



2020 ANNUAL REPORT 2021



NEW BRUNSWICK
HUMAN RIGHTS
COMMISSION

Annual Report 2020-2021
New Brunswick Human Rights Commission
Published by:
Human Rights Commission of New Brunswick

ISBN 978-1-4605-2853-2 (Bilingual print edition)
ISBN 978-1-4605-2854-9 (English version online)
ISBN 978-1-4605-2855-6 (French version online)
ISSN 1189-4423

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From the Minister to the Lieutenant-Governor

Her Honour 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 Fiscal Year 2020-21.

Respectfully submitted,



Trevor A. Holder
Minister Responsible for the Human Rights
Commission

From the Chair to the Minister

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

Dear Minister:

I am pleased to present the Annual Report of the New Brunswick Human Rights Commission, describing the Commission's operations for Fiscal Year* 2020-2021.

Respectfully submitted,



Claire Roussel-Sullivan, Chairperson
New Brunswick Human Rights Commission

*Fiscal Year indicates the period covering April 1, 2020, to March 31, 2021.

TABLE OF CONTENTS

Chairperson's Message	1
From the Director's Desk	3
Members of the Commission	4
Compliance	5
By the Numbers	7
Settlements Mediated by the Commission	14
Legal Affairs	18
Education and Communication	22
Appendices	24
A – Organizational chart	26
B – Complaint process	27
C – New formal complaints by allegations indicating grounds and activity	28
D – Formal complaints opened and closed, 2009-2020	29
E – Summary of expenditures	29
F – Publications of the Commission	30

CHAIRPERSON'S MESSAGE

It is my privilege as chairperson to table this annual report which highlights exceptional work and dedication over the past year by the members and staff of the New Brunswick Human Rights Commission. We worked diligently to administer the *New Brunswick Human Rights Act* in what was a challenging year for the Commission due to the global pandemic.



Claire Roussel-Sullivan

We strive to prevent discrimination and to provide an improved service to assist people settle complaints of alleged discrimination, while also adapting our programs and services to meet the challenges brought forward by the pandemic. In these unprecedented and challenging times, more people turned to us for answers than ever before. To help address this influx, the Commission expanded its training delivery approach and with enhanced technology, offered interactive information sessions via webinars dealing with a variety of important human rights topics.

As part of its education mandate, the Commission held 16 online workshops and education sessions to heighten awareness among employers and housing and service providers of their obligations and the public's rights and responsibilities under the Human Rights Act. We will continue to develop new

approaches for this area, and to assess our impact by monitoring key indicators so we can adapt our education programs to the needs of people in the province.

This year, 1786 New Brunswickers called upon one of the Commission's three offices. Of those intakes, 233 complaints were filed, containing 513 distinct allegations of discrimination. The complaints continue to originate mainly from the employment sector, and most were based on allegations that employers failed to provide reasonable accommodation for an employee's physical or mental disability. This data shows us that there is still much to be done when it comes to understanding accommodation obligations. For the first time, mental disability surpassed physical disability as a ground of alleged discrimination.



The Commission had the honour of presenting the New Brunswick Human Rights Award to two outstanding New Brunswickers in a virtual ceremony held in March 2021. For 32 years now, the Human Rights Award has highlighted New Brunswickers' major contributions to our province, and this year's recipients are no exception.

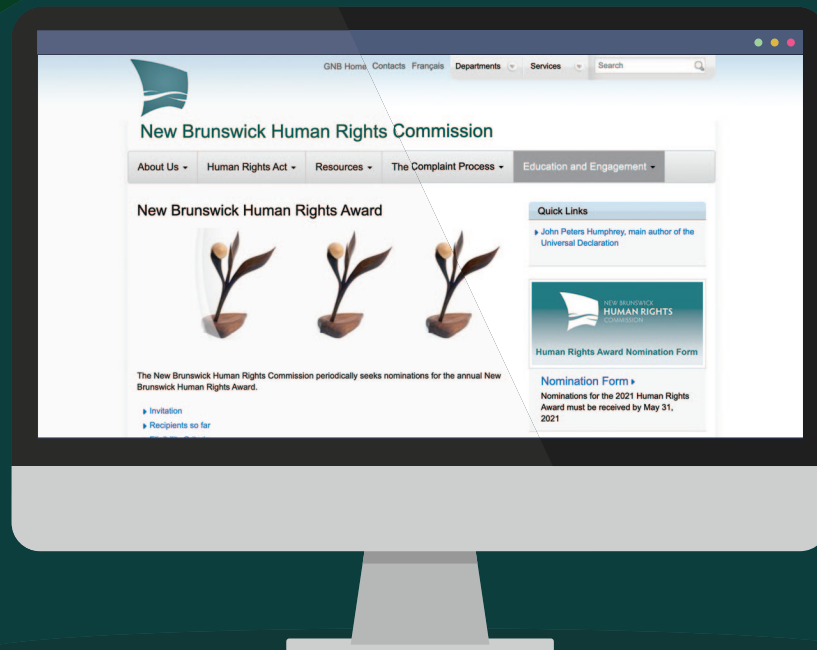
The New Brunswick Human Rights Award was presented to Claudette Bradshaw, of Moncton, who distinguished herself through her efforts, achievements, and exceptional leadership focused on the importance of helping victims of discrimination based on social status or family status.

The Youth Human Rights Award highlights young people who engage in promoting the values associated with human rights, such as respect, appreciation for diversity and the absence of discrimination. This year's recipient is Emma Coakley, of Saint John, in recognition of her dedication to making the people of her community aware of the topic of amputation, prostheses, the War Amps, and the PlaySafe program.

Finally, I want to acknowledge the support of the Minister and officials in the Department of Post-Secondary Education, Training and Labour. And, I also want to thank all New Brunswickers who contributed to making our province a welcoming and respectful place to live, work and play. The social fabric of our population has changed and is continuing to change. All of us need to feel like we belong so we can all reach our full potential. The effects of the pandemic will continue to surface and force us to adjust over the next while and we need to ensure that the New Brunswick we create is free of discrimination and is welcoming, respectful and accepting of all differences.



Claire Roussel-Sullivan
Chair
New Brunswick Human Rights Commission



FROM THE DIRECTOR'S DESK

The events of this past year have shown us that no level of foresight would have fully prepared us for the uncertainties created by the pandemic. And while it has been anything but business as usual, the Commission continued to deliver its essential mandate thanks in large part to its dedicated staff and members.



Marc-Alain Mallet

Each day brought on different challenges: from responding to a dramatic increase in complaints to addressing the many requests for information around human rights in a pandemic world.

Working together with the other Human Rights Commissions across the country, our newly created COVID team developed customized communications in response to the many inquiries from the public around human rights during a pandemic. Further, recommendations were provided to governments, employers, and the public on how to ensure human rights are protected in these uncharted waters.

The stories and statistics in this annual report provide an overview of the Commission's work this last year. And while we can expect a level of uncertainty for some time to come, my staff and I together with our newly appointed Chair, Claire Roussel-Sullivan, will continue the Commission's mandate and bring a heightened level of awareness around human rights to all New Brunswickers.

A handwritten signature in black ink, appearing to read 'Marc-Alain Mallet'.

Marc-Alain Mallet
Director and Secretary to the Commission

MEMBERS OF THE COMMISSION

In 2020-21, the Commission was comprised of:

- Claire Roussel-Sullivan, Chairperson
- Annie Guitard
- Charles Ferris
- Dorothy Thériault
- Jean-Claude Pelletier
- Kimberley Douglass
- Patricia Thomas-Arsenault
- Shelley Dumouchel

For biographical information about Commission members, visit the Commission's website: www.gnb.ca/hrc-cdp.



Claire Roussel-Sullivan



Annie Guitard



Charles Ferris



Dorothy Thériault



Jean-Claude Pelletier



Kimberley Douglass



Patricia Thomas-Arsenault



Shelley Dumouchel

COMPLIANCE

Complaint process

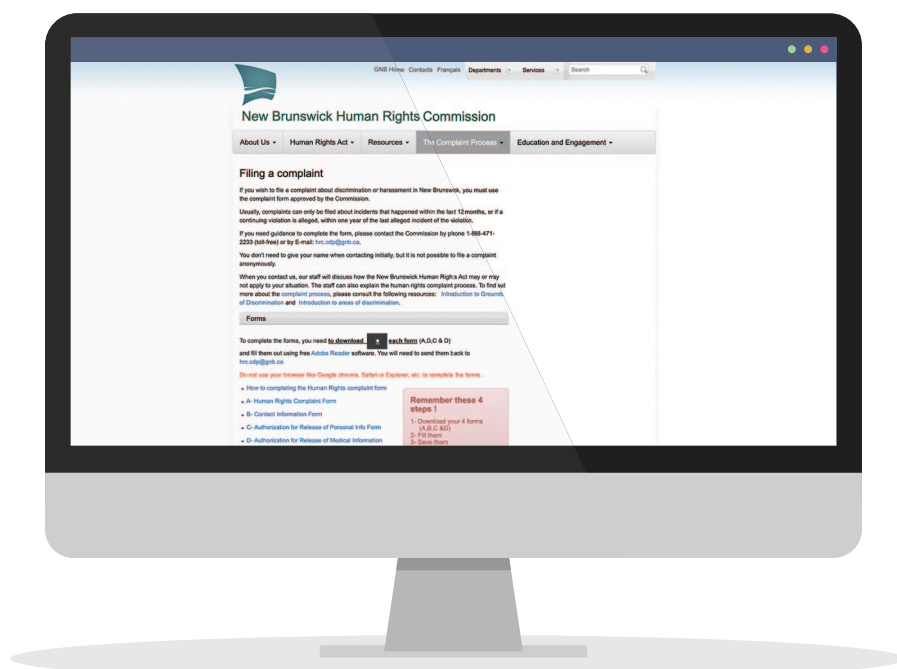
Each year the Commission helps thousands of New Brunswickers find the most efficient way to address their human rights concerns or to obtain information about their human rights. Many times, the Commission is successful in helping individuals resolve their issues at the earliest stages of the process, or it directs them to the appropriate organization that has jurisdiction to address their issue.

Under the New Brunswick Human Rights Act, all persons are protected against discriminatory treatment if the discrimination is linked to one or more of the 16 grounds listed in the Act, or if it relates to sexual harassment or to reprisals against individuals for contacting the Commission. The areas or activities in which discrimination is prohibited are employment, housing, services, advertisements or publications, and membership in business or trade associations.

