



Office of the Citizens' Representative
Province of Newfoundland & Labrador

**Citizens' Representative
Annual Digest**

April 1, 2013 - March 31, 2014

...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

November 10, 2014

The Honourable Wade Verge
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's 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, 2013 to March 31, 2014.

Respectfully submitted,

Barry Fleming, Q.C.
Citizens' Representative

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Message from the Citizens' Representative

This is the seventh Annual Digest of the Office of the Citizens' Representative. In contrast to our Annual Report which outlines our formal reporting requirements under the *Transparency and Accountability Act*, the Digest is an informal overview of the work of our Office. We have an opportunity to provide general information about our outreach efforts, case summaries and other matters of interest.

Over the past fiscal year we have experienced a dramatic increase in the number of ombudsman complaints and inquiries. In 2012-13 we received 393 complaints and inquiries. In 2013-14 the number increased by 54% to 607. This increase has occurred without any change in the

methodology used to compile our statistics. While some of the increase in demand is credited to our work in corrections, we have experienced increased numbers of complaints and inquiries relating to all aspects of the greater public service. We, in no way, attribute this increase to a decline in administrative performance or professionalism of the province's public employees. Rather, it is an indication of the institutionalization of the OCR as part of the machinery of government. Citizens are more aware of our role and mandate. Public employees are aware that while we have an oversight function, all our interventions are oriented towards what is in the best interests of the public we jointly serve. As well, our staff have become more proficient in dealing with the concerns of citizens.

One persistent area of concern for us over the past year relates to delays experienced by citizens in having their human rights complaints dealt with by the Human Rights Commission. We filed two reports where the citizens were waiting approximately five years to have their complaints processed. These delays do not include the time required to have the citizens' complaints adjudicated before a board of inquiry. That process can take anywhere from an additional one to three years depending upon the availability of the parties' legal counsel. I have a heightened awareness of the need for timely human rights investigation having served as legal counsel and Executive Director of the Human Rights Commission for eleven years. I recognize the challenges and difficult work that the employees of the Commission face, but unless citizens' complaints can be handled more quickly, I fear the public will lose confidence in the Commission's ability to be a gatekeeper for processing complaints. Fortunately, this fall, Government accepted our recommendation that a management review be undertaken to identify the issues that have given rise to these delays.

In closing, I would like to express my gratitude for having such a wonderful job. It is a privilege to meet with citizens and hear their concerns. Every complaint and inquiry we receive gives us the opportunity to improve a citizen's relationship with the public service. We heartily accept the responsibility of expending our best efforts at optimally dealing with those complaints and inquiries as we seek fairness and find solutions for the people who brought those concerns to us.

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

Barry Fleming, Q.C.

Citizens' Representative

Our Role

The Office of the Citizens' Representative (the "OCR") was established after the passage of the *Citizens' Representative Act* in December 2001. We serve the public, and the House of Assembly, in the traditional parliamentary ombudsman role as an independent complaint investigation and mediation office. In 2007, our mandate expanded to include the investigation of public interest disclosures made by members and staff of the House under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*.

As a non-partisan Statutory Office, we initiate 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 legally permitted to initiate investigations on his/her own motion without a specific written complaint.

As part of its regular course of business, the Office commonly assumes a mediation/facilitation function in cases which do not require formal investigation. Through low-level interventions it seeks early resolution of complaints by opening lines of communication with departments and agencies and, where applicable, using telephone and email inquiry, and shuttle diplomacy, to resolve conflict between government departments/agencies and citizens. With the cooperation and mutual respect of the public service, we are successful in this endeavor every day.

The OCR has, like many of its Ombudsman counterparts, assumed a "traffic cop" or referral function whereby work is performed to ensure that the person who presents with a complaint beyond our legal capacity to investigate is provided with the necessary information to contact the appropriate agency to deal with their concern. Given the size of our referral network, we can often link a citizen directly with the agency that can help. Tips for effective self-advocacy, forms, telephone numbers, internet links and required next steps are also provided wherever appropriate.

