



Office of the Citizens' Representative
Province of Newfoundland & Labrador

Citizens' Representative Annual Digest

April 1, 2015 - March 31, 2016

...seeking fairness, finding solutions



Office of the Citizens' Representative
Province of Newfoundland and Labrador

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November 14, 2016

The Honourable Tom Osbourne
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's Digest.

This Digest satisfies Section 43 of the *Citizens' Representative Act*. 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, 2015 to March 31, 2016.

Respectfully submitted,

Barry Fleming, Q.C.
Citizens' Representative

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Message from the Citizens' Representative

This is the ninth Annual Digest of the Office of the Citizens' Representative. In contrast to our Annual Report which outlines our formal reporting requirements under the *Transparency and Accountability Act*, the Digest is an informal overview of the work of our Office. It gives us an opportunity to provide general information about case summaries, statistics and other topics of interest.

In this edition, we have highlighted our work in dealing with many aspects of the corrections system (pages 17-22). All Ombudsman offices in Canada have a responsibility to receive and investigate complaints from all those associated with corrections. At the federal level, the Correctional Investigator of Canada is responsible for providing oversight of federal correctional institutions.

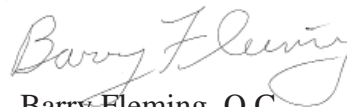
We receive inquiries and complaints from all those associated with correctional facilities. By far, the most common complaint or inquiry comes from inmates. Generally, these are issues and concerns that can be dealt with quickly, like complaints about having proper clothes available for court, dietary restrictions on meals, or obtaining recreation. Sometimes, the concerns raised by inmates require extensive investigations like the Use of Force Incident outlined later (page 20) or the fairness of the methods used to transport inmates (page 22).

We also receive complaints from family and friends of inmates. Our investigation into a death in custody (page 17) was initiated by the parent of a man who died of a drug overdose while in custody. As well, it is not uncommon for us to investigate complaints raised by people working at a facility or who have regular contact with inmates. In this report we investigated the sanitary conditions at the Lock-up (page 19) and the state of bedding at Her Majesty's Penitentiary (page 18).

I recently had an opportunity to give a presentation to correctional officer trainees where I described our role as independent, unbiased investigators of inmate complaints. I explained that while, given the amount of contact we have with the correctional facilities, we might be perceived as advocates for inmates; we are not. In the majority of cases we side in favour of the position of the corrections officers and the institution. One trainee asked then, is our work worth it? The answer of course was a resounding "yes". It has been long recognized that by providing a means for inmates to express their concerns and frustrations, ombudsman offices can provide a "relief valve" for the pressures associated with 24/7 incarceration. We can provide early feedback to management on issues that, if not addressed, can become a crisis. As well, through investigations, we can provide recommendations to improve the quality of life for all connected with our correctional facilities.

I would like to thank the inmates and their families who have brought these concerns to us. As well, we acknowledge and thank all employees in the correctional facilities for their dedicated work. While we may not always agree on how a particular issue should be addressed, we conduct our respective work in a civil and productive manner.

As always, I acknowledge the work of the staff of our Office as we seek fairness and find solutions for all involved in corrections in Newfoundland and Labrador.



Barry Fleming, Q.C.
Citizens' Representative

Our Role

The Office of the Citizens' Representative (the "OCR") opened in February 2002, after the passage of the *Citizens' Representative Act* in December 2001. The OCR serves the public and the House of Assembly in a traditional parliamentary ombudsman role, focused on independent complaint investigation and mediation.

In 2007, the OCR's mandate expanded to include the investigation of public interest disclosures made by members and staff of the House of Assembly under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*.

On July 1, 2014, the House of Assembly passed the *Public Interest Disclosure and Whistleblower Protection Act* (PIDA), which is legislation designed to allow government employees to confidentially disclose wrongdoing in the public interest. The PIDA also prohibits reprisals against persons who make disclosures or seek advice on the commission of wrongdoing in the public service. The Citizens' Representative is the named investigator of public interest disclosures under PIDA.

As a non-partisan office, the OCR initiates investigations of provincial public bodies based on complaints received from:

- citizens
- whistleblowers
- Members of the House of Assembly, and
- the Lieutenant Governor in Council.

The Citizens' Representative is also able to initiate investigations without a specific written complaint under Section 15 of the *Citizens' Representative Act*.

The Office commonly assumes a mediation/facilitation function in cases which do not require formal investigation. Through ongoing dialogue with the public service, the OCR seeks early resolution of complaints by opening lines of communication with departments and agencies and, where applicable, using telephone and email inquiry, and shuttle diplomacy, to resolve many of the complaints we receive.

The OCR has, like many of its Ombudsman counterparts, assumed a referral function whereby work is performed to ensure that the person who presents with a non-jurisdictional complaint is provided with the necessary information to contact the appropriate agency to deal with their concern. Given the size of its referral network, the OCR can often link the citizen directly with the agency they need to contact to resolve the complaint. Tips for effective self-advocacy and effective complaining, forms, telephone numbers, internet links, email addresses, and the required next steps to help resolve the complaint are also provided to citizens whenever appropriate.

There are a number of entities that are outside the jurisdiction of the OCR. These are set out in Section 19 of the *Citizens' Representative Act* and include:

