

2013 - 2014

ANNUAL REPORT



NEW BRUNSWICK
HUMAN RIGHTS
COMMISSION

The Honourable Graydon Nicholas
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, 2013 to March 31, 2014.

Respectfully submitted,

A handwritten signature in black ink that reads "Jody Carr". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jody Carr
Minister Responsible for the Human Rights Commission

Jody Carr
Minister Responsible for the Human Rights Commission

Sir:

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 2013-2014.

Respectfully submitted,

A handwritten signature in blue ink that reads "Randy Dickinson". The signature is cursive and flows across the page.

Randy Dickinson
Chairperson
New Brunswick Human Rights Commission

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Message from the Chairperson

Another operating year has come to an end and provides us with the opportunity for reflection on what has just taken place and perhaps some thinking about where we will go to next. I would first like to take this opportunity to thank the other members of the New Brunswick Human Rights Commission and all of the staff for their hard work and commitment towards the protection of human rights in our province.

When we watch the international news on television or on our computers, we may become smug as we bear witness to the horrible tragedies inflicted upon people in other nations who may end up being tortured or killed for preaching equality, for trying to vote, or even for allowing girls to go to school to get an education. We are so fortunate to live in a democratic society in Canada, but I believe that having the ability to enjoy our many human rights also brings with it responsibilities. I think the most basic form of citizen responsibility is to get out and vote at every election, whether municipal, provincial or federal, to select the representatives who will establish the laws and policies that govern our communities. I am discouraged and even ashamed to see the declining rate of voter participation in our elections when I look at other countries where people are literally murdered for trying to have a say in how they are governed.

Since becoming the Chairperson of our Human Rights Commission, I have been surprised and frustrated to see the types of situations that still happen today due to blatant examples of discrimination, especially in the workplace. Over the past year, our office received over 2100 intakes asking questions about possible situations of discrimination, which led to 160 actual formal complaints being filed. Once again, complaints involving persons with disabilities were the highest, comprising 51% of the overall complaints received. While progress has been made in the concept of disability awareness and inclusion, it is obvious from the continuing level of complaints that too much discrimination still exists for this population. As well, we see too many situations where women have been discriminated in the workplace and we need to do better.

The Commission has an active program of education and prevention initiatives and we speak to many organizations, employers and educational settings. However, due to staff and budget limitations, we know that we are not adequately reaching the public at large to educate them not only about their rights but their obligations under human rights so that we may prevent unnecessary discrimination from taking place. We will continue to undertake efforts to reach out, especially to employers and human resource managers, to try especially to reduce discrimination in the workplace. For more information about the publications and educational materials available from the Commission, I would urge readers to go to our website.

I am pleased to report that, despite a heavy workload and some staff turnovers and human resource shortages, our Commission team has managed to continue resolving many complaints through the process of mediation. Mediation allows complaints to be settled more quickly and at lower cost while ensuring that both parties to the complaint have agreed to the mediated compromise which resolved the matter.

We would also like to publicly congratulate John Wood of Oromocto who was this year's winner of the New Brunswick Human Rights Award for his outstanding efforts at community fundraising to help other persons with disabilities obtain items that they needed directly due to their disability. John shows that an average person can make an important difference in enabling people to be included in their community. Not everyone can take the time to do community fundraising, but we all can take the time to speak up and intervene when we see something wrong happening, such as someone being bullied or discriminated against for whatever reason.

The Commission continues to be busy and vigilant around the subject of human rights in New Brunswick, Canada and elsewhere while retaining connections with other human rights commissions who are members of the Canadian Association of Statutory Human Rights Agencies (CASHRA). By sharing information about each other's activities, we are kept up-to-date on the progress around public education and protection of human rights as well as the case law across the country. We have recognized that there remain many differences in the language and the grounds of discrimination contained in the various enabling legislation for the different provincial and territorial Commissions. We hope to undertake further efforts to create more uniformity in the definitions and the listed grounds for discrimination protected in all of the different jurisdictions so that Canadians will enjoy the same general protection of their human rights wherever they might live in Canada.

We expect that our own legislation in New Brunswick will need to be updated to improve on the language used in the definitions as well as the current listing of protected grounds against discrimination.

In closing I would like to leave you with a quote from Franklin D Roosevelt, who said:

Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain these rights and keep them. Our strength is our unity of purpose. To that high concept there can be no end save victory.

Respectfully submitted;



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

Members of the Commission

On April 1, 2013, the members of the Human Rights Commission were Randy Dickinson (Chairperson), René Landry, Karine Levesque and Emil Olsen. Donald Gauvin, Steve Lambert and George Richmond were appointed to the Commission during the 2013-14 fiscal year. The following biographical notes are up-to-date as of March 31, 2014.

Randy Dickinson, C.M., Chairperson

Randy Dickinson, C.M., was born and raised in Upper Woodstock, New Brunswick. He holds a Bachelor of Arts Degree with Honours in Political Science from Acadia University and 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 of 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 of 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 issues, 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, amongst 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 also 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 NB Association for Community Living in 2009 amongst others. In 2006, Recreation NB created an annual award known as the "Randy Dickinson Community Inclusion Award" which is presented for the purpose of recognizing a program or facility that has furthered the inclusion of persons with disabilities within the area of sport, recreation, and active living.

Mr. Dickinson is currently active with the N.B. 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 N.B. Disability Awareness Week and is the Vice-President of the John Wood Foundation Inc., which raises funds for persons with disabilities. Mr. Dickinson is also a member of the City of Fredericton's Age Friendly Advisory Committee. He serves as a member of Alternative Measures Program (Adult) and the Extra Judicial Sanctions Program (Youth) Advisory Committee for eligible offenders under the Department of Public Safety.

Donald Gauvin

Donald Gauvin, who has a Masters in Education degree, retired in 2000 after a 31 year career as a school teacher, mainly in the Mathematics and IT fields. Since retiring, he has taught at the New Brunswick Community College and the Université de Moncton and has consulted with the French language adult literacy federation of New Brunswick.

Mr. Gauvin has also been active on a number of boards. He has been the chair of the local teachers' branch, member of the Board of Directors of the New Brunswick Teachers Federation, Chairman of the Board of the Roberville Co-op, Secretary-treasurer of the Nepisiquit-Chaleur Solid Waste Commission, as well as Treasurer and Vice-President of the Club Richelieu of Bathurst. He is currently the Chair of the Advisory Committee of the Tremblay Local Service District, the Chair of the Petit-Rocher Public Library Commission and a member of the Regional Service Commission Board for Region 3

Steve Lambert

Acupuncturist by profession, Steve Lambert is from Caraquet. He has been running an acupuncture and Chinese medicine clinic in Campbellton since 1985. It serves customers from the Maritimes and from the Gaspé Peninsula. He has studied in several countries and has several certificates, diplomas and doctorates, including acupuncture, traditional Chinese medicine, auriculotherapy, NADA detoxification, differential diagnosis, therapeutic touch, and pranic healing. Mr. Lambert is also a practitioner of medical Qi Gong, a life coach and a therapeutic clown. As a *Nouveau Penser* (New Thought) officiant, he celebrates several marriages and baptisms each year in the Gaspé Peninsula.