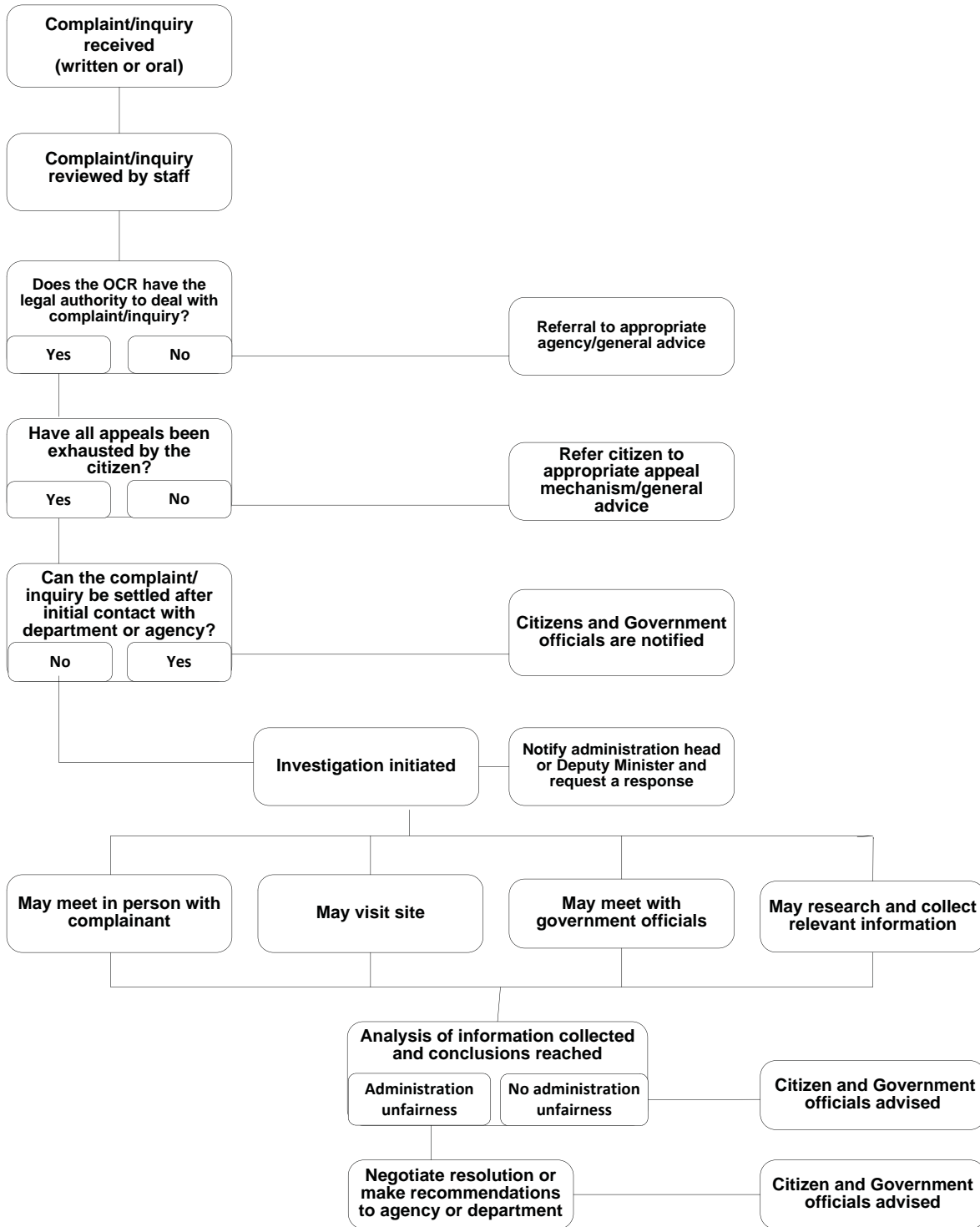
There are a number of entities and issues that are outside the statutory purview of the Office. These include:

- 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

During 2013-2014 our Office continued to provide citizens with outreach and public education opportunities. We remain committed to providing a high level of access to our services, whether we are setting up community intake sessions in larger centres, or visiting smaller communities to conduct our investigations or meet with concerned citizens. We also maintain a high level of public access through our website, our Facebook page, our toll-free number, our quarterly newsletter (*OCR Insights*), and presentations in the community. Staff also work outside of regular business hours when necessary, to ensure people who work during the day can meet privately during the evening hours. In addition, both the Citizens' Representative and staff make themselves available to non-governmental organizations to both promote the role and mandate of the Office, and sometimes to provide factual information on issues of public concern, notably in the social sector. We host regular meetings with the Seniors' Resource Centre and meet with the Caregivers Out of Isolation Provincial Advisory Committee. We continue to benefit from education sessions hosted by the Newfoundland and Labrador Network for the Prevention of Elder Abuse, such as: elder mediation, ageism and the provincial *Adult Protection Act*. We also attend at meetings of the Mayor's Rental Housing Action Committee (St. John's) to provide referral options and ad hoc feedback.



In the past year, our Office has presented on its role and mandate to the Access to Information and Protection of Privacy Community of Practice, and the Newfoundland and Labrador Housing Corporation. In addition, we have attended presentations at the Memorial University School of Social Work, the Social Work Expo and Community Fair, and the Newfoundland and Labrador Association of Social Workers on subject areas like demographic forecasts, diversity, social media ethics, disabilities, and professional boundaries.

Citizens' Representative, Barry Fleming, welcomed Veteran's Ombudsman, Guy Parent, to St. John's in April of 2013. In June he addressed graduate interns working in the public service on the role and mandate of our Office. Barry taught at the Osgood Hall Law School / Forum of Canadian Ombudsman Certificate "Ombuds Essentials" course (September 2013), and addressed Memorial University's Social Work 3720 class in March 2014 on the subject of Ethical and Legal Considerations in Social Work Practice.

A Month in Review

We received a number of positive comments after our 2012-2013 Digest featured “A Month in Review.” This year, we chose November to demonstrate the target, nature and scope of allegations received by the OCR.

ALLEGATION	DEPARTMENT
Human resource issue	NL Center for Health Information
Garnishment of income by Support Enforcement	Justice
Pending eviction from NLHC unit	NL Housing
Difficulty obtaining specialist referral for rare condition	Western Health
\$150 flat rate allowance withdrawn	Eastern Health
Contesting notice to vacate NLHC unit	NL Housing
Difficulty in getting information from Sheriff's Office	Justice
Incorrect sentence calculation	Justice
Questions regarding Mental Health Court	Justice
Fired from position	Private company (discussed legal and personal options)
Protesting removal of children	Child, Youth and Family Services
Protocol for seniors in emergency rooms	Health and Community Services
Complaint re: adult dental program	Health and Community Services
Request for eyeglasses (HMP)	Justice
Delay in request for transfer	NL Housing
Billing dispute for out-of-province service	MCP
Loss of inmate property (HMP)	Justice
Judgement re: default on student loan	Advanced Education and Skills
Dropped from RNC Recruitment Program	Memorial University / RNC
Cannot change gender on birth certificate	Service NL
Denial of re-read (certification exam)	Advanced Education and Skills
Inmate money account complaint (HMP)	Justice
Incorrect decision	RNC Public Complaints Commission
Home support funding denied	Health and Community Services
Dispute over home care hours	Western Health
Access to long-term care funding	Health and Community Service
Incorrect decision	Workplace, Health, Safety & Comp. Review Division
Delay in receiving mail (HMP)	Justice
Shortfall in long-term care funding	Eastern Health
Human resource issue	Justice
No funding for medication	Health and Community Services
Quieting of Titles matter	Environment and Conservation
Unfairness re: forcing citizens to travel for OT service	Service NL

