



Government of Newfoundland and Labrador  
Department of Justice  
Civil Division

Rolf Pritchard  
Telephone: (709) 729-2864  
E-mail: [rolfpritchard@gov.nl.ca](mailto:rolfpritchard@gov.nl.ca)

August 31, 2009

**COPY**

Bernard Coffey Law Office  
1<sup>st</sup> Floor, 263 Duckworth Street  
St. John's, NL  
A1C 1G9

ATTENTION: Bernard Coffey, QC

Dear Sir:

**RE: Darlene Neville**

Further to the above and our recent conversation, please find attached documents as requested. I have been advised that your request regarding Ms. Neville's daytimer is being actioned. Finally, I am instructed to advise that any submission you prepare on behalf of Ms. Neville by way of reply should be provided on or before Monday, September 7, 2009. I trust this is satisfactory.

Yours truly,

Rolf Pritchard  
Solicitor  
/rs

Executive  
Council



Newfoundland  
and Labrador

COPY

*Certified to be a true copy of a Minute of a Meeting  
of the Committee of the Executive Council of Newfoundland and  
Labrador approved by His Honour the Lieutenant-Governor on*

2009/08/20

OC2009-264

MC2009-0420. TB2009-001.

TB/Secretary  
JUS/DM  
W. MacKenzie  
R. Fitzgerald  
J. Rorke  
AG  
Deputy Clerk  
File

Under the authority of section 8(2) of the Child and Youth Advocate Act, the Lieutenant Governor in Council appoints Mr. John Rorke as Acting Child and Youth Advocate until such time as the Child and Youth Advocate's suspension is dealt with in the House of Assembly and in accordance with the terms and conditions of a contract between the Speaker of the House of Assembly and Mr. Rorke, a copy of which is to be filed with the Clerk of the Executive Council.

A handwritten signature in cursive script that reads "Gary Norris".

Clerk of the Executive Council

Executive  
Council



Newfoundland  
and Labrador

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2009/08/20

OC2009-263

TB/Secretary  
JUS/DM  
W. MacKenzie  
R. Fitzgerald  
AG  
Deputy Clerk  
File

MC2009-0420. TB2009-001.

Under the authority of section 8(1) of the Child and Youth Advocate Act, the Lieutenant Governor in Council suspends with pay Ms. Darlene Neville for conduct which has culminated in an incapacity to act as Child and Youth Advocate, until such time as the suspension can be dealt with in the House of Assembly.

*Gary Norris*

Clerk of the Executive Council



HOUSE OF ASSEMBLY  
Newfoundland and Labrador

*OFFICE OF THE SPEAKER*

August 17, 2009

Mr. Gary Norris  
Clerk of Executive Council  
Confederation Building  
St. John's, NL

Dear Mr. Norris:

I am writing as Speaker of the House of Assembly to inform the Executive Council of my serious concerns with the current situation in the Office of the Child and Youth Advocate, a Statutory Office of the House of Assembly. I will outline some of the events over the past year and a half.

Throughout 2008, staff of the Office of the Child and Youth Advocate (OCYA) expressed concerns to our Manager of Human Resources or the Chief Financial Officer. OCYA staff in these instances usually wanted confidential advice on a personal level, but did not choose to initiate any formal action respecting Ms. Neville's management. As the House of Assembly administers the human resource functions for OCYA, we were already aware of the unusually high rate of staff turnover in that Office, with seven staff having departed since August, 2005.

The concerns expressed by staff centered on important advocacy projects being left uncompleted by the Advocate and inappropriate management practices. The uncompleted projects were various reviews and investigations which had previously been announced, some of which went back to 2005, and the absence of systemic advocacy advice to government on its service to children and youth. OCYA staff informed House staff that, up to December 2008, no review had been concluded since Dr. Markesteyn's Turner Review and no systemic advocacy advice had been formally presented to government.

The inappropriate management concerns reported by OCYA staff included intimidation and harassment which resulted in a demoralized staff and a poisoned work environment. House of Assembly staff investigated a variety of possible actions in response to these concerns. One response was to engage the Public Service Commission

(PSC) to deliver a seminar to all staff within the Legislature on the Respectful Workplace program which informed managers and staff of appropriate office behaviour and to provide advice on how to deal with harassment.

In the discussions with OCYA staff in December 2008 and January 2009, the central issue was whether or not they collectively or individually would take steps to address the office situation. One option explored was to file a complaint against Ms. Neville under government's Harassment and Discrimination-Free Workplace policy. However, OCYA staff anticipated reprisals if they took such a step and were worried about their continued employment and professional futures. I also understand that OCYA staff at this time began discussions with the Citizens' Representative on the Public Interest Disclosure ("whistleblower") process in Part VI of the *House of Assembly Accountability, Integrity and Administration Act*.

House of Assembly staff engaged in many discussions with the PSC during this period in attempting to find a means of addressing OCYA staff concerns without leaving them open to reprisals. PSC processes and services generally involve full disclosure of concerns to all parties. Despite repeated discussions on this issue, OCYA staff's fear of reprisal could not be allayed and they would not initiate a formal complaint.

Given the apparent fear and mistrust of Ms. Neville, I sought advice from the PSC on other means of the House of Assembly providing assistance to improve the situation within that Office. I determined that the best approach would be for me to request the PSC to initiate a Workplace Assessment under the Respectful Workplace Program. The Workplace Assessment was explained to me as a non-intrusive, collaborative process during which managers and staff are coached to improve communications and cooperation within a work environment. There is no investigatory or accusatory element to the process and this seemed the appropriate response to addressing the concerns.

With a representative of the PSC present, I met with Ms. Neville to discuss the Workplace Assessment approach and Ms. Neville indicated her agreement to proceed. However, one day later, Ms. Neville informed me that she changed her mind and declined to cooperate further in the process. Given Ms. Neville's refusal to cooperate in a Workplace Assessment process, I felt that the House of Assembly had to take action and I requested the Public Service Commission to undertake an Administrative Investigation of the Office. (This investigation is ongoing, although I understand that to date only one OCYA staff person has agreed to speak to the PSC investigators.)

Ms. Neville's response to the above was to allege harassment against her on my part. I then requested, as is my right as a Member of the House of Assembly, that the Citizens' Representative investigate this under the Public Interest Disclosure provisions of the *House of Assembly Accountability, Integrity and Administration Act*. The Citizens' Representative, Mr. Fleming, conducted this investigation and his Report exonerated me of the allegation. Ms. Neville currently has an application before the courts to have this Report quashed. Ms. Neville also requested that an independent investigator be appointed. This was agreed to and Mr. Wayne Thistle of the Centre for Innovative

Dispute Resolution was contracted to undertake this second investigation of Ms. Neville's allegation of harassment. Mr. Thistle's Report also exonerated me of the charge.

During this same period, staff of OCYA initiated a "whistleblower" investigation with the Citizens' Representative under the Public Interest Disclosure provisions referred to earlier. Ms. Neville currently has an application before the courts seeking a prohibition against Mr. Fleming from conducting this investigation as she alleges he is in a conflict of interest by virtue of his spouse's employment with a health authority.

Mr. Fleming decided, in light of Ms. Neville's allegations, that he would not personally undertake the investigation. The Lieutenant Governor in Council then appointed Mr. Robert Noseworthy as Acting Citizens' Representative to undertake the investigation of the complaint. Ms. Neville also has an application before the courts seeking to prevent Mr. Noseworthy from pursuing the investigation. Court dates to deal with this and the other applications are set for December 2-4, 2009.

These various matters have been reported in the media and have served to further erode that Office's effectiveness. Public confidence in the ability of the Office to fulfill its mandate has similarly been eroded. During all these events, counseling services under the Employee Assistance Program of the Public Service Commission were utilized by many staff to deal with the daily stress experienced within the OCYA environment. These services are provided by various private counsellors and are normally subject to a maximum limit of \$500 per person. In light of the significant needs of OCYA staff, the PSC has agreed that, in this case, it will not cap EAP services at that level and staff are continuing to avail of these services. The House of Assembly has also contracted a conflict-management firm to provide ongoing counseling to staff.

As permitted under the Public Interest Disclosure regime (S. 62 of the *House of Assembly Accountability, Integrity and Administration Act*), many staff have also engaged legal counsel, at the Legislature's expense, to provide legal advice to them during the 'whistleblower' investigation.

On July 22, 2009, Ms. Neville held a staff meeting and informed staff that she believed an error had been made by one or more of her staff respecting a referral from the public, following a complaint made to Ms. Neville by Ms. Yvonne Jones, the Member of the House of Assembly for Cartwright-L'Anse au Clair. Ms. Neville informed her staff that she was going to publicize, in the media, her decision to reverse the previous staff decision as she was not going to accept personal responsibility for the error. The staff meeting, and the August 7, 2009 Press Release from Ms. Neville in which she blames her staff, have further exacerbated the poisoned atmosphere in that office. The accuracy of the minutes of the July 22 staff meeting has been disputed by staff but Ms. Neville has apparently refused to amend them.

The individual alleged to have made the referral error, the Director of Advocacy Services, is now seeking legal advice respecting the possible filing of a reprisal complaint

with the Labour Relations Board against Ms. Neville, pursuant to S. 59 of the *House of Assembly Accountability, Integrity and Administration Act*.

Ms. Neville has written the Clerk of the House of Assembly, as Chief Administrative Officer, requesting that he "remove" the Director of Advocacy Services (the individual whom Ms. Neville believes made the error noted above) as it was not appropriate for her to "remain within the employ" of OCYA. Ms. Neville's request acknowledged that it was made to avoid the possibility of a reprisal complaint being filed with the Labour Relations Board. The Clerk in his reply pointed out that S.59 of the *House of Assembly Accountability, Integrity and Administration Act* prohibits directing others to undertake reprisals on one's behalf and that he must decline to undertake the dismissal of the Director of Advocacy Services. The Clerk suggested that, given the importance Ms. Neville placed on the Labrador investigation, she hire additional staff to assist her and explained how salary dollars could be found to accomplish this.

Ms. Neville replied to the Clerk on August 14, contending that her previous request had been misinterpreted. Ms. Neville stated that she had not requested that the individual be discharged from government employment and implied that her intention was that the individual would be transferred or seconded elsewhere within the public service, as in a previous case involving OCYA staff.

In her August 14 correspondence to the Clerk, Ms. Neville also stated that as long as the current incumbent remains as the Director of Advocacy Services, "the Labrador Investigation cannot be conducted in-house". The Clerk has replied to Ms. Neville, stating that he does not believe the arguments advanced by Ms. Neville are sufficient to warrant taking such serious action against the incumbent. The Clerk is also of the view that, even if outright dismissal is not being sought, forcing the individual to transfer could reasonably be seen by the Labour Relations Board as a reprisal for her cooperation in a "whistleblower" investigation.

Many staff are now seeking medical help in response to their work situation. I understand that at least 4 of the 7 professional staff in that Office have received or are seeking medical advice which would allow the PSC to assign them to vacant positions within the public service, without competition, on medical grounds. Others are simply arranging their personal affairs to plan their resignations. Should these matters unfold, the Office will be left without adequate staff to function.

The above is a brief summary of events to August 14, 2009. The Office of the Child and Youth Advocate is in turmoil; its public reputation has been seriously damaged; staff are ill and demoralized; the Office may soon find itself without sufficient staff to operate; and Ms. Neville has taken no action to address matters. There are currently two investigations underway respecting these matters: the Administrative Investigation by the Public Service Commission and the "whistleblower" investigation lead by Mr. Noseworthy. It appears quite likely that a reprisal complaint will be filed with the Labour Relations Board, which could conceivably result in yet a third investigation.

Had Ms. Neville simply cooperated with the Workplace Assessment process, the necessary improvements in the operations of her Office might well have been effected in a collegial manner. Her resistance to any outside assistance or scrutiny and her refusal to cooperate in any of the measures initiated by the House of Assembly cause me grave concern. In my view, the current situation is such that the Advocate is no longer in an effective position "to protect and advance the rights of children and youth".

Yours truly,

A handwritten signature in black ink, appearing to be 'Roger Fitzgerald', written in a cursive style.

**Roger Fitzgerald, M.H.A.**  
Bonavista South District  
Speaker of the House of Assembly





**Office of the Child and Youth Advocate**  
PROVINCE OF NEWFOUNDLAND AND LABRADOR

August 18, 2009

**Executive Council**

DELIVERED BY HAND  
STRICTLY PRIVATE & CONFIDENTIAL

AUG 19 2009

Ms. Roxanne Pottle  
Director of Advocacy Services  
Office of the Child and Youth Advocate  
193 LeMarchant Road  
St. John's, NL A1C 2H5

**RECEIVED**

Dear Ms. Pottle:

You are aware that I have provided Notice to the Chief Executive Officer, Labrador-Grenfell Regional Integrated Health Authority; the Deputy Minister of Child, Youth and Family Services; and the Deputy Minister of Health and Community Services of my intention to conduct an investigation (the "Labrador Investigation") pursuant to section 15.(1)(a) of the *Child and Youth Advocate Act*.

I have been communicating with Mr. William MacKenzie in his capacity as Chief Administrative and Financial Officer of the House of Assembly about the inability of the OCYA, due to conflict of interest issues and public perception concerns, to conduct the Labrador Investigation in-house while you remain the Director of Advocacy Services. The cost to the public purse associated with delegation of the conduct of the Labrador Investigation to an external consultant would undoubtedly be considerably higher than if the Investigation were to be conducted internally by the OCYA.

During the July 22, 2009 OCYA staff meeting relating to this Labrador matter, you volunteered that you had been involved during January 2009 in the decision regarding the Labrador referral, and you added that the matter was very upsetting for everybody involved. You also told those present that you were prepared to take responsibility, even if that meant resigning.

2

In his August 17, 2009 letter to me concerning the matter of the Labrador Investigation, Mr. MacKenzie advised that, "If Ms. Pottle voluntarily agrees to a transfer or secondment, I would of course do all that I can to assist."

I am, therefore, asking whether you would volunteer to be transferred outside the OCYA to a position of comparable remuneration elsewhere in the public service. I do not feel a secondment will adequately address the requirements of the Labrador Investigation. The inability to offer permanent, full-time employment would certainly restrict my ability to recruit a suitably qualified candidate and would, therefore, further delay the investigation.

~~Due to the considerable delay that has already resulted from your unfortunate~~  
January 2009 decision respecting the referral that has now given rise to the Labrador Investigation, I must ask that you advise me in writing by noon on Thursday, August 20, 2009 whether you would voluntarily agree to a transfer. If I do not hear from you by that time, I will assume that you are not prepared to volunteer.

Sincerely,

*Darlene Neville*

Darlene Neville  
Child and Youth Advocate

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OFFICE OF  
THE CLERK OF THE HOUSE



P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J6 CANADA  
TEL: (709) 729-3405  
FAX: (709) 729-4820

Tuesday, November 29<sup>th</sup>, 2005

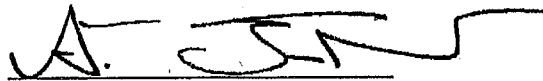
Be it known that on this day the House of Assembly unanimously passed the following Resolution:

**Resolution**

**"WHEREAS** subsection 4(1) of the *Child and Youth Advocate Act* provides

"The Office of the Child and Youth Advocate shall be filled by the Lieutenant Governor in Council on a resolution of the House of Assembly."

**NOW THEREFORE BE IT RESOLVED** that Ms. [REDACTED] be appointed as the Child and Youth Advocate."



**A. John Noel, Q.C.,**  
Clerk of the House of Assembly.

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**Tab 2**

Executive  
Council



Newfoundland  
and Labrador

*Certified to be a true copy of a Minute of a Meeting  
of the Committee of the Executive Council of Newfoundland and  
Labrador approved by His Honour the Administrator on*

2005/12/01

OC2005-638

MC2005-0500.

P  
JUS/DM  
J. Noel  
D. Neville  
AG  
Deputy Clerk  
File

Under the authority of section 4(1) of the Child and Youth Advocate Act, following  
the unanimous approval of a Resolution of the House of Assembly, the Lieutenant  
Governor in Council is pleased to appoint Ms. Darlene Neville as the Child and  
Youth Advocate, effective November 29, 2005, in accordance with the terms and  
conditions of a contract between the Speaker of the House of Assembly and Ms.  
Neville, a copy of which is to be filed with the Clerk of the Executive Council.

COPY

Clerk of the Executive Council

**THIS AGREEMENT** made at St. John's in the Province of Newfoundland and Labrador, Canada this 29<sup>th</sup> day of November, 2005.

**BETWEEN**

**HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR, CANADA** herein represented by the Honourable the Speaker of the House of Assembly

(hereinafter the "Speaker")

OF THE ONE PART

**AND**

**DARLENE NEVILLE** of St. John's, Newfoundland and Labrador, Canada

(hereinafter called the "Child and Youth Advocate")

OF THE OTHER PART

**THIS AGREEMENT WITNESSTH** that, in consideration of the promises and covenants expressed herein, the Parties agree as follows:

**1. Services**

- 1.1 The Child and Youth Advocate was appointed by the Lieutenant-Governor in Council on resolution of the House of Assembly.
- 1.2 In accordance with section 6(1) of the *Child and Youth Advocate Act* ("the Act"), the Child and Youth Advocate shall hold office for a period of 6 years from November 29, 2005, and may be re-appointed for a second term of 6 years, but not for more than 2 terms of 6 years.
- 1.3 During the term of office referenced in 1.2 the Child and Youth Advocate shall be governed by the terms of this contract and the provisions of the Act, with the roles and responsibilities set out in the Act.

**2. Remuneration and Benefits**

- 2.1 The Child and Youth Advocate shall be paid an annual remuneration of \$109,758 (step 19 of the 2056 point scale). The per annum amount shall be paid every two weeks, on Wednesday, in equal installments. General salary increases and step advancements applicable to deputy ministers in the Government of Newfoundland and Labrador and equivalents, as approved, shall apply.



- 2.2 The following deductions shall be made from the remuneration of the Child and Youth Advocate:
- i. Income Tax,
  - ii. Employment Insurance,
  - iii. Canada Pension Plan,
  - iv. Public Service Pension Plan,
  - v. Group Health and Life Insurance Plan, and
  - vi. Any other deductions required by law.
- 2.3 Travel and other expenses shall be reimbursed as approved by the Commission of Internal Economy.
- 2.4 If approved by the Commission of Internal Economy the Speaker shall pay the annual Law Society fees for the Child and Youth Advocate.
- 2.5 The Child and Youth Advocate shall be entitled to 30 days Paid Leave in accordance with the Executive Compensation Pay Plan.

### 3. Tenure

- 3.1 The Child and Youth Advocate's tenure is subject to sections 7 and 8 of the Act.
- 3.2 Upon expiry of the term of office, the Speaker shall not make any payment to the Child and Youth Advocate except for the amount payable for severance pay in accordance with the Human Resources Policy Manual which will include employment with the Department of Justice, the Newfoundland and Labrador Legal Aid Commission and the Office of the Child and Youth Advocate; and for the balance of any unused Paid Leave. The payment for severance pay and Paid Leave is calculated using the salary component of the amount in Clause 2.1.

### 4. Injury on Duty

- 4.1 If the Child and Youth Advocate is injured while carrying out duties and responsibilities the terms set out in the Personnel Administration Procedures issued by Treasury Board under the authority of section 7(2) of the *Financial Administration Act* regarding injury on duty apply.

5. **Conflict of Interest**

5.1 The Child and Youth Advocate shall comply with the provisions of the *Conflict of Interest Act, 1995*.

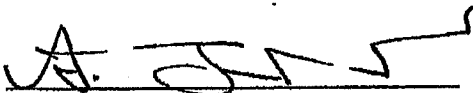
6. **Incompatible Position**


6.1 The Child and Youth Advocate is an officer of the House of Assembly and shall not hold any office or position or engage in any business that is incompatible, as determined by the Speaker, with her duties and responsibilities under this Agreement and the Act.

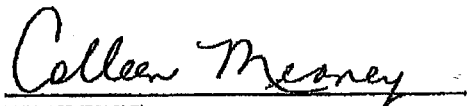
7. **Agreement**

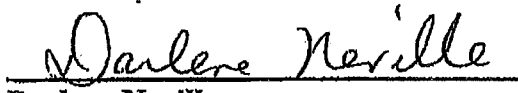
7.1 This Agreement, OC2005-638 and the terms of the Act constitute the entire Agreement between the Child and Youth Advocate and the Speaker respecting the appointment as Child and Youth Advocate.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed in the day and year first before written.

  
WITNESS

  
Harvey Hodder

  
WITNESS

  
Darlene Neville

**Briefing Note  
Cabinet Secretariat**

**Title:** Salary and Benefit for New Child and Youth Advocate

**Issue:** Direction is sought from the Internal Economy Commission, pursuant to the *Child and Youth Advocate Act*, respecting the salary and payment of Law Society fees for the new Child and Youth Advocate, Darlene Neville

**Background:**

- Darlene Neville has been appointed as the new Child and Youth Advocate, effective August 1, 2005, in a temporary capacity until her appointment is approved by a resolution of the House of Assembly.
- Section 9 of the *Child and Youth Advocate Act* requires consultation with the Internal Economy Commission concerning the salary for the new Advocate.
- Ms. Neville's career in the public service began in 1981 as a social worker. Ten years later she received her law degree. Ms. Neville has been working with the Newfoundland and Labrador Legal Aid Commission since 1995.
- Ms. Neville's current salary is in accordance with the Solicitors Pay Plan. She receives \$99,282 per annum, which includes a base salary of \$95,282 and a \$4000 stipend for being on call 24/7 for one week at a time, two to three times per year. In addition, her Law Society fees for a lawyer with practicing status are paid by Government (\$1775 per year).
- The Child and Youth Advocate position is a Deputy Minister equivalent position that has not been classified. [REDACTED]  
[REDACTED] The range for this point scale today is \$89,598 to 116,478. [REDACTED]  
[REDACTED] Given the responsibilities of the position, this appears to be a satisfactory scale subject to classification review, which is recommended.
- It is also recommended that Ms. Neville be provided salary in the ballpark of \$110,000 and an approximate 10% salary increase (\$109,210). This would be comparable to promotions under the Executive Compensation Plan which do not exceed 10%. On the 2056 point scale, the nearest steps to \$110,000 would be step 19 (\$109,758) and step 20 (\$110,878). This is also close to step 18 (currently \$108,638), [REDACTED]

- The payment by Government of Law Society fees for Ms. Neville to continue practicing status would be a discretionary benefit separate from her salary. While the Child and Youth Advocate does not need to be a practicing lawyer, it is recommended that Government continue paying Ms. Neville's practicing fees.