The Commission safeguards the public interest, and its core objective is the protection of personal human dignity. Persons who contact the Commission are treated with utmost respect and empathy, and the information they share with the Commission stays private and confidential. We listen to all persons, whether they reach us by phone, email, online, or in-person, and as a first step, we determine whether a person has legal basis for a human rights claim, and whether the Commission is the right organization to address their concern.

If the Commission determines that it has cause to investigate an issue, we contact all parties to the complaint and propose early or Pre-complaint Intervention (PCI), to resolve the matter before the initiation of a formal complaint. If the PCI is unsuccessful, the complainant is directed to file a formal complaint, either in a paper form mailed to them with a complaint kit, or through the Commission's new online complaint form.

For details on the steps involved in the complaint process, see **Appendix B**.



Operations

In April 2020, the Commission improved accessibility to its complaint process by making the complaint form and all required documentation available on the Commission's website. Complainants can now retrieve the forms and file them entirely online. In addition to enhancing accessibility, this measure helped reduce the number of phone inquiries by 10 percent, compared to last year, and also led to a decrease in the number of complaint packages the Commission sent out by mail.

The Commission is also developing a self-assessment tool or wizard, which will guide potential complainants through a step-by-step process to determine whether their complaint falls under the Commission's jurisdiction. Once the wizard is available on the Commission's website, it will help the Commission further streamline its complaint process.

This year the Commission shouldered the additional responsibility of continually responding to the uncertain situations triggered by the Covid-19 pandemic, and to assess the human rights implications of government regulations regarding service closures, mandatory vaccines, and mask mandates.

To assist the public in understanding its human rights during an emergency and health crisis, the Commission issued a series of FAQs and statements, responded to hundreds of queries, and kept its social media pages updated with the latest developments and information.

Furthermore, as a government entity, the Commission continued to coordinate its operations and service delivery in accordance with the province's pandemic guidelines, Covid-19 operational plans, and health and safety regulations.

NEW BRUNSWICK HUMAN RIGHTS COMMISSION

Human Rights Complaint Form

To complete this form, you need to download this form first and fill it out using free Adobe Reader software. You will need to send it back to hrc.cdp@gnb.ca. Be sure to complete all sections of the form. Contact the Commission if you need guidance to complete the form. See the Completing the Human Rights Complaint Form guide available on our website to help you to complete this form.

For office use only
Date received

12850

Section A – Your name (You are the Complainant)

First Name	Last Name

ONLY complete this box if you are filing ON BEHALF of someone else.

First Name	Last Name

You are the: Parent Legal Guardian/Guardian Power of Attorney

For office use only	
HRC File Number	Section(s) # of the HRA
Area(s) of Discrimination	Ground(s) of Discrimination
Comments	

Entered by	Entered date	Total number of pages

Version 2020.08.25

1

BY THE NUMBERS

The Commission responds to all inquiries and reviews every complaint it receives. Many complaints are resolved informally at the earliest stages or referred to the appropriate dispute resolution process.

The numbers in this section show a breakdown of inquiries and complaints received this year, how they were processed, and how many were settled, investigated, or closed. The section also provides statistics for grounds and areas of discrimination under which complaints were filed, with comparative numbers from previous years, to identify shifts or emerging human rights trends in the province.

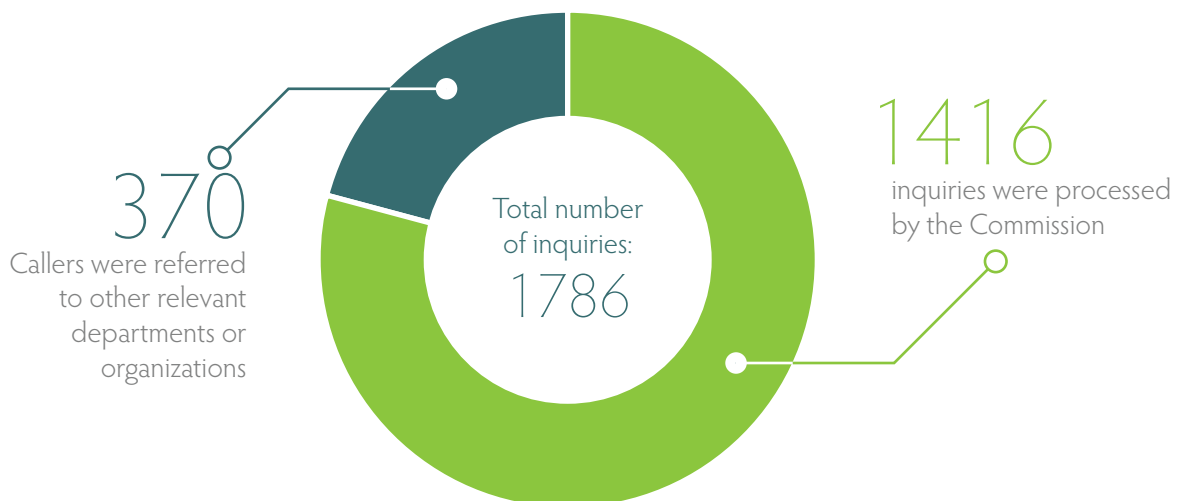
Number of inquiries and complaints received by the Commission

1786
people contacted the Commission to inquire about a human rights issue or file a complaint

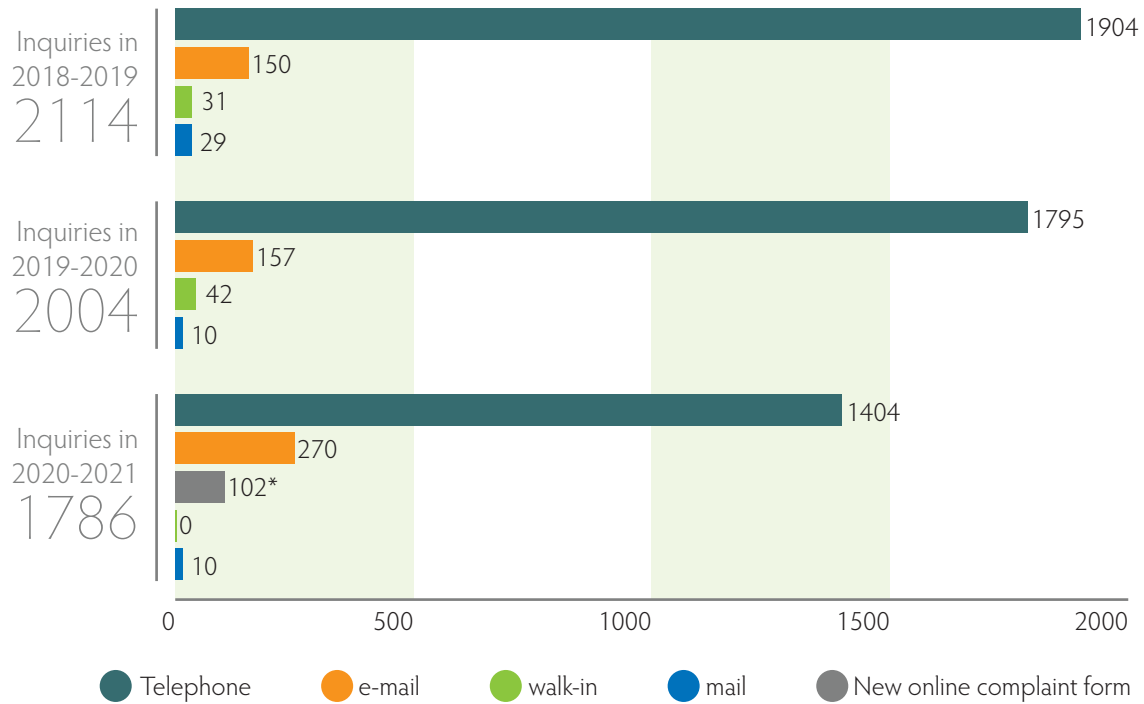
233
complaints were filed with the Commission

Many inquiries were addressed by the Commission without a complaint being filed

Commission staff assess all inquiries carefully, and, when an issue does not fall under the *Human Rights Act*, direct individuals to the relevant agencies that have jurisdiction to address their concerns. Through this vetting process, we guide New Brunswickers to the appropriate channels to pursue their concerns, and we screen the Commission's complaints dossier from non-jurisdictional inquiries at the initial stages of the process.

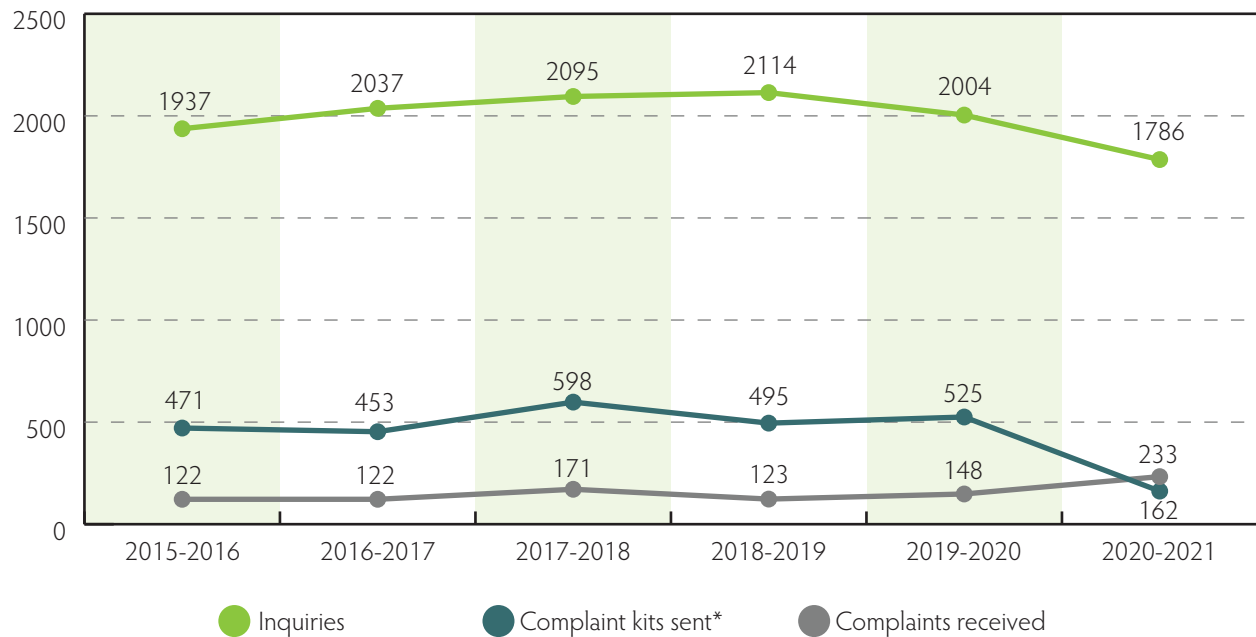


Number of inquiries per year and how they were received



*Already this year upward of hundred persons reached the Commission through the new online complaint form, decreasing the Commission's volume of phone inquiries by more than 10 percent. As this trend continues, the Commission's efforts to modernize its complaints process would continue to evolve.

