



**Office of the Citizens' Representative  
Province of Newfoundland & Labrador**

**Citizens' Representative  
Annual Digest**

**April 1, 2016 - March 31, 2017**

**...seeking fairness, finding solutions**





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# Table of Contents

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Message from the Citizens' Representative .....	1
Our Role.....	2
The Complaint Process. ....	4
A Month in Review .....	5
Public Interest Disclosure .....	7
Individual Case Summaries .....	8
<i>An Investigation and Report on the History and Treatment of Donald Dunphy     by WorkplaceNL.....</i>	8
<i>Department of Advanced Education, Skills and Labour - "Good Reason Why Not" .....</i>	9
<i>Department of Fisheries and Land Resources - "No Way Out" .....</i>	9
<i>Service NL - "No Simple Answer for the Transfer" .....</i>	10
<i>Service NL - "Vive l'accent aigu!" .....</i>	10
<i>Eastern Health - Own Motion re: Rehabilitation Technology Wait Times.....</i>	11
<i>Department of Finance - "Pension Apprehension" .....</i>	11
<i>Various Agencies - "OCR as Central Referral Source" .....</i>	12
<i>Service NL - "Census Consensus" .....</i>	12
<i>Department of Justice and Public Safety - "Communication Breakdown" .....</i>	12
<i>Newfoundland and Labrador Housing Corporation - "Eyeballs Needed" .....</i>	13
<i>Eastern Health - "Medication Frustration" .....</i>	14
<i>Eastern Waste Management - "Account Review" .....</i>	14

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# Table of Contents (Cont'd)

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<i>Service NL - “Suspension Tension”</i> .....	14
<i>Eastern Health – “Process Upgrade”</i> .....	15
<i>Department of Justice and Public Safety - “Chapel Incident”</i> .....	15
<i>Department of Municipal Affairs and Environment - “Insecure Security”</i> .....	15
<i>Service NL - “Cabin Country Blues”</i> .....	16
<i>Department of Justice and Public Safety - “I’m Going Blind”</i> .....	16
<i>Eastern Health - “Avoiding Disruption”</i> .....	17
<i>Newfoundland and Labrador Housing Corporation - “Termination Frustration”</i> .....	17
<i>College of the North Atlantic - “Procedural Shortcomings”</i> .....	17
Your Comments .....	19
Statistics .....	20
Organizational Chart .....	23
How to Reach Us .....	24

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## Message from the Citizens' Representative

This is the tenth Annual Digest of the Office of the Citizens' Representative. In contrast to our formal reporting requirements under the *Transparency and Accountability Act*, the Digest is an informal overview of the work of our Office over the past year. It gives us an opportunity to provide general information about how our Office operates and the type of work we do.

The most significant event experienced by my Office over the past year was the referral to us by Cabinet of the investigation into the history and treatment of Donald Dunphy by WorkplaceNL. The *Citizens' Representative Act* permits such a referral from either the House of Assembly or Cabinet. This was the first time in Canada such a referral was made from a cabinet to a provincial ombudsman office. My colleague in British Columbia recently completed a major investigation into the 2012 Ministry of Health employment terminations and related matters. That investigation was referred to him by the legislature, as opposed to cabinet.

We received the referral from Cabinet on September 27, 2016, and obtained all relevant material for the investigation from WorkplaceNL on November 23, 2016. We immediately reviewed the material and commenced interviews. All material was reviewed by my Assistant Citizens' Representative, Bradley Moss. I then independently reviewed the material and we jointly analyzed it. Investigators in our Office conducted cross-jurisdictional research on issues that we determined required commentary.

During the winter of 2016-17, Bradley produced a first draft of our report that was subsequently morphed into our final report which was released on March 10, 2017. The investigation and report required tremendous work from every member of my staff. The people who worked on the report dedicated themselves to thorough and extensive research. The rest were obliged to conduct the important work of providing citizens with an ombudsman service. It is right and proper that the analysis and conclusion of the report be commented upon and critiqued. Any valid criticism falls on me. What is beyond debate is the incredible contributions of all my staff over the past year to assimilate this significant work into our operations while maintaining full caseloads.

I invite readers to review this Digest, and in particular, our case summaries, to get a flavour of the many ways we have helped citizens seek fairness and find solutions within the Public Service over the past year.



Barry Fleming, Q.C.  
Citizens' Representative

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## Our Role

The Office of the Citizens' Representative (the "OCR") opened in St. John's in February 2002, after the passage of the *Citizens' Representative Act* in December 2001. Our Office serves the public and the House of Assembly in a traditional parliamentary ombudsman role, focused on independent complaint investigation and mediation.

In 2007, our mandate expanded to include the investigation of 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*.

On July 1, 2014, the House of Assembly passed the *Public Interest Disclosure and Whistleblower Protection Act* (PIDA), which is designed to give government employees a vehicle to confidentially disclose wrongdoing that should be stopped or corrected in the public interest. The PIDA also imposes penalties on anyone who commits a reprisal against persons who make disclosures or seek advice on the commission of wrongdoing in the Public Service.

As a non-partisan statutory office, we are empowered to investigate provincial public bodies based on complaints received from:

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

The Citizens' Representative is also able to initiate investigations on his or her own motion without a specific written complaint.

Our Office commonly assumes a mediation/facilitation function in cases which do not require formal investigation. With the cooperation of public bodies, who assign personnel to liaise with our Office, early resolution of complaints is sought by opening immediate lines of communication, using telephone and email inquiry, and sometimes face-to-face meetings to resolve many of the complaints we receive.

Over the past fifteen years, we have also become a valuable source of referral information for those not quite sure where to turn for help. We ensure work is performed to see that the person who presents with a non-jurisdictional complaint is provided with the contact information for the appropriate agency to deal with their concern. Given the size of its referral network, we can often link the citizen directly with who they need to contact to resolve the complaint, and may facilitate that contact if the citizen has barriers to access, limited resources or disability. Tips for effective self-advocacy and effective complaining, forms, telephone numbers, internet links, email addresses, and the required next steps to help resolve the complaint are also provided to citizens who require such assistance.

