



OMBUD NB
N.-B.

LISTEN . REVIEW . RESPOND . ÉCOUTER . ÉTUDIER . CLARIFIER .

**Annual Report
2016 - 2019**

Annual Report 2016 - 2019

Published by:

Office of the Ombud
Province of New Brunswick
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December 16, 2021

Mr. Shayne Davies
Clerk
Legislative Assembly
Province of New Brunswick
Fredericton, NB

Sir:

Pursuant to Subsection 25(1) of the *Ombud Act*, Section 36 of the *Civil Service Act* and Section 30 of the *Public Interest Disclosure Act*, I have the honour to present the Forty-seventh Annual Report of the Ombud for the period of April 1, 2016 to March 31, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Murray', written in a cursive style.

Charles Murray

Interim Ombud



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Statutory Responsibilities

The Office of the Ombud in New Brunswick has a broad legislated jurisdiction under the *Ombud Act*, as well as significant compliance and administrative responsibility and fairness in the public sector.

The Office of the Ombud currently has responsibilities under four Statutes.

1. *Ombud Act*
2. *Civil Service Act*
3. *Archives Act*
4. *Public Interest Disclosure Act*

Office of the Ombud Goals

The Office of the Ombud is committed to the following goals:

1. To conduct independent, confidential investigations to resolve complaints.
2. To provide efficient, effective and accessible services to the public within the framework of the human and fiscal resources provided.
3. To review policies, procedures, legislation and regulations to resolve existing complaints and, where applicable, to recommend changes to improve administrative practices.
4. To initiate reviews and investigations on the Ombud's own motion, when appropriate, to ensure fairness in the delivery of public services to every New Brunswick resident.



The Ombud

The Ombud is an Officer of the Legislative Assembly and is independent of government.

The *Ombud Act* provides the authority to investigate complaints into any matter of administration. In accordance with the *Act*, all investigations are carried out in a confidential manner and information is only divulged where necessary in furtherance of the investigation. Accordingly, all files of the Office of the Ombud are confidential.

What we can do

The Ombud and his staff investigate complaints against:

- Provincial government departments
- School districts
- Regional health authorities
- Municipalities
- Crown agencies
- Other agencies responsible to the Province including:
 - Commissions
 - Boards and corporations
 - Or any other public authority as defined under the *Ombud Act*.

What we can't do

The Ombud and his staff do NOT have authority to investigate complaints concerning:

- The federal government
- Private companies and individuals
- Judges and functions of any court
- Deliberations and proceedings of the Executive Council or any committee thereof.



Performance Indicators

The Office of the Ombud measures its performance in delivering the various legislated services through a number of indicators.

Supporting our central mission

INDICATOR

The Office of the Ombud has one central mission: to ensure that all New Brunswick citizens are treated with administrative fairness by government and its agencies. Under the *Ombud Act*, the Office of the Ombud strives to guarantee that individuals are served in a consistent, fair and reasonable manner by New Brunswick Government organizations.

RESULT

Our central mission is communicated through various public and government employee education activities and speaking opportunities by the Ombud and staff, and are reinforced through the office's web page, printed material, and our Annual Report.

Providing service in an effective and efficient manner

INDICATOR

The Office of the Ombud ensures its staff members are properly trained and up to date on current events and challenges by providing the following:

- Internal training provided to new staff members
- External training sessions
- Regular staff meetings
- Reference tools such as newspapers, books, various contact numbers, websites and policies
- Sharing knowledge, training and experience within the Office
- Continued self-training is expected in such areas as:
 - The authorities with which they interact
 - Relevant law and regulation related to those authorities
 - *Ombud Act*
 - Investigative skills, techniques and technologies

RESULT

The Office of the Ombud staff members are able to address clients' concerns in a professional, knowledgeable, reliable, and timely manner.



