

Human Rights Commission

Annual Report
2014–2015



**New Brunswick Human Rights Commission
Annual Report 2014-2015**

New Brunswick Human Rights Commission
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Transmittal letters

From the Minister to the Lieutenant-Governor

**The Honourable Jocelyne Roy Vienneau
Lieutenant-Governor of New Brunswick**

May it please your Honour:

It is my privilege to submit the Annual Report of the New Brunswick Human Rights Commission for the fiscal year April 1, 2014, to March 31, 2015.

Respectfully submitted,



Honourable Francine Landry
Minister Responsible

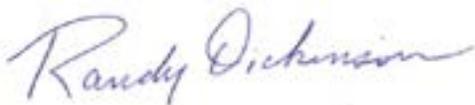
From the Chairperson to the Minister Responsible

**Honourable Francine Landry
Minister Responsible for the New Brunswick Human Rights Commission**

Madam:

I am pleased to be able to present the Annual Report describing the operations of the New Brunswick Human Rights Commission for the fiscal year 2014-2015.

Respectfully submitted,



Randy Dickinson
Chairperson

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Message from the Chairperson

Each year as I prepare my message for the annual general report, it gives me an opportunity to reflect on the work that we have achieved in the past year and gaze into my crystal ball to predict what might happen in the future.

This has certainly been an interesting and challenging year for the New Brunswick Human Rights Commission. There are some skeptics who wonder why we need a human rights commission when we have both federal and provincial legislation and the *Canadian Charter of Rights and Freedoms* to protect human rights in our country and in our province. I can assure you that my experience as chairperson, and having the opportunity to see the types of situations that allege discrimination based on a variety of causes that we are still seeing coming forward to us in 2015, convinces me that we still have a long way to go before the human rights that we have in theory are consistently and equitably available to all persons and, especially, to those from various minority backgrounds.

The largest number of complaints continues to be around discrimination based on disability, especially in situations found in the workplace. But, these are followed by often blatant examples of discrimination against women around such gender issues as pregnancy leave and employment. There is still much work to do by the commission in promoting awareness about rights and responsibilities and to provide the neutral mechanism where such alleged violations can be dealt with in a timely and cost-effective manner.

During the past year, we struggled with inadequate staffing resources caused by some unfilled staff positions that were beginning to create an unacceptable backlog in dealing with complaints. I would like to acknowledge however, that recently the provincial government has moved to allow us to fill some of these vacant positions so we can move forward with the work of the commission in a more timely and comprehensive manner. This is especially important during a time of program review and fiscal restraint underway within government overall. This support is greatly appreciated and demonstrates a commitment to protect human rights in New Brunswick.

I would like to acknowledge our previous director, Jill Peters, who decided to take her well-earned retirement during this year. She provided leadership to the work of the commission during most of the time that I served as chairperson. A selection process is underway to fill the role of director. I must also acknowledge the tremendous personnel who work in all aspects of the commission's activities. Their consistent hard work and passion around human rights issues are second to none. It has been a great privilege for me to meet such outstanding public servants. We are lucky to have them!

We are also fortunate to have a group of dedicated and knowledgeable appointed members of the commission who take on the job of reviewing investigation reports about complaints received and make final decisions on their disposition on behalf of the commission. I would like to thank our past commission members and especially our current members, René (Pepsi) Landry, Emil Olsen, Karine Levesque, George Richmond, Donald Gauvin and Steve Lambert. Their intelligent input to our decision making process has been a real asset to the ongoing work of the commission.

The volume of activity around complaints remained high during the past year, with 170 distinct new complaints filed and 206 complaints still active at the end of the year, including cases pending before a board of inquiry or the courts. Those 170 new filed complaints included 305 specific allegations of discrimination. Once again our focus was on resolving most complaints through offering mediation services to both parties from the moment that the commission is contacted to file a complaint. While not all parties will agree to mediation, this technique has proven to be effective in saving time and money in processing the majority of complaints that we receive each year. We believe it is important to try to resolve matters in a timely fashion so that justice is not delayed, whether the case is dismissed for lack of sufficient evidence or that the respondent agrees that something took place that should not have taken place and moves to redress the issue without requiring a formal board of inquiry.

Because of this focus on mediation during the year in question, only two cases were referred to the more complicated and expensive process of a board of inquiry. This option is always available in situations where the two parties cannot come up to an agreeable compromise resolution through the process of mediation and that the investigation finds that there is sufficient grounds or evidence to proceed further.

Once again, during the past year, we have remained actively engaged with the Canadian Association of Statutory Human Rights Agencies (CASHRA) to be kept informed of human rights activities in the other provinces and territories as well as with the Canadian Human Rights Commission. We have also participated in CASHRA initiatives around the United Nations *Convention on the Rights for Persons with Disabilities* and the United Nations *Declaration on the Rights of Indigenous Peoples*.

Our commission has started reviewing the current provincial legislation, the *New Brunswick Human Rights Act*. We have identified a number of issues that will require possible amendments to bring the Act up-to-date with changes made in other Canadian jurisdictions. It is our belief that the legislative framework for human rights should be consistent across Canada so that all Canadians enjoy the same basic human rights wherever they live in Canada and that the legislation clarifies where those boundaries around specific rights will be to allow for proper enforcement. This work will continue and then be passed on to the provincial government for the normal process for legislative reforms.

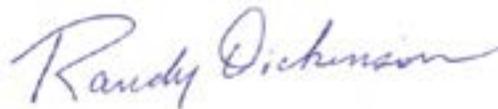
One example of the current gap in our legislation concerns the regulation of the use of service animals in our province. Over the years, many different types of service animals have become available and are no longer limited to seeing-eye dogs for the visually impaired. There are also concerns about who should have the authority to certify that a particular animal is properly trained and thus should qualify for the benefits available to legitimate service animals. This is one of the topics being researched.

Public education and awareness about human rights continues to be a priority for the commission but limited resources require us to put the emphasis on processing actual complaints brought forward. This is an area in which the commission will need to continue to work hard to educate people not only about their rights but also their responsibilities to others when they engage in public and commercial activities. This is especially true for employers in terms of their obligations toward their existing and potential employees. We will have to continue to be creative in the methods used for such education projects and perhaps make better use of information technology to do this in a cost-effective manner to ensure the best use of staff time.

As this message marks the end of my term as chairperson of the New Brunswick Human Rights Commission, please let me take this opportunity to thank all of those people who have helped support the very important work around human rights that takes place in this province and not just through the activities of the commission. It has been an honour and privilege to work with you all during my term.

