2.2 Office of the Citizens' Representative

Introduction

An Act respecting the appointment of a Citizens' Representative for the Province, having the powers traditionally conferred on an ombudsman, (the *Citizens' Representative Act*) was assented to on 24 May 2001 and came into force on 7 December 2001. The Province's Citizens' Representative was appointed in December 2001. The Office of the Citizens' Representative was established on 1 February 2002 under the authority of the *Act*. The Citizens' Representative is an Officer of the House of Assembly and reports to the Speaker of the House of Assembly. An Agreement between the Province and the Citizens' Representative, dated 1 February 2002, outlines the services to be performed, payment and hours of work and tenure of the Citizens' Representative.

The Office of the Citizens' Representative mission is "to act as an investigating body, ensuring decisions, acts or omissions by the Government of Newfoundland and Labrador are investigated in an analytical, impartial and timely manner for the citizens of Newfoundland and Labrador, when all other avenues of administrative appeal have been exhausted".

The *Act* requires that traveling and other expenses incurred by the Citizens' Representative may be approved by the Commission of Internal Economy. The budget estimates for the Office of the Citizens' Representative are approved annually by the Commission of Internal Economy. Figure 1 provides information on budget estimates of the Office of the Citizens' Representative since it commenced operations on 1 February 2002.

Figure 1

Budget Information
Office of the Citizens' Representative
For the Period 1 February 2002 to 31 March 2005

Budget category	1 Feb 2002 to 31 March 2002	1 April 2002 to 31 March 2003	1 April 2003 to 31 March 2004	1 April 2004 to 31 March 2005	Total
Salaries and employee benefits	$ -	$241,500	$249,800	$312,100	$803,400
Transportation and communication	-	60,000	60,000	60,000	180,000
Purchased services and supplies	-	83,500	83,500	96,000	263,000
Professional services	150,000	-	-	20,000	170,000
Property, furnishings and equipment	-	20,000	20,000	10,000	50,000
Total Budget	**$150,000**	**$405,000**	**$413,300**	**$498,100**	**$1,466,400**

Source: Budget Estimates

2.2 Office of the Citizens' Representative

The initial funding of $150,000 (for the period 1 February 2002 to 31 March 2002) was provided by the Department of Justice. Subsequently, funding was provided by the Legislature Head of Expenditure as approved annually by the Commission of Internal Economy.

Figure 2 provides information on actual expenditures of the Office of the Citizens' Representative from the commencement of operations on 1 February 2002 to 30 June 2004.

Figure 2

Financial Information
Office of the Citizens' Representative
For the Period 1 February 2002 to 30 June 2004

Expenditure category	1 Feb 2002 to 31 March 2002	1 April 2002 to 31 March 2003	1 April 2003 to 31 March 2004	1 April 2004 to 30 June 2004	Total
Salaries and employee benefits	$35,595	$222,439	$232,902	$61,542	$552,478
Transportation and communication	4,488	29,319	38,242	10,480	82,529
Purchased services and supplies	13,538	56,853	78,825	9,780	158,996
Property, furnishings and equipment	48,745	-	7,084	-	55,829
Total Expenditure	**$102,366**	**$308,611**	**$357,053**	**$81,802**	**$849,832**

Source: Financial Management System

Scope and Objectives

We completed our review of the Office of the Citizens' Representative in November 2004. Our review covered the period from 1 February 2002 to 30 June 2004. Our objective was to review the expenditures of the Office of the Citizens' Representative and to determine whether they were in accordance with the approved budget, and in accordance with legislative requirements.

Conclusions

My audit of the Office of the Citizens' Representative identified a number of concerns relating to the operations of the Office. In particular, claims for private vehicle usage appeared excessive, private vehicle mileage was incorrectly claimed between the Citizens' Representative's permanent residence and the Office, there were inconsistencies related to private

vehicle usage claims and traveling without authorization. In addition, there were management practice issues relating to such matters as cellular telephones and entertainment. Furthermore, there was an instance of non-compliance with the *Citizens' Representative Act* and another instance of non-compliance with the *Public Tender Act.*

Accounting for the Citizens' Representative Office is performed by the Office of the Clerk of the House of Assembly. As a result of numerous accounting errors in the accounts of the Office of the Citizens' Representative, the expenditure details in the Province's Public Accounts are not correct. Furthermore, the Office of the Citizens' Representative was not always provided with sufficient information to enable the Office to monitor its expenditures.

Findings and Recommendations

Non-Compliance with the *Citizens' Representative Act*

Section 4.(2) of the *Citizens' Representative Act* specifies that the Citizens' Representative shall not hold another public office or carry on a trade, business or profession. During our review, we became aware of several invoices that were addressed to a public sector union as a statement of account for work completed by the Citizens' Representative. Performing such work would constitute a contravention of section 4.(2) of the *Citizens' Representative Act.* Details of the invoices are as follows:

Invoice Date	Invoice Amount ($)	Period Worked
10 May 2002	1,108	19 March 2002 - 9 April 2002
12 August 2002 (Note 1)	3,170	1 November 2001 - 1 August 2002
12 August 2002 (Note 2)	1,460	25 September 2001 - 13 June 2002
12 August 2002	110	Not specified
15 August 2002 (Note 3)	2,330	6 August 2001 - 30 June 2002
22 October 2002	110	Not specified
22 October 2002	110	Not specified
6 January 2003	110	Not specified
6 January 2003	110	Not specified
6 January 2003	110	Not specified

Note 1: Of 8.5 days charged, 6.0 were after the date of appointment on 1 February 2002.
Note 2: Of 3.5 days charged, 3.5 were after the date of appointment on 1 February 2002.
Note 3: Of 6.5 days charged, 4.5 were after the date of appointment on 1 February 2002.

2.2 Office of the Citizens' Representative

Financial Operations

The Office of the Citizens' Representative commenced operation on 1 February 2002. Expenditures recorded related to the operation of the Office for the period 1 February 2002 to 30 June 2004 totalled $849,832 as detailed in Figure 3.

Figure 3

Financial Information
Office of the Citizens' Representative
For the Period 1 February 2002 to 30 June 2004

Expenditure category	Total	%
Salaries and employee benefits	$552,478	65
Transportation and communication	82,529	10
Purchased services and supplies	158,996	19
Property, furnishings and equipment	55,829	6
Total Expenditure	**$849,832**	**100**

Source: Financial Management System

The Office of the Clerk of the House of Assembly is responsible for the administration of the financial operations of the Office of the Citizens' Representative. Documentation from the Office of the Citizens' Representative is forwarded to the Clerk's Office for input into Government's Financial Management System and for subsequent payment processing.

We reviewed the various categories of expenditure for the Office of the Citizens' Representative for the period 1 February 2002 to 30 June 2004. Details of our review are as follows:

