

2018 ANNUAL REPORT 2019



NEW BRUNSWICK  
**HUMAN RIGHTS**  
COMMISSION

Annual Report 2018-2019  
New Brunswick Human Rights Commission  
Published by:  
Human Rights Commission of New Brunswick

ISBN 978-1-4605-2027-7 (Bilingual print edition)  
ISBN 978-1-4605-2028-4 (English version online)  
ISBN 978-1-4605-2029-12 (French version online)  
ISSN 1189-4423

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# TRANSMITTAL LETTERS



## From the Minister to the Lieutenant-Governor

The Honourable Brenda Murphy  
Lieutenant-Governor of New Brunswick

May it please your Honour:

It is my privilege to submit the Annual Report of the  
New Brunswick Human Rights Commission for the  
fiscal year April 1, 2018, to March 31, 2019.

Respectfully submitted,

Trevor A. Holder  
Minister Responsible for the Human Rights  
Commission

## From the Chairperson to the Minister Responsible

Trevor A. Holder  
Minister Responsible for the New Brunswick  
Human Rights Commission

Sir:

I am pleased to be able to present the Annual Report  
describing the operations of the New Brunswick  
Human Rights Commission for the fiscal year April 1,  
2018, to March 31, 2019.

Respectfully submitted,

Nathalie Chiasson, Q.C.  
Chairperson  
New Brunswick Human Rights Commission

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# MESSAGE FROM THE CHAIRPERSON



As Chairperson of the New Brunswick Human Rights Commission, I would like to make a few remarks about the Commission's activities over the last fiscal year. In the past year, the Commission concentrated its efforts on restructuring the complaint receipt and triage process internally in an effort to reduce the waiting time for processing the complaints it receives. This challenge continues to grow with the increasing number of complaints received in the past three years, considering that operating budgets and human resources have remained the same. The Commission is aware that the waiting time for processing a complaint may cause the parties a significant hardship, and a new registrar's position was created this year to better manage the increase in the volume of complaints.

In addition to managing the complaint process and offering mediation services, the Commission has an education mandate to promote human rights. Human rights education is an important tool for preventing complaints, and the Commission is counting on education to prevent discriminatory behaviours prohibited by the Act. This year, the Commission made 46 presentations to over 800 people on the administration of the Act in very specific contexts, to enable employers, service providers, and New Brunswickers to clearly determine their human rights obligations and rights. In addition, this year, the Commission published a guide for employers on their obligations to accommodate their employees in anticipation of the cannabis legislation and three new guidelines on prohibiting discrimination based on social condition, employers' obligations to employees struggling with addictions, and sexual harassment.

The province's sociodemographic composition has undergone, and will continue to experience, major changes in the next few years. The province will become more culturally diversified owing to the immigration policies adopted by the provincial and federal governments to help populations that are victims of war measures and to address labour shortages in the province. Employers are encouraged

to adopt strategies to hire and incorporate these immigrants into their businesses to meet their labour needs and remain competitive.

By immigrating to our province, these newcomers benefit, upon their arrival, from all rights and benefits due to New Brunswickers, free from all forms of discrimination based on race, colour, national origin and place of origin, ancestry, belief, or religion. Since the employment sector is the one from which the greatest number of complaints originate, employers are asked to become aware of the importance of developing a multicultural integration strategy within their businesses and to become familiar with the guidelines published on the Commission's website. Landlords must also be aware that they cannot discriminate against these newcomers by taking their place of origin into consideration before determining whether they are acceptable tenants. Integration efforts must be made in all spheres of society to ensure that the newcomers want to stay in this province that has welcomed them since their arrival in this country.

The Commission must make a sustained effort to educate and raise awareness, targeting the relevant segments of the population, and maintain its education program to inform the public of the various grounds of discrimination prohibited in the *Human Rights Act*.

I would like to thank all the people and interest groups in the province that work to promote human rights in their communities, and want to conclude by acknowledging the dedication of the members and staff of the Commission to promote and protect the administration of the *Human Rights Act* in New Brunswick.

Respectfully submitted,

Nathalie Chiasson, Q.C.  
Chairperson

# MESSAGE FROM THE DIRECTOR



This past year has been a time of both opportunity and unexpected challenges. As a public agency with a compliance and education mandate, the Commission has had to adapt to new realities and rethink its operations.

First, human rights complaints are increasing in volume and complexity. In the last three years alone, the number of active complaints has risen steadily from one hundred and fifty-seven (157) to two hundred and forty (240). With the same number of staff available to address this growth, our efforts to process the backlog have been challenged. Second, a growing number of complaints require more in-depth legal research and analysis due to their complex nature. This level of work requires more time to address and it is a constant balancing act between procedural fairness and access to justice.

Throughout the year Commission staff remained steadfast in improving education and awareness efforts aimed at better explaining the legislation to an increasingly diverse demographics, and by making the complaint process easier to navigate. Many complaints don't fall within the purview of the Human Rights Act. We know that people respond to authenticity hence we needed to better explain the reasons for not proceeding with a complaint. This year, we introduced a revised report to the parties that provides the legal analysis and a clear rationale for the dismissal of a file. We also revamped our triage process with a new Registrar function and several other measures to more effectively prioritize files and improve assessment time.

We often talk about quality of life and the welcoming nature of New Brunswick yet we still see too many instances where citizens experience a differential treatment due to a lack of accessibility or awareness. As a society we need to do better to ensure our institutions, buildings and services can be accessed and enjoyed by everyone. This is especially relevant in the context of advancing the province's immigration and retention efforts.

The Commission contributed to several policy initiatives this year but two are particularly worth noting. Last May we took part in the consultation process on Bill C-65 to

prevent harassment and violence in the workplace. We also contributed to Statistics Canada and Status of Women Canada's survey on sexual harassment and sexual assault or misconduct in the workplace. In the fall the Commission collaborated on a proposal with Public Legal Education and Information Service of New Brunswick as part of the Department of Justice Canada's initiative to address sexual harassment in the workplace. If we are successful in the latter, and I am confident we will be, this new funding will greatly enhance our programming to assist vulnerable groups, workers and employers.

Even before cannabis became legal in the province, the Commission's legal team took steps to develop and release information to alleviate uncertainties in the workplace and help employers navigate the regulatory framework. We published a *Primer on the consumption of cannabis, inside and outside the workplace*, and subsequently a more detailed *Guideline on Cannabis, Alcohol, and Drug Addictions*.

Looking ahead to 2019-20, the Commission will continue to improve its effectiveness and seek opportunities to leverage our expertise. We are committed to remaining innovative, transparent and collaborative so that we may achieve these goals.