"Bad things happen when good people stand by and do nothing." I am confident that there will be others who will come after me to make sure that the protection of human rights will continue to be a priority in New Brunswick. We must all continue our efforts to reach the day when all persons get to enjoy their human rights without question and without the need to file a human rights complaint to achieve that goal.

Respectfully submitted,

A handwritten signature in blue ink that reads "Randy Dickinson". The signature is written in a cursive, flowing style.

Randy Dickinson, C.M.
Chairperson
New Brunswick Human Rights Commission

Members of the New Brunswick Human Rights Commission

From April 1, 2014, to March 31, 2015, the members of the commission were Randy Dickinson (chairperson), Donald Gauvin, Steve Lambert, René Landry, Karine Levesque, Emil Olsen and George Richmond. Following are their biographical notes as of March 31, 2015.

Randy Dickinson, C.M., Chairperson

Randy Dickinson, C.M., was born and raised in Upper Woodstock, N.B. He holds a bachelor of arts degree with honours in political science from Acadia University. He successfully completed first-year law school studies at the University of New Brunswick. However, his on-going summer employment at Camp Rotary led to a permanent job offer from the Canadian Rehabilitation Council for the Disabled (now known as Easter Seals NB) in 1977.

In January 1983, Mr. Dickinson was hired as the first executive director of the Premier's Council on the Status of Disabled Persons. In 1990, he was asked to become the executive director of the Premier's Council on Health Strategy. When he completed that assignment, Mr. Dickinson briefly headed up the Canadian Paraplegic Association in New Brunswick before returning to the Premier's Council on the Status of Disabled Persons in 1992. In November 2009, he retired from the premier's council due to the progression of his physical disability.

As part of his job and volunteer activities, Mr. Dickinson has been involved with many committees, boards and projects around such topics as employment equity; inclusive education; human rights; social housing; poverty; mental health; reducing violence against women; barrier-free access to public services and facilities; accessible transportation options; inclusive recreation; access to rehabilitation equipment and programs; and sustainable health care, among other social and economic issues.

Mr. Dickinson has been honoured for his professional and community activities with a number of awards, including being appointed as a Member of the Order of Canada in 1999. He has received two Paul Harris Fellowships from Rotary International, two national citations from the Canadian Association of Occupational Therapists, the Queen's Golden Jubilee Medal in 2002, the Queen's Diamond Jubilee Medal in 2012, the provincial New Brunswick Day Award of Merit, the Jack Sarney Award from the Easter Seals/March of Dimes National Council, and the Champion of Inclusion Award from the New Brunswick Association for Community Living in

2009, among others. In 2006, Recreation New Brunswick created an annual award known as the Randy Dickinson Community Inclusion Award, which recognizes a program or facility that has furthered the inclusion of persons with disabilities within the area of sport, recreation and active living.

Mr. Dickinson was previously active with the New Brunswick Health Council as a board member; a member of the executive committee; and the nominations committee; as well as serving as chair of the Population Health Working Group. He is co-chair of New Brunswick Disability Awareness Week and is the vice-president of the John Wood Foundation Inc., which raises funds for persons with disabilities. Mr. Dickinson is a member of the City of Fredericton's Age Friendly Advisory Committee.

Donald Gauvin

Donald Gauvin, who has a masters in education degree, retired in 2000 after a 31-year career, teaching math and information technology. During that time, he was involved as a member of the boards of directors of the following professional and service associations: Fédération des enseignantes et des enseignants du Nouveau Brunswick and its local teachers' branch, the Petit-Rocher Public Library, Coopérative de Robertville, Caisse populaire de Bathurst, Nepisiguit-Chaleur Solid Waste Commission and the Club Richelieu of Bathurst.

In addition to being a member of the commission, Mr. Gauvin is chair of the Tremblay Local Service District Advisory Committee, chair of the Petit-Rocher Public Library Commission, a member of the Chaleur Regional Service Commission and a member of the Comité de regroupement des districts de services locaux avec Petit-Rocher (committee to amalgamate local service districts with Petit-Rocher). He occasionally gives courses at the Collège communautaire du Nouveau Brunswick and the Shippagan campus of l'Université de Moncton, and he offers tutoring in math at the high school and university levels.

Steve Lambert

An acupuncturist by profession, Steve Lambert hails from Caraquet. He has operated an acupuncture and Chinese medicine clinic in Campbellton since 1985, serving patients from the Maritimes and the Gaspé region of Quebec. He has studied in several countries

and has earned various certificates and diplomas in acupuncture, traditional Chinese medicine, detoxification (National Acupuncture Detoxification Association – NADA), and therapeutic touch. He is also a medical Qi Gong practitioner, a medical bioenergy consultant, a life coach, and a therapeutic clown.

Mr. Lambert is a New Thought minister who celebrates many marriages and baptisms every year in Gaspé. In 2015, he was the recipient of an honorary Doctor of Divinity degree (D.D.) from that organization. He is a founder and president of the New Brunswick Chapter of the Chinese Medicine and Acupuncture Association of Canada (CMAAC-NB). Since 2012, he has been a volunteer member of the Restigouche County Volunteer Action Association of Campbellton. He provides assistance and participates in fundraising for this non-profit organization.

He is a member of the Union des écrivaines et des écrivains québécois (UNEQ), a Quebec writers' association. He is the author of two books published by Les Éditions de la Francophonie. The first, in 2014, is entitled *Si ton bonheur dépend de quelqu'un d'autre...* The second, in 2015, is called *Aller vers l'avant*. He is the volunteer host of a community radio show on CIMS 104 FM in Balmoral, N.B., *Énergie et esprit visiteur*.

René Landry

René (Pepsi) Landry attended the University of Ottawa, where he received a certificate in physical education in 1962. He graduated from l'Université de Moncton with a bachelor of commerce, administration major, in 1971. He also received a certificate in practicum counselling from Sir George Williams University in 1971, and in 1972 completed one year toward a master of education degree.

He has been a board member for both the Moncton Youth Residences and the Moncton Boys' and Girls' Club, a member of the Volunteer Awards Committee for the City of Moncton, a volunteer with the Kidney Foundation of Canada, and a founding member of l'Université de Moncton Aigles Bleus Booster Club. He has been involved with the Recreation Society of Atlantic Canada, the Moncton Lions Minor Baseball Association, and the Greater Moncton Leisure Master Plan Committee. He is a 10-year member of the City of Moncton's finance committee.

