



Office of the Citizens' Representative

Province of Newfoundland and Labrador

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October 5, 2021

Sandra Barnes

Clerk of the House of Assembly

East Block, Confederation Building

St. John's, NL

A1B 4J6

Dear Ms. Barnes:

Please find enclosed six copies of the 2020-21 Annual Performance Report for this statutory Office. I submit it to you as per the applicable Tabling process outlined in Appendix "A" to the *Guidelines for Annual Performance Reports*.

Operational demands prevented our Office from Tabling in accordance with the legislated timeframe of September 30, 2021.

I respectfully ask that you arrange to have this document Tabled in the House of Assembly at your earliest leisure.

Yours truly,

Bradley J. Moss

Citizens' Representative



**Office of the
Citizens' Representative**

**2020-21
ANNUAL PERFORMANCE
REPORT**

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Message from the Citizens' Representative

It is my duty and privilege to submit to the House of Assembly our 2020-21 Annual Performance Report under the **Transparency and Accountability Act**. This Report is an update on progress made under our 2020-23 Activity Plan, which was tabled in the House in October of 2020.

The key strategic issue in the Activity Plan was ensuring that the Office can strengthen its internal capacity to resolve matters faster through adopting best practices from other jurisdictions, and pursuing more effective liaisons with key contacts in the public service to resolve matters for citizens in a timelier fashion.

This ability to deal with complaint volumes more quickly serves both the government and the citizens of our province; both want complaints dealt with as expeditiously as possible, without the need for months-long formal investigations. While admittedly, in some cases, formal investigations are required, the general (and reasonable) consensus among both complainants and respondents is that early resolution is the most desirable outcome.

Our challenge, in an office this small, is to remain focused on continual improvement of four separate complaint management systems (public complaints, two whistleblower programs and an anti-harassment program) while continuing to deliver those core mandate services on a daily basis.

These improvements do not occur in a vacuum, and so we have undertaken to reach out to our national counterparts in the Ombudsman community to see if they employ any best practices that we can adopt. We are also seeking the opinions of our regular, close contacts in government departments on what we can do better or how we can improve or streamline our processes for everyone's benefit. We have also identified a need to "future proof" the Office so that those who come behind us can be informed of our corporate memory (now 20 years). This allows the Office to drop its roots further without too much regression in the event of staff turnover and change at the top.

Ultimately, it is our hope that these institutional enhancements will benefit the people we serve, who bring their complaints forward for consideration and resolution. We are pleased to report progress in this area despite everything the last fiscal year threw at us as an organization. The staff of OCR are to be given full credit for their daily unwavering dedication to our mandate, and their desire to help the citizens of Newfoundland and Labrador wherever and whenever they can.

This Report was prepared under my direction in accordance with the **Transparency and Accountability Act** for a Category 3 entity. As Citizens' Representative, I am accountable for the actual results reported in this document



Bradley J. Moss
Citizens' Representative

OVERVIEW

The **Citizens' Representative Act** has been in force since December 2001. This statute creates and sets out the duties and obligations of the Citizens' Representative to investigate complaints from members of the public, Members of the House of Assembly, and the provincial Cabinet about matters of administration. The phrase "matters of administration" has been judicially considered and was defined by the Supreme Court of Canada¹ as encompassing everything done by governmental authorities in the implementation of government policy.

On two occasions (2007, 2014), the legislative mandate of the OCR expanded to make the OCR the investigative unit for public interest disclosures made by employees of the House of Assembly and the wider public service. Conventionally known as "whistleblower programs," public interest disclosures contain allegations of wrongdoing in the workplace, including breaking federal or provincial law, gross mismanagement of funds, mismanagement of government assets or threats to public safety or the environment. Reprisals against disclosers or those seeking advice are prohibited by law and punishable by loss of employment and/or fines of up to \$10,000 as determined by the Labour Relations Board.

In December of 2019 the House of Assembly concurred in a report by the Privileges and Elections Committee to establish a stand-alone anti-harassment policy for complaints directed at Members of the House of Assembly. This program took effect on April 1, 2020.

Information and FAQ on all aspects of the OCR mandate can be found on the OCR website or by contacting the office directly.

Bradley Moss is the Citizens' Representative. As of March 31, 2021, OCR has a permanent staff of nine including:

- an Assistant Citizens' Representative (female)
- two Senior Investigators (one female, one male)
- two Investigators (female)
- one Intake Officer/Investigator (female)
- one Office Manager (female), and
- one Executive Secretary (female)

¹ British Columbia Development Corporation v. Friedmann (Ombudsman) [1984] 2 SCR 447

In 2020-21, the OCR received:

- 656 complaints/inquiries under the **Citizens' Representative Act**,
- Four complaints/inquiries under the **Public Interest Disclosure and Whistleblower Protection Act**² and,
- Two complaints/inquiries under the **House of Assembly Accountability, Integrity and Administration Act**²

OCR closed 639 complaint/inquiry files across all business lines during 2020-21 (including complaints/inquiries from the previous fiscal year).

