlined OCR's mission to bring positive change to the organization through investigative training and in-house improvements in the areas of planning, execution and reporting. Both were viewed as vehicles to ensure consistent, timely and effective responses to members of the public who complain to OCR, and to employees of the House of Assembly who make disclosures of wrongdoing to OCR in the public interest.

The Mission statement outlined in the 2008-2011 Business Plan read as follows:

By March 31, 2011 the Office of the Citizens' Representative will have implemented effective procedures to ensure consistent, timely and effective responses to citizens' and employees' complaints.

**Measure:** By 2011 the Office of the Citizens' Representative will have improved capacity to support fair, timely and effective investigations.

**Indicators:**

- Increased human resource expertise in conducting investigations.
- Enhanced investigative planning, execution and reporting.

Over the course of the mission cycle, OCR has accomplished the mission of implementing effective procedures to ensure consistent, timely and effective responses to requests for service. OCR has increased its cumulative investigative

expertise and enhanced its internal investigative methodologies. The implementation of continuing education for staff and assuming a more active role in the Canadian Ombudsman community has resulted in a staff complement that is better connected and better trained and able to consistently execute the work expected of it.

Table 1 outlines the planned versus actual results for the indicators of the Mission Statement.

**Table 1. Planned vs. Actual Results of 2008-2011 Mission Statement indicators.**

Indicator	Planned	Actual
Increased human resource expertise in conducting investigations.	Continuing education designed to enhance existing skill sets of OCR staff.	Citizens' Representative ("CR") and Assistant Citizens' Representative ("ACR") attended advanced investigative training hosted by Ombudsman Ontario. Toronto: September 2008.  ACR attended training by Forum of Canadian Ombudsman on "Working Behind Prison Walls." Winnipeg: September 2008.  Investigator attended Forum of Canadian Ombudsman training on "Difficult Complainant Behaviour." Montreal: October 2008.  CR attended Public Interest Disclosure Working Group meetings. Halifax: November, 2008.

	<p>Increased human resource expertise in conducting investigations (cont'd).</p>	<p>Senior Investigator completed Alternate Dispute Resolution training via Stitt Feld Handy / University of Windsor. St. John's: April 2009.</p> <p>Three Investigators attended "Problem Solving in the Workplace" hosted by the Labour Relations Agency. St. John's: March 2009</p> <p>Continuing education designed to enhance existing skill sets of OCR staff. (cont'd).</p> <p>ACR and Investigator attended meetings of the Public Interest Disclosure Working Group. Toronto: October 2009.</p> <p>Staff attended Advanced Investigative Interviewing and Statement Profile training offered by Metacentre. St. John's: November 2009.</p> <p>Investigators trained in administrative and harassment investigations by expert in the field. St. John's: Canadian Association of Statutory Human Rights Associations, June 2010.</p> <p>Investigator enrolled in Centre for Learning Development (Public Service Secretariat) "Time Management." St. John's: 2010.</p> <p>Administrative staff</p>
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		<p>enrollment in House of Assembly Front Line Service Certificates (MUN Lifelong Learning) St. John's: 2010/2011.</p> <p>ACR facilitator at "Ombuds Fundamentals." Toronto: September 2010.</p> <p>CR and ACR attended Public Interest Disclosure Workshop hosted by Public Sector Integrity Commissioner (Canada). Ottawa: October 2010.</p> <p>CR and two staff trained in Information Gathering Using Professional Interviewing Techniques. Gardiner Centre, St. John's: February 2011.</p>
Enhanced investigative planning, execution and reporting.	<p>Steps to improve investigative methodology and report production.</p>	<p>Conducted review of OCR Investigator's manual (2008).</p> <p>Studied pan-Canadian timelines for the completion of an Ombudsman investigation. (2008).</p> <p>Developed template for reports made under Section 37 of the <i>Citizens' Representative Act</i> using consistent fonts, layout. (2009).</p> <p>Received training in</p>

