



Office of the Citizens' Representative  
Province of Newfoundland and Labrador

# Citizens' Representative Annual Digest

April 1, 2019- March 31, 2020





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

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December 2020

The Honourable Scott Reid  
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, 2019 to March 31, 2020.

Respectfully submitted,

Bradley J. Moss  
Citizens' Representative





## Our Mission Statement

Through investigation and mediation, the Office of the Citizens' Representative strives to achieve high standards of trust in, and accountability by, the Public Service of Newfoundland and Labrador. Our services are independent, impartial and free.



Seeking fairness...  
finding solutions

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## Message from the Citizens' Representative



In my last Digest, I reported on the successes achieved during the final year of office of my predecessor, Barry Fleming, QC. With only a short time on the job, I was still adjusting to my new role. As the former Deputy, there were things that I'd "always done"

that I would have to delegate in order to concentrate on my new duties. But my promotion meant I had to recruit a new Deputy, who had a very short runway to depart from, and not a lot of time to get up to altitude. After a PSC / House of Assembly competition, I was happy to appoint Sharon Samson, MSW, to the job. Sharon was a Senior Investigator at the OCR who had over a decade of experience in OCR investigations, and prior to that, complaint management roles at the Human Rights Commission and the former Department of Human Resources, Labour and Employment. Together with the staff, we plunged into a year that included an expansion of our mandate into investigating harassment issues at the House of Assembly, additional hiring, a fairly large public interest disclosure investigation, a massive landlord-funded interior renovation, my first budget, a one in 100 year snowstorm that closed the city for two weeks, and the onset of a global pandemic and associated provincial lockdown. Any of these issues can cause problems in isolation; but in every

situation the team pulled together; pivoted when necessary and we persevered, while simultaneously delivering our core mandate services to hundreds of Newfoundlanders and Labradorians and coming in under budget.

Working in complaints management involves daily interaction with people who are in varying stages between minor aggravation and full blown personal crises. When the phone rings you never expect it to be a person who is going to tell you just how great things are going. Over time it can be stressful and like many professions, very difficult not to take home with you.

But complaints fall within the role of our office, and the staff believe in our mandate as much as I do. They work hard to prosecute it every day and together, we talk these problems out and do our best to ensure everyone's doing ok in terms of processing what comes before them in the course of their work. It is a blessing to be surrounded 100% by highly competent, professional, sensible people, and I thank Sharon Samson, Michele Lédévehat, Michael Sooley, Lorraine Holden, and Jocelyn Walsh for supporting me, together with our new employees, Rebecca French and Karen Chaisson, who joined the OCR this year. Finally, welcome back Juanita Dwyer, who spent a year practicing social work here in the St. John's area before resuming her fifteen year career here at the OCR.

Thank you for taking the time to read this report. It highlights our progress and activities during a busy year for our Office. I hope you find it interesting and informative.

## 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 2020, Canada continues to be an active player on the forefront of the evolution of the ombudsman concept, as it expands further into the public and private sector.

The Office of the Citizens' Representative (OCR) opened in St. John's in February 2002. The OCR serves 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, the OCR has also been responsible for the government-wide public interest disclosure 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: [www.citizensrep.nl.ca](http://www.citizensrep.nl.ca).

Effective April 1, 2020, the OCR became responsible for receiving complaints from employees under the Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly. Complaints under this policy can be brought forward by another Member of the House of Assembly, or an employee of the legislative, or executive branch of the Provincial Government. It is the role of the OCR in this capacity to provide information and supports to employees to address allegations of harassment and, where an employee requests, investigate these allegations and report its findings to the House of Assembly.

As a non-partisan Statutory Office, the OCR investigates public bodies based on complaints received from:

- citizens;
- whistleblowers;
- employees of the legislative and executive branch;
- Members of the House of Assembly; and,
- the Lieutenant Governor-in-Council.

Under its primary mandate, the **Citizens' Representative Act**, the OCR provides an ombudsman service to citizens who interact with the Government of Newfoundland and Labrador. Citizens who access, or attempt to access any Provincial Government services under line departments or agencies, boards or corporations, often reach out to the OCR as they navigate government and various administrative processes.

The case summaries within this digest will demonstrate examples of the following types of services provided to citizens.

**The OCR engages with citizens to determine how best to resolve a particular matter of administration.**



### **Inquiry - Early Resolution**

Often, citizens' complaints can be resolved through mediation or facilitation, when investigation is not required to resolve, at best, or provide reasons why a matter cannot be resolved to the citizens' satisfaction, at least. Public bodies provide the OCR with open lines of communication in the interest of early resolution or settlement of complaints.



### **Investigation**

Citizens' complaints sometimes require formal investigation where there exists a prima facie appearance of unfairness. Formal investigations can, where unfairness is identified, result in recommendations to settle the complaint for the citizen. Alternately, where it has been found that the department and/or agency has afforded adequate administrative fairness, the OCR endeavours to provide sound reasoning to the citizen for such findings.

The Citizens' Representative is also empowered to launch investigations in his or her own discretion, without a specific named complainant.



### **Navigation, Self-Advocacy and Referral**

Citizens contact the OCR from all walks of life and with a wide range of interpersonal skills and knowledge. Where appropriate, the OCR will provide support to citizens by referring them to available appeal mechanisms or the appropriate program within government to address their complaints. Sometimes, citizens may prefer to address concerns on their own, but require direction and information to support their self-advocacy. In situations where citizens' complaints are non-jurisdictional, the OCR will refer the complainants to the appropriate agency to deal with their concerns. In these situations, the OCR can often link the citizens directly with the person(s) they need to speak with or 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 the OCR's 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**;
- 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.

