



Office of the Citizens' Representative
Province of Newfoundland & Labrador

**Citizens' Representative
Annual Digest**

April 1, 2012 - March 31, 2013

...seeking fairness, finding solutions



Office of the Citizens' Representative
Province of Newfoundland and Labrador

4th Floor, Beothuck Building, 20 Crosbie Place, P.O. Box 8400, St. John's, NL A1B 3N7
Telephone: (709) 729-7647 Toll Free: 1-800-559-0079 Facsimile: (709) 729-7696
Email: citrep@gov.nl.ca Website: www.citizensrep.nl.ca

October 25, 2013

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

Dear Mr. Speaker:

It is my privilege to submit to the House of Assembly and the citizens of Newfoundland and Labrador the Annual Citizens' Representative Digest. It provides statistics on complaints received, and describes the day-to-day work of the Office of the Citizens' Representative during the period April 1, 2012 to March 31, 2013.

Respectfully submitted,

Barry Fleming, Q.C.
Citizens' Representative

Table of Contents

Message from the Citizens' Representative	1
Our Role.....	2
The Complaint Process.....	3
Outreach, Public Education and Access Initiatives.....	4
A Month in Review.....	5
Good Governance Week.....	6
Books for St. Peter's Academy, Black Tickle, Labrador.....	7
Public Interest Disclosure.....	7
Own Motion Investigations and Systemic Reviews.....	8
<i>Department of Justice - Psychiatric Services to Inmates.....</i>	8
Individual Case Summaries.....	9
<i>Contrary to Law- Service NL Consumer Affairs Division (Residential Tenancies).....</i>	9
<i>Agricultural Student Finds Bug in the System - Department of Advanced Education and Skills (Student Aid Division).....</i>	10
<i>Thank you Ferry Much - Department of Transportation and Works.....</i>	10
<i>Massaging the Rates - Workplace Health, Safety and Compensation Commission ("WHSCC").....</i>	11
<i>Passport to Happiness - Service NL (Vital Statistics).....</i>	11
<i>Incorrect Charge Causes Safety Concern - Department of Justice (Adult Corrections).....</i>	11
<i>No Fun Refund - Department of Environment and Conservation (Crown Lands Division).....</i>	12
<i>"Sore Arm" Service - Service NL and the Office of the High Sheriff.....</i>	12
<i>Sentence Commuted - Department of Justice (Adult Corrections Division).....</i>	12
<i>Fracking Concerns - Department of Environment and Conservation.....</i>	13

Table of Contents (Cont'd)

<i>Dispute Settled “Over the Fence” - Department of Transportation and Works</i>	13
<i>Complex Need Met - Newfoundland and Labrador Housing Corporation (“NLHC”)</i>	13
<i>Room for Discretion - Labrador-Grenfell Health</i>	14
<i>Mom’s Worries Allayed - Department of Child, Youth and Family Services (“CYFS”)</i>	14
<i>No Time to Wait - Department of Advanced Education and Skills (“AES”)</i>	14
<i>No Sail Pending - Department of Environment and Conservation (Crown Lands Division)</i>	15
<i>Improvements Sought - Department of Justice (Legal Aid Commission)</i>	15
<i>Hearing Loud and Clear - Department of Advanced Education and Skills (“AES”)</i>	16
<i>Change for the Better - Memorial University</i>	16
<i>Minor Jolt to Electrical Inspection Regime - Service NL (Inspections, Licenses, Permits and Registrations)</i>	17
<i>Assistance Rendered - Department of Health and Community Services (NL Prescription Drug Program)</i>	17
<i>Seniors’ Concerns - Central Health</i>	18
<i>New Evidence, New Decision - Department of Advanced Education and Skills (“AES”)</i>	18
Your Feedback	19
Kudos	20
Statistics	21
Organizational Chart.....	23
How to Reach Us.....	24



Message from the Citizens' Representative

This is the sixth Annual Digest of the Office of the Citizens' Representative. The Digest provides me with an opportunity to outline various aspects of the work of our Office during 2012 – 2013. In addition to providing general information about our Office, we provide a summary of our public education and access initiatives, as well as samples from our case files.

Many commentators, judges and legal scholars have discussed problems associated with access to justice. The demand on our courts has grown exponentially. Citizens are increasingly representing themselves in court. The costs of criminal and civil litigation are prohibitive for many. Policy makers are challenged to find alternatives for dispute resolutions. Some relief may be found once we understand that access to justice means more than access to the courts. The ombudsman institution can provide the means by which citizens can seek redress for their grievances in a non-adversarial, conciliatory environment. Resolution of disputes can occur in the absence of formal findings of fact and application of legal precedents. Clearly, there are occasions when a formal determination of citizens' rights is appropriate. I would, however, encourage readers to review the individual case summaries contained in this Digest to see the ways in which this Office has been able to find modest success in dealing with citizens' search for justice.

The past year has been a challenging one for the public service. Unionized employees have been working without a collective agreement and facing the possibility of a strike. Fiscal austerity has created uncertainty for many about their job security. Job classifications are about to be revamped. The demands on public pensions created by below-market returns and longer lifespans have been well documented. Despite these uncertainties the public service continues to act with professionalism and dedication in advancing the public good. In the Kudos section of this Digest we've outlined the significant contributions of three public employees to the work of this Office.

In December 2012, I was appointed for a second term as the Citizens' Representative by a unanimous resolution of the House of Assembly. I would like to thank all MHAs for their support and confidence in my ability to assist citizens in this role. Thank you to my staff for their continuing hard work and dedication. I look forward to a second term helping citizens seek fairness and find solutions when dealing with the public service.

A handwritten signature in blue ink that reads "Barry Fleming".

Barry Fleming, Q.C.
Citizens' Representative

Our Role

The Office of the Citizens' Representative (the "OCR") is an independent complaint investigation and mediation Office established by the House of Assembly in 2002 to provide a provincial Ombudsman service. Its duties and powers are set out in the *Citizens' Representative Act*. The OCR also has a mandate to investigate public interest disclosures made by Members and staff of the House of Assembly under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*.

As a non-partisan Office, the OCR initiates investigations of provincial public bodies based on complaints received from citizens, referrals from Members of the House of Assembly or from the Lieutenant Governor-in-Council. The Citizens' Representative is also empowered to initiate investigations without a specific complaint.

The Office commonly assumes a mediation function in cases which do not require formal investigation. Over the past ten years it has been highly successful, through low-level intervention, in seeking early resolution of complaints using informal mediation techniques. It does so with the cooperation and good will of all departments and agencies.

