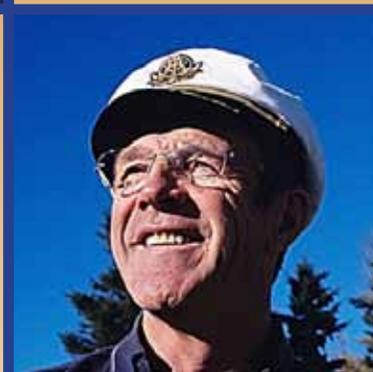


# New Brunswick Human Rights Commission

## 2011-2012

### ANNUAL REPORT



Fredericton, N.B.  
The Honourable Graydon Nicholas  
Lieutenant Governor of the  
Province of New Brunswick

Your Honour:

I have the honour to submit to you the Annual Report of the New Brunswick Human Rights Commission for the fiscal year ending March 31, 2012. The Commission is responsible to the Minister of Post-Secondary Education, Training and Labour, Province of New Brunswick.

Sincerely,

A handwritten signature in black ink that reads "Martine Coulombe". The signature is written in a cursive style with a large initial 'M' and a decorative flourish at the end.

Honourable Martine Coulombe  
Minister Responsible for the Human Rights Commission

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Honourable Martine Coulombe  
Minister Responsible for the Human Rights Commission  
Province of New Brunswick

Dear Minister:

I am pleased to submit the Annual Report of the New Brunswick Human Rights Commission, for the fiscal year ending March 31, 2012.

Sincerely,

A handwritten signature in blue ink that reads "Randy Dickinson". The signature is written in a cursive style with a large initial 'R' and a decorative flourish at the end.

Randy Dickinson  
Chairperson  
New Brunswick Human Rights Commission

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## Message from the Chairperson:

Completing the annual report provides an opportunity for some reflection on the mandate and the activities undertaken by the New Brunswick Human Rights Commission to ensure the appropriate level of public education and awareness about their obligations and rights and to see that these rights are properly enforced for the protection of the public. While it is clear that we are making progress in promoting human rights in our province and across the country, it is also unfortunately true that many situations still demonstrate that discrimination takes place more frequently than we would hope at this stage.

I would like to take this opportunity to recognise the very hard-working and professional staff at the Commission led by Jill Peters, the Director. They have all worked very hard to ensure that the mandate of the Commission is actively engaging the community, especially with employers and others involved in delivering public services. The appointed members of the Commission were also diligent and met regularly to review the staff investigation files and then made the necessary decisions on the disposition of cases.

During the year in question, our Commission received 169 distinct new formal complaints. In that same year, 173 formal complaints were closed, including 72 cases that were settled; 74 that were dismissed; 20 cases that were withdrawn or abandoned, found to be outside the Commission's jurisdiction or closed for other reasons; and 7 others that were closed at the Board of Inquiry or court levels.

We continued to successfully offer mediation services in all of the complaints received, which led to many cases being settled without having to complete the formal complaint process. Using mediation means that complaints can be settled more quickly and at lower cost, which usually means a win-win situation for both parties involved, as well as reducing the strain on the resources of the Commission. At the end of the year, we still had 177 active complaints at various levels of the complaint process, with 168 still involved somewhere at the Commission level and 9 other cases at the Board of Inquiry or Judicial Review or Court of Appeal level.

During the year in question, the most common grounds of discrimination claimed in the complaints continued to be physical disability (77); and mental disability (58); followed by age (20), sex (19) and social condition (17).

It is interesting to note that, during the year in question, the Commission received a total of 192 inquiries on sex discrimination, with 129 of the inquiries being pregnancy related.

The Commission has updated a number of its guidelines to help explain the responsibilities of employers and others to respect human rights under the different grounds of discrimination covered under our legislation. We have posted these updated guidelines on our website to help educate the interested parties. We need the public to be aware of their rights and also their responsibilities so we can avoid unnecessary complaints ending up at the Commission.

We were pleased to have an opportunity to participate in an organizational review by Bernard Richard of several agencies of the Province of New Brunswick, and to share our input on how the operations of the New Brunswick Human Rights Commission might be improved. We were impressed with the support and cooperation provided by the Minister and officials of the Department of Post-Secondary Education, Training and Labour, who are willing to accept the idea that there could be changes in how future Boards of Inquiry could be appointed without having to go through the office of the Minister. This would certainly enhance the public perception of the political independence of the Commission, especially when dealing with complaints that may involve departments or agencies of the provincial government. I can also confirm for the public record that, during my term of office as Chairperson, that there has been absolutely no political interference in the day-to-day work of the Commission. However, we want not only for justice to be done, but for justice to appear to be done as well throughout the complaint process.

As part of our public education activities, we have continued to deliver a number of workshops and presentations at different venues on the subject of human rights, especially in training sessions for employers, in particular on how to accommodate rights in the workplace. We have issued a number of public media releases during the year to highlight various special days and weeks connected with the observance of human rights, both here in New Brunswick and across the country and internationally.

We have maintained our involvement in the Canadian Association of Statutory Human Rights Agencies (CASHRA) through monthly teleconferences, attending the annual national conference and sharing other relevant information with each other throughout the year. We have worked cooperatively with them on such issues as how to effectively monitor the impact of the United Nations Convention on the Rights of Persons with Disabilities, and how to create an environment where the rights of persons dealing with a mental disability are properly protected while not allowing frivolous complaints from individuals that are potentially primarily a reflection of the symptoms of their mental disability. I am pleased to note that the operations and level of activities of our N.B. Human Rights Commission, compares very well on the national stage relative to the efforts undertaken in other provinces and territories in Canada. Again, this reflects well on the professionalism and productivity of our dedicated staff team and the Commission members.