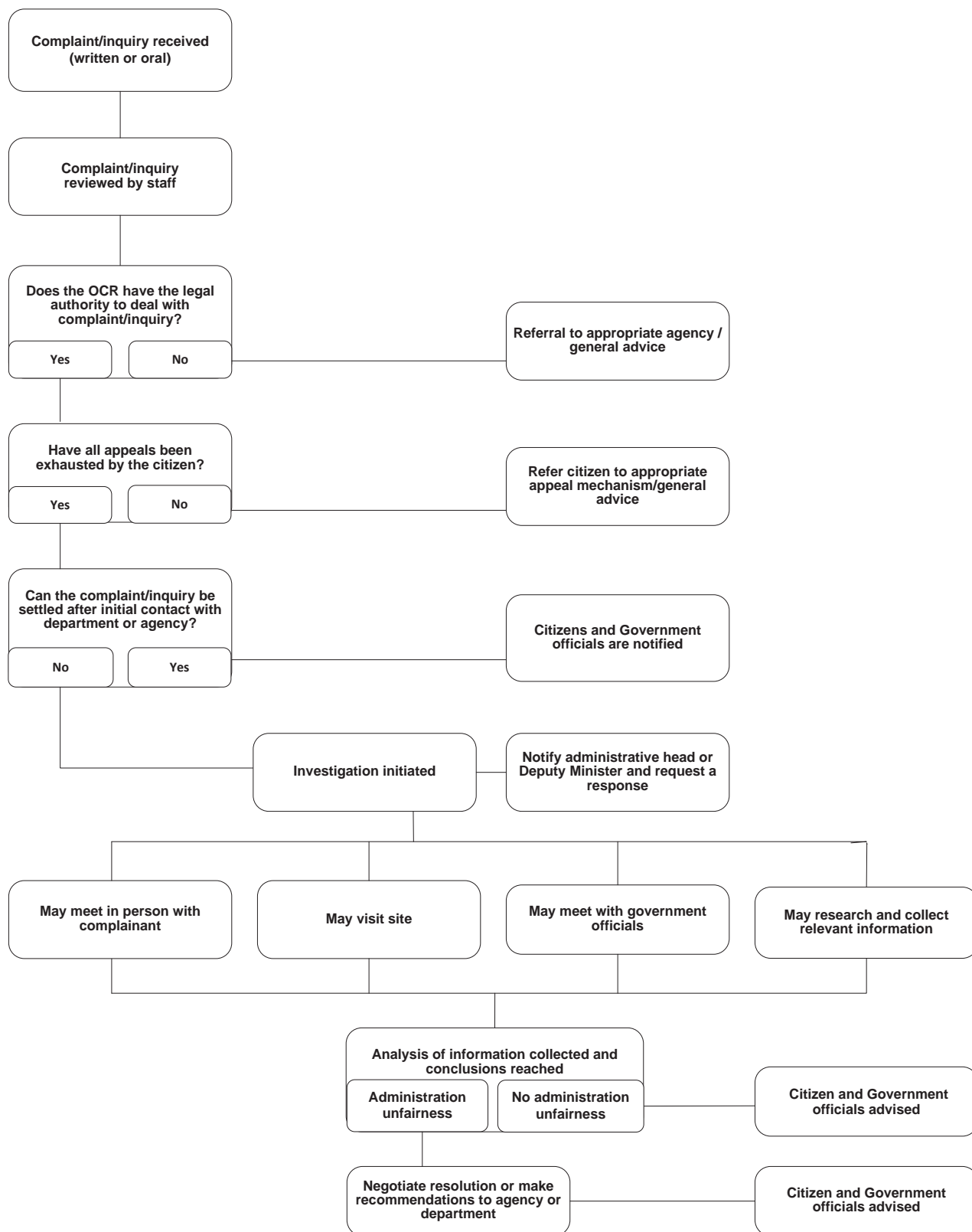
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- the House of Assembly or a committee thereof;
 - the Lieutenant Governor in Council;
 - Executive Council and its various divisions¹;
 - the court, the members of the judiciary, masters of the court, and justices of the peace;
 - awards, decisions, recommendations or omissions of arbitrators made pursuant to the *Arbitration Act*;
 - matters in respect of which there are existing rights of appeal or objection under another Act until such time as these rights are exhausted or the time to appeal has expired;
 - refusals to provide access to information under the *Access to Information and Protection of Privacy Act, 2015*; and,
 - matters falling within the jurisdiction of the Office of the Child and Youth Advocate; and
 - certain matters relating to the administration of the *Personal Health Information Act* or a matter falling within a Commissioner's purview under that Act.

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

¹ 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

To inform readers of the nature and volume of complaints received at the OCR, we have selected one month from the fiscal year to provide examples of the intake aspect of our work. The following is a cross section of allegations received in September 2015.

ALLEGATION	DEPARTMENT
Inmate receipt of threats on his life	Justice and Public Safety
Canada Pension Plan disability trouble	Referral to Service Canada - Office for Client Satisfaction
Dispute with Town of Portugal Cove - St. Philip's	Municipality (referral to Municipal and Intergovernmental Affairs - "MIGA")
Inmate wrongfully being dry celled	Justice and Public Safety
Delayed response by Residential Tenancies Division	Service NL
Unfair treatment by City of Mount Pearl	MIGA
Suspension of income support	Advanced Education and Skills
Social housing tenant alarmed with drug activity requesting transfer	Newfoundland & Labrador Housing Corporation
Inmate denied a phone call on admission	Justice and Public Safety
Inoperable elevator in a personal care home	Central Health
Expectant mother requesting urgent transfer to escape extortion and criminal activity.	Newfoundland & Labrador Housing Corporation
Inmate in segregation for longer than 15 days	Justice and Public Safety
Delay in considering Workplace Health, Safety and Compensation appeal	WorkplaceNL
Citizen frustrated by having to pay for lost Canadian passport	Out of jurisdiction (referred to Member of Parliament)
Workplace harassment	Transportation and Works
Criticism of the tax clearance certificate program	Finance
Family separated by Child, Youth and Family Services	Child, Youth and Family Services
Inmate cut off from methadone by prison psychiatrist	Justice and Public Safety
Lack of enforcement of smoking regulations	Service NL
Citizen unable to secure home insurance	Service NL (referral)
<i>Adult Protection Act</i> issue	Central Health
Parental visitation issue	Child, Youth and Family Services
Complaint re: relocation of Harbour Round	MIGA
Frustrated with process for home modifications and accessible van	WorkplaceNL
Crown Lands lease / grant issue	MIGA
Multiple issues with child protection	Child, Youth and Family Services
Rotating lockdowns at Penitentiary	Justice and Public Safety

Good Governance Week

Since 2009, the OCR has celebrated Good Governance Week as a way to promote the Ombudsman concept. We have traditionally set aside the second week of October to spend some time highlighting our role and mandate.

Our seventh annual Grade 6 Good Governance Week Essay Contest, which poses the question “what is good governance?” was won by Isaac Buckingham of Immaculate Heart of Mary School in Corner Brook. Isaac wrote extensively on the importance of government treating citizens with respect, honesty and fairness. Isaac’s essay can be accessed at:

<http://www.citizensrep.nl.ca/pdfs/IsaacBuckinghamEssay2015.pdf>

While conducting business on the west coast during November 2015, Citizens’ Representative, Barry Fleming, visited Immaculate Heart of Mary and presented Isaac with the 1st prize and winning certificate at a school assembly.



*Citizens' Representative Barry Fleming
and Isaac Buckingham*

Our staff really liked the phrase “Honesty is the best policy and the saying is no different when it comes to government.”

Public Interest Disclosure

The OCR is the named investigator under two pieces of legislation to investigate protected disclosures made in the public interest by public employees:

1. Since 2007, the OCR has been the designated investigator under Part VI of the *House of Assembly Accountability, Integrity and Administration Act* (“HOAAIA”), which provides a process for employees and Members of the House of Assembly to disclose potential wrongdoing in the public interest.

During 2015-16, the OCR had two disclosures under HOAAIA which either did not meet the threshold test for investigation, or the advice provided to the discloser was sufficient to avoid a formal written disclosure.

2. On July 1, 2014, the *Public Interest Disclosure and Whistleblower Protection Act* (“PIDA”) came into force. Under PIDA, the OCR is responsible for the receipt and investigation of disclosures of wrongdoing made by employees of the provincial government and its various agencies, boards and commissions. Alleged reprisals taken against employees are considered by the Labour Relations Board.

The PIDA report covering the period April 1, 2015 to March 31, 2016, was forwarded to the Speaker on July 20, 2016, pursuant to Section 20 of the PIDA, and is available on the OCR website at <http://www.citizensrep.nl.ca/pdfs/PIDAReport2015-2016.pdf> or by request.

The OCR handled 16 matters under PIDA during the fiscal year 2015-16.

