



NEW BRUNSWICK
HUMAN RIGHTS
COMMISSION



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COMMISSION

Annual Report
2012 - 2013

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, 2013. The Commission is responsible to the Minister of Post-Secondary Education, Training and Labour, Province of New Brunswick.

Sincerely,



Honourable Danny Soucy
Minister Responsible for the Human Rights Commission

Honourable Danny Soucy
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, 2013.

Sincerely,



Randy Dickinson
Chairperson
New Brunswick Human Rights Commission

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Contact Information:

New Brunswick Human Rights Commission
P.O. Box 6000
Fredericton, NB
E3B 5H1 Canada

Telephone: 1-888-471-2233 (toll-free in NB)
(506) 453-2301 (Fredericton & out-of-province)
TTY: (506) 453-2911

Email: hrc.cdp@gnb.ca

Website: www.gnb.ca/hrc-cdp

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Message from the Chairperson:

Once again the Commission has had a busy year and I would like to commend the staff and the other Commission members for all of their hard work and thoughtful contributions to the activities carried out in the past year.

Some people may question as to whether or not there is still a need for human rights commissions when we have the *Canadian Charter of Rights and Freedoms* along with federal and provincial legislation to guarantee human rights for Canadians. Unfortunately, based on the types of situations that we have reviewed in the past year, it is clear to me that there are still too many cases where people are still being discriminated against, especially in the workplace.

We are also concerned that many other individuals who may have experienced discrimination in some form have chosen not to come forward to initiate a formal complaint with the Commission, perhaps fearing reprisal should they do so. The public needs to be aware that there is actually legal protection under the New Brunswick *Human Rights Act* to prevent reprisals against anybody who participates in a complaint through the New Brunswick Human Rights Commission.

Nelson Mandela once said, “To deny people their human rights is to challenge their very humanity.” If we want to have a society and an economy that reaches its full potential, I would suggest that we need to support an environment that is respectful and inclusive and protects the human rights of all citizens at all times. As the population demographics of our province continue to develop a more multi-cultural profile, we need to ensure that everyone is respectful of diversity and that all people are treated equally.

As you read this annual report, you will find various information on the activities of the Commission, but I would draw your attention to the fact that in the past year about 55% of the complaints received involved persons living with a physical or mental disability and that most of these complaints involved issues in the workplace. We continue to provide education sessions to employers and human resource professionals so that they can understand their obligations under the New Brunswick *Human Rights Act* and perhaps avoid putting themselves in situations where a complaint is justified.

We would like to remind everyone that the Commission is a neutral body and does not represent either the complainants or the respondents. Our role is to provide an objective process to help settle disputes. We have continued our emphasis on using the process of mediation in order to settle complaints more quickly and cost-effectively. In actual fact, very few complaints now end up in a formal tribunal due to the success

of the mediation program which is offered to the two parties very early in the complaint process and on an ongoing basis until a case is closed.

The Commission has continued an active emphasis on education to expose the public, employers, and students at all levels to a better understanding of their rights and obligations under human rights legislation. Many complaints are settled when the respondent is made aware that they may have done something wrong, and they are quick to work towards a successful settlement of the complaint to fulfill their obligations. Some employers however are still surprised with their legal duty to provide reasonable accommodation to their employees up to the point of undue hardship.

We were pleased to participate for the first time in National Pink Shirt Day as a means to draw attention to the problem of bullying in the schools especially using social media. Everyone needs to do a better job in preventing cyber bullying and supporting the victims when they ask for help.

We have also added many names to our key informants list to distribute relevant information and publications produced by the Commission so that they may be more widely known and understood in the community at large. During the year in question we also circulated a number of media releases on topics related to human rights and participated in a number of media interviews.

The annual New Brunswick Human Rights Award provides an opportunity to recognize outstanding individuals who have worked hard over the years to promote human rights within the province of New Brunswick. Ralph Thomas of Saint John was the winner of the annual award in 2012. We also named Lorraine Silliphant of Fredericton as the recipient of the special New Brunswick Pioneer of Human Rights Award.

Human rights case law is in a state of constant evolution in Canada and we try to stay on top of current developments by actively participating in the Canadian Association of Statutory Human Rights Agencies, known as CASHRA. Through monthly teleconferences and the regular exchange of other information, we try to share common approaches to common problems. CASHRA also hosts a national annual conference on human rights issues as well as two face-to-face meetings of the provincial and territorial and federal representatives. CASHRA also has a national working group on Mental Health Issues as well as a national working group on the UN *Convention on the Rights of Persons with Disabilities*.

It should also be noted that, during the year in question, our provincial legislation was amended so that if the Commission decides that the case needs to go forward to a tribunal, we no longer need to go through the office of the Minister of the Department of Post-Secondary Education, Training, and Labour to have this process implemented. This removes the potential perception of bias should a complaint involve a

provincial government department or agency. I would like to state, however, that we enjoy an excellent working relationship with this department without interference in our operational activities.

In closing, I think it is important to acknowledge the many community leaders and organizations across the province who continue to actively promote the concept of human rights and to stand up and be heard when discrimination is suspected.

As Edmund Burke stated, “Evil flourishes when good men do nothing.” We must all continue to work together to ensure that human rights do not just exist in legislation in theory but also in the realities of the day-to-day lives and activities of all our citizens.

Respectfully submitted;



Randy Dickinson, C.M.

Chairperson

New Brunswick Human Rights Commission

Members of the Commission

On April 1, 2012, the members of the Human Rights Commission were Randy Dickinson (Chairperson), Patrick Barbour, Huberte Gautreau, , René Landry, Karine Levesque, Emil Olsen and Eva Sock. During the 2012-23 fiscal year, the terms of Patrick Barbour, Huberte Gautreau, and Eva Sock expired. The continuing members as of March 31, 2013 were Randy Dickinson, René Landry, Emil Olsen and Karine Levesque. Their biographical notes are up-to-date as of March 31, 2013.

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, both the Queen's Golden Jubilee and the Queen's Diamond Jubilee medals for community service, 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.

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.

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:

- 135 distinct complaints were received in 2012-13,
- 157 complaints were active at the end of the year, including cases pending before a Board of Inquiry or court,

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 2012-2013, there were 729 referrals of this type.

A total of 193 inquiries concerned sex discrimination, 134 of which concerned pregnancy, compared to 129 pregnancy inquiries the previous fiscal year. Thirty-three 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;

During 2012-13, 584 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 the complaint process.

Sixty-one per cent (61%) of the complaint kits were sent to women, and 39% were sent to men. Complaint kits were sent out to 54 potential complainants about pregnancy discrimination; which resulted in 13 formal complaints being filed and an additional complaint being settled at the pre-complaint intervention stage.