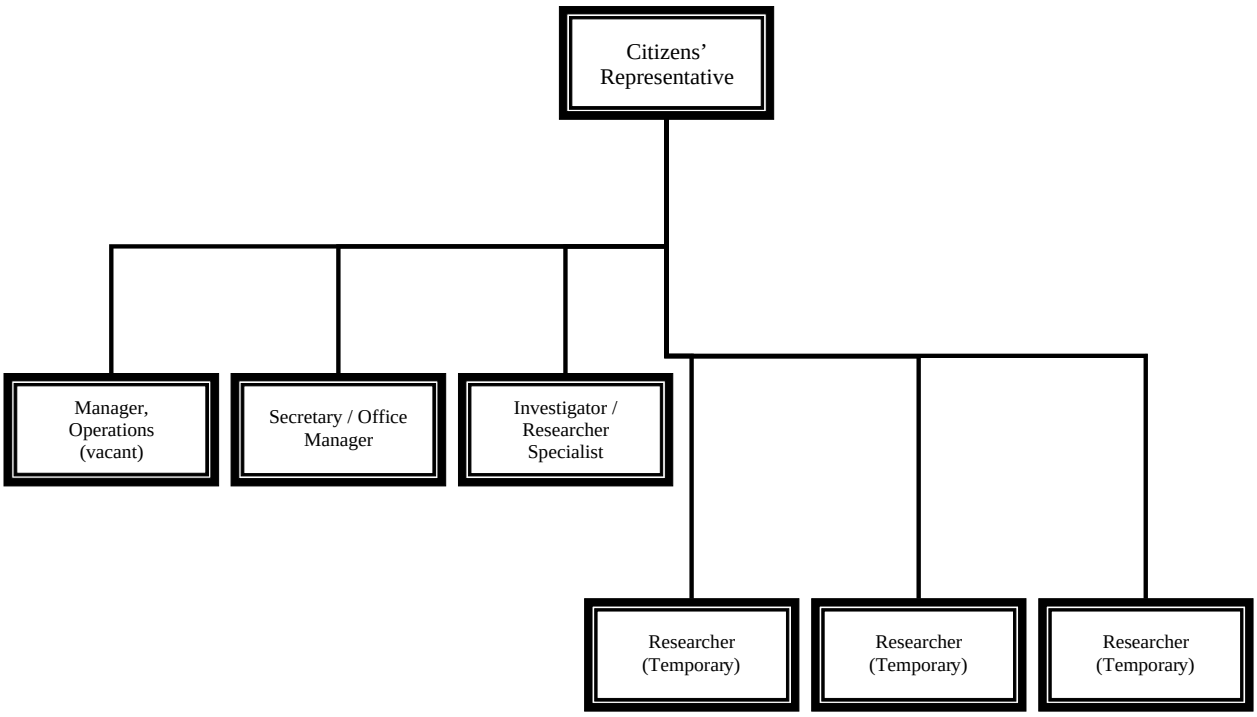
Salaries and employee benefits

The approved staff complement of the Office of the Citizens' Representative includes four permanent positions and three temporary positions. Figure 4 outlines the staffing profile as of 30 June 2004.

2.2 Office of the Citizens' Representative

Figure 4

Organization Chart
Office of the Citizens' Representative
30 June 2004



Our review of recorded salaries and employee benefits indicated the following:

- Salaries totalling $72,638 for an employee of the Office of the Citizens' Representative from September 2002 to October 2004 were charged to salaries for the Office of the Child and Youth Advocate. Furthermore, although officials at the Clerk's Office indicated that the error had been corrected in August 2004, we found that the correction was not made until October 2004.

- The Clerk's Office did not apply either annual salary increases (July 2002 and January 2003) or a step progression to the Citizens' Representative until the Citizens' Representative brought it to their attention in February 2003.

- No record of attendance was maintained for the period 1 February 2002 to 31 March 2002.

Transportation and communication

Figure 5 provides detailed information on recorded expenditures for transportation and communication from 1 February 2002 to 30 June 2004.

Figure 5

Transportation and Communication
Office of the Citizens' Representative
For the Period 1 February 2002 to 30 June 2004

Details	1 Feb 2002 to 31 March 2002	1 April 2002 to 31 March 2003	1 April 2003 to 31 March 2004	1 April 2004 to 30 June 2004	Total
Travel expense claims for Citizens' Representative	$3,999	$18,513	$23,300	$6,392	$52,204
Travel expense claims for employees of the Office of the Citizens' Representative	-	9,559	7,663	1,649	18,871
Communication (includes cellular telephones)	243	877	6,228	2,005	9,353
Other	246	370	1,051	434	2,101
Total Transportation and Communication	**$4,488**	**$29,319**	**$38,242**	**$10,480**	**$82,529**

Source: Financial Management System

During our review of recorded transportation and communication expenditures, the following issues were identified:

(a) Travel by the Citizens'Representative

In accordance with an agreement between the Province of Newfoundland and Labrador and the Citizens' Representative, travel expenses for the Citizens' Representative are to be reimbursed in accordance with the Executive Compensation Travel Rules.

2.2 Office of the Citizens' Representative

Figure 6 provides information on amounts included on travel expense claims for the Citizens' Representative from 1 February 2002 to 30 June 2004.

Figure 6

Travel Expense Claims for the Citizens' Representative
Office of the Citizens' Representative
For the Period 1 February 2002 to 30 June 2004

Expenditure detail	1 February 2002 to 31 March 2002	1 April 2002 to 31 March 2003	1 April 2003 to 31 March 2004	1 April 2004 to 30 June 2004	Total	Total Including HST
Private vehicle usage	$1,284	$12,408	$15,950	$4,721	$34,363	$39,518
Meals	299	2,916	3,661	934	7,810	8,981
Accommodations	377	1,809	2,549	520	5,255	6,043
Travel	1,974	874	618	11	3,477	3,999
Entertainment	-	451	407	180	1,038	1,192
Other (Note 1)	65	55	115	26	261	288
Total	**$3,999**	**$18,513**	**$23,300**	**$6,392**	**$52,204**	**$60,021**

Source: Financial Management System
Note 1: HST calculated incorrectly, difference $12

As Figure 6 indicates the Citizens' Representative has received $60,021 reimbursement of travel expenses for the period 1 February 2002 to 30 June 2004. Of this total, $39,518 (66%) represents the reimbursement of kilometers claimed for business purposes using a private vehicle. Further detail on private vehicle usage claimed by the Citizens' Representative is provided in Figure 7.

Figure 7

Private Vehicle Usage Claimed by the Citizens' Representative
For the Period 1 February 2002 to 30 June 2004

Month	Total Kms. Claimed	Days Traveled	Avg. Kms. Per Travel Day	Amount Claimed ($)
February 2002	2,200	6	367	693
March	2,815	10	282	887
Total 2001-02	**5,015**	**16**	**313**	**1,580**
April	3,415	9	379	1,076
May	3,998	12	333	1,259
June	2,875	7	411	906
July	4,002	12	334	1,261
August	10,572	23	460	3,330
September	3,370	12	281	1,062
October	3,980	16	249	1,254
November	4,496	14	321	1,416
December	1,629	4	407	513
January 2003	3,741	12	312	1,178
February	2,087	7	298	657
March	2,155	6	359	678
Total 2002-03	**46,320**	**134**	**346**	**14,590**
April	2,717	9	302	856
May	7,713	17	454	2,430
June	4,120	8	515	1,298
July	11,680	26	449	3,679
August	4,899	10	490	1,543
September	6,800	15	453	2,142
October	3,915	7	559	1,233
November	4,499	11	409	1,417
December	1,559	4	390	491
January 2004	1,680	3	560	529
February	1,733	4	433	546
March	5,787	12	482	1,823
Total 2003-04	**57,102**	**126**	**453**	**17,987**
April	7,421	14	530	2,338
May	3,349	7	478	1,055
June	6,247	16	390	1,968
Sub-total 2004-05	**17,017**	**37**	**460**	**5,361**
Total	**125,454**	**313**	**401**	**39,518**

Source: Office of the Citizens' Representative

As Figure 7 indicates, the Citizens' Representative has submitted private vehicle usage claims which show that there was a total of 125,454 kilometers ($39,518) traveled on 313 days during the 29 months of our review. The Citizens' Representative traveled a daily average of 401 kilometers for each of the 313 days traveled during the period from 1 February 2002 to 30 June 2004. The Citizens' Representative submitted 76 separate travel claims relating to this travel.

Due to the confidential nature of the Citizens' Representative files, my Office did not have access to the files and, therefore, when there were references on travel claims to file numbers we were unable to identify the citizen to confirm whether a meeting had taken place. Therefore, my Office could not make a final determination, in these instances, as to whether the travel was in fact performed.

Our review of the Citizens' Representative's private vehicle usage claims indicated a number of inconsistencies and concerns as follows:

- There are instances where it is difficult to determine how there was sufficient time in a day to travel the number of kilometers claimed and also have time for the number of meetings with citizens indicated on the travel claims. For example, there were five instances where the Citizens' Representative claimed in excess of 1,000 kilometers in a day and also met with citizens as follows:

9 July 2002	claimed 1,020 kilometers (St. John's to New-Wes-Valley to Deadman's Bay to Lumsden to Aspen Cove to Gander to Glovertown to St. John's) and referred to 10 files.
30 May 2003	claimed 1,270 kilometers (St. John's to Newman's Cove to Buchans to Eagle's Haven Lodge to Gander to St. John's) and referred to 3 files.
5 June 2003	claimed 1,202 kilometers (St. John's to Gander to Grand Falls-Windsor to Gander to Marystown to St. John's) and referred to 3 files.
8 July 2003	claimed 1,301 kilometers (St. John's to Gander to Harbour Breton to Belleoram to Pool's Cove to St. John's) and referred to 2 files.
24 July 2003	claimed 1,119 kilometers (St. John's to Marystown to Lamaline to St. Lawrence to Marystown to Clarenville to Bonavista to Summerford to St. John's) and referred to 7 files.