Mr. Landry has often been recognized for his various accomplishments. He is the recipient of the Builder of Youth Award from the Boys' and Girls' Clubs of Canada, the Silver Keystone Award for outstanding service to youth, and the 125th anniversary of the Foundation of Canada Commemorative Medal in recognition of significant contributions to his community and to Canada.

He was a member of the Legislative Assembly of New Brunswick from 1999 to 2003. He was elected to Moncton city council in 2004 and was re-elected in 2008 and 2012.

Karine Levesque

Karine Levesque, RSW, is a social worker employed by the Extra-Mural Program in Grand Falls since 2000. She was previously a social worker with the Community Mental Health Centre in Edmundston.

Ms. Levesque is the outgoing president of the New Brunswick Association of Social Workers (NBASW) and sits on the board of directors of the Canadian Association of Social Workers (CASW). She is a member of the Quality End-of-Life Care Coalition of Canada and the Canadian Coalition for Seniors' Mental Health. Over the years, she has served on the board of directors of the New Brunswick Division of the Canadian Mental Health Association.

She is a member of the community action network (Réseau-action communautaire) of the health and wellness in French society of New Brunswick (Société Santé et Mieux-être en français du Nouveau Brunswick).

In 2012, Ms. Levesque received the Debbie Nason Award for her dedication to the profession of social work in the health-care field, presented by the NBASW. In 2010, she received the Distinguished Service Award for New Brunswick given by the CASW. In 2004, she was the Social Worker of the Year of her local chapter of the NBASW.

Emil Olsen

Emil Olsen was born in Edinburgh, Scotland. He immigrated to Canada with his mother, a war bride, along with his brother and sister, on the *Queen Mary*, landing at Pier 21 in Halifax, N.S. His father, a member of the Canadian Armed Forces during the Second World War, met them in Fredericton, where they lived for a number of years before moving to McAdam.

Mr. Olsen graduated from the McAdam High School and from the New Brunswick Community College in Moncton as a mechanical technologist. After a 41-year career in the petroleum industry, he retired in 2004.

He moved to Quispamsis in 1974 and has been active in community affairs. His service record is lengthy, having served on numerous municipal, regional and provincial committees. He was mayor of Quispamsis from 1983 to 1995. He left politics for a few years, then was elected to council in Quispamsis in 2004, re-elected as deputy mayor in 2008 and re-elected as a councillor in 2012.

Mr. Olsen is proud to have signed the original regional agreements in the Kennebecasis Valley for fire, police, ambulance and library services on behalf of the residents of Quispamsis. He continues to support and recognize the strengths of regional services.

Mr. Olsen was awarded the 125th Anniversary of the Foundation of Canada Commemorative Medal in 1992, and he was a recipient of the Queen's Golden Jubilee Medal in 2002 and the Queen's Diamond Jubilee Medal in 2012.

George R. Richmond

George R. Richmond, Q.C, is a member of the bar of New Brunswick and Ontario. He is an acknowledged expert in labour law, with experience mainly in labour and employment law, administrative law, human rights, legal research and writing, advocacy, and boards and committees. He has 40 years' experience before the Labour and Employment Board and various tribunals, commissions and courts at all levels.

Mr. Richmond has co-authored a publication on Canadian labour law and delivered lectures on labour law and human rights in the workplace. He has advised employers and other parties on human rights legal and policy issues and been the chief negotiator of a number of collective agreements.

Mr. Richmond has been involved with numerous boards and committees. He has volunteered for the Canadian Red Cross Society and the Fredericton Community Kitchen. He has coached various sports and is a life member of the Beaverbrook Art Gallery.

Compliance

Complaint process

Individuals who believe they have been discriminated against on the basis of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition or political belief or activity have the right to file a complaint of discrimination under section 17 of the New Brunswick *Human Rights Act*. All complaints filed with the commission are considered confidential and are discussed only with the parties involved.

A flow chart of the complaint process is found in Appendix B.

- The complaint process is explained on the commission's website:
<http://www.gnb.ca/hrc-cdp/18-e.asp>.

Complaint statistics

Appendix C includes charts showing statistical information on the complaints filed with the commission. Highlights:

- 170 distinct complaints were received in 2014-2015; and
- 206 complaints were active at the end of the year, including cases pending before a board of inquiry or court.

Intakes

In 2014-2015, there were 1,921 intakes. Nearly all intakes begin with a telephone call. When the call does not involve discrimination contrary to the *Human Rights Act*, the person is typically referred to the appropriate agency. In 2014-2015, there were 546 referrals of this type.

A total of 179 inquiries concerned sex discrimination, 107 of which concerned pregnancy. Eighteen of the pregnancy inquiries were made by employers, and two of the inquiries were made by service providers. The pregnancy-related inquiries from employees and employers concerned:

- accommodation of pregnancy by employers;
- rights of pregnant employees;
- termination of employment due to pregnancy;
- termination of employment while on maternity leave or upon return from maternity leave;
- demotion, loss of hours, suspension or reprimands due to pregnancy;
- demotion or loss of hours upon return from maternity leave;
- accommodation of breastfeeding in the workplace;

- denial of a position, a promotion or extra hours due to pregnancy;
- accrual of vacation credits while on maternity leave;
- difficulty in getting a record of employment from employer for maternity leave;
- request to extend maternity leave denied;
- being pressured to return early from maternity leave; and
- working part-time while on maternity leave.

Grounds of discrimination

The 170 distinct complaints filed included 305 allegations of discrimination since some complaints alleged discrimination in more than one activity (e.g., both services and housing) or grounds (e.g., both race and colour). As shown in Appendix C, the most common grounds were physical disability (112), social condition (48), and mental disability (38). The next most common grounds were sex (25) and age (20).

As in previous years, most allegations (170) were employment-related. The majority (86, i.e., 51 per cent) of the employment complaints dealt with discrimination based on physical and/or mental disability. Twenty-two of the sex discrimination complaints were employment-related, while three were service-related. Eleven of the 13 sexual harassment complaints were employment-related.

Appendix C includes charts that show the sex of complainants. Of the 170 distinct formal complaints filed, 92 were by women and 78 were filed by men. Eighteen of the 25 sex discrimination complaints were filed by women and seven were filed by men. The seven complaints filed by men were all in the area of employment and four of these complaints involved transgendered complainants. Three of the 13 sexual harassment complaints were filed by men.