Enhanced investigative planning, execution and reporting. (cont'd).	Steps to improve investigative methodology and report production. (cont'd).	<p>advanced investigative planning, execution and reporting from Ombudsman Ontario. (2010).</p> <p>Adopted Investigative Planning Template for systemic investigations. (2010).</p> <p>All Investigators trained in general and specialized technical report writing via Memorial University Lifelong Learning. St. John's: March 2009, January 2010.</p>
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As Table 1 illustrates, OCR has been active in its attempts to increase its capacity to undertake fair, timely and effective investigations. Over the course of the planning cycle, both the Citizens' Representative and staff have trained and networked with leaders in the conduct of administrative investigations. In keeping with the first indicator, OCR has markedly improved its human resource expertise through professional development and the reception of relevant, focused investigative training. This was accomplished while staying within budgeted amounts for travel and professional services. This investment in our workforce has culminated in a total of thirteen training and networking opportunities over the three years encapsulated by the Business Plan, as opposed to only five over the preceding three years.

In 2011 the Citizens' Representative was elected Vice President of the Canadian Council of Parliamentary Ombudsman and in 2008 the Assistant Citizens' Representative accepted an invitation to join the Forum of Canadian Ombudsman Education and Training Committee. These volunteer positions ensure OCR is at the forefront of not only setting the agenda for the national organization of provincial and territorial Ombudsman, but also the development of training opportunities for Ombudsman offices across Canada.

In the field of public interest disclosure OCR has met annually with its national parliamentary oversight counterparts to discuss best practices, hear from world leaders in the conduct of whistleblowing investigations, and stay abreast of national issues, trends and techniques. OCR has partnered with its counterparts in Nova Scotia, New Brunswick, Ontario, Manitoba and the Government of Canada in

a cross-jurisdictional review of public interest disclosure mandates. This working group has drafted a binder for reference in the participating offices. In January of 2011 the Office conducted a survey of MHAs, the House of Assembly Service, statutory offices and political staff involving awareness of the public interest disclosure program contained in the *House of Assembly Accountability, Integrity and Administration Act*.

In keeping with the second indicator, during the planning cycle OCR turned a lens on itself to identify ways to improve in-house investigative practice and methodology. It did so by critically analyzing and augmenting its Investigator's Manual, triangulating itself within national timeframes for investigation completion, implementing standard formats for reporting, and receiving training tailored specifically to OCR report writing. As a result, OCR has adopted a more intensive approach to both investigative planning, and has re-emphasized fundamental investigative practices in areas of issue identification, resource and investigation planning, evidence collection, dealing with respondent roadblocks and difficult complainants, witness interviewing, and conducting objective and factual investigative analyses.

## **2. Report on Strategic Issues**

### **2(a) Report on Goal**

In our 2008-2011 Business Plan, OCR set a goal that it would, by 2011, be the lead agency accountable for the investigation and mediation of complaints by citizens alleging administrative unfairness within the public service, or gross mismanagement within the House of Assembly. We set the following measure and indicators for this goal:

Measure: Leadership and accountability in complaints investigation.

Indicators:

- Developed flexible, timely and effective investigation techniques;
- Completed a review of governing legislation to ensure it adequately facilitates the investigation processes;
- Continued development and delivery of informative sessions about the Office's mandate and investigation processes.

Table 2 highlights planned versus actual results for indicators made under the goal.

**Table 2: Planned vs. Actual results for 2008-2011 goal indicators**

Indicator	Planned	Actual
Developed flexible, timely and effective investigation techniques.	<p>Improved methodologies.</p> <p>Evaluated past/future training for Investigators and frontline staff. (2009).</p> <p>Initiated focused training for Investigators and frontline staff. (2010).<sup>1</sup></p> <p>Adopted Investigation Planning template for systemic reviews. (2010).</p>	<p>Reviewed Investigators Manuals for strengths/weaknesses. (2008).</p> <p>Invoked mandatory monthly case load reporting for Investigators. (2008).</p> <p>Consulted/liaised with national counterparts re: procedural and specific best practices. (2008-present).</p>

<sup>1</sup> Dates and specifics of training contained in Tables 1 and 3 .

