



**Office of the
Citizens' Representative**

**2017-18
ANNUAL PERFORMANCE
REPORT**

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September, 2018

Message from the Citizens' Representative

I am pleased to present the 2017-18 Annual Performance Report of the Office of the Citizens' Representative ("OCR"). This Report outlines the actual results achieved in pursuit of our objective for the 2017-18 fiscal year, as outlined in the 2017-20 OCR Activity Plan tabled 28 June 2017.

The OCR is a statutory office of the House or Assembly as defined in the **House of Assembly Accountability, Integrity and Administration Act**. Its primary guiding legislation is the **Citizens' Representative Act**. OCR provides a legislative Ombudsman service for the province, and investigates public interest disclosures under both Part VI of the **House of Assembly Accountability, Integrity and Administration Act** and the **Public Interest Disclosure and Whistleblower Protection Act**.

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.

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

Barry Fleming, Q.C.
Citizens' Representative

OVERVIEW

The **Citizens' Representative Act** was passed by the House of Assembly in 2001. The legislation grants the Citizens' Representative powers to investigate complaints about public services, programs and personnel. Referrals from MHAs and the Lieutenant Governor in Council about matters of administration are also anticipated.

OCR's mandate has since expanded twice; first in 2007 under Part VI of the **House of Assembly Accountability Integrity and Administration Act**, and again in 2014 under the **Public Interest Disclosure and Whistleblower Protection Act**. These powers were granted by the House of Assembly to investigative disclosures made by employees of the government with respect to wrongdoing in the public service.

Barry Fleming, Q.C., is the Citizens' Representative. 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 2017-18, the OCR received:

- 611 complaints/inquiries under the **Citizens' Representative Act**,
- 16 complaints/inquiries under the **Public Interest Disclosure and Whistleblower Protection Act**¹, and,
- 0 complaints/inquiries under the **House of Assembly Accountability, Integrity and Administration Act**.

OCR closed 583 complaint/inquiry files during the fiscal year (also taking into account complaints/inquiries from the previous fiscal year). Contained in these files were 50 recommendations to government, all connected with formal and investigations under Section 15 of the **Citizens' Representative Act**.

¹ Details on OCR activities pursuant to the **Public Interest Disclosure and Whistleblower Protection Act** require stand-alone reporting to the House of Assembly. Previous reports are available on our website or by request.

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:

Telephone: (709) 729-7647
(800) 559-0079

Address: 4th Floor, Beothuck Building
20 Crosbie Place
P.O. Box 8400
St. John's, NL A1B 3N7

Email: citrep@gov.nl.ca Website: www.citizensrep.nl.ca

Total operational expenditures of the OCR for 2017-18 were \$756,010. Further information on budgeting and expenditures can be found on page 10.

HIGHLIGHTS AND PARTNERSHIPS

The Annual Digest is the main document of record for OCR and outlines in detail the ongoing work of the Office, and the types of complaints received, mediated and investigated. The Digest also contains complaint statistics, information on the complaint process, outreach initiatives, and other topics of interest.

In addition to its regular investigation and mediation work, the key highlights and accomplishments of the OCR during 2017-18 include:

- Hosting the Canadian Council of Parliamentary Ombudsman conference in St. John's.
- Regularly meeting with representatives of the Seniors Resource Centre.

- Meeting with the newly appointed Seniors Advocate to discuss how our Offices will implement the referral function anticipated in Section 17 of the **Seniors Advocate Act**.
- Holding a seat on the Board of Directors of the Forum of Canadian Ombudsman (FCO) and participating in planning for the FCO/Association of Canadian College and University Ombudsman 2017 bi-annual conference in Ottawa.
- Addressing new recruits in the correctional officer training program.
- Participation in the Virginia Park Community Centre Health and Wellness Fair.
- Attendance at the St. John's Citizens' Crime Prevention Committee's "World Elder Abuse Day" event.
- Implementing the first phase of the OCR Records Retention and Disposal Schedule.
- 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.
- Completing our first year of jurisdiction over the provincial Regional Service Boards created under the *Regional Service Boards Act, 2012*.

REPORT ON PERFORMANCE

Fiscal year 2017-18 is the first in OCR's 2017-20 Category 3 Activity Plan. 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 first objective relevant to the issue was set for completion in the time period covered by this report:

By March 31, 2018, the Office of the Citizens' Representative will have assessed real or perceived barriers existing for citizens and employees to access its programs.

Indicator: Consulted with other jurisdictions and staff on real or perceived barriers and access to programs, notably the whistleblowing program.