In September of 2011, we were very proud to present the annual New Brunswick Human Rights Award to Émilienne Basque of Tracadie-Sheila for her outstanding record of over 40 years of volunteer undertakings on behalf of the poor and persons with disabilities in the province.

I would refer readers of this annual report to please take advantage of the resources on the website for the New Brunswick Human Rights Commission to learn more information about our activities and to consult guidelines on how to interpret the boundaries of the current grounds of discrimination covered by our legislation. We have also posted a work plan for the Commission to highlight some of our operational priorities as we go forward over the next several years.

We intend to continue to put emphasis on mediation as a means to resolve complaints in a timely and cost-effective manner without limiting the public's access to the full formal adjudication process for situations that cannot be resolved through mediation efforts. We wish to reduce the average time required to close a complaint from the time the initial intake is received by the Commission to when the case is resolved one way or another. Justice delayed can also be justice denied.

We will also maintain a focus on public education and awareness in order to prevent unnecessary situations of discrimination from taking place anywhere in New Brunswick as much as possible.

We will also cooperate with our many partners in the community at every level to help us promote awareness and the enforcement of all legitimate human rights for all the citizens in our province. We have come a long way on the journey for human rights, but we have not yet reached the destination where everyone can safely assume that the human rights that they have in theory will always be respected in reality and that all people can automatically enjoy their full and equal rights without discrimination. With the support of our partners in both the public and private sectors, the members and staff at the New Brunswick Human Rights Commission will be committed to continue their efforts to help meet that objective.

Respectfully submitted by;



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



## Members of the Commission

Throughout the April 2011 to March 2012 fiscal year, the members of the Human Rights Commission were Randy Dickinson (Chairperson), Patrick Barbour, Huberte Gautreau, Arthur Harquail, René Landry, Karine Levesque, Emil Olsen and Eva Sock. These are their bios:

### Randy Dickinson, C.M., Chairperson

Randy Dickinson, C.M. is from Woodstock, N.B. He graduated from Acadia University with an Honours Degree in Political Science and completed first year law studies at the University of New Brunswick before taking leave to accept a position with the Canadian Rehabilitation Council for the Disabled. In 1983, Mr. Dickinson became the first Executive Director of the Premier's Council on the Status of Disabled Persons. He also held leadership positions with the Premier's Council on Health Strategy and the Canadian Paraplegic Association before returning to the Premier's Council on the Status of Disabled persons in 1992. He retired from that job in 2009 due to his disability issues.

Mr. Dickinson has been involved with many groups and projects on topics related to disability advocacy, employment equity, inclusive education, human rights, social housing, mental health, violence against women, rehabilitation programs and equipment, accessible transportation, sustainable healthcare, NB Disability Awareness Week, Camp Rotary and others. Mr. Dickinson has received numerous awards for his professional and volunteer service, including the Order of Canada, two Paul Harris Awards from Rotary international, two national citations from the Canadian Association of Occupational Therapists, a national Easter Seals Award, and the Champion of Inclusion Award from the N.B. Association for Community Living.

### Patrick Barbour

Patrick Barbour, M.Ed, CCC, a resident of Dalhousie, is a certified counselor with Chaleur Counselling and Assessments specializing in career assessments and crisis counselling. A former Special Education teacher and Guidance Counselor, Mr. Barbour remains committed to inclusion in education. He is actively involved within his former school as a volleyball coach.

He has researched and made many presentations on the causes of underachievement and its long-term social and financial impact. Mr. Barbour has also authored several one act plays on bullying and harassment in elementary schools. He is the founder of the Dalhousie Regional High School Ambassador Program which was designed to foster community involvement through volunteerism.

## Huberte Gautreau

Huberte Gautreau is a nurse and a graduate from the University of Chapel Hill, North Carolina, where she earned her masters degree in community health. She was hired by the World Health Organization and by CUSO to work abroad in the field of health care. She also was a professor at the nursing school at the University of Moncton, a project co-ordinator of education for international solidarity, and an advisor on sexual and sexist harassment.

Since her retirement, Ms Gautreau has dedicated herself to the passing of legislation on pay equity for both the public and private sectors, and involved herself with Conscience Canada, an organization that seeks to have laws enacted to allow conscientious objectors to direct a portion of their taxes toward peace. In 2000, she co-chaired the committee of the World March of Women, from which emerged the Coalition for Pay Equity, which she has chaired twice. Active on the Coalition still today, she seeks pay equity legislation that would apply to the private sector. She is a member of the Solidarité Acadie Palestine (Acadia-Palestine solidarity) project that was established in 2010.

In 1995 Ms Gautreau received the New Brunswick Human Rights Award, and in 2004 she received a Governor General's Award in commemoration of the Persons Case.

## 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 Pine Needle Golf and Country Club, the Recreation Society of Atlantic Canada, the Moncton Lions Minor Baseball Association, and the Greater Moncton Leisure Master Plan 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.

### **Eva Sock**

Eva Sock, who is from the Elsipogtog First Nation, has extensive work experience in various jobs throughout her career.

She has been the Band Manager at Elsipogtog and was involved in the development of the community and the management of its affairs for over 30 years. Her employment with Elsipogtog Band Council was in inter-governmental relations and, more importantly, in community planning to assist the Elsipogtog community in attaining its own Master Plan for the future. She was also a Project Manager in the Integrated Primary Health Care Pilot Project for four years.