Office Financial Information

2016-2017

	Budget (\$)	Actual (\$)
Personal Services	831,000	789,730.62
Other Services	70,800	40,400.51
Materials and Supplies	6,700	5,391.86
Property and Equipment	8,500	948.27
TOTAL	917,000	836,471.26

2017-2018

	Budget (\$)	Actual (\$)
Personal Services	837,366	754,568.57
Other Services	72,500	48,795.34
Materials and Supplies	11,000	5,057.35
Property and Equipment	7,500	748.53
TOTAL	902,000	809,169.79

2018-2019

	Budget (\$)	Actual (\$)
Personal Services	883,200	836,202.35
Other Services	73,300	65,222.70
Materials and Supplies	11,000	4,057.93
Property and Equipment	7,500	4,146.92
TOTAL	975,000	909,629.90



Ombud Act

Under the *Ombud Act*, the Office of the Ombud conducts independent and confidential investigations into complaints from individuals regarding administrative matters involving provincial government departments and other related organizations such as school districts, regional health authorities and municipalities.

In 1967, the Government of New Brunswick introduced legislation creating the Office of the Ombud. The Ombud is an independent officer of the Legislative Assembly with a mandate under the New Brunswick *Ombud Act* to conduct independent investigations into the delivery of public services by government officials.

Depending upon the nature of a complaint, it is sometimes possible to resolve the complaint informally. If an investigation identifies that an administrative error or injustice has occurred, and the matter cannot be resolved informally, the *Act* provides for the Ombud to make a recommendation to the administrative head of the authority concerned.

Complaints under the Ombud Act

ACCESS

The Office of the Ombud is accessible to every person in the Province of New Brunswick. People who feel they have a problem with a provincial government agency can contact the Office in either official language.

The Office of the Ombud receives complaints in a variety of ways: by letter, by telephone, by fax, by email and by personal interview at our office or in the client's community.

COMPLAINTS

The Office of the Ombud investigates an extremely diverse cross-section of complaints related to government departments, municipalities, school districts, regional health authorities, crown agencies and other authorities responsible to the Province as defined under the *Ombud Act*.



INVESTIGATION

In accordance with the *Ombud Act*, the Office conducts independent and confidential investigations into complaints from individuals regarding administrative matters.

In conducting an investigation, staff of the Office of the Ombud may be required to critically analyze and review policies, procedures, legislation, case law, and government records. Information is also obtained from officials either through meetings or correspondence. In addition to receiving information from clients through interviews or correspondence, investigators may obtain information through site visits conducted throughout the province.

As a result of the information gathered through the investigation, the Office of the Ombud makes a finding. If, on the conclusion of the investigation, the finding supports the client's complaint, the Ombud will facilitate a resolution or, in the alternative, make a recommendation for corrective action. The Ombud does not have the authority to require the government to act, however, negotiation has proven to be very effective. Where there is insufficient evidence to establish that the complaint is justified, the investigation is discontinued and the client is advised of the results in writing.

PROVIDING INFORMATION AND REFERRALS

When a complaint is outside the Ombud's jurisdiction to investigate, the Office provides information and, where appropriate, refers individuals to other complaint mechanisms or possible sources of assistance.

Correctional Institutions

Section 13(4) of the *Ombud Act* provides that any person in custody has a right to have a letter forwarded to the Office of the Ombudsman unopened, thereby ensuring them the opportunity of bringing their complaints to this Office for investigation.

Inmates are provided with an orientation manual by the Department of Public Safety on admittance to each of the correctional institutions. The manual advises the inmate that the Office of the Ombud investigates complaints from individuals who feel they have been treated unjustly.



In 2013-2016 the Office received inquiries and complaints regarding a wide range of issues. Section 12 of the *Ombud Act* empowers the Office to investigate complaints “*with respect to a matter of administration,*” which the courts have interpreted broadly to include any government matter other than matters relating to the affairs of the Courts or the Legislature.

In some cases where complaints alleging a criminal assault have been brought forward, the Ombudsman has exercised his discretion not to investigate and has instead referred the matter to appropriate police authorities. In other instances where an inquiry or a complaint does not fall within the jurisdiction of the *Ombud Act*, individuals are referred to the appropriate body.