Good Governance Week

As part of the ombudsman's overall role in promoting administrative good practice and public accountability, each year our Office sponsors a "Good Governance Week." This provides us with a unique opportunity to raise our profile in schools, reinforce our network of connections in the public service, and publicly reiterate our commitment to upholding fairness in public administration. We celebrated our 5th "Good Governance Week" in October 2013 by hosting a networking event for departmental designates at our Office, and judging the winner of our student essay contest. Each year the essay contest asks all Grade 6 students in the Province to tell us simply what "good governance" means to them. All staff are given copies of the essays received, and then deliberate on a winner. With the cooperation of the winning school's Principal, the winning student is contacted at school and given the good news. The 2013 essay contest winner was Ms. Gina Spencer of Immaculate Heart of Mary School in Corner Brook. **Congratulations Gina! ***

Photos: Good Governance Week 2013



*Gina's essay and all previous winning submissions can be viewed at www.citizensrep.nl.ca under the "Events" and "Good Governance Week" tabs.

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 our Office during 2013-2014.

It is worthy of note that as of July 1, 2014, our Office is the named investigator of public interest disclosures under the government-wide *Public Interest Disclosure and Whistleblower Protection Act*. Section 20 of that *Act* specifies that the Citizens' Representative shall make an annual report to the House of Assembly on the exercise and performance of his or her functions and duties under the *Act*. A report on this subject will be tabled in 2015.

Human Rights Commission

The primary purpose of the Human Rights Commission (the "Commission") is to accept, attempt to settle, and investigate complaints of discrimination and harassment in employment and the provision of services and accommodations. The Commission also has a role in educating the public on human rights issues. Staff of the Commission report to the Executive Director. The Executive Director reports to a Commission with respect to all matters dealing with human rights and to the Department of Justice on administrative matters.

A complaint to the Commission is the only mechanism most citizens have to seek redress for the harm done by discrimination and harassment. Some union employees may be able to avail of anti-discrimination clauses in their collective agreements, while others may have the financial resources necessary to seek equality through litigation using the Charter of Rights and Freedoms. Otherwise, the courts have consistently ruled that citizens must use mechanisms within human rights legislation to enforce their equality rights. Simply put, for most citizens the Commission is the only game in town for investigating and enforcing human rights.

Over the past fiscal year we have dealt with three complaints from citizens about the Commission. Invariably, the complaints were about delays experienced in the conduct of investigations. Two of the complaints resulted in findings that the affected citizens were treated unfairly as contemplated by section 37 of the *Citizens' Representative Act*. A third case is still at the investigation stage with the Commission. The delays experienced in each case are troubling.

One citizen filed a complaint with the Human Rights Commission in November 2011. By the spring of 2014, nearly two and a half years later, he was 19th on a caseload of 41 held by his assigned investigator. His complaint was dismissed by the Commission. If the complaint had been forwarded to a Board of Inquiry for adjudication he would have had to wait for that process to conclude, possibly an additional two to three years.

We undertook an in-depth review of one woman's contact with the Commission. She filed a complaint of discrimination on the basis of a mental disability against her employers in May 2009. In July 2013, her complaint was 9th on a caseload of 46 held by her assigned investigator. We

issued our report with recommendations in September 2013 and followed up with her in August of 2014. At that time she was second on her assigned investigator's caseload. During our review we noticed that the file closure rate per investigator at the Commission had decreased dramatically over the past 10 to 12 years. We made a number of recommendations which were accepted by the Commission. One recommendation, that a management review be conducted to determine authoritatively why there are delays in the investigation process, was initially rejected but subsequently approved this month. We note that since our review the Commission has been allocated funding to hire an additional solicitor and an intake officer. We hope that these additional resources and a management review will alleviate some of the delays.

Individual Case Summaries

The core mandate and function of our Office is to receive and investigate complaints. When a complaint is received it can follow any number of paths. If the matter is non-jurisdictional, or beyond our power to investigate, it is referred to the proper agency for consideration. If the matter is jurisdictional it is assessed for early complaint resolution. Often, early complaint resolution results in settlement of the complaint through the provision of information, the correction of an error or an omission, or the alleviation of some other minor administrative malady. If the matter cannot be settled easily, or requires the exchange of complex or heightened personal information, witness interviews, site visits and report writing, it is referred for formal investigation. The following cases provide examples of all three. These cases give an overview of our work.

“Restriction on Disclosure by a Minister” – Department of Justice

Section 32 of the *Citizens' Representative Act* enables the Minister of Justice to certify in writing to the Citizens' Representative that disclosure of evidence in a matter under investigation would interfere with or impede the investigation or detection of an offence. Prior to 2013-2014, this power had never been employed.

Our Office was investigating a complaint in relation to an application for a public job competition in the Fish and Wildlife Enforcement Division of the Department of Justice. A conditional offer of employment was extended to an individual and subsequently withdrawn after the outcome of an enhanced screening, with no explanation provided to the individual. The withdrawal caught the individual off guard, and cast a shadow on the individual's existing law enforcement job in another province.