<p>Completed a review of governing legislation to ensure it adequately facilitates the investigation processes.</p>	<p>Examination of the <i>Citizens' Representative Act</i> and Part VI of the <i>House of Assembly Accountability, Integrity and Administration Act</i> and recommend change if necessary.</p>	<p>Conducted critical analysis of statutes. (2009). Sought input from 32 stakeholders and reported nine recommendations for legislative change to the Speaker of the House of Assembly. (2010).</p>
<p>Continued development and delivery of informative sessions about the Office's mandate and investigation processes.</p>	<p>Sustain and build upon community/government outreach initiatives.</p>	<p>Presentation to Community Living and Support Services (Eastern Health). (2008). Presentation to Rotary Club of Clarenville. (2008). Presentation to Marystow Lions Club. (2008). Presentation to the Grand Falls-Windsor Lions Club. (2008). Conducted a Joint Staff Meeting with the Canadian Mental Health Association. (2008). Presentation to the Seniors Resource Centre Peer Advocates (Grand Falls – Windsor). (2008). Presentation to the Independent Living Resource Centre. (2008).</p>

<p>Continued development and delivery of informative sessions about the Office's mandate and investigation processes. (cont'd).</p>	<p>Sustain and build upon community/government outreach initiatives. (cont'd).</p>	<p>Presentation to the Coalition for Persons With Disabilities. (2008).</p> <p>Presentation to all House of Assembly and Statutory Office employees on Public Interest Disclosure Program. (2008).</p> <p>Development of poster and brochure for inmates. (2009).</p> <p>Initiation of correctional facility outreach program. (2009).</p> <p>Development of Public Interest Disclosure brochure for House of Assembly employees. (2009).</p> <p>Presentation to the Newfoundland and Labrador Association of Social Workers. (2009).</p> <p>Presentation to the John Howard Society. (2009).</p> <p>Presentation to the Humber Rotary Club. (2009).</p> <p>Presentation to Correctional Officer Recruits. (2009).</p> <p>Initiation of regular consultations with Senior's Resource Centre. (2009).</p>
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	<p>Continued development and delivery of informative sessions about the Office's mandate and investigation processes. (cont'd).</p>	<p>Sustain and build upon community/government outreach initiatives. (cont'd).</p> <p>Development of poster and brochure for students. (2010).</p> <p>Commencement of student outreach program (CONA, MUN, private colleges) including 8 campus visits in St. John's, Mount Pearl, Carbonear and Grand Falls – Windsor. (2010).</p> <p>Development of brochure and poster for seniors. (2010).</p> <p>Initiation of seniors outreach program to public and private long term care homes including 72 completed facility visits in 34 communities in eastern Newfoundland. (2010).</p> <p>Conducted survey of House of Assembly employees on awareness of public interest disclosure program. (2010)</p> <p>Presentation to Buckmaster Circle Community Centre. (2011).</p> <p>Presentation to Froude Avenue Community Centre. (2011).</p> <p>Presentation to Virginia Park Community Centre. (2011).</p>
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Continued development and delivery of informative sessions about the Office's mandate and investigation processes. (cont'd).	Sustain and build upon community/government outreach initiatives. (cont'd).	Presentation to Stella Burry Corporation. (2011).
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As Table 2 illustrates, OCR has achieved actual results in the pursuit of its goal of improving technique, advancement toward long term improvements to its legislation and the community outreach component that is not only critical to its predominant business line (complaint investigation/mediation), but also to its secondary line (the promotion of good governance).

Worthy of note is the imposition of mandatory monthly reporting for Investigators. This system allows the Citizens' Representative to stay abreast of aggregate case loads, files which may require attention, strategies/timelines for completion and the productivity of the investigative staff complement. Likewise, the reporting system provides the Assistant Citizens' Representative with the information necessary to delegate new complaints, and assure that Investigators have equal amounts of work and are developing via exposure to complaints across varying jurisdictions.