As inmates are within the care of the Province of New Brunswick, every complaint that is within the jurisdiction of this Office to investigate is acted upon as expeditiously as possible. This usually requires that the matter be brought to the attention of the Department of Public Safety so that the Department in addition to the correctional facility concerned are also given the opportunity to be heard.

On receiving information from both parties and in carrying out any further reviews that may be necessary, this Office concludes the investigation and the inmate is advised accordingly.

Civil Service Act

In 1994, the Civil Service Commission was amalgamated with the Office of the Ombud. Through a change to the *Civil Service Act*, the Ombudsman was made responsible to hear appeals and investigate complaints regarding the selections for appointment to the civil service. However, in December 2009, new amendments to the *Civil Service Act* significantly reduced the Ombud’s authority.

On December 1, 2009 substantial amendments to the *Civil Service Act* came into effect and, as a result, the way by which an appointment within the New Brunswick civil service can be reviewed or challenged has changed considerably. One of these modifications involves the basis on which a review or challenge of an appointment can be initiated by an unsuccessful candidate. Pursuant to the amended *Act*, where a candidate is screened-in for further assessment in the context of an open or closed competition but is not successful, this person may challenge an appointment “if the candidate has reason to believe that the successful candidate was appointed to the position because of favouritism” (subsection 33.1(1), *Civil Service Act*).



Favouritism is the only ground on which a complaint may be submitted to our Office pursuant to the amended *Civil Service Act* under the complaint process. Favouritism means giving preference to a candidate that is based on factors that supersede the assessment of qualifications, and that is attributable to a relationship or connection that is external to the workplace.

In accordance with established practice and the relevant provisions of the Civil Service Act, the first level of review is done by an unsuccessful candidate requesting from the department an explanation as to the reasons why they were not successful in obtaining an appointment to the vacant position. The task of responding to this request will likely be delegated to departmental human resources staff.

If an unsuccessful candidate remains unsatisfied with the initial response and once they have been notified that a person has been appointed to the position, they may, within 30 days, forward a complaint to the appropriate Deputy Minister and clearly state how they believe that the appointment of the successful candidate was based on favouritism. The Deputy Minister may choose to investigate the matter or dismiss the complaint.

Finally, if, after receiving the Deputy Minister's response to a request to have an appointment process investigated, the unsuccessful candidate remains unsatisfied, they may, within 30 days, file a complaint with the Office of the Ombud alleging that the successful candidate was appointed on the basis of favouritism.

The Office of the Ombud cannot intervene in the process before the two first steps outlined above have been taken.

In summary, the three steps available to screened-in candidate to challenge the appointment of the successful candidate to the relevant position are as follows:

- 1.** Send a written request to the HR branch of the department requesting feedback as to why they were not successful in obtaining the appointment.
- 2.** If an individual remains unsatisfied after receiving feedback from the HR branch, they can send a formal complaint to the Deputy Minister of the department which ran the competition indicating how they believe that the appointment of the successful candidate was based on favouritism.
- 3.** After receiving the response from the Deputy Minister, if the individual remains unsatisfied, they may, within 30 days, file a complaint with the Office of the Ombud.

If the Ombud investigation finds that a complaint has merit, the Ombud can make a recommendation to government. The Ombud cannot revoke an appointment.



Public Interest Disclosure Act

The *Public Interest Disclosure Act* came into force on July 1, 2008. Originally, the office of the Conflict of Interest Commissioner provided oversight for complaints under this Act. In June of 2011 amendments were made to the Act and the Office of the Ombud became responsible to receive complaints under this Act.

PURPOSE

The purpose of the Act is to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service that are potentially unlawful, dangerous to the public or injurious to the public interest and to protect people who make those disclosures. It is commonly known as ‘Whistleblower’ legislation.

WRONGDOING

Employees of the public service can contact the Ombud or the Department concerned if they feel there has been wrongdoing. Wrongdoing is defined in the Act as:

- a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;
- b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- c) gross mismanagement, including of public funds or a public asset;
- d) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (c).