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There are a number of entities that are outside the jurisdiction of our Office. These are set out in Section 19 of the *Citizens' Representative Act* and include:

- the House of Assembly or a committee thereof;
- the Lieutenant Governor-in-Council;
- Executive Council and its various divisions<sup>1</sup>;
- the court, the members of the judiciary, masters of the court, and justices of the peace;
- awards, decisions, recommendations or omissions of arbitrators made pursuant to the *Arbitration Act*;
- matters in respect of which there are existing rights of appeal or objection under another Act until such time as these rights are exhausted or the time to appeal has expired;
- refusals to provide access to information under the *Access to Information and Protection of Privacy Act, 2015*; and,
- matters falling within the jurisdiction of the Office of the Child and Youth Advocate; and
- certain matters relating to the administration of the *Personal Health Information Act* or a matter falling within a Commissioner's purview under that Act.

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

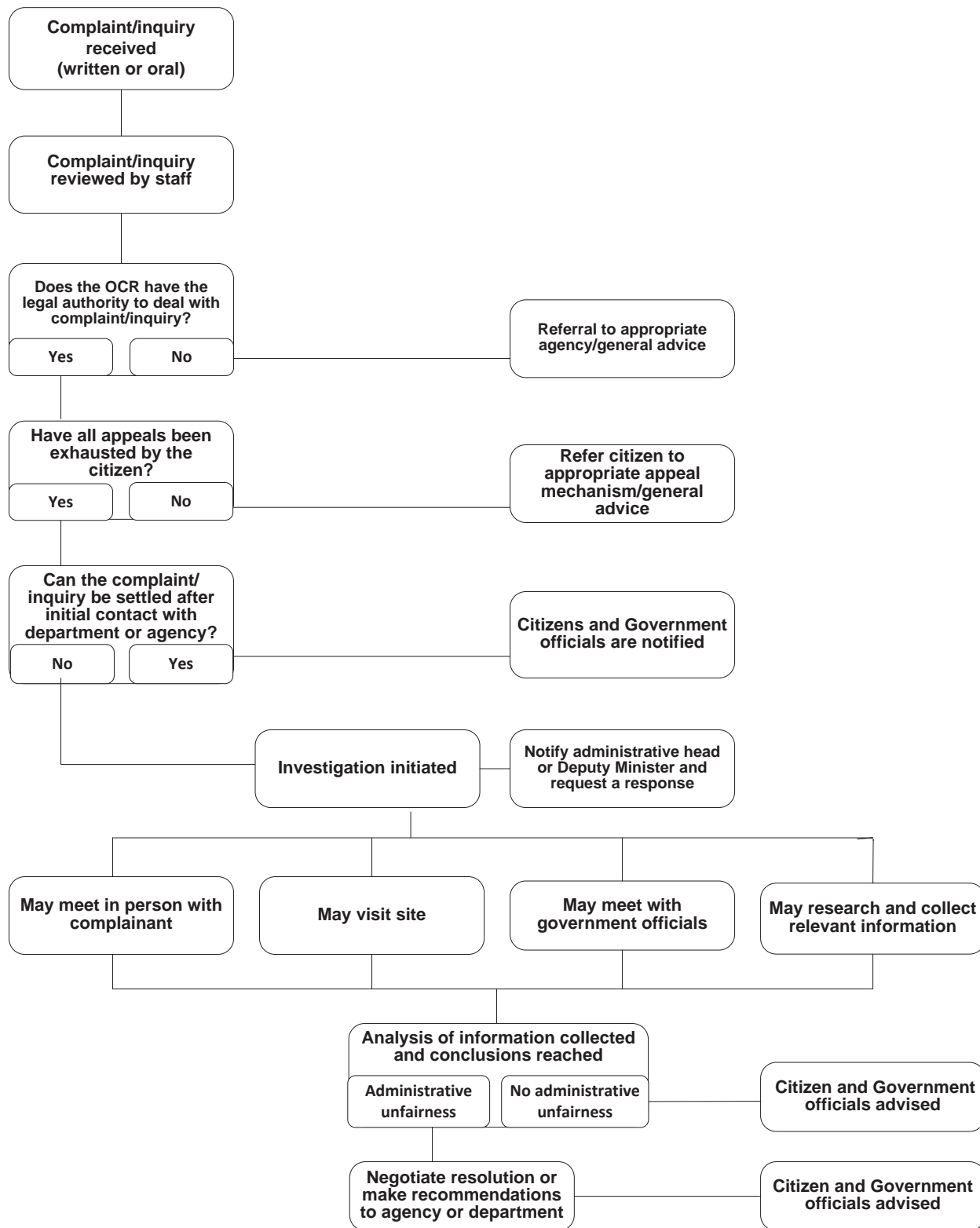
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<sup>1</sup> The Executive Council is exempt from the *Citizens' Representative Act* but is subject to investigation under the *Public Interest Disclosure and Whistleblower Protection Act*.

# The Complaint Process

It is important for citizens to know what to expect with respect to the complaint process used by our Office. The following chart helps to illustrate how complaints and inquiries are processed.





## A Month in Review

To inform readers of the nature and volume of complaints received at our Office, we have selected one month from the fiscal year to provide examples of the intake aspect of our work. The following is a cross section of allegations received in March 2017.