As an Office of last resort, many of the contacts to the OCR are from those who are unsure of where to go for assistance. Rather than dismiss the complaints as simply beyond our jurisdiction to investigate, we utilize our numerous contacts in the federal and municipal governments, and community based groups, to refer those citizens to agencies that may be able to help.

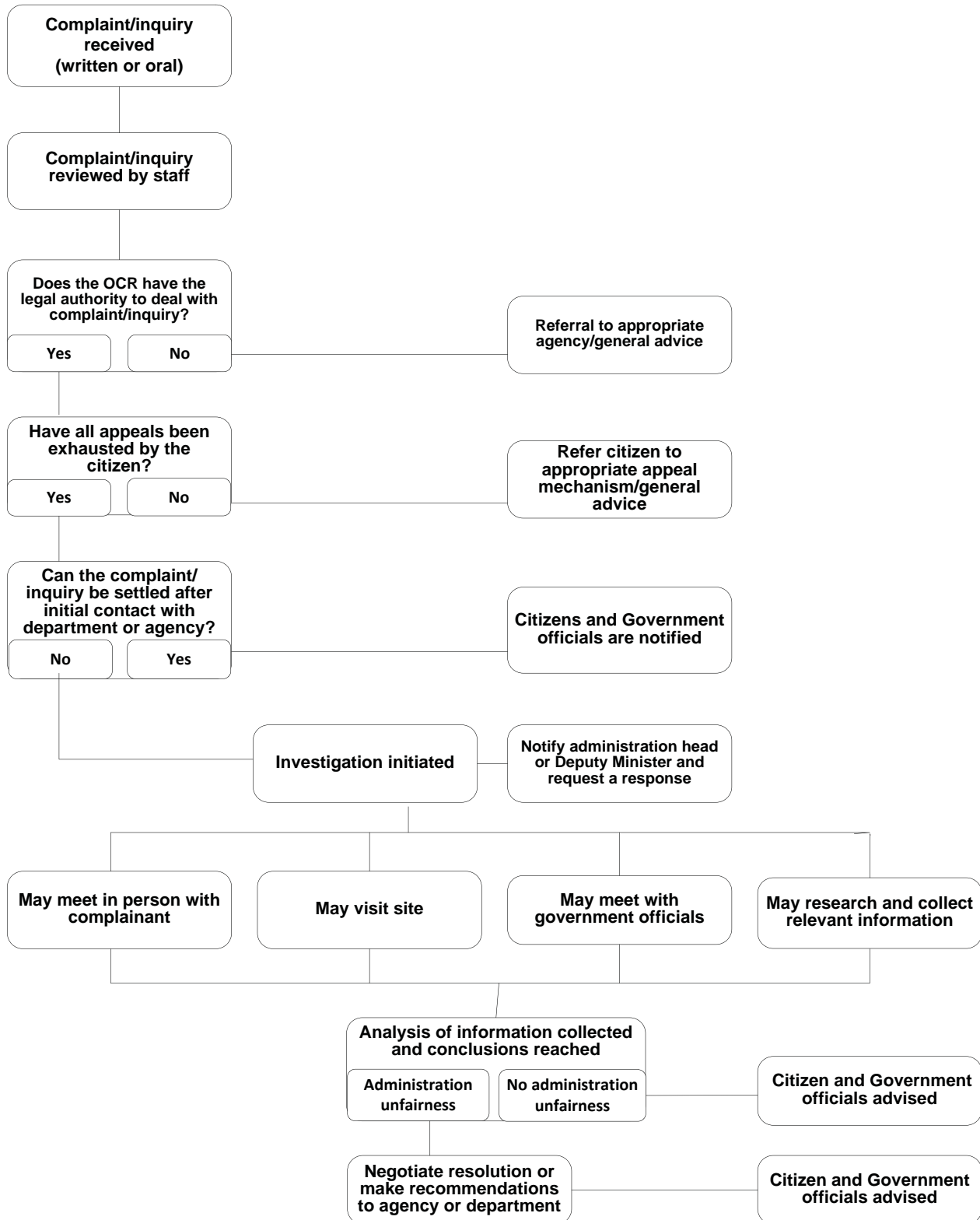
There are a number of entities and issues that are outside the statutory purview of the Office. These include:

- the House of Assembly or a committee thereof;
- the provincial Cabinet;
- Executive Council and its various divisions;
- the courts, 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; and,
- matters falling within the jurisdiction of the Office of the Child and Youth Advocate.

The *Citizens' Representative Act* also does not cover the acts, errors, omissions or decisions of the federal and municipal levels of government, nor does it authorize the investigation of private companies, agencies or citizens.

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.



Outreach, Public Education and Access Initiatives

The OCR is committed to providing outreach and province-wide access to its services through intake and information sessions, and the provision of educational presentations about its services. In addition to our website, Facebook page and toll-free number, these community access initiatives give citizens an opportunity to interact with the Citizens' Representative and members of staff in person, closer to where they reside.

Intake and Information Sessions

During the fiscal year, we provided intake and information sessions in the following communities:

Corner Brook	Gander
Stephenville	Channel - Port-Aux-Basques
Happy Valley - Goose Bay	Burgeo
Springdale	
Grand Falls - Windsor	

Presentations

We provided presentations about the work of our Office to the following groups:

- Annual General Meeting - Western Health (Burgeo)
- Annual General Meeting - Provincial 50+ Federation (Gander)
- NL Elder Abuse Prevention Network (St. John's)
- Autism Society of Newfoundland and Labrador (St. John's)
- New Vision 50+ Club of Centreville-Wareham-Trinity



*Presentation by Barry Fleming
to the New Vision 50+ Club, in November 2012*

A Month in Review

Citizens frequently inquire about the types of complaints we typically receive. We chose November 2012 to illustrate the nature and scope of the allegations presented to the OCR in an average month. What follows is a list of complaints and inquiries we received in that month and the agencies against which they were made.

