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REBEL PIONEER CREATOR EXPLORER DEFENDER TRAILBLAZER CHALLENGER VISIONARY INNOVATOR ADVENTURER REBEL PIONEER CREATOR EXPLORER DEFEN  
TRAILBLAZER CHALLENGER VISIONARY INNOVATOR

OFFICE OF FAIR PRACTICES  
AND LEGAL AFFAIRS  
ANNUAL REPORT

APRIL 1, 2014 - MARCH 31, 2015



UNIVERSITY  
OF MANITOBA

# THE OFFICE OF FAIR PRACTICES AND LEGAL AFFAIRS

## Message from the Director

The Annual Report for the Office of Fair Practice and Legal Affairs is an office wide report that describes highlights from the various offices within the unit, as well as a statistical representation of the files managed by each office. The report covers a twelve month period from April 1, 2014 to March 31, 2015.

The Office of Fair Practices and Legal Affairs was created to elevate the University's commitment to human rights, statutory compliance, transparency and general fair practices. The unit consists of four offices which are as follows:

- **The Office of Legal Counsel**
- **Access and Privacy Office**
- **Human Rights and Conflict Management**
- **Copyright Office**

The "Mission Statement" for the unit is: To support the University's faculty, staff and students by promoting a fair and equitable environment in which to work and learn. To encourage the University's efforts to comply with its statutory, regulatory, contractual and moral obligations. To help facilitate options for faculty and students to teach and learn in respected educational programs, to champion ground-breaking research, and to participate in inspiring service opportunities.

The "Vision Statement" is: Enabling excellence in education, research, service, and administrative endeavours through the provision of exceptional advice and service.

The Office of Fair Practices and Legal Affairs continues to make a significant and valuable contribution to the University community.

**Naomi M. Andrew**

Director & General Counsel  
(Fair Practices and Legal Affairs)

# The Office of Legal Counsel

## The Role of the Office of Legal Counsel

The Office of Legal Counsel supports the University's academic, research and administrative missions and initiatives by providing ethical, efficient and high-quality legal services on matters related to:

- litigation and administrative hearings both internal and external to the University;
- negotiating and drafting agreements and transactions;
- providing advice on a wide variety of issues;
- assisting with drafting and submission of policies and procedures; and
- assisting with the development of effective compliance and risk mitigation strategies to facilitate the University's complex operations.

The Office has conduct of the legal affairs of 26 different Faculties, Schools and Colleges, dozens of administrative units, and 8,700 faculty and staff.

## Staff

The real strength of any organization is reflected in the employees and The Office of Legal Counsel consists of a full complement of talented professionals who are dedicated, highly knowledgeable, experienced and service oriented.

The Office currently consists of 3 full time and 1 part time legal counsel and 4 legal assistants, all of whom report to the General Counsel and Director of the Office of Fair Practices and Legal Affairs and General Counsel. The main office is located on the University's Fort Garry Campus, with one lawyer working at the University's Bannatyne Campus. The lawyers in the office are required to handle a broad range of legal issues however, each specialize in significant and recurring areas of University legal work.

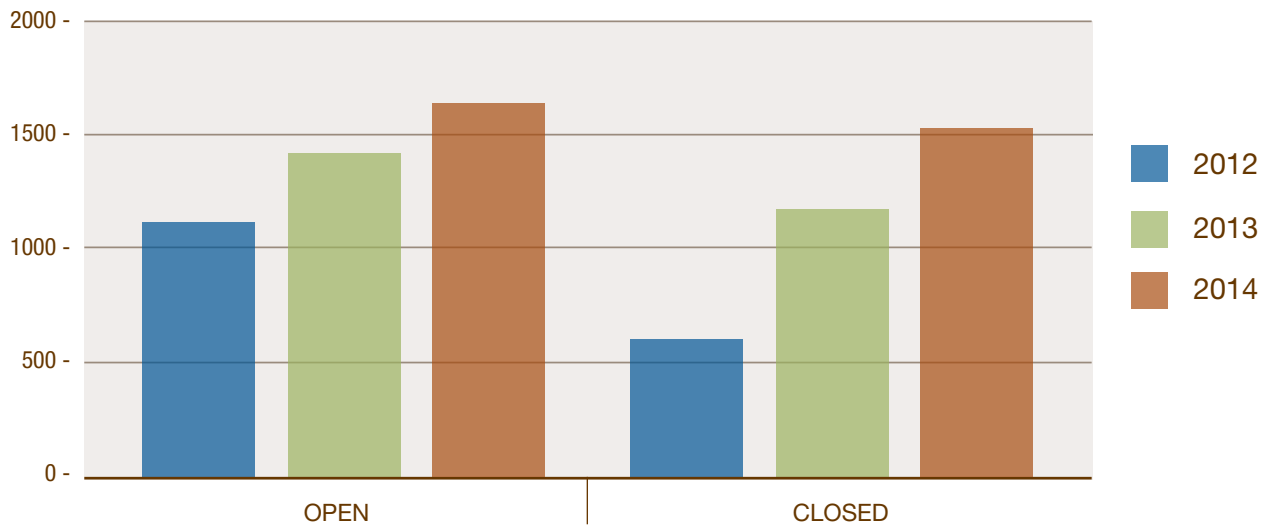
To stay up to date of current topics and recent trends in their areas of practice, the lawyers in the office participate in focused in-person professional conferences and training sessions offered by a variety of sources including the Manitoba Bar Association and the Law Society of Manitoba. The lawyers also maintain participation in relevant associations and ListSerts including the Canadian Association of University Solicitors (CAUS) and National Association of College and University Attorneys (NACUA).