ALLEGATION	DEPARTMENT
Involuntary admittance to Waterford Hospital	Eastern Health
Access to mental health court / problems with NLHC tenancy	Various
Complaint versus child protection social worker	Children, Seniors & Social Development (“CSSD”)
Incarcerated in RCMP cells awaiting transfer to HMP	Justice & Public Safety
No legal representation for upcoming court appearance	Legal Aid Commission
Requesting full investigation of Ontario workers’ compensation	Outside jurisdiction
Inmate re: access to mail	Justice & Public Safety
Inmate re: disciplinary charges following altercation	Justice & Public Safety
Inmate re: seeking access to medical	Justice & Public Safety
Snow clearing on main road in town	Transportation & Works
Denied AESL benefits	Advanced Education, Skills & Labour (“AESL”)
Medical transportation and dental services	AESL
Disputing amount owed to Eastern Waste Management	Eastern Waste Management
General complaints about service received in hospital	Western Health
Disputing approval process for income support	AESL
Frustration with smoking around NLHC building	Newfoundland & Labrador Housing Corporation (“NLHC”)
NL Power / AESL coverage / termination and reconnection	Various
Cut off from income support / private landlord dispute	AESL
Inmate re: adequate clothing for court appearance	Justice & Public Safety
Medical transportation denial	AESL
Denial of emergency food voucher	AESL
Inmate re: dental services	Justice & Public Safety
Inmate re: special diet	Justice & Public Safety
Denied housing unit transfer	NLHC
Denied income support	AESL
Concerns re: hospital admission / medical treatment	Eastern Health
Cancellation of housing subsidy	NLHC

## A Month in Review (cont'd)

ALLEGATION	DEPARTMENT
New resident unable to qualify for income support	AESL
Inmate re: missing property	Justice & Public Safety
Property damage from snow clearing operations	Transportation & Works
Concerns about operations of a personal care home	Eastern Health
Dispute over construction of access road to property	Transportation & Works
Business owner upset over water tax	Municipal Affairs & Environment
Child protection issue	CSSD
Access to legal aid and various CSSD issues	Legal Aid / CSSD
Immigrant seeking emergency funding from AESL	AESL
Employment issue	Central Health
Multiple lawyers / no continuity / lack of consultation	Legal Aid
Disputing AESL overpayment	AESL
Citizen requesting reopening of 2009 investigation	WorkplaceNL
Issues with Provincial Home Repair Program	NLHC
Difficulty locating affordable housing	AESL
Issue with child apprehension	CSSD
Suspension of driver's license for medical reasons	Service NL
Visitation with child in custody	CSSD
Supplementary services for seniors (foot care)	Eastern Health
Busing contractor upset with retrofit requirement	Service NL

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## Public Interest Disclosure

We are responsible for investigating allegations of serious wrongdoing (whistleblowing) under the following two pieces of legislation:

1. *Part VI of the House of Assembly Accountability, Integrity and Administration Act* (“HOAAIA”), which provides a process for employees and Members of the House of Assembly to disclose potential wrongdoing in the public interest.

During 2016-17, we had one disclosure under HOAAIA and advice was provided to the discloser which was sufficient to avoid a formal written complaint and investigation.

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

A stand-alone PIDA report is required annually under law. The report, covering the period April 1, 2016 to March 31, 2017, was forwarded to the Speaker of the House of Assembly on July 4, 2017, pursuant to Section 20 of the PIDA, and was tabled on July 19, 2017. It is available on our website at <http://www.citizensrep.nl.ca>.

During 2016-17, we dealt with six matters under PIDA.

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## Individual Case Summaries

The following case summaries, selected by staff, outline a cross-section of the complaints received, mediated and investigated during 2016-17.

### *An Investigation and Report on the History and Treatment of Donald Dunphy by WorkplaceNL*

The tragic police shooting death of Donald Dunphy in Mitchell's Brook, Newfoundland and Labrador on April 5, 2015, was a concern, not only to the family, and the Government of Newfoundland and Labrador, but to the entire province. A Commission of Inquiry into the shooting was ordered. It was conducted and reported upon by Mr. Justice Leo Barry in a report released in June of 2017.

The *Citizens' Representative Act* anticipates referrals by Cabinet of investigations to the Citizens' Representative. We were requested by Cabinet to complete a review of Mr. Dunphy's injured worker's claim with WorkplaceNL, which spanned over 30 years.

We liaised with the general counsel to WorkplaceNL. Extensive medical evidence and claim notations were reviewed and a detailed chronology was prepared. Policies and statutes applicable throughout Mr. Dunphy's 30+ years on claims were reviewed in detail and assessed against each decision made in his case. The report is available in its entirety on our website at <http://www.citizensrep.nl.ca/> under "Publications."

Our review of the matter concluded that WorkplaceNL did not act contrary to any relevant legislation governing Mr. Dunphy's claim. We based this conclusion on the fact that WorkplaceNL consistently cited legislation and policies, and provided reasons, as necessary, to support its decision making. Mr. Dunphy was consistently directed to an avenue of internal and quasi-judicial appeal as per his rights. We did not find that he was overburdened with respect to WorkplaceNL processes. WorkplaceNL's positions on Mr. Dunphy's benefit rates, retraining, his ability to return to work, payment of medication expenses, and payment of mileage expenses were compliant with the legislative and policy framework that existed at all times during his claim. Decisions appeared to have been made in line with obvious facts and evidence and there were no departures or disconnections between what he was eligible for and what he received.

No evidence was found showing that claims managers, claims handlers or rehabilitative staff refused to use discretion. There were multiple references in the file to concern, sympathy and flexibility, notably, after the death of his wife. There were no inordinate delays found; retroactive benefit payments were full and timely, and there was no evidence of malice or lack of courtesy towards him.

Mr. Dunphy was adversely affected by a system that pays only a percentage of pre-injury earnings, and one which captures 75% of CPP benefits. It was beyond the scope of our review to assess and evaluate the relative merits of the workers' compensation regime and the benefits provided by it.

As our six month, intensive investigation did not uncover any breach of the *Citizens' Representative Act*, we were not in a position to make formal recommendations to WorkplaceNL. We did, however, notice two areas of WorkplaceNL operations that could be improved to benefit injured workers.



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First, we felt that WorkplaceNL could do a better job of communicating more about the core values of the workers' compensation system, and how it serves as a substitute to costly private insurance and expensive litigation against employers.