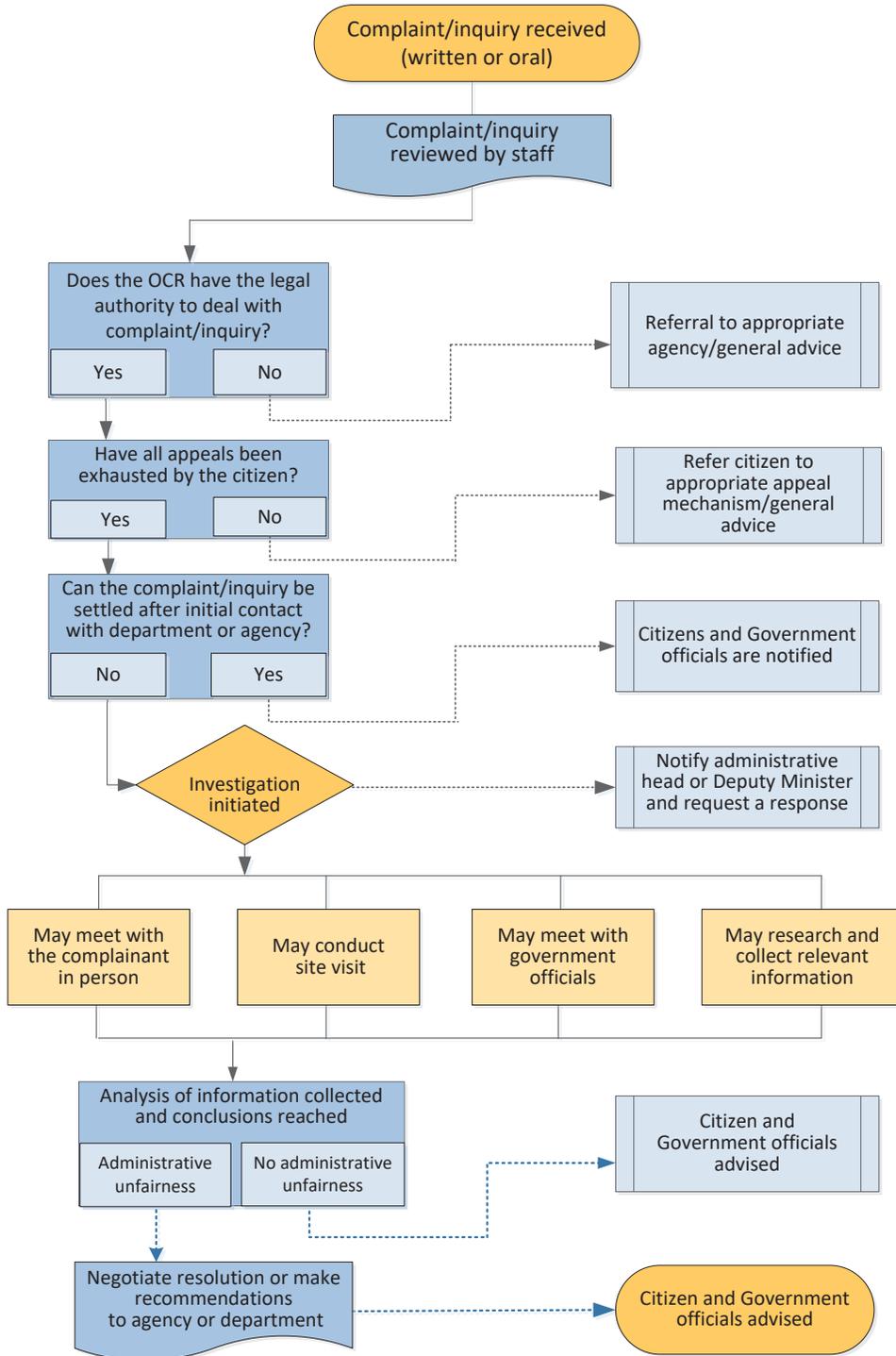
The **Citizens' Representative Act** also does not cover the acts, errors, omissions or decisions of the Government of Canada, or the municipal level of government. Neither does it authorize the investigation of private companies or private citizens.

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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 February 2020.

ALLEGATION	DEPARTMENT
Unfair process of Red Seal Certification	Immigration, Skills and Labour – Apprenticeship and Trades Certification
Unfair disciplinary charge, lost mail, denied access to programming	Justice and Public Safety – Adult Corrections
Unable to locate family member in custody	Referral: Legal Aid Commission
Denial of prescription drug coverage	Health and Community Services – Newfoundland and Labrador Prescription Drug Program
Inadequate access to toothbrush/toothpaste, cleaning supplies, health care, inconsistent decisions permitting personal items, condition of pillows/blankets, time between meals, lighting in tv room	Justice and Public Safety – Adult Corrections
Denial of funding for washer and dryer	Immigration, Skills and Labour – Income Support Division
Inadequate access to medical attention	Justice and Public Safety – Adult Corrections
Failure to receive items ordered through bookstore	Memorial University of Newfoundland
Discontinued medication	Justice and Public Safety – Adult Corrections
Unable to access funding to support out-of-province travel to attend mental health conference (2)	Out of jurisdiction
Inadequate access to recreation and overcrowding	Justice and Public Safety – Adult Corrections
Unfair 90-day eviction	Newfoundland and Labrador Housing
Denied phone call due to unit lockdown	Justice and Public Safety – Adult Corrections
Denied avenue of appeal- reclassification	Out of jurisdiction- Human Resource Secretariat
Inadequate access to library, unable to access suboxone	Justice and Public Safety – Adult Corrections
Inappropriate actions of security guard	Western Health
Denied programming while in segregation	Justice and Public Safety – Adult Corrections
Denial to cover cost of training course in the United States	Immigration, Skills and Labour
Delay in adding contact to phone list	Justice and Public Safety – Adult Corrections
Concern with contract between local service district and Regional Service Board	Referral: Regional Service Board
Wrongful dismissal	Newfoundland and Labrador Housing
Inappropriate treatment by correctional staff	Justice and Public Safety – Adult Corrections

