

NEWFOUNDLAND & LABRADOR  
OFFICE OF THE CITIZENS' REPRESENTATIVE  
**CITIZENS' REPRESENTATIVE DIGEST**  
“...seeking fairness, finding solutions...”



APRIL 1 THROUGH MARCH 31, 2008



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## MESSAGE FROM THE CITIZENS' REPRESENTATIVE



Citizens' Representative—Barry Fleming, Q.C.

This is the first annual digest of the Office of the Citizens' Representative. The information contained herein was previously reported upon in the Office's annual report. In 2006/07 this Office became subject to the Province's *Transparency and Accountability Act* which prescribes that annual performance reports reflect an organization's progress towards meeting its strategic goals. Our Annual Performance Report was filed in September 2008. In addition to this reporting obligation, I determined that it was important to continue to report about the activities of my Office in a more traditional manner and this Digest serves that purpose.

2007/08 marked my first full year as Citizens' Representative. During the year I gained a better understanding of the promise of this Office while endeavouring to understand the many and varied problems citizens encounter with the public service. During the year I have also gained a better understanding of the problems facing public employees when trying to meet the reasonable expectations of citizens. Sometimes citizens expect our public service to be all things to all people. Like any complex organization the public service is limited in what it can provide based upon its mandate, and current and past financial resources.

For the first time in our history we have kept statistics of the outcome of citizens' complaints that were closed in 2006/07. Further, we have kept track of the average number of days it took to close a file for the reporting period. Of 280 files closed in 2006/07, 90 (32%) were settled to the citizens' satisfaction. In those cases where a complaint is not settled we provide the citizen with a detailed explanation as to why we feel that he or she was treated fairly by the government department or agency complained against. This statistic does not include the hundreds of referrals which we provide to citizens on an annual basis. The average length of time to close a file was 181 working days. As our Office has now eliminated its substantial back log of cases we anticipate a significant reduction in the time it takes to close files in the future.

During 2007/08 the Management Commission of the House of Assembly approved two new positions for my Office; an Executive Secretary and an Assistant Citizens' Representative. These positions are important for enhancing the ability of my Office to meet my ever increasing administrative obligations and to provide timely service in addressing citizens' complaints. I thank the members of the Management Commission for their approval of these new positions.

My Office has been named the lead investigator for public interest disclosure (whistle blower) complaints within the House of Assembly. We have researched and developed investigative techniques which are

suitable for these unique, and often complex, investigations. I have contacted my colleagues in other jurisdictions who have similar responsibilities to gain from their experience and to establish ongoing relationships to help share best practices. I am happy to report that we did not receive any complaints under this program for the reporting period. During 2008/09 I will be giving presentations to the staff of the House of Assembly and its statutory offices to ensure that there is a widespread understanding about the process for filing a complaint and what to expect once a complaint is filed.

Our Office, like many administrative agencies, is always attempting to understand the perimeters of its jurisdiction. In 2007 we filed an application with the Supreme Court of Newfoundland and Labrador against Newfoundland and Labrador Housing to determine our powers with respect to investigating employment related complaints. A unionized employee of NLHC filed a complaint with our Office alleging that he was unfairly disciplined by his employer for off-duty behaviour. NLHC argues that as unionized employees were covered by a collective agreement, the grievance arbitration process was binding and final, and therefore, a complaint could not be properly filed with my Office. Because an Ombudsman does not determine the legal rights and responsibilities of employees and employers, I respectfully disagreed with NLHC's position. The application was scheduled to be heard in April 2008 and a decision is pending. It is important to note that while my Office and officials of NLHC respectfully disagree about this issue, we still maintain a productive client focused approach for resolving citizens' complaints.

While I have endeavoured in 2007/08 to canvass the concerns of citizens throughout the Province my focus in the coming year will be on meeting with organizations that represent different groups within society which have unique requirements of the public service. These groups will include those which represent seniors, the mentally challenged and prisoners. I hope to gain a better understanding of how our Office can integrate the needs of these groups while assisting the people they represent in seeking fairness and finding solutions when dealing with the public service.

Barry Fleming, Q.C.

A handwritten signature in black ink, appearing to read 'Barry Fleming', with a stylized, flowing script.

## OUR ROLE

The Office of the Citizens' Representative is an independent investigation and mediation office established under the *Citizens' Representative Act*.

As a statutory office of the House of Assembly, the Office initiates investigations against provincial government 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 "own motion" investigations, also known as systemic investigations, which do not require an individual complaint to be registered.

The office assumes a mediation function in cases which do not require formal statutory investigation and in many cases, is able to obtain redress for citizens who have previously been unable to solve their problems within provincial government bodies.

With the passage of the *House of Assembly Accountability, Integrity and Administration Act* in 2007, the office is now the named investigator for public interest disclosure or "whistle blowing" allegations within the House of Assembly.

By convention, the office also serves as a central clearing house for government information and on an annual basis it provides hundreds of individuals in the public with the correct contact and referral information for matters that fall outside of its jurisdiction.

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;
- a court, 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.

