



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

**Citizens' Representative  
Annual Digest**

**April 1, 2017 - March 31, 2018**

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



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

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September, 2018

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

Dear Mr. Speaker:

It is my privilege to submit to the House of Assembly and the citizens of Newfoundland and Labrador the Annual Citizens' Representative Digest. It provides statistics on complaints received, and describes the day-to-day work of this Office of the House of Assembly during the period April 1, 2017 to March 31, 2018.

Respectfully submitted,

  
Barry Fleming, Q.C.  
Citizens' Representative

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## Message from the Citizens' Representative

This is the eleventh Annual Digest of the Office of the Citizens' Representative. In contrast to our formal reporting obligations under the *Accountability and Transparency Act*, the Digest is an informal overview of the work we undertake.

During the year, we continued to act as a public interest disclosure (whistleblower) investigator and as a general ombudsman service. Citizens often ask what types of things does an ombudsman do? For a look at the many and varied issues we address, take a look at the Digest's *Month in Review* on page 5.

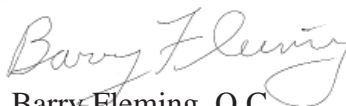
A major focus of our ombudsman work over the past year has been dealing with complaints and inquiries against the Eastern Regional Services Board (ERSB). The ERSB was created by the Province to deliver regional municipal services. In 2009, the ERSB was given a mandate to ensure the efficient delivery of modern waste management services throughout communities in the Eastern Region of Newfoundland and Labrador. This entails being responsible for curbside/roadside collection of garbage and recyclables, waste recovery facilities, bulk items pick-up, and household hazardous waste events. We received jurisdiction over the ERSB on March 21, 2017.

The ERSB charges a fee for the services it provides on a cost recovery basis. We have reviewed the mechanisms by which ERSB calculates its fees and they are consistent with a cost recovery model. It is not our role to second guess or dictate specifically how and when fees are charged. That is the purview of the House of Assembly and/or the Board of the ERSB.

Understandably, citizens are frustrated whenever they have to pay an additional fee. This has generated considerable controversy and hostility towards the ERSB. Unfortunately, ERSB's approach has not helped mitigate that hostility.

Complaint handling in a government context is incredibly important as, if done effectively, it can bring finality to complaints in a non-litigious format and provide valuable feedback on the public body's programs and services. We have made recommendations to ERSB on ways to improve its customer-handling work, including: training frontline staff on respectful and open communication with citizens; providing citizens with all information which may affect their services or exempt them from fees; and establish a clear complaint resolution protocol. Implementation of these recommendations may mitigate some of the hostility the ERSB currently faces.

As this is my last Annual Digest, I would like to take the opportunity to acknowledge the tremendous work and character of my staff. I have been fortunate over the past twelve years to work with some great people, but the current composition of staff is outstanding. They each bring empathy, skill and good humor to every task. Their creativity and collegiality enlivens all that we do. I will miss them. But rest assured, they will continue to seek fairness and find solutions for the citizens they serve.

  
Barry Fleming, Q.C.  
Citizens' Representative

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## Our Role

For over 50 years, Canadian provinces, universities and colleges and the federal government have relied on ombudsman services to mediate and investigate complaints about public bodies. In 2018, Canada continues to be an active player on the forefront of the evolution of the ombudsman concept, as it expands further into the private sector.

Our Office opened in St. John's in February 2002. We serve the public, and the House of Assembly, in the classical parliamentary ombudsman role. In 2007, our mandate expanded with the passage of the *House of Assembly Accountability, Integrity and Administration Act*. Under Part VI of that Act. We are tasked with the investigation of public interest disclosures of wrongdoing made by members and staff of the House of Assembly.

Since 2014, we have also been responsible for the government-wide whistleblower program. Under the *Public Interest Disclosure and Whistleblower Protection Act*, (PIDA), government employees have the right to confidentially disclose wrongdoing in their workplace that should be stopped or corrected in the public interest. The PIDA imposes penalties on anyone who commits a reprisal against persons who make disclosures, or who seek advice on the commission of wrongdoing in the public service. Previous reports relating to PIDA can be found on our website <http://www.citizensrep.nl.ca>.

As a non-partisan Statutory Office, we investigate 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 empowered to launch investigations in his or her own discretion, without a specific named complainant.

We recognize the value in resolving complaints at the earliest possible stage. We assume a mediation/facilitation function in cases which do not require the intricacies of a formal investigation. Public bodies under our jurisdiction generally agree with this approach, typically assigning personnel to liaise and open lines of communication with us in the interest of prompt resolution or settlement of complaints.

Over the last 16 years, we have acquired a broad knowledge of referral sources for citizens initially unsure of where to turn for help in resolving their problems. Staff endeavor to ensure the person who presents with a non-jurisdictional complaint is still provided with the contact information for the appropriate agency to deal with their

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concerns. Given the size of our referral network, we can often link the citizen directly with the person they need to speak with, and may further facilitate contact if the citizen has limited resources, a disability or some other barrier to access. Our Investigators are skilled in effective self-advocacy and complaint-handling techniques, and frequently provide forms, telephone numbers, internet links and email addresses to individuals who need alternate avenues of redress.

There are a number of statutory restrictions on our jurisdiction. 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 Government of Canada, or municipalities. Nor does it authorize the investigation of private companies or private citizens.