Scabies outbreak - Her Majesty's Penitentiary ("HMP")
Poor quality of private home repairs - referral to Consumer Affairs
Concerns re: level of care and "culture" of nursing homes - Central Health
Inmate with cleft palate subject to taunting by correctional officer - HMP
Citizen has not received rental subsidy - NL Housing Corporation
Concerns re: transport of female inmates - NL Correctional Centre for Women
Inmate refused medical attention - HMP
Delay in receiving child support - Support Enforcement Agency (Justice)
Concerns re: loved one's finances and provision of care - Central Health
Loss of privileges for disciplinary reasons - HMP
Seniors on fixed income struggling with ambulance bill - Eastern Health
90-day eviction notice from NL Housing - NL Housing Corporation
Medical Transport Assistance Program - Health & Community Services
Provision of eyeglasses - HMP
Turned down for monthly rental subsidy - NL Housing Corporation
Concerns from patient at Waterford Hospital - Advanced Education & Skills
Drastic increase in municipal assessment - Municipal Assessment Agency
Inability to access library books, mail and property complaint - HMP
Request for compensation for medical treatment received - Eastern Health
No coverage for meal costs while traveling (medical) - Advanced Education & Skills
Confusion over money in inmate's account - HMP
Lack of access to medical information - Labrador Grenfell Health
Unfair treatment re: Red Seal Certification - Advanced Education & Skills
Incorrect information in prisoner file - HMP
Lack of coverage of drug by Prescription Drug Program - Health & Community Services
Complaint regarding amount of student loan - Advanced Education & Skills
Delay in receiving microwave and TV on unit - HMP
Lack of coordination of family visit - Child, Youth and Family Services
Workplace harassment and hiring issue - NL Housing Corporation
Upset with client contribution amount to community support program - Eastern Health
Unable to meet with Classification Officer -HMP
Student expelled from academic program - Memorial University

Good Governance Week

Together with some of our counterparts in Ombudsman offices across Canada, each year we celebrate Good Governance Week. This provides us with an opportunity to raise the OCR's profile, reiterate the principles of good governance, and reinforce our relationship with our contacts within the public service. We celebrated our 4th "Good Governance Week" in October 2012 by hosting a networking event for departmental designates, and judging the winner of our student essay contest. The essay contest asked all Grade 6 students in the province to tell us what good governance means to them. The staff chose Clara Ryan* of Immaculate Heart of Mary School in Corner Brook as the winner. *

Photos: Good Governance Week 2012



*Clara's essay can be viewed at www.citizensrep.nl.ca under the "Events" and "Good Governance Week" tabs.

Books for St. Peter's Academy - Black Tickle, Labrador

As a spinoff from Good Governance Week, the OCR organized a book drive for students of St. Peter's Academy in Black Tickle. Staff were moved to act after receiving many submissions to the essay contest from students in Black Tickle that highlighted their love of reading, while lamenting a lack of books in their school library. With assistance from several private donors, Beachy Cove Elementary in Portugal Cove – St. Philip's, St. Andrew's School in St. John's and the Portugal Cove – St. Philip's Lions Club, over 200 new and gently used books were sent to students of St. Peter's Academy. Their letters of gratitude began pouring in after the first shipment arrived. Each of the donors were contacted directly by students as well.



Bradley Moss, Assistant Citizens' Representative and Karen Bursey, Investigator

Public Interest Disclosure

Under Part VI of the *House of Assembly Accountability, Integrity and Administration Act* the Citizens' Representative is the lead investigator of disclosures made in the public interest by members and employees of the House of Assembly and its Statutory Offices. There were no disclosures registered with the OCR during 2012-2013.

The OCR maintains open dialogue with the six other jurisdictions in Canada that have government-wide whistleblower laws, in order to stay current and connected in this essential area of oversight. We were fortunate in October 2012 to host eleven representatives of Canadian Ombudsman and Commissioners' offices in St. John's. Attendees spent two days discussing matters of mutual interest and were given a tour of the House of Assembly and a presentation on the ethical structures of the provinces by Dr. Chris Dunn of Memorial University's Political Science Faculty.



Standing (L-R)

Janet Mirwaldt (Saskatchewan), Aaron Orban (Saskatchewan), Greg Sykes (Saskatchewan), Joe Friday (Government of Canada), Bradley Moss (Newfoundland & Labrador), Valerie Jepson (Ontario), Stan Ferguson (Nova Scotia), Jennifer Murray (New Brunswick).

Seated (L-R)

Mel Holley (Manitoba), Lynn Morrison (Ontario), Barry Fleming (Newfoundland & Labrador), Kevin Fenwick (Saskatchewan), Jennifer Innis (Nova Scotia).

Own Motion Investigations and Systemic Reviews

Department of Justice - Psychiatric Services to Inmates

On March 25, 2011, the Citizens' Representative released a report on Psychiatric Services in Provincial Correctional Facilities in response to numerous complaints from inmates about being denied access to psychotropic drugs for mental illnesses diagnosed by physicians in the community, prior to incarceration.

Our investigation concluded that the standard of care for adult mental health in this Province is different depending on whether a citizen is incarcerated or not. We concluded that to continue to retain the current conservative practice in our correctional system was unreasonable, unjust and oppressive to inmates experiencing previously diagnosed and documented mental illness.

The Report culminated in recommendations that the Department of Justice:

Undertake a request for proposals for the provision of psychiatric services at the Province's correctional facilities. Respondents to the request should outline their general philosophies with respect to the prescription of psychiatric medications. We further recommend that the Department accept a request which will ensure that inmates have the same access to properly prescribed prescription drugs as citizens in the community.

This recommendation was rejected by the Department of Justice. Instead, the Department elected to conduct a peer review of the current treating psychiatrist's work in the wake of our Report. During the winter of 2012, the Citizens' Representative met with the expert contracted to conduct the peer review and made him aware of the OCR's findings and concerns.

The External Peer Review of Psychiatric Services in Newfoundland Corrections was released in the Fall of 2012. The Peer Review concluded that the psychiatric services provided at the Province's correctional facilities were typical of correctional psychiatry in Canada, but noted that correctional psychiatry could be improved.

The Peer Review made a number of recommendations which should improve the provision of services in correctional facilities. It recommended the use of the Recovery Model of Care. Viewing inmates through that Model would assist the psychiatrist in understanding that inmates are likely to have experienced abuse, have little personal efficacy, lack life skills, and that their drug abuse is the by-product of a long and tormented personal history. This awareness can move the psychiatrist - inmate relationship beyond a "contest of wills" and toward a range of treatment options.

Another recommendation of the Peer Review addressed a concern in the OCR's Report about the different treatment received by inmates in society as compared to that provided in detention. It noted that psychiatric care should not be subject to substantial variability. It recommended that clinical practical guidelines should be implemented whenever possible. It noted that there are recognized standards for mental health care in correctional settings. Explaining these guidelines to inmates would help in maintaining good communication between mental health professionals and inmates.

Individual Case Summaries

The OCR's core mandate is to accept complaints and inquiries for investigation and resolution. These complaints and inquiries are against provincial government departments, agencies, boards and commissions scheduled to the *Citizens' Representative Act*. While the majority of complaints received fall within our jurisdiction, staff attempt wherever possible, to assist citizens with appropriate referrals for complaints falling outside of the OCR's legal mandate.