## Overview of Files

Senior administrators, faculties, departments and administrative units contact the Office of Legal Counsel directly. Based on the nature of the request or assistance required a file will be opened within the Office and assigned to a particular lawyer depending on the subject matter and the faculty, department or unit initiating the request.

During the reporting period of April 1, 2014 to March 31, 2015, the Office of Legal Counsel opened a total of 1779 files. During that same period a total of 1688 files were closed. As of March 31, 2015, the end date of the reporting period, the office had a total of 1570 active files.

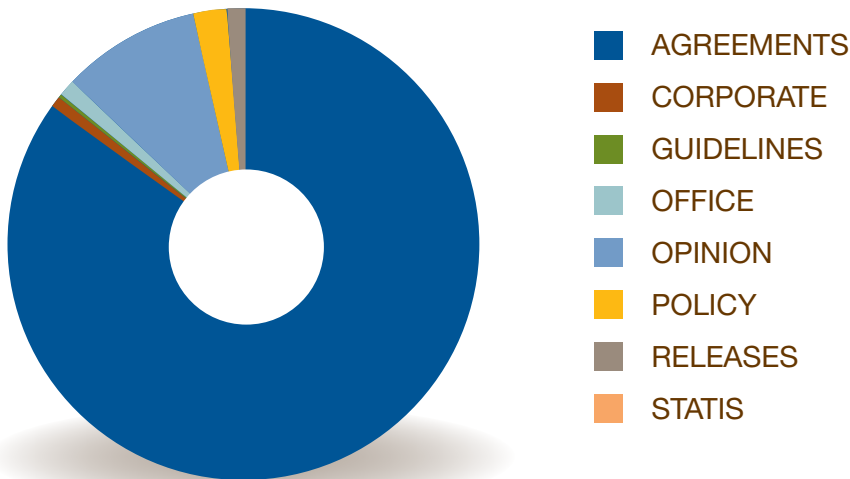
## Open and Closed Files



By comparison, during the previous reporting period (April 1, 2013 to March 31, 2014) the office opened a total of 1539 files and closed a total of 1343 files.

When a file is opened it is categorized into one of several different categories based on subject matter. The breakdown of the files that were opened during the reporting period is as follows:

## Files by Category

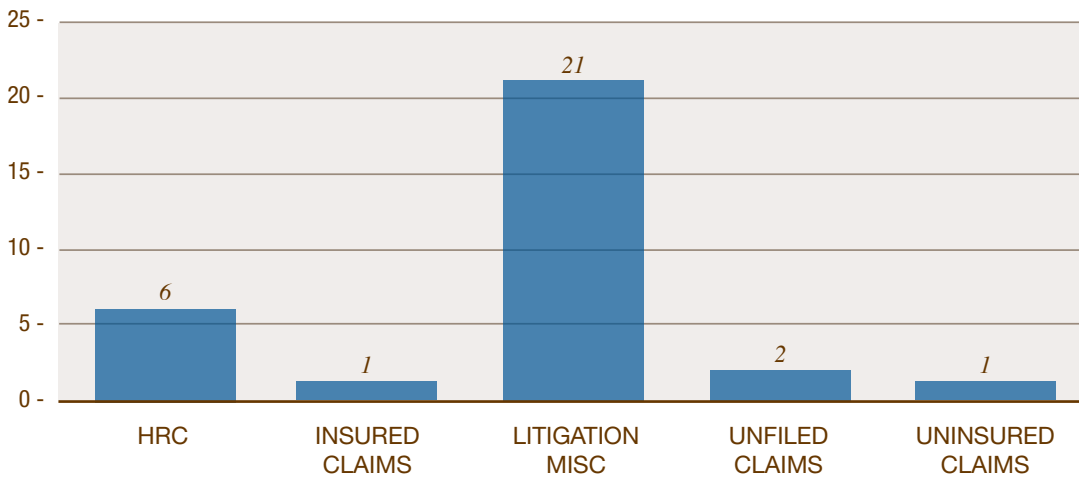


## Litigation Files

Litigation files involve an adversarial component. While there are a wide variety of matters that can fall into this category, some examples include academic disputes, class action suits, commercial disputes, discrimination, employee accommodation, intellectual property disputes, personal injury, professional malpractice, property damage, sexual assault, student accommodation, theft by employee and, wrongful dismissal. The lawyers in the office will often work with external counsel on litigation matters.

Of the files opened during the reporting period, 48 files fell into the Litigation category. This category is further broken down into subcategories that include human rights complaints, insured claims, potential claims that are not filed to date, uninsured claims and other miscellaneous litigation matters.

