



Office of the Citizens' Representative
Province of Newfoundland & Labrador

Citizens' Representative Annual Digest

April 1, 2011 - March 31, 2012

...seeking fairness, finding solutions



Office of the Citizens' Representative

Province of Newfoundland and Labrador

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October 15, 2012

The Honourable Ross Wiseman
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 the Office of the Citizens' Representative during the period April 1, 2011 to March 31, 2012.

Respectfully submitted,

Barry Fleming, Q.C.
Citizens' Representative

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Message from the Citizens' Representative

This is the fifth Annual Digest of the Office of the Citizens' Representative. The Digest provides me with an opportunity to outline various aspects of the work of our Office during 2011-2012. In addition to providing general information about our Office, we provide a summary of our public education and access initiatives, as well as samples of some case files.

2012 marks the 10th anniversary of the opening of the Office of the Citizens' Representative. During the year, we provided a serial history of the Office in our quarterly newsletters, *OCR Insights*. Copies of the newsletters are available on our website

www.citizensrep.nl.ca. The 10th anniversary has given me pause to consider where our Office stands in its evolution.

Shortly after I was appointed in 2006, I introduced myself to the other provincial ombudsmen and their legal staff. I was struck by the long histories of the ombudsman institution throughout Canada. I recall speaking by phone with the legal counsel for the Saskatchewan's Ombudsman's Office. After a general discussion about mutual topics of interest, we chatted about our respective careers. I was somewhat surprised to learn that he had spent over 30 years as legal counsel for the Saskatchewan Office. He explained that over time, and with hard work, the role of the ombudsman office had become widely known and generally accepted, not only throughout the public service, but within the general community, as well. That conversation provided the first real understanding I had that beyond our day-to-day work, we had a duty to ensure a permanent place for this Office in the fabric of our Province's democratic institutions.

Our Office has reached maturity. We have an organizational structure which consists of a Senior Investigator and three Investigators reporting to a permanent Assistant (Deputy) Citizens' Representative. The average tenure of our professional staff is six years. We have developed robust policies and procedures for conducting citizen and systemic investigations. We gain confidence from our modest successes and learn from our mistakes. Most importantly, we have a clear understanding of our mandate. This permits us to work hard at the issues we are authorized to investigate, while accepting that certain complaints are beyond our jurisdiction.

Undoubtedly, the future will present many challenges. Over the past 10 years, we have established a strong foundation upon which to meet those challenges. We can continue to build upon that foundation if we focus on the concerns of citizens as they seek fairness and attempt to find solutions when dealing with the public service.

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

Barry Fleming, QC
Citizens' Representative

Our Role

The Office of the Citizens' Representative ("the OCR") is an independent complaint investigation and mediation Office established by the House of Assembly in 2002. Its activities are governed by the *Citizens' Representative Act*. The OCR also has a mandate to investigate public interest disclosures made by Members and staff of the House of Assembly under the *House of Assembly Accountability, Integrity and Administration Act*.

As a non-partisan Office, the OCR initiates investigations of provincial public bodies based on complaints received from citizens, referrals from Members of the House of Assembly or from the Lieutenant Governor-in-Council. The Citizens' Representative is also empowered to initiate investigations without a specific complaint.

The Office assumes a mediation function in cases which do not require formal investigation, and has been highly successful in clearing miscommunications, correcting information or otherwise obtaining early resolution for citizens using informal mediation tactics. It does so with the cooperation of departments and agencies.

A by-product of the OCR's contact with citizens is that the Office has built an excellent capacity to provide referral and information services in response to complaints that may fall outside of its jurisdiction, or have other appeal options available under law. In this regard, the OCR's experience with the multitude of government services, its "bird's eye view," fosters the connection between citizens and the public service and can put people on the correct track towards resolving their problem. Many calls received are from citizens who simply do not know which way to turn for help.

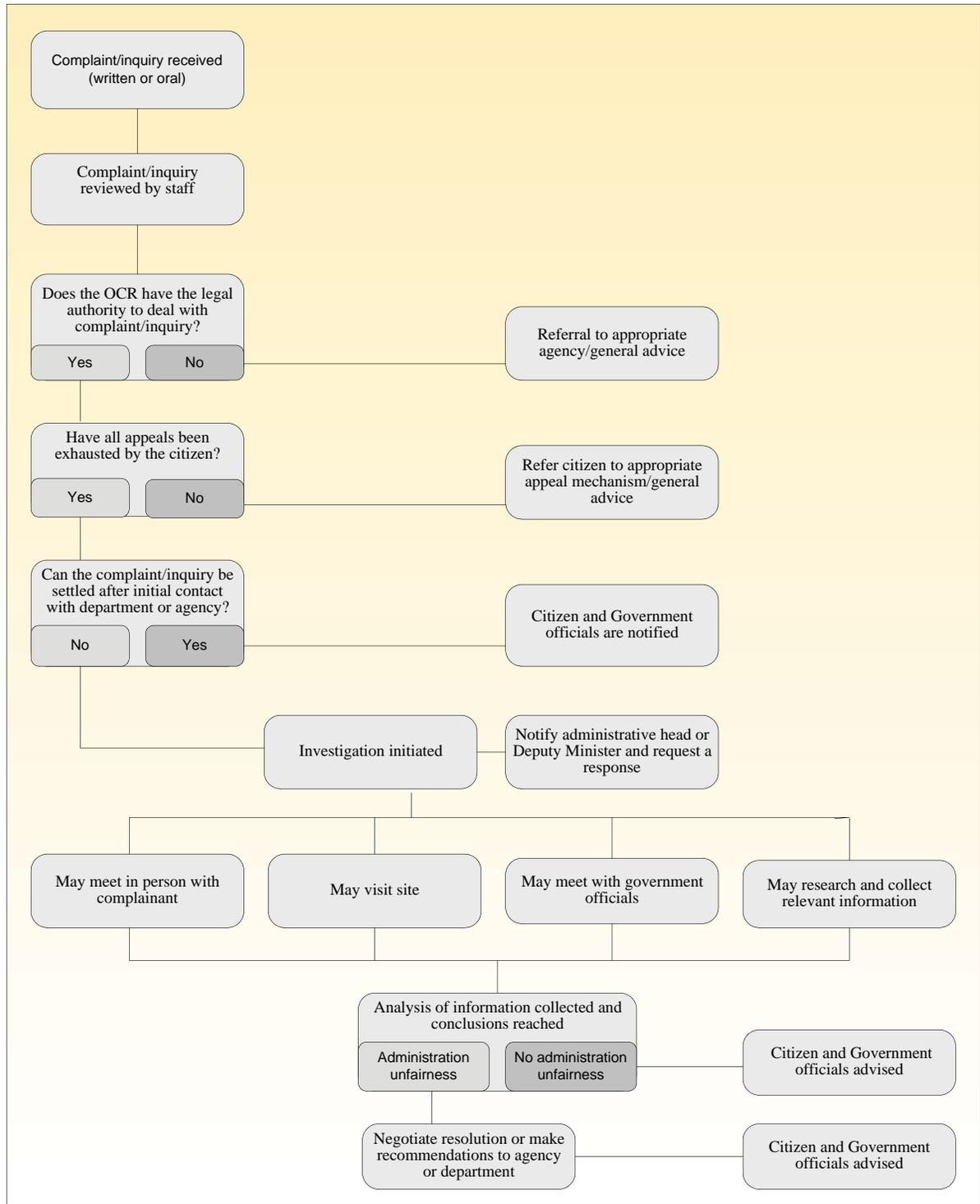
There are a number of entities that are outside the statutory purview of the Office. These include:

- the House of Assembly or a committee thereof;
- the provincial Cabinet;
- Executive Council and its various divisions;
- 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; and,
- matters falling within the jurisdiction of the Office of the Child and Youth Advocate.

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

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.



Outreach, Public Education and Access Initiatives

The OCR's services are free and available to all citizens of the Province. The OCR remains committed to publicizing its work and providing opportunities for members of the public to meet with our staff in or near their home communities. We do this by conducting traditional "intake and information" sessions in towns across Newfoundland and Labrador. Investigators will travel when necessary to view sites, collect evidence, or interview witnesses in person.

In 2011-2012, we conducted outreach, intake and/or investigation services in the following communities:

Labrador City / Wabush	Lewisporte
Happy Valley – Goose Bay	Grand Falls - Windsor
Deer Lake	Robert's Arm
Stephenville	Springdale
Corner Brook	

In addition, a presentation was given to all staff and inmates of the West Coast Correctional Centre in Stephenville.

Defining Jurisdiction

It is fundamentally important that all administrative agencies have a clear understanding of their jurisdiction. Jurisdiction is a legal term that defines what actions an administrative agency can undertake given the legislation which created it. Once jurisdiction is properly determined, administrative agencies can direct resources to efficiently undertake their work. Without a clear understanding of jurisdiction, an administrative agency may undertake activities which it has no right to engage in and conversely, ignore important tasks which it is obliged to complete.

On January 24, 2012, the Newfoundland and Labrador Court of Appeal released its decision in the *Office of the Citizens' Representative v. Newfoundland and Labrador Housing Corporation, Her Majesty's Attorney General, and the Canadian Union of Public Employees and its Local 1860*. The decision confirmed the jurisdiction, or legal right, of the Office of the Citizens' Representative to investigate complaints from public employees who have had workplace grievances settled by their employer and union.

A citizen complained to our Office about a ten-month suspension he received from his employer, the Newfoundland and Labrador Housing Corporation, for a criminal conviction precipitated by events which occurred while off duty and in no way associated with his employment. He filed a grievance with his union, the Canadian Union of Public Employees. It successfully negotiated a reduction of the suspension from ten months to six months. He subsequently filed a complaint with the Office of the OCR alleging that the six-month suspension was unfair. The employer challenged the jurisdiction of the OCR to complete its investigation on the basis that the employee's issue had been dealt with through the grievance arbitration process. At a subsequent court application, Her Majesty's Attorney General and the Canadian Union of Public Employees were granted intervenor status.



The Supreme Court of Newfoundland and Labrador Trial Division ruled that the employee was not “aggrieved” as contemplated by the *Citizens’ Representative Act* and, therefore, the Office of the Citizens’ Representative was without the legal right to investigate his complaint. In doing so, the Court concluded that by operation of law, the employee was deemed to have consented to the settled grievance and, therefore, could not continue to complain about the suspension. A majority of the Court of Appeal allowed the appeal and set aside the Trial Division decision. The Court confirmed that for the purposes of complaints to ombudsman offices, a person is aggrieved when he or she genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his or her interests, whether or not a legal right is called into question.

During the course of the court proceedings the employer, union, and Attorney General argued that public sector unionized employee complaints about their working conditions could only be resolved through the exclusive use of the grievance arbitration mechanism found in collective agreements. The Court of Appeal disagreed. It stated:

There is no principled reason why actions of a government agency that have been reviewed by public service collective bargaining tribunals should be exempt from scrutiny of alleged “improprieties”, when governmental actions reviewed by other tribunals are not exempt. If the end result of the Citizens’ Representative investigating an alleged “impropriety” is to motivate an agency of government to cause a change in its practice or a reversal of a specific decision, then the legislation would have achieved its purpose.

On the specific facts of the case, the Court of Appeal stated;

...there was no nexus between the employee’s actions and the employment relationship. In those circumstances, the action of the employing government agency in imposing a penalty equivalent to a fine amounting to one-half year’s salary, when the court had already decided that probation was the appropriate punishment for the offence, would seem to be the very kind of “impropriety” that the Act was intended to permit the Citizens’ Representative to investigate, seek correction for and, failing corrective action, to expose. Thus, in this case, there was something to investigate that had not already been effectively resolved.

The Court of Appeal decision is important for three reasons. First, it permitted the OCR to complete the investigation of this citizen’s complaint. Second, it clearly defines the OCR’s jurisdiction to investigate complaints arising from unionized public sector employment. Finally, it affirms our commitment to vigorously defend challenges to the broad and remedial purposes of the *Citizens’ Representative Act*.

Readers should note that despite the fact this case has been before the courts for a number of years, the OCR and the NLHC have maintained a professional and productive relationship. The best evidence of this can be found in the case summaries in this and previous Digests which outline the effective response of employees of NLHC to our complaints and inquiries.

A Month in Review

We selected June 2011 to illustrate the nature and scope of the complaints presented to the OCR in an average month. The following is a list of the issues we dealt with that month.