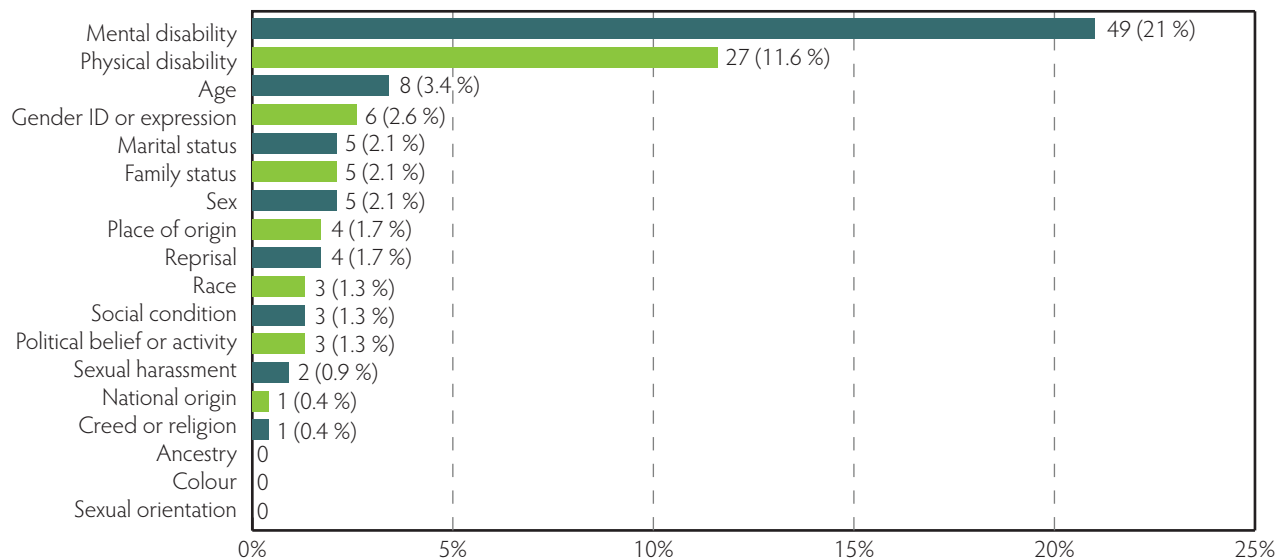
Number of inquiries received, complaint kits sent, and complaints filed



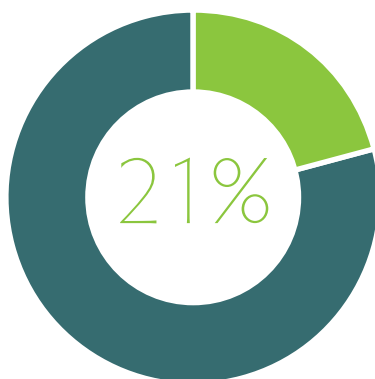
*As a result of the online complaint form introduced in April 2020, the Commission sent out significantly fewer physical complaint kits this year.

Grounds under which complaints were filed this year*

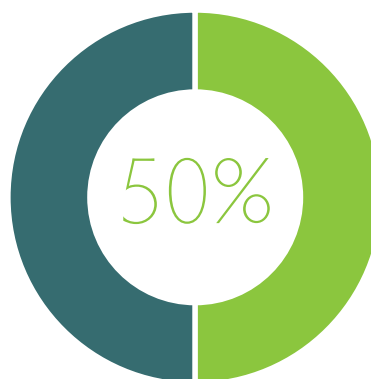
Of the 233 complaints filed with the Commission, 107 were filed on multiple grounds and are not depicted in the following graph.



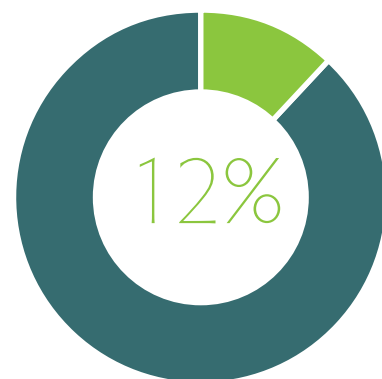
Emerging trends in complaints filed this year



21 percent of complaints in 2020-21 related to **mental disability**



50 percent of complaints in 2020-21 cited **more than one ground of discrimination**



12 percent of complaints in 2020-21 related to **physical disability**

Most complaints received by the Commission this year related to mental and physical disability. As in the previous year, complaints based on mental disability surpassed physical disability complaints, indicating an emerging trend that may have exacerbated in 2020-21 due to the uncertainties and disruptions of the pandemic.

Additionally, half of the complaints received by the Commission involved an intersection of grounds, endorsing the fact that persons disadvantaged by multiple grounds are more vulnerable to discriminatory treatment. Intersectional complaints tend to be more complex, and they require more extensive analysis and review by Commission staff.

*For more details on complaints by grounds and activity, see **Appendix C**.

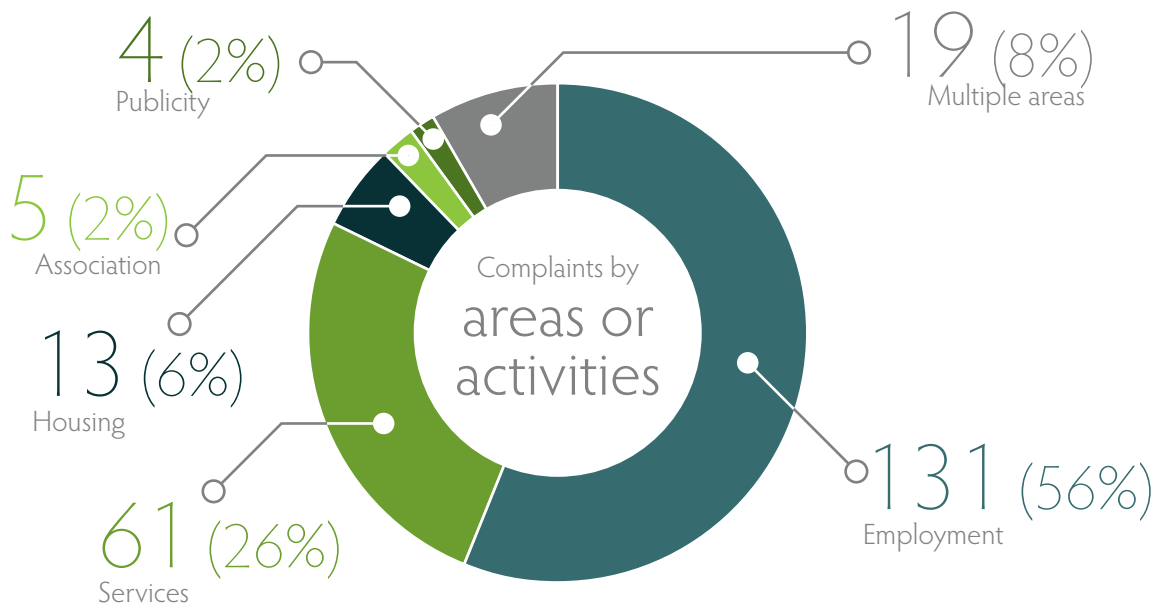
Areas of discrimination

As in previous years, most complaints accepted by the Commission in 2020-21 related to employment and services, 56 percent complaints being employment related and 26 percent dealing with services.

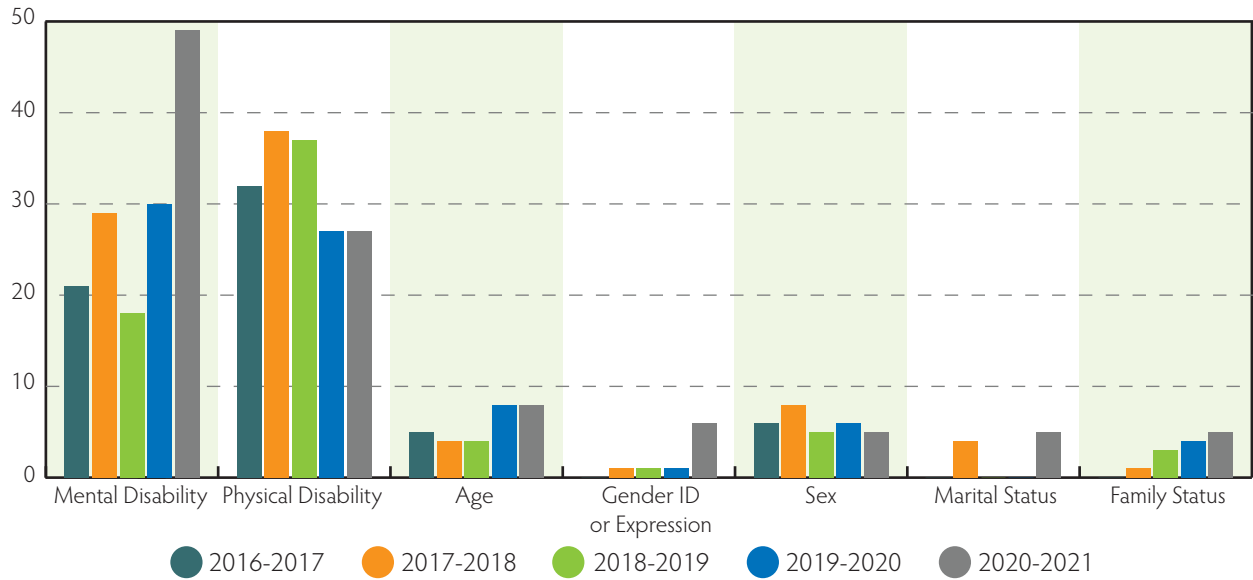
131 (56%)
Complaints related to employment