Individual Case Summaries

The following case summaries outline a cross-section of the complaints received, mediated and investigated during 2015-16, as selected by staff. This year we have added a section dedicated solely to adult correctional complaints and inquiries, as there have been a number of changes made to the correctional policies as a result of the OCR recommendations during the 2015-16 fiscal year.

Nalcor Energy - “Process Matters!”

Regardless of their job title, employees have a right to work in a workplace free of bullying, harassment and intimidation. This file involved an employee of a contractor working for Nalcor who made several wide-ranging allegations of harassment, micro-management, humiliation and isolation against two employees of Nalcor Energy’s Lower Churchill Project. He claimed he had never experienced any workplace discipline; however, the behavior of the two Nalcor employees led to his dismissal and subsequent financial peril.

Nalcor disputed the allegations and provided voluminous evidence of its attempts to manage the disagreement. It pointed out that while the employee worked for a contractor, he was allowed to avail of Nalcor’s human resource investigation process. Nalcor hired, at its own expense, an external investigator who found no evidence of bullying or harassing behavior after interviewing several witnesses with proximate knowledge of the parties.

There was no concrete evidence of bullying or aggression. Witnesses in the OCR investigation lined up on both sides of the complaint. Nevertheless, the OCR found the process followed by Nalcor was fair. Its contracted investigation was timely and thorough. There was no new evidence that would call the veracity of the internal investigation into question.

Service NL - “Zones of Influence”

The ability of persons with legitimate disabilities or medical conditions to park near businesses and public buildings has long been a recognized norm. Regulation and enforcement of so-called “Blue Zones”, however, remains a consistent challenge.

The OCR received a complaint that alleged both the provincial government and the business community in the province were neglecting their legal obligations under the *Buildings Accessibility Act* regarding the proper installation, maintenance and enforcement of Blue Zones. The final report in this matter was issued to the responsible Department – Service NL - on April 22, 2015.

This investigation consisted mainly of taking a representative photographic survey of public and private buildings, and analyzing it against the regulated standards dealing with availability, paint, adequate signage and signage height. The OCR also reviewed a submission and documentary evidence from Service NL on these issues, including 147 inspection reports from across the province.

Due to an inability to accurately calculate the total parking space numbers assigned to many buildings, especially hospitals or schools, an assessment of the prescribed percentage of allocated spaces (4%) was not included in weighing compliance. However, buildings which had no availability whatsoever were noted. For purposes of the investigation, “full compliance” extended to the three most user-friendly indicators of spacing, signage and paint. “Partial compliance” indicated a building with two indicators. “Non-compliance” was one or no indicator(s).

The main representative sample was of 43 public buildings and 43 private buildings in the St. John’s metro area.² The investigation found:

Full compliance percentage of public buildings:	70%
Partial compliance percentage of public buildings:	26%
Non-compliance percentage of public buildings:	4%
Full compliance percentage of private buildings:	42%
Partial compliance percentage of private buildings:	42%
Non-compliance percentage of private buildings:	16%

Service NL separated core government departments from agencies, boards and commissions, and advised the government itself was responsible for only seven of the non-compliant and partially compliant public buildings photographed by the OCR, therefore, any of the public buildings viewed (for example schools and hospitals) were not under their direct control. Service NL submitted others were not germane because of a clause in the Regulations that exempts buildings constructed prior to 1981. It stated it sent brochures to construction industry, stakeholder and enforcement groups after the passage of the Regulations. It also highlighted the fact that some public bodies reviewed were in leased space and these matters should, therefore, be raised with the landlord.

The OCR investigators tried to take the perspective of disabled citizens getting into their vehicle and driving to obtain some form of provincial public service: things like visiting a government office, an entertainment or arts venue; going to fill out an application for social housing; going to a hospital; or accessing a school, or police station.

With respect to private businesses, Service NL noted in its response to the preliminary report that:

Of the 43 private buildings noted in your report, 13 are exempt from regulation, 13 are fully compliant, seven are partially compliant and the remaining buildings are under review and will have orders issued as appropriate.

The regulations were passed in 2012 and the evidence collected by us in the last fiscal year showed full compliance rates in metropolitan St. John’s ranged between 42% (businesses) and 70% (public bodies). Partial compliance rates were 42% (businesses) and 26% (public bodies). Non-compliance rates were 16% (businesses) and 4% (public bodies). We also stressed that partial compliance is not full compliance as anticipated by law. The statistics left the impression that more can be done.

² Seven government buildings, or buildings occupied by government departments, were photographed in Port-aux-Basques, Stephenville, Corner Brook and Happy Valley – Goose Bay while investigators were on travel status in connection with other OCR investigations. Three were partially compliant and four were non-compliant.

The OCR concluded:

1. The Department had not adequately inspected businesses to ensure compliance with the Regulations.
2. There was evidence that some provincial public buildings, and privately owned buildings (including some occupied by government) were in direct violation of the Regulations.
3. The Department did not act consistently with its obligations under the Regulations.

The OCR expressed a concern that as the sponsor of the Regulations, and the enforcement body, Service NL should provide the proper care and attention to ensure all public buildings, whether under direct control of the Department of Transportation and Works or not, were fully compliant within two years of the introduction of the regulations.

A preliminary report with two recommendations was forwarded in late 2014, (with commentary by Service NL in italics):

Recommendation 1:

All government departments, corporations and agencies of the province, including school and health authorities, should be made aware of the Regulations by the Department, and be directed to immediately comply with same.

All government departments, corporations and agencies of the province, including school districts and health authorities, would be aware of the regulations as a result of the public release when the regulations went into effect. Service NL has had a number of discussions with officials of the Department of Transportation and Works regarding their review and the necessity of compliance with buildings under their control. We will undertake to send reminders to Crown Corporations and other agencies requesting that they check their properties for compliance with the regulations and, if non-compliant, to rectify the matter expeditiously.

Recommendation 2:

Funding should be allocated, and positions created, to ensure increased random inspections can be conducted throughout the province to ensure compliance with (Blue Zone) legislation.

Service NL has a number of staff which are able to conduct random inspections of buildings in their respective regions and managers have been instructed to make this a priority. Over the past two years there have been a number of blitz-type inspections which have resulted in either confirmation of compliance or orders for corrective action.

While increasing the number of enforcement positions in many of the areas under our mandate, including buildings accessibility, would be desirable, unfortunately, due to of (sic) the current fiscal climate, it is not anticipated that we will be able to add positions to our staff complement in the upcoming fiscal year.

On September 12 2014, the Department announced a new partnership with the Coalition of Persons with Disabilities (“Coalition”) to “help promote education and awareness of the proper use of blue zone parking spaces, including the correct installation of signage, for businesses and municipalities”.

The Department entered into a contract with the Coalition to develop promotional materials and to present information sessions for businesses, municipalities and the general public. The total cost of the contract is \$25,800, with Service NL providing the printing services for same.

On March 4, 2015, the Department announced an awareness campaign in a news release:

The campaign includes brochures for business owners, pamphlets for accessible parking permit holders and presentations to various organizations such as building design and construction industries and municipalities. The campaign promotes education and awareness of the proper designation of accessible parking spaces, including the correct installation of signage, as well as the proper use of the accessible parking permit.