Ms. Sock has also worked with the First Nation governments in the Atlantic Region under the Department of Indian Affairs.

Currently she is the Executive Director of the Eastern Door Fetal Alcohol Spectrum Disorder Diagnostic Center, and is involved within the Community Health field as an advisor in the area of Primary Health Care.

Ms. Sock received her Social Work Degree from St. Thomas University and has been in the helping profession for over 30 years. She is actively involved with her community on a volunteer basis, and has a lot of knowledge and experience in community and individual crises. She loves to share the plight of her community, its aspirations as well as its dreams.

# 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.

All formal complaints are reviewed to identify the human rights issues raised in the complaint and answer any issues as to jurisdiction or the sufficiency of the complaint as filed.

The Commission uses a centralized complaint notification system, where one staff member is responsible for contacting the parties to all complaints that have been filed. The staff member contacts the complainant and obtains additional information pertaining to his/her complaint. He then advises respondent(s) of the complaint and of the Commission's mediation and investigation process, and offers its early mediation services.

If mediation is accepted, a Human Rights Officer attempts to resolve the complaint by providing the respondent(s) with the complainant's proposed terms of settlement. In some cases, the parties participate in a face-to-face mediation session. All settlement discussions are strictly confidential and are on a "without prejudice" basis. If a settlement is reached, the parties sign a release and confidentiality agreement and the file is closed as being settled.

If a settlement is not reached, the respondent must file a written response to the complaint and the complainant is provided with the opportunity to provide a written rebuttal to the response. The file is then reviewed and the next appropriate steps are determined. They may include dismissal at the Director's level or assignment to an officer for further investigatory steps.

Settlements may include compensation for special and general damages, as both of these remedies may be ordered by a Board of Inquiry should it find discrimination. Special damages could include lost wages and expenses incurred by the complainants. General damages are intended to compensate complainants for the injury to their dignity, feelings and self-respect. Other possible terms of settlement include accommodation, a letter of reference, a letter of apology, changes in policies, reinstatement of a dismissed employee, and a human rights training seminar for the respondent.

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

## Complaint Statistics

Appendix C includes charts showing statistical information on the complaints filed with the Commission. Here are some highlights:

- 169 distinct complaints were received in 2011-12, compared to 161 complaints in 2010-11;
- 177 complaints were active at the end of the year, including cases pending before a Board of Inquiry or court, compared to 178 the previous year.

## 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 2011-2012, there were 872 referrals of this type.

A total of 192 inquiries concerned sex discrimination, 129 of which were about pregnancy, which is a significant increase from previous years. Twenty-seven of the pregnancy inquiries were made by employers seeking information about a situation they were facing. The pregnancy-related inquiries from employees and employers concerned:

- Accommodation of pregnancy by employers;
- Accommodation of breastfeeding in the workplace;
- 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;

During 2011-12, 619 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 wanted to file a complaint, which resulted in 169 complaints being filed (a 27% return ratio).

Three hundred forty-eight (56%) of the kits were sent to women, and 87 (51%) of the complaints were filed by women. Sixteen of the complaints filed by women alleged sex discrimination, nine of them being pregnancy-related.

## Grounds of Discrimination

The 169 complaints filed included 247 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 (77) and mental disability (58), which together accounted for 55% of all complaints. The next most common grounds were age (20) and sex (19), followed by social condition (17).

As in previous years, most complaints (186) were employment-related. The majority (100, 54 %) dealt with discrimination based on physical or mental disability.

## Closed Complaints

In total, 173 formal complaints were closed in 2011-12, compared to 189 in 2010-11. They were closed at the following stages:

- 72 were settled, 35 of them in early mediation (compared to 10 in early mediation in 2010-11),
- 74 were dismissed (mainly due to lack of evidence or being filed out of time), compared to 95 in 2010-11,
- 20 were withdrawn or abandoned or found to be outside the Commission's jurisdiction or closed for other reasons,
- 7 were closed at the Board of Inquiry or court levels.

The average age of complaints at closure was 12 months, which is similar to previous years.

## Settlements

A total of 92 cases were settled and closed in 2011-2012, compared to 59 in 2010-2011. They involved 77 formal complaints and 15 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:

- 15 cases during pre-complaint interventions (compared to 4 in 2010-11);
- 36 cases settled within six months of the complaint (i.e. during early mediation) (compared to 11 in 2010-11);
- 35 cases settled after six months, but before being considered at a Commission meeting;
- 1 case settled after being considered at a Commission meeting, but before being referred to a Board of Inquiry; and
- 5 cases settled at the Board of Inquiry level (compared to 2 in 2010-11).

These are statistics about the terms of settlement:

- \$447,307 is the estimated total monetary value of the settlements (average \$4862);
- 14 human rights training seminars;
- 24 complainants were accommodated;
- 3 policies changed or developed;
- 4 job offers;
- 3 positions held open while complainant on leave;
- 4 complainants received other benefits (equipment, health benefits or counselling);
- 4 amended Records of Employment;
- 6 letters of reference;
- 7 letters of apology or misunderstanding;
- 1 eviction cancelled.

An additional settlement arose out of an incident that occurred outside New Brunswick. The local human rights commission had asked the New Brunswick Human Rights Commission to investigate and mediate the complaint because the local commission could not do so due to a potential conflict of interest. Because it arose outside New Brunswick, it is not included in the statistics in this annual report.