61 (26%)
Complaints related to services

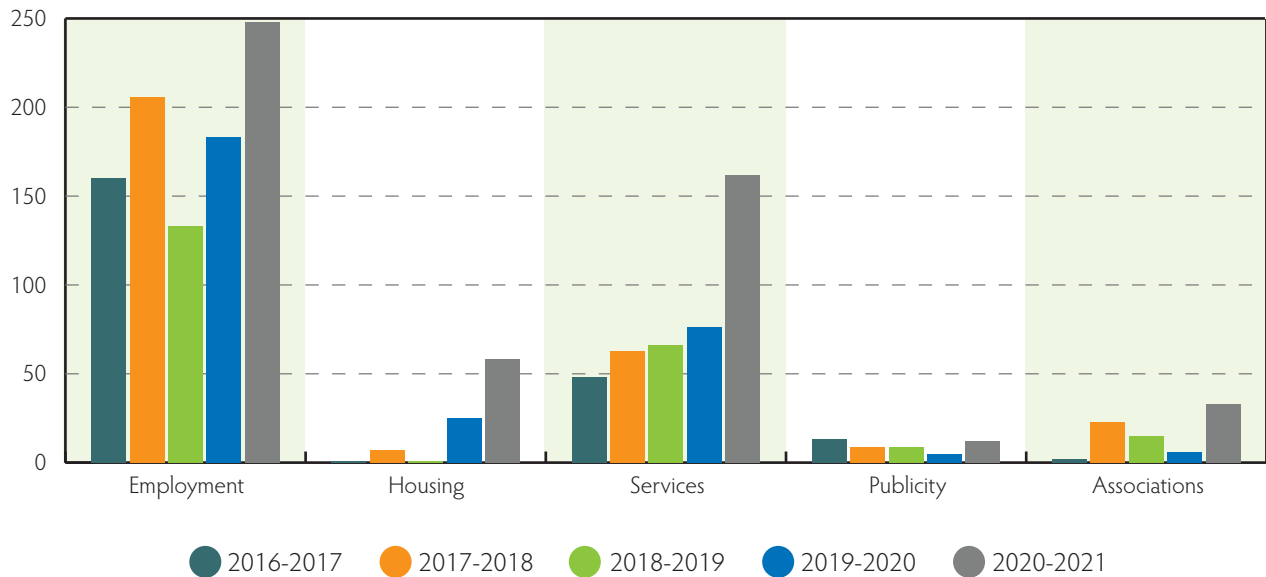
Furthermore, 34 percent of all employment related complaints involved alleged discrimination based on a physical or mental disability, while 38 percent of all services related complaints involved alleged physical or mental disability discrimination, endorsing the pattern of escalation in disability based complaints noted this year.



How complaints filed this year compared to complaints from previous years based on grounds of discrimination*



Allegations of complaints based on areas or activities



*More granular data on other grounds of discrimination is available on the Commission website.

Number of filed, resolved, and active complaints, 2020-21*

233
complaints filed
this year

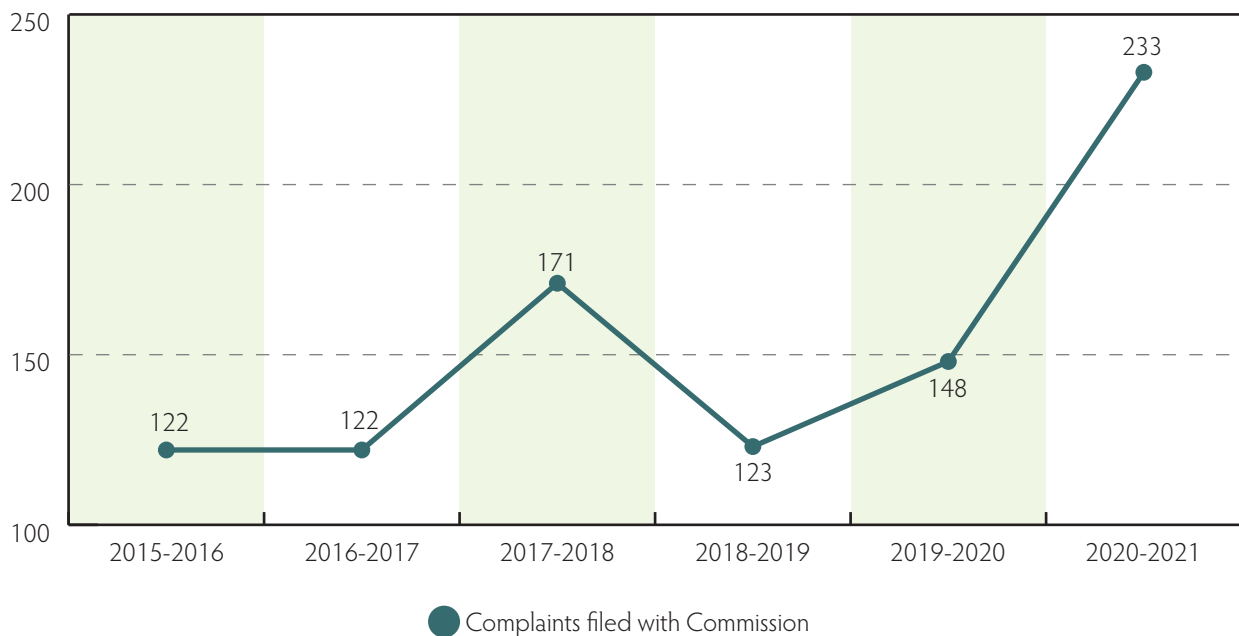
249
complaints
resolved this year

236
total active complaints
at year end

This year the Commission confirmed 233 new complaints, which was a significant increase from the 148 complaints filed last year. The high complaints volume stretched the Commission's resources and impacted its endeavors to bring down the complaints backlog accumulated over the years.

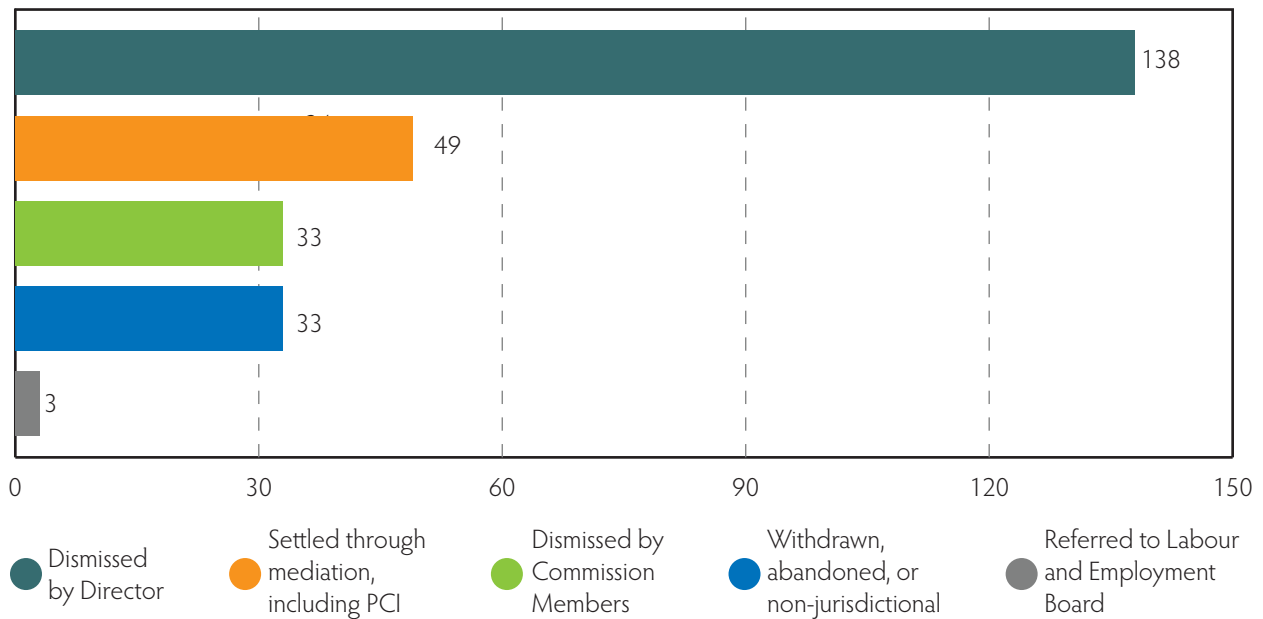
Despite these pressures, which were aggravated by the constant stream of inquiries related to the restrictions of the pandemic, the Commission successfully resolved 249 complaints this year, which is a substantial increase from the 146 complaints closed last year, and shows the positive impact of enhanced process improvement and service delivery measures introduced by the Commission during this and previous years. However, the year ended with a backlog of 236 active complaints, which continues to be a concern, as it impacts the Commission's efforts to instill efficiency in fulfilling its mandate and puts constant strain on its resources and personnel.

Number of complaints filed with the Commission increased exponentially in 2020-21



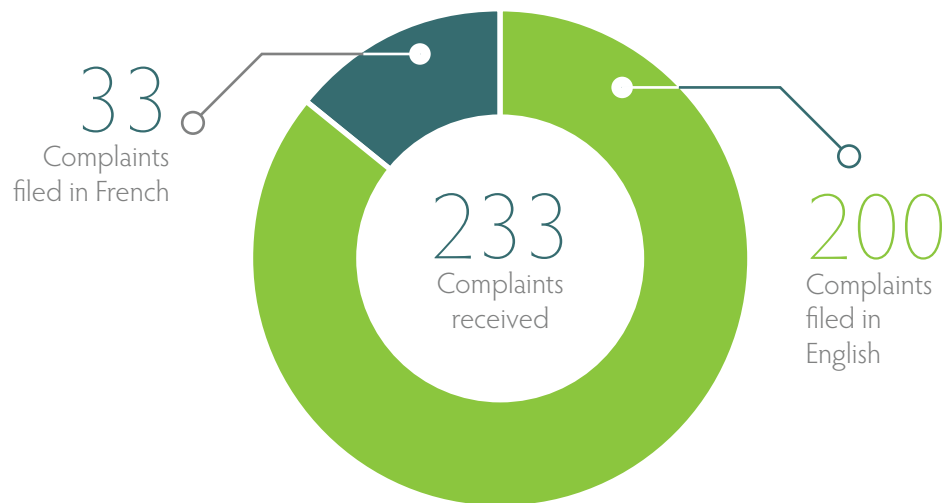
*For a comparison with complaint numbers from previous years, see Appendix D.

How the complaints were closed



A significant number of complaints were dismissed for being without merit, which determination the Commission makes after vigorous legal analysis of each complaint. Additionally, in its role as a quasi-judicial body, the Commission acts as mediator between parties, and guides them to mutually consented settlement agreements. For information on complaints settled by the Commission this year, please see this Report's settlement section.