The OCR highlighted that while the pre-1981 exemption listed in Section 5(1) of the *Buildings Accessibility Act* extends to some of the public and private buildings contained in the report, most of the exempt buildings in the representative sample still had some modicum of disability parking, best exemplified by the east block of Confederation Building, which, despite its exemption, was fully compliant.

The OCR intends to re-visit compliance rates in a follow-up investigation.

Department of Transportation and Works – “Maintenance” of a Harassment and Discrimination-Free Workplace

Recognizing the diversity of the Public Service of Newfoundland and Labrador, the Government is committed to a work environment that treats all individuals with dignity and respect. However, sometimes there can be unintended flaws in the process used to address issues of harassment and discrimination in the workplace.

The OCR became aware of an employee who experienced an incident of harassment and discrimination and felt that the issues were not adequately resolved, despite a departmental investigation into the matter. The OCR investigation of the matter revealed there were issues throughout the departmental investigation that could have been better addressed. It was further acknowledged that management may not have had the training and/or skills they required to resolve the issues effectively. Adequate steps were taken and Departmental management were trained in Respectful Workplace Training (RWP) and Conflict Management. Further to that, the employee was provided with a letter of apology and the Department also highlighted actions taken to mitigate future incidents in the workplace. An independent review of the Harassment and Discrimination-Free Workplace Policy and Respectful Workplace Program was subsequently undertaken by the Government and released.

Service NL – “Co-operation Matters”

Service NL provides accessible, responsive services in the areas of public health and safety, environmental protection, occupational health and safety, consumer protection, and the preservation

of vital statistics and commercial transactions. Included in these services is the registration of co-operatives. Co-operatives may be formed by groups of people with similar interests who are willing to organize and operate on a co-operative basis, and who meet the criteria for incorporation. Most co-operatives fall under the following basic types: consumer, producer, housing, workers, community service, and extra-provincial.

Primarily, the objective of this registry is to provide a regulatory environment which facilitates continued growth of co-operatives while promoting public awareness. Co-operatives are distinct legal entities from corporations and are regulated pursuant to the *Co-Operatives Act*.

In this case a group of citizens was attempting to set up a French language daycare as a co-operative. Everything about their proposal was accepted except for one thing: the name, which had to include the word “co-operative”. As a French language daycare the submitted name for registration was in French. They were initially advised by Service NL that in order to register, they must change the name of their co-operative from “co-opérative” (French version) to “co-operative”. A representative for the group contacted the OCR to inquire whether or not this was fair, and to see if there was any available recourse. We consulted with Service NL, who stood by their decision, but also advised they were in the process of a review. The OCR scanned the list of active co-operatives on the registry and pointed out to Service NL that a number of the names contained therein did not comply with the legislation either. On May 31, 2016, Bill 30, An Act to Amend the *Co-operatives Act*, was passed in the House of Assembly. This Act amended the current legislation to allow the French language version of the word “co-operative.” The citizen was delighted with the outcome and the name was changed.

Department of Justice and Public Safety – “Job” Done Properly

An employee of a division of Justice and Public Safety made a complaint about what they believed to be an unfair hiring practice, concerning someone being appointed to a position without a competition and that nepotism may be at play. The OCR thoroughly investigated the complaint; reviewed the competition file, and found that there was nothing improper regarding the filling of the position.

Department of Finance – “Pension Apprehension”

The Department of Finance is responsible for providing strategic leadership across the public service on the financial and economic implications of its policy decisions. It also oversees the management and control of provincial finances to ensure appropriate use of public funds, and it provides centralized services to other government departments in areas like economic analysis, statistical services, internal audit services, and payment processing. The issue in this investigation involved its role in administering a pension plan sponsored by the Government of Newfoundland and Labrador.

A citizen made a complaint regarding pension money allegedly owed to him after he switched employment from the public service to a government agency. He claimed that he was owed over \$15,000, but Government was stating he was owed much less, a little over a \$1,000. The OCR contacted the department to get an explanation for the discrepancy. They advised that the original amount quoted was an administrative error due to software problems they were having at the time.

This error was caught by an actuary and had to be recalculated. In the interest of ensuring accuracy and exercising its responsibility for the prudent outlay of public funds, the department also had their legal representative look at the case. The OCR was satisfied with the outcome of the review and found no breach of the *Citizens' Representative Act*. Although the citizen was not happy with receiving less money, he was satisfied that the matter was handled appropriately.

Eastern Health – “Relationships Matter”

Just as we expect public bodies to treat people legally, we expect public bodies to treat them fairly. This includes reasonable follow up by public bodies on concerns raised by members of the public, and the implementation of policy change, if warranted.

A citizen contacted the OCR with a complaint against Eastern Health, the province's largest health authority, regarding the treatment of a family member by staff. He outlined concerns about negative comments by front line staff when a loved one was admitted to hospital, as well as several concerns about treatment while that person was a resident of a personal care home. In response to the OCR's bringing the matter forward, Eastern Health investigated the issues, and acknowledged a number of concerns they had as well. They had apologized to the citizen for the problems he experienced, and committed to address the specific concerns and the staff involved. They also committed to make several policy changes and improvements. As Eastern Health had already taken responsibility for the concerns of the citizen, we advised the citizen there would be no formal investigation. However, the OCR did follow up with Eastern Health to determine if they had followed through with their commitments as they had promised. We were able to get confirmation of the actions taken and advised the citizen of same.

Fire and Emergency Services Newfoundland and Labrador (“FES-NL”) – “I’d like to inquire about a fire.”

FES-NL is tasked with the implementation of the provincial emergency management strategy, designed to develop and maintain a modern and robust emergency management system in the province. It works to plan against, prepare for, respond to, and recover from emergencies, disasters and fires. Like other public bodies it handles a large volume of paperwork and reports that it is responsible for safeguarding.

A citizen called with a complaint against FES-NL regarding a missing fire report from a fire which destroyed his home several years ago. He stated that this fire was investigated by someone, but could not remember facts surrounding the investigation. The citizen felt that there should be a record of this report somewhere but he was unable to obtain one. We contacted FES-NL. They confirmed that there was no record on their system of the fire in question, but they had implemented a new electronic record system shortly after this fire occurred. The staff person was in the process of checking previous written records with the nearby fire departments in an attempt to track it down. They were ultimately successful in finding the report and this was forwarded to the citizen.

Service NL – “Protection against a misread of the Deed”

Among its many business lines, Service NL is responsible for maintaining the provincial Registry of Deeds. This registry has a mandate for facilitating the registration and provision of information relating to property transactions in Newfoundland and Labrador.

A citizen made a complaint to this office regarding an incorrect deed in the Registry. The citizen stated that the department made a mistake with the address listed on the deed, and it refused to correct it, or even discuss the matter with him. We called the department to make an inquiry and were advised that the registration cannot be changed as it is based on the surveyor’s document submitted; so the original address had to remain. Our inquiry found a viable option existed which was acceptable to both parties: the Registry could, with minor effort from the citizen, add the other address as a sort of addendum to the deed, without changing the deed itself.