If the Ombud receives a complaint from an individual who is not an employee of the Public Service, under section 23 he may forward the claim to the chief executive of that portion of the public service in respect of which the claim is made.

REPRISALS

Under the *Act*, if an employee (or former employee) feels a reprisal has been taken against him or her, they may file a complaint with the Labour and Employment Board. The Office of the Ombud is unaware of any activity under the reprisal section of the Act.





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STATISTICS
2016 - 2019

Types of Complaints by Department

The following tables provide the number of complaints by type and by department investigated in the year 2016-2019. In consideration of the confidentiality provisions of the *Ombud Act*, **only those departments with more than 10 complaints are set out in the tables below.**

Correctional Institutions			
Health Issues	2016-2017	2017-2018	2018-2019
Assault/Abuse - Physical, Sexual, etc.	6	8	1
Dental	16	42	11
Glasses, Eye Care	5	3	-
Medical Appliance	3	8	32
Mental Health	5	10	6
Prescriptions Requested or Denied	31	54	36
Request to go to Hospital	5	9	3
Request to see Nurse/Doctor	30	49	36
Special Diet	3	6	1
Subtotal	104	189	126

Living Conditions			
Cleanliness	5	10	11
Clothing and Bedding	17	17	9
Food	39	68	17
Heat and Ventilation	5	12	-
Maintenance and Repairs	1	7	1
Overcrowding	-	1	1
Subtotal	67	115	39



Others			
Abandoned by Inmate	5	21	8
Administration	10	19	13
Classification/Transfer	24	50	15
Contraband	-	1	1
Correspondence	25	16	12
Courts	3	8	4
Discipline	14	13	9
Legal Aid	5	2	5
Official Language-Service	1	-	-
Parole	1	2	1
Personal/Inmate Property	32	55	28
Physiotherapy	-	1	-
Placement within Institution	39	60	55
Probation	2	-	-
Program Privileges	14	19	21
Recreation	3	25	9
Request Form	6	7	7
Request for House Arrest	-	6	1
Requests for Items Denied	8	10	7
Segregation	11	18	13
Sentence / Remission Calculation	8	12	2
Staff Conduct and Department	11	16	5
Telephone Use	17	24	23
Temporary Absence Program	5	16	3
Threatened by Other Inmates	2	8	2
Use of Restraints	2	3	1
Verbal Abuse/Swearing	-	1	-
Visiting Privileges	3	4	7
Other (includes Non-Jurisdiction & Inquiry)	56	66	57
Subtotal	307	483	309
TOTAL	478	787	474



Public Safety

	2016-2017	2017-2018	2018-2019
Administration	3	6	8
Complaints Regarding Staff	-	54	38
Coroner Services	-	1	1
Emergency Measures	-	1	1
Employment	1	2	2
Permits / Licenses	9	10	7
Others (includes Non-Jurisdiction & Inquiry)	56	45	27
TOTAL	69	119	84

Social Development

Income Assistance Benefits	2016-2017	2017-2018	2018-2019
Amount/Calculation	5	4	4
Delay	6	6	2
Denied	10	11	22
Discontinued/Reduced	21	14	17
Eligibility Criteria	16	18	6
Long Term Needs	10	7	4
Repayment	5	7	11
Subtotal	73	67	66



Housing Unit			
Availability	3	12	12
Evictions	4	10	11
Inspections	-		1
Repairs	6	10	6
Tenant Rights	1		-
Transfers	4	3	4
Subtotal	18	35	34

Others			
Administration	2	2	2
Adoption	2	-	1
Appeal Board	-	1	1
Appeal Process	-	2	-
Appliances-Furniture	1	1	-
Complaints Regarding Staff	6	10	3
Employment	3	2	1
Health Card	6	7	3
Heat Supplement	1	2	6
Housing Loans/Grants	3	9	3
Medical Issues	-	6	1
Nursing Homes/Residential Services	19	7	6
Protection Services	10	9	4
PPIA - Request Information	-	2	1
Transportation		2	-
Other (includes Non-Jurisdiction & Inquiry)	53	25	27
TOTAL	197	189	159