Grounds of Discrimination

The 135 complaints filed included 225 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 (76) and mental disability (47), which together accounted for 55% of all complaint allegations. The next most common grounds were sex (28) and age (12), followed by social condition (12).

As in previous years, most complaints (149) were employment-related. The majority (90, i.e. 60%) of the employment complaints dealt with discrimination based on physical or mental disability.

Appendix C includes charts that show the sex of complainants. Four sex discrimination complaints and one sexual harassment complaint were filed by men; the rest were filed by women. As has been the case since 2010-2011, the majority of sex discrimination complaints filed by women concerned pregnancy; in 2012-2013, 13 of the 24 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 and neck, which form about a quarter of the physical disability discrimination allegations. The second most commonly mentioned physical disabilities involve upper and lower extremities. The most common mental disabilities mentioned are depression (39%), stress/burnout/anxiety (27%) and cognition/concentration/learning (13%).

Closed Complaints

In total, 154 formal complaints were closed in 2012-13 (an additional two complaints were closed and later re-opened), compared to 173 in 2011-12. They were closed for the following reasons:

- 67 were settled, compared to 72 in 2011-12,
- 58 were dismissed (mainly due to lack of evidence or being filed out of time), compared to 74 in 2011-12,
- 25 were withdrawn, abandoned, found to be outside the Commission's jurisdiction or closed for other reasons,
- 4 were closed at the Board of Inquiry or court levels.

The average age of complaints at closure was 11 months, compared to 12 months the previous fiscal year.

Settlements

A total of 79 cases were settled and closed in 2012-2013, compared to 92 in 2011-2012. They involved 70 formal complaints and 9 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:

- 9 cases during pre-complaint interventions (compared to 15 in 2011-12);
- 41 cases settled prior to a respondent filing a response to the complaint with the Commission;
- 17 cases were settled after a response to the complaint had been filed, but before the investigation was completed;
- 9 cases were settled after the investigation had been completed, and in some cases after the case analysis report had been drafted;
- 3 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.

These are statistics about the terms of settlement:

- \$386, 120 is the estimated total monetary value of the settlements (average of \$4888 per settlement), of which \$331,700 were general damages;
- 26 letters of reference;
- 16 letters of apology or misunderstanding;
- 15 human rights training seminars;
- 9 complainants were accommodated (7 in employment and 2 in services);
- 5 were offered employment or were reinstated into employment;
- 4 complainants had medical benefits reinstated;
- 1 policy developed;

Sample Complaints

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

1. Physical and Mental Disability / Employment

The complainant alleged the respondent employer discriminated against her on the basis of her physical disability (severe arthritis) and mental disability (stress from a family member's death) when the respondent terminated her employment while she was on medical leave. The respondent denied having discriminated against the complainant, but the matter was settled through early mediation.

2. Age and Religion / Employment

The complainant alleged that her employer had discriminated against her on the basis of age and religion when the employer disciplined her and later terminated her employment. She also alleged that her union had failed to fully represent her during the arbitration of her grievance regarding the termination.

The employee had been employed with the respondent for a number of years, but the employer maintained that, though she had had a good service record for the majority of her service, her infractions during the last two years were serious enough to warrant termination. The employer maintained that her dismissal was because she had violated safety rules and caused the injury of a client.

The Director of the Human Rights Commission found that the complaint against the employer was clearly without merit, and it was dismissed. Further, the Director dismissed the complaint against the union as the employee had failed to provide information that would indicate that her union's alleged failure to properly represent her at the arbitration hearing was based on one of the prohibited grounds in the *Human Rights Act*. The employee appealed the Director's decision to the Commission, but the Members upheld the decision to dismiss because of insufficient evidence supporting the allegations of discrimination.

3. Political Belief or Activity and Reprisal / Employment

The complainant alleged that the respondent failed to provide him with his "fair share of work" (hiring his company) because he did not financially or publicly support an official political party and because of a previous human rights complaint settlement. The respondent maintained that they would have given him contracts if his trucks were licensed and insured. The respondent also maintained that they treated the complainant fairly, that he was given an equal opportunity to be hired, and that it was not reprisal due to the previous settlement. The Commission's staff investigated the matter and the Commission dismissed the complaint because the information provided was not sufficient to support the allegations of discrimination.

4. Physical Disability / Employment

The complainant alleged she was discriminated against on the basis of her physical disability (diabetes) when at first her employer refused to accommodate her work schedule and later terminated her employment. The employee alleged that, when she first requested accommodation, her employer refused her accommodation request, citing that they had no duty to accommodate her and that her doctor could not dictate her working hours. The complainant then contacted the Human Rights Commission and obtained information to provide to the employer regarding their duty to accommodate.

The employer then accommodated the complainant's work schedule, but, within three weeks, her employment was terminated. The respondent maintained that the complainant's employment was terminated based on poor performance of her duties, such as absenteeism, leaving early, hanging up on customers during phone calls and manipulating the computer system to avoid calls. They also maintained they had accommodated the complainant by giving her the schedule recommended by her doctor. Commission staff investigated the matter and, in the case analysis report from the staff to the Commission Members, recommended to not dismiss the complaint as the information provided was not sufficient to support the respondent's position that the complainant's disability and her requested accommodation were not a factor in their decision to terminate her employment. Prior to being considered by the Commission Members, the matter was resolved through the Commission's mediation process.

5. Age, Physical Disability, Political Belief or Activity, Social Condition / Services

The complainant alleged that the respondent and some of its employees had discriminated against him on the basis of physical disability, age, social condition and political belief by banning him from the respondent's store. The complainant was advised by a Commission staff member that the information contained in his complaint form was insufficient to support his allegations of discrimination, and that he could either revise his complaint form or withdraw it and file a new one with sufficient information. The complainant advised that he would withdraw his complaint, but the Commission never received his withdrawal form, nor a revised complaint form.

Based on the information provided, the Director dismissed the complaint as being clearly without merit and abandoned by the complainant, and advised him of this by letter that also advised him of his right to appeal the dismissal within 15 calendar days. The complainant attempted to file an appeal with the Commission Members, but it was not filed within the 15 calendar days set out in the *Human Rights Act*. The Commission was unable to consider the appeal as the *Act* does not allow the Commission to grant a time extension for appeals.

6. Physical Disability / Employment

The complainant alleged that his employer discriminated against him on the basis of physical disability (torn meniscus - knee surgery) when they: would not allow him to return to work before he was 100% healed; failed to return him to the position he was in before his medical leave; rescinded his previously approved vacation time; made him perform menial asks; failed to inform him of a day off; and terminated his employment following his return to work after his medical leave.