Department of Advanced Education and Skills – “No-fun Refund”

The Department of Advanced Education and Skills helps citizens obtain the necessary educational, financial, and social supports they require. Their complex mandate includes employment supports and career services, income supports, labour market development, immigration and private post-secondary oversight. Included in this suite of services are payments to individuals who incur costs to obtain methadone treatment.

A citizen filed a formal complaint against Advanced Education and Skills, stating she was in the Methadone Program and was required to travel to Gander to receive her methadone treatment. She stated that the Department had paid the cost of medical transportation in the past; however, she alleged that she did not receive payment for taxi trips in January, February, May and June of 2014, and that the denial of payment was unfair and inflicting undue economic hardship.

The OCR initiated a formal investigation. All documentation and applicable policies provided by the department were reviewed. Our review of the file indicated that she had not been fully reimbursed for some of the dates provided. Following discussions with officials within the Department it was determined that she should have been reimbursed.

The Department advised the OCR that a cheque had been issued for \$2,089.00 which covered off some 35 trips.

Support Enforcement Agency (“SEA”) – “Support from Court”

The SEA is the branch of the Department of Justice and Public Safety charged with the administration of, among other things, receiving and disbursing court-ordered funds for support, maintenance or alimony. It issues Notices of Garnishment, traces delinquent payers, maintains interprovincial support enforcement agreements, and initiates seizure and sale under the *Judgment Enforcement Act*. Many citizens rely on its services to enforce court orders.

The OCR was contacted by a lady in Hamilton, Ontario. She stated that her ex-spouse lives in St. John’s. He was currently \$32,500 in arrears in spousal and child support payments. The Unified Family Court Order issued in their case was for \$600 for spousal support and \$512 in child support, per month.

She was frustrated because she had been advised by a case manager at SEA that they had received a cheque for \$1,600; however, she alleged SEA could not release it to her because they had no updated information on her son. She advised that four years ago her son started a university undergraduate program, and she claimed the university had provided SEA with the information required. It was her view that even without updated information on her son, the \$1,600 could still be released for spousal support.

With her consent an OCR Investigator contacted the Director of SEA. Following a discussion the Director advised that a cheque for \$1,660 would be released.

Newfoundland and Labrador Housing Corporation (“NLHC”) – “What’s Up With the Supp?”

As the public housing authority, NLHC owns over 5,500 rental units in the province. In addition, it assists qualifying individuals with supplements for private landlord accommodations. Qualification turns on, among other things, a financial assessment. In situations of fluctuating income, approved clients of NLHC are required to report changes so that financial reassessment and supplement levels can be adjusted, as necessary.

An immigrant to Canada who had escaped domestic violence in this province had been receiving a rental and heat supplement from NLHC as a single woman. She received a letter from them advising that she would no longer be eligible. This came at a bad time for her. She was employed as an interpreter for two employers but her contract with one of them had expired. There was some hope she would get back to work with them, but there was no way of assuring this.

NLHC advised our investigator her reportable income of \$13,000 from her former job was not reported and therefore had to be taken into account for purposes of financial assessment. The woman claimed to be unaware of the obligation to report changes in her financial status in real time, but she had honestly reported the increase when she underwent the standard annual client reassessment. When NLHC told her that the supplement was cancelled but she could reapply the following month, she was crushed. With this significant reduction in her assistance, she would not be able to pay the amount of her current rent and would have to simultaneously find housing and employment.

Working with our investigator, NLHC switched the woman from annual reassessments to monthly, and ceased calculating the value of the unstable contract work into an annual income calculation. Given the woman’s dire circumstances, the possibility of her being temporarily homeless, and her good intentions in revealing the new information, NLHC extended the subsidy for six months. The woman was understandably delighted and moved through the monthly assessments with NLHC as agreed.

Department of Health and Community Services – “Dental Work: Can’t Wait Until It’s Too Late.”

The Adult Dental Program provides funding for basic dental services and dentures to qualified individuals, through an approvals and subsequent payment process.

A man qualified for the program and was in need of immediate extraction. He went ahead and paid for the service only to be advised that he would have to wait up to ten weeks for reimbursement. He was also waiting for a letter confirming his eligibility for continued dental coverage, but was told this would take approximately three weeks.

Inquiring into the matter, the OCR learned that a backlog exists in dental eligibility letters; however, the crux of the payment problem was found in the assignment of a “vendor number” to the man. A vendor number is issued by the Department of Finance which requires name, contact information and banking information before cheques can be provided. The vendor number must then flow back to MCP which can process the reimbursement.

The OCR inquiry revealed the man’s paperwork had just been approved. He now had a vendor’s number and his payment would follow by the end of the week. MCP also advised improvements to the system were already underway. Manual processing was continuing for the time being, but the process was being computerized in partnership with the Office of the Chief Information Officer; and this was forecast to reduce wait times.

Eastern Health – “Back on Track”

As an operator of long term care homes in the province, Eastern Health works diligently to satisfy demand for beds on a priority basis. This is a very intricate mandate that changes around the clock. To alleviate pressure on the system, for a number of years it has subsidized beds at a private long term care facility in St. John’s, pursuant to a financial agreement and subject to operational standards imposed by the Province.

The daughter of a resident of the facility contacted the OCR making a series of safety-related allegations about her mother, who was in a subsidized bed on a protective unit. She claimed that the operational standards were not being enforced as strictly as they were in public institutions. She alleged there was no orientation, no list of personal care items required, and no list of services provided which lead to the purchase of services that were supposed to be covered. Further, she stated that the parent had experienced two falls, one resulting in the family being called the following day to transport the parent to hospital. There was little clarity around the circumstances or mechanics of the injury. Lastly, she had concerns about the documentation of medications after she believed her mother had not received prescribed medication that had been paid for, and there was no explanation for the error.

Eastern Health disclosed during the OCR investigation that it had completed a review of quality of care issues and had initiated a 12 point action plan involving a series of reviews in the area of the family’s concern, with specific timeframes for required completion, and continual monitoring. This added validity to the woman’s concerns and highlighted that these matters were in need of systemic address by the authority. Our review of the 12 initiatives showed it was adequate to improve accountability on many fronts, and would bring the level of service up to that of a public institution. In its report, the OCR held that if the province is going to support private long term care facilities, there has to be adequate mechanisms in place to ensure compliance with quality standards, especially at the front line of service. These mechanisms already existed in large part, inside the operational standards. This was a case of irregular monitoring.

The OCR requested that the Authority include in the orientation process for new admissions to public and private nursing homes a list of items that are covered by Eastern Health, and those which are the responsibility of the resident/family. Likewise, the authority should tighten its restrictions on the inventory and tracking of unused medication.

Department of Advanced Education and Skills – “Helping Hand in a Health Matter.”

The Income Support Division of the Department of Advanced Education and Skills, in partnership with a host of other organizations, has a complex social mandate that involves helping the most vulnerable persons in our province.