Second, while the policies and programs offered by WorkplaceNL deal almost exclusively with the physical and vocational healing of injured workers, research outside of the Province showed that other jurisdictions are taking a more interdisciplinary approach to workplace injuries, including increased use of psychologists and social workers to assist workers with all aspects of their injuries. We recommended that WorkplaceNL provide social work and psychological services to those who are experiencing difficulty in dealing with the altered life experiences caused by workplace injury early in the claims process. It is our hope that these services would generate a system-wide understanding that workplace injuries engage more than just physical and vocational rehabilitation, but also involve family, social, psychological and self-awareness issues that need to be resolved.

### ***Department of Advanced Education, Skills and Labour – “Good Reason Why Not”***

The employees of the Income Support Division strive daily to meet the needs of marginalized citizens while respecting the law and policy that surrounds their work. Often, this means acting on issues in an urgent fashion.

We were contacted by a woman with a serious heart condition who was desperate and did not know where to turn. She required medical transportation to St. John's for two days of testing, and the appointments could not be piggybacked due to the fact she had to wear a specialized monitor that needed to record 24 hours of data. Her income support benefits had been cut and the matter was under an appeal that had not yet been heard. We brought the details of the case forward to a regional enquiries coordinator in the Department, and after management consideration, the two-day benefit was approved.

### ***Department of Fisheries and Land Resources – “No Way Out”***

A man with a license to occupy land on one of the former Reid Lots<sup>2</sup> was frustrated with his attempts to have a cabin built on it. As part of the process for receiving approval for construction, government must approve a septic design. The problem the man had was that he was surrounded on three sides by wilderness roads, and on the fourth sat an illegal structure owned by another citizen, thus impeding his ability to install a septic system.

Normally, the Department would post a removal notice on the illegal structure, then destroy or move it if the illegal occupier did not take action. The Department faced a larger problem, however, as there were a total of 61 illegal structures in the area. The issue was delayed when the Department had to assess the matter in terms of taking action on one structure or 61. We highlighted the provisions of Section 32 of the *Lands Act* which permits the Department to take action on the neighbouring structure at a minimum, and all illegal structures in the Province at a maximum. We recommended they enforce the legislation, policy and procedures in this case with respect to the removal of the structure. The Department agreed and set about enforcing the law so that the man could move on with plans he had for land he legally occupied.

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<sup>2</sup> When the Newfoundland Railway was constructed, large tracts of land were issued to the Reid Newfoundland Company. The land in question was subsequently sold to Corner Brook Pulp and Paper (CBPP), and was purchased by the Province in 1994, together with six recreational cottage permits that had been issued by CBPP which were absorbed into the Crown Lands Registry as licenses.

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### *Service NL – “No Simple Answer for the Transfer”*

The Motor Registration Division (“MRD”) handles diverse demands for its services in ways many citizens may not realize. While driver licensing and testing, fines, and highway safety / enforcement immediately come to mind, employees are tasked with issuing photo i.d., driver suspensions, monitoring sales tax on vehicle transfers, and the auditing of commercial fleets and school buses.

A man contacted us concerning the re-registration of a written-off vehicle to a new owner. The vehicle had been imported from Alberta. At the time of the re-registration, the vehicle was not released to the insurance company as salvage by his daughter, the legal owner. When the man came to learn that the vehicle had been sold at auction by an insurance company, without a cash settlement and signed release, he contacted us to allege the vehicle was improperly transferred.

Our investigation confirmed that a clerk had processed a Bill of Sale at the counter, for a vehicle that was declared “salvage” that had changed hands twice since auction. In a situation where MRD records show a vehicle to be leased, a power of attorney from a leasing company issuing consent for the vehicle to be sold is required for the vehicle to be registered. Service NL confirmed there was no power of attorney located in the batch. We did have concerns, however, about the practices MRD has in place for verifying required documentation for the registration of vehicles that were moved to Newfoundland and Labrador from other provinces.

We recommended a review of procedures and systems regarding vehicle registration to ensure proper and rigorous registration processes exist, and that a checklist be developed to be used by staff for registration compliance, including provisions for vehicles arriving from out of province. Service NL agreed with the recommendations and slated both the review and the checklist for action.

### *Service NL – “Vive l’accent aigu!”*

Service NL’s Registry of Co-operatives incorporates and generally supervises co-operative societies in Newfoundland and Labrador. It prevents similar or objectionable names from being registered. The current *Co-operatives Act* replaced the *Co-operative Societies Act* in 1998.

A group of citizens attempting to set up a French language daycare as a co-operative had their application rejected on the grounds that the proposed French spelling of the word “co-operative” was unacceptable. At issue was the use of a single accent aigu (é) suggesting the name of the new entity would be a “co-opérative.” The group contacted our Office.

We searched the co-operatives registry and found that there were a number of other co-operatives registered that were technically in violation of the legislation. In fact, some didn’t have the word “co-operative” in the title at all. We pointed this out to Service NL who advised the matter was under review.

On May 31, 2016, Bill 30 amended the *Co-operatives Act* to allow the French version of the word. Section 2 of the amended Act now says the word “co-operative” or ‘co-opérative’ shall be

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part of the name of every co-operative and a co-operative may set out its name in its articles in an English form, a French form, or in a combined English and French form.

### ***Eastern Health – Own Motion re: Rehabilitation Technology Wait Times***

Eastern Health has the only publicly funded and nationally accredited Prosthetic and Orthotic service in the province. Based at the Miller Center and the Janeway sites, these services include custom wheelchair and prosthetic specification fittings, and repair to assistive devices.

A Member of the House of Assembly came to us to relay the difficulties some of her constituents were having when accessing outpatient services offered in Prosthetics and Orthotics. The Member provided anecdotal evidence of long wait times and barriers to access, including the requirement that a medical referral be provided to access these services.

We set about investigating the allegations without a specific complainant, using the “own motion” provisions of the *Citizens’ Representative Act*. We asked Eastern Health to explain its position in relation to the allegations. Eastern Health provided valuable statistical information including the number of citizens seen, average wait times and average number of citizens waiting for service. It outlined its staffing challenges and cited the fact there are only two training facilities for this type of study in Canada.