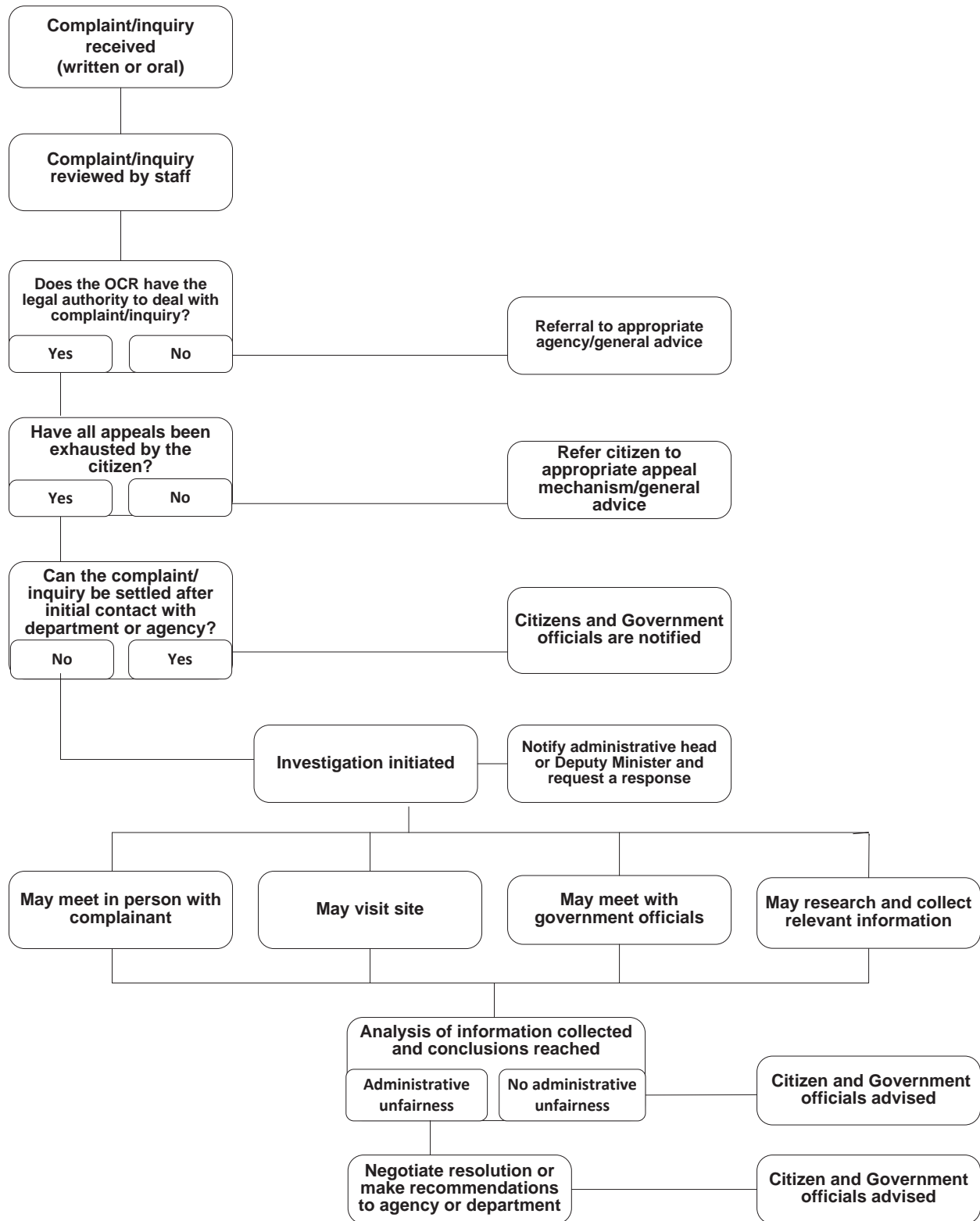
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<sup>1</sup>The Executive Council is exempt from the *Citizens' Representative Act* but is subject to investigation under the *Public Interest Disclosure and Whistleblower Protection Act*.



# 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

Intake is an extremely important function in any complaint-handling organization. It covers a wide array of topics each month. To inform readers of the nature and volume of complaints at our intake stage, we select one month from the fiscal year to furnish examples of what we hear. The following is a cross section of allegations and issues raised by citizens in October, 2017.

ALLEGATION	DEPARTMENT
Arbitrary cutoff of methadone treatment	Justice and Public Safety – Corrections
Unwanted social worker home visits	Children, Seniors and Social Development
Disagreement with substitute decision maker	Eastern Health
Property damage from sewer backup	Municipality (Out of jurisdiction)
35 days in RCMP holding cells	Justice and Public Safety – Corrections
Disconnection of electrical service	NL Hydro
Difficulty obtaining policy on kinship arrangements	Children, Seniors and Social Development
Expired health benefits for CNA-Qatar employee	Medical Care Program
Delay in conducting appeal	Advanced Education, Skills and Labour
Tax dispute and personal conduct of town clerk	Municipality (Out of jurisdiction)
Unit lockdown	Justice and Public Safety - Corrections
Inadequate recreation for long-term care residents	Eastern Health
Pothole damage to vehicle	Transportation and Works
Non-renewal of instructor contract	College of the North Atlantic – Qatar
Pollution of crown land and water reserve	Fisheries and Land Resources
Confined to cells	Justice and Public Safety – Corrections
Status of payment for special needs child	Advanced Education, Skills and Labour
Uniform fee for waste collection (seasonal resident)	Eastern Regional Service Board
No access to parole officer	Justice and Public Safety - Corrections
Terms of investigation of bus driver	NL English School District
Support for child transitioning out of care	Advanced Education, Skills and Labour
Unfair treatment by social worker	Children, Seniors and Social Development
60 days in lockup	Justice and Public Safety – Corrections

## A Month in Review (cont'd)

ALLEGATION	DEPARTMENT
Revocation of alternate care home license	Health and Community Services
Lack of accommodation for exam writing	Memorial University of Newfoundland
Resident alleging theft of money by other residents	Other (private personal care home)
Wide ranging complaints vs. politicians, public service	Other
\$180 fee for rural waste collection	Eastern Regional Service Board
Privacy breach by public body	Referral: Information and Privacy Commissioner
Treatment of instructors by college administration	College of the North Atlantic – Qatar
Request to reopen previous OCR investigation	WorkplaceNL
Uniform fee for waste collection (seasonal resident)	Eastern Regional Service Board
Interprovincial adoption issue	Children, Seniors and Social Development
Concern with investigation leading to employee suspension	Justice and Public Safety
Overpayment	Advanced Education, Skills and Labour
Pothole damage to vehicle	Transportation and Works

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## Public Interest Disclosure

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

1. *Part VI of the House of Assembly Accountability, Integrity and Administration Act* (“HOAAIA”). Part VI serves as a portal for employees and Members of the House of Assembly to disclose potential wrongdoing at the House of Assembly that they believe should be investigated in the public interest.

During 2017-18, we received 0 disclosures under HOAAIA.

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

A report to the House of Assembly under Section 20 of the PIDA is required annually. The report, covering the period April 1, 2017 to March 31, 2018, was forwarded to the Speaker of the House of Assembly on July 10, 2018, and was tabled on July 18, 2018. It is available on our website at <http://www.citizensrep.nl.ca>.

During 2017-18, we handled 16 inquiries under PIDA.



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## Individual Case Summaries

Case summaries allow us to expand on the specific course certain complaint files have taken through our complaint handling system. The following cases, selected by staff, outline a cross-section of the complaints referred, mediated and investigated during 2017-18.

### NL Human Rights Commission (HRC)

#### *“Take it to the Limit”*

The Human Rights Commission (HRC) is an independent government agency that is responsible for promoting an understanding, acceptance, and compliance with the provisions of the *Human Rights Act, 2010* (the Act).