- There are instances where travel within a week included multiple return trips to St. John's. For example, in a one week period in July 2003 the Citizens' Representative claimed a total of 4,101 kilometers ($1,292) for travel as follows:

Monday, 7 July 2003	St. John's to Placentia to St. John's (259 kilometers)
Tuesday, 8 July 2003	St. John's to Gander to Harbour Breton to Belleoram to Pool's Cove to St. John's (1,301 kilometers)
Wednesday, 9 July 2003	St. John's to Clarenville to St. John's (400 kilometers)
Thursday, 10 July 2003	St. John's to Gander to Grand Falls-Windsor to Gander to Twillingate to Gander (730 kilometers)
Friday, 11 July 2003	Gander to St. John's (334 kilometers)
Saturday, 12 July 2003	St. John's to Placentia to St. Bride's to St. John's (359 kilometers)
Sunday, 13 July 2003	St. John's to Lewisporte to St. John's (718 kilometers)

- During the period 1 February 2002 to 30 June 2004, there were four instances where private vehicle mileage was claimed for days when the Citizens' Representative was recorded as being on paid leave.

- From 1 April 2003 to 30 June 2004, the Citizens' Representative indicated on the travel claims that his permanent residence was in Blaketown, 100 kilometers from the Office of the Citizens' Representative headquarters in St. John's.

  Contrary to Government's travel rules, the Citizens' Representative incorrectly claimed a total of 13,300 kilometers ($4,190) relating to travel between his permanent residence in Blaketown and his Office in St. John's. Furthermore, in these instances the trips were indicated as commencing 7:00 a.m. and earlier and ending 7:00 p.m. and later.

- Private vehicle usage reports did not always include a detailed list of private vehicle mileage. In some instances, details as to the number of kilometers between each location visited would be indicated on the claim while in other instances only total mileage would be recorded on the claim for visits to numerous locations.

  For example, details of travel for the period 30 July 2002 to 5 August 2002 specifies "St. John's to Arnold's Cove to Blaketown to Clarenville to Lewisporte to Grand Falls to Port au Port to Stephenville to Port aux Basques to North Sydney to Halifax and various local driving in Halifax to North Sydney to Port aux Basques to Corner Brook to Blaketown to St. John's" and the distance traveled was 3,652 kilometers ($1,150).

  Without detailed information it is difficult to determine if the private vehicle mileage claimed is legitimate.

- The Citizens' Representative did not request the required prior approval of the Speaker of the House of Assembly relating to a trip to Halifax in July/August 2002.

- There was an instance where the distance traveled was inconsistent with the details of travel. For example details of travel in one instance specified "St. John's to Gander to Lewisporte to Summerford to Gander to St. John's" and the distance traveled was 1,768 kilometers. However, the total distance to and from these locations is approximately 900 kilometers.

- There were instances where incorrect per diem amounts for meals and private accommodations were claimed. In 5 of the 76 travel claims, per diem rates from before 1 April 2000 were used instead of the new per diem rates effective 1 April 2000.

- Travel expense claims did not always include time of departure or time of return information as required by Government's travel rules. Without this information it is not possible to determine if the per diem amounts claimed are legitimate.

(b) Entertainment Expenses

The Citizens' Representative incurred entertainment expenses of $1,038 from 1 February 2002 to 30 June 2004. This amount consists of 34 claims for lunches with individuals. Our review indicated that, contrary to Government's entertainment policy, there was an instance where lunch costing $48 was claimed while the only individuals in attendance were Government officials and the required Treasury Board approval was not obtained. Also, there was one instance where there was no supporting documentation on file for a $40 charge for entertainment expenses. In addition, there was one instance where there was no indication of who was in attendance and, therefore, it was not possible to determine if the expenditure claimed was legitimate.

(c) Cellular Telephones

We reviewed expenditures on cellular telephones made during the period 1 February 2002 to 30 June 2004. Our review indicated the following:

- At 30 June 2004, the Office had five cellular telephones for three permanent staff and three temporary staff; therefore, only one temporary employee does not have a cellular telephone assigned to them. There was nothing on file to support the initial need for all of these cellular telephones.

- The Commission of Internal Economy began a review of cellular telephones for the House of Assembly offices in February 2004; however, as at 30 November 2004 this review was ongoing.

Purchased services and supplies

During the period 1 February 2002 to 30 June 2004, expenditures recorded for purchased services and supplies totalled $158,996. Included in this amount was $60,819 for office rent, $25,448 for legal and consulting services, $12,334 for printing services, $4,598 for office renovations and $55,797 for other purchased services and supplies.

Our review disclosed that the Office contravened the *Public Tender Act* when in June 2003 the Office paid $11,182 for printing services for the 2002 Annual Report to the House of Assembly without being publicly tendered.

The *Public Tender Act* requires tenders to be invited where the cost of goods and services is more than $10,000. The *Act* provides exceptions where tenders may not be required to be invited and in these cases the Minister of Government Services must be informed. The Minister in turn will table a report in the House of Assembly.

In this instance, the Minister of Government Services and therefore the House of Assembly was not informed of any exception.

Accounting Errors

The Office of the Clerk of the House of Assembly assists with the administration of the financial operations of the Office of the Citizens' Representative. Documentation from the Office of the Citizens' Representative is forwarded to the Clerk's Office for input into Government's Financial Management System and for subsequent payment processing.

Our review indicated that there were many significant errors in account postings which were not always detected due, in part, to the fact that sufficient information was not always provided to the Office of the Citizens' Representative to enable the Office to monitor its expenditures. As a result of the accounting errors, the total expenditures of the Office of the Citizens' Representative as reflected in the Province's Public Accounts are not correct. Details of the accounting errors are as follows:

- Salaries totalling $72,638 for an employee of the Office of the Citizens' Representative from September 2002 to October 2004 were charged in error to salaries for the Office of the Child and Youth Advocate. Furthermore, although officials at the Clerk's Office indicated that the error had been corrected in August 2004, we found that the correction was not made until October 2004.

- The Clerk's Office did not apply either annual salary increases (July 2002 and January 2003) or a step progression to the Citizens' Representative until the Citizens' Representative brought it to their attention in February 2003.

- Officials at the Office of the Citizens' Representative indicated that sufficient information to monitor their expenditures was not always provided by the Clerk's Office. Transaction reports detailing amounts expended and available budgets were not always provided. To illustrate, in March 2003, the Citizens' Representative wrote requesting expenditure details from the previous year to develop a new budget.

- Fees for legal and consulting services totalling $25,448 were charged in error to purchased services ($22,897) and supplies ($2,551). These expenditures should have been charged to professional services; however, there was no approved budget for professional services for the Office of the Citizens' Representative. Budget transfers could have been made to charge the expenditures to the proper account.

- Office rent totalling $4,334 for the Information and Privacy Commissioner's Office was charged in error to the Office of the Citizens' Representative.

- Computer equipment, software and IT consulting costing $45,997 was charged in error to property, furnishings and equipment. These expenditures should have been charged to information technology.

- In February 2003, the Office was charged $3,000 for lease costs of a photocopier which was never located at the Office. Since that time, no expenditures have been charged to the Office for photocopiers provided to it under leasing arrangements coordinated by the House of Assembly. As a result, the full cost of Office operations is not being reflected in its accounts.

- In March 2003, invoices totalling $410 relating to photographs of Members of the House of Assembly were incorrectly charged to the Office.

- We were advised that cellular telephone costs were incorrectly charged to other expenditure activities under the House of Assembly; however, the Clerk's Office could not provide details on where these expenditures were charged.

In addition to the accounting errors, there was an administrative issue relating to travel expense claims in that they were not always signed to signify approval. In 5 of the 76 travel claims relating to the Citizens' Representative (19 April 2002 - $1,658, 16 July 2002 - $643, 13 January 2003 - $742, 20 October 2003 - $629, 29 October 2003 - $590) we reviewed there was no signature of approval. Officials of the Office of the Citizens' Representative indicated that the normal practice is for the Speaker of the House of Assembly or the Clerk of the House of Assembly, in the Speaker's absence, to approve travel claims for the Citizens' Representative.