The leadership role the Commission plays in the policy making process is often underestimated. As you read this annual report, I hope it will remind you of the foundational importance the Human Rights Commission has in making our province a place where our communities are vibrant and prosperous, and our citizens are able to embrace diversity and inclusion.

Marc-Alain Mallet  
Director and Secretary to the Commission

# MEMBERS OF THE COMMISSION



On March 31, 2019, the Commission was composed of:

- Nathalie Chiasson (Chairperson)
- Pierrette Bouchard
- Byron Bushey
- Kimberley Douglass
- Murray Driscoll
- Audrey Lampert
- Jean-Claude Pelletier
- George Richmond
- Dorothy Thériault

Additional information on our commission members is available on the Commission's website:

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

First row, from left: Pierrette Bouchard, Nathalie Chiasson (Chairperson), Kimberley Douglass; second row, from left: Dorothy Thériault, Audrey Lampert, George Richmond and third row, from left: Jean-Claude Pelletier, Murray Driscoll and Byron Bushey.



# COMPLIANCE



## Complaint process

Individuals who believe they have been discriminated against on the basis of race, colour, creed or religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity, gender identity or expression and family status, sexual harassment have the right to file a complaint of discrimination under section 17 of the *New Brunswick Human Rights Act*. The Act also prohibits sexual harassment and reprisal for making or being involved in a complaint.

All complaints filed with the Commission are confidential and are discussed only with the parties involved.

If someone thinks they have been discriminated against or harassed based on these grounds, they can contact the Human Rights Commission for more information. If the complaint seems to fit within the definition of discrimination as defined in the *Human Rights Act*, a person can file a complaint.

Staff at the Commission may suggest early intervention in an attempt to reach a resolution. If that is not possible, the staff will send a complaint kit to the caller asking them to describe the alleged discrimination. This complaint kit will contain a blank complaint form that must be completed by the complainant, the person who is alleging that discrimination has occurred.

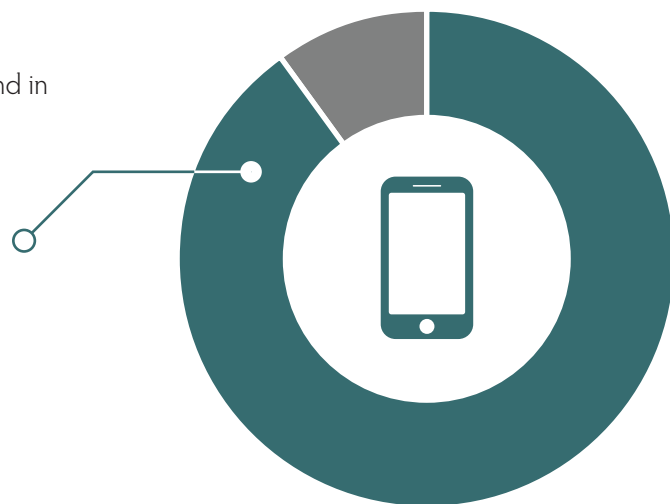
A flow chart of the complaint process is found in **Appendix B**.

90%  
of New Brunswickers  
contact the Commission  
by phone.

## Operation

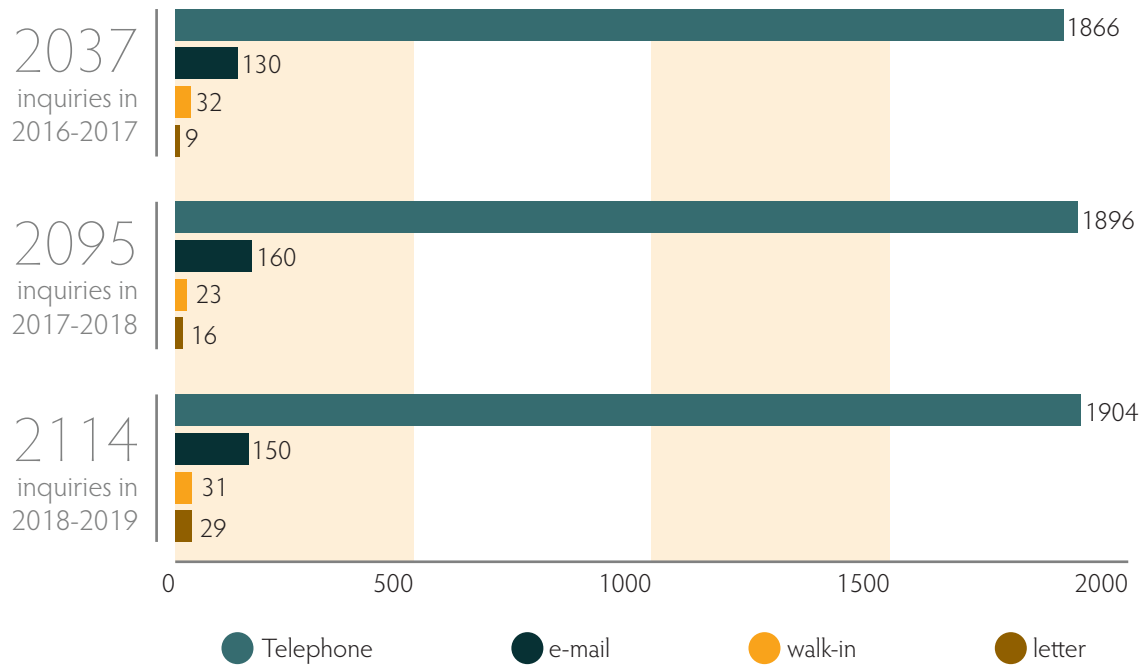
The new Registrar position was staffed over the summer and this help to move forward several files. Improvements were made to the intake function with the adoption of a checklist and standard operating procedure. A standard of procedures was also developed for the complaint notification step. We modified our triage process for complaints at the next step analysis where the Legal Counsel and Registrar will be reviewing the files currently in the Next Step Analysis queue to determine mediation, director dismissal or investigation. We also streamlined our Summary Director Dismissal Report to better explain the reason for dismissal.

On the investigation front, we created a “complex investigation” queue to house those files that are more involved either because of complex issues, number of witnesses or documents that may be involved. We are also revising the investigation report to better capture the arguable case and reasons for the recommendation and make the new report shorter than currently; a change that is welcomed by Commission members.