**Action required:**

- That the Internal Economy Commission approve the recommended salary of Darlene Neville, Child and Youth Advocate, at \$110,000 annually subject to review by classification, and approve the payment of Ms. Neville's Law Society fees for practicing status.
- That the Internal Economy Commission be further consulted following the classification review, before Ms. Neville's salary is confirmed.

*Review  
at least  
a minimum*

Prepared by: Cabinet Secretariat  
July 18 2005



GOVERNMENT OF  
NEWFOUNDLAND AND LABRADOR

**Executive Council**  
Clerk of the Executive Council  
and Secretary to Cabinet

2005 07 12

Ms. Darlene Neville  
49 LeMarchant Road  
McKinlay Place  
Unit 307  
St. John's, NL  
A1B 2G9

Dear Ms. Neville:

Pursuant to our discussion, we are pleased to offer you the position of Child and Youth Advocate. This will be in a temporary capacity pursuant to subsection 4(3) of the *Child and Youth Advocate Act* ("the Act") until such time as a resolution is passed in the next sitting of the House of Assembly.

Remuneration is fixed by the Lieutenant-Governor in Council following consultation with the Commission of Internal Economy. For the interim period commencing August 1, 2005, you will be paid on the Executive Compensation Plan at a rate of pay at a Deputy Minister equivalent level subject to review by classification and by the Internal Economy Commission and with consideration being given to payment of your Law Society fees.

If appointed by a resolution of the House of Assembly, you agree to accept the position as the Child and Youth Advocate pursuant to subsection 4(1) of the Act reporting to the Speaker of the House of Assembly for a six year term commencing at the same salary.

During the interim period and six year term, you will be governed by the provisions of the Act and any contract negotiated with the Speaker of the House of Assembly, with the roles and responsibilities as set out in the Act.

You shall continue to be enrolled in the Group Insurance Program of the Government of Newfoundland and Labrador and shall continue to contribute to the Public Service Pension Plan. Travel and other expenses shall be reimbursed as approved by the Internal Economy Commission. You shall continue to be entitled to paid leave at the rate of 30 days per year in accordance with the Executive Compensation Plan. It is agreed you will carry over any paid leave days from your employment with the Newfoundland and Labrador Legal Aid Commission.

You are a statutory Officer of the House of Assembly and therefore you shall not hold any other public office or carry on a trade, business or profession.

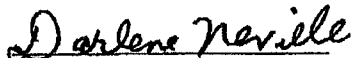
This letter is completed in duplicate. If these terms are acceptable to you, please sign in the space provided below and return one of the documents to me.

Sincerely,



ROBERT C. THOMPSON

Accepted and agreed to:

  
Darlene Neville

Date July 12/05

Executive  
Council



Newfoundland  
and Labrador

*Certified to be a true copy of a Minute of a Meeting  
of the Committee of the Executive Council of Newfoundland and  
Labrador approved by His Honour the Lieutenant-Governor on*

2005/07/08

OC2005-404

MC2005-0295.

P.  
JUS/DM  
J. Noel  
D. Neville  
AG  
Deputy Clerk  
File

Under the authority of subsection 4(3) of the Child and Youth Advocate Act, the Lieutenant Governor in Council is pleased to appoint Darlene Neville as the Child and Youth Advocate in a temporary capacity effective from a current date, with salary to be determined in consultation with the Commission of Internal Economy.

**COPY**

Clerk of the Executive Council

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**Tab 3**





HOUSE OF ASSEMBLY  
NEWFOUNDLAND AND LABRADOR

OFFICE OF THE SPEAKER  
TEL: (709) 729-3404  
FAX: (709) 729-4820

P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J6

February 12, 2009

Ms. Darlene Neville - Child and Youth Advocate  
Office of the Child and Youth Advocate  
193 LeMarehant Rd.

Dear Ms. Neville,

I am writing with respect to the meeting with you and Ms. Cathy Murphy, Respectful Workplace Coordinator with the Public Service Commission, on February 10, 2009. At this meeting we indicated that concerns respecting the administration of employees in your office had been expressed to Management of the House of Assembly. In this meeting there was a recommendation that we undertake a workplace assessment in accordance with policies of the Public Service Commission, which was the first step towards assisting your office with this matter. We are committed to providing necessary administrative support to the statutory offices as is required by the *House of Assembly Accountability, Integrity and Administration Act* (ss. 32(6) and (3)) and policies applicable to the House and its administration, and under the *Public Service Commission Act* and its policies. This process is intended to assist the workplace and not to undermine it.

Your telephone conversation with me on February 11, 2009 during which you demanded an apology for this legitimate administrative support process, and your email correspondence with Ms. Murphy, makes it clear that you no longer wish to participate in the agreed upon workplace assessment. Under the circumstances I have no choice but to direct that an investigation of the administration of your office be carried out under those same referred to policies.

Should you wish to have the originally agreed upon workplace assessment outlined at our meeting implemented, please do not hesitate to contact me.

Sincerely,

ROGER FITZGERALD, MHA  
Speaker, House of Assembly

c.c. Ms. Cathy Murphy, Respectful Workplace Coordinator

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**Tab 4**



**Office of the Child and Youth Advocate  
PROVINCE OF NEWFOUNDLAND AND LABRADOR**

February 12, 2009

DELIVERED BY HAND

The Honourable Roger Fitzgerald, M.H.A.  
Speaker of the House of Assembly and  
Chair of the House of Assembly Management Commission  
East Block, Confederation Building  
St. John's, NL A1B 4J6

Dear Mr. Fitzgerald,

I acknowledge receipt of your correspondence dated February 12, 2009.

In your correspondence, you state that "we indicated that concerns respecting the administration of employees in your office had been expressed to Management of the House of Assembly". This is different from what you said during the meeting. You stated that you had heard "stories" that staff at my office were unhappy, looking for other jobs and didn't feel respected. You indicated that the concern was that I "micromanaged".

I request that you provide full disclosure regarding these "stories", including the source(s) and details. I also request that you provide complete details as to why you feel you are authorized to direct an investigation of the administration of the independent Office of the Child and Youth Advocate.

In my view, your direction to conduct this investigation and your request of Tuesday, February 10, 2009 to conduct an intervention constitutes a hindrance to the performance of my functions and duties and is, therefore, in violation of Section 31.(a) of the *Child and Youth Advocate Act*.

It is untenable for me to be under investigation while I am conducting investigations of services and programs provided by Government, its Boards and Agencies. I query whether it is your intention or the intention of others advising you to intimidate me from completing my ongoing investigations.

I, therefore, request that you reconsider your actions and trust you will govern yourself accordingly.

Sincerely,

*Darlene Neville*

Darlene Neville  
Child and Youth Advocate

---

---

**Tab 5**



# HOUSE OF ASSEMBLY

NEWFOUNDLAND AND LABRADOR

OFFICE OF THE SPEAKER  
TEL: (709) 729-3404  
FAX: (709) 729-4820

P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J8

February 13, 2009

Mr. Ed Walsh  
Chair and Chief Executive Officer  
Public Service Commission

Dear Mr. Walsh:

**Re: Office of the Child & Youth Advocate**

Management employees of the House of Assembly have been made aware of workplace problems within the Office of the Child and Youth Advocate. The Child and Youth Advocate is a Statutory Officer of the House of Assembly, answerable in administrative matters to me as the Speaker, and to the Management Commission of the House of Assembly in its capacity for dealing with personnel matters.

The Child and Youth Advocate Office and other Offices of the House of Assembly have participated in Respectful Workplace seminars within the past few months. On Tuesday, February 10, I met with Ms. Cathy Murphy from the Public Service Commission and Ms. Darlene Neville, the Child and Youth Advocate, to discuss the implementation of an agreed upon workplace assessment process. At that meeting Ms. Neville agreed upon participating in this process. Unfortunately, on February 11, Ms. Neville clearly indicated to me and to Ms. Murphy that she would not participate in this workplace assessment.

We have been made aware that there are perceptions of violations of the "Harassment and Discrimination Free Workplace Policy" of the Government through communication to our Chief Financial Officer from employees of the Office of the Child and Youth Advocate. Therefore, we ask that an investigation into the administration of the Child and Youth Advocate Office workplace be carried out by the Public Service Commission.

Sincerely,

**ROGER FITZGERALD, MHA**  
Speaker, House of Assembly

---

**Tab 6**



**Office of the Child and Youth Advocate  
PROVINCE OF NEWFOUNDLAND AND LABRADOR**

February 16, 2009

**STRICTLY PRIVATE AND CONFIDENTIAL**  
**DELIVERED BY HAND**

Hon. Roger Fitzgerald, MHA  
Speaker of the House of Assembly  
Chair, Management Commission  
East Block, Confederation Building  
St. John's, NL

Ms. Elizabeth Marshall, MHA  
3<sup>rd</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Hon. Joan Burke, MHA  
Minister of Education and  
Government House Leader  
3<sup>rd</sup> Floor, West Block  
Confederation Building  
St. John's, NL

Mr. Tom Osborne, MHA  
4<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Ms. Yvonne Jones, MHA  
Leader of the Official Opposition  
5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Mr. Kelvin Parsons, MHA  
5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Ms. Lorraine Michael, MHA  
Leader, NL NDP Party  
5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Mr. William MacKenzie  
Clerk of the House of Assembly and  
Secretary to the Management Commission  
Confederation Building  
St. John's, NL

Hon Trevor Taylor, MHA  
Minister of Transportation & Works  
6<sup>th</sup> Floor, West Block  
Confederation Building  
St. John's, NL



Dear Members of the Management Commission:

Re: **Official Complaint Under the Harassment and Discrimination  
Free Workplace Policy (Creating a Respectful Work Environment)**

I am writing today to file an official complaint against the Speaker of the House of Assembly, Mr. Roger Fitzgerald, under the Creating a Respectful Work Environment Policy referenced above.

Below I outline the series of events which led to the filing of this complaint, followed by a statement of the formal complaint and closing commentary.

### Events Leading to the Complaint

On Tuesday, February 10, 2009, I attended a meeting scheduled at the Speaker's request. The Speaker's office had informed me that it would be the Speaker and myself in attendance but they did not forward an agenda for the meeting. When I arrived at the Speaker's office, I was introduced to Ms. Cathy Murphy of the Public Service Commission and informed that she would also be attending the meeting.

At the meeting, Mr. Fitzgerald indicated that the true purpose of the meeting was to advise me that he had heard "stories – nothing official mind you, no formal complaint, but stories that I heard more than once" that staff in my office were unhappy, looking for other jobs and did not feel respected. There were apparently also concerns that I "micromanaged". He emphasized that no official complaint had been filed, so he was "recommending" that an intervention be introduced into the Office of the Child and Youth Advocate. The suggested intervention, *Creating a Respectful Workplace Program*, is a pilot program operated by the Public Service Commission that offers employees a way to resolve workplace conflicts when they first arise. I was completely blindsided by this revelation, delivered in the presence of Ms. Murphy, with no prior notice and no one else present to act on my behalf, and initially agreed to the Speaker's request to begin a workplace intervention in my office.

On the morning of February 11, 2009, I contacted the Speaker by telephone. I must state here that this was not a cordial conversation, as by this time my shock had turned to anger and outrage. I did, however, speak from my prepared notes so that I was sure of the information I was conveying with respect to the manner in which this matter had been addressed with me, specifically:

- acting on hearsay versus a formal complaint;
- failing to initially call me in private to explore possible other explanations or counterpoints to the "stories";
- failing to notify me that, in the absence of first speaking with me he had proceeded to engage the services of Ms. Murphy, indicating that before I even had a chance to discuss the situation, he had rushed to the judgment the stories were true and the office required an intervention;
- failing to notify me that Ms. Murphy would be present at the meeting and I should feel free to have someone accompany me as well; and

- breaching the very policy, ironically, that he purported to support.

I also referenced my deep concern about the timing and motivation of such an intervention, as everyone is well aware that I am in the middle of several very volatile investigations, the resistance to which has been substantial. I demanded that he reconsider his actions in this matter. The Speaker responded in anger also and indicated that if I would not accept a voluntary intervention in my office, he "had no choice but to escalate his intervention into an investigation". He refused to accept any responsibility for the manner in which he had rushed to judgment in this matter and his impropriety in the actions noted above.

On February 12, 2009, I received a letter from the Speaker (attached) indicating that he was acting in accordance with the *House of Assembly Accountability, Integrity and Administration Act* and the *Public Service Commission Act* under provisions designed to "assist the workplace not undermine it". In his letter, he did not reference the fact that he was acting on "stories" but stated, instead, that he was acting on concerns addressed to the Management of the House of Assembly. The letter made good on the threat he had delivered over the telephone on February 12<sup>th</sup> and indicated that "he had no choice" but to proceed to an investigation of the office. He suggested, however, that if I was willing to reconsider, he could see his way through to merely have an intervention versus an investigation.

I responded in writing to the Speaker on February 12, 2009 (also attached) requesting full disclosure of the source of the "stories" and reiterating that it was untenable that I could complete my investigations if I myself were under investigation.

On February 13, 2009, my staff was contacted via email (attached) by Ms. Marlene Lambe, Chief Financial Officer, House of Assembly, and informed that the Speaker had requested that the Public Service Commission conduct an administrative investigation to address workplace concerns that had been raised which impact the employees of the Office of the Child and Youth Advocate.

#### Statement of Formal Complaint

I, Darlene Neville, Child and Youth Advocate, wish to file a formal complaint of harassment against the Speaker of the House of Assembly, Mr. Roger Fitzgerald.

According to the Harassment and Discrimination Free Workplace Policy (*Creating a Respectful Workplace Environment*), harassment is "any inappropriate behaviour directed at or offensive to any employee, or any inappropriate behaviour that endangers any employee's job, undermines any employee's performance or threatens the economic livelihood of any employee".

The inappropriate behaviour directed at me has been outlined above. It is inconceivable that the Speaker has rushed to judgment against an Independent Officer of the House of Assembly, based on stories and innuendo. In prematurely engaging the services of Ms. Murphy, he failed to keep the nature of his concerns confidential until such time as he could discuss them with me first privately. His actions violate the above-referenced policy in that he acted without a formal complaint. A complainant under this

policy is "an employee(s) who has brought forward or filed a complaint under this policy, alleging discrimination or harassment". By the Speaker's own admission, there is neither a formal complaint nor identified complainant. Furthermore, basic human resource management practice would insist that the employee, as a first step, address any concerns they have with the party in question, so that they are aware of the concerns and are given an opportunity to address them. I myself have not received a formal or informal complaint from any member of my staff, past or present.

The actions of the Speaker in rushing to judgment based on hearsay and commencing an investigation also constitutes an undermining of my performance in that it seriously compromises the authority of the Child and Youth Advocate to proceed with investigations while she herself is under investigation. And it is this area which causes me the greatest concern and, yes, anger.

I was hired to advocate for society's most vulnerable, the children of this province, and I take this obligation seriously. Unfortunately, due to the actions of the Speaker, important investigations underway stand to be derailed. In addition to the well known investigation into mental health services delivered to children and youth in the province, I am nearing completion of one review in which a child was essentially starved to the point of brain damage while under the protection of Child, Youth and Family Services. As the Members of the Management Commission are aware, those involved in this case refused to even meet with me and the government later gave the Advocate subpoena powers so that the investigation could proceed. The other case involves the systemic torture of two young girls. These girls were also known to a Child Protection Team; the team publicly touted the abuser as a model of good parenting while horrific abuse continued over the course of several years. Both of these investigations involving Child Protection were commenced following the conclusion of criminal trials where the parents in both cases entered guilty pleas and received periods of imprisonment.

With respect to the issues raised by the Speaker in our meeting on February 11, 2009, I would like to present the following response:

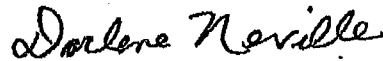
It is no secret that when I took over the Office of the Child and Youth Advocate, the Office was widely regarded as being in a mess:

- There had been a negative audit by the Auditor General regarding use of public funds under the previous Child and Youth Advocate. He was no longer involved in the Office but several staff who would have been involved in the administration of funds remained. I was compelled to institute management controls to ensure misuse of public funds did not occur again. This may not have been an entirely popular move among staff that were used to doing things differently but I am prepared to accept the criticism that I micromanage oversight of the use of public funds. Not all staff were able to accept the necessary changes and sought employment elsewhere.
- Several of the key personnel in the Office had direct involvement with the cases under investigation and had been allowed to remain in the Office despite these conflicts; one of these individuals was even short-listed for the position of Child and Youth Advocate. It took several months to negotiate alternative placements

within the Public Service for these individuals and they did inform me they were not happy about having to leave the Office. I regret that these actions were necessary but I stand by them.

In closing, I wish to express my profound sadness that this series of events has occurred. However, I have an obligation to fulfill my mandate and if that makes some people uncomfortable, then so be it. I came in to this position with an unsullied and excellent reputation for dealing with some of the most vulnerable and disadvantaged members of our society (both adults and children) with respect and dignity. I have attempted to deal fairly with the past human resources challenges in my Office. I am very happy with and appreciative of the dedicated team of professionals who currently work in the Office of the Child and Youth Advocate and am prepared to address any legitimate concerns brought to my attention in the appropriate manner. I am not prepared to be treated with disrespect or intimidation.

Sincerely,



Darlene Neville  
Child and Youth Advocate

DN/sp  
Encls.

**Darlene Neville**

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**From:** Lambe, Marlene M. [mlambe@gov.nl.ca]  
**Sent:** Friday, February 13, 2009 1:16 PM  
**To:** Roxanne Pottle; Jennifer Forristall; Dorothy Penney; Randy Doyle; Debbie Gillard; Heather Lannon; Bonnie Poole; Amanda Mercer; Shirley Prior  
**Cc:** Darlene Neville  
**Subject:** Respectful Workplace Program

The Speaker of the House of Assembly has requested the Public Service Commission to conduct an administrative investigation to address workplace concerns that have been raised which impact the employees of the Child and Youth Advocate Office.

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We understand that such a course of action is stressful and wish to indicate that the intent of the administrative investigation is to support the workplace. Assistance during this process is available to staff through the Respectful Workplace Program of the Public Service Commission at 729-5891.

Thanks  
Marlene Lambe  
Chief Financial Officer  
House of Assembly

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"This email and any attached files are intended for the sole use of the primary and copied addressee(s) and may contain privileged and/or confidential information. Any distribution, use or copying by any means of this information is strictly prohibited. If you received this email in error, please delete it immediately and notify the sender."



# HOUSE OF ASSEMBLY

NEWFOUNDLAND AND LABRADOR

OFFICE OF THE SPEAKER  
TEL: (709) 729-3404  
FAX: (709) 729-4820

P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J8

February 13, 2009

Mr. Ed Walsh  
~~Chair and Chief Executive Officer~~  
Public Service Commission

Dear Mr. Walsh:

**Re: Office of the Child & Youth Advocate**

Management employees of the House of Assembly have been made aware of workplace problems within the Office of the Child and Youth Advocate. The Child and Youth Advocate is a Statutory Officer of the House of Assembly, answerable in administrative matters to me as the Speaker, and to the Management Commission of the House of Assembly in its capacity for dealing with personnel matters.

The Child and Youth Advocate Office and other Offices of the House of Assembly have participated in Respectful Workplace seminars within the past few months. On Tuesday, February 10, I met with Ms. Cathy Murphy from the Public Service Commission and Ms. Darlene Neville, the Child and Youth Advocate, to discuss the implementation of an agreed upon workplace assessment process. At that meeting Ms. Neville agreed upon participating in this process. Unfortunately, on February 11, Ms. Neville clearly indicated to me and to Ms. Murphy that she would not participate in this workplace assessment.

We have been made aware that there are perceptions of violations of the "Harassment and Discrimination Free Workplace Policy" of the Government through communication to our Chief Financial Officer from employees of the Office of the Child and Youth Advocate. Therefore, we ask that an investigation into the administration of the Child and Youth Advocate Office workplace be carried out by the Public Service Commission.

Sincerely,

**ROGER FITZGERALD, MHA**  
Speaker, House of Assembly



# HOUSE OF ASSEMBLY

NEWFOUNDLAND AND LABRADOR

OFFICE OF THE SPEAKER  
TEL: (709) 729-8404  
FAX: (709) 729-4820

P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J8

February 12, 2009

Ms. Darlene Neville - Child and Youth Advocate  
Office of the Child and Youth Advocate  
193 LeMarchant Rd.

Dear Ms. Neville,

I am writing with respect to the meeting with you and Ms. Cathy Murphy, Respectful Workplace Coordinator with the Public Service Commission, on February 10, 2009. At this meeting we indicated that concerns respecting the administration of employees in your office had been expressed to Management of the House of Assembly. In this meeting there was a recommendation that we undertake a workplace assessment in accordance with policies of the Public Service Commission, which was the first step towards assisting your office with this matter. We are committed to providing necessary administrative support to the statutory offices as is required by the *House of Assembly Accountability, Integrity and Administration Act* (ss. 32(6) and (3)) and policies applicable to the House and its administration, and under the *Public Service Commission Act* and its policies. This process is intended to assist the workplace and not to undermine it.

Your telephone conversation with me on February 11, 2009 during which you demanded an apology for this legitimate administrative support process, and your email correspondence with Ms. Murphy, makes it clear that you no longer wish to participate in the agreed upon workplace assessment. Under the circumstances I have no choice but to direct that an investigation of the administration of your office be carried out under those same referred to policies.

Should you wish to have the originally agreed upon workplace assessment outlined at our meeting implemented, please do not hesitate to contact me.

Sincerely,

ROGER FITZGERALD, MHA  
Speaker, House of Assembly

c.c. Ms. Cathy Murphy, Respectful Workplace Coordinator



Office of the Child and Youth Advocate  
PROVINCE OF NEWFOUNDLAND AND LABRADOR

February 12, 2009

DELIVERED BY HAND

The Honourable Roger Fitzgerald, M.H.A.  
Speaker of the House of Assembly and  
Chair of the House of Assembly Management Commission  
East Block, Confederation Building  
St. John's, NL A1B 4J6

Dear Mr. Fitzgerald,

I acknowledge receipt of your correspondence dated February 12, 2009.

In your correspondence, you state that "we indicated that concerns respecting the administration of employees in your office had been expressed to Management of the House of Assembly". This is different from what you said during the meeting. You stated that you had heard "stories" that staff at my office were unhappy, looking for other jobs and didn't feel respected. You indicated that the concern was that I "micromanaged".