## A Month in Review (cont'd)

ALLEGATION	DEPARTMENT
Unsuccessful attempts to make contact	Human Rights Commission
Wrongful dismissal	Out of jurisdiction – private company
Seeking payment for accommodations while undergoing medical treatment (2)	Health and Community Services
Delay in access to medical attention	Justice and Public Safety – Adult Corrections
Delayed assignment of lawyer	Legal Aid Commission
Harassment by social worker	Eastern Health
Unfair unit lockdown	Justice and Public Safety – Adult Corrections
Denial of emergency food voucher	Immigration, Skills and Labour- Income Support Division
Poor water quality in a private home	Out of jurisdiction
Failure to provide information	Children, Seniors and Social Development
Denied information in relation to a transfer to a federal institution	Justice and Public Safety – Adult Corrections
Concern for adult parents involved in court process	Out of jurisdiction
Mail not being processed	Justice and Public Safety – Adult Corrections
Denial of emergency accommodations	Newfoundland and Labrador Housing
Special diet not meeting nutritional guidelines	Justice and Public Safety – Adult Corrections
Frequent change in lawyer	Legal Aid Commission
Unfair institutional charge	Justice and Public Safety – Adult Corrections
Unable to access canteen services	Justice and Public Safety – Adult Corrections
Unfair deductions from reimbursement of out-of-province medical transportation	Health and Community Services – Medical Transportation Assistance Program
Inaccurate amount of child support arrears	Justice and Public Safety – Support Enforcement Program
Improper procurement process for acquisition of goods and services	Eastern Health
Denied use of weight room without medical clearance	Justice and Public Safety – Adult Corrections
Incorrect clinical assessment	Central Health
Forced on leave status pending court action against employer	Justice and Public Safety
Denied medical attention	Justice and Public Safety – Adult Corrections
Frustration with release process	Justice and Public Safety – Adult Corrections
Workplace harassment	Referral to government employer
Social worker not responsive to telephone calls and office visit	Children, Seniors and Social Development
Denial of legal aid	Legal Aid Commission

## Public Interest Disclosure



The OCR is responsible for investigating allegations of wrongdoing 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 2019-20, the OCR received one disclosure 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, 2019, to March 31, 2020, was tabled on July 31, 2020. This report can be accessed electronically at <https://www.citizensrep.nl.ca/pdfs/PIDAreport2019-2020.pdf>.

The OCR handled ten inquiries under PIDA during 2019-20.

# 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 2019-20.

## Newfoundland and Labrador Housing Corporation (NLH)

The Provincial Home Repair Program (PHRP) is delivered through Newfoundland and Labrador Housing (NLH). The program assists low-income homeowners with financial assistance who require improvements to their home.

### Support with the Basic Necessities



A citizen contacted our Office having been denied funding by NLH to assist with the repair of the water pump in the home. The citizen was concerned that the family did not have access to running water as a result of the broken pump. The family was in receipt of income support benefits from the Department of Immigration, Skills and Labour (ISL).

Upon inquiry, NLH advised the citizen owed outstanding arrears on previous loan accounts. NLH policy states that an applicant is ineligible for additional funding if they owe outstanding funds to NLH. The OCR was advised that the application could be considered if the citizen was willing to engage with the income support program to assess financial eligibility and provide a commitment of eligible funding towards the new repayable loan, as long as the homeowner was in receipt of income support.

With further inquiry to ISL, it was determined the citizen was eligible for additional funding to meet the commitment as requested by NLH. Based on this commitment of a monthly payment to NLH on behalf of the citizen, she was able to submit an application to the PHRP to address the broken water pump and once again have running water in the home.

### Discretionary Decision-Making



In June 2018, Newfoundland and Labrador Housing (NLH) assumed responsibility for the oversight and administration of the emergency shelter program to respond to situations of homelessness and requests for emergency accommodations. An advocacy coordinator contacted our Office with concern for alleged unfair treatment and lack of support experienced by a citizen from NLH. The citizen was reportedly assaulted at his

home (a private rental unit) and was afraid to return to the home due to the potential safety risk that remained. The citizen's situation had been presented to the NLH Emergency Housing staff, whereby a request for emergency shelter had been denied.

The OCR reached out to NLH to determine how requests for emergency shelter are generally assessed and how this particular situation was assessed. NLH informed that upon identification of a safety risk in the home, the citizen was instructed to report the risk to local law enforcement. In turn, if law enforcement determined there was a safety risk, they would reach out to the NLH Emergency Shelter line to request emergency accommodations for the citizen. As NLH had not heard from the Royal Canadian Mounted Police (RCMP), and had not received any documentation to demonstrate there was a safety risk to the citizen if he remained in the home, NLH made the determination that the citizen was not homeless and should return to the rental unit. Our Office spoke with the advocacy coordinator who was willing to connect with the RCMP to determine if there would be a risk of violence present if the citizen were to return to the rental unit.

NLH subsequently informed the OCR that although the citizen did not meet the criteria to be approved for emergency shelter accommodations, given concerns for the citizen's well-being, NLH would assist with accommodations.

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A citizen complained to our Office that an application for a transfer had been denied by NLH because the request did not meet the eligibility criteria. The citizen's concerns stemmed mostly from other "nuisance tenants" in the apartment building who were described as disturbing the citizen and other tenants by constantly knocking on their doors asking for food, money, etc. The citizen also stated there had been an increase in thefts and smoking in and around the residence. The citizen believed these circumstances warranted a transfer because he could no longer reasonably enjoy his apartment. The citizen further believed that measures were warranted to be in place by NLH to address these ongoing concerns.

The OCR reached out to NLH and determined the citizen's request for a transfer was fairly reviewed because social issues

## Discretionary Decision-Making (cont'd)



## Supporting Peaceful Enjoyment



## Supporting Peaceful Enjoyment (cont'd)



in general do not meet the eligibility criteria for approval. NLH's tenant handbook informs tenants that requests for a transfer are only considered in situations where a home is either too small or too large for a family. Our inquiry indicated the citizen was actually in receipt of a rental supplement and not actually a tenant of a property owned by NLH. NLH provided financial assistance on behalf of the citizen towards rent and heating costs, however, they were not the actual landlord of tenants of the building. In situations such as that experienced by the citizen, NLH recommends that residents contact the building superintendent or property manager and have any issues that are affecting the peaceful and quiet enjoyment of their property addressed at that level.

## Health and Community Services

### A Matter of Documentation



The Department of Health and Community Services (HCS) has responsibility for the delivery of the Income Support Medical Transportation Assistance (ISMT) program. The ISMT provides assistance to recipients of income support who incur substantial out-of-pocket travel costs to access specialized medical services which are not available in their immediate area of residence.

A citizen complained that ISMT was acting unfairly by requesting documentation of a medical appointment in writing prior to attending the appointment in order to approve funds for travel in advance. The citizen had received confirmation of a specialist appointment by telephone and was advised that the specialist does not provide written confirmation. The citizen was not in a position to access medical transportation without financial assistance and had no other option but to cancel the appointment.