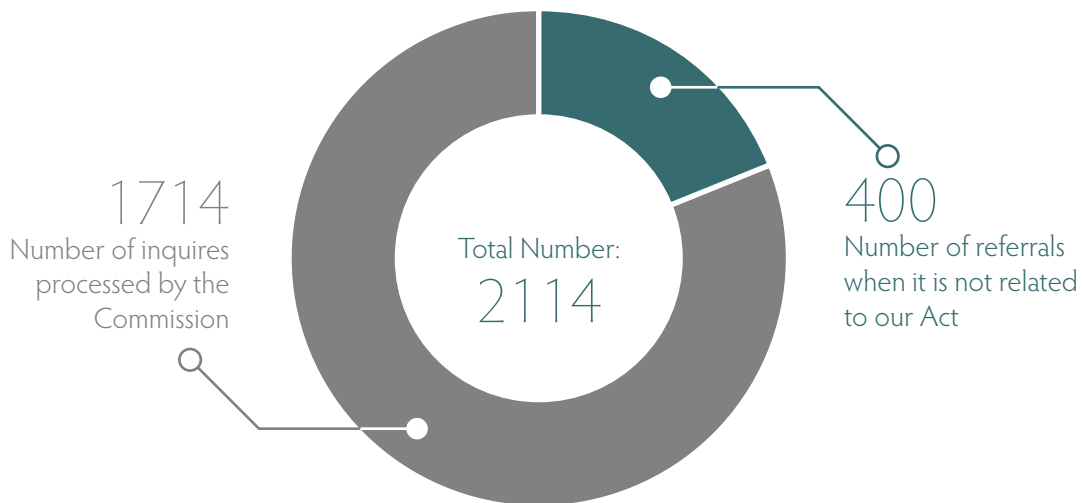




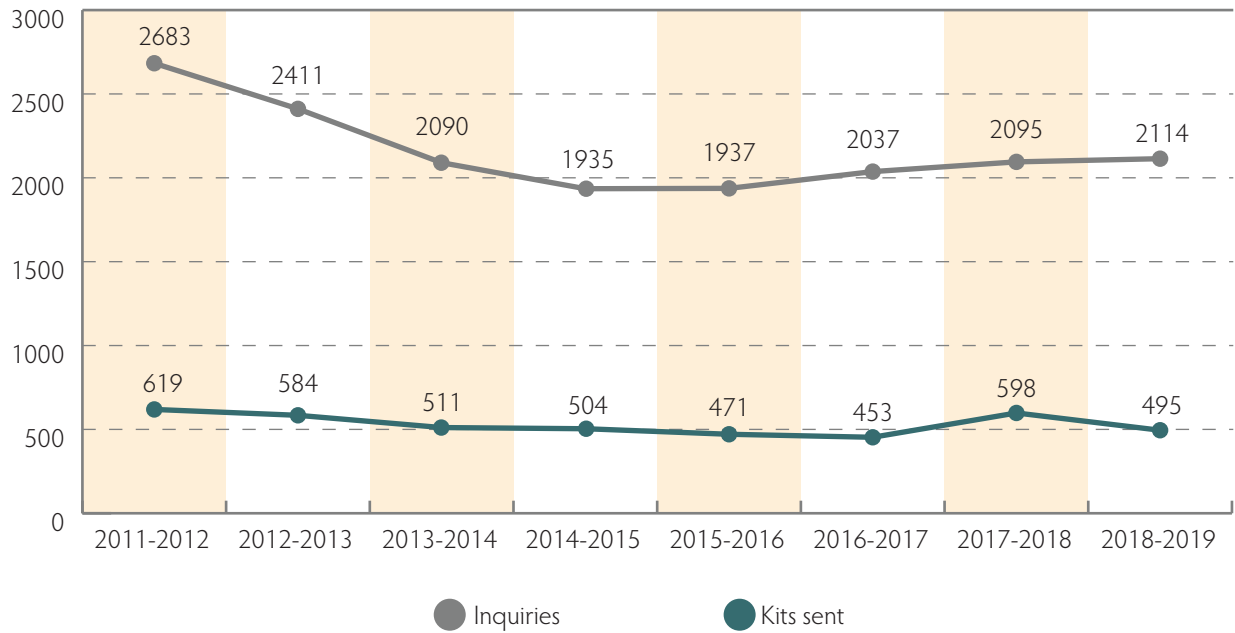
## Proportion of inquires by channel per year



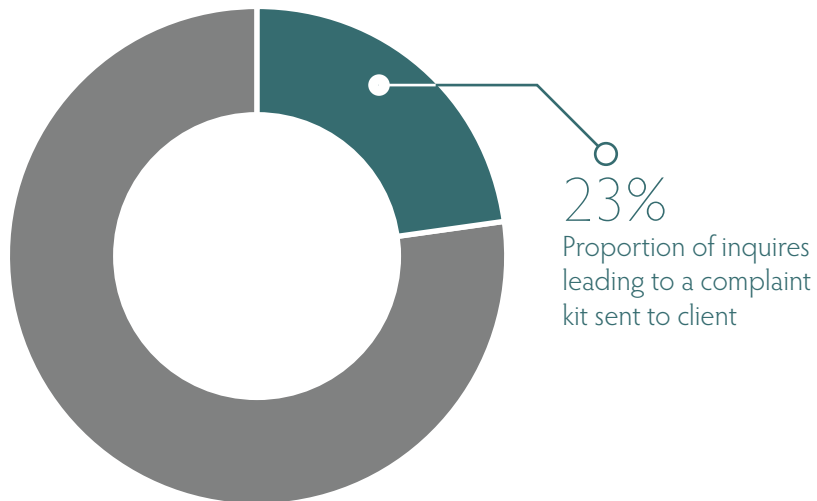
When a call does not involve discrimination contrary to the *Human Rights Act*, the person is referred to the appropriate agency.