The Minister of Justice certified that the disclosure of information related to the security clearance would interfere with or impede the investigation or detection of an offence. With respect to the administrative conduct of the recruitment the Department undertook to implement a series of six recommendations as a result of our investigation.

Section 32 of the *Citizens' Representative Act* requires the Citizens' Representative to report the transmission of the certificate to the House of Assembly.

“Medical Needs Addressed” - Department of Advanced Education and Skills

As part of its mandate, the Department of Advanced Education and Skills (AES) is responsible for administration of the provincial drug card plan, which assists individuals below certain income levels with the cost of pharmaceutical care. A man called our Office stating that he had recently had his income support reinstated, however, his drug card had not been validated and his pharmacy was unwilling to provide his epilepsy medication without it. The pharmacy was set to close at noon that day, and he would be without medication if the issue wasn't resolved. Our inquiry determined he was entitled to drug card benefits. Our AES contact got in touch with the man directly, as well as the pharmacy to confirm his eligibility, and he received his medication before the pharmacy closed.

“In Need of a Fresh Start” – Newfoundland and Labrador Housing Corporation

The Newfoundland and Labrador Housing Corporation (NLHC) is the largest landlord in the Province, with over 5,500 social housing units in its portfolio. Relations with its tenants are sometimes challenging, and like any landlord it sometimes has to evict tenants for breaches of the terms of leases, including the disruption of the peaceful occupancy of neighbouring units.

A woman contacted our Office very upset with NLHC over a 90-day eviction notice she had received. She cited a 30-year tenancy and claimed she had no previous issues with the NLHC. She advised she was disabled, and had adult children living in the unit - one of whom had a mental illness. After receiving the notice of eviction, she secured alternate accommodations but was upset to learn that she would not be subsidized in a private rental. An inquiry to NLHC determined the address was one of three identified by police to be involved in illegal drug activities. An individual living at the address, who was not on the lease, was responsible for the bulk of the illegal activity. NLHC had reason to believe the individual had been living there for years and they did not want to add his name to the lease. Housing officers had discussed the situation and its repercussions on numerous occasions with the woman but she ignored them. She made a deliberate, cognizant choice of who occupied her unit and was well aware of the reasons why she faced eviction. While we were reviewing the matter, the woman indicated to us that, on reflection, the eviction was “a blessing in disguise;” she felt that her and her adult children would do better on their own and that a move would be good for them. We were able to provide information on the Residential Tenancies Division appeal process, information on re-applying to NLHC if need be, and we worked with NLHC to ensure community programming for her mentally disabled son would continue after she moved.

“Here Come da Judge” Adult Corrections Division – Department of Justice

Inmates in the Province's correctional facilities are expected to adhere to the rules and regulations which govern appropriate behavior as established by corrections officials. If those rules and regulations are breached a disciplinary proceeding ensues. Over a four-week period we received seven complaints from inmates at Her Majesty's Penitentiary (HMP) concerning the conduct of disciplinary hearings and the sentences imposed. After conducting some preliminary research we decided to conduct a systemic investigation of the disciplinary proceedings at HMP.

The investigation consisted of a review of 65 of the most recent disciplinary court hearings held at HMP. This included, but was not limited to, the offense reports that triggered the disciplinary court, the notification of inmates, and the notices of findings and sentences imposed. We intermittently sought clarification from justice officials to ensure we understood the sentences issued. In conducting our investigation we were mindful that the conduct of disciplinary proceedings in correctional institutions require some flexibility. In addition, supplemental research was conducted into disciplinary proceedings that take place in correctional facilities in other provinces.

Our investigation revealed that 40% of the disciplinary proceedings were held beyond the time required by policy. In 15% of the files the date of the alleged incident was incorrectly recorded. Of some concern was the fact that for three of the proceedings an officer who was present at the alleged infraction presided over the disciplinary hearing into that matter. We also found that in three instances persons giving evidence at the proceeding were not present at the time of the alleged infraction.

We made six recommendations to the Adult Corrections Division which were designed to infuse the disciplinary process with consistency and adherence to the basic principles of procedural fairness. Corrections officials accepted all six recommendations and advised that a checklist had been developed containing our recommendations which the chair of a disciplinary panel is now required to sign at the completion of a hearing.

“How Many Days in a Month?” – Western Health

As stewards of provincial home support service funding, Regional Health Authorities must assess citizens’ abilities to meet certain contribution requirements, prior to subsidizing the cost of care. The details of the subsidy arrangements are set out in a funding agreement between the parties.

A man complained to our Office after he assisted his elderly parents with the financial arrangements for home support services. The services commenced on September 17, 2012, for 33 hours per week. A letter from Western Health dated September 17 stated that according to the assessment, they were required to pay \$492 per month toward the cost of their care. The complainant accepted that, however, 11 days after the letter was received, he was advised that the \$492 he had paid was for the final two weeks of the month of September. As a result, his parents now owed Western Health \$492 for October. The parties to the complaint differed on the interpretation of the Funding Agreement. The son felt they would not owe any money after the initial payment until October 17th. Western Health cited the Funding Agreement which referenced \$492 “per month.” Our review found the Funding Agreement was unclear and ultimately, Western Health was responsible for ensuring a client entering a funding agreement clearly understands its terms and conditions.

The man’s parents used 14 days of home support in September and 9 in October; however, they were being required to pay the full monthly contribution for both months. We recommended that Western Health refund a pro-rated portion of the home care services in the months of September and October 2013. A refund of \$607 followed.

“Thanks for the Help” - Eastern Health

Qualified disabled individuals can avail of monetary assistance simultaneously through Eastern Health and the Department of Advanced Education and Skills to meet their living expenses.