The ISMT provided its position that requirement of written confirmation of appointments is within standard operating procedures, and policy requires this confirmation on file prior to approving financial assistance to attend the appointment. Following this complaint, the ISMT altered the practice for individuals with a positive history of providing written confirmation of past appointments, to provide eligibility for an advancement of funds for upcoming appointments. The concerns raised by the citizen were acknowledged by ISMT. The Department apologized for the inconvenience to the citizen.

The Medical Transportation Assistance Program (MTAP) provides financial assistance to beneficiaries of the Medical Care Plan (MCP), 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 citizen from a rural area contacted the OCR having requested financial support to attend a specialist appointment in St. John's. The citizen was advised by MTAP that the approval was subject to agreement that \$20 would be deducted from the eligible travel amount due to an overpayment owed by the citizen. The citizen was confused about why they owed the Department money and further concerned that repayment would present them with undue hardship.

To gain a better understanding of the debt owed by the citizen, the OCR made an informal inquiry to MTAP. It was indicated that MTAP had previously erred in approving a service for an ineligible expense. As a result, the Department advised the citizen that the debt would be recovered by deducting increments of \$20 or \$50 from future travel, depending on the travel requirements.

The citizen's complaint raised concerns for the OCR regarding the principles of administrative fairness when recovering overpayments connected to MTAP. A formal investigation was initiated to review policy and legislative provisions to ensure the following aspects of administrative fairness are available to citizens accessing this program:

- that citizens are advised of the reason leading to the establishment of any overpayment;
- that citizens are advised of and understand the recovery process; and
- that citizens are informed of any appeal mechanisms available.

The Department acknowledged that approval was made in error and the requested service was actually ineligible under MTAP guidelines. Our investigation was directed to the process of how the program resolves and collects overpayments to ensure it provides for a fair and consistent approach.

Our investigation found that the Department was reviewing its policy respecting both the determination and the administration of overpayments. It further indicated that as the policy had yet to be formalized, the citizen's debt under MTAP would be waived and the overpayment would be forgiven.

## Making Fairness and Transparency a Priority



## The Challenges of Professional Regulatory Reform



The Department of Health and Community Services provides a lead role in policy, planning, program development and support to the four regional health authorities and other mandated health and community service agencies. The Department also monitors and provides feedback as appropriate with respect to program implementation, accountability issues and health and community outcomes.

Eastern Health is the largest integrated health authority in the province, with 13,000 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 unique provincial programs and services.

There are occasions when the nature of a complaint to the OCR indicates a need to engage more than one public body to adequately respond to allegations leading to an investigation. This holds true in situations such as this case example where the Department of Health and Community Services is responsible for legislative and policy directives and the health authority is responsible for the implementation of the directives.

In December 2012, the **Pharmacy Act** was amended to require that pharmacy technicians be registered with the Newfoundland and Labrador Pharmacy Board to be able to practice this profession within Newfoundland and Labrador. The OCR received a number of complaints from pharmacy technicians. It was alleged the process implemented by Eastern Health, directed by the Department of Health and Community Services, to implement the new regulations under the **Pharmacy Act**, was unfair to existing pharmacy assistants/technicians. It was particularly unfair to those required to complete additional educational components to meet the registration requirements, which would enable them to maintain their current positions. Essentially, it was reported that the regulatory reform caused much turmoil for practicing, unlicensed pharmacy technicians. It was alleged that inconsistent and unclear information was provided to pharmacy technicians at the onset of the regulatory reform process, and that pharmacy technicians were not adequately supported to complete the requisite educational component to enable their registration. Our investigation acknowledged the regulatory reform gave rise to both the Department and the Regional Health Authorities being responsible for the implementation of the change in legislation

requiring the regulation of the previously unregulated profession. During the investigation, it became quite clear these measures were taken in the public interest and the chronology of both the Department and the Regional Health Authorities demonstrated the significant efforts made by these public bodies to minimize the impact on pharmacy assistants over an extended period of time. The issue of whether or not this process was effectively communicated and implemented was complicated as the process involved other bodies, such as the Newfoundland and Labrador Pharmacy Board and the union(s) representing the pharmacy technicians.

The OCR acknowledged, and were empathetic towards the stress and disruption during this process among the affected employees. We could not, however, conclude that there was any failure in adequately communicating the details of the regulation process to employees. There were also various initiatives to support pharmacy technicians in the regulatory reform process, inclusive of, but not limited to funding and reimbursements associated with tuition and exam costs, preparatory education sessions, personal support, leave and scheduling for practical training.

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Eastern Health is responsible for administering a full continuum of health and community services, including the Community Supports Program (CSP). It focuses on supporting individuals by promoting independence, safety, and overall well-being with a belief that individuals have a right to live in the community. Under the CSP, eligibility for services of the Home Support Program is assessed following receipt of a referral.

A citizen contacted the OCR advising that a request for reassessment for Home Support eligibility was denied. The citizen had been assessed for supports several weeks prior and was determined to be ineligible for home supports. The citizen, however, identified both a deterioration in health and some life changes since the first assessment, and felt the denial of a reassessment was unfair due to the level of deterioration experienced.

The citizen understood that the OCR could not question the clinical assessment previously completed, which resulted in ineligibility. Our Office was able, however, to work with Eastern Health and a reassessment for eligibility was scheduled with the citizen.

## The Challenges of Professional Regulatory Reform (Cont'd)



## Eastern Health

### Change can Happen Quickly



## The Effectiveness of Education and Awareness



Eastern Health is the largest integrated health organization in Newfoundland and Labrador with over 13,000 health care and support service professionals providing quality care and health service delivery in the region and in the Province.

A public service employee filed a complaint with our Office against the employer, Eastern Health. The employee felt the employer did not adequately respond to their reports of bullying and harassment. All employers owe a duty to employees to ensure workplace bullying is addressed with adequate measures to ensure such behaviour is not condoned or perpetuated in any form.

Upon investigation, the OCR made the determination that Eastern Health provided a reasonable response to the reports of bullying and harassment made by the citizen, in an effort to address the incidents and to ensure that bullying and harassment were prevented in the future. The OCR did not cite a breach of the **Citizens' Representative Act** and found that Eastern Health did have adequate policies to respond to both allegations of harassment and for resolving workplace conflict. We believed, however, that it could improve how it communicated and trained staff in relation to these policies. It is our position that employees must feel confident they can bring forward any work related relationship concerns they may have with a view to resolving issues constructively, and at the earliest possible stage. An intimidating workplace sets the tone for communication breakdown, poor productivity, and absenteeism. Training ensures all employees are aware of what behaviours constitute harassment and bullying and that employees understand what to do if they feel harassed.

