



**Office of the
Citizens' Representative**

**2018-19
ANNUAL PERFORMANCE
REPORT**



Office of the Citizens' Representative
Province of Newfoundland and Labrador

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September 6, 2019

Sandra Barnes
Clerk, House of Assembly
East Block
Confederation Building
St. John's, NL
A1B 4J6

Dear Ms. Barnes:

Please find enclosed 6 (six) copies of the Office of the Citizens' Representative 2017-18 Annual Performance Report as per the applicable Tabling Process outlined in Appendix A to the *Guidelines for Annual Performance Reports*.

Trusting this is satisfactory.

Yours truly,

Bradley Moss
Citizens' Representative

Encls.

TABLE OF CONTENTS

Message from the Citizens' Representative.....	4
Overview.....	5
Highlights and Partnerships.....	6
Report on Performance.....	8
Strategic Issue.....	8
Discussion of Results.....	9
Outlook.....	11
Opportunities and Challenges Ahead.....	11
Financial Statements.....	12

Message from the Citizens' Representative

It is my duty and privilege to present, pursuant to Section 9(1) of the **Transparency and Accountability Act**, the 2018-19 Annual Performance Report of the Office of the Citizens' Representative ("OCR"). This Report conveys the actual results achieved in pursuit of our objective for the 2018-19 fiscal year, as outlined in the 2017-20 OCR Activity Plan.

The OCR is a statutory office of the House of Assembly as defined in the **House of Assembly Accountability, Integrity and Administration Act**. The office draws most of its legislated mandate from the **Citizens' Representative Act**, which provides for a province-wide legislative Ombudsman service. Legislative (or sometimes "classical") Ombudsmen are public officials who independently mediate and investigate allegations about public bodies and their personnel regarding unfairness, errors, omissions, misconduct or other matters of administration. In this regard, OCR does not advocate or represent the interests of individuals or groups, but rather it represents the interests of the people of Newfoundland and Labrador, by helping to ensure everyone in the province is treated fairly by their public service. Each year, we table a separate document, the Citizens' Representative's Digest, which informs the public and the legislature of our activities with statistics and case studies that highlight the depth and breadth of our Ombudsman work.

The Citizens' Representative is also the named investigator of disclosures made in the public interest under both Part VI of the **House of Assembly Accountability, Integrity and Administration Act** and the **Public Interest Disclosure and Whistleblower Protection Act**. Both of these statutes were enacted in the interest of deterring and correcting gross misconduct and wrongdoing within both the House of Assembly and the wider public service. Further information on these programs can be found on our website.

On May 1st, 2019, I succeeded Mr. Barry Fleming, QC, who was the Citizens' Representative at all times material to the period covered by this Report. I take this opportunity to thank Mr. Fleming for his 12 years of outstanding hard work and dedicated service to the OCR, the House of Assembly, the pan-Canadian Ombudsman community, and to the citizens of this province during his two terms as Citizens' Representative.

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



Bradley J. Moss
Citizens' Representative

September 6, 2019

OVERVIEW

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

Twice since 2001, the OCR mandate has expanded under legislation to become the investigation unit of public interest disclosures made by House of Assembly and public service employees. Commonly known as "whistleblower programs," public interest disclosures center on allegations of wrongdoing in the workplace, including gross mismanagement of funds, government assets or threats to safety or the environment.

Barry Fleming, Q.C., was the Citizens' Representative for the 2018-19 fiscal year. OCR has a permanent staff of seven including:

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

In 2018-19, the OCR received:

- 702 complaints/inquiries under the **Citizens' Representative Act**,
- 6 complaints/inquiries under the **Public Interest Disclosure and Whistleblower Protection Act**² and,
- 1 complaint under the **House of Assembly Accountability, Integrity and Administration Act**²

OCR closed 709 complaint/inquiry files across all business lines during 2018-19 (including complaints/inquiries from the previous fiscal year).

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

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

OCR made 46 formal recommendations to various departments, agencies, boards and commissions. Formal recommendations flow from statutory investigations initiated under Section 15 of the **Citizens' Representative Act**, and are designed to rectify cases of unfairness or error, and help prevent circumstances germane to the complaint from re-occurring.

There were 0 recommendations made to government under the **Public Interest Disclosure and Whistleblower Protection Act**.

There were 0 formal recommendations made under Part VI of the **House of Assembly Accountability, Integrity and Administration Act**.