## Number of Complaint kits sent by year



## Proportion of inquiries leading to a complaint kit sent to client



## Complaint Statistics

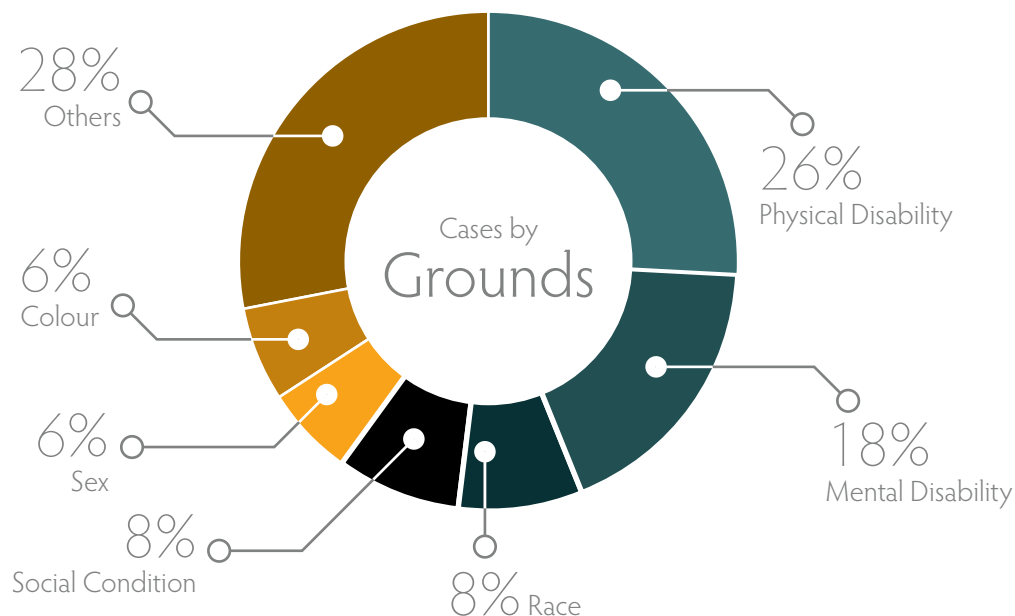
123  
new complaints

240  
active complaints

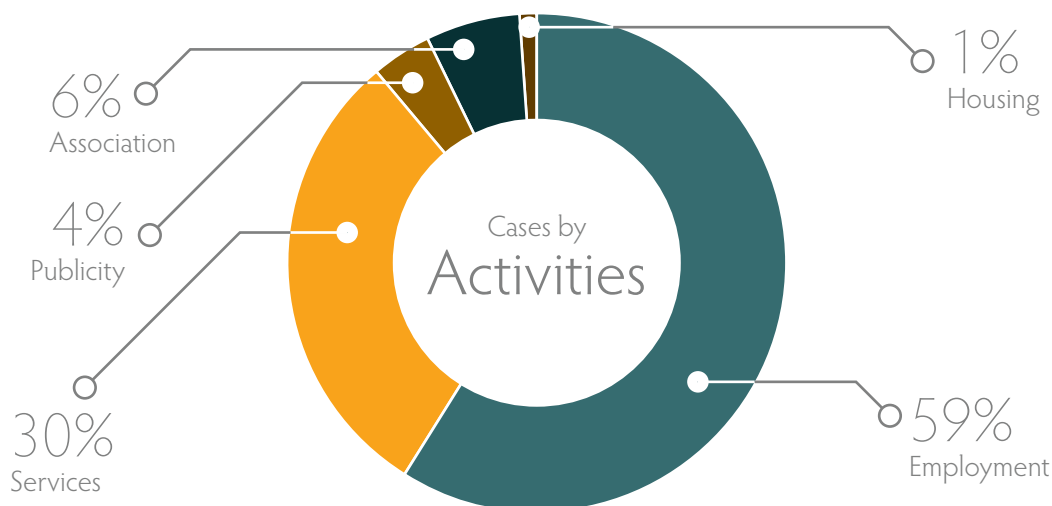
222  
allegations of discrimination

## Grounds of discrimination

The 123 distinct complaints filed included 222 allegations of discrimination since some complaints alleged discrimination in more than one activity (e.g., both services and housing) or ground (e.g., both race and colour). The most common grounds in 2018-19 were physical disability (58) and mental disability (41), race (18), social condition (17), sex (14) and colour (13).

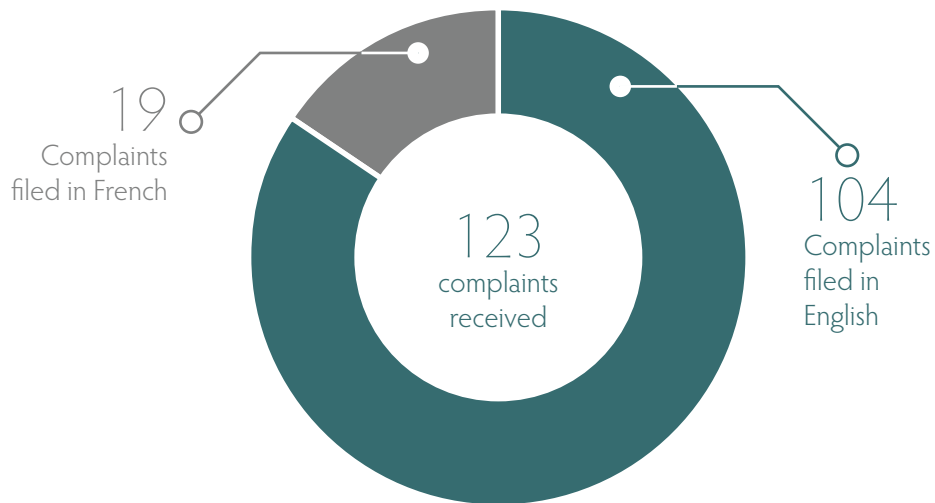


As in previous years, most allegations (131) were employment related. Of the employment complaints, 73 dealt with discrimination based on physical and/or mental disability. Nine of the sex discrimination complaints were employment related, while three were service related; and two were associations. Seven of the 8 sexual harassment complaints were employment related. Of the services complaints, 23 were related to physical and/or mental disability, nine to social condition and 7 to race.



More details on grounds and activities can be found in **Appendix C**.

## Language of Complaint File



## Closed complaints

In total, 96 formal complaints were closed in 2018-2019 compared to 114 in 2017-2018. The cases were closed for various reasons: after mediation, dismissed (mainly due to lack of evidence or being filed out of time), withdrawn, abandoned, found to be outside the Commission's jurisdiction or closed for other reasons, or closed at board of inquiry or court levels.

**123**  
opened complaints during the year

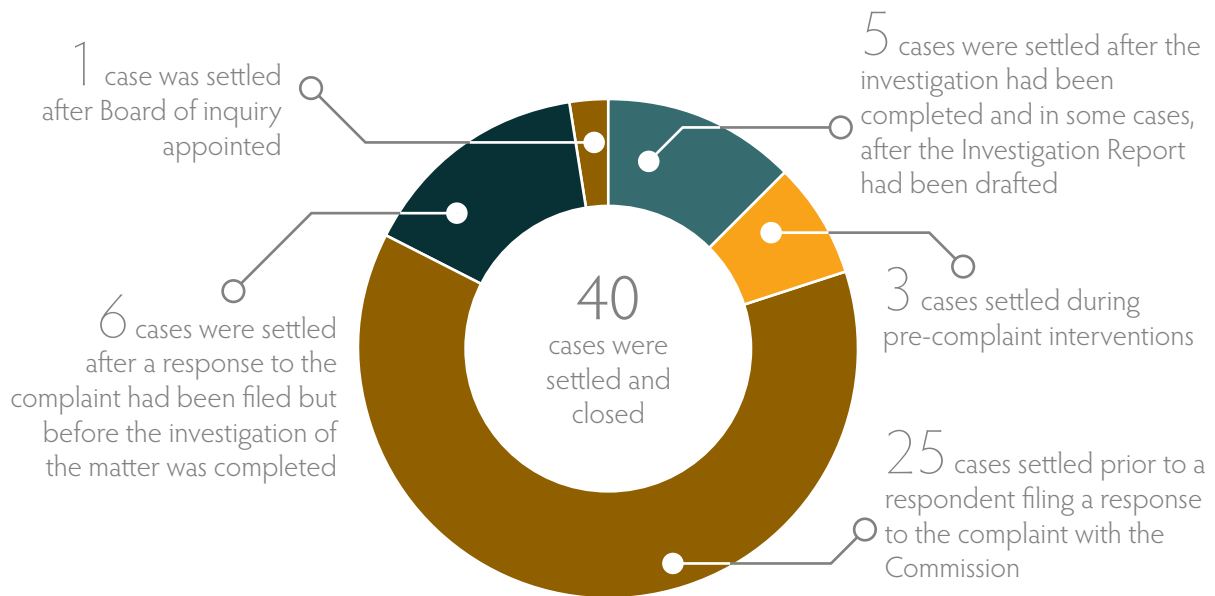
**96**  
closed complaints during the year