Our activities to meet this objective are as follows:

Planned	Actual
<p>Consulted with other jurisdictions and staff on real or perceived barriers and access to programs, notably the whistleblowing program.</p>	<p><u>Consultation with other Ombudsman jurisdictions re: barriers.</u></p> <p>New Brunswick: December 18, 2017</p> <p>Nova Scotia: December 19, 2017</p> <p>Ontario: December 19, 21, 22, 2017 January 16, 2018</p> <p>Manitoba: December 19, 2017 January 3, 4, 2018</p> <p>Saskatchewan: December 19, 2017 January 11, 19, 2018</p> <p>British Columbia: December 19, 22, 27, 2017</p> <p><u>Consultation with staff re: barriers.</u></p> <p>Solicitation and written reply December 18, 19, 20, 2017</p> <p>Analysis of input: January 8, 2018</p> <p>Debrief/discussion with staff: January 19, 2018</p>

Discussion of Results

This research and consultation process was fruitful and showed the very broad number of challenges to access that exist in the Canadian legislative ombudsman community. Each province that participated had similar challenges to Newfoundland and Labrador, but most identified a particular barrier unique to their geographic location, population demographic, and culture. Jurisdictions with very large urban centres are overcoming challenges around providing services in multiple languages to new Canadians. Jurisdictions with large First Nations populations are working to close the gap between their offices and their indigenous communities. Provinces with large land masses and expansive northern geography remain committed to having a periodic presence there because citizens in these areas deserve and appreciate having the Ombudsman visit their area. All of this in a time when technological advances are putting services on people's personal devices, and younger Canadians are gravitating away from traditional methods of communication like mail and telephone, toward email and social media platforms. All offices noted the cautious interplay between promoting your services and demonstrating results while operating in a strictly confidential environment. Jurisdictions with whistleblower mandates are all working to promote their services in a business line that has the specific challenge of being an outlet for employees to make serious allegations about someone typically in higher authority.

Staff pointed to barriers such as a general lack of awareness of OCR inside and outside the public service, a perceived disconnect with the 18-45 demographic, the location of OCR in St. John's, language and cultural barriers faced by new Canadians, fear of reprisal for complaining in a small province, and the complex nature of citizens having, more than ever, multiple intertwined relationships with government departments, agencies and community groups.

With regard to the whistleblower mandate: fear of reprisals, the negativity of being possibly identified as a whistleblower, limited knowledge of the disclosure process and the existence of other optional reporting pathways (collective bargaining, human rights, labour standards, OHS, harassment investigations) which coexist or overlap onto sections of OCR's overall mandate.

Together, the Citizens' Representative and staff resolved to attempt nine measures during 2018-19 to raise awareness of services, notably the whistleblower program.

1. Dedicate space in the OCR newsletter to the whistleblower program during 2018-19.
2. Upgrade and re-issue pamphlets designed in 2014 to promote the whistleblower mandate.

3. Undertake intra-provincial travel within budgetary confines to promote services, speak to groups and local media.
4. Approach the Center for Learning Development to possibly deliver content via course content or webinar on the OCR mandate, notably whistleblowing.
5. Engage the Seniors NL peer support volunteers throughout the province to raise awareness of our services so that knowledge can be passed throughout rural areas.
6. Engage on Facebook at a higher level than previous years.
7. Provide the option of an online, fillable complaint form.
8. Engage both the Native Friendship Center and the Association of New Canadians to promote our services.
9. Develop content for the OCR website that clarifies reporting pathways available to citizens and public employees.

Outlook: Objective 2 (2019)

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.

OPPORTUNITIES AND CHALLENGES AHEAD

The opportunities available to, and the challenges confronting OCR for fiscal year 2018-19 are:

- Availing of the opportunity to promote our programs and services, especially whistleblower programs, in line with our 2017-20 Activity Plan.

- Overcoming the challenge of implementing promotional measures without impinging on OCR's core mandate investigative functions and services to citizens.

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 2018 (unaudited).

OFFICE OF THE CITIZENS' REPRESENTATIVE

	<u>Estimates</u>		
	Actual	Amended	Original
01. Salaries	667,228	677,000	677,000
Operating Accounts:			
Employee Benefits	3,847	8,000	8,000
Transportation and Communications	14,280	34,800	34,800
Supplies	1,813	5,000	5,000
Professional Services -	-	12,000	12,000
Purchased Services	67,093	85,400	85,400
Property, Furnishings and Equipment	1,749	4,000	4,000
<u>02. Operating Accounts</u>	<u>88,782</u>	<u>149,200</u>	<u>149,200</u>
Total: Office of the Citizens' Representative	756,010	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.