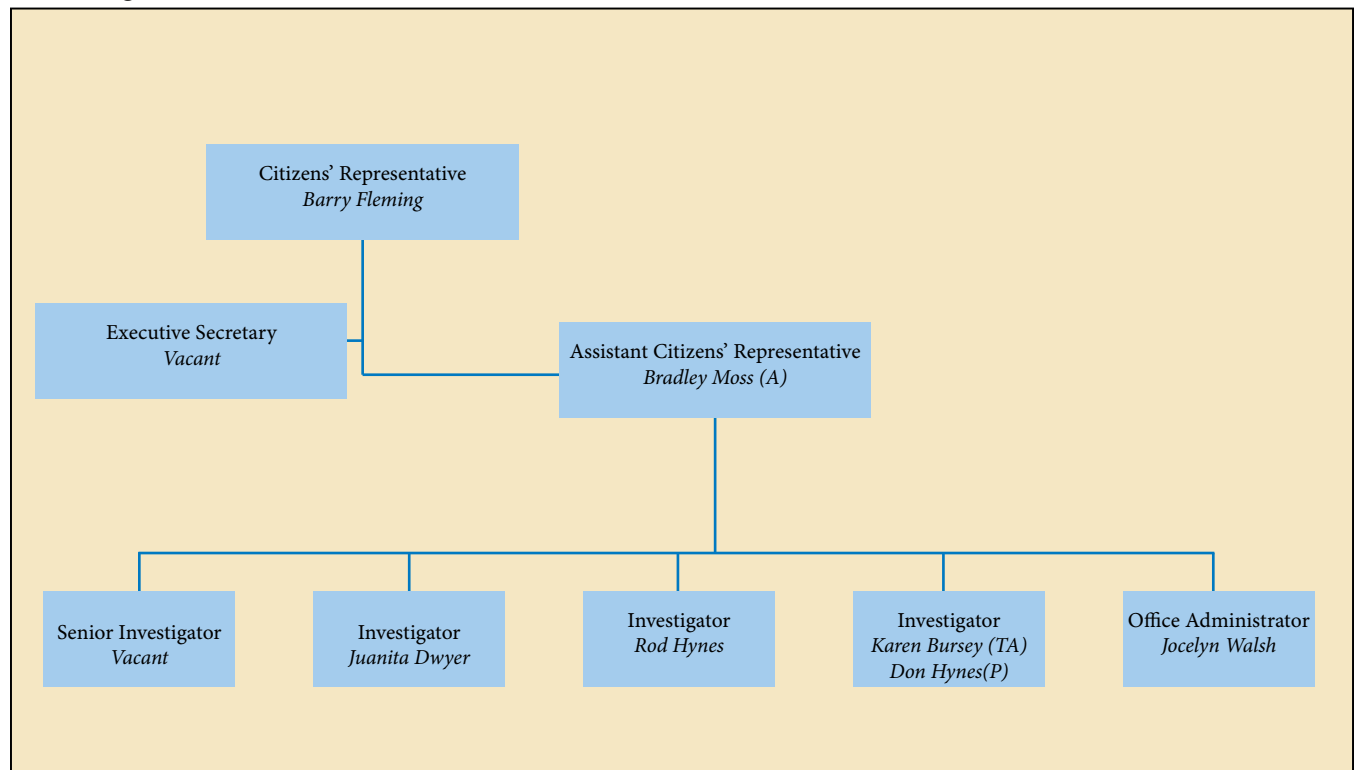
## A NEW ORGANIZATIONAL STRUCTURE

During 2007-08 the Management Commission of the House of Assembly approved a new organization structure for the Office of the Citizens' Representative. The new organization of the Office encompasses two new positions; an Assistant Citizens' Representative and an Executive Secretary.

The Assistant Citizens' Representative position will assist the Citizens' Representative with the overall management of the Office including its reporting obligations pursuant to Provincial legislation. As well, the position will play a lead role in the planning and conduct of systemic or complex investigations.

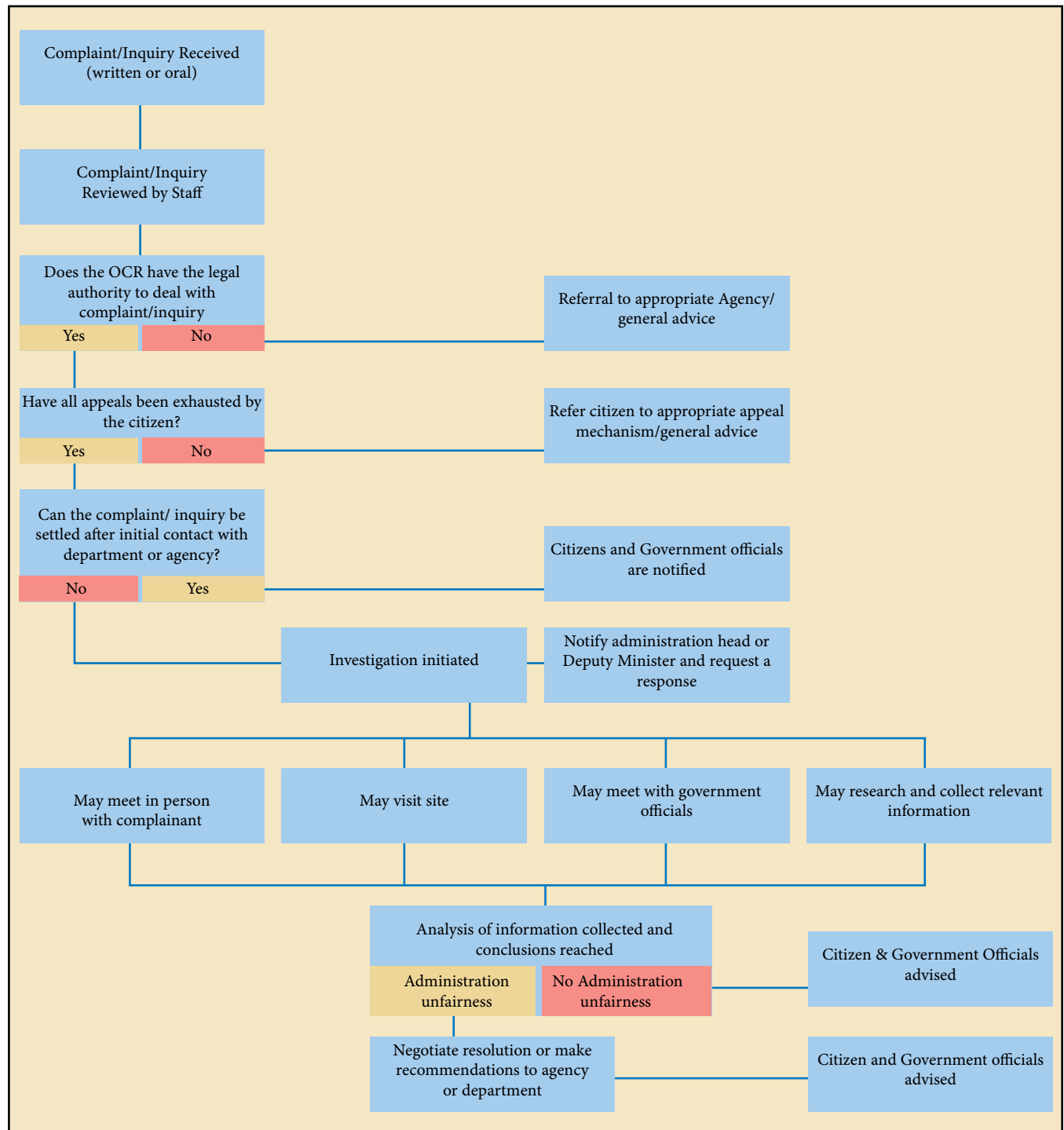
The Executive Secretary position will provide dedicated secretarial support to the Citizens' Representative which had previously been undertaken by the Office Administrator.

### OCR Organizational Chart



# THE COMPLAINT PROCESS

It is important for citizens to know what to expect with respect to the complaint process used by our Office. It costs nothing to file a complaint. The following chart helps illustrate how complaints and inquiries are addressed.





## TRAINING AND EDUCATION

During 2007, staff of the Office attended two educational and training activities. These included:

Acting as local host and attending the Forum of Canadian Ombudsman “Working Behind Prison Walls” course held in St. John’s from November 25–27, 2007. This course included three days of interactive training sessions involving staff investigators from federal and provincial Ombudsman offices across Canada, Bermuda and Northern Ireland. Presentations were made by local members of the judiciary, the bar and the correctional community.

The Office also sent one Investigator to the Forum of Canadian Ombudsman “Intake 2008: Complaint Intake Challenges, Ideas and Techniques” in Toronto from January 27–29, 2008.

## INITIATIVES OFF THE NORTHEAST AVALON

The Office of the Citizens’ Representative strives to offer a province-wide service. This is particularly important for citizens, because of geography, who do not have the ability to deal with their public service problems in person. During 2007–08 the Citizens’ Representative and staff from the Office conducted intake sessions or conducted investigations in the following communities:

Labrador City - Wabush	Grand Falls – Windsor	Nicholsville
Happy Valley – Goose Bay	Gander	New Harbour
Sheshatshiu	Lewisporte	Port de Grave
Channel	Port aux Basques	Jackson’s Cove
Bonavista	Stephenville	Aspen Cove
Harbour Grace	Stephenville Crossing	Botwood
Bay Roberts	Corner Brook	North River
Clarenville	Deer Lake	Fortune
Fogo Island		

## OWN MOTION INVESTIGATION AND SYSTEMIC REVIEWS

The Office of the Citizens’ Representative is often made aware of issues arising within the public service that may impact vulnerable groups within society. Those negatively affected by a government policy may perceive that they will suffer reprisals should they complain. Sometimes individuals are not aware, or are disinclined to avail, of the services of our Office. In these and other circumstances the Citizens’ Representative has the authority to initiate his own investigations. The following three investigations/inquiries were undertaken or completed in 2007–08.