Language of complaints



SETTLEMENTS MEDIATED BY THE COMMISSION

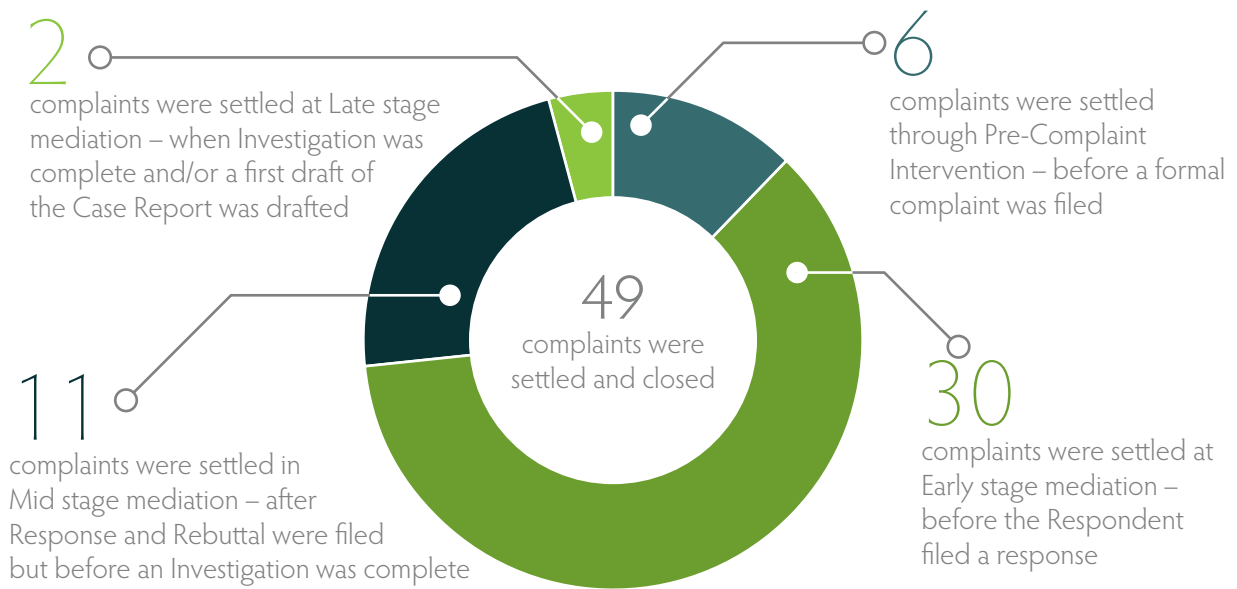
When a complainant files a human rights complaint with the Commission, the Commission provides mediation services free of charge at all stages of the complaint cycle, wherein the Commission assists parties to settle their dispute by mutual agreement.

In 2020-21, the Commission settled and closed a total of 49 complaints, compared to 48 settlements it facilitated in 2019-2020.

The Commission offers mediation services throughout the compliance process, where a staff member, acting as a neutral third party, assists parties to resolve a complaint as early as possible. Mediation is completely voluntary and is considered a good faith approach to resolving an issue. The mediation process is also confidential and without prejudice to either party.

Mediation settlements can include monetary compensation, such as general damages (compensation for injury to dignity, feelings, or self-respect) and/or special damages (compensation for expenditures, financial losses, or deprivation of benefits). Settlements can also include non-monetary compensation, for example a letter of apology to the complainant, human rights training for the organization/individuals involved, and/or a change in the organization's policies and procedures.

This year too complaints were settled at various stages of the proceedings, including at Pre-complaint Interventions (PCI). In a PCI, the Commission attempts to mediate a dispute before a complainant has filed their formal complaint with the Commission. These interventions are particularly effective when there is still a limited time window to resolve a dispute before it aggravates into a potential discriminatory situation.



Terms of settlement

A settlement typically may include monetary awards, general damages, or other considerations. In the 49 settlements completed this year, the Commission was successful in achieving the following outcomes:

- Over \$179,855 in total cumulative monetary settlements including \$160,600 in general damages
- Letters of recommendation
- Reinstatement of employees with letter of apology
- Accommodation of employees through modified work schedules and a welcoming work environment
- Human rights training provided to employers and employees by the Commission

Successful mediations overseen by the Commission resulted in \$179,855 awarded cumulatively toward monetary settlements, including \$160,600 in general damages

Settlement stories: Persons we helped through our mediation process

All names in these stories have been changed to respect the privacy of complainants.

Family status and age discrimination housing complaint successfully mediated

Jack's story: Jack lived with his partner in a building complex designated "mature only". When they were expecting a child, Jack advised the landlord of the anticipated change in their family. Because of the building's mature-only policy, the landlord asked the couple to move out of the apartment. Additionally, even though Jack was in a month-to-month lease, the landlord asked him to give 60-days notice, in violation of the *Residential Tenancies Act* – this also meant that the couple would have to pay a month's rent for the new apartment they had booked while they waited for the notice period to end.

Jack contacted the Commission and the Intake Officer recommended pre-complaint intervention (PCI) for early resolution of the issue. The PCI was unsuccessful, and Jack filed a formal human rights complaint, citing age and family status discrimination in housing.

Resolution: The Commission eventually resolved the complaint in mediation, and the landlord compensated Jack with general damages for injury to dignity, feelings, and self-respect. He also agreed to waive the last payment on the lease, so Jack was also able to end his lease early, and his family moved to their new apartment without paying extra rent.

Age discrimination complaint addressed in mediation

Kelsey's story: Kelsey, a part-time worker at a large retail store, worked very few shifts and wanted to increase her hours. While her manager stated that the hours of all other workers had been similarly reduced due to the pandemic, Kelsey felt that the employer doubted her capabilities because of age-based stereotypes. Moreover, the store hired a younger worker for the same position and immediately assigned them near full-time hours. Kelsey also felt neglected in training opportunities, compared to younger employees.

After she developed COVID symptoms, her shifts were reduced further and even though her test came back negative. When they met to discuss the issue, her manager made discriminatory comments about her age. She raised these issues with the store's human resources, but nothing was done to address her concerns. Later, the employer offered her a temporary layoff due to the store's reduced hours, which she accepted because of the tense workplace situation.

Resolution: Kelsey filed a human rights complaint with the Commission, alleging age discrimination in employment. In mediation, the employer agreed to compensate Kelsey with special damages equaling two weeks' pay for her termination. Additionally, the company agreed to provide anti-discrimination training to all managers, as part of their internal diversity, equity, and inclusion program.

Intersectional complaint resolved at mediation

Martin's story: Martin is in his early 20s and identifies as LGBTQIA2S+ and visible minority. He joined a company that provided services to local businesses and government agencies, and during his probation, he was placed in a government agency. At the agency he felt uncomfortable from the start because some employees made homophobic comments which were permitted by the management.

Martin complained to the company manager about his treatment at the agency, but the manager failed to rectify the situation. Martin felt that he was being treated differently because of his race and sexual orientation. The company did not renew Martin's contract after the probation, claiming that he did not fit the job profile.

Resolution: Martin filed a human rights complaint alleging discrimination in employment based on race, national origin, colour, age, sex, and sexual orientation. As a result of mediation, the company agreed to compensate Martin by paying damages for injury to personal dignity, feelings, and self-respect. Martin accepted the offer, and the matter was resolved.

Covid-19 mask complaint resolved in mediation

Maria's story: Maria has a physical disability that prevents her from wearing a mask. Maria went to a large retail store wearing a mangle mask (resembling a face shield), to respect the mask mandate while complying with her limitation.

The store manager and a couple of employees advised her that customers were not allowed in the store with a mangle mask. Maria presented the medical note that confirmed her medical exemption from wearing a mask. However, the manager insisted that the store did not accept medical exemptions and asked her to leave, but when Maria later called the store's customer service line the agent agreed that the manager should have accommodated her medical exemption. Maria filed a formal complaint with the Commission, alleging physical disability discrimination in services.

Resolution: Due to the Commission's mediation, the retailer agreed to issue a formal letter of apology to Maria and to comply with the Act in the future. The file was closed as result of a successful settlement.

Resolution reached on housing rights issue involving a service animal

Brenda's story: Brenda was in the process of purchasing a mini home and applied for lease of the land where the home was located. Her lease was denied because Brenda's child had a service dog that did not meet the community's sizing requirements for pets. The denial of the lease meant that the family would lose the opportunity to purchase the home, as the deadline for the sales contract was close.

Brenda contacted the Commission and the Intake Officer referred the matter for PCI for a quick resolution, as the issue was time sensitive and the purchase date was approaching.

In Pre-complaint Interventions, the Commission negotiates a settlement before a formal complaint is filed – such resolutions are particularly effective in time-sensitive complaints, which are resolved before they aggravate to more egregious circumstances.

Resolution: Commission staff contacted the community's regional manager, explained the difference between pets and service animals under the Act, and offered assistance in resolving the issue through a PCI.

PCI was successful and the housing community agreed to approve Brenda's lease application and to allow the service animal in the home. Brenda agreed that the service dog would not be left unattended when outdoors and would always wear a service vest. She also agreed to advise her immediate neighbours that her dog was a service animal.

Swift resolution of an employment dispute

Lorenzo's story: Lorenzo worked with a company that provided services to local businesses and government agencies. He was assigned to a local agency but was not receiving any breaks during his shifts. This was not only contrary to the *Occupational Health and Safety Act* but was particularly risky for Lorenzo because he needed breaks to administer medication for a health condition. Lorenzo contacted the Commission for advice on his rights, and the Intake Officer referred the matter to PCI.

Resolution: A staff member contacted Lorenzo's employer and apprised them of the Commission's PCI process. The employer stated that it was working with the agency to ensure Lorenzo received the required breaks, and we advised the employer to notify us of the outcome should further intervention be required. The accommodation was worked out with the agency and Lorenzo began to get appropriate breaks from work.

LEGAL AFFAIRS

In 2020-21, the Commission referred three complaints to a Board of Inquiry after completing its investigation.

Boards of Inquiry

After completing its investigation of a complaint, and when parties to the complaint have been unable to reach a settlement, if the Commission determines that the complaint constitutes an arguable case of discrimination, it refers it for adjudication to the Labor and Employment Board, a Board of Inquiry established under the *Labour and Employment Board Act*. In proceedings before the Board, the Commission represents the public interest and has carriage of the complaint.

Below is a snapshot of the three complaints referred to the Board this year.