He is a founder and the president of the New Brunswick Chapter of the Association of Chinese Medicine and Acupuncture in Canada (CBAC NB). He was appointed Ambassador of New Brunswick in 2010. Since 2012, he is a volunteer member of the board of the Restigouche County Volunteer Action Association (RCVAA) in Campbellton, which is both a food bank and a soup kitchen. He assists and participates in fund-raising for this

non-profit organization. He has been a columnist for the newspaper *l'Acadie Nouvelle* since September 2013; every Saturday he writes on topics that appeal to him, to promote wellness

René Landry

René "Pepsi" Landry attended the University of Ottawa, where he received a certificate in Physical Education in 1962. He graduated from the 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 the Université de Moncton *Aigles Bleus* Booster Club. He has also been involved with the Recreation Society of Atlantic Canada, the Moncton Lions Minor Baseball Association, and the Greater Moncton Leisure Master Plan Committee, and is a ten 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 the 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 and represents that organization on the board of directors of the Canadian Association of Social Workers. She is also a member and former President of the Madawaska Branch of the Canadian Mental Health Association (CMHA) and a former member of the Board of Directors of the New Brunswick Division of the CMHA.

She is also 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 2010, Ms. Levesque received the Distinguished Service Award for New Brunswick given by the Canadian Association of Social Workers. In 2004, she was the Social Worker of the Year of her local chapter of the New Brunswick Association of Social Workers.

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, Nova Scotia. His father, a member of the Canadian Army 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 the 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 was a recipient of the Queen's Golden Jubilee Medal in 2002 and the Queen's Diamond Jubilee Medal in 2012.

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 at: <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. Here are some highlights:

- 160 distinct complaints were received in 2013-14,
- 178 complaints were active at the end of the year, including cases pending before a Board of Inquiry or court,

Intakes

In 2013-2014, there were approximately 2100 intakes. Nearly all intakes begin with a phone call. When the call does not involve discrimination contrary to the *Human Rights Act*, the person is typically referred to the appropriate agency. In 2013-2014, there were 581 referrals of this type.

A total of 136 inquiries concerned sex discrimination, 94 of which concerned pregnancy. Twenty-two of the pregnancy inquiries were made by employers. The pregnancy-related inquiries from employees and employers concerned:

- Accommodation of pregnancy by employers;
- Termination of employment due to pregnancy;
- Termination of employment while on maternity leave, or upon return from maternity leave;
- Demotion or loss of hours upon return from maternity leave;

- Accommodation of breastfeeding in the workplace;
- Denial of a position or of a promotion.

During 2013-14, 511 complaint/information kits (pamphlets, a blank complaint form, instructions on the complaint process and how to complete the form, etc.) were mailed to individuals who were interested in filing a complaint.

Fifty-eight per cent (58%) of the complaint kits were sent to women, and 42% were sent to men. Complaint kits were sent out to 38 potential complainants about pregnancy discrimination; which resulted in 8 formal complaints being filed.

Grounds of Discrimination

The 160 distinct complaints filed included 252 allegations of discrimination since some complaints alleged discrimination in more than activity (e.g. both service and housing) or ground (e.g. both race and colour). As shown in Appendix C, the most common grounds were physical disability (73) and mental disability (55), which together accounted for 51% of all complaint allegations. The next most common grounds were sex (18) and age (16), followed by social condition (15).

As in previous years, most complaints (180) were employment-related. The majority (104, i.e. 58%) of the employment complaints dealt with discrimination based on physical or mental disability. Fourteen of the 18 sex discrimination complaints were employment related, while the rest were service related. The nine sexual harassment complaints were all employment related.

Appendix C includes charts that show the sex of complainants. The 160 distinct formal complaints were evenly divided between male and female complainants. Four of the 18 sex discrimination complaints and two of the nine sexual harassment complaints were filed by men. As has been the case since 2010-2011, the majority of sex discrimination complaints filed by women concerned pregnancy; in 2013-2014, 11 of the 14 sex discrimination complaints filed by women concerned pregnancy.

Also included in Appendix C are charts that show the types of mental or physical disability mentioned in the disability complaints. The most commonly mentioned physical disabilities are related to the back, neck and head, which form about a quarter of the physical disability discrimination allegations. The second most commonly mentioned physical disabilities involved the heart, lung and organs, which represent one fifth of the physical disability allegations. The most common mental disabilities mentioned are depression (36%, stress/burnout/anxiety (31%) and cognition/concentration/learning (17%).

Closed Complaints

In total, 139 distinct formal complaints were closed in 2013-14 (An additional complaint was closed and later re-opened.). The cases were closed for the following reasons:

- 57 were settled,
- 46 were dismissed (mainly due to lack of evidence or being filed out of time),
- 30 were withdrawn, abandoned, found to be outside the Commission's jurisdiction or closed for other reasons,
- 7 were closed at the Board of Inquiry or court levels (This includes four pre-hearing settlements.).

The average age of complaints at closure was 12 months.

Settlements

A total of 72 cases were settled and closed in 2013-2014. They involved 61 formal complaints and 11 pre-complaint interventions. Pre-complaint interventions are attempts by the Commission to mediate a dispute before a complaint is filed; such interventions are used especially in urgent situations or situations when there is an opportunity for a limited time to quickly resolve a dispute.

The cases were settled at the following stages:

- 11 cases during pre-complaint interventions;
- 35 cases settled prior to a respondent filing a response to the complaint with the Commission;
- 11 cases were settled after a response to the complaint had been filed, but before the investigation was completed;
- 11 cases were settled after the investigation had been completed, and in some cases after the case analysis report had been drafted;
- 4 cases were settled after the Commission made the decision to refer the matter to a Board of Inquiry, or were settled at the Board of Inquiry level. (Two of them had been referred to the Board in previous years.).

These are statistics about the terms of settlement:

- \$528,912 is the estimated total monetary value of the settlements (average of \$7346 per settlement), of which \$386,000 were general damages;
- 16 complainants were accommodated (9 in employment, 5 in services and 2 in housing);
- 13 letters of reference;
- 11 files resulted in human rights training seminars;
- 5 letters of apology or misunderstanding;
- 4 complainants had medical or other benefits reinstated;

- 4 complainants received a letter confirming their employment;
- 3 were offered employment or were reinstated into employment;
- 2 policies developed or changed;
- 1 complainant received an amended Record of Employment.