OCR made 13 formal recommendations to various departments, agencies, boards and commissions. Formal recommendations flow from statutory investigations initiated under Section 15 of the **Citizens' Representative Act**, and are designed to remedy cases of unfairness or error, and help prevent circumstances connected to the complaint from re-occurring.

There were zero recommendations made to government under the **Public Interest Disclosure and Whistleblower Protection Act**.

There were zero recommendations made under Part VI of the **House of Assembly Accountability, Integrity and Administration Act**.

OCR can be contacted by:

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(800) 559-0079

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Total operational expenditures of the OCR for 2019-20 were \$800,677. Further information on budgeting and expenditures can be found on page 14.

² Details on OCR activities pursuant to the **Public Interest Disclosure and Whistleblower Protection Act** require stand-alone reporting to the House of Assembly. Disclosures received under Part VI of the **House of Assembly Accountability, Integrity and Administration Act** are reported in the Citizens' Representative's Digest.

HIGHLIGHTS AND PARTNERSHIPS

In addition to prosecuting its core mandate services of complaint investigation and mediation, some key highlights and accomplishments of the OCR during 2019-20 include:

- Providing instruction on trends analysis at “Ombuds Essentials”, a joint offering of the Forum of Canadian Ombudsman / Osgoode Hall Law School Professional Development program.
- Participation in Forum of Canadian Ombudsman (FCO)/Association of Canadian College and University Ombudspersons (ACCUO) conference planning.
- Participation in FCO webinar: Covid-19: The Impacts and Challenges for Ombudsman.
- Membership on the House of Assembly Classification Review Committee.
- Participation in annual Federal / Provincial / Territorial public interest disclosure meetings (2 day videoconference).
- Participation on National Public Interest Disclosure Awareness Day.
- Ongoing membership and participation in the Canadian Council of Parliamentary Ombudsman (CCPO).
- CCPO Teleconference regarding complaint volumes during the Covid-19 pandemic.
- CCPO Communications group teleconference.
- CCPO participation in provincial webinars highlighting unique issues for parliamentary ombuds.
- Presentation to the CCPO: Investigation of Non-Compliance with Evidence Collection Provisions.
- Participation by webinar by the American Bar Association on Ombuds Day – A Recognition of the Ombuds Profession and the Value Ombuds Provide.
- Continuing to produce our Office newsletter - “OCR Insights” - a quarterly update on the OCR’s activities.

- Indigenous Cultural Diversity Training (First Light) for all staff.
- Manager training on Employee Health and Safety.
- Participation by webinar on Suicide Prevention in the Workplace (Canadian Mental Health Association).
- Participation by webinar on Supporting Survivors of Suicide Loss: A Narrative and Reflexive Approach (Newfoundland and Labrador College of Social Workers).
- Participation by webinar of the John Howard Society of Canada panels of the Spotlight on Solitary Confinement in Canada.
- Meetings with the Department of Justice and Public Safety and Eastern Health to build awareness of the transition of psychiatric services within adult custody.
- Meeting with Independent Support Advisor procured under the Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly.
- Provided Bachelor of Social Work field practicum opportunity to 4th year student in conjunction with Memorial University of Newfoundland, School of Social Work.
- Presentation of the Citizens' Representative Office mandate to students of the School of Social Work, Memorial University of Newfoundland.
- Information sharing meeting with End Homelessness St. John's.

REPORT ON PERFORMANCE

Fiscal year 2020-21 is the first year of OCR's 2020-23 Category 3 Activity Plan, which was tabled in the House of Assembly on 7 October 2020. The issue, goal and objectives of the Activity Plan are as follows:

Strategic Issue

The Activity Plan focused on the issue of strengthening OCR capacity to respond to citizen complaints with improved efficiency.

Two goals were identified in relation to this issue, with three objectives identified to fulfill both goals. A full discussion of results follows the report on the annual objective.

Issue: Strengthen OCR Capacity to Respond to Citizen Complaints with Improved Efficiency

The 2020-23 Activity Plan identified OCR's intent to strengthen the capacity of investigators to accept and conduct formal and informal inquiries with improved efficiency. The impetus to improve efficiency was based on the acknowledgement that a naturally occurring aspect of long term complaint management is the overlap or repetition of issues presented. Further acknowledgment of corporate knowledge accumulated by staff of existing government policies, procedures and practice prove immensely valuable in complaint resolution. Likewise, this knowledge extends to the vast number of recommendations flowing from previous investigations since OCR existence (2002) and informs future investigations.

The 2020-23 Activity Plan further identified that key contacts or "designates" in the provincial public service are a source of corporate knowledge that enhances the ability of the Office to respond efficiently and practically to citizens seeking support.