## Sample Complaints

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

### 1. Sex (pregnancy) / Employment

The complainant alleged that she was discriminated against on the basis of pregnancy when she was fired while on a medical leave. The employer maintained that they terminated her employment due to her poor attitude and poor work performance, and not because of her pregnancy. The investigation showed that the employer had spoken to employee about her attitude at work and her work performance and that, immediately after this meeting and before she advised them that she was going on a medical leave, the employer made the decision to terminate her employment and drafted a termination letter. The Commission found that the complaint was without merit as the information did not support the complainant's allegation that her pregnancy was a factor in the respondent's decision to terminate her employment. The Commission dismissed the complaint.

## 2. Physical & mental disability / Employment

The complainant alleged that he was discriminated against on the basis of a mental and physical disability (drug and alcohol dependency) when his employer terminated his employment after catching him drinking alcohol on the premises. The employee alleged that he was not working at the time of the incident. He was waiting in a car in the employer's parking lot. He said he had not informed the employer that he had a drug and alcohol dependency. The Commission asked him to provide medical documentation stating that he has a drug and alcohol dependency, but he failed to do so. As he had never advised the employer of his alleged drug and alcohol dependency and did not provide the Commission with the required medical documentation, the Director dismissed the complaint as being "clearly without merit" under the authority given by the Commission's *Guideline on Delegation of Compliance Functions*. The employer was not contacted in this matter.

## 3. Physical disability and sex (pregnancy) / Employment

The complainant alleged that she was discriminated against on the basis of pregnancy and physical disability when her employer replaced her with a new employee while she was on a sick leave related to her pregnancy. She had been working full-time, but was placed off work by her physician. She alleged that, when she contacted her employer to confirm her return-to-work date, the employer advised her that she would be taken back only on an on-call basis. When contacted by the Commission, the employer maintained that the employee was not replaced while she was out on sick leave, and she had failed to provide medical documentation indicating that she was cleared to return to work. The Commission's investigation showed that the physician's medical note given to the employer specified a return-to-work date, therefore indicating that she was cleared to return to work, that the employer had hired a replacement employee while the complainant was off on medical leave; and that the replacement employee was not advised that her position would only be temporary. The parties agreed to participate in mediation, and the matter was resolved.

## 4. Physical disability / Services

The complainant alleged that her educational institution failed to accommodate her severe allergy to a specific fruit when it did not provide her in a timely manner with an educational environment free from her allergen. Further, she alleged that the school failed to ensure that school related activities were free of the allergen, which resulted in her not being able to attend some school activities, including the reception that followed the graduation ceremony.

The educational institution maintained that some of the allegations fell outside of the one-year time limit prescribed by the *Human Rights Act*; therefore, the Commission should not investigate those allegations. The student filed a time limit extension request as authorized by the *Act* and the Commission's *Guideline on Time Limit Extensions for Complaint Initiation*. She maintained that: she had a strong arguable case in that the institution failed to properly accommodate her physical disability in a timely manner; there was an identifiable remedy as she had incurred costs associated with the school's actions and had been unable to attend several events, including the reception following her graduation, and she would have suffered a substantial loss as her instructor advised her to

perhaps seek an alternate career due to her allergy; she had a *bona fide* reason for not filing within the one-year time limit as she was in a vulnerable position and was afraid of reprisal, and when she had asked for accommodation, the school responded by forcing her to travel a far distance to see her doctor to obtain a medical note; and the institution would not be unduly prejudiced if the Commission granted the time limit extension. The Commission considered the submissions of the parties and decided that the circumstances warranted the granting of a time limit extension.

The educational institution denied having discriminated against the student and maintained that some of the activities were not school sponsored. However, it agreed to participate in mediation, and the parties were able to resolve the matter with the assistance of the Commission's staff.

## Boards of Inquiry

If a formal complaint cannot be settled, the Human Rights Commission may recommend that a Board of Inquiry hear the complaint. In that case, the Minister responsible for the Commission may refer the matter to the Labour and Employment Board, which is a permanent tribunal that deals with a variety of employment disputes and acts as a Human Rights Board of Inquiry upon request of the Minister. Alternately, the Minister may choose to appoint a separate Human Rights Board of Inquiry to hear that specific case<sup>1</sup>. Boards of Inquiry are separate and independent from the Commission.

During the fiscal year, the Commission recommended the appointment of two new Boards of Inquiry, both of which concerned employment discrimination. One case dealt with physical disability discrimination and the other dealt with mental and physical disability discrimination. At the end of March 2012, one of the newly appointed cases remained open, whereas the other was settled and closed.

In addition, four Boards of Inquiry appointed in past fiscal years were settled and closed during the present fiscal year. As of March 31, 2012, four Boards of Inquiry were pending.

We do not provide details of these Boards of Inquiry here because human rights complaints are confidential. Details of complaints are only published if and when a Board of Inquiry or court publishes its decision on the complaint.

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<sup>1</sup> This was the appointment procedure throughout the 2011-2012 fiscal year. The procedure was changed in June 2012 when an amendment to the *Human Rights Act* took effect.

## Judicial Reviews

During the 2011-2012 fiscal year, seven complaints were under judicial review by the Court of Queen's Bench, but as of March 31, 2012, the court had not yet given a decision on them, apart from the following two cases:

### *Killam v. Fitchco Entreprises Inc. and the New Brunswick Human Rights Commission*

Mr. Killam had filed a complaint alleging mental disability discrimination with respect to employment. Since the discrimination had allegedly occurred more than a year before the complaint, he also filed for a time limit extension requesting the Commission to exercise its discretion pursuant to what was then subsection 17.1(2)<sup>2</sup> of the *Human Rights Act*. The Commission denied the time extension request since it did not meet the criteria set out in its *Guideline of Time Limit Extension for Complaint Initiation*.