A man contacted our Office and stated he was being treated unfairly by Eastern Health. He had been advised that there was too large of an overlap in the support he received, and as a result, he had an overpayment in the amount of \$707.67 and was being required to pay it back. The man disputed that he owed the money but did agree to pay it back in two installments of \$353.84. On review, our investigator confirmed that this arrangement would leave him further marginalized as he was living on a fixed income, and that the payment schedule was too short. Prior to our further involvement the man expressed an interest in going back to the authority for a second time. Our investigator provided him with tips for self-advocacy on the matter.

Shortly thereafter, he contacted our Office and advised that he and his homecare worker had spoken with his social worker and it was determined that he did not owe the full amount. The parties agreed on a reasonable payment plan and he advised the matter was now resolved to his satisfaction.

“Tanks for the Help” – Eastern Health

As part of their work in providing community medical services, provincial health authorities oversee the approval and dispersal of medical home oxygen units. Private companies make a number of different oxygen systems available for hire, and clients are approved for the appropriate system based on assessed need.

A client of the Medical Home Oxygen Program contacted us frustrated with the process of getting approval for a portable oxygen concentrator (POC). As a result, she felt her mobility and independence were severely restricted and in effect, she could not leave her home. The oxygen concentrator she had was a home version of stationary design. The lady was approved for portable oxygen tanks (frequently seen being toted on a trolley or shoulder bag); however, she had extreme difficulty getting the tank valves open.

Initially, Eastern Health advised that she did not meet the criteria for a POC because she was not exceeding the threshold monthly tank use (set at 16 per month). Because she was only using 12 she was deemed not to have met the criteria. Further, the authority said there was little difference between the weight and size of a POC and a shoulder bag or trolley, and her home support worker should be in a position to open the tanks for her.

Opinions on the matter clearly diverged. While the authority stated the client had refused to utilize the portable tank system and its effectiveness could not be assessed, the client stated she was not capable to operate the system for purposes of assessment. When this point was articulated to the authority, it decided to proceed with funding for the POC. The client was understandably grateful and the investigation was discontinued.

“Evidence Matters” – Adult Corrections Division - Department of Justice

Adult Corrections’ policy on disciplinary measures permits confinement of up to fifteen days and a loss of privileges for displaying disrespect towards staff and using obscene language.

An inmate at Her Majesty’s Penitentiary (HMP) contacted us to complain about a correctional officer who had him charged with a breach of the institutional rules as they related to making rude comments toward a correctional officer. The same day he was charged, he was convicted and confined to his cell for five days with full loss of privileges.

The man appealed, despite serving the sentence, because he truly believed that he had not sworn on the officer and he wanted the record to reflect that fact. A review of the matter was conducted by HMP at our request. There was no evidence on video that the incident occurred. We questioned the lack of evidence to support the charge and inquired as to whether the charge could be adjusted. HMP replied that it had the charge and conviction removed from his file.

“Weasel Out!” – Department of Advanced Education and Skills

Citizens sometimes call us when they simply don’t know where to turn. Every attempt is made to connect the citizen with the correct service provider, who is given a description of the problem and the issues to be addressed.

A disabled woman who relies on a wheelchair contacted us to say there was an infestation of weasels in her home; to be more precise in her kitchen. She could not find any way to get rid of them, was afraid, and wasn’t sure who could help. She lived on income support and could not afford to pay for the necessary pest control service.

Having had previous experience with pest control complaints, our investigator contacted AES and advised them of the issue. We were advised that AES would cover the cost for an exterminator to go into the woman’s home, and they would ensure the matter was resolved. The investigator advised her of the new developments and she was grateful for the help.

“Medical Needs Met” – Adult Corrections Division – Department of Justice

Staff of our correctional facilities have a duty to ensure the physical safety and well-being of those in their custody. This can be a challenge given the personal circumstances of the inmates who arrive at the gates.

A man incarcerated for five months alleged he received unfair treatment by staff of the West Coast Correctional Institution in relation to the recurrence of a back injury he reported to staff. It was the inmate’s position that he had been without proper medical attention until he was taken by ambulance to St. John’s for emergency surgery to repair a disc overlying a nerve in his back. We reviewed the chronology of events and the entire medical file in the institution’s possession. The review found that he had been provided with the appropriate institutional medical attention and numerous trips to the hospital; likewise his meals were brought to him to avoid him having

to walk to receive meals. The institution opted to have the man transported via ambulance to St. John's from Stephenville to avoid having to travel in the inmate transport van. Only one instance was found where his medication was administered three hours late. The question for us to consider was whether the man had "access to a comprehensive health care service equivalent in quality to the health care available in the community." The answer was that he had.

"I Can See Clearly Now" – Service NL – Motor Vehicle Registration

A man contacted our Office after he had been advised that he required an eye exam and that he could not drive until the report on his vision was received. The man maintained that the original letter from Motor Vehicle Registration (MVR) was sent to the wrong mail box therefore there was a delay in his receiving it. Once the letter was received, the man claimed he did what was required and forwarded the information to MVR; however, MVR advised it was not received.

He then received a second notice from MVR which stated that his license would be cancelled. He provided a reference number to our investigator and an inquiry was made to MVR on his behalf.

We were advised that the man was required to file a routine medical report, unfortunately, the vision portion was omitted from the report he submitted. The second request was sent to him which asked to have the vision portion completed by his family physician.

All information was then received and the driving suspension was deleted. The man was advised by MVR that he was okay to drive.

"Fast Moving Target" – Department of Innovation, Business and Rural Development and Department of Tourism, Culture and Recreation

Innovation, Business and Rural Development (IBRD) is the provincial department responsible for small and medium sized enterprise development, industrial diversification, innovation and investment. Part of its role is to foster private sector business growth by facilitating the commercialization of technology with individual business enterprises.