A woman who was dealing with a recent cancer diagnosis, and who had become estranged from her spouse, came home to Newfoundland and Labrador to seek treatment. Her financial and housing status bottomed out and she moved in with her 80 year old mother. She contacted the OCR for help in navigating the income support system after applying for support and receiving no timely reply on the status of her application. She had a landlord in place who was waiting on rent money. She was managing this while trying to get a much needed cancer surgery in place.

An inquiry to the Income Support Division revealed the delay was attributed to her application receiving enhanced analysis because she identified a recent marital separation. The division ordinarily conducts a mandatory early detection program review which can take up to five days. We requested an update on the status and provided additional information that put the application in better context. A cheque was issued shortly thereafter.

Adult Corrections

This year we are including a section dedicated to adult correctional facilities, which have been the source of increasing numbers of complaint inquiries and investigations. The section will highlight some of the more noteworthy cases considered in 2015-16, and some of the innovative ways the OCR and the Adult Corrections Division of the Department of Justice and Public Safety are working to resolve them.

Death in Custody

The Adult Corrections Division is responsible for facilities located in St. John’s, Clarenville, Bishop’s Falls, Stephenville and Happy Valley-Goose Bay. This includes the St. John’s Lockup, where fresh arrests are processed and accused persons are held pending court appearances. Unlike other such detention centers in Canada, the St. John’s Lockup is staffed by correctional officers as opposed to police officers.

A distraught father contacted the OCR some months after his son died of a drug overdose at the Lockup. He claimed the details of his son’s passing were not readily available to the family. He knew of the existence of surveillance footage of the evening his son had died but had not been given an opportunity to view it. He also wanted to know if the system of regular checks in place at the Lockup reflected standards in other provinces and if not, could they be improved for the benefit of others coming into custody.

Adult Corrections Divisions complied fully with the OCR investigation. With appropriate supports in place the father viewed the surveillance and received a copy of the Chief Medical Examiners' report on his son's death.

The OCR investigation revealed that with one minor exception the standard for visual body checks in the cells was met on the night in question. However, other provinces do have higher standards for the timing of visual "live body" checks. Prior to this investigation the Newfoundland and Labrador standard was constant video surveillance with live body visual checks conducted every hour; whereas Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan and British Columbia all conduct checks in the 15-20 minute range. The OCR's recommendation for the province to rise to this standard was accepted. Standing Orders to correctional officers were also amended to include "live body" requirements including ensuring flesh is visible, the detainee can be seen moving and breathing, and the visual checks are recorded in two electronic systems. In addition, a higher frequency of checks can be approved by a supervisor where detainees are visibly intoxicated on admission. Correctional officers have been trained on intoxication recognition and the Chief Medical Officer is producing a video on intoxication recognition that will be mandatory for all staff and new recruits to view.

Bedding at Her Majesty's Penitentiary ("HMP")

The UN Standard Minimum Rules for the Treatment of Prisoners, to which Canada is a signatory, were initially adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the UN Economic and Social Council in 1957. The rules were updated in 1977 and again (during this investigation) in 2015.

The OCR received a credible tip about the deplorable condition of bedding at HMP, including linen, pillows and mattresses and that it posed a health risk to all inmates. We viewed this as a potential violation of Rule 19 of the UN Standard Minimum Rules which states that:

Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

The OCR initiated an own motion investigation³. We conducted a random inspection of 23 cells. Mattresses and pillows were uncovered and photographed. All were found in deplorable condition and many were ripped open.

Pursuant to the *Citizens' Representative Act* we recommended:

1. Immediate replacement of all mattresses and pillows, specifying the department should order correctional grade products that have fire-resistant, vandal-proof and fluid repelling characteristics. New mattresses should be able to be cleaned.
2. A directive from Adult Corrections Division that all inmates, on admission, be assigned a standard issue of bedding that includes a mattress designed to remain with them during their admission.

³ Under Section 15 of the *Citizens' Representative Act*, the Citizens' Representative may initiate an investigation without a complainant/written complaint.

The OCR was notified by the Department less than 30 days later that an expedited procurement was taking place to replace mattresses in all adult correctional facilities. New mattresses would meet the OCR specification and bedding would henceforth be issued to an inmate for his/her entire stay. In the interim, the Department committed to use its remaining complement of spare bedding to replace those in need of immediate disposal. Within six months of the commencement of the investigation, the OCR received notification that new correctional grade mattresses with attached pillows had been deployed system-wide.

Sanitary Conditions at St. John's Lockup

The UN Standard Minimum Rules for the Treatment of Prisoners also specify at Section 14 that:

All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

The OCR investigated allegations of unsanitary conditions at the St. John's Lockup, located in the basement of the Supreme Court building. Our investigator attended at the Lockup escorted by a provincial Environmental Health Officer. They found, and took photographs of, unsanitary conditions.

The Department of Justice and Public Safety acted on our preliminary findings, and our subsequent concerns. The Department indicated it had:

- Fixed a leaking air conditioner in the computer server room.
- Pressure washed and painted all cells.
- Installed new flooring.
- Tested for mold and analyzed the results of testing (no adverse findings).
- Purchased and introduced a new and improved cleaning and disinfecting agent.
- Completed indoor air quality testing and analyzed results of testing (no adverse findings).
- Fixed leaks in the janitor's closet and removed a decrepit appliance from the premises.
- Replaced all toilets with new stainless steel models.
- Purchased new institutional footwear for detainees and cleaning of footwear occurs prior to re-issue.
- New mattresses purchased and installed.
- Janitorial staff had been trained in workplace hazardous materials.
- Retained a private company to undertake cleaning jobs that require special equipment, or which may endanger the health of staff janitors.
- Introduced temperature-controlled warm water to cells.
- Developed facility-specific sanitation orders/procedures in consultation with public health.
- Created a daily and weekly sanitation log to be submitted to the Captain on duty for review.

The OCR notified the Department of its satisfaction with this response, and closed the file in June of 2015.

Use of Force Incident

The use of physical force as a method of controlling an inmate is permitted in correctional facilities; however, the degree of force used should, at all times, be only enough to counter the threat to institutional or officer safety being posed. Likewise, the amount and degree of force used during an incident should be re-evaluated throughout the incident. In June 2014, we notified the Department of our intention to investigate certain allegations made by an inmate of Her Majesty's Penitentiary ("HMP") pertaining to:

1. A use of force by correctional officers against inmates at HMP on June 8th, 2014;
2. A delay in inmates receiving medical attention after the use of force.

Eight inmates who were housed in the Segregation Unit of HMP complained about the use of force. The original complainant stated the inmates in other cells on the unit covered their cameras in order to have correctional officers respond to an issue involving insects and requests by inmates for water. The complainant alleged that at least 12 correctional officers entered the unit and moved into each cell one by one, extracting the inmates. It was at this time that he alleges the correctional officers used, what he described as, excessive force in doing so.

The complainant maintained that he and his cellmates were lying on their beds at the time of the incident and that the camera in their cell was not covered. He alleged that correctional officers entered his cell, placed a shield over his body, handcuffed him and bent his foot backwards over the edge of the bed and pulled him to the floor. He further alleged that guards stood on his back, his head was smashed against a wall, and a thumb was placed in the pressure point behind his ear which was applied with such force that it left marks days after the incident. The complainant alleged that he was dragged across the concrete floor, and that when he was returned to his cell he was picked up and thrown over the toilet hitting the side of his bed. He believed unnecessary force was applied despite him being compliant and non-aggressive.