I request that you provide full disclosure regarding these "stories", including the source(s) and details. I also request that you provide complete details as to why you feel you are authorized to direct an investigation of the administration of the independent Office of the Child and Youth Advocate.

In my view, your direction to conduct this investigation and your request of Tuesday, February 10, 2009 to conduct an intervention constitutes a hindrance to the performance of my functions and duties and is, therefore, in violation of Section 31.(a) of the *Child and Youth Advocate Act*.

It is untenable for me to be under investigation while I am conducting investigations of services and programs provided by Government, its Boards and Agencies. I query whether it is your intention or the intention of others advising you to intimidate me from completing my ongoing investigations.



I, therefore, request that you reconsider your actions and trust you will govern yourself accordingly.

Sincerely,

*Darlene Neville*

Darlene Neville  
Child and Youth Advocate

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**Tab 7**



HOUSE OF ASSEMBLY  
Newfoundland and Labrador

February 27, 2009

Members of the House of Assembly Management Commission

Attached please find a response from the Appeals and Investigation Division of the Public Service Commission informing me that they will not be able to investigate Ms. Neville's complaint. This letter is in response to my e-mail to Ed Walsh and Raelene Thomas of February 17, 2009.

Given this response, the Speaker, as an individual Member, has requested that the Citizens' Representative undertake an investigation under the Public Interest Disclosure provisions of the *House of Assembly Accountability, Integrity and Administration Act*.

Yours,

A handwritten signature in black ink, appearing to read 'William MacKenzie', written over a printed name and title.

William MacKenzie  
Clerk of the House of Assembly

cc: Deputy Speaker  
Ms. Darlene Neville



Government of Newfoundland and Labrador  
Public Service Commission

*Public Service Excellence through Merit, Fairness & Respect*

February 26, 2009

Mr. William MacKenzie,  
Clerk of the House of Assembly  
Confederation Building  
East Block

Dear Mr. MacKenzie:

**Re: Request for Investigation, dated February 17, 2009**

Further to your correspondence and e-mail of February 17, 2009 I am writing to advise that the Appeals and Investigation Division will not be able to investigate Ms. Darlene Neville's complaint against the Speaker of the House of Assembly. We believe there may be a potential for internal conflict were we to investigate two related matters at the same time. It would not be possible for this office to keep information obtained in the first investigation which was referred to the Commission on February 13, 2009 separate from any information which may have been obtained in the above-referenced investigation.

If you wish to discuss this matter further I may be contacted at your convenience at 729-2581.

Yours sincerely,

A handwritten signature in cursive script that reads "Raelene Thomas".

**RAELENE THOMAS**  
Director, Appeal and Investigation

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**Tab 8**



HOUSE OF ASSEMBLY  
NEWFOUNDLAND AND LABRADOR

OFFICE OF THE SPEAKER  
TEL: (709) 729-3404  
FAX: (709) 729-4820

P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J8

---

February 27, 2009

Ms. Darlene Neville, Child & Youth Advocate  
Office of the Child & Youth Advocate  
193 LeMarchant Rd.  
St. John's, NL A1C 2H5

Dear Ms. Neville,

The Clerk has been informed by the Public Service Commission that their Appeal and Investigation Division is unable to investigate the allegations against me contained in your letter of 16 February 2009 to myself and the Management Commission of the House of Assembly.

Consequently, as a Member and Speaker of the House of Assembly of Newfoundland and Labrador, I have asked the Citizens' Representative to undertake an investigation under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*, into the allegations of wrongdoing made against me.

Regards,

ROGER FITZGERALD, MHA  
Speaker, House of Assembly

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**Tab 9**



HOUSE OF ASSEMBLY  
NEWFOUNDLAND AND LABRADOR

OFFICE OF THE SPEAKER  
TEL: (709) 729-3404  
FAX: (709) 729-4820

P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J6

February 27, 2009

Mr. Barry Fleming, Citizens' Representative  
Office of the Citizens' Representative  
20 Crosbie Place  
St. John's, NL A1B 3N7

Dear Mr. Fleming,

I have enclosed a copy of a letter from Ms. Darlene Neville, the Child and Youth Advocate, which was sent to me, as Speaker of the House of Assembly, and to members of the House of Assembly Management Commission. As you can see from this letter, allegations have been made with respect to my conduct in a matter relating to the management of the Office of the Child and Youth Advocate and in particular with respect to a meeting with Ms. Neville.

I believe that this letter is an implication of a wrongdoing carried out by myself as Speaker, and as a Member and Speaker of the House of Assembly I ask that you carry out an investigation into this under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*.

Regards,

ROGER FITZGERALD, MHA  
Speaker, House of Assembly





**Office of the Child and Youth Advocate  
PROVINCE OF NEWFOUNDLAND AND LABRADOR**

February 16, 2009

**STRICTLY PRIVATE AND CONFIDENTIAL**  
**DELIVERED BY HAND**

Hon. Roger Fitzgerald, MHA  
Speaker of the House of Assembly  
Chair, Management Commission  
East Block, Confederation Building  
St. John's, NL

Ms. Elizabeth Marshall, MHA  
3<sup>rd</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Hon. Joan Burke, MHA  
Minister of Education and  
Government House Leader  
3<sup>rd</sup> Floor, West Block  
Confederation Building  
St. John's, NL

Mr. Tom Osborne, MHA  
4<sup>th</sup> Floor, East Block  
Confederation Building  
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Ms. Yvonne Jones, MHA  
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5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Mr. Kelvin Parsons, MHA  
5<sup>th</sup> Floor, East Block  
Confederation Building  
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Ms. Lorraine Michael, MHA  
Leader, NL NDP Party  
5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Mr. William MacKenzie  
Clerk of the House of Assembly and  
Secretary to the Management Commission  
Confederation Building  
St. John's, NL

Hon Trevor Taylor, MHA  
Minister of Transportation & Works  
6<sup>th</sup> Floor, West Block  
Confederation Building  
St. John's, NL

Dear Members of the Management Commission:

Re: Official Complaint Under the Harassment and Discrimination  
Free Workplace Policy (Creating a Respectful Work Environment)

I am writing today to file an official complaint against the Speaker of the House of Assembly, Mr. Roger Fitzgerald, under the Creating a Respectful Work Environment Policy referenced above.

Below I outline the series of events which led to the filing of this complaint, followed by a statement of the formal complaint and closing commentary.

#### Events Leading to the Complaint

On Tuesday, February 10, 2009, I attended a meeting scheduled at the Speaker's request. The Speaker's office had informed me that it would be the Speaker and myself in attendance but they did not forward an agenda for the meeting. When I arrived at the Speaker's office, I was introduced to Ms. Cathy Murphy of the Public Service Commission and informed that she would also be attending the meeting.

At the meeting, Mr. Fitzgerald indicated that the true purpose of the meeting was to advise me that he had heard "stories – nothing official mind you, no formal complaint, but stories that I heard more than once" that staff in my office were unhappy, looking for other jobs and did not feel respected. There were apparently also concerns that I "micromanaged". He emphasized that no official complaint had been filed, so he was "recommending" that an intervention be introduced into the Office of the Child and Youth Advocate. The suggested intervention, *Creating a Respectful Workplace Program*, is a pilot program operated by the Public Service Commission that offers employees a way to resolve workplace conflicts when they first arise. I was completely blindsided by this revelation, delivered in the presence of Ms. Murphy, with no prior notice and no one else present to act on my behalf, and initially agreed to the Speaker's request to begin a workplace intervention in my office.

On the morning of February 11, 2009, I contacted the Speaker by telephone. I must state here that this was not a cordial conversation, as by this time my shock had turned to anger and outrage. I did, however, speak from my prepared notes so that I was sure of the information I was conveying with respect to the manner in which this matter had been addressed with me, specifically:

- acting on hearsay versus a formal complaint;
- failing to initially call me in private to explore possible other explanations or counterpoints to the "stories";
- failing to notify me that, in the absence of first speaking with me he had proceeded to engage the services of Ms. Murphy, indicating that before I even had a chance to discuss the situation, he had rushed to the judgment the stories were true and the office required an intervention;
- failing to notify me that Ms. Murphy would be present at the meeting and I should feel free to have someone accompany me as well; and

- breaching the very policy, ironically, that he purported to support.

I also referenced my deep concern about the timing and motivation of such an intervention, as everyone is well aware that I am in the middle of several very volatile investigations, the resistance to which has been substantial. I demanded that he reconsider his actions in this matter. The Speaker responded in anger also and indicated that if I would not accept a voluntary intervention in my office, he "had no choice but to escalate his intervention into an investigation". He refused to accept any responsibility for the manner in which he had rushed to judgment in this matter and his impropriety in the actions noted above.

On February 12, 2009, I received a letter from the Speaker (attached) indicating that he was acting in accordance with the *House of Assembly Accountability, Integrity and Administration Act* and the *Public Service Commission Act* under provisions designed to "assist the workplace not undermine it". In his letter, he did not reference the fact that he was acting on "stories" but stated, instead, that he was acting on concerns addressed to the Management of the House of Assembly. The letter made good on the threat he had delivered over the telephone on February 12<sup>th</sup> and indicated that "he had no choice" but to proceed to an investigation of the office. He suggested, however, that if I was willing to reconsider, he could see his way through to merely have an intervention versus an investigation.

I responded in writing to the Speaker on February 12, 2009 (also attached) requesting full disclosure of the source of the "stories" and reiterating that it was untenable that I could complete my investigations if I myself were under investigation.

On February 13, 2009, my staff was contacted via email (attached) by Ms. Marlene Lambé, Chief Financial Officer, House of Assembly, and informed that the Speaker had requested that the Public Service Commission conduct an administrative investigation to address workplace concerns that had been raised which impact the employees of the Office of the Child and Youth Advocate.

#### Statement of Formal Complaint

I, Darlene Neville, Child and Youth Advocate, wish to file a formal complaint of harassment against the Speaker of the House of Assembly, Mr. Roger Fitzgerald.

According to the Harassment and Discrimination Free Workplace Policy (*Creating a Respectful Workplace Environment*), harassment is "any inappropriate behaviour directed at or offensive to any employee, or any inappropriate behaviour that endangers any employee's job, undermines any employee's performance or threatens the economic livelihood of any employee".

The inappropriate behaviour directed at me has been outlined above. It is inconceivable that the Speaker has rushed to judgment against an Independent Officer of the House of Assembly, based on stories and innuendo. In prematurely engaging the services of Ms. Murphy, he failed to keep the nature of his concerns confidential until such time as he could discuss them with me first privately. His actions violate the above-referenced policy in that he acted without a formal complaint. A complainant under this

policy is "an employee(s) who has brought forward or filed a complaint under this policy, alleging discrimination or harassment". By the Speaker's own admission, there is neither a formal complaint nor identified complainant. Furthermore, basic human resource management practice would insist that the employee, as a first step, address any concerns they have with the party in question, so that they are aware of the concerns and are given an opportunity to address them. I myself have not received a formal or informal complaint from any member of my staff, past or present.

The actions of the Speaker in rushing to judgment based on hearsay and commencing an investigation also constitutes an undermining of my performance in that it seriously compromises the authority of the Child and Youth Advocate to proceed with investigations while she herself is under investigation. And it is this area which causes me the greatest concern and, yes, anger.

I was hired to advocate for society's most vulnerable, the children of this province, and I take this obligation seriously. Unfortunately, due to the actions of the Speaker, important investigations underway stand to be derailed. In addition to the well known investigation into mental health services delivered to children and youth in the province, I am nearing completion of one review in which a child was essentially starved to the point of brain damage while under the protection of Child, Youth and Family Services. As the Members of the Management Commission are aware, those involved in this case refused to even meet with me and the government later gave the Advocate subpoena powers so that the investigation could proceed. The other case involves the systemic torture of two young girls. These girls were also known to a Child Protection Team; the team publicly touted the abuser as a model of good parenting while horrific abuse continued over the course of several years. Both of these investigations involving Child Protection were commenced following the conclusion of criminal trials where the parents in both cases entered guilty pleas and received periods of imprisonment.

With respect to the issues raised by the Speaker in our meeting on February 11, 2009, I would like to present the following response:

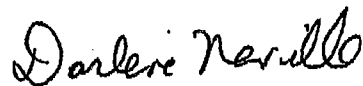
It is no secret that when I took over the Office of the Child and Youth Advocate, the Office was widely regarded as being in a mess:

- There had been a negative audit by the Auditor General regarding use of public funds under the previous Child and Youth Advocate. He was no longer involved in the Office but several staff who would have been involved in the administration of funds remained. I was compelled to institute management controls to ensure misuse of public funds did not occur again. This may not have been an entirely popular move among staff that were used to doing things differently but I am prepared to accept the criticism that I micromanage oversight of the use of public funds. Not all staff were able to accept the necessary changes and sought employment elsewhere.
- Several of the key personnel in the Office had direct involvement with the cases under investigation and had been allowed to remain in the Office despite these conflicts; one of these individuals was even short-listed for the position of Child and Youth Advocate. It took several months to negotiate alternative placements

within the Public Service for these individuals and they did inform me they were not happy about having to leave the Office. I regret that these actions were necessary but I stand by them.

In closing, I wish to express my profound sadness that this series of events has occurred. However, I have an obligation to fulfill my mandate and if that makes some people uncomfortable, then so be it. I came in to this position with an unsullied and excellent reputation for dealing with some of the most vulnerable and disadvantaged members of our society (both adults and children) with respect and dignity. I have attempted to deal fairly with the past human resources challenges in my Office. I am very happy with and appreciative of the dedicated team of professionals who currently work in the Office of the Child and Youth Advocate and am prepared to address any legitimate concerns brought to my attention in the appropriate manner. ~~I am not prepared to be treated with disrespect or intimidation.~~

Sincerely,



Darlene Neville  
Child and Youth Advocate

DN/sp  
Encls.

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**Tab 10**



**Office of the Child and Youth Advocate**  
PROVINCE OF NEWFOUNDLAND AND LABRADOR

March 3, 2009

**STRICTLY PRIVATE AND CONFIDENTIAL**  
**DELIVERED BY HAND**

Hon. Roger Fitzgerald, MHA  
Speaker of the House of Assembly  
Chair, Management Commission  
East Block, Confederation Building  
St. John's, NL

Hon. Trevor Taylor, MHA  
Minister of Transportation & Works  
6<sup>th</sup> Floor, West Block  
Confederation Building  
St. John's, NL

Mr. Tom Osborne, MHA  
Deputy Speaker, House of Assembly  
3<sup>rd</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Ms. Elizabeth Marshall, MHA  
3<sup>rd</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Hon. Joan Burke, MHA  
Minister of Education and  
Government House Leader  
3<sup>rd</sup> Floor, West Block  
Confederation Building  
St. John's, NL

Mr. Kelvin Parsons, MHA  
5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Ms. Yvonne Jones, MHA  
Leader of the Official Opposition  
5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Mr. William MacKenzie  
Clerk of the House of Assembly and  
Secretary, Management Commission  
East Block, Confederation Building  
St. John's, NL

Ms. Lorraine Michael, MHA  
Leader, NL NDP Party  
5<sup>th</sup> Floor, East Block  
Confederation Building  
St. John's, NL

Dear Members of the Management Commission:

Re: **Official Complaint Under the Harassment and Discrimination  
Free Workplace Policy (Creating a Respectful Work Environment)**

I write today to express my deep concern regarding the manner in which my official complaint of harassment by Mr. Roger Fitzgerald, Speaker of the House of Assembly, dated February 16, 2009, has been addressed to-date.

On February 17, 2009, I was copied on an email from William MacKenzie, Clerk of the House of Assembly, to Mr. Ed Walsh and Ms. Raelene Thomas of the Public Service Commission (copy attached), acknowledging receipt of my complaint and indicating that my complaint and appended documents had been forwarded to the Public Service Commission for action and follow-up.

Ten days later, on February 27, 2009, I received a letter from the Speaker indicating that he had been informed by the Clerk that the Public Service Commission was unable to investigate my complaint (copy attached). I also received a copy of a letter from the Clerk, addressed to members of the Management Commission, together with a copy of a letter from Ms. Raelene Thomas, Director, Appeal and Investigation, Public Service Commission, wherein Ms. Thomas advised that the Public Service Commission was unable to investigate my complaint due to the potential for conflict of interest (copies of both correspondence attached).

Mr. Fitzgerald stated in his February 27, 2009 correspondence that he (the person against whom the complaint had been lodged) had requested the Citizens' Representative to undertake an investigation of my complaint under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*. This essentially entailed moving my complaint under the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Work Environment) of the Public Service Commission to Part VI, the Public Interest Disclosure Section, of the *House of Assembly Accountability, Integrity and Administration Act*, otherwise known as the Whistle-Blower Legislation, and having my complaint investigated by the Citizens' Representative, Mr. Barry Fleming.

This unilateral redirection of my complaint is unacceptable for the following reasons:

1. If the Public Service Commission was unable to address my complaint due to conflict of interest concerns, the proper course of action was for the matter to be redirected back to the Management Commission for consideration and direction. Other institutions which find themselves unable to address complaints under a Respectful Workplace Policy due to conflict of interest concerns



obtain external assistance from legal counsel or other consultants/ investigators acceptable to all parties.

2. I have no confidence that my complaint will be dealt with fairly and impartially by Mr. Fleming. I mean him no disrespect, but he is clearly in a conflict of interest position himself for the following reasons:

(a) Mr. Fleming reports to the Speaker of the House of Assembly. While the Whistle Blower Legislation permits the investigation of the Speaker by the Citizens' Representative, it should be noted that Section 54.(1)(e) of the *House of Assembly Accountability, Integrity and Administration Act* contemplates investigation for matters such as the misuse of public funds; not harassment. It would be inconsistent with the spirit and intent of this Whistle Blower Legislation to enable the subject of a harassment complaint to divert the complaint away from the very government policy specifically developed to address such complaints.

(b) A Civil Action was commenced on January 16, 2009 (Court File No. 2009 05T 0008) in the Supreme Court of Newfoundland and Labrador, Trial Division, wherein the Speaker was named Respondent in the Action. The Originating Application contains assertions that the Citizens' Representative, Barry Fleming, failed to disclose a conflict of interest during his investigation of the Applicant's complaint regarding the mental health services provided by the Eastern Regional Integrated Health Authority to his son. Specifically, at paragraph 7, the Applicant states:

"At no time did the Citizens' Representative indicate that his wife, Ms. Beverley Clarke, was the Chief Operating Officer (COO) of Eastern Health. [The COO of Eastern Health was one of the key players that had met with the Applicant, on at least two occasions in 2007.] ..."

(c) Ms. Beverley Clarke's judgment came under criticism by Dr. Peter Markesteyn in his Report of the Turner Review and Investigation which I released on October 4, 2006. Furthermore, Ms. Clarke, within the coming weeks, will be subpoenaed to testify in my ongoing investigation into the mental health services provided to children and youth at the Janeway as, in her capacity as Chief Operating Officer of Eastern Health, she is responsible for the delivery of mental health and addictions programs and services.

(d) My once close personal friendship with both Barry Fleming and his wife, Beverley Clarke, has not survived due to the ongoing work of my office which involves the review of programs and services delivered by the Eastern Regional Integrated Health Authority under the direction of Ms. Clarke.

I respectfully request that the Management Commission follow up on my original complaint of February 16, 2009 under the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Work Environment) and retain an external consultant to conduct the investigation appropriately under that policy.

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Respectfully submitted,



Darlene Neville  
Child and Youth Advocate

DN/sp  
Encls.

**Darlene Neville**

---

**From:** MacKenzie, William [willammackenzie@gov.nl.ca]  
**Sent:** Tuesday, February 17, 2009 9:23 AM  
**To:** Walsh, Ed; Thomas, Raelene  
**Cc:** Darlene Neville; Fitzgerald, Roger; Burke, Joan; Jones, Yvonne; Michael, Lorraine; Taylor, Trevor; Marshall, Elizabeth; Osborne, Tom; Parsons, Kelvin  
**Subject:** Complaint - Harassment and Discrimination Free Workplace Policy

Mr. Walsh:

The House of Assembly Management Commission has received a complaint from Ms. Darlene Neville, the Child and Youth Advocate, alleging violations of the Harassment and Discrimination Free Workplace policy by Speaker Fitzgerald. ~~I note that Subsection 32(6) of the House of Assembly Accountability, Integrity and Administration Act applies the Public Service Commission Act to the House of Assembly.~~

As Secretary to the Management Commission, I have this morning couriered Ms. Neville's complaint and appended documents to you and Ms. Thomas for appropriate Public Service Commission action and follow-up.

Regards,

William MacKenzie  
Clerk of the House of Assembly  
Province of Newfoundland and Labrador  
P.O. Box 8700  
St. John's, NL, Canada  
A1B 4J6  
[willammackenzie@gov.nl.ca](mailto:willammackenzie@gov.nl.ca)  
709-729-3405  
709-729-4820 (fax)

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2/17/2009



HOUSE OF ASSEMBLY  
Newfoundland and Labrador

February 27, 2009

Members of the House of Assembly Management Commission

Attached please find a response from the Appeals and Investigation Division of the Public Service Commission informing me that they will not be able to investigate Ms. Neville's complaint. This letter is in response to my e-mail to Ed Walsh and Raelene Thomas of February 17, 2009.

Given this response, the Speaker, as an individual Member, has requested that the Citizens' Representative undertake an investigation under the Public Interest Disclosure provisions of the *House of Assembly Accountability, Integrity and Administration Act*.

Yours,

A handwritten signature in black ink, appearing to read 'William MacKenzie', written over a printed name and title.

William MacKenzie  
Clerk of the House of Assembly

cc: Deputy Speaker  
✓ Ms. Darlene Neville



HOUSE OF ASSEMBLY  
NEWFOUNDLAND AND LABRADOR

OFFICE OF THE SPEAKER  
TEL: (709) 729-3404  
FAX: (709) 729-4820

P.O. BOX 8700  
ST. JOHN'S, NL  
A1B 4J8

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February 27, 2009

Ms. Darlene Neville, Child & Youth Advocate  
Office of the Child & Youth Advocate  
193 LeMarchant Rd.  
St. John's, NL A1C 2H5

Dear Ms. Neville,

The Clerk has been informed by the Public Service Commission that their Appeal and Investigation Division is unable to investigate the allegations against me contained in your letter of 16 February 2009 to myself and the Management Commission of the House of Assembly.

Consequently, as a Member and Speaker of the House of Assembly of Newfoundland and Labrador, I have asked the Citizens' Representative to undertake an investigation under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*, into the allegations of wrongdoing made against me.