A citizen wanted the Commission to investigate a discrimination complaint regarding his employer. The HRC advised the citizen that they were unable to investigate because the event occurred more than 12 months prior to him filing his complaint, and the Act precludes investigations of alleged discrimination that is older than 12 months. The citizen contacted our Office because he felt his complaint had merit.

We investigated the facts of the man’s case and the application of the time limit to those facts. We conducted a jurisdictional scan of other provincial human rights legislation. This investigation found that the 12 month time limit was standard for most of the provinces of Canada. Some of the other provinces’ commissions do have the discretion to take complaints beyond the one year time limit in extenuating circumstances; however, the discretion is enshrined in legislation. *Newfoundland and Labrador’s Human Rights Act* does not provide the Commission with similar discretion.

Therefore, we concluded that the HRC was restricted by its enabling legislation and could not accept the citizen’s complaint.

### Eastern Regional Services Board (ERSB)

#### *“Exemption Frustration”*

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The role of the Eastern Regional Services Board (ERSB) is to provide certain services to municipalities as mandated by the Province. Currently, the ERSB is implementing the Provincial Solid Waste Management Strategy via the provision of waste management services. The Board is responsible for, among other things, the management of services delivered to the eastern region including curbside/roadside collection of garbage and recyclables, waste recovery facilities, bulk item pick up, and household hazardous waste events. The ERSB provides these services through its Eastern Waste Management Division.

A citizen complained on behalf of a family member whose property was being charged a waste collection fee. The citizen felt that this family member should not have to pay the fee as she was living full time in a nursing home with severe medical issues, and the home at issue had been vacant for over three years. He applied for a fee exemption, but was turned down by the ERSB with the explanation being that although the house was vacant, the Board still considered it “habitable”. The citizen also complained regarding poor customer service; he alleged staff were rude and did not provide the relevant information he was requesting.



Our Office initiated a formal investigation into the ERSB's exemption policy and how it is enforced. This included examining all of the properties that applied for exemptions from the ERSB. Our investigation revealed that the ERSB has been inconsistent in its application of their Exemption Policy and there were multiple examples of staff not following their own policy, and inconsistently granting or denying exemptions to properties. We formed the opinion, based on the evidence, that the property in question should have been granted an exemption.

We found that the ERSB was charging the citizen a full waste management fee on a property that they acknowledged was vacant, solely on the basis that staff believed someone, hypothetically, could live there at some point in time. We felt that this stance was unfair and unreasonable. We also found that the ERSB staff displayed poor customer service in their handling of the citizen's application. We concluded that the ERSB breached s.37 of the *Citizens' Representative Act* and made the following recommendations:

1. That the property be granted an exemption from the ERSB's waste management fees under the Exemption Policy.
2. That the ERSB refund any fees collected dating back to when the original request for exemption occurred.
3. That the ERSB clearly include details of the exemption policy in its information guidebooks provided to residents.
4. That the ERSB clearly define the terms "vacant" and "inhabitable" in policy.
5. That the ERSB improve its "customer service" and communication with citizens, both in general and with regards to the exemption process.
6. That the ERSB improve the documentation and tracking of exemption requests.

Our Office met with the ERSB on March 9, 2018, and discussed the recommendations. As of March 31st, there had been no formal reply to the recommendations.

The Province has provided a mandate to the ERSB and its subsidiary, Eastern Waste Management (EWM) to ensure the efficient delivery of waste management services in rural areas within its established boundaries.

In the fall of 2017, EWM scheduled a bulk pick-up in a rural area. A concerned citizen was referred to us by her MHA's office after she alleged that EWM had failed to pick up bulk garbage from a location that had been a designated drop-off area in previous years. The citizen had contacted EWM and received the response that the drop-off area in question was not a designated site and was, therefore, considered to be an illegal dump of garbage. The citizen acknowledged the miscommunication and committed to taking steps to prevent this from happening the following year, but requested that EWM arrange to collect the waste, as it could constitute a hazard to

## ERSB

### *"Exemption Frustration"* *(cont'd)*

## ERSB - EWM

### *"Bulk Pick-up or Illegal Dumping?"*

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**ERSB - EWM**

***“Bulk Pick-up or Illegal Dumping?”  
(cont’d)***

citizens using the road, and would be spread by the snow plow in winter months.

Our inquiry to EWM resulted in the message; citizens should report an illegal dump to Crime Stoppers and to Service NL’s Environmental Protection Officers to investigate the issue of illegal dumping. Upon reporting by us, Service NL advised that a “No Dumping” sign was installed, but considered the matter to be a bulk garbage placement, not an illegal dump. EWM maintained its position and denied responsibility to remove the bulk garbage. In frustration, the citizen arranged to personally remove and properly dispose of the bulk garbage and subsequently withdrew her complaint to our Office.

**ERSB**

***“An Invoice Without Structure”***

A family member of a deceased property owner contacted us upon receipt of an invoice from the ERSB. The family notified the ERSB of the property owner’s death in 2013. The property being billed for waste collection was vacant. Upon inquiry to ERSB, a Field Operations Officer was sent to visit the property in question to verify the property was not developed and that no structures existed on it. Upon confirmation the property was indeed a vacant piece of land. The ERSB altered the status of the account to make it inactive with no balance owing by the estate.

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**WorkplaceNL**

***“Shuttle Diplomacy”***

WorkplaceNL’s mandate is to provide a workers’ compensation program for injured workers in the Province, as well as the promotion of workplace health and safety via public education.

A man complained that WorkplaceNL wasn’t responding to his request for a motorized scooter. Our inquiry to WorkplaceNL determined that they forwarded a request for more information to the citizen’s doctor on three separate occasions; however, they hadn’t received a reply. WorkplaceNL advised that they are unable to make any decisions regarding the request for a motorized scooter until the information was in hand. Our Investigator followed up with the man to discuss the information and the next steps required in the process. The citizen advised he would follow up with his physician to make sure that WorkplaceNL was provided with the necessary information. He appreciated the assistance and got to work on the problem.

**WorkplaceNL**

***“Back on the Radar”***

A citizen filed a complaint with us against WorkplaceNL. The gentlemen explained that WorkplaceNL denied his request for hearing aids. Our Investigator needed to determine whether there were any ongoing appeals, so an inquiry was made to WorkplaceNL. Through this initial inquiry, WorkplaceNL came to the realization that the citizen was not afforded the opportunity to internally appeal the decision to deny the hearing aids. WorkplaceNL confirmed that a letter explaining their decision, with the opportunity for the citizen to appeal same would be forwarded to him immediately. WorkplaceNL also confirmed that should he request an appeal, it would be given priority.