Eviction notice - NLHC
Inmate – incorrect release date
Inappropriate representation from Legal Aid
Inmate – delay in classification meeting x 2
Refusal to provide information requested for tax purposes
Denial of MCP card
Psychiatric service HMP
Sale of assets – NLHC
Referral to Public Legal Information Association
Inmate –dispute over time served
Income support – level of support for board and lodging
Refusal of private school funding for child of CNA Qatar employee
Inmate – no access to recreation time x 2
Citizen unable to access income support
Denial of NLHC application
Inmate – lack of access to medical staff
Citizen needs bathtub lift – delay in receiving one from Health Authority
Inmate – outcome of disciplinary court
Referral to Patient Assistance Program of major drug company
Inmate – delayed access to psychiatric services
Lack of access to home care hours
Inmate – diabetic diet concerns
Inmate – lack of access to chapel
Family legal issue – no jurisdiction
Referral to the College of Physicians and Surgeons
Conditions at the Waterford Hospital
Inmate – placement within institution
Public employee re: promotion / performance issues
Delay in transfer to NLHC unit x 2
Inmate – denied Methodone treatment
Citizen with no housing or food

Good Governance Week

Good Governance Week was started in 2009 to celebrate the 200 year anniversary of the birth of the modern Ombudsman concept in Sweden. It is celebrated under similar names in all provinces with legislative Ombudsman offices. We celebrated our third “Good Governance Week” from October 10-14, 2011, by hosting a networking event for departmental designates, and judging the winner of our student essay contest. The essay contest asked all Grade 6 students in the Province to tell us what good governance means to them. The staff chose Taylor Keefe of Eric G. Lambert School in Churchill Falls as the winner.¹

In addition, Citizens’ Representative Barry Fleming, addressed students at the Faculty of Political Science at Memorial University on the role and mandate of the Ombudsman.

Photos: Good Governance Week



¹ Taylor’s essay can be viewed at www.citizensrep.nl.ca under the “Latest News” and “Good Governance Week” tabs.

Social Media, Newsletter and Website

In 2011, the OCR altered its communication practices to further enhance its profile and give the public service and the public at large a better feel for our work.

As a first step, the OCR joined Facebook as “Office of the Citizens’ Representative – Newfoundland and Labrador” in May 2011, electing to use the social media vehicle as a method of releasing short bursts of information on upcoming community intake sessions, to promote Good Governance Week, and to link to our media releases and other topics of interest.

In June 2011, the OCR launched its quarterly Newsletter, entitled “*OCR Insights*”, which is distributed electronically to subscribers across our public and community based/volunteer sectors, as well as posted on the OCR website. *OCR Insights* gives readers a glimpse of case studies and other topics of interest. Anyone interested in receiving the newsletter can subscribe by contacting us at citrep@gov.nl.ca or by calling 1-800-559-0079.

Finally, we restructured our website, www.citizensrep.nl.ca to modernize its appearance and make it easier to locate information quickly.

Public Interest Disclosure

Under Part VI of the *House of Assembly Accountability, Integrity and Administration Act* the Citizens’ Representative is the lead investigator of disclosures made in the public interest by members and employees of the House of Assembly and its Statutory Offices. The OCR continues to dialogue with the six other jurisdictions in Canada who have government-wide whistleblower laws, in order to further develop its technique and stay abreast of national trends in this essential and emerging area of public policy.

There were no disclosures registered with the OCR during 2011-2012, however, the Citizens’ Representative did receive an inquiry on a subject that would have been covered by a government-wide law.

Own Motion Investigations and Systemic Reviews

Update: Psychiatric Services to Inmates in Provincial Correctional Facilities

On March 25, 2011, the Citizens' Representative released a report on *Psychiatric Services in Provincial Correctional Facilities* in response to numerous complaints from inmates about being denied access to psychotropic drugs for mental illnesses diagnosed by physicians in the community prior to incarceration.

Our investigation concluded that the standard of care for adult mental health in this Province is different, depending on whether a citizen is incarcerated or not. We concluded that to continue to retain the current conservative practice in our correctional system was unreasonable, unjust and oppressive to inmates experiencing previously diagnosed and documented mental illness.

The Report culminated in recommendations that the Department of Justice:

Undertake a request for proposals for the provision of psychiatric services at the Province's correctional facilities. Respondents to the request should outline their general philosophies with respect to the prescription of psychiatric medications. We further recommend that the Department accept a request which will ensure that inmates have the same access to properly prescribed prescription drugs as citizens in the community.

This recommendation was rejected by the Department of Justice out of hand. Instead, the Department elected to conduct a peer review of the current treating psychiatrist's work in the wake of our Report. During the winter of 2012, the Citizens' Representative met with the physician contracted to conduct the peer review and made him aware of the OCR's findings and concerns. At the time of writing, the results of the peer review are unknown. The OCR continues to receive monthly complaints about the continuing practice of denying inmates previously prescribed psychotropic medications.

Individual Case Summaries

Each year, the Office of the Citizens' Representative makes inquiries and conducts investigations based on complaints received by citizens against government departments, agencies, boards and commissions. When the Office cannot investigate or inquire about a complaint because it falls beyond its legal ability as prescribed by the *Citizens' Representative Act*, an attempt is made to direct the citizen to the appropriate agency or private company which can best deal with his or her issue.

The outcomes of inquiries and investigations are tracked closely and the following pages outline a sample of complaint resolutions and findings of our interventions. These cases give an overview of our work.

Pesky Bill – Department of Health & Community Services

A student who set out for Australia notified the Newfoundland and Labrador Medical Care Plan (“MCP”) of her temporary absence from the Province and received an “out-of-province” certificate for medical coverage. She returned home on schedule but quickly moved to Nova Scotia to prepare for university. Upon her arrival in Nova Scotia, she had to undergo x-rays through Nova Scotia’s Capital District Health Authority. Seven months later, bills were sent from Capital Health District to her mother’s address in Newfoundland; however, her mother had moved and the new tenants were away for a number of months and hadn’t retrieved their mail. When the bills were finally received, the student was a resident of Nova Scotia and applied to have them paid for by that province’s medical care plan, only to be told she was still considered a resident of Newfoundland and Labrador. She mailed the bills to MCP for payment and was told MCP would not pay them as they were more than a year old. This response from MCP was delayed because of an error by MCP in citing her proper postal code in Nova Scotia. In the interim, the matter was forwarded to a collection agency. The OCR established contact with MCP and explained the situation, which resulted in a letter being sent to the Capital Health District indicating MCP would pay the outstanding balance for services, and instructing the Capital Health District to make the collection agency aware that the account had been settled.