Health			
	2016-2017	2017-2018	2018-2019
Addiction Services	-	2	-
Administration	2	5	14
Ambulance Services	-		-
Complaints regarding Staff	26	45	55
CSA - Appeal			-
Extra Mural Services	1	2	-
Hospital Employment	4	2	4
Harassment Employment	-	-	1
Medicare	7	7	6
Mental Health	20	14	12
Permits/Licenses	-	-	-
Placement Services		1	3
Public Health		1	-
Treatment	1	1	-
Medical Treatment	21	14	22
Admission-Discharge	7	14	10
Others (includes Non-Jurisdiction & Inquiry)	46	69	56
TOTAL	135	177	183

Justice and Attorney General			
	2016-2017	2017-2018	2018-2019
Administration	1	1	2
Complaint Regarding Staff	1	1	-
Insurance Branch	1	-	-
Support Payment and Orders	6	4	3
Others (includes Non-Jurisdiction & Inquiry)	6	14	10
TOTAL	15	20	15



Worksafe NB

Compensation	2016-2017	2017-2018	2018-2019
Amount/Calculation	4	8	3
Discontinued/Reduced	14	9	9
Subtotal	18	17	12

Others			
Administration	2	3	1
Appeals Tribunal	2	6	8
Claim Denied	15	4	10
Complaints Regarding Staff	2	1	1
Deeming	3	1	1
Long Term Disability	-	1	-
Employability Assessments	2	2	-
Employment	-	-	1
Medical Payments	5	3	2
Medical Rehabilitation	3	1	3
Permanent Partial Impairment	-	-	1
Retraining	-	-	1
Others (includes Non-Jurisdiction & Inquiry)	17	16	12
TOTAL	69	55	53



NB Power Corporation

	2016-2017	2017-2018	2018-2019
Administration	-	1	1
Billing-Amount / Calculation	-	6	4
Damage Claims	1	1	-
Disconnection	18	11	18
Employment	-	1	-
Payment Schedules	1	2	-
Service Issues	2	-	5
Other (includes Non-Jurisdiction & Inquiry)	6	4	6
TOTAL	28	26	34

Education / School Districts

	2016-2017	2017-2018	2018-2019
Access to School Records	1	-	-
Administration	2	-	3
Complaints Regarding Staff	1	-	2
Curriculum - testing	1	-	-
Employment	3	3	1
French Program	-	2	-
Suspensions	-	-	1
Transportation	5	1	-
Others (includes Non-Jurisdiction & Inquiry)	9	7	4
TOTAL	22	13	11



Transportation

	2016-2017	2017-2018	2018-2019
Access - Right of Way	1	1	1
Administration	1	1	3
Complaints Regarding Staff	1	-	1
Damage Claims	5	-	3
Employment	4	3	3
Expropriation Procedures	-	-	1
Highway Signage	-	-	1
Property Issues	-	4	3
Road/Bridge Maintenance	1	2	4
Others (includes Non-Jurisdiction & Inquiry)	7	4	2
TOTAL	20	15	22

Municipalities

	2016-2017	2017-2018	2018-2019
Administration	1	2	3
Complaints Regarding Staff	-	3	7
Employment	5	2	5
Municipal Bylaws	3	2	4
Permits-Licenses	-	2	
Property Issues	2	4	4
Right to Information	-	-	1
Roads / Streets	-	-	2
Services	1	1	
Water/Sewage	6	2	4
Zoning	5	3	
Others (includes Non-Jurisdiction & Inquiry)	7	10	7
TOTAL	30	31	37



Service New Brunswick

	2016-2017	2017-2018	2018-2019
Administration	1	2	2
Complaint Regarding Staff	2	2	2
Permits/Licenses	7	3	3
Property Assessment	3	1	1
Property Assessment - Appeal Procedures	3	-	1
Registry Office - Procedures	2	3	1
Rentalsman	23	35	34
Vital Statistics	2	4	1
Other (includes Non-Jurisdiction & Inquiry)	8	6	5
TOTAL	51	56	50

