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September 30, 2009

Delivered by Courier

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

Dear Mr. Norris:

I write in response to your letter dated 2009 08 20 advising me that, on the direction of Cabinet, I was suspended with pay pursuant to Section 8.(1) of the *Child and Youth Advocate Act*. Your correspondence indicated that if I wished to make a submission in response, my submission would be considered.

Having reviewed the contents of your letter and considered the series of events which have transpired in the Office of the Child and Youth Advocate, I determined it is necessary to provide a written response.

To make a full reply in my defence, an opportunity to appear before the House of Assembly, when in Session, is required. That process must be subject to public scrutiny and conducted in accordance with the principles of transparency and accountability to ensure public confidence in the Office of the Child and Youth Advocate. Accordingly, I have today commenced an Originating Application in the Supreme Court, Trial Division, seeking Declaratory Relief that I should be afforded an opportunity to be heard before the House of Assembly. A copy of that Originating Application is enclosed.

Since being summoned to Executive Council Office on August 20, 2009 and handed a letter of suspension stating that Cabinet had lost confidence in my ability to do my job, I have struggled to identify what could possibly justify such an unwarranted action by the Government. My reflections have extended to the overall treatment of me over the past several months by the Speaker of the House of Assembly, by those acting on his direction, by the Public Service Commission, and by the Cabinet.

Just over one year ago on the invitation of Premier Williams I sat at the Cabinet table to discuss the fact that Eastern Health had effectively shut down the investigatory arm of the Office of the Child and Youth Advocate by refusing to voluntarily participate in interviews relating to ongoing investigations. At that time I impressed upon the Premier and his Ministers the need for subpoena power in order for investigations then underway to resume. The Government

amended the legislation and granted subpoena power effective June 4, 2008. I also recall an earlier occasion on which at the invitation of Premier Williams I met with the Cabinet on the day following my release of the Turner Report. Again, the Government responded positively to my concerns and to the Turner Report. I have been unable to reconcile this past demonstration of confidence in me by the Premier and his Cabinet with their recent decision to suspend me without even speaking with me. Although the manner in which I was suspended is tantamount to a "hanging before the trial," I have not defended myself publicly. I believed it would not be appropriate for me to do so without first addressing my concerns to the Premier and Cabinet.

My response is lengthy. For that I offer no apology. The matters addressed are often inter-related. In the interests of clarity, repetition is at times necessary. The importance of the matters at hand requires thoroughness on my part. My submission commences with a brief Overview that utilizes tables. The body of the submission then follows.

OVERVIEW

On August 20, 2009, on the direction of Cabinet, Mr. Gary Norris handed me a letter of suspension pursuant to Section 8 of the *Child and Youth Advocate Act*. The key areas of concern outlined in the letter of suspension related to my management of OCYA personnel and my ability to effectively advance the mandate of the OCYA.

The achievements by the OCYA staff under my direction in the Fiscal Year Ending March 31, 2009, and in recent months up to the date of my suspension, are clear evidence that I have been able "to mobilize and utilize OCYA personnel toward attainment of the Office's mandate." These achievements of the OCYA would not have been possible without the full participation of OCYA staff. The achievements of the Office of the Child and Youth Advocate are detailed in Table 1, Achievements of the Office of the Child and Youth Advocate, at page 6. Personnel management practices within the OCYA are detailed in Table 2, Personnel Management, at page 8.

My actions in recent months, in particular since February 2009 when the Speaker informed me he had determined an intervention in the OCYA was necessary based on his having heard "stories", and my response to what I then believed to be an attempt by outside persons to prevent the Janeway Investigation from proceeding, evidence my ability and my determination to advance the mandate of the OCYA in the most trying and challenging of circumstances. The detailed account that follows has been provided to assist Cabinet in understanding matters in the context in which they occurred.

The account provided illustrates that the first three investigations initiated under the newly implemented whistleblower legislation were all inappropriate applications of that legislation. The absence of procedural safeguards permitted the Speaker to hijack my harassment complaint against him away from the Harassment and Discrimination Free Workplace Policy to

the Citizens' Representative, Mr. Barry Fleming, Q.C., and to the forum of the Speaker's choosing, the whistleblower legislation. While conducting his investigation of my harassment complaint against the Speaker, Mr. Fleming initiated a second whistleblower investigation, one that targeted me. Mr. Fleming eventually ceased his conduct of his whistleblower investigation of me, but not until after I had filed an application in the Supreme Court, Trial Division, to prohibit him from continuing that investigation.

Mr. Fleming was embroiled in numerous conflicts of interests with respect to the conduct of both those whistleblower investigations. The most notable conflict of interest related to an ongoing court action involving both Mr. Fleming and the Speaker, which conflict should have precluded the Speaker from requesting Mr. Fleming to conduct any investigation of him, let alone an investigation of a harassment complaint about himself. The Speaker had been recently named as a Respondent by a private citizen in a court action that contained assertions that Mr. Fleming, in his capacity as Citizens' Representative, had acted in a conflict of interest with respect to an investigation of mental health services delivered by Eastern Health, a conflict allegation that involved his wife. The Speaker, having been named as a Respondent in a court action, the basis of which was Mr. Fleming's conduct, then requested that Mr. Fleming complete an investigation of the Speaker's conduct.

The second whistleblower investigation of me was initiated by an Order-in-Council. Mr. Robert Noseworthy commenced and pursued this investigation on the basis of the same disclosure of OCYA staff complaints that Mr. Fleming utilized to initiate his whistleblower investigation of me. In July 2009 Mr. Noseworthy was added as a party to the application I had commenced in my capacity as the Child and Youth Advocate in the Supreme Court in March 2009, wherein Mr. Fleming was the sole Respondent. It was in the whistleblower disclosure, provided to me in July 2009 by Mr. Noseworthy's legal counsel, that I first learned exactly what OCYA staff had been complaining about. It is inconceivable that such complaints were deemed appropriate for investigation of a "wrongdoing" under the whistleblower legislation. The full details of these complaints are contained in Table 3, Staff Complaints Resulting in Two Whistleblower Investigations, at page 9.

Contrary to statements made by Minister Jerome Kennedy, Q.C, in the media and during the Special Sitting of the House of Assembly on September 9, 2009 that I have initiated a court action every time an investigation of the OCYA has been attempted, I wish to set the record straight. I have initiated only one court application. That application was commenced in March 2009 to challenge the inappropriate utilization of the whistleblower legislation and the conflict of interest related to the conduct of that investigation by Mr. Fleming. Mr. Robert Noseworthy was later added as a party to that application as the second whistleblower investigation of me arose out of the same circumstances that had rendered Mr. Fleming's conduct of the first whistleblower investigation of me inappropriate.

The Speaker instigated the Public Service Commission investigation of my Office on February 13, 2009. I have not, either through communication with my staff or initiation of court proceedings, attempted to hinder, delay or prevent the Public Service Commission investigation

of the OCYA from proceeding. Following notification by Ms. Marlene Lambe, Chief Financial Officer (CFO) of the House of Assembly, in an email to OCYA staff that the Speaker had requested the Public Service Commission to conduct an investigation of the OCYA, I emailed all my staff and encouraged them to cooperate in any investigation that might occur. I also encouraged OCYA staff to avail of the services of the Public Service Commission to assist them in managing any stress arising from an investigation.

The Speaker's statement in his letter to Cabinet that the Advocate has resisted "any outside assistance or scrutiny" is false. Unfortunately, Minister Kennedy appears to have relied on this erroneous information and has seen fit to repeat it in the public domain. Section 3.(c.1) of the *Child and Youth Advocate Act* states:

> *3. The Office of the Child and Youth Advocate is established*
> ...
> *(c.1) to review and investigate matters affecting the rights and interests of children and youth; and*
> ...

Given its investigatory function, the OCYA is, in fact, an oversight body. The public release of erroneous information that, in my capacity as the Child and Youth Advocate, I have resisted any scrutiny, when oversight of the services provided to children and youth by Government departments, its boards and agencies is a primary function of the OCYA, has eroded public confidence in the OCYA and caused significant damage to my reputation.

The Speaker, in his letter to Cabinet, and Minister Kennedy, in his statements to the media, portrayed the Office of the Child and Youth Advocate as "dysfunctional". The achievements of the Office and the personnel management practices in the OCYA clearly contradict this view. It was the undermining of my authority by the Speaker and those acting on his direction that resulted in the poisoning of the work environment within the OCYA. Consideration of the fact that the entire series of events that have unfolded originated in a February 2008 letter to an employee that provided legitimate criticism of her work performance makes what followed very disturbing. Had the Speaker, his senior management staff, and the Public Service Commission simply adhered to the procedural safeguards set out in written Government Policy when the accusations against me were first brought to their attention in February 2008, the undermining of the Office of the Child and Youth Advocate would not have occurred.

The account of the events that have transpired illustrates a complete failure by the Speaker, his senior management staff, and the Public Service Commission, throughout the entire 2008 year and up to and including my August 20, 2009 suspension by Cabinet, to adhere to basic human resources management principles. It recounts a series of actions by the Speaker and his staff, as well as the Public Service Commission, to circumvent the procedural safeguards contained within Government Policy to promote the bringing forward of legitimate complaints and to discourage malicious and unfounded accusations. Further details are contained in Table 4, Rights and Protections – Failure to Follow the Process, at page 12.

The failure of senior management at the House of Assembly to adhere to the procedural safeguards contained in Government Policy has continued. My executive secretary, Ms. Shirley Prior, was examined under subpoena on two separate occasions by Mr. Noseworthy during his conduct of the whistleblower investigation of me. At his request, she provided written documentation refuting the allegations against me contained in the disclosure.

Unfortunately, on reporting for work on the morning following my suspension, Ms. Prior was evicted from the Office of the Child and Youth Advocate by Ms. Mitchell Cooney, Manager of Human Resources of the House of Assembly, and Ms. Marlene Lambe, Chief Financial Officer of the House of Assembly. She was told she "should go home as it is no secret that you are close to Darlene and, because you are close to Darlene, you make other staff uncomfortable". Thereupon Mr. John Rorke, Interim Advocate, directed Ms. Lambe and Ms. Mitchell Cooney to "reassure her that she has done nothing wrong, she isn't being fired, and that something will be found for her". The manner in which she was "evicted" from the Office of the Child and Youth Advocate, in a distraught state with over one hour's drive on the highway to reach her home in Conception Harbour violated basic human resources policy. I am deeply concerned that the treatment she has received regarding her continued employment within the OCYA is a reprisal for having contradicted statements of some OCYA staff.

The actions of the Speaker and those acting on his direction have undermined my authority and impeded my ability to advance the mandate of the Office of the Child and Youth Advocate. The actions of the Speaker and the Clerk of the House of Assembly, Mr. William MacKenzie, in relation to my conduct of the Labrador Investigation, evidence blatant interference in the independence of the OCYA. An account of the events leading up to my initiation of the Labrador Investigation on August 3, 2009 and up to and including the date of my suspension on August 20, 2009 is set out in Table 5, Labrador Investigation, at page 16.

Blatant disregard for Government policy and its procedural safeguards, the inappropriate utilization of the whistleblower legislation, and the Speaker's letter to Cabinet containing misleading and erroneous information, later repeated by Minister Kennedy in the media and in the Special Sitting of the House of Assembly, could hardly fail to achieve any outcome other than a loss of public confidence in the Office of the Child and Youth Advocate and significant damage to my reputation.

Any remedial action undertaken by Government to address the unfortunate environment that has been created within the OCYA, the loss of public confidence in the OCYA, and the damage to my reputation must be subject to public scrutiny. In light of the events that have transpired, only a transparent process is appropriate.

TABLE 1

ACHIEVEMENTS OF THE OFFICE OF THE CHILD AND YOUTH ADVOCATE

Facts Regarding Productivity of the OCYA

- Four Annual Reports filed since Advocate's appointment August 2005; all were tabled in the House of Assembly; and all reported progress on systemic advocacy files;
- Annual report filed for Fiscal Year Ending March 31, 2008 achieved all goals contained in the Business Plan; also reported progress on systemic advocacy advice to Government;
- **Annual report for Fiscal Year Ending March 31, 2009**, due to be tabled in the House of Assembly on September 30, 2009: (1) all goals contained in the Business Plan achieved; (2) staff responded to 490 new individual advocacy referrals and closed 354 files as the work was completed; (3) staff conducted advocacy clinics throughout the Province and provided public education, including school presentations; (4) three letters containing recommendations regarding systemic advocacy issues were provided to Government; (5) work on the Review of the Transitioning of Children and Youth in Care was completed by staff within the Fiscal Year – the Report required substantial revision by the Advocate. Recommendations were provided to Government and each Regional Integrated Health Authority on March 30, 2009, and the report ***Lost in Transition: A Review of the Transitioning of Children of Youth in Care*** was publicly released on June 2, 2009;
- Review of Pouch Cove Case was delayed for 1 year because of the refusal of staff at Eastern Health to voluntarily participate in interviews. The Advocate met with Cabinet about this issue in March 2008, and the *Child and Youth Advocate Act* was amended to include subpoena power effective June 4, 2008. All examination of witnesses were completed during the 2008-09 Fiscal Year, and the Advocate was in the process of finalizing the Report to be delivered to Government on September 30, 2009 when she was suspended by Cabinet;
- Review of the Clarke's Beach Case was also delayed pending amendment of legislation to grant subpoena power. Extensive review and analysis of documentation undertaken during the summer and fall of 2008;
- Investigation of inpatient psychiatric services delivered to children and youth at the Janeway Hospital initiated December 15, 2008. It was anticipated that a total of 62 witnesses would be examined under subpoena, and 30 patients, parents and family members would participate in interviews without being subpoenaed. To date, 38 witnesses have been examined under subpoena by the Advocate, and 18 patients, parents and family members have been interviewed by the Advocate and one Consultant at the OCYA, Gander and Conception Bay North. The medical charts of 61 patients were reviewed, and analysis is underway by the Director and both Consultants. Examination of witnesses were slated for completion in the fall of 2009, with submission of the Report to Government and Eastern Health by March 31, 2010;
- On August 14, 2009, the Advocate provided a written submission containing recommendations to the Department of Education regarding its Draft Inclusive Education Policy. Work on this systemic file was completed by the Director and one Consultant;
- Frontline advocates continued to provide public education, including school presentations,

to respond to individual advocacy referrals, and to conduct advocacy clinics throughout the Province during the spring and summer of 2009;

- The Labrador Investigation was initiated on August 3, 2009.

Commentary: Allegations of the Speaker contained in his letter to Cabinet that important advocacy reviews were not being completed and systemic advocacy advice was not being provided to Government are false.

It is the prerogative of the Advocate to determine the priority of OCYA reviews and investigations. The Advocate made a conscious decision to pursue first those investigations where resource constraints impacting the system were a significant piece of the problem (Transitioning Review and Janeway Investigation). The factual circumstances of the Pouch Cove and Clarke's Beach cases were not related to resource constraints, and, therefore, advice to Government regarding remedial action was not as time sensitive. However, there were lessons to be learned regarding necessary policy and practice revisions, and those Reviews were scheduled.

TABLE 2
PERSONNEL MANAGEMENT

Facts Regarding Human Resources Management Practices at OCYA

- OCYA staff enjoy flexible work arrangements. All but two staff have chosen to work either a flex schedule or a compressed schedule;
- Requests from OCYA staff to work from home when personal circumstances require it have been accommodated;
- All leave requests by OCYA staff have been approved by the Advocate since her appointment on August 1, 2005, including vacation, paternity leave, and requests for leave without pay when staff did not wish to exhaust annual leave. This year, to date, all staff other than the executive secretary have taken their vacation;
- OCYA staff are rarely required to work overtime. The front-line staff occasionally work overtime when conducting advocacy clinics throughout the Province or when required to meet with youth groups during the evening. Overtime is compensated on a leave in lieu basis at a time and one-half rate, in accordance with Government policy;
- Professional development is encouraged by the Advocate. Funding and leave to attend workshops and conferences have routinely been provided;
- Supportive practices which exist within the OCYA include peer consultation, individual supervision, staff meetings, attendance at respectful workplace seminars offered by House of Assembly, attendance at a full-day stress management workshop, and encouragement to avail of the Employee Assistance Program as and when required;
- Communication between all OCYA staff, including the Advocate, is very informal. Casual conversations regularly occur throughout the day in the kitchen, in the reception area, and in staff offices. Staff regularly share personal pictures via email of children, grandchildren, spouses, pets, new homes and vacations;
- OCYA staff have a tradition of celebrating birthdays and other special events with coffee and cake. In an office of ten, rarely a month passes without such a celebration. Other events which have been celebrated include Valentine's Day, Administrative Professional's Day, St. Patrick's Day, the annual Christmas tree trimming party, and Christmas lunch at a local restaurant followed by a gift exchange at the OCYA.

Commentary: Allegations of the Speaker contained in his letter to Cabinet that OCYA staff are "demoralized" by the Advocate's human resources management practices are false. OCYA staff enjoy flexible work arrangements in an informal atmosphere. OCYA staff regularly avail of professional development opportunities and continue to engage in social interactions and celebrations. Such behaviour is hardly indicative of "demoralized employees". The pattern of absenteeism usually associated with "demoralized employees" does not exist within the OCYA.

TABLE 3
STAFF COMPLAINTS
RESULTING IN TWO WHISTLEBOWER INVESTIGATIONS

The Advocate was not made aware of the exact nature of the staff complaints against her that led to the initiation of not one, but two, whistleblower investigations until the complaints were revealed in disclosure provided to the Advocate in July 2009.

Facts Regarding Staff Complaints

- **OCYA staff did not approve of the considerable time and effort expended by the Advocate in acquiring subpoena power for the OCYA.** The refusal by staff at Eastern Health to voluntarily participate in interviews in ongoing OCYA investigations required subpoena power in order for those investigations to continue.
- **Staff did not approve of the system of inventory control that the Advocate had instituted.** OCYA staff were upset that the Advocate instituted a system of inventory control within the OCYA as none had previously existed. While this was not a popular move among staff used to doing things differently, it was necessary to account for the expenditure of public monies.
- **Staff characterized the Advocate's requests that typing errors be corrected as rage.** OCYA administrative staff were upset about the Advocate's requests to correct typing errors. On more than one occasion the administrative staff told the Advocate that she was "too picky". The specific example provided in the whistleblower disclosure related to the Advocate's request that the Administrative Assistant retype the correct date on certificates of appreciation for children who participated in the OCYA calendar project. Contrary to the complaint that the Advocate reacted with rage, the Administrative Assistant sent an email to the Advocate stating that she admired the Advocate for personally signing all of the certificates and ended her email with a happy face ☺. *No description of the alleged rage was contained in the complaint, as there was none. The Advocate has never reacted with rage towards any employee within the OCYA.*
- **Staff did not approve of the work priorities set by the Advocate, in particular the Advocate's direction to respond to referrals from politicians or the media.** OCYA staff did not approve of the Advocate's direction concerning the appropriate response to certain referrals received from politicians and the media. Some staff in the OCYA resent responding to any referrals that are made by politicians or the media, regardless of the merit or the urgency of the referral. The Advocate was very aware of staff sentiment. In response to a referral from the Premier's Office, one staff member went so far as to say, "Danny Williams should have to take a number and stand in line with everybody else."
- **Staff were upset that new direction became necessary during investigations.** The Director of Advocacy Services and both Consultants experience difficulty adapting to changes in direction which commonly arise, given the fluid nature of reviews and investigations. The Advocate implemented bi-weekly team meetings in the Janeway

Investigation to address this matter. The Director, Ms. Roxanne Pottle, in particular, was upset with the Advocate's direction in the Transitioning Review when an originally agreed upon deadline for completion of the Review had to be extended. In this particular case, the Advocate would not accept the Director's suggestion that, to meet her original deadline, the Director would limit the number of interviews of youth in care to four youth for the entire Province.

- **Staff claimed they had performed large amounts of work on files which "languished" in the Advocate's office.** No work completed by OCYA staff "languished" in the Advocate's office. Only the Director and two Consultants submit work to the Advocate for review. During the 2008-09 Fiscal Year, the Director and Consultants were involved on an almost full-time basis in the Transitioning Review and, beginning in December 2008, in the Janeway Investigation. The draft Report of the Transitioning Review submitted by staff to the Advocate on March 17, 2009 required substantial revision by the Advocate. Recommendations were provided to Government and each Regional Integrated Health Authority on March 30, 2009, and *Lost in Transition: A Review of the Transitioning of Children and Youth In Care* was publicly released on June 2, 2009. The Janeway Investigation was still underway at the time of the Advocate's suspension. In addition to their work on these two Reviews and Investigations, the Director and Consultants completed work on three systemic files. The Advocate completed additional work on these three files prior to forwarding letters containing recommendations to Government in March 2009. The Advocate was surprised, therefore, to in July 2009 learn that the staff expectation was that they should decide when and how recommendations are submitted to Government.
- **Staff claimed that a culture of fear existed within the OCYA due to the fear that staff could be summarily fired (based upon the transfer of two senior OCYA staff due to conflict of interest in the winter of 2006 to positions of equivalent remuneration elsewhere in the Public Service), receive a letter of reprimand, or a negative performance appraisal.** The Advocate was astounded to read in the whistleblower disclosure that the staff were working in a culture of fear, terrified that they could be summarily fired, receive a letter of reprimand, or receive a negative performance appraisal. None of that had ever happened. The Advocate has never, in her life, fired anybody.
    1. **Fear of being summarily fired (based upon the transfer of two senior OCYA staff due to conflict of interest in the winter of 2006 to positions of equivalent remuneration elsewhere in the Public Service):** Two senior OCYA staff had been transferred due to conflict of interest in the winter of 2006 to positions of equivalent remuneration elsewhere in the Public Service. Conflict of interest concerns for staff in the OCYA had been identified prior to the current Advocate's appointment. Ms. Pottle and Ms. Holden were the only staff members who were employed in the OCYA at the time these staff were transferred. If staff do have a fear of being summarily fired, that fear can only have been instilled in them by Ms. Pottle and Ms. Holden. This would be particularly troubling in Ms. Pottle's case, as she has received two promotions during the Advocate's tenure.

2. **Fear of receiving a letter of reprimand:** The Advocate has not given anyone a letter of reprimand. The letter given to Ms. Holden, copied to Ms. Pottle as her supervisor, while critical of her work performance and attitude, was not an official letter of reprimand and consequently was never placed in her personnel file at the House of Assembly. The Advocate certainly did not inform other staff that Ms. Holden had received a letter. If staff have a fear of receiving a letter of reprimand, that fear can only have been instilled in them by Ms. Pottle or Ms. Holden.
3. **Fear of receiving a negative performance appraisal.** Performance appraisals have never been conducted within the OCYA, and therefore no one has ever received a negative one. Staff were aware that the House of Assembly was in the process of developing a system for performance appraisals, and that it would eventually be a requirement that performance appraisals be conducted. **Given that eight of the nine staff within the OCYA report directly to Ms. Pottle, she would be responsible for preparing their performance appraisals.** This fear, therefore, cannot rationally be attributed to the Advocate.

Commentary: These complaints by OCYA staff formed the basis for not one, but two whistleblower investigations of the Advocate. It is truly shocking that such complaints were deemed appropriate for investigation of "wrongdoing" under the whistleblower legislation. The dangerous precedent which has now been set will have far-reaching consequences for every department across Government. **Nowhere else within Government are staff permitted and encouraged to challenge the authority of a Deputy Minister (or equivalent) to direct investigations, decide when recommendations arising from work completed by staff are to be advanced, or the amount of time to be devoted to an issue of critical importance.** Nowhere else within Government are staff permitted and encouraged to make a formal complaint because they were simply asked to do their jobs.

TABLE 4
RIGHTS AND PROTECTIONS – FAILURE TO FOLLOW THE PROCESS

The Harassment and Discrimination Free Workplace Policy (the "Policy")

- The Policy requires that an Official Complaint precede an investigation by the Public Service Commission. This requirement is a procedural safeguard and, as such, constitutes one of a number of checks and balances put in place to ensure adherence to the principles of procedural fairness and natural justice;
- The purpose in the requirement that an Official Complaint must first be made in order for an investigation to proceed is reflected in the corresponding rights and responsibilities of the complainant and respondent during an investigation. These rights and responsibilities are clearly set out in the Policy;
- The existence of corresponding rights and responsibilities serves to promote the bringing forward of legitimate complaints and to discourage "malicious, false or willfully damaging accusations";
- A complainant has a number of responsibilities which include the responsibility to express the complaint honestly and accurately, and to make their disapproval or unease known to the respondent within a reasonable period of time;
- These corresponding rights and responsibilities, therefore, are meant to provide protection both to the complainant and to the respondent. They are intended to prevent a situation where an individual is given the opportunity to make anonymous and malicious accusations with no regard to the rights of the respondent to be treated fairly and fully informed of the accusations;
- The Policy provides protection to a complainant from reprisals which could result from the requirement to make an Official Complaint;
- The Policy provides protection to a respondent from anonymous and malicious accusations by its requirement that an Official Complaint must be made before an investigation is undertaken.

Human Resources Management Principles

- Require that a person be informed at the earliest opportunity that a complaint has been made against them so that the person may respond and the complaint can be appropriately addressed;
- Require that due diligence be undertaken to investigate the validity of the complaint before any further action is taken regarding the complaint;
- Require that particular caution be exercised in cases where the complaint immediately follows criticism of an employee's work performance. In particular, a determination whether the criticism of that employee's work performance was warranted should be made prior to any further action being taken.

The Facts

- Senior management staff at the House of Assembly failed to adhere to basic human resources management principles. They failed to engage in due diligence when Ms. Roxanne Pottle, Director of Advocacy Services, first complained in February 2008 on behalf of Ms. Lorraine Holden, then Administrative Officer within the OCYA, about a letter critical of Ms. Holden's work performance (related to her preparation of budget estimates) provided to her by the Advocate;
- Had senior management at the House of Assembly engaged in a minimum of due diligence, it would have been discovered that the Advocate's letter to Ms. Holden was a legitimate criticism of her work performance, and a proper exercise of the authority of the Child and Youth Advocate;
- Had Ms. Marlene Lambe, Chief Financial Officer of the House of Assembly, done more than merely examine the final budget estimates when it was determined that, on the basis of the quality of what was submitted, the letter to Ms. Holden was not warranted, it would have been discovered that it was the Advocate, not Ms. Holden, who had prepared the final budget estimates and that the Advocate had done so with the assistance of Ms. Lambe's own staff at the House of Assembly;
- Had Ms. Sandra Mitchell Cooney, the former Manager, Human Resources and Administration within the OCYA and then Manager of Human Resources at the House of Assembly, provided the crucial information that she had personally verbally reprimanded Ms. Holden when she had directly supervised Ms. Holden at the OCYA for issues related to her work performance and attitude, it would have been discovered that Ms. Holden had a previous history of work performance issues and the matter would have been put to rest in February 2008;
- Senior management at the House of Assembly skipped this critical first step of due diligence and immediately contacted Ms. Cathy Murphy of the Respectful Workplace Program at the Public Service Commission to assist in handling this matter;
- What followed was one full year of Ms. Pottle and Ms. Holden complaining about the Advocate to senior management at the House of Assembly and the Public Service Commission. During this entire time, no one saw fit to tell the Advocate that accusations had been made against her. Ms. Pottle and Ms. Holden, on the other hand, enjoyed one full year of protection and unconditional support from the House of Assembly and the Public Service Commission without ever being required to file an Official Complaint, **and without ever having the legitimacy of their accusations determined;**
- The Policy requirement for a complainant to make their disapproval or unease known to the person they are complaining about within a reasonable period of time was not applied to Ms. Pottle and Ms. Holden;
- The Advocate was denied her rights under the Policy to be treated fairly, to be fully informed of the accusations, and to protection from anonymous and malicious accusations;
- Ms. Murphy advised the Speaker in February 2009 that there was potential liability if he did not take action to respond to the concerns that had been brought forward by

Ms. Pottle and Ms. Holden one full year earlier in February 2008. Ms. Murphy recommended to the Speaker that an intervention (workplace assessment) should occur in the OCYA. Ms. Murphy advised the Speaker that he should tell the Advocate he had heard "stories" rather than reveal that Ms. Pottle and Ms. Holden had been complaining about her for one full year, but were still unwilling to make an Official Complaint, and that senior House of Assembly management had in turn accepted the one-sided version of the complaints without confirming the legitimacy of the complaints;

- The Speaker summoned the Advocate to a meeting on February 10, 2009 where, in the presence of Ms. Murphy, he told her that he had heard "stories", had heard them before but had brushed them off, that people in her office were unhappy, did not feel respected, were looking for other jobs, and there was concern that she micromanaged. He refused to identify the source of the stories or provide specific details to the Advocate, though he did acknowledge that there was no Official Complaint;
- The Advocate was blindsided by the Speaker's revelations, and though she had initially agreed to the intervention, she reconsidered, having taken time overnight to consider the impact the Speaker's acting on "stories" and innuendo would have on OCYA investigations, particularly the recently initiated Janeway Investigation. She telephoned the Speaker and informed him that she was not prepared to participate in an intervention based on his having heard "stories";
- The Advocate reminded the Speaker that OCYA investigations had been effectively shut down by the refusal of staff at Eastern Health to participate in interviews, and that the Government had to amend the legislation to grant subpoena power in order for those investigations to proceed. The Advocate told the Speaker that she believed the "stories" were, once again, outside efforts to prevent OCYA investigations underway, in particular the Janeway Investigation, from proceeding. She informed the Speaker of her concern that his insistence that an intervention in the OCYA occur on the basis of "stories" and innuendo (that he had initially ignored) constituted interference in the independence of her Office. The Speaker refused to provide specific details regarding the "stories", despite the effect this had on the Advocate and the concern she had expressed about her ongoing OCYA investigations. Had the Speaker simply told the Advocate the truth, it would have alleviated her concern about possible efforts to stymie OCYA investigations;
- In an effort to clearly communicate her concern, the Advocate told the Speaker that if the Speaker could insist on an intervention in the independent Office of the Child and Youth Advocate on the basis of "stories" and innuendo, it would send the clear message that if anyone did not want an investigation by the OCYA to proceed, all they would have to do is "whisper a story in the Speaker's ear";
- The Speaker then threatened the Advocate that if she did not agree to an intervention, he would order an investigation by the Public Service Commission, despite there being no authority for him to do so, as no Official Complaint existed;
- It was the fear of liability previously instilled in him by Ms. Murphy that motivated the Speaker to circumvent the Policy and proceed to then instigate an investigation of the OCYA without the required Official Complaint;

- By proceeding with an investigation without an Official Complaint as required by the Policy, the Speaker sent the message to OCYA staff that he was not bound by the Policy, and he could do whatever he wanted without any regard for the Policy. The Speaker's cavalier disregard for the Policy's procedural safeguards also sent the message to OCYA staff that he had no regard for the Advocate;
- By initiating an investigation of the OCYA without an Official Complaint, the Speaker ensured that Ms. Pottle and Ms. Holden would not have to make an Official Complaint, thereby ensuring that the legitimacy of their accusations would never be subject to scrutiny and the Advocate would not be aware that they had been complaining about her for one full year;
- The most significant message the Speaker's actions sent to OCYA staff was that it was Ms. Pottle, Director of Advocacy Services, the most senior staff member within the OCYA, who had his full support, and not the Advocate. The impact of this message on OCYA staff was profound. From that point on, OCYA staff were fully aware that Ms. Pottle enjoyed the full support of both the Speaker and the senior management of the House of Assembly, whereas the Advocate did not. Ms. Pottle had been able to get the Speaker to instigate an investigation for her without her ever having to make an Official Complaint, despite the Policy requirement that she do so;

- **This support enabled Ms. Pottle to openly undermine and discredit the Advocate within the OCYA with the implicit backing of the full authority conferred on her by the Speaker;**
- Armed with that authority, Ms. Pottle was able to undermine the Advocate's efforts to direct the operations of the OCYA and to poison the OCYA work environment.