Regards,

**ROGER FITZGERALD, MHA**  
Speaker, House of Assembly



Government of Newfoundland and Labrador  
Public Service Commission

Public Service Excellence through Merit, Fairness & Respect

February 26, 2009

Mr. William MacKenzie,  
Clerk of the House of Assembly  
Confederation Building  
East Block

Dear Mr. MacKenzie:

**Re: Request for Investigation, dated February 17, 2009**

Further to your correspondence and e-mail of February 17, 2009 I am writing to advise that the Appeals and Investigation Division will not be able to investigate Ms. Darlene Neville's complaint against the Speaker of the House of Assembly. We believe there may be a potential for internal conflict were we to investigate two related matters at the same time. It would not be possible for this office to keep information obtained in the first investigation which was referred to the Commission on February 13, 2009 separate from any information which may have been obtained in the above-referenced investigation.

If you wish to discuss this matter further I may be contacted at your convenience at 729-2581.

Yours sincerely,

A handwritten signature in cursive script that reads "Raelene Thomas".

**RAELENE THOMAS**  
Director, Appeal and Investigation

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**Tab 11**

**REPORT OF THE INVESTIGATOR**

This report was prepared following an investigation of a formal complaint of harassment made by DARLENE NEVILLE, the Child and Youth Advocate (the "Complainant") against ROGER FITZGERALD, Speaker of the House of Assembly of Newfoundland and Labrador ( the "Respondent"), specifically, that:

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The said Respondent engaged in inappropriate behaviour directed at the Complainant contrary to the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Work Environment)

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**PREPARED FOR: MS. MARLENE LAMBE**

**CHIEF FINANCIAL OFFICER**

**HOUSE OF ASSEMBLY**

**NEWFOUNDLAND AND LABRADOR**

**PREPARED BY: WAYNE THISTLE, Q.C., C. ARB.**

**THE CENTRE FOR INNOVATIVE DISPUTE RESOLUTION**

**36 QUIDI VIDI ROAD**

**ST. JOHN'S NL A1A 1C1**

**SUBMITTED: June 4, 2009**



## **THE ASSIGNMENT**

Ms. Marlene Lambe, Chief Financial Officer, House of Assembly, Newfoundland and Labrador contacted the Centre for Innovative Dispute Resolution to request services to investigate the complaint from the Complainant against the Respondent. The letter of engagement was dated March 31, 2009.

The Scope of Work was set out in Appendix "A" to an Agreement between The House of Assembly Service of Newfoundland and Labrador as represented by the Clerk of the House of Assembly (the Client) and the Centre for Innovative Dispute resolution as represented by Wayne Thistle (the Consultant) and states as follows:

The Consultant shall complete the work and/or perform the following services:

- (1) The Consultant shall carry out an investigation into the complaint to the House of Assembly Management Commission under the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Work Environment) made by the Child and Youth Advocate against the Speaker of the House of Assembly in her letter dated February 16, 2009.
- (2) A copy of the correspondence referred to at paragraph (1), material originally attached to that correspondence and a copy of the Harassment and Discrimination Free Workplace Policy of the Public Service Commission will be provided to the Consultant.
- (3) The Consultant shall develop and complete a report to the Chief Financial Officer setting out findings, conclusions and recommendations, if any.

## **ORIGINS OF THE DISPUTE**

Sometime prior to February 10, 2009 the Respondent had been informed of concerns at the Office of the Child and Youth Advocate (the "OCYA"). The concerns expressed to him involved informal complaints about the Complainant by certain members of the staff of the OCYA.

On February 10, 2009, a meeting, called by the Respondent was held at his office. Attending that meeting were the Respondent, Ms. Cathy Murphy, Respectful Workplace Co-ordinator with the Public Service Commission, and the Complainant. The Respondent called the meeting to propose to the Complainant that because of the concerns that had come to his attention it would be appropriate to conduct a Workplace Assessment (WPA) to have the matters addressed. He asked the Complainant if she objected to the presence of Ms. Murphy at the meeting and she responded in the negative. The Complainant did not object to the WPA and most of the meeting involved a discussion between Ms. Murphy and the Complainant on the purposes of a WPA and how to move forward on its implementation.

After the meeting, the Complainant had discussions with colleagues, family and friends regarding what had transpired at the meeting and began to have serious reservations about the proposed WPA. These reservations included how the Respondent had reached a conclusion that such was necessary, the failure to notify her in advance of the purpose for the meeting and that Ms. Murphy would be present, the prior involvement of Ms. Murphy in respect of staff of the OCYA and the impact the WPA would have on her ability to investigate matters under her jurisdiction.

The next morning at 10:00 a.m. the Complainant called the Respondent to outline her reservations and to advise him that she no longer agreed with the WPA. She implored him not to proceed with it. There was a rather heated exchange with the Respondent informing the Complainant that if she did not agree with the WPA he would proceed to have an investigation of the administration of her office.

On February 11, 2009 Ms. Murphy sent an e mail to the Complainant requesting a meeting to follow up on the WPA. The Complainant responded by e mail the same

day advising that she was no longer prepared to proceed with this process. She had consulted with legal counsel and had received advice that this action constitutes an obstruction and hindrance with respect to the performance of her duties under the *Child and Youth Advocate Act* pursuant to Section 31(a). She stated this is a direct interference in the independence of her Office.

The Respondent followed up on the February 11 conversation with the Complainant in a letter dated February 12, 2009 which states as follows:

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Dear Ms. Neville,

I am writing with respect to the meeting with you and Ms. Cathy Murphy, Respectful Workplace Coordinator with the Public Service Commission, on February 10, 2009. At this meeting we indicated that the concerns respecting the administration of employees in your office had been expressed to Management of the House of Assembly. In this meeting there was a recommendation that we undertake a workplace assessment in accordance with the policies of the Public Service Commission, which was the first step towards assisting your office with this matter. We are committed to providing necessary administrative support to the statutory offices as is required by the House of Assembly Accountability, Integrity and Administration Act (ss. 32(6) and (3)) and policies applicable to the House and its administration, and under the Public Service Commission Act and its policies. This process is intended to assist the workplace and not to undermine it.

Your telephone conversation with me on February 11, 2009 during which you demanded an apology for this legitimate administrative support process, and your email correspondence with Ms. Murphy, makes it clear that you no longer wish to participate in the agreed upon workplace assessment. Under the circumstances, I have no choice but to direct that an investigation of the administration of your office be carried out under those same referred to policies.

Should you wish to have the originally agreed upon workplace assessment outlined at our meeting implemented, please do not hesitate to contact me.

The Complainant responded to this letter on February 12, 2009 as follows:

DELIVERED BY HAND

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Dear Mr. Fitzgerald,

I acknowledge receipt of your correspondence dated February 12, 2009.

In your correspondence, you stated that “we indicated that concerns respecting the administration of employees in your office had been expressed to Management of the House of Assembly”. This is different from what you said during the meeting. You stated that you had heard “stories” that staff at my office were unhappy, looking for other jobs and didn’t feel respected. You indicated that the concern was that I “micromanaged”.

I request that you provide full disclosure regarding these “stories”, including the source(s) and details. I also request that you provide complete details as to why you feel you are authorized to direct an investigation of the administration of the independent Office of the Child and Youth Advocate.

In my view, your direction to conduct this investigation and your request of Tuesday, February 10, 2009 to conduct this investigation constitutes a hindrance to the performance of my functions and duties and is, therefore, in violation of Section 31.(a) of the *Child and Youth Advocate Act*. It is untenable for me to be under investigation while I am conducting investigations of services and programs provided by Government, its Boards and Agencies. I query whether it is your intention or the intention of others advising you to intimidate me from completing my ongoing investigations.

I, therefore, request that you reconsider your actions and trust you will govern yourself accordingly

### **THE COMPLAINT AGAINST THE SPEAKER**

In a letter dated February 16, 2009 and addressed to the members of the Management Committee, the Complainant set forth her official complaint against the Respondent. The letter reads as follows:

---

Dear Members of the Management Commission:

**“Re: Official Complaint Under the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Work Environment)”**

I am writing today to file an official complaint against the Speaker of the House of Assembly, Mr. Roger Fitzgerald, under the Creating a Respectful Work Environment Policy referenced above.

Below I outline the series of events which led to the filing of this complaint, followed by a statement of the formal complaint and closing commentary.

#### **Events Leading to the Complaint**

On Tuesday, February 10, 2009, I attended a meeting scheduled at the Speaker’s request. The Speaker’s office had informed me that it would be the Speaker and myself in attendance but they did not forward an agenda for the meeting. When I arrived at the Speaker’s office, I was introduced to Ms. Cathy Murphy of the Public Service Commission and informed that she would also be attending the meeting.

At the meeting, Mr. Fitzgerald indicated that the true purpose of the meeting was to advise me that he had heard “stories – nothing official mind you, no formal complaint, but stories that I heard more than once” that staff in my office were unhappy, looking for other jobs and did not feel respected. There were apparently also concerns that I “micromanaged”. He emphasized that no official complaint had been filed, so he was “recommending” that an intervention be introduced into the Office of the Child and Youth Advocate. The suggested intervention, *Creating a Respectful Workplace Program*, is a pilot program operated by the Public Service Commission that offers

employees a way to resolve workplace conflicts when they first arise. I was completely blindsided by this revelation, delivered in the presence of Ms. Murphy, with no prior notice and no one else present to act on my behalf, and initially agreed to the Speaker's request to begin a workplace intervention in my office.

On the morning of February 11, 2009, I contacted the Speaker via telephone. I must state here that this was not a cordial conversation, as by this time my shock had turned to anger and outrage. I did, however, speak from my prepared notes so that I was sure of the information I was conveying with respect to the manner in which this matter has been addressed with me, specifically:

- acting on hearsay versus a formal complaint;
- failing to initially call me in private to explore possible other explanations or counter points to the "stories";
- failing to notify me that, in the absence of first speaking with me he had proceeded to engage the services of Ms. Murphy, indicating that before I even had a chance to discuss the situation, he had rushed to the judgment the stories were true and the office required an intervention;
- failing to notify me that Ms. Murphy would be present at the meeting and I should feel free to have someone to accompany me as well; and
- breaching the very policy, ironically, that he purported to support.

I also referenced my deep concern about the timing and motivation of such an intervention, as everyone is well aware that I am in the middle of several very volatile investigations, the resistance to which has been substantial. I demanded that he reconsider his actions in this matter. The Speaker responded in anger also and indicated that if I would not accept a voluntary intervention in my office, he "had no choice but to escalate his intervention into an investigation". He refused to accept any responsibility for the manner in which he had rushed to judgment in this matter and his impropriety in the actions noted above.

On February 12, 2009, I received a letter from the Speaker (attached) indicating that he was acting in accordance with the *House of Assembly*

*Accountability, Integrity and Administration Act* and the *Public Service Commission Act* under provisions designed to “assist the workplace not undermine it”. In his letter, he did not reference the fact that he was acting on “stories” but stated, instead, that he was acting on concerns addressed to the Management of the House of Assembly. The letter made good on the threat he had delivered over the telephone on February 12<sup>th</sup> and indicated that “he had no choice” but to proceed to an investigation of the office. He suggested, however, that if I was willing to reconsider, he could see his way through to merely have an intervention versus an investigation.

---

I responded in writing to the Speaker on February 12, 2009 (also attached) requesting full disclosure of the source of the “stories” and reiterating that it was untenable that I could complete my investigations if I myself were under investigation.

On February 13, 2009, my staff was contacted via e-mail (attached) by Ms. Marlene Lambe, Chief Financial Officer, House of Assembly, and informed that the Speaker had requested that the Public Service Commission conduct an administrative investigation to address workplace concerns that have been raised which impact the employees of the Office of the Child and Youth Advocate.

#### Statement of Formal Complaint

I, Darlene Neville, Child and Youth Advocate, wish to file a formal complaint of harassment against the Speaker of the House of Assembly, Mr. Roger Fitzgerald.

According to the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Workplace Environment), Harassment is “any inappropriate behaviour directed at or offensive to any employee, or any inappropriate behaviour that endangers any employee’s job, undermines any employee’s performance or threatens the economic livelihood of any employee.”

The inappropriate behaviour directed at me has been outlined above. It is inconceivable that the Speaker has rushed to judgment against an Independent Officer of the House of Assembly, based on stories and innuendo. In prematurely engaging the services of Ms. Murphy, he failed to keep the nature of his concerns confidential until such time as he could discuss them with me first privately. His actions violate the above referenced

policy in that he acted without a formal complaint. A complainant under this policy is "an employee(s) who has brought forward or filed a complaint under this policy, alleging discrimination or harassment". By the Speaker's own admission, there is neither a formal complaint nor identified complainant. Furthermore, basic human resource management practice would insist that the employee, as a first step, address any concerns they have with the party in question, so that they are aware of the concerns and are given an opportunity to address them. I myself have not received a formal or informal complaint from any member of my staff, past or present.

---

The actions of the Speaker in rushing to judgment based on hearsay and commencing an investigation also constitutes an undermining of my performance in that it seriously compromises the authority of the Child and Youth Advocate to proceed with investigations while she herself is under investigation. And it is this area which causes me the greatest concern and, yes, anger.

I was hired to advocate for society's most vulnerable, the children of this province, and I take this obligation seriously. Unfortunately, due to the actions of the Speaker, important investigations underway stand to be derailed. In addition to the well-known investigation into mental health services delivered to children and youth in the province, I am nearing completion of one review in which a child was essentially starved to the point of brain damage while under the protection of Child, Youth and Family Services. As the Members of the Management Commission are aware, those involved in this case refused to even meet with me and the government later gave the Advocate subpoena powers so that the investigation could proceed. The other case involves the systemic torture of two young girls. These girls were also known to a Child Protection Team; the team publicly touted the abuser as a model of good parenting while horrific abuse continued over the course of several years. Both of these investigations involving Child Protection were commenced following the conclusion of criminal trials where the parents in both cases entered guilty pleas and received periods of imprisonment.

With respect to the issues raised by the Speaker in our meeting on February 11, 2009, I would like to present the following response:

It is no secret that when I took over the Office of the Child and Youth Advocate, the Office was widely regarded as being a mess:



- There had been a negative audit by the Auditor General regarding use of public funds under the previous Child and Youth Advocate. He was no longer involved in the Office but several staff who would have been involved in the administration of funds remained. I was compelled to institute management controls to ensure misuse of public funds did not occur again. This may not have been an entirely popular move among staff that were used to doing things differently but I am prepared to accept the criticism that I micromanaged oversight of the use of public funds. Not all staff were able to accept the necessary changes and sought employment elsewhere.
- 

- Several of the key personnel of the Office had direct involvement with the cases under investigation and had been allowed to remain in the Office despite these conflicts; one of these individuals was even short-listed for the position of Child and Youth Advocate. It took several months to negotiate alternative placements within the Public Service for these individuals and they did inform me they were not happy about having to leave the Office. I regret that these actions were necessary but I stand by them.

In closing, I wish to express my profound sadness that this series of events has occurred. However, I have an obligation to fulfill my mandate and if that makes some people uncomfortable, then so be it. I came in to this position with an unsullied and excellent reputation for dealing with some of the most vulnerable and disadvantaged members of our society (both adults and children) with respect and dignity. I have attempted to deal fairly with the past human resources challenges in my Office. I am very happy with and appreciative of the dedicated team of professionals who currently work in the Office of the Child and Youth Advocate and am prepared to address any legitimate concerns brought to my attention in the appropriate manner. I am not prepared to be treated with disrespect or intimidation.

## **ANALYSIS**

### **The Central Question**

The central question that I must address is whether the behaviour of the Respondent as outlined in the formal complaint dated February 16, 2009 constitutes harassment as defined in Harassment and Discrimination Free Workplace Policy (Creating a Respectful Workplace Environment).

This Policy states, in part:

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All employees of the Government of Newfoundland and Labrador are entitled to pursue their duties in a respectful workplace. It is crucial that everyone, regardless of role or position in the organization conduct themselves in a respectful manner in the workplace.

The Employer will strive to create and maintain a work environment free from harassment and discrimination by the Employer, an agent of the employer, or by other employees. No form of harassment will be tolerated by the Employer. Where harassment has been determined to have occurred, disciplinary action, up to and including dismissal will be taken.

The Employer will also encourage and provide a means through which employees can seek resolution to harassing and/or discriminatory behaviour.”

In the definition section, “harassment” is defined as:

“any inappropriate behaviour directed at, or offensive to any employee, or any inappropriate behaviour that endangers any employee’s job, undermines any employee’s performance, or threatens the economic livelihood of any employee;

any offensive behaviour of a sexual nature, related to a person’s gender which creates an intimidating, unwelcome or hostile work environment, or that could reasonably be thought to put sexual conditions on a person’s job or employment opportunities

any objectionable conduct, comments or displays made either on a one-time basis or on a continuous basis that demeans or belittles an employee

any inappropriate use of power and authority by a supervisor that endangers, undermines, threatens, interferes with or influences an employee's job, the performance of that job, the economic livelihood of the employee or the employee's career but does not include the legitimate and proper exercise supervisory (sic) responsibilities such as:

- distribution of work assignments or training opportunities;

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- work evaluation;
- disciplinary measures taken for any valid reason; and/or
- Staffing decisions

Further, "inappropriate behaviour/objectionable conduct" is defined as:

"behaviour or conduct that is known or ought reasonably to be known to be unwelcome, objectionable or offensive and which includes unwelcome verbal and written remarks, jokes, activities or other inappropriate behaviour(s) related to personal issues such as:

- race, religion or religious creed;
- age, sex, sexual orientation or marital status;
- physical or mental disability;
- political opinion; and/or  
colour, ethnic, national or social origin"

## **What is a Workplace Assessment?**

The applicable policy states as follows:

The goal of a workplace assessment is to help create a healthy, harmonious work environment. It is not an investigative process. A workplace assessment focuses on the perceptions, impressions and feelings of the employees. Whereas an investigation focuses on obtaining facts and evidence to support or refute specific allegations made with respect to a formal complaint.

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The purpose of a Workplace Assessment is to:

- obtain information regarding the employee perception of their work environment
- identify the strengths and challenges of the workplace
- provide employees with the mechanism to discuss their needs/concerns with respect to their workplace
- discuss problem areas and sources of conflict affecting the working conditions and interpersonal relationships
- empower employees with an opportunity to identify approaches to address their concerns

A Workplace Assessment is one of the least disruptive processes available to resolve conflict in the workplace. It is often described as “conflict coaching” and provides a facilitation process to assist individuals or groups of employees in dealing with conflict. A manager would have to agree with a Workplace Assessment before it is introduced and the manager would be key to the success of any action plan which may be developed to deal with issues which are identified.

The Workplace Assessment was introduced by the Public Service Commission as a pilot in 1999 and arose out of a workplace study where it was shown that unresolved workplace conflict was a major stress for many employees and a barrier to productivity. In March 2006 it was introduced as a permanent initiative of the

Commission. There are now two full time employees who serve full time as Respectful Workplace Coordinators.

**What conduct on the part of the Respondent can be considered in my assessment of whether harassment occurred?**

To answer the central question, I must analyze the conduct of the Respondent leading up to the meeting on February 10, 2009, his conduct at the meeting, his ~~conduct during the telephone conversation on February 11, 2009 and any relevant~~ conduct on his part prior to the letter of complaint issued on February 16, 2009. The Complainant, during my investigative meetings did suggest that there was evidence of harassment subsequent to that date but clearly I have authority only to deal with matters which occurred between the Complainant and the Respondent leading to the filing of the complaint.

**Does my mandate extend to an assessment of what information the Respondent had received regarding concerns that had come to his attention from staff of the Office of the Child and Youth Advocate?**

I am satisfied that the Respondent was aware that concerns respecting the administration of employees in the OCYA had been expressed to the management of the House of Assembly sometime in December 2008 or January 2009, more likely in January and that on first hearing about them he did not proceed with any action. When they came to his attention on a further occasion, he sought advice on what action, if any should be taken. He was informed that the failure to initiate measures to address the concerns did have the potential for liability on the part of an employer should there be any legal action by an employee.

Whether the concerns that came to the attention of the Respondent have foundation is not within the mandate of this investigation. I understand that is the subject of another investigation.

**The description of the staff concerns: "Stories"**

Prior to the meeting of February 10, 2009 the Respondent had sought input from Ms. Murphy as to how to conduct the meeting to achieve the outcome that was felt to be the most appropriate, i.e. proceeding with a WPA. The information provided to me was that in the absence of a formal complaint from staff members he should describe what he heard as "stories." One of the persons interviewed gave the following assessment: "It was an improper use of the term; it wasn't stories – there were concerns. All staff found themselves, including present staff and past staff, with concerns. 'Stories' implies staff were making things up."

As it turned out, the use of this descriptor generated a very strong negative reaction on the part of the Complainant as to how the Respondent could introduce a WPA, often referred to as an "intervention" rather than an "assessment" based on hearsay. This was a contributing factor as to why the complaint was lodged.

The Complainant did acknowledge that if the Respondent had said "..It's more than stories, maybe I'd agree to an assessment."

**Did the meeting of February 10, 2009 achieve the objective the Respondent had when the decision was made to call the meeting?**

From what has been presented to me, it appears the meeting achieved the objective with the Respondent and the Complainant reaching an agreement that a WPA was the best way to proceed forward. It was the next day after consultations with others that the Complainant reached a conclusion she had too willingly and inappropriately agreed to the WPA because it would result in interference in her ability to carry on with her investigations pursuant to her mandate, i.e. while under investigation, how could she freely and independently investigate matters under her jurisdiction, some of which involved government departments and agencies.

**What had the Respondent anticipated from a WPA? Was it expected that discipline could arise from a WPA?**

I am satisfied from the information available to me that in proposing a WPA the Respondent was not intending that the management and staff issues in the OCYA would be investigated for the purpose of possible discipline of the Complainant. The commitment from the Respondent was that the Complainant would have remained in charge of how the WPA would occur, working with the assistance of an independent neutral to "...help create a healthy, harmonious work environment."

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**Did the prior involvement of Ms. Murphy in discussions of staff issues in the OCYA make it inappropriate that she participate in the meeting of February 10, 2009?**

Ms. Murphy did have contact with Ms. Lambe going back to February 2008 regarding staff issues at the OCYA. She made connection with some staff members in September 2008 but there was no request for a WPA nor was the staff prepared to make any formal complaint. Ms. Murphy participated in further meetings which took place in December 2008 and February 2009. By February 2, 2009 it had been agreed by the Respondent, Ms. Lambe and Ms. Murphy that the Complainant should be made aware of the concerns expressed by staff and that a WPA would be proposed. Given Ms. Murphy's knowledge of and prior involvement with the WPA process it was agreed that she should be present at a meeting where the Respondent would inform the Complainant of such concerns. Ms. Murphy indicated her reason for being present was to see how they could move forward to a resolution and offer the Complainant appropriate support and resources throughout the process.