Upping the Hours – Department of Education

Prior to the creation of the Department of Advanced Education and Skills in October 2011, journeyman apprentices from designated occupations were regulated by the Department of Education under the *Apprenticeship and Certification Act*. Part of the Department’s mandate was to monitor the progress of apprentices and trade qualifiers through the certification process. An electrical apprentice alleged that the Industrial Training Division of the Department was refusing to credit him with all of his training hours. He claimed to have worked with an electrical contractor who was not accommodating his request to complete the necessary forms outlining his training hours, and as a result, he was not receiving credit from the Department. With hundreds of apprentices to regulate, the Department was not amenable to contacting the employer in a dispute over paperwork. As a courtesy, the OCR took up the man’s case and contacted the employer, who certified 2625 hours of work. The documents were forwarded to the Industrial Training Division and credited to his apprenticeship. The apprentice expressed great satisfaction with this outcome.

“I’d Like a Vowel...But I Don’t Want to Buy it” – Department of Health & Community Services

In a case of exercising discretion when discretion is called for, a mom called to complain that her daughter had been denied a new provincial MCP card because, as per policy, she was not in possession of a birth certificate documenting the correct spelling of her name. The problem developed because her previous MCP card had her name listed as “Ashlin”; however, she was properly named “Ashlen.” The mom felt that the requirement of applying and paying for a new birth certificate for the sake of a vowel was onerous. The OCR agreed to make inquiries about the policy and Ashlen’s case specifically. A senior official in the Department considered the OCR’s inquiry and advised that a government-issued photo identification card with the correct spelling would be acceptable in the case of Ashlen’s renewal. She attended with her provincial driver’s permit and was immediately issued a new MCP card.

The Case of the Misplaced Money – Department of Justice (Adult Corrections)

Each inmate in the Province's custody is provided with an internal account in his or her name, into which spouses, family, or other loved ones can deposit money for the inmate to make canteen or other pre-approved purchases. Upon release, the funds owing to an inmate are disbursed. An inmate was perplexed to notice \$100 missing from his account at Her Majesty's Penitentiary ("HMP"). He requested a printout and identified the error. He was certain he had not authorized any removal of funds from his account. He contacted the OCR and an Investigator inquired with HMP about the missing money. A subsequent investigation by prison officials revealed the problem to be an errant deposit into another account. HMP responded quickly and the money was replaced to the inmate's satisfaction.

Emphasizing "Support" in Income Support – Department of Advanced Education & Skills (Income Support Division)

Among the duties of the new Department of Advanced Education and Skills ("AES") is the administration of programming to assist clients with entering or re-entering the workforce. The mother of a son with complex medical needs contacted the OCR regarding the amount of financial support he was receiving from AES, which was subsidizing his continued education as a plumber. The student was alleged to be having difficulty meeting his dietary needs which resulted in the aggravation of a medical problem. The combination of poor diet and declining health was rapidly deteriorating his ability to attend school and study his trade effectively. There were legitimate concerns about the student's ability to continue. Working with AES, a check of the student's medical conditions, place of schooling, and eligibility for assistance revealed he was entitled to special needs rent. The provision of the rental assistance funding freed up nearly \$200 per month and enabled the young man to stabilize himself to a point where he could complete his program of study in good health.

A Fortunate Delay – Newfoundland & Labrador Housing Corporation

As the largest landlord in the Province, the Newfoundland and Labrador Housing Corporation ("NLHC") naturally devotes some of its energy to the collection of rent. A concerned dad contacted the OCR to say his child and her mother were about to be evicted from an NLHC unit for non-payment of rent. He advised that his former partner fell behind due to a loss of income and an overpayment registered against her by another Department. He claimed the Sheriff's Office was coming the following day to evict her and that the mother and child would be homeless. The OCR initiated an inquiry, accompanied by a proposed payment plan, and found that the woman had fallen behind on the rent and had previously reneged on two payment agreements with NLHC. With over 500 people on the waiting list, the Corporation had little appetite for a third payment plan after the first two failed; it was intending to proceed with the eviction. As it happened, the inquiry delayed the eviction process for 24 hours...long enough for the mother to satisfy the arrears in full with the help of a group of friends. The NLHC got its money and the eviction notice was withdrawn.

Smart Solution for a Frustrated Family – Eastern Health

The mother of a physically and mentally challenged son contacted the OCR frustrated with the delay in receiving a new wheelchair, which the son had outgrown. The OCR contacted Eastern Health, which acknowledged it was in the process of making changes and hiring new staff for its sitting clinic. Sitting clinics are used to ensure that wheelchairs and associated equipment are optimally fitted for a patient. Eastern Health assured the OCR that it would notify the manager responsible and would contact the complainant when it settled its hiring process and began taking appointments again. When we contacted the complainant with an update, she advised that the seatbelt in her son's wheelchair had broken and that parents and caregivers were now physically carrying the son to medical appointments. The OCR made immediate contact with Eastern Health to see what more could be done. Eastern Health checked on all possibilities within its programs and was able to arrange for the son to be assessed at the sitting clinic at the Janeway Hospital. A short time later, the mother called to advise the assessment had taken place and a new wheelchair had been ordered for her son.

No Bar to Access – Department of Justice (Adult Corrections Division)

All inmates entering our correctional system are given a medical consultation and are then provided with health care as needed. Following admission, and for continuity of care, all medical assessments and treatments administered to the inmate are documented in a medical chart. An inmate at the West Coast Correctional Institution (WCCI) contacted the OCR alleging that he had been denied access to his chart and he was not sure what to do next. He was specifically concerned about two medications he was being prescribed and wished to have more information about them. The OCR contacted the medical unit at HMP and asked if the inmate was entitled to a copy of his chart. When the medical unit confirmed that he was, the OCR telephoned the WCCI and was advised that it was not a standard practice to provide copies of medical charts. The Department of Justice was apprised of the situation and stepped in to make arrangements for a nurse practitioner to meet with the inmate to discuss his concerns and provide a copy of the medical chart.

A Place to Call His Own – Department of Advanced Education & Skills (Income Support Division)

In some cases, complainants who approach the OCR are “not on anyone’s radar.” These calls usually come from people unfamiliar with government processes or the right agency to call for assistance with their personal problems. A man with a diagnosed and documented mental illness called the OCR in despair and without knowledge of where to turn after spending too long without a fixed address. He claimed he was “couch surfing” and because of his illness could no longer cope with living with others in this fashion. The man outlined his limited source of income and was deemed by the OCR Investigator to be in need of further assessment for support eligibility. He was encouraged to marshal the necessary supporting medical documentation while the OCR contacted the Department of Advanced Education and Skills (“AES”) to inquire on the man’s

options. AES conducted a timely assessment of the man's situation and confirmed his enhanced eligibility for services. With the appropriate documents in hand, AES then approved rent and emergency assistance for groceries. A short time later he contacted the OCR to advise that he was moving into an apartment.