He alleged that handcuffs were placed on him tightly and remained on him for approximately 3 ½ hours, after which he was given no medical attention.

Each of the other inmates who complained alleged similar excessive force and delay in getting medical attention.

After reviewing documentary and video evidence, photographing inmates' injuries and interviewing inmates and three of the correctional officers involved, we issued a request for proposals in August of 2014 for a subject matter expert (SME) specializing in the use of force in correctional facilities. The request for proposals preferred "knowledge of ethical and appropriate use of the spectrum of force options in correctional settings, investigations, independent and detailed report writing, and knowledge of civil and legal rights." The contract was awarded to a former employee of the Alberta Ombudsman, the Office of the Correctional Investigator (Canada) and the Correctional Service of Canada who has also worked as an advisor to the United Nations on correctional matters in Afghanistan. He had worked on, or reviewed over 7500 use of force investigations over the course of his career.

Overall, the SME found:

- The extraction process failed to meet policy requirements relating to the deployment of an organized, properly trained and configured extraction team.

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- The staff involved failed to meet policy requirements with respect to the provision of health care to inmates who sustained injuries and post incident reporting by all officers involved.
 - Officers failed to attempt to settle the incident prior to the application of force.
 - The decision to treat all the inmates with the same level of force when most were displaying no apparent resistance was contrary to policy.
 - In many instances the level of force applied exceeded the level of force necessary based on the behavior presented by the inmates immediately prior to the extractions, in violation of policy.
 - The failure to constantly reassess the situation relative to inmate behavior changes was contrary to policy.
 - There was an absence of good correctional methodology with respect to the movement of compliant and secured inmates or non-compliant inmates once they were properly secured. Movements were frequently done in a manner that appeared to be lacking in planning and proper control of the inmate. All too often the method of movement was risky, posing a greater risk of officer or inmate injury and an elevation of pain control beyond that which is necessary. These were inappropriate and violated policy.

The SME made four recommendations. Paraphrased, they were:

1. The OCR should initiate a dialogue with senior correctional authorities with respect to the application of force at HMP. The dialogue should cover the nature and frequency of reportable applications of force, training provided to correctional staff, management of application of force under policy, and the process of internal review.
2. The OCR should formulate an internal process whereby the OCR would, during visits to correctional facilities, routinely seek out information from inmates and officials on the application of force at that site.
3. Ongoing concerns regarding the management and application of force should be identified to correctional officials and reviewed in a systemic manner.
4. The OCR should report regularly, through existing reporting vehicles, its observations and concerns relating to the application of force within the NL correctional system.

In November 2014 a copy of the SME report was provided to the Deputy Minister of Justice and Public Safety, and a meeting was requested with senior officials to discuss the SME's opinion.

The meeting took place in February 2015. It resulted in Adult Corrections Division taking ownership of the problems highlighted in the report. We agreed that the Director of Corrections and Community Services would work in tandem with the Superintendent of Prisons and the Assistant Superintendent of HMP to consider the concerns raised by the OCR, and implement some form of solution to them. We placed the investigation on hold while the Department worked on the problems identified.

We received a written update in August 2015. The Department cited the following actions it had taken:

- Supervisors had been briefed on the review and the incident will be used for purposes of future officer training.
- Certain internal written procedures were amended.

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- An additional method of review of use of force incidents has been implemented for the provincial correctional system.
 - New staff training was ordered.

Issue 2: *A delay in inmates receiving medical attention after the use of force.*

The original complainant had handcuffs placed on him at approximately 1945 hrs and removed at 2306 hrs on June 8. Documents show him requesting medical attention at 1515 and 1625 on June 9. He was seen at 1625. Therefore, it was 18 hours after his extraction before he received medical attention. There were, however, no other records of him or others requesting medical assistance. Worthy of note was that no emergency medical attention was required for inmates or correctional officers.

The OCR reiterated all persons injured as a consequence of the use of force must receive prompt medical attention. Necessary to the provision of medical attention, however, is notification of a medical problem in the first place. The Department advises that officers who could have arranged medical attention were not immediately aware of problems. The initial complainant was the first to request medical attention and he received medical attention approximately one hour after requesting it. Others were processed in order of their requests.

These actions by the Department on this issue were not unreasonable pursuant to Section 37(1)(a) of the *Citizens' Representative Act*.

Statistics

During 2015-2016, the OCR received 740 complaints and inquiries. The following tables illustrate the origin of the complaints we received and which government departments and agencies were concerned. 670 jurisdictional complaints and inquiries are in the table below; 70 non-jurisdictional complaints and inquiries are listed on page 26.

Complaints/Inquiries by Department and Agency April 1, 2015 – March 31, 2016

Advanced Education and Skills	4
Income Support Division	60
Business, Tourism, Culture and Rural Development	1
Central Health	4
Child, Youth and Family Services	24
College of the North Atlantic	2
Eastern Health	19
Education and Early Childhood Development	2
Environment and Conservation	1
Finance	3
Government Purchasing Agency	1
Health and Community Services	8
Justice and Public Safety	17
Correctional Facilities	419
Labrador-Grenfell Health	1
Memorial University	2
Municipal and Intergovernmental Affairs	8
Nalcor Energy	2
Newfoundland and Labrador English School District	2
Newfoundland and Labrador Housing Corporation	29
Newfoundland and Labrador Legal Aid Commission	11
Newfoundland and Labrador Liquor Corporation	1
Newfoundland and Labrador Medical Care Plan - MCP	5
Seniors, Wellness and Social Development	1
Service NL	15
Transportation and Works	8
Western Health	3
Workplace NL	13
Workplace Health, Safety and Compensation Review Division	4
Total Complaints and Inquiries by Department and Agency	670

**Complaints / Inquiries by
Electoral District
April 1, 2015 - September 20, 2015**

Baie Verte-Springdale	1
Bay of Islands	2
Bonavista North	1
Bonavista South	1
Cape St. Francis	5
Carbonear – Harbour Grace	7
Conception Bay East & Bell Island	4
Conception Bay South	9
Exploits	12
Ferryland	8
Gander	2
Grand Bank	2
Grand Falls – Windsor – Buchans	8
Harbour Main	10
Humber East	2
Humber Valley	1
Humber West	12
Kilbride	2
Labrador West	1
Lake Melville	10
Lewisporte	2
Mount Pearl North	5
Mount Pearl South	7
Other Provinces	6
Placentia & St. Mary's	5
Port au Port	7
Port de Grave	1
Signal Hill – Quidi Vidi * ¹	166
St. Barbe	1
St. George's – Stephenville East	32
St. John's Centre	20
St. John's North	2
St. John's South	3
St. John's West	11
Terra Nova	31
The Isles of Notre Dame	3
The Straits & White Bay North	2
Topsail	2
Trinity – Bay de Verde	6
Trinity North	3
Unknown * ²	55
Virginia Waters	3
Total Complaints & Inquiries by Electoral District	473

* Note 1: 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-country, no fixed address, systemic investigations.