Mr. Killam then filed an application for judicial review alleging that the Commission failed to observe the principles of natural justice or procedural fairness or, alternatively, erred by fettering its discretion under the *Human Rights Act*.

The Court of Queen's Bench gave its decision on May 13, 2011. It determined that the Commission had allowed the parties to file material and had granted an extension to do the same. It found that the Commission had carefully considered the application to extend the time limit, and there was no evidence that it had misconstrued or misapprehended the material provided. The decision to not extend the time limit was a reasonable one, and the Commission had treated both parties fairly and exercised its statutory discretion after considering all relevant factors. The court also stated that the Commission had not failed to observe the rules of natural justice or procedural fairness, and that the guideline is flexible and allows the Commission to exercise its discretionary power under the *Act*. Accordingly, the court dismissed the application for judicial review.

### *Smith v. Province of New Brunswick (Dept. of Public Safety) and the New Brunswick Human Rights Commission*

Mr. Smith had filed a complaint of employment discrimination based on mental and physical disability. The staff investigated the complaint and drafted a Case Analysis Report analyzing the evidence, which report was shared with the parties, who were given the opportunity to respond. The Commission members reviewed the file and dismissed the complaint as being without merit. Mr. Smith filed an application for judicial review with the Court of Queen's Bench alleging the Commission did not observe the rules of natural justice and procedural fairness in failing to interview certain individuals, to obtain certain documents and to provide sufficient reasons for its decision to dismiss. He also claimed that the Commission erred in failing to consider relevant evidence.

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<sup>2</sup> In May 2011, several sections of the *Human Rights Act* were renumbered or re-ordered. Subsection 17.1(2) was renumbered as subsection 18(2).

The Court rendered a decision on June 20, 2011. It found that it was the Commission's view that the complaint dealt with workplace harassment unrelated to his physical disability. Further, the Court determined that Mr. Smith did not show on a standard of reasonableness that the Commission erred in giving the decision it did. Costs in the amount of \$500.00 were awarded to each respondent.

## Appeals

Only one case was considered by the Court of Appeal in 2011-2012. It concerned the *Smith* case (see above). Mr. Smith alleged in his appeal that the Court of Queen's Bench failed to address: the sufficiency of reasons given by the Commission for dismissing the complaint; whether the Commission's investigation was flawed or incomplete; and whether the Complainant was discriminated against on the basis of a perceived mental disability. He also argued that the Court of Queen's Bench erred in law when it concluded the issue before it was whether the Commission's jurisdiction could be broadened to include workplace harassment. As of March 31, 2012, the Court of Appeal had not rendered its decision.

## 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.

One of CASHRA's regular activities is an 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 *New Realities New Direction* in June 2011. The Chairperson moderated a panel called "Emerging Issues in Disability Law."

The Chairperson 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, the Director was active on the organizing committee of the *Human Rights Forum on Mental Health and Employment* that was held in October 2011. The event was co-produced by CASHRA and the Great - West Life Centre for Mental Health in the Workplace.

One of the Commission's lawyers is a member of the CASHRA lawyers' group that meets periodically on federal/provincial jurisdictional issues related to human rights. The lawyer also represents the Commission on CASHRA's Research and Policy Committee.

### 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 designed and crafted by Lawrence Wuest of Cross Creek, New Brunswick. It is on permanent display at Government House in Fredericton, where it may be viewed by the public.

On September 15, 2011, which is New Brunswick Human Rights Day, Lt.-Gov. Graydon Nicholas presented the 2011 New Brunswick Human Rights Award to Émilienne Basque of Tracadie-Sheila. Mrs Basque richly deserved the award because of her hard work over 40 years to improve the lives of people who are poor, disabled, receiving income assistance or otherwise disadvantaged. Her social justice activities range from practical self-help projects to setting up and heading various organizations.

About 65 people attended the ceremony at Government House where framed Human Rights Award certificate was presented to Mrs Basque. She was also the first Human Rights Award recipient to receive a pewter lapel pin recently commissioned by the Commission. As is the case with all recipients, her name was added to the base of the award sculpture, and a framed presentation photo was hung in the boardroom at the Commission's head office in Fredericton.

## 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.

Statements were also published to mark a number of provincial, national and international days related to human rights, such as New Brunswick Human Rights Day, International Women's Day, Disability Awareness Week, the International Day against Homophobia and Transphobia, the International Day for the Elimination of Racial Discrimination, National Acadian Day and National Aboriginal Day.

In total, 18 releases or statements were published on the Commission's website and distributed to all the media in New Brunswick by email.

The Chairperson was interviewed by the media on several occasions about current human rights issues.

## Presentations

As part of its educational programme, the Human Rights Commission delivered 59 presentations or information sessions in 2011-12. Sixteen of the sessions were agreed to as a term of settlement of a human rights complaint.

Presentations were delivered to students in universities, business colleges and life skills classes, and 12 presentations were delivered to classes in public schools. Information sessions were also delivered to multicultural

associations, human resources associations, private and public sector employers, businesses associations and unions.

The most common topic of the presentations was the duty to accommodate disability in the workplace, which accounted for 23 presentations. There were also two presentations on accommodation of religion, one on accommodation of age and another on the Commission's guideline on accommodating students with a disability. There were also several general presentations on the *Human Rights Act*.