Many complaints and inquiries are subject to early resolution techniques: clearing miscommunications, ending delays, seeking reconsideration, referring complaints to applicable appeal processes or providing information for self-advocacy. Others require more in-depth investigation involving formal notification of the respondent department or agency, the review of documentation and the conduct of site visits and interviews where applicable. A report is generated and forwarded to all parties to the complaint.

The outcomes of inquiries and investigations are tracked closely by our electronic case management system. The following pages outline a sample of complaint resolutions and findings of our interventions. These cases give an overview of our work.

Contrary to Law - Service NL Consumer Affairs Division (Residential Tenancies)

The *Residential Tenancies Act, 2000* ("the *Act*") is the law that governs rental accommodations and sets up the method by which citizens, whether landlords or tenants, can have their grievances heard.

A couple who had rented for seven years had a dispute with their landlord and refused to pay rent in lieu of alleged unsatisfactory living conditions. This resulted in an order from the Director of Consumer Affairs for them to vacate their rental unit. They secured alternate accommodations but advised that it would take three days to move their personal belongings. Upon contacting the landlord they were advised that all of their belongings were being held until arrears had been paid. The couple believed this was a clear violation of Section 29 of the *Act*, which explicitly prohibits the retention of personal property by landlords for non-payment of rent. They made numerous attempts to recover their property, including written correspondence to Service NL. They were particularly upset when the landlord requested, and received on the same day, an order from the Director of Consumer Affairs to dispose of their property because it had been "abandoned." They had proof they notified Service NL they were not abandoning their personal property and had provided a list of their belongings. The couple were distraught to learn their family albums, wedding photos, furniture, degrees and diplomas, together with everything else they owned was now in the legal possession of the landlord. They argued that they were never notified of the landlord's request despite Service NL having their contact information, and that the monetary value on the list they provided far exceeded the amount of rental arrears. They wanted Service NL to conduct an investigation.

The OCR launched a formal investigation and raised concerns with the manner in which the couple were treated by Service NL. Our investigation concluded Service NL, on the facts of the application, did not have the authority to allow the landlord to dispose of the couple's personal

property; did not make a reasonable attempt to notify the couple of its Order; and failed to acknowledge the existence of critical evidence that proved the couple had been in contact with them to express legitimate concerns. We made the following recommendations:

- A. That (Service NL) amend its Abandoned Property Policy to include an express requirement to make a reasonable effort to contact a tenant before allowing a landlord to dispose of personal property belonging to that tenant, and that these efforts be documented.
- B. That the Director allow the disposal of property only in the event that the conditions for disposal set out in Section 28(4) of the *Act* have been clearly met.
- C. That (Service NL) write a letter of apology for its failure in allowing the disposal of the couple's belongings contrary to Section 28 of the *Act*, and for its failure to make an adequate attempt to contact the couple prior to allowing the disposal.

Service NL responded by stating that it would accept recommendation A but maintained it acted in good faith and in accordance with the *Act*. It refused to apologize.

Agricultural Student Finds Bug in the System – Department of Advanced Education and Skills (Student Aid Division)

Full time students who are residents of Newfoundland and Labrador attending college and university outside of the Province must make application for student loans through the NL Student Aid Division.

A citizen of Newfoundland and Labrador studying at the Nova Scotia Agricultural College contacted the OCR in distress. She was entering her third week of study with no books and no money for tuition. She claimed her loan had been approved but it had not been released and no one seemed willing to assist. The OCR contacted the responsible manager for client services at the Student Aid Division who explained the Province had just implemented a new electronic system for schools to check on the status of loan approvals for their students. The manager explained that all Canadian post-secondary schools had been notified of the new system and were encouraged to apply for access. The Agricultural College had only recently applied and had just been sent confirmation of the loan. The money was released. The manager provided the OCR with his direct telephone number to provide to the student so that she could contact him with any future concerns she had about her application.

Thank you Ferry Much – Department of Transportation and Works

Users of our provincial ferry system are not usually compensated for vehicle damage sustained on vessels or wharves. However, there is room for discretion in cases where the Department knows, or ought to have known, of a hazard which could cause damage.

A man contacted the OCR after his claim for vehicle damage had been denied. He explained he had to swerve to avoid a pedestrian and struck an embedded piece of steel on the Portugal Cove dock. Separate appraisals placed damage at between \$1,100 and \$1,700. The Department refused to pay the claim after considering it for approximately six weeks. It stated that while it had removed the steel, it was never an issue before and the driver was aware of its existence but chose to drive over it. The OCR investigated the complaint on the basis that the man's primary

concern was avoiding the pedestrian. Our site visit indicated there was insufficient room to avoid the pedestrian without hitting the embedded object. Within thirty days of our notice of intent to investigate, the Department indicated its willingness to pay the lowest quote for the vehicle damage, resulting in payment of \$1,109.13.

Massaging the Rates – Workplace Health, Safety and Compensation Commission (“WHSCC”)

Clients of the WHSCC frequently receive referrals for massage therapy, however, the \$25 payable per treatment is often less than the market value for a massage therapy treatment.

A woman contacted the OCR frustrated with the rate, and alleged that many massage therapists will not take WHSCC clients because it was below the prevailing market rate. WHSCC’s response to requests for massage therapy was driven by a number of appeal decisions requiring it to pay for the therapy. It explained the \$25 rate was put in place to contain the potentially explosive costs of having clients taking a treatment that, in its view, provided little evidence of successful medical outcomes. Our investigation determined that the current rate is well below the prevailing rate, especially on the Avalon Peninsula. We determined it was unreasonable, especially given that the massage therapist cannot charge an additional fee or “top up” to injured workers who wish to pay it. We recommended WHSCC review its policy with respect to the fees paid to massage therapists.

The OCR met with senior officials of WHSCC and was advised they had planned to review the issue, recognizing the substandard rate. The rate was raised to \$40 and capped at a maximum of six treatments. WHSCC started to develop a memorandum of understanding with provincial massage therapists.

Passport to Happiness – Service NL (Vital Statistics)

Canadian citizens generally have no difficulty obtaining a passport. Imagine, then, being born in the United States and moving to Newfoundland at the age of six days, immediately being placed in foster care for four years, and then being adopted by parents who never applied for your Canadian citizenship. Fast forward forty years to be told you are not a Canadian citizen and, therefore, ineligible for a passport. A woman contacted the OCR in this predicament. She knew her mother was born in Newfoundland and, as such, she qualified for citizenship, however, she required her biological mother’s birth certificate. Her biological mother had passed away. We solicited our contacts in the Vital Statistics Division who immediately began work on a solution in partnership with the Adoptions Division of the Department of Child, Youth and Family Services. Post-Adoption Services sent a letter to Citizenship and Immigration Canada, which issued a citizenship card that paved the way for a passport. A long-overdue vacation followed.