Ms. Murphy's prior knowledge of staff concerns would not disqualify her from attending a meeting with the Respondent and the Complainant. She was not an adversary in any sense of the word. She indicated that she would not be involved with a WPA if at any time discipline was being considered and would remove herself if this became the case.

## **FACTORS CONTRIBUTING TO THE DECISION TO FILE AN OFFICIAL COMPLAINT OF HARASSMENT**

The Complainant did not file her complaint without considering the potential implications of such action. A number of factors led to that decision. They include, but are not necessarily limited to the following:

1. She had had considerable difficulties in respect of certain investigations because some individuals had refused to cooperate in the investigations. After much time and effort she did succeed in her request to be granted subpoena powers. She had a concern that the proposed WPA might be initiated because someone may be “whispering” in the Respondent’s ear and there may be an effort to intimidate her from completing ongoing investigations, undermine her performance as CYA and hinder the performance of her duties.
2. She was concerned that the Respondent had not arranged a private meeting with her to advise her of the information he had received regarding her administration of the office.
3. She was concerned that she had been denied fair process when she was called to a meeting with the Respondent without the benefit of knowing the agenda and without being informed that Ms. Murphy would be present.
4. She was concerned that the Respondent had “rushed to judgement based on stories and innuendo” and found it inconceivable that he would initiate the WPA based on “stories and innuendo.”
5. She was concerned about Ms. Murphy’s prior involvement with staff of the OCYA and awareness of issues staff may have had with her administration of the office.
6. She was concerned that Ms. Murphy’s role in the WPA may not have been supportive of her role as the leader in the office, but more to cover for the lack of action taken to address the issues that may have come to her attention.



From the vantage point of the Complainant she certainly felt that she had to take action to try and avert what she viewed as a major intrusion in and interference with her office.

**THE SPECIFIC ALLEGATIONS BEHIND THE FORMAL (OFFICIAL) COMPLAINT OF HARASSMENT**

The formal complaint in the letter of February 16, 2009 listed the following ~~specific examples of what the Complainant saw as founding her allegation of~~ harassment. I shall review each separately with a view to reaching a conclusion on whether they severally or collectively would lead to a conclusion that harassment had occurred:

- acting on hearsay versus a formal complaint;
- failing to initially call me in private to explore possible other explanations or counterpoints to the “stories”;
- failing to notify me that, in the absence of first speaking with me he had proceeded to engage the services of Ms. Murphy, indicating that before I even had a chance to discuss the situation, he had rushed to judgement the stories were true and the office required an intervention;
- failing to notify me that Ms. Murphy would be present at the meeting and I should feel free to have someone accompany me as well; and
- breaching the very policy, ironically that he purported to support.

Other allegations were also contained in the letter of complaint.

### **Acting on hearsay versus a formal complaint**

A formal complaint is not a precondition to a WPA. In fact, the opposite is the case. If a formal complaint is lodged it likely would lead to an investigative process which would obtain facts and evidence to support or refute specific allegations made with respect to a formal complaint. The Respondent did receive information about staff issues in the OCYA:

- staff felt demoralized
- ~~- staff did not feel respected~~
- staff were afraid to speak out about their concerns
- staff felt that the Complainant micromanaged
- the Complainant did not conclude work presented to her by staff
- staff were seeking other employment opportunities

The information available to me confirms these concerns were expressed to Ms. Lambe and to Ms. Murphy by staff. This information was presented to the Respondent. This is not a situation where the Respondent was obliged to confront the Complainant with the concerns before he proposed a process to have the concerns addressed through an established informal and least intrusive process.

I conclude that the Respondent did not harass the Complainant when he acted on information on staff issues provided to him by Ms. Lambe and Ms. Murphy.

### **The failure to initially call the Complainant in private to explore possible other explanations or counterpoints to the “stories”**

As pointed out earlier in this report, it is unfortunate that the Respondent was advised to use, and did use the label “stories” to describe the concerns that staff had raised. The Respondent did not intend to engage in a process to ascertain whether what he had heard about staff concerns was founded or not. He did not have information on which staff had raised which concerns and it would therefore

not be productive for him to have the Complainant respond to them. The concerns would more properly be addressed through a WPA since it could focus on the perceptions, impressions and feelings of the staff.

I conclude that the Respondent did not harass the Complainant when he failed initially to call her in private to explore possible other explanations or counterpoints to staff concerns.

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**The failure to notify the Complainant that, in the absence of first speaking with her he had engaged the services of Ms. Murphy, indicating that before she even had a chance to discuss the situation, he had rushed to the judgement the stories were true and the office required an intervention**

As indicated earlier in this report, the Respondent sought advice from Ms. Lambe and Ms. Murphy on how to deal with the staff concerns. Ms. Murphy had knowledge of some of the concerns going back to early 2008 but the staff at that time did not wish to proceed with a WPA. There is no evidence to support a finding that the Respondent had rushed to a judgement. He sought advice and acted on a timely basis on that advice. He took no action on initially hearing about the concerns. There is no evidence to support a finding that he had reached a conclusion that the staff issues and concerns were founded. He was not engaged in a process to reach such a judgement.

On this point, I conclude that the Respondent did not harass the Complainant.

**The failure to notify the Complainant that Ms. Murphy would be present at the meeting and she should feel free to have someone accompany her as well**

It is not clear what exactly the communication to the Complainant in respect of the meeting was. I accept she was not told it was to discuss a WPA nor was she told that anyone other than the Respondent would be present. I have no sense that the Respondent was trying to prevent the Complainant from having someone present at the meeting. He was proposing a WPA not an investigation process which could lead to potential discipline. He does not profess to be a human resources specialist

so invited a person with expertise in a WPA to assist in explaining what was being proposed.

The Respondent was intending to have this matter handled in the most informal manner and believed that by suggesting to the Complainant that she may wish to have someone accompany her to the meeting would escalate the process more than anyone would have wanted.

It is unfortunate that the Complainant was not informed in advance, of the purpose for the meeting and who would be attending. From a "best" practices human resource management approach, this would have been advisable. If the Complainant had been informed that the meeting was for the purpose of discussing some issues or concerns that had been raised by the staff of the OCYA and that she may wish to have someone attend the meeting with her, this may have resulted in her not feeling she was "blindsided" and removed part of the reason for her filing the complaint. That said, my conclusion is that under the circumstances and particularly that the meeting was not disciplinary in nature, the fact she may not have been told the purpose for the meeting and was not told Ms. Murphy would be present is not inappropriate behaviour on the part of the Respondent so as to constitute harassment.

My conclusion is that the failure to notify the Complainant that Ms. Murphy would be present at the meeting and she should feel free to have someone accompany her as well does not constitute harassment

### **Breaching the very policy, ironically that he purported to support**

I have reviewed in detail the Harassment and Discrimination Free, Workplace Policy (Creating a Respectful Work Environment). The actions of the Respondent in respect of the complainant as summarized in her complaint letter of February 16, 2009 do not support a conclusion that the Respondent breached this policy. The reasons for this conclusion are contained in the analysis of the foregoing specific allegations of conduct constituting harassment.

I conclude on this point that the Respondent did not harass the Complainant.

### **Concern of the Complainant about the timing and motivation of the intervention**

Was the attempt to introduce a WPA a means to try and subvert the work of the OCYA or interfere in any way with the ongoing investigations of the OCYA?

Although the Complainant did raise the possibility that there were parties who would have wanted some interference in her ongoing investigations and the ~~“intervention” in her office may have been intended to intimidate her from completing~~ her ongoing investigations, there is no substantiated evidence that this in fact, was the case. Her concern was that people were “whispering “in the ear of the Respondent with the intention of interfering in her ability to pursue ongoing investigations. I conclude that such was not the case. Her ongoing work as CYA was not a matter that the Respondent intended to interfere with through a WPA.

### **The Respondent’s threat and subsequent decision to implement an administrative investigation of the OCYA**

The Respondent was aware of staff concerns and could have made direct contact with the Complainant to discuss these concerns. Since he did not have detailed knowledge of the concerns there would not have been much advantage of such a discussion so he opted for what had been recommended to him – a WPA. The other alternatives were an administrative investigation or a complaint under the Public Interest Disclosure Program. The Respondent had to find a means to address the staff concerns and when the Complainant declined to participate in a WPA he proceeded to implement a workplace investigation as the next alternative.

I conclude that moving to the administrative investigation did not constitute harassment.

## **FINDINGS AND CONCLUSIONS**

An allegation of harassment by the Child and Youth Advocate against the Speaker is a serious allegation and a conclusion on whether the allegation is founded requires a thorough review of the background documentation and information from those who had involvement in the action which led to the complaint of harassment. This has been done. The onus is on the Complainant to establish the allegations on the civil burden of the balance of probabilities. Given that harassment involves inappropriate behaviour or conduct directed at and known to be unwelcome, objectionable or offensive to an employee it would require clear and cogent evidence to support a finding.

My conclusion is that the events and conduct on the part of the Respondent as described in the formal complaint by the Complainant against the Respondent dated February 16, 2009 do not constitute harassment as defined in the Policy.

RESPECTFULLY SUBMITTED this 4th day of June, 2009

CENTRE FOR INNOVATIVE DISPUTE RESOLUTION

Per:

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WAYNE THISTLE, Q.C., C. ARB.

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Office of the Child and Youth Advocate  
August 7, 2009

### Child and Youth Advocate Initiates Investigation

The Child and Youth Advocate, Darlene Neville, announced today that she will conduct an investigation, pursuant to Section 15.(1)(a) of the *Child and Youth Advocate Act*, of the services provided by Child, Youth and Family Services, Labrador-Grenfell Regional Integrated Health Authority, to the families of a 13 year old boy and a five year old girl who died as a result of a fire in Happy Valley-Goose Bay in June 2008.

Ms. Neville acknowledged that during January 2009 staff in her office received a referral from a concerned citizen in Happy Valley-Goose Bay regarding the child protection services provided to the 13 year old boy and his family prior to the fire. Neville confirmed that staff in her office had originally taken no action in response to this referral, and that she had not been informed of the referral having been received. Neville stated that it was during a June 2009 meeting with Yvonne Jones, Leader of the Official Opposition, that she first learned of the January 2009 referral to her office relating to the provision of child protection services to the 13 year old boy and his family.

Neville stated that after being informed of the existence of this referral, she requested and received documentation from Child, Youth and Family Services in Labrador regarding the services provided to these families. She has now personally reviewed that documentation and determined that an investigation by the Office of the Child and Youth Advocate is required.

Ms. Neville stated that as certain staff in her office concluded in January 2009 that the referral regarding the provision of child protection services to the 13 year old boy and his family did not warrant any action or follow up, it would be inappropriate for those staff members to now undertake an investigation of the same referral. Ms. Neville stated she has today written the Management Commission of the House of Assembly seeking assistance with respect to the conduct of this investigation. She confirmed that she will personally conduct the investigation until such time as the Management Commission can respond to her request for assistance.

On Monday, August 3, 2009, notice of the intention of the Child and Youth Advocate to conduct an investigation, as required by the *Child and Youth Advocate Act*, was provided to the Chief Executive Officer, Labrador-Grenfell Regional Integrated Health Authority, Boyd Rowe; to the Deputy Minister of Child, Youth and Family Services, Sheree MacDonald; and to the Acting Deputy Minister of Health, Don Keats.

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Media contact:

Shirley Prior  
Office of the Child and Youth Advocate  
709-753-3636

2009 08 07

9:45 a.m.



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**Tab 13**



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**Office of the Child and Youth Advocate**  
PROVINCE OF NEWFOUNDLAND AND LABRADOR

August 7, 2009

DELIVERED BY HAND  
STRICTLY PRIVATE & CONFIDENTIAL

OFFICE OF THE CLERK

Mr. William MacKenzie  
Clerk of the House of Assembly  
Confederation Bldg., East Block  
P.O. Box 8700  
St. John's, NL A1B 4J6

AUG 07 2009

Dear Mr. MacKenzie,

I write to you in your capacity as Chief Administrative and Financial Officer of the House of Assembly to seek your assistance with the conduct of an investigation by the Office of the Child and Youth Advocate.

On Monday, August 3, 2009, I provided Notice to the Chief Executive Officer, Labrador-Grenfell Regional Integrated Health Authority and to the Deputy Ministers of Child, Youth and Family Services and Health and Community Services of my intention to conduct an investigation, pursuant to Section 15.(1)(a) of the *Child and Youth Advocate Act*. This investigation will include an examination and evaluation of the adequacy of the child protection services provided by Child, Youth and Family Services to the families of a 13 year old boy and a 5 year old girl who died as a result of a fire in Happy Valley-Goose Bay in June 2008.

In order for the Office of the Child and Youth Advocate to conduct this investigation in-house, I will require the active involvement of my most senior staff, the Director of Advocacy Services. It is not possible for the current Director of Advocacy Services, Ms. Roxanne Pottle, to conduct this investigation, nor is it appropriate for Ms. Pottle to remain within the employ of the Office of the Child and Youth Advocate as the Director. I am, therefore, seeking your assistance in vacating the position of Director of Advocacy Services. I further request that you seek on my behalf, pursuant to Section 11.(1) of the *Child and Youth Advocate Act*, the necessary approval from the House of Assembly Management Commission ("Management Commission") for the appointment of a new Director of Advocacy Services "in the manner provided by the *Public Service Commission Act*."

On March 17, 2009, Mr. Barry Fleming, Citizens' Representative, acting in his capacity as Investigator under Part VI of the *House of Assembly Accountability, Integrity and Administration Act* (commonly referred to as "whistle blower legislation"), by letter advised me that he had commenced a Part VI investigation of me for alleged wrongdoing in my capacity as the Child and Youth Advocate. I understand that Ms. Pottle has participated in Mr. Fleming's Part VI investigation of me, and that she has also recently participated in Mr. Robert Noseworthy's Part VI investigation of me. These Part VI investigations by the Citizens' Representative(s) are presently subject to judicial review. A hearing in relation to an application for judicial review has been scheduled in the Supreme Court, Trial Division, commencing December 2, 2009.

Mr. Fleming, in his March 17, 2009 correspondence to me, threatened "vigorous prosecution before the Labour Relations Board" for any reprisal against a person assisting Mr. Fleming in his capacity as Investigator. That threat, in effect, precludes me from directly dealing with the matter of Ms. Pottle's continued employment within the Office of the Child and Youth Advocate. I currently cannot address the issue of Ms. Pottle's employment; were I to attempt to do so, Ms. Pottle would in all likelihood advance a reprisal argument to resist the legitimate exercise of my authority as the Child and Youth Advocate. It is, therefore, necessary for you to assume this responsibility in your capacity as the Chief Administrative and Financial Officer of the House of Assembly pursuant to Section 28 of the *House of Assembly Accountability, Integrity and Administration Act*.

I provide the following information to assist you and the Management Commission in responding to my request for assistance in the conduct of the investigation that I initiated on August 3, 2009. Specifically, the assistance required in order for this investigation to proceed is two-fold: the removal of Ms. Pottle from the position of Director of Advocacy Services within the OCYA; and the approval of the Management Commission to hire a new Director of Advocacy Services.

During a June 10, 2009 meeting with Ms. Yvonne Jones, Leader of the Official Opposition, at the Office of the Child and Youth Advocate, Ms. Jones brought to my attention that a concerned citizen in Labrador had contacted her to complain of being very dissatisfied with the lack of response by staff in my Office to referrals. Ms. Jones provided two examples of unsatisfactory responses by OCYA staff to referrals. The first example involved no action having been taken by OCYA staff in relation to a referral regarding the lack of child protection services provided by CYFS to a 13 year old boy who died in a fire in June 2008. The second example related to the lack of action and follow up to concerns expressed to the OCYA about ALA placements in Labrador.

Ms. Jones agreed to provide further details in written correspondence, and I committed to follow up the issues raised. Following receipt on June 15, 2009 of

Ms. Jones' correspondence dated June 11, 2009, at my request a search of the OCYA individual file database in the name of the boy who had died in the fire was undertaken to locate the referral. No OCYA file had been opened for this boy and, therefore, no record of any referral existed in the database.

Given the significant number of issues related to ALA placements in Labrador, I determined that [REDACTED] a front-line advocate, would be an appropriate staff member to involve in the investigation of the ALA concerns as [REDACTED] had previously been involved in individual cases related to ALAs in Labrador. [REDACTED] was scheduled during June 2009 to depart on an advocacy clinic to the South Coast of Labrador, to be followed by two weeks vacation.

On July 10, 2009, I provided Ms. Roxanne Pottle, Director of Advocacy Services, with a copy of [REDACTED] June 11, 2009 correspondence, and she agreed that we should involve [REDACTED] in the OCYA response to the ALA concerns. A meeting was initially scheduled for July 14, 2009, and later rescheduled to July 16, 2009. Ms. Pottle agreed to provide [REDACTED] with a copy of Ms. Jones' correspondence, as [REDACTED] would be involved in the ALA aspect of the meeting.

On the afternoon of July 15, 2009, during the course of an informal conversation I was having with [REDACTED] confirmed that [REDACTED] would be joining Ms. Pottle and me for the meeting the next day to discuss the ALA concerns. During this conversation, [REDACTED] in passing mentioned that the OCYA had received a referral regarding the boy who died in the June 2008 fire. [REDACTED] indicated that [REDACTED] had reviewed a copy of Ms. Jones' correspondence and stated that [REDACTED] was the one who had taken this referral. [REDACTED] informed me that [REDACTED] had not opened a file for this boy, but that [REDACTED] did have notes about the discussion. I asked [REDACTED] to review his notes and bring them to the meeting with Ms. Pottle the next morning.

During my July 16, 2009 meeting with Ms. Pottle and [REDACTED] confirmed that the referral source had informed him that [REDACTED] had made an official child protection referral three weeks before the fire about [REDACTED] by the child's mother and a lack of supervision of the child. The referral source had told [REDACTED] "CYFS don't always get the job done and that [REDACTED] should never have died in the fire in Goose Bay last summer." The referral source had also stated that social workers had gone out to the house where the child and his mother lived following her child protection referral, but they had not entered the house to investigate. [REDACTED] indicated that the child's mother had apparently been [REDACTED] on the night of the fire after she [REDACTED]

[REDACTED] stated he had discussed this referral with other front-line staff, and he had also sought the direction of Ms. Pottle. Ms. Pottle thereupon indicated that she would have to take some of the responsibility for having given direction to

██████████ that no response by the OCYA to this referral was required as she "had the understanding that the OCYA did not do death reviews." ██████████ notes indicate the following regarding the direction provided to him by Ms. Pottle:

*Met w/Roxanne to discuss conversation w/C.*

- *though a terrible situation child was in the care of babysitter at time of fire*
- *CYFS involvement is a separate issue that shouldn't be linked to child's death.*

I explained to ██████████ and Ms. Pottle that an investigation of government programs and services was different from a child death review. I reminded them that in January 2009 there were four active reviews/investigations of government programs and services within the OCYA. I reiterated that I should be made aware of any referrals involving such serious allegations, particularly child protection referrals. I explained that for the OCYA to take no action in response to such a serious referral was inappropriate; it indicated a fundamental lack of understanding of the role and mandate of the OCYA as an oversight body. I further explained that, at a minimum, CYFS should have been contacted and documentation obtained from CYFS to assist in the determination of whether an investigation of the government programs and services provided by CYFS to the 13 year old boy and his family was warranted, and whether any remedial action was required with respect to the delivery of the programs and services.

I directed Ms. Pottle to contact Child, Youth and Family Services and obtain, within seven days, all documentation in their possession regarding the children who died in the fire. I reminded Ms. Pottle and ██████████ that in the Turner Death Review the OCYA had come under criticism for not understanding its role; it had not understood that it is not an extension of CYFS, but rather an oversight body meant to act proactively and ensure that CYFS has done its job. I reiterated that taking no action in response to such a serious referral about the inadequacy of child protection services provided to a boy who later died in a fire was not appropriate and did not meet the OCYA's mandate.

I should here state that by the conclusion of my July 16<sup>th</sup> meeting with Ms. Pottle and ██████████ I was shocked to realize that, even in light of the hard-learned lessons for this Office in the Turner case, front-line staff, acting on the direction of the Director of Advocacy Services (my most senior staff member) would deem it appropriate to take no action in response to such serious concerns expressed by a resident from the community that had been so deeply affected by a tragedy that had claimed the lives of two children, one 17 year old youth, and two adults. It was incredulous to me that the Director of Advocacy Services clearly did not understand her role as Director, as she had failed to instruct OCYA front-line staff to pick up the phone, call CYFS, and obtain documentation to assist in

determining what, if any, action was required by the OCYA. The fact that such basic advice was not provided indicated to me that, despite the findings regarding the OCYA's performance in the Turner case, at the Director level there is a fundamental lack of appreciation of the role and mandate of the OCYA.

Following my meeting with Ms. Potté and [REDACTED] I obtained and reviewed copies of [REDACTED]'s notes regarding the January 2009 referral. After reflecting further upon the information provided to me by Ms. Potté and [REDACTED] I determined that I had an obligation to personally address this serious issue with respect to understanding the role and mandate of the OCYA, particularly given our statutory duty to appropriately respond to referrals regarding the provision of government programs and services. I therefore scheduled a meeting for all OCYA staff for Wednesday, July 22, 2009.

During the July 22<sup>nd</sup> meeting with all OCYA staff, I informed them that a serious situation regarding the lack of response by OCYA staff to a child protection referral had been brought to my attention by the Leader of the Official Opposition. I provided details of that referral, and provided direction to staff regarding the appropriate response to such a referral. I reminded staff that on a past occasion, when Ms. Potté and I had been in Nain, residents of that community had told us that people in Labrador were upset "that so much money and attention was paid to the death of a white child who was the son of a doctor and that no one cared about all the Aboriginal children who had died." I also reminded staff that a number of them have told me that similar comments had been expressed to them while conducting advocacy clinics in Labrador.

During the July 22<sup>nd</sup> meeting, Ms. Potté volunteered that she was involved in the decision in this referral. She informed OCYA staff that the matter was very upsetting for everybody involved. She further stated that she was prepared to take responsibility, even if it meant resigning.