### 1. Department of Justice and Department of Health and Community Services: Facilities and Supports for Female Offenders from Labrador

In January of 2007 local media reported the case of a female offender who was arrested and detained by the RCMP in Happy Valley-Goose Bay in 2006. As a consequence of her declaration of intent to harm herself, her clothing was removed and she was kept naked in a holding cell. The reason provided by the RCMP, for this treatment was that the only “secure room” at the Labrador Health Centre was in use and unavailable. This case begged for a systemic review of how our prisons and health systems are treating female offenders from Labrador.

On June 13th 2007 this Office released the results of its systemic review of facilities and supports for female offenders from Labrador. The report, entitled “Alone Among The Few” was based on the results of a team investigation involving over 40 witnesses including offenders, correctional officials, health care professionals and community groups. We engaged the following individuals and organizations during our investigation:

- All females from Labrador incarcerated at the Newfoundland and Labrador Correctional Centre for Women (NLCCW);
- One former offender residing in Labrador;
- Department of Justice
- Department of Health and Community Services
- Labrador-Grenfell Regional Health Authority
- Eastern Regional Integrated Health Authority
- Legal Aid Commission
- Government of Nunatsiavut
- Provincial Advisory Council on the Status of Women
- RCMP Happy Valley-Goose Bay
- Labrador West Status of Women Council;
- Mokami Status of Women Council;
- Canadian Mental Health Association;
- Turnings;
- Stella Burry Community Services;
- Correctional Service of Canada;
- Labrador Legal Services;
- Sheshatshiu Treatment and Community Support Services; and,
- Labradorians for Peaceful Communities—a division of the provincial Violence Prevention Initiative

What we found was a costly and disjointed system as it relates to the incarceration of these offenders. They are underserved by a lack of suitable correctional facilities and one overtaxed medical facility in Happy Valley – Goose Bay. Female offenders from Labrador are many times subjected to epic journeys over great distances between coastal Labrador, Happy Valley – Goose Bay, St. John’s and Clarenville. Sometimes flown by commercial aircraft, women are being needlessly transported back and forth from Labrador to Clarenville, sometimes to appear as witnesses in matters other than their own. Aspects of these journeys were found to be humiliating to the women involved.

The report concluded with five recommendations to be considered by the provincial government:

- i. The Province of Newfoundland and Labrador should make an immediate commitment to provide for a secure adult female custodial building that can accept up to five lower risk offenders in Happy Valley – Goose Bay;
- ii. The Province of Newfoundland and Labrador should take immediate steps to improve the Labrador Health Centre's capacity to handle citizens with complex mental health needs in a secure environment;
- iii. Prior to any construction or retrofit in Happy Valley – Goose Bay of the facility recommended in #1 above, the Province of Newfoundland and Labrador should undertake immediate and adequate measures to increase offender appearances before the courts through the use of video conferencing. This will decrease the costly and disruptive requirement for escorts while providing a continuous period of time for the offender to avail of programming;
- iv. The Newfoundland and Labrador Correctional Centre for Women in Clarenville (NLCCW) should increase the availability of the current bi-weekly counseling session to a part time position in a pilot project of fixed duration, that will both make counseling more accessible and instill confidence in offenders and allow for the establishment of rapport with treating professionals; and,
- v. NLCCW should provide offenders, regardless of where they are from, with a printed and regularly updated list of available community supports prior to release.

Representatives of the Departments of Justice and Health and Community Services have indicated that they are still considering the contents of recommendations 1 through 4. Recommendation 5 was implemented immediately by the Department of Justice. The following progress can be reported on the other issues.

- i. **Construction of a custodial facility:** The Department of Justice is assessing "feasibility and operational issues associated with constructing a secure facility in Labrador." Since our report, and in concert with other developments in corrections, the Adult Custody Division is undergoing a complete review by outside consultants. The Minister of Justice had made a series of public statements on the issue. I report that this Office has been included in the process of submissions to the consultants, where this recommendation and the reasons for making it were reiterated.
- ii. **Increasing the "secure room" capacity at the Labrador Health Centre:** In June of 2007, the Department of Health and Community Service indicated it was going to work with the Labrador-Grenfell Health Authority "to review existing infrastructure and operational requirements for secure rooms."

In response to our follow up the Department indicated:

The Labrador Health Centre now has 2 secure rooms to deal with persons who have mental health problems, one in the Emergency Dept. and one on the inpatient unit. Funding for renovations was provided in July 2007. There are still some renovations being done to enhance observation by staff. The Department will continue to respond to requests from (Labrador Grenfell) Health Authority to provide the infrastructure and operational requirements for secure rooms within available resources. This service will be monitored on an ongoing basis as the *Mental Health Care and Treatment*

*Act (2006)* is implemented....four extra staff were hired in January, 2008 to assist with observation of persons who are held in one of the secure rooms at the Labrador Health Center.

- iii. **The use of video conferencing technology** was being assessed by the Department of Justice and by management of the NLCCW in the interest of producing a report to the Department of Justice.
- iv. **Increasing availability of counseling at NLCCW:** Management of NLCCW was to engage Eastern Health to reassess the delivery of mental health and addictions services.

## **2. Atlantic Lottery Corporation—Retailer Wins**

As I reported to the House of Assembly and the public in my 2006/07 Annual Report, the Ombudsman Offices of Newfoundland and Labrador, Nova Scotia and New Brunswick have cooperated in monitoring the progress of the Atlantic Lottery Corporation in addressing the disproportionate lottery wins by ALC retailers. As the ALC is a corporation owned and operated by the four Atlantic Provinces, no one Ombudsman Office has the jurisdiction to investigate the ALC. We asked for, and were granted cooperation from ALC with respect to our review.

During 2006–07 we met with officials of the ALC and were forwarded copies of the various consultant, accounting and management reports which were generated in an effort to address this issue. Two observations flow from my review of the process. First, the management of ALC is acutely aware of the importance of addressing this issue to ensure the public's confidence in the lottery regime. Unlike lottery corporations in other jurisdictions, the ALC self-reported the initial problem. It has been open and transparent with all requests for information and documentation. Second, and most importantly, the initiatives introduced have gone a long way to alleviate the problem. The general theory behind those initiatives was to minimize the lack of retailer custody and control over tickets during the process of redeeming winning tickets for cash.

## **3. Department of Government Services—Blue Zone Parking**

In 2007 we heard a number of complaints from citizens about Blue Zone Parking. Some of the citizens who complained to our Office were fearful of lodging an individual complaint because they perceived they might have difficulties in gaining access to a driver's license in the future because of their complaint. The Office initiated an investigation into the policies and procedures associated with the distribution of parking permits for the disabled, with the Department of Government Services, Motor Vehicle Registration Division (MRD) as respondent. Our investigation addressed:

- The period of time for which a disabled parking permit is issued and what appears to be inconsistencies in those time frames;
- The nature of the medical evidence requested for those seeking disabled parking permits; and,
- The specific procedure for applications for disabled parking permits and the road tests that those applications may generate.