Incorrect Charge Causes Safety Concern – Department of Justice (Adult Corrections)

There are a lot of formal rules in prisons, but there are many conventional rules that are not written down. Once incarcerated, inmates are frequently treated differently by their peers based on the crimes they have committed, or their reputation as inmates. An inmate being transferred to a

federal penitentiary from Her Majesty's Penitentiary in St. John's contacted us fearful for his safety because his transfer records incorrectly indicated he had an internal disciplinary charge for sexual assault. His fellow inmates would certainly view a sexual assault charge differently than the actual common assault charge he received. This was causing the inmate undue stress and anxiety as he moved to his new surroundings. The OCR decided to investigate the matter further, and upon receiving the OCR notice, the Department of Justice conducted a further review of the matter. The Department had legitimate concerns with the disciplinary process in this case. It expunged the matter from his disciplinary record and advised the Correctional Service of Canada immediately.

No Fun Refund– Department of Environment and Conservation (Crown Lands Division)

A person who submits an application for crown land which is subsequently rejected is entitled to apply for a refund of the application fee.

A man who fit into this category contacted the OCR after he attempted to get his money back. He alleged he applied for the refund but received a letter stating he would not get a refund, instead he was required to sign a letter confirming his current address and send it back. He did so (wondering why they had elected to mail a letter to the address they wanted confirmed), and attended twice at his local office to inquire about his cheque, but to no avail. The OCR contacted the Department to inquire about the status of the cheque, and it arrived at his home shortly thereafter.

“Sore Arm” Service – Service NL and the Office of the High Sheriff

There are numerous requirements in law that proper service of documents be effected to provide notice of issues before the courts and administrative tribunals. “Process Serving” is typically accomplished by private companies or Deputy Sherriff officers and, at times, can be hostile work. Once service is effected on a person or company, a sworn affidavit must be kept on file stating the name of the person served, the person serving, and when and where service took place.

A woman upset with her eviction for rental arrears and garnishment of her wages contacted the OCR and alleged she was never notified of her residential tenancies hearing, and was not served with associated garnishment documents from the Court. Our inquiry revealed that both Service NL and the Office of the High Sheriff had valid affidavits of service on file. Further, the Deputy Sheriff remembered the woman specifically, as she had thrown the garnishment documents in his face, and slammed her door on his arm.

Sentence Commuted - Department of Justice (Adult Corrections Division)

People sentenced to serve jail terms on weekends can lose earned remission time (or “good behaviour time”) for a number of infractions, including not showing up on time for incarceration.

A man serving weekends at Her Majesty's Penitentiary (“HMP”) contacted the OCR indicating he had been scheduled for release from his weekend sentences, however, he did not show up for one weekend and lost his accumulated earned remission. He explained that he could not report to HMP because he had experienced a seizure. His statement was verified by the Royal

Newfoundland Constabulary, who showed up at his house to escort him to HMP and instead, had to call an ambulance. By the time the ambulance arrived the seizure had ended and he was taken to the St. John's Lockup. After transfer to HMP, he was charged and lost the earned remission. The OCR contacted senior officials at HMP, who overturned the decision and commuted the man's sentence. He did not have to return to jail.

Fracking Concerns – Department of Environment and Conservation

Prospective natural resource developments often promote rumors. These can sometimes lead to unnecessary anxiety and speculation in communities where people exercise their right to oppose development on grounds of protecting the environment and peacefully enjoying their property.

A man representing a group of concerned citizens on the west coast of Newfoundland contacted the OCR stating that hydraulic fracturing, commonly known as "fracking," was taking place without proper environmental permits from the Department of Environment and Conservation, and he was unable to reach decision makers in that Department. He listed companies he believed were undertaking this illegal activity. The OCR contacted its designated officer in the Department with the list of companies and was advised that before any company can begin the activity it must have applied for consideration which included registering the project with the Department. None of the companies listed had applied for consideration, and while there were proposals for the area in question, no activity had occurred. The man who brought forward the complaint admitted there was speculation occurring in the community, and that the group would have to gather more factual information and participate in any upcoming public consultations involved in the environmental approval process.

Dispute Settled "Over The Fence" – Department of Transportation and Works

With thousands of kilometers of roadway to maintain, much of it remote, snow plough operators in Newfoundland and Labrador endure some of the harshest winter driving conditions in Canada. Inevitably, their ploughs and the tons of snow they push come into contact with private property.

A man with a seasonal home on the west coast of Newfoundland contacted the OCR to say his fence had been severely damaged by a snow plough, which also left a mess of debris on the property. The OCR formally investigated the matter by conducting a site visit, taking photographs, and interviewing the affected citizen. It reported back to the Department that it should restore the site to its original condition, clean up the debris and cost-share the estimate for the new fence. To its credit, the Department agreed that it would clean up the debris and paid the man its half of the estimate to repair: \$424.79.

Complex Need Met – Newfoundland and Labrador Housing Corporation ("NLHC")

As the agency responsible for the provision of affordable housing, the NLHC deals with individuals presenting with complex needs in the community on a daily basis. To help manage its priorities, it classifies applicants under codes used to identify those most in need of help.

A woman referred to the OCR by the Community Sector Council presented with a constellation of personal and medical problems. A victim of spousal abuse with a mental illness who has difficulty walking, the woman was "couch surfing" in St. John's when she applied for an NLHC unit. The

OCR discovered a problem lay in the lack of information in the application she filed with the NLHC. This led to her being coded differently than she would have been if NLHC was fully aware of her situation. Based on the new information, a vacancy was found and approved.

Room for Discretion - Labrador-Grenfell Health

In some cases, common sense prevails over strict policy. Labrador-Grenfell Health maintains limited housing units for professional staff working in Natuashish. An employee of Labrador-Grenfell Health, a maintenance worker, was sharing one of the housing units. When he learned his son was coming to live with him, he advised his employer accordingly. He was told he would be evicted. He contacted the OCR to complain that the eviction was unfair given the fact he was already living in the unit, there wasn't any pressure for units, and his son would not be an added burden. He would have nowhere to live if the eviction went through. We inquired with the responsible VP at Labrador-Grenfell Health to advise we had received the complaint and to seek their position. The VP maintained that Labrador-Grenfell Health does not generally provide accommodations for maintenance staff, but there was indeed room, given there were no professional staff currently in need of housing in Natuashish. The VP advised that in the event professional staff came to Natuashish from outside of the community, the man should prepare for alternatives, including having the son share a room with him. The VP undertook to speak with staff of Labrador-Grenfell Health to ensure there would be no eviction.