Eastern Health stated it had finally filled all available positions and that wait times should be reduced. It will continue to look for efficiencies and has implemented specific clinic days for certain patient populations. Additional efficiencies include assessing partial foot amputees during their post-operative stay; reorganizing workspaces; reviewing material and supply processes; inventory management, using new fabrication techniques and central fabrication facilities. It stated the requirement for a referral for service is used mainly to prioritize the wait list, and that not having a referral can result in delayed authorization for service.

We were satisfied that the program area was functioning optimally with its current resources and capacity.

### ***Department of Finance – “Pension Apprehension”***

Prior to the establishment of Provident<sup>10</sup>, the new Public Service Pension Management Corporation, the Department of Finance, Pensions Administration Division, was the main repository for complaints involving pension management.

A frustrated widow of a government pensioner contacted us with a complaint about a delay in receiving her survivor benefit. Compounding the problem was her lack of savings to assist with months of delay. She had conformed to the requirements of applying for the survivor benefit.

We made direct contact with our designated liaison in the Department, outlined the complaint and inquired about the delay in processing. Prompt follow-up was made by the Department, the issue was resolved and the widow received her benefit, plus a retroactive payment, in short order.

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### ***Various Agencies – “OCR as Central Referral Source”***

Some issues presented to our Office do not fit squarely within the confines of the *Citizens’ Representative Act*. Rather than turn citizens away, every attempt is made to ensure they are on the right track to having their concerns resolved.

An employee of the Department of Community Services for the City of St. John’s contacted us after a community outreach he was conducting identified an older adult couple who were experiencing many barriers to the services they required. Chief among them was a need to have their annual income tax returns completed and filed.

Our first referral was to the Canada Revenue Agency Community Volunteer Income Tax Program, and the second to a representative at SeniorsNL, an agency that meets regularly with us to discuss matters of mutual concern.

### ***Service NL – “Census Consensus”***

The Vital Statistics Branch at Service NL is responsible for issuing various documents, including birth certificates. In many instances the information it provides assists citizens with obtaining other government services and benefits.

A woman contacted us unsure of what to do to prove her indigenous ancestry. She believed her grandparents were indigenous and when she sought birth certificates for them at her local Service NL location, she was told dates of birth were required. Unfortunately, she had no idea what the relevant dates of birth were. Her parents were deceased and there were no other known family or community members to help. We contacted Service NL in St. John’s and were provided with a link to the 1921 Newfoundland Census which helped locate the grandfather. A further suggestion to locate the grandmother was to obtain the baptismal certificate from her hometown church.

### ***Department of Justice and Public Safety – “Communication Breakdown”***

From time to time, the relatives of citizens incarcerated in our correctional centres raise concerns about the treatment of their loved ones in custody. Every day, corrections employees act as liaisons between family and inmates by processing canteen deposits, facilitating visits, phone contact and mail. The Department also investigates complaints about its employees when concerns are raised by families.

The family of a paroled inmate complained to our Office, alleging that a correctional centre had failed to respond to its formal complaint relating to the activities of an employee. They alleged that the employee had supplied alcohol to their relative, contrary to the terms of that parole. When the same employee reported the consumption of alcohol, the inmate was re-arrested and incarcerated. The family advised us that it had not received any response to their complaint to the Department, including an acknowledgement that it had been received.

Our investigation showed that the Department took the allegations seriously and an investigation was commenced. We were satisfied that the concerns of the family were



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adequately investigated and acted on appropriately by the Department. We did find, however, that the Department failed to meet the reasonable expectations of anyone directly connected with the start of an investigation. While the Department had to protect the privacy of its employee, it could have acknowledged the complaint and provided periodic status updates to the family, together with some indication of the outcome of the investigation. This was determined to be a breach of the *Citizens' Representative Act* in that there was a lack of adequate communication in response to a formal written complaint.

We recommended, and the Department accepted, the following recommendations:

1. The Department should develop and implement a policy to identify appropriate steps to be taken by administration upon receipt of a complaint that will:
  - Acknowledge receipt of written complaints, including the name and contact details of the person handling the complaint;
  - Provide information about the complaint-handling process;
  - Identify possible outcomes and identify any limitations on its investigation;
  - Ensure the complaint is dealt with in a timely manner, with progress reports when the process is protracted;
  - Establish a process for advising complainants of the outcome of their complaint;
  - Provide adequate reasons to a complainant if their complaint is being rejected.
2. The Department provide a formal response to the family to advise of completion of the investigation and to provide an apology to the family for the lack of adequate communication with them.

### ***Newfoundland and Labrador Housing Corporation – “Eyeballs Needed”***

As the largest landlord in the Province, Newfoundland and Labrador Housing offers a diverse range of programs from the delivery and maintenance of affordable social housing to the provision of funds for the building of low income rental units. From time to time, its tenants contact us, and the Housing Corporation is always willing to work with our staff to find solutions.

In this case, we were contacted by a citizen in a public housing unit who complained that despite having requested specific maintenance to take place in her unit, there was a failure to adequately respond to her requests. She was concerned that the delay in maintenance was posing a risk to her family's safety.

We quickly opened a dialogue with our designated liaison at the Housing Corporation who ordered a Maintenance Field Supervisor to the unit. He verified the maintenance issues and corrective action was taken immediately.

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### ***Eastern Health – “Medication Frustration”***

Eastern Health is responsible for the Waterford Hospital in St. John’s, the largest in-patient mental health facility in the Province.

A patient of the hospital called us extremely concerned about receiving his medication in a crushed form. Given the profile of the drug involved he was alarmed that the slow-release properties of the drug would be eradicated by crushing. He claimed that sometimes the drug was crushed and other times, it wasn’t. We researched the drug’s characteristics and concluded it was not to be administered in the format alleged.

An inquiry to the Health Authority resulted in him receiving his medication intact, with instructions left on his file that the medication was to be administered in that fashion. The instructions were to be passed on at each shift change of staff.