Commentary: The Policy requirement that an Official Complaint precede an investigation by the Public Service Commission exists for good reason. **It is designed to prevent the situation which occurred in this case where Ms. Pottle and Ms. Holden were given the opportunity to make anonymous and baseless accusations for over one full year about the Advocate with no regard to the rights of the Advocate to be treated fairly and fully informed of their accusations.** It was the Speaker's actions, as well as those of his staff and the Public Service Commission, in circumventing the Policy, that allowed this to occur. Had senior management at the House of Assembly engaged in even a minimum of due diligence, it would have been determined in February 2008 that the accusations of Ms. Pottle and Ms. Holden were false, and that the criticism of Ms. Holden's work performance was warranted. Ms. Pottle and Ms. Holden would not then have been provided one full year of protection and unconditional support by senior management at the House of Assembly and the Public Service Commission which enabled them to continue to make anonymous and baseless accusations against the Advocate without ever being required to make an Official Complaint. **Although the Speaker, his staff, and the Public Service Commission demonstrated throughout this entire process a blatant disregard for the procedural safeguards contained within the Policy, it is the willingness of these parties to engage in other than forthright behaviour since then, in an attempt to avoid responsibility for their actions, that is truly shocking.**

TABLE 5
LABRADOR INVESTIGATION

Facts Regarding Labrador Investigation

- Referral received by OCYA in January 2009 from a concerned citizen in Labrador regarding the child protection services provided to a 13 year old boy who later died as a result of a fire in Happy Valley-Goose Bay in June 2008. Front-line advocacy staff, acting on the direction of Ms. Roxanne Pottle, Director of Advocacy Services, took no action in response to the referral. The Advocate was not informed the referral had been received;
- In June 2009, the Advocate was made aware of this referral by Ms. Yvonne Jones, Leader of the Official Opposition;
- Advocate then conducted a search of the OCYA file data base, but it contained no record of this referral; however, the Advocate was later informed by a front-line staff member that he had received the referral in January 2009 and sought the advice and direction of Ms. Pottle, who had instructed him to take no action on the referral. The front-line staff member informed the Advocate he had never been comfortable with Ms. Pottle's direction to take no action in response to such a serious referral;
- Over the course of the next six weeks, the Advocate: held a meeting with Ms. Pottle and the front-line staff member involved in the initial referral; held a staff meeting with all OCYA staff to apprise them of the situation regarding the Labrador referral and reinforce for them the appropriate response to referrals; sent emails to all staff to further reinforce for them the appropriate response to referrals; and reviewed a considerable amount of documentation she had requested and received from Child, Youth and Family Services in Labrador;
- Ms. Pottle continued throughout this time to undermine the Advocate's efforts to educate staff as to the appropriate response to referrals received by the OCYA. Such efforts by the Advocate referenced the Turner case. Ms. Pottle continued to advise staff that the Turner case was not applicable to the Labrador referral. Ms. Pottle's continued strong opposition to the Labrador Investigation was disturbing;
- Following review of documentation received from Child, Youth and Family Services in Labrador, the Advocate determined an investigation by the OCYA is required and notified staff of her decision;
- On 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 CEO, Labrador-Grenfell Regional Integrated Health Authority and to the Deputy Ministers of Child, Youth and Family Services and Health and Community Services;
- On August 7, 2009, the Advocate wrote the Clerk of the House of Assembly, Mr. William MacKenzie, in his capacity as Chief Financial and Administrative Officer for the House of Assembly, and requested assistance with the conduct of the Labrador Investigation;
- On August 7, 2009, consistent with OCYA established practice, the Advocate, in a press

release, announced the Investigation and disclosed the conflict of interest;

- Between August 7th and August 17th, the Advocate and the Clerk exchanged correspondence regarding the Advocate's request that Ms. Pottle be transferred out of the OCYA to address the conflict of interest situation within the OCYA that prevented the OCYA from conducting the Labrador Investigation in-house. The conflict of interest had arisen as a result of Ms. Pottle's involvement and misdirection to front-line staff in the initial referral, and her continued refusal to support the need for the investigation. The Advocate had determined that if Ms. Pottle remained within the Office, the Labrador Investigation would have to be referred to an external consultant as in the case of the Turner Review and Investigation;
- In the meantime, the Speaker, Mr. Roger Fitzgerald, misinformed the public during a televised interview that the nature of the assistance requested by the Advocate to conduct the Labrador Investigation was additional funding. No such request for funding was made by the Advocate;
- The Clerk's August 17th correspondence made clear to the Advocate that he was not willing to provide the assistance she had requested. The Clerk informed the Advocate he was not prepared to transfer Ms. Pottle and challenged the basis for the Advocate's determination that a credible investigation could not be conducted in-house by the OCYA if Ms. Pottle remained in the Office. The Clerk made a conditional offer of assistance to the Advocate that he would transfer Ms. Pottle only if she "voluntarily agreed" to transfer out of the OCYA;
- The Advocate pursued the Clerk's conditional offer of assistance and wrote Ms. Pottle asking if she would volunteer to be transferred. Ms. Pottle had previously offered to resign over her misdirection to front-line staff in this matter during a July 22, 2009 staff meeting. The Advocate believed that a transfer would certainly be more desirable to Ms. Pottle than her original offer of resignation. Ms. Pottle did not respond to the Advocate's request;
- **Between August 7th and August 17th, the Advocate's efforts focused on preserving the integrity of the Labrador Investigation**; the Clerk's efforts, supported by the Speaker, focused on preserving Ms. Pottle's continued employment within the OCYA;
- The Advocate was suspended on August 20, 2009. At that time, the Advocate had sole carriage of the Labrador Investigation and was prepared to engage the services of an external consultant to conduct the Investigation should Ms. Pottle not be transferred out of the OCYA, thereby permitting a credible Investigation to be conducted in-house by the OCYA.

Commentary: The Clerk's challenge to the Child and Youth Advocate's authority to make decisions related to an ongoing investigation, which includes the determination of the existence and impact of conflict of interest on the ability of the OCYA to conduct the investigation in-house, **constituted interference in the independence of that Office. Such interference in the independent Office of the Child and Youth Advocate is prohibited by Section 31 of the *Child and Youth Advocate Act*.** The Speaker, in his letter to Cabinet, saw fit to repeat the Clerk's view with respect to the Advocate's decision regarding the impact of the conflict of interest on the ability of the OCYA to conduct a credible investigation of the child

protection services provided to the children in Labrador. In doing so, the Speaker continued his unfortunate pattern of behaviour towards the Advocate in terms of: (a) rushing to judgment without ensuring that he fully understood both sides of an issue; and (b) refusing to afford all parties equal opportunity to respond to disagreements that arise in the course of the performance of their duties.

How the Existence of a Problem First Came to My Attention and My Reaction to It

What follows is an account of the events that have transpired since my February 10, 2009 meeting with Mr. Roger Fitzgerald, Speaker of the House of Assembly. It was at this meeting that Mr. Fitzgerald advised me that he had determined that an intervention (workplace assessment) of the Office of the Child and Youth Advocate (OCYA) was required.

Following that initial meeting with the Speaker, I contacted the Premier's Office and spoke with Mr. Brian Crawley. I requested an opportunity to speak with the Premier regarding my concerns that the Speaker was interfering in the independence of my Office. I explained to Mr. Crawley that the Speaker had summoned me to a meeting where, in the presence of Ms. Cathy Murphy of the Respectful Workplace Program, Public Service Commission, he proceeded to tell me that he had heard "stories" that people in my Office were unhappy, did not feel respected, were looking for other jobs, and there was concern that I micromanage. I told Mr. Crawley that Mr. Fitzgerald had refused to identify the source of the "stories" or provide specific details, but had said that when he first heard the stories he had brushed them off. I informed Mr. Crawley that the Speaker had also told me there was no official complaint, but he had determined that an intervention (workplace assessment) was necessary.

I informed Mr. Crawley I was so taken back, in fact blind-sided, by the Speaker's revelations that I had initially agreed to a workplace assessment, but had reconsidered, having taken time overnight to consider the significance of the Speaker's actions and the impact on the conduct of investigations underway by my Office, particularly the recently initiated Janeway Investigation. I informed Mr. Crawley I had contacted Mr. Fitzgerald the following morning by telephone and advised him I was not willing to participate in an intervention that he had determined was necessary based on "stories" that he had initially ignored.

I also told Mr. Crawley that I had reminded the Speaker that OCYA investigations had previously been shut down by staff of Eastern Health who had refused to participate in interviews related to OCYA investigations, and that the Government had had to amend the legislation to provide subpoena power so that those investigations could proceed. I informed Mr. Crawley that, despite having shared those concerns with Mr. Fitzgerald, the Speaker would still not reveal the source of the stories, and that he had in fact threatened me during this telephone call by saying that if I did not voluntarily participate in an intervention he would order an investigation, despite his having no such authority as no official complaint existed.

Mr. Crawley later informed me he had relayed to the Premier the information I had provided as well as my request to speak with him regarding the situation with the Speaker. He said the Premier had asked him to advise me it would not be appropriate for the Premier to get involved, and that I should work it out with the House of Assembly.

Minister Jerome Kennedy, Q.C., in announcing my suspension during an August 21, 2009 press conference, stated:

The issues of harassment, the respectful workplace issues, the allegations of conflict of interest against the Citizens' Representative, the numerous court actions, and I will say that, yeah, the issuance of that news release last week was certainly a factor.

From the time the Speaker summoned me to his Office in February 2009, the normal avenues of support and assistance previously provided to me by the Premier and Cabinet, the Speaker's Office, and the Public Service Commission have clearly not been available. Premier Williams would not take my call. The Speaker's actions eliminated him as a possible source of support. The Public Service Commission's involvement and acceptance of the Speaker's request for an investigation of me, absent an official complaint, excluded them as well.

Initially, I believed it possible that the "stories" referenced by the Speaker were an attempt to prevent the Janeway Investigation from proceeding, given my past experience with Eastern Health when staff refused to voluntarily participate in interviews for OCYA investigations. That refusal effectively shut down those investigations for a year until subpoena power was granted. Consequently, in my official complaint of harassment against the Speaker I complained about Mr. Fitzgerald having acting on "stories and innuendo." The Speaker was well aware of my concerns, but remained silent about the true background of the matter.

Only much later did I learn that the Speaker had in fact not acted on the basis of "stories." Rather, Ms. Roxanne Pottle, Director of Advocacy Services, had initially in early 2008 complained to House of Assembly senior management about a letter I had provided to Ms. Lorraine Holden, former OCYA Administrative Officer. Ms. Pottle's complaint occurred more than a year before Mr. Fitzgerald spoke to me about his having heard "stories." Although both Ms. Pottle and Ms. Holden apparently complained about me for over a year to House of Assembly senior management and to staff at the Public Service Commission, they had been unwilling to make an official complaint. During that entire year no one had seen fit to speak to me about those complaints.

As the Child and Youth Advocate, I was under a duty to protect the integrity of the investigations underway by my Office. Therefore, I was required to take action with respect to what I perceived to be interference in the independence of my Office. Section 31 of the *Child and Youth Advocate Act* provides a penalty for interference in the Office of the Child and Youth Advocate. Before making my official complaint of harassment against the Speaker, which was based on his actions having undermined my ability to do my job, I reviewed carefully the events that had transpired, the *Child and Youth Advocate Act*, and the Harassment and Discrimination Free Workplace Policy. Having thought long and hard, I determined that two options were available. The first was to bring a complaint against the Speaker under the Harassment and Discrimination Free Workplace Policy. The second was to publicly politicize the issue. I chose the first option as I believed it had the greatest potential to result in a positive resolution of the issues as it would be dealt with appropriately and privately by the Management Commission.

Explanation of my initiation of the court action involving Mr. Barry Fleming, Q.C., Citizens' Representative requires an understanding of the events that lead up to that decision. I should here state that, up to the time of my suspension on August 20, 2009, there was only one

Application before the Supreme Court, not "numerous Court actions" as Minister Jerome Kennedy has publicly stated.

Following receipt of my complaint of harassment against the Speaker, the Clerk of the House of Assembly, Mr. William MacKenzie, referred the matter to the Public Service Commission for investigation. The Public Service Commission subsequently declined to accept this referral due to the potential conflict of interest as it had in the meantime agreed to Mr. Fitzgerald's request to conduct an investigation of my Office.

At some point following Mr. MacKenzie's receipt from the Public Service Commission of correspondence declining to investigate my harassment complaint, the Speaker took control of my complaint against him. He asked Mr. Fleming to investigate him under the "whistleblower" legislation. Mr. Fleming had conducted in-services with all the House statutory offices during the fall of 2008 related to his new duties under that legislation. He had specifically informed me and my staff that these sorts of issues were not covered under whistleblower legislation. I was, therefore, quite surprised when Mr. Fleming agreed to the Speaker's request that my complaint of harassment against him be investigated under the whistleblower legislation. It was also disconcerting that an apparent absence of procedural safeguards would allow the Speaker to hijack the investigation of my harassment complaint against him.

It was difficult for me to understand why Mr. Fleming had agreed to the Speaker's request, given my previous close personal friendship with him and his wife, Ms. Beverley Clarke. In addition, it was already known that Ms. Clarke would be subpoenaed in the OCYA Investigation of the Janeway Hospital in her capacity as the senior management official who oversaw the delivery of the inpatient psychiatric services at the Janeway. Furthermore, the Speaker had only recently been named as a Respondent in a court action brought by a private citizen who asserted that Mr. Fleming, in his capacity as Citizens' Representative, had acted in a conflict of interest with respect to an investigation of mental health services delivered by Eastern Health, a conflict allegation that involved Mr. Fleming's wife. I was shocked that the Speaker would ask Mr. Fleming to conduct an investigation of a complaint against him in light of this ongoing court action involving both the Speaker and Mr. Fleming.

Despite these serious concerns, I attempted to resolve the issue privately through the Management Commission by writing them and outlined my concerns. I specifically requested that an external consultant be retained to investigate my complaint of harassment against the Speaker under the Harassment and Discrimination Free Workplace Policy. I heard nothing from the Management Commission.

Faced with the Management Commission's failure to respond to the concerns I had brought to their attention, and given both the urgency of the situation [Mr. Fleming having already started his investigation] and the serious ramifications associated with this inappropriate utilization of the whistleblower legislation, I was forced to retain legal counsel. I contacted Mr. Bernard Coffey, Q.C., who wrote the Management Commission giving notice that an application would be made to the Supreme Court unless the Commission complied with its duty to retain an

independent external consultant to conduct an appropriate investigation of my complaint under the Harassment and Discrimination Free Workplace Policy. Legal counsel for the Management Commission subsequently advised Mr. Coffey that an external consultant would be retained to conduct an investigation of my harassment complaint against the Speaker pursuant to the Policy.

Mr. Wayne Thistle of the Centre for Innovative Dispute Resolution was retained. He completed a report of his investigation of my complaint of harassment against the Speaker. In his June 4, 2009 report, Mr. Thistle stated: "clearly I have authority only to deal with matters which occurred between the Complainant and the Respondent leading to the filing of the complaint." The actions of the Speaker in having hijacked my complaint and engaged the Citizens' Representative, whom he knew to be in a conflict of interest with respect to the ongoing court action involving him and the Citizens' Representative, were not investigated by Mr. Thistle, and were therefore not considered in his determination that no harassment occurred.

At no point did Mr. Thistle apprise me or my legal counsel that he was constrained in his investigation, and would therefore not be conducting a full and complete investigation. In June 2009 my counsel wrote the Management Commission to ask that they consider the fact Mr. Thistle did not thoroughly investigate my complaint. To date, the Management Commission has not responded to that correspondence. I have attached copies of my counsel's written submission to Mr. Thistle and the letter sent by my counsel to the Management Commission.

On the occasion of his "exoneration" by Mr. Thistle, Mr. Fitzgerald issued a press release on the Government website indicating how copies of the full report could be obtained. He also made statements in the media that I was "frivolous" in bringing this harassment complaint against him. He did so despite his knowledge that his own actions had necessitated my bringing the complaint in the first place. Mr. Fitzgerald's public statements, absent any acknowledgement that Mr. Thistle had been constrained by Ms. Marlene Lambe, the CFO of the House of Assembly, from completing a full and thorough investigation of my complaint, evidence a fundamental lack of understanding of the concept of procedural fairness. Ironically, as the Speaker, Mr. Fitzgerald is the arbiter of procedural fairness within the House of Assembly.

At the same time my counsel first wrote the Management Commission with respect to Mr. Fleming's investigation of my harassment complaint against the Speaker, he also wrote Mr. Fleming and outlined the inappropriateness of Mr. Fleming conducting that investigation. He requested that Mr. Fleming utilize a provision in the whistleblower legislation to discontinue the investigation. Mr. Fleming replied that he was of the opinion that he had the authority to proceed. He then completed his investigation and filed a report.

Mr. Fleming's Report Sheds Some Light on the Matter

Mr. Fleming's report provided the source of the "stories" relayed to the Speaker, information the Speaker had refused to give me. From Mr. Fleming's report I first learned that staff in my Office had been complaining about me to House of Assembly senior management for more

than a year, but had been unwilling to make an official complaint. Mr. Fleming's report also described involvement by the Public Service Commission dating back more than a year. It had been Ms. Cathy Murphy, a staff member from the Public Service Commission's Respectful Workplace Program, who had during a meeting with the Speaker and Ms. Marlene Lambe, the Chief Financial Officer of the House of Assembly, suggested that, given the absence of a formal complaint, the Speaker use the concept of "stories" when meeting with me.

I can appreciate that the Speaker may have been troubled by the fact this matter had been mismanaged for more than a year by both House of Assembly senior management and Public Service Commission staff. However, I cannot understand why he accepted the misguided advice to portray the situation as his having heard "stories." Given that he knew my distress was based on my belief that, once again, efforts were underway to stymie OCYA investigations, I cannot understand why Mr. Fitzgerald didn't simply tell me the truth.

Mr. Fleming's report also contained information about what had prompted a staff member in my Office to complain about me to House of Assembly senior management. Mr. Fleming wrote:

> *The Administrative Officer (since resigned and working elsewhere within the House of Assembly) was upset that she had received a letter of reprimand for unacceptable work in preparing budget estimates.*

In this regard, Mr. Fleming failed to reveal yet another conflict of interest. The person he so described as having received the letter of "reprimand" and now working "elsewhere within the House of Assembly" was in fact Ms. Lorraine Holden, who was by then employed as Mr. Fleming's executive secretary at the Office of the Citizens' Representative.

Mr. Fleming also stated that another staff person within the OCYA had contacted House of Assembly senior management staff with concerns about my letter to Ms. Holden and the general lack of morale within the OCYA. Mr. Fleming's report identified the House senior management as the Clerk, Mr. William MacKenzie, the Manager of Human Resources, Ms. Sandra Mitchell Cooney, and the Chief Financial Officer ("CFO"), Ms. Marlene Lambe. I would only later learn from Mr. Wayne Thistle, during his investigation of my harassment complaint against the Speaker, that Ms. Roxanne Pottle, Director of Advocacy Services, was the OCYA staff person who had initially complained about me, on behalf of Ms. Holden, to House of Assembly senior management more than a full year before Mr. Fitzgerald called me to a meeting and told me he had heard "stories."

Mr. Fleming's report stated that the responsibility for handling the issue regarding Ms. Holden and the general lack of morale within the OCYA was initially assigned to the CFO. He wrote:

> *In a meeting on February 1, 2008, it was decided that the CFO would have responsibility for dealing with this issue. The Manager of Human Resources had previously worked at the OCYA and the Clerk's spouse – while availing of secondments from time to time – was still an employee of the OCYA.*

Mr. Fleming's report also indicated the CFO in February 2008 contacted Ms. Cathy Murphy of the Respectful Workplace Program at the Public Service Commission to assist in handling this matter. Ms. Murphy would be the one who a year later recommended to the Speaker that he use the concept of "stories" when meeting with me because no formal complaint had been lodged. Ms. Murphy would also be the one who later advised the Speaker and the CFO, Ms. Lambe, that there was potential liability if no action was taken to respond to OCYA staff concerns. Ms. Murphy was present during the February 2009 meeting I attended with the Speaker when he told me he had heard "stories." Ms. Murphy was the person the Speaker requested to oversee the intervention (workplace assessment) in the OCYA that he had determined, based upon previous advice from Ms. Murphy, was necessary. It was only from Mr. Fleming's report that I finally learned that the Public Service Commission had in fact initially become involved with OCYA staff in February 2008. That involvement to my knowledge has never ended.

Prior to writing Ms. Holden, I had been very concerned about the deterioration in her work and her general attitude. Ms. Roxanne Pottle had approached me and expressed concern about Ms. Holden as she was experiencing a number of stresses in her personal life. Ms. Pottle discussed Ms. Holden's situation with me, stated her concerns about Ms. Holden, and suggested that she would approach her about seeking assistance from the Employee Assistance Program offered by the Public Service Commission. As I shared Ms. Pottle's concern, I agreed that she should approach Ms. Holden about seeking help. I directed Ms. Pottle to inform Ms. Holden that I was prepared to reassign some of her duties to assist her. Ms. Pottle later informed me that she had spoken with Ms. Holden who said that she was already receiving counselling and medical attention. I was told by Ms. Pottle that Ms. Holden had considered my offer of reassignment of some of her duties, but did not wish to avail of it at that time. At no time did Ms. Pottle inform me that Ms. Holden was upset by my letter. Had either Ms. Holden or Ms. Pottle come to me, I would have addressed any concerns brought to my attention.

I did not consider my letter to Ms. Holden regarding her unsatisfactory work performance and attitude in preparation of the budget estimates to be a formal letter of reprimand. A copy of the letter was therefore not forwarded to the House of Assembly to be placed in her personnel file. The purpose of my letter was two-fold: to bring to Ms. Holden's attention that such unsatisfactory work performance and unacceptable attitude could not continue; and to reassure her I was prepared to assist her by reassigning some of her duties. I felt an obligation to accommodate Ms. Holden's personal issues and to offer the type of assistance I did.

In March 2007, I was informed by the Clerk of the House of Assembly, Mr. William MacKenzie, that the position of Manager, Human Resources and Administration within the OCYA, then occupied by Ms. Sandra Mitchell Cooney, was being moved to the House of Assembly as that position could no longer be justified in an office the size of the OCYA. The position and its incumbent, Ms. Mitchell Cooney, were transferred to the House of Assembly in March 2007. At Mr. MacKenzie's suggestion, and with Ms. Holden's agreement, Ms. Holden was laterally transferred from the position of Administrative Assistant within the OCYA to the newly created

position of Administrative Officer, which absorbed the financial and administrative duties of the Manager, Human Resources and Administration.

This background information is critical to understanding what appears to have been a failure by Ms. Mitchell Cooney to disclose her previous concerns with Ms. Holden's work performance and attitude during the time when she directly supervised Ms. Holden at the OCYA. Those concerns had culminated in a verbal reprimand of Ms. Holden in October 2006, delivered by Ms. Mitchell Cooney in the OCYA boardroom, and overheard by other staff. Ms. Mitchell Cooney had an obligation to disclose that information to the House of Assembly CFO, who had been given responsibility to deal with the issue. Ms. Mitchell Cooney would ordinarily in her capacity as Manager of Human Resources, House of Assembly, have been responsible for dealing with such matters. However, she had declared herself to be in a conflict of interest in dealing with the issues brought forward in February 2008 by Ms. Pottle on behalf of Ms. Holden. Had the Speaker and his staff exercised due diligence, they would have readily learned of the concerns with Ms. Holden's work performance and attitude that predated my letter to her.

Mr. Fleming's report stated:

> *The CFO was perplexed by the letter in that the budget estimates prepared by the Office Administrator were in keeping with the quality of that provided by the staff of the other statutory offices.*

The OCYA budget estimates submitted to the House of Assembly were not prepared by Ms. Holden, the Office Administrator. Again, due diligence would have revealed that I personally prepared the final budget estimates, with the assistance of Mr. Scott Jones, an employee then under the direct supervision of the CFO within the House of Assembly.

Basic human resources management principles suggest that most employees, when confronted with criticism of their work performance, will be upset, regardless of any corresponding offer of assistance. It is essential that any person who is the subject of allegations of harassment be made aware at the earliest opportunity that such concerns have been expressed so that the validity of the concerns can be determined and appropriately addressed. The conclusion that my concerns about Ms. Holden's work performance and attitude were unfounded could not reasonably have been reached had the previous concerns of Ms. Mitchell Cooney, her former supervisor, who was then employed in the House of Assembly, been considered or had the basis for the criticism of Ms. Holden's work performance been investigated. The failure by the Speaker and his staff and the Public Service Commission to engage in due diligence and to adhere to basic human resources management principles instigated a series of events that could have been avoided.

I have challenged Mr. Fleming's report of the investigation of my harassment complaint against the Speaker in my capacity as the Child and Youth Advocate. An Originating Application has been filed in the Supreme Court, Trial Division. The Application seeks a court order quashing

Mr. Fleming's report. It is my understanding Mr. Fleming is not prepared to consent to such an order despite his numerous conflicts of interest with respect to his investigation of my complaint against the Speaker, and despite the completion of an investigation and report of my harassment complaint by an external consultant. Therefore, this matter remains before the Court.

The Investigations of Me and the OCYA

While conducting his whistleblower investigation of my harassment complaint against the Speaker, Mr. Fleming initiated a second whistleblower investigation, one that targeted me. He informed me in writing in March 2009 that he had received a disclosure from staff in my Office related to my management style, which he described as "a propensity to be myopically mired in one issue at a time." He also informed me that staff alleged that I was "domineering, disrespectful, threatening and unduly insensitive to all members of the staff." Mr. Fleming did not provide me with specifics of these allegations. He did, however, reiterate in writing the threat of prosecution set out in his February 2009 correspondence to me related to his whistleblower investigation of my harassment complaint against the Speaker. Mr. Fleming stated:

> *Please be advised that during the course of my investigation any attempts to obstruct me or my staff with respect to our work will be strictly prosecuted. As well, any reprisal against a person who assists with my investigation will lead to a vigorous prosecution before the Labour Relations Board.*

Despite the conflict of interest issues communicated to him related to his conduct of the investigation of my harassment complaint against the Speaker, Mr. Fleming commenced this second whistleblower investigation. At one point, I was in the OCYA boardroom conducting interviews in connection with the Janeway Investigation while Mr. Fleming's staff were in a nearby OCYA meeting room interviewing my staff in relation to his whistleblower investigation of me. Mr. Fleming subsequently moved the interviews of OCYA staff to the Office of the Citizens' Representative. He eventually ceased his conduct of this investigation, but only after I had filed an Application in the Supreme Court, Trial Division.

Minister Kennedy is quoted in the Saturday, August 22, 2009 edition of The Telegram as saying:

> *We don't know exactly what's going on in the Office because each time we've attempted to have an investigation, it's resulted in a court action.*

Minister Kennedy reiterated this statement in the House of Assembly on September 9, 2009.

These statements by Minister Kennedy are inaccurate. The first investigation of my Office was initiated by the Public Service Commission at the Speaker's request. Months prior to my suspension, all staff in the OCYA were contacted by Mr. Bill MacDonald, Investigator, Public Service Commission, and offered an opportunity to participate in interviews. I have since

learned that only one staff member, my executive secretary, availed of this opportunity. Despite the fact the Speaker requested that the Public Service Commission conduct an investigation in the absence of an official complaint, I have not brought any court action to prevent the Public Service Commission from conducting that investigation. To the best of my knowledge, Mr. MacDonald's investigation is ongoing.