A technology company approached our Office with two primary complaints. First, it alleged delay and indecision on the part of IBRD leading to the company being "beaten to market" by a U.S. company with a similar product. Second, it alleged that "a carbon copy of our proprietary intellectual property" was subsequently released by the Department of Tourism, Culture and Recreation (TCR). The company's directors complained they had followed all of the necessary rules, but the departments stymied the company and then released a government-sponsored version of their product: a tourism app.

We found for the company in the first complaint, and absolved the departments in the second. We found that the company submitted its application to the IBRD Commercialization Program requesting funding on January 14, 2008. In July of that year the company was informed that IBRD was quite busy, and in August, IBRD advised the company their assessment was a priority and it was not the department's intention to delay the proposal. However, it involved a significant amount of funding and the proper checks had to be made, including inquiries into TCR. In late October 2008 it told the company that the project would probably move in November. In the interim, another

partner, the federal National Research Council was expressing concerns to the company about the delay and especially the perilous position of companies awaiting funding in the field of mobile technologies.

Nine months after it had received the proposal, IBRD went to TCR for commentary. A meeting to discuss the issue did not occur until February 9, 2009, over a year after the funding request was received.

We found the delay unreasonable. Any corporation seeking government assistance to do business in technology has two reasonable expectations: (1) because of the dynamics of the technology industry, processing would occur quickly, and (2) that stakeholders (in this case TCR) would be consulted earlier in the process. Neither occurred in this case.

We recommended that IBRD apologize to the company for the delay in processing and that it develop realistic policies and procedures which address appropriate timeliness for processing applications. The policies and procedures should also indicate when line departments should be consulted regarding applications.

IBRD agreed to apologize for the delay, and pointed out that it had, post 2009, introduced a client service support delivery management and reporting system that enables the department to track a client from entry point to investment decision.

The second aspect of the complaint involved the allegation of interference with intellectual property. There were no patents pending. We hired a subject matter expert to perform a review of the TCR app against the company's proposed app, and considered submissions from the parties. TCR pointed out the existence of similar apps in Asia and Europe at the time. The subject matter expert concluded that none of the company's proposed capabilities appeared in the TCR app.

We could not conclude that the company had incurred an infringement of its intellectual property; subject to any existing limitations, and the company retained its right to have the potential infringement of any intellectual property rights assessed in a court of law.

“Reasonable Requirements” - Newfoundland and Labrador Housing Corporation

Citizens who cannot normally afford repairs to their home can apply and be assessed by the Newfoundland and Labrador Housing Corporation (NLHC) for cost shared projects or grants to fix their homes. A man who lived alone and relied on a wheelchair for mobility contacted our Office in 2013 stating that he had applied for home repairs in 2012 but could not understand the delay. He alleged he needed repairs to his patio and the replacement of an exterior door. A bad leak in the ceiling of his bathroom was rotting the floor and needed to be addressed. Our investigator briefed him on her understanding of the process and on June 21, agreed to approach NLHC for more information on the case. The investigator learned there were delays in the process due to the (reasonable) requirements that the man provide proof of income, home ownership and a report from an Occupational Therapist. We kept in touch with the man to ensure he was obtaining the right information on a timely basis so he could be properly assessed. By September 17 the loan package was approved and the required work was completed by the end of the month.

“Bill’s Not Here” – Department of Health and Community Services – Medical Care Plan

As a branch of the Department of Health and Community Services, the Medical Care Plan (MCP) oversees the comprehensive medical insurance program extended to residents of the province. Part of its role is to liaise with hospitals outside of the province, and Canada, to reimburse other jurisdictions for costs associated with specified types of care.

A man who had been approved for, and received surgery in the United States began receiving bills from the service provider after he returned home. When he contacted MCP he was told that he should not be receiving the bills and was not responsible to pay them. Despite this, and as a result of a discrepancy between the price quoted and the price billed, he continued to receive bills.

He contacted us after he received a letter threatening the matter would be forwarded to a collection agency. Our inquiry to the Department was acted upon immediately and the appropriate actions were taken to resolve the matter in the man’s favour.

“Doing Nothing Versus Doing Something” – Department of Justice - Legal Aid Commission

Funded by the Department of Justice, the province’s Legal Aid Commission is responsible for the provision of certain legal services to low income citizens. Its primary focus tends to be on criminal defendants and family court litigants.

A woman contacted our Office after her two young children were ordered into the continuous custody of the Department of Child, Youth and Family Services. She claimed she had been let down by Legal Aid over the course of two years and that if she had been adequately represented, she would still have her children in her care. She claimed Legal Aid repeatedly changed her lawyer and the process was unduly delayed.

Our review of the matter concluded that allegations of “doing nothing” were not supported by the evidence contained in the file. While it was true she had a number of lawyers assigned to her file, at times she had a team of lawyers together with paralegal and administrative support working on her behalf. Over approximately two years a number of appeals had been made including a stay application, an application for rescission of the original judgment and an appeal for the matter to be heard by the Supreme Court of Canada. The filings and appearances were together with all necessary research, case conferences and numerous meetings and communications with the citizen. We did not find any administrative unfairness in the process.

“Rights Versus Privileges” – Eastern Health

During 2013 our Office investigated a complaint received from two citizens who alleged they had been barred from entering a hospital operated by Eastern Health, while a family member was under admission.

The investigation revealed a complete breakdown in their relationship with Eastern Health, which took steps to limit contact between the citizens and Authority employees through a series of controls on visiting hours, outright bans on visitation, and limited telephone contact with managers.