## Litigation File Breakdown by Subcategory

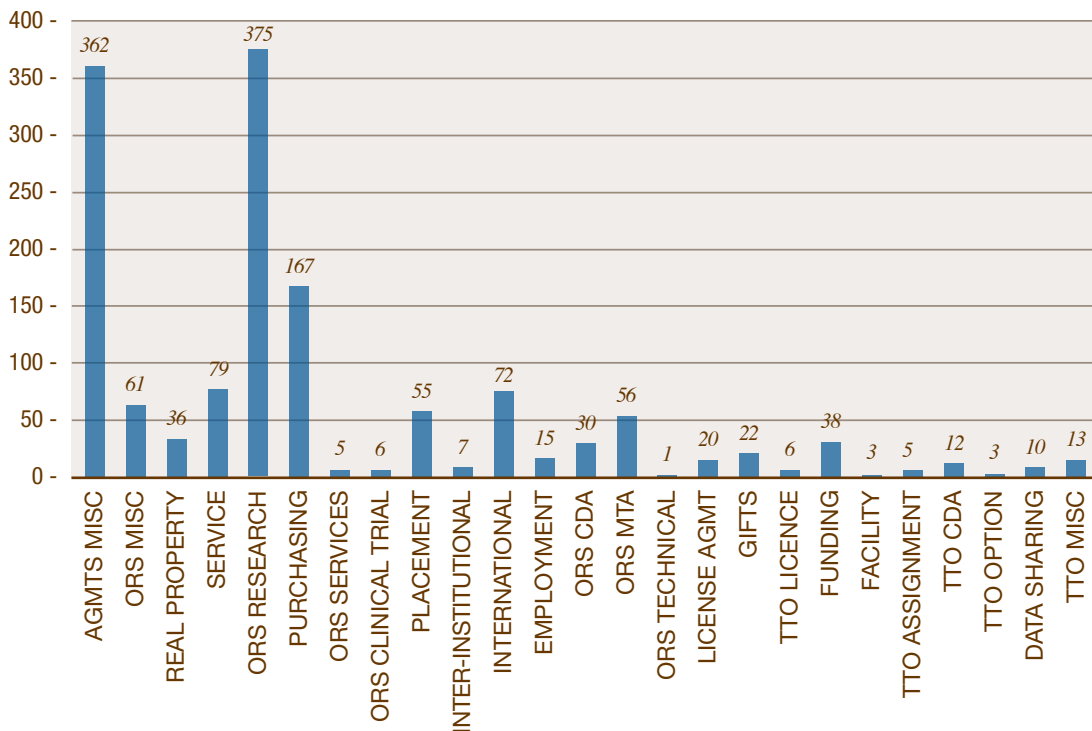


## Agreements

During this reporting period, the Office provided important transactional legal services on a variety of research agreements, technology commercialization efforts, real estate transactions, investments, gifts, and international agreements, as well as other important commercial activities.

The total number of files opened related to the review, negotiation and/or drafting of agreements was 1470, the largest single category of work for the office. Of these files, 534 were agreements related to research, which was the highest number of agreements from a single client unit, accounting for over 36% of the total number of agreements initiated in the reporting period. The office also helped to develop several template agreements which can be used by various departments in order to expedite the signing process for agreements.

The following chart depicts the overall breakdown of files related to transactional matters:



## Highlights

The following are examples of some of the important projects that the office was involved with during the reporting period.

### **Purchase of 137 Innovation Drive**

The University required additional space to accommodate its expanding External Relations Office. The office played a major role in the negotiation and development of several agreements to give effect to the purchase of 137 Innovation Drive from Cangene Corporation, including the purchase agreement and lease amendments.

### **Castanera Scholarship Fund**

The office was successful in its application to vary the trust for the Castanera Scholarship Fund. The Court held that where a gift can be articulated as promoting a cause of belief with specific reference to a past inequality, there is nothing discriminatory about such a gift unless societal values have changed so significantly that the condition has become offensive generally to members of society. This case is important in shaping how the University should proceed with respect to future applications for variation, as well as future gifts for a specified purpose.

### **Active Living Centre**

The office worked closely with Physical Plant, Purchasing Services and the Faculty of Kinesiology and Recreation Management to facilitate the opening of the Active Living Centre. Services included construction and project advice, as well as procurement and contractual support for the multi-million dollar facility.

### **The University of Manitoba Accessibility Policy and related Procedures**

The office is a member of the Cooper Commission Implementation Committee (CCIC). The Cooper Commission was a Senate approved committee which was tasked with making recommendations to Senate on how to balance the University's legal obligation to offer reasonable accommodations to students with disabilities while also protecting academic standards. The CCIC was created to implement the Senate approved recommendations of the Commission. The office's involvement included drafting assistance for the University's Accommodation Policy, the Student Accessibility Procedure and the Student Accessibility Appeal Procedure which came into force on January 1, 2015. The office also supported implementation by partnering with Student Accessibility Services to deliver informational seminars to Academic Staff about the University's legal duty to accommodate and how this is accomplished through this new Policy.

# Access and Privacy Office

## Executive Summary

The Access and Privacy Office is responsible for the central administration and implementation of *The Freedom of Information and Protection of Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA) and other information management requirements. The primary focus of the office is to facilitate the rights of the public to access records in the custody or control of the University of Manitoba, ensure that personal information and personal health information are protected to safeguard the privacy of individuals, and to provide guidance and assistance related to the creation, storage, use and disposal of University records.

The Access and Privacy Office responds to all formal access to information requests for the University. During the reporting year, the office received 63 formal access requests and 3 were carried over from the previous fiscal year, for a total of 66 access requests to be processed; a small increase from the previous year of 61 access requests.

The Access and Privacy Office also responds to any formal access to information requests received by all levels of government or other public bodies in which the University of Manitoba is a third-party to the application. During the reporting year, the office received five third-party access requests.

The number of privacy incidents reported to the Access and Privacy Office during the fiscal year was 19, in which 13 resulted in investigations. This remains consistent, with 13 internal privacy incidents investigated during the previous reporting period as well.

A Privacy Impact Assessment (PIA) is a process used by the Access and Privacy Office to help ensure that new technologies, information systems, initiatives and program changes at the University are compliant with privacy legislation and meet basic privacy requirements. The Access and Privacy Office received 34 information management system projects during this reporting year, in addition to 15 projects that were carried over from the previous fiscal year, for a total of 49 project consultations. Of the total projects completed during the reporting period, 28 projects were required to complete the full Privacy Impact Assessment process and 9 were carried forward to the next fiscal year.