Closed complaints

In total, 140 formal complaints were closed in 2014-2015. The cases were closed for the following reasons:

- 51 were settled;
- 53 were dismissed (mainly due to lack of evidence or being filed out of time);
- 35 were withdrawn, abandoned, found to be outside the commission's jurisdiction or closed for other reasons; and
- three were closed at board of inquiry or court levels (this includes two pre-hearing settlements).

The average age of complaints at closure was 13 months.

Settlements

Fifty-three cases were settled and closed in 2014-2015. They involved 51 formal complaints and two pre-complaint interventions. Pre-complaint interventions are attempts by the commission to mediate a dispute before a complaint is filed; such interventions are used in especially urgent situations or situations when there is an opportunity for a limited time to quickly resolve a dispute or to prevent a potentially discriminatory action from occurring.

The cases were settled at the following stages:

- two cases during pre-complaint interventions;
- 31 cases settled prior to a respondent filing a response to the complaint with the commission;
- 10 cases were settled after a response to the complaint had been filed but before the investigation of the matter was completed;
- eight cases were settled after the investigation had been completed and in some cases, after the case analysis report had been drafted;
- two cases settled after the commission made the decision to refer the matter to a board of inquiry or settled at the board of inquiry level.

Statistics about the terms of settlement:

- \$967,976.36 is the estimated total monetary value of the settlements, \$690,910.36 of which as general damages;
- seven files resulted in human rights training seminars;
- eight complainants were accommodated;
- four letters of apology or misunderstandings;
- 12 letters of reference;
- five positive verbal references;
- two continuation of benefits; and
- one news release.

Sample complaints

The following is a sampling of the types of complaints that the commission dealt with during the period under review.

1. Race, national origin and religion/employment/time limit extension request

The complainant alleged discrimination on the basis of his race, national origin and religion when various insensitive comments were made toward him by fellow employees at his former place of work. The complainant alleged that the employer's response to his initial complaint was insufficient and that the employer had failed to prevent the occurrence of further similar incidents. The employer maintained that all reasonable steps were taken to address the situation. The employer further maintained that, following the initial incident, the complainant did not notify the employer of any subsequent insensitive remarks until nearly two years after the fact. The employer maintained that an internal investigation was carried out and had resulted in a finding that there was not enough evidence to support the complainant's allegations.

The complainant had filed his complaint outside of the one-year time limit prescribed by the Act. As a result, the complainant was required to file a request for a time limit extension. For the commission to grant a time limit extension, a complainant must pass a four-part test as outlined in article 2 of the commission's *Guideline on Time Limit Extensions for Complaint Initiation*. The complainant did not pass all four parts of the test, and the file was closed as having been filed outside of the one-year time limit.

2. Age/employment

The complainant alleged that he was discriminated against in the workplace on the basis of his age and was eventually dismissed from his employment for the same reason. The employer denied any differential treatment with regard to the complainant's age. The employer further maintained that the complainant's dismissal from employment was due to poor performance, and not related to age. Commission staff investigated the matter and recommended to the commission that it dismiss the complaint as being without merit. The commission dismissed the complaint.

3. Mental disability/employment/services

The complainant alleged discrimination on the basis of mental disability when she was harassed by one of her superiors at work. She further alleged that her employer failed to accommodate her mental disability during her medical leave of absence from work. The complainant also alleged that her doctor failed to provide proper health care during a medical crisis. The commission staff advised the complainant that the information

contained in her complaint form regarding the allegations against her employer were insufficient and that she needed to revise her complaint form should she wish to proceed with her complaint against her employer. The complainant failed to contact commission staff on this issue, and she failed to revise her complaint form. The complainant's failure to contact commission staff within the prescribed time frame resulted in a finding that the complaint against her employer had been abandoned. The commission also determined, following investigation, that the allegations of discrimination against her doctor were without merit and were to be treated as abandoned due to the complainant's failure to contact staff of the commission.

4. Sex (pregnancy)/employment

The complainant alleged discrimination on the basis of sex when her employment was terminated shortly after revealing to her employer that she was pregnant. The employer maintained that her dismissal was due to poor performance and unrelated to her pregnancy. However, the parties agreed to participate in the commission's no admission of liability mediation process. Commission staff was able to assist the parties in reaching a resolution.

5. Physical disability/employment

The complainant alleged discrimination on the basis of her physical disability when her employer failed to accommodate her medical requirements. She further alleged that her dismissal by her employer was also based on physical disability discrimination. The employer had maintained that her dismissal was due to the complainant's frequent absenteeism. The parties agreed to participate in the commission's no admission of liability mediation process. Commission staff was able to assist the parties in reaching a resolution.

6. Sex/employment

The complainant alleged discrimination on the basis of sex following a series of incidents that culminated in the termination of her employment. The complainant alleged differential treatment as a female in a purportedly male-dominated profession. The complainant alleged she was refused the opportunity to perform duties despite passing certification requirements. The complainant alleged that she had been denied employment opportunities and was eventually terminated on the basis of her sex. The employer maintained that the denial of certain career opportunities and her eventual dismissal were based on the complainant's failure to meet prescribed conditions for continued employment. The commission staff investigated the matter and recommended to the commission that it dismiss the complaint as being without merit. The commission accepted the recommendation of commission staff and dismissed the complaint.

7. Physical disability/employment

The complainant alleged that her employer discriminated against her on the basis of her physical disability when she was not provided with her annual Christmas bonus and when her employer advised her that it had no light duties to accommodate her disability. The complainant alleged that she typically received a Christmas bonus, but due to the fact that she was off work due to her disability (lung cancer) for five months, her employer decided that she did not qualify for a Christmas bonus. The respondents denied discriminating against the complainant. An investigation was completed by commission staff, who recommended to the commission that the complaint not be dismissed and that it refer the matter to a board of inquiry. The commission decided that the circumstances warranted the appointment of a board of inquiry and referred the matter to the Labour and Employment Board.

8. Physical disability/mental disability services

The complainant alleged that a service provider discriminated against her on the basis of her mental disabilities and physical disabilities when they decided to terminate her benefits because of the same reasons. The respondents denied discriminating against the complainant and maintained that they had the legal right to terminate or suspend her benefits because of her mental disabilities and physical disabilities. An investigation was completed by commission staff, who recommended to the commission that the complaint not be dismissed and that it refer the matter to a board of inquiry. The commission decided that the circumstances warranted the appointment of a board of inquiry and referred the matter to the Labour and Employment Board.