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NLH is a crown corporation with a mandate to develop and administer housing assistance policy and programs for the benefit of low to moderate income citizens throughout the Province.

A citizen contacted our Office alleging the unjust disposal by NLH of furniture and personal belongings of her and her two children while she was making efforts to retrieve them. Following incidents of domestic violence towards her, she had left her unit for safety reasons while the matters were being dealt with in court. She left the Province to be with family. She told the maintenance person that her intention was to return to her unit once the court process was complete and the safety of her and her children was secured. The rent continued to be paid by the provincial Income Support Program. Unfortunately, she had not discussed her departure with her assigned Housing Administration Officer.

Subsequently, NLH became aware through another source that the unit was vacant. In accordance with the *Residential Tenancies Act*, NLH posted a twenty-four hour notice of inspection. The following day, the unit was inspected and an “Abandoned Property” form was completed which included photos of the condition of the unit. It was registered with the Residential Tenancies Division of Service NL (Residential Tenancies). NLH requested, and received approval to dispose of the contents of the unit in accordance with the law, citing the property was of no monetary value and it was unsanitary or unsafe to store (the unit having required extermination services at NLH’s expense).

The citizen returned to the Province and met with NLH approximately three weeks after the completed inspection. At that time, the unit had not been cleaned out and her personal belongings remained there. NLH agreed to let her remove her belongings; however, she did not communicate with officials of NLH about the problems she was having in retrieving her property. It was disposed of approximately two weeks later. She presented our Office with evidence of emails and telephone calls made. The investigation showed that an email was received by NLH after the disposal had taken place, but was directed to the Housing Administrative Officer’s junk email box.

The investigation concluded that while the citizen did make attempts to secure her unit and her belongings, she missed opportunities to communicate her situation with her assigned Housing Administrative Officer, who may have been able to support her within their policy.

The Affidavit of Abandoned Property currently in use by Residential Tenancies requests a host of evidence, including colour photos of all items, a list of items to be disposed of, the approximate value of the abandoned items and the approximate cost of storage fees. This allows for an evaluation of the cost of removal and a demonstration that the cost evaluation has been adequately assessed. NLH was successful in acquiring approval to dispose of the property without demonstrating whether an evaluation of the cost of storage against the value of the property had occurred. We reminded NLH

**Newfoundland  
and Labrador  
Housing  
(NLH)**

*“Communication  
and  
Documentation  
is Key”*

***“Communication and Documentation is Key” (cont’d)***

**NLH**

***“In Need of Some Space”***

that an evaluation should be presented to Residential Tenancies as it would strengthen evidence in the decision-making process in future cases of disposal of abandoned property.

A tenant of NLH complained that her request for a transfer to a more accessible unit had been denied.

She disclosed that she had been living in the same unit for approximately 17 years. The lady explained that she has numerous serious health issues and that her housing unit was no longer suitable; it was too small and not wheelchair accessible. She stated that she applied for a transfer approximately three years ago and she provided NLH with supporting medical documentation that demonstrated her need to live in a larger more accessible unit. She did not feel that NLH understood or appreciated the extent of her health issues, the daily challenges she faces, and the impact that her accommodations were having on her health.

We initiated a formal investigation and an Investigator conducted a home visit. It was evident that the housing unit no longer met her needs. A review of the disclosure provided by NLH determined that policy was not followed in this case. Based on this, the Manager of Rental Housing advised us that the citizen’s request was reconsidered and had been approved. We were also advised that one bedroom accessible units are limited and no vacancies existed. However, NLH assured us that once suitable accommodations became available, she would be notified without delay.

**Service NL (SNL)**

**Occupational Health & Safety**

***“Compliance Ensured”***

The Occupational Health and Safety Division (OHS) is a branch of SNL. The primary goal of OHS is accident and illness prevention. OHS recognizes that all workers have a fundamental right to a workplace that neither impairs their health, nor imperils their safety. This is achieved by working with stakeholders to establish, promote and enforce workplace practices, standards and procedures.

A citizen contacted us regarding being fired from his job for making an OHS complaint about a private company. He also alleged that OHS did an investigation of this company, finding multiple violations, but he believed the company never complied with OHS directives. The citizen was advised that our Office would not have the jurisdiction, or the legal ability, to investigate a private company regarding his termination and he was referred to the Labour Relations Agency on that issue. However, we were able to inquire with SNL on whether OHS had followed up on the violations and directives they gave the company.

SNL provided all relevant documentation that showed that OHS had indeed followed all the appropriate policies and procedures with respect to the specific safety violations, and confirmed that the file was now closed. Staff also advised that there would be ongoing inspections of this company to ensure compliance.

Service NL (SNL) provides a wide array of public services, including licensing and inspections related to public health, public safety, and environmental protection. SNL also uses Environmental Health Officers to enforce the Private Sewage Disposal and Water Supply Standards for both residential and commercial properties.

A citizen filed a complaint with our Office about being unfairly denied the ability to install a septic system on his property, as well as what he believed to be selective enforcement of the Sanitation Regulations under the *Public Health Act* with respect to his cabin. He stated an anonymous complaint had been filed against him with the Department which initiated an investigation leading to SNL forcing him to cease the installation of his septic system. He felt this was unfair as he stated he had provided information of violations of similar nearby cabins that were not investigated at all. He also felt that the communication with the Department was vague and inconsistent.

In response to the complaint, SNL advised that staff followed the policies in place and that the information the citizen provided regarding other cabins in violation of the *Sanitation Regulations* was insufficient to conduct investigations.

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The Department of Advanced Education, Skills and Labour (AESL) has a mandate to ensure the province has highly educated graduates and skilled workers, and to support the income of those who are unable to afford the costs of daily living.

We received a complaint from a citizen who was residing in a seniors' home, but had submitted an application for an apartment in another community. He stated that he was advised by AESL that the application was processed, approved and gone to the payment center and that payment would be sent to the landlord. However, the landlord didn't receive the payment. When the citizen contacted AESL, he was told that more documentation was needed. Confusion existed regarding the ownership of a home belonging to his deceased spouse that she left to family in her Will. AESL needed to see the Will to confirm that he was not the owner, as this would affect the amount of funding he would be approved for. Further complicating the issue was his difficulty in obtaining the documentation due to poor health and transportation issues. He was concerned that it would take too much time to get the documentation which would result in him losing the apartment he had secured. The citizen was desperate and contacted us to inquire whether there could be some accommodation made for him to secure the apartment before he got the documentation.