The respondent maintained that: they had no light duties and therefore the complainant had to be 100% healed before returning to work; they returned him to the position he was in before his medical leave; they had to rescind his previously approved vacation time due to scheduling issues; and they did not make him perform menial tasks. The respondent further maintained that the complainant's physical disability was not a factor in their failure to advise him of a day off, and they terminated his employment due to him having had three preventable accidents, resulting in his driving privileges being suspended with the respondent, and the respondent had no non-driving positions available.

The Commission's staff investigated the matter and the information provided appeared to indicate that the respondent had a policy in place where they would only provide light duties to employees injured on the job and not employees injured outside of the workplace. Prior to the investigation being fully completed, the Commission's staff was able to assist the parties in reaching a resolution.

Boards of Inquiry

Prior to June 2012, the Human Rights Commission could recommend to the Minister responsible for the Commission that a Board of Inquiry be appointed to hear a case when a formal complaint could not be settled. In June 2012, the New Brunswick *Human Rights Act* was amended to remove the Minister from the Board of Inquiry appointment process. As a result, if the Commission is unable to settle a case and is satisfied in the circumstances that a Board of Inquiry should be appointed, the Commission may now directly refer the matter to the Labour and Employment Board to hold a Board of Inquiry hearing.

During the 2012-13 fiscal year, the Commission recommended or referred five new Boards of Inquiry, which are summarized below. Identifying information is not provided in four of the cases as the complaint process is confidential until a Board of Inquiry or court hearing is held

In the first case, the complainant alleged social condition discrimination when a potential employer refused to hire her as a cleaner because she did not have a grade 12 education or equivalent. The employer maintained that the educational requirement was a necessary qualification. The Commission's staff completed its investigation and the Commission Members recommended that a Board of Inquiry be appointed. However, the case was resolved through the Commission's mediation process before proceeding to the Board of Inquiry.

In the second case, the 56 year old complainant alleged that the respondent refused to rent to her as she was too young. The respondent maintained that its housing was reserved for persons over the age of 60. However, section 5 of the *Human Rights Act* does not permit age discrimination with respect to housing. The case was investigated by the staff, and the Commission Members referred it to the Labour and Employment Board. The case was resolved via the Board of Inquiry's mediation process.

In the third case, the complainant claimed that the respondent terminated his employment while he was off work due to a physical and mental disability. The respondent maintained that the complainant did not keep them informed of his absence and had failed to apply for short term disability benefits through the respondent's insurance carrier. The case was investigated and referred it to the Labour and Employment Board to sit as a Board of Inquiry. The matter was resolved via the Board of Inquiry's mediation process.

In the fourth case, Khalid Malik filed an age discrimination complaint alleging that his employment was terminated once he turned 65 years of age. His employer, Brunswick News Inc., maintained that his employment was terminated due to performance issues. The staff investigated the complaint and the Commission Members dismissed the complaint as being without merit. The employee sought judicial review of the Commission's decision and the Court of Queen's Bench quashed the Human Rights Commission's dismissal of the complaint¹ and referred the matter back to the Commission to investigate whether the collective agreement was discriminatory, whether age was a factor in the termination and whether a bona fide qualification and/or bona fide retirement plan existed. After the staff completed the additional investigatory steps directed by the Court of Queen's Bench, the Commission Members referred the matter to the Labour and Employment Board to sit as a Board of Inquiry. Hearing dates were scheduled for September 2013.

In the fifth case, the complainant alleged sex (pregnancy) discrimination when her employer failed to accommodate her pregnancy and demoted her upon her return to work from maternity leave. She further alleged that she was sexually harassed by another employee and the respondent knew of the sexual harassment but failed to take steps to address it. The employer maintained that they had accommodated the complainant's pregnancy and did not demote her. The employer also claimed that the person who allegedly sexually harassed the complainant was not an employee but a contractor contracted to do occasional work for the respondent, and the employer was not aware of the alleged sexual harassment. The staff completed its investigation of the case and the Commission Members, referred the matter to the Labour and Employment Board to sit as a Board of Inquiry. As of March 31, 2013, hearing dates had not been set.

In addition, two Boards of Inquiry appointed in past fiscal years were settled and closed during the present fiscal year. In one of the cases, the complainant alleged physical disability discrimination when her employment was terminated while she was out on sick leave. The employer maintained that the employment contract became frustrated when the complainant remained off work for over two years and failed to provide

¹ *Malik v. New Brunswick Human Rights Commission* [2012] N.B.J. No. 198 (NBQBTD); <http://canlii.ca/t/fr989>

the employer with necessary medical information. The staff completed its investigation in January 2011 and in April 2011 the Commission Members recommended to the Minister responsible for the Commission that a Board of Inquiry be appointed. However, a settlement was reached in July 2012 during the Board of Inquiry's mediation process and the file was closed in October 2012 as all the terms of settlement had been met.

In the second case, the complainant alleged physical disability discrimination when a service provider refused to continue to provide a service to her daughter due to an allergy. The respondent maintained that they could not accommodate the complainant's daughter due to her allergy and the nature of the service. The staff investigated the matter and in March 2012, the Members decided to recommend to the Minister responsible for the Commission that a Board of Inquiry be appointed to hear the matter. In August 2012, a settlement was reached via the Board of Inquiry's mediation process and the file was closed in September 2012 as all terms of settlement had been met.

As of March 31, 2013, six Boards of Inquiry were pending, namely the fourth and fifth cases noted above as well as four cases mentioned in the next paragraph that are pending the decision of the Court of Queen's Bench

Judicial Reviews

During the 2012-2013 fiscal year, four complaints were under judicial review by the Court of Queen's Bench as to whether or not a Board of Inquiry should proceed in each case, but as of March 31, 2013 the Court had not yet given a decision on them.

Appeals

Only two cases were considered and decided upon by the Court of Appeal in 2012-2013:

1. John Smith v. the Province of New Brunswick (Department of Public Safety) and the New Brunswick Human Rights Commission²

Mr. Smith had filed a complaint alleging mental and physical disability discrimination in employment. The staff had investigated the complaint and the Human Rights Commission Members dismissed it in February 2010. In May 2010, Mr. Smith sought judicial review before the Court of Queen's Bench of the Commission's dismissal of the complaint, but in August 2011 the Court dismissed the application for judicial review³.