OCR can be contacted by:

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Total operational expenditures of the OCR for 2018-19 were \$759,980. Further information on budgeting and expenditures can be found on page 12.

HIGHLIGHTS AND PARTNERSHIPS

In addition to its core mandate services of complaint investigation and mediation, the key highlights and accomplishments of the OCR during 2018-19 include:

- Addressing new recruits in the correctional officer training program.
- Providing instruction on trends analysis at "Ombuds Essentials", a joint offering of the Forum of Canadian Ombudsman / Osgoode Hall Law School Professional Development program.

- Continued participation in the Ombudsman Health Network, an ad hoc group of 10 provincial/territorial Ombudsman offices that teleconference on issues of mutual interest in health care complaints management.
- Continuing to produce our Office newsletter - "OCR Insights" - a quarterly update on the OCR's activities.
- Training on Hay Group methods of job evaluation.
- Membership on the House of Assembly Classification Review Committee.
- Participation in annual Federal / Provincial / Territorial public interest disclosure meetings.
- Ongoing membership and participation in the Canadian Council of Parliamentary Ombudsman (CCPO).
- Presentation to inmates at Her Majesty's Penitentiary in partnership with the Public Legal Information Association of Newfoundland and Labrador and the Human Rights Commission.
- Speaking to Academy Canada Legal Studies students on statutory offices and quasi-judicial tribunals.
- Staff training in enhanced report writing through the Office of the Auditor General and the Canadian Audit and Accountability Foundation.
- Learning sessions for employees on Trauma Informed Practice.
- Training on Managing Unreasonable Complainant Conduct.
- Applied Suicide Intervention Skill Training (ASIST) for employees.
- Attendance at World Elder Abuse Awareness Day session in St. John's.
- Senior Investigators' attendance at Social Work Practice Symposium.
- Quarterly meetings with Statutory Offices of the House of Assembly.
- Meeting with Senator Kim Pate on the subject of Adult Corrections.

REPORT ON PERFORMANCE

Fiscal year 2018-19 is the second year of OCR's 2017-20 Category 3 Activity Plan, which was tabled in the House of Assembly on 28 June 2017. Highlighted in the Activity Plan were:

Strategic Issue

The Activity Plan focuses on the issue of heightening awareness of services available to members of the public and government employees, with an emphasis on the whistleblowing program.

OCR's goal is to undertake measures to promote increased awareness in these areas.

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

By March 31, 2019, the Office of the Citizens' Representative will have undertaken measures designed to raise awareness and availability of existing services, notably the whistleblower programs.

- Indicator: Implemented measures identified by OCR to assist in overcoming barriers to access.

Our activities to meet this objective are as follows:

Planned	Actual
1. Dedicate space in the OCR newsletter to the whistleblower program during 2018-19.	1. OCR newsletters in June, September, December 2018 and March 2019 editions all contained information or references.
2. Upgrade and re-issue pamphlets designed in 2014 to promote the whistleblower mandate.	2. Reviewed and revised two pamphlets designed to promote the whistleblower mandate 12 March 2019. With Queen's Printer as of 30 March 2019.
3. Undertake intra-provincial travel within budgetary confines to promote services, speak to groups and local media.	3. Intra-provincial travel subsequently limited to investigations only for cost-saving purposes. Expanded outreach by engaging targeted demographic groups by mail pursuant to #8 below.

<p>4. Approach the Center for Learning Development (CLD) to possibly deliver content via course content or webinar on the OCR mandate, notably whistleblowing.</p> <p>5. Engage the Seniors NL peer support volunteers throughout the province to raise awareness of our services so that knowledge can be passed throughout the province.</p> <p>6. Engage on Facebook at a higher level than previous years.</p> <p>7. Provide the option of an online, fillable complaint form.</p> <p>8. Engage both the Native Friendship Center and the Association of New Canadians to promote our services.</p> <p>9. Develop content for the OCR website that clarifies reporting pathways available to citizens and public employees.</p>	<p>4. Communications with Center for Learning Development re: content 24 September, 29, October, 14 November 2018. Developed slides and sent to CLD 8 January 2019.</p> <p>5. Citizens' Representative's letter to the Executive Director of SeniorsNL on 23 July 2018 distributed to all peer support volunteers.</p> <p>6. 244% increase (31 Facebook postings versus 9 in 2017-18)</p> <p>7. Online, fillable form completed, cleared by OCIO and available to the public 25 April 2018.</p> <p>8. Engaged First Light (formerly Native Friendship Center) and Association of New Canadians in writing 15 March 2019.</p> <p>Expanded promotion by contacting all Transition Houses, Status of Women Councils, and Stella's Circle 15 March 2019.</p> <p>9. Content for website developed 22 November and online 29 November 2018.</p>
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Discussion of Results

The nine activities above provided an opportunity for OCR to connect, and in some cases reconnect with governmental and non-governmental organizations, especially with groups that may be able to make good use of OCR processes but are unaware of their existence.