Mom's Worries Allayed – Department of Child, Youth and Family Services (“CYFS”)

The CYFS Child Care Services Subsidy Program is available to qualifying individuals to provide assistance with the costs of having a child in a licensed child care centre or a regulated family child care home. Some or all of the costs of care may be covered.

A concerned mother contacted the OCR after applying for the subsidy sixty days prior to needing it. The mother returned to school and the child was attending day care, however, she was worried that the costs were not going to be covered. Our inquiry revealed that indeed the mother had applied sixty days prior, however, she was not registered as a student at the time of registration and was, therefore, ineligible. When advised by the OCR that circumstances had changed, temporary approval was granted while the necessary documentation was gathered for full approval. Shortly afterward the mother contacted us to say all was well.

No Time to Wait – Department of Advanced Education and Skills (“AES”)

As part of its mandate, AES is involved in funding those who wish to upgrade their skills to find meaningful employment. It can provide additional income support where warranted, to ensure a person's successful completion of training.

A young man who had completed a course of study in Bonavista was advised that his income support benefits would continue upon his return to St. John's. Upon his return, however, he was advised that he would have to re-apply for benefits. In the interim, he had secured an apartment. He contacted the OCR, worried that he would lose the apartment in the time it would take to complete an application. Furthermore, AES was introducing further delay by requesting documentation he believed was already in their possession. Our inquiry to AES determined that when his application

was received, the intake worker had requested additional banking information and receipts, however, their subsequent review of the file showed this information was previously available. There would be no further delay in processing and a cheque was generated manually to resolve his immediate concerns.

No Sail Pending – Department of Environment and Conservation (Crown Lands Division)

Crown land holdings in Newfoundland and Labrador are held in trust for the citizens of the province. As stewards of this land, Crown Lands Division sometimes has to lean on citizens and communities to cease illegal activities.

A resident of Cupids contacted the OCR to advise that citizens there were being charged berthing fees by the local boat owners association at a marina that he believed was being operated with no clear title or legal authority. He alleged the association was acting on behalf of the town council, which did not own and had not applied for the crown land the marina was operating on. He had previously complained directly to Crown Lands Division but was unaware of any activity to halt the imposition of berthing fees. The OCR investigated and was advised that the Department was aware of the man's complaint, and had actually written the boat owners association and the town to say that they had no authorization to operate a commercial marina. It instructed the association and the town to immediately cease occupation and not to restrict public access. Further, it advised that failure to vacate would result in the Department applying to a judge for a court order under the *Lands Act* "requiring these lands to be delivered up to the Crown." The OCR found no finding of administrative unfairness by the Department, but suggested that notification of actions taken be provided to any citizen who requests a review.

Improvements Sought – Department of Justice (Legal Aid Commission)

Family courts have the power to order an assessment of individual parenting capacity. Prepared by psychologists, they are designed to inform a judge's decision making on parental custody and access to children. Legal Aid has the difficult task of determining when to fund what can be an expensive assessment. When a parent is a client of Legal Aid, the Legal Aid solicitor acts as a conduit through which an application for legal aid funding is made to provide the expert opinion.

A man contacted the OCR frustrated with the amount of time the process of obtaining a parental assessment was taking. He had an order dated December 2009 for an assessment which as of May 2012 had not been completed. In the interim, he had no access to his child and had tried successfully to seek a change in legal representation. He felt ignored by the Legal Aid Commission which he alleged frequently neglected to return his calls, e-mails, and even a hand-delivered letter.

The OCR launched an investigation in the man's case and was then forced to write the Commission twice more for an acknowledgement and disclosure of records. It took seventeen weeks to receive the requested documents. Our review included a detailed chronology of events which highlighted a number of concerns with respect to the Commission, including:

-
- significant and unnecessary delays,
 - lost documentation,
 - poor internal communications and
 - inappropriate decision making.

We concluded the man was treated unreasonably under the *Citizens' Representative Act* with respect to the handling of the assessment process and the Commission's lack of effective communication. The OCR made two recommendations designed to prevent the problems identified from re-occurring:

1. That the Director's Office (Legal Aid) conduct a comprehensive review of its records management system in order to minimize the loss and misplacement of documents.
2. That the Commission implement an internal policy for handling complaints from all staff of the Commission dealing with problems in communicating within the Commission.

The Commission accepted the concerns and initiated a review of its information and document management procedures. It committed to draft a policy to address concerns revolving around communication within the Commission, having regard for the dictates of solicitor/client privilege. At the conclusion of the investigation, the complainant's assessment was still underway.

Hearing Loud and Clear – Department of Advanced Education and Skills (“AES”)

While legally considered an office of last resort, the OCR is often the first point of contact for individuals looking for information, or who are trying to navigate complex government processes. Just as we expect the public service to go an “extra mile” for citizens when warranted, we endeavour to do the same.

A young woman completing a work term contacted the OCR looking for assistance in finding any government program that would pay for a hearing aid. She was finding it increasingly difficult to hear and she was desperate for help. After taking some basic information, the OCR contacted AES and was advised she may qualify for assistance, but would have to make a more detailed application. Directing her to the appropriate person in the system, our investigator monitored her path until she received her hearing aid from a local hospital approximately sixty days later.

Change for the Better – Memorial University

Provincial public bodies are subject to internal respectful workplace and anti-harrassment policies, and Memorial University has such a policy in place.

A man complained to the OCR that he had been waiting twenty-eight months for an investigation of a complaint he made under the respectful workplace policy at Memorial. He did not anticipate an investigation given the passage of time, however, he felt that a policy review was required and changes needed to be implemented for the policy to be effective. The OCR commenced an

investigation and was immediately assured by legal counsel for Memorial that a comprehensive and thorough review of the current policy would be taking place beginning in 2013 under its Policy Framework Process. The man was content to await the outcome and file under the new policy if the need arose.

Minor Jolt to Electrical Inspection Regime – Service NL (Inspections, Licenses, Permits and Registrations)

All new homes in the province with electrical service must undergo inspections pursuant to the *Public Safety Act* and the Electrical Regulations associated with it. Service NL is responsible for ensuring compliance with the Canadian Electrical Code and will issue permits to connect to the power grid following an electrical inspection.