Post-Secondary Education and Training

	2016-2017	2017-2018	2018-2019
Administration	1	-	1
Community College - Admissions Procedures	-	1	-
Community College - Others	-	2	5
Community College - Programs	-	-	1
Complaint Regarding Staff	1	2	-
Employment	1	2	1
Employment Programs	1	2	1
Grants-Loans	2	3	1
Student Loans	6	1	4
Others (includes Non-Jurisdiction & Inquiry)	4	4	2
TOTAL	16	17	16



Outcome of Complaints by Department 2016-2017

(Outcome of Complaints within Jurisdiction which does not include inquiries or non-jurisdiction complaints or complaints still under investigation at year end)

Departments / Agencies	Total	Assistance Rendered	Recommendation Made	Referral Given / Clarification Provided	Not Substantiated	Discontinued by Client / Ombud
Public Safety & Corrections	537	95	-	250	71	121
Social Development	197	28	-	97	30	42
Education / School Districts	11	1	-	4	1	5
Health	53	8	-	24	6	15
NB Power Corporation	39	8	-	18	5	8
Post-Secondary Education, Training and Labour	12	-	-	7	2	3
Service New Brunswick	50	10	-	18	5	17
Justice / Consumer Affairs	17	6	-	5	2	4
Municipalities	24	3	-	9	6	6
Transportation and Infrastructure	14	-	1	7	4	2
Worksafe NB	48	3	-	29	7	9
Other**	156	13	-	61	7	75
Total	1158	175	1	529	146	307

**This number includes departments/agencies with 10 or less complaints during 2016-2017. This number includes investigations which were continued from the previous years.



Outcome of Complaints by Department 2017-2018

(Outcome of Complaints within Jurisdiction which does not include inquiries or non-jurisdiction complaints or complaints still under investigation at year end)

Departments / Agencies	Total	Assistance Rendered	Recommendation Made	Referral Given / Clarification Provided	Not Substantiated	Discontinued by Client / Ombud
Public Safety & Corrections	388	50	1	172	31	134
Social Development	180	19	-	94	38	29
Health	66	7	-	28	8	23
NB Power Corporation	20	7	-	6	3	4
Post-Secondary Education, Training and Labour	18	2	-	10	1	5
Service New Brunswick	44	12	-	18	9	5
Justice / Consumer Affairs	13	2	1	6	-	4
Municipalities	14	-	-	3	5	6
Transportation and Infrastructure	12	-	-	5	4	3
Worksafe NB	28	-	-	21	5	2
Other**	140	3	1	43	10	83
Total	923	102	3	406	114	298

**This number includes departments/agencies with 10 or less complaints during 2017-2018. This number includes investigations which were continued from the previous years.



Outcome of Complaints by Department 2018-2019

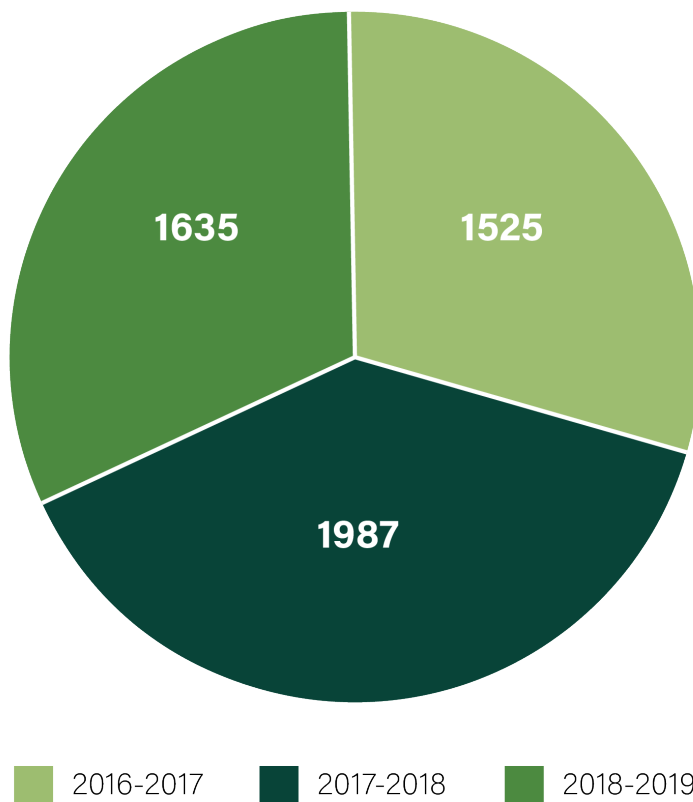
(Outcome of Complaints within Jurisdiction which does not include inquiries or non-jurisdiction complaints or complaints still under investigation at year end)