² *Smith v. New Brunswick (Department of Public Safety)* [2012] N.B.J. No. 139 (NBCA); <http://canlii.ca/t/fr44x>

³ *Smith v. New Brunswick (Department of Public Safety)* [2011] N.B.J. No. 207 (NBQBDT); <http://canlii.ca/t/fm48q>

The complainant appealed the decision of the Court of Queen's Bench, but in April 2012 the Court of Appeal dismissed the appeal. It found that the Court of Queen's Bench judge did not err when he noted that the *Human Rights Act* does not apply to harassment that is not based on one of the protected grounds under that *Act*. The Court of Appeal found that the *Human Rights Act* was not adopted for the purpose of providing unionized workers a convenient forum for airing industrial grievances, and the judge was entitled to observe this fact.

The Court of Appeal also found that the Human Rights Commission had provided sufficient reasons for dismissing the complaint since the Commission adopted the recommendations in the case analysis report prepared by the Commission's investigator. The recommendations were to dismiss the complaint as there was not sufficient information to show that the alleged harassment was related to Mr. Smith's physical disability or that the respondent perceived him as having a mental disability.

The Court of Appeal also found that the investigator's record prepared for the Commission demonstrated a level of thoroughness and patience that insulated her investigation from any challenge premised on a flawed investigation. Further, the Court found that the fact that the investigator was acutely aware of the general problem of workplace harassment at the work site was a relevant consideration, and explains why the investigator and the Court of Queen's Bench judge were concerned that Mr. Smith's personal situation could be symptomatic of a general workplace issue and not related to his physical disability and the employer's decision to accommodate his disability.

With regard to Mr. Smith's allegation that the judge had failed to deal with the allegation that he had been discriminated against based on the perception that he had a mental disability, the Court of Appeal found that the judge most likely did not deal with this issue in his reasons because the issue lacked an air of reality.

2. Warren McConnell v. Brunswick News Inc. and the New Brunswick Human Rights Commission⁴

Mr. McConnell alleged that the respondent discriminated against him on the basis of his mental disability when they terminated his employment. The respondent denied the allegation. The Commission's staff investigated the complaint and in July 2006 the Commission recommended that the Minister responsible for the Commission appoint a Board of Inquiry to hear the case. The Board of Inquiry held hearings on 17 days over a 12 month period and in December 2009 rendered its decision dismissing the complaint.

In March 2010, Mr. McConnell filed an application for judicial review with the Court of Queen's Bench. In August 2011, the court issued its decision dismissing the application⁵.

⁴ *McConnell v. Brunswick News Inc.* [2012] No. 138 (NBCA); <http://canlii.ca/t/fr44v>

⁵ *McConnell v. Brunswick News Inc.* [2011] N.B.J. No. 274 (NBQBTD); <http://canlii.ca/t/fmmtx>

In October 2011, Mr. McConnell appealed the Court of Queen's Bench decision. The Court of Appeal issued its decision in April 2012, dismissing the appeal. The Court of Appeal noted that, according to the Supreme Court of Canada, the lack of reasons is not a sufficient ground for rejecting the Commission's argument that in recommending the complaint move to the Board of Inquiry stage, the Commission must have implicitly decided to grant an extension of time. Therefore, the Board of Inquiry's finding that the Commission could not have implicitly granted an extension was difficult to sustain.

With regard to the onus on the complainant to establish discrimination, the Court of Appeal found that there was no reason for interfering with what was essentially a finding of fact by the Board of Inquiry to the effect that the Mr. McConnell's position did not exist in the respondent's other newspaper environments and the position was eliminated due to a corporate restructuring and not the complainant's mental disability.

On the employer's duty to accommodate, the Court of Appeal found that the record and the Board of Inquiry's decision included instances in which the respondent engaged Mr. McConnell in discussions regarding suitable work and the need to ensure that he was not placed in a stress-filled work environment. The court found that the Board of Inquiry's finding of reasonable accommodation has not been shown to fall outside of the range of acceptable outcomes as required when applying the reasonableness standard of review.

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.

The Chairperson and Director participate in CASHRA's monthly telephone conferences. 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 *Are we There Yet?* in Winnipeg in June 2012.

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 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 on federal/provincial jurisdictional issues related to human rights. The lawyer also represents the Commission on CASHRA's Research and Policy Committee.

In June 2012, an article on the New Brunswick Human Rights Commission was featured on the CASHRA website.

Human Rights Award and Pioneer of 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. 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.

The 2012 Human Rights Award was presented to Ralph Thomas of Saint John for his achievement and leadership in promoting equal social and economic opportunities for women and visible and multicultural minorities in New Brunswick, and especially because of the essential role that he played in various capacities over many years within PRUDE Inc., an advocacy and service group for black, ethnic and newcomer communities in Saint John.

In addition to the annual Human Rights Award, the Commission occasionally presents the New Brunswick Pioneer of Human Rights Award to recognize pioneers in the protection and promotion of human rights for their historic contributions to human rights in Canada. This award was first presented in 2002 to Senate Speaker Noël A. Kinsella; Gordon Fairweather; and former premier Louis J. Robichaud. It has been presented to only three recipients since then, the latest being Lorraine Silliphant of Fredericton in 2012.

The Pioneer of Human Rights Award was presented to Mrs. Silliphant for her pioneering work on behalf of the community living and inclusive education movements for youths and adults with intellectual disabilities over a period of 40 years.

Lt.-Gov. Graydon Nicholas and Randy Dickinson, the Commission's chairperson, presented the awards at a ceremony attended by about 60 people at Government House in Fredericton on September 11, 2012. Both recipients received a framed certificate and a pewter lapel pin or locket that represent their award.

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.

On June 25, 2012, the Commission issued a release announcing the latest amendments to the *Human Rights Act* that corrected some discrepancies between the English and French versions of the *Act* and now allow the Commission to refer a complaint directly to the Labour and Employment Board for a hearing instead of recommending to the Minister that a Board of Inquiry be appointed.

News releases were also issued to publicise a play and documentary in March 2013 that the Commission co-sponsored to mark the International Day for the Elimination of Racial Discrimination.

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.

This year, the Commission issued a statement on Pink Shirt Day for the first time; Pink Shirt Day is aimed at opposing bullying in schools. The staff wore specially commissioned pink T-shirts on February 27 to mark the occasion.

The Commission also published a statement to mark the 30th anniversary of the *Canadian Charter of Rights and Freedoms*, on April 17, 2012.

In total, 19 releases or statements were published on the Commission's website and distributed to the media and the Commission's stakeholders by email.

The Chairperson was interviewed by the media on several occasions about current human rights issues and is regularly asked by media to comment on human rights related issues, especially those connected with the frequent media releases of the Commission. 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 73 presentations or information sessions in 2012-13. Nineteen of the sessions were agreed to as a term of settlement of a human rights complaint.