A woman contacted the OCR dissatisfied with the final electrical inspection performed on her home. The contractor she had hired was responsible for acquiring the necessary permit, completing the electrical work and notifying Service NL at specific intervals for purposes of inspecting the completed work. After her home passed final inspection, the woman identified deficiencies, some of which she felt were safety concerns. She contacted Service NL with her concerns and her view that the final inspection should not have passed in light of the perceived deficiencies. Further, she felt she should be reimbursed for having another electrician come in to complete work.

The OCR's investigation revealed no evidence to reflect she had been treated unfairly. The inspection was performed looking for life and safety defects and not whether the electrical work was completed to the specification of the homeowner. However, Service NL did not have sufficient documentation to verify what components were inspected and deemed compliant with the Canadian Electrical Code. While no formal recommendation was made, the OCR suggested Service NL should develop a proper checklist to be completed by all electrical inspectors after each inspection. The checklist could serve as a guideline and ensure all aspects of the inspection are verified and compliant in the event the inspection is called into question.

Assistance Rendered - Department of Health and Community Services (NL Prescription Drug Program)

One aspect of the Newfoundland and Labrador Prescription Drug Program ("NLPDP") is the "65 Plus Plan." Eligibility is automatic for those 65 years of age and older upon eligibility for the federal Guaranteed Income Supplement ("GIS"). When NLPDP is notified that a person no longer qualifies for the GIS, the province can no longer validate a drug card.

During intake information sessions on the west coast, we met with a 75 year old lady who was concerned about the status of her provincial drug card. She had received a payment from a former employer which resulted in her GIS being cancelled. The OCR contacted NLPDP with an explanation and a request for clarification on her eligibility for a drug card. Our contact at NLPDP connected us with a representative of Service Canada who agreed to review her eligibility for federal benefits. Within days she was notified that she was, in fact, owed money from federal Old Age Security. The review showed an error in calculations that reinstated her GIS and then, her drug card.

Seniors' Concerns – Central Health

The OCR frequently receives calls from those advocating on behalf of others. These calls sometimes require our investigators to follow up on health and safety concerns outlined by callers. Our wide range of contacts across all levels of government give us an ability to quickly make authorities aware of such concerns.

A woman contacted the OCR in relation to her elderly sister who was mentally delayed and living in a private residence with others. The woman spoke of concerns she had with the living conditions in the home, and the behaviour of those living with her sister. She had specific concerns about her finances and the provision of non-prescribed medicine to her sister by other residents. On top of it all, the caller had just been diagnosed with cancer and had two recent surgeries which limited her ability to assist.

Central Health was contacted immediately to report concerns of the sister's safety and to request a follow-up site visit from a professional. With her permission, we advised Central Health of her own recent predicament with respect to her mobility. Central Health agreed to check on the private home and contact our caller to discuss establishing supports of her own.

New Evidence, New Decision - Department of Advanced Education and Skills ("AES")

AES has to ensure the resources available for income support and associated benefits are properly administered. This mandate is often challenging due to the life circumstances of some of the citizens they assess and the multi and varied demands on available resources.

A woman who claimed to own a piece of land allowed a couple to move a home onto the land, and she took up residence in the home as a tenant. In addition to rent, she paid municipal taxes and utilities. This was achieved by a complex verbal agreement that soon led to trouble. As a client of AES, the department requested clarification of ownership of the land for purposes of reassessing her eligibility for \$400 per month in rental assistance. With no legal documentation for the land and no written rental agreement, she was cut off from assistance in December 2010. AES required proof that she was in a rent-to-own agreement. She appealed to the Income and Employment Support Appeal Board and lost. She contacted the OCR and provided all documentation she had to validate her story, including a rental agreement drafted in January 2012. The OCR investigators traveling through the area visited the site, the town office and spoke with neighbours and the landlord. Our review showed a history of the complainant being less than forthright with AES, fluidity in the purported ownership of the property and a measure of unwillingness from the landlord to assist in properly documenting what was the true status of the relationship. Conversely, the review showed an unhealthy citizen with very few options who was in genuine need of modest rent, and no explanation from AES as to why it was imperative that a rent-to-own agreement be put in place.

When a new rental agreement was put in place in 2012, the OCR wrote AES to recommend that her updated financial circumstances be assessed for rent of \$465 plus utilities as contemplated in the new agreement. AES conducted the assessment, and concurred there had been inconsistencies and conflicting information related to the file. It agreed to reinstate the rental benefit retroactive to 2011.

Your Feedback

"I want to thank you for your efforts in this matter and say that I am very impressed with the professional and expedient manner in which you handled this. Needless to say after months of beating my head against a stone wall I am more than pleased with the result you were able to achieve."

"I received my Birth Certificate in the mail today...thank you for your assistance."

"Thank you all for your help...I can't wait to obtain a passport and go on a long overdue vacation."

"I can't thank you enough for what you did accomplish for me. I am sure that the general public would not enjoy (natural resource), but for your involvement in the matter."

"Wow! It was months of me inquiring about the steps of getting my file and over a year of (requests) and you have gotten me answers in just weeks. It is reassuring to know there are places where people can turn when they need help advocating for themselves."

"Thank you so much for helping me with my problem with (health authority), you will never know how much I appreciate what you have done for me. It's nice to know there is someone out there looking out for the little guy."

"Thank you for all you've done. I'm delighted and thankful to everyone."

Kudos

For each of the last ten years, the OCR has singled out individual public employees who have demonstrated, through their interaction with staff, a willingness to “go the extra mile” or otherwise devote the time and attention necessary to uphold the principles of fairness in administration. “Kudos” have been given in the past to public employees who have provided timely, reliable advice in a diplomatic fashion, while adhering to the laws and policies that govern their area of specialty.

We give the following public servants “kudos” for a job well done. Each will receive letters of acknowledgment and congratulations from the Citizens’ Representative for their personnel files. These recipients are nominated by staff of the OCR who have firsthand knowledge of the recipients’ positive impact, and their nominations are as follows:

Mimie Carroll – Director, Community Support & Residential Services, Central Health

Mimie has coordinated responses to the OCR on issues that are highly sensitive and require timely responses. She has also become a great source for referral as well as a resource for policy and practice clarification at a front line level. Mimie has been available and has coordinated appropriate responses directly to citizens to ensure awareness of services available and to facilitate the process of accessing services.