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

In September and December 2011, a member of the Commission's staff gave a class on accommodating disability to three groups of public servants taking the Public Service Management Program (PSMP) at the University of New Brunswick and the Université de Moncton. The PSMP program is geared towards new and emerging managers and supervisors in the public service of New Brunswick. The Commission's presentation focused on the application of the *Human Rights Act* to the government of New Brunswick. Topics included the duty to accommodate, discrimination and harassment based on the protected grounds, sexual harassment, internal workplace investigations and investigations by the Human Rights Commission.

On September 28, a member of the staff gave a presentation to members of the Canadian Bar Association in Fredericton. The title of the presentation was "Managing Workplace Risk: The Human Rights Perspective." The presentation was part of the Canadian Bar Association's "RISK is Another 4-Letter Word" day of training. The Commission's presentation looked at internal workplace investigations and investigations by the Human Rights Commission.

In addition, a member of the legal staff gave a presentation to a Human Rights class at St Thomas University in Fredericton, and gave a class to the Employment Law course at the University of New Brunswick Law School. A member of the staff delivered a presentation on accommodation of employees with a disability to Enterprise Charlotte County in St. Andrews.

**Other Initiatives**

Two of the Commission's guidelines were updated in 2011-12, the *Guideline on Drug and Alcohol Testing in the Workplace* and the *Guideline on Time Limit Extension for Complaint Initiation*.

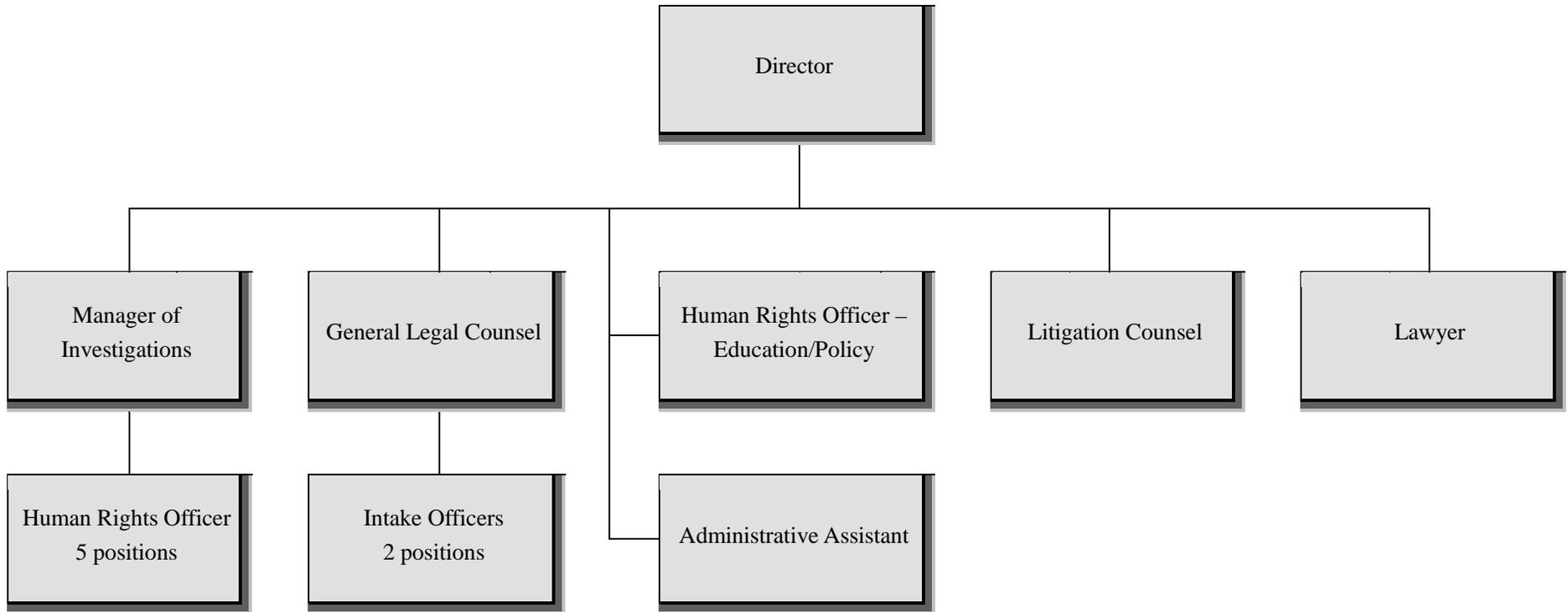
The *Accommodation at Work* manual jointly developed by the Human Rights Commission, WorkSafeNB and the Employment Standards Branch of the Department of Post-secondary Education, Training and Labour was updated and reprinted. It deals with the right to return to work after various types of leaves, in particular after a leave due to a disability.

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. Lawyers also rely on the site to get the written decisions of human rights Boards of Inquiry. In 2011-12, a page listing all the Commission's printed publications was added to the website. Spanish, Chinese and Korean language versions of the Commission's *Our Human Rights* pamphlet were also added to the website.