## Department of Justice and Public Safety - Adult Corrections

### Assumption of Guilt



Adult Corrections is a Division of the Corrections Branch of the Department of Justice and Public Safety. Adult Custody in the Province is comprised of five correctional facilities and two detention centres which provide services and programs for sentenced, remanded and temporarily detained offenders.

The OCR received a complaint from an inmate concerned about the lack of procedural fairness experienced during the disciplinary court process. While in prison, when an inmate is formally charged with a violation of the Prison Regulations, the inmate is required to participate in a disciplinary hearing. A disciplinary panel will hear evidence to make a determination of whether the charge is substantiated and discipline is appropriate.

As soon as possible after the hearing, the inmate will be provided written notice of the findings and the reasons for the decision with the resulting disposition. It was alleged by the inmate that the disposition was prepared in advance of attendance at the disciplinary hearing, and thus, guilt was predetermined before the inmate was given the opportunity to respond to the charge.

Upon investigation to determine whether appropriate process was followed, the Department confirmed the disposition was prepared in advance of the disciplinary hearing for ease of administration. The Department also acknowledged that preparing the disposition in advance of the hearing is not the accepted practice and does not accord with the principles of natural justice. The Superintendent of Prisons reminded staff responsible for disciplinary hearings of the duty to conduct hearings in a procedurally fair manner.

The OCR found that the admission of having completed the disciplinary disposition prior to the hearing was a breach of the **Citizens' Representative Act**. The following recommendations were made by the OCR:

1. The Department report on what steps have been made to facilitate the proclamation of the new **Correctional Services Act**, and provide ongoing updates to the OCR regarding this proclamation.
2. The Department ensure policy regarding independent third-party adjudication of disciplinary hearings is implemented and enforced in order to improve procedural fairness.
3. The Department take steps to create and implement a formal disciplinary disposition appeal sheet to be readily available at disciplinary hearings and to staff on each unit to permit ease of access to inmates in a timely manner.
4. The Department take steps to ensure that disciplinary dispositions are prepared subsequent to disciplinary hearings with the use of time stamps to mark each step of the disciplinary hearing process.
5. The Department take steps to ensure that paperwork generated through disciplinary hearings contains all required information, and does not breach another individual's privacy and confidentiality.

In response, the Department demonstrated the efforts it had undertaken to support these recommendations. The OCR will continue to monitor these actions.

## Assumption of Guilt (Cont'd)



## Access to Services



An inmate from Her Majesty's Penitentiary (HMP) contacted the OCR stating that despite requests over several weeks to speak with a Classification Officer to discuss ongoing concerns, he had not received any indication that his requests were received or that a meeting was being secured for him. The inmate alleged the lack of responsiveness was unfair as there were several concerning issues that required attention and support of the Classification Officer.

Upon inquiry to administration at HMP, the OCR was informed of policy that requires a Classification Officer must meet with an inmate at least every 30 days. A review of the inmate's file confirmed it had been more than 30 days since the inmate had access to a Classification Officer. The OCR was assured the inmate would meet with a Classification Officer on the same day. Administration further indicated that this policy requirement would be addressed with appropriate staff members to ensure compliance.

## Department of Justice and Public Safety

### Communication is the Key



The Support Enforcement Division falls under the Department of Justice and Public Safety. It performs a number of services related to the collection and distribution of court-ordered funds for support, maintenance or alimony. The authority for the establishment of the agency lies under the **Support Orders Enforcement Act, 2006**.

A citizen complained to the OCR that they were not able to acquire information from Support Enforcement about their file. The citizen alleged they had sent multiple emails over a number of months without receiving a response. When the citizen called Support Enforcement, it was acknowledged that the enforcement officer had been on leave during the period in question. The citizen eventually received a response from the enforcement officer; however, subsequent inquiries did not receive a response. Adding to the citizen's frustration was the fact that the Support Enforcement website stated: "Utilize the Enforcement Officers' voice messaging system and your call will be returned within two business days", a commitment the citizen alleged was falling short.

The OCR contacted the Support Enforcement Division to inquire of the alleged communication issues. The Director confirmed the two-day response time may not always be met due to the high volume of calls they had been receiving, in combination with a decrease in staff. It was acknowledged that an out-of-office automatic email reply would have alleviated the citizen's frustration. The Director advised he would follow up with the citizen and that he would be available in the event the citizen experienced further communication issues.

A company of Nalcor Energy, Newfoundland and Labrador Hydro (NL Hydro) is the main energy provider for the citizens of Newfoundland and Labrador in more than 200 communities across the Province.

A citizen submitted a complaint to the OCR stating NL Hydro unfairly denied a claim for damage to a household appliance. It was alleged the damage occurred after a “reclose”. A review of NL Hydro’s Damage Claim Policy and like policies from other jurisdictions determined that damage claims are typically denied unless there is negligence on the part of the hydro electricity company.

Through inquiry, the OCR was satisfied that NL Hydro completed a thorough investigation of the cause of the power interruption that caused damage to the citizen’s appliance. NL Hydro verified that a reclose, which is a normal system operation that enables power to be quickly restored when the temporary fault that caused the interruption is cleared, did take place on the date indicated. The OCR verified this to be an industry standard operation to which there was no crew response. Normally, recloses are not responded to unless they occur multiple times within a very short timeframe. NL Hydro also verified that the power interruption would have affected all customers of the community. A search of the NL Hydro’s Customer Service database did not show any other complaints from other customers in the community resulting from the reclose. While not conclusive, we found this fact to be supportive of NL Hydro’s position that there was no evidence of negligence by NL Hydro that would have caused the citizen’s damages.

The Department of Immigration, Skills and Labour (ISL) provides financial support, in addition to a host of other services, to eligible citizens to assist in the provision of basic needs, primarily through the Income and Social Supports Division. The Income and Employment Support Appeal Board (the Board) is an independent, arms-length body created by ISL and authorized to hear appeals on decisions regarding income and employment supports.