During the July 22<sup>nd</sup> meeting, I stressed to staff the importance that the OCYA learn from its mistakes in the Turner case, and I emphasized that we are an oversight body, not an extension of CYFS. We cannot continue to respond to child protection referrals as we did in Turner when the OCYA assumed that CYFS was doing its job even though the OCYA had information that strongly suggested it was not.

During the week following the July 22<sup>nd</sup> meeting, it was brought to my attention that on the day after the July 22<sup>nd</sup> meeting Ms. Potté had met with advocacy staff while I was out of the Office. I have been advised that during that meeting Ms. Potté did not support the direction I provided to staff during the July 22<sup>nd</sup> meeting regarding the necessity of appropriately responding to referrals. In light of this information, on July 27, 2009 I provided further clarification and direction to OCYA staff in the form of an email (copy attached).

Following my July 27<sup>th</sup> email to OCYA staff, [REDACTED] came to my office and asked to speak with me privately. During the ensuing discussion, I asked [REDACTED] if [REDACTED] now understood what the appropriate response to such a referral would be, and [REDACTED] indicated that [REDACTED] did. I then referenced my email to all staff earlier in the day, and informed [REDACTED] that apparently not all OCYA staff understood the connection between the Turner case and this referral. [REDACTED] indicated to me that [REDACTED] "got it and that [REDACTED] was never comfortable with taking no action on this referral." I asked him why, if [REDACTED] was uncomfortable with the direction provided by Ms. Pottle, [REDACTED] had not brought the referral to my attention during January 2009. He responded that [REDACTED] "had brought it to the attention of the Director of Advocacy Services and I would have to take it up with Roxanne why she did not bring it to my attention."

Following my July 27<sup>th</sup> email to all OCYA staff, it was again brought to my attention that the Director, Ms. Pottle, continued to undermine my efforts to clarify and provide direction to staff with respect to the appropriate response to referrals received by the OCYA. In particular, she was advising OCYA staff that the January 2009 Labrador case is not like the Turner case, and that the lessons for the OCYA in Turner are not applicable to this referral. Therefore, it was necessary for me to on July 29, 2009 send a second email to all OCYA staff to provide direction with respect to the appropriate OCYA response to referrals (copy attached).

Upon entering my office on Saturday, August 2, 2009, I discovered an envelope from Ms. Roxanne Pottle. It contained her written request for certain changes to the minutes of the July 22<sup>nd</sup> staff meeting. Despite the direction I had provided to all OCYA staff during the July 22<sup>nd</sup> meeting regarding what constituted an appropriate response to referrals and despite the further direction to all OCYA staff contained in my July 27<sup>th</sup> and July 29<sup>th</sup> emails, Ms. Pottle inquired about the Office's response to events in the media and questioned "how far do we stretch this?"

Although Ms. Pottle did offer to resign during the July 22<sup>nd</sup> staff meeting, and has subsequently confirmed that she did indeed make that offer, she clearly has no grasp of the significance of her serious error in judgment when she directed front-line OCYA staff to take no action on the January 20, 2009 child protection referral.

The fundamental lack of understanding by Ms. Pottle of the role of the Office of the Child and Youth Advocate and failure to appreciate, even with the benefit of hindsight, her lack of critical thinking and judgment, is compounded when one considers the effect of Ms. Pottle's attitude and mindset on the quality and appropriateness of her direction to front-line staff within the OCYA. Furthermore, she exhibits no understanding of the consequences of her direction to [REDACTED] that no action was required of the OCYA in response to this referral.

Upon receipt of a referral complaining that a child unnecessarily died in Labrador while on a child protection caseload, the OCYA had a statutory duty to investigate the provision of child protection services to determine whether remedial action is required to ensure the protection of those children in Labrador who now or will in the future require child protection services.

Given the failure of the OCYA to respond to this referral by investigating the concerns expressed in January 2009 related to the provision of child protection services in Happy Valley-Goose Bay to ensure that any necessary remedial action has been taken, it is fortunate that no similar tragedies have occurred since the January 2009 decision by the Director of Advocacy Services to take no action. Equally disturbing is that the urgency of the OCYA now taking immediate and appropriate action in response to this January 2009 child protection referral appears to be lost on Ms. Pottle.

I trust the above account sufficiently outlines the reasons why Ms. Pottle cannot continue to occupy the position of Director of Advocacy Services within the Office of the Child and Youth Advocate, and specifically cannot be involved in the investigation of the January 2009 referral she previously concluded did not warrant any response by this Office.

As noted above, it is not practically possible for me at this time to personally address the issue of Ms. Pottle's continued employment within the OCYA. However, I am the Child and Youth Advocate, and must pursue my duty to ensure that the ability of that Office to discharge its mandate "to protect and advance the rights and interests of children and youth" is not compromised by the incompetence of my most senior staff person, nor further compromised by her efforts to undermine communications by myself to promote among OCYA staff an acceptable level of understanding of the role and mandate of the Office. I cannot and will not tolerate the message that Ms. Pottle's inappropriate direction and attitude have unfortunately to date conveyed, namely that the children of Labrador somehow deserve less.

I respectfully request that you immediately undertake the necessary action to remove Ms. Pottle from her position as Director of Advocacy Services within the OCYA, and to obtain the approval of the Management Commission for the OCYA to hire a new Director.

Respectfully submitted,

*Darlene Neville*

Darlene Neville  
Child and Youth Advocate

DN/sp

Copies to Members of the Management Commission:



Hon. Roger Fitzgerald  
Speaker, House of Assembly and Chair,  
Management Commission

Mr. Tom Osborne  
Deputy Speaker

Hon. Joan Burke  
Minister, Child, Youth and Family Services

Hon. Jerome P. Kennedy, Q.C.  
Minister of Finance and  
President of Treasury Board

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Ms. Yvonne Jones  
Leader of the Official Opposition

Ms. Lorraine Michael  
Leader, NL NDP Party

Mr. Kelvin Parsons, Q.C.

Ms. Elizabeth Marshall

Neville, Darlene

From: Neville, Darlene  
Sent: Monday, July 27, 2009 2:34 PM  
To: Pottle, Roxanne; Forristall, Jennifer; Penney, Dorothy; Doyle, Randy; Gillard, Debbie; Lannon, Heather; Poole, Bonnie; Mercer, Amanda; Prior, Shirley  
Subject: Labrador Referral

Good afternoon everyone,

I have placed a copy of the minutes of the staff meeting regarding the Labrador referral held on July 22, 2009 in your mail slots.

It has been brought to my attention since the meeting that some staff are still unclear about how the Turner case is relevant to the Labrador referral, discussed during the staff meeting.

I am pleased that staff have requested this clarification as it is essential that we fully understand and apply the hard-learned lessons from Turner. There were many lessons to be learned from Turner; however, the key lesson for this Office is very basic, yet critical, and must be applied to every referral received by this Office:

Doing nothing in response to a referral to this Office related to the provision of government programs and services for children and youth is never appropriate.

This is the bottom line in Turner for this Office. Obviously, the severity of the possible outcome if the OCYA does not appropriately respond to referrals will vary depending on the particulars of the referral and the programs/services to which it relates.

With respect to the Labrador case in particular, from what is known at this point, there are two main differences between the Turner case and the Labrador referral which include:

- o The OCYA received the referral regarding concerns with respect to the provision of government programs and services (namely, child protection services) prior to the death of Zachary Turner, but after the death of the boy in Labrador; and
- o The death of Zachary Turner was directly caused by his mother whereas the boy in Labrador died in a fire while his mother was [REDACTED] apparently following [REDACTED].

From what is known at this point, there are obvious similarities between the Turner case and the Labrador referral which include:

- o In both cases, CYFS had received official child protection referrals prior to the deaths of these children;
- o In both cases, the OCYA had received referrals where concern was expressed about the quality of the child protection services provided by CYFS. In Turner, the referral to the OCYA was received prior to Zachary's death and in the Labrador case, the referral was received after the child's death;
- o In both cases, the OCYA did not take appropriate action in response to referrals it received regarding the provision of child protection services by CYFS;
- o In both cases, OCYA staff apparently operated under the misapprehension that if CYFS had received an official child protection referral, then this Office did not have a role to play as the OCYA can rely on CYFS to do its job;
- o In both cases, it is apparent that the OCYA did not understand that its role is to investigate all referrals it receives regarding the provision of any government programs and services to children and youth;
- o In both cases, the lack of action in response to the referrals received by the OCYA regarding the provision of child protection services by CYFS reflects a lack of appreciation of the role and the mandate of this Office as an oversight body;
- o In both cases, the OCYA failed to take the necessary action to ensure the protection of children who were

recipients of services from CYFS. In Turner, the OCYA failed to protect Zachary during his lifetime by failing to seek out information to ensure that CYFS was protecting him. In the Labrador referral, the OCYA failed to protect children and youth in Labrador who are now receiving or will require child protection services in the future. The OCYA did not investigate the validity of the concerns expressed in the referral and in failing to do so, did not identify any remedial action required with respect to the delivery of child protection services in Happy Valley-Goose Bay. Such inaction constitutes a failure to discharge our statutory duty to protect and advance the rights and interests of children and youth by advising government regarding the effectiveness and responsiveness of services to children and youth.

I hope this information provides the necessary clarification. Please feel free to let me know if there is any further information/clarification that I can provide.

Darlene

---

*Darlene Neville*  
Child and Youth Advocate  
Office of the Child and Youth Advocate  
193 LeMarchant Road  
St. John's, NL. A1C 2H5  
Tel: 709-753-3888  
Fax: 709-753-3888  
Email: [dneville@childandyouthadvocate.nl.ca](mailto:dneville@childandyouthadvocate.nl.ca)

**Neville, Darlene**

**From:** Neville, Darlene  
**Sent:** Wednesday, July 29, 2009 2:03 PM  
**To:** Pottle, Roxanne; Forristall, Jennifer; Penney, Dorothy; Doyle, Randy; Gillard, Debbie; Lannon, Heather; Poole, Bonnie; Mercer, Amanda; Prior, Shirley  
**Subject:** OCYA Response to Referrals

Good afternoon everyone,

It has been brought to my attention since the staff meeting of July 22<sup>nd</sup> and my email to all staff of July 27<sup>th</sup> that there continues to be some confusion about what exactly is expected from this Office with respect to our response to referrals related to the provision of child protection services by CYFS.

Our response must always be to investigate any and all referrals received by this Office in connection with the provision of government programs and services to or on behalf of children and youth. Of course, any referral concerning the safety of a child and the provision of child protection services must be investigated thoroughly and expeditiously.

Some staff have questioned our role with respect to what the involvement of the Office should be in cases that have not been referred to the OCYA but have been reported in the media and through the courts. Shortly after my appointment in August 2005 as Child and Youth Advocate, I established the practice of proactively initiating contact with children, youth and their families in situations brought to the attention of the Office through the courts and the media. As well, in the public release of the Turner Review and Investigation Report, I committed to the public and to the government that this Office would be vigilant in seeking out, through community consultation as well as through media reports, situations wherein the protection of the rights of children and youth may be in question. Since Turner we have done just that:

- A high profile case in which we took a proactive role on behalf of a child was the case of a young mother murdered in her Airport Heights apartment. We were made aware of this case through media reports at the time and became involved on behalf of the child to ensure she was protected.
- All of the front-line advocacy staff are now in the process of initiating contact with children, youth and their families who have received inpatient services on Unit J4D, Janeway, since January 1, 2009. This initiative is a result of concerns brought to the attention of Dorothy and me, during the conduct of the ongoing Mental Health Investigation.
- We follow media reports and open line shows for issues concerning children and youth. I have asked most of you at one time or another to initiate contact with individuals who have expressed concern to the media with respect to the provision of government programs and services provided to or on behalf of children and youth.
- Two of the reviews/investigations currently underway in the Office relate to the provision of child protection services brought to our attention through decisions of the presiding judges in the Supreme Court, Trial Division, in the parents' criminal trials and through the media.

I must caution, however, that our commitment to be proactive does not mean it is appropriate for us to investigate the death or injury of every child in Newfoundland and Labrador.

In short, front-line staff, under the direction of the Director of Advocacy Services, will continue to be responsible for responding appropriately to all referrals received by the OCYA.

In cases where the OCYA has not received a referral, the established practice of proactively monitoring the media, the courts, as well as seeking input from staff will continue, and decisions to initiate OCYA involvement in non referral situations will continue to be made on a case-by-case basis in consultation with the Child and Youth Advocate.

8/2/2009

Staff have informed me that there is a desire to move forward from the Labrador referral and to ensure that the response to referrals by the Office is appropriate. Staff have also expressed to me a reluctance to openly engage in discussions regarding our response to referrals as many do not wish to appear critical of colleagues involved in the Labrador referral. I wish to assure all of you that my communication to you in the staff meeting and emails is intended to provide direction to all staff to ensure we are responding appropriately to referrals. Given the Labrador referral is presently being reviewed, I appreciate the reluctance of staff to seek direction at this time; however, I encourage you to continue to bring your concerns and questions to me, in whatever manner you are most comfortable, so they can be addressed.

Thank you.

Darlene

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*Darlene Neville*  
Child and Youth Advocate  
Office of the Child and Youth Advocate  
193 LeMarchant Road  
St. John's, NL A1C 2H5  
Tel: 709-753-3888  
Fax: 709-753-3988  
Email: [dneville@childand youthadvocate.nl.ca](mailto:dneville@childand youthadvocate.nl.ca)

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Last updated at 8:50 AM on 08/08/09

## Neville slams own staff over probe

Advocate to launch investigation of fatal Labrador fire

**ROB ANTLE**  
The Telegram

Child and youth advocate Darlene Neville has issued a news release slamming her own staff for their handling of a complaint made earlier this year.

Neville says she will now launch her own investigation of the situation, and doesn't want "certain staff" at her office involved in the probe.

The development comes in the wake of a cabinet decision to appoint a new investigator to look into whistleblower complaints by Neville's staff.

And it is the latest in a series of complaints, counter-complaints, investigations and legal actions that have embroiled the House of Assembly and its independent offices in recent months.

Neville said in her Friday release that staff in her office received a referral in January from a concerned citizen in Happy Valley-Goose Bay about a fatal fire in the town last year.

The referral concerned the child-protection services provided to a 13-year-old boy and his family prior to the fire. The boy, a five-year-old girl, and three others died in the blaze, according to media reports.

Neville said staff in her office had originally taken no action in response to the referral, and she didn't find out about it until a June meeting with Opposition Leader Yvonne Jones.

She said she subsequently asked for, and reviewed, documents from Child, Youth and Family Services in Labrador regarding the services provided to these families, and determined a probe is necessary.

Neville said it would be inappropriate for "certain staff" to be involved in the new investigation, as they previously determined that no action or followup was required.

She indicated she is looking for help from the House of Assembly management commission in carrying out the probe.

That is the group of politicians that now oversees the administration of the legislature.

Neville and House Speaker Roger Fitzgerald have been at loggerheads for months.

In June, Fitzgerald released an independent review that cleared him of harassment allegations made by Neville.

Last month, Neville filed court documents seeking to quash a new investigation into a whistleblower complaint involving her office.

The cabinet appointed retired civil servant Robert Noseworthy to look into the matter.

Previously, Neville had filed court documents seeking to bar citizens' representative Barry Fleming from carrying out the investigation.

She has alleged that Fleming is in a conflict of interest, because of Neville's own probes of the health authority where Fleming's wife is employed.

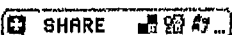
It also emerged in recent court filings that another investigation of Neville's office is currently underway - this one by the Public Service Commission, at the request of the Speaker. The House of Assembly said Friday the Speaker was reviewing the latest matter involving Neville's office, and may be in a position to comment next week.



Darlene Neville

[rantle@thetelegram.com](mailto:rantle@thetelegram.com)

08/08/09



## Comments:

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**fedup from nl writes:** he said that she didnt,she said that he didnt,he did ,she did,they did,they didnt,i didnt,i didnt either, and on and on and on our tax money working for you

Posted 08/08/2009 at 9:26 AM | Alert an Editor | Link to comment

**Paul Butt from St. John's, NL writes:** This Woman should be taken out of power she is wasting our tax money to get her own staff back for the whistleblower complaints. This news peice has pay back wrote all over it.

Posted 08/08/2009 at 9:39 AM | Alert an Editor | Link to comment

**Marshallart from Mount Pearl, NL writes:** No doubt morale at Neville's office is at an all time high. Smiles and high fives all round at the workplace from hell. Why don't Neville and Fitzgerald just duke it out in the parking lot ? A front kick to the gonads and everybody back to work.

Posted 08/08/2009 at 10:20 AM | Alert an Editor | Link to comment

**darls from st.johns, newfoundland writes:** I think she should slame herself into a wall....then maybe she'll wake up and actually help the kids out there who needs her help or better yey take her out of this position and replace her with someone who actually cares about these kids

Posted 08/08/2009 at 11:24 AM | Alert an Editor | Link to comment

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**Rod Lyver from Corner Brook, NL writes:** Why is Mrs. Neville allowed to remain in this position while her office is besieged with controversy? If it's not one thing it's another. I say remove her now and let someone run it. The constant lawsuits and public fighting does nothing to improve the already damaged image of child welfare and Mrs. Neville's office. It appears that Mrs. Neville is hanging on to her plum job with every finger nail when she should have been running the shop. Do the right thing , Resign!!!!

Posted 08/08/2009 at 11:47 AM | Alert an Editor | Link to comment

**up4discussion from edmonton writes:** if she leads her own investigation , wouldn't this make the results of any findings somewhat biased? I feel an independent, out of province agency is warranted and needed here.

Posted 08/08/2009 at 12:32 PM | Alert an Editor | Link to comment

**David Smith from NL writes:** These people have the power to make decisions regarding the welfare of children? - scary!

Posted 08/08/2009 at 12:36 PM | Alert an Editor | Link to comment

**bridget murray from Corner Brook, NL writes:** This province needs to take a close look at the record from the Child and Youth Advocates office. The first advocate left under a shadow of suspicion and now we have Ms. Neville who is always looking for someone to blame rather than taking a good look at herself. Surely the House of Assembly must realize the lack of confidence that is growing with the Advocate's office. What is the role, anyway? Is it not to advocate for better services for children and youth? Have there been any improvements since the advent of the Advocate's office? If so, what are they?

Posted 08/08/2009 at 12:47 PM | Alert an Editor | Link to comment

**stan rivera from nl writes:** Way to throw the staff under the bus Darlene! That should buy you another paycheque or two. Something stinks in that office and it starts at the top. Time to fire this gasbag.

Posted 08/08/2009 at 1:05 PM | Alert an Editor | Link to comment

**Elliott Leyton from NL writes:** Same old, same old at the Office of the Child Youth Advocate , I see. Do they actually do much at this expensive office? Have they ever done much?

Posted 08/08/2009 at 1:24 PM | Alert an Editor | Link to comment

**g-man from st.johns, nl. writes:** will someone tell ms.neville that her anticks are causing our tax payers a fortune..get rid of her(neville) !!!

Posted 08/08/2009 at 1:30 PM | Alert an Editor | Link to comment

**Edward Smith from Corner Brook, NL writes:** Three cheers to Ms Neville! It must take tremendous courage to speak the truth and not just roll over.

The whole matter sounds very complex, which must make action even more difficult for Ms Neville.

I face many challenges myself with Western Health administrators in Corner Brook on several health care issues related to my mom.

Is it not time for provincial Town Hall meetings on health care, child and youth, mental health, addictions, etc.?

Hang in there, Ms Neville.

Posted 08/08/2009 at 2:13 PM | Alert an Editor | Link to comment

**not surprised from NL writes:** you know what they say, a ship is only as good as it's captain time to make this captain walk the plank!!!



Posted 08/08/2009 at 2:34 PM | [Alert an Editor](#) | [Link to comment](#)

**Cynthia from NL writes:** Another what's her name Burke in the cabinet?

Posted 08/08/2009 at 5:52 PM | [Alert an Editor](#) | [Link to comment](#)

**Frank from St. John's, NL writes:** And the children still suffer.

This appointee should be shown the door. It's everyone's fault but hers.

Bum covering at its finest.

Posted 09/08/2009 at 12:32 AM | [Alert an Editor](#) | [Link to comment](#)

**Manuel Clark from Newfoundland writes:** All these workers had the oppurnity to voice their concerns. They have never done so nor did they plan to do it. I am a child from a very abusive hosehold and was tortured. I went to them as a child and was brought home again by the police only to be beaten again. I have a medical record larger then anyone in newfoundland and not once did child welfare take me out of the house. So to hear these stories is of no surprise. Its normal for our system and most are used to it. A few come on here to voice their opinion and thats as far as it will go. Nobody will ever step up to the plate and speak for these kids. Its a very sad thing to say but its going to happen and continue to happen until some horrific beating of a child that makes someone step up and take action.

Posted 09/08/2009 at 8:07 AM | [Alert an Editor](#) | [Link to comment](#)

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HOUSE OF ASSEMBLY  
Newfoundland and Labrador

August 11, 2009

Ms. Darlene Neville  
Child and Youth Advocate  
Office of the Child and Youth Advocate  
193 LeMarchant Road  
St. John's, NL A1C 2H5

Dear Ms. Neville:

I am writing in reply to your correspondence of August 7, 2009, in which you seek my assistance with the following matters:

1. the conduct of the Labrador investigation you initiated August 3, 2009;
2. the removal of Ms. Pottle from the position of Director of Advocacy Services within the OCYA; and
3. the approval of the Management Commission for the appointment of a new Director of Advocacy Services in place of Ms. Pottle.

Your letter states that "in order for [the Labrador] investigation to proceed", you require the removal of Ms. Pottle and the approval of the Management Commission to hire her replacement.

You also state, having regard for Ms. Pottle's involvement in the ongoing *House of Assembly Accountability, Integrity and Administration Act Part VI Public Interest Disclosure* investigation against you, that you "currently cannot address the issue of Ms. Pottle's employment; were I to attempt to do so, Ms. Pottle would in all likelihood advance a reprisal argument" [under section 59 of the *House of Assembly Accountability, Integrity and Administration Act*]. You then effectively request that I take responsibility for terminating Ms. Pottle's employment on your behalf.

It is not clear to me from your correspondence why it is necessary that Ms. Pottle be removed from her position as Director of Advocacy Services within the OCYA and a replacement be hired before you can proceed with the Labrador investigation. This requirement will only delay matters, as I will

discuss below. As your priority is the Labrador investigation, I believe you should proceed with the investigation as soon as possible and without such delays.