Sample Complaints

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

1. Ancestry & Physical Disability / Services

The Complainant alleged that he was discriminated against on the basis of his physical disability when he was refused medical treatment. He also alleged discrimination for differential treatment due to his ancestry while in detention. The detention facility maintained that they did not discriminate against the Complainant; they treated him the same way as every other offender. Further, they maintained that he was given medication to treat his medical condition. The Commission's staff attempted to contact the Complainant, but were unsuccessful. Accordingly, the case was dismissed by the Director as being abandoned by the Complainant.

2. Sex (pregnancy) / Employment

The complainant complained that she was terminated from her position after disclosing to her employer that she was pregnant. The employer maintained that they did not discriminate against the complainant based on her sex (pregnancy) but rather she was dismissed due to her job performance. Commission staff investigated the matter and the Commission dismissed the complaint as being without merit since the information gathered was insufficient to support an arguable case of sex (pregnancy) discrimination.

3. Sex (pregnancy) / Employment

The complainant alleged that she was discriminated on the basis of sex when the attitude towards her changed shortly after she announced that she was pregnant. She also alleged that her position was permanently filled with a new employee when the complainant had to take a medical leave prior to her maternity and parental leave. The employer maintained that he was unaware of the extended leave taken by the complainant and was under the impression she had made the decision to not return to work with the employer. Mediation services were offered to the parties before the investigation report was complete. Commission staff assisted the parties in reaching a resolution to the matter.

4. Age / Employment

The complainant alleged that she was discriminated against because of her age (64) when her employment was terminated shortly after she was hired and only after the employer became aware of her age. The employer maintained that the complainant's employment was terminated not because of her age but because of other factors, including a lack of professionalism and unsuitability for the position. The Commission staff assisted the parties in reaching a resolution to the matter.

5. Physical Disability / Employment

The complainant alleged that he was discriminated against because of his physical disability (broken back and ribs) when his employer refused to grant him a leave of absence to recuperate from injuries sustained outside of the workplace and instead terminated his employment. The employer maintained that they did not discriminate against the complainant; rather he was laid off as a result of a shortage of work. Further, the employer maintained that they did not recall the complainant having asked for a leave of absence because of his injuries. The Commission's Director dismissed this complaint as having been abandoned by the complainant after he failed to contact Commission staff despite several requests that he do so to review and clarify his complaint.

6. Sex / Employment

The complainant alleged that he was discriminated against based on his sex (male) when the employer hired three female employees instead of him even though he had worked with the employer seasonally for a number of years. The complainant alleged that females were preferred as they would increase the number of customers. The employer maintained that they did not discriminate against the complainant, but decided to not rehire him because of his work performance. The employer also maintained that they did not discriminate against him due his sex since they had offered the position to three other males, all of whom declined the position. The matter was investigated and was dismissed by the Commission as being without merit as the information provided was not sufficient to support an arguable case of sex discrimination.

7. Physical Disability & Mental Disability / Employment / Time Limit Extension Request

The complainant alleged discrimination on the basis of her physical and mental disabilities (respiratory problems, chronic fatigue syndrome, fibromyalgia, and cognitive problems) when her employment was terminated while she was on an extended medical leave due to her physical disabilities. The employer maintained that they did not discriminate against the complainant but rather took a variety of steps to ensure the complainant's return to work. The employer maintained that her employment was terminated because her particular needs were simply too great and the necessary accommodations were excessive for the employer.

The complainant had filed her 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. In order 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. Therefore, the file was closed.

Boards of Inquiry

During the fiscal year, the Human Rights Commission referred four complaints to a Board of Inquiry. One complaint alleged physical disability discrimination with respect to services, another alleged reprisal discrimination with respect to services and employment, and two complaints alleged physical disability discrimination in employment. Two of the four complaints referred to a Board this year were resolved at the Board level through mediation and the other two proceeded to hearings. A third Board hearing concerned a complaint that had been referred to the Board in previous years. As of March 31, 2014, two Boards of Inquiry were pending, namely the *Bryson* and *Bourque-Coyle* cases.

1. *Bryson v. The University of New Brunswick*¹

Sylvia Bryson, a former UNB student and hockey player on UNB's Women's Varsity Hockey Team, filed a complaint of sex discrimination with respect to services against UNB when they decided to reclassify the women's team so that it would no longer be a varsity club, while the mens' hockey team remained a varsity club and was thus treated in a preferential manner.

After the staff investigated the complaint, the Commission recommended that a Board of Inquiry to hear the matter. UNB sought judicial review of the Commission's recommendation, and the Minister's decision, to appoint a Board of Inquiry (see page 14 of this annual report for a discussion of the court's decision).

On November 29th, 2013, after the judicial review, the Board of Inquiry addressed several preliminary issues. The Board confirmed that the timeframe of 2004-2008, as established by the Commission, was correct, and it recognized the Commission's decision to extend the time for filing of the complaint. As to whether the complaint concerned a "service available to the public," the Board decided that it was appropriate to determine this question based on all of the evidence to be presented at the hearing on the merits.

This matter is currently proceeding before the Board of Inquiry.

¹ *Bryson v. University of New Brunswick*, 2013 CanLII 81389 (NB LEB) < <http://canlii.ca/t/g2bl0>>

2. *John Downey v. Keenan Truck Repair Inc.*²

On October 28, 2009, John Downey filed a complaint alleging that his employer, Keenan Truck Repair Inc., had discriminated against him on the basis of his physical disability with respect to the termination of his employment.

Downey had been hired by Keenan as their sole licensed body mechanic in 2004. In October 2008, Downey commenced a medical leave of absence, which was initially anticipated to last two weeks. However, his condition was identified as carpal tunnel syndrome; it required surgery, which was delayed until June 18, 2009 by no fault of his own.

While Downey was out on medical leave, Keenan decided to close the body shop, but did not inform Downey of this. In October 2009, Keenan also cancelled his medical benefits since he had been off on medical leave for one year. In late November 2009, Downey received clearance to return to work on November 30, 2009. However, he was laid off by Keenan on November 28, 2009; the reason cited was that the body shop was no longer operating as of June 15, 2009.

At the hearing, the three instances of alleged discrimination were: 1) the closing of Keenan's body shop; 2) the cancellation of Downey's medical benefits; and 3) the termination of employment.

The Board dismissed the last two allegations because the complaint did not provide Keenan sufficient notice of the allegations, and because they were beyond the one year time limit since they did not constitute a continuing violation.

Based on the evidence provided by both parties, the Board found that Downey did not have a disability within the meaning of the *Act* at the time of his termination. The Board relied on case law from British Columbia to determine what constitutes a physical disability under human rights legislation. (Unlike the New Brunswick *Human Rights Act*, the British Columbia *Human Rights Code* does not contain a definition of physical disability). The Board also found that Keenan did not perceive Downey to be functionally disabled at the time of termination.