### ***Eastern Waste Management – “Account Review”***

The Eastern Regional Service Board, which operates Eastern Waste Management, has worked since 2012 to establish its new identity as the Waste Management Authority for garbage and hazardous waste collection, bulk waste management, and household recycling for the greater Avalon Peninsula.

A citizen contacted us to express his point of view that he had been wrongfully charged fees and penalty interest for services rendered to his household. The Authority told him he had been receiving service, but not making payments, for seven years. They invoiced him for that time period, with interest. The man believed that he had been making payments and tendered evidence that showed automatic withdrawals from his bank account. The citizen advised he had no issue with paying for the service, but did not feel it was fair to have to pay penalty interest, and that he should be reimbursed for the payments he could verify.

Eastern Waste Management provided a fulsome response and, after a detailed review was conducted, notified us that it did not contest the assertions made. The citizen was reimbursed accordingly.

### ***Service NL – “Suspension Tension”***

One of the more difficult tasks assigned to the Motor Registration Division is the suspension of driving privileges for medical reasons. This act, taken in the interest of public safety, often leaves the suspended driver upset with having their independence diminished. It also requires them to take a number of specific actions to regain their license to drive.

In most Canadian jurisdictions, legislation requires physicians to report any patient who, in their opinion, has a medical condition that may make it dangerous for the patient to drive. Here in Newfoundland and Labrador, the final decision in these matters is left to the Registrar of Motor Vehicles.

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Our investigation of a citizen's allegations that his license was unfairly suspended found that the Motor Registration Division was in compliance with both the *Highway Traffic Act* and the Canadian Council of Motor Transport Administrators. While no recommendations were made in the case, we felt that there is limited information available to help citizens understand the driver's license medical review process and how the determination of "fitness to drive" is made. We asked the Department to consider how it could improve citizens' access to this information.

### ***Eastern Health – "Process Upgrade"***

Eastern Health's Centre for Nursing Studies is also responsible for training Licensed Practical Nurses in the Province.

A complaint was received from a student concerning dismissal from the program. Students may appeal any academic decisions made by the Centre for Nursing Studies including dismissal. Based on our investigation, it was determined the administrative policies, procedures and processes had been fairly applied to the student.

The student also alleged there was limited information available about the student's ability to attend the appeals process in person. The Centre committed to better explaining this process in future by revising the Practical Nursing Student Handbook.

### ***Department of Justice and Public Safety – "Chapel Incident"***

The Department operates five secure adult custody facilities and two lockups in Newfoundland and Labrador. Maintaining order in these facilities is an around-the-clock concern and disturbances among groups of inmates occur from time to time.

A group of correctional officers made a complaint to us against the Department regarding the "chapel riot" that occurred at Her Majesty's Penitentiary in 2014. They felt that management was aware the incident was going to happen and did nothing to stop it, putting staff, inmates and volunteers at risk. They also felt that it was permitted to happen intentionally by management to relieve pressure arising from inmate tension in the institution.

In response to our investigation, the Department refuted that management intentionally allowed the riot to occur. They did, however, admit that the incident was not handled appropriately in several different ways. We conducted an extensive investigation into the allegations and issued a detailed report. In the interest of officer and institutional safety, we are not at liberty to publicly disclose what shortcomings were identified; however, we were satisfied with the Department's effort to address the gaps in policy that gave rise to the chapel incident.

### ***Department of Municipal Affairs and Environment – "Insecure Security"***

Municipalities in the Province that contract with private companies are obliged to properly tender for required services.

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A citizen made a complaint against the Department and the Government Purchasing Agency regarding the awarding of a security contract between a town and a private company. The citizen alleged that the Department had not fulfilled its obligations to investigate his complaint, that the town council was acting in a conflict of interest and with an apprehension of bias, when it procured security services from a private company. He alleged the contract was never properly tendered and further, the company that was awarded the contract was not properly licensed to provide these services.

Our investigation concluded that the Department conducted its investigation properly from a procedural perspective. However, we felt the Department was incorrect in the conclusions they drew from their investigation. Our evidence showed that the town was contravening Section 221 of the *Municipalities Act* and, therefore, the Department should have enforced the legislation against the town. The Government Purchasing Agency, after conducting its own investigation, had likewise concluded the town was in violation of the *Public Tendering Act*. The inappropriate contracted arrangement was subsequently terminated.

### ***Service NL – “Cabin Country Blues”***

A citizen alleged unfair treatment by Service NL due to the denial of a septic permit for a damaged cabin he was intending to rebuild. The citizen felt he was subject to a double standard. He alleged there were 30 to 50 other cabins in the area that violate the same septic regulations being imposed on his lot. He further alleged that Service NL was made aware of the violations previously, but did not take action to address the infractions. Service NL initially denied any unfair treatment or selective enforcement of the regulations.

Our investigation determined that due to gaps and exemptions in policy the citizen was unfairly denied his permit. It was also determined the Department failed to investigate complaints against other properties with the same vigor that the complainant had experienced.

We made several recommendations to Service NL to improve and enhance its policies to ensure consistency and fairness. They were accepted and the Department also agreed to a compromise that saw a suitable septic system approved to the satisfaction of both it and the citizen.

### ***Department of Justice and Public Safety – “I’m Going Blind”***

Just as the Department is responsible to house and feed inmates in the correctional system, it is also obliged to provide health care at a level comparable with that available to the general population.

A diabetic inmate contacted us with the rather serious report that he was going blind. Given his diabetic diagnosis, we opened up lines of communication with the medical unit at his institution, which led to an immediate referral on an emergency basis to an eye clinic in St. John’s.



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### ***Eastern Health – “Avoiding Disruption”***

Eastern Health’s wide mandate includes oversight of the Alternate Family Care (AFC) Program which allows approved individuals with a variety of health issues to reside in family homes in their communities. These AFC providers may not be family members, but are screened and approved to provide the service.