Employee mandatorily retired at age 65 alleges age discrimination in employment

In the first complaint referred this year by the Commission to a Board of Inquiry, the complainant alleged age discrimination in employment against her employer and union. The complainant was mandatorily retired from her position when she turned 65, based on a mandatory retirement provision contained in the employer's Collective Agreement. The complainant argued that the mandatory retirement provision of the Collective Agreement was discriminatory based on the protected ground of age; the respondents maintained that the provision was protected by Section 4(6)(a) of the NB *Human Rights Act*, which permits mandatory retirement in *bona fide* retirement or pension plans.

After conducting its investigation, the Commission determined that the employer's Collective Agreement did not meet the definition of a *bona fide* retirement or pension plan envisaged in the *Human Rights Act* and the complainant had established an arguable case of age-based discrimination. The matter is pending before a Board of Inquiry.

Employee alleges discriminatory treatment in employment based on mental disability

The complainant was struggling with depression and anxiety and her doctor prescribed a one-week medical leave from work. When she returned to work, her employer reprimanded her for being absent and complained that the work of the company was suffering because of employee absenteeism. The next day the employer terminated the complainant's employment, and she filed a human rights complaint with the Commission alleging mental disability discrimination in employment.

The employer argued that the complainant did not properly inform them of her need for mental disability accommodation and that she behaved toward them in a disrespectful manner, which culminated in her termination.

After conducting a thorough investigation, gathering all the evidence, and interviewing witnesses, the Commission determined that mental disability was a factor in the complainant's dismissal and the complainant had established an arguable case of discrimination. The matter was referred to a Board of Inquiry for adjudication and was still pending before the Board when the fiscal year closed.

Complainant alleges sex discrimination in terms and conditions of employment

The complainant alleged that her employer discriminated against her based on her sex because she was treated differently from her male colleagues in assignment of work duties, participation in certain job functions, and frequent changes in work shifts.

The complainant stated that because of the differential treatment she experienced anxiety and doubts about her competence, suffered loss of seniority in employment, and was disadvantaged in her pay scale. She alleged that her male colleagues were not subjected to the same treatment or disadvantage, and even male colleagues who were junior to her were given preference over her in certain aspects of the job.

The respondent denied discriminating against the complainant based on sex, asserting that she enjoyed equal opportunities for work and promotion and her shifts were only moved for the benefit of better work-life balance.

After conducting its investigation, including review of all evidence and interviews of witnesses, the Commission closed certain aspects of the complaint that were filed outside the one-year time limit and did not meet the criteria for a time limit extension, but accepted other allegations filed outside the time limit as constituting a continuing violation of the *Human Rights Act*. The Commission also determined that the complainant had established an arguable case of discrimination for parts of the complaint filed within the prescribed time limit for filing complaints. The matter is awaiting adjudication by a Board of Inquiry.

Judicial Review

NB Court of Appeal upholds Commission's administrative process and dismissal of complaint under Section 19(2)(a)*

The Appellant worked as a library assistant and turned 65 when she was on a prolonged sick leave. During this time, the Respondent restructured its library services, which resulted in the Appellant's position being eliminated. When her leave ended, the Appellant refused the Respondent's offer of a part-time job and did not apply for a new library position the Respondent had posted. The Appellant filed a human rights complaint with the Commission, citing age discrimination in employment.

After thorough investigation of the facts and all submissions of the complaint, the Commission concluded that the complaint was without merit and dismissed it pursuant to Section 19(2)(a) of the *Human Rights Act*.

The Appellant filed a judicial review application against the Commission's decision, in which the reviewing judge upheld the Commission's dismissal of the complaint as reasonable. The Appellant then filed a motion in the Court of Appeal, pleading that the Commission's decisions be quashed because it was based on insufficient investigation and analysis.

* *Ayotte v Université de Moncton*, 2021 NBCA 15

Note: The Court of Appeal heard the *Ayotte* appeal concurrently with *Laliberté v Rural Community of Kedgwick* (2021 NBCA 16), which had also challenged the Commission's dismissal of a human rights complaint under Section 19(2)(a). The Court stated that the analysis in *Ayotte* should be read to settle the issue in the *Laliberté* case – thus, the Commission's dismissal of the *Laliberté* complaint was also deemed reasonable based on the legal reasoning advanced by the court in *Ayotte*.

The Court of Appeal upheld the Commission's dismissal of the complaint, and noted the following:

- The Commission's mandate is to conduct a preliminary assessment of the merits of a complaint, and to determine whether it should be referred to the Labour and Employment Board for adjudication.
- Section 19(2)(a) of the *Human Rights Act* is a filtering tool that allows the Commission to dismiss a complaint if its allegations are not supported by sufficient facts and information.
- The Commission is entitled to base its decision to dismiss a complaint on the available record, including submissions of both complainants and respondents, and the findings and recommendation of the Commission's investigating staff.
- In reaching its decision to dismiss the complaint, the Commission applied the appropriate standards of reasonableness, in accordance with the Supreme Court of Canada's direction in *Canada (Minister of Citizenship and Immigration) v Vavilov*.

Commission's investigation into a complaint can only be quashed in exceptional circumstances, NB Queen's Bench determines*

The complainant was appointed to a government agency on a five-year term. Following a change in administration, the new government passed legislation to dissolve the agency and the complainant's position was eliminated. The complainant filed a human rights complaint with the Commission alleging employment discrimination by the Province and the political party under the ground of political belief or activity.

The Commission determined that the political party was not the complainant's employer and not liable for the alleged discrimination, but it accepted the complaint against the other respondent. The respondent submitted that the Commission did not have jurisdiction to investigate the complaint because the respondent had acted pursuant to Sections 2(13) and (14) of the *Act to Dissolve*, which indemnified them against legal proceedings. The Commission, however, determined that it had jurisdiction to investigate incidents of the complaint that had occurred prior to the date the *Act to Dissolve* came into force. The respondent filed a judicial review application, pleading that the Commission investigation be quashed for lack of jurisdiction.

The Court concluded that the respondent's judicial review application was premature. The Commission was investigating the matter and an ongoing administrative inquiry should only be quashed by courts in exceptional circumstances; the issue of lack of jurisdiction did not qualify as "exceptional circumstances". If the Commission's investigation was ceased at this stage, it would constitute interference in the Commission's administrative process, and the Court would not have evidentiary foundation to determine the merits of the complaint. The application was dismissed and the Commission was allowed to proceed with its investigation.

Contributions to the international human rights framework

As part of its mandate to protect and promote human rights in the province, the Commission also contributes to the province's international human rights commitments, by providing the human rights perspective on new legislative and policy proposals introduced to comply with international human rights standards. The Commission receives requests from government departments and international organizations to provide technical reviews of new international human rights instruments and ILO treaties ratified by the federal government, to assess if the existing legislative frameworks of the province is compliant with the provisions of those instruments and treaties.

**Department of Energy and Resource Development v Margaret-Ann Blaney*, QBNB 2021.

Our technical reviews of international documents assess the relevant protections granted in provincial laws, including the *Human Rights Act*, and identify areas of compliance and potential areas where the provincial legal domain might be lacking conformity with international human rights provisions. After careful analysis of all instruments and legislations, we propose legislative changes that may be required in certain provincial laws to bring the provincial statutory framework in compliance with a particular international instrument.

Technical Review of ILO's Convention 190 on Violence and Harassment

This year the Commission provided a detailed technical review of ILO Convention 190 on Workplace Violence and Harassment, conducting a close analysis of the Articles of the Convention and reviewing relevant existing provincial legislations, policies, and programs, to identify areas of compliance and potential lack of compliance with the ILO document.

Disability Action Plan and proposed Service Animal Legislation

To accord with the United Nation's *Convention on the Rights of Persons with Disabilities*, the federal government enacted *Accessible Canada Act* (2019), and New Brunswick's Premier's Council on Disabilities launched a Disability Action Plan (DAP).

The Commission provided a response to the recommendations of DAP, particularly with reference to the recommendation to enact a Service Animal Act in New Brunswick, noting the implications of the proposed legislation in relation to similar provisions in the *Human Rights Act*. The review included recommendations for drafting strategies for the proposed legislation, to ensure that the new legislation harmonized with the disability protections of the *Human Rights Act*.

Collaboration on Universal Periodic Review research

The United Nation's Universal Periodic Review (UPR) reports on the status of human rights in Canada, identifies areas of human rights compliance or noncompliance in Canadian jurisdictions, and recommends measures for improvement. Provinces contribute to the UPR process and coordinate with the federal Human Rights Commission to contribute to Canada's submissions to the UN human rights regime.

This year the Commission responded to a request for a survey of the province's role in the UPR process conducted by UPR Info, a Geneva-based international human rights organization that monitors the UPR system globally.

EDUCATION AND COMMUNICATION

In addition to protecting the rights of New Brunswickers through its compliance process, the Commission promotes human rights in the province through its education mandate. The Commission's educational initiatives serve as pre-emptive tools in human rights management and enhance human right awareness, which, in the long term, translates into reduction of discriminatory practices and attitudes in society. A robust education agenda is key to informing and sensitizing the public and stakeholders about their human rights and responsibilities, and to promote equality and inclusion in New Brunswick.

The Commission fulfills its education mandate by ongoing research, legal and policy analysis, and by disseminating human rights awareness through seminars and presentations, research publications, and through public, media, and online outreach.

The Commission's educational publications include guidelines and other research-based materials, and it engages in awareness building, informational outreach, and training initiatives through presentations to educational institutions, government and the private sector, businesses and employers, and community groups across the province. We also partner with other organizations, businesses and service providers, civil society, and NGOs to leverage our educational mandate across a broad social spectrum.

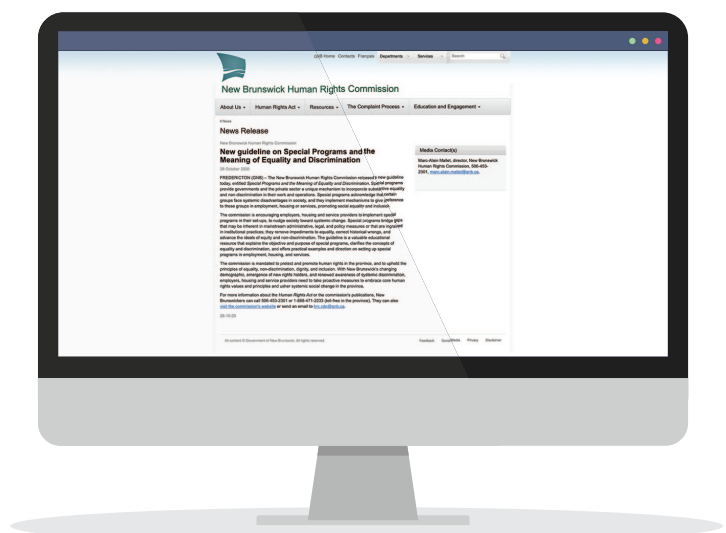
Guideline on Special Programs published

The Commission's educational work is undergirded by robust research support, and we produce a wide array of research documents, including legal guidelines on various aspects of discrimination under the Act.