The Board also made a finding of fact that, prior to Downey's termination, Keenan had offered Downey two alternate positions that Downey rejected as he believed that his former position as a body repairman was available at the time. The Board dismissed the complaint as a whole.

² *John Downey v. Keenan Truck Repair Inc.*, 2014 CanLII 9593 (NB LEB) <<http://canlii.ca/t/g62xn>>

3. *Bourque-Coyle v. City of Dieppe*³

Abby Bourque-Coyle filed a complaint against the City of Dieppe alleging that she was discriminated against on the basis of her physical disability (visually impairment) when the City reconfigured an intersection in 2010 in a manner that made it inaccessible or unsafe for herself or other visually impaired pedestrians. After completing an investigation, the Commission referred the matter to a Board of Inquiry.

At the hearing, the City sought to have Paul Mackey give expert evidence regarding the intersection, but the Commission objected to this due to his involvement in the matter. On February, 12, 2014, the Board decided that Mackey would be able to give evidence based only on facts, but not expert evidence, due to the lack of independence required by the expert.

The matter is currently proceeding before the Board with the hearing of all evidence to conclude in September 2014.

Judicial Reviews

During the 2013-2014 fiscal year, three complaints were reviewed by the Court of Queen's Bench.

1. *The University of New Brunswick v. New Brunswick Human Rights Commission and Province of New Brunswick*⁴

Three women hockey players (Thompson, Davis and Bryson) each filed complaints alleging that UNB had discriminated against them on the basis of sex. The staff investigated the complaints, and the Commission recommended that a Board of Inquiry hear all three complaints.

In July 2011, UNB applied for judicial review of the Commission's decision. The Court of Queen's Bench rendered its decision in April 2013.

The Court found that there was deference owed to the Commission's recommendations and that the standard of review was that of reasonableness, not correctness. The Court found that the Commission did not breach its duty of procedural fairness, stating that the CAR (A Case Analysis Report is a detailed review of the investigation written by the staff for the parties and the Commission.) constituted sufficient reasons for their recommendations. Further, the Court found that UNB knew or should have known why the Commission made its recommendations.

³ *Bourque-Coyle v. City of Dieppe*, 2014 CanLII 9590 (NB LEB) 2014-02-12 <<http://canlii.ca/t/g62xf>>

⁴ *UNB v. NB Human Rights Comm. & PNB*, 2013 NBQB 148 (CanLII), <<http://canlii.ca/t/xfk>>

The Court also found that a “bona fide qualification” for sex discrimination was not established by UNB under what is now subsection 6(2) of the *Human Rights Act*.

However, the Court found that the Thomson and Davis complaints did not have an arguable case of sex discrimination with respect to services. Thompson was “an active and effective supporter and volunteer for the Women’s Program” and Davis was “the Head Coach” of the Team, but they did not meet the threshold test for being an aggrieved person under section 5 (now section 6) of the Act. Accordingly, the Court quashed the recommendations of the Commission and the decisions of the Minister in these two complaints.

However, the Court found that Bryson, as a former player on the Team, had “a reasonable basis in law and fact for the discrimination complaint to move to the adjudicative stage.” The Court found that the Commission’s recommendation met the standard of reasonableness, and dismissed UNB’s application for this complaint.

This case is currently before the Board; see *Bryson v. The University of New Brunswick* at page 12 of this report for issues raised at the Board of Inquiry.

2. Province of New Brunswick v. Labour and Employment Board, New Brunswick Human Rights Commission and A.A.⁵

A.A. filed a complaint in January 2008 against the Department of Health and the Premier (the Province). She alleged that the statutory provisions related to abortion discriminated against her patients and herself on the basis of sex contrary to section 5 (now 6) of the *Human Rights Act*, which applies to services available to the public. In New Brunswick, abortions are covered by Medicare only if they are performed in an approved hospital, where they must be performed by a specialist in obstetrics and gynecology after two medical doctors have certified in writing that they are medically required.

The Commission’s staff investigated the complaint and the Commission decided to recommend a Board to hear the matter.

In May 2011, the Board delivered a written decision finding that A.A. could not bring a complaint on behalf of her patients (a representative complaint), but that her personal complaint could proceed.

The Province filed for judicial review. In May 2013, the Court of Queen’s Bench held that A.A., in her capacity as a physician, fit the description of an aggrieved person under section 17 of the *Human Rights Act*, but did not fulfill the requirements of section 5 (now 6) of the Act. Further, the Court found that A.A.’s case did not meet the threshold test of an arguable case, stating that it did not identify the “service which is available to the public” nor did it identify the “public” which is receiving the service to the exclusion of the complainant, A.A.

⁵ *AA v New Brunswick (Health Department)*, 2011 CanLII 35360 (NB LEB), <<http://canlii.ca/t/flw0p>>

The Court quashed the Board's decision since it did not meet the standard of reasonableness. A.A. sought to appeal this decision; see below.

Appeals

Only one case was considered and decided upon by the Court of Appeal in 2013-2014:

*AA v. The Province of New Brunswick*⁶

In November 2013, A.A. sought an extension of time to file an appeal from the decision of the Court of Queen's Bench noted above. A.A.'s Notice of Motion was filed more than four months beyond the limitation period. The Court of Appeal assessed the request for an extension based on the following factors: 1) bona fide intention to appeal / communication of intent to opposite parties; 2) whether counsel moved diligently; 3) explanation of the delay; 4) extent of the delay; and 5) merits of the appeal.

The Court of Appeal found that A.A. failed to form the intention to appeal within the prescribed time, and failed to advise the opposing parties of any intention to appeal. The Court found that she knew or ought to have known that the diligence of her counsel would be a factor in assessing whether the extension would be granted; yet, her affidavit did not include a date upon which she engaged counsel, prohibiting the Court of Appeal from assessing the diligence of said counsel.

The Court also found that A.A.'s explanations for the delay were inadequate. A.A. expressed discouragement throughout the process, as well as an unwillingness to pay a large retainer to a "lawyer she did not know and had no reason to trust", but did not offer an explanation for her failure to respect the time limits, of which she was aware.

As for the extent of the delay, the Court of Appeal found that the four month delay to appeal was excessive. Due to A.A.'s training and experience, the advice provided to her by the Commission regarding the strict time limits, her access to legally trained individuals, and the public availability of the Rules of Court, the Court of Appeal found that she did not give adequate reasons.

The Court also found that A.A. did not have an "arguable case" that she had been discriminated against by the Province on the basis of sex; she was also unable to identify a comparator group that was treated differently. For the above reasons, the Court of Appeal dismissed A.A.'s motion for an extension of time to file an appeal.