Sherri Tiller-Park – Access and Privacy Coordinator, Western Health

Sherri has been designated as our contact with Western Health for several years. She has provided highly professional responses, exhibiting tremendous respect for the work of our Office, Western Health which she represents and also the citizens in need of service. Sherri has been available to listen to concerns expressed by citizens to the OCR. In this regard, she has ensured timely and appropriate referrals to assist citizens within Western Health. By doing so, Sherri has supported the work of the OCR in seeking resolution to citizens’ concerns.

Megan Collins, Director, Policy & Strategic Management, (Acting), Service NL

Megan is very knowledgeable of the policies and procedures within the various divisions of the Department. If she is not sure of the answer to a question or inquiry she will go out of her way to ensure she gets the correct information and provides it promptly. She returns phone calls, responds to emails, and always reiterates the fact that she is there to help and we should not hesitate to call. Megan keeps us in-the-loop in terms of timeframes for release of documents requested.

Statistics

During 2012-2013, the OCR received 393 complaints and inquiries. The following tables illustrate the origin of the complaints we received, the types of issues and which government departments and agencies were concerned.

Complaints/Inquiries by Department and Agency April 1, 2012 – March 31, 2013

Advanced Education and Skills	6
Advanced Education and Skills – Income Support Division	34
Central Health	5
College of the North Atlantic	2
Eastern Health	22
Child, Youth and Family Services – Division of Eastern Health	17
Education	2
Environment and Conservation	7
Finance	2
Health and Community Services	13
Innovation, Business and Rural Development	1
Justice	11
Correctional Facilities	154
Human Rights Commission	4
RNC Public Complaints Commission	1
Labour Relations Agency	1
Labrador-Grenfell Health	3
Memorial University	3
Municipal Affairs	3
Municipal Assessment Agency	1
Newfoundland and Labrador Centre for Health Information	1
Newfoundland and Labrador Housing Corporation	32
Newfoundland and Labrador Legal Aid Commission	3
Public Service Commission	4
Service NL	17
Tourism, Culture and Recreation	2
Transportation and Works	2
Western Health	4
Western School District	1
Workplace Health, Safety and Compensation Commission	8
Workplace Health, Safety and Compensation Review Division	3
Total Complaints & Inquiries by Department and Agency	369

**Complaints / Inquiries
by Electoral District
April 1, 2012 - March 31, 2013**

Baie Verte-Springdale	1
Bay of Islands	3
Bellevue	1
Bonavista North	3
Bonavista South	6
Burgeo & La Poile	1
Cape St. Francis	4
Carbonear – Harbour Grace	4
Conception Bay East & Bell Island	7
Conception Bay South	8
Exploits	5
Ferryland	4
Gander	5
Grand Bank	2
Grand Falls – Windsor – Buchans	4
Grand Falls – Windsor – Green Bay South	4
Harbour Main	7
Humber East	9
Humber West	8
Kilbride	6
Labrador West	3
Lake Melville	5
Lewisporte	2
Mount Pearl North	3
Mount Pearl South	6
Other Provinces	5
Placentia & St. Mary's	6
Port au Port	8
Port de Grave	1
Signal Hill – Quidi Vidi * 1	141
St. George's – Stephenville East	17
St. John's Centre	10
St. John's East	10
St. John's North	11
St. John's South	14
St. John's West	6
Terra Nova	4
The Isles of Notre Dame	2
The Straits & White Bay North	1
Topsail	5
Trinity – Bay De Verde	1
Trinity North	2
Unknown * 2	34
Virginia Waters	4
Total Complaints & Inquiries by Electoral District	393

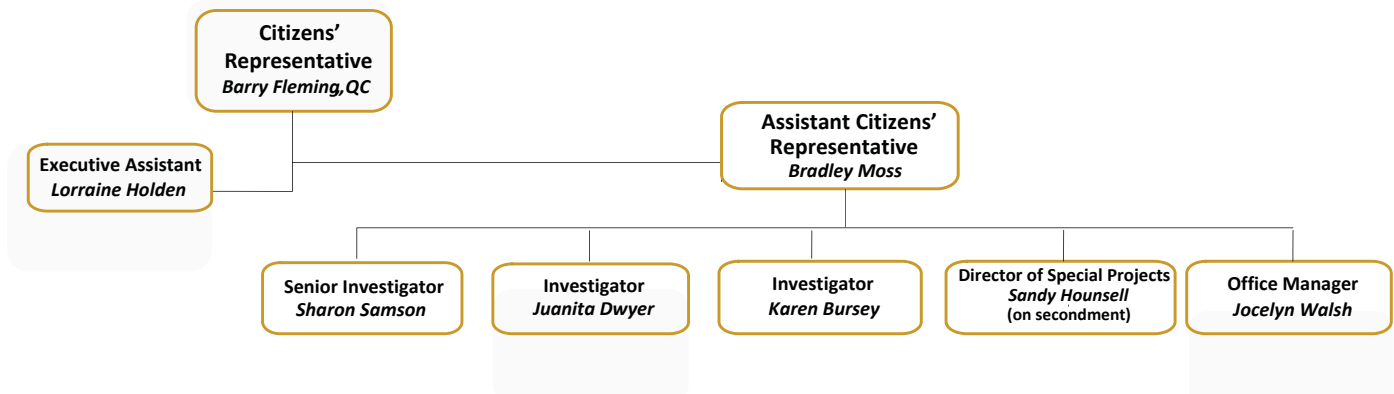
* Note 1: that the higher volume of complaints emanating from the District of Signal Hill-Quidi Vidi is a result of the location of Her Majesty's Penitentiary.

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

**Complaints/Inquiries Non-Jurisdictional
April 1, 2012 – March 31, 2013**

Federal Departments, Agencies and Crown Corporations	2
City of Corner Brook	1
Other	17
Private Companies/Corporations	3
Royal Newfoundland Constabulary	1
Total Complaints & Inquiries Non-Jurisdictional	24

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



How to Reach Us

Staff

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

On the Internet

www.citizensrep.nl.ca

By Phone

Toll Free	1-800-559-0079
Telephone	(709) 729-7647
Fax	(709) 729-7696

By Mail


P.O. Box 8400
St. John's, NL
A1B 3N7

In Person

4th Floor, Beothuck Building
20 Crosbie Place
St. John's, NL

On Facebook

Office of the Citizens' Representative – Newfoundland and Labrador



**Office of the Citizens' Representative
4th Floor, Beothuck Building
20 Crosbie Place
P.O. Box 8400
St. John's, NL A1B 3N7**

Telephone: (709) 729-7647

Toll Free: 1-800-559-0079

Fax: (709) 729-7696

Email: citrep@gov.nl.ca

Web Site: www.citizensrep.nl.ca

Iceberg in St. Anthony's Bight, Newfoundland, in late August