It is worth noting that at the time Mr. Fitzgerald requested the Public Service Commission to conduct an investigation of my Office, I emailed all OCYA staff and encouraged them to participate in any investigation that might occur. I simultaneously encouraged staff to avail of the stress management services available through the Public Service Commission should they require them. It cannot be said that I have in any way, either through communication to my staff or through initiation of Court proceedings, attempted to prevent or delay the conduct of the Public Service Commission investigation of my Office. I have attached a copy of my email to staff.

Mr. Bill MacDonald, Investigator, Public Service Commission, provided me a copy of the email dated March 24, 2009 from Mr. William MacKenzie to Ms. Raelene Thomas of the Public Service Commission. In this email, Mr. MacKenzie stated:

> *The Speaker confirms his previous request that the PSC conduct an administrative investigation of the Office of the Child and Youth Advocate. Therefore, please proceed as appropriate according to PSC processes.*

The timing of the Speaker's March 2009 request that the Public Service Commission proceed with his original request for an investigation of my Office coincides with the filing of Mr. Fleming's report of his investigation exonerating the Speaker of my harassment complaint against him. It is evident from Mr. MacKenzie's email that the Public Service Commission investigation had temporarily been on hold; hence the necessity for the Speaker to confirm his previous request that the administrative investigation of the OCYA proceed. Whether the decision to place the investigation on hold was the Speaker's own or that of the Public Service Commission is unknown to me. Also unknown to me is whether Mr. Fleming's initiation of a whistleblower investigation of me while conducting the whistleblower investigation of my harassment complaint against the Speaker factored into the decision to place the Public Service Commission's investigation on hold. From the onset, the Public Service Commission investigation has been problematic: there was no official complaint as is required prior to the commencement of such an investigation; and the Public Service Commission had already been involved in this matter for over one year. The Public Service Commission investigation was clearly delayed for approximately one month in mid-winter 2009 either by the Speaker or by the Public Service Commission; that delay cannot be attributed to me.

Mr. Robert Noseworthy was appointed by the Cabinet effective June 1, 2009 to act as Citizens' Representative in a temporary capacity for the sole purpose of investigating a complaint made against me under the *House of Assembly Accountability, Integrity and Administration Act* (commonly referred to as "whistleblower" legislation). Mr. Noseworthy has, in effect, been

authorized to pursue and continue the same investigation Mr. Fleming initiated in circumstances where he did not act in good faith due to his numerous conflicts of interest.

Despite having brought an Originating Application in the Supreme Court in March 2009 with respect to Mr. Fleming's conduct of his whistleblower investigation of me, it was not until Mr. Noseworthy was in July 2009 added as a party to an Amended Originating Application that I finally received the disclosure Mr. Fleming, and then Mr. Noseworthy, had relied on to pursue their whistleblower investigations of me.

In July 2009 my legal counsel received redacted disclosure from legal counsel for Mr. Noseworthy. That disclosure revealed the information Mr. Fleming had previously relied upon to open his investigation of me. Mr. Noseworthy relied on the very same disclosure in deciding he should pursue the matter under the whistleblower legislation.

I do not know whether the documents contained in that disclosure were provided to Cabinet during its deliberations prior to appointing Mr. Noseworthy as temporary Citizens' Representative. I assume that in so appointing Mr. Noseworthy, Cabinet must have concluded it was not appropriate for Mr. Fleming to conduct the investigation of me as otherwise Mr. Noseworthy would hardly have been appointed.

The disclosure received by my legal counsel was redacted, meaning that names, certain dates, and specific allegations had been removed. Nevertheless, the disclosure did reveal that staff in the OCYA first contacted Mr. Fleming in December 2008 and then met with him in January 2009. It was during that January 2009 meeting that Mr. Fleming recorded the concerns of staff in the OCYA; however, at that time he suggested staff should consider their options, including the ongoing training offered by the Public Service Commission around the Respectful Workplace Program.

The disclosure indicates that, following acceptance by the Public Service Commission of the Speaker's request for an investigation of the administration of my Office, staff in the OCYA contacted Mr. Fleming again. It was during a March 2009 meeting [the date of which has been redacted, but the disclosure makes it apparent that the meeting followed a March 9th teleconference call with OCYA staff] that Mr. Fleming provided an acknowledgement to OCYA staff that their whistleblower complaint had been received and proposed a meeting of all staff on March 17th. I have, therefore, concluded that this meeting likely occurred between March 9th and March 17th. Mr. Fleming also advised OCYA staff in this March meeting that his previous discussions with OCYA staff would form the basis of the complaint. Those previous discussions had taken place in December 2008 and January 2009.

After reviewing the disclosure provided to me July 2009, I reflected upon Mr. Fleming's March 2009 telephone call to me during which he told me he had received a whistleblower complaint against me from staff in my Office. I reviewed his March 2009 written correspondence advising me of that complaint. Mr. Fleming never did inform me that his whistleblower investigation of me was based on concerns of OCYA staff first communicated to him during a January 2009

meeting. Nor did Mr. Fleming ever inform me that during that January meeting he had not accepted a complaint from staff, but instead suggested they consider their options. Mr. Fleming also failed to acknowledge to me that his agreement to Mr. Fitzgerald's February 2009 request that he investigate my harassment complaint against the Speaker under the whistleblower legislation occurred after Mr. Fleming's December 2008 and January 2009 involvement with OCYA staff. Mr. Fleming's prior involvement with OCYA staff clearly placed him in a conflict of interest with respect to the investigation under the whistleblower legislation of my harassment complaint against the Speaker.

Only Mr. Fleming can explain why he chose not to reveal this critical information. However, it is apparent Mr. Fleming was either unable or unwilling to acknowledge the many conflicts of interest he was embroiled in both in respect of his conduct of the investigation of my complaint against the Speaker and his conduct of the whistleblower investigation of me.

It is significant that Mr. Fleming, prior to commencing the whistleblower investigation of my harassment complaint against the Speaker, had involvement with OCYA staff, in particular Ms. Roxanne Pottle and Ms. Lorraine Holden. It was following receipt by Ms. Holden of legitimate criticism of her work performance and workplace attitude that Ms. Pottle initially contacted senior management at the House of Assembly back in February 2008. Ms. Pottle and Ms. Holden were the OCYA staff who had been complaining, unbeknownst to me, for over a year to House of Assembly senior management and to staff at the Public Service Commission, but who were unwilling to make an official complaint.

The Speaker was aware of Mr. Fleming's prior involvement with OCYA staff, in particular Ms. Roxanne Pottle and Ms. Lorraine Holden. The Speaker knew full well that it was a year of complaining by those two individuals and the suggestion of potential liability arising from the mismanagement of this very situation by House of Assembly senior management and Public Service Commission staff, and not "stories," that had prompted him to summon me to the meeting in February 2009.

Both Mr. Fleming and Mr. Fitzgerald were aware that prior to Mr. Fitzgerald's request that I agree to a workplace assessment, Ms. Lorraine Holden had resigned her position within the OCYA and had started employment as Mr. Fleming's executive secretary within the Office of the Citizens' Representative. I cannot understand Mr. Fleming's failure to acknowledge this obvious conflict of interest. Mr. Fleming should never have agreed to Mr. Fitzgerald's request that he conduct an investigation of my harassment complaint against him under the whistleblower legislation. And while Mr. Fleming should never have agreed to that request, Mr. Fitzgerald should certainly never have made it.

The disclosure provided to me in July 2009 was based entirely on the OCYA staff concerns that had been verbally communicated to Mr. Fleming in December 2008, and then recorded by him in January 2009. Mr. Fleming advised OCYA staff at a January 2009 meeting that they should consider their options; he did not accept a complaint under the whistleblower legislation at that time. The disclosure provided to me contains nothing that can legitimately explain what

had changed between Mr. Fleming's January meeting with OCYA staff, when he did not accept a complaint under the whistleblower legislation, and his subsequent determination at his March meeting with OCYA staff that, on the basis of the exact same information that had been communicated to him in January, a whistleblower investigation was somehow warranted.

One event I am aware of that occurred between the January and March meetings is the filing of an Originating Application by a private citizen naming the Speaker as a Respondent. That Application contained assertions that Mr. Fleming failed to disclose his conflict of interest when he conducted an investigation of mental health services provided by Eastern Health to the citizen's son. Mr. Fleming's spouse, described in the Application as a "key player" in the delivery of the services provided by Eastern Health, was said to have met with this citizen. The private citizen's Application states that when Mr. Fleming was informed of this fact he chose not disclose that this "key player" was his spouse, and instead proceeded to conduct an investigation of the services provided by Eastern Health.

The only other changed circumstance of which I am aware of relates to the predicament the Speaker found himself in having initiated an investigation of my Office by the Public Service Commission absent an official complaint. The Speaker and Mr. Fleming would have known that once Mr. Fleming commenced a whistleblower investigation of my harassment complaint against the Speaker, that legislation permitted Mr. Fleming to initiate additional whistleblower investigations. Therefore, the Speaker's problem of not having an official complaint, required for the Public Service Commission investigation, was resolved by Mr. Fleming, who wasted little time in initiating a second whistleblower investigation, this time of me.

I have serious concerns about the manner in which the whistleblower legislation has been used against me. As outlined above, Mr. Fleming, at the request of the Speaker, proceeded with a whistleblower investigation, and, while conducting the first whistleblower investigation, initiated a second one despite being in numerous conflicts of interest with respect to both investigations. My concerns are not limited to conflict of interest issues. The application of the whistleblower legislation has been inappropriate as it has been applied to situations not contemplated as constituting a "wrong doing" within the meaning of the legislation.

What follows are examples contained in the disclosure I received in July 2009 which reflect the overall nature of the staff concerns which resulted in two (albeit related) whistleblower investigations of me.

OCYA staff expressed concern that they believed I "prioritized work around media or political attention as opposed to the merit of the work that has to be done." I would like to share with you examples of instances when OCYA staff were upset about my response to what they perceived to be political referrals.

The first relates to the Premier's Office. In the fall of 2008, I was contacted by staff in the Premier's Office who requested that I personally meet with a mother whose children were then in the care of the Director of Child, Youth and Family Services. It was my understanding from

both the Premier's staff and this mother that Premier Williams had himself already met with her. The case involved an already active OCYA file, and I agreed to meet with the mother, along with the OCYA staff already assigned to the file. While the staff member who was primarily assigned the file conveyed to me that she was pleased to have my involvement, other staff engaged in a discussion that it was inappropriate for me to jump because the Premier's Office called. One staff member went so far as to say, "Danny Williams should have to take a number and stand in line with everybody else." Although unpopular, my response to staff present was that if the Premier could take time away from running the Province to meet with this woman, then I could certainly take an hour out of my day to do so.

Another example of staff displeasure at their perception of my responding to political referrals relates to my handling of a situation when a father contacted the OCYA and asked for our assistance as his son had attempted suicide the night before while in custody at the Parade Street facility. This matter also related to an already active file in the OCYA; however, the front-line staff member assigned to this file was away from the Office. I directed other staff to attend the Parade Street facility and participate in the meeting being held with Child, Youth and Family Services and the psychiatrist from the Janeway. In light of the suicide attempt, I considered this boy's case to be a high priority. Not all staff in my Office agreed, and my direction was viewed by some as an overreaction to a political referral. The resentment of the attention given this boy stemmed from the fact that Mr. Jack Harris, Member of Parliament for St. John's East, had called the Office on behalf of the boy and his father seeking our assistance to ensure the boy had access to the services he required.

When he initiated his whistleblower investigation of me, Mr. Fleming in March 2009 advised me in writing that I had a "propensity to be myopically mired in one issue at a time." I was, therefore, shocked to later read in the disclosure I finally received in July 2009 that one of the issues I had ostensibly become "obsessed" with was my attempt to gain subpoena power for the Child and Youth Advocate. I cannot comprehend how Mr. Fleming and Mr. Noseworthy could possibly view this "concern of staff" as being appropriate for investigation under whistleblower legislation. I readily acknowledge that I expended considerable time and energy in the effort to acquire subpoena power so that the OCYA investigations that had effectively been shut down by Eastern Health could resume. I would be remiss not to acknowledge the considerable attention Government gave to addressing this issue, and the subsequent amendment to the *Child and Youth Advocate Act* granting subpoena power. It concerned me greatly to only recently learn that some OCYA staff have apparently not grasped the significance of the situation, i.e., that unless subpoena power was granted, the OCYA would not be able to discharge its investigatory mandate.

I was also disturbed by the allegation that, despite being "obsessed" with gaining subpoena power, such power had not been used by the OCYA. This was clearly inaccurate as I had during the fall of 2008 examined witnesses under subpoena at the OCYA.

It was alleged that staff had a fear that I had the power to "summarily fire staff." The example provided was that I had "previously 'fired' two high ranking officials of the OCYA shortly after

being appointed." I have never fired anyone in my life. This "fear of staff" is completely unfounded.

In the winter of 2006, two senior staff members, Ms. Marilyn McCormack and Ms. Paula Burt, were transferred to positions of equivalent remuneration elsewhere in the Public Service. Those transfers occurred due to conflict of interest concerns related to their previous employment activities which negatively impacted the ability of the OCYA to fulfill its mandate. The transfers were undertaken with the full cooperation and assistance of former Speaker, Mr. Harvey Hodder, former Clerk, Mr. John Noel, Q.C., former Clerk of the Executive Council, Mr. Robert Thompson, and Chair of the Public Service Commission, Mr. Ed Walsh. Ms. McCormack and Ms. Burt were not "summarily fired."

At the time of the staff disclosure to Mr. Fleming on January 20, 2009, Ms. Roxanne Pottle and Ms. Lorraine Holden were the only employees who had been employed at the OCYA when Ms. McCormack and Ms. Burt were transferred. Both Ms. Pottle and Ms. Holden were well aware I expended significant effort to ensure appropriate deployment for Ms. McCormack and Ms. Burt. Ms. Pottle did, however, inform me during a meeting I held with staff to explain the reasons for the transfers that she was "angry and angry with me." It is disturbing to me to think that Ms. Pottle either experiences irrational fears related to the workplace or has deliberately instilled fear in other OCYA staff based upon a complete misrepresentation of what occurred. It should be noted that during the winter of 2006 I promoted Ms. Pottle to the position of Senior Advocacy Services Specialist, and that I again promoted her in December 2007 to the position Director of Advocacy Services.

It was also alleged that I was "obsessed" with inventory control "to the point that the employee responsible for the inventory had to carry the keys to the supply room on her person." Prior to my time as Advocate, there had never been a proper inventory system in place in the OCYA. It was, therefore, necessary one be instituted. No employee in the OCYA was ever required to keep the keys to the supply room on their person. Staff meeting minutes reflect the procedure to be followed when obtaining supplies. I understand my insistence that capital assets and inventory be accounted for was not popular among staff. I make no apology for ensuring proper management of the expenditure of public monies.

Another allegation by staff stated that I "reacted with rage when administrative errors occurred." One example provided was in relation to "certificates for children under the Calendar Project." I recall quite clearly my instruction to the Administrative Assistant regarding the preparation of those certificates. I requested that the Administrative Assistant retype the correct date on certificates of appreciation to be provided to the school children who participated in the 2009 OCYA Calendar Project. I also informed the staff person that, given we had to print the certificates again, I intended to sign each certificate individually rather than use a scanned signature as had been done in the past. This approach met with resistance from both the Administrative Assistant and other staff who did not see any value in providing this personal touch. I explained to them that, given the children put a lot of effort into their drawings and the teachers spend time with the children in the classroom helping them prepare their artwork

submissions, I certainly did not mind staying a couple of extra hours to sign the certificates. Contrary to the allegation that I reacted with rage in this situation, the Administrative Assistant sent me the following email which ended with a "happy face":

> *I admire your patience to sit down and hand sign all those certificates.* ☺.

Another example of concern expressed by OCYA staff to Mr. Fleming included "staff are frustrated with performing large amounts of work on files only to have them languish in Ms. Neville's office." Front-line staff does not submit files for my review as their work is supervised by the Director of Advocacy Services. The two Consultants and the Director do submit work to me. During the 2008-2009 fiscal year, the priority focus for the Director and one Consultant was the Transitioning Review. After they submitted the Transitioning Review draft report to me on March 17, 2009, I had to completely rewrite the Report, cover to cover, complete both an Executive Summary and comprehensive analysis as neither had yet been completed, and draft new as well as redraft existing recommendations. These recommendations were submitted to Government and the Health Authorities on March 30, 2009. The draft report hardly "languished" in my Office as I publicly released *Lost in Transition: A Review of the Transitioning of Children and Youth in Care* on June 2, 2009.

Work on systemic issues and reviews/investigations within the OCYA is completed by me as well as by the Director and two Systemic Advocacy Consultants. The first Consultant was hired in January 2008, and the second in late August 2008. During the 2008-09 fiscal year, the focus of the Consultants' work was concentrated on the Transitioning Review and later, in December 2008, on the Janeway Investigation. These reviews/investigations occupied both Consultants on almost a full-time basis, with the exception of their examination of three systemic issues. Work on these three systemic files was submitted to me. I completed additional work on those files prior to forwarding letters containing recommendations to Government in March 2009. The submission to Government of these three letters satisfied the systemic goal contained in the OCYA Business Plan for the 2008-09 fiscal year.

The timing of submission to Government of these systemic recommendations was strategic, based on a number of factors. I kept staff informed of my intentions with respect to the work they had submitted to me on the three systemic issues. I can only assume that staff were operating under the misunderstanding that the decision as to when and how recommendations are submitted to Government was theirs to make.

The allegation by staff that work was languishing in my Office has no factual basis. All of the goals contained in the 2008-2009 Business Plan as previously approved by the House of Assembly Management Commission were met.

The above examples illustrate the type of concerns voiced by OCYA staff to Mr. Fleming and recorded in the disclosure that was the basis for both Mr. Fleming and Mr. Noseworthy commencing and pursuing their whistleblower investigations of me.

When I finally received the redacted disclosure in July 2009, having commenced court proceedings in March 2009, I was in a state of disbelief that these types of complaints had been deemed appropriate for application of the whistleblower legislation. Prior to receiving the redacted disclosure in July, I was completely in the dark as to what exactly staff had been complaining about. Up to that point, I had only been told that I had a "propensity to be myopically mired in one issue at a time," was "domineering, disrespectful, threatening and unduly insensitive to all members of the staff," "micromanaged," and was "unable to complete work product."

The July 2009 disclosure that finally provided me specific examples of the allegations against me has not been filed in the Supreme Court either by legal counsel for Mr. Noseworthy or by legal counsel for Mr. Fleming. In fact, to date counsel for Mr. Fleming and Mr. Noseworthy have filed no documentation with the Court. The only documentation filed has been that filed by my counsel on my behalf.

During a court proceeding in July 2009, Chief Justice David Orsborn asked legal counsel for Mr. Fleming and for Mr. Noseworthy exactly what was being investigated by their clients. Both counsel informed Chief Justice Orsborn that they did not know what was being investigated by their clients. (I should here note that the July 2009 disclosure containing the specifics of the allegations was not provided to my legal counsel by Mr. Noseworthy's legal counsel until after that particular Court appearance.) The Chief Justice further queried whether it was necessary to have these whistleblower investigations as it seemed to him that the issues involved related to management style. He further inquired about the status of the Public Service Commission investigation and whether any court application had been filed with respect to Mr. MacDonald's conduct of the Public Service Commission investigation. My legal counsel told the Chief Justice that no court application had been filed to prevent Mr. MacDonald from proceeding with his investigation. Legal counsel for Mr. Noseworthy and legal counsel for Mr. Fleming both informed the Chief Justice they were unaware of the status of Mr. MacDonald's Public Service Commission investigation.

In pursuit of his whistleblower investigation, Mr. Noseworthy has conducted examinations of OCYA staff under subpoena. My executive secretary met with Mr. Noseworthy on two separate occasions, and at his request provided written documentation refuting the allegations contained in the disclosure.

Unfortunately, on reporting for work on the morning following my suspension my executive secretary was evicted from the Office of the Child and Youth Advocate by Ms. Mitchell Cooney, Manager of Human Resources of the House of Assembly, and Ms. Lambe, Chief Financial Officer of the House of Assembly. She was told she "should go home as it is no secret that you are close to Darlene and, because you are close to Darlene, you make other staff uncomfortable." Mr. John Rorke thereupon directed Ms. Mitchell Cooney and Ms. Lambe to "reassure her that she has done nothing wrong, she isn't being fired and that something will be found for her."

I would like to point out that not only has my executive secretary participated, under subpoena, in Mr. Noseworthy's whistleblower investigation and provided written documentation refuting the allegations, she is the one staff member who participated in Mr. MacDonald's Public Service Commission investigation. She has been openly supportive of me. It would appear that her participation in those investigations and apparent support of me contributed to the decision to remove her from her position of executive secretary within the OCYA. I am deeply concerned that the treatment she has received regarding her continued employment within the OCYA is a reprisal for her having contradicted the statements of some OCYA staff. The manner in which she was "evicted" in a distraught state from the Office of the Child and Youth Advocate violated basic human resources policy.

I understand that the Public Service Commission has informed Minister Kennedy (based on Minister Kennedy's response in a media scrum) that the decision that my executive secretary should leave the OCYA was a mutual one. I can assure you it was not. She was instructed to attend the OCYA after hours, and in the presence of Ms. Marlene Lambe, CFO for the House of Assembly, was required to remove her personal effects from the Office. I realize this may be standard practice when an employee is suspended or fired; however, in a situation where as in this case suspension or dismissal is not applicable, it is not standard practice when, to quote Mr. Rorke, the employee "has done nothing wrong."

My Suspension by Cabinet and the Roles of Mr. Fitzgerald and Others in It

On the direction of Cabinet, Mr. Gary Norris, Clerk of the Executive Council and Secretary to Cabinet, met with me on August 20, 2009 and provided me with a letter of suspension. The following reasons for my suspension were provided:

> *Recent events at the Office of the Child and Youth Advocate have caused the Lieutenant-Governor in Council to lose confidence in your ability to guide your office to fulfillment of its statutory mandate. Key areas of concern include (1) your management of OCYA personnel; culminating in (2) your inability to effectively advance the mandate of your office.*

It was also stated:

> *... While no determinations have been made as to whether or not you intended to do so, your correspondence of August 7th and 14th to William MacKenzie, Clerk of the House of Assembly, as well as the news release issued by your office on August 7th, 2009 evidence your mismanagement of OCYA personnel.*
>
> *The persistent and unresolved concerns of OCYA staff and your demonstrated inability to constructively resolve and overcome those concerns, have cast doubt on your ability to mobilize and utilize OCYA personnel toward attainment of the Office's mandate. Further, your conduct casts doubt about whether you possess the good judgment required by the Child and Youth Advocate to successfully execute the requirements of the office.*

Under your leadership, the OCYA has in recent months failed to significantly progress toward attainment of its statutory obligations. Your failing staff relations appear to have culminated in an inability to act in a manner that advances the mandate of the Office of the Child and Youth Advocate.

Mr. Norris' letter invited a written submission in response to the aforementioned concerns or any other concerns related to my continued tenure as Child and Youth Advocate. As you are aware, I have not had access to my Office since my suspension. Mr. Rolf Pritchard arranged, at the request of my legal counsel, for a copy of the documentation Cabinet utilized as a basis for suspending me to be delivered to his law office. Upon Mr. Coffey's return to St. John's on September 3rd, I was able late that day for the first time to review that documentation. I met with Mr. Coffey late on September 3rd and received the documentation.

Prior to my suspension, I was not informed that the Speaker, Mr. Fitzgerald, had on August 17, 2009 provided a Cabinet submission to Mr. Norris, in his capacity as Clerk of the Executive Council. I first learned of Mr. Fitzgerald's August 17th letter through media coverage of Minister Kennedy's press conference announcing my suspension on August 21, 2009. No reference to Mr. Fitzgerald's letter is contained in my letter of suspension, nor was any mention made of it by Mr. Norris during our meeting when he handed me my letter of suspension. I have since received a copy of Mr. Fitzgerald's letter as it was included in the documentation Cabinet utilized in its decision to suspend me, which documentation was provided to my legal counsel.

In his August 17th letter, Mr. Fitzgerald wrote to Mr. Norris with the intention that the Premier and Cabinet would rely on his letter as it is in effect a briefing note in its deliberations with respect to my continued tenure as the Child and Youth Advocate. I was, therefore, astonished by the inaccuracies contained in Mr. Fitzgerald's letter given the fact he knew Cabinet would rely on it. The omission of relevant information from that letter is also conspicuous by reason of its absence.

Premier Williams testified at the Cameron Inquiry as follows in response to questioning about briefing notes:

... The other thing I've got to tell you as a result of this whole exercise, which deeply concerns me, is the whole briefing note exercise. First of all, we've tried to tighten them up and make them as good as we can make them. We always assumed that they were as good as they could be, but with regard to complete accuracy – if a briefing note is sent to me, then I rely on it and I rely on the information in it, and I act upon the information that's in the briefing note. ...

While I have personally been on the receiving end of Mr. Fitzgerald's less than forthright behaviour, I had not imagined Mr. Fitzgerald's propensity to be less than candid would extend to the Premier and his Cabinet.

In responding specifically to my letter of suspension, it is necessary to first deal with Mr. Fitzgerald's letter. I will address the points raised by Mr. Fitzgerald in the order in which they appear.

Mr. Fitzgerald states:

> *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.*

This statement confirms Mr. Fitzgerald's misrepresentation to me during our February 2009 meeting when he spoke of having heard "stories." Despite his full knowledge of the fact that throughout 2008 OCYA staff had expressed concerns to senior management at the House of Assembly, he chose to misrepresent the basis for his determination that a workplace assessment of the OCYA was necessary. Given Mr. Fitzgerald's knowledge of the negative effect, considered in light of the concern I had expressed to him regarding the impact on the independence of the OCYA and its investigations, that his reliance on "stories and innuendo" would have on me, it is incomprehensible that he did not appreciate the seriousness of my concern.

Mr. Fitzgerald ended his letter with "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." Had Mr. Fitzgerald and senior management at the House of Assembly and staff at the Public Service Commission engaged in due diligence and adhered to basic human resources management principles at the time those concerns were first raised in 2008, it would have been determined that the concerns expressed by Ms. Pottle on behalf of Ms. Holden regarding legitimate criticism of Ms. Holden's work performance were not valid.

It was the failure by Mr. Fitzgerald and his staff, as well as by the Public Service Commission, to appropriately respond at the time those issues were first raised by Ms. Pottle and Ms. Holden, including the failure to inform me at the earliest opportunity that allegations of harassment had been made against me, that resulted in the entire series of events which subsequently unfolded.

Mr. Fitzgerald's August 17th letter confirms that senior management of the House of Assembly, specifically Ms. Mitchell Cooney, Manager of Human Resources, were less than forthright with Mr. Fleming during his investigation of my harassment complaint against the Speaker. You will recall that Mr. Fleming reported that he had been told by senior House of Assembly management that the reason Ms. Lambe, CFO, was given responsibility for this issue was due to

the fact that Ms. Mitchell Cooney had declared herself in a conflict of interest when Ms. Pottle first complained about me on behalf of Ms. Holden.

Mr. Fitzgerald's August 17th letter indicates that, contrary to Ms. Mitchell Cooney being out of the picture as reported by Mr. Fleming, she actually continued to be involved with this matter. Mr. Fitzgerald stated, "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." Ms. Mitchell Cooney in her role as Manager of Human Resources would be responsible for tracking staffing movement within the House of Assembly and its Statutory Offices. I assume, therefore, that she is the source of Mr. Fitzgerald's information which resulted in his negative perception of staff movement within the OCYA as an "unusually high rate of staff turnover."

Mr. Fitzgerald's portrayal in his letter to Cabinet of an "unusually high rate of staff turnover" and his statement that seven staff "departed" since August 2005 are inaccurate. Mr. Fitzgerald would have one believe that seven staff have quit since I was appointed Child and Youth Advocate on August 1, 2005. This is not the case.

As referenced above, during the winter of 2006 two senior OCYA staff, Ms. Marilyn McCormack and Ms. Paula Burt, were transferred due to conflict of interest related to their previous employment activities which impacted the ability of the OCYA to fulfill its mandate. Their transfers to positions of equivalent remuneration elsewhere in the Public Service were undertaken with the full cooperation and assistance of then Speaker Mr. Harvey Hodder, then Clerk Mr. John Noel, Q.C., then Clerk of the Executive Council Mr. Robert Thompson, and Chair of the Public Service Commission Mr. Ed Walsh. Ms. Mitchell Cooney, who was in 2006 employed as the Manager of Human Resources and Administration at the OCYA, assisted me throughout this entire process. In the Turner Report, Dr. Peter Markesteyn reported the existence of a conflict of interest within the OCYA. I released the Turner Report on October 4, 2006, and by that time I had already identified and responded to the conflict of interest which existed within the OCYA at the time of my appointment.

Mr. Fitzgerald was well aware of the circumstances related to the transfer of Ms. McCormack and Ms. Burt as the Clerk, Mr. MacKenzie, confirmed in his August 17, 2009 correspondence to me that he had "reviewed the file on this matter." Mr. MacKenzie specifically referenced my January 5, 2006 letter to the former Clerk of the Executive Council, Mr. Robert Thompson. A copy of Mr. MacKenzie's letter is contained at Tab 17 of the supporting documentation utilized by Cabinet in its decision to suspend me.

Ms. Sandra Mitchell Cooney is a third individual who once worked at the OCYA. Back in March 2007, I was informed by Mr. MacKenzie, the Clerk of the House of Assembly, that Ms. Cooney Mitchell's position of Manager, Human Resources and Administration, within the OCYA, was being moved to the House of Assembly as the position could no longer be justified in an office the size of the OCYA. Both that position and its incumbent, Ms. Mitchell Cooney, were transferred to the House of Assembly in March 2007.