Recommendations

The Citizens' Representative should:

- *comply with the* Citizens' Representative Act*;*
- *comply with the* Public Tender Act;
- *ensure that all out of Province travel is approved, in advance, by the Speaker of the House of Assembly as required by policy;*
- *comply with Government's entertainment policy and Executive Compensation Travel Rules; and*
- *establish formal policies and procedures governing the provision and use of cellular telephones and ensure that all use is properly monitored.*

The Office of the Clerk of the House of Assembly should:

- *provide sufficient information to the Office of the Citizens' Representative to enable that Office to monitor its expenditures; and*
- *charge expenditures of the Office of the Citizens' Representative to the correct expenditure account categories.*

Citizens' Representative's Response

Introduction

The Citizens' Representative expresses appreciation to the Auditor General for his Report and the efforts he and his staff invested in this particular effort. In so far as the Citizens' Representative is empowered to do so the recommendations found (in the Auditor General's) *Report shall be implemented. It is administratively unfortunate that the Citizens' Representative did not receive such a Report until thirty five months after his appointment. An earlier report may have led to administrative efficiencies.*

Without interfering with the above noted appreciation the Citizens' Representative uses offered opportunity for response to deal with factual errors, misinterpretation and situational lack of knowledge on the part of the Auditor General. This response will deal with issues as same occurs chronologically by page in the Report.

Non-Compliance with the Citizens' Representative Act

The Citizens' Representative states unequivocally that he did not hold another public office or carry on a trade, business or profession since being appointed Citizens' Representative.

The Auditor General specifies six invoices forwarded to a former client of the Citizens' Representative that were in accordance with a consulting agreement existing prior to the appointment of the incumbent Citizens' Representative on February 1, 2002.

The Citizens' Representative submits that if the Auditor General is, in fact, alleging that the Citizens Representative acted in contravention of Section 4(2) of the Act then such allegation is incorrect and inappropriate.

First, the Auditor General erred in fact when he concluded that the Citizens' Representative was appointed "in December 2001." The Act came into force on December 7, 2001; the Citizens' Representative was selected on December 13, 2001; the Citizens' Representative was appointed effective February 1, 2002. Substantiation of this fact is found in the Report when the Auditor General reviews the period from February 1, 2002 to June 30, 2004. If the incumbent Citizens' Representative was appointed during December of 2001 then surely the Auditor General's review would have to be retroactive to that December date. Further, (in) *the report it is clearly stated that "the Office of the Citizens'Representative commenced operation on 1 February 2002." Substantiation is also found in Hansard and in section 2.1 of an Agreement between Fraser March and Her Majesty the Queen in Right of the Province of Newfoundland and Labrador (the Agreement). Said Agreement is a complete Agreement (see section 4.1) and is the sole governing authority for relationships between the Crown and the Citizens'Representative. Thus any conclusions arising from the data found in notes 1, 2, and 3* (in the table) *is erroneous.*

This matter was dealt with by the hiring committee of the Executive Council, the Lieutenant Governor in Council, the House of Assembly and the Citizens'Representative prior to Fraser March accepting the position of Citizens' Representative. At this time the Citizens' Representative had forty three projects ongoing in his labour relations consultation business which operated under the title Fraser March - Mediation/Dispute Resolution. It was agreed by the noted parties on advice from the Department of Justice (the Department of Justice initially provided advice to the Citizens' Representative but had to cease this practice after three months of operation because of the relationship between Justice and other Government departments) that Fraser March would be expected, baring unforseen circumstances, to separate himself from these private business matters by June 30, 2002. Such was/is practice in other Canadian

jurisdictions for newly appointed ombudspersons. It was further agreed, at the request of Government, that this understanding would be an addendum to the Agreement between Fraser March and the Crown and would be enforced under authority of Section 45(1) of the Act.

Of the forty-three noted projects, thirty-nine were transferred to other labour-relations specialists thus requiring no further action on the part of the Citizens' Representative who charged the union clients one hundred and ten dollar administrative fee for each case in accordance with his consulting fee schedule. Six of these cases are listed (in) *the Report and for identification purposes are dated August 12, 2002; October 22, 2002 (2 cases); January 6, 2003 (3 cases). Three of the remaining matters were completed by June 30, 2003 in accordance with the Agreement. These are listed* (in) *the Report and for identification purposes are dated May10, 2002; August 12, 2002; and August 15, 2002. In one matter the Citizens' Representative worked during July of 2002 at the request of the office of the Premier. This case is noted* (in) *the Report and for identification purposes is dated August 12, 2002.*

During the period from February 1, 2002 to August 1, 2002 the Citizens' Representative spent four regular work days on the matters listed above and stemming from pre-appointment duties. During the same period the Citizens' Representative worked 28 Saturdays, 2 statutory holidays, and 8 Sundays. Hardly a bad deal for the citizens of Newfoundland and Labrador.

The Citizens' Representative negotiated an Agreement with the Crown in good faith and lived up to the terms of said Agreement. Said Agreement was enforced by the Crown in accordance with law.

Given these circumstances it is respectively suggested that there is no basis to allege that the Citizens' Representative has acted in contravention of Section 4(2) of the Act.

Salaries and Employee Benefits

- *The Auditor General notes that "the Clerk's Office did not apply either annual increases (July 2002 and January 2003) or a step progression to the Citizens' Representative until the Citizens' Representative brought it to their attention in February 2003." While factually correct the opinion of the Citizens' Representative is that this observation is insignificant to the point of the ridiculous and doesn't deserve the paper it is written on. The situation could be explained by comparing human resources availability in our public service vis-a vis other jurisdictions.*

- *The Auditor General observes that "no record of attendance was kept for the period 1 February 2002 to 31 March 2002." That may or may not be correct. While the office of the Citizens' Representative routinely provides attendance data which it is hoped will keep the bean-counters, paper-clip organizers and paper-pushers happy and off our backs, the Citizens' Representative considers such bureaucratic malingering as an obstacle to professional public service. It is not important when you show up but what you do after you show up. Employees of the Citizens' Representative have to be available by cell-phone twelve hours a day, seven days a week with an emphasis on productivity rather than time. If you can keep a forty case investigation portfolio current the Citizens'Representative will not be searching your location. Those who cannot accept this non civil-service mode of operations don't seem to stay in close contact with the incumbent Citizens'Representative for any lengthy period of time.*

  The Citizens' Representative, hoping that the forgoing testimony annoys a little but not to much, suggests that the answer to (this) *issue may be found in the fact that during the period in question the Citizens' Representative did not have employees, did not have office furniture except for a borrowed telephone requiring him to perform most of his duties at home.*

  It is a relevant note that the Commission of Internal Economy has never directed the Citizens'Representative to keep an attendance record for his office under authority of Section 45(1) of the Act thus there is no legal requirement for the Citizens' Representative to keep any attendance records.

Travel by the Citizens'Representative

- *The Auditor General makes comment to the effect that "claims for private vehicle usage appeared excessive". The weakness in this observation is that there is no comparison. Are the claims excessive compared to other ombudspersons? Are travel claims excessive in comparison to other public employees who have similar mandates? Is there a less expensive way to fulfill the mandate given the Citizens' Representative by the House of Assembly based on actual practice?*

  Let's not forget what the Legislature has provided in the office of the Citizens' Representative. What has been legislated is a complaint mechanism for each and every citizen of Newfoundland and Labrador whereby the citizen may have any decision, recommendation, act, or omission of Government or specified

2.2 Office of the Citizens' Representative

Government Agencies investigated and reported upon at no specific, individual cost to the citizen. Additionally, legislation provides for complaint/issue direction from the House of Assembly, the Cabinet, and from members of the House of Assembly. As well, the Citizens' Representative has the responsibility of investigating matters on his own initiative where he believes a person or group of persons may be aggrieved.

The House of Assembly further mandated the Citizens' Representative "to take this citizen grievance service to every doorstep in our province" and to ensure that each provincial district received a fair share of the attention and time of the Citizens' Representative. There was strong and specific indication that this was not to be a "St. John's only operation".

This mandate and the law demands that all resulting investigations and reporting be performed without public identification any citizen or circumstance involved except as is necessary to report to the House of Assembly.