Twenty-four presentations were delivered to students in universities, business colleges and life skills classes, and nine presentations were delivered to classes in public schools. Information sessions were also delivered to multicultural associations, private and public sector employers, and unions.

The most common topic of the presentations was the duty to accommodate disability in the workplace, which accounted for 24 presentations. There were also presentations on the Commission's guideline on accommodating students with a physical or mental disability, on sexual harassment, on the human rights of lesbian, gay, bisexual and transgender students and on the human rights of transgender employees. There were also several general presentations on the *Human Rights Act*.

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

In October, the chairperson gave a speech at the UNB Law School in Fredericton on disability rights and effective advocacy. He also spoke about advocacy as a panellist at workshops organized by Muscular Dystrophy Canada in September in Moncton.

On March 8, 2013, International Women's Day, the Director and a member of the staff delivered a presentation on human rights to about 150 women attending an event organized by the Fredericton Family Resource Center in Fredericton.

During the month of May 2012, four presentations were given to a total of about 100 staff of the French community colleges in Dieppe, Bathurst, Edmundston and Shippagan. The presentations concerned the Commission's guideline on accommodating students with a disability.

One presentation was delivered to CUPE Local 380 in Saint John in May, 2012 on the duty to accommodate at work.

One presentation was given to Parents, Family and Friends of Lesbians, Gays and Transgenders (PFLAG) in May, 2012 in Moncton, on the application of the *Human Rights Act* to lesbian, gay, bisexual and transgender youth. Another presentation was given on March 14, 2013 on the rights of transgender employees to a workshop organized by the Spectrum LGBT student group on the UNB/STU campuses.

In June 2012, two presentations were given to a total of 100 to 150 managers of the Regional Health Authority, in Fredericton and Saint John. They were on the employer's duty to accommodate. In July, another presentation was delivered on doctors' notes documenting the accommodations or sick leaves that employees required,

In October, a member of the staff gave a class to about 35 civil servants enrolled in the Public Service Management Program at UNB in Fredericton.

Events

The Human Rights Commission co-sponsored and organized two events to mark March 21, the International Day for the Elimination of Racial Discrimination: a new 45 minute documentary by a Fredericton filmmaker, and a play performed by the Hampton High School Theatre Company.

Semra Yüksel's *It was the Dance* documentary addresses racism, socio-economic injustice, history and world politics through the true stories of an Austrian Jewish refugee and an African-Canadian soldier with Black Loyalist and Maliseet ancestors who fell in love with each other in London during the Second World War and afterward settled in Fredericton. About 40 people attended the screening on March 21 at St Thomas University in Fredericton. The screening was co-sponsored by the Human Rights Commission, the Atlantic Human Rights Centre and the Office of Human Rights and Positive Environment at UNB.

Pulitzer Prize winner Ariel Dorman's powerful play, *Speak Truth to Power; Voices from Beyond the Dark*, was inspired by the accounts of 50 heroic human rights activists chronicling horrific human rights abuses around

the world. A presentation of the Hampton High School Theatre Company, the play was co-sponsored by the Commission, the Atlantic Human Rights Centre, the Office of Human Rights and Positive Environment at UNB and the Hampton John Peters Humphrey Foundation.

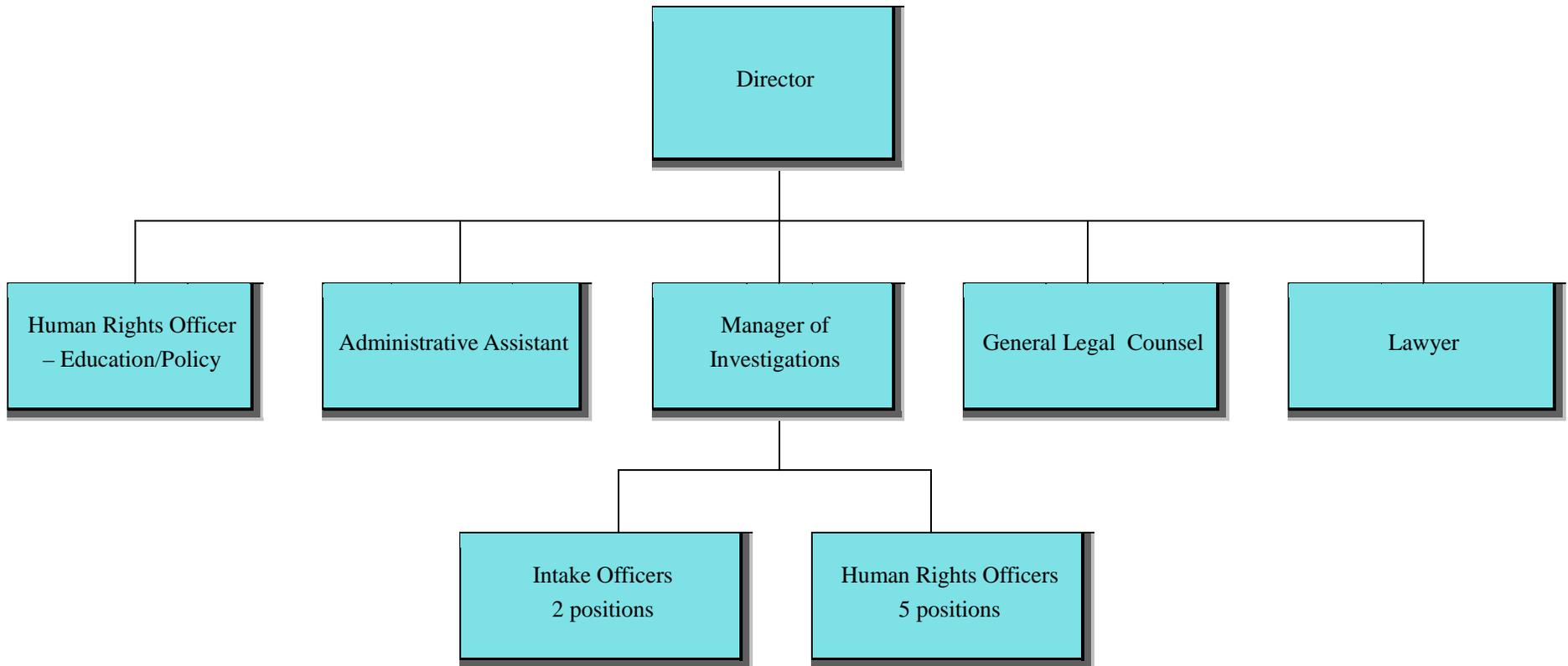
Other Initiatives

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. Lawyers and others can also access the written decisions of human rights Boards of Inquiry. The website was updated to reflect the amendment to the *Human Rights Act* on the procedure for referring complaints to the Labour and Employment Board. The updated *Guideline on Time Limit Extension for Complaint Initiation* and *Guideline on Delegation of Compliance Functions* were posted to the website. Links were also added from time to time to recent statements by the Canadian Association of Statutory Human Rights Agencies, such as CASHRA's statement urging Canadian governments to endorse the United Nations *Declaration on the Rights of Indigenous Peoples*.