The Citizens' Representative set the following two goals in 2020:

Goal 1: By March 31, 2023, the Office of the Citizens' Representative will have undertaken measures to enhance in-house corporate knowledge and to promote increased knowledge and capacity of staff in the interest of more efficient complaint resolution.

Goal 2: By March 31, 2023, the Office of the Citizens' Representative will have reviewed and analyzed existing supportive resources and practices for designates within the public service.

A total of three yearly objectives were identified for each goal. The first objective relevant to each goal was set for completion in the time period covered by this report:

Objectives Pursuant to Goal 1:

Goal 1: By March 31, 2023, the Office of the Citizens’ Representative will have undertaken measures to enhance in-house corporate knowledge and to promote increased knowledge and capacity of staff in the interest of more efficient complaint resolution.

Objective 1: By March 31, 2021, the Office of the Citizens’ Representative will have reviewed and analyzed existing supportive resources and practices for staff.

Indicator: Consulted with staff and other jurisdictions on methods to improve the sharing of corporate knowledge and resources.

Indicator: Consulted with staff and other jurisdictions on areas of improvement of existing policies, investigative techniques, resource documents, and training opportunities.

Our activities to meet this objective are as follows:

Planned	Actual
<p>1. Consulted with staff and other jurisdictions on methods to improve the sharing of corporate knowledge and resources.</p>	<p>1. Investigative staff were consulted to identify the specific types of corporate knowledge and resources of optimal value to be organized and accessible for support as they carry out their work either by informal inquiries or by formal investigations. This knowledge would complement the previously identified policies and resources of public bodies and recommendations flowing from OCR investigations.</p> <p>Administrative staff were consulted to determine the best use of current resources, i.e. existing technology platforms available to organize and</p>

<p>2. Consulted with staff and other jurisdictions on areas of improvement of existing policies, investigative techniques, resource documents, and training opportunities.</p>	<p>secure placement of corporate knowledge to ensure accessibility in an organized manner.</p> <p>Ombudsman jurisdictions were consulted in exploration of existing Knowledge Management Strategies, including British Columbia, Ontario and Nova Scotia.</p> <p>2. Investigative and administrative staff were consulted informally and periodically (via staff meetings) to identify areas of policy improvement, noting evolving patterns in currently used investigative methods and training opportunities.</p> <p>Participation in Canadian Council of Parliamentary Ombudsman (CCPO) meetings, webinars, etc. sharing information of improving policies and considering new ways of responding to arising investigative challenges.</p> <p>Review of existing Investigator's Manual inclusive of policies and procedures to determine those that are obsolete and require updating.</p>
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Discussion of Results

The consultation with OCR staff and those from our national parliamentary counterparts have given rise to a deeper evaluation of current OCR processes in relation to the availability, accessibility of previously acquired information that supports the daily work of our Office. In nearly twenty years of interaction with more than 120 public bodies under OCR jurisdiction under its four current lines of business, the amount of corporate knowledge accumulated is significant and its organization is imperative to support staff efficiency in their respective roles. It is important that corporate knowledge not only be readily available and easily accessible, but must also be fluid and flexible to respond to an ever changing climate where new challenges give rise to the need to alter existing policies and procedures to be optimally responsive. As we have learned from our own experience and that of our Canadian legislative ombudsman community as we all

navigated the Covid-19 global pandemic, the need to respond creatively and flexibly is a benefit to all, including our staff, without whose efforts we would be challenged to be efficient. Likewise, our own knowledge management will better support the knowledge transfer to new employees and students who join the OCR.

A review of the existing OCR Investigator's Manual and the experiences of staff have collectively identified the need to update resource material, investigative techniques and general office policies and procedures. We have informally updated practices and acquired relevant training that would prove useful to create updated policies. The review will identify the outdated information to be deemed obsolete and discarded.

The efficient onboarding of new staff and students is a priority for the OCR. OCR will benefit from efforts to employ knowledge management, particularly as it relates to office policies and resources. The consultation has also identified the benefits of reconnecting with public bodies and community referral sources to provide educational opportunities to support investigative staff and to become reacquainted with their current mandate, including updated program initiatives.

Together, the Citizens' Representative and staff resolved to attempt the following measures during 2021-22 to improve the sharing of corporate knowledge and resources and to improve existing policies, investigative techniques, resource documents, and training opportunities:

1. Reorganize OCR shared directory to maintain areas of corporate knowledge in a manner that is easily navigable.
2. Review and update OCR Investigator's Manual to reflect current and relevant policies, investigative techniques and resources.
3. Meet with staff individually to assess training and resource needs identified within public bodies under OCR jurisdiction and referral sources for non-jurisdictional complaints.