If additional resources beyond your current staff are required to lead this investigation, we can assist you in identifying other sources of funds to hire the necessary staff. The Legislature Transfer of Funds Policy allows funds to be transferred to the Salaries main object from other main objects. If you cannot identify funds within your Salaries budget, but can identify permanent savings elsewhere in your budget, those funds can be transferred into Salaries. If sufficient savings cannot be identified anywhere in your Activity, we can examine other Activities to see if savings can be identified elsewhere under the Legislature Head of Expenditure to transfer to your Salaries budget. In the interim, you currently have sufficient funds in your Salaries main object to hire temporary staff for this investigation.

With respect to your proposed dismissal of Ms. Pottle, I point out your obligation to follow the general administrative and human resource policies of government respecting disciplinary actions. In such situations, due process and natural justice must be applied and be seen to be applied. Only on the most rare occasions can immediate and outright dismissal of staff, such as you propose, occur; government practice involves a regime of progressive disciplinary steps, with each progressive step fully documented over a period of time. Your correspondence does not outline any such history of progressive disciplinary actions nor is there any evidence of such in Ms. Pottle's personal file. Based on the facts as outlined in your correspondence, dismissal cannot be justified. It would violate accepted labour practices and would undoubtedly be overturned through the management grievance process administered by the Public Service Commission.

Should you wish to initiate a progressive disciplinary regime in this matter, I suggest a meeting to discuss the appropriate steps to begin the process. If you wish, we can request the assistance of the Public Service Secretariat to ensure that due process is observed and that all actions are defensible and in accordance with contemporary employment standards.

As you are aware, Section 59 of the *House of Assembly Accountability, Integrity and Administration Act* states that a "person shall not take a reprisal against an employee or **direct** that a reprisal be taken against an employee because the employee has, in good faith, ...cooperated in an investigation ...." [Emphasis added]

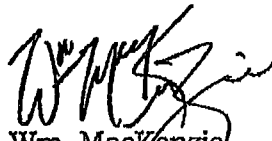
Where you have expressed concern that you cannot directly terminate Ms. Pottle's employment because of section 59 of the Act ("shall not take a reprisal against an employee"), you should have equal concern that you cannot indirectly terminate Ms. Pottle's employment by requesting others to assume this responsibility on your behalf ("shall not ... **direct** that a reprisal be taken against an employee").

If the 'no reprisal' provision in the Act impedes your attempts to currently address the issue of Ms. Pottle's employment, you may have to await the final outcome of the ongoing Part VI Public Interest Disclosure investigation before you can do so.

Since your priority is the Labrador investigation, I recommend that House of Assembly Service staff work with you to identify the necessary resources to allow you to undertake this expeditiously, rather than connecting the undertaking of the investigation with extraneous matters. I ask you to separate your issues with Ms. Pottle from your duty to proceed with the Labrador investigation. I see no reason why you cannot proceed with the investigation and, at the same time, pursue your issues with Ms. Pottle's employment under the standard processes or await the final outcome of the Part VI Public Interest Disclosure investigation.

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Yours truly,



Wm. MacKenzie  
Clerk

cc: House of Assembly Management Commission  
Deputy Speaker

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Tab 16



**Office of the Child and Youth Advocate**  
PROVINCE OF NEWFOUNDLAND AND LABRADOR

August 14, 2009

**DELIVERED BY HAND**  
**STRICTLY PRIVATE & CONFIDENTIAL**

**OFFICE OF THE CLERK**

**AUG 14 2009**

Mr. William MacKenzie  
Clerk of the House of Assembly  
Confederation Bldg., East Block  
P.O. Box 8700  
St. John's, NL A1B 4J6

Dear Mr. MacKenzie,

Your letter to me dated August 11, 2009 was delivered by courier on the afternoon of August 12, 2009. Unfortunately, it failed to address the practical problems associated with Ms. Roxanne Pottle continuing in the role of Director of Advocacy Services. My correspondence of August 7, 2009, addressed to you in your capacity as Clerk of the House of Assembly, set out in detail the background and nature of those problems. To reiterate and put the matter succinctly:

1. Ms. Pottle has in the past (January 2009), by virtue of her inappropriate direction to frontline OCYA staff, demonstrated an inability to appreciate the statutorily mandated oversight role of the Office of the Child and Youth Advocate "to protect and advance the rights and interests of children and youth."
2. Ms. Pottle at present (late July 2009), by virtue of her undermining of my efforts to clarify and provide direction to OCYA staff as to the appropriate response to referrals received by the OCYA, continues to demonstrate an outright refusal to accept the statutorily mandated oversight role of the Office of the Child and Youth Advocate "to protect and advance the rights and interests of children and youth."

As noted in my August 7<sup>th</sup> letter, "I cannot and will not tolerate the message that Ms. Pottle's inappropriate direction and attitude have unfortunately to date conveyed, namely that the children of Labrador somehow deserve less." I was, therefore, disconcerted by both the tone and content of your August 11, 2009 letter.



Your suggestion that your Office is being asked to engage in a reprisal against Ms. Pottle is unwarranted.

The premise of your August 11<sup>th</sup> letter is that I am asking for assistance in having Ms. Pottle discharged from government employment. I made no such request. I asked that she be removed from her position as Director of Advocacy Services, and that the Management Commission provide approval to me to hire a new Director of Advocacy Services in accordance with the *Public Service Commission Act*.

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In drafting my August 7<sup>th</sup> request, I assumed that you and other House of Assembly management staff are conversant with the precedent of having senior OCYA staff, in circumstances where there was a reasonable perception of them being in a conflict of interest because of earlier employment activities, transferred out of the OCYA and into positions elsewhere in the public service. I refer you to the cases of Ms. Marilyn McCormack and Ms. Paula Burt.

Prior to my October 4, 2006 release of the Turner Report, I sought and received valuable assistance from your predecessor, Mr. John Noel, Q.C., as well as from Mr. Harvey Hodder, then Speaker, Mr. Ed Walsh, Chairman and CEO of the Public Service Commission, and Mr. Robert Thompson, then Clerk of the Executive Council, in order to facilitate transfers of those two senior OCYA employees to suitable positions of equivalent seniority and remuneration elsewhere in the public service.

Your August 11<sup>th</sup> letter suggests this matter can best be addressed by the expenditure of additional funds in order to hire additional staff. Such an approach would, in my view, be counterproductive. It would unnecessarily waste otherwise scarce public resources, as it would require the hiring of a senior experienced individual to perform the exact duties that in the normal course would be performed by the most senior staff member, the Director of Advocacy Services, in relation to the Labrador investigation. Your approach would in effect result in there simultaneously being two Directors, one of whom would be in a conflict of interest situation. Your suggestion would result in a statutory office with a present staff of ten, one of whom is the Child and Youth Advocate, having two directors.

So long as Ms. Pottle remains as the Director of Advocacy Services, the Labrador investigation cannot be conducted in-house. Were she to continue as Director during an in-house investigation, the report of my findings and recommendations could not possibly be perceived by the public as credible.

Your suggested approach would also allow future exposure of OCYA frontline staff to Ms. Pottle's continuing efforts to undermine my direction as the Child and Youth Advocate in relation to the appropriate OCYA response to referrals.

Ms. Pottle is in an obvious conflict of interest. She is the senior OCYA employee who concluded in January 2009 that this serious referral regarding child protection services in Labrador did not warrant any response by the OCYA. This decision and associated direction to frontline staff was made by Ms. Pottle without even so much as a simple phone call to obtain additional information. Ms. Pottle's continued presence in the OCYA while the Labrador investigation is ongoing can hardly fail to have any result other than a confirmation of an already widespread perception by the people of Labrador that, unlike Zachary Turner, the children who died in Labrador do not deserve a proper investigation; one untainted by conflict of interest. It is not possible to reconcile Ms. Pottle's continued employment within the OCYA with the conduct of a credible investigation.

The Management Commission has consistently supported budget submission requests to increase staffing levels within the OCYA in order to enable the Office to conduct reviews and investigations in-house and thereby eliminate the need to outsource. The Government responded positively to an OCYA request so that in May 2008 the *Child and Youth Advocate Act* was amended to include subpoena powers. That legislative initiative permitted OCYA investigations then underway to resume and otherwise facilitates the conducting of investigations internally by the OCYA.

The actions of Government as well as the Management Commission are a recognition that investigations of government programs and services are best conducted by the Office established by statute to "protect and advance the rights and interests of children and youth" in this province. Child Advocate offices in other provincial jurisdictions have adopted this approach and conduct their investigations internally. It goes without saying that such an approach is not only desirable from an expertise point of view, but is also the most fiscally responsible. If the present Director of Advocacy Services remains within the Office, the Labrador investigation will have to be outsourced because of the resultant public perception of conflict of interest.

Management Commission records indicate that the cost to the taxpayer of the Turner Investigation was in the vicinity of \$1 million. The cost of conducting the Labrador investigation utilizing external consultants can reasonably be anticipated to be at least double the cost of the Turner investigation; it could conceivably be even higher.

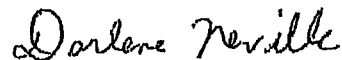
Contrary to the Speaker's recent public statements, I did not request nor am I now requesting funding to hire additional OCYA staff. My August 7<sup>th</sup> correspondence outlined the obvious conflict of interest issue with respect to Ms. Pottle's continued employment within the OCYA, and proposed a reasonable solution that would not require the expenditure of additional funds. I simply asked that the Clerk of the House of Assembly remove Ms. Pottle from the position of Director of Advocacy Services within the OCYA, and that the Clerk obtain Management Commission approval for me to hire a new Director. Once a new Director has been hired, I am confident the Labrador investigation can be completed with the existing complement of OCYA staff.

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As your spouse was my Executive Secretary during the period when Ms. McCormack and Ms. Burt were transferred elsewhere in the public service, I had assumed you were aware of that matter and its precedent value. In drafting my August 7<sup>th</sup> letter, I understood that as Clerk you might utilize such an approach in order to facilitate the conduct of the Labrador investigation by the OCYA.

I respectfully ask that my August 7<sup>th</sup> request for assistance from the Office of the Clerk of the House of Assembly as Chief Administrative and Financial Officer of the House of Assembly be reconsidered.

Sincerely,



Darlene Neville  
Child and Youth Advocate

DN/sp

Copies to Members of the Management Commission:

Hon. Roger Fitzgerald  
Speaker, House of Assembly and Chair,  
Management Commission

Mr. Tom Osborne  
Deputy Speaker

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~~Hon. Jean Burke~~  
Minister, Child, Youth and Family Services

Hon. Jerome P. Kennedy, Q.C.  
Minister of Finance and  
President of Treasury Board

Ms. Yvonne Jones  
Leader of the Official Opposition

Ms. Lorraine Michael  
Leader, NL NDP Party

Mr. Kelvin Parsons, Q.C.

Ms. Elizabeth Marshall

Not in binder

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Tab 17



HOUSE OF ASSEMBLY  
Newfoundland and Labrador

Executive Council

AUG 17 2009

RECEIVED

August 17, 2009

Ms. Darlene Neville  
Child and Youth Advocate  
Office of the Child and Youth Advocate  
193 LeMarchant Road  
St. John's, NL A1C 2H5

Dear Ms. Neville:

I am writing in reply to your correspondence of August 14, 2009.

With respect to the issue of the removal of Ms. Pottle, Director of Advocacy Services, I have carefully re-read your August 7, 2009 correspondence, in case I had misinterpreted your request respecting her dismissal. The following statements from your August 7, 2009 correspondence are those which led me to the conclusion that you were requesting the dismissal of Ms. Pottle:

*"...nor is it appropriate for Ms. Pottle to remain within the employ of the Office of the Child and Youth Advocate as the Director"* (page 1);

*"I am ...seeking your assistance in vacating the position of Director of Advocacy Services"* (page 1);

*"that... precludes me from directly dealing with the matter of Ms. Pottle's continued employment within the Office of the Child and Youth Advocate"* (page 2);

*"I currently cannot address the issue of Ms. Pottle's employment; were I to attempt to do so Ms. Pottle would in all likelihood advance a reprisal argument to resist the legitimate exercise of my authority as the Child and Youth Advocate"* (Page 2);

*"the removal of Ms. Pottle from the position of Director of Advocacy Services within the OCYA"* (page 2);

*"Ms. Pottle cannot continue to occupy the position of Director of Advocacy Services within the Office of the Child and Youth Advocate"* (page 7);

and,

*"I respectfully request that you immediately undertake the necessary action to remove Ms. Pottle from her position as Director of Advocacy Services within the OCYA".*  
(page 7).

Upon further examination of your August 7, 2009 correspondence, I can find no reference to a possible secondment or transfer respecting Ms. Pottle. I am sure you will agree that the language quoted above would logically lead one to assume dismissal was being requested.

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The previous case referenced by you occurred before I was appointed as Clerk of the House. After receiving your August 14 correspondence, I reviewed the file on this matter and note significant differences in your approach in these two cases.

Your correspondence of January 5, 2006 to the Clerk of Executive Council, Robert Thompson, quite specifically requested that secondments within the Public Service be found for the two individuals, as follows:

*"I write at this time to seek your assistance in providing secondments within the Public Service for two of my staff...."* (page 1);

*"We [Hodder, Noel, Neville] agreed I should contact you to request secondments for both individuals. Everyone wishes to see the problem resolved without any loss of employment."* (page 3);

and

*"...I hope to be in a position to offer alternative employment...."* (page 4).

As your correspondence of August 14, 2009 made no reference to secondment or transfer, I believe my conclusion as to the nature of your request is understandable.

With respect to a possible secondment or transfer of Ms. Pottle, I assume that you have not yet broached the matter with her to determine whether this is an option acceptable to her. Ms. Pottle may well view such a proposal as a disciplinary measure.

With respect to Ms. Pottle's understanding and support of the mandate of the OCYA, you summarize the situation on page 1 of your August 14 correspondence, as follows:

1. *Ms. Pottle has in the past (January 2009), by virtue of her inappropriate direction to frontline OCYA staff, demonstrated an inability to appreciate the statutorily mandated oversight role of the Office of the Child and Youth*

*Advocate "to protect and advance the rights and interests of children and youth."*

2. *Ms. Pottle at present (late July 2009), by virtue of her undermining of my efforts to clarify and provide direction to OCYA staff as to the appropriate response to referrals received by the OCYA, continues to demonstrate an outright refusal to accept the statutorily mandated oversight role of the Office of the Child and Youth Advocate "to protect and advance the rights and interests of children and youth."*

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Summary Item #1 contends that one inappropriate direction provided to staff by Ms. Pottle in January 2009 (outlined in your previous correspondence), serves to sufficiently demonstrate Ms. Pottle's inability to appreciate the OCYA mandate.

With respect to this January 2009 incident, Ms. Pottle might indeed have erred in her direction to staff, as you state. However, one has to consider whether her advice was made in good faith and represented a reasonable and defensible response to the referral, even if it was ultimately determined to be an error in judgement. I note that such a test of good faith is referenced in S. 26 of your Act, in prohibiting proceedings against you or your staff. There is no suggestion in your correspondence that her advice was presented in bad faith. As there is no record in Ms. Pottle's personal file of any other incidents in the past, it does not appear reasonable to conclude that this single instance demonstrates an inability to appreciate the OCYA mandate.

As the Advocate, you have a responsibility to ensure all staff, including the Director of Advocacy Services, understand the mandate of your Office and all its policies and procedures. If explicit policies have not been established to guide staff, this fact could be seen as a mitigating factor in this incident.

In Summary Item #2, you contend that Ms. Pottle's actions in late July (as outlined in your previous correspondence), demonstrate an undermining of your efforts to provide clarity and direction to staff. You also contend that Ms. Pottle's actions in late July demonstrate an "outright refusal" to accept the statutorily mandated oversight role of the OCYA.

On page 3 of your August 7 correspondence, you state that you "have been advised" that Ms. Pottle did not support the direction [you] provided to staff", but no further details are provided. On page 6, you state that "it was again brought to my attention that...Ms. Pottle continued to undermine my efforts to clarify and provide direction to staff". Again, no further details are provided.

On page 6, you note that Ms. Pottle provided you with a written request "for certain changes to the minutes of the July 22<sup>nd</sup> staff meeting" and queried how OCYA responded to media reports respecting child care issues. With respect to the minutes



presenting a fair account of the substance of a meeting, all participants should be able to arrive at a common understanding of matters discussed and decisions reached. From your description of events, it is not clear whether her written request for meeting minute changes was insubordinate or simply correcting the factual account of the meeting. As she was willing to put this request in writing, the request could be interpreted as indicating the latter. If the other participants in the meeting support Ms. Pottle's account of the meeting and the need for the minutes to be changed, it may be difficult to conclude that Ms. Pottle was undermining your authority.

Given the above, I do not feel I can undertake to have Ms. Pottle removed from her position. If Ms. Pottle voluntarily agrees to a transfer or secondment, I would of course do all that I can to assist. However, with the information you have provided me to date, your proposal could be construed as disciplinary action or reprisal.

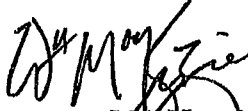
Your August 7, 2009 correspondence does not, in my view, set out proper grounds for your allegation of conflict of interest. You state that "Ms. Pottle...indicated that she would have to take some of the responsibility for having given direction to [redacted] that no response of the OCYA to this referral was required as she "had the understanding that the OCYA did not do death reviews". This suggests a misunderstanding on Ms. Pottle's part as to the nature of the referral. It appears from your correspondence that Ms. Pottle understood the referral to be about a death review, whereas you understood the referral to be about the review of child protection services provided to a boy who later died in a fire. I do not see how this forms the basis for a conflict of interest sufficient for you to require Ms. Pottle to be removed from her position as Director of Advocacy Services in order to proceed with the Labrador investigation.

I repeat the advice in my August 11 correspondence that as the Labrador investigation is a priority for you, you initiate the steps to conduct it expeditiously. Government practice is that where an employee is in a perceived conflict of interest situation, the employee would continue with other duties but would not perform duties related to the work where the perceived conflict exists. Continuing to connect the conduct of the Labrador investigation with the separate matter of Ms. Pottle's employment in OCYA is delaying the investigation.

You have the necessary funds and the delegation authority to begin this important investigation. My previous suggestion was that you use the existing savings in your salaries budget - which currently amounts to 4 or 5 months salary at the director level - to hire staff to assist you in the investigation. I do not see how this approach would, as you state, "in effect result in there simultaneously being two Directors". You are aware of section 14 of the *Child and Youth Advocate Act*, which authorizes you to "delegate to another person [your] powers under this Act." The individual hired to undertake this investigation need not be titled "Director", and can be delegated any powers you feel are necessary to carry out the investigation. This would be the most straight-forward way of addressing the matter.

My advice to you is to proceed with the Labrador investigation, using new and existing staff. If there are issues with Ms. Pottle's employment, they are best dealt with using the existing human resources standard processes.

Yours truly,

A handwritten signature in black ink, appearing to read 'W MacKenzie', written in a cursive style.

**William MacKenzie**  
Clerk of the House of Assembly

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cc: House of Assembly Management Commission  
Deputy Speaker

Not in  
binder NO

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Tab 18



HOUSE OF ASSEMBLY  
Newfoundland and Labrador

COPY

Executive Council

AUG 18 2009

RECEIVED

August 13, 2009

Ms. Darlene Neville  
Child and Youth Advocate  
Office of the Child and Youth Advocate  
193 LeMarchant Road  
St. John's, NL A1C 2H5

Dear Ms. Neville:

I am writing to you at the direction of the House of Assembly Management Commission.

Your recently-announced decision to conduct an investigation into certain child care services provided by Child Youth and Family Services and Labrador-Grenfell Health Authority is fully supported by the Management Commission. At a Commission meeting of August 12, 2009, the Management Commission requested a report on the status of the other Reviews and Investigations previously announced by your Office.

I note that the Office of the Child and Youth Advocate Business Plan for the Fiscal Year ending March 31, 2008, included the following Goal:

*"By April 1, 2008, the Office of the Child and Youth Advocate will have completed the four Reviews of government programs and services currently being conducted by the office."*

The Indicator associated with this Goal is:

*"Reviews completed, provided to government and released publicly".*

Your Annual Report 2007-08 commented on your work on these four Reviews and noted the need for subpoena powers under the *Child and Youth Advocate Act*. The amendments you requested respecting subpoena powers were enacted in the Spring of 2008.

I note also that the OCYA Business Plan 2008 – 2011 includes the following Objective:

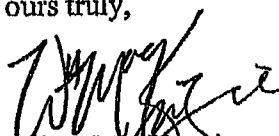
*"By March 31, 2009, the Office of the Child and Youth Advocate will have increased the number of Reviews completed related to government programs and services in comparison to 2008."*

Your Office's Annual Report for 2008-09 is required to be tabled by September 30, 2009 and will undoubtedly provide the status of the various Reviews up to March 31, 2009. However, the Management Commission has requested a current status report (rather than ~~to-March-31, 2009~~)-respecting-your-Office's-Reviews-in-advance-of-the-tabling-deadline for the 2008-09 Annual Report.

In your reply, it would be helpful for the Commission to have each Review briefly summarized and identified in a generic, anonymous manner – perhaps, by name of community or key systemic issue – so they can be distinguished from each other without disclosing confidential information. It would also be helpful for the Commission if you described the work done to date on each Review, the number of interviews conducted and left to be conducted, any other matters of significance in each Review, as well as your most current target date for completion of each.

Should you have any questions concerning the Management Commission's direction in this matter, please do not hesitate to contact me.

Yours truly,

  
William Mackenzie  
Clerk of the House of Assembly

cc: House of Assembly Management Commission  
Deputy Speaker

Not in  
binder

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Tab 19



House of Assembly

TRIM #

EOR879/2009

**Office of the Child and Youth Advocate**  
PROVINCE OF NEWFOUNDLAND AND LABRADOR

August 18, 2009

DELIVERED BY HAND  
STRICTLY PRIVATE & CONFIDENTIAL

OFFICE OF THE CLERK

Executive Council

Mr. William MacKenzie

AUG 18 2009

Clerk of the House of Assembly  
Confederation Bldg., East Block  
P.O. Box 8700  
St. John's, NL A1B 4J6

AUG 18 2009

RECEIVED

Dear Mr. MacKenzie,

I acknowledge receipt of your letter dated August 13, 2009, delivered by courier the same day late in the afternoon (copy attached).