Invoice Paid in Full – Service NL (Office of the Queen's Printer)

A print media consultant from Ontario contacted the OCR to express his dissatisfaction with a decision by Service NL not to pay additional money he was charging for specialized printing of the *Debates of the Newfoundland Legislature (1933)*. The dispute arose over payment for revisions made by the consultant after two errors were discovered in the preparatory work the Office of the Queen's Printer had done on the volumes. The revisions were performed by the consultant over and above the contracted printing price and the consultant complained he could not persuade anyone to pay him for his additional services, which were integral to producing a finished product. An investigation was launched and prior to its conclusion, Service NL took responsibility for the matter and indicated that in light of the facts, they would pay the full amount of the invoices owing to the business owner.

Loss of Property Results in Reimbursement – Department of Justice (Adult Corrections Division)

When an inmate is taken into custody, all clothing and possessions on his or her person are documented on a property sheet and the items are placed in a personal property receptacle in the inmate's name. An inmate called the OCR upset that after his admission to Her Majesty's Penitentiary, correctional officials lost his coat and sneakers. He was issued a standard pair of sandals, however, this prevented him from partaking in his daily hour of recreation. The OCR inquired and was later informed that the Adult Corrections Division had reviewed surveillance footage from the day the inmate was admitted. The Division confirmed that the inmate was wearing the articles he said he was wearing on admission. Despite a search of the property room, the Division could not locate the inmate's property. A claim for the loss was submitted by the inmate and was paid by the Department of Justice.

"Fine" With Me – Department of Justice (Provincial Fines Administration Division)

The Provincial Fines Administration Division is assigned to the sometimes challenging task of collecting overdue fines from motorists. A man owing nearly \$10,000 in fines complained that he had been trying to pay down his outstanding fines, but was not getting cooperation from the Fines Administration Division. An investigation revealed that the Division had been dealing with the man since 1996, and that repeated attempts had been made to locate and explain to him what his options were. In accordance with policy, the Division had set up a garnishment against the man's taxes, however, he stopped filing them. The OCR re-established contact with the man and explained the entire process in detail, starting with the requirement that he file his income taxes for the last three years and set up a dedicated, reliable schedule of payments to the Division. He understood the advice, contacted Fines Administration and set about filing his tax returns.

Dump the Decision – Department of Municipal Affairs (Eastern Regional Waste Management Committee)

A displeased former contractual employee of the Eastern Regional Waste Management Committee (“ERWMC”) filed a complaint stating he had been terminated and denied an explanation as to why. He claimed he was asked to attend a meeting to discuss his workload and performance, but when he attended he was summarily dismissed. He further alleged the employer asked him to sign a release in order to receive his two-weeks’ salary in lieu of notice. He refused, and the ERWMC’s Finance and Administration Sub-Committee subsequently refused to release his pay-in-lieu cheque. A review of the man’s contract revealed that he could be terminated by his employer “at its sole discretion and for any reason.” There were no provisions for explaining or identifying reasons for dismissal, however, there were a number of issues previously identified in the man’s file that led to the decision by ERWMC. The OCR’s review of the contract and the *Labour Standards Act* found no provisions; however, that required a signed release to be executed prior to paying out the employee’s pay in lieu of notice. This point was highlighted and the ERWMC agreed to release the cheque for two-weeks’ salary.

Willing to Move – Newfoundland & Labrador Housing Corporation

The father of three children with allergies contacted the OCR to describe moldy living conditions and unsustainable heating costs in his home. He had medical documentation proving the illnesses and stated his children were missing a lot of school as a result. For the sake of his family’s health, the man wanted to leave his home and obtain safe and reliable housing through the Newfoundland and Labrador Housing Corporation (“NLHC”). An inquiry to a regional manager revealed that there was a lot of pressure on social housing in the community at issue, and that there were other, more medically sensitive (even life threatening) cases on their local wait list. Understandably, the complainant was dedicated to improving his children’s condition and volunteered to relocate to another community if it improved his chance of securing affordable housing. The OCR notified NLHC and his housing application was amended to reflect his willingness to relocate to two other nearby communities. The updated information expedited his chances of acceptance. NLHC indicated if he wanted to expand his choices even further, he was welcome to let them know.

Qatari Questions – College of the North Atlantic

The OCR investigated a complaint in 2011 from a former instructor at the Qatari Campus of the College of the North Atlantic (CNA). The complaint centered around a 12.25% salary increase for employees and the calculation and breakdown of his personal salary. He claimed that the Joint Oversight Board of CNA Qatar approved the 12.25% as a Cost of Living Allowance (COLA), yet CNA chose to pay out only 6.25% of this increase, withholding 6% to pay out as an End of Service Gratuity (ESG) required by the State of Qatar when employees leave their employment. The man claimed the entire 12.25% should have been paid, and was not meant to cover the ESG.

The OCR concluded that the manner in which the CNA distributed the COLA was creative, and there was nothing in the applicable legislation, agreements or policies of the CNA preventing the distribution of the COLA as it had occurred.



The calculation of his salary was another matter. The trouble he experienced in receiving a breakdown was unnecessary and contravened a provision of the terms and conditions of his employment.

The OCR doubted the veracity of his salary calculations. At the end of the investigation the OCR recommended: (1) a detailed audit and explanation of the salary, including a specific description of each of the components and the manner in which they were calculated; (2) an audit to determine whether he was receiving the full amount of his salary in light of increases made since his hiring; (3) that CNA honour its specific obligations to employees under the various policies, contracts and agreements currently in place; and(4) that CNA respond to the OCR requests in a timely manner and provide any information requested under the *Citizens' Representative Act*.

Hope for a Young Mother – Referral

The Newfoundland and Labrador Prescription Drug Plan (“NLPDP”) provides financial assistance towards eligible drugs for citizens who meet designated criteria for coverage. A student of Memorial University, who was a young single mother with a diagnosed mental illness, contacted us to say the NLPDP does not cover the drug Seroquel XR, which she has found to be highly effective in controlling her illness. The cost of \$1200 per year was too much for her to bear alone and she sought advice on her options. The OCR verified that Seroquel XR was not listed on the Province’s drug formulary and immediately put the young mother in touch with AstraZeneca, the drug’s manufacturer, which confirmed the existence of a Patient Assistance Plan. The Plan is available for patients in financial need who meet certain eligibility criteria. Eligible patients receive the drug at no charge through their physician. She was delighted with the news and had her doctor contact the company on her behalf.