To fulfill this legislated mandate the Citizens' Representative divided the Province into three regions for the purposes of his office. These three regions were the Avalon, which covered the Avalon Peninsula; Central, which started at Clarenville and extended west to the Baie Verte Peninsula; West, which included the island part of the province west of the Baie Verte Peninsula and Labrador. The Citizens' Representative committed a relative equal share of his time and his office's time to each region and have recorded citizen complaints/inquires in the TRIM data system by electoral district.

During its first twenty-two months of operation the Office of the Citizens' Representative received 5,999 telephone inquires and initiated 1,754 formal investigations in accordance with the Act. Of these initiated investigations 498 were completed as of December 31, 2003. To deal with this complaint workload the House of Assembly approved three permanent positions as human resource support for the Citizens' Representative. These were/are Office Manager, Receptionist, and Investigator/Researcher. Initially the two administrative positions could provide little assistance in work that had of necessity to be performed outside the office because of citizen demand and House of Assembly mandate. During the past two years the Citizens' Representative has been able, with the co-operation of the Commission of Internal Economy, to make human resources adjustments that has allowed

the transfer of extra-office duties to be increasingly assumed by the staff supporting the Citizens' Representative.

To have an increased awareness of the efforts of the Citizens' Representative to fill his mandate the reader is invited to view pages 50 and 51 of the Second Annual Report of the Citizens' Representative where it is shown that the Citizens' Representative had community visitations and intake seminars in 185 communities during 2003. The Citizens' Representative has often to meet numerous citizens in order to reach a conclusion in a given matter. All such meetings are to be confidential as is required by statute. This sometimes means having to return to the same location several times to interview different citizens with information material to a case. This means interviewing a public employee in a non workplace location. When the Citizens' Representative receives a complaint he has the responsibility to go out and find all relevant information and make an objective decision that can stand on its own legs. He does not have the power of a member of the judiciary who may demand that all material information be brought to him/her. The Citizens' Representative must go and find relevant information using available resources in his office. At the end of the day when his report is written the Citizens' Representative must show Government why its decision was incorrect (see section 37 of the Act) or sit in the citizen's kitchen and explain why Government was right.

Based on statistics presented by the Auditor General (in) *the Report which have not been confirmed by the Citizens' Representative who does have some concerns in that the Auditor General did not review original expense claims forwarded by the Citizens' Representative to the House of Assembly; there seems to be no basis to conclude that 125,454 kilometers traveled during 29 months of this type of public service in an ombuds function is by any standard excessive.*

The Citizens' Representative would appreciate any documentation that the Auditor General is aware of that could demonstrate methods or procedures that could reduce the amount of time the Citizens' Representative and staff have to invest in road travel in order to fulfill their ombuds duties.

The Citizens' Representative normally plans his work week on a Sunday afternoon. He then spends the next six days performing the duties of his office working a minimum of twelve hours a day. Three of these six work days will be spent on the road. The bad news, if this level of road travel is excessive, is that it will increase in the

future. First, while the Auditor General sees travel of the Citizens' Representative to be excessive, citizens of our province and Members of the House of Assembly are of quite a different view. As of December 31, 2004 there were 26 locations where the Citizens' Representative had guaranteed citizens that he would visit in 2004 but was unable to visit because of excessive workload. They will be on the phone as this Response is being written wanting to know when the Citizens' Representative will visit them. Further, there are 43 new circumstances that will require visitation but do not have visitation dates set. Also, the Citizens' Representative has six hearings set for early 2005 in accordance with the Act. There is a constant flow of inquiries from MHA's concerning when their area or constituent will receive attention from the Citizens' Representative. It has become normal practice for MHA's including Cabinet Ministers to inform citizens that issues will be dealt with after the Citizens' Representative has completed investigation. Such demand is normal for an ombuds service and is in accordance with law.

It seems that the Citizens' Representative will be criticized by the Auditor General for being excessive if he strives to meet demand for ombuds services and will be criticized by citizens' and MHA's if he doesn't. Kind of a catch 22.

The Citizens' Representative will for the remainder of his term play a role in Canada's ombuds community :-a responsibility that has been neglected during his term's first two and one-half years because of above average citizen complaint levels.

The Citizens' Representative is now preparing a travel itinerary for 2005/2006 that includes visits to all campuses of post-secondary educational institutions and all high schools in Newfoundland and Labrador in addition to investigatory work. Such visits should have taken place during 2002/2003 but were postponed because of a heavier than normal complaint intake. If the Citizens' Representative and staff continues their present plans for the development of an ombuds service for our province then they will spend much more time on road travel during the next three years.

The Citizens' Representative and staff have reviewed alternate modes of travel and have found that these alternatives are less conductive to the needs of an ombuds service and are more expensive for the taxpayer.

Newfoundland and Labrador is not the first jurisdiction to struggle with this issue. Other jurisdictions have found that the only way to adequately deal with this problem is to develop a system of regional offices. Before the Citizens' Representative requests regional offices he will attempt to convince the House of Assembly that there should be one properly equipped provincial office. Or, maybe, a lack of public resources will force us in Newfoundland and Labrador to think outside the envelope and create a different model for this public service. Perhaps there should be an increase use of communications technology such as voice activated laptops and cell phones. Ops, sorry.

It should be noted, in passing, that having to work on the road is not a fiscally advantageous circumstance for any public employee. At 31.5 cents per kilometer the public employee loses money every kilometer driven. While, based on research completed on behalf of the Treasury Board of Canada, it may be the case that the loses are lessened with increased driven kilometers, an employee would have to drive 80,000 kms a year to break even.

- *The Auditor General expresses a concern that his "office did not have access to the files (of the Citizens' Representative) and, therefore, when there were references on travel claims to file numbers we (the office of the Auditor General) were unable to identify the citizen to confirm whether a meeting took place".*

  The Citizens' Representative appreciates the obstacle faced by the Auditor General in performing his professional duties in these circumstances. If the Citizens' Representative or his staff claim to have met citizens either as complainants or material witnesses to a complaint there is no procedure whereby the Citizens' Representative can open his files to the Auditor General or to any person. As a matter of fact to do so would violate law and establish a cause for dismissal of the Citizens' Representative. Thus, there is no way for the Auditor General to visit a citizen and confirm that a meeting actually took place. There is no way for a police office to confirm that a meeting took place. There is no way for a Supreme Court Justice to confirm that a meeting took place. There is no legal way for the Citizens' Representative to tell anyone when he or his staff visited any location if such identifies a citizen:- complainant or witness or otherwise.

  The need for this protection has been reviewed by the Supreme Court of Canada and has been found necessary for the proper functioning of an ombuds service. This legal protection gives each and every citizen a comfort zone when providing information to the

Citizens' Representative. An active public employee can provide information knowing that he/she will never be identified. A retired public employee can provide information that under any other circumstances could have legal consequences. A family member could provide information that would otherwise be buried in family archives. This list goes on.

However, since the Auditor General has hung this cloud of suspicion and doubt over the office of the Citizens' Representative it is considered necessary to examine procedures to alleviate legal restrictions preventing the Auditor General from a more complete review of the activities of the Citizens' Representative.

The Citizens' Representative will initiate discussions with the Speaker and the Commission of Internal Economy as soon as schedules allow to further discuss this question.

While it may not be legally possible nor professionally practical for an ombuds service to identify its citizen contacts, there may be other procedures that would at least allow the Auditor General to establish that the Citizens' Representative was where he claimed he was. For instance restaurant receipts and gasoline receipts could be attached to expense claims for information purposes. On a balance of probabilities if the Citizens' Representative ate a meal and gassed up at a location then he was there. It may be possible to identify public employees who met the Citizens' Representative in the performance of their official duties who would be in a position to confirm the location of the Citizens' Representative. There may be other steps that can be taken in dealing with this matter.

It is suggested that the Auditor General, having raised this concern, has some responsibility to recommend solutions and it is noted with some disappointment that such recommendations are not found in the Report.

- *The Auditor General states that "it is difficult to determine how there was sufficient time in a day to travel the number of kilometers claimed and also have time for the number of meetings with citizens indicated ..." on " 9 July 2002, 30 May 2003, 5 June 2003, 8 July 2003, (and) 24 July 2003".*

  This Response will display the schedule, recorded on the day of travel, of the Citizens' Representative for each date as follows.