Written in precise and simple language, summarizing up-to-date human rights case-law, and enunciating the Commission's position on key human rights issues, our guidelines are quasi-legal documents that serve as a valuable educational resource for the public, and for prospective complainants and respondents. Guidelines are used by lawyers and the legal fraternity and cited in court judgements, as a trusted source for the Commission's position on issues covered in them.

In October 2020 the Commission published *Special Programs and the Meaning of Equality and Discrimination*, which explains the special programs provision of the Act, clarifies the meaning of equality and discrimination in human rights law and jurisprudence, and illustrates that, by using special programs, government and the private sector can instill substantive equality and non-discrimination practices in their operations, thereby curtailing systemic discrimination in New Brunswick.

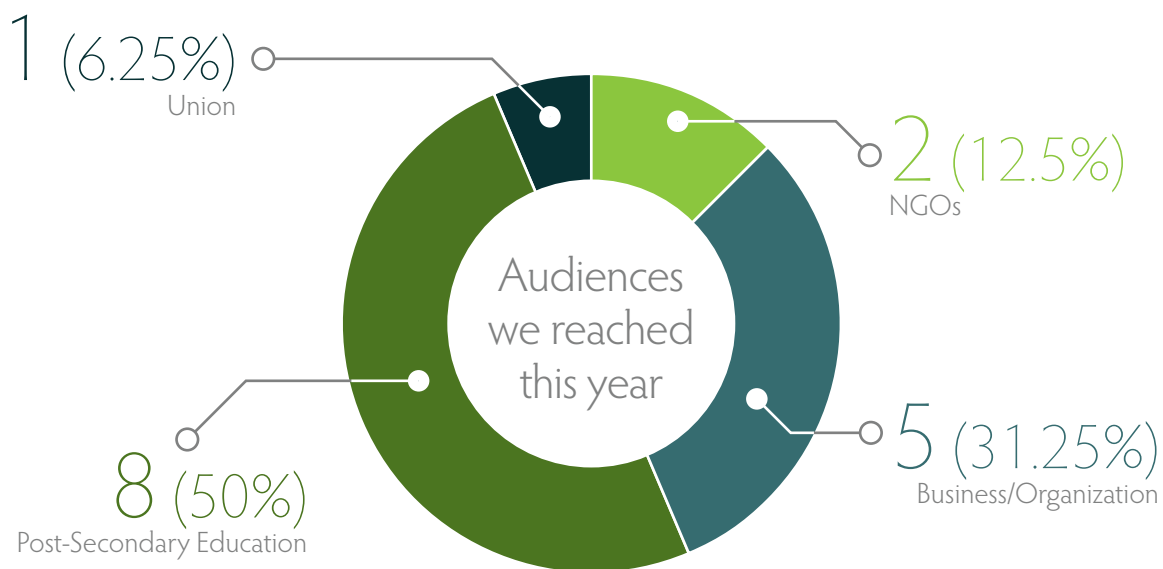
For a list of all guidelines published by the Commission, see **Appendix E**.



Presentations and workshops

The Commission's presentations highlight core human rights themes and are geared to assist employers and service providers, government departments, professional associations, and educational institutions to integrate human rights awareness and best practices in their operations and practices.

Because of closures and social distancing protocols put in place by the government, especially in the early phases of the pandemic, the Commission's outreach initiatives were significantly curtailed in 2020-21 compared to previous years. This year the Commission delivered 16 workshops, with over 200 attendees, and transitioned to virtual presentations to compensate the physical restrictions of the pandemic.



Audiences and topics of our presentations

This year's presentations were delivered to university and high school students, businesses, NGOs, municipalities, and multicultural groups, and covered the following topics:

Topic	Number of workshops	Percentage
Getting Acquainted with Human Rights	6	38%
Accommodating Students with a disability	5	30%
Duty to Accommodate at Work	3	19%
Overview of Human Rights Act	2	13%

Panel discussion on online hate groups

In October 2020, Commission's Director Marc-Alain Mallet participated in a panel discussion titled "From Hate to Hope in the Digital Age", as part of the Vigod Lecture Series organized by St. Thomas University and the Atlantic Human Rights Centre. Mallet emphasized the role of the Commission in raising awareness about human rights and obligations in the emerging technological environment, and the importance to rectify the disinformation and hate propaganda that have become endemic on certain web platforms.



Human Rights Award

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

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

This year's Human Rights Award recipient was Claudette Bradshaw from Moncton, in recognition of her distinguished services in ameliorating the conditions of persons who face discrimination because of their social class or due to their family status or circumstances.

This year's Youth Human Rights Award was awarded to Emma Coakley of Saint John, for her singular efforts in raising community awareness about amputation, prostheses, and the War Amps and PlaySafe programs.

Project on preventing sexual harassment in the workplace

As part of a five-year federally funded \$1.5M project, sponsored by the federal Department of Justice, the Commission continues to partner with Public Legal Education & Information Service of New Brunswick, undertaking educational and awareness-raising initiatives to help prevent sexual harassment of gender-diverse groups in the workplace.

CASHRA engagements

Canadian Association of Statutory Human Rights Agencies (CASHRA) was established in 1972 to foster cooperation and information-sharing between human rights commissions across Canada. CASHRA meetings and events are an effective forum for human rights commissions nationwide to address operational matters, share latest research in human rights law and jurisprudence, discuss statutory interpretation and emerging human rights issues, and share leading practices among human rights practitioners from across the country.

As a founding member of CASHRA, the Commission continues to play an active role in CASHRA and participated in several working groups under its auspices in 2020-21.

Media relations

The Commission is often contacted by the news media to comment on developments in the province that have a potential to impact the human rights of New Brunswickers.

To inform New Brunswickers about their human rights and responsibilities and keep them updated on new developments, we issue news releases and statements summarizing the Commission's perspective on a current issue of concern and noting potential violations of the *Act*. These publications are distributed on the GNB media feed, the Commission's website, and on the Commission's social media pages.

The Commission distributed four releases or statements in 2020-21, to promote guidelines and information published by the Commission, commemorate human rights events or milestones, clarify the human rights perspective on a contentious current topic, and issue reminders about the human rights of vulnerable groups in the province.

For example, during the last provincial election, when news report pointed out deficient accessibility facilities in certain polling stations, the Commission issued a statement reiterating the need to respect accessibility rights and obligations enshrined in human rights law.

Social media strategy





More and more New Brunswickers are accessing news and information from social media channels and other web platforms, customizing and choosing when and how they want to access the information they need. For this reason, social media has become a critical component of the Commission's educational outreach.

This year we revamped our social media and communication strategy, with a view to create a more proactive and vigorous social media presence.

As part of this new strategy, we have started posting salient contents of Commission guidelines, FAQs, and other publications on our social media channels, which helps us disseminate this information to an audience that may not otherwise know about it. We also leverage our social media engagements to assess which human rights issues our subscribers want information on, and use this data to streamline our informational priorities for wider public impact and outreach.

Facebook and Twitter were the leading platforms used by New Brunswickers to access the information disseminated by the Commission in 2020-21, while people also used our YouTube and LinkedIn pages to get information we posted about human rights issues and the Commission's engagements.

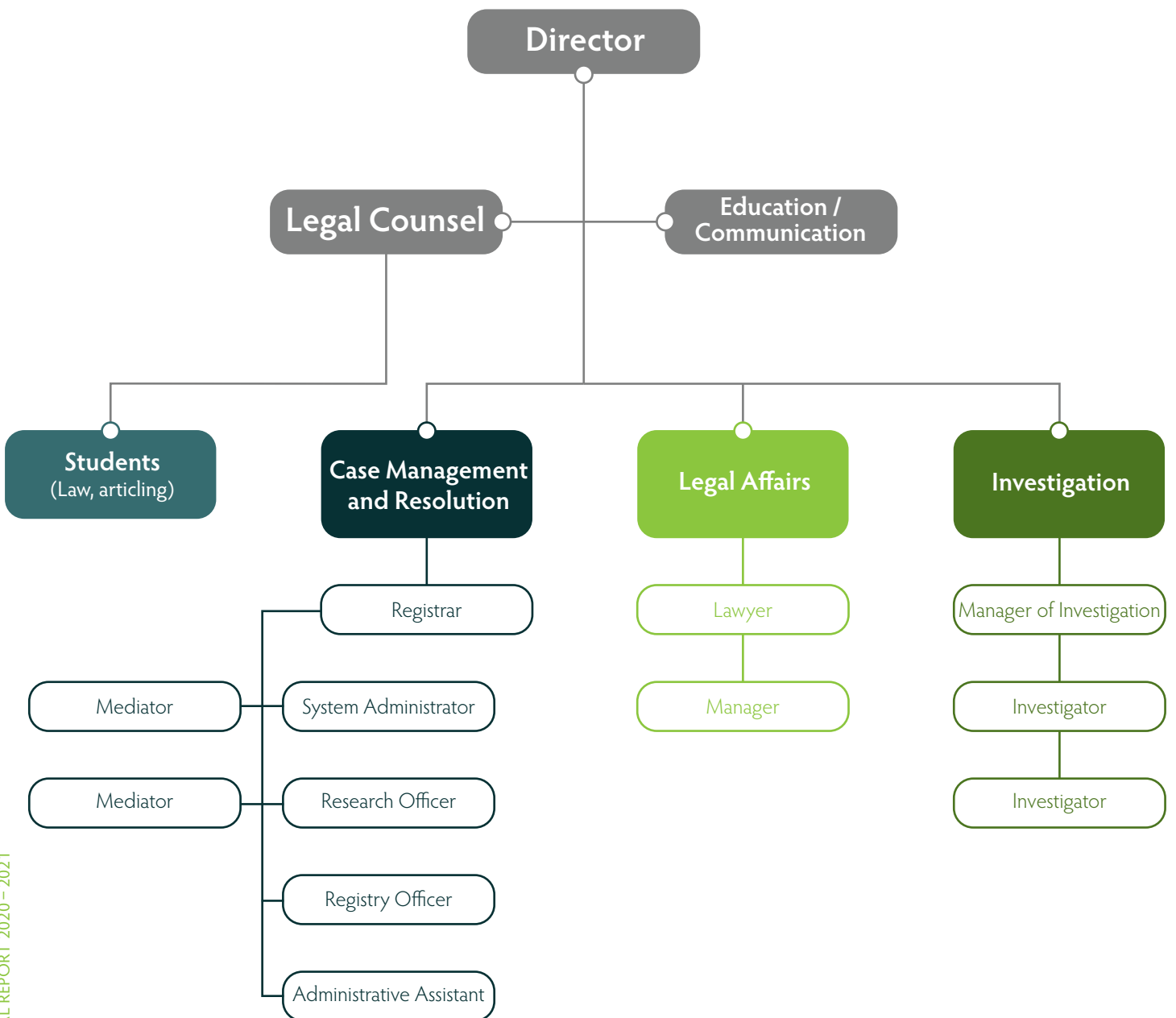
Our Social Media Outreach, 2020-21

	Posts/ Tweets	Followers	Posts Reached	Shares and Comments	Impressions	Videos	Subscribers	Views
	52	650	30.4 k	2.9 k	—	—	—	—
	45	481	—	—	37.6 k	—	—	—
	—	—	—	—	5.3 k	2	43	429
	—	37	—	—	—	—	—	—