Complaints / Inquiries by Electoral District September 21, 2015 - March 31, 2016

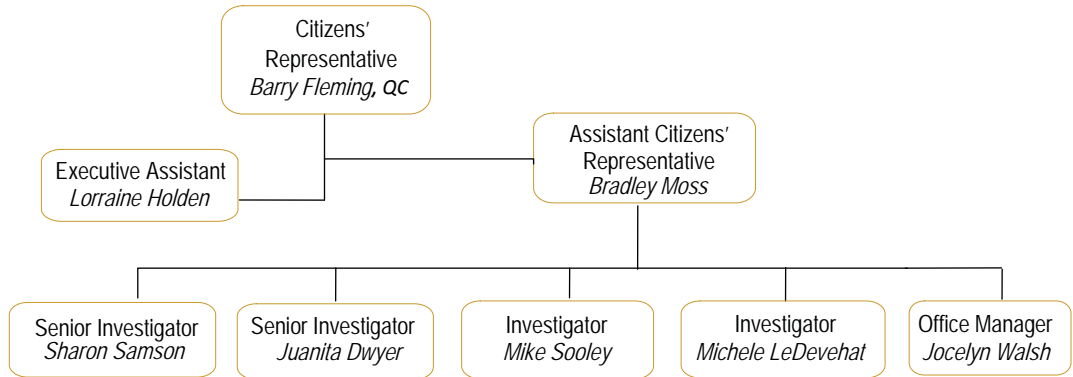
* Note 1: The higher volume of complaints emanating from the District of St. John's East - Quidi Vidi is a result of the location of Her Majesty's Penitentiary.

Baie Verte-Green Bay	1
Bonavista	4
Carbonear – Trinity - Bay de Verde	7
Corner Brook	11
Fogo Island - Cape Freels	6
Harbour Grace - Port de Grave	3
Humber - Bay of Islands	2
Humber - Gros Morne	1
Lewisporte - Twillingate	6
Mount Pearl - Southlands	3
Mount Scio	6
Placentia West - Bellevue	1
St. Barbe - L'Anse Aux Meadows	4
St. George's – Humber	4
St. John's East - Quidi Vidi * ¹	154
Stephenville - Port au Port	32
Topsail - Paradise	4
Virginia Waters - Pleasantville	1
Waterford Valley	11
Windsor Lake	6
Total Complaints & Inquiries by Electoral District	267

Complaints/Inquiries Non-Jurisdictional
April 1, 2015 – March 31, 2016

Eastern Regional Waste Management Authority	1
Executive Council	2
Federal Departments, Agencies and Crown Corporations	4
Municipality (Exc. St. John's, Mt. Pearl and Corner Brook)	6
Other	55
Private Companies	1
Royal Newfoundland Constabulary	1
Total Complaints & Inquiries Non-Jurisdictional	70

Office of the Citizens' Representative Organizational Chart



How to Reach Us

Staff

Barry Fleming, Q.C.	Citizens' Representative
Bradley Moss	Assistant Citizens' Representative
Sharon Samson	Senior Investigator
Juanita Dwyer	Senior Investigator
Mike Sooley	Investigator
Michele LeDevehat	Investigator
Jocelyn Walsh	Office Manager
Lorraine Holden	Executive Assistant

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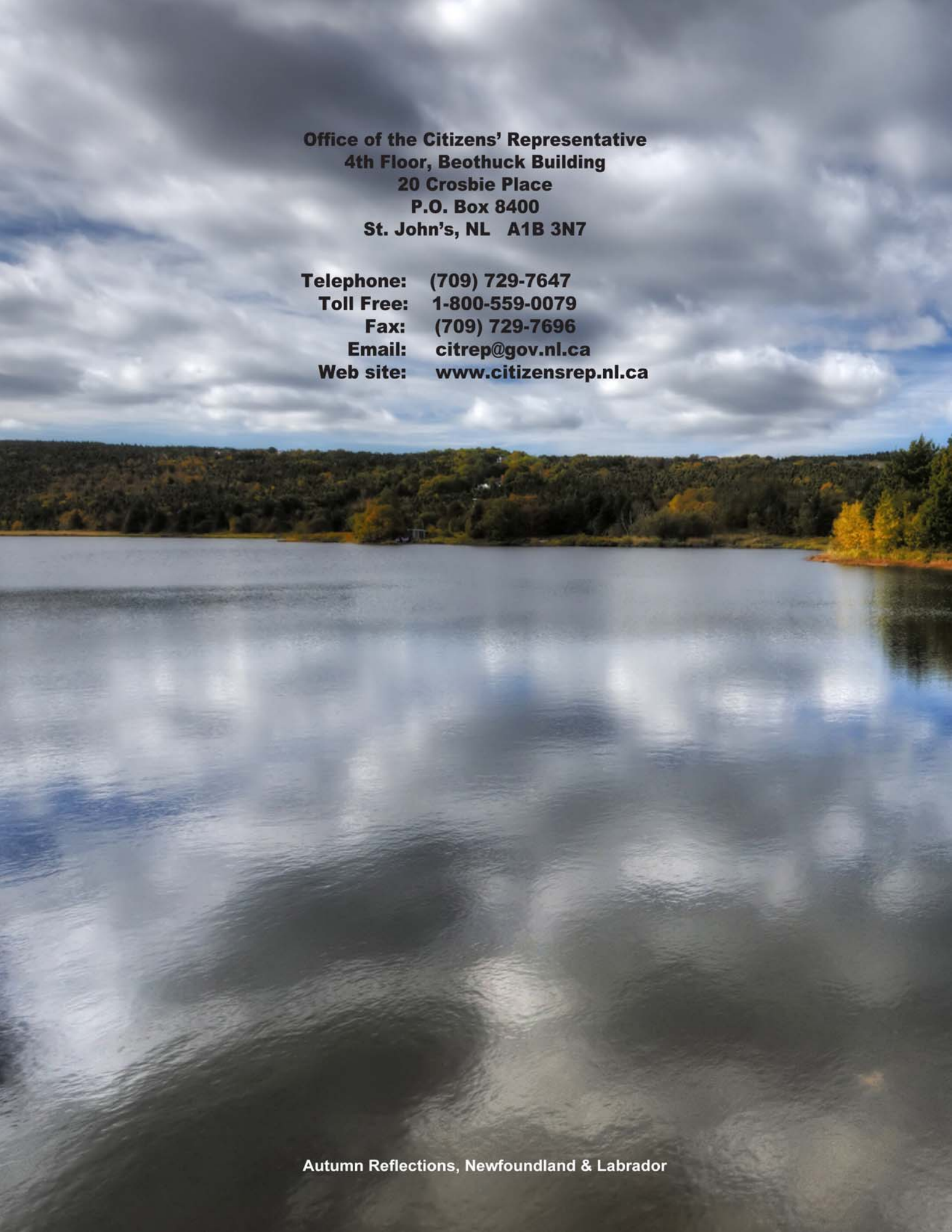
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