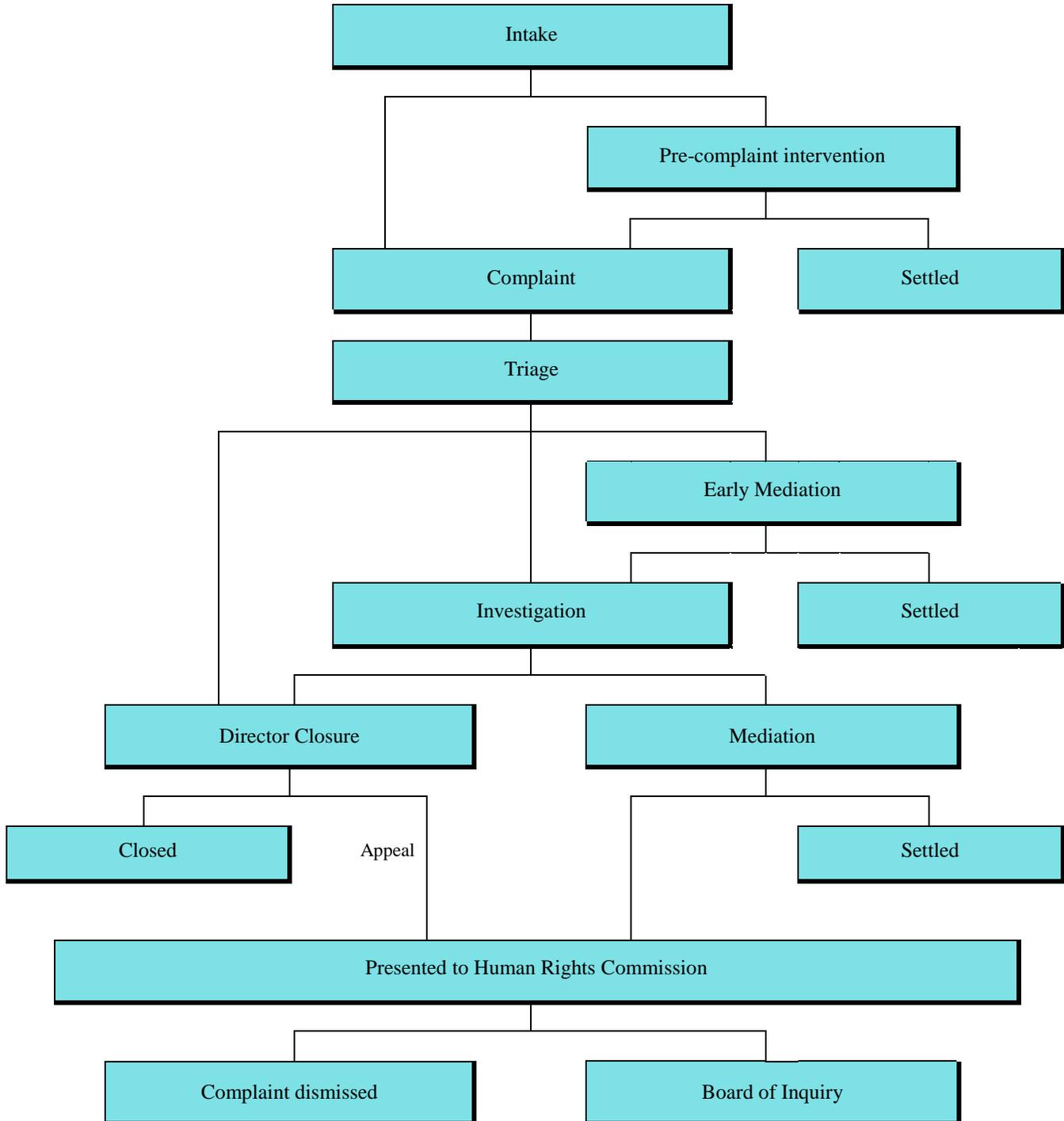
The Commission partnered with the Atlantic Human Rights Center at St. Thomas University to establish an internship program at the Commission, now in its second year, and to co-sponsor the play and documentary to mark the March 21 Day for the Elimination of Racial Discrimination.