Designated Mobility Impaired Parking Permits (Blue Zone Parking Permit (BZPP)) are issued to individuals and entitle the vehicle in which it is displayed to be parked in a designated parking space. These parking spots are identified by the blue international wheelchair logo both on a sign and in the parking

area. The individual to whom the permit is issued must be in the vehicle and the permit cannot be loaned to anyone else for use. It is illegal to use a permit not issued to the permit holder.

The Department provided a full and thorough explanation of its position. It can be summarized as follows:

- Prior to 2002 the Canadian Paraplegic Association issued parking permits. The Department took over this responsibility on January 2, 2002 but was unable to obtain medical files of past recipients of parking permits from CPA and therefore had to start a new databank.
- With respect to the recall or suspension of driver's licenses the Registrar of Motor Vehicles, pursuant to the authority in the *Highway Traffic Act* may do so when in receipt of evidence that justifies same (usually from physicians or police reporting).
- At no time is an on-road assessment required in order to obtain an Impaired Mobility Parking Permit. These permits are temporary or permanent depending upon the nature of the disability which prompted a request for the permit. Any individual applying for the permit must complete an Impaired Mobility Parking Permit Application form and have the application certified by their family physician. A Medical Review Officer or Medical Consultant can review the application and may request more information to assess the validity of the request for the application.
- A temporary permit was established to curtail fraud, that is, improper use of the permit once an applicant was deceased. A temporary permit is typically issued for six months any may be renewed for a further six-month period. Permanent permits are issued for two-year or five-year periods.
- In November 2002 the Department implemented a new policy which allows the renewal of a permanent permit without a physician certificate if the original permit was issued through the Department and had been previously reviewed by the Medical Review Officer or Medical Consultant.
- With respect to the issuance of drivers' licenses, a medical file is established for any applicant with a known medical condition. The knowledge about the medical condition may come from a citizen's application for a parking permit. Once all medical information has been collected an assessment of the citizen's fitness to drive is undertaken by the Medical Review Officer or Medical Consultant. That assessment requires a review of the citizen's medical condition against medical standards for driving acuity. In most cases, the drivers' licenses are continued with medical follow up. Any citizen who has his or her license suspended may appeal to the Supreme Court of Newfoundland and Labrador.
- Prior to the granting of a license a citizen may be required to undertake an on-road assessment. The need for an assessment may stem from a request by a physician, an occupational therapist, or the police if the applicant has been in a motor vehicle accident.
- The on-road assessment takes approximately 90 minutes and is free of charge. The individual capability of the applicant is assessed against the following criteria; active range of motion, strength, involuntary movement, lane observance, starting, turning, right of way, stopping, speed control, passing, traffic light, backing, parking and straight line driving.

- Statistics collected indicate that there are approximately 250 medical on-road assessments conducted each year. The Department advises there are 20,000 active medical files thus suggesting that only 2% of all medical follow up files culminate with a road side assessment.
- The Department, in cooperation with the Coalition of Persons with Disabilities undertook a comprehensive review of the Designated Impaired Mobility Parking Permit Program. A committee was struck comprised of government and community representatives. A number of changes were made to the Program with the input of the Committee. They include:
  - i. The application form has been revised to more clearly identify specific eligibility requirements for a parking permit;
  - ii. The application form clearly states that the information contained on the application will be forwarded to the Motor Registration Division Medicals Section, for review on any impacts the applicant's condition may have on their ability to drive safely. This may result in a request for additional medical information for the purposes of assessing the medical condition on driving.



Seniors Advocates in Grand Falls-Windsor meet with Barry Fleming, Citizens' Representative.

- iii. Renewals of permanent parking permits do not require physician re-certification. The Department only requires completion of a request from the applicant in order to ensure they have the latest address information on file.
- iv. Applications may now be signed by a nurse practitioner in addition to physicians.
- v. Letters referencing the Impaired Mobility Parking Permits have been modified.
- vi. Work continues on further changes to the overall medical program.
- vii. Current changes may be viewed on the Department website at <http://www.gs.gov.nl.ca/gs/mr/dimpp.stm>

Our Office reviewed similar programs in eight other Provinces and discovered that all had very similar application processes and timelines for the retention of parking processes.

Much of the anxiety and concern raised by citizens who contacted our Office about the parking permit process emanate from the fact the Department had to recreate a database when files were transferred to it from the Canadian Paraplegic Association. While those with medical conditions or disabilities have a right to be accommodated so as to permit access to the public roads, that accommodation cannot come at the cost of public safety.

The Office of the Citizens' Representative acknowledges the Department's efforts to consult with those organizations that represent those who must access the disabled parking permits. Congratulations on making a meaningful endeavour of the consultative process as evidenced by the changes outlined earlier in this report.

## INDIVIDUAL CASE SUMMARIES

Each year, the Citizens' Representative makes inquiries and conducts investigations based on complaints laid by citizens against public bodies. For any complaint which falls beyond the power of this office to accept, an effort is made to re-direct the citizen to the appropriate federal or provincial agency or private company that can best deal with his or her issue.

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

### **“The Road to Lead: Occupational Health & Safety”**

In February 2003 P.P. and C.T. filed complaints with our Office alleging that the Occupational Health and Safety Branch (“OHS”) of the Department of Government Services did not act appropriately with respect to their long standing complaints that they worked in an unsafe environment. Both men had worked in a private garage in St. John's from the late 1970's. They left the employ of the garage in 2001 after being diagnosed with toxic lead poisoning.

The file was essentially held in abeyance in our Office until the Spring of 2007 when the Citizens' Representative undertook a comprehensive review of numerous boxes of evidence and related research which had been gathered by staff. A forty-two page report was issued in September 2007 which found that OHS had acted unfairly and unjustly with respect to the complaints by P.P. and C.T. and that OHS had not acted appropriately about their health and safety concerns.

The overarching conclusion gleaned from the evidence was that OHS had been aware of lead problems at the citizens' employer from at least 1988 to 2001. In May 2001 an expert in lead poisoning had stated that

P.P. and C.T. “..... had regular daily exposure to lead fumes, vapors and dust in the course of their work with a total duration of exposure of respectively 23 and 29 years”. For over half of the period when these men were exposed to the lead fumes vapors and dust, OHS was monitoring the progress of the employer to deal with the problem. The expert noted that these men were consistently found to suffer from significant chronic lead exposure.

OHS’s involvement with the P.P.’s and C.T.’s employer was prolonged, extensive and ultimately ineffective. For example, in 1993 an OHS inspector issued eleven directives to the employer, one of which was that workers who were exposed to contaminants in the garage should use respiratory equipment until “proper engineering controls and other work practices” were in place. The use of respiratory equipment was meant to be a temporary measure but it was a persistent recommendation of numerous OHS officials and private consultants in the ensuing years.

When our Office issued its report in September 2007 we invited P.P., C.T. and OHS to provide submissions as to what recommendation the Citizens’ Representative should make given his findings. No submissions were received and the Office did not make recommendations because given the passage of time from the end of P.P.’s and C.T.’s employment at the garage, any recommendations would have been academic or moot. OHS, since 2001, has become much more proactive in prosecuting employers for violations of occupational health and safety standards and in issuing stop work orders to protect workers. Given that our review was limited to two complaints, it was imprudent to make sweeping recommendations about the systems used by OHS to undertake its work during the relevant time period. We are prepared to revisit the prospect of conducting a more systemic review of OHS’s current policies, procedures and practices if a critical mass of complaints suggest such a review is warranted.