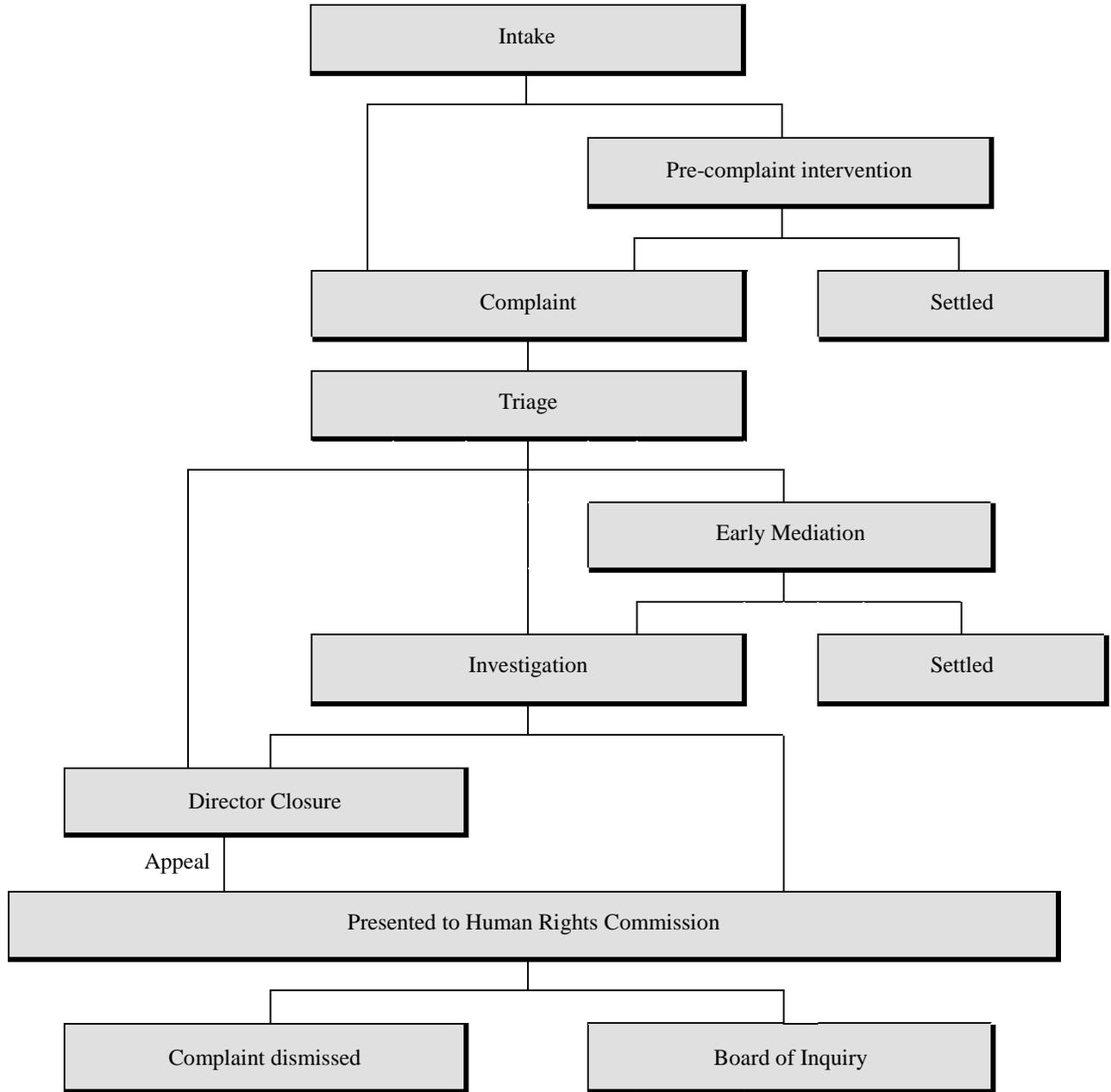
The Commission updated and expanded its emailing list, which permitted the Commission to give wider distribution to information about its activities and about rights and responsibilities under the *Human Rights Act*.

In partnership with the Employment Standards Branch and the Industrial Relations Branch of the Department of Post-secondary Education, Training and Labour, information kiosks were set up at the New Brunswick Federation of Labour annual conference in May 2011. The Commission also set up a kiosk at Canadian Forces Base Gagetown in Oromocto at an event organized by the base to mark the International Day of Disabled Persons.