Having received a significantly large overpayment declaration following an internal investigation by ISL, a citizen engaged the process of the Board to appeal the decision. The citizen complained to the OCR, alleging the process to appeal through the Board was unfair and further alleged that the Board did not follow proper procedure. The citizen complained the Board lacked communication in relation to responding to procedural questions and failing to

## Newfoundland and Labrador Hydro

### Fault for Damage



## Immigration, Skills and Labour (ISL) (formerly Advanced Education, Skills and Labour)

### All Decisions Require Due Process



## All Decisions Require Due Process (Cont'd)



provide relevant documents to which they were entitled in a timely manner. In addition, the citizen complained of the perceived unfairness of commencing collection of the overpayment prior to the conclusion of the appeal processes available to her.

The OCR conducted a comprehensive investigation of the appeal process afforded to the citizen. Upon review of the evidence, the OCR found the citizen had been treated unfairly by ISL for the following reasons:

1. The citizen should have been provided with a detailed breakdown of the overpayment.
2. A manager should have been more diligent in returning the citizen's phone calls to respond to concerns and questions in relation to the overpayment.
3. The citizen should have been provided with relevant documents in relation to the internal investigation as requested over the course of several months. These documents were actually provided hours prior to the actual Appeal Board hearing.
4. The citizen was not provided with procedural fairness by the Appeal Board as it did not address the citizen's concern of having received information from the Department related to the internal investigation until hours before the hearing. As such, the citizen did not have adequate opportunity to review the evidence and establish a response to the allegations under investigation prior to the hearing.

Our investigation found that the Department had breached the **Citizens' Representative Act** and the following recommendations were made:

1. The citizen be granted another hearing before the Appeal Board.
2. The Department not initiate collection activity by way of the Federal Set-Off process until the citizen has exhausted all available appeal levels.

3. The Department amend policy to provide a detailed summary of the overpayment to accompany the notice of overpayment to citizens.
4. The Department provide a directive to staff to be more diligent in responding to citizens who have questions, complaints or who request documentation.

The OCR acknowledged the flexibility of Departmental staff during the investigation and reported the acceptance by the Department to these recommendations. The citizen later advised, following a new Appeal Board hearing, that the decision of the overpayment was overturned and a garnished income tax refund was returned to the citizen.

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The OCR heard from a citizen who had returned to live in Newfoundland and Labrador (NL) from another province. Upon arriving in NL, the citizen had applied for income support benefits from the Department of ISL, but was experiencing difficulty obtaining specific information to support the application. The citizen was not able to acquire confirmation that income support benefits had been terminated in the province in which she previously resided. Also, specific medical documentation was requested to support a special food diet, but there was no physician in the rural community to confirm the citizen's medical need. The citizen was experiencing difficulty navigating these pieces to complete the income support application and was having difficulty reaching a manager to clarify how to proceed in light of the circumstances.

Upon inquiry, ISL advised the OCR that it had the ability to address the issue of confirming termination of benefits in another province. The citizen was also advised that medical documentation from the local nurse practitioner will meet the requirement to support a special food diet. Subsequently, a manager reached out to the citizen and resolved the matter.

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The Department of Immigration, Skills and Labour has a mandate to ensure the Province has skilled workers for a fast-growing economy. The Apprenticeship and Trades Certification Division is responsible for Apprenticeship and Certification programs for those pursuing a career in a skilled trade.

## All Decisions Require Due Process (Cont'd)



## Navigating the System Requirements



## The Cost of Renewal



## The Cost of Renewal (Cont'd)



The OCR received complaints from several citizens in relation to a \$50 renewal fee for journey persons' Certificate of Qualification, noting that Newfoundland and Labrador was the only Province in Canada with the requirement to renew a Certificate of Qualification. The complaining journey persons alleged it was unfair to require a fee to renew a Certificate of Qualification that does not expire. It was further alleged that despite the Certificate of Qualification not expiring, the Province placed an expiry date on the Certificate, which resulted in some journey persons being denied employment opportunities.

The Department advised that during the previous three years, it had been working toward a new interprovincial Apprenticeship Management System with other Canadian jurisdictions. The historical practice of including an expiration date on the Certificate of Qualification was raised as an issue and a change to remove the expiry date from the Certificate was approved by the Provincial Apprenticeship and Certification Board and took effect April 1, 2019. The issue of the replacement fee was also under review by the Department.

In light of the change in practice confirming that expiration dates would no longer be included on future Certificates of Qualification, and that the replacement fee was under review by the Department, the OCR determined the matter did not require further investigation. The current application form on the Department's website for renewal or replacement of a Certificate of Qualification states: "There is no payment for Journeyperson certificate renewal after April 1, 2019..."

## Environment, Climate Change and Municipalities

### Communication is Key



The Department of Environment, Climate Change and Municipalities supports the economic, social and environmental sustainability of municipalities, communities and regions through the delivery of effective programs, services and supports. It is responsible for environmental protection and enhancement through implementing water resource and pollution prevention regulations and policies, as well as coordinating environmental impact assessments of proposed development projects and managing impacted sites.

A citizen contacted our Office regarding the lack of communication from the Department after filing an official environmental complaint.

It was alleged that several emails and telephone calls were unanswered during a five-week time span. The citizen was seeking an update on the progression of his environmental complaint. Upon inquiry to the Department, it was determined that the staff person contacted was not responsible for assessing the complaint and had not been available to respond to the citizen's telephone calls and emails.

The Department acknowledged receipt of the complaint that was under assessment at the time of our inquiry. The OCR was assured the citizen would receive a response in the coming days. Within this timeframe, the citizen did receive a response to the complaint from the Department.

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A citizen contacted the OCR as a member of the Public Service Pension Plan. The citizen had questions about re-entry to the Group Insurance Plan, having opted out of the plan several years previous, and wasn't confident in navigating this process.

While the OCR does not have jurisdiction of the Human Resource Secretariat, it has established a network of contacts within most areas of government, as a means of supporting the work of our Office. In this instance, the OCR was able to rely on our contact to inquire whether the desire of the citizen to enter the Group Insurance Plan was possible, and if so, to outline the relevant process.

Following consultation with the Human Resource Secretariat, the citizen was advised of the process of re-entry to the Group Insurance Plan and was provided with contact information to engage the process to determine future eligibility.

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The OCR aims to educate and empower citizens, particularly where jurisdiction may be lacking, by supporting self-advocacy with a goal towards resolution.