Ms. Colleen Meaney is the permanent incumbent in the position of executive secretary within the OCYA. She has requested and I have approved three secondments since January 2006. Ms. Meaney's second secondment in the winter of 2007 ended prematurely when she contacted me, while on secondment, and asked to return early to her position within the OCYA. Ms. Meaney went on a third secondment in April 2008 for a period of one year. She has since requested that her leave of absence be extended to September 30, 2009. Ms. Meaney previously informed me that when her spouse, Mr. MacKenzie, was appointed Clerk of the House of Assembly, he told her he was uncomfortable with the optics of her working in the OCYA in light of his position as Clerk.

Ms. Kelly Hatch commenced employment as a front-line advocate in May 2006. She remained with the OCYA for just over six months, at which point she informed me and other OCYA staff that she no longer wished to work in a position requiring daily interaction with children, youth and their families. Since leaving the OCYA, Ms. Hatch is, based on reports I have heard, happily employed in a research laboratory.

Mr. Alex Chernoff commenced employment as a front-line advocate in May 2006. He resigned just over one year later. Mr. Chernoff was from New Brunswick. He had come to Newfoundland to be with his girlfriend who was attending medical school here. After their relationship ended, Mr. Chernoff elected to leave Newfoundland and pursue graduate studies elsewhere.

Ms. Lorraine Holden, former Administrative Officer, resigned her position with the OCYA in January 2009 and immediately commenced employment as executive secretary to Mr. Barry Fleming, Q.C., Citizens' Representative.

Four of the seven employees who have left the OCYA since my appointment on August 1, 2005 have done so either: on the direction of the House of Assembly, as in the case of Ms. Mitchell Cooney; with the participation and involvement of both the House of Assembly and the Executive Branch of Government, as in the case of Ms. McCormack and Ms. Burt; or with the full knowledge of the Speaker and the Clerk, as in the case of Ms. Meaney. Of the three former employees who resigned their positions, Ms. Holden is the only one who left the employment of the OCYA to obtain similar employment elsewhere.

In the circumstances, Mr. Fitzgerald's description in his letter to Cabinet of staffing changes within the OCYA as involving an "unusually high rate of staff turnover" is unfair and misleading.

In his letter to Cabinet Mr. Fitzgerald stated:

> *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 concerns of staff communicated to me by Mr. Fitzgerald in our February 2009 meeting consisted of "staff were unhappy, did not feel respected, were looking for other jobs and had concerns that I micromanage." At no point during that meeting, or since that time, has Mr. Fitzgerald communicated to me that there was concern expressed by staff throughout 2008 regarding the completion of reviews and investigations. Surely if the Speaker had been made aware by OCYA staff that there was concern about the completion of reviews and investigations of the OCYA he would not have permitted such serious concerns to go unaddressed for more than a year. For the Speaker to suggest to Cabinet that he was aware of concerns about the completion of reviews and investigations throughout the entire 2008 year and considered the appropriate response to such a serious issue to be a Respectful Workplace Intervention is, indeed, astounding.

Such an approach was inconsistent with the response the Premier and Cabinet deemed appropriate when I made them aware of my concerns about completing reviews and investigations then underway, but stymied due to my then lack of subpoena power. Government's response was to amend the *Child and Youth Advocate Act* to grant subpoena power to the Advocate so that the reviews then underway could resume.

It is evident that, contrary to what Mr. Fitzgerald told Cabinet, during 2008 OCYA staff concerns were not centered on completion of work. Mr. Fleming's report on his investigation of my harassment complaint against the Speaker revealed it was my letter to the Administrative Officer regarding her work performance that prompted another staff member within the OCYA to complain on her behalf and about issues of general morale. Mr. Fleming in his report listed a series of contacts initiated by Ms. Cathy Murphy of the Respectful Workplace Program, Public Service Commission, with staff of the OCYA throughout 2008. Ms. Murphy's involvement, up to December 2008, related to dealing with those morale issues involving staff.

The issue of completion of work was apparently only first introduced on December 3, 2008 in a meeting with OCYA staff by Ms. Murphy and Ms. Marlene Lambe, CFO. It was on December 3rd, according to Mr. Fleming, that the CFO was informed that OCYA staff were "frustrated in not having the work completed by them processed by Ms. Neville in a timely fashion." Mr. Fleming stated in his report that, "My presentation occurred at the OCYA - coincidentally – on the afternoon of December 3rd, the same day that staff, Ms. Murphy and the CFO had met."

I distinctly recall Mr. Fleming's December 3rd presentation on whistleblower legislation to OCYA staff, including examples he provided related to the application of that legislation. Mr. Fleming stated that the whistleblower legislation was not intended to address human resources issues, including issues related to management style, as Government has established policies and processes to address such concerns. He did, however, inform us that whistleblower legislation might in rare cases be appropriate when the concerns were primarily related to human

resources, but only if those issues had resulted in the work of an Office coming to a standstill. According to Mr. Fleming, it would have to be a situation where these issues prevented the Office from achieving its mandate; in Mr. Fleming's words, "the Office would have to be, more or less, in a complete state of shutdown."

It is, therefore, apparent that the nature of OCYA staff concerns was expanded on December 3, 2008 from Ms. Holden's letter regarding unsatisfactory work performance and general morale issues to include concerns regarding work completion. It was during Mr. Fleming's presentation that the threshold for the rare application of the whistleblower legislation to issues related to human resources was explained in detail.

In his March 24, 2009 Report, Mr. Fleming said that OCYA staff had contacted him on the morning immediately following his December 3rd presentation to discuss the possibility of filing a whistleblower complaint. He subsequently met with staff on January 20, 2009, and recorded their concerns related to the completion of work as "staff are frustrated with performing large amounts of work on files only to have them languish in Ms. Neville's office." Mr. Fleming did not accept a whistleblower complaint at that time. Rather, he suggested to staff that they consider their options. As noted above, it was not until March 2009 that Mr. Fleming accepted a whistleblower complaint against me from OCYA staff.

The staff concerns recorded by Mr. Fleming in January 2009 apparently formed the basis of their March whistleblower complaint against me. I can only assume Mr. Fleming recorded the concerns of staff as they were reported to him. The July 2009 disclosure I received makes no reference to OCYA staff having been concerned about reviews and investigations left uncompleted by the Advocate.

The earliest documented reference to any concern by OCYA staff regarding completion of OCYA work is December 3, 2008. This contradicts the Speaker's statement to Cabinet that throughout 2008 OCYA staff expressed concerns to "House staff" about reviews and investigations being uncompleted by the Advocate. It is difficult to accept that OCYA staff would have voiced concern to "House staff" that reviews and investigations were uncompleted by the Advocate, but did not reiterate such a serious concern to Mr. Fleming when they first spoke with him in December 2008 and then met with him in January 2009. It is also difficult to accept that "House staff" made aware of this concern did not share it with Mr. Fleming when he interviewed them for his whistleblower investigation of my harassment complaint against the Speaker. The Speaker made no mention of OCYA staff concerns regarding reviews and investigations being uncompleted by the Advocate when interviewed by Mr. Fleming in the winter of 2009. Mr. Fitzgerald certainly never informed me, either in the meeting in February or any time since, of such a concern.

A record does exist regarding earlier concerns about the ability of the Office of the Child and Youth Advocate to complete reviews and investigations. My Annual Report for the Fiscal Year 2007-08 at page 7 stated:

.... The refusal of several key informants to voluntarily participate in the reviews being conducted by the Advocate necessitated placement of the reviews on hold pending amendment to the Child and Youth Advocate Act. Work on the reviews continued to the extent possible.

The Advocate expended considerable effort with respect to advancing the need for the Child and Youth Advocate Act to be amended to include subpoena powers required to ensure the completion of these reviews. The Child and Youth Advocate Act was amended in the 2008 Spring Session of the Legislature; however, the amendment occurred outside this reporting period. ...

Mr. Fitzgerald was well aware of my concern about the inability of the Office of the Child and Youth Advocate to complete reviews and investigations in light of the refusal by staff of Eastern Health to voluntarily participate in interviews related to two reviews underway. My Annual Report detailed the challenge the OCYA faced during the 2007-08 Fiscal Year. As required by Section 28 of the *Child and Youth Advocate Act*, my Annual Report was submitted to the Speaker and tabled by him in the House of Assembly. He was aware I had met with Cabinet in March 2008 about these concerns. Mr. Fitzgerald, in his capacity as Speaker, was aware of the Bill to amend the *Child and Youth Advocate Act* to include subpoena power and of the debate and subsequent amendment to the legislation in the House of Assembly. As Chair of the Management Commission, he was also aware of this issue as it was discussed at a meeting of the Management Commission.

It is inconceivable then that if the Speaker was aware since 2008 that OCYA staff had expressed concern about my completion of reviews and investigations, he would mention it for the very first time in his August 17th letter to Cabinet. Furthermore, the Speaker misrepresented to Cabinet the situation with respect to my conduct of reviews and investigations, and he did so with full knowledge of the challenges I had faced and the considerable effort I had expended to obtain subpoena power so that reviews underway could proceed. To suggest I was responsible for the fact that reviews and investigations had not been completed and that the concerns related to the completion of OCYA reviews and investigations were first brought to light by OCYA staff complaining to "House staff" is a complete distortion of the facts.

The Speaker in his August 17th letter also referenced concerns expressed by OCYA staff to "House staff" throughout 2008 of work uncompleted extended to the systemic advocacy work. The current OCYA Business Plan contains separate goals for systemic advocacy and reviews/investigations. It is, therefore, necessary to respond separately to Mr. Fitzgerald's statements regarding the absence of systemic advocacy advice to government.

The Speaker's statements related to the absence of any systemic advocacy advice are contradicted by the OCYA Annual Reports that were submitted to the Speaker and then tabled in the House of Assembly. All OCYA Annual Reports completed since the Office opened in November 2002 are readily available on the OCYA website.

Prior to making his statements to Cabinet regarding "the absence of systemic advice to government on its service to children and youth" and "no systemic advocacy advice had formally been presented to government," the Speaker had an obligation to engage in due diligence to determine the accuracy of those assertions. Had he done so, Mr. Fitzgerald would have discovered that my Annual Report for the Fiscal Year 2007-08, which was submitted to him and tabled by him in the House of Assembly on September 30, 2008, clearly contradicts those statements. At p. 6 of that Annual Report, I stated:

> *The Office of the Child and Youth Advocate increased its number of recommendations regarding systemic issues affecting children and youth in comparison to the Fiscal Year 2006-07. During Fiscal Year 2007-08, the Child and Youth Advocate and/or her staff participated in 85 meetings with officials from government departments, boards and agencies where the anecdotal experience of the Office was shared and recommendations for systemic changes were advanced. This was a marked increase from participation in 72 meetings in the preceding Fiscal Year 2006-07 and therefore the goal of better informing government of issues of a systemic nature was achieved. In addition, the number of formal recommendations regarding systemic issues that were reduced to writing increased with two areas being addressed compared to one area in the preceding Fiscal Year.*

Furthermore, if the Speaker had attempted to verify the accuracy of his statements prior to submitting them to Cabinet, he would have found that since my appointment on August 1, 2005 I have submitted four Annual Reports that have been tabled in the House of Assembly. Prior to the 2007-08 Annual Report, which has a prescribed format, the Annual Reports contained more detailed examples of work undertaken by the OCYA and included tables that reported progress on systemic issues. A review of those Annual Reports makes it readily apparent that systemic advocacy advice has been consistently provided to Government since my appointment on August 1, 2005.

As you are aware, I have not had access to my Office since my suspension on August 20, 2009. I am, therefore, unable to confirm the actual number of meetings held with officials from Government departments, board and agencies where recommendations for systemic changes were advanced during the 2008-09 Fiscal Year. I can, however, confirm that the number of formal recommendations regarding systemic issues that were reduced to writing increased, with three areas being addressed compared to two areas in the preceding Fiscal Year. As stated above, I submitted three letters containing recommendations related to three systemic issues to Government in March 2009.

I will now address the remaining allegations set out in Mr. Fitzgerald's letter to Cabinet. Mr. Fitzgerald stated:

> *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.*

He further stated:

> *The inappropriate management concerns reported by OCYA staff included intimidation and harassment which resulted in a demoralized staff and a poisoned work environment.*

Mr. Fitzgerald outlined the options explored by House of Assembly staff in response to these concerns. He stated:

> *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.*

He also stated that the option of staff filing an official complaint was explored:

> *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.*

He said that his determination that a workplace assessment was the best approach was based on staff fear and mistrust of me:

> *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.*

Mr. Fitzgerald stated that he asked the Public Service Commission to undertake an administrative investigation of the OCYA because of my refusal to cooperate in the workplace assessment:

> *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.)*

Mr. Fitzgerald's synopsis of the events that transpired leading up to his request that the Public Service Commission complete an investigation of the OCYA is intended to depict his actions as a logical and necessary response to the issue of staff morale within the OCYA. However, Mr. Fitzgerald had a choice with respect to the details he provided to Cabinet. Rather than paint a

full picture of what transpired, Mr. Fitzgerald elected, through his omission of key events and decisions, to portray the situation in a manner that can only be described as self-serving.

Mr. Fitzgerald made no mention in his letter to Cabinet of the fact that this entire situation originated in February 2008 following receipt by Ms. Lorraine Holden of a letter critical of her work performance. By omitting this critical piece of information, Mr. Fitzgerald ensured that no attention would be drawn to his lack of due diligence and, in particular, to his failure to investigate the validity of my concerns related to Ms. Holden's work performance. The omission of this critical fact enabled Mr. Fitzgerald to deflect attention away from more than a year of mismanagement by his own staff and that of the Public Service Commission in relation to OCYA staff concerns.

Mr. Fleming's report of his whistleblower investigation of my harassment complaint against the Speaker suggested that Mr. Fitzgerald acted on the advice of Ms. Murphy. She was the one who advised him (in the absence of an official complaint against me) to use the concept of "stories" during his February 2009 meeting with me. He also relied on her advice in determining that an intervention (workplace assessment) was necessary as she had informed him and the CFO, Ms. Marlene Lambe, that they could be liable for a failure to address the workplace concerns of OCYA staff that had been ongoing for one full year. Contrary to Mr. Fitzgerald's statement in his letter to Cabinet that he based his determination that a workplace assessment (intervention) was the best approach "given the apparent fear and mistrust of Ms. Neville", it was not fear and mistrust of me that compelled the Speaker to act, but instead his own fear of liability. Mr. Fitzgerald omitted to tell Cabinet of his having utilized the concept of "stories" and his awareness of that potential liability. He omitted to tell Cabinet I had told him a workplace assessment in the circumstances would send the message that if anyone did not want an investigation by the Office of the Child and Youth Advocate to proceed, all they would have to do would be to "whisper a story in the Speaker's ear." Had he told me the truth, my concerns related to interference in ongoing OCYA investigations would have been alleviated.

Mr. Fitzgerald had a duty to be forthright with me about the true source and specifics of the allegations. Had Mr. Fitzgerald informed me it was his potential liability that compelled him to act, my response would have been different. My inclination, evidenced by my actions to first resolve my concerns through the Management Commission, would have been to participate in a discussion with the Speaker regarding the appropriate direction this matter should take.

Had Mr. Fitzgerald engaged in due diligence, which would have required him to be upfront with me, he would have discovered that my letter to Ms. Holden, which prompted the entire series of events that later unfolded, was a legitimate exercise of my authority as the Child and Youth Advocate. Furthermore, he would have discovered that my letter to Ms. Holden was based on concerns that could have been validated, not only by me, but by Ms. Mitchell Cooney, who at the time was employed as the Manager of Human Resources within the House of Assembly. As noted above, Ms. Mitchell Cooney had during her period of employment within the OCYA verbally reprimanded Ms. Holden for similar concerns. The failure of Mr. Fitzgerald to acknowledge to Cabinet the mismanagement for over one year by his senior staff and staff at

the Public Service Commission is compounded by his lack of due diligence in having the validity of the concerns expressed by OCYA staff investigated.

Mr. Fitzgerald's letter to Cabinet stated:

> *PSC processes 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.*

The Public Service Commission did not follow its own processes, confirmed by its acceptance of Mr. Fitzgerald's request for an investigation of my Office absent the requisite official complaint. Mr. Fitzgerald in his letter said he had engaged the assistance of the Public Service Commission. Mr. Fleming's found that Mr. Fitzgerald not only engaged the assistance of the Public Service Commission, he in fact relied on advice provided by Ms. Cathy Murphy of the Public Service Commission to utilize the concept of "stories" because no official complaint had been made.

The Harassment and Discrimination Free Workplace Policy requirement that an official complaint precede an investigation by the Public Service Commission exists for good reason. It is a procedural safeguard and, as such, constitutes one of a number of checks and balances put in place to ensure adherence to the principles of procedural fairness and natural justice. The process that was followed by the Speaker, senior management at the House of Assembly, and the Public Service Commission permitted OCYA staff to complain for over a full year and to avail of the rights conferred on a complainant in an investigation process without ever having to make an official complaint as required by the Policy.

The purpose in the requirement that an official complaint must first be made in order for an investigation to proceed is reflected in the corresponding rights and responsibilities of the complainant and respondent during an investigation. These rights and responsibilities are clearly set out in the Harassment and Discrimination Free Workplace Policy. A complainant has a number of responsibilities which include the responsibility to express the complaint honestly and accurately, and to make their disapproval or unease known to the respondent within a reasonable period of time.

The existence of corresponding rights and responsibilities serves to promote the bringing forward of legitimate complaints and to discourage "malicious, false or wilfully damaging accusations." These corresponding rights and responsibilities, therefore, are meant to provide protection both to the complainant and to the respondent. They are intended to prevent a situation where an individual is accorded the opportunity to make anonymous accusations with no regard to the rights of the respondent to be treated fairly and fully informed of the accusations. Specifically, protection is provided to a complainant as a shield from reprisals which could result from the requirement to make an official complaint. The Policy also provides protection to a respondent as a shield from anonymous accusations by its requirement that an official complaint must be made before an investigation is undertaken.

Had the Speaker, his staff and the Public Service Commission elected to comply with the written Policy, rather than to circumvent it, it would have been revealed that the accusations of Ms. Pottle and Ms. Holden, which had their origin in a legitimate letter of criticism of Ms. Holden's work performance, were not valid.

In failing to follow its own processes, the Public Service Commission, and the Speaker and his senior management staff, acting on the advice of the Public Service Commission throughout this entire process, embarked upon a path of destruction. Unfortunately, it is my reputation and public confidence in the Office of the Child and Youth Advocate that has been destroyed.

Mr. Fitzgerald implied that my harassment complaint against him was retaliation for his having requested the investigation by the Public Service Commission. He noted his exoneration by Mr. Fleming, Citizens' Representative:

> *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.*

Mr. Fitzgerald knew my harassment complaint against him was based on legitimate concerns I had expressed to him and his actions in undermining my ability to do my job. The Speaker is fully aware he could have alleviated these concerns, but chose not to. I did not hide behind a blanket of anonymity; rather, I filed an official complaint pursuant to the Harassment and Discrimination Free Workplace Policy. Omitting relevant information from his letter to Cabinet, specifically the concerns I had raised with him related to my ongoing investigations, enabled the Speaker to mischaracterize my harassment complaint against him as a retaliation in response to his having requested an investigation.

Mr. Fitzgerald highlighted for Cabinet his second exoneration by Mr. Thistle, the independent investigator appointed by the House of Assembly:

> *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.*

While Mr. Fitzgerald's letter to Cabinet referenced his exonerations by Mr. Fleming and Mr. Thistle of my harassment complaint against him, he failed to mention that the issue related to Mr. Thistle being constrained by the Speaker's own senior management staff, Ms. Marlene Lambe, CFO, in his conduct of the investigation of my complaint is presently before the Management Commission. My legal counsel in June 2009 wrote the Management Commission to request that they review the matter in light of the fact that Mr. Thistle's investigation was

not thorough and complete. As noted above, to date the Management Commission has not replied to this request.

On June 5, 2009, Mr. Fitzgerald issued a press release on the Government website announcing his exoneration by Mr. Thistle of my harassment complaint against him. Mr. Fitzgerald also made statements to the media, later televised, that I was "frivolous" in bringing this complaint. It is unconscionable that Mr. Fitzgerald made such a statement, with the full knowledge that Mr. Thistle had been constrained by the Speaker's own staff in his investigation and had not completed a full and thorough investigation of my harassment complaint.

Mr. Fitzgerald's letter to Cabinet contained no reference to the initial request by the Clerk, Mr. William MacKenzie, that the Public Service Commission investigate my harassment complaint against the Speaker. Mr. Fitzgerald stated:

> *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.*

Mr. Fitzgerald has also made statements to the media. He was quoted in the March 21, 2009 edition of The Telegram as follows:

> *... After that direction was initiated, there was an allegation made against me. And the allegation that was made against me, I immediately put it to the Citizens' Representative for an investigation. ...*

Those public statements of Mr. Fitzgerald are not an accurate account of the events leading to his request that Mr. Fleming conduct a whistleblower investigation of my harassment complaint against the Speaker. He did not "immediately put it to the Citizens' Representative for an investigation" as he told The Telegram and implied in his letter to Cabinet.

Mr. Fitzgerald did not mention in either his letter to Cabinet or in his statement to the media that the Clerk, Mr. MacKenzie, had initially requested that the Public Service Commission conduct the investigation of my harassment complaint. It was only when Mr. MacKenzie was informed that the Public Service Commission was not prepared to conduct this investigation that Mr. Fitzgerald was somehow able to take control of my complaint and request the Citizens' Representative, Mr. Fleming, investigate my complaint against him. In effect, the Speaker unilaterally moved the complaint I made against him under the Harassment and Discrimination Free Workplace Policy to the forum of his choosing, the whistleblower legislation.

By not mentioning this initial request to the Public Service Commission to investigate my harassment complaint, Mr. Fitzgerald was able to conceal the impropriety of his actions in hijacking my complaint. If the Speaker had acknowledged the Public Service Commission was initially asked to conduct the investigation of my harassment complaint, he would have had to

account for his actions in taking control of and redirecting the conduct of an investigation of a harassment complaint about himself.

Mr. Fitzgerald, in his letter to Cabinet, limited the conflict of interest issues set out in my application before the Supreme Court, Trial Division, seeking an order of prohibition to prevent Mr. Fleming from conducting a whistleblower investigation of me to "his spouse's employment with a health authority". Mr. Fitzgerald stated:

> *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. Fitzgerald's statement implies that the sole basis of my court application with respect to Mr. Fleming is the employment of Mr. Fleming's spouse with a health authority. Mr. Fitzgerald is aware that that is not the case. In March 2009, I wrote to the Management Commission and expressed concern about Mr. Fitzgerald's request that Mr. Fleming conduct a whistleblower investigation of my harassment complaint against him.

One of the conflict of interest issues identified in that letter related to the involvement of Mr. Fitzgerald and Mr. Fleming in a Court action initiated by a private citizen. Mr. Fitzgerald was named as a Respondent in an application before the Supreme Court by this private citizen. That application contained assertions that Mr. Fleming, while conducting an investigation of this citizen's complaint, failed to disclose a conflict of interest involving Mr. Fleming's spouse. Therefore, Mr. Fitzgerald's statement is not only inaccurate, but self-serving. Undoubtedly, its purpose was, once again, to deflect attention from the impropriety of his own actions. The Speaker, having been named as a Respondent in a Court action, the basis of which was Mr. Fleming's conduct, then requested Mr. Fleming complete an investigation of his conduct.

Mr. Fitzgerald, in his letter to Cabinet, contends that media coverage of my application before the Court has "served to further erode that Office's effectiveness" and "the ability of the Office to fulfill its mandate." Mr. Fitzgerald stated:

> *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.*

It is necessary to clarify that up to and including the date of my suspension, August 20, 2009, there was only one application before the Supreme Court, Trial Division, and that application, commenced in March 2009, originally named one Respondent, Mr. Barry Fleming. The Application was subsequently amended in July 2009 to add a second Respondent, Mr. Robert Noseworthy. Therefore, only one Application is before the Court, and that Application has indeed been scheduled for hearing on December 2-4, 2009. There is no "other applications" as stated by the Speaker. This erroneous information, contained in the Speaker's letter to Cabinet,

has unfortunately subsequently been repeated in the media and in the House of Assembly by Minister Kennedy. Minister Kennedy's statement in the September 9, 2009 Special Sitting of the House of Assembly that the Speaker's letter to Cabinet was a triggering event confirmed for me that Cabinet has relied on the Speaker's letter and therefore, by extension, on erroneous information.

Minister Jerome Kennedy during the September 9, 2009 Special Sitting of the House of Assembly, as recorded in Hansard, stated:

> *... the letter is one piece of information that was provided to Cabinet. In fact, it may be the triggering event, I can say that, which brings it to the attention of Cabinet that these problems that people are hearing about in the news – because that is all we are doing; we are hearing about things in the news and reading about it in newspapers – are issues now that Cabinet may have to deal with.*

I have not publicly commented on the matter presently before the Court. The repetition of erroneous information regarding the number of "actions" before the Court has served to erode public confidence in the OCYA, and not my singular application to the Supreme Court which I was forced to file in March 2009. As stated above, I did so only after my attempts to resolve the issue privately through the Management Commission by writing them and outlining my concerns. My legal counsel then wrote Mr. Fleming and requested that he discontinue his whistleblower investigation due to his conflicts of interest. Mr. Fleming refused. Faced with the inaction of the Management Commission in responding to the legitimate concerns I had brought to their attention, the urgency of the situation due to Mr. Fleming having commenced his investigation, and given the serious ramifications associated with the inappropriate application of the whistleblower legislation, I retained legal counsel. Initiation of court action was a last resort only taken after I had exhausted every other avenue possible.

My attempts to have a complete and thorough investigation of my harassment complaint have focused on achieving a resolution through the Management Commission. No court action has been initiated with respect to the harassment complaint I made against the Speaker. This matter presently remains in the hands of the Management Commission.

Mr. Fitzgerald, on the other hand, has commented publicly with respect to issues arising out of the Office of the Child and Youth Advocate. Mr. Fitzgerald's statement to the media on June 5, 2009, later televised, following his public release of Mr. Thistle's report, that I was "frivolous" in bringing my complaint against him likely did erode public confidence in the Office of the Child and Youth Advocate. By making such a defamatory statement about me, Mr. Fitzgerald's comment cast aspersions not only on my reputation, but on that of my Office as well. I had made my complaint of harassment against Mr. Fitzgerald in my capacity as the Child and Youth Advocate, and, therefore, such an offensive comment by the Speaker of the House of Assembly could hardly fail to result in anything but a loss of public confidence in the Office of the Child and Youth Advocate.

In his letter to Cabinet, Mr. Fitzgerald provided his assessment of the current situation with respect to OCYA Staff. Mr. Fitzgerald stated:

> *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.*

Mr. Fitzgerald's letter indicated that OCYA staff are either seeking medical advice in order to obtain transfers on medical grounds to other jobs within the Public Service without competition or are planning to quit. Mr. Fitzgerald stated:

> *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.*

I can appreciate that the past several months have been stressful for staff of the OCYA. They have certainly been stressful for me. There have been three investigations related to the OCYA, namely, the Public Service Commission investigation requested by Mr. Fitzgerald in February 2009, Mr. Fleming's whistleblower investigation of me commenced in March 2009, and Mr. Noseworthy's whistleblower investigation of me initiated by an Order in Council dated May 25, 2009. Staff participation was mandatory for both whistleblower investigations. Given this extraordinary situation, it is not surprising that the stress levels of staff were impacted by both their involvement in and media coverage of those investigations.

Following my February 2009 harassment complaint against the Speaker, Mr. Fleming at Mr. Fitzgerald's request commenced a whistleblower investigation of my complaint in March. Mr. Thistle commenced an investigation of my complaint under the Harassment and Discrimination Free Workplace Policy in April-May. While the focus of those two investigations of my harassment complaint against the Speaker was not internal to the OCYA, the media coverage regarding those investigations, no doubt, has had an impact on OCYA staff.

Since March, I have been subject to a threat of prosecution communicated to me in writing by Mr. Fleming with respect to his conduct of the whistleblower investigations. This threat, in effect, has precluded me from openly engaging staff about any stress experienced as a result of these investigations. I do not know whether staff within the OCYA have received any direction regarding discussions amongst themselves with respect to these investigations. I can tell you that, overall, these investigations were "the elephant in the room" nobody talks about.

I cannot respond to Mr. Fitzgerald's statements regarding the medical attention he reported OCYA staff as receiving in response to their work situation. Mr. Fitzgerald has not provided the specifics of the medical help staff are receiving or specific details of the work situation that

prompted staff to seek this medical help. I am not a physician and, therefore, it would be inappropriate for me to speculate about the particulars, including the cause, of OCYA staff medical issues. I can, however, provide a description of the work environment that existed within that Office during recent months up to and including the date of my suspension, August 20, 2009.

Although subject to a number of external investigations during that period, the OCYA continued to conduct its own investigations. In particular, 38 witnesses were examined under subpoena and 15 parents and youth participated in interviews, in the OCYA boardroom. I mention this as it has been necessary for me on a number of occasions to request that staff close the kitchen door as the sound of laughter emanating from the kitchen while staff were on coffee breaks was being picked up on the recording equipment.

We have a tradition in the OCYA of celebrating our birthdays with coffee and cake. In an Office of ten, rarely a month passes without such a celebration. During recent months, other events were celebrated, including Valentine's Day, Administrative Professionals' Day, and St. Patrick's Day. Our traditional Christmas lunch last year was at the Clovelly Golf Course, followed by a gift exchange at the OCYA. In early December 2008, we held our annual tree trimming party and everyone helped decorate the tree.

Communication between all OCYA staff, including me, is very informal. Casual conversations regularly occur throughout the day in the kitchen, in the reception area, and in staff offices. Staff continued to share personal pictures via email of children, grandchildren, spouses, pets, new homes, and vacations.