We contacted AESL to inquire on the man's behalf. AESL staff told us that after speaking with the citizen and reviewing the file, they would allow the funding for the apartment to be approved on a 30-day basis until the documentation could be acquired. The citizen was happy with the resolution, as it allowed him to secure the apartment he wanted.

SNL

*“Permission  
Granted”*

**Department  
of Advanced  
Education, Skills  
and Labour  
(AESL)**

*“Department vs.  
Apartment”*



**AESL**

**“Simple  
Misunderstanding”**

We received a complaint from a citizen who had just received notice from AESL that she had an \$11,000 overpayment. Understandably, she was very upset, stating that there has to be some kind of mistake.

An Investigator contacted officials with AESL and requested a review of the citizen’s file. The file review showed that there were overpayments dating back several years; but the current balance owing was \$86.55. The document which referenced \$11,000 was actually a statement of the total amount of income support the citizen had received. AESL advised that they would be deducting \$13.35 semi-monthly from her benefits until the \$86.55 overpayment was repaid. The Investigator contacted the citizen and advised her of this. She was relieved and very grateful for the help.

**Department of  
Justice and Public  
Safety**

**Adult Corrections**

**“Use of Force  
Review”**

Employees with the Department of Justice and Public Safety (the Department) in correctional institutions are trained in how to appropriately use force to maintain the safety and security of the institutions. Incidents where force is employed are to be documented and reported, and reviewed by the institutional head.

A citizen alleged that upon his return to a correctional facility, unnecessary force was used towards him by correctional officers, and this caused injury to his thumb and also to his back. It was alleged that the use of force was excessive for the situation.

Following our notification to the Department of our intent to investigate the use of force applied to the citizen, the Department stated it had no concerns with the incident as it had been reviewed by the institutional head and others in the Department. The Department acknowledged that during their internal investigation, there was noise on the surveillance tape that was concerning in one area of the institution where the inmate was being transferred. While the Department noted that the investigation did not identify any excessive use of force in this area where the alleged incident occurred, it was stated that video surveillance was lacking in this area and a camera was later installed.

The Department also noted that the correctional officers involved did not complete the requisite Use of Force Reports and Officer Statement and Observation Reports, as required to be completed on the day of the incident. Policy was subsequently reviewed with the staff involved and they were coached on the importance of completion of these documents.

We reviewed the surveillance of the incident, policies related to the use of force, reports completed by individuals involved and completed research of the security model currently implemented in Adult Corrections.

We identified a breach of section 37 of the *Citizens’ Representative Act* on the following points:

1. The Correctional Officers involved failed to follow policy requiring the completion of a Use of Force Report, Officer Statement and Observation Report, and Unit Offender Notes into the Provincial Corrections Offender Management System.
2. As a result of the incomplete reporting, the Institutional Head or designate failed to complete a review of the incident involving the use of force within two working days.
3. The departmental investigation of this incident involving the use of force was protracted in duration, with an investigative report being finalized seven months following the incident and six months from being made aware of it.
4. The departmental investigation lacked complete objectivity in failing to consider the totality of the situation, including the environment, situational factors, officer’s perceptions and the Correctional Officer’s and the citizen’s behavior during the incident.
5. The departmental investigation of the incident (with only audio surveillance) did not conclusively provide an acceptable explanation of the accuracy of events that were not captured on video surveillance, and did not correlate with the audio evidence available.
6. The assessment of risk was unreasonable to support the level of force used in the incident, considering that there were two Correctional Officers and two Sheriff’s Officers present with proximity to the cell block, when balanced with the behavior of the citizen.
7. The use of force in the incident was not supported by the policy-based principle of necessity, and there were alternate means of addressing the citizen’s behavior as per the Situation Management Model.
8. The use of force was not supported by the principle of restraint, and the level of force used in this incident was not reasonable or necessary in the circumstances.
9. The use of force gave an appearance of a punitive measure towards the citizen for his verbal disrespect of a female Correctional Officer.
10. The level of force used by the Correctional Officer in this situation was beyond that which was the safest and the most reasonable in light of the circumstances.

Based on these conclusions, the following recommendations were made:

1. The Department establish a more rigorous method of educating staff of the requirement to report any and all use of force incidents.
2. The Department consider the use of an independent investigator to review reported use of force incidents.
3. The Department provide ongoing training to all staff, inclusive of senior managers, of the Situation Management Model, and appropriate diffusing techniques and appropriate levels of use of force.

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**Adult  
Corrections**

***“Use of Force  
Review”  
(cont’d)***

4. The Department take any other measures to mitigate an apparent culture of acceptance of treatment towards inmates that is contrary to the human rights that all citizens are entitled to.

The Department advised of its agreement in principle with all recommendations made and the following measures will be implemented.

1. During use of force training, greater emphasis will be placed on ground level intervention such as conflict resolution, de-escalation, and verbal commands. Training will be provided to Officers to be aware of signs of a potential conflict between an inmate and a particular staff member with a view to removing that person from the situation to eliminate the conflict.
2. Enhanced training will occur for managers/those persons reviewing use of force incidents to ensure these incidents are appropriately reviewed. Where there is an injury requiring medical attention or complaint of inappropriate use of force, a committee comprising of the Assistant Superintendent for HMP, Captain of the St. John’s Lockup, and Manager of Public Safety and Enforcement (this position is not within Adult Corrections) will conduct a review.
3. The CoRT<sup>1</sup> program, daily muster and use of force training within Adult Corrections will be used to reinforce the requirement to report use of force incidents.
4. Management in Adult Corrections will continue to take steps to promote a culture of respect and using force as a last resort. If necessary, disciplinary measures will be taken to reinforce compliance with expected organizational norms and practices.

**Adult  
Corrections**

***“Is Help  
Needed?”***

An inmate incarcerated at the West Coast Correctional Center (WCC) contacted our office. The inmate was extremely upset. He stated that he needed to go to the Waterford Hospital; he was suicidal; he needed help; and he could no longer handle being confined in a jail cell. Immediate contact was made with the Assistant Superintendent of the facility as we were concerned for the inmate’s safety and well-being.

The Assistant Superintendent advised that once an inmate identifies as being suicidal the inmate is placed on suicide watch as per policy. In addition, the medical unit sets up a telehealth conference between the staff psychiatrist and the inmate. We were advised that during the initial telehealth conference the inmate was not cooperative. A second telehealth conference was held. The psychiatrist determined that the inmate was not suicidal, nor did he need to go to the Waterford. This was a clinical decision and one which was beyond our jurisdiction to investigate.