Boards of inquiry

During the fiscal year, the commission referred two new complaints to a board of inquiry. One complaint alleged physical disability discrimination in employment. The other alleged physical disability and mental disability discrimination with respect to services (see above).

At the beginning of the fiscal year, three boards of inquiry were pending or underway. Two of these cases were resolved at the board of inquiry level and one was still proceeding at the close of the fiscal year.

At the close of the 2014-2015 fiscal year, three boards of inquiry were pending.

Judicial reviews

During the 2014-2015 fiscal year, one case was reviewed by the Court of Queen's Bench:

1. *New Brunswick Human Rights Commission versus Downey and Keenan Truck, 2014 NBQB 238.*

John Downey (complainant) had filed a complaint alleging that his employer, Keenan Truck Repair Inc. (respondent), had discriminated against him on the basis of his physical disability with respect to the termination of his employment. Once an investigation had been concluded, the commission referred the matter to the Labour and Employment Board to sit as a board of inquiry. After a full hearing, the board of inquiry dismissed the complaint and found that the complainant did not have a disability within the meaning of the *New Brunswick Human Rights Act* at the time that his employment was terminated by the respondent. When making this finding, the board of inquiry relied on case law from British Columbia to determine what constitutes a physical disability under human rights legislation. The board also dismissed the complaint on the basis that the complainant did not provide sufficient notice to the respondent with regard to two allegations and because those two allegations were filed outside of the one-year time limit prescribed by the Act.

The commission filed for judicial review and a hearing of the matter was held on Oct. 2, 2014, and the Court of Queen's Bench rendered its decision on Oct. 31, 2014.

The court dismissed the commission's application for judicial review and found that the board of inquiry did not err in fact or law in limiting the scope of the hearing before the board of inquiry to the specific allegations of discrimination set out in the complaint form. The court found that the sufficiency of a complaint is a matter involving the board's rules and policies with respect to procedure. The court also found that the board's decision that the termination of the complainant's employment was not discriminatory was reasonable.

Appeals

Only one case was pending before the New Brunswick Court of Appeal in 2014-2015:

1. *Rose versus Her Majesty the Queen in Right of the Province of New Brunswick (The Province of New Brunswick including the Departments of Justice, Office of the Attorney General and Finance), et al.* [2015] NBJ No, 94.

The complainant alleged that she had been discriminated against on the basis of her marital status and perceived mental disability by the respondents when they failed to hire her for employment because they took in information from biased and unqualified persons outside of the screening committees for various employment competitions. Parts of the complaint were filed outside of the one-year time limit and the complainant filed a time limit extension request with the commission. After receiving submissions from the parties pertaining to the time limit extension request, the commission decided not to grant a time limit extension. The remainder of the complaint that had been filed within the one-year time limit was considered by the commission. After an investigation into the matter, the commission decided to dismiss the complaint.

The complainant sought judicial review of the commission's two decisions (not granting the time limit extension request and dismissal of the entire complaint). The commission filed a motion to be removed as a party to the judicial review proceedings. A hearing was conducted by the Court of Queen's Bench with regard to the motion filed by the commission. The commission's motion was granted.

The complainant filed an appeal with the New Brunswick Court of Appeal. A hearing was conducted by the court on Jan. 29, 2015, and March 12, 2015. As of the end of this fiscal period, a decision had not been rendered by the court.

Education and prevention

National activities

The commission continues to be very active at the national level through its involvement with the Canadian Association of Statutory Human Rights Agencies (CASHRA), of which it is a founding member. CASHRA was established in 1972 to foster co-operation and information-sharing between human rights agencies across Canada. The commission's chairperson and director participated in CASHRA's monthly telephone conferences throughout the year.

Every year, a different CASHRA agency organizes on a rotating basis a annual human rights conference for human rights commission members and staff and the public. In 2014, the CASHRA annual general meeting and conference were hosted by the Canadian Human Rights Commission in Ottawa from June 11 to 13; the chairperson and director attended, and the chairperson spoke at the conference. They also attended CASHRA's mid-year business meeting in November at the newly opened Canadian Museum for Human Rights in Winnipeg.

The chairperson is an active member of an inter-agency committee working to ensure that a mechanism is put into place for the independent and accountable monitoring of the *Convention on the Rights of Persons with Disabilities*. The committee, which is also working to promote the convention, is a partnership of CASHRA, the Council of Canadians with Disabilities, the Canadian Association for Community Living and several other national disability advocacy groups.

During the year, the director was active on CASHRA's working group on Mental Health in the Workplace. One of the commission's lawyers is a member of the CASHRA lawyers' group that meets periodically by telephone on federal/provincial jurisdictional issues related to human rights.

The commission was featured on CASHRA's website during May 2014. Its feature article focused on the Ashley Smith case.¹

New Brunswick Human Rights Award

The New Brunswick Human Rights Award is an annual award established in 1988 to recognize individuals and organizations that have shown outstanding effort, achievement and/or leadership on a volunteer basis in the promotion of human rights and equality, and as such serve as examples to all New Brunswickers.

The award is represented by an elegant sculpture of walnut and maple. The names of the recipients are engraved on the base of the award, which is on permanent display at Government House in Fredericton, where it may be viewed by the public.

A news release seeking nominations for the 2014 award was published in February 2014. Nominations were also solicited from a wide variety of groups by email. The nomination form is posted on the commission's website.

- <http://www.gnb.ca/hrc-cdp/index-e.asp>

Corinne Gallant, of Dieppe, was the recipient of the 2014 New Brunswick Human Rights Award.

One of the first Acadian women to earn a doctorate, she was a professor of philosophy at l'Université de Moncton, where she launched its first course on feminism, which she led until her retirement. Gallant was also the author of a book on feminist philosophy, *La philosophie... au féminin*, which was widely used in French-language institutions. She was a president of the first national organization of feminist researchers, the Canadian Research Institute for the Advancement of Women (CRIAOW).

In addition, Gallant played a key role in the formation of the New Brunswick Advisory Council on the Status of Women, and helped establish a shelter for battered women in Moncton. She also worked for Acadian rights, particularly French as an Official Language.

¹ *The Problems Identified by the Ashley Smith Case are Getting Worse* <<http://www.cashra.ca/past-featured/newbrunswick-2014.html>> Accessed on March 19, 2015..



A framed certificate and a pewter lapel pin representing the award were presented to Corinne Gallant by then-lieutenant-governor Graydon Nicholas and Randy Dickinson, the commission's chairperson, at a ceremony attended by about 50 people at Government House in Fredericton on Sept. 15, 2014.