An addendum to the Investigation Report was issued in November 2007 to address the reasons for not making recommendations. The addendum noted three benefits of the overall review. It was a reminder to OHS of the tremendous importance of the work it undertakes. The consequences of anything but vigilance in investigating occupational health and safety complaints can be devastating to the men and women who look to OHS as the last line of defence to ensuring workplace safety. Second, the report was an unbiased and thorough review and ultimately a confirmation of P.P.’s and C.T.’s concerns that OHS had not acted with enough vigor with respect to their concerns. Sometimes, the best an ombudsman can do is confirm the deeply held convictions of a citizen. Third, the review was a reminder to the Citizens’ Representative and its staff of the importance of addressing citizens’ complaints in a timely fashion. Reasons and excuses may exist for the delay in this Office addressing P.P.’s and C.T.’s concerns but they do nothing to alleviate a citizen’s desire to seek timely redress from an oversight agency.

### **Invasive Group A Streptococcus: Western Regional Integrated Health Authority & Dept. of Health and Community Services**

On November 6, 2006 a citizen filed a complaint with our Office against the Western Regional Integrated Health Authority (Western Health) and the Department of Health and Community Services concerning the circumstances surrounding her husband’s death in late Spring, 2006. Her husband had died of Invasive Group A Streptococcus Disease (“Invasive Strep A”). The citizen suggested that there had been an outbreak of the disease prior to her husband’s death which had not been properly reported and monitored. Further, she alleges that Western Health improperly permitted a leak of the cause of her husband’s death to the local media. The citizen also had concerns about the way she was notified of her husband’s death and the fact the emergency staff which treated her husband were prescribed antibiotics prior to her being afforded that opportunity.



While our Office does not have the jurisdiction to review the standard of practice of medical professionals, we can review the actions of health authorities to determine if, beyond the medical treatment provided, citizens have been treated fairly. With respect to this complaint we conducted extensive research into the nature of Invasive Strep A, the reporting obligations of health authorities when a diagnosis is made, the past incidence of outbreaks of the disease in this Province. We also reviewed the extensive material and submissions presented by the citizen, Western Health and the Department.

Our review indicated that there were six cases of all forms of Streptococcus in this Province in 2006. Two of the cases involved Group A Streptococcus – a mild form of the disease which sometimes manifests as “strep throat”. Two cases were Streptococcal Pneumonia. Of the two cases of the very serious Invasive Strep A, one occurred in the Western Region and one was in Labrador. Given the low incidence of the disease, and the fact the two incidents were so geographically dispersed, an outbreak had not occurred in 2006. We also reviewed the incidence of the disease from 1992 to 2005 and can confirm that there had not been an outbreak for those years.

We investigated the citizen’s concern that the media in her town was notified of the cause of death of her husband shortly after he died. We could not determine how the leak occurred (it could have been from hospital personnel, patients or family members of patients). Medical personnel at Western Health were obliged, once the issue was in the public domain, to comment publicly about the nature of the disease and to allay citizens’ concerns. Our review indicated that at no point during those interviews did the personnel breach the citizen’s privacy interests. It is an unfortunate consequence of small town life that, where an exceptional occurrence leads to the death of a citizen which requires public commentary by health officials, others will be able to identify the family of the deceased. We suggested that in the future the family should be extended the courtesy of being advised that a public comment would be made about the disease that caused the death of a loved one.

We also reviewed the circumstances surrounding the notification of the citizen about her spouse’s death and the timing of the prescription of antibiotics to the emergency room staff and the citizen. While our Office agreed with the citizen that both issues were not ideally handled, the health officials were somewhat hampered in notifying the citizen of the death of her spouse and in ensuring she was prescribed antibiotics by the fact that at the relevant period of time both she and her spouse were en route from her home to St. John’s for more intensive treatment of her husband’s condition. Regrettably her husband died before arriving in St. John’s.

#### **Full Benefits Extended: Workplace Health Safety and Compensation Commission (“WHSCC”).**

An injured worker registered a complaint against the WHSCC that he had been incorrectly awarded partial earning loss benefits when he felt he was entitled to full benefits. The worker claimed he had been deemed able to work as a light duty cleaner when in fact he was physically unable to do so. Our Office reviewed the matter and determined that under Section 60 of the *Workplace Health Safety and Compensation Act* the WHSCC could obtain an independent functional capacity evaluation and have the results compared against existing medical and allied health documentation on file. The new functional capacity evaluation led to the extension of full earning loss benefits by the WHSCC.

#### **More benefits extended: WHSCC**

Joe registered a complaint alleging that WHSCC erred in determining that his asymptomatic pre-existing degenerative disc disease and spinal stenosis were minor contributing factors to his total disability. Because of the WHSCC decision Joe was experiencing a 25% reduction in benefits. Our investigation determined

that conflicting medical evidence on causation warranted one of two actions: WHSCC could have an independent medical examination performed or it could provide 100% extended earnings loss. WHSCC opted to refer this matter back to a case manager and the 100% extended earnings loss was retroactively extended.

#### **Computer Error Identified: Department of Government Services—Motor Registration Division (“MRD”)**

A citizen who had his license suspended because of a criminal conviction was surprised to have a new driver’s license show up in the mail prior to the expiry of the suspension. We investigated and found that a computer error at MRD resulted in pre-2005 *Criminal Code* restrictions being incorrectly processed in the computer system. MRD corrected the problem immediately so as to prevent similar problems from arising in the future.

#### **Mediated outcome improves living conditions: Newfoundland and Labrador Housing Corporation (“NLHC”)**

Brian contacted us to complain that living conditions in his NLHC unit had deteriorated considerably and he had health and safety concerns after a septic back-up. Working with NLHC, our Office was successful in having the family relocated to another community. Upon moving out of the community however, the family was unable to continue with the credit they had established with a local store owner. We contacted the Department of Human Resources, Labour and Employment and were successful in obtaining emergency assistance to help the family through the transition into their new community.

Investigating and mediating complaints from citizens against NLHC requires substantial empathy for those accessing and providing public housing. A person’s house is his or her castle and it is the basic ingredient in providing the comfort, peace and tranquility that a home entails. It is important that, to the extent possible, public housing units provide citizens with the capacity to realize those goals. It is equally important to understand that many of the complaints that citizens file against NLHC stem from housing units that were built decades ago and which have experienced many years of sub-par maintenance. To rectify these problems will require prolonged and extensive capital expenditures. With these two imperatives as a starting point – and with a collaborative client focused relationship with NLHC – we strive to address the many and varied issues raised by tenants of NLHC.

#### **Elderly Citizens Can’t Get Through!: MCP**

A concerned sibling telephoned our Office to advise that her sister and brother-in-law, both in their 80s, could not re-register for the new MCP card. A courtesy call by staff was made to the MCP office concerned and the pair were issued cards the following day.

#### **Personal Safety Concerns Settled with the Help of NLHC**

An NLHC tenant who was relocated during renovations complained about being moved to a neighbourhood that was unfriendly to homosexuals. Shortly after moving in the tenant became the subject of verbal assaults from local teenagers and was terrified when a steel bar was hurled through a window. While he was dealing with the police, the tenant asked if our Office could assist him in moving to another neighbourhood. NLHC listened to OCR’s account of the matter and agreed to move the tenant to a residence in another area.