An AFC provider called to advise that previously they had three clients in their home; however, one had passed away and one moved out. Eastern Health advised the AFC provider that it was no longer fiscally viable to keep the third client and he would have to move. This was deemed a final decision and a date for the move was set. This caused a great deal of stress and anxiety for the client, who was being forced to leave his community, caregivers and staff. The AFC providers came up with possible options, including having him reside in an apartment downstairs in their home.

We initiated an investigation of the matter. A short time later Eastern Health approved the client’s move downstairs in the AFC provider’s basement thus ensuring the client had overnight monitoring and support, meals, and access to the upstairs living area.

### ***Newfoundland and Labrador Housing Corporation – “Termination Frustration”***

In large organizations it is not uncommon to have a fluctuating workforce of people on maternity leave, resigning, coming on board or being terminated. With 350 employees fulfilling a number of roles including professional, accounting, inspection and maintenance, the NLHC is not immune to workforce change.

We were contacted by a former employee of NLHC who was hired as a temporary employee, but ended up filling a permanent supervisory position. Late in 2015 he was terminated without cause and he alleged that proper procedure was not followed.

Based on a review of the evidence, we found that the termination without cause, in this case, differed from standard termination practice and policy. We found problems with the recommended weeks of pay in lieu of notice, discrepancies between options ordinarily available to a terminated employee and concerns about confidentiality regarding referral to the employee assistance programming (EAP). We recommended that NLHC develop a termination policy that was more in accord with policies operating in the broader public service and that addressed the irregularities we identified in our investigation. We also recommended an adjustment in the former employee’s pay in lieu of notice which was in keeping with that permitted in other public sector workplaces. NLHC accepted all of the recommendations.

### ***College of the North Atlantic – “Procedural Shortcomings”***

The College of the North Atlantic (CNA) offers a Practical Nursing (PN) Program at certain campuses in partnership with the Centre for Nursing Studies (CNS). An agreement is in place for students across Newfoundland and Labrador to take the program without the need for relocation to St. John’s. This program is not typical in the CNA structure because the rules for conduct of the program are set by CNS.

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A student contacted us to complain that she had been dismissed from the program and that CNA did not handle the case fairly. She claimed she had been dismissed for reasons unknown to her. She further alleged she was not supervised by a licensed practical nurse at all times during her clinical rotation, as required. In addition, she said she had been denied a copy of a letter of complaint and was not provided with a formal letter of dismissal when she was called in to be expelled. She was unaware of any appeal processes until our Office made representations on her behalf.

In response to our investigation CNA advised it had received a written complaint about conduct on a particular date, which had already been brought to the attention of the PN Program Coordinator earlier in the month. A PN Program Committee, consisting of the coordinator and two faculty members, met to discuss the matter. This gave rise to a recommendation of dismissal; a letter was prepared and forwarded to the student.

Our role was to determine whether the student was afforded adequate procedural fairness in the case. We found the process was unorganized and lacked clear procedure to be followed in circumstances where a student is alleged to have displayed a practice that is “unsafe” in a clinical situation.

We found that a letter of dismissal, including a stated right to appeal the matter, should have been available to the student the day of the dismissal. We cited delay in providing a copy of the letter of complaint that impacted her ability to respond completely to the allegations and formulate a complete appeal.

In addition, we determined there was not full adherence to the agreement in place. Specifically, the PN Program Committee at the campus did not include a student representative from the campus when the alleged misconduct was reviewed. CNA could not provide any minutes from the meeting regarding the termination from the program.

We were, however, satisfied that the concerns during the clinical placement were shared with the student in a meeting, and the complaint was eventually shared with her prior to the appeal, so she should have been aware of the reasons for her dismissal.

We did not find that the termination of the student was improper; however, we had concerns with the procedures used for the denial. The appropriateness of the decision was not questioned, rather the procedure followed was.

We recommended that CNA create a clear policy that outlines the process to be followed when communicating the decision to be terminated from the PN Program, including a formal letter for the student which cites the regulation and includes reasons for termination, the right of appeal and any other relevant documents. We also recommended consistent adherence to the CNS Practical Nursing Program Student Handbook, as long as it is being used as a reference tool for students. CNA accepted the recommendations.

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## *Your Comments*

- *“I’d like to take this opportunity to express my appreciation to you and your office for your support and guidance. It was with your help that I was able to understand the process of appeal and develop an appropriate plan to reach a solution.”*
  
  - *“Thank you so much for the incredible amount of work that went into this. Regardless of the outcome, I know you did everything you could with this case. It is a great help to me in that I know I did everything I could. This will help to bring closure to this part of my life.”*
  
  - *“I read your report several times. Hellishly impressive, not because you found in my favour, but because you were able to clearly cut between all the grey areas.”*
  
  - *“These past few years have been brutally frustrating, tremendously stressful and demoralizing. I had up until the time I became involved with you literally, lost faith in the system. You have done a great deal to restore that and I thank you more than you will ever understand.”*
  
  - *“I want to thank you sincerely for all the time and effort you put into this file trying to help me get it sorted out...which you did with the correct and just result.”*
  
  - *“God love your heart and thank you very much.”*
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## Statistics

During 2016-2017, the OCR received 648 complaints and inquiries. The following tables illustrate the origin of the complaints we received and which government departments and agencies were concerned. 571 jurisdictional complaints and inquiries are in the table below; 77 non-jurisdictional complaints and inquiries are listed on page 22.