OCYA staff enjoy flexible work arrangements. All but two staff have chosen to work either a flex schedule or a compressed schedule. Since my appointment on August 1, 2005, I have approved every leave request by staff, which has included vacation, paternity leave, and requests for leave without pay when staff did not wish to exhaust annual leave. This year, to date, all staff other than my executive secretary have taken their vacation.

OCYA staff are rarely required to work overtime with the exception of the front-line staff. The front-line staff work overtime when they conduct advocacy clinics throughout the Province and meet with youth groups, etc. during the evening. Overtime has, on occasion, been pre-approved at the request of staff to assist them in catching up with paper work, particularly at year end, or to assist staff in responding to time-sensitive requests. This overtime is compensated on a leave in lieu basis at a time and one half rate in accordance with Government policy.

The medical issues identified by Mr. Fitzgerald in his letter to Cabinet were not reflected in the leave requests of staff. The pattern of extended absenteeism one would ordinarily expect to see associated with a request for transfer based on medical reasons, without a Public Service competition, did not exist within the OCYA up to the date of my suspension. Furthermore, in most cases involving transfer for medical reasons, particularly stress-related issues, there is a

noted withdrawal of such employees from social interaction and participation in social events associated with the workplace. As outlined above, this did not occur.

In his letter to Cabinet, Mr. Fitzgerald stated that four of the seven professional staff are planning to transfer out of the OCYA for medical reasons, and that others are planning their resignations. At the time of my suspension, there were six permanent and one temporary professional staff working in the OCYA.

The temporary staff member has been employed since September 2008 as a front-line advocate, initially as a paternity leave replacement, and later in a temporary capacity as sufficient funds existed within the OCYA budget to permit this staff person to remain employed until funding for an additional front-line position was approved in the recent budget. This staff person recently participated in a Public Service competition for the permanent position. Ms. Pottle, Director of Advocacy Services, informed me just prior to my suspension that this staff person was the highest ranked candidate. However, I did not receive the selection board list of recommended candidates for my approval. I understand Mr. John Rorke has since approved the hiring of this staff person for this permanent position.

Clearly not all professional staff within the OCYA are planning to leave as at least one person recently chose to seek permanent employment within the OCYA, having worked there in a temporary capacity for close to one year. I was unaware until I read Mr. Fitzgerald's letter that other staff were seeking medical transfers or planning to quit.

In his letter, Mr. Fitzgerald stated that staff are "demoralized," and that I have "taken no action to address matters." I disagree with Mr. Fitzgerald's statement that I have taken no action to address matters. Following Mr. Fitzgerald's February 2009 request that the Public Service Commission conduct an investigation of the OCYA and notification of that investigation to OCYA staff in an email by Ms. Marlene Lambe, CFO, House of Assembly, I emailed all staff and encouraged them to cooperate with any investigation that might occur and to avail of the services offered by the Public Service Commission to assist them in management of stress that might arise as a result of the investigation. I fully appreciated at that time that this investigation might be stressful for staff, and, therefore, took appropriate action.

I have been limited in addressing any issues arising out of the whistleblower investigations as I have been under a threat of prosecution since Mr. Fleming's March initiation of his whistleblower investigations. Any effort on my part to discuss this situation with OCYA staff would, in all likelihood, be perceived as an attempt on my part to influence the testimony of staff and thereby "obstruct" the investigations. Therefore, while I recognized that media coverage of the situation might be stressful for the staff, I was effectively precluded from addressing this issue with staff.

Despite the stress that may have arisen due to media coverage that was sometime inaccurate, and despite OCYA staff being subject to three investigations over a short time period, the behaviour of staff, including their demeanour, did not suggest the stress was unmanageable or

required further action by me. My experience has been that OCYA staff have in the circumstances coped remarkably well.

Mr. Fitzgerald, in his letter to Cabinet, portrayed the atmosphere within the OCYA as follows:

> *The inappropriate management concerns reported by OCYA staff included intimidation and harassment which resulted in a demoralized staff and a poisoned work environment.*

As previously noted, OCYA staff continued to engage in social interaction and celebrations. Such behaviour is hardly indicative of "demoralized" employees working in a "poisoned" work environment. Despite this fact, I do agree there has been a poisoning of the OCYA work environment. However, it has not occurred as a result of any action by me.

The poisoning of the environment within the Office of the Child and Youth Advocate and the resulting decline in morale should never have happened. It was entirely preventable. We now know from Mr. Fleming's report that the triggering event occurred in February 2008 when I provided a letter to Ms. Holden that was critical of her work performance. Ms. Pottle then approached senior management of the House of Assembly to complain about me on Ms. Holden's behalf. Senior management of the House of Assembly enlisted the assistance of the Public Service Commission.

The Public Service Commission and senior management of the House of Assembly were obligated to follow basic human resources management principles and were under a duty to adhere to the Government's own Harassment and Discrimination Free Workplace Policy when the accusations against me were first made in February 2008. Had they engaged in a minimum of due diligence, it would have been discovered that my letter to Ms. Holden was a legitimate criticism of her work performance and a proper exercise of my authority as the Child and Youth Advocate. Had Ms. Lambe done more than merely examine the final budget estimates when she determined, on the basis of the quality of what was submitted, that my letter was not warranted, she would have discovered that it was me, not Ms. Holden, who had prepared the final budget estimates, and that I had done so with the assistance of Ms. Lambe's own staff member, Mr. Scott Jones. Had Ms. Mitchell Cooney, the former Manager, Human Resources and Administration within the OCYA and then Manager of Human Resources within the House of Assembly, provided crucial information about her having personally verbally reprimanded Ms. Holden in the past for issues related to her work performance and attitude, this matter would have been put to rest in February 2008.

Had senior management at the House of Assembly and the Public Service Commission done the right thing at the right time, the subsequent poisoning of the work environment of the Office of the Child and Youth Advocate could not have occurred.

Senior management staff at the House of Assembly and the Public Service Commission not only permitted, but indeed encouraged Ms. Pottle and Ms. Holden to continue to complain about me for one full year without ever being required to make an official complaint. Had senior

management at the House of Assembly and the Public Service Commission complied with the requirements of the Harassment and Discrimination Free Workplace Policy, particularly the requirement that a complainant make their concerns known within a reasonable period of time to the person they are complaining about, then Ms. Pottle and Ms. Holden would not have been able to continue to complain for one full year without making an official complaint.

Let me put this in perspective. Ms. Pottle initially complained on behalf of Ms. Holden who had received a letter critical of her work performance. A reasonable person when confronted with an employee making allegations of harassment immediately following receipt of a letter critical of that employee's work performance would take all necessary steps to first determine if the criticism of the employee's work performance was warranted. This did not happen.

Had senior management at the House of Assembly taken the necessary steps to determine if the criticism of Ms. Holden's work performance was warranted, they would have found that it was not only warranted and a legitimate exercise of my authority as the Child and Youth Advocate, but that Ms. Holden had a previous history of work performance issues.

A reasonable person, having determined that the criticism of the employee's work performance was warranted, would not permit or encourage continued complaining from that employee for a full year. However, there was nothing reasonable about what happened here. There was no attempt by senior management at the House of Assembly to determine the validity of Ms. Pottle's and Ms. Holden's complaint; they were permitted and encouraged to continue complaining for one year. Instead of taking the obvious first step of determining whether my criticism of Ms. Holden's work performance was warranted, senior management at the House of Assembly skipped this critical step and immediately proceeded to enlist the services of the Public Service Commission.

The failure of senior management at the House of Assembly and the Public Service Commission to respond appropriately to these accusations unfortunately sent a message to Ms. Pottle and Ms. Holden that "you can say whatever you want"; "we will believe you and support you"; and "we won't tell her what you said." The effect of this was to fuel Ms. Pottle and Ms. Holden who then embarked upon a mission to discredit me. The full year of unquestioning support provided by senior management at the House of Assembly and staff at the Public Service Commission enabled them in this endeavour. It was during that time that the poisoning of the OCYA workplace began.

Even with the support of senior management at the House of Assembly and the Public Service Commission, it still took nearly a full year before Ms. Pottle and Ms. Holden were able to influence and recruit other OCYA staff to join in the complaining. It was not until January 20, 2009 that other staff members within the OCYA met with Mr. Fleming to discuss making a whistleblower complaint. In January 2009 I was unaware Ms. Pottle and Ms. Holden had been complaining about me for almost one year to senior management at the House of Assembly and to the Public Service Commission. Ms. Pottle and Ms. Holden, on the other hand, had enjoyed a full year of support without the legitimacy of their complaint being questioned.

When Mr. Fitzgerald proceeded with an investigation of the OCYA without an official complaint, it sent the message to all staff within the OCYA that the Speaker was not bound by the Harassment and Discrimination Free Workplace Policy. The message was that he could, in fact, do whatever he wanted without any regard for the Policy. The Speaker's cavalier disregard for the Policy's procedural safeguards also sent the message to OCYA staff that he had no regard for me. By pursuing the Public Service Commission investigation without an official complaint, the Speaker was able to ensure I would be kept in the dark regarding the specific details of what he had told me were "stories."

The Speaker's initiation of a Public Service Commission investigation without an official complaint sent Ms. Pottle and Ms. Holden, who by then had started working with Mr. Fleming at the Office of the Citizens' Representative, three key messages: 1) they would never have to make an official complaint as he had circumvented the Policy and proceeded with an investigation without one; 2) they would continue to enjoy protection; and 3) that the validity of their accusations about me would not be subject to scrutiny.

The most significant message the Speaker's actions sent to OCYA staff was that it was Ms. Pottle, Director of Advocacy Services, the most senior staff member within the OCYA, who had his full support, and not me. The Speaker thereby undermined my authority, as for all practical purposes the real authority in respect of the management of the OCYA was exercised by the Speaker.

The impact of this message on OCYA staff was profound. From that point on, OCYA staff were fully aware Ms. Pottle enjoyed the full support of both the Speaker and the senior management of the House of Assembly, whereas I did not. This enabled Ms. Pottle to openly continue her efforts to undermine and discredit me with the implicit backing of the full authority conferred on her by the Speaker. Armed with that authority, Ms. Pottle was able to undermine my efforts to direct the operations of the Office of the Child and Youth Advocate and to further poison the OCYA work environment.

Mr. Fleming met with some OCYA staff in January 2009, but had not accepted a whistleblower complaint at that time. The impact on OCYA staff of Mr. Fleming's reversal by agreeing in March 2009 to investigate a complaint of a sort he had previously informed OCYA staff was not appropriate for application of the whistleblower legislation was significant. By this time, OCYA staff were aware Ms. Pottle had been successful, with the assistance of the Speaker, in circumventing the Harassment and Discrimination Free Workplace Policy and achieving the desired result of initiating an investigation without ever having to make an official complaint. That ensured I would not in the normal course ever become aware Ms. Pottle had made unsubstantiated allegations against me. Furthermore, not only had Ms. Pottle been successful in getting the Speaker to circumvent the Policy, it now appeared to OCYA staff she had been successful in getting Mr. Fleming to change his mind about what constituted appropriate application of the whistleblower legislation. This additional development undoubtedly

reinforced the OCYA staff perception that Ms. Pottle was in practice the person in charge of the Office.

The poisoning of the work environment within the OCYA that began in February 2008 steadily worsened over the course of the following 17 months. By July 2009 it was complete. It was then that I became aware that the OCYA had received a referral some six months previous from a citizen of Labrador in connection with the child protection services provided to a 13 year old boy who died in a fire in Happy Valley-Goose Bay in June 2008 while on an active child protection case load. Upon further examination, I discovered that an OCYA front-line staff member had indeed received this referral, and then, acting on the direction of Ms. Pottle, Director of Advocacy Services, determined that the OCYA had no role to play. Consequently, no action had been taken. No OCYA file had been opened, and this very serious referral had not been brought to my attention.

I met with Ms. Pottle and the front-line staff member involved in this referral on July 16, 2009. During that meeting I became aware that despite the hard-learned lessons for the OCYA in the Turner case, even at the Director level there is still a fundamental lack of appreciation of the role and mandate of the OCYA.

Following that meeting, and upon reflection, I determined I had an obligation to personally address this serious issue, given the statutory duty of the OCYA to appropriately respond to referrals regarding the provision of government programs and services, especially referrals involving child protection. I therefore scheduled a meeting for all OCYA staff for July 22, 2009.

During the July 22nd meeting, I provided details of the Labrador referral to staff, and gave direction to staff regarding what constituted an appropriate response to such a referral. At no point did I identify the particular staff who had been involved in the Labrador referral. As I had done on numerous occasions since the release of the Turner Report, my explanation of what constituted an appropriate response referenced the Turner Report. I explained to staff that I was awaiting receipt of file documentation from Child, Youth and Family Services in Labrador to assist me in determining the nature of our response. I indicated that if that response was the initiation of an OCYA investigation, it would be necessary for me to determine whether it was still possible for such an investigation to now be conducted internally, given the existence of the conflict of interest within the OCYA. I explained to staff that if the OCYA were now to conduct an investigation of this matter, having already determined that the OCYA had no role to play, it would be necessary for our previous involvement to be disclosed. I reminded staff that the usual OCYA practice of issuing a press release when an investigation was initiated would occur in this case as well. I reminded staff that it was OCYA practice to acknowledge the existence of conflict of interest in press releases announcing investigations. I committed to staff that I would inform them of my decision regarding the action the OCYA would now take in this matter.

It was following my comments to staff regarding the press release that would be issued if an investigation was initiated that Ms. Pottle identified herself as being "involved in the decision"

in this referral. She informed staff "the matter was very upsetting for everybody involved." She told staff that she "was prepared to take responsibility, even if it meant resigning." I did not make any comment in response to Ms. Pottle's offer to resign.

I concluded the staff meeting with an acknowledgement to staff that I recognized the lack of response by the OCYA to such a serious referral was undoubtedly upsetting for all staff. I encouraged staff to speak with me regarding any assistance I could provide them to ensure the OCYA appropriately responds to referrals.

Contrary to the assertion in the Speaker's August 17th letter to Cabinet, at no time during the July 22nd staff meeting, or any time thereafter, did I state to staff or anyone else that I "was not going to accept personal responsibility for the error."

In his letter, the Speaker also stated:

> *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.*

That statement is not true. Following circulation to all staff of the minutes of the July 22nd staff meeting, the front-line staff member who, on the direction of Ms. Pottle, had not actioned the Labrador referral came to my office and asked to have a couple of minor changes made to the minutes. I asked my executive secretary to bring in her minute book, which she did. The three of us, together, checked the minute book against the minutes, and a minor adjustment to the minutes was agreed to and made. I informed the staff person that I would not be circulating the revised minutes until all staff had returned from vacation and had had an opportunity to review them and request changes, if necessary.

One of the Consultants also approached me about making changes to the minutes. Again, I asked my executive secretary to bring in her minute book, which she did. The three of us, together, examined the minutes in the minute book. I agreed to make the minor revision the Consultant requested. However, I advised this staff person that I could not change the minutes to replace statements she actually made with statements she now wished she had made. She told me that what she had said in the July 22nd staff meeting, which was reflected in the minutes, had been perceived by some staff as critical of those staff members who had handled the Labrador referral. I informed the staff person that I had not interpreted her comments that way. She stated that "others have and they've told me so." She did tell me she understood that I could not accommodate that specific change request.

Later that same afternoon, the staff person involved in the Labrador referral came to my office again. The staff person stated that he wanted to correct information he had initially provided to me during our July 16th meeting with Ms. Pottle, and which had been discussed during the July 22nd staff meeting. The staff person stated he had wanted to provide this correct information during the staff meeting, but at that time he had not wanted to identify himself as the staff person involved in the Labrador referral. During our meeting this staff person told me he

wanted me to know that "he was never comfortable with taking no action on that referral." I asked him why he had not brought it to my attention in January 2009, to which he responded, "I brought it to Roxanne's attention and you will have to take it up with Roxanne why she didn't bring it to your attention."

Ms. Pottle was on vacation when the minutes of the July 22nd staff meeting were circulated. Upon her return she placed an envelope containing a note under my office door in which she made comments about the July 16th meeting and the July 22nd staff meeting. Despite the direction I had provided to all OCYA staff during the July 22nd meeting regarding what constituted an appropriate response to referrals and despite the further direction to all OCYA staff contained in my July 27th and July 29th emails, Ms. Pottle inquired about the Office's response to events in the media and asked, "How far do we stretch this?"

The most notable change Ms. Pottle requested to the minutes of the July 22nd meeting related to the wording of her offer to resign. Ms. Pottle and I did not have an opportunity prior to my suspension to discuss her note. I should state here that upon receipt of Ms. Pottle's note, I asked my secretary to bring me her minute book, which she did. I then reviewed the minutes, the notes as recorded in my secretary's minute book, and Ms. Pottle's requested change. The minutes accurately reflect the notes in the minute book as well as my memory of the meeting. Ms. Pottle's offer to resign was, as I am sure you can appreciate, an extraordinary statement for someone to make in a staff meeting. I have no difficulty whatsoever recalling Ms. Pottle's exact words.

In his letter to Cabinet, Mr. Fitzgerald's assertions in relation to my handling of the Labrador referral by OCYA staff, namely that I "was not going to accept personal responsibility for the error," and that I was not prepared to amend the minutes of a staff meeting when the accuracy had been questioned, are therefore false. Mr. Fitzgerald again provided erroneous information to Cabinet, information he knew Cabinet would rely on. It is unfortunate the Speaker chose not to provide the source of that misinformation. Mr. Fitzgerald stated:

> *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 Speaker's failure to verify the accuracy of the information he provided to Cabinet is particularly troubling given Cabinet's determination that my suspension was justified because of "an incapacity to act" as required under Section 8.(1) of the *Child and Youth Advocate Act*. In the August 20, 2009 letter notifying me of my suspension, Mr. Norris stated:

> *Your failing staff relations appear to have culminated in an inability to act in a manner that advances the mandate of the Office of the Child and Youth Advocate.*

During the week following the July 22nd staff meeting, it was brought to my attention that on the day after the July 22nd meeting Ms. Pottle met with advocacy staff while I was out of the office. I have been advised that during that meeting Ms. Pottle did not support the direction I

had provided to staff during the July 22nd 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. A copy of that email is contained at Tab 13 of the documentation Cabinet relied on in its decision to suspend me.

Following my July 27th email to all OCYA staff, it was again brought to my attention that Ms. Pottle was continuing 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 referral 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. A copy of that email is contained at Tab 16 of the documentation Cabinet relied on in its decision to suspend me.

Upon receipt of the documentation I had requested from Child, Youth and Family Services in Labrador regarding the child protection services provided to the families of the 13 year old boy and the 5 year old girl who died as a result of a fire in Happy Valley-Goose Bay, I personally reviewed all of it and determined that an investigation by the Office of the Child and Youth Advocate is required. I emailed all OCYA staff on August 3, 2009 to inform them of my decision.

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 of Labrador-Grenfell Regional Integrated Health Authority and the Deputy Ministers of the Department of Child, Youth and Family Services and the Department of Health.

Once I determined the Labrador Investigation was necessary and had provided the required notice, I then focused my attention on how that investigation could best be conducted in light of the conflict of interest issue within the Office of the Child and Youth Advocate. Having reviewed the file documentation, and in light of my own experience of having lived and practiced law in Labrador, I realized that the issues to be addressed in this investigation would be complex. I determined that in order for this investigation to be conducted internally by the OCYA I would require the assistance of a professional with several years' experience working within the field of child protection. That individual, along with me and the two consultants currently employed within the OCYA, could undertake the investigation. The Director of Advocacy Services would normally take on that role. However, Ms. Pottle was in a conflict of interest. It was Ms. Pottle who had determined, when the referral was first received by the OCYA in January 2009, "though a terrible situation ... CYFS involvement is a separate issue that shouldn't be linked to child's death," and who directed the front-line staff person to take no action.

Prior to my August 7th letter to Mr. MacKenzie (copied to members of the Management Commission), I gave considerable thought to the conduct of the Labrador Investigation and to the impact of the conflict of interest within the OCYA upon that investigation. I determined that Ms. Pottle's continued presence in an Office of ten staff was not feasible, given her role as

Director and the conflict of interest created by her misdirection to staff to take no action on this referral. I determined that if she were to remain in the Office the Labrador Investigation could not be conducted internally and still preserve the integrity of the investigation necessary to ensure that the findings and recommendations were perceived as credible. The conflict of interest within the OCYA in the Turner case had necessitated that investigation be conducted by an external consultant. Dr. Peter Markesteyn was retained in the spring of 2005 to do so. In other words, the response to the conflict of interest within the OCYA at that time was to move the investigation out of the Office.

By way of background, I should point out that over the past four years, and in particular since my restructuring of the OCYA staffing model in the winter of 2006, there has been a change in direction. The staffing complement has been increased in order to enhance the capacity of the OCYA to conduct reviews and investigations internally. That change in direction has met with the approval of the Management Commission. Recent budgets have provided funding to hire two Consultants to assist in the conduct of reviews and investigations. The expertise acquired with the hiring of two Consultants makes it possible to conduct such investigations internally. The work that has been undertaken by the OCYA, its unique perspective, and the expertise which now exists within the OCYA supports the conduct of 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.

I did explore the option of retaining an external consultant to conduct the Labrador investigation. I considered the cost of such an external consultant and concluded it would be very high. The former Speaker, Mr. Harvey Hodder, had informed me on the day of the Turner press conference that the cost of that Review was in the vicinity of $1 million. Considering the Labrador Investigation involved the deaths of two children from two separate families, both on active child protection case loads at the time of their deaths, I concluded the cost associated with retaining an external consultant to conduct the Labrador Investigation would be $2 million, perhaps more. In considering the available options, I want to be clear that cost was not the deciding factor. When I determined in August 2009 that the Labrador Investigation should be conducted internally by the OCYA, it was based on the existence of the expertise which then existed within the OCYA.

I have lived in Labrador. I have a respect for the cultural diversity of this unique part of our Province. I also have an appreciation of the challenges Labrador's vast geography presents to social workers who practice there. As a former social worker with extensive experience in the field of child protection, I have an understanding of the challenges of that system. Having practiced law in Labrador, I have an appreciation of the complexities which arise from the interface of the legal system with the child protection system. Given the urgency of the situation, as at that time a serious referral had been received by the OCYA and not properly addressed for six months, I believed the likelihood of retaining a suitably qualified external consultant on a timely basis was remote. I intended the investigation proceed promptly. I, therefore, wrote Mr. MacKenzie and the Management Commission on August 7th and sought

their assistance in removing Ms. Pottle from the OCYA, as that measure was necessary for the Labrador Investigation to be conducted internally.

The request to that effect contained in my August 7th letter should have provided more detail. In particular, no explicit reference made clear that I was requesting a secondment for Ms. Pottle. That omission unfortunately resulted in Mr. MacKenzie reaching the conclusion that it was Ms. Pottle's dismissal that was being requested.

My August 7th letter provided ample detail about the background and nature of the problems with respect to Ms. Pottle's continued employment as Director within the OCYA. Ms. Pottle's inappropriate direction to front-line staff, evidenced by her direction in the Labrador referral, and her continued undermining of my efforts to clarify and provide direction to staff as to the appropriate response to referrals received by the OCYA clearly demonstrated the inappropriateness of Ms. Pottle remaining within the employ of the OCYA.

Ordinarily the behaviour exhibited by Ms. Pottle would have resulted in progressive disciplinary measures being implemented. Under normal circumstances, the advice in Mr. MacKenzie's August 11th letter related to progressive discipline would have been sound. However, these were not normal circumstances.

I have no doubt Ms. Pottle's undermining of my authority warranted progressive discipline, which by definition takes time. Time, however, was a luxury the circumstances did not afford. It was Ms. Pottle's conflict of interest, which she created by her inappropriate direction to front-line staff, that necessitated an immediate secondment for Ms. Pottle to permit the OCYA to move forward with the Labrador Investigation. Ms. Pottle's undermining of my authority compounded the existing conflict of interest problem and had a direct impact on the conduct of the Labrador Investigation. Her presence in the Office would afford her the opportunity to continue to influence the two Consultants who would be assisting in the Investigation. Therefore, while Ms. Pottle's behaviour supported progressive discipline, it was her conflict of interest that necessitated her immediate removal from the Office in order for the Labrador Investigation to proceed.

While I understand Mr. MacKenzie having misinterpreted my August 7th letter as seeking Ms. Pottle's dismissal, I take serious issue with his suggestion that I asked him to engage in a reprisal against Ms. Pottle. I made no such request. I wrote to Mr. MacKenzie in his "capacity as Chief Administrative and Financial Officer of the House of Assembly" seeking "assistance with the conduct of an investigation by the Office of the Child and Youth Advocate." I informed him that since March 17, 2009, when Mr. Fleming initiated the whistleblower investigation of me, I had been under a threat of prosecution for any reprisal against a person involved in that investigation. I informed Mr. MacKenzie that it was that threat which precluded me from dealing with the matter of Ms. Pottle's continued employment within the OCYA. I explained to him that "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."

I made this statement to Mr. MacKenzie to ensure he was fully aware of the reasons I could not engage in the legitimate exercise of my authority as the Child and Youth Advocate and address the matter myself. I did and do not consider removal of Ms. Pottle from the OCYA to be a reprisal. It was a necessary and appropriate response to address Ms. Pottle's conflict of interest which prevented the Labrador Investigation from proceeding internally. I did not ask Mr. MacKenzie to engage in a reprisal as I did not then and I do not now consider the assistance I requested to constitute a reprisal. My letter made it abundantly clear that it was my inability to conduct the Labrador Investigation while Ms. Pottle remained within the OCYA that necessitated my request for her to be moved.

Mr. Norris' August 20th letter cited my August 7th letter to Mr. MacKenzie as evidence of my mismanagement of OCYA personnel. In his letter to Cabinet, Mr. Fitzgerald also referenced that letter to Mr. MacKenzie. Mr. Fitzgerald stated:

> *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.*

My August 7th letter was written for one purpose and one purpose only. I required assistance to properly conduct the Labrador Investigation internally. I have previously outlined the basis for my determination that the OCYA should conduct the Labrador Investigation and the necessity of immediately addressing the conflict of interest issue essential to protecting the integrity of the Investigation and the credibility of the findings and recommendations arising from it. It is truly unfortunate that my efforts to ensure a proper investigation of the child protection services provided to children in Labrador have been twisted to suggest that I was motivated by vindictiveness.

On August 7, 2009, in accordance with established practice I issued a press release regarding the initiation of the Labrador Investigation. A copy of that press release is contained at Tab 12 of the documentation Cabinet relied on in its decision to suspend me.

In his letter to Cabinet, Mr. Fitzgerald stated:

> *... the August 7, 2009 Press Release from Ms. Neville in which she blames her staff, have further exacerbated the poisoned atmosphere in that office.*

Mr. Fitzgerald's characterization of my press release as my blaming my staff is not an accurate description of the content of the press release. The press release speaks for itself. I was under a

duty to acknowledge and disclose to the public the fact that staff in the OCYA had previously determined that no response was required to the Labrador referral when it was first received. In order to protect the integrity of the investigation, it was necessary to not only identify the conflict of interest and how it arose, but also to assure the public that the staff involved in the initial determination that "the referral did not warrant any action or follow up" would not be involved in the investigation. When faced with a conflict of interest, Rule number one is: Identify it. Rule number two is: Indicate how you plan to address it. Cardinal Rule: Don't cover it up.

No staff member was identified either by name or position title in the August 7th press release. The press release stated that I had written the Management Commission "seeking assistance with respect to the conduct of this investigation." I intentionally chose not to in the press release reveal the specific nature of my request for assistance as to do so could have led to the identification of the staff initially involved in the Labrador referral.

It should be noted that prior to any press release being placed on the Government website, it is first submitted to Executive Council. My August 7th press release was so submitted, and Executive Council saw fit to make only minor revisions before posting it on the Government website.

Mr. Fitzgerald was fully aware that the assistance I had requested was that Ms. Pottle be moved out of the OCYA in order for me to address the conflict of interest situation and conduct the Labrador Investigation internally. I never asked for extra money. Mr. Fitzgerald, in his statements to the media, misinformed the public about the nature of my request, and indicated that I had asked for funding. At that time, Mr. Fitzgerald did not express any concern about the content of the press release. Mr. Fitzgerald, in an interview with CBC Reporter Chris O'Neill-Yates that was later both televised and carried on CBC Radio, stated:

> *The Clerk has received a letter requesting funding to carry out an investigation. The Commission met on Wednesday to consider the request and the letter already being sent to Child and Youth Advocate saying that we realize the importance of this investigation and the funding will be provided to carry out the investigation in a thorough and professional way.*

The August 7th press release only became an issue following my August 14th letter pointing out that, if Ms. Pottle was not redeployed elsewhere in the Public Service to address the conflict of interest in the OCYA, the Labrador Investigation would have to be undertaken by an external consultant. Mr. Fitzgerald's effort to have me summarily suspended quickly followed.

Following my August 7th letter to the Clerk (copied to the Management Commission) and my August 7th press release, an exchange of correspondence occurred between me and Mr. MacKenzie. As previously discussed, Mr. MacKenzie's August 11th response to my August 7th letter indicated he had concluded I was seeking Ms. Pottle's dismissal. I wrote Mr. MacKenzie on August 14th to correct his misunderstanding.

I should here state that prior to writing my August 14th letter, I received a letter dated August 13th from Mr. MacKenzie. In his August 13th letter, Mr. MacKenzie informed me that I had the full support of the Management Commission with respect to my conduct of the Labrador Investigation. He also relayed an unprecedented request by the Management Commission for a status report of other Reviews and Investigations previously announced by my Office. Mr. MacKenzie further indicated that the Management Commission's request was for a "current status report, rather than to March 31, 2009" as the Annual Report to be tabled by September 30, 2009 normally required. In fact, my Annual Report was due to be submitted to the House of Assembly by August 31, 2009. It is worth noting that Mr. MacKenzie's August 13th letter expressed no concern about the content of the August 7th press release I has issued.