### **Government's Snowplows Aren't the Cause: Department of Finance**

Jane contacted our office after her basement sustained serious flooding and she could not get a satisfactory response from the Department of Finance (Insurance Division) about compensation. Jane believed that snow banks created by Transportation and Works' snowplows were the cause of the flooding. We investigated and found that the flooding was the direct result of neglect of a culvert installed by a private utility in the late 1970s. We put Jane in touch with the correct personnel at the utility and the municipality concerned, as both were responsible for the maintenance of the culvert.

### **Accessibility Modifications Completed: NLHC**

A disabled tenant contacted our office to say that the accessibility modifications to his rental unit which he requested were initially considered by an inspector for NLHC in September of 2006 but as of May 2007 he was still awaiting repairs. When we inquired about the delay, we were told that there was a report pending from the tenant's occupational therapist. By June the report had been received and processed and construction began immediately.

### **Mediated settlement reached with the Department of Government Services (Motor Registration Division)**

Dwayne alleged that in 2001 he had spoken with an official with Motor Vehicle Registration and discussed the idea of converting a school bus into a mobile garage service vehicle. Essentially, a garage or shed. He claimed he was told the conversion would not be a problem, however when he converted and tried to register the bus it was a problem. Dwayne received no information from Motor Vehicle Registration on the process and admitted all communications were verbal. We got the parties together and both sides were given ample time to express their interpretation of the events that had unfolded. A reasonable settlement was proposed and agreed upon to the satisfaction of all parties and Dwayne could realize the settlement after signing a release.

### **Department's Actions Reasonable: Human Resources, Labour & Employment ("HRLE")**

Nicole contacted OCR after her HRLE benefits were suspended due to her receiving an income tax rebate from the Canada Revenue Agency. She claimed she was unaware she had to disclose the rebate as income and spent the proceeds. We inquired of HRLE and learned that the tax refund was \$2466. Any amount under \$500 is not considered in a monthly assessment, however Nicole received \$1966 more than the threshold dollar amount. This \$1966 was considered as income for the month Nicole received the money. As her monthly needs were calculated at \$1070, she was ineligible for one month. Further, as per HRLE policy the balance of the refund is considered to be a liquid asset for the next month and she



Host of "First Local", Gina Brown, interviews Barry Fleming, Citizens' Representative.

therefore became eligible partway into the next month. As difficult as it sometimes is, and to be fair to the Treasury and to the public, income support recipients must report income received in lump sums.

### **Pass or Fail?? Department of Education**

Bill was a recent high school graduate when he contacted us in July...or was he? Bill didn't know because he had not received the grades from his public exams one month after school closed. OCR contacted the Department, which advised he was erroneously assigned a public examination number that was not in the system. The Department immediately corrected the oversight and mailed Bill his grades.

### **Investigation: Caught in the Cogs: Eastern Health**

Our Office closed a lengthy investigation in 2007 involving Mark, who had complained that he had not received proper severance pay from a hospital which is now part of Eastern Health when he retired. The main problem was that Mark's term of service ran through several agencies and it spanned 34 years. We tracked the extensive documentary evidence necessary, reported to the Authority and mediated an acceptable settlement.

### **Turn the Lights On!: Department of Human Resources, Labour & Employment**

Renee contacted our Office stating that HRLE had incorrectly deducted payments totaling approximately \$900 from her income support payments over a period of 16 months, and had paid the money to a utility account that did not belong to her. This was discovered to be an innocent mistake: Renee and her husband, also a recipient, had separated and the money was being redirected to pay her husband's arrears. HRLE was unaware of the marriage breakdown and reimbursed Renee the full amount.

### **"A Good Spot:" Department of Transportation and Works**

A citizen contacted our Office to express great displeasure over the expropriation of his land for the purposes of bridge construction, as well as with the overall construction plan for the bridge. The citizen felt that the Department could realign and reposition the bridge to lessen the amount of land he would lose as a result of the expropriation. The investigation found that the Department chose the optimum route for the bridge considering a host of factors including impact on residents, the town's water and sewer main, construction time, sight distances on intersections, curve radii, and cost. Our Office was satisfied that the Department chose the least intrusive method while maintaining the integrity of engineering standards and Departmental requirements for bridge construction.

### **"You Actually Listened to my Concerns." Central Health**

A willingness by Central Health to open a dialogue on home care resulted in the early mediation of a statutory investigation. A frustrated and concerned parent contacted OCR to investigate why Central Health had denied her request for additional home support hours for her daughter. While our review revealed Central Health was abiding by a strict interpretation of its home support policies, Central Health saw an opportunity to discuss other options with the mother in order to accommodate other disabled citizens in adjoining properties. The end result: a pay raise for the lead home care worker and an increase in home support hours for disabled individuals living in close proximity to each other.

### **Tipping the Scale: Department of Transportation and Works**

The construction of a new road had led to flooding of Mr. and Mrs. Smith's backyard. To avoid future flooding events, Transportation and Works constructed new open French drains on the property which, while sparing the property, also devalued its appraised value. A series of meetings involving the Smiths and the Government took place and a settlement was offered which was acceptable to the Smiths.

### **I Can See Clearly Now: Department of Human Resources Labour and Employment**

Eva contacted our Office because she had requested approval for a specialized lens to put in her glasses. She claimed to have provided all necessary medical documentation to support the claim but was getting no answers as to whether or not the lens would be approved. We inquired and found that the matter had been referred to a supervisor for consideration. Eva got her lens shortly thereafter.

### **But I Can't Wait Any Longer: Department of Human Resources Labour and Employment**

Margaret contacted us regarding an overdue request for medical transportation. She needed to travel by taxi to a medical appointment and couldn't reach anyone to find out if she had been approved. Her problem was compounded by the fact the appointment was within hours. Our inquiry received immediate attention and Margaret got to her appointment.

### **No Need for Sandbags: Department of Transportation and Works**

Our Office investigated allegations brought by Malcolm that his property had been subject to flooding and water damage as a result of blockages in ditching near his house. After a series of meetings and other



Barry Fleming, Citizens' Representative meets with Lewisporte Chamber of Commerce.

contact with the Department it took a number of actions—including ditching on the opposite side of the road—which resolved the problem to Malcolm’s satisfaction.

### **It Came Without Warning: Department of Transportation and Works**

Joan was referred to our Office by her MHA. Her vehicle struck a large unmarked pothole on a busy highway, causing damage to her vehicle’s rim. Joan replaced it with a second hand rim at a cost of \$74 but thought the Department should have made people aware of the existence of the pothole. Damage to motor vehicles occurs daily on this province’s road system and in the overwhelming majority of cases, road hazards are marked as soon as the Department becomes aware of them. This investigation found, however, that the Department had knowledge of the pothole at issue and despite an order that it be fixed, it was left unattended for four days. There was no daily activity report indicating that the work had taken place when ordered on November 1<sup>st</sup>, 2006 but there was a daily activity report indicating work had taken place on November 6<sup>th</sup>, the day after Joan’s vehicle had been damaged. The Department concurred with our finding and kindly reimbursed Joan her modest expense.