July 9, 2002. 6:00 am:-Pick up files and documents at St. John's office and departed for New-Wes-Valley. Arrived in New-Wes-Valley (Wesleyville) at approximately 9:55 am and visited citizen returning original documents and collecting new documents related to file # 51CF02. Note, the Citizens' Representative has an operational policy of hand delivery of returned original documents when he or staff is in an area on another matter:-otherwise, returned originals are couriered. This practice gives citizens a level of comfort when allowing original documents out of their possession. Visited another New-Wes-Valley citizen for the purposes of investigation of complaint found in file 211CF02. 11:30 am:-departed New-Wes-Valley for Aspen Cove via Lumsden and Deadman's Bay. 11:45 am:-held short meeting with citizen at Lumsden concerning inquiry found in file # 209CF02 and proceeded to Deadman's Bay. Arrived in Deadman's Bay at 12:15 pm and had one hour meeting with Citizen concerning complaint found in file # 222CF02. 1:20 pm (approx) departed Deadman's Bay for Aspen Cove arriving at 2:00 pm. Did "a view of a construction site that is a factor in file # 88CF02 and discussed issues in complaint # 272CF02. (both complaints are from the same citizen). Also, met with Citizen involved in complaint # 120CF02. Departed Aspen Cove at 4:00 pm and arrived at Gander at 5:00 pm. Picked up documents related to file # 5CF02 and file # 273CF02 that were left at the Albatross Hotel for the Citizens' Representative; gassed the car at a local service station and fueled the Citizens' Representative at the local Tim Horton's and headed for Glovertown. Arrived Glovertown at 5:30 pm and interviewed witness as part of investigation dealing with complaint # 191CF02. Departed Glovertown at 6:30 pm and arrived St. John's at 9:30 pm. Worked in St. John's office until 11:30 pm. preparing for meetings with lawyer next day. Then proceeded to St. John's residence. For those poor souls who don't understand rural Newfoundland and Labrador and are wondering when the Citizens ' Representative ate on July 9,2002:-he ate while driving as is his custom but with the additional cultural factor of Bonavista North of not being allowed to leave a house without taking some food with you.

30 May 2003. 6:00 am:-departed St. John's office for Newman's Cove arriving Newman's Cove at 9:00 am for scheduled meeting with complainant and family concerning file # 606CF02. Departed Newman's Cove at 10:00 am and arrived at Buchans at 2:30 pm. Proceeded to Eagles Haven Lodge where there was a meeting involving several citizens concerning complaint # 443CF02. Ate while driving with the help of Tim Horton. Departed Eagles Haven Lodge at 5:00 pm and arrived Gander at

6:00 pm. Met with citizen concerning complaint # 48CF03. Departed Gander at 7:00 pm and arrived in St. John's at 10:30 pm. Worked in St. John's office until 11:30 pm and then returned to St. John's residence.

5 June 2003. 6:00 am:-departed St. John's office and arrived Gander at 9:30 am. Met with citizen concerning complaint # 48CF03. Proceeded to Grand Falls and collected information material to complaint # 443CF02. Departed Grand Falls and arrived Gander at 12:30 pm and met with Community Services. Departed Gander at 1:00 pm and arrived at Marystown at 4:00 pm to complete a review of files at and to return files to Portfolio Management. Departed Marystown at 5:00 pm and arrived St. John's at 9:30 pm. Worked in St. John's office until 11:30 pm. Proceeded to St. John's residence.

8 July 2003. 6:00 am:-departed St. John's office and arrived at Gander. Met complainant at Hotel Gander at 9:00 am who agreed to travel to Gander for the meeting when he heard the Citizens' Representative was traveling in central Newfoundland. His complaint # was 81CF02. Departed Gander at 10:00 am and proceeded to Harbour Breton arriving at 1:00 pm . Spent from 1:00 pm to 5:00 pm interviewing witnesses with information relevant to complaint # 295CF02. These witnesses resided at Harbour Breton, Belleoram, and Pools Cove. Departed the Connaigre Peninsula at 5:00 pm and arrived St. John's office at 11:30 pm. Picked up documents required for meeting with Minister of Health and Community Services next day. Proceeded to St. John's residence.

24 July 2003. Departed St. John's office at 6:00 am arriving Marystown at 9:00 am. Met citizen at Tim Hortons, Marystown regarding complaint # 20CF02. (Location citizen's choice) Picked up documents relevant to complaint # 285CF02. Then proceeded to Portfolio Management to review files relevant to complaint # 712CF02. At 11:00 am proceeded to St. Lawrence and met with citizen and family members concerning complaint # 216CF02. Also had short meeting at request of complainant dealing with complaint 247CF03. At this time the Citizens' Representative had a staff person doing a preliminary investigation in this matter. At 12:00 pm departed St. Lawrence for Clarenville and Bonavista as part of an investigation into complaint # 103CF02. This investigation involved examination of personal files at the College of the North Atlantic. During the return trip visited the complainant in file # 211CF03 and gave the citizen an update. Arrived back at the St. John 's office at 9:30 pm.

The Citizens' Representative can find no basis for any person to find it difficult to have a clear view of what is happening here. It has been suggested by one who has considerable experience in public bureaucratic that if the Citizens' Representative had taken two days for each trip and stayed in a hotel on each trip then he would not have to deal with this micro-scrutiny. Thus in the public service you are scrutinized with suspicion for saving public funds and building efficiency and rewarded with a more leisure lifestyle by accomplishing less, spending more, and operating within the envelope.

The mode of operation of the Citizens' Representative has been dictated by the scarcity of public resources and the challenge of establishing an ombuds service in Newfoundland and Labrador and is strickly in accordance with the requirements of the Policies and Procedures Manual of the Executive Compensation Plan.

- *The Auditor General sees concerns and inconsistencies with "instances where travel within a week included multiple return trips to St. John's" and uses the week beginning Monday, July 7 as one instance.*

  This Response will examine the schedule of the Citizens' Representative during that week with explanation. This explanation is based on file and personal notes taken during noted week.

  July 7, 2003. 8:00 am -arrived at St. John's office. 9:00 am to 12:00 am held staff meeting as is the practice each Monday morning. During staff meeting it was concluded that the situation surrounding complaint 77CF02 was becoming very difficult and should immediately be addressed by the Citizens' Representative. Also there were calls from an MHA and a Cabinet Minister inquiring about the progress of this investigation. The Citizens' Representative interrupted preparations for a next day trip to the Connaigre Peninsula and proceeded to Placentia to deal with this matter returning to the St. John's office at 8:00 pm and continuing preparations for the Connaigre visit until 10:30 pm. Returned to St. John's residence.

  July 8, 2003. Left St. John's office at 6:00 am, proceeded to Connaigre Peninsula to deal with matters concerning investigation into complaint # 295CF02. Agreed to meet a citizen in Gander to discuss file # 81CF02. Returned to St. John's office at 11:30 pm. Details of this trip have been described (in) *this Response.*

July 9, 2003. In the am met with Honourable Gerald Smith, Minister, Department of Health and Community Services. This meeting was required by statute and was a necessary prerequisite to the release of four Reports in accordance with the Act. 2:00 pm to 4:00 pm met two citizens in separate interviews at St. John's office. At 4:00 pm proceeded to Clarenville as part of an investigation into complaint # 712CF02 and returned to St. John 's office at 8:00 pm. This visit was planned several weeks in advance. At 8:00 pm attended a personal medical appointment in St. John's after which returned to St. John's residence.

July 10, 2003. 7:00 am -arrived at St. John's office. Prepared for private hearing dealing with complaint # 127CF03 until 12:15 pm at which time departed for Grand Falls. Held private hearing at Grand Falls beginning at 6:30 pm and ending at 10:30 pm. This hearing was held under authority of the Act. 10:45 pm proceeded to Gander where Citizens' Representative spent the night at the Albatross Hotel. While in Grand Falls received information for file 43CF03.

July 11, 2003. 9:00 am -proceeded to Twillingate and returned to Gander as part of investigation in complaint # 81CF02. Departed Gander at 4:00 pm and arrived at St. John's office at 8:00 pm.

July 12, 2003. 8:00 am -arrived at St. John's office. Reviewed information, judicial reports and related data relevant to file # 77CF02 until 4:00 pm. at which time departed for Placentia, returned original documents and interviewed new witness, returning to St. John's office at 8:30 pm. Worked on this file until 10:30 pm at St. John's office. Then proceeded to St. John's residence.