The investigation concluded Eastern Health did not contravene the provisions of Section 37 of the *Citizens' Representative Act* by prohibiting visitation, although its actions in response to the citizens were on the extreme end of actions to be taken by a health authority against members of a patient's family. Its decisions were well documented and made with input from a large number of sources. Opportunities were afforded at specific times for the citizens to meet with decision makers for the purposes of consulting on the parent's care and to discuss ways visitation could be more fully restored.

We determined a health authority does not owe a freestanding legal duty to patient families or visitors with respect to guaranteeing visitation. We found that a health authority owed a legal duty to the patient as it related to the provision of clinical care, and it owed a legal duty to its employees under the *Occupational Health and Safety Act*. The Authority provided voluminous documented, corroborated evidence depicting serial unacceptable and interfering behaviours by the citizens –the effect of which were reports of a demoralized, frustrated workforce. Some employees were hesitant to enter the hospital room to provide care.

While the investigation concluded there was no breach of the *Citizens' Representative Act* by the Health Authority in its handling of the visitation aspect of the case, we concluded Eastern Health did not do a good enough job informing members of the public of the steps it will take to limit harassing, disruptive or illegal behaviours in its facilities. The investigation found Eastern Health did not communicate in any publicly identifiable way what it expects of visitors to its facilities. By extension, it had not shown it can recite to visitors its considerable authority to limit a person's ability to enter one of its facilities. We concluded Eastern Health should be able to point to a standard, or a policy document that contains its express authority to limit individual visitation, to better inform the public and prevent the appearance of "policy on the fly."

We found that while these types of cases are rare, there are occasions where published or posted norms could be effective. A component of administrative fairness is that the more serious the implications of the decision taken by a public body, the higher the degree of procedural, substantive and relational fairness that is owed to the person effected.

We noted the Authority already posted notices to the public on its wards and public areas on the subjects of:

- Private rooms;
- Visiting hours;
- Visitor policy (hours, number of patients per room and children under 12 not permitted);
- A "Privacy Policy for Inpatients";
- An executive commitment to a healthy workplace (a.k.a. the Healthy Workplace Charter);
- Specific visitor restrictions posted as a result of a communicable disease outbreak;

-
- Statement of Rights and Responsibilities for Clients, Patients and Residents; and
 - Rights of an Involuntary Patient.

We found one ward that had posted visiting guidelines which include the statement:

The staff of (ward) acknowledges the importance of one's family and friends as a critical component of patient care. It is our responsibility to protect patients and the public. This includes your right to privacy, confidentiality, and a safe and therapeutic environment. Please respect our visiting guidelines.

Also worthy of note, the Emergency Department at the hospital in question notifies the public, among other things, that "Verbal or physical abuse will not be tolerated in this department. Security will be called if necessary." While the Emergency Department most likely sees the highest levels of volatility and disruption, these workplace safety dynamics could easily migrate to inpatient wards if the emergency patient is admitted.

The Visiting Hours and Guidelines reviewed in the investigation were last revised in February 2005. Our research on 20 reputable city hospitals in the U.S. and Canada found The Johns Hopkins Hospital Patient Handbook to be the best current model on public notice of the consequences of unacceptable behavior: It states in part:

In response to a visitor who has displayed unacceptable behaviours of any kind, security measures including visitor restriction and/or legal action will be taken. Unacceptable behaviours include but are not limited to:

- **Unreasonable interference with a patient's plan of care.**
- **Harassment of any kind, including inappropriate telephone calls to a staff member.**
- **Use of loud, threatening, abusive or obscene language.**
- **Offensive remarks of racial, sexual or personally derogatory nature.**
- **Use of physical violence or act in a threatening manner towards staff.**
- **Arrive on hospital property under the influence of drugs or alcohol.**
- **Damage to hospital property.**
- **Theft.**
- **Possession of weapons or firearms.**
- **Retaliation against any person who addresses or reports unacceptable behaviour.**
- **Excessive noise that is obstructive to others in the vicinity.**

When accompanied by appropriate signage and a brochure, we felt this policy improvement was in the best interest of both the Authority and the public.

We recommended that the Administrative Policy Manual under Patient Care, Policy #XVII-125 entitled “Visiting Hours and Guidelines” be amended to include language covering visiting restrictions and unacceptable behaviours, and that the subject matter be made available to the public. We suggested that signage and a brochure would augment this recommendation.

Eastern Health accepted the recommendation and revised its policy to include language covering visiting guidelines, unacceptable behaviours and visiting restrictions. A brochure, signage, communication plan and education of its employees, in addition to routine announcements, were also implemented.

Your Feedback

"I was able to help my aged parents make their case to the Citizens' Representative and I am pleased that you saw merit in my argument. I want to thank you for your time and efforts in this case."

"You have saved my life and my career. I would not have received the information I needed in time without your assistance. Thank you for the discussion and information you have provided. I wish I had contacted you earlier as the discussion allowed me to re-evaluate my situation and look at my circumstances from a different and clearer perspective."

"Thank you, thank you for your assistance in this matter."

"I did receive a call around 3 p.m. yesterday and I picked up my cheque...your diligent efforts are a great asset to the department you work for."

"I'm pleased to inform you that shortly after receiving your report we did receive a refund in the amount of \$607...I also wanted to let you know that I feel that it was a fair settlement of the financial part of my complaint."

"I'm thankful to you both and for having an Ombudsman Office for citizens needing help and insight into government departments and community agencies."

"I know how important you were in getting this done and for that I want to say thank you."