⁶ *AA v. Province of New Brunswick*, 2013 CanLII 76030 (NB CA), <<http://canlii.ca/t/g22wg>>

Education and Prevention

National Activities

The Human Rights Commission continues to be very active on the national scene 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 cooperation and information-sharing between human rights agencies across Canada.

Randy Dickinson, the Commission's Chairperson, and Jill Peters, its Director, participate in CASHRA's monthly telephone conferences. Another regular CASHRA activity is its annual human rights conference that it organizes for members, staff and the general public each year on a rotating basis. The Director and the Chairperson attended the CASHRA annual general meeting and conference in Halifax in May 2013. Jill Peters also attended CASHRA's mid-year meeting in December 2013.

Randy Dickinson is an active member of a 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, Jill Peters 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 phone on federal/provincial jurisdictional issues related to human rights

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. Nominations are solicited from a wide variety of groups by email; this year, the nomination form was posted on the Commission's website for the first time.

John Wood, of Oromocto was selected as the recipient of the 2013 Human Rights Award, for his exceptional work in terms of advocacy and serving as a role model while supporting other individuals with physical disa-

bilities. Wood's determination in the face of adversity has provided support and guidance for families and communities alike. His foundation helps provide equipment, medications, travel and home renovations to residents throughout New Brunswick so they may lead a more enriched life.

A framed certificate and a pewter lapel pin representing the award were presented to the recipient by Lt.-Gov. Graydon Nicholas and Randy Dickinson, the Commission's chairperson, at a ceremony attended by about 80 people at Government House in Fredericton on September 13, 2013.

Media Relations

The Commission publishes news releases or statements to inform New Brunswickers of their human rights and responsibilities and the activities of the Commission, such as the Human Rights Award and the publication of the Commission's annual report. They are published on the Commission's website and distributed to the media and the Commission's stakeholders by email.

Seventeen releases or statements were published from April 1, 2013 to March 31, 2014.

Notably, on January 27, 2004, the Commission published a statement on the Ashley Smith case. She was a mentally ill teenage woman from Moncton who had been incarcerated initially for minor offenses, but ended up spending four years in jail, mostly in solitary confinement. After numerous attempts, she finally killed herself in 2007, while guards delayed entering the cell because of strict orders to enter only if she stopped breathing.

Statements were also published to mark a number of provincial, national and international days related to human rights, such as Black History Month, Persons Day, National Seniors Day, Equality Day, and International Day of Tolerance.

The Chairperson was interviewed by the media on several occasions about current human rights issues, especially those connected with the media releases of the Commission. In 2013-14, he gave several media interviews on the subject of accessible taxis. The Chairperson also responded to a number of requests from university classes and other groups to speak on the work of the Commission and on human rights.

Presentations

As part of its educational programme, the Human Rights Commission delivered 79 presentations or information sessions in 2013-14. Sixteen of the sessions were agreed to as a term of settlement of a human rights complaint.

Twenty-seven of the 79 presentations were delivered to students at universities, community colleges, business colleges, life skills classes and public schools. In addition, five presentations were delivered to various groups of educators. Information sessions were also delivered to private and public sector employers, multicultural groups and disability groups.

The most common topics of the presentations was the duty to accommodate disability in the workplace, which accounted for 13 presentations, and accommodating students with a disability, which accounted for 11 presentations. There were also presentations on employment and the *Human Rights Act*, on bullying and harassment, on same-sex marriage policy and on other human rights issues. There were also several general presentations on the Human Rights Act.

The following is a sample of the presentations given by members and staff:

The staff gave a class on Human Rights Law to students of UNB's Law School in September 2013.

In October 2013, two Commission employees delivered five presentations on sexual harassment in the workplace to a total of 225 employees of an employer.

During the month of December 2013, a member of the Commission's staff delivered three presentations on accommodating children with a disability to daycare operators and to the Department of Education and Early Childhood Development's Child Care Coordinators.

Another member of the Commission's staff gave a presentation to the student body of Oromocto High School and Ridgeview Middle School on February 3, 2014.

A member of the staff gave an information session for the public at the Beresford Public Library on February 27.

A member of the staff gave a class to a Law class at the Université de Moncton also on February 27.

Over the year, staff delivered Human Rights in Employment presentations to adults enrolled in six Workplace Essential Skills (WES) courses in various locations in the province.

On March 21, the Commission's Legal Counsel participated on a panel on the duty to accommodate before 150 union members.

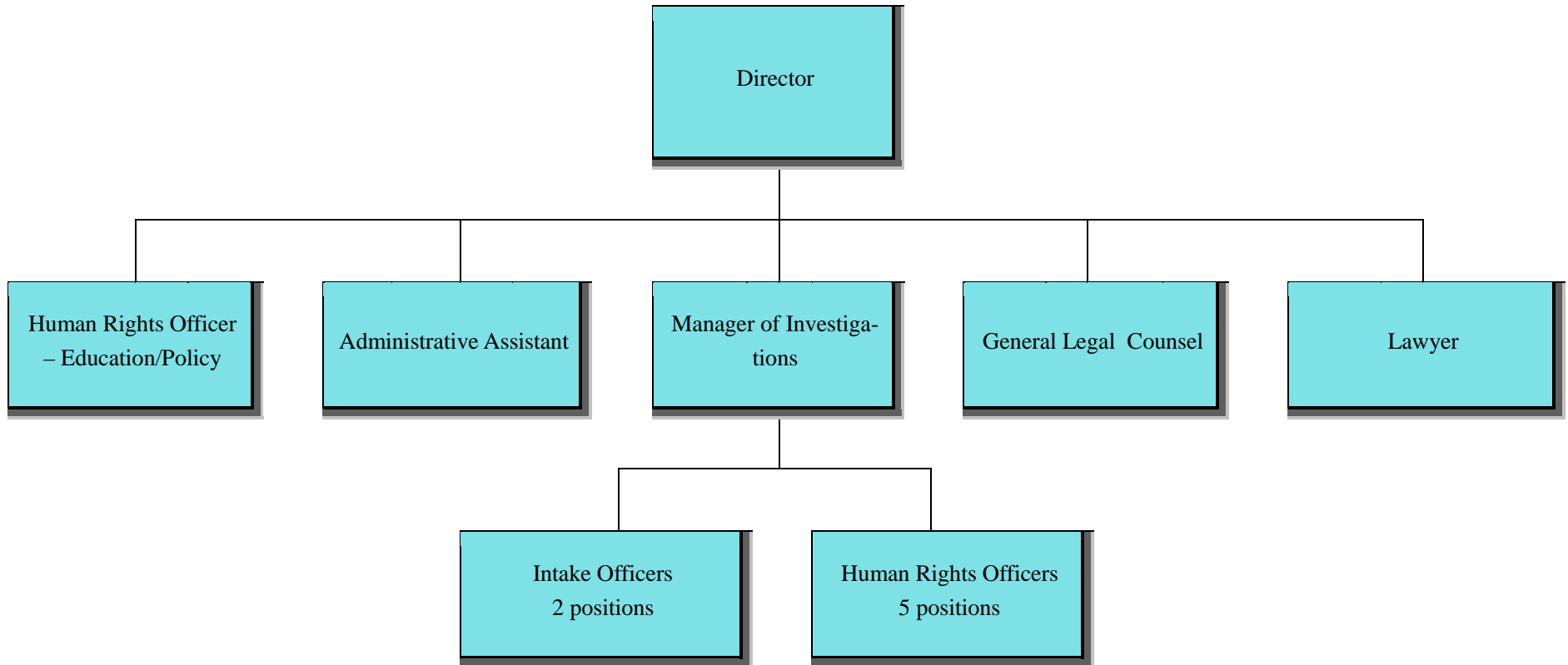
Also on March 21, a member of the staff participated on a human rights awareness workshop attended by about 150 civilian and military staff of CFB Gagetown, to mark the International Day for the Elimination of Racial Discrimination.