## Settlements for 2018-2019

A total of 40 cases were settled and closed, compared to 48 in 2017-2018.

The 40 cases involved 37 formal complaints and 3 pre-complaint interventions. Pre-complaint interventions are attempts by the Commission to mediate a dispute before a formal complaint is filed; such interventions are used in especially urgent situations or situations when there is an opportunity for a limited time to quickly resolve a dispute or to prevent a potentially discriminatory action from occurring. These 40 cases were settled at different stages.

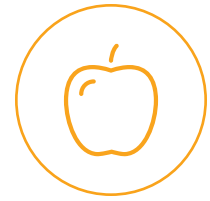


### Terms of settlement

When a case is settled, the mediation process can lead to many different desired outcomes, including the following:

- Over \$293,000 in total cumulative monetary settlements including \$266,550 in general damages;
- policy changes within GNB;
- accommodation through modification of work environment and creation of a welcoming workplace;
- training;
- employees reinstated.

# EDUCATION AND ENGAGEMENT



## Awareness

To reflect the evolution of the jurisprudence and as part of its mandate to develop and conduct educational programs designed to eliminate discriminatory practices, the commission published three new guidelines in 2018-2019. They offer the Commission's interpretation of rights and obligations in various situations of discrimination with various examples based on recent cases.

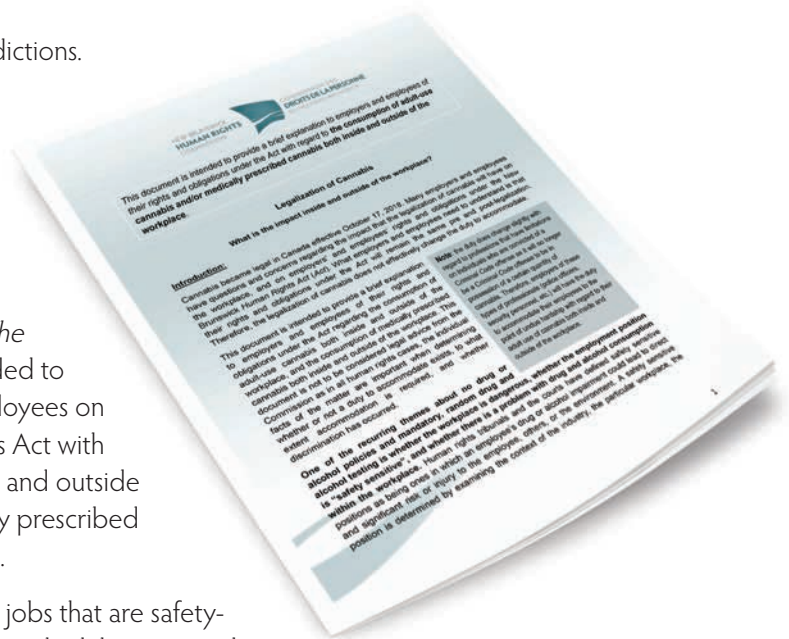
- Guideline on Sexual Harassment;
- Guideline on Social condition;
- Guideline on Cannabis, Alcohol, and Drug Addictions.

The list of Guidelines can be found in **Appendix E**

The commission also published a primer on the key considerations regarding the obligation to accommodate in the workplace.

The primer, titled *Legalization of cannabis: what is the impact inside and outside the workplace?*, is intended to provide a brief explanation to employers and employees on their rights and obligations under the Human Rights Act with regard to the consumption of cannabis, both inside and outside of the workplace, and the consumption of medically prescribed cannabis, both inside and outside of the workplace.

This primer also addresses important topics such as jobs that are safety-sensitive, addictions, medically prescribed cannabis and adult-use cannabis.



In early fall we had the opportunity to sit down with Tara Flood from the Alliance for Inclusive Education based in the United Kingdom. Mrs. Flood selected New Brunswick and Ontario as part of her research on examples of successful inclusive education and policy implementation.



From left to right, Tara Flood, Marc-Alain Mallet, Director and Sarina McKinnon, Legal Counsel and Head of Mediation Unit for the Commission

## Policy

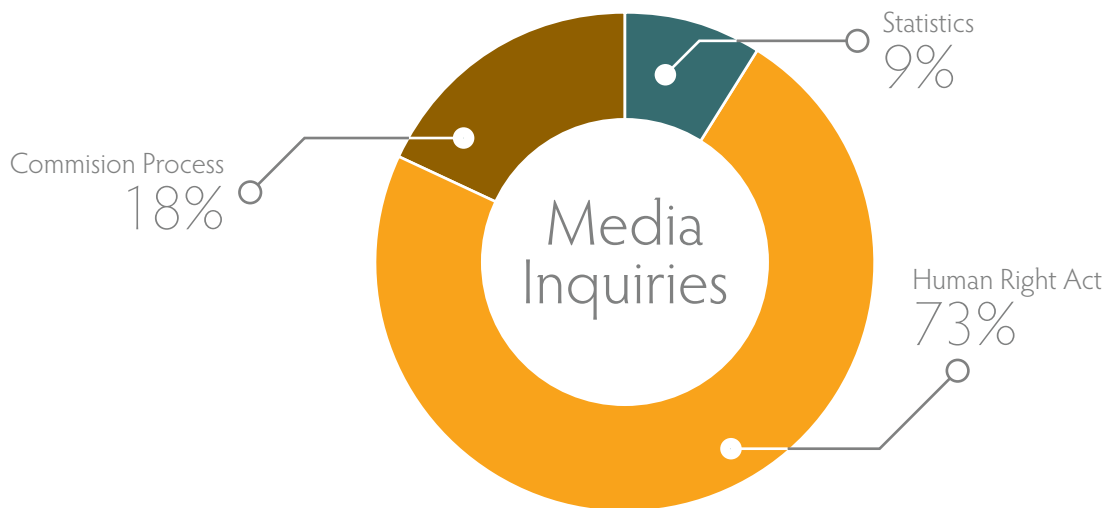
The Commission participated in several policy reviews. These have ranged from transgender policy in sports at schools to the GNB wide workplace harassment policy. Over the summer the Commission was asked to provide input in the design of a new survey by Statistics Canada and Status of Women Canada on sexual harassment and sexual assault or misconduct in the workplace. The one-time survey was being developed as a part of "It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence". The purpose of the survey is to address the lack of data on the prevalence and nature of sexual harassment and sexual misconduct in the workplace.