Details Matter – Department of Education

There are currently five private schools in the Province (Corner Brook, Mount Pearl, St. Alban’s and two in St. John’s) whose students follow the provincial teaching curriculum, but receive instruction in a private setting in exchange for paying tuition. These schools are run by Boards of Directors or Management Councils separate from the main school districts. The father of a student at a private school contacted the OCR when he learned about a statement by a Minister on the subject of government promising free textbooks to all students in the K-12 school system. He was concerned that children in private schools were not being given free textbooks as indicated by the Minister. The relevant budget document was reviewed, together with the *Schools Act*, which makes no explicit reference to the Province supplying private schools. The Department of Education maintained that it is only obligated by legislation to pay for supplies through established Boards, and private schools are not considered to be operating under the guise of Boards as currently anticipated by the *Schools Act*. The OCR concurred and found that authorization of a payment to an entity other than a “Board” as anticipated by the *Schools Act* would be contrary to law. The matter would require legislative amendment through the standard lobbying channels. When this was explained, the parent agreed it was most appropriate to follow this route.

Unfair Tweetment? – Referral

A citizen complained to the OCR that a Member of the House of Assembly had “blocked” him from responding to the Member’s statements on the popular social media website Twitter. The citizen felt that because the Member had opened up his Twitter account to dialogue with the public, he was being unfairly cut out of the discussion and he was no longer free to debate the merits of the Member’s statements. He cited excerpts from the Code of Conduct for Members of the House of Assembly regarding integrity and did not appreciate being unable to contact an elected official through this new medium. As the OCR is exempt from investigating complaints from the public about the conduct of Members of the House, the matter was referred to the Office of the Clerk of the House of Assembly.

Smoking Ban Upheld – Eastern Regional Integrated Health Authority

In 2009, Eastern Health publicly committed to providing a smoke-free workplace and environment by implementing a far-reaching smoking ban that prohibits smoking on all Eastern Health property. The daughter of a long-term care home resident called to state her mother was upset that she was no longer being permitted to smoke in the long-term care facility she resided in, despite residents on other floors still being able to do so. As the facility was their mother’s “home”, the mother and daughter felt the closure of the smoking room on her floor, and the decision not to repair it, was unfair. We found no unfairness in the smoke-free environment policy invoked by Eastern Health. With respect to smoking in long-term care homes, Eastern Health is currently “sun-setting” its smoking rooms, i.e. not allowing new residents to smoke until the point where all residents are smoke free. In this case, the room’s failing ventilation system was decommissioned in response to concerns raised by staff, residents and visitors to the facility. Investing money in re-commissioning the room ran contrary to the overall goals of the smoking ban and made less sense in light of the fact a new long-term care facility is being constructed in St. John’s.

Some Good from the Bad – Western Regional Integrated Health Authority

The First Available Bed Policy, well known in long-term care circles, dictates that a resident waiting to go into long-term care must take the first available bed in the region, even if that means moving away from their home community. The stepson of a recently deceased man was distressed with the circumstances his family faced prior to their 92 year-old father’s passing. As a result of the First Available Bed Policy, the father had been transferred 275 kilometres from Corner Brook to Port Saunders. Less than two weeks later, the man passed away. The family wanted to see the end of the Policy. Western Health stated that it has implemented the Policy twice since 2006, when pressure has become extraordinary in the Corner Brook region. Western Health advised it looks forward to the completion of the new long-term care home in the City which should help alleviate the use of First Available Bed Policy. Western Health admitted that it had not executed an acknowledgement with the family that the Policy had been explained, and committed to increasing the explanation of the Policy to applicants of long-term care. Further, Western Health engaged the family personally to discuss their experience and sought their input on a draft policy and pamphlet for new entrants into the long-term care system.

New Evidence = New Decision – Department of Advanced Education & Skills (Income Support Division)

The OCR often helps citizens alleviate or rectify problems by working with Departments and agencies to ensure that the most up-to-date information is being considered when decisions are made that directly affect people's lives. A young man with substantial barriers in his life approached the OCR to say his monthly expenses were badly outstripping his income. Due to moderate increases, his rent had become so high that he was not able to afford other necessities like groceries. When contacted, the Department of Advanced Education and Skills ("AES") advised us that the young man was in receipt of the maximum available funding, however, officials were unaware of the extent of his mental and social impairments. The OCR contacted the man and advised him to obtain medical verification of his conditions for consideration by the Department. He contacted us a short time later to say that his request had been approved within policy for an increase in allowable rent based on the new evidence.

"Waist" Management – Department of Justice (Adult Corrections Division)

As a large subset of our population gets older, the number of medical conditions associated with aging that our correctional employees are witnessing goes up. An older inmate called the OCR to express his concerns with respect to his diabetic needs, and the fact that the dentures he surrendered to the RCMP prior to a court appearance were not returned prior to his transport to St. John's. He complained that he received only fried foods in custody and this diet was causing his medical condition to deteriorate. When contacted by the OCR, the Nurse Practitioner at Her Majesty's Penitentiary confirmed that the man was not to consume fried foods; this issue was rectified immediately by notifying kitchen services the inmate was to receive food appropriate for a diabetic. Upon notification that his dentures were missing, a new set was ordered. The inmate expressed his satisfaction and thanks.

Complex Needs Prompt Request for Assistance – Newfoundland & Labrador Housing Corporation

Members of the public are not the only source of inquiries for the OCR. From time to time, we receive calls from public servants who are looking for clarification, advice, or assistance of some fashion or another. An official at NLHC contacted the OCR to discuss options for a senior who was the subject of numerous complaints from her neighbours. The neighbours were intimidated by the tenant and reported being regularly subjected to confrontation and verbal abuse. While NLHC had eviction in its list of possible outcomes for the woman, it did not want to proceed in this direction, if at all possible. The OCR quickly facilitated contact with an employee of the Office for Aging and Seniors, which has a wealth of expertise and knowledge on services available for seniors. The Office of Aging and Seniors quickly issued a referral to the Assertive Community Treatment ("ACT") Team, a division of Eastern Health dedicated to, among other things, addressing complex housing needs in the community.

Lower Co-Pay Eases Burden – Department of Health & Community Services (Newfoundland & Labrador Prescription Drug Program)

An MHA referred a disadvantaged couple to the OCR after they were advised that their co-pay amount on prescription drugs was 68.2% and that coverage would be terminated within the next 30 days. The OCR inquired of the Department of Health and Community Services and during the discussion, it was noted that the couple's income had declined, and that certain documents from the Canada Revenue Agency and an updated prescription history were required to conduct a full assessment of the couple's situation. The OCR facilitated transmission of the required documents and when the assessment was completed, the co-pay amount was reduced by over 35% and coverage was extended for an additional six months.