### Complaints/Inquiries by Department and Agency April 1, 2016 – March 31, 2017

Department / Agency	Complaints / Inquiries
Advanced Education and Skills	1
Income Support Division	67
Central Health	6
Children, Seniors & Social Development	23
College of the North Atlantic	1
Eastern Health	25
Eastern Regional Waste Management Authority	2
Finance	6
Fisheries & Land Resources	5
Health and Community Services	3
Newfoundland & Labrador Medical Care Plan - MCP	4
Justice and Public Safety	20
Correctional Facilities	314
Human Rights Commission	3
RNC Public Complaints Commission	1
Labrador-Grenfell Health	1
Memorial University	1
Municipal Affairs & Environment	4
Nalcor Energy	1
Newfoundland and Labrador English School District	2
Newfoundland and Labrador Housing Corporation	23
Newfoundland and Labrador Legal Aid Commission	15
Public Service Commission	1
Service NL	10
Transportation and Works	10
Western Health	2
Western Regional Waste Management Authority	1
WorkplaceNL	15
Workplace Health, Safety and Compensation Review Division	4
<b>Total Complaints and Inquiries</b>	<b>571</b>



**Complaints / Inquiries by  
Electoral District  
April 1, 2016 - March 31, 2017**

<b>Electoral District</b>	<b>Complaints / Inquiries</b>
Baie Verte-Green Bay	4
Bonavista	5
Burgeo - LaPoile	1
Burin - Grand Bank	2
Cape St. Francis	8
Carbonear - Trinity - Bay de Verde	8
Cartwright - L'Anse au Clair	1
Conception Bay East & Bell Island	2
Conception Bay South	4
Corner Brook	8
Exploits	11
Ferryland	4
Fogo - Cape Freels	6
Gander	2
Grand Falls – Windsor – Buchans	9
Harbour Grace - Port de Grave	11
Harbour Main	8
Humber - Bay of Islands	4
Humber - Gros Morne	2
Labrador West	1
Lake Melville	30
Lewisporte - Twillingate	4
Mount Pearl - Southlands	5
Mount Pearl North	8
Mount Scio	15
Other Provinces	8
Placentia - St. Mary's	5
Placentia West - Bellevue	5
St. Barbe - L'Anse aux Meadows	2
St. George's – Humber	4
St. John's Centre	24
St. John's East - Quidi Vidi * <sup>1</sup>	276
St. John's West	9
Stephenville - Port au Port	12
Terra Nova	27
Topsail - Paradise	3
Unknown * <sup>2</sup>	91
Virginia Waters - Pleasantville	4
Waterford Valley	9
Windsor Lake	6
<b>Total Complaints and Inquiries</b>	<b>648</b>

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

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

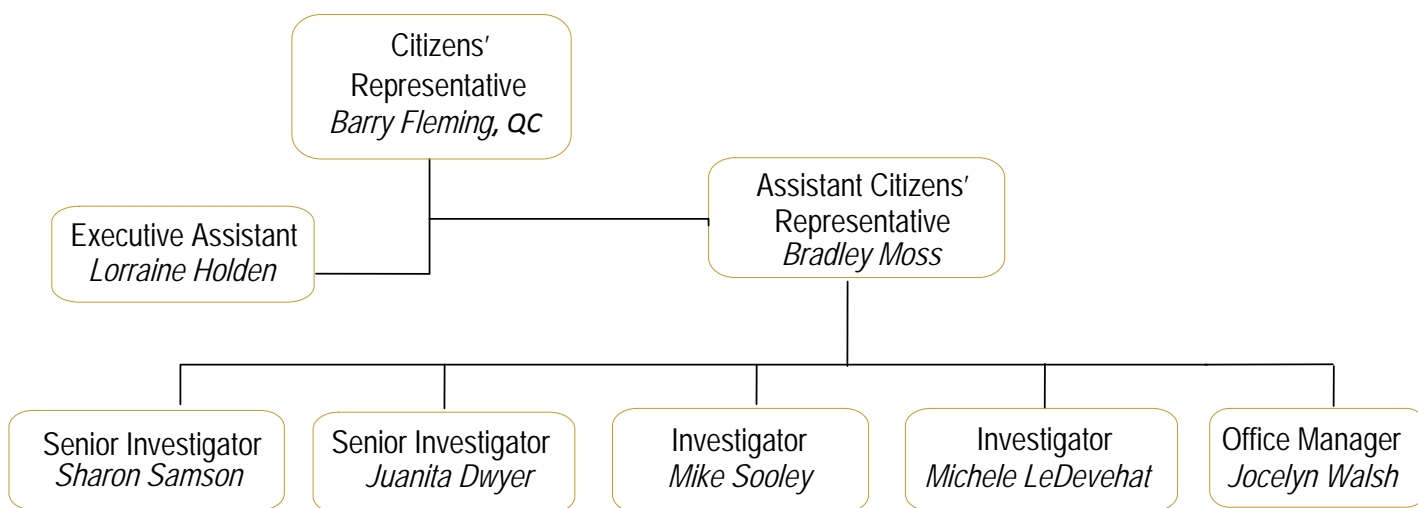
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**Complaints/Inquiries Non-Jurisdictional**  
**April 1, 2016 – March 31, 2017**

<b>Non-Jurisdictional</b>	<b>Complaints / Inquiries</b>
Executive Council	1
Federal Departments, Agencies and Crown Corporations	5
Other	66
Private Companies	4
Royal Newfoundland Constabulary	1
<b>Total Complaints and Inquiries</b>	<b>77</b>



## Office of the Citizens' Representative Organizational Chart



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## How to Reach Us

### *Staff*

Barry Fleming, Q.C.	Citizens' Representative
Bradley Moss	Assistant Citizens' Representative
Sharon Samson	Senior Investigator
Juanita Dwyer	Senior Investigator
Mike Sooley	Investigator
Michele LeDévéhat	Investigator
Jocelyn Walsh	Office Manager
Lorraine Holden	Executive Assistant

### *On the Internet*

[www.citizensrep.nl.ca](http://www.citizensrep.nl.ca)

### *By Phone*

Toll Free: 1-800-559-0079

Telephone: (709) 729-7647

Fax: (709) 729-7696

### *By Mail*

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

### *In Person*

4<sup>th</sup> 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  
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**Fax: (709) 729-7696**

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**Web Site: [www.citizensrep.nl.ca](http://www.citizensrep.nl.ca)**

*Photo: Wild Flowers and Coastal Cliffs at  
Neddies Harbour, Bonne Bay, NL*