## 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. They are published on the Commission's website and distributed to the media and the Commission's stakeholders by email.

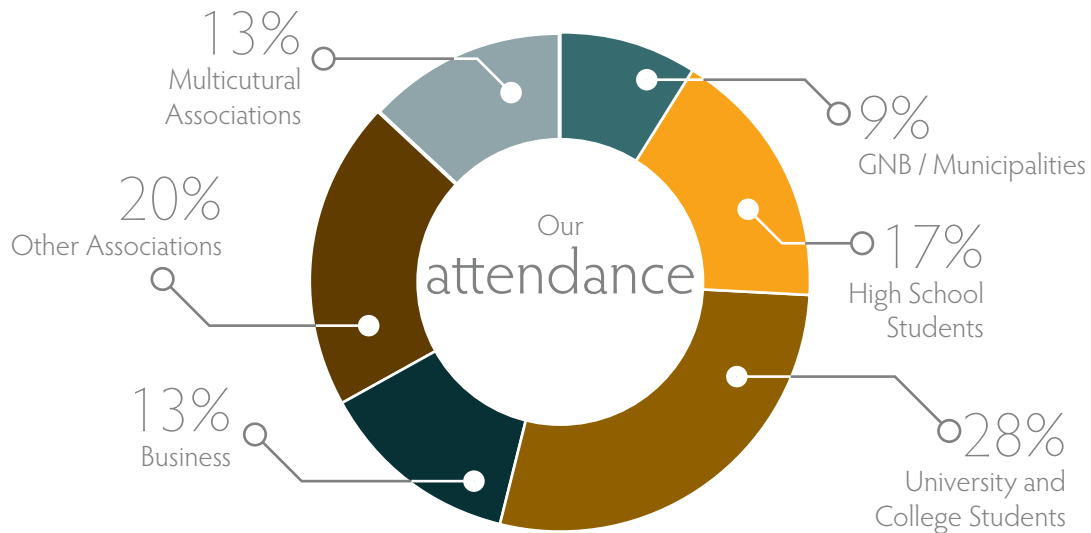
Ten releases or statements were published during the 2018-2019 fiscal year. They mainly focused on promoting the publication of guidelines published by the commission, Day for the Elimination of Racial Discrimination and human rights days.

The chairperson and the director were interviewed by the media on several occasions about human rights issues.



## Presentations and workshops

As part of its education mandate, the Commission is regularly making presentations to various groups such as professional associations and educational institutions. The Commission delivered 46 presentations or information sessions in 2018-2019. Two of the sessions were agreed to as a term of settlement of a human rights complaint.



## Who we sat down with

Twenty-five of the awareness presentations were delivered to students at universities, community colleges, business colleges, public schools and Workplace Essential Skills classes. In addition, five presentations were delivered to business employers and employees. Twelve information sessions were delivered to GNB employees, municipalities, multicultural groups and other associations.

The commission presented to  
**832**  
people.

The most requested presentations focused on a general introduction to the *Human Rights Act* (42 presentations), the duty to accommodate students with disabilities (2 presentations) and the duty to accommodate at work (2 presentations).

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

- discrimination in the workplace;
- best practices related to workplace dispute resolution and mediation;
- the duty to accommodate employees or students with a disability;



## Provincial activities

As part of the 2019 Respectful Workplace Week, the Commission's Legal Counsel was a keynote at the main conference entitled "Understanding and Acting on Rights and Responsibilities" where the focus was violence and harassment in the workplace. Attendance for this year was more than double previous years.

The Registrar was also a panelist on the "Violence and Harassment" session at the WorkSafeNB (WSNB) 2018 Health & Safety Conference where over 100 representatives attended from various workplaces across NB.



## National activities

The Commission is a founding member of the Canadian Association of Statutory Human Rights Agencies (CASHRA) and continues to play an active role within this organization. CASHRA was established in 1972 to foster cooperation and information-sharing between human rights agencies across Canada.

During the last year, the Commission continued to leverage its membership to CASHRA and through its participation on several working groups contributed to inform the decision-making on key files such as the CASHRA virtual class room and website, the Human Rights international obligations under the United Nations Declaration on the Rights of Indigenous Peoples and the Public Legal Education and Information project on Sexual Harassment in the Workplace.

CASHRA regular meetings are also an effective forum for Commissions to address operational matters, discuss statutory interpretation, and share leading practices among practitioners across the country.



NBHRC organized the first Manager's Forum as part of the Canadian Association of Statutory Human Rights Agencies' Annual Conference, Whitehorse, YK | June 2018

## Social media and other activities

Social media is an expanding component of the Commission's communication strategy. New Brunswick's legal community, business sector, human resources practitioners and citizens rely on the Commission's website for information, especially our guidelines. By linking with other member agencies of the Canadian Association of Statutory Human Rights Agencies, our website is also a gateway to developments in the field of human rights across Canada.

With **390** followers, our twitter account, @HRCNB\_CDPNB, has published **51** tweets generating **94,100** tweet impressions that generated interaction from others on Twitter.

Our Facebook account, @HRCNB.CDPNB, generated **173** likes with **32** publications and **9,477** impressions.