Mr. MacKenzie did say:

> *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.*

I was pleased to be informed that I had the full support of the Management Commission with respect to my conduct of the Labrador Investigation. I was, however, surprised that the Management Commission was seeking such detailed information regarding my ongoing Reviews and Investigations. I was also concerned that this request by the Management Commission was accompanied by Mr. MacKenzie's invention of a goal related to Reviews and Investigations contained in the OCYA Business Plan for the Fiscal Year Ending March 31, 2008. In his letter Mr. MacKenzie quoted the goal as being:

> *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. All Business Plans are tabled in the House of Assembly, following approval by the Management Commission. The following goal was 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.*

Mr. MacKenzie further stated:

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

Nowhere in my 2007-08 Annual Report, tabled in the House of Assembly on September 30, 2008, is there a reference to "four Reviews." Mr. MacKenzie's falsification of the goal contained

in my Business Plan can lead to only one conclusion: it was intended to mislead the Management Commission in an effort to cause them to believe I had failed to achieve the goals set out in my Business Plan, and thereby had failed to advance the mandate of the OCYA.

Upon considering such deliberate and blatantly inaccurate statements by Mr. MacKenzie and the unprecedented request by the Management Commission for a "report on the status of other Reviews and Investigations previously announced by your Office," I was left with no doubt I was engaged in a losing battle. Despite Mr. MacKenzie's assurance that I had the full support of the Management Commission, it was clear to me that he intended to ensure that any such support was short lived.

Although Mr. MacKenzie's August 13th letter is contained at Tab 18 of the documents Cabinet relied on in its decision to suspend me, Mr. Fitzgerald omitted any reference to it in his letter to Cabinet. Given that Mr. MacKenzie's August 13th letter contained an unprecedented request from the Management Commission that could be interpreted as an attempt to interfere with ongoing OCYA Investigations, coupled with misrepresentation of the goal contained in the Business Plan related to those Reviews and Investigations, one can only assume Mr. Fitzgerald shared a similar motive to Mr. MacKenzie: Mr. MacKenzie intended to mislead the Management Commission, while Mr. Fitzgerald intended to mislead Cabinet.

Prior to responding to Mr. MacKenzie's August 13th letter, I responded in writing on August 14th to his August 11th letter and provided clarification of my August 7th request related to Ms. Pottle's removal from the OCYA. I reiterated my concerns regarding Ms. Pottle's misdirection to staff, her inability to appreciate the oversight role of the OCYA, and her continued undermining of my efforts to clarify and provide direction to OCYA staff as to the appropriate response to referrals received by the OCYA. I assured Mr. MacKenzie I had not asked his Office to engage in a reprisal against Ms. Pottle and in doing so reiterated a statement in my August 7th letter:

> *As noted in my August 7th 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.*

My August 14th letter clarified the nature of my request for assistance made in my August 7th letter, namely that it was a transfer out of the OCYA for Ms. Pottle, and not her dismissal, that I was seeking in order to be able to conduct the Labrador Investigation internally. I reminded Mr. MacKenzie of the precedent:

> *...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.*

I described the valuable assistance I had previously received when conflict of interest necessitated the transfer of two senior OCYA staff:

> *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.*

I also informed Mr. MacKenzie I had assumed he was familiar with the matter and its precedent value as his spouse had been my executive secretary during the period when Ms. McCormack and Ms. Burt were transferred elsewhere in the public service. I also informed the Clerk:

> *In drafting my August 7th 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.*

Mr. Fitzgerald, in his letter to Cabinet, characterized the clarification of my request for Ms. Pottle's transfer as being "implied":

> *... 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 light of the specific clarification provided to Mr. MacKenzie with respect to my request for Ms. Pottle's transfer, Mr. Fitzgerald's statement that I "implied" I was requesting a transfer suggests that I am disingenuous. As noted, my August 14th letter clearly stated it.

My August 14th letter detailed the specifics of the conflict of interest within the OCYA which necessitated Ms. Pottle's transfer out of the OCYA in order for the Labrador Investigation to be conducted in-house:

> *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.*

I also responded to the suggestion in Mr. MacKenzie's August 11th letter that the Labrador Investigation can best be addressed by the expenditure of additional funds in order to hire additional staff. I informed Mr. MacKenzie that his letter failed to address the practical problems associated with Ms. Pottle continuing in the role of Director of Advocacy Services, as well the conflict of interest issue:

> *Your August 11th 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.*

I reminded Mr. MacKenzie that 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. I informed him that these actions of Government and the Management Commission recognize 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." This is the approach adopted by other jurisdictions in Canada. I also informed Mr. MacKenzie that "such an approach is not only desirable from an expertise point of view, but it is also the most fiscally responsible." I informed Mr. MacKenzie that, although it was preferable that the Labrador Investigation be conducted in-house, this would not be possible if Ms. Pottle were to remain within the OCYA as the resultant public perception of conflict of interest would necessitate that the Labrador Investigation be outsourced.

Mr. MacKenzie's suggestion that the conflict of interest issue could be adequately addressed through funding to hire additional OCYA staff, and the Speaker's statements to the media that the nature of my request for assistance was funding, necessitated further explanation in my August 14th letter:

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 7th 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.

The purpose of writing my August 14th letter to the Clerk was to seek reconsideration of the request for assistance contained in my August 7th letter. I had determined that, in order for a credible investigation of the Labrador referral to proceed in-house, the conflict of interest issue must first be addressed. My August 14th comments provided both clarification of my August 7th letter and further information to assist the Clerk in his reconsideration of my August 7th request for assistance in conducting the Labrador Investigation. My letter was hand delivered to Mr. MacKenzie and members of the Management Commission on Friday, August 14th.

I then began to prepare my response to the Management Commission request contained in Mr. MacKenzie's August 13th letter to me for a current status report of all Reviews and Investigations previously announced by the OCYA. I had substantially completed that task when, on Monday, August 17th, I received a reply from Mr. MacKenzie to my August 14th letter. Mr. MacKenzie embarked on a detailed comparison of the contents of my August 7th letter to that of my January 5, 2006 letter to Mr. Robert Thompson, former Clerk of the Executive Council, in which I had requested secondments within the public service for two former OCYA staff (Ms. McCormack and Ms. Burt). As previously discussed, these were two senior staff whose previous employment activities rendered them in a conflict of interest with respect to the discharge of the OCYA mandate. Mr. MacKenzie noted a difference in the approach in my August 7th letter regarding Ms. Pottle to that in my January 5, 2006 letter regarding Ms. McCormack and Ms. Burt. While the circumstances were similar in that both situations required the transfer of OCYA staff due to conflict of interest that prevented the discharge of the OCYA mandate, two key differences accounted for the different approach.

First, in the case of Ms. McCormack and Ms. Burt, the conflict of interest arose as a result of their previous employment activities having rendered them in a conflict of interest with respect to the discharge of the OCYA mandate. This conflict of interest had been identified both by my predecessor and in the media prior to my August 1, 2005 appointment. While it had been identified, it had not been addressed when I took office.

In the case of Ms. Pottle, the conflict of interest with respect to the conduct of the Labrador Investigation did not arise as a result of her previous employment activities. Rather, she created the conflict of interest by her determination that no action should be taken when the Labrador referral was first received, and further by her direction to front-line staff that they take no action in response to the referral. Ms. Pottle's subsequent actions exacerbated the conflict of

interest she created. These actions included concealing the existence of the referral from me (it was the front-line staff involved in this referral who confirmed the existence of the referral, not Ms. Pottle), despite her having been provided a copy of Ms. Yvonne Jones' June 11, 2009 letter outlining the specifics of the referral (including the 13 year old boy's name), and her failure to appreciate the oversight role of the OCYA, evidenced in her continued undermining of my efforts to educate staff as to the appropriate response to referrals.

Second, in the case of Ms. McCormack and Ms. Burt, the conflict of interest was addressed with cooperation from both the Executive and Legislative Branches of Government. Considerable effort was expended by everyone involved to ensure suitable redeployment of these individuals as no precedent existed within the OCYA at that time to address such conflict of interest situations.

In the case of Ms. Pottle, the transfer precedent had already been established. I had assumed in writing my August 7th letter that Mr. MacKenzie was aware of this precedent and would utilize such an approach in responding to my request regarding Ms. Pottle given that the issue was conflict of interest which prevented the OCYA from discharging its mandate.

My August 14th letter was written to seek Mr. MacKenzie's assistance in transferring Ms. Pottle out of the Office of the Child and Youth Advocate. I accepted that I had not explicitly spelled that out in my August 7th letter, and therefore clarified the matter in my August 14th letter. I had already determined that Ms. Pottle was in a conflict of interest and that the Labrador Investigation could not proceed in-house as long as Ms. Pottle remained in the OCYA. I did not seek Mr. MacKenzie's approval of my decision regarding Ms. Pottle's conflict of interest or the impact of her continued presence within the OCYA on the conduct of the Labrador Investigation. Rather, I sought only his assistance, in his capacity as Chief Financial and Administrative Officer of the House of Assembly, in effecting a transfer for Ms. Pottle out of the OCYA.

The background and supporting information contained in both my August 7th and August 14th letters were provided to Mr. MacKenzie to assist him in accommodating my request for Ms. Pottle's transfer. Specifically, this information was provided to give him an appreciation of the urgency of my request. At that time, I was solely responsible for the Labrador Investigation and dependent upon assistance from Mr. MacKenzie to move ahead with it. This referral had initially been received by the OCYA in January 2009. Further delay was unacceptable.

Mr. MacKenzie's August 17th letter clearly rejected my request for assistance. Mr. MacKenzie stated:

> *Your August 7, 2009 correspondence does not, in my view, set out proper grounds for your allegation of conflict of interest.*

It is evident Mr. MacKenzie did not even consider my request for assistance. He instead questioned a decision I had made related to my conduct of the Labrador Investigation. Mr.

MacKenzie's pronouncement that I had not set out proper grounds for my "allegation" of conflict of interest suggests that Mr. MacKenzie lacks a fundamental understanding of the role of an independent office. His denial of my request for assistance, based on his determination that I had not made a proper determination of conflict of interest, constitutes a blatant interference in the independence of the OCYA.

Minister Kennedy recently described what in his view constitutes interference in the independence of a statutory office. In the Special Sitting of the House of Assembly on September 9, 2009, recorded in Hansard, Minister Kennedy stated:

> *So, Mr. Speaker, these offices or these independent statutory offices of the Legislature exist so that important societal goals may be achieved with minimal potential for political interaction and interference. In that respect, Mr. Speaker, these independent offices, of which the Office of the Child and Youth Advocate is one, are protected from interference or interaction from government, the House of Assembly, MHAs, bureaucrats – cannot tell the Child and Youth Advocate or other independent statutory offices what investigations to conduct, or how they should be conducted ...*

It is evident in Mr. Fitzgerald's letter to Cabinet that he shares Mr. MacKenzie's views, and not those of Government as expressed by Minister Kennedy, on there being no right of the House of Assembly to impose its will on the conduct of reviews and investigations undertaken by the Office of the Child and Youth Advocate. Mr. Fitzgerald wrote:

> *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.*

It is also apparent that the fear of liability with respect to Ms. Pottle is shared by the Clerk and the Speaker. This fear is manifest in the Clerk's refusal to appropriately respond to my legitimate request to have Ms. Pottle transferred in order for a proper investigation of the Labrador matter, one not tainted by conflict of interest, to be conducted by the OCYA. Once again, Mr. Fitzgerald opted to protect himself from potential liability rather than do the right thing. The Speaker's past actions in circumventing the procedural safeguards contained in the Harassment and Discrimination Free Workplace Policy to avoid liability were repeated. Unfortunately, the Speaker has now allowed his fear of potential liability with respect to Ms. Pottle to override the rights of the children in Labrador to a proper investigation of child protection services which are provided to keep them alive and safe.

Mr. MacKenzie's unwillingness to entertain my reasonable request that Ms. Pottle be transferred out of the OCYA resulted in him providing the following advice to me with respect to addressing the conflict of interest her continued presence in the OCYA presented. Mr. MacKenzie stated:

> *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.*

For Mr. MacKenzie to suggest that Ms. Pottle "continue with other duties but not perform duties related to the work where the perceived conflict exists" is both unrealistic and unreasonable. I cannot accept that Mr. MacKenzie, with the full knowledge of the situation that existed in the OCYA, thought it possible for a credible investigation to be conducted with Ms. Pottle remaining within the Office. Interestingly, Mr. MacKenzie provided no advice as to how I was to preserve the integrity of the Labrador Investigation, faced with the reality of the situation within the OCYA. Mr. MacKenzie's advice focused only on preserving Ms. Pottle's continued employment within the OCYA, and not on preserving the integrity of the Labrador Investigation.

The OCYA is an office of ten, including the Advocate. All but one staff member report directly to Ms. Pottle, and two of those are the Consultants who would be assisting me in the Labrador Investigation. Ms. Pottle's apparent inability, even with the benefit of hindsight, to recognize that her direction in response to a serious referral was inappropriate, considered in the context of her continued undermining of my direction to staff, makes it inconceivable that Mr. MacKenzie could hold the view that I could conduct a credible investigation in such circumstances. For Mr. MacKenzie to wilfully blind himself to the obvious impact on the existing conflict of interest posed by Ms. Pottle's continued presence within the OCYA in an attempt to defend Ms. Pottle's actions is inexcusable.

Mr. MacKenzie devoted much of his August 17th letter to defending Ms. Pottle's serious error in judgment as merely a "misunderstanding" regarding the nature of the referral. Mr. MacKenzie stated:

> *You state that 'Ms. Pottle ... indicated that she would have to take some of the responsibility for having given direction to Mr. Doyle 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.

It is indeed unfortunate that Mr. MacKenzie trivialized such a serious error in judgement involving a referral where two children on active child protection caseloads died by reducing it to a "misunderstanding." Equally disturbing is that he did so with the full knowledge of the specific details of the referral Ms. Pottle had determined required no action – not so much as a simple phone call to verify the validity of the referral. In my August 7th letter, I had provided those specific details of this referral to Mr. MacKenzie:

During my July 16, 2009 meeting with Ms. Pottle and Mr. Doyle, Mr. Doyle confirmed that the referral source had informed him that she had made an official child protection referral three weeks before the fire about excessive drinking by the child's mother and a lack of supervision of the child. The referral source had told Mr. Doyle, 'CYFS don't always get the job done and that MG 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. Mr. Doyle indicated that the child's mother had apparently been incarcerated on the night of the fire after she attempted to choke the boy.

It is difficult to comprehend how Mr. MacKenzie could possibly accept as plausible Ms. Pottle's explanation for her direction in this matter as a "misunderstanding" about whether the OCYA conducted death reviews. The referral source specifically stated she had made an official child protection referral three weeks before the fire. The front-line staff member had communicated to Ms. Pottle the specifics of the referral. It is very troubling that a person at the level of Director, with extensive experience in social work and child protection, could fail to exercise the skill, care and diligence any reasonable person would expect when receiving a referral of this nature. Even more troubling, however, is the willingness of both Mr. Fitzgerald and Mr. MacKenzie to accept a lower standard of care for the children of Labrador.

Not only did Mr. MacKenzie embrace Ms. Pottle's explanation for her failure to recognize both the seriousness of the referral and her inappropriate direction to front-line staff as being a "misunderstanding", he took it even further. Mr. MacKenzie suggested Ms. Pottle's failure to understand the mandate of the OCYA was my fault. Mr. MacKenzie stated:

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.

The duties of Ms. Pottle's Director's position require that she develop policies and procedures and instruct all advocacy staff regarding the role and mandate of the OCYA. Mr. MacKenzie, in

his capacity as Chief Financial and Administrative Officer for the House of Assembly, is fully aware of the responsibilities and accountabilities contained in this Director-level position. The House of Assembly completed a classification review process in the spring of 2008. Those classifications were subsequently provided by Mr. MacKenzie to the Management Commission for approval.

Ms. Pottle has, since 2007, been tasked with creating a protocol for the response by OCYA front-line staff to referrals. In the meantime, I have provided ongoing direction 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 been provided in staff meetings, emails and conversations with OCYA staff.

Mr. MacKenzie would only agree to provide assistance with Ms. Pottle's transfer on the condition that she agreed to such a transfer. Mr. MacKenzie stated:

> *If Ms. Pottle voluntarily agrees to a transfer or secondment, I would of course do all that I can to assist.*

Following receipt of Mr. MacKenzie's August 17th letter, I had little doubt that my request for assistance with Ms. Pottle's transfer would not be forthcoming. Nevertheless, I did act on Mr. MacKenzie's conditional offer of assistance. I wrote Ms. Pottle on August 18th and asked if she was prepared to volunteer to be transferred. A copy of this correspondence is contained in the documents Cabinet relied on in its decision to suspend me.

On August 18th I provided a written response to the request of the Management Commission for a current status report on all reviews and investigations previously announced by the OCYA. In addition to the current status report regarding reviews and investigations, I provided an overview of significant events within the OCYA relevant to those reviews and investigations.

As previously discussed, Mr. MacKenzie's August 13th letter to me misrepresented, in fact invented, a goal related to reviews and investigations he stated was contained in my Business Plan for the Fiscal Year Ending March 31, 2009. It was, therefore, necessary for me to in my August 18th letter first address the misrepresentations by Mr. MacKenzie before providing the current status report requested by the Management Commission.

I wish to share with you the circumstances under which I compiled a response to the Management Commission's request relayed through Mr. MacKenzie in his August 13th letter. I was extensively involved in the Janeway Investigation, conducting almost daily examination of witnesses. I was writing the Pouch Cove Review Report, which I intended to deliver to Government on September 30th. In order to protect the integrity of the Labrador Investigation, I had sole carriage of that matter during that time. In the midst of all this, my most senior staff member, the Director of Advocacy Services, who created a conflict of interest with respect to the conduct of the Labrador Investigation due to her inappropriate direction to a staff member, was openly undermining my efforts with staff to promote an understanding of the role and

mandate of the OCYA. The Director was the same individual who had been making unfounded complaints about me for a year and a half. In addition, I was overseeing the daily operations of the OCYA.

In the space of 12 days, the following had occurred. I had written Mr. MacKenzie on August 7th to request assistance with the conduct of the Labrador Investigation. He had responded to my letter on August 11th and accused me of asking him to engage in a reprisal against Ms. Pottle on my behalf. I had again written to Mr. MacKenzie on August 14th, told him I had not asked him to engage in a reprisal on my behalf, and reiterated my request for assistance. Mr. MacKenzie wrote me on August 17th and not only informed me he would not be providing the assistance I had requested, but tried to usurp my authority to make decisions regarding the Labrador Investigation.

It was in this frame of mind that I completed my response to Mr. MacKenzie's August 13th letter that he had opened with nothing short of a bold faced fabrication. The impact of this falsehood was significant. I had through Mr. MacKenzie received an unprecedented request by the Management Commission for a current status report on all reviews and investigations previously announced by the OCYA. This unprecedented request was accompanied by a goal manufactured by Mr. MacKenzie as to reviews and investigations contained in my Business Plan for the Fiscal Year Ending March 31, 2009. There was no doubt in my mind that Mr. MacKenzie fabricated this goal to mislead the Management Commission and to discredit me. It is not possible to meet a goal that does not exist. Yet my performance and progress would be measured against that fictitious goal. It was clear to me then that "something is rotten in the state of Denmark."

My August 18th report outlined significant events within the OCYA that were relevant to the conduct of reviews and investigations. The restructuring of the OCYA staffing model, the hiring in 2008 of two Consultants to assist in the conduct of reviews and investigations, and the amendment to the *Child and Youth Advocate Act* to grant subpoena power, effective June 4, 2008, were the three significant events that affected the conduct of review and investigations by the OCYA. Most notably, two reviews had been on hold due to the refusal of key civil service employees to voluntarily participate in interviews. Therefore, subpoena power had a significant impact on the ability of the OCYA to discharge its investigatory mandate.

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

- 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.

Since the winter of 2008, the Janeway Investigation has been a top priority for the OCYA, occupying both consultants on close to a full-time basis. At the date of my suspension, the Director and the two Consultants had completed reviews of the medical charts of the 61 patients relevant to that Investigation, and the analysis of file documentation was ongoing. Regular bi-weekly team meetings were held to review progress and plan for the Investigation. I had personally conducted examinations of 38 witnesses under subpoena. One Consultant and I had conducted interviews with 18 patients, parents and family members at the OCYA, Gander and Conception Bay North. It was anticipated that approximately 62 witnesses would be required to testify pursuant to subpoena during the Janeway Investigation. It was anticipated that 30 patients, parents and family members would participate in interviews without being subpoenaed. All interviews were scheduled for completion during the fall of 2009. The target date for completion of the Report of the Investigation and delivery to Government and Eastern Regional Integrated Health Authority was March 31, 2010.

Work on the Review of the Transitioning of Children and Youth In Care was completed by the Director and consultants within the Fiscal Year Ending March 31, 2009. Despite significant deficiencies in the draft Report that was provided to me in March 2009, which deficiencies required me to rewrite the entire Report, the research and investigative work completed on the Review by staff was of good quality. This Review had been a priority for the Director and one Consultant for the entire 2008 year. The second Consultant, hired in late August 2008, provided assistance with this Review in the fall of 2008. On March 30, 2009, I provided to Government and to each CEO in the four Regional Integrated Health Authorities a copy of the recommendations arising from the Review. The goal and objectives contained in the OCYA Business Plan related to reviews and investigations were met. I publicly released *Lost in Transition: A Review of the Transitioning of Children and Youth In Care* on June 2, 2009.

I also provided information in my August 18, 2009 report related to the work of the front-line OCYA advocacy staff. In the Fiscal Year Ending March 31, 2008, front-line advocacy staff responded to 490 new individual advocacy referrals, and 354 individual advocacy files were closed as the work was completed. The front-line advocacy staff also conducted advocacy clinics through the Province and provided public education, including school presentations, regarding the OCYA and the availability of Government programs and services. The goal and objectives contained in the OCYA Business Plan related to individual advocacy were met.

While I did not reference the ongoing systemic advocacy work of the OCYA in my August 18th report, three letters containing recommendations regarding systemic advocacy issues considered by the OCYA were provided to Government in March 2009. The goal and objectives

contained in the OCYA Business Plan related to systemic advocacy were met. Recently, on August 14, 2009, the OCYA provided a written submission containing recommendations to the Department of Education regarding its Draft Inclusive Education Policy. The Director and Consultants completed work on all four of those systemic files.

Mr. Fitzgerald, as Chair of the Management Commission, was provided a copy of my August 18th response to the Management Commission's request for a current status report of reviews and investigations previously announced by the OCYA. The report is contained at Tab 19 of the documents Cabinet relied on in its decision to suspend me. Mr. Fitzgerald was under a duty, upon receipt of my August 18th report, to amend his August 17th letter to Cabinet, which he knew Cabinet would rely and act on, so as to include in his submission accurate information regarding the completion of reviews and investigations by the OCYA. In failing to do so, Mr. Fitzgerald ensured Cabinet would rely on the inaccurate information he had provided regarding concerns allegedly expressed by OCYA staff to his senior management throughout 2008 about the completion of reviews and investigations. Taken together with Mr. MacKenzie's invention of a fictitious goal attributed to the OCYA Business Plan, Mr. Fitzgerald in his letter to Cabinet deliberately portrayed me as having failed to advance the mandate of the OCYA when he had full knowledge that this was not true.

Mr. Gary Norris, on the direction of Cabinet, made the following statement regarding the achievements of the OCYA in my August 20th letter of suspension:

> *Under your leadership, the OCYA has in recent months failed to significantly progress toward attainment of its statutory obligations.*

Mr. Fitzgerald provided incomplete and inaccurate information to Cabinet which Cabinet then relied on in reaching the determination that there has been a failure in recent months of the OCYA to progress toward attainment of its statutory obligations. The information contained in my August 18th current status report provided to the Management Commission and the information provided above clearly demonstrate that all goals set out in the OCYA Business Plan have been achieved, that work on reviews/investigations and systemic issues continued to progress, and that the individual advocacy work undertaken by the OCYA has been substantial.

Shortly after 2:00 p.m. on Thursday, August 20, 2009, I received a phone call from Executive Council. Mr. Gary Norris, Clerk of the Executive Council and Secretary to Cabinet, wanted to meet with me at 3:00. I asked who would be present at the meeting and if an agenda could be made available. Mr. Norris' secretary could not provide this information, so I requested that she ask Mr. Norris to call me. He did so within ten minutes.

Mr. Norris informed me Cabinet had met the day before. He asked that I meet with him before the end of the day to discuss the situation in my Office. I asked if I should bring my lawyer to the meeting. He stated that it was entirely up to me. I told Mr. Norris, in light of his response, I would be contacting my lawyer to request he accompany me. I then asked Mr. Norris if he had been asked to fire me. Mr. Norris stated that he did not want to discuss the matter over the

telephone as there were some nuances he needed to lay out for me. We agreed I would contact my lawyer, determine his availability, and get back to Mr. Norris. Mr. Norris was clear that his instructions were that the meeting had to occur that day. I contacted my lawyer, Mr. Bernard Coffey, Q.C., who agreed to attend the meeting. I then contacted Mr. Norris, and we agreed to meet at the Executive Council at 6:00 p.m.

As I hung up the phone and sat back in my chair, I remember quite clearly staring at the stack of material sitting in the middle of my desk. I was in the process of reviewing the documents I had just received from the Department of Child, Youth and Family Services concerning the two children who, while on active child protection caseloads, had died as a result of a fire in Labrador. It was only then that the full impact of Mr. Norris' phone call hit me. I realized that I had lost the battle. There would be no credible investigation for the children of Labrador.

Mr. Coffey and I attended the meeting at Executive Council at 6:00 p.m. Present were Mr. Norris and Mr. Rolf Pritchard, Solicitor, Department of Justice. Mr. Norris informed Mr. Coffey and me that Cabinet had reached a decision to suspend me pursuant to Section 8 of the *Child and Youth Advocate Act*. He also said that retired Provincial Court Judge John Rorke had agreed to replace me as the Interim Advocate. He then provided us with a copy of my letter of suspension and asked us to read it before he discussed other details. Once we had finished reading the letter, Mr. Coffey inquired as to details Mr. Norris had mentioned. Mr. Norris informed me that Ms. Marlene Lambe, Chief Financial Officer of the House of Assembly, was at the OCYA waiting for me to remove my personal belongings from my office. He also informed us that my Government ID, access cards and keys would have to be turned over to Ms. Lambe. I informed Mr. Norris that I had personally purchased several pieces of furniture for my Office and would need some time to make arrangements to get those things moved. Mr. Norris said that Ms. Lambe would remain at the Office that evening as long as required to permit me to remove my personal effects.

I attended at the Office of the Child and Youth Advocate that evening with my executive secretary to collect my personal effects. We walked past Ms. Pottle sitting in the OCYA boardroom on the way to my office. Ms. Marlene Lambe and Ms. Sandra Mitchell Cooney supervised the removal of my personal belongings.

Ms. Lambe is the senior management staff at the House of Assembly who had dealt with Ms. Pottle since February 2008 when she first complained about the letter Ms. Holden had received. Ms. Lambe is also the senior management staff at the House of Assembly who "constrained" Mr. Thistle in his investigation of my harassment complaint against the Speaker. Ms. Mitchell Cooney is the senior management staff member at the House of Assembly who could and should have informed the Speaker and Ms. Lambe that Ms. Holden had a history of issues with her work performance and attitude, and that Ms. Mitchell Cooney herself had reprimanded Ms. Holden in the past. Instead, Ms. Mitchell Cooney had declared herself to be in a conflict of interest and said nothing. Together, Ms. Lambe and Ms. Mitchell Cooney had mismanaged the entire matter for more than a year and a half, and now they were supervising

the removal of my personal belongings while Ms. Pottle waited in the boardroom. The irony was not lost on me.

The letter of suspension provided to me on August 20th by Mr. Norris did not reference Mr. Fitzgerald's August 17th letter to Cabinet, nor did Mr. Norris inform me or my legal counsel of its existence during the meeting on August 20th. I only learned subsequently through the media of Mr. Fitzgerald's letter and its significance in the decision of Cabinet to suspend me.

In the press release issued August 21, 2009 on the Government website, Minister Jerome Kennedy stated:

> *Serious concerns have been expressed and brought to Cabinet by the Speaker of the House of Assembly regarding the proper functioning of the office, including external investigations about the office and concerns about the work environment. It is important that we take immediate action to allow the work of the office to continue in an appropriate manner.*

In the Saturday, August 22, 2009 edition of The Telegram, Minister Kennedy was quoted as follows:

> *The Speaker had outlined in his letter a chronological review of everything that's taken place in that office and expressed the opinion that the child and youth advocate can no longer fulfil her function in protecting the youth and children of this province.*

In the Special Sitting of the House of Assembly on September 9, 2009 Hansard recorded Minister Kennedy as having said:

> *On August 17, 2009, a letter was written by the Speaker to the Clerk of the Executive Council. It now comes to the attention of Cabinet.*
>
> *It was after that, then, that things started to move a little bit faster, and the letter is one piece of information that was provided to Cabinet. In fact, it may be the triggering event, I can say that, which brings it to the attention of Cabinet ...*

It is evident from Minister Kennedy's statements both to the media and during the Special Sitting of the House of Assembly that Mr. Fitzgerald's August 17th letter was given considerable weight by Cabinet. As previously discussed, Mr. Fitzgerald's letter to Cabinet was misleading, contained numerous inaccuracies, and omitted relevant information.

Minister Kennedy stated that my views were well known to Cabinet when the decision to suspend me was made. In the Special Sitting of the House of Assembly, on September 9, 2009 Hansard recorded Minister Kennedy as stating:

... there were numerous letters, Mr. Speaker, numerous letters from the Child and Youth Advocate outlining her position in relation to the various allegations made against her by her staff.