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<sup>1</sup>Cognitive Research Trust Program for Creative Thinking

The Assistant Superintendent advised us that the inmate was returned to the living unit and was confined to his cell. Staff reported that he was compliant and cooperative. Further follow-up revealed that he was eating his meals and was no longer expressing suicidal ideations.

The Support Enforcement Division performs a number of services related to the collection and distribution of court-ordered funds for support, maintenance or alimony pursuant to the *Support Orders Enforcement Act, 2006*.

A citizen contacted our Office stating that she had moved to the Province from Alberta and that she had transferred her child support order to Support Enforcement. She alleged that all efforts were not being made to enforce the outstanding debt, despite the information she had provided to assist in the enforcement process, including the date the debtor was returning to work and the name of the debtor's employer. She pointed out that while living in Alberta, other efforts such as revocation of driving privileges were employed when the order was in non-payment status.

When contacted by our Investigator, Support Enforcement indicated that for an order that is registered in NL, the actual enforcement occurs in the province of the debtor. Our inquiry prompted further contact with Support Enforcement in Alberta which stated the debtor was actually no longer employed by the reported employer. Alberta proceeded to revoke the debtor's driver's license and passport, and steps were taken to trace any employment activity with the debtor's trades union until the order could be enforced. Support Enforcement encouraged the citizen to stay in touch, and further inquiries would be made to Alberta on her behalf, to ensure that enforcement efforts are taken.

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Eastern Health is the largest integrated health authority in the Province, with 12,000 employees serving a regional population of more than 290,000. The Authority offers a full spectrum of health and community services, including public health, long-term care, hospital care and community-based programs and services.

Personal care homes (PCHs) are privately owned and operated residential homes. These homes are licensed and regulated by Eastern Health in consultation with Service NL. Personal care homes are monitored by a team of professionals on an ongoing basis, including a yearly review of compliance with the Provincial Personal Care Home Operational Standards.

**Adult  
Corrections**  
*“Is Help needed?”*  
*(cont’d)*

**Support  
Enforcement  
Division**  
*“Opening Lines of  
Communication”*

**Eastern Health (EH)/  
Department of  
Health and  
Community Services  
(HCS)**

*“Find the Time to  
Put it Online”*

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**EH/HCS**

***“Find the Time  
to Put it Online”  
(cont’d)***

A citizen contacted us alleging Eastern Health (EH) failed to adequately investigate an incident of medical error involving a family member at a personal care home. They also alleged that EH had refused to provide her with the pertinent information concerning this incident and the subsequent investigations.

We investigated and found that EH staff had adhered to all existing and applicable policy regarding inspections. However, we determined more forceful policy may be needed with respect to the monitoring of resident medication. We also felt public posting online of quarterly and annual inspection reports for PCHs would be prudent and in the public interest. Our Office made the following recommendations:

- 1) That EH permanently include a Medication Administration Records checking component for inspections and have home visits.
- 2) That EH post the results of all quarterly/annual inspection reports online.

EH agreed with Recommendation #1. EH also agreed with Recommendation #2; however, staff advised that while they are supportive of this recommendation and in increasing transparency, its implementation would fall under provincial jurisdiction. In response, we forwarded this recommendation to the Department of Health and Community Services for consideration.

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**Eastern Health**

***“A Mother’s Love”***

A concerned mother contacted us to say that her adult son was not receiving the care he required at the personal care home where he was residing. She explained that her son is 50 years old and has Huntington’s disease. She had genuine concerns that her son was not receiving the necessary care he required. Her opinion was that her son should be admitted to a long-term care facility in St. John’s. She provided us with information from her son’s attendance at the Rehabilitation Day Services Consultation at the Miller Centre. This information suggested that further assessment was required to determine the level of care required. The mother alleged that a follow-up assessment was never conducted.

We initiated a formal investigation of the complaint. This resulted in an assessment being conducted which determined that her son should be assessed for level 3 care. The gentleman was transferred to a long-term care facility in St. John’s. The mother advised us that she was very pleased that her son had been moved and she felt his needs were finally being met.

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The MTAP is administered by HCS and provides financial assistance to beneficiaries of the Medical Care Plan who incur substantial out-of-pocket travel costs to access specialized insured medical services which are not available in their immediate area of residence and/or within the Province.

A couple, one of whom was a cancer patient with few identified treatment options, indicated they had been referred to an out-of-province hospital where a surgery was performed that was not available here. Due to the urgency of the diagnosis and a lack of knowledge by the family of MTAP, the family did not acquire prior approval for consideration of reimbursement for travel expenses they incurred.

Upon their return, they were advised MTAP had denied the request for reimbursement of travel expenses as the treatment received (surgery) was one that was available in NL. To be considered for reimbursement of medically related travel expenses under MTAP, the following criteria must be met:

1. The beneficiary must incur substantial out-of-pocket expense.
2. The expense must have been incurred in order to access a medically required insured specialized service(s).
3. The beneficiary must be referred for out-of-province treatment by an in-province specialist physician.
4. The treatment recommended by the in-province specialist physician must not be available in the province.

Additional guidelines provided by the Department provide scenarios where medical transportation assistance through MTAP is not available for:

1. procedures which are not recommended by their NL specialist physician;
2. a second opinion;
3. procedures which are considered experimental in nature; and
4. procedures which are considered clinical trials.

While the family indicated they were referred to an out-of-province hospital for treatment, a formal referral letter, typically generated by referring physicians, was never presented as evidence. The out-of-province clinical file referenced a referral from the citizen's treating physician, but did not contain an actual letter of referral. In the absence of this referral and the ability to review the reason for the referral (and thereby make a determination of whether the referral was for an insured service that was not available in this province), the Department relied on a clinical assessment by its Medical Director to determine if the referral would support reimbursement.

**Department of Health  
and Community  
Services (HCS);  
Medical  
Transportation  
Assistance Program  
(MTAP)**

*“Improve the Map  
for MTAP”*

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**HCS; MTAP**

**“Improve the Map  
for MTAP”  
(cont’d)**

The family conceded that the surgery completed out of province, may have been generally available in NL; however, it was not available to their family member. It was their treating physician’s opinion that the patient’s medical condition had progressed such that the surgery would not have provided a benefit. This clinical view was supported by the evidence reviewed.