Media relations

The commission publishes news releases or statements to inform New Brunswickers of their human rights and responsibilities as well as its activities. They are published on the commission's website and distributed to the media and the commission's stakeholders by email.

Fourteen releases or statements were published during the 2014-2015 fiscal year. They mainly focused on various provincial, national and international days related to human rights, such as Black History Month (February), Equality Day (April 17), the International Day Against Homophobia and Transphobia (May 17), Disability Awareness Week, National Acadian Day (Aug. 15) and the International Human Rights Day (Dec. 10).

A news release was also issued on Sept. 11 to announce the commission's new online step-by-step guide for completing the human rights complaint form.

A news release was issued on Oct. 16, 2014, to announce the commission's new guideline on the accommodation of students with a physical or mental disability in post-secondary institutions.

News releases were also issued to announce the commission's annual report, to seek nominations for the Human Rights Award and to announce the recipient of the award.

The chairperson was interviewed by the media on several occasions about human rights issues, especially those connected with the news releases of the commission. Notably, he gave media interviews related to Equality

Day, Disability Awareness Week, National Acadian Day, the annual report, Speaker Noël Kinsella's retirement from the Senate (Kinsella had been the commission's first chairman) and Black History Month.

Presentations

As part of its education mandate the commission is regularly making presentations to various groups such as professional associations, educational institutions. The commission delivered 55 presentations or information sessions in 2014-2015. Seven of the sessions were agreed to as a term of settlement of a human rights complaint.

Twenty-six of the 55 awareness presentations were delivered to students at universities, community colleges, business colleges, public schools and Workplace Essential Skills classes. In addition, two presentations were delivered to Boys and Girls clubs, and another was presented to teachers. Information sessions were delivered to private and public sector employers, multicultural groups and disability-related groups.

The presentations most commonly presented a general introduction to the *Human Rights Act* (13 presentations) or explained its application to employment (10 presentations). There were seven presentations on the duty to accommodate disability in employment and five presentations on the commission's procedures.

The following is a sample of the topics covered by members and staff:

- age discrimination in the workplace;
- the impact of age on performance and the termination of employment;
- best practices related to workplace dispute resolution and mediation;
- the key elements and approaches for effectively tackling mediating conflict and avoiding escalations during mediation sessions;
- employment issues related to transgender employees to managers of a business;
- the duty to accommodate students with a disability; and
- various aspects of the role of managers in promoting human rights.

Other activities

The commission's website is used by the public to access its guidelines and other publications as well as news and events. Links are also added from time to time to recent statements by CASHA.

A step-by-step guide for completing the human rights complaint form was developed and posted on the commission's website on Sept. 11, 2014. A news release about the guide was released at the same time.

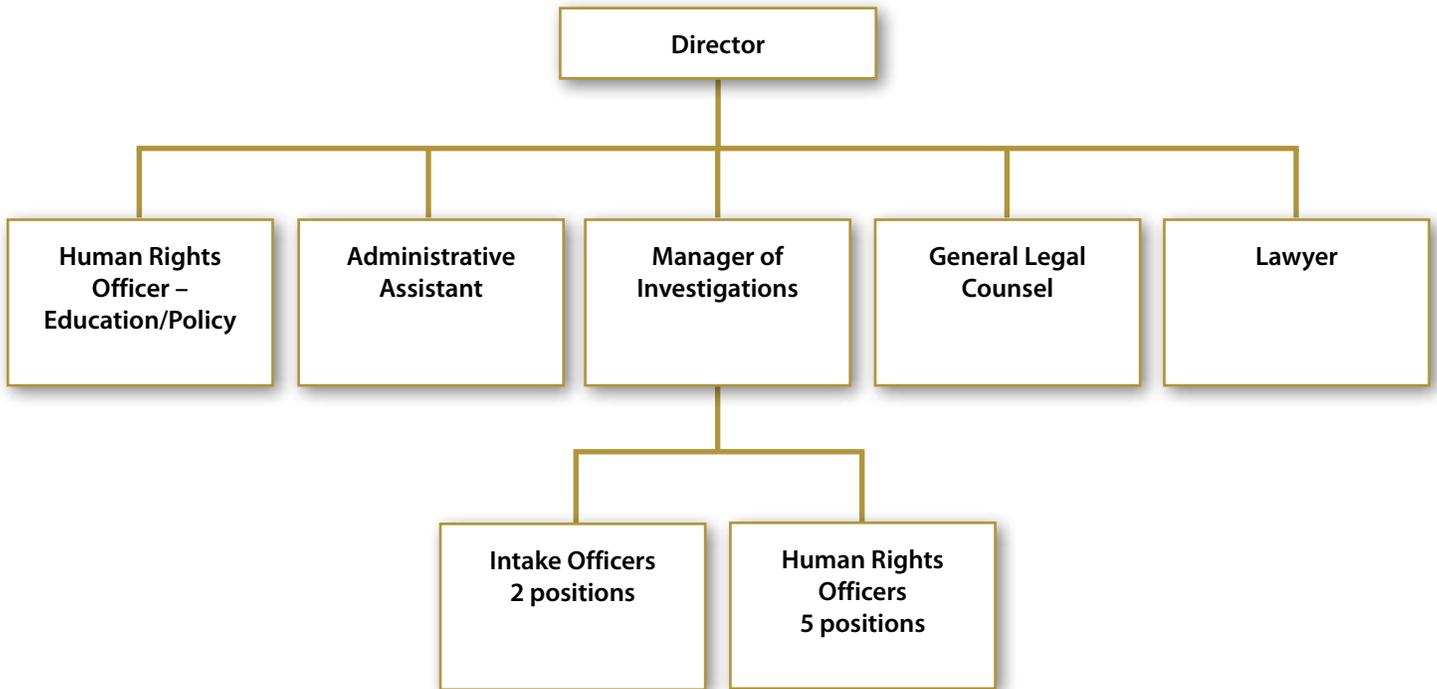
The commission's guideline on accommodating disability at work was updated and posted on its website. In addition, the commission's new *Guideline on Accommodating Students with Disabilities in Post-Secondary Institutions* was posted online on Oct. 16, 2014.

The commission's 2013-2014 annual report was posted online on Nov. 4, 2014.

Throughout the year, the commission updated its emailing list, which permitted it to give wider distribution to information about its activities and rights and responsibilities under the *Human Rights Act*.