Departments / Agencies	Total	Assistance Rendered	Recommendation Made	Referral Given / Clarification Provided	Not Substantiated	Discontinued by Client / Ombud
Public Safety & Corrections	442	63	-	182	66	131
Social Development	140	18	-	67	27	28
Health	107	8	-	44	16	39
NB Power Corporation	43	10	-	14	8	11
Worksafe NB	38	2	-	26	4	6
Service NB	41	4	3	19	8	7
Municipalities	33	-	1	8	16	8
Transportation and Infrastructure	19	1	-	8	4	6
Post-Secondary Education, Training and Labour	14	-	-	5	2	7
Justice / Consumer Affairs	11	1	-	4	3	3
Education	11	2	1	3	3	2
Other**	130	2	-	44	16	68
Total	1029	111	5	424	173	316

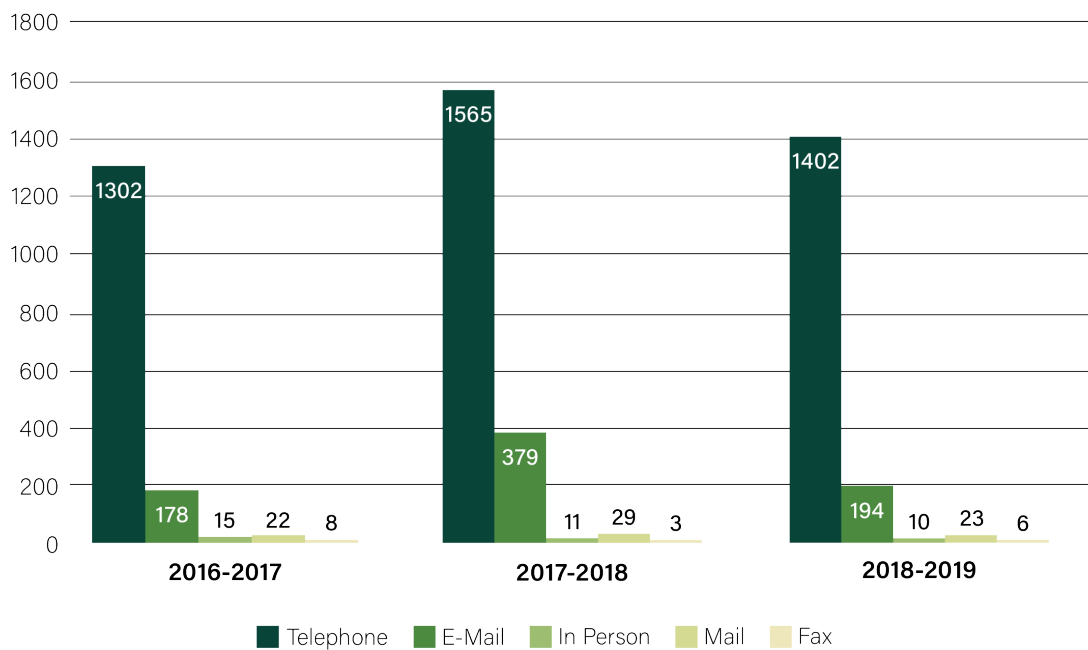
**This number includes departments/agencies with 10 or less complaints during 2018-2019. This number includes investigations which were continued from the previous years.



Total Number of Complaints per Year



Complaints Received by Reception Method



Complaints by Intake Type