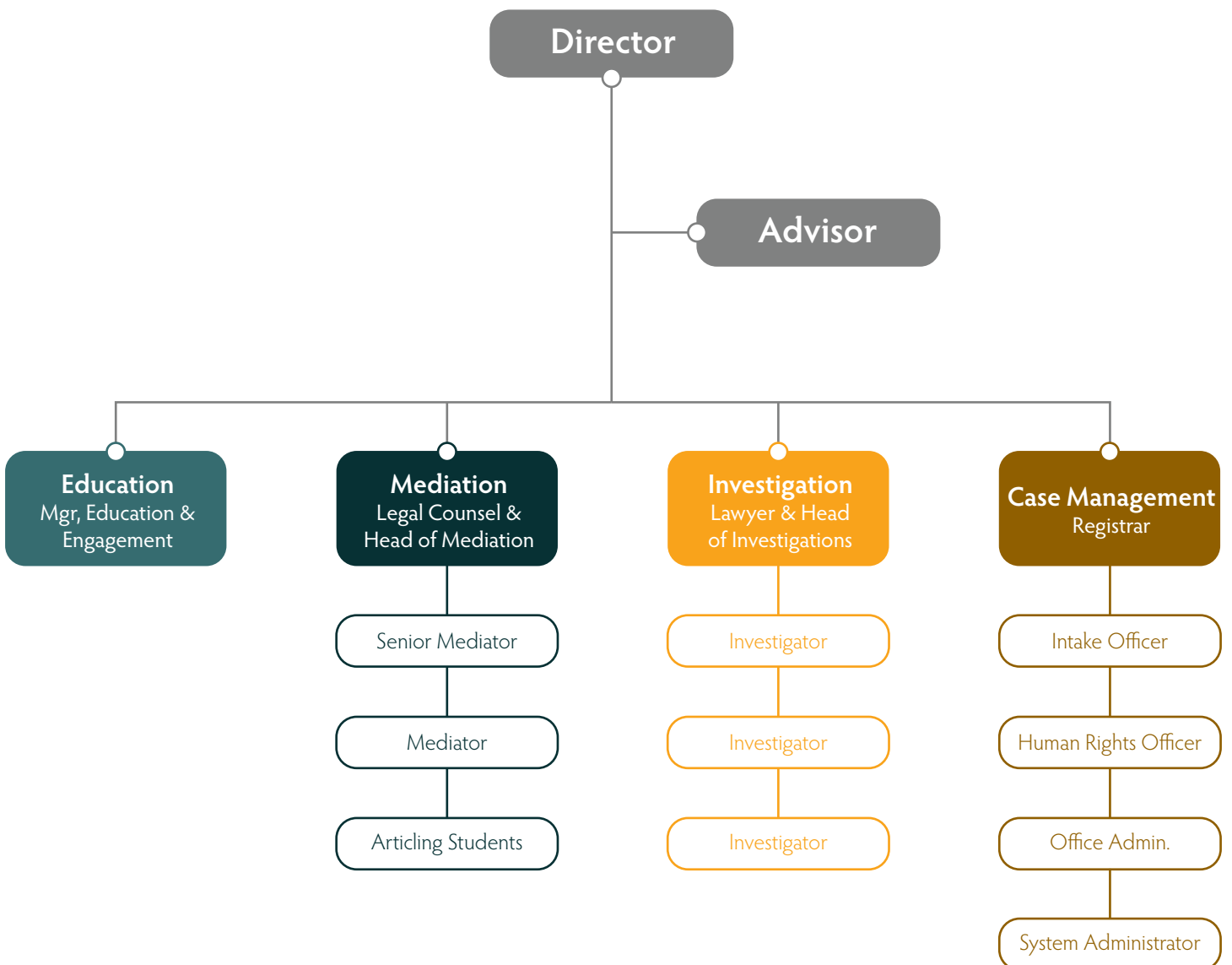


# APPENDICES



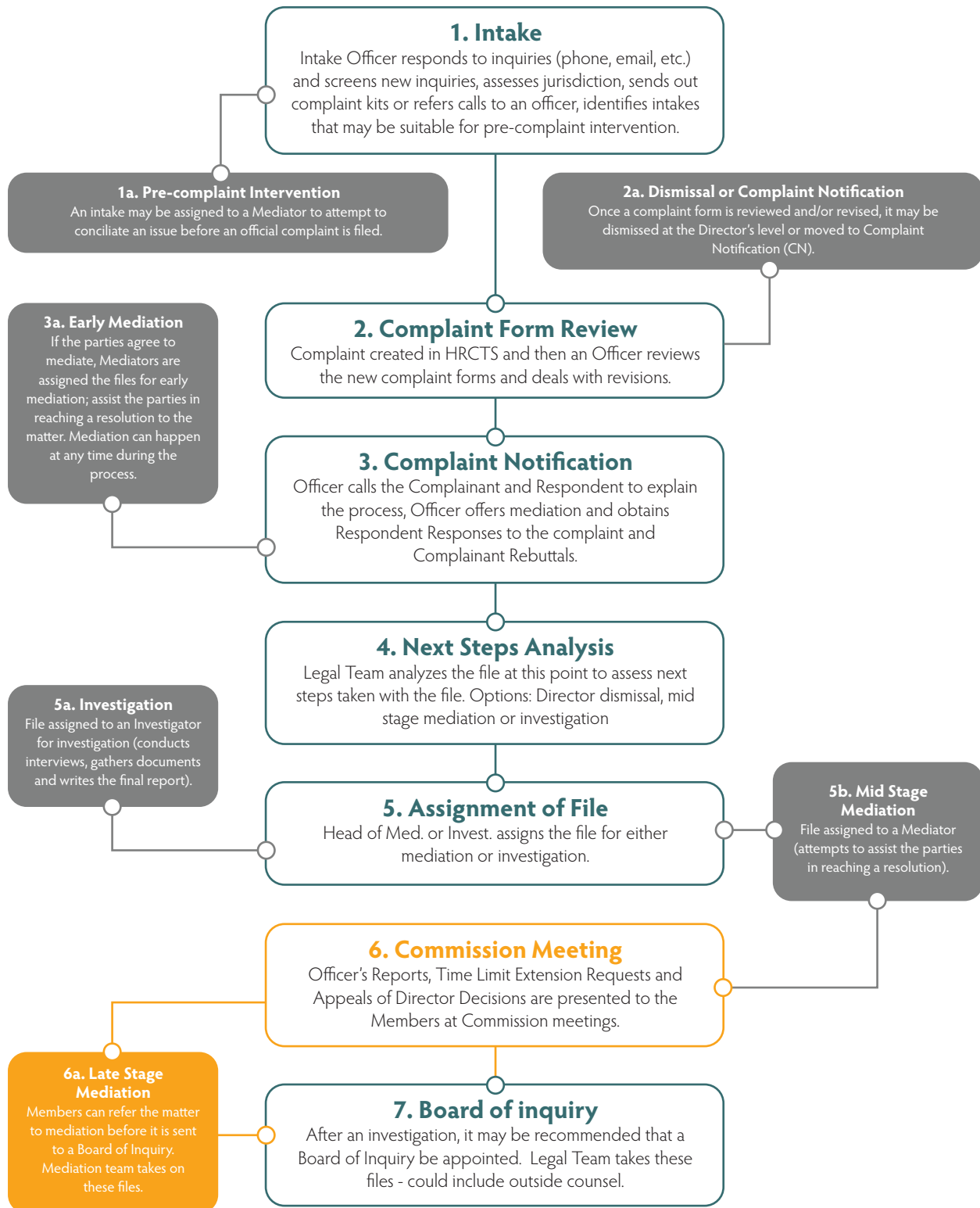
## Appendix A

### Organizational chart



# Appendix B

## Complaint process



## Appendix C

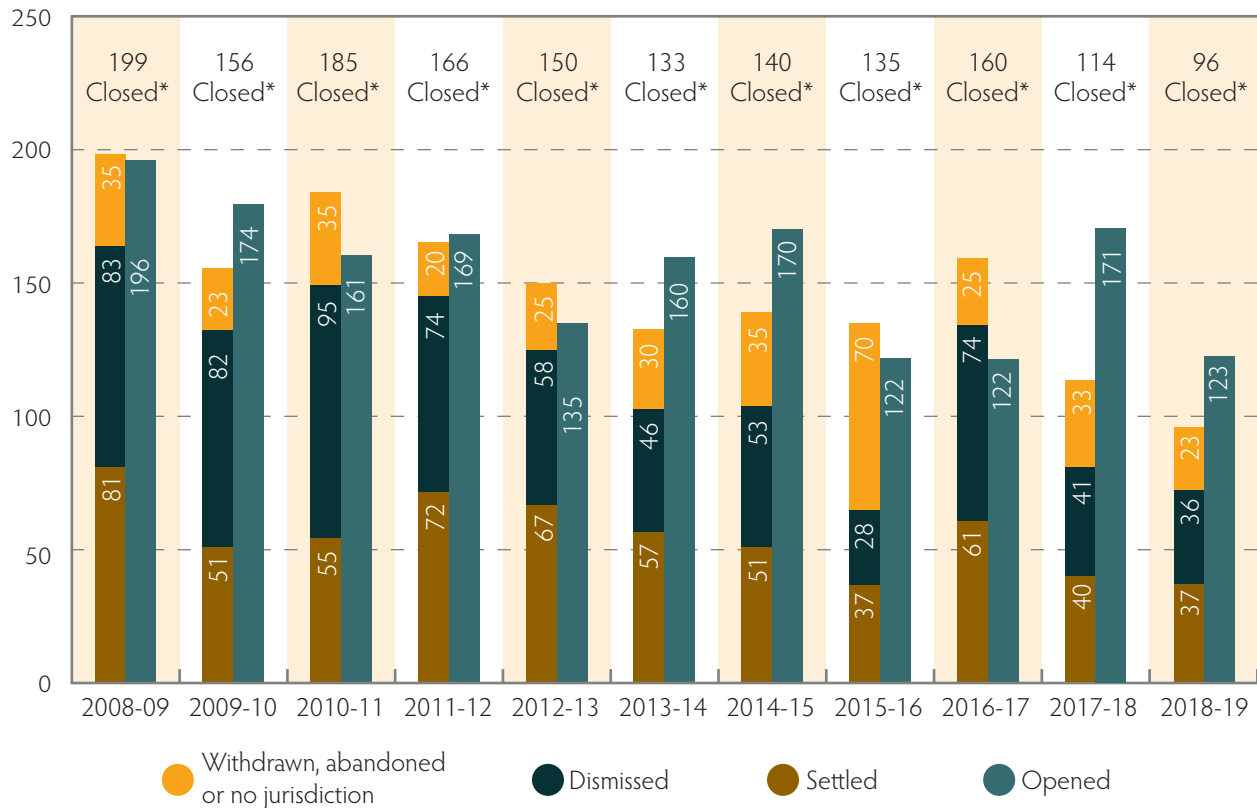
### New Formal Complaints\* by Ground and Activity April 1, 2018, to March 31, 2019

	Employment	Housing	Services	Publicity	Associations	Total
Physical Disability	46	0	12	0	0	58
Mental Disability	27	0	11	0	3	41
Race	8	0	7	2	1	18
Social Condition	4	0	9	2	2	17
Sex	9	0	3	0	2	14
Colour	6	0	4	2	1	13
Age	8	0	2	0	0	10
Place of Origin	4	0	3	1	1	9
Sexual Harassment	7	0	0	0	1	8
National Origin	3	0	2	1	1	7
Creed or Religion	0	0	5	1	0	6
Family Status	2	1	3	0	0	6
Reprisal	2	0	1	0	1	4
Sexual Orientation	3	0	0	0	1	4
Ancestry	1	0	2	0	0	3
Marital Status	1	0	1	0	0	2
Gender ID or Expression	0	0	2	0	0	2
Political Belief or Activity	0	0	0	0	0	0
<b>Total</b>	<b>131</b>	<b>1</b>	<b>67</b>	<b>9</b>	<b>14</b>	<b>222</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 (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 123 distinct, new, formal complaints.

## Formal complaints opened and closed\* 2008-2019

\* NOTE: Statistics for closed complaints are for formal complaints closed by the 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

	2018-2019 Main Estimates	2018-2019 Budget	2018-2019 Actual
Compliance and Prevention	\$1,211,921	\$1,211,921	\$1,049,940