### **Prosecution of Harassment Investigation: Central Health**

An employee of Central Health filed a complaint with OCR regarding a harassment investigation that had been conducted as a result of her filing a complaint of harassment with her employer. OCR conducted its own investigation of the matter and it was determined that the harassment investigation was flawed: it was unduly influenced by staff of the Authority and the complainant was not treated with procedural fairness. Based on the results of the investigation, a recommendation was made to Central Health to remove any negative reports in the employee’s personnel file revolving around the matter. Central Health’s response was to reject the recommendations and question the OCR’s jurisdiction to conduct an investigation of what it deemed an “internal employer/employee matter.” The employee had terminated her employment by the time of our Report so further efforts to advocate for the recommendation were not warranted.

### **Home for Christmas: Department of Justice (Adult Corrections Division)**

An inmate serving a federal sentence at Her Majesty’s Penitentiary contacted our Office stating he had lost 20 days of earned remission time and would not be released in time for Christmas with his family. As a federal inmate he felt he should have been released according to the statutory release date calculated as 2/3 of his sentence. We investigated and found his statutory release date did not apply, however, as the province has the right to govern the release of federal prisoners it incarcerates it is free to add time for disciplinary offences. A disciplinary ruling against this inmate meant that he would be staying imprisoned longer than if he had been incarcerated on the mainland in a federal prison. HMP did not have to honour the earned remission since the appeal date for the disciplinary ruling had passed, however, given the inmate was a parent, he was credited with 5 days and released to spend Christmas with his family.

### **Roof Repairs: Newfoundland and Labrador Housing Corporation (“NLHC”)**

Ray called us stating that he had been denied assistance for housing upgrade under the Provincial Home Repair Program. The Program has a repair limit of \$5,000.00. Our investigation found that Ray, a widower, had received \$4950 in 2005 to fix his roof, however this amount did not cover the problems he was currently having and in 2007 he was told he wasn’t eligible for additional funding until 2010. Investigators visited the home and NLHC graciously agreed to extend a loan that would enable him to remain in his home.



## **Hearing Aid Batteries for a Deaf Student: Eastern Health and Department of Human Resources Labour and Employment**

Catherine complained that her son's hearing aid batteries were not covered by the Department. The son was a student of the Newfoundland and Labrador School for the Deaf. Neither HRLE or the Department of Health and Community Services would cover the cost. A caring Audiologist we contacted at Eastern Health, however, communicated with the School for the Deaf and explained the circumstances; the School for the Deaf was happy to oblige the son as long as he was a student there.

### **“I Just Can’t Live There Anymore”: Eastern Health**

An elderly man with complex needs and no family supports, who was assisted in various capacities by Eastern Health, came to our Office asking for assistance in having Eastern Health move him from a board and lodging arrangement that was not conducive to his health or general well being. He relayed numerous examples of violence and discrimination at the hands of other boarders and didn't know where else to turn. We immediately engaged Eastern Health in discussions. Eastern Health immediately assigned a case manager and the man was moved within days. Full credit to the Authority for moving quickly in this case.

## **KUDOS**

Each year the staff of our Office are solicited by the Citizens' Representative to put forward a nominee for recognition for exceptional cooperation with the Office. These are sometimes regular contacts who have a track record of reliability in multiple cases, and other times it is someone who responded immediately when called upon (many times “out of the blue”) to provide information, assist a citizen in need, or to provide some other assistance in the course of our regular investigations.

With the cooperation of the Clerk of the Executive Council, both the Office of the Premier and the Office of the Citizens' Representative will provide letters of recognition for the employee's personnel file as an acknowledgment of our appreciation for a job well done.

Donna Barnes—Regional Enquiries Coordinator—Department of Human Resources, Labour & Employment. Donna is our primary contact for HRL&E in central Newfoundland and consistently returns our phone calls and emails with explanations. She is always available to meet with Investigators passing through central and does a great job of facilitating an effective flow of information.

Keith Rees—Manager of Tax Administration, Department of Finance. Since 2004 we have worked closely with Keith on numerous tax issues, some going back decades. The procurement of documents and mediation of cases would have taken a lot longer without Keith's insightful and pragmatic involvement.

Marian Crowley—Information Coordinator, Eastern Health. Marian has a track record of providing speedy replies to our various inquiries at Eastern Health. Her proactive approach to solving problems and resolving disputes was acknowledged by all Investigators on staff.

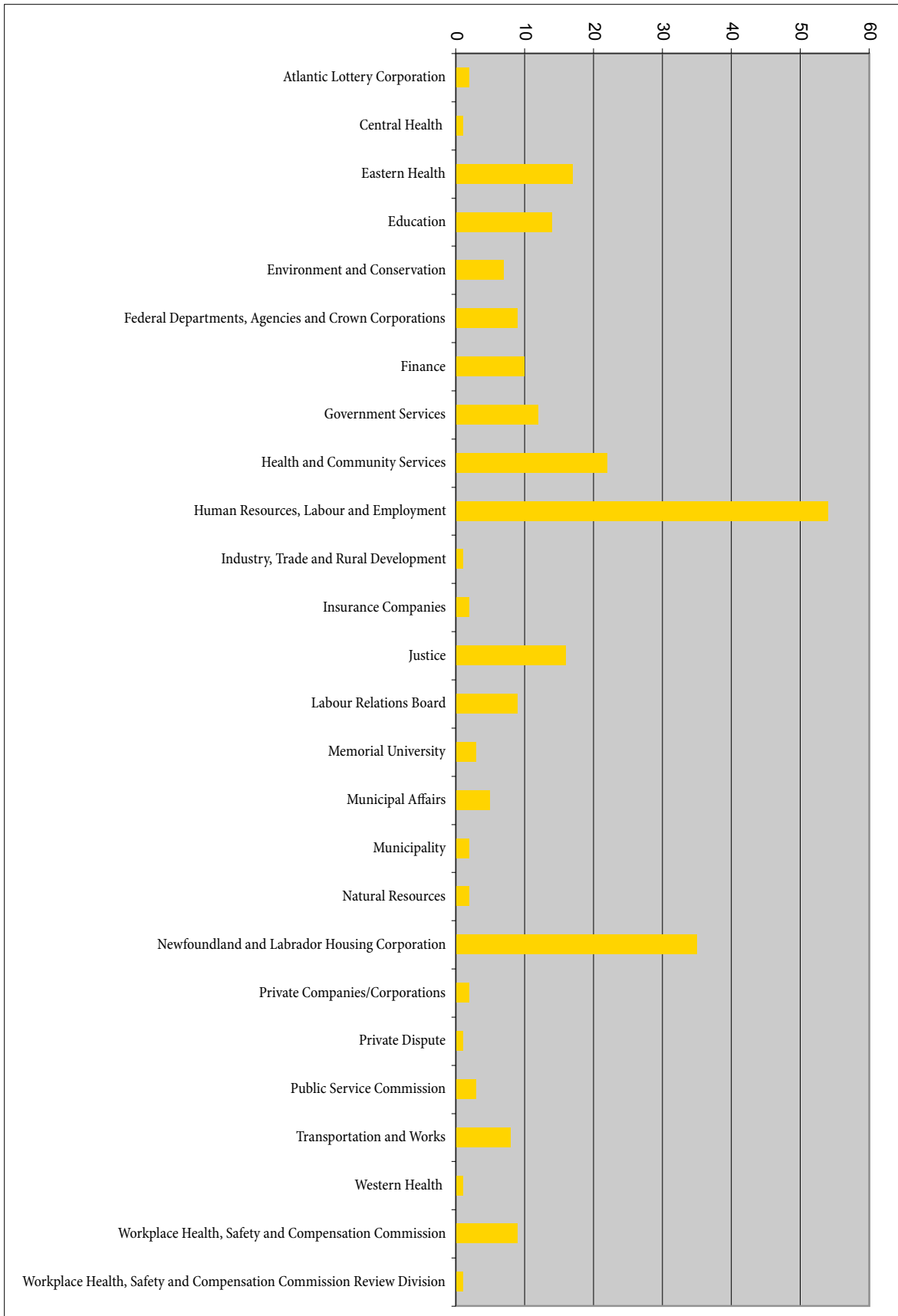
## **STATISTICS**

The following charts and diagrams detail statistics compiled by our Office from April 2007 to March 2008. Care should be taken when reviewing these statistics. Departments and public agencies which provide front line services to citizens will garner significantly more complaints than those which provide policy advice or services to select subsets of our population. Not surprisingly, the Department of Human Resources Labour and Employment will respond to more complaints from citizens than the Department