Other Initiatives

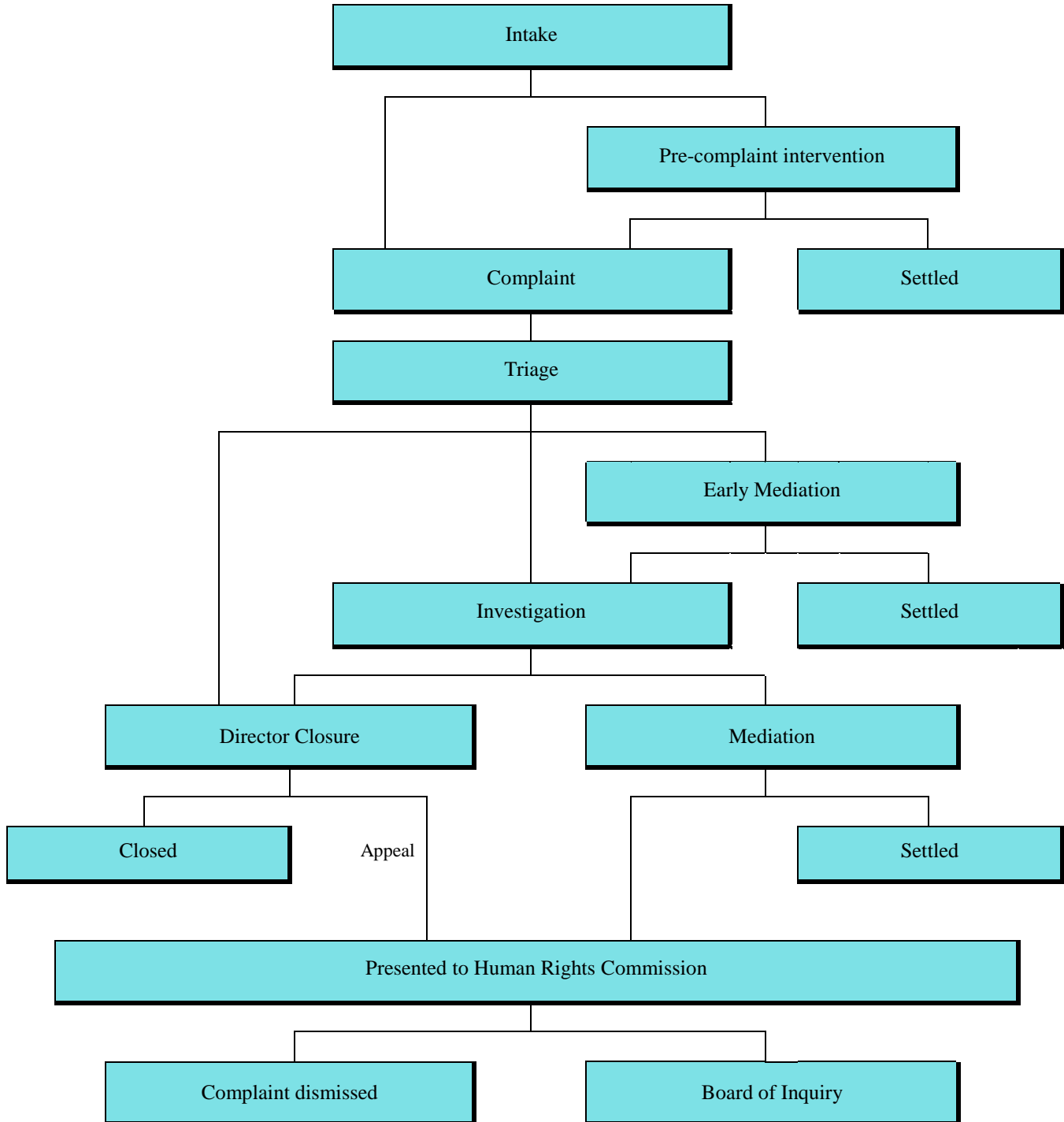
The Human Rights Commission's website is used by the public to access the Commission's guidelines and other publications as well as news and events. Links were also added from time to time to recent statements by the Canadian Association of Statutory Human Rights Agencies.

The Commission continued to update its emailing list, which permitted the Commission to give wider distribution to information about its activities and about rights and responsibilities under the *Human Rights Act*.