Office of the Commission	\$58,440	\$58,440	\$44,465
Total	\$1,270,361	\$1,270,361	\$1,094,405

For detailed figures, please consult the supplementary information relating to the Department of Post-Secondary Education, Training and Labour in Volume 2 of the 2018-2019 Public Accounts.

## Appendix E

### Publications of the New Brunswick Human Rights Commission

#### Guidelines available on the Commission's website:

- Guideline on the Section 19(2)(f) Process (2017, 30 pages)
- Accommodating Disability at Work (2017, 25 pages)
- Accommodating People with Service Animals (2017, 20 pages)
- Accommodating Students with a Disability (K-12) (2017, 32 pages)
- Accommodating Students with Disabilities in Post-Secondary Institutions (2017, 13 pages)
- Delegation of Compliance Functions (2017, 4 pages)
- Guideline on Family Status (2017, 12 pages)
- Guideline on Gender Identity or Expression (2017, 9 pages)
- Time limit Extension for Filing a Complaint (2017, 4 pages)
- Guideline on Sexual Harassment (2018, 39 pages)
- Guideline on Cannabis, Alcohol, and Drug Addictions (2018, 42 pages)
- Guideline on Social Condition (2019, 22 pages)

#### Other publications

- Annual reports
- Accommodation at Work (reference manual) (2012)
- Additional publications are available on the Commission's website: [www.gnb.ca/hrc-cdp](http://www.gnb.ca/hrc-cdp)