Educational outreach is the best tool to address privacy risks and information management, and the office has continued to expand its training offerings, with 71 in-person training sessions offered during the reporting period, up from 65 presentations offered during the previous reporting period. A total of 2,612 individuals received access and privacy training during the reporting period, with 1,621 receiving training at an in-person session, and 991 through on-line training modules created and maintained by the Access and Privacy Office.

The Access and Privacy Office is also responsible for the Records Management Program at the University. The office provides guidance and assistance with records management and data classification, including records retention schedules; records storage; transfer of records to the university archives; authorized records destruction; and digitization. Robust records management practices help to meet the University's business, fiscal and legal requirements; support program and service delivery; inform and document decisions and support accountability; and ensure compliance with access and privacy legislation. A five-year Records Management Plan continued to be implemented, with a focus on the development of the first specialized records authority schedules for the Human Resources and Financial functions of the university and the development of training tools for staff. The office saw a significant increase in the application of retention schedules in University offices resulting in a greater disposition of records.

New policies and procedures as well as revisions to the office's existing *FIPPA and PHIA Policy* and *PHIA Procedures* were finalized over the reporting period and were ready for submission to the University's Board of Governors for review and approval. The new and revised policies and procedures ready for submission are as follows:

- Access and Privacy Policy (to replace the existing FIPPA and PHIA Policy)
- Access and Privacy Procedures (to replace the existing PHIA Procedures)
- PHIA Training and Pledge of Confidentiality Procedures (new)
- Records Management Policy (new)
- Imaging Records for Use as Official Records Procedures (new)
- Records Holds Procedures (new)
- Transitory Records Procedures (new)

### Access to Information Requests

The University of Manitoba received a total of 63 requests for information during the period of April 1, 2014 to March 31, 2015, and three requests were carried over from the previous fiscal year, for a total of 66 access requests. Requests for information included requests for personal information and also general records held by the University.

#### Types of Applicants

Individuals (including the public, staff and students) made 45 applications during the reporting period. Political parties submitted 19 applications and media submitted 2 requests.

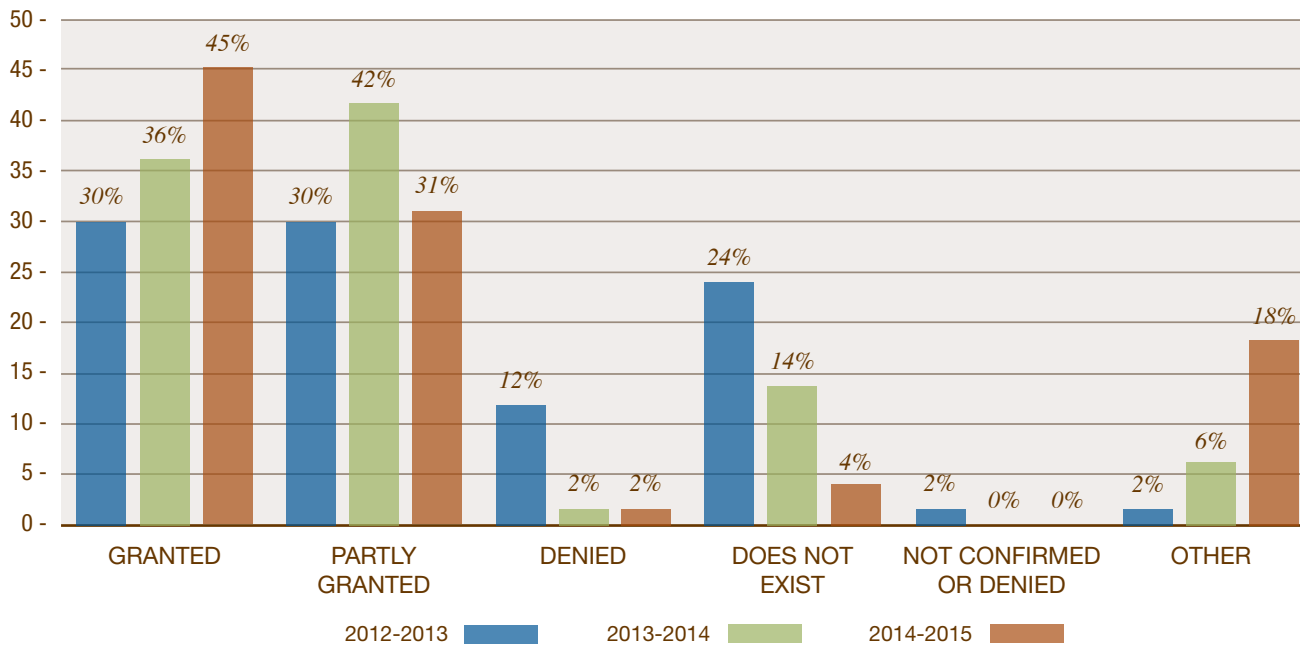
#### Access Decisions

Of the 66 requests that were received during the reporting period, six requests were withdrawn or abandoned, and five were carried over to the next fiscal year. Of the remaining 55 access requests that were completed in the reporting period, 45% were granted access to all the record(s) or information requested. An additional 31% were provided with partial access. The remaining 24% were denied access or the requested records did not exist.