Appendix A Organizational Chart



Appendix B Complaint Process



Appendix C

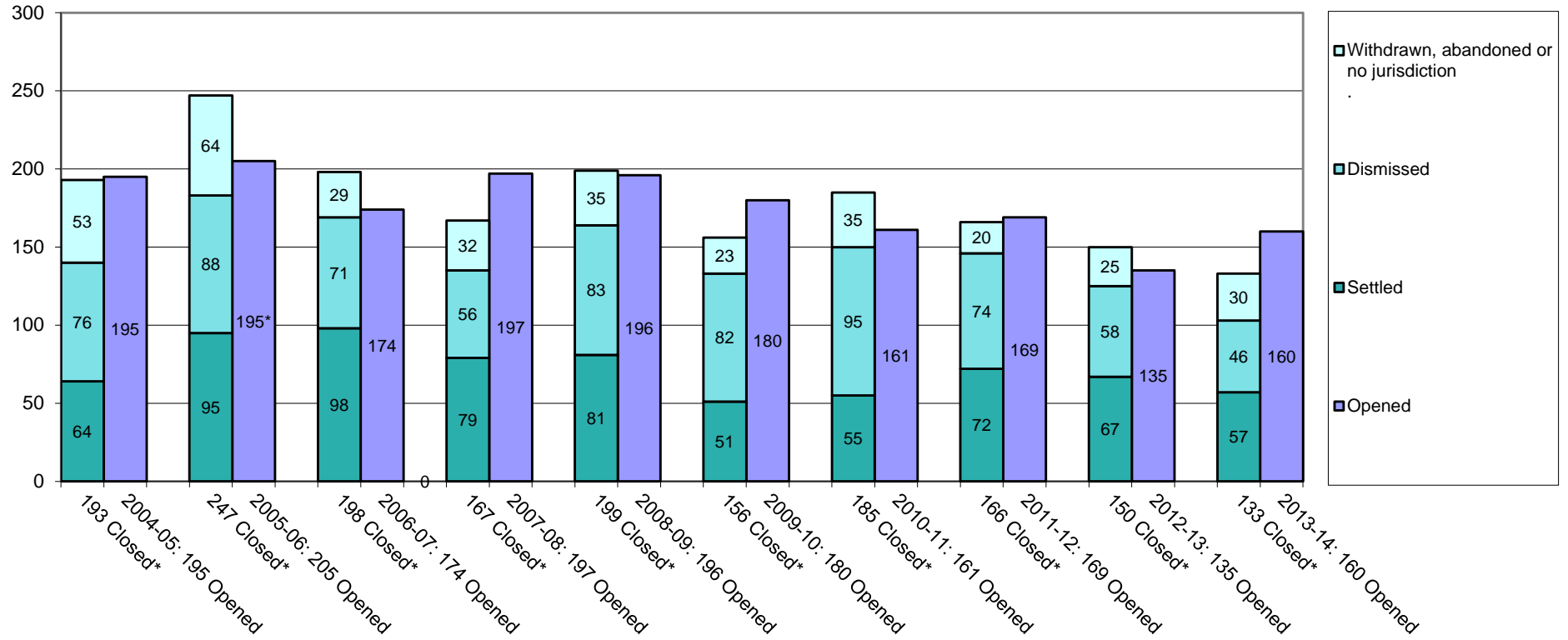
New Formal Complaints* by Ground and Activity

April 1, 2013 to March 31, 2014

	Employment	Housing	Services	Publicity	Associations	Total
Race	5	0	8	0	1	14 (6%)
Sex	14	0	4	0	0	18 (7%)
Religion	4	0	5	0	0	9 (4%)
Place of Origin	2	0	4	0	0	6 (2%)
Marital Status	0	0	2	0	0	2 (1%)
Mental Disability	41	1	13	0	0	55 (22%)
Colour	2	0	3	0	0	5 (2%)
Age	13	1	2	0	0	16 (6%)
Ancestry	4	0	7	0	0	11 (4%)
National Origin	4	0	4	0	1	9 (4%)
Physical Disability	63	0	10	0	0	73 (29%)
Sexual Harassment	9	0	0	0	0	9 (4%)
Sexual Orientation	3	0	1	0	0	4 (2%)
Political Belief or Activity	0	0	0	0	0	0 (0%)
Social Condition	9	1	4	1	0	15 (6%)
Reprisal	6	0	0	0	0	6 (2%)
Total	179	3	67	1	2	252*
	(71%)	(1%)	(27%)	(0%)	(1%)	

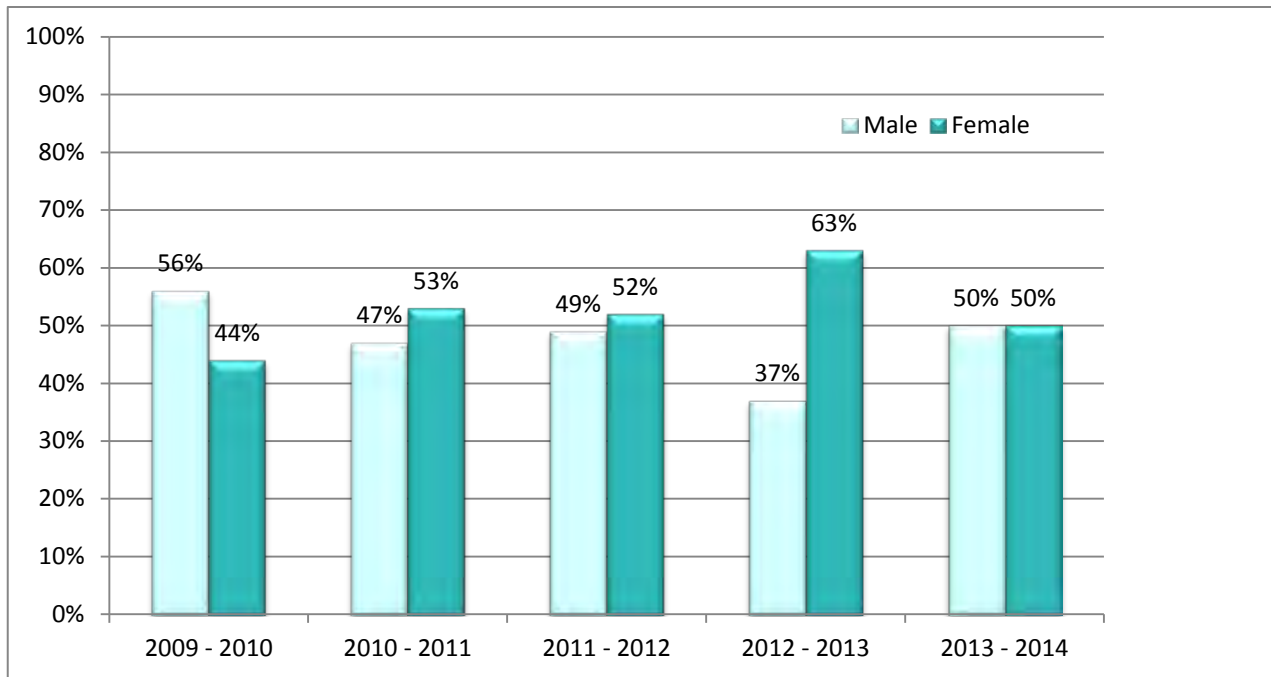
* Note that this table shows allegations of discrimination, which exceed the number of distinct formal complaints since a single complaint may allege discrimination on more than one ground (e.g. race and colour) or in more than one activity (e.g. employment and service). When each new formal complaint alleging discrimination on multiple grounds or in multiple activities is counted as a single complaint, there were 160 distinct new formal complaints.