Photos of Springdale



Your Feedback

"I spoke with (the Department) this morning and was informed my request for a higher rate of rent has been approved. Ill never be able to thank you enough for all of your guidance and help - I couldn't have done it without you. Thank you so much."

Complainant

"I would like to take this opportunity to thank you, and other staff, particularly Mr. Fleming, who has been most supportive over the years with my concerns. I will await your reply and again, thank you for your efforts."

Complainant

"I have been in contact with the Citizens' Representative...they are great they actually call you back and keep you up-to-date as they are working on your case...and called me back after I had (appointment) to see how it went."

From Facebook

"It's good to know there are still good people in the world!"

Complainant

"Thank you so much, you have no idea how much this means to us. I don't know what we would have done without you. You have provided a good service."

Complainant

"...big thanks go out to the Citizens' Representative...they get it done and fast. Without them, I could have been on the wait list for many months. I am a happy momma today!"

From Facebook

"I want to thank you for taking on my case and for listening to me right from the start."

Complainant

Kudos

In each of the last nine years, the OCR has dedicated a small space in its annual report to public employees who have gone an extra mile to help resolve issues in a timely and professional fashion and in keeping with their legal obligations, putting fairness first. Past “Kudos” recipients have stayed late to finish work, followed up to ensure that citizens received services, provided reliable advice to our Investigators, and exhibited remarkable patience and diplomacy in complex complaint investigations.

We give the following public servants “kudos” for a job well done. Each will receive letters of acknowledgement and congratulations from the Citizens’ Representative and the Premier for their personnel files.

Carolyn Burggraaf – Registrar of Motor Vehicles, Service NL

Carolyn demonstrates respect for the concept of fairness by ensuring that citizens are formally advised of decisions, and she consistently provides reasons to back up her decisions. Carolyn ensures that citizens are aware they have a right to have a decision reviewed, and has made herself personally available on numerous occasions to hear citizens’ views. As Registrar, Carolyn strikes the balance between the consideration of public safety and respecting the reasonable needs of vehicle owners and drivers.

Nicholas Whalley – Regional Enquiries Coordinator, Department of Advanced Education and Skills (Income Support Division).

Nicholas is our primary contact for his department in Central Newfoundland. His nomination read “Nicholas’ knowledge of applicable income support policies, his governing legislation and his commitment to providing pertinent information in a timely manner has lead to success at the early resolution stage of our work, and he often eliminates the need for formal investigations of citizen complaints.”

Statistics

During 2011-2012, OCR received 476 complaints and inquiries. The following tables illustrate the origin of the complaints we received, the types of issues and which government departments and agencies were concerned.

Complaints/Inquiries by Department and Agency April 1, 2011 – March 31, 2012

Advanced Education and Skills	2
Advanced Education and Skills – Income Support Division	53
Central Health *	44
College of the North Atlantic	3
Eastern Health	23
Child, Youth and Family Services – Division of Eastern Health	15
Eastern School District	1
Education	4
Environment and Conservation	3
Finance	5
Health and Community Services	10
Newfoundland and Labrador Medical Care Plan – Division of Health & Community Services	2
Justice	17
Correctional Facilities	188
RNC Public Complaints Commission	1
Labour Relations Agency	1
Memorial University	2
Municipal Affairs	6
Newfoundland and Labrador Housing Corporation	40
Newfoundland and Labrador Legal Aid Commission	5
Public Service Commission	1
Service NL	7
Transportation and Works	4
Western Health	5
Workplace Health, Safety and Compensation Commission	10
Workplace Health, Safety and Compensation Review Division	1
Total Complaints & Inquiries by Department and Agency	453

* 36 individual complaints were filed concerning a single allegation of unfairness.

**Complaints / Inquiries
by Electoral District
April 1, 2011 - March 31, 2012**

Baie Verte-Springdale	7
Bay of Islands	2
Bellevue	2
Bonavista North	4
Bonavista South	3
Burgeo & La Poile	1
Burin – Placentia West	4
Cape St. Francis	6
Carbonear – Harbour Grace	7
Conception Bay East & Bell Island	3
Conception Bay South	9
Exploits	1
Ferryland	5
Gander	4
Grand Bank	2
Grand Falls – Windsor – Buchans	8
Grand Falls – Windsor – Green Bay South	2
Harbour Main	11
Humber East	5
Humber Valley	4
Humber West	20
Kilbride	4
Lake Melville	6
Lewisporte	37
Mount Pearl North	6
Mount Pearl South	2
Other Provinces	3
Placentia & St. Mary's	3
Port au Port	10
Port de Grave	1
Signal Hill – Quidi Vidi * 1	163
St. George's – Stephenville East	26
St. John's Centre	15
St. John's East	5
St. John's North	10
St. John's South	13
St. John's West	6
Terra Nova	4
The Isles of Notre Dame	3
Topsail	4
Torngat Mountains	1
Trinity – Bay De Verde	1
Trinity North	6
Unknown * 2	36
Virginia Waters	1
Total Complaints & Inquiries by Electoral District	476

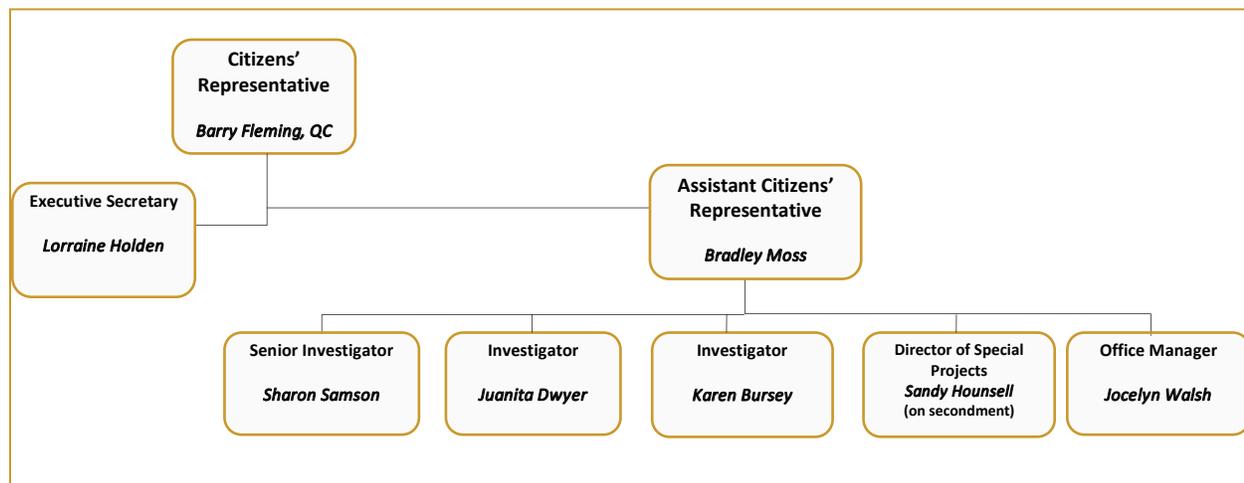
* Note 1: that the higher volume of complaints emanating from the District of Signal Hill-Quidi Vidi is a result of the location of Her Majesty's Penitentiary.