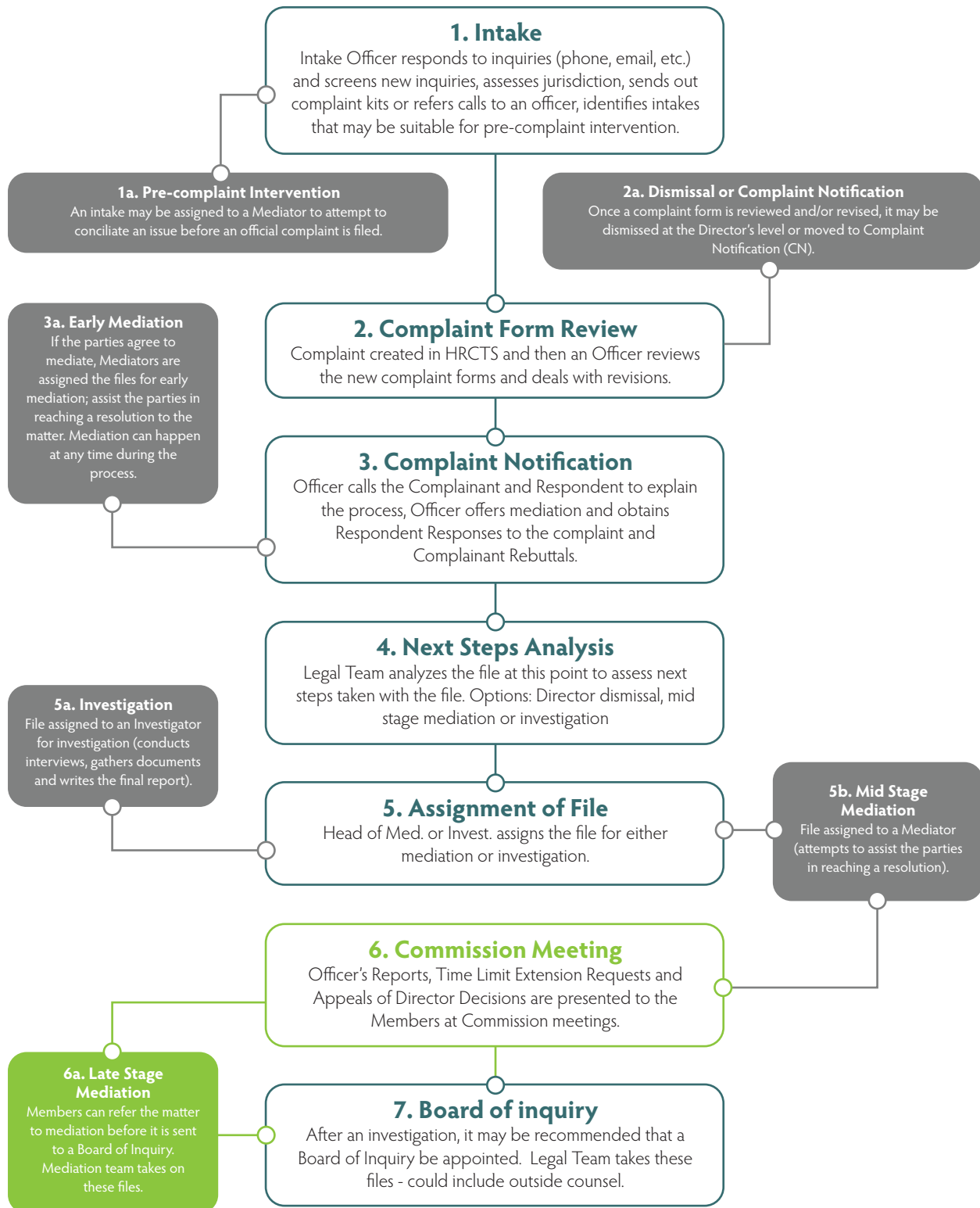
APPENDICES

Appendix A

Organizational chart



Complaint process



Appendix C

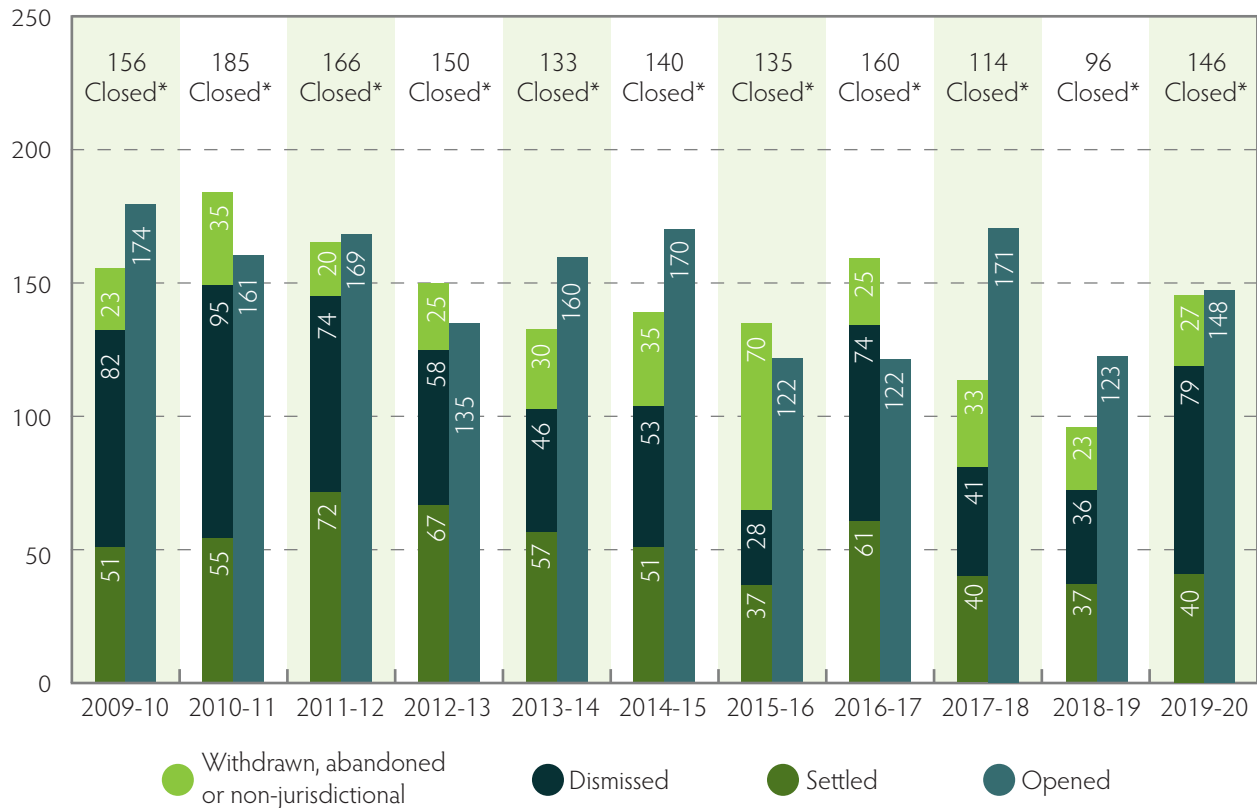
New formal complaints by allegations indicating grounds and activity

	Employment	Housing	Services	Publicity	Associations	Total
Mental Disability	55	12	34	0	11	112
Physical Disability	49	7	23	0	1	80
Sex	22	3	6	0	3	34
Age	12	2	7	0	0	21
Ancestry	7	1	3	0	1	12
Race	16	2	12	2	1	33
Social Condition	2	2	8	1	3	16
Sexual Harassment	13	0	2	0	0	15
National Origin	8	2	6	3	2	21
Family Status	15	5	6	0	4	30
Place of Origin	9	1	10	1	1	22
Colour	10	2	4	1	1	18
Creed or Religion	6	5	10	1	1	23
Reprisal	4	0	1	0	0	5
Gender ID or Expression	5	7	10	0	1	23
Political Belief or Activity	1	4	9	2	1	17
Sexual Orientation	8	1	2	0	1	12
Marital Status	6	2	9	1	1	19
Total	248	58	162	12	33	513

* 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). While there were 233 distinct formal complaints filed this year, many complaints alleged discrimination based on more than one ground – thus, the total number of allegations amounted to 513, based on the 233 complaints.

Appendix D

Formal complaints opened and closed* 2009-2020



* 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 E

Summary of expenditures, 2020-21

	Budget	Actual Expenditure
Education and Compliance	\$ 1,231,556.00	\$ 1,080,294.42
Office of the Commission	\$ 58,440.00	\$ 32,549.10
Total	\$ 1,289,996.00	\$ 1,112,843.52

For detailed figures, please consult Supplementary Information in Volume 2, Public Accounts 2020-21, Department of Post-Secondary Education, Training and Labour.

Appendix F

Publications of the 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)
- Guideline on Pregnancy Discrimination (2019, 39 pages)
- Special Programs and the Meaning of Equality and Discrimination (2020, 56 pages)
- Guideline on Housing Discrimination* (2021, 70 pages)

Other publications

- Annual reports
- Studies and Reports
- Statistics
- FAQs on Employment and Services
- Board of Inquiry Decisions
- Introduction to Grounds and Areas of Discrimination

* The Commission's Guideline on Housing Discrimination was published in June 2021.