So by August 17, or August 20, Mr. Speaker, there was no question that the views of the Child and Youth Advocate were known to Cabinet when the decision was made.

Contrary to Minister Kennedy's statement during the Special Sitting of the House of Assembly, my views in relation to the various allegations made against me were not known to Cabinet when the decision to suspend me was made. I have not commented publicly in the media regarding the allegations against me, either before the decision to suspend me or since.

The list of the documents provided to me which Cabinet relied on in its decision to suspend me included correspondence written between February 12, 2009 and August 18, 2009.

My February 12, 2009 letter to the Speaker, my February 16, 2009 Official Complaint of Harassment against the Speaker, and my March 3, 2009 letter to the Management Commission relate to Mr. Fitzgerald's initiation of a Public Service Commission investigation of my Office without an official complaint as required by the Harassment and Discrimination Free Workplace Policy. Also, my concerns arising from Mr. Fitzgerald's inappropriate unilateral redirection of my complaint from one under the written Harassment Policy to Mr. Fleming and the forum of his choosing (the whistleblower legislation), and the conflict of interest issues arising from Mr. Fleming proceeding to conduct that investigation were addressed in that correspondence.

My August 7th press release, my August 7, 2009 and August 14, 2009 letters to Mr. MacKenzie, and my August 18, 2009 letter to Ms. Roxanne Pottle all directly relate to my conduct of the Labrador Investigation.

My August 18, 2009 correspondence to the Clerk of the House of Assembly is a response to the request by the Management Commission for a current status report of all reviews and investigations previously announced by the OCYA.

My views regarding the allegations made against me by staff do not form the subject matter of any of the above correspondence. In fact, as noted above, I was not aware of the specific nature of those allegations until legal counsel for Mr. Robert Noseworthy provided redacted disclosure in July 2009 to my legal counsel.

During my meeting with the Speaker on February 10, 2009, he would only tell me that he heard "stories that staff in my office were unhappy, didn't feel respected, were looking for other jobs, and there was concern that I micromanaged." I made the Speaker aware of my belief that the "stories" were part of an attempt to interfere with the Janeway Investigation, but he refused my requests to provide any specific information regarding the "stories".

My Detailed Response to Specific OCYA Staff Complaints

It was during his whistleblower investigation of my harassment complaint against the Speaker that Mr. Fleming initiated a whistleblower investigation of me. Mr. Fleming informed me on March 17, 2009 that he had received a complaint from staff about me. Mr. Fleming said he was not prepared to provide specific details regarding the complaint at that time. The only information he provided about the staff complaint was that I "fail to manage my office with a sense of direction, unable to complete work product, and that I have a propensity to be myopically mired in one issue at a time," and that staff allege I am "domineering, disrespectful, threatening and unduly sensitive." He refused to tell me anything more about the complaints.

It was only when Mr. Fleming filed a report on March 24, 2009 that I first learned that the Speaker had not heard "stories". Instead, there had been more than a year of complaining by staff in the OCYA to senior management at the House of Assembly and the Public Service Commission, complaining that had its origin in the letter I gave to Ms. Holden back in February 2008. Prior to March 24, 2009 I had absolutely no idea that it was that letter, a legitimate criticism of Ms. Holden's work performance, that had lead to this entire series of events.

It was not until mid-July 2009 that I finally received the redacted disclosure of the specific staff complaints that formed the basis of the whistleblower investigations of me. It was only then that I finally learned exactly what staff had been complaining about.

- staff did not approve of the amount of time and effort I spent acquiring subpoena power;
- staff did not approve of the system of inventory control I had instituted;
- staff characterized my requests that typing errors be corrected as rage;
- staff did not approve of the work priorities I set, in particular my direction to respond to referrals from politicians or the media;
- staff were upset that new direction became necessary during investigations;
- staff claimed they had performed large amounts of work on files which "languished" in my office; and
- staff claimed that a culture of fear existed within the OCYA due to the fear that staff could be summarily fired (based upon the previous transfer due to conflict of interest of two OCYA staff to positions of equivalent remuneration elsewhere in the Public Service), or receive a letter of reprimand or a negative performance appraisal.

Those specific complaints formed the basis of the whistleblower investigations of me. Those specific complaints gave rise to Mr. Fleming's description of my management style as "failing to manage my office with a sense of direction, unable to complete work product, and a propensity to be myopically mired in one issue at a time." Mr. Fleming also stated that staff alleged I was "domineering, disrespectful, threatening and unduly insensitive."

I would like now to provide Cabinet with my response to each of the specific allegations OCYA staff have made against me.

Complaint #1

I had absolutely no idea staff were upset with me because I had expended considerable time and effort acquiring subpoena power for the OCYA. I was shocked that both Mr. Fleming and Mr. Noseworthy apparently determined that this sort of complaint could amount to "wrong doing" appropriate for investigation under the whistleblower legislation.

Complaint #2

I was not surprised that staff did not appreciate my institution of a system of inventory control within the OCYA, as none had previously existed. This was not an entirely popular move among staff that were used to doing things differently. I was shocked that both Mr. Fleming and Mr. Noseworthy considered my initiative to increase accountability of the expenditure of public monies within the OCYA could amount to "wrongdoing" appropriate for investigation under the whistleblower legislation, given that that legislation was put in place to address a lack of accountability with respect to the expenditure of public monies.

Complaint #3

I was not surprised administrative staff were unhappy about my requests that typing errors be corrected. On more than one occasion the administrative staff told me that I was "too picky". While I did insist that correspondence, promotional material, etc. prepared by the OCYA not leave the Office with typing errors, I was always respectful in my requests for correction of typing errors. I was, therefore, shocked to learn that my reasonable requests had been described as rage, especially since the specific example provided in the disclosure related to corrections made to certificates of appreciation for the children who participated in the OCYA calendar project. Following my request that the Administrative Assistant retype the certificates with the correct date, she sent me an email telling me how much she admired me for personally signing each certificate and ended her email with a happy face (☺). The email the Administrative Assistant sent me following my request that she correct the date on the certificates is not consistent with the allegation that I had acted with rage when making the request. It was not surprising to me that the disclosure did not contain a description of the alleged rage. Such a description could not be provided because I have never acted with rage toward any employee within the OCYA.

Complaint #4

I was not surprised that staff did not approve of my direction concerning the appropriate response to certain referrals received from politicians and the media. Some staff in the OCYA resent responding to any referrals that are made by politicians or the media, regardless of the merit or the urgency of the referral. Given the example discussed above when one staff went so far as to say, "Danny Williams should have to take a number and stand in line with everybody else," I was very aware of staff sentiment. I was shocked, however, that both Mr. Fleming and Mr. Noseworthy had determined that my decisions as Child and Youth Advocate in relation to

the setting of work priorities of that Office could amount to "wrongdoing" appropriate for investigation under the whistleblower legislation.

Complaint #5

I was aware that the Director of Advocacy Services and both Consultants experience difficulty adapting to the changes in direction that commonly arise given the fluid nature of reviews and investigations. I implemented bi-weekly team meetings in the Janeway Investigation to address this matter.

I was also aware that Ms. Pottle was upset with my direction related to the Transitioning Review. I extended the originally agreed upon deadline of November 30, 2008 for the Transitioning Review because I could not accept Ms. Pottle's suggestion to me that in order for her to meet the original November 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 Transitioning Review involved examination of the files of 277 children and youth who had experienced 400 transitions. I explained to Ms. Pottle, in response to her suggestion, that any province-wide 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 would certainly lack credibility.

I was shocked, however, that both Mr. Fleming and Mr. Noseworthy had determined that direction provided by a Statutory Officer of an independent office to staff regarding the conduct of a review or investigation could amount to a "wrongdoing" appropriate for investigation under the whistleblower legislation.

Complaint #6

I had no idea that the Director of Advocacy Services and two Consultants held the view that work was languishing in my office. (This complaint can only have been made by the Director and/or the Consultants, as the front-line staff do not submit files for my review.) During the 2008-09 Fiscal Year, the Director and Consultants were involved on an almost full-time basis in the Transitioning Review, and beginning in December, 2008 in the Janeway Investigation. As explained above, the draft Report of the Transitioning Review was submitted to me mid-March 2009, and I provided recommendations to Government and the four Regional Integrated Health Authorities on March 30, 2009. The Janeway Investigation was still underway at the time of my suspension. In addition to their work on these two Reviews and Investigations, the Director and Consultants undertook work on only three systemic files. They submitted this work to me. I completed additional work on these files prior to forwarding letters with recommendations to Government in March 2009. I kept staff informed of my intentions with respect to the work they had submitted to me on these three systemic issues. No work completed by the Director or the Consultants languished in my office. I was very surprised, therefore, to learn that the staff expectation was that they should decide when and how recommendations are submitted to Government. I was shocked, however, that both Mr. Fleming and Mr. Noseworthy had

determined that such workflow was appropriate for investigation of "wrong doing" under the whistleblower legislation.

Complaint #7

I was astounded when I read in the disclosure that staff were working in a culture of fear, terrified that they could be summarily fired, receive a letter of reprimand, or receive a negative performance appraisal. None of that has ever happened. First, I have never in my life fired anybody. Ms. McCormack and Ms. Burt were transferred in the winter of 2006 due to conflict of interest to positions of equivalent remuneration elsewhere in the Public Service. Ms. Pottle and Ms. Holden were the only staff members who were there at the time Ms. McCormack and Ms. Burt were transferred. They were both well aware of the significant efforts by the Executive and Legislative Branches of Government and me to secure appropriate deployment for Ms. McCormack and Ms. Burt. If staff have a fear of being summarily fired, that fear can only have been instilled by Ms. Pottle and Ms. Holden. Second, I had not given anyone a letter of reprimand. The letter I gave Ms. Holden, copied to Ms. Pottle as her supervisor, while critical of her work performance and attitude, was not an official letter of reprimand that was placed in her personnel file at the House of Assembly. I certainly did not inform other staff that I had given Ms. Holden this letter. If staff have a fear of receiving a letter of reprimand, that fear can only have been instilled by Ms. Pottle and Ms. Holden. Third, performance appraisals have never been conducted within the OCYA, and therefore no one has ever received a negative one. Staff were aware that the House of Assembly was in the process of developing a system for performance appraisals, and that it would eventually be a requirement that performance appraisals be conducted. Given that eight of the nine staff within the OCYA report directly to Ms. Pottle, she would be responsible for preparing their performance appraisals. I cannot, therefore, understand how any such fear can be attributed to me.

I was shocked that both Mr. Fleming and Mr. Noseworthy had determined that issues related to human resources management were appropriate for investigation of "wrongdoing" under the whistleblower legislation.

My Concluding Observations on the Specific OCYA Staff Complaints

I am unaware of any department within Government where staff have been permitted and encouraged to challenge the authority of a Deputy Minister (or equivalent) to direct investigations, decide when recommendations arising from work completed by staff were to be advanced, or the amount of time to be devoted to an issue of critical importance. While I was aware that some staff within the OCYA did not like the inventory system I instituted, did not like correcting typing errors, and did not want to respond to referrals that came from the media or politicians, I cannot fathom that OCYA staff now believe it is appropriate to make a formal complaint because they were simply asked to do their jobs.

My Specific Response to Allegations in the August 20th Suspension Letter

The letter of suspension provided to me on August 20th cited the following reasons for my suspension:

> *Recent events at the Office of the Child and Youth Advocate have caused the Lieutenant-Governor in Council to lose confidence in your ability to guide your office to fulfillment of its statutory mandate. Key areas of concern include (1) your management of OCYA personnel; culminating in (2) your inability to effectively advance the mandate of your office.*
>
> *... While no determinations have been made as to whether or not you intended to do so, your correspondence of August 7th and 14th to William MacKenzie, Clerk of the House of Assembly, as well as the news release issued by your office on August 7th, 2009 evidence your mismanagement of OCYA personnel.*
>
> *The persistent and unresolved concerns of OCYA staff and your demonstrated inability to constructively resolve and overcome those concerns, have cast doubt on your ability to mobilize and utilize OCYA personnel toward attainment of the Office's mandate. Further, your conduct casts doubt about whether you possess the good judgment required by the Child and Youth Advocate to successfully execute the requirements of the office.*
>
> *Under your leadership, the OCYA has in recent months failed to significantly progress toward attainment of its statutory obligations. Your failing staff relations appear to have culminated in an inability to act in a manner that advances the mandate of the Office of the Child and Youth Advocate.*

I want to now directly address the specific contents of Mr. Norris' letter. To properly respond, it has been necessary for me to provide an account of the events that transpired within the Office of the Child and Youth Advocate immediately before my suspension. It has also been necessary to reference sundry events that transpired since my appointment on August 1, 2005. This information has been provided to enable Cabinet to understand the context in which events occurred.

I want to begin with the concern expressed regarding my management of OCYA personnel, specifically the concern that my failing staff relations have culminated in my inability to act and advance the mandate of the OCYA. The actual record since my appointment on August 1, 2005, and in particularly during recent months, in fact demonstrate my ability to identify and respond to human resources challenges in a fair and appropriate manner.

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 that was impacting the ability of the Office to fulfill its mandate. My actions in addressing this conflict of interest and, in particular, the efforts I expended to ensure appropriate redeployment for the staff involved,

suggest not only an effective management style, but an ability to address human resources challenges that might impact the ability of the OCYA to discharge its mandate.

My restructuring of the OCYA staffing model, including the hiring of two Consultants to assist in the conduct of reviews and investigations, was achieved through planning and effective communication with the Management Commission throughout the budget process so as to obtain their full support and cooperation in that endeavour.

Considerable initiative was required on my part to convince Government of the need for subpoena power in order to overcome the obstacles that were then preventing the discharge of the investigatory mandate of the OCYA. Government's amendment to the legislation to grant subpoena power to the Advocate, effective June 4, 2008, would not have occurred without Cabinet having confidence in my ability to discharge the mandate of the OCYA.

My actions in recent months, in particular since February 2009, when the Speaker informed me he had determined an intervention in the OCYA was necessary based on his having heard "stories", and my response to what I then believed to be an attempt by outside persons to prevent the Janeway Investigation from proceeding, evidence my ability to advance the mandate of the OCYA in the most trying and challenging of circumstances.

The Speaker's refusal to provide to me specific information related to the "stories" (information that would have alleviated my concern that the independence of the OCYA and its ability to conduct investigations was under threat) and his subsequent initiation of a Public Service Commission investigation of my Office (absent the requisite official complaint) compelled me to take the action that I did. The Speaker's actions undermined my authority to do my job. I tried in vain to address my concern about the threat to the independence of my Office with Mr. Fitzgerald. His refusal to simply tell me the truth left no other option than for me to invoke the complaint process under the Harassment and Discrimination Free Workplace Policy.

I was under no illusions; filing an Official Complaint of Harassment against the Speaker of the House of Assembly had potentially career-impairing implications. However, as the Child and Youth Advocate, I was under a duty to protect the integrity of investigations, essential to discharging the mandate of the OCYA "to protect and advance the rights and interests of children and youth". I understood the risk associated with fulfilling my duty.

Following notification by Ms. Marlene Lambe to OCYA staff that the Speaker had initiated an investigation of the OCYA, I emailed all my staff and encouraged them to cooperate in any investigation which may occur. I also encouraged them to avail of the services of the Public Service Commission to assist them in managing any stress arising from this investigation. I closed the Office for a full day in March 2009 to enable all staff to participate in a stress management workshop. I have not taken any action, either through communication with OCYA staff or through the Courts, to prevent, hinder or delay that investigation. The Public Service Commission investigation of the OCYA is still ongoing. Any delay that occurred in relation to it was attributable to the Speaker, the Public Service Commission, or both.

Despite the fact the Speaker had no authority to initiate that investigation, and the Public Service Commission should not have agreed to conduct it absent an official complaint, I recognized that it was essential for OCYA staff to be given necessary reassurance that I supported their participation in the investigation, and that I understood that they might experience stress associated with the process. My reassurance to staff and my full support of the stress management workshop evidence my leadership and responsiveness to the needs of the staff of the OCYA.

Since March 2009, OCYA staff have been subject to two whistleblower investigations of me: the first arose in March, initiated by Mr. Fleming; the second was initiated by an Order in Council dated May 25, 2009 appointing Mr. Noseworthy. My ability has been limited in addressing any issues with OCYA staff arising out of those whistleblower investigations as I have been under a threat of prosecution since Mr. Fleming initiated his whistleblower investigation. That threat has effectively precluded me from openly engaging staff about any concerns arising from their mandatory participation in those investigations, as any effort on my part to discuss these concerns with staff would, in all likelihood, have been perceived as an attempt on my part to influence the testimony of staff and thereby obstruct the investigations.

The concern is expressed in Mr. Norris' letter that I have demonstrated an inability to constructively resolve and overcome staff concerns:

> *The persistent and unresolved concerns of OCYA staff and your demonstrated inability to constructively resolve and overcome those concerns, have cast doubt on your ability to mobilize and utilize OCYA personnel toward attainment of the Office's mandate.*

As noted, I have been under a threat of prosecution since March 2009 and have therefore been prevented from "resolving and overcoming" the concerns of OCYA staff. Furthermore, I was not even aware of the specific staff concerns because nobody would tell me, despite my repeated requests, exactly what the concerns were. I was left until mid-July 2009 struggling to determine how I was "myopically mired" and what exactly had caused such wide-spread unhappiness amongst OCYA staff.

Nevertheless, I carried on. I made a concerted effort in recent months to continue to promote the informal atmosphere within the OCYA. Our traditions of celebrating birthdays and other special events continued throughout this time. Staff continued to enjoy flexible work arrangements. Staff continued to gather in the kitchen for coffee. Staff's children, grandchildren and nieces visited the Office. Staff went on vacation. I continued to engage in informal conversations with staff throughout this entire period. The whistleblower investigations were the proverbial elephant in the room nobody talked about.

In recent months significant progress was made by OCYA staff under my direction in advancing the mandate of the Office. The nature of that progress is as follows.

Since the winter of 2008, the Janeway Investigation has been a top priority for the OCYA, occupying both Consultants on nearly a full-time basis. At the time of my suspension on August 20th, the Director and the two Consultants had completed reviews of the medical charts of the 61 patients relevant to the Janeway Investigation, and the analysis of file documentation was ongoing. Regular bi-weekly team meetings were being held to review progress. I had personally conducted examinations of 38 witnesses under subpoena. One consultant and I had conducted interviews with 18 patients, parents and family members at the OCYA, Gander and Conception Bay North.

Work on the Review of the Transitioning of Children and Youth In Care was completed by the Director and Consultants within the Fiscal Year Ending March 31, 2009. That review had been a priority for the Director and one Consultant for the entire 2008 year. The second Consultant, hired in late August 2008, provided assistance for that Review in the fall of 2008. On March 30, 2009, I provided Government and each CEO in the four Regional Integrated Health Authorities a copy of the recommendations arising from the Review. The goal and objectives contained in the OCYA Business Plan related to reviews and investigations were met. I publicly released *Lost in Transition: A Review of the Transitioning of Children and Youth In Care* on June 2, 2009.

During the Fiscal Year Ending March 31, 2009, front-line advocacy staff responded to 490 new individual advocacy referrals, and 354 individual advocacy files were closed as the work was completed. The front-line advocacy 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 goal and objectives contained in the OCYA Business Plan related to individual advocacy were met.

Three letters containing recommendations regarding systemic advocacy issues considered by the OCYA were provided to Government in March 2009. The Director and Consultants completed work on all three of these systemic files. The goal and objectives contained in the OCYA Business Plan related to systemic advocacy were met.

While I was suspended prior to submitting my Annual Report for the Fiscal Year Ending March 31, 2009, the goals related to individual and systemic advocacy and reviews/investigations for that fiscal year were met. OCYA staff, under my direction, continued during the 2009 Fiscal Year to advance the individual advocacy, systemic advocacy, and the investigatory mandate of the OCYA.

Up to the date of my suspension, OCYA front-line advocacy staff continued to respond to referrals and conduct advocacy clinics throughout the Province.

As recently as August 14, 2009, the OCYA provided a written submission containing recommendations to the Department of Education regarding its Draft Inclusive Education Policy. The Director and one Consultant completed work on that systemic file.

At the time of my suspension, the Janeway Investigation was actively underway. Subpoenas had been issued to witnesses, and it was anticipated that all examinations of witnesses and interviews with patients and parents would be completed during the fall 2009. The Director and Consultants were actively engaged in analysis of the information arising from that Investigation.

At the time of my suspension, I was also engaged in writing the Report of the Pouch Cove Review which I intended to deliver to Government on September 30, 2009.

The achievements by the OCYA staff under my direction in the Fiscal Year Ending March 31, 2009, and in recent months up to the date of my suspension on August 20, 2009, are unequivocal evidence that I have been able "to mobilize and utilize OCYA personnel toward attainment of the Office's mandate."

On the date of my suspension, I had sole carriage of the Labrador Investigation due to the conflict of interest situation within the OCYA. Upon receipt of the documentation I had requested from Child, Youth and Family Services in Labrador regarding the child protection services provided to the families of the 13 year old boy and the 5 year old girl who died as a result of a fire in Happy Valley-Goose Bay, I personally reviewed all the documentation and determined that an investigation by the Office of the Child and Youth Advocate is required. I emailed all OCYA staff on August 3, 2009 and informed them of my decision. On Monday, August 3, 2009, I provided notice of my intention to conduct an investigation, as required by the *Child and Youth Advocate Act*, to the Chief Executive Officer of Labrador-Grenfell Regional Integrated Health Authority and the Deputy Ministers of the Department of Child, Youth and Family Services and the Department of Health.

My letter of suspension specifically references my August 7th and 14th letters to Mr. MacKenzie as well as my August 7th press release, all of which directly relate to the Labrador Investigation:

> *... While no determinations have been made as to whether or not you intended to do so, your correspondence of August 7th and 14th to William MacKenzie, Clerk of the House of Assembly, as well as the news release issued by your office on August 7th, 2009 evidence your mismanagement of OCYA personnel.*

By the time I wrote to Mr. MacKenzie seeking assistance with the Labrador Investigation and issued my press release announcing the Labrador Investigation, I had been dealing with the mismanagement of the Labrador referral by my Director of Advocacy Services, Ms. Pottle, and the resultant conflict of interest for six weeks. I had held meetings with Ms. Pottle and the front-line staff involved in the original referral. I had held a staff meeting with all OCYA staff to apprise them of the situation and reinforce for them the appropriate response to referrals. I had sent emails to all staff to further reinforce for them the appropriate response to referrals. I had received and reviewed a considerable amount of documentation from Child, Youth and Family Services in Labrador. Throughout that six week period, Ms. Pottle continued to undermine my efforts to educate staff as to the appropriate response to referrals and the role and mandate of the OCYA. In order to contain the conflict of interest and preserve the integrity

of the Labrador Investigation until the assistance I had requested of the House of Assembly was forthcoming, I maintained sole carriage of the Labrador Investigation.

Ms. Pottle was clearly in conflict of interest with respect to the conduct of the Labrador Investigation. The fact that Ms. Pottle's lack of critical thinking and complete failure to appreciate the role and mandate of the OCYA had occurred three years post-Turner was extremely troubling. Her inability, even with the benefit of hindsight, to appreciate the seriousness of her error in judgment and its impact on the child protection services in Labrador, coupled with her role as Director of Advocacy Services to provide direction, not only to the front-line advocacy staff but also to the two Consultants who would assist in the Labrador Investigation, exacerbated the conflict of interest she had created. This situation rendered Ms. Pottle's redeployment a matter of urgency.

My August 7th and 14th letters to Mr. MacKenzie were requests for assistance to address the conflict of interest created by Ms. Pottle. I had determined that Ms. Pottle's continued presence in the Office prevented the OCYA from conducting the Labrador Investigation internally. I requested assistance in having Ms. Pottle moved out of the OCYA in order to permit the OCYA to conduct the Labrador Investigation in-house. There is established precedent, within the OCYA and throughout Government, for transfer of employees whose conflict of interest impacts the ability of the Office to fulfill its mandate.

Effective human resources management requires maximum utilization of existing human resources in the most fiscally responsible manner. I had determined that the conduct of the Labrador Investigation in-house was not only desirable from an expertise point of view, but was also the most fiscally responsible approach. Therefore, the request that Ms. Pottle be transferred was necessary not only to conduct the Investigation in-house, but to achieve the highest standard for the Labrador Investigation.

My August 7th and 14th letters to Mr. MacKenzie do not evidence mismanagement of OCYA staff. What they do provide is evidence of my effective utilization of existing expertise and human resources in the most fiscally responsible manner. Furthermore, my efforts to have Ms. Pottle transferred out of the OCYA evidence my responsiveness to the needs of the front-line staff and the Consultants who require appropriate direction and guidance in order to effectively discharge the mandate of the OCYA.

My August 7th press release identified the existence and reason for the conflict of interest. In order to protect the identity of the individuals who had mismanaged the original referral, OCYA staff were not identified by name or position. Nor did the press release reference the nature of the assistance I had requested from the Management Commission as to do so would have revealed the identity of the staff involved. I had a duty both to disclose the existence of the conflict of interest and to reassure the public that OCYA staff involved in the initial decision to take no action would not be involved in the Investigation. I had a further duty to inform the public that I had not been aware of the initial referral as I would be the person directing the Investigation. This disclosure was necessary to ensure public confidence in the conduct of the

Labrador Investigation by the OCYA. In pursuing my duty to ensure continuing public confidence in the OCYA, I had an ancillary duty to OCYA staff to so far as possible preserve their professional reputations. My August 7th press release does not evidence mismanagement of OCYA staff. It is evidence of an effective balancing of competing interests and duties.

Contrary to Mr. Norris' assertion, my correspondence of August 7th and 14th and August 7th press release in fact evidence my determination to preserve the integrity of the Labrador Investigation and to ensure a credible investigation for the children of Labrador, one not tainted by conflict of interest.

Concluding Remarks

I have provided a full account of the events that transpired. Had Mr. Fitzgerald from the outset been candid with me, Cabinet would never have become involved. Had Mr. Fitzgerald, senior management at the House of Assembly, and the Public Service Commission engaged in due diligence in February 2008, and had the Legislative and Executive Branches of Government adhered to Government policies, in particular the procedural safeguards in those policies designed to prevent the mess which must now be addressed, the subsequent poisoning of the OCYA work environment could not have occurred. For my part, I have consistently tried to follow the rules in a situation where others chose not to.

The Speaker's August 17th letter to Cabinet blamed my management style for the poisoning of the work environment within the OCYA. The full account of the events that have transpired both inside and outside the OCYA leads to a different conclusion. The Speaker's less than forthright behaviour, his willingness to readily circumvent Government's written Policy, and the resulting messages such behaviour sent to staff within the OCYA could hardly fail to have any result other than a complete undermining of my authority. It was the actions of the Speaker and those acting on his direction in undermining my authority that resulted in the poisoning of the OCYA work environment.

I ask you to consider my account of the events that have transpired and the actions of the Speaker, senior management within the House of Assembly, and the Public Service Commission throughout. I ask each member of Cabinet to ponder this question: Faced with such circumstances, what would you have done?

I ask each member of Cabinet to consider that the Speaker is the person who wrote his August 17th letter knowing and intending for Cabinet to rely on it and suspend me. He is the same person who caused his own staff to limit the scope of the investigation of my harassment complaint against him. I ask that you to recall that the Speaker refused to simply tell me the truth, and thereby alleviate my concern about the impact his acting on "stories" would have on my ongoing investigations, particularly the recently initiated Janeway investigation. That was the beginning. In the end, it was my efforts to protect the children of Labrador that ultimately lead to my suspension.

Contrary to Cabinet's determination that failing staff relations resulted in my incapacity to act, I continued right up to the date of my suspension to take the steps necessary to advance the mandate of the Office of the Child and Youth Advocate to "protect and advance the rights and interests of children and youth." I am not the one whose actions failed to protect the children of this Province. I have been prevented from continuing to do my job. It was my insistence that a proper investigation of the child protection services provided to the children of Labrador that ultimately lead to my removal. I stand by the following statement, initially written in my August 7th letter and reiterated in my August 14th 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 have provided a complete account of these matters as known to me. Of necessity, it is lengthy. There has been a deliberate and ongoing interference in the independence of my Office by the Speaker and those acting on his direction. That interference unfortunately caused a poisoning of the work environment of the OCYA. That interference was possible due to the absence of scrutiny. If public confidence in the OCYA is to be restored, and the damage to my reputation repaired, any remedial action undertaken must be subject to public scrutiny.

For Government to undertake the remedial action required, I believe it is necessary for me to be heard publicly. As noted at the outset, I have therefore today filed an Originating Application in the Supreme Court, Trial Division, seeking Declaratory Relief that I be afforded an opportunity to be so heard. I ask that Cabinet consider my request in that regard.

Respectfully submitted,

Darlene Neville

Darlene Neville
Child and Youth Advocate (Suspended)

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June 22, 2009

PRIVATE AND CONFIDENTIAL
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COPY

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Chair, Management Commission
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Dear Members of the Management Commission; the Speaker in his own right; and the Clerk in his own right:

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

Further to my earlier correspondence to you concerning the above-captioned matter, Mr. Wayne Thistle on June 4, 2009 submitted a "Report of the Investigator" to Ms. Marlene Lambe. In his Report, Mr. Thistle at pages 11 and 14 stated, "The central question that I must answer is whether the behaviour of the Respondent as outlined in the formal complaint dated February 16, 2009 constituted harassment...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 [February 16, 2009 – the date of the official complaint] 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."

Viewing his mandate as circumscribed by the Scope of Work and thereby limited to events prior to February 17, 2009, Mr. Thistle did not in his Report address anything that occurred subsequent to February 16, 2009. Specifically, Mr. Thistle did not consider the impropriety of Mr. Fitzgerald unilaterally referring the official complaint against him by the Applicant under the Policy to Mr. Barry Fleming for investigation under Part VI of the *House of Assembly Accountability, Integrity and Administration Act*. Mr. Thistle, therefore, did not consider whether that behaviour by Mr. Fitzgerald constituted harassment of the Applicant.