* Note 2: out-of-province, out-of-country, no fixed address, systemic investigations.

Complaints/Inquiries Non-Jurisdictional April 1, 2011 – March 31, 2012

Banks	1
Executive Council	1
Federal Departments, Agencies and Crown Corporations	3
Municipality (Exc. St. John's, Mt. Pearl and Corner Brook)	3
Other	9
Private Companies/Corporations	4
Royal Newfoundland Constabulary	2
Total Complaints & Inquiries Non-Jurisdictional	23

Office of the Citizens' Representative Organizational Chart



How to Reach Us

Staff

Barry Fleming, QC	Citizens' Representative
Bradley Moss	Assistant Citizens' Representative
Sharon Samson	Senior Investigator
Juanita Dwyer	Investigator
Karen Bursey	Investigator
Sandy Hounsell	Director of Special Projects (on secondment)
Jocelyn Walsh	Office Manager
Lorraine Holden	Executive Secretary

On the Internet

www.citizensrep.nl.ca

By Phone

Toll Free	1-800-559-0079
Telephone	(709) 729-7647
Fax	(709) 729-7696

By Mail

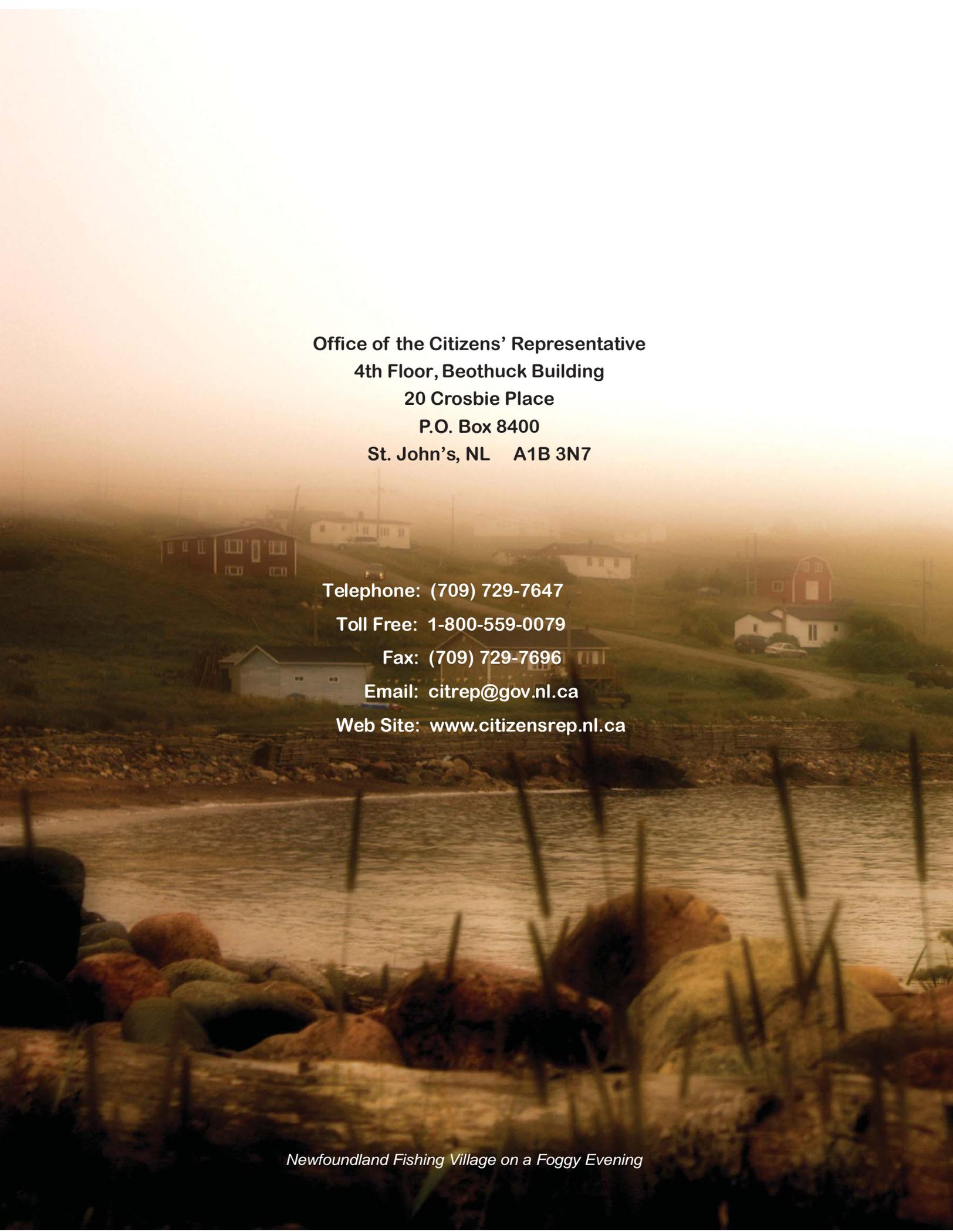
P.O. Box 8400
St. John's, NL
A1B 3N7

In Person

4th Floor, Beothuck Building
20 Crosbie Place
St. John's, NL

On Facebook

Office of the Citizens' Representative – Newfoundland and Labrador

The background of the page is a photograph of a coastal village at dusk or dawn. The scene is shrouded in a thick, golden-brown fog. In the foreground, there are large, smooth, dark rocks and some sparse vegetation. A body of water, likely a bay or harbor, stretches across the middle ground. In the background, several houses are visible, including a prominent red barn with a white roof. The overall atmosphere is quiet and serene.

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