Access Decision	Number of Requests Applied
Access Granted in Full	25
Access Partly Granted	17
Access Denied	1
Record Does Not Exist	2
Refused to Confirm or Deny Existence of a Record	0
Incomprehensible, Frivolous or Vexatious	3
Record is Publicly Available or Out of Scope	7
Total Access Decisions	55



## Access Decisions



## Reasons for Denial of Access

When the University withholds information in a requested record or withholds a record completely, exceptions to disclosure under FIPPA must be cited and explained to authorize the decision. The most frequently used exceptions to disclosure during the reporting period was Section 17: Disclosure harmful to a third party's privacy.

Sections of the Act Used	Exceptions	Number of Requests Applied
<b>Mandatory Exceptions</b>		
17	Disclosure harmful to a third party's privacy	9
18	Disclosure harmful to business interests of a third party	3
19	Cabinet confidences	0
20	Information provided in confidence by another government	2
<b>Discretionary Exceptions</b>		
21	Harmful to relations between MB and other governments	2
22	Local public body confidences	0
23	Advice to a Public Body	6
24	Harmful to individual and public safety	2
25	Harmful to law enforcement or legal proceedings	1
26	Harmful to security of property	0
27	Solicitor Client Privilege	3
28	Harmful to economic and other interests to public body	3
29	Testing procedures, tests and audits	0
30	Confidential evaluations	0
31	Preservation of heritage resources and life forms	0
32	Information that is or will be available to the public	0

## **Response Time**

Under FIPPA, the University must respond to all access to information requests within 30 calendar days of receipt, unless an extension was taken which would allow up to an additional 30 days to provide a response to the applicant. A total of 100% of access requests received by the University were responded to within the legislated timelines.

## **Third-Party Access Requests**

The University of Manitoba received a total of five third-party access requests during the period of April 1, 2014 to March 31, 2015. No requests were carried over from the previous fiscal year, nor were any carried forward to the next fiscal year.

## **Third-Party Access Decisions**

Of the five third-party requests that were received during the reporting period, three requests (60%) were granted access to all the record(s) or information the University was consulted on. The other two requests (40%) were provided with partial access.

## **Complaints about Access Decisions**

Access to information applicants have the right to submit a complaint to the Manitoba Ombudsman regarding access decisions under FIPPA. The complaint must be submitted within 60 days of receiving an access response from the University. The University received seven formal complaints from the Ombudsman during the reporting period, plus one that was carried over from the previous fiscal year for a total of eight complaints to be processed. This is up significantly from the previous reporting period in which two formal complaints were received. Of these eight complaints, one complaint was withdrawn, none were carried over to the next fiscal year, and seven complaints were closed or resolved. Of the seven complaints, six decisions were handed down by the Manitoba Ombudsman's Office, with the University being fully supported in five complaints and partly supported in one complaint.

The University works with the Manitoba Ombudsman closely to mediate acceptable solutions to all access to information complaints.

## **Complaints about Privacy**

Both FIPPA and PHIA require that the University implement standards and procedures in their day-to-day management of personal information and personal health information in their custody or under their control. This covers matters such as why and how personal information and personal health information is collected, how the accuracy and integrity of such information is maintained, how the information is accessed and used within the University, the appropriate disclosure of information outside the University when necessary or required, and the safe storage and destruction of such information.

There were two formal complaints submitted to the Ombudsman related to the protection of privacy during the reporting period, which was resolved. Additionally, 19 privacy incidents were reported during the fiscal year, resulting in 13 internal privacy incident investigations conducted by the Access and Privacy Office during the reporting period. A report with privacy risk mitigation recommendations result from the investigation and a follow-up process regarding the implementation of the recommendations is in place.

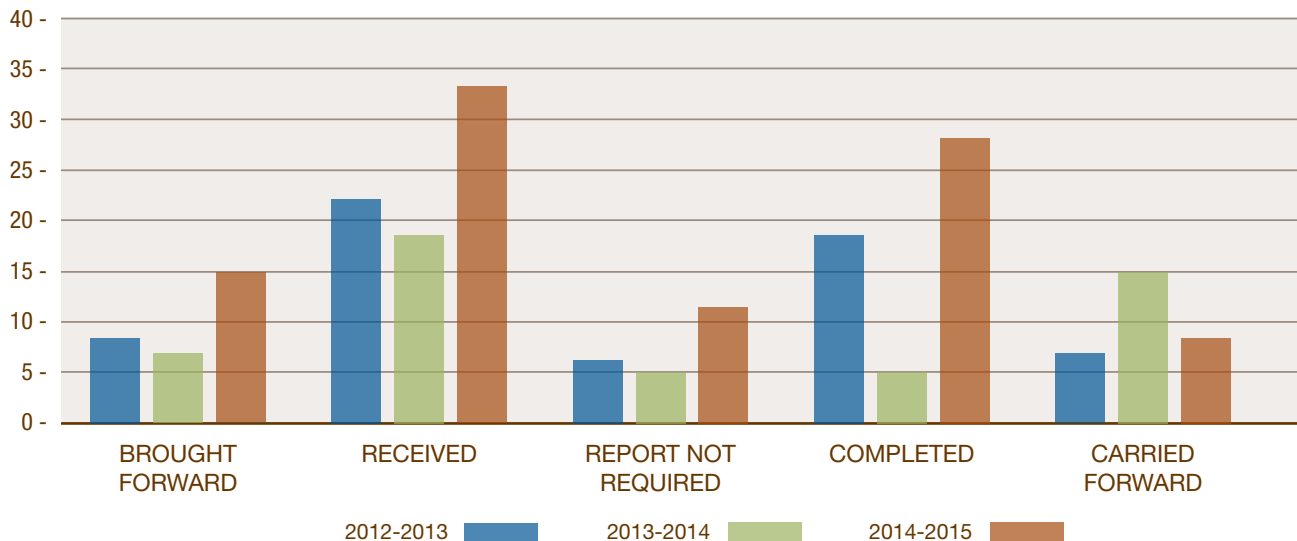
## Privacy Impact Assessments

The Access and Privacy Office assesses compliance with privacy legislation and assesses risk on new and existing information management systems using a Privacy Impact Assessment (PIA). A completed Privacy Impact Assessment report provides advice and recommendations to ensure the University of Manitoba's compliance with FIPPA and PHIA. The PIA process helps to ensure that the University of Manitoba collects and uses only the minimum amount of personal information for authorized and lawful functions or activities, and that the information collected is protected appropriately against breaches.