July 13, 2003. 8:00 am -arrived at St. John's office. Worked on complaint # 5CF02. Had telephone conversation with complainant previous night and was informed that there was a person in Lewisporte who had pertinent information but would be leaving province next day. After arranging for attendance by a Commissioner of Oaths set a meeting with witness and departed for Lewisporte where interview took place. Returned to St. John's arriving at 10:30 pm.

There are no inconsistencies here. If there is a concern then it should be for the health of the Citizens' Representative. The Citizens' Representative is attempting to establish an ombuds service in our province while dealing with a complaint workload far above the national average with human resource support that

is only a fraction of what is provided in other jurisdictions. It is noteworthy that during the week in question the Citizens' Representative was criticized for not traveling to another part of the province and dealing with other issues. Also relevant to this discussion is the Act which provides law that gives the Citizens' Representative the authority to "determine his .. procedure" unless restrained by section 45(1). The House of Assembly utilized powers available under section 45(1) when the travel regulations of the Executive Compensation Plan were negotiated into the Agreement between the Citizens' Representative and the House of Assembly. An objective review of these regulations and the travel of the Citizens' Representative concluded that there was no conflict between the regulations and the activities of the Citizens' Representative.

The Citizens' Representative wonders what the problem is here. If he travels to a location on ombuds business and returns the same day thus being able to continue further work early the next morning :-isn't that behavior to praise and replicate rather than critize. Under travel regulations he could have completed his work, stayed in an hotel and returned the next day at a price for productivity and at extra cost to Government. Unfortunately for the Citizens' Representative he cannot live up to the commitments he made to the House of Assembly and stay within civil service behavioral and cultural bounds. The Citizens' Representative must however stay within boundaries set under authority of section 45(1) of the Act.

- *The Auditor General alleges that the Citizens Representative claimed private vehicle mileage while on personal leave. Information from the Auditor General's office indicates that the personal leave days occurred on August 26, 2002; December 27, 2002; July 30, 2003 and July 31, 2003. The Auditor does not indicate what travel regulation is violated or why such an occurrence is of concern.*

  August 26, 2002. The Citizens' Representative was on personal leave during the morning of August 26, 2002 and terminated his leave at 2:00 pm so that he could attend to a matter that was brought to his attention concerning file # 93CF02. Mileage was submitted and approved by the House of Assembly for the period after 2:00 pm on August 26, 2002.

December 27, 2002. The Citizens' Representative arrived at his St. John's office at 8:00 am on this date and carried out his workplace functions until 1:00 pm when he commenced personal leave. Mileage claimed and approved occurred between 8:00 am and 1:00 pm.

July 30, 2003. The Citizens' Representative was on personal leave for one-half day on this date. Leave commenced at 8:00 am and was terminated at 1:00 pm. Mileage claimed and approved on July 30, 2003 occurred between 1:00 pm and 10 pm.

July 31, 2003. The Citizens' Representative was not on personal leave on this date. He visited western Newfoundland locations as part of investigations into complaint # 36CF02, and complaint #685CF02 as well as having meetings with three individual citizens.

There is no indication in the Report as to why the Auditor General sees inconsistencies in these actions on the part of the Citizens' Representative. Nor is there any indication why these actions should raise a concern. The Citizens' Representative used personal leave as the Agreement requires and terminated personal leave as duty dictated.

- *The Auditor General states "the Citizens' Representative indicated that his permanent residence was in Blaketown" and further concludes that "contrary to Government's travel rules incorrectly claimed a total of 13,300 kilometers ($4,190) relating to travel between his permanent residence in Blaketown and his office in St. John's.*

  The Auditor General is in error on his first statement. The Citizens' Representative did not indicate that his permanent address was Blaketown but instead stated that his mailing address was Blaketown. He also arranged with the House of Assembly to have all mail delivered to his office so that there would be timely receipt of same given that he would be absent from Blaketown for periods of time.

  When the incumbent Citizens' Representative was appointed the matter of location of a headquarters for our Ombuds service was negotiated at the Executive Council as was travel rules. As a matter of fact the Citizens' Representative was asked where he wished the headquarters to be located. Part of that discussion was an agreement that the Citizens' Representative would have a St. John's residence. Which has been the case since his appointment

February 1, 2002. For a period during July and August of 2004 the Citizens' Representative was moving from one St. John's location to another and while he technically had a St. John's residence in that he moved in on friends he spent most of his nights in Blaketown. Otherwise he has lived up to his Agreement with Government and has maintained a St. John's residence. It should be known, however, that the Citizens' Representative does not spend one minute in St. John' s other than what is absolutely necessary and spends every minute possible in Blaketown.

Further, travel rules applicable to the Citizens' Representative were contained in the Policies and Procedures Manual of the Executive Compensation Plan which would include amendments to said Plan.(see section 2.6 of the Agreement between the Citizens' Representative and Government) The Executive Compensation Plan is a stand alone document having no links to other policy statements and is designed to apply to the Executive Branch of Government. These travel rules from the Executive Compensation Plan are silent on the question arising in this (issue).

It was agreed that these rules may be amended from time to time by the Commission of Internal Economy under authority of section 45(1) of the Act. The Commission of Internal Economy has provided a number of travel policy directives to the Citizens' Representative which have been incorporated into the policy travel manual of the Citizens' Representative but has never provided any travel rules relevant to the question arising in this (issue).

The Citizens' Representative, however, did not arbitrarily set travel rules for himself. During the interview and hiring period of the Citizens' Representative the advise of Treasury Board was sought, the advise of those public employees operating under provisions of the Executive Compensation Plan was sought, and information thus gathered was used to iron out an agreement at the Executive Council and the accepted consensus was presented to the House of Assembly in the first meeting of the Citizens' Representative with the Commission of Internal Economy. The Citizens' Representative also had the assistance of a senior human resources manager seconded from Government during February and March of 2002. It is noteworthy that this consensus reflects the practice of other members of the Executive Branch.

The consensus thus reached and incorporated into travel policy for the Citizens' Representative under authority of section 45(2) of the Act is as follows. First, the Citizens' Representative would not charge mileage or per diem allowance for any period traveling to and from Blaketown or while staying at Blaketown when not on travel status. Second, the Citizens' Representative would not charge any per diem allowance, any incidental expense allowance, or any private accommodation allowance for any period staying at Blaketown when on travel status. Third, if the Citizens' Representative stayed at an hotel while in the Blaketown area on travel status then all allowances would apply in accordance with the Executive Compensation Plan or such other provisions as the Commission of Internal Economy directed under authority of section 45(1) of the Act. Fourth, all travel by the Citizens' Representative qualifying for travel status shall be initiated at the Office of the Citizens' Representative and shall terminate at the Office of the Citizens' Representative in St. John's. Fifth, the Citizens' Representative would remain cognizant of his responsibility to always utilize the least expensive method of travel when on travel status. This consensus became travel policy for the Citizens' Representative under authority of section 45(2) of the Act.

Thus the position of the Citizens' Representative is that the opinion of the Auditor General is in error in relation to this (issue) *in that it wrongly identifies the permanent residence of the Citizens' Representative and does not give due consideration to the Executive Compensation Plan, and travel rules implemented under authority of section 45(2) of the Citizens' Representative Act thus the Citizens' Representative has not incorrectly claimed mileage relating to travel between Blaketown and the office of the Citizens' Representative in St. John's.*

- *The Auditor General notes that "private vehicle mileage did not always provide a detailed list of private vehicle mileage" and gives the example of travel occurring between July 30, 2002 and August 5, 2002.*

  The Citizens' Representative has reviewed travel claims and does admit that some may be confusing to an observer who doesn't know the ombuds business. More care will be invested in the recording of future travel claims.

  During the period between July 30, 2002 and August 5, 2002 the Citizens' Representative was on official travel status at all times inclusive of these dates.

2.2 Office of the Citizens' Representative

- *The Auditor General states that "the Citizens' Representative did not request required prior approval of the Speaker of the House of Assembly relating to a trip to Halifax in July/August 2002."*

  There was no requirement in the Executive Compensation Plan for approval of said trip.

  Upon election by the House of Assembly the Citizens' Representative wrote the Commission of Internal Economy asking if they had any rules for the guidance of the Citizens' Representative under authority of section 45(1) of the Act. The Speaker responded that there was none.