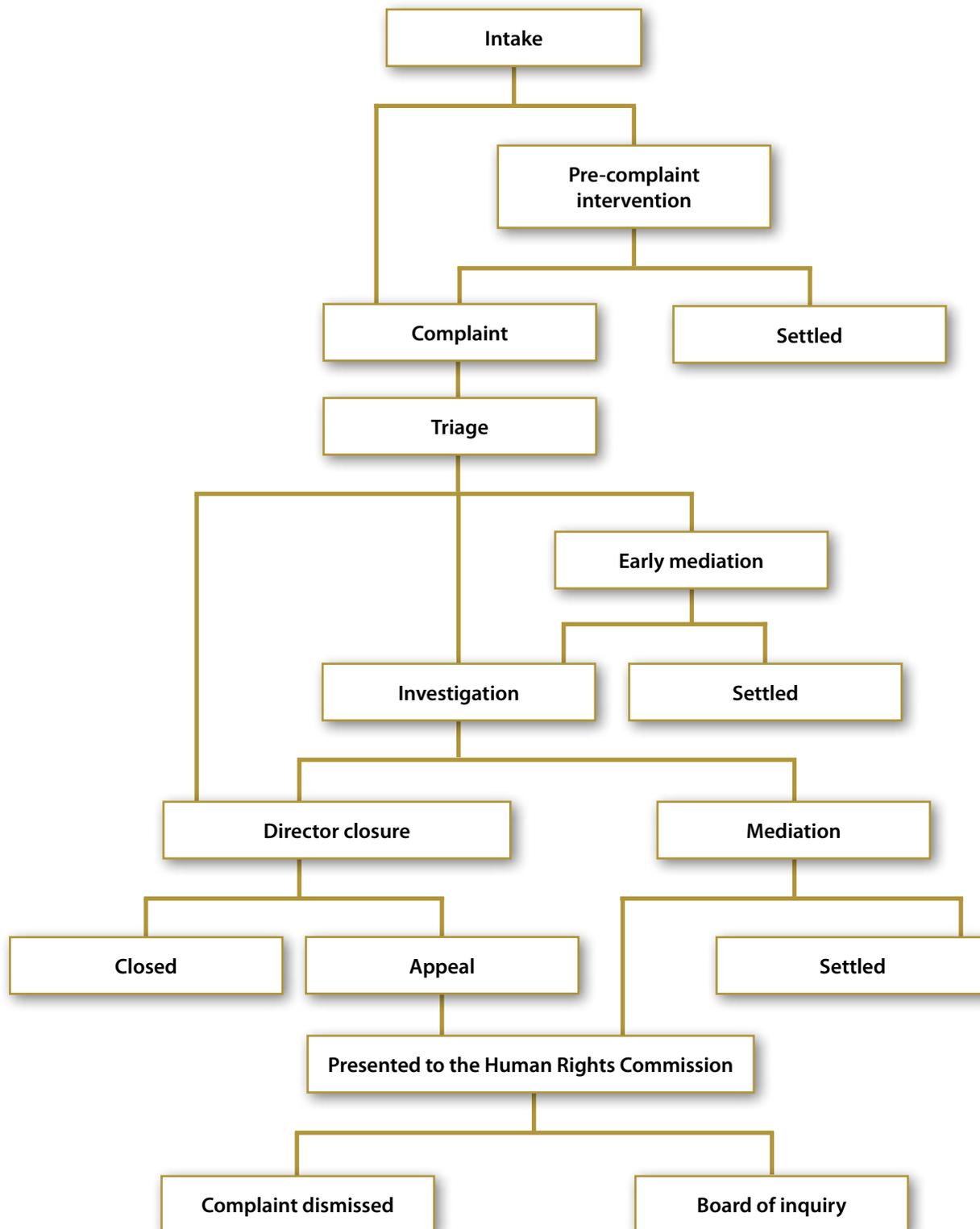
Appendix A

Organizational chart



Appendix B

Complaint process



Appendix C

New formal complaints* by ground and activity

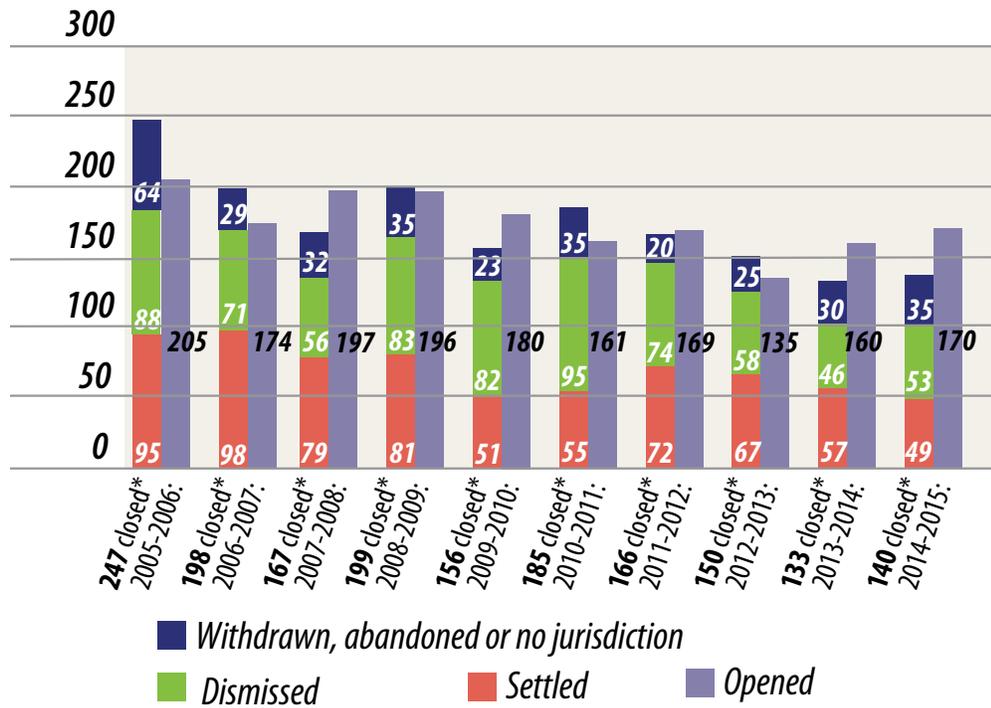
April 1, 2014, to March 31, 2015

	Employment	Housing	Services	Publicity	Associations	Total
Race	5	0	1	0	1	7 (2.3 %)
Sex	22	0	3	0	0	25 (8.2 %)
Religion	1	1	2	1	0	5 (1.6 %)
Place of origin	3	0	2	1	1	7 (2.3 %)
Marital status	4	0	2	1	0	7 (2.3 %)
Mental disability	27	1	6	2	2	38 (12.5 %)
Colour	4	0	0	0	1	5 (1.6 %)
Age	15	1	2	1	1	20 (6.6 %)
Ancestry	1	0	1	0	0	2 (0.7 %)
National origin	3	0	1	1	0	5 (1.6 %)
Physical disability	59	1	30	19	3	112 (36.7 %)
Sexual harassment	11	0	1	1	0	13 (4.3 %)
Sexual orientation	3	0	0	0	0	3 (1 %)
Political belief or activity	2	0	0	0	0	2 (0.7 %)
Social condition	6	1	23	17	1	48 (15.7 %)
Reprisal	4	0	1	0	1	6 (2 %)
Total	170 (55.7 %)	5 (1.6 %)	75 (24.6 %)	44 (14.4 %)	11 (3.6 %)	305*

* NOTE: This table shows allegations of discrimination, which exceed the number of distinct formal complaints since a single complaint may allege discrimination on more than one ground (e.g., race and colour) or in more than one activity (e.g., employment and service). When

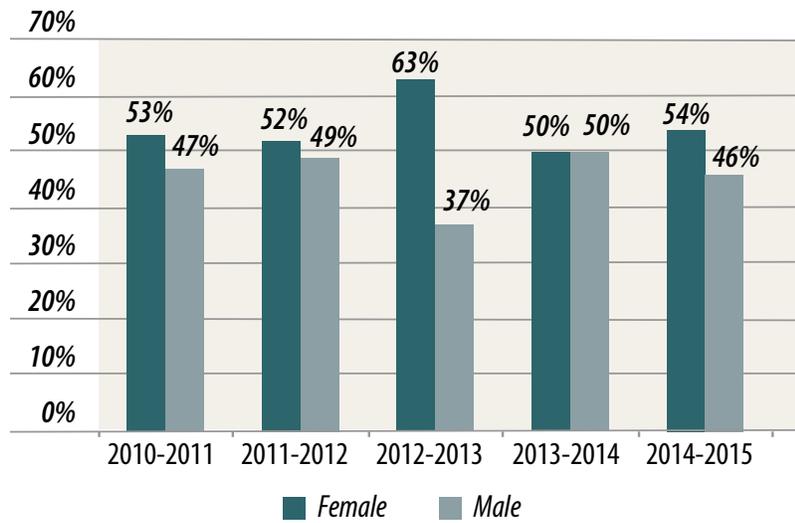
each new formal complaint alleging discrimination on multiple grounds or in multiple activities is counted as a single complaint, there were 170 distinct new formal complaints.

Formal complaints opened and closed* 2005-2015

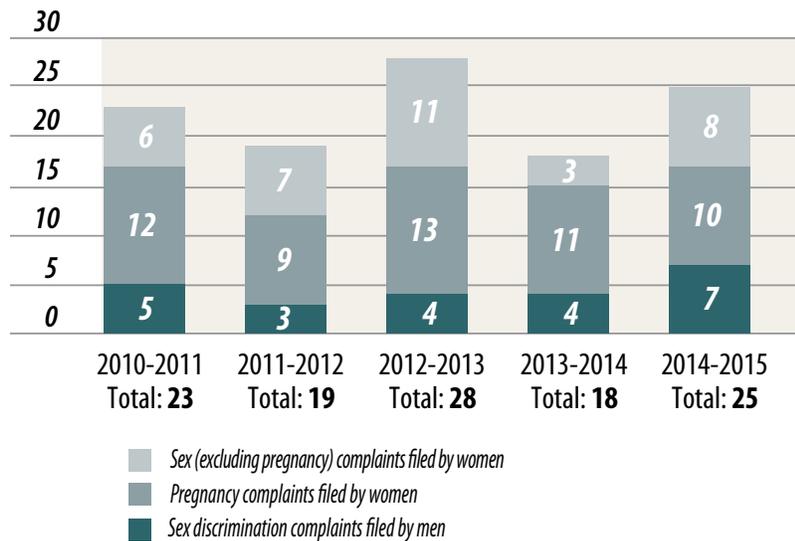


* NOTE: Statistics for closed complaints are for formal complaints closed by the commission only, not cases settled during pre-complaint interventions or formal complaints closed at the board of inquiry or court levels.

Sex of complainants for all complaints



Sex of complainants for sex discrimination complaints



Appendix D

Summary of expenditures