A citizen contacted our Office in relation to issues within the health care system. The citizen outlined in detail some health issues and the diagnosis by their family physician. Having conducted their own research, the citizen was seeking a referral to a specialist to ensure an accurate diagnosis and proper treatment to which they were entitled.

## Communication is Key (Cont'd)



## Navigating the Process



## Self-Advocacy is a Tool Towards Understanding and Resolution



### Self-Advocacy is a Tool Towards Understanding and Resolution (Cont'd)



The citizen was advised of the limitations of the OCR with respect to clinical decision-making; however, was also offered some self-advocacy possibilities with the intention to understand their medical situation and to ensure the most accurate assessment.

Self-advocacy is about empowering and enabling people to take responsibility for decisions that can affect their lives. Self-advocacy can help:

- clarify a person's views and wishes;
- express a person's views and wishes in a way that ensures they are understood by others;
- provide clear options to assist in decision making and taking action.

Since the citizen had previously completed research of the medical issue and had a clear sense of resolution - a referral to a specialist, the OCR was able to encourage the need to plan steps to seek the referral by raising the issue with the treating physician with the evidence to support the request in a diplomatic and respectful manner.

### The Value of Referral



Following assessment, where matters are determined to be non-jurisdictional for the OCR, our investigators try to provide appropriate referral information to citizens to explore further options of support or resolution of their concern.

A citizen contacted the OCR about an issue he was experiencing with the possibility of faulty installation of spray insulation. Several years previous, he contracted a local private company to have spray foam insulation installed in his basement. Since that time, there had been on-going issues with mildew. The citizen, having contacted the OCR as a last resort, was provided with a list of insulation contractors in an attempt to gauge the cost of a second opinion or inspection to remedy the issue.

### Working Together to Support Understanding



A citizen, residing in a privately operated personal care home, contacted the OCR alleging she had not received her GST payment from the federal government. This matter had caused significant distress to the citizen as she was lacking understanding of how this could happen. The health authority responsible for subsidizing the

citizen's accommodations confirmed that GST payments are not part of the financial assessment process, and therefore, should be accessible to the citizen. The OCR does not have jurisdiction of personal care homes. It was felt, however, that it would be valuable to acquire an understanding of the citizen's circumstances and to have someone who was aware of the circumstances to sit with the citizen to hear the concerns. Upon contact with the business manager of the personal care home, it was disclosed that the citizen owed arrears of monthly rent and had entered into an agreement with the personal care home to pay the arrears with the GST eligibility. Further, it was indicated that the arrears had been paid in full and the business manager sat with the citizen to explain the situation and that future GST payments would be available to her.

## Working Together to Support Understanding (Cont'd).



## Good To Know

The deaf, hard of hearing and speech-impaired communities have greater access to our services with the use of the **Canada VRS** (Video Relay Service).

- Through this service, citizens have
- access to a sign language
- interpreter who relays the call in

**SRV**  **CANADA** **VRS** real time. OCR staff are prepared and welcome calls using this service.

For convenience, the OCR has its **complaint form** available on our website in a fillable format. The complaint form can be completed and submitted online by visiting <https://www.citizensrep.nl.ca>.

## Statistics

During 2019-2020, the OCR received 696 complaints and inquiries. The following tables illustrate the origin of the complaints we received and which government departments and agencies were concerned. 610 jurisdictional complaints and inquiries are in the tables below; 86 non-jurisdictional complaints and inquiries are listed on page 28.

<b>Complaints and Inquiries by Department April 1, 2019—March 31, 2020</b>			
<b>Departments</b>	<b>2019-2020</b>	<b>2018-2019</b>	<b>2017-2018</b>
Immigration, Skills and Labour	4	11	2
Income Support Division	30	47	47
Children, Seniors and Social Development	22	19	18
Education	2	2	1
Finance	1	1	2
Fisheries, Forestry and Agriculture	13	5	10
Health and Community Services	42	18	9
Justice and Public Safety	13	29	7
Correctional Facilities	355	369	273
Environment, Climate Change and Municipalities	2	3	5
Industry, Energy and Technology	1	0	0
Digital Government and Service NL	12	11	14
Tourism, Culture, Arts and Recreation	1	1	1
Transportation and Infrastructure	6	3	20
<b>Total Complaints and Inquiries</b>	<b>504</b>	<b>519</b>	<b>409</b>

## Statistics (Cont'd)

<b>Complaints and Inquiries by Agencies and Boards</b>			
<b>April 1, 2019—March 31, 2020</b>			
<b>AGENCIES/ BOARDS</b>	<b>2019-2020</b>	<b>2018-2019</b>	<b>2017-2018</b>
College of the North Atlantic	3	2	4
Eastern Regional Waste Management Authority	0	4	31
Human Rights Commission	3	3	4
Memorial University	4	2	3
Municipal Assessment Agency	0	0	1
Newfoundland and Labrador Medical Care Plan - MCP	0	1	4
Newfoundland and Labrador English School District	1	3	5
Newfoundland and Labrador French School District	0	0	1
Newfoundland and Labrador Housing Corporation	31	26	17
Newfoundland and Labrador Hydro	2	0	1
Newfoundland and Labrador Legal Aid Commission	11	8	2
Newfoundland and Labrador Liquor Commission	2	3	1
Provincial Information and Library Resources Board	2	0	0
Public Procurement Agency	0	1	3
Public Service Commission	1	1	0
<u>Regional Health Authorities</u>			
Central Health	8	8	11
Central Regional Services Board	0	1	1
Eastern Health	23	25	29
Labrador-Grenfell Health	0	0	1
Western Health	7	7	5
WorkplaceNL	7	10	6
Workplace Health, Safety & Compensation Review Division	1	1	0
<b>Total Complaints and Inquiries</b>	<b>106</b>	<b>106</b>	<b>130</b>

## Complaints/Inquiries by Electoral District April 1, 2019 - March 31, 2020

Electoral Districts	2019-2020
Baie Verte – Green Bay	4
Bonavista	1
Burgeo - LaPoile	1
Cape St. Francis	3
Carbonear – Trinity – Bay de Verde	9
Cartwright – L'Anse Au Clair	1
Conception Bay East – Bell Island	1
Conception Bay South	3
Corner Brook	10
Exploits	1
Ferryland	12
Fogo Island – Cape Freels	6
Fortune Bay – Cape La Hune	1
Gander	8
Grand Falls – Windsor – Buchans	6
Harbour Grace – Port de Grave	12
Harbour Main	6
Humber – Bay of Islands	4
Humber – Gros Morne	2
Labrador West	1
Lake Melville * 1	44