Of the 49 information management system projects that were submitted to the Access and Privacy Office, 28 required a full Privacy Impact Assessment be completed and a report with recommendations issued.

Projects Submitted	Number of Projects
Carried over from previous year	15
Received during reporting period	34
<b>Total</b>	<b>49</b>
PIA not required	12
PIA completed, report and recommendations issued	28
Carried over to the next year	9
<b>Total</b>	<b>49</b>

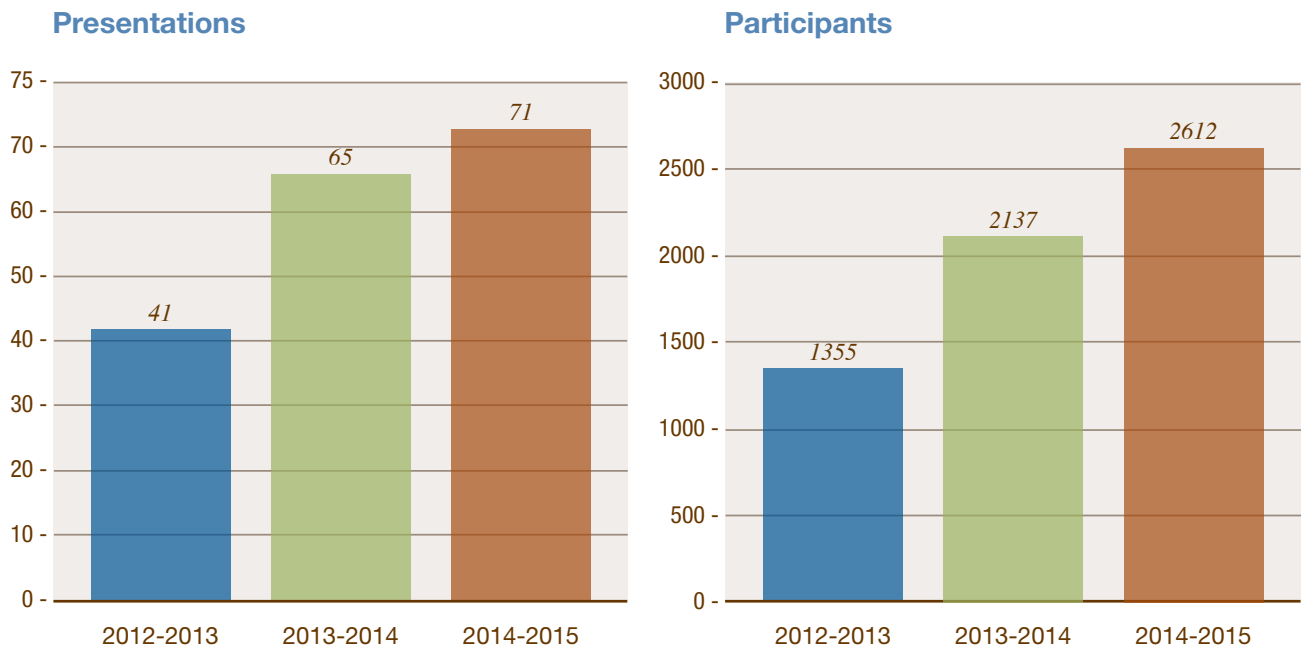
## Privacy Impact Assessments



## Personal Health Information Act (PHIA) Training

The Access and Privacy Office provides University of Manitoba (UM) Personal Health Information Act (PHIA) training, as well as Winnipeg Regional Health Authority (WRHA) PHIA training to persons associated with the University who are exposed to personal health information in the custody or under the control of either the University or the WRHA. The UM and WRHA PHIA training outlines the roles and responsibilities of individuals regarding the security and protection of privacy of personal health information. PHIA pledges of confidentiality are signed by the participants at the conclusion of the training.

During the reporting period, the Access and Privacy Office completed a total of 71 training sessions (UM and WRHA), with 2612 people signing Pledges of Confidentiality. This is an increase from the previous reporting period, which had 2137 people signing Pledges of Confidentiality.



## Records Management

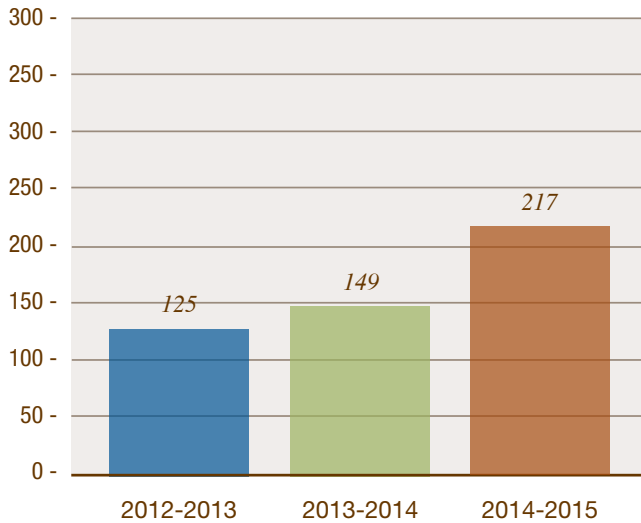
The Access and Privacy Office is responsible for the University of Manitoba's Records Management Program, which provides guidance and assistance regarding the systematic control of records creation, storage, use and disposal.