Objectives Pursuant to Goal 2:

Goal 2: By March 31, 2023, the Office of the Citizens' Representative will have reviewed and analyzed existing protocols involving interactions with designates within the public service.

Objective 1: By March 31, 2021, the Office of the Citizens' Representative will have reviewed and analyzed existing supportive resources and practices for designates within the public service.

Indicator: Completed a survey with public service designates on methods to improve the efficiency of the relationship with the Office of the Citizens' Representative.

Our activities to meet this objective are as follows:

Planned	Actual
Complete a survey with public service designates on methods to improve the efficiency of the relationships with the Office of the Citizens' Representative.	Survey questions prepared and reviewed internally in January 2021. Research availability of survey technology in January 2021.

Discussion of Results

The survey was intended to improve the efficiency of existing and new relationships with designates. As a first step, the necessity to evaluate the current landscape and the existing relationships was determined to be instrumental. Thoughtful consideration was given to existing mechanisms to support and foster positive relationships. We reviewed our current process of introduction to newly assigned designates, inclusive of providing the previously crafted brochure entitled **A Guide for OCR Designates**. Consultation with staff suggested uncertainty by newly assigned designates of the mandate of the OCR and the expectations of them in their designate role. With the survey, we saw an opportunity also to further evaluate how we could educate designates upon initial assignment to the role, and the usefulness of this brochure.

Further, we recognized that generally, our only connection with designates is in response to specific inquiries or investigations, or reactively upon risk of a deteriorating relationship. Due to the heightened level of value we place on the role of designates, we believed there was value in fostering more proactive opportunities to collaborate on concerns of mutual interest. For example, to set a recurring schedule to meet, to discuss the identification of complaint trends or

other issues as they may appear within a specific department and to share perspectives of both the OCR and the respective public body. This potential method for improving efficiencies would have to demonstrate efficiencies for the designate also. Thus, we anticipated acquiring feedback of the viability of this collaboration.

It is also important for us to assess the perspectives of existing designates and their experience working with our Office, aspects of the relationship that are considered to be valuable and those that could be improved upon, or any other supports that could be helpful to designates in their role.

During this fiscal year, survey questions were created and reviewed internally. Our desire was to ensure this opportunity to capture information from designates was optimal and covered areas that were valuable to the OCR and based on previously acquired feedback from existing designates.

Due to challenges relating to the global pandemic, public health guidelines necessitating an adjustment to a remote working model, and concerns with the confidentiality of the validity of the survey and its results, the actual completion of the survey has been delayed and was not able to be completed prior to the end of this reporting year. The OCR will report further on the results of the designate survey in the next fiscal year, 2021-2022, in addition to the indicator identified in the OCR 2020-2023 Activity Plan for this specific goal.

Together, the Citizens' Representative and staff resolved to attempt the following measures during 2021-22 to facilitate and support the acquisition of information and policies from the designate network:

1. Complete survey of designate network and analyze outcomes.
2. Review designate list to ensure that it is current and inclusive of all public bodies represented by OCR jurisdiction.
3. Engage each designate to strengthen the perception of mutually beneficial relationship between OCR and the public body. Identify any further support the OCR can offer to each public body to facilitate efficiencies.
4. Assess the current brochure: **A Guide for OCR Designate** and seek input from designates and staff for improvement.

OPPORTUNITIES AND CHALLENGES AHEAD

The opportunities available to, and the challenges confronting OCR for fiscal year 2020-21 are:

- Continuing to be accessible to the people of the Province while abiding with the Public Health Orders in place as a result of the global Covid-19 pandemic.
- Planning to appropriately and effectively deliver OCR services with the possibility of additional, more restrictive Public Health Orders flowing from an increase in Coronavirus cases in our province.
- Effectively managing the 2020 expansion of the OCR's mandate into enforcement of a legislature-specific harassment-free workplace policy.
- Availing of the opportunity to strengthen our capacity to respond to citizen complaints with improved efficiency, in line with our 2020-23 Activity Plan.
- Continuing to plan the important work identified herein while maintaining efficiencies with OCR core mandate.

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 2021 (unaudited).

OFFICE OF THE CITIZENS' REPRESENTATIVE

	<u>Estimates</u>		
	Actual	Amended	Original
01. Salaries	689,303	800,500	800,500
Operating Accounts:			
Employee Benefits	-	7,000	7,000
Transportation and Communications	6,549	31,400	34,800
Supplies	5,118	5,300	5,000
Professional Services	11,098	69,600	69,600
Purchased Services	77,756	108,000	108,000
Property, Furnishings and Equipment	10,943	11,100	8,000
02. Operating Accounts	111,374	232,400	232,400
Total: Office of the Citizens' Representative	800,677	1,032,900	1,032,900

Audited financial information will be included in the Annual Report of the House of Assembly Management Commission to be tabled by the Speaker during a future 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.