The role of our Office is to review compliance with administrative processes as opposed to reviewing clinical decision-making. In the absence of evidence to demonstrate that the couple’s circumstances complied with relevant policy, the family did not appear to be entitled to reimbursement under the Program. However, we found that the policy provisions that could have been considered and offered to the family were determined to be lacking. While the evidence supported that the request for reimbursement had indeed been reviewed by the Medical Consultant, the family had not been afforded the opportunity to have the claim reviewed by the policy-based Review Committee, as found in the Department’s policy. Our investigation also determined that information on the review process was not publically available via brochures or the government website.

We felt that the failure to provide information about the review process or have such information publicly available is unfair to end-users of the MTAP.

The Department accepted our recommendations to:

1. Develop a procedure to notify citizens accessing the MTAP of the review process available by referring to the process, particularly in letters outlining decisions on eligibility.
2. Ensure that policy information and information about the availability of a Review Committee is available via the website.
3. Make the Review Committee available to the family should they make their intention to avail of this review mechanism known by writing to the Minister as indicated in the policy.

**Department of  
Children, Seniors and  
Social Development  
(CSSD)**

**“Termination  
Frustration”**

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The Department of Children, Seniors and Social Development (CSSD) is the provincial department dedicated to helping ensure the protection and well-being of children and youth in Newfoundland and Labrador. The Department is responsible for the provision and development of programs, policies, standards and services related to several statutes including the *Adoption Act, 2013*; the *Children and Youth Care and Protection Act*; the *Young Persons Offences Act*; and the *Youth Criminal Justice Act (Canada)*.

We received a complaint from a citizen regarding what he believed to be unfair treatment by the Department with regard to his employment and subsequent termination. He also alleged that he was bullied and harassed by management and this was ignored by the Department.

In response to the complaint, the Department maintained that staff handled this situation appropriately, in consultation with the Human Resource Secretariat (HRS), and as per policy.

We investigated and determined that the Department acted appropriately and fairly with respect to the employment and termination of this citizen, as well as the harassment allegations he brought forward. Although we did take issue with some aspects of the HRS investigation, as well as the excessive delay by both the Department and HRS in providing evidence to us in a timely manner, we determined that CSSD did not breach the *Citizens' Representative Act* in respect of its dealings with the former employee.

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The Public Procurement Agency (“the Agency”), formerly known as the Government Purchasing Agency, is the central procurement unit of the Government of Newfoundland and Labrador, with responsibility for managing the procurement process on behalf of all government departments.

A citizen contacted us alleging a violation of the *Public Tendering Act* in relation to a tender for a Standing Offer Agreement on behalf of the Department of Transportation and Works. The citizen advised he had submitted a bid on a recent tender and met all specifications, yet the contract was awarded to another supplier who did not meet those specifications. The citizen advised that he had informed the Department of Transportation and Works and the Agency of the alleged non-compliance. At the same time he contacted us, the GPA had initiated a review of the contract. We monitored the status of the review and kept in contact with the citizen. The Agency subsequently advised it had exercised its option to cancel the contract with a thirty-day notice to the contract holder. The citizen expressed a desire for us to investigate how the contract was permitted to be awarded given this outcome. We were satisfied, however, that the GPA had appropriately reviewed the matter and addressed the identified discrepancy with the specifications required by the Department of Transportation and Works. A new contract would eventually be let. No further investigation was required in the case.

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Memorial University of Newfoundland (MUN) is a multi-campus, multi-disciplinary, public university based in St. John's. It has more than 18,500 students spread across four campuses, and nearly 85,000 alumni.

## CSSD

*“Termination  
Frustration”  
(cont'd)*

## Public Procurement Agency

*“Specification  
Frustration”*

## Memorial University of Newfoundland (MUN)

*“Continuation  
Irritation”*

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**MUN**  
**“Continuation  
Irritation”**  
**(cont’d)**

An employee with MUN made a complaint regarding the financial calculations of a Long Term Disability (LTD) claim with the University. This was her second claim for LTD over the course of a number of years. Her issue was that her LTD payments were being based on her salary when her first claim was made, instead of being based on her current salary. She felt that this may have been against policy, but she could not get an explanation from MUN staff.

We contacted MUN in an effort to obtain clarification for the employee. Staff looked into the matter and advised that this employee’s situation was handled correctly and according to the policy in place. The University provided the relevant documentation to support its position. We were able to explain this to the citizen who was satisfied that a third party like our Office was able to verify the correct information.

**Newfoundland and  
Labrador Liquor  
Corporation (NLC)**  
**“Too Close for  
Comfort”**

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We received a complaint from a wine agent, alleging his business had suffered because the Chief Executive Officer (CEO) of the NLC was using his position to benefit his family and friends. The citizen stated the situation had caused him to lose significant business. He alleged a blatant conflict of interest between the CEO and his son, who was also a wine agent.

Our investigation focused on a review of the documentation provided, and an analysis of the policies that relate to conflict of interest. We were concerned with a trend that saw two companies, one owned by the CEO’s son and one owned by a friend of the CEO, steadily increase their share of purchase orders for wine.

Section 3 of the *Conflict of Interest Act* states a conflict can arise when an employee’s decision gives rise to an opportunity for self-benefit. Unlike some other jurisdictions, our legislation does not define a conflict of interest to exist when the parties to a commercial or contractual relationship are parent and adult child.

The following recommendation was made and accepted:

1. That NLC undertake a review of its conflict of interest policies to ensure they are restructured to enable board members and employees to better identify possible and or perceived conflict of interest situations.

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The NLC accepted our recommendation that its Board of Directors establish an anti-nepotism policy which is tailored for employees and contacts who are in family relationships with board members or persons in positions of authority within the NLC.

The Department of Finance stated it had consulted internally on our report recommendations. Based on this consultation, it has been determined that Government will take a broader approach to the issue, and will consider the recommendations of our report in a government-wide review of conflict of interest which will include crown corporations such as NLC. As such, the Department of Finance does not plan to bring forward amendments to the *Liquor Corporation Act* to address apparent conflicts of interest between familial members at this time, and will await the outcomes of the broader government-wide review.

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NLC

*“Too Close  
for Comfort”  
(cont’d)*



## Statistics

During 2017-2018, the OCR received 611 complaints and inquiries. The following tables illustrate the origin of the complaints we received and which government departments and agencies were concerned. 539 jurisdictional complaints and inquiries are in the table below; 72 non-jurisdictional complaints and inquiries are listed on page 26.