Formal Complaints Opened and Closed* 2004-2014

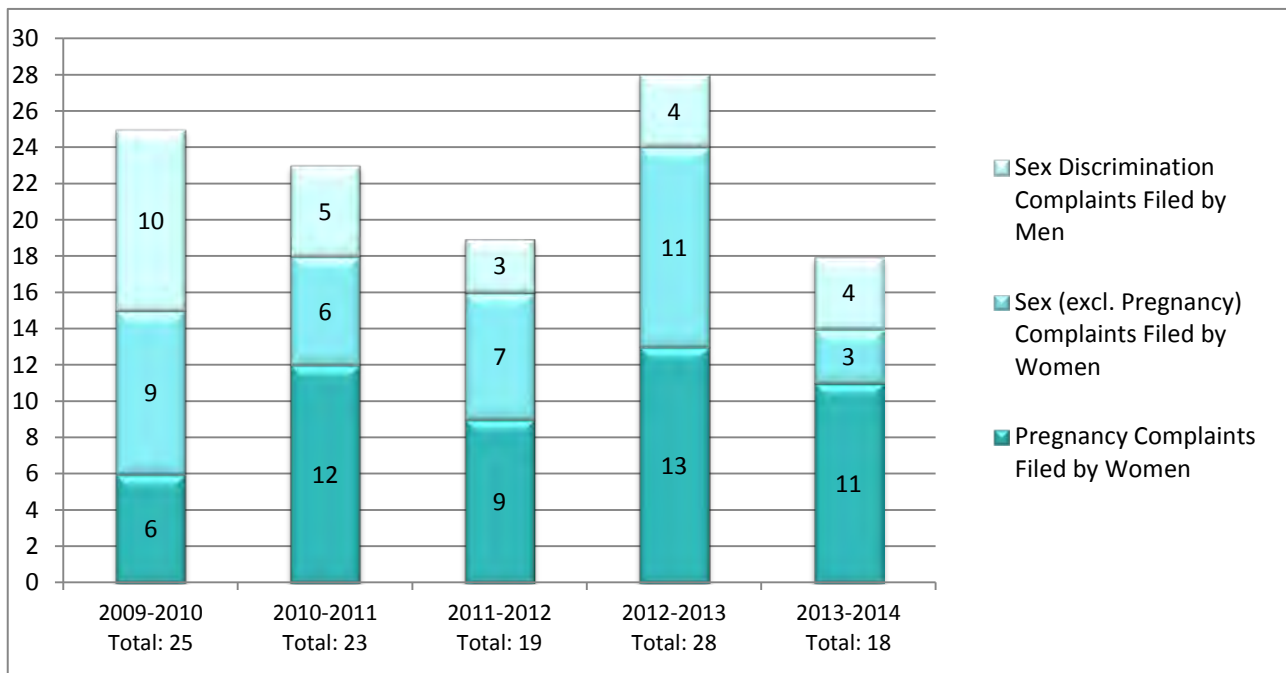


* NOTE: Statistics for closed complaints are for formal complaints closed by the Human Rights Commission only, not cases settled during pre-complaint interventions, nor formal complaints closed at the Board of Inquiry or court levels.

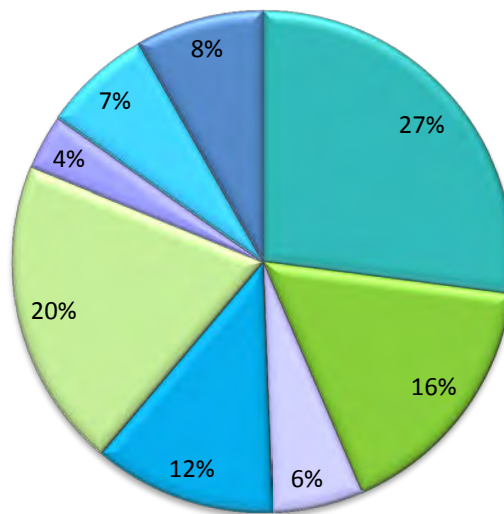
Sex of Complainants for all Complaints



Sex of Complainants for Sex Discrimination Complaints



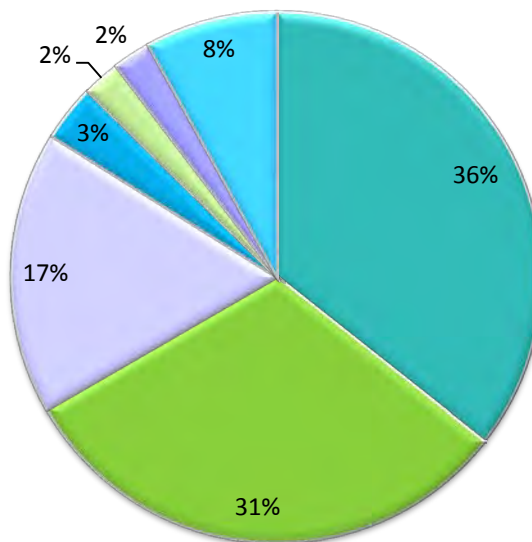
Physical Disability# Discrimination Allegations



- 27% Back, Neck & Head
- 16% *Miscellaneous
- 6% Upper Extremity
- 12% Lower Extremity
- 20% Heart, Lungs & Organs
- 4% Cancer & Diabetes
- 7% Vision & Hearing
- 8% Blood, Circulation & Nervous System

* Miscellaneous varies from year to year. In 2013-14, it included: Alcoholism, Chronic Fatigue, Exhaustion, Fibromyalgia, HIV, Magnesium malabsorption, Polio, serious illness, severe pain, skin condition, and an Umbilical Hernia.

Mental Disability# Discrimination Allegations



- 36% Depression
- 31% Stress, Burn Out or Anxiety Related
- 17% Cognition, Concentration or Learning Related
- 3% Post Traumatic Stress Disorder
- 2% Alcoholism or Addiction
- 2% Perceived Mental Disability
- 8% Miscellaneous*

*Miscellaneous varies from year to year. In 2013-14, it included: Bi Polar Disorder, Mood Disorder, Borderline Personality Disorder, Oppositional Defiant Disorder, Multiple Organ Dysfunction

Physical and mental disabilities are self-reported and may not coincide with expert opinion or with diagnostic criteria.

Appendix D

Summary of Expenditures

This annual report was printed before the publication of the Public Accounts for 2013-14. 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 Volume 2 of the Public Accounts.

	2013-2014 Main Estimates	2013-2014 Budget	2013-2014 Actual
Compliance and Prevention	\$937,100	\$937,100	\$845,558
Legal Services	\$316,900	\$316,900	\$305,343
Office of the Commission	\$68,000	\$68,000	\$45,908
Total	\$1,322,000	\$1,322,000	\$1,196,809

Appendix E

Publications of the New Brunswick Human Rights Commission

Pamphlets

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

Guidelines adopted by the Commission

- Guideline on Accommodating Physical and Mental Disability at Work (2014)
- Guideline on Accommodating Students with a Disability (2007)
- Guideline on B.F.O.Q.'s and B.F.Q.'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 & 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 our website:
www.gnb.ca/hrc-cdp