Significant time in this fiscal year was devoted to the development of records management training content for various university audiences, as well as the development of new functional records authority schedules.

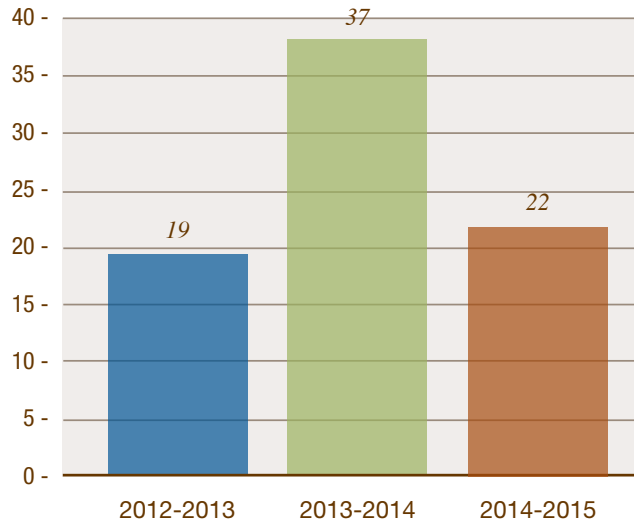
University records that do not have an archival value need to be destroyed in a controlled and confidential manner that meets the requirements outlined in privacy legislation. The Requisition to Destroy Records (RDR) process ensures the authorized, confidential, controlled and documented destruction of University records once they have met their retention periods, as outlined in the approved retention period. During the reporting period, a total of 217 RDRs were received and approved by the Access and Privacy Office, up from 149 RDRs during the previous report period.

When University records of archival value (records with long-term legal, operational or historical use) are no longer being actively used, University of Manitoba offices, faculties, departments and schools can arrange to transfer them to the University of Manitoba Archives and Special Collections (Fort Garry Campus), or the Medical Archives department within the Neil John Maclean Health Sciences Library (Bannatyne Campus). Each transfer of records must be accompanied by a Requisition to Transfer Records (RTR) that is reviewed and approved by the Access and Privacy Office before the transfer is completed. During the reporting period, a total of 22 RTRs were approved.

**Requisition to Destroy Records**



**Requisition to Transfer Records**



The development and approval of new records authority schedules also enabled the Access and Privacy Office to initiate a review of records that had been transferred to the archives for semi-active storage. This resulted in the review, reclassification and execution of destruction via RDRs for 136 boxes of records that had been occupying valuable storage space in the archives, which in turn opened up that space for the secure storage of other valuable university business records.

# The Office of Human Rights and Conflict Management

## Executive Summary

The University of Manitoba is committed to an inclusive and respectful work and learning environment. The Respectful Work and Learning Environment (RWLE) policy establishes the University's approach to maintaining a climate of respect within this community and to address any situations in which respect is lacking.

This year the Office of Human Rights and Conflict Management (OHRCM) experienced steady growth in the number of contacts for advice and assistance. These contacts increased 39% from last year, and presentations in education and awareness are up 56% from last year.

Conflict management is a new category added to provide services to individuals who need assistance dealing with conflict. The majority of these files were requests for assistance from supervisors, department heads and deans on behalf staff members in the office. Conflict management coaching is still offered as a service to the community under conflict management.

Personal harassment continues to represent the majority of files dealt with. However, the number of new personal harassment casefiles has decreased from last year. The decrease in informal cases may be the result of instances of alleged personal harassment being dealt with via conflict resolution. The majority of concerns are employment related which is consistent with the previous year. Staff made up 40% of all complainants, students accounted for 30% and the remaining 30% were complaints brought forward by third parties. 52% of all respondents were staff, 29% were students, and 19% were unnamed.

This year has seen an increase in the number of new concerns brought forward under sexual harassment. The University of Manitoba is committed to creating an environment where allegations of sexual harassment can be brought forward by complainants in a safe and respectful setting. The increase may be the result of this message becoming more prevalent. Further, the creation of a website dedicated to providing information on sexual assault may assist with this. Complaints were brought forward by students (47%), staff (33%), and third parties (20%). Respondents to informal complaints in this category included 50% students, 40% staff and 10% under other.

There has been a decline in the number of human rights files this year, representing the lowest number of informal files. Of complainants in this category, 50% were staff, 19% were students, and 31% were brought forward on behalf of complainants. Respondents to informal complaints included 30% students, and 70% staff (either individuals or a specific unit or administrator).

This year has seen an increase in formal complaints; last year there were seven; this year there are sixteen. Six under human rights, two university instituted complaints under sexual harassment and eight under personal harassment. Of the complaints, 13% were ongoing, 31% did not trigger the policy, 31% were found to have a breach, 6% were dropped and 19% did not breach the policy.

### Advisory:

Any individual that contacts the OHRCM for assistance is initially recorded in advisory. Advice and information will be given and/or referrals may be made to the individual. This year 25% of advisory contacts became either informal, formal or conflict management files, an 8% decrease from last year; which represents a continuing trend.