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

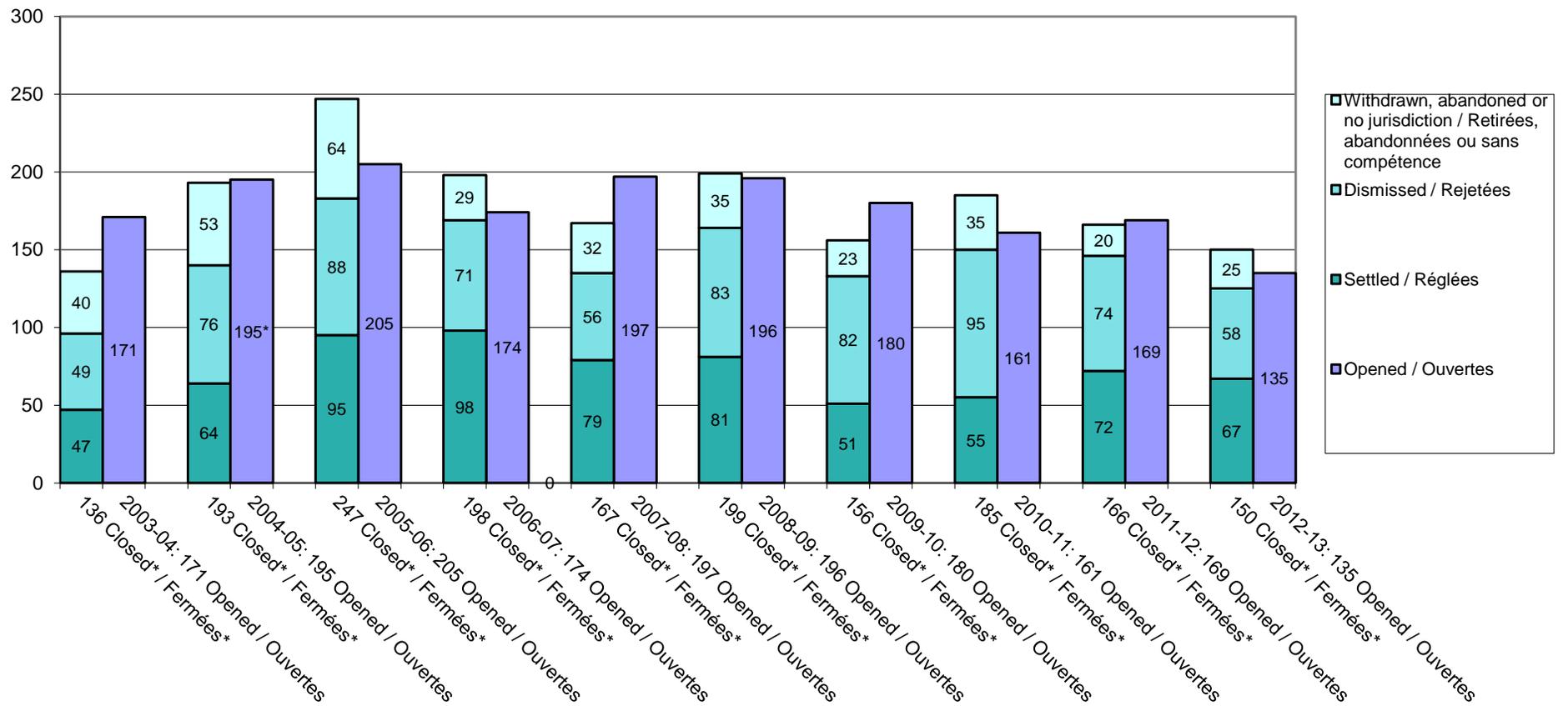
April 1, 2012 to March 31, 2013

	Employment	Housing	Services	Publicity	Associations	Total
Race	3	0	4	0	2	9 (4%)
Sex	24	0	3	0	1	28 (12%)
Religion	1	0	3	0	1	5 (2%)
Place of Origin	2	0	0	1	1	4 (2%)
Marital Status	5	0	1	0	0	6 (3%)
Mental Disability	32	3	11	0	1	47 (21%)
Colour	2	0	1	0	0	3 (1%)
Age	7	1	2	1	1	12 (5%)
Ancestry	1	0	3	1	1	6 (3%)
National Origin	2	0	0	0	1	3 (1%)
Physical Disability	58	3	12	1	2	76 (34%)
Sexual Harassment	5	0	1	0	0	6 (3%)
Sexual Orientation	2	0	1	0	0	3 (1%)
Political Belief or Activity	1	0	1	1	0	3 (1%)
Social Condition	2	3	6	1	0	12 (5%)
Reprisal	2	0	0	0	0	2 (1%)
Total	149	10	49	6	11	225*
	(66%)	(4%)	(22%)	(3%)	(5%)	

* 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 135 distinct new formal complaints.