The Harassment and Discrimination Free Workplace Policy (Creating a Respectful Work Environment) states that a complainant has the right to have his or her complaint taken seriously and have it thoroughly investigated. Enclosed you will find a copy of the written submission provided by counsel for Ms. Darlene Neville to Mr. Wayne Thistle. As perusal of that submission makes apparent, Ms. Neville understood, following receipt of Mr. Gregory Smith's email of March 26, 2009 to her counsel, that the independent external consultant would examine the entirety of Mr. Roger Fitzgerald's behaviour toward her. Her understanding in that regard was based upon: (1) the acknowledgement in Mr. Smith's March 26, 2009 email of the Management Commission's receipt of her March 3, 2009 letter (in which letter she explicitly referenced her February 16, 2009 official complaint of harassment and further complained about Mr. Fitzgerald's behaviour toward her subsequent to February 16, 2009); and (2) the March 26, 2009 assurance made on behalf of the Management Commission that the investigation by the outside consultant would be done in accordance with the Policy.

Accordingly, Ms. Neville was very surprised and disappointed to on June 4, 2009 learn that Mr. Thistle felt so constrained in his mandate that he ignored everything that occurred after February 16, 2009, including any inferences that might be drawn from those subsequent events in relation to characterizing what occurred prior to February 16, 2009.

I trust that the Management Commission will take the within comments into consideration in its deliberations as to how this entire matter is to be dealt with.

Yours truly,

Bernard Coffey Law Office

COPY

BERNARD COFFEY, Q.C.

BC
Enclosure

cc: Mr. Gregory Smith

SUBMISSION ON BEHALF OF DARLENE NEVILLE
(CHILD AND YOUTH ADVOCATE)

IN RELATION TO THE INVESTIGATION
OF HER OFFICIAL COMPLAINT AGAINST

ROGER FITZGERALD
(SPEAKER OF THE HOUSE OF ASSEMBLY)

candour: *freedom from reserve in one's statements; openness, frankness, ingenuousness, outspokenness* [Oxford, 1989]

unreserved, honest or sincere expression; FORTHRIGHTNESS [Merriam-Webster's, 11 ed.]

I. Introduction

1. Albeit in the context of addressing a claim for wrongful dismissal, the Supreme Court of Canada has made the following statements about the nature of the employment relationship and the employment contract:

This power imbalance is not limited to the employment contract itself. Rather, it informs virtually all facets of the employment relationship.

The vulnerability of employees is underscored by the level of importance which our society attaches to employment.

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

Thus, for most people, work is one of the defining features of their lives. Accordingly, any change in a person's employment status is bound to have far-reaching repercussions.

The obligation of good faith and fair dealing is incapable of precise definition. However, at a minimum . . . employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive.

I note that there may be those who would say that this approach imposes an onerous obligation on employers. I would respond simply by saying that I fail to see how it can be onerous to treat people fairly, reasonably, and decently . . . In my view, the reasonable person would expect such treatment. So should the law.

{Excerpts cited from *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701.}

2. In effect, the Supreme Court of Canada has stated that it is not unreasonable to expect candour (i.e. forthrightness) from an employer (i.e. a superior) when addressing matters of relevance to an employee's status as an employee.

3. It is, therefore, not surprising to find that the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Work Environment) of the Government of Newfoundland and Labrador (hereafter referenced as "the Policy") stipulates that:

   (a) All Government employees are entitled to pursue their duties in a respectful workplace, and therefore that everyone, regardless of role or position in the organization, is required to conduct themselves in a respectful manner in the workplace.

(b) No form of harassment will be tolerated.

(c) Harassment is broadly defined as being 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.

(d) Inappropriate behaviour is defined as behaviour that is known or ought reasonably to be known to be unwelcome, objectionable or offensive.

4. Under the Policy, complainants and respondents are accorded rights and assigned responsibilities.

5. Included among the rights of a complainant is the right to have the complaint held in confidence **subject to the express proviso that "this means your complaint will be shared with the person against whom the complaint is made"** (emphasis added).

6. Included among the responsibilities of a complainant is the express obligation "to make their disapproval or unease known to the other person within a reasonable time."

7. Included among the rights accorded a respondent, being an employee against whom a complaint has been filed, are the right to:

(a) be informed that a complaint has been filed;

(b) be accompanied by another person for support during all related interviews;

(c) be fully informed of all the allegations;

(d) respond to those allegations; and

(e) receive fair treatment.

8. The Policy expressly provides for the filing of "an official complaint" of harassment against the person whose behaviour they find inappropriate. An official complaint is to be investigated by the designated senior official. An official complaint is to include such details as: specific information on the behaviours of concern (exactly what behaviours are occurring); where possible, times and dates of alleged incidents of harassment; and where possible, the names of witnesses to the alleged incidents of harassment. The designated senior official, where the respondent's behaviour is determined to have been inappropriate or objectionable, is to recommend disciplinary action.

9. The circumstances that gave rise to and have followed Darlene Neville's filing of an official complaint of harassment against Roger Fitzgerald are certainly of relevance to her status as an employee of the Government of Newfoundland and Labrador, namely her being an officer of the House of Assembly.

10. With the foregoing as the legislative and procedural background, one turns to an examination of the factual circumstances that gave rise to the official complaint filed under the Policy by Darlene Neville in her capacity as the Child and Youth Advocate against Roger Fitzgerald in his capacity as the Speaker of the House of Assembly.

11. That examination must, in the circumstances of this matter, proceed along two parallel, but distinct paths, namely what was known or understood by Ms. Neville from time to time, and what was known or understood by Mr. Fitzgerald from time to time.

12. Before embarking on that examination, it is important to bear in mind that the Speaker chairs the House of Assembly Management Commission. While Ms. Neville as the Child and Youth Advocate legislatively has the power and discretion to determine what matters within her mandate will be investigated by the OCYA, her Office is administratively dependent on the management of the House of Assembly. The Speaker chairs the Management Commission, and he in effect oversees the day-to-day administrative functions of the House of Assembly and of the offices of the various officers of the House of Assembly.

II. Vantage Point of Darlene Neville as of February 16, 2009

13. Shortly before February 10, 2009, Mr. Fitzgerald's office contacted Ms. Neville and asked her to attend a private meeting (i.e. with just the Speaker and Ms. Neville in attendance) on that date. Having received neither an agenda nor been informed about the purpose of the meeting, Ms. Neville assumed Mr. Fitzgerald perhaps intended to seek her advice on or thoughts concerning a court application that had been initiated in which he had been named as the Defendant and that involved allegations of conflict of interest against Barry Fleming, the Citizen's Representative and a fellow officer of the House of Assembly.

14. Upon arriving at the February 10, 2009 meeting, Ms. Neville was introduced to Cathy Murphy of the Public Service Commission and informed Ms. Murphy would also be present. Mr. Fitzgerald told Ms. Neville the purpose of the meeting was to let her know he had heard "stories" that OCYA staff were unhappy, looking for other jobs, and did not feel respected. He also referred to his having heard concerns that Ms. Neville "micromanaged." He emphasized that no official complaint had been filed against her. In light of the "stories," he recommended an intervention (a "workplace assessment") into the OCYA be carried out under the Creating a Respectful Workplace Program. Mr. Fitzgerald refused to answer Ms. Neville's request for information concerning the "stories." He would not tell her from whom he had heard them, nor say exactly when he had first heard them. The only

information he did provide lead her to believe the "stories" had originated after Christmas 2008. Mr. Fitzgerald said that Ms. Murphy would manage the intervention. Ms. Neville was taken so aback, in effect shocked, by this information that she agreed the proposed intervention could occur under the guidance of Ms. Murphy.

15. After having overnight had the opportunity to reflect on what had occurred, Ms. Neville the next morning contacted Mr. Fitzgerald by phone to request that he reconsider his approach to the matter of the "stories" he had heard. A heated discussion ensued during which she informed Mr. Fitzgerald that in the circumstances she was withdrawing her earlier agreement to participate in the workplace assessment process. Upon hearing that, Mr. Fitzgerald told Ms. Neville that if she did not consent to a voluntary intervention he would go ahead and order that an investigation of the OCYA be conducted. (Pursuant to the provisions of the Policy, an investigation would only occur following the filing of an official complaint.) The phone conversation ended without Ms. Neville agreeing to a workplace assessment.

16. On the morning of February 11, 2009, Cathy Murphy by email advised Ms. Neville that she had already "sent out an Expression of Interest for the Workplace Assessment." That same morning Ms. Neville advised Ms. Murphy that she was not prepared to proceed with the workplace assessment process, and that she had already so informed the Speaker.

17. On February 12, 2009, Ms. Neville received a letter from Roger Fitzgerald, who wrote in his capacity as Speaker. His letter omitted any reference to his having heard "stories." Mr. Fitzgerald instead wrote saying that "concerns respecting the administration of employees in [her] office had been expressed to Management of the House of Assembly." He further advised her that "I have no choice but to direct that an investigation of your office be carried out under" the policies of the Public

Service Commission. He concluded be stating she should contact him if she changed her mind and would agree to have a voluntary workplace assessment carried out.

18. On February 12, 2009, Ms. Neville responded in writing to Mr. Fitzgerald's letter. She noted the change in his account from him having heard "stories" to there instead having been "concerns...expressed to the Management of the House of Assembly." Ms. Neville requested full disclosure regarding the "stories" Mr. Fitzgerald had referenced, including the source(s) and details. She also asked for details as to the purported authority for the Speaker to in the circumstances direct an investigation of the OCYA. Ms. Neville queried, in light of the absence of details and the name of the source(s) of the "stories," whether the process was intended to intimidate her from completing ongoing investigations by the OCYA. She stated that his direction that an investigation be conducted into the OCYA would in the circumstances hinder her in the performance of her duties. She concluded with a request he reconsider his position.

19. Mr. Fitzgerald did not accord Ms. Neville the courtesy of replying to her February 12, 2009 letter. She learned of his refusal of her request to reconsider his direction that an investigation of the OCYA be conducted when she was copied on an email dated Friday, February 13, 2009 @ 1:16 PM from Marlene Lambe, the Chief Financial Officer of the House of Assembly, addressed to all the staff of the OCYA advising them that, "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."

20. On Monday, February 16, 2009, Ms. Neville delivered to all members of the Management Commission (including Roger Fitzgerald) a copy of a formal complaint of harassment against the Speaker of the House of Assembly, Roger Fitzgerald. This "Official Complaint Under the Harassment and Discrimination Free Workplace Policy (Creating a Respectful Workplace)" set forth the nature of and

basis for Ms. Neville's harassment complaint based on the information then known to her. In her official complaint Ms. Neville noted it was to her "inconceivable that the Speaker has rushed to judgment against an Independent Officer of the House of Assembly, **based on stories and innuendo**" (emphasis added). Having received a copy of her official complaint, Mr. Fitzgerald knew Ms. Neville understood the basis for his direction that her office be investigated was "stories and innuendo."

III. Commentary on Events Prior to February 16, 2009

Question #1:
"Was there inappropriate behaviour by Mr. Fitzgerald prior to February 16, 2009?"
Answer:

21. In the Policy, inappropriate behaviour is defined as "behaviour or conduct that is known or ought reasonably to be known to be unwelcome, objectionable or offensive." Intentional or reckless disregard for adherence to the terms of the Policy when preparing to and then dealing with an employee in a subordinate position about a matter related to or arising under the Policy would certainly be viewed by that subordinate as objectionable or offensive. What effort(s), if any, did Mr. Fitzgerald make to ensure in his dealings with Ms. Neville that the Policy had been and was being complied with?

22. Before attending the February 10, 2009 meeting, Mr. Fitzgerald knew that no employee of the OCYA had yet brought to Ms. Neville's attention any disapproval or unease concerning her behaviour or conduct.

23. Before attending the February 10, 2009 meeting, Mr. Fitzgerald knew that Ms. Neville had not been informed about any concerns that may have been expressed in relation to her behaviour or conduct. He also knew that no written official complaint had been filed against Ms. Neville.

24. Before attending the February 10, 2009 meeting, Mr. Fitzgerald knew that Ms. Neville had not been informed that she could choose to be accompanied by another person for support during the February 10, 2009 meeting.

25. Before attending the February 10, 2009 meeting, Mr. Fitzgerald knew that Ms. Neville had not been fully (or indeed at all) informed about any allegations concerning her conduct or her management of the OCYA by anyone from the management of the House of Assembly.

26. Despite his knowledge of the undermining of Ms. Neville's rights as a respondent and his knowledge of her lack of information, during the February 10, 2009 meeting Mr. Fitzgerald refused to tell Ms. Neville: (1) about what he and Cathy Murphy then (at least according to Barry Fleming) knew about allegations against Ms. Neville; and (2) about how those allegations had been addressed (or not addressed) up to that point. This refusal occurred despite Ms. Neville's explicit verbal request that Mr. Fitzgerald tell her the basis of the "stories" he referred to having heard. In so refusing, Mr. Fitzgerald not only breached Ms. Neville's right to be informed, but also intentionally thereby negated her right to respond to whatever allegations there then were.

27. During their telephone conversation of February 11, 2009, Mr. Fitzgerald responded to Ms. Neville's rescission of her agreement of the day before to participate in a workplace assessment by telling her that if she would not accept a voluntary intervention (i.e. workplace assessment) "he had no choice but to escalate his intervention into an investigation." A workplace assessment is ostensibly a voluntary process. It can hardly be said Ms. Neville received "fair treatment" in circumstances where Mr. Fitzgerald threatened to order an investigation of her management of the OCYA should she withdraw from a voluntary process. The unfairness of this behaviour by Mr. Fitzgerald toward Ms. Neville is made manifest by the fact that at that time Mr. Fitzgerald knew full well that there was no basis for such an

investigation to be carried out pursuant to the Policy as no official complaint had been filed against Ms. Neville, a fact about which he had informed her the day before.

28. In his letter to Ms. Neville dated February 12, 2009, Mr. Fitzgerald compounded his inappropriate February 11, 2009 verbal *quid pro quo* offer when he in writing in effect offered to discontinue the investigation he had instigated of the OCYA (for which he knew there was under the Policy no basis) if Ms. Neville would change her mind and again agree to a workplace assessment.

Question #2:

"If so, was that inappropriate behaviour directed at or offensive to Ms. Neville?"

OR

"If so, did that inappropriate behaviour undermine Ms. Neville's performance as an employee, or did it threaten her economic livelihood as an employee?"

Answer:

29. During their telephone conversation of February 11, 2009, Ms. Neville clearly explained to Mr. Fitzgerald that she found his conduct in the matter objectionable. Ms. Neville's written response to Mr. Fitzgerald dated February 12, 2009 also clearly communicated to Mr. Fitzgerald that she found his conduct to be objectionable and offensive and why she found it so.

30. Ms. Neville's February 12, 2009 letter to Mr. Fitzgerald also clearly reiterated another point she had made to him during their February 11, 2009 conversation, namely that she felt his behaviour in the circumstances had the effect of undermining her performance as the Child and Youth Advocate and would hinder the performance of her duties. Mr. Fitzgerald's instigation of an investigation of the OCYA in the admitted absence of an official complaint could hardly fail to undermine Ms. Neville's authority, and thereby her performance. During any such investigation it would readily become apparent to those employed in the OCYA that

there had been no official complaint, and therefore no basis under the Policy for an investigation. The conclusion would be apparent to all concerned that the Speaker could do whatever he wanted without regard for the Policy. Such cavalier disregard by the Speaker for the Policy's procedural safeguards could only result in employees of the OCYA concluding that the real authority in respect of the management of the OCYA was for practical purposes exercised by the Speaker, and not by Ms. Neville.

31. Despite that knowledge, Mr. Fitzgerald persisted in his inappropriate behaviour and thereby aggravated his harassment of Ms. Neville. He deliberately chose to refuse to provide the information she on February 12, 2009 made a written request for, namely full disclosure regarding the "stories," including the source(s) and details. He knew or ought to have known that his failure to respond to such a legitimate request would be offensive to Ms. Neville.

IV. Vantage Point of Darlene Neville Subsequent to February 16, 2009

32. Unbeknownst to Ms. Neville as to its detailed content until she on March 24, 2009 received a copy from the Public Service Commission, on February 13, 2009 Mr. Fitzgerald as Speaker sent a letter to Ed Walsh, the Chair of the Public Service Commission, requesting "an investigation into the administration of the Child and Youth Advocate Office workplace be carried out by the Public Service Commission." The basis for the request was said to be that, "We have been made aware that there are perceptions of violations of the "Harassment and Discrimination Free Workplace Policy" of the Government through communications to our Chief Financial Officer from employees of the Office of the Child and Youth Advocate." That information was never communicated to Ms. Neville prior to March 24, 2009, and even then it did not come to her from the Speaker or his office.

33. Mr. Fitzgerald failed to exhibit the candour Ms. Neville had the right to expect of him. On February 10, 2009, Mr. Fitzgerald verbally told her he had heard "stories." Then on February 12, 2009 he in writing instead couched the matter as involving

"concerns respecting the administration of employees in your office." Consequently, it was in those circumstances that Ms. Neville initially became aware she was a respondent under the Policy. Her attempts after February 16, 2009 to exercise her rights as a respondent unfortunately met with no more success than had her earlier efforts in that regard. As noted above, in her February 16, 2009 official complaint she explicitly complained about Mr. Fitzgerald acting on "stories and innuendo." Mr. Fitzgerald took no steps to address the apparent misapprehension Ms. Neville was then under as to the background of the matter – a misapprehension entirely attributable to the misguided decisions reached by Mr. Fitzgerald during his February 2, 2009 meeting with Ms. Murphy and Marlene Lambe, CFO of the House of Assembly.

34. Upon filing her official complaint against the Speaker, Ms. Neville on February 16, 2009 thereupon became a complainant under the Policy, with the rights and obligations attendant thereon.

35. On February 17, 2009, Ms. Neville was informed by email that her official complaint had been referred by William MacKenzie, the Clerk of the House of Assembly, in his capacity as Secretary to the Management Commission, to the Public Service Commission "for appropriate Public Service Commission action and follow-up."

36. On Friday, February 27, 2009, Mr. MacKenzie by letter advised the members of the Management Commission and Ms. Neville that the position of the Public Service Commission communicated by a letter dated February 26, 2009 was that it was unable to investigate Ms. Neville's official complaint against Mr. Fitzgerald because "there may be a potential for internal conflict were [the PSC] to investigate two related matters at the same time" because "[i]t 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 [Mr. Fitzgerald's request for an investigation of the OCYA] separate from any information which may have been obtained in the

above-referenced investigation [Ms. Neville's official complaint against Mr. Fitzgerald]."

37. On February 27, 2009, Mr. Fitzgerald by letter informed Ms. Neville that in light of the PSC's refusal to investigate the harassment complaint she had filed against him, he had as both a Member of the House of Assembly and as Speaker asked the Citizen's Representative to undertake an investigation of her complaint against him under Part VI of the *House of Assembly Accountability, Integrity and Administration Act.* In his February 27, 2009 letter referenced above, the Clerk of the House of Assembly also advised the members of the Management Commission and Ms. Neville of Mr. Fitzgerald having requested a Part VI investigation of himself. In doing so without expressing any concern or reservation about such a self-referred Part VI investigation, the Clerk apparently signified his concurrence with such an approach to investigating Ms. Neville's complaint against Mr. Fitzgerald.

38. By a letter dated February 27, 2009, Barry Fleming, the Citizen's Representative, advised Ms. Neville he was undertaking the Part VI investigation Mr. Fitzgerald had asked be conducted of his own conduct. Mr. Fleming told her he therefore intended to investigate her official complaint of harassment against Mr. Fitzgerald.

39. In a letter to members of the Management Commission (including Mr. Fitzgerald) dated Tuesday, March 3, 2009, Ms. Neville expressed deep concern about the proposed Part VI investigation by Barry Fleming. Her concerns related to both Mr. Fleming being in a conflict of interest and the inappropriateness of Mr. Fitzgerald as a respondent purporting to remove her complaint from the auspices of the Policy and transfer it into an investigation under Part VI of the *House of Assembly Accountability, Integrity and Administration Act.* She therefore asked that the Management Commission retain an external consultant to properly conduct an investigation of her official complaint of harassment against the Speaker.

40. In a letter dated Mach 11, 2009 to members of the Management Commission, counsel for Ms. Neville gave the requisite statutory notice that unless Ms. Neville was advised that her official complaint against Mr. Fitzgerald would be undertaken by an independent external consultant an application would be made for a mandatory court order to that effect.

41. By way of a letter dated March 26, 2009, Gregory Smith, counsel for the Management Commission, advised counsel for Ms. Neville that her request that an outside consultant conduct an investigation of her official complaint against Mr. Fitzgerald was being acceded to, and that such a consultant was in the process of being engaged on behalf of Marlene Lambe, CFO of the House of Assembly. Mr. Smith advised that Ms. Lambe was "the senior official designated in accordance with the Policy to investigate Ms. Neville's complaint" against Mr. Fitzgerald.

42. In a report authored by Barry Fleming, dated March 20, 2009 and received by Ms. Neville on March 24, 2009, there is a reference to the CFO, Ms. Lambe, having as early as February 1, 2008 been assigned the responsibility of dealing with "some concerns about staff morale at the OCYA."

43. Therefore, Ms. Lambe is apparently: (1) the official who during the period from February 1, 2008 to February 2, 2009 was responsible, unbeknownst to Ms. Neville, for dealing with concerns about staff morale in the OCYA; and (2) also the official to whom the external consultant (Wayne Thistle) will report the results of his investigation of Ms. Neville's harassment complaint against Mr. Fitzgerald. According to Mr. Fleming's March 20, 2009 report, some of Mr. Fitzgerald's conduct and behaviour toward Ms. Neville has its genesis in: (1) Ms. Lambe's oversight of Ms. Murphy's activities prior to February 2, 2009; and (2) Ms. Lambe's interactions with Mr. Fitzgerald concerning the matter of staff morale in the OCYA, including their February 2, 2009 meeting concerning how and when Ms. Neville should be approached by Mr. Fitzgerald and told about the matter.

44. It was only during her reading on March 24, 2009 of Mr. Fleming's report that Ms. Neville for the first time became aware: (1) of the circumstances that had apparently given rise to the "stories" [or "concerns about staff morale"]; and (2) that those circumstances apparently dated back more than a full year.

V. Commentary on Events Subsequent to February 16, 2009

A. Darlene Neville as a Respondent

Question #1:
"Has there been any inappropriate behaviour by Mr. Fitzgerald since February 16, 2009?"
Answer:

45. As pointed out above, the Policy defines inappropriate behaviour as "behaviour or conduct that is known or ought reasonably to be known to be unwelcome, objectionable or offensive." Continued intentional or reckless disregard for adherence to the terms of the Policy when dealing with a subordinate about a matter related to or arising under the Policy would certainly be viewed by that subordinate as objectionable or offensive. Did Mr. Fitzgerald after February 16, 2009 insure the Policy was being complied with?

46. After receiving Ms. Neville's February 16, 2009 official complaint against him, Mr. Fitzgerald knew that Ms. Neville was in effect "still in the dark" both as to any concerns about staff morale at the OCYA and as to how those concerns had been addressed (or not addressed) over the then past year. Though he knew she had complained about his having peremptorily acted on "stories and innuendo," Mr. Fitzgerald took no steps to ensure Ms. Neville received adequate information relevant to those matters, despite her being entitled as a respondent to be fully informed of all the allegations. Without being so fully informed, her concomitant right to respond to any allegations continued to Mr. Fitzgerald's knowledge to be

negated. Indeed, to the date hereof Ms. Neville has never been advised as to any official complaint under the Policy having been filed against her.

47. The unfair conduct by Mr. Fitzgerald toward Ms. Neville as a respondent under the Policy continued as recently as March 24, 2009. Despite his knowledge that there was still no basis for an investigation to be carried out pursuant to the Policy, as no official complaint had been filed against Ms. Neville, Mr. Fitzgerald persisted in having the investigation he instigated on February 13, 2009 resumed by the Public Service Commission after his "exoneration" by Mr. Fleming.

48. Consequently, as a respondent Ms. Neville can hardly be said to have received fair treatment at the behest of Mr. Fitzgerald acting in his capacity as the Speaker.

Question #2:

"If so, was that inappropriate behaviour directed at or offensive to Ms. Neville?"

OR

"If so, did that inappropriate behaviour undermine Ms. Neville's performance as an employee, or did it threaten her economic livelihood as an employee?"

Answer:

49. In her official complaint dated February 16, 2009, Ms. Neville explicitly made it known to Mr. Fitzgerald and others that she objected to and was dissatisfied with his refusal to provide her with information in relation to the "stories" he had referenced. While he was clearly aware she considered his behaviour in that regard to be offensive, Mr. Fitzgerald subsequently did nothing to rectify his earlier failure to provide Ms. Neville the information she had requested. Despite his knowledge of her view as to the illegitimacy of his having unilaterally referred her harassment complaint to Mr. Fleming for investigation, Mr. Fitzgerald utilized the occasion of his "exoneration" by Mr. Fleming to communicate his request that the Public Service Commission re-institute an investigation for which Mr. Fitzgerald well knew there had been no official complaint filed. A reasonable observer would understand

such calculated behaviour would be perceived by a respondent in the position of Ms. Neville as oppressive of her.

50. In the circumstances, the message Mr. Fitzgerald was sending Ms. Neville can be paraphrased as: "My nominee has dismissed your complaint against me. Since you wouldn't play ball and knuckle under to my workplace assessment suggestion, I'll now continue a process certain to undermine your authority despite us both knowing there is no basis for the investigation I have re-instigated against you."

B. Darlene Neville as a Complainant

Question #1:
"Has there been any inappropriate behaviour by Mr. Fitzgerald since February 16, 2009?"
Answer:

51. In her letter dated March 3, 2009 to the members of the Management Commission, which included Mr. Fitzgerald, Ms. Neville pointed out why she was concerned about what she viewed as Mr. Fitzgerald's attempt to "hijack" the investigation of her official complaint against him by redirecting it so as to have the propriety of his behaviour examined by a person of Mr. Fitzgerald's own choosing. By that time, February 27, 2009, Mr. Fleming had more than a month earlier been identified in legal proceedings as an officer of the House of Assembly whose allegedly inappropriate behaviour had resulted in Mr. Fitzgerald, as the Speaker, being named as the Defendant in court pleadings. Any reasonable observer would conclude that a complainant such as Ms. Neville would quite understandably conclude that in the circumstances her official complaint against Mr. Fitzgerald was unlikely to be thoroughly and fairly investigated by Mr. Fleming. Mr. Fitzgerald knew or ought to have known that his unilateral behaviour in so redirecting the investigation of an official complaint of harassment concerning his own conduct would be interpreted by the complainant as high-handed and offensive, and therefore likely to compound

the negative effect of any earlier inappropriate behaviour by him toward Ms. Neville.

Question #2:
"If so, was that inappropriate behaviour directed at or offensive to Ms. Neville?"
OR
"If so, did that inappropriate behaviour undermine Ms. Neville's performance as an employee, or did it threaten her economic livelihood as an employee?"
Answer:

52. Ms. Neville's March 3, 2009 letter clearly communicated to Mr. Fitzgerald that she found his conduct in so re-directing her complaint objectionable. Despite that knowledge, he did nothing to remedy the matter. Ms. Neville has had to file an application seeking judicial relief in order to address her concerns about Mr. Fitzgerald's redirection of her complaint to Mr. Fleming.

53. While the current investigation by Mr. Thistle is in keeping with her March 3, 2009 request to the Management Commission, Ms. Neville's need to retain counsel in order to bring about such an independent investigation was initially occasioned by the unilateral, high-handed behaviour of Mr. Fitzgerald, and necessitated by his obstinate persistence in the course of action he had embarked on.

VI. Conclusion

54. In his capacity as Speaker, Mr. Fitzgerald was and is entitled to rely upon advice from professional advisers in relation to human relations administrative matters. However, he cannot rely on any purported advice to relieve him of his over-riding obligation as Speaker to personally treat administrative subordinates in a forthright manner, and to also ensure that his advisors both counsel and do the same. Candour hardly requires technical expertise; and technical expertise, without more, hardly guarantees candour.

55. A final point worth noting is the following. Had Mr. Fitzgerald during the course of his involvement in this matter exercised even a modicum of due diligence, he would not have ended up *de facto* relying on mere "stories and innuendo." Even a cursory examination of the circumstances surrounding the Lorraine Holden matter would have made it clear to any reasonable observer (including presumably Mr. Fitzgerald) that the purported concerns about staff morale in the OCYA were unfounded..

VII. Relief Sought by Darlene Neville

56. Ms. Neville seeks straightforward relief. She asks that the external investigator conclude that Roger Fitzgerald's behaviour toward her was inappropriate, and that in the circumstances it constituted harassment by him in his capacity as Speaker of her in her capacity as the Child and Youth Advocate.

Dated at St. John's, NL this 26th day of May, 2009.

BERNARD COFFEY LAW OFFICE

Per: Bernard Coffey, Q.C.
Solicitor for Darlene Neville
(Child and Youth Advocate)

Prior, Shirley

From: Darlene Neville

Sent: Monday, February 16, 2009 8:46 AM

To: Roxanne Pottle; Jennifer Forristall; Dorothy Penney; Randy Doyle; Debbie Gillard; Heather Lannon; Bonnie Poole; Shirley Prior; Amanda Mercer

Good Morning Everyone,

Pursuant to the email from Marlene Lambe on Friday, February13, 2009, I wish to encourage all staff to cooperate with any investigation which may occur. Also, I encourage you to avail of the services of the Public Service Commission to assist you with any unmanageable stress which may arise as a result of the investigation.

Darlene

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