  On February 9, 2004 the Speaker of the House of Assembly notified the Citizens' Representative that all travel by the Citizens' Representative outside the province required prior approval. Thus, effective February 9, 2004 this policy was incorporated into the policy manual of the Office of the Citizens' Representative under the authority of Section 45(1) of the Act.

  Thus, at the time of the above noted trip there was no onus on the Citizens' Representative to seek prior approval.

  Another factor relevant here is the nature of the trip to Halifax. This trip was part of a training program designed to prepare the Citizens' Representative to assume certain responsibilities related to Access to Information Legislation. The Citizens' Representative was to get hands on experience from the Privacy Commissioner of Nova Scotia as a result of this trip. The Department of Justice had responsibility for carriage of this training program but it was clear that the Speaker had full knowledge of proceedings.

  Given the forgoing the position of the Auditor General is puzzling.

- *The Auditor General accuses the Citizens' Representative of providing incorrect total mileage for a return trip beginning at St. John's. The Auditor General states that the Citizens' Representative submitted a mileage claim of 1,768 kms for a trip from St. John's to Gander to Lewisporte to Summerford to Gander to St. John's when the total distance between these locations is approximately 900 kms. The Citizens' Representative agrees with the mileage estimate of the Auditor General and will review and make required changes if same are required.*

- *The Auditor General notes that The Citizens' Representative used old per diem rates rather than higher rates that were effective April 1, 2000. The Citizens' Representative used rates as he was instructed under section 45(1) of the Act. He could not increase his per diem rate until he was officially notified of changes to the Executive Compensation Plan or until direction was given under authority of section 45(1) of the Act. Once proper notice was given then per diem rates were increased.*

- *The Auditor General observes that expense claims "did not always include time of departure or time of return". The Citizens' Representative has found three claims where this charge has basis in fact. Every effort will be made to ensure that future claims will not have this defect.*

Entertainment Expenses

The Auditor General raised three issues regarding entertainment expenses incurred by the Citizens' Representative. First, there was an instance where $48.00 was spent when there were only Government officials in attendance without the approval of Treasury Board. Second, there was an instance when it is alleged that there was no supporting documentation for a $40.00 entertainment charge. Third, there was one instance where there was no indication of who was in attendance.

Dealing with the first instance, it is noted that at a budget meeting of the Commission of Internal Economy, the President of Treasury Board gave prior approval for meetings between officers of the House of Assembly to meet and aid the Citizens' Representative in his adjustment/start up period and also for any meetings designed to build efficiency and co-operation between Officers of the House of Assembly.

Dealing with the second instance, the Citizens' Representative is satisfied, after review of original documents, that there has not been one incidence where an entertainment expense claim has been submitted without supporting documentation.

Dealing with the third instance, it is noted that the Executive Compensation Plan stipulates at section 7.4 that claims for reimbursement of entertainment expenses must include the names of the persons involved. On the other hand section 13 and section 27 of the Act guarantees any citizen who becomes involved in an investigation by the Citizens' Representative that their participation will be secret and maintained confidential. The best legal advise available indicates that law supersedes policy, thus when citizens who were vital to an investigation

stated that co-operation was available if lunch was involved and no name would ever be printed that could lead to identification, the Citizens' Representative co-operated.

Cellular Telephones

The Auditor General states that "there was nothing on file to support the initial need for all of these cellular telephones ". The cellular telephones in question are those utilized by the Citizens' Representative and his staff. The statement is in error. The Citizens' Representative made a major presentation to the House of Assembly dated February 17, 2004 regarding the vital role that wireless communications play in the ombuds service being developed in Newfoundland and Labrador. This presentation is on file at the office of the Citizens' Representative and at the House of Assembly.

Purchased Services and Supplies

The Auditor General accuses the Citizens' Representative of contravening "the Public Tender Act when in June 2003 the Office paid $11,182 for printing services for the 2002 Annual Report to the House of Assembly without being publicly tendered." Two points are relevant here.

First, the Office of the Citizens' Representative does not come under authority of the Public Tender Act. In order for the Public Tender Act to apply to the Office of the Citizens' Representative such would have to be directed under provisions of Section 45(1) or 45(2) of the Act. This has not happened. That is not to say that it should not happen and the recommendation of the Auditor General will be given due consideration after consultation with the Commission of Internal Economy. Nevertheless in June of 2003 the Citizens' Representative could not have contravened legislation that did not apply to his Office.

Second, even if covered by the Public Tender Act, which the Citizens' Representative was not, the Act would not have been contravened when printing the Annual Report because this was not one printing contract but two, each less than $10,000.

Thus the Citizens' Representative disputes the conclusion of the Auditor General on this matter.

The Citizens' Representative has not acted arbitrarily on this matter but has received advice from the House of Assembly which influenced previous actions.

Conclusion

The Citizens' Representative does appreciate the contribution of the Auditor General vis-a-vis administrative improvements to his Office and after consultation with the Commission of Internal Economy will implement, in as far as he is empowered, the recommendations so made.

Notwithstanding the foregoing the Citizens' Representative would be remiss if he did not express his disappointment that the review of the Office of the Citizens' Representative by the Auditor General did not expose wastage of scarce public funds when many thousands of dollars were invested in training the Citizens' Representative and staff to assume responsibility for Access to Information which was subsequently arbitrarily removed from the jurisdiction of the Citizens' Representative.

Further there is the nagging question of why the House of Assembly pays above market rent for an Office that the Citizens' Representative is forced to occupy even though it is totally unacceptable for this type of citizen grievance service. It is also noted that there has been no public tender issued for this office space since the appointment Citizens' Representative.

Clerk of the House of Assembly's Response

We thank the Auditor General and his staff for their analysis and investigation of the matters provided in the Auditor General's Report and hereby provide a response.

In consultation with the Speaker and the Commission of Internal Economy, the Office of the Clerk will endeavor to implement the controls and administrative functions suggested by the Auditor General. In fact, the oversights noted in the Auditor General's Report have already been corrected.

However, in order to place the criticisms as noted in the Auditor General's Report in its proper context, it should be remembered that the House of Assembly Establishment has grown dramatically during the past three years. Traditionally, the Office of the Clerk as mandated by law and custom provided procedural, administrative and financial services to all the Members of the House of Assembly and a very small office structure, namely: Hansard, the Legislative Library and the Broadcast Centre. Two to three staff members of the Office of the Clerk provide these services to Members and the internal House of Assembly Establishment. The complement of staff in the Office of the Clerk has not changed despite the increased responsibilities of that Office.

2.2 Office of the Citizens' Representative

In 1993, the Office of the Chief Electoral Officer was transferred from the Department of Justice to the House of Assembly. It was felt that the independence of the Chief Electoral Officer would be better served if that Office were attached to the House of Assembly with the Chief Electoral Officer reporting to the Speaker and the Commission of Internal Economy. As the only administrative and financial structure in place at that time, the Office of the Clerk became responsible for the financial administration for that Office.

In 2001, the Citizens' Representative Act and the Child and Youth Advocate Act were enacted. The new Citizens' Representative Office was established in early 2002 in a similar fashion to that of the Chief Electoral Officer with the financial responsibility for that Office provided by the Clerk's Office. Also in May 2002, the Child and Youth Advocate was appointed with his office commencing operation in November of 2002. The same administrative and financial structures were also provided by the Office of the Clerk to the Child and Youth Advocate Office. It should also be noted that the establishment of both offices in one year placed an enormous strain on the small staff of the Office of the Clerk to provide the necessary support and advice especially where both offices were required to commence operation in a short time frame.

With the experience of establishing the above-noted two new offices and the recent Office of the Information and Privacy Commissioner, the House of Assembly has recognized that its Establishment does not have the administrative and financial structures to properly administer the independent offices that report to the Speaker and the Commission of Internal Economy. Since the transfer of the Chief Electoral Officer to the House of Assembly Establishment in 1993, the structure of the Office of the Clerk has not grown to accommodate the extra responsibilities placed on that Office by virtue of the creation of three additional new offices that report directly to the Speaker and the Commission of Internal Economy. The Auditor General's comments have placed in perspective the necessity of providing for an increase in the staff complement in the House of Assembly Establishment, together with a comprehensive restructuring of the financial accountability procedures. The matter of staffing in the Office of the Clerk will be considered by the Commission of Internal Economy during the forthcoming budgetary process.