OCR emphasis on whistleblowing in quarterly “OCR Insights” newsletter is an attempt to foster conditions that lead to the identification and correction of wrongdoing, and to generally normalize the reporting of wrongdoing in the public interest.

Increasing understanding of the whistleblowing regime was also the main driver for revising promotional pamphlets for public interest disclosure in both the House of Assembly and the wider public service.

By placing OCR whistleblowing information on the CLD website, employees are free to browse their options under the programs. Likewise, managers may also access information in order to better inform their thinking when it comes to reporting, or what to do if they become involved in the whistleblowing process in the course of their work.

With the largest provincial demographic in 2018 being citizens between 55 and 65 years of age, OCR felt it was important to engage the peer support network of seniors across the province who volunteer their time every day to help seniors with problems navigate the various services and supports available to them. Each peer support volunteer now has a full description of OCR services available to them for referral purposes.

OCR increased activity on Facebook publicized OCR newsletters and encouraged users to visit the website where information on the entire suite of OCR services, including whistleblowing, is available. Posts also linked to the latest OCR newsletter and shared news items of interest from the wider Ombudsman community.

The online complaint form makes it easy to file a complaint with OCR when compared with downloading and mailing or faxing forms. It instantly became a popular method of making contact. By connecting the form to OCR general office email, complainants receive an instant reply and the complaint is acknowledged and assigned to an Investigator within hours of submission.

Citizens who self-identify as aboriginal or new Canadians were also of interest from a demographic perspective. OCR contacted both First Light and the Association of New Canadians to provide them with promotional materials for distribution to anyone who may be having difficulty with provincial government programs, services or personnel. Internally, it was felt OCR could do a better job of reaching out to women who may be in crisis situations as well, so the activity was expanded to include a total of 25 offices and transition houses across the province.

New “reporting pathways” content (adapted from Australia) on OCR website is intended to identify and clarify complaint or grievance processes available to citizens and public employees. The flow chart helps people identify the best way to get at settlement or consideration of their complaint by pointing them to

appropriate procedures such as collective bargaining, occupational health and safety, and harassment investigations which sometimes co-exist or overlap onto sections of OCR's overall mandate.

It remains important to continue to increase OCR messaging, and provide clarity regarding our services. Fiscal year 2019-20 will give OCR an opportunity to further assess what worked, and what may work for OCR as an annual exercise going forward.

Outlook: Objective 3 (2020)

By March 31, 2020, the Office of the Citizens' Representative will have analyzed the results of the measures undertaken and internally discussed further areas of improvement.

- Indicator: Analysis and internal discussion of further improvements.

OPPORTUNITIES AND CHALLENGES AHEAD

The opportunities available to, and the challenges confronting OCR for fiscal year 2019-20 are:

- Transfer of leadership within the Office of the Citizens' Representative at the expiry of the second term of the current Citizens' Representative.
- Possible further expansion of the OCR's mandate into enforcement of a legislature-specific harassment free workplace policy.
- The opportunity to set new priorities and further strengthen operations through the next Activity Planning process.

FINANCIAL STATEMENTS

Expenditure and revenue figures included in this document are based on public information provided in the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for Fiscal Year Ended 31 March 2019 (unaudited).

OFFICE OF THE CITIZENS' REPRESENTATIVE

	<u>Estimates</u>		
	Actual	Amended	Original
01. Salaries	667,228	677,000	677,000
Operating Accounts:			
Employee Benefits	2,510	8,000	8,000
Transportation and Communications	19,932	34,800	34,800
Supplies	2,002	5,000	5,000
Professional Services	-	12,000	12,000
Purchased Services	64,764	85,400	85,400
Property, Furnishings and Equipment	3,544	4,000	4,000
02. Operating Accounts	92,752	149,200	149,200
Total: Office of the Citizens' Representative	759,980	826,200	826,200

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