## Appendix A Organizational Chart



## Appendix B Complaint Process



## Appendix C

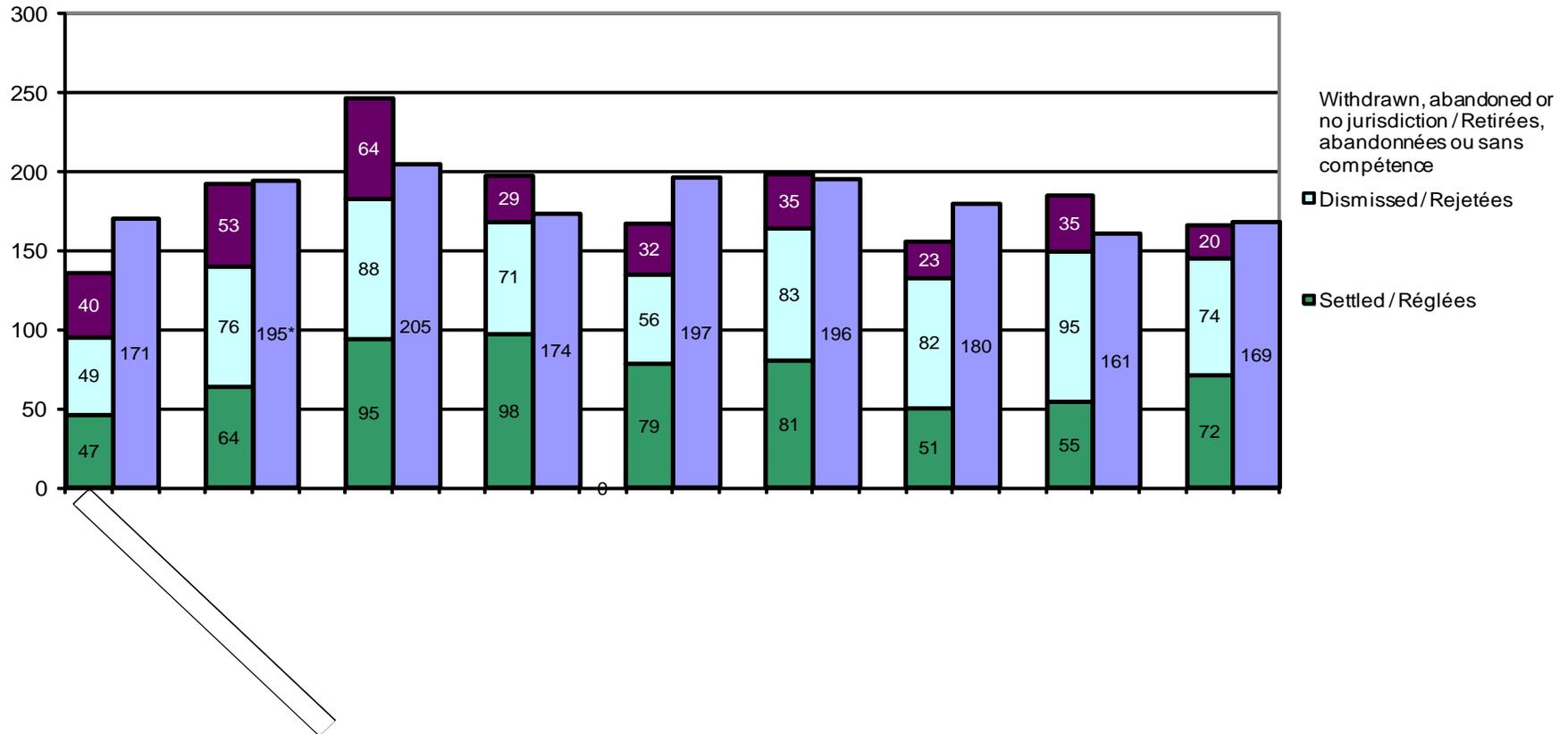
### New Formal Complaints\* by Ground and Activity

April 1, 2011 to March 31, 2012

	Employment	Housing	Services	Publicity	Associations	Total
Race	3	0	4	0	0	<b>7</b> (3%)
Sex	15	1	2	0	1	<b>19</b> (8%)
Religion	5	0	2	1	0	<b>8</b> (3%)
Place of Origin	2	1	0	0	0	<b>3</b> (1%)
Marital Status	4	0	1	0	0	<b>5</b> (2%)
Mental Disability	40	1	15	0	2	<b>58</b> (24%)
Colour	2	0	0	0	0	<b>2</b> (1%)
Age	19	0	0	0	1	<b>20</b> (8%)
Ancestry	0	1	0	0	0	<b>1</b> (0%)
National Origin	2	1	0	0	0	<b>3</b> (1%)
Physical Disability	60	1	14	0	2	<b>77</b> (31%)
Sexual Harassment	5	1	1	0	0	<b>7</b> (3%)
Sexual Orientation	4	0	2	0	0	<b>6</b> (2%)
Political Belief or Activity	9	1	0	0	0	<b>10</b> (4%)
Social Condition	13	1	3	0	0	<b>17</b> (7%)
Reprisal	3	0	1	0	0	<b>4</b> (2%)
<b>Total</b>	<b>186</b>	<b>9</b>	<b>45</b>	<b>1</b>	<b>6</b>	<b>247*</b>
	<b>(75%)</b>	<b>(4%)</b>	<b>(18%)</b>	<b>(0%)</b>	<b>(2%)</b>	

\* 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 or in more than one activity. When each new formal complaint alleging discrimination on multiple grounds or in multiple activities is counted as a single complaint, there were 169 distinct new formal complaints.

## Formal Complaints Opened and Closed\* 2003-2012



\*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.

## Appendix D

### Summary of Expenditures

This annual report was printed before the publication of the Public Accounts for 2011-12. 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.

	<b>2011-2012 Main Estimates</b>	<b>2011-2012 Budget</b>	<b>2011-2012 Actual</b>
<b>Compliance and Prevention</b>	\$962,000	\$962,000	\$812,497
<b>Legal Services</b>	\$307,000	\$307,000	\$294,008
<b>Office of the Commission</b>	\$71,000	\$71,000	\$48,209
<b>Total</b>	<b>\$1,340,000</b>	<b>\$1,340,000</b>	<b>\$1,154,714</b>

## Appendix E

### Publications of the New Brunswick Human Rights Commission

#### Pamphlets

- Accommodation at Work, FAQ for Employers
- Accommodation at Work, FAQ for Workers
- Accommodating Students with a Disability
- Complaint Process
- Our Human Rights (English, French, Korean, Mandarin & Spanish)

#### Guidelines adopted by the Commission

- Guideline on Accommodating Physical and Mental Disability at Work (2008)
- 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 (2009)
- Guideline on Discrimination in the Housing Sector (2004)
- Guideline on Political Belief or Activity (2011)
- Guideline on Pregnancy Discrimination (2011)
- Guideline on Privilege and the Human Rights Commission (1995)
- Guideline on Social Condition (2005)
- Guideline on Time Limit Extension for Complaint Initiation (2011)

#### 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](http://www.gnb.ca/hrc-cdp)