Kudos

Each year, staff are solicited to nominate public servants for the “Kudos” section of our Digest. We give kudos each year to public servants we encounter who are doing something extra; whether that is responding in a timely, diplomatic fashion to our investigations or inquiries, or going an additional mile to resolve a conflict or difficulty a citizen has with a public service.

This year we selected Captain Dave Harvey of the Department of Justice (Adult Corrections Division). His nomination reads as follows:

“Captain Dave Harvey demonstrated a respect for the role of the Office of the Citizens’ Representative (OCR) when dealing with complaints received from persons incarcerated at Her Majesty’s Penitentiary (HMP). He stated “ Once I understood what your office was responsible for it came down to realizing we all have a job to do and I can honestly say it has been a pleasure dealing with everyone in your office”.

Captain Harvey retired from his position at HMP on July 31, 2014, and his professionalism, accessibility, and timely responses will be missed. The OCR wishes him well in his future endeavors.

Statistics

During 2013-2014, the OCR received 607 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, 2013 – March 31, 2014

Advanced Education and Skills	4
Income Support Division	58
Central Health	4
Child, Youth and Family Services	15
College of the North Atlantic	2
Eastern Health	31
Eastern School District	2
Environment and Conservation	9
Finance	2
Fisheries and Aquaculture	3
Government Purchasing Agency	1
Health and Community Services	16
Justice	21
Correctional Facilities	293
Human Rights Commission	1
RNC Public Complaints Commission	1
Labour Relations Agency	1
Labrador-Grenfell Health	2
Memorial University	2
Municipal and Intergovernmental Affairs	7
Municipal Assessment Agency	1
Natural Resources	4
Newfoundland and Labrador Housing Corporation	48
Newfoundland and Labrador Legal Aid Commission	4
Newfoundland and Labrador Medical Care Plan - MCP	4
Public Service Commission	2
Service NL	13
Transportation and Works	6
Western Health	10
Workplace Health, Safety and Compensation Commission	8
Workplace Health, Safety and Compensation Review Division	2
Total Complaints and Inquiries by Department and Agency	577

**Complaints / Inquiries
by Electoral District
April 1, 2013 - March 31, 2014**

Baie Verte-Springdale	2
Bay of Islands	4
Bellevue	1
Bonavista North	4
Bonavista South	3
Burgeo & La Poile	3
Burin - Placentia West	1
Cape St. Francis	4
Carbonear – Harbour Grace	5
Conception Bay East & Bell Island	3
Conception Bay South	7
Exploits	3
Ferryland	11
Fortune Bay - Cape La Hune	1
Gander	3
Grand Falls – Windsor – Buchans	5
Grand Falls – Windsor – Green Bay South	2
Harbour Main	8
Humber East	5
Humber Valley	5
Humber West	18
Kilbride	11
Labrador West	4
Lake Melville	11
Lewisporte	2
Mount Pearl North	9
Mount Pearl South	3
Other Provinces	15
Placentia & St. Mary's	3
Port au Port	6
Port de Grave	1
Signal Hill – Quidi Vidi * 1	242
St. Barbe	5
St. George's – Stephenville East	10
St. John's Centre	21
St. John's East	3
St. John's North	23
St. John's South	11
St. John's West	7
Terra Nova	13
The Isles of Notre Dame	2
The Straits & White Bay North	1
Topsail	2
Torngat Mountains	1
Trinity – Bay de Verde	21
Trinity North	30
Unknown * 2	48
Virginia Waters	4
Total Complaints & Inquiries by Electoral District	607

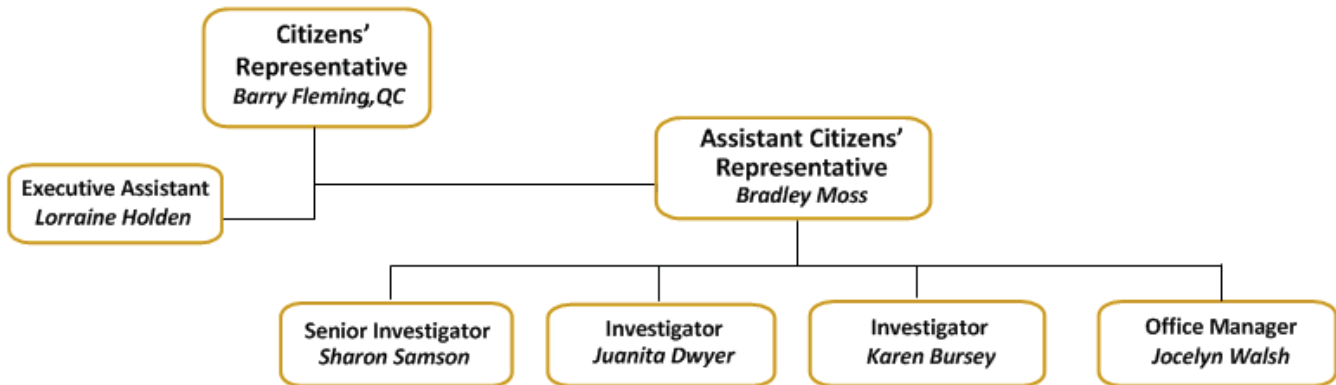
* Note 1: that the higher volume of complaints emanating from the District of Signal Hill-Quidi Vidi is a result of the location of Her Majesty's Penitentiary.

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

**Complaints/Inquiries Non-Jurisdictional
April 1, 2013 – March 31, 2014**

Executive Council	1
Municipality (Exc. St. John's, Mt. Pearl and Corner Brook)	2
Other	22
Private Companies/Corporations	4
Royal Newfoundland Constabulary	1
Total Complaints & Inquiries Non-Jurisdictional	30

**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
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

Newfoundland Fall Scene Along a Trail