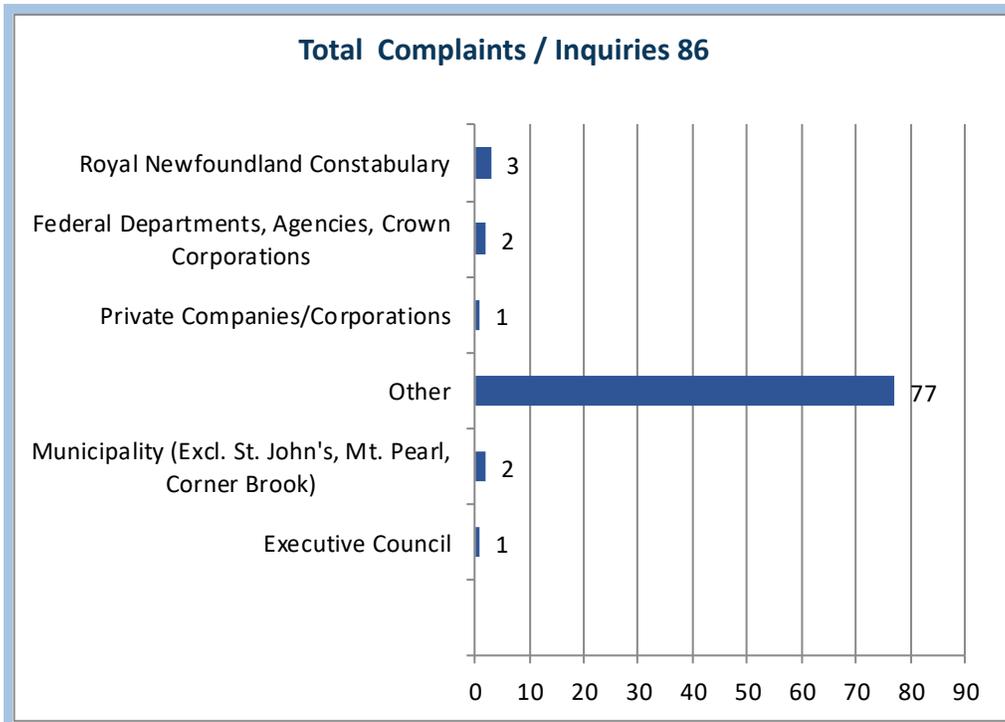
Electoral Districts	2019-2020
Lewisporte - Twillingate	3
Mount Pearl - Southlands	6
Mount Pearl North	10
Mount Scio	15
Other Provinces	11
Placentia - St. Mary's	3
Placentia West - Bellevue	3
St. Barbe - L'Anse Aux Meadows	2
St. George's - Humber	1
St. John's Centre	7
St. John's East - Quidi Vidi *2	281
St. John's West	6
Stephenville - Port au Port	25
Terra Nova	25
Topsail - Paradise	2
Torngat Mountains	1
Unknown * 3	145
Virginia Waters - Pleasantville	1
Waterford Valley	6
Windsor Lake	7
<b>Total Complaints &amp; Inquiries</b>	<b>696</b>

\* Note 1: The volume of complaints emanating from the District of Lake Melville is a result of the location of the Labrador Correctional Centre.

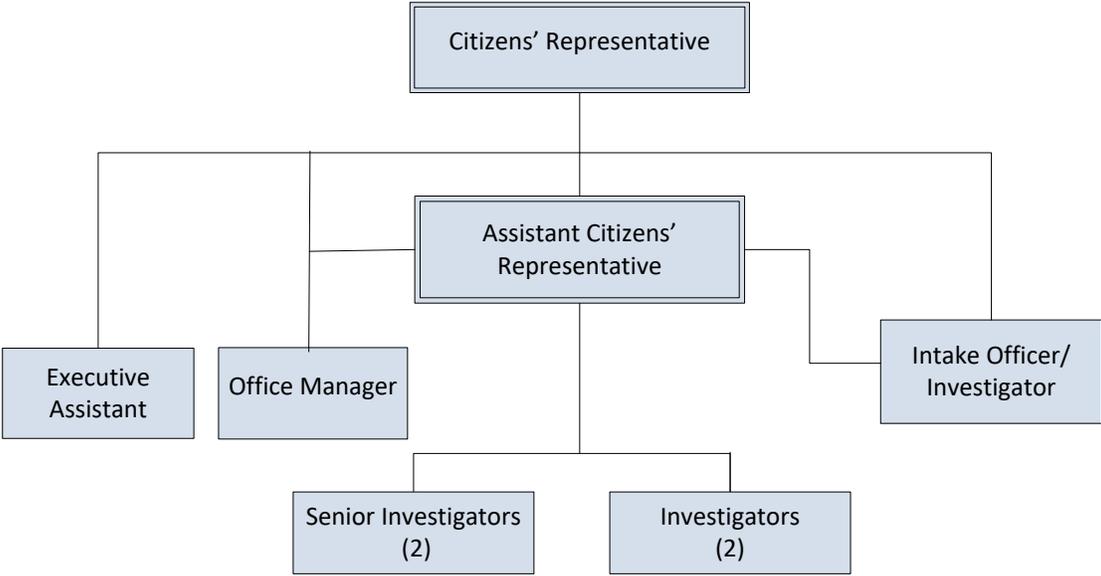
\* Note 2: The higher volume of complaints emanating from the District of St. John's East - Quidi Vidi is a result of the location of Her Majesty's Penitentiary.

\* Note 3: Out-of-country, no fixed address, systemic investigations.

## Complaints/Inquiries Non-Jurisdictional April 1, 2019 - March 31, 2020



# Office of the Citizens' Representative Organizational Chart



## HOW TO REACH US

Bradley J. Moss	Citizens' Representative
Sharon Samson	Assistant Citizens' Representative
Michele LeDévéhat	Senior Investigator
Mike Sooley	Senior Investigator
Karen Chaisson	Intake Officer/Investigator
Rebecca French	Investigator
Juanita Dwyer	Investigator
Jocelyn Walsh	Office Manager
Lorraine Holden	Executive Assistant



<https://www.citizensrep.nl.ca/>



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