This annual report was printed before the publication of the *Public Accounts* for 2014-2015. Audited information was not yet available. For final figures, please consult the

supplementary information relating to the Department of Post-Secondary Education, Training and Labour in Vol. 2 of the *Public Accounts*.

	2014-2015 Main Estimates	2014-2015 Budget	2014-2015 Actual
Compliance and Prevention	\$869,500	\$869,500	\$768,404
Legal Services	\$316,500	\$316,500	\$307,594
Office of the Commission	\$68,000	\$68,000	\$44,824
Total	\$1,254,000	\$1,254,000	\$1,120,822

Appendix E

Publications of the New Brunswick Human Rights Commission

Pamphlets

- *Accommodating Students with a Disability*
- *Our Human Rights* (English, French, Korean, Mandarin and Spanish)

Guidelines adopted by the commission

- *Guideline on Accommodating Physical and Mental Disabilities at Work* (2014)
- *Guideline on Accommodating Students with Disabilities [K-12]* (2007)
- *Guideline on Accommodating Students with Disabilities in Post-Secondary Institutions* (2014)
- *Guideline for BFOQ's and BFOQ's and the Duty to Accommodate* (2005)
- *Guideline on Delegation of Compliance Functions* (2012)
- *Guideline on Discrimination in the Housing Sector* (2004)
- *Guideline on Drug and Alcohol Testing in the Workplace* (2011)
- *Guideline on Political Belief or Activity* (2011)
- *Guideline on Pregnancy Discrimination* (2011)
- *Guideline on Privilege and the Human Rights Commission* (1995)
- *Guideline on Sexual Harassment* (2011)
- *Guideline on Social Condition* (2005)
- *Guideline on Time Limit Extension for Complaint Initiation* (2012)

Other publications

- Annual reports
- *Accommodation at Work* (reference manual) (2012)
- NOTE: This list shows only printed publications. A few additional publications are available on the commission's website www.gnb.ca/hrc-cdp.