### Informal Complaint:

Any person who believes that they or any member of the University has been subjected to harassment or discrimination in the course of University-related employment, study, training or activities may address their concerns informally under the RWLE policy. The human rights and conflict management officer (HRCMO) facilitates resolution of informal complaints through conflict management coaching, conciliation or mediation.

### Formal Complaint:

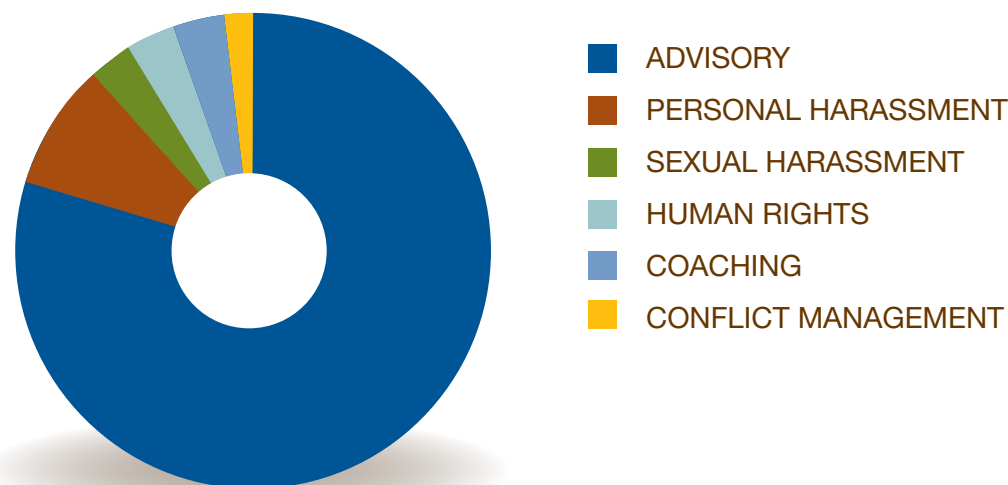
All formal complaints must be submitted in writing within one year from the date of the most recent alleged incident. When a matter cannot be resolved informally, or if the behaviour continues, one has the option of proceeding to a formal complaint. It is important to note that a complainant is not obligated to attempt to resolve a conflict informally; they have the right to proceed directly to a formal complaint if they choose. Formal complaints are reviewed by an investigator independent of the University of Manitoba to determine applicability under the RWLE policy. Interestingly, 88% of written formal complaints submitted to OHRCM proceeded directly to the formal investigation process, a trend continuing from last year which was 86%.

### Conflict Management

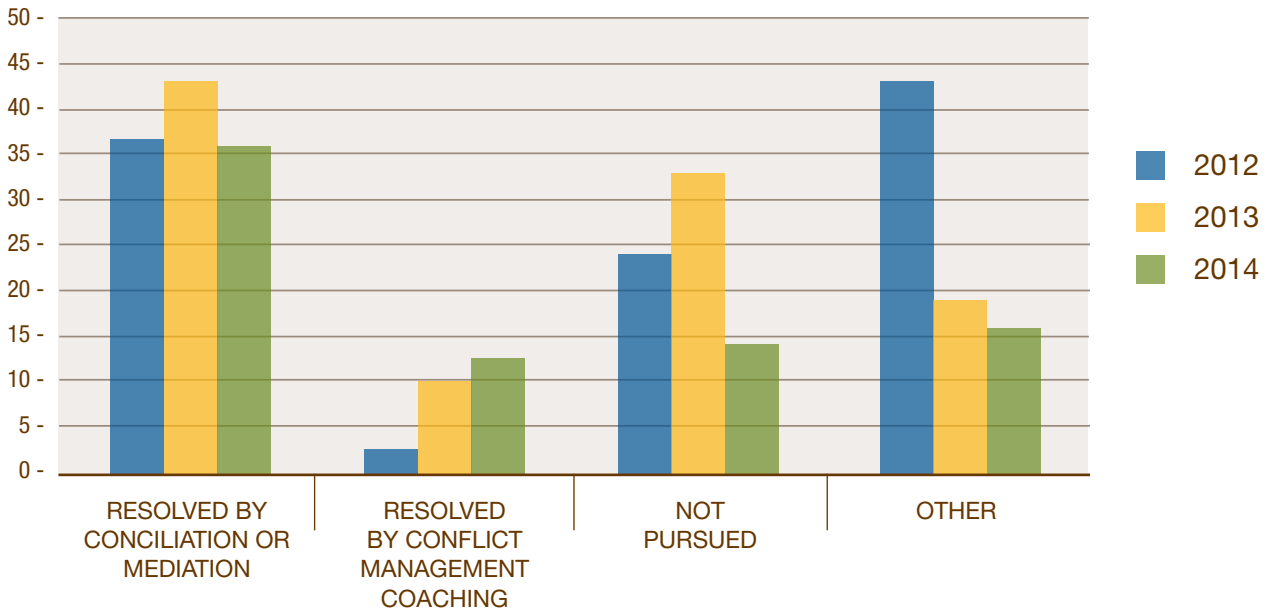
Conflict management (CM) was a newly developed service offered by OHRCM in 2014. CM involves the voluntary, participant-driven and cooperative resolution of disputes between and among pairs and small groups. CM is facilitated by OHRCM staff and may take the form of conflict coaching, conciliation, mediation, facilitated group dialogue, or restorative justice forums. These options often allow for win-win outcomes for participants, and thus can deescalate conflicts and help foster better relationships. It is important to note that while most CM strategies involve all parties in a conflict, conflict coaching is a one-