### Complaints/Inquiries by Department and Agency

April 1, 2017 – March 31, 2018

Department / Agency	Complaints / Inquiries
Advanced Education and Skills	2
Income Support Division	47
Central Health	11
Central Regional Services Board	1
Children, Seniors and Social Development	18
College of the North Atlantic	4
Eastern Health	29
Eastern Regional Waste Management Authority	31
Education and Early Childhood Development	1
Finance	2
Fisheries and Land Resources	10
Health and Community Services	9
Newfoundland and Labrador Medical Care Plan - MCP	4
Justice and Public Safety	7
Correctional Facilities	273
Human Rights Commission	4
Labrador-Grenfell Health	1
Memorial University	3
Municipal Affairs and Environment	5
Municipal Assessment Agency	1
Newfoundland and Labrador English School District	5
Newfoundland and Labrador French School District	1
Newfoundland and Labrador Housing Corporation	17
Newfoundland and Labrador Hydro	1
Newfoundland and Labrador Legal Aid Commission	2
Newfoundland and Labrador Liquor Commission	1
Public Procurement Agency	3
Service NL	14
Tourism, Culture, Industry and Innovation	1
Transportation and Works	20
Western Health	5
WorkplaceNL	6
<b>Total Complaints and Inquiries</b>	<b>539</b>



**Complaints / Inquiries by  
Electoral District  
April 1, 2017 -  
March 31, 2018**

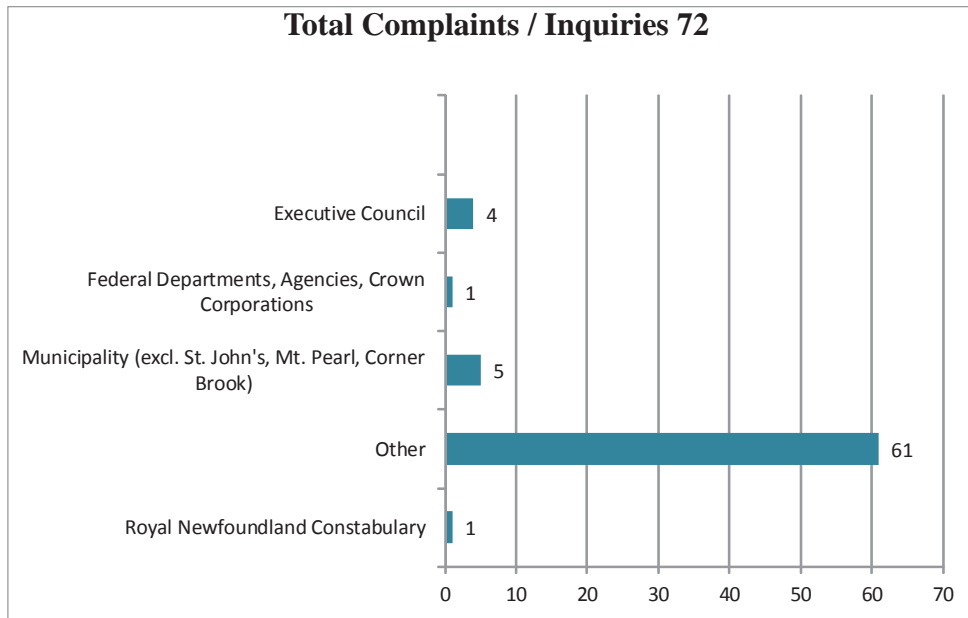
<b>Electoral District</b>	<b>Complaints / Inquiries</b>
Baie Verte-Green Bay	6
Bonavista	3
Burgeo - LaPoile	2
Burin - Grand Bank	4
Carbonear - Trinity - Bay de Verde	16
Conception Bay East - Bell Island	17
Conception Bay South	5
Corner Brook	5
Exploits	7
Ferryland	6
Fogo Island - Cape Freels	5
Fortune Bay - Cape La Hune	2
Gander	12
Grand Falls – Windsor – Buchans	7
Harbour Grace - Port de Grave	21
Harbour Main	8
Humber - Bay of Islands	2
Humber - Gros Morne	2
Labrador West	1
Lake Melville	20
Lewisporte - Twillingate	7
Mount Pearl - Southlands	5
Mount Pearl North	4
Mount Scio	11
Other Provinces	13
Placentia - St. Mary's	10
Placentia West - Bellevue	3
St. Barbe - L'Anse aux Meadows	2
St. George's – Humber	1
St. John's Centre	12
St. John's East - Quidi Vidi *1	241
St. John's West	8
Stephenville - Port au Port	24
Terra Nova	12
Unknown *2	80
Virginia Waters - Pleasantville	8
Waterford Valley	12
Windsor Lake	7
<b>Total Complaints and Inquiries</b>	<b>611</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.

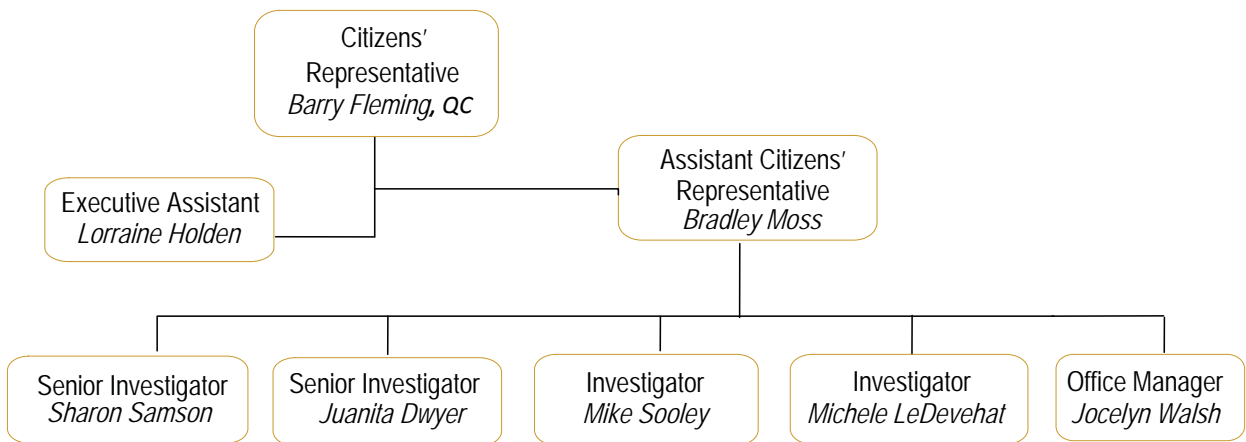
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## Complaints/Inquiries Non-Jurisdictional April 1, 2017 – March 31, 2018



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

*Photo: Wild Iris Blooming Along Green Garden Trail,  
Gros Morne National Park, NL*