#### 2(b) Report on 2010-2011 Objective

In our 2008-2011 Business Plan, we outlined three major Objectives designed to enhance the visibility, efficiency and productivity of the Office. Reports on the 2008-2009 and 2009-2010 objectives were filed previously under the *Transparency and Accountability Act*. A report on Objective 3 follows:

Objective 3: By March 31, 2011 the Office of the Citizens' Representative, will, after explaining its role to citizens (2009) and assessing its legislation (2010) undertake a review of its investigation techniques and professional development undertakings.

Our final objective under the 2008-2011 Business Plan was to complete a review of our investigation techniques and professional development undertakings. Results are summarized in Table 3.

Measure: Undertake a review of (OCR's) investigation techniques and professional development undertakings.

**Table 3: Activities pursuant to 2010/2011 Objective**

<b>Indicator</b>	<b>Activities</b>
Review investigation techniques via comparative review with pan-Canadian counterparts to identify best practices.	Reviewed Investigator Manuals for areas of improvement. Consulted and networked with counterparts from NS, NB, ON, MB, SK, AB, BC, YK and Government of Canada (Public Interest Disclosure) on various subjects of mutual interest in 2010, 2011).  Adopted best practices in areas of investigative planning, execution and report writing (2010).
Review the professional development opportunities afforded to staff.	Completion of a Staff Training / Education Profile to evaluate each employee's education and training history. Assisted with the completion of a training matrix for all OCR staff in partnership with the House of Assembly HR Division. (July 2010).  Identification and completion of training opportunities for all staff. (Ref: Table 1).

2(c) Discussion of Overall Performance

As indicated in the 2008/2009 Performance Report, in year one (2008/2009) we increased the number of targeted presentations to interest groups and opinion leaders. Further, we initiated a strategy to disseminate print material to vulnerable groups which needed an enhanced communication effort. As indicated in the 2009/2010 Performance Report we critically analyzed our governing legislation, obtained stakeholder input and submitted a position paper on reform of both the *Citizens' Representative Act* and the Part VI of the *House of Assembly Accountability, Integrity, and Administration Act* to the Speaker of the House of Assembly on March 31, 2010.

OCR is satisfied there are no aspects of the 2008-2011 Business Plan that have been left unmet. With a stable staff complement and the accumulation of another 24 person-years of experience in complaint handling augmented by focused training and improved internal controls, OCR looks forward to pursuing its responsibilities under its second Business Plan while continuing to provide a province-wide Ombudsman service.

## **OPPORTUNITIES AND CHALLENGES AHEAD**

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The opportunities available to and the challenges confronting the Office of the Citizens' Representative for the next planning cycle are:

- The opportunity to assist the public service in improving complaint handling at the front line and management level.
- Striving to achieve high standards of administrative fairness in an effort to bolster trust and accountability in the public service.
- The opportunity to construct a human resource plan unique to OCR which will enhance staff wellness, balance and capacity.

# **FINANCIAL STATEMENTS**

***Expenditure and revenue figures included in this document are based on public information provided in the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for Fiscal Year Ended 31 March 2011 (unaudited).***

## **OFFICE OF THE CITIZENS' REPRESENTATIVE**

<b>OFFICE OF THE CITIZENS' REPRESENTATIVE</b>	<u>Actual</u>	<u>Amended</u>	<u>Original</u>
Salaries	<b>618,728</b>	619,300	591,300
Employee Benefits	<b>3,235</b>	3,300	2,000
Transportation and Communications	<b>26,620</b>	63,500	64,200
Supplies	<b>5,804</b>	10,000	10,000
Professional Services	<b>46,071</b>	50,000	50,000
Purchased Services	<b>75,043</b>	78,900	79,500
Property, Furnishings and Equipment	<b>15,937</b>	<u>16,400</u>	<u>5,000</u>
<b>Total: Office of the Citizens' Representative</b>	<b><u>791,438</u></b>	<b><u>841,400</u></b>	<b><u>802,000</u></b>

Audited financial information will be included in the Annual Report of the House of Assembly Management Commission to be tabled by the Speaker during the next sitting of the House of Assembly. The Office of the Citizens' Representative does not currently have a requirement for a separate, individual audited financial statement.