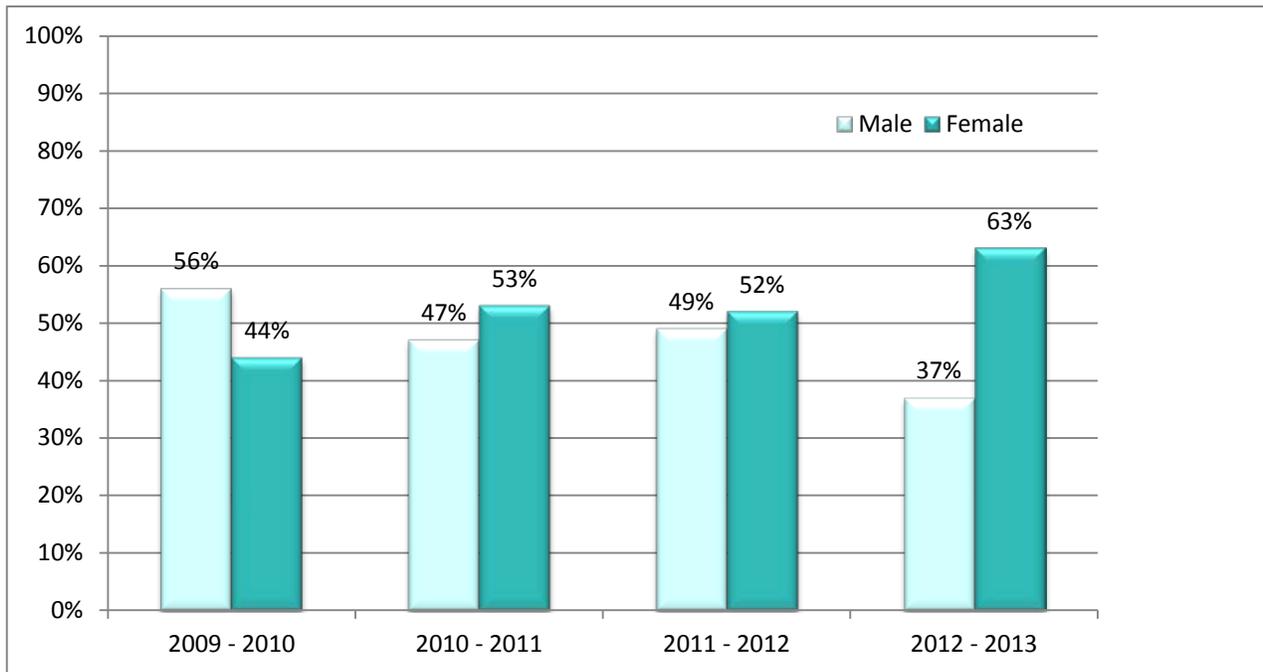
Formal Complaints Opened and Closed*

2003-2013

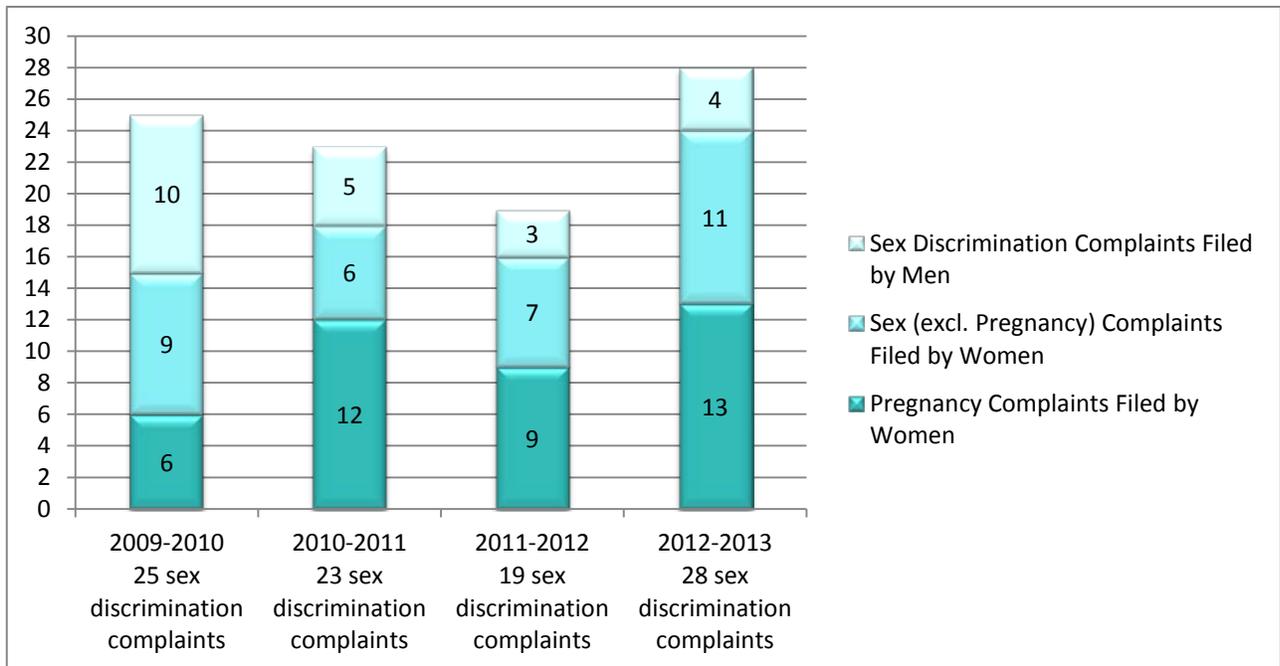


*NOTE: Statistics for closed complaints are for formal complaints closed by the Human Rights Commission only, not cases settled during pre-complaint interventions, nor formal complaints closed at the Board of Inquiry or court levels.

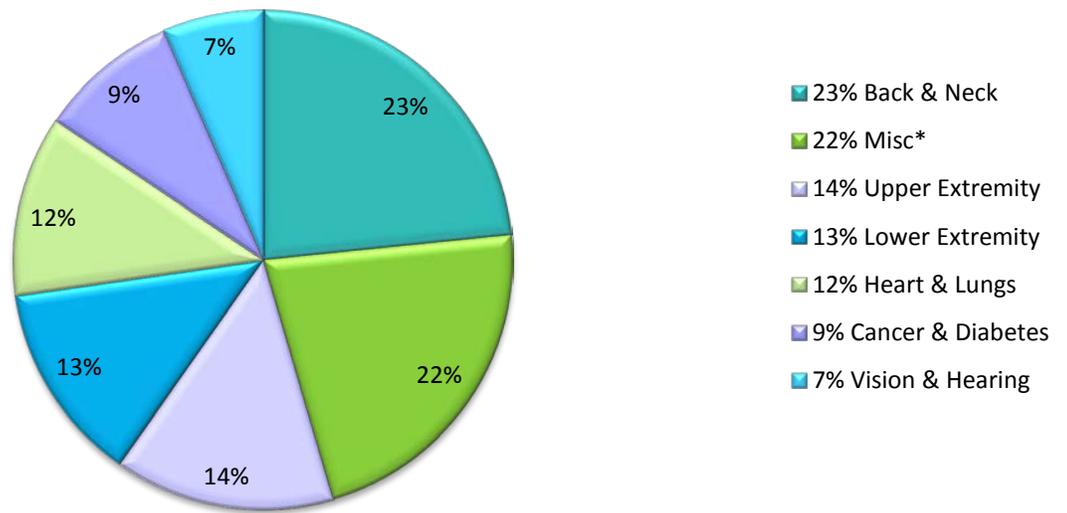
Sex of Complainants for all Complaints



Sex of Complainants for Sex Discrimination Complaints

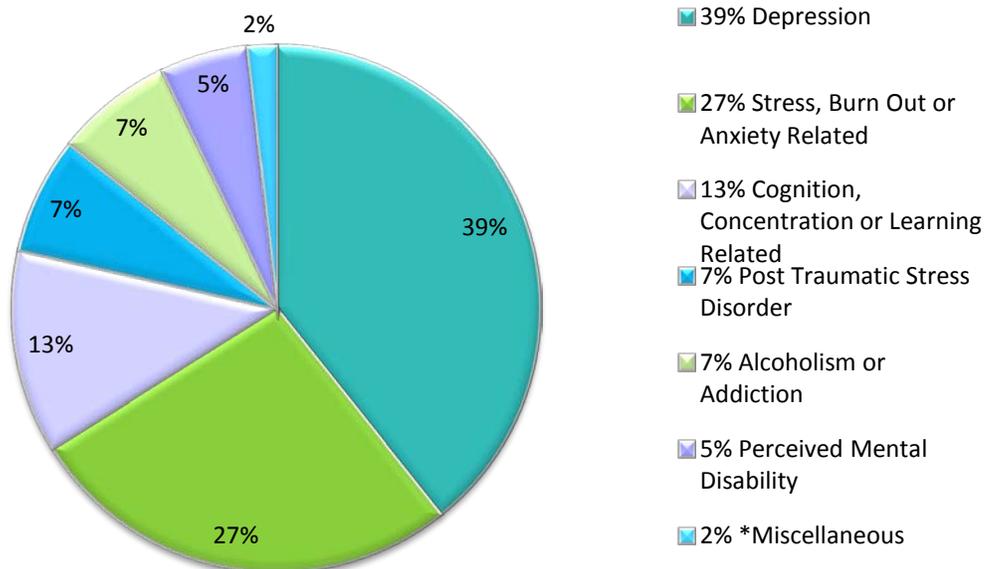


Physical Disability Discrimination Allegations



* Misc Includes: Fibromyalgia, Fatigue, Hepatitis C, MS, Alcohol or Drug Dependence, Crohns Disease and Cerebral Palsy

Mental Disability Discrimination Allegations



*Miscellaneous Includes: Bi Polar Disorder

Appendix D

Summary of Expenditures

This annual report was printed before the publication of the Public Accounts for 2012-13. 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.

	2012-2013 Main Estimates	2012-2013 Budget	2012-2013 Actual
Compliance and Prevention	\$939,600	\$939,600	\$866,847
Legal Services	\$317,400	\$317,400	\$284,763
Office of the Commission	\$71,000	\$71,000	\$43,497
Total	\$1,328,000	\$1,328,000	\$1,195,107

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
- 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 (2012)
- Guideline on Discrimination in the Housing Sector (2004)
- Guideline on Drug & Alcohol Testing in the Workplace (2011)
- Guideline on Housing (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