In your correspondence, you quoted the following goal as being contained in the Office of the Child and Youth Advocate ("OCYA") Business Plan for the Fiscal Year Ending March 31, 2008:

*"By April 1, 2008, the Office of the Child and Youth Advocate will have completed the four Reviews of government programs and services currently being conducted by the office."*

No such goal appears in any Business Plan for the Office of the Child and Youth Advocate completed to date. As you are aware, all Business Plans are tabled in the House of Assembly, following approval by the Management Commission. Please be so good as to provide the source of your information related to the goal you quoted as having appeared in the OCYA Business Plan.

The following goal related to Reviews is contained in the March 31, 2008 Business Plan for the Fiscal Year Ending March 31, 2008:

*By April 1, 2008, the Office of the Child and Youth Advocate will have supported the improvement of government services and programs provided to children and youth."*

In your letter of August 13<sup>th</sup> you further stated:

*"Your Annual Report 2007-08 commented on your work on these four Reviews ..."*

Nowhere in my 2007-08 Annual Report, which was tabled in the House of Assembly on September 30, 2008, is there a reference to "four Reviews." Again, please provide the source of your information.

You indicated in your correspondence that my recently announced decision to conduct an Investigation of the services provided by Child, Youth and Family Services in Labrador is fully supported by the Management Commission. You also indicated that at an August 12, 2009 Management Commission meeting you were directed to request a report on the status of other Reviews and Investigations previously announced by my Office. You further stated that such report should be a current status report, rather than up to the year ending March 31, 2009, as this period will be covered in my Annual Report required to be tabled in the House of Assembly by September 30, 2009.

I am pleased to be informed that I have the full support of the Management Commission in conducting this extremely important Investigation affecting the children in Labrador. I am also pleased with the level of interest shown in the work of the OCYA with respect to the conduct of Reviews and Investigations underway.

While this request by the Management Commission for a current status report of Reviews and Investigations underway in the OCYA is unprecedented, I am always pleased to avail of an opportunity to promote the work of the Office, particularly when such an opportunity is presented in close proximity to the fall budget consultation process. I wish, however, to make one matter clear; in acceding to the request by the Management Commission conveyed in your August 13<sup>th</sup> letter, I am in no way agreeing that I require the approval of the Management Commission with respect to my conduct of Reviews and Investigations. Any such agreement by the Child and Youth Advocate would be tantamount to acceptance that interference in the independence of my Office is appropriate when clearly that it is not the case as any such behaviour is strictly prohibited by section 31 of the *Child and Youth Advocate Act*.

Currently, four ongoing Investigations/Reviews that have active status within the OCYA are:

- the Labrador Investigation;
- the Investigation of the Inpatient Psychiatric Services Provided by Unit J4D, Janeway Children's Health and Rehabilitation Centre;
- the Clarke's Beach Review; and
- the Pouch Cove Review.



Two other Reviews/Investigations have been completed and given rise to recommendations that have already been provided to Government. These two Reviews/Investigations remain "active" in that follow up is required by the OCYA with respect to monitoring the implementation by Government of the recommendations contained therein. The latter two Reviews/Investigations are:

- the Turner Review and Investigation; and
- the Review of the Transitioning of Children and Youth In Care.

Before detailing the status of each Review/Investigation, I believe it would be helpful to the Management Commission to provide a contextual overview of significant events relevant to the conduct of Reviews and Investigations that have transpired within the OCYA since my appointment as Child and Youth Advocate on August 1, 2005.

### Overview of Significant Events Within the OCYA Relevant to Reviews and Investigations

At the outset of my term, it was well known publicly and had been reported in the media that a conflict of interest with respect to senior staff of the OCYA existed which was impacting the ability of the Office to fulfill its mandate. During the fall of 2005, I assessed the conflict of interest situation and explored possible avenues to address it. I concluded that it would not be possible for the mandate of the Office to be achieved, given the existing conflict of interest of two senior staff members. I sought and received valuable assistance from the former Speaker of the House of Assembly, Mr. Harvey Hodder, Mr. John Noel, Q.C., former Clerk of the House of Assembly, Mr. Robert Thompson, former Clerk of the Executive Council and Mr. Ed Walsh, Chairman and CEO of the Public Service Commission. These individuals were very helpful in facilitating transfers of the two senior OCYA staff to suitable positions of equivalent seniority and remuneration elsewhere in the public service. Those transfers were completed in the winter of 2006.

Following the transfer of these two senior staff, Mr. Hodder, Mr. Noel and the former Internal Economy Commission supported me in my efforts to restructure the staffing model within the OCYA. At the time of the restructuring, there was one advocacy staff employed in the OCYA, namely Ms. Roxanne Pottle, whom I then promoted to the newly created position of Senior Advocacy Services Specialist. Ms. Pottle assumed added responsibilities related to the supervision of three frontline advocacy services specialist positions created during the restructuring process. By May 2006, temporary appointments to these three frontline positions had been made.

On October 4, 2006, I released the Turner Review and Investigation Report ("Turner Report"), which had been completed by an external consultant, Dr. Peter Markesteyn, due to the existence of conflict of interest within the OCYA. Prior to the release of the Turner Report, I had already addressed this conflict of interest issue through the transfer of senior staff elsewhere in the public service. Dr. Markesteyn reported the existence of the conflict of interest within the OCYA.

I had extensive involvement with officials within the Department of Health and Community Services during the fall of 2006 and winter of 2007 with respect to the Government's implementation of the recommendations contained in the Turner Report. Immediately prior to the release of the Turner Report, I had requested an operational review of Child, Youth and Family Services, Eastern Region. The Government agreed to my request, and in the fall of 2006 expanded the operational review to include the Child, Youth and Family Services programs within the four Regional Integrated Health Authorities. I provided input to the consultants who conducted the Deloitte Operational Review. I also requested a clinical review of Child, Youth and Family Services, and participated in the clinical review that was conducted. The report of this clinical review was released by the Minister of Child, Youth and Family Services, Ms. Joan Burke, on May 13, 2009.

In March 2007, I provided my response to the justice-related recommendations contained in the Turner Report to then Minister of Justice Tom Osborne. I supported Dr. Markesteyn's recommendation that the *Child and Youth Advocate Act* be amended to include subpoena power.

In June 2007, I attempted to pursue interviews with key informants from the Eastern Regional Integrated Health Authority and the Department of Health and Community Services related to the Pouch Cove Review. While officials from the Department voluntarily participated in interviews, the overwhelming response from Child, Youth and Family Services (Eastern Health) was a refusal to participate in interviews without subpoenas.

This refusal by staff of Child, Youth and Family Services (Eastern Health) in effect for practical purposes prevented the continuation of both the Pouch Cove Review and the Clarke's Beach Review. In July 2007, I wrote to then Minister of Health and Community Services Ross Wiseman and to the Ministers of the five-member Ministerial Committee established by Premier Williams to respond to the Turner Report and advised them of my predicament.

As you will recall, a provincial election was held in October 2007. The House of Assembly did not next sit until the Spring Session in 2008. The Government responded positively to my request for subpoena power so that effective June 4, 2008 the *Child and Youth Advocate Act* was amended to include subpoena power to permit investigations then underway to resume.

Approval was granted by the Management Commission in the 2007-08 budget for the creation of a consultant position to enable the OCYA to conduct Reviews and Investigations internally. At the time of my budget submission to the Management Commission, I promoted the need for such a position within the OCYA as I viewed it as necessary if the OCYA was to fully discharge its investigatory mandate. I also indicated at the time that the creation of this consultant position was essential to prevent the outsourcing of Reviews and Investigations to external consultants. I also reminded the Management Commission of the significant cost of the Turner Review and Investigation Report, an amount that the former Speaker, Mr. Harvey Hodder, had informed me on the day of the press conference relating to the public release of that Report was in the vicinity of \$1 million. A second consultant position was approved in the 2008-09 budget to further assist the OCYA to conduct Reviews and Investigations internally.

In December 2007, I promoted Ms. Roxanne Pottle to the newly created position of Director of Advocacy Services. Throughout 2008, file reviews and interviews necessary to complete the Transitioning of Children and Youth In Care Review were completed by the Director of Advocacy Services, Ms. Roxanne Pottle, with the assistance of one Systemic Advocacy Consultant, Ms. Jennifer Forristall, as well as assistance provided during the fall of 2008 by a second Systemic Advocacy Consultant, Ms. Dorothy Penney, who commenced her employment in the OCYA in late August 2008.

During the summer and fall of 2008, I engaged in an extensive review of documentation related to the Pouch Cove and Clarke's Beach Reviews. I completed the examination of required witnesses for the Pouch Cove Review in December 2008, having for the first time utilized the subpoena power referred to above. I would have ordinarily involved the Director, Ms. Pottle, in this work, but she was otherwise occupied with the Transitioning Review.

On December 15, 2008, I initiated an Investigation of the psychiatric services provided by J4D, Janeway Children's Health and Rehabilitation Centre, during the period January 1, 2008 to December 31, 2008. Ms. Dorothy Penney, Consultant, was assigned to this Investigation as Ms. Pottle and Ms. Forristall were still engaged in the Transitioning Review.

It had been my intention to conduct the examination of witnesses in the Clarke's Beach Review during the winter of 2009. However, in late 2008 I determined that in light of the ongoing nature of the issues that precipitated the Janeway Investigation, the examination of witnesses in the Clarke's Beach Review would have to be deferred. The urgency of the Janeway Investigation necessitated this course of action.

My decision to defer the Clarke's Beach Review was not one taken lightly. I considered the significant response to date by the Government to the child protection

concerns identified in the Turner Report. The circumstances of the Turner case related to services provided by the Eastern Regional Integrated Health Authority, and the Clarke's Beach Review also relates to child protection services provided within that same region. I also considered, in reaching this decision, that I had just completed the examination of witnesses for the Pouch Cove Review, which also related to the provision of child protection services within the Eastern Region.

The Janeway Investigation was prompted by serious issues related to the inpatient psychiatric services provided by the Janeway in its capacity as the only inpatient psychiatric facility for children and youth within the province. The provision of these psychiatric services had not been previously subject to OCYA oversight.

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When the Janeway Investigation was initiated on December 15, 2008, it was anticipated that the Director of Advocacy Services would complete the remaining interviews related to the Review of the Transitioning of Children and Youth In Care early in 2009, and then complete the drafting of the related Report. Given Ms. Pottle's extensive background in child protection, I intended to then assign her to the lead role in the Clarke's Beach Review.

Ms. Pottle completed the interviews of youth in care in late February 2009. The Report was provided to me on March 17, 2009. I should state here that there had been an earlier deadline of November 30, 2008, but I extended it when Ms. Pottle suggested to me that in order for her to meet the November 30<sup>th</sup> deadline she would limit the interviews of youth in-care to one per Region for a total of four youth for the entire province. The Review involved examination of 277 individual files and 400 transitions. I explained to Ms. Pottle, in response to her suggestion, that any report released by the Office of the Child and Youth Advocate dealing with children and youth in care that involved interviews of only four youth in care for the entire province would certainly lack credibility. Furthermore, I impressed on her the long-lasting negative impact on the OCYA that such an under-representation of the voices of the very youth the report dealt with would have.

I am not able to adequately describe in words the significant deficiencies of the Transitioning Report that was provided to me on March 17, 2009. I had to completely rewrite the Report, cover to cover, but not before I wrote the Executive Summary, calculated percentages for all the tables, completed a comprehensive analysis because none had yet been completed, and drafted new as well as redrafted existing recommendations. I am prepared to make a copy of the Report as submitted to me on March 17<sup>th</sup> available to any member(s) of the Management Commission who may wish to see it.

Despite the significant inadequacies of the draft Transitioning Report, I was confident that the conduct of the Review itself and the data collected were acceptable and reliable. That confidence was a product of my involvement in the development

of the file review instrument and interview guides, and my having monitored the file review and interview process.

The following objective is set out in the 2008-2011 OCYA Business Plan:

*By March 31, 2009, the Office of the Child and Youth Advocate will have increased the number of Reviews completed related to government programs and services in comparison to 2008.*

The work for the Transitioning Review was completed within the 2008-09 Fiscal Year and this objective was met. On March 30, 2009, I provided to the Deputy Minister of Health and Community Services and to each CEO in the four Regional-Integrated Health Authorities a copy of the recommendations arising from the Review. I publicly released *Lost in Transition: A Review of the Transitioning of Children and Youth In Care* on June 2, 2009.

Unfortunately, the conduct by the OCYA of the Reviews and Investigations underway has been impacted by the three separate investigations of me: the February 13, 2009 Public Service Commission investigation of the administration of the OCYA initiated by the Speaker; the March 17, 2009 "whistleblower" Part VI wrongdoing investigation of me initiated by Mr. Barry Fleming, Q.C.; and the "whistleblower" Part VI wrongdoing investigation of me by Mr. Robert Noseworthy, initiated by an Order in Council dated May 25, 2009.

Mr. Fleming, in his March 17, 2009 correspondence to me, threatened "vigorous prosecution before the Labour Relations Board" for any reprisal against a person assisting Mr. Fleming in his capacity as investigator. I am aware that Ms. Pottle to date has participated in both Mr. Fleming's and Mr. Noseworthy's investigations. Mr. Fleming's threat has, in effect, precluded me from being able to address in any effective manner Ms. Pottle's work performance issues.

In responding to the Management Commission's request for a current status report, I cannot ignore the significance of Ms. Pottle's poor work performance with respect to the Transitioning Review Report and its present and future impact on the conduct of Reviews and Investigations by the OCYA. Given that the Report of the Review/Investigation is the primary vehicle whereby recommendations are provided to Government, it is critical that those tasked with responsibility to write them are both capable of doing so and properly do so. In the circumstances, the only acceptable course of action over the past six months has been for me to undertake the duties of the Director with respect to the conduct of Reviews and Investigations currently underway within the Office.

The requirement that I rewrite the Transitioning Report resulted in my work on the Report of the Pouch Cove Review being delayed. Since the release of the Transitioning Report on June 2<sup>nd</sup>, I have resumed my work on the Report of the

Pouch Cove Review. I am also extensively involved in the ongoing Janeway Investigation, personally conducting examination of witnesses. I intend to deliver my Report of the Pouch Cove Review to Government and to the Eastern Regional Integrated Health Authority on September 30, 2009.

Needless to say, in light of Ms. Pottle's poor performance in the drafting of the Report of a Review that as the Director she had carriage of for the entire 2008 year and for part of 2009, I am not now prepared to assign Ms. Pottle the lead role in the Clarke's Beach Review. I was available to Ms. Pottle and provided direction to her throughout the file reviews and interviews completed for the Transitioning Review. In hindsight, I now realize that the quality of the work completed during the actual data collection and interview phases of the Transitioning Review was a direct result of my involvement, both in the early stages with respect to the development and approval of the file review instrument and interview guides, and in my ongoing direction to Ms. Pottle throughout the Review process.

The Director, as my most senior staff member, is responsible for overseeing the work of the two consultants with respect to the conduct of Reviews and Investigations. I require a Director that can perform this duty with limited supervision as contemplated by the position description.

The Labrador Investigation, which I initiated on August 3, 2009, has been detailed at length in my previous correspondence to you dated August 7, 2009 and August 14, 2009. As stated in my correspondence, I will continue to personally conduct the Labrador Investigation until such time as the process to be utilized for the Investigation has been finalized.

Reviews and Investigations are undertaken by the OCYA in order to discharge its investigatory mandate. The Office of the Child and Youth Advocate has a dual mandate that includes both an advocacy and an investigatory role. Although not requested to do so, I would indicate here that in the Fiscal Year ending March 31, 2008, the frontline advocacy staff responded to 490 new individual advocacy referrals. During this period, 354 individual advocacy files were closed as the work was completed. The frontline staff also conducted advocacy clinics throughout the province, and provided public education, including school presentations, regarding the OCYA and the availability of government programs and services. The frontline staff have a role in relation to Reviews and Investigations as they are the first point of contact for all referrals, and, therefore, are positioned to inform the systemic and investigatory work of the Office. It was a January 2009 failure by frontline staff, under the direction of Ms. Pottle, to properly respond to a referral that lead to the current conflict of interest that would prevent the OCYA from conducting the Labrador Investigation internally.

## Status Report on OCYA Reviews/Investigations to Date

### Labrador Investigation..

- o Investigation involves the provision of child protection services to [redacted] age 13, and [redacted] age 5, both of whom died as a result of a fire, while on active child protection caseloads, in Happy Valley-Goose Bay on June 22, 2008;
- o Investigation of services provided by Child, Youth and Family Services, Labrador-Grenfell Regional Integrated Health Authority, initiated by the Child and Youth Advocate on August 3, 2009;
- o ~~Notice of the Investigation as required by the Child and Youth Advocate Act provided to the CEO, Labrador-Grenfell Regional Integrated Health Authority and the Deputy Ministers of Health and Community Services and Child, Youth and Family Services;~~
- o All documentation received prior to August 3, 2009 from Child, Youth and Family Services, Labrador-Grenfell Regional Integrated Health Authority, personally reviewed by the Child and Youth Advocate;
- o Documentation received from the Department of Child, Youth and Family Services on Friday, August 14, 2009;
- o Additional documentation received from Child, Youth and Family Services, Labrador-Grenfell Regional Integrated Health Authority, on Monday, August 17, 2009;
- o Considering response dated August 17, 2009 from the Clerk of the House of Assembly and Management Commission to my August 14, 2009 correspondence re consideration of my August 7, 2009 request for assistance with respect to the conduct of this Investigation.

### Investigation of Inpatient Psychiatric Services Provided by the Janeway Children's Health and Rehabilitation Centre, Unit J4D, during the period January 1, 2008 to December 31, 2008

- o Investigation initiated following the closure of Unit J4D, the only inpatient psychiatric unit for children and youth in the province, and the transport of two young girls from this adolescent acute care facility to an adult acute care facility in handcuffs, in the back of a marked police vehicle;
- o Reviews of medical charts/files of the 61 patients relevant to this Investigation have been completed;
- o Analysis of file documentation ongoing;
- o 48 subpoenas have been issued to date, and examinations of 38 witnesses have been completed to date by the Child and Youth Advocate at the OCYA;

- o 18 patients, parents and family members have been interviewed by the Child and Youth Advocate and one systemic advocacy consultant at the OCYA, Gander and Conception Bay North;
- o 12 additional patients, parents and family members have indicated they wish to participate in interviews during the fall of 2009;
- o 14 additional witnesses will be subpoenaed to testify during the fall of 2009;
- o It is anticipated that approximately 62 witnesses will be required to testify pursuant to a subpoena during this Investigation;
- o It is anticipated that a total of 30 patients, parents and family members will participate in interviews without being subpoenaed;
- o Target date for completion of Report of Investigation and delivery to Government and Eastern Regional Integrated Health Authority is March 31, 2010;

#### Pouch Cove Review

- o This Review relates to the provision of child protection and public health nursing services provided to [redacted] and [redacted] family, from the date of [redacted] birth until [redacted] removal from [redacted] parents' care and [redacted] admission to hospital for severe malnourishment (10 month period);
- o Review of all file documentation received from Department of Health and Community Services and from Eastern Regional Integrated Health Authority completed;
- o All interviews concluded for this Review;
- o 7 individual interviews were conducted at the OCYA;
- o 8 individuals participated in written interviews;
- o 2 witnesses were examined under subpoena;
- o Analysis completed by Child and Youth Advocate;
- o Drafting of Report of Review underway;
- o Target date for completion of Report of Review and delivery to Government and Eastern Regional Integrated Health Authority is September 30, 2009.

#### Clarke's Beach Review

- o This Review relates to the provision of child protection services provided a mother and her six children in Conception Bay North over a 10 year period;
- o The mother in this Review received a six year period of imprisonment following the entry of guilty pleas to charges of criminal negligence causing bodily harm by failure to provide the necessaries of life; unlawful confinement; assault with a weapon, specifically with a belt and a broom; and common assault;



- File documentation received from the Department of Health and Community Services and from Eastern Regional Integrated Health Authority;
- Review of all file documentation completed by Child and Youth Advocate;
- It is anticipated that 40 subpoenas will be issued in connection with this Review;
- Continued conduct of this Review, including examination of witnesses and completion of Report, under consideration in light of response dated August 17, 2009 from the Clerk of the House of Assembly and Management Commission to my August 14, 2009 correspondence.

### Turner Review and Investigation

- Report of Dr. Peter Markesteyn released publicly on October 4, 2006 by Child and Youth Advocate;
- Continued input by Child and Youth Advocate to Government regarding the implementation of recommendations in Turner;
- Participation by the Child and Youth Advocate in the Operational Review and Clinical Review of Child, Youth and Family Services undertaken by external consultants for Government;
- June 2009 meeting with Minister of Child, Youth and Family Services, Ms. Joan Burke, following the creation of this new Department in response to the Turner Report;
- Ongoing direction provided by Child and Youth Advocate to OCYA staff regarding the application of the Turner Report with respect to the appropriate response to referrals received by the OCYA. Such direction has included staff meetings, emails and conversations with OCYA staff. The Director of Advocacy Services, Ms. Pottle, has since 2007 been tasked with creating a protocol for the response by OCYA frontline staff to referrals. Such a protocol, when completed, would incorporate the lessons learned from the Turner case.

### The Review of the Transitioning of Children and Youth in Care

- Review completed in Fiscal Year 2008-2009, and recommendations provided to Government and to each CEO in the four Regional Integrated Health Authorities on March 30, 2009;
- The Report *Lost in Transition: A Review of the Transitioning of Children and Youth In Care* publicly released on June 2, 2009 by the Child and Youth Advocate;
- Follow up with respect to the implementation by Government of the recommendations contained in the Report will continue;

- Importance of continued dialogue regarding issues related to children and youth in care acknowledged by Government, and agreement by Child and Youth Advocate and Minister Burke to engage in such dialogue, particularly during this critical transition phase for the newly created Department of Child, Youth and Family Services.

I trust this information responds to the request of the Management Commission for a status report of Reviews and Investigations announced by the Child and Youth Advocate.

Sincerely,

*Darlene Neville*  
Darlene Neville  
Child and Youth Advocate

DN/sp

Copies to Members of the Management Commission:

Hon. Roger Fitzgerald  
Speaker, House of Assembly and Chair,  
Management Commission

Mr. Tom Osborne  
Deputy Speaker

Hon. Joan Burke  
Minister, Child, Youth and Family Services

Hon. Jerome P. Kennedy, Q.C.  
Minister of Finance and  
President of Treasury Board

Ms. Yvonne Jones  
Leader of the Official Opposition

Ms. Lorraine Michael  
Leader, NL NDP Party

Mr. Kelvin Parsons, Q.C.

Ms. Elizabeth Marshall