of Intergovernmental Affairs. Sometimes, the genesis of a citizen's complaint is not ascertained until some investigatory work has taken place. This work may reveal that our Office does not have the power to further investigate. That explains why the following statistics show we had some complaints against federal departments and one that was ultimately determined to be a private dispute.

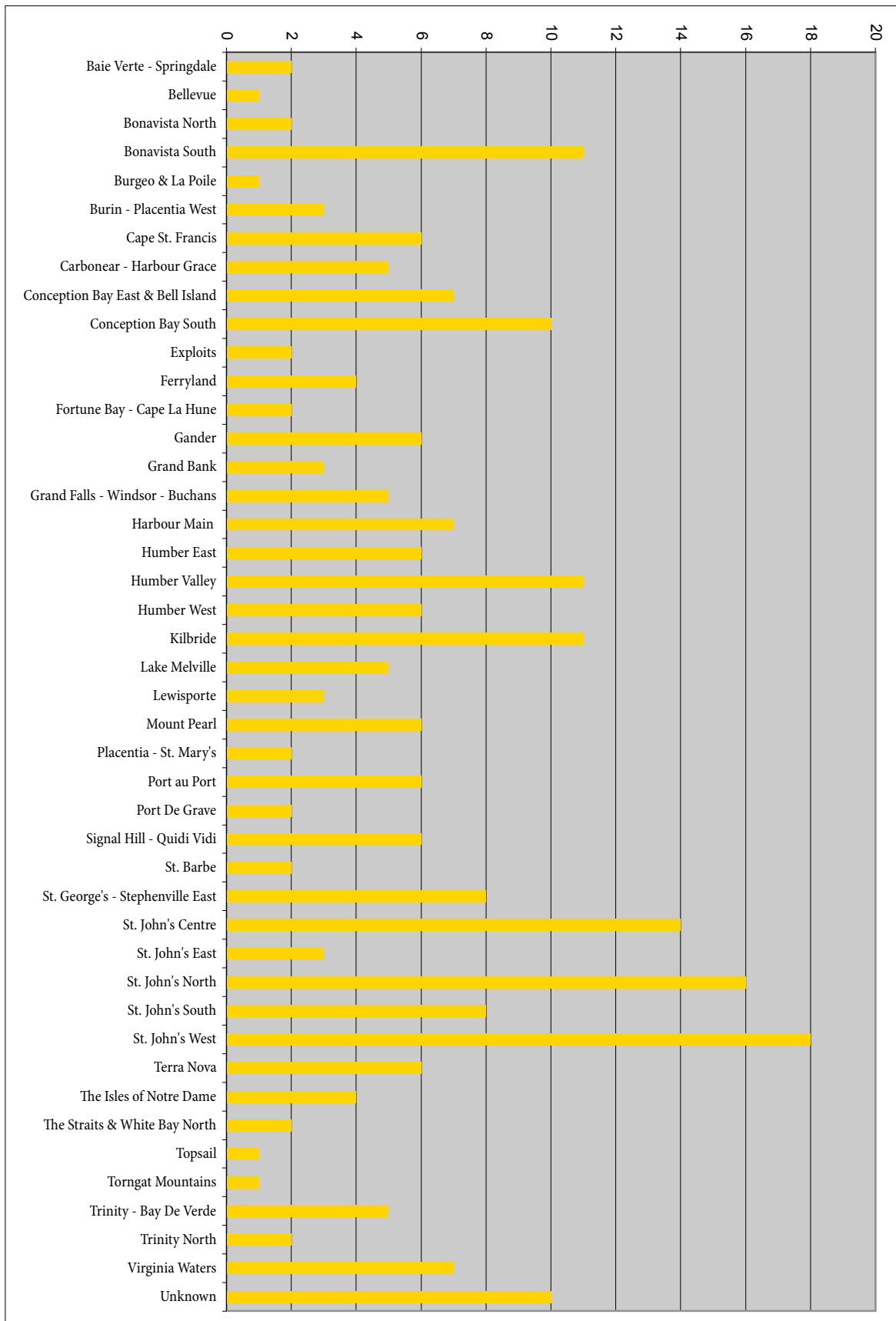
<b>April 1, 2007 – March 31, 2008 Complaints/Inquiries by Department and Agency</b>	
Atlantic Lottery Corporation	2
Central Health	1
Eastern Health	17
Education	14
Environment and Conservation	7
Federal Departments, Agencies and Crown Corporations	9
Finance	10
Government Services	12
Health and Community Services	22
Human Resources, Labour and Employment	54
Industry, Trade and Rural Development	1
Insurance Companies	2
Justice	16
Labour Relations Board	9
Memorial University	3
Municipal Affairs	5
Municipality	2
Natural Resources	2
Newfoundland and Labrador Housing Corporation	35
Private Companies/Corporations	2
Private Dispute	1
Public Service Commission	3
Transportation and Works	8
Western Health	1
Workplace Health, Safety and Compensation Commission	9
Workplace Health, Safety and Compensation Commission Review Division	1
<b>Total Complaints &amp; Inquiries by Department and Agency</b>	<b>248</b>





<b>April 1, 2007 – March 31, 2008 Complaints/Inquiries by Electoral District</b>	
Baie Verte – Springdale	2
Bellevue	1
Bonavista North	2
Bonavista South	11
Burgeo & La Poile	1
Burin – Placentia West	3
Cape St. Francis	6
Carbonear – Harbour Grace	5
Conception Bay East & Bell Island	7
Conception Bay South	10
Exploits	2
Ferryland	4
Fortune Bay – Cape La Hune	2
Gander	6
Grand Bank	3
Grand Falls – Windsor – Buchans	5
Harbour Main	7
Humber East	6
Humber Valley	11
Humber West	6
Kilbride	11
Lake Melville	5
Lewisporte	3
Mount Pearl	6
Placentia - St. Mary's	2
Port au Port	6
Port De Grave	2
Signal Hill – Quidi Vidi	6
St. Barbe	2
St. George's – Stephenville East	8
St. John's Centre	14
St. John's East	3
St. John's North	16
St. John's South	8
St. John's West	18
Terra Nova	6
The Isles of Notre Dame	4

<b>April 1, 2007 – March 31, 2008 Complaints/Inquiries by Electoral District</b>	
The Straits - White Bay North	2
Topsail	1
Torngat Mountains	1
Trinity – Bay De Verde	5
Trinity North	2
Virginia Waters	7
Unknown	10
<b>Total Complaints &amp; Inquiries by Electoral District</b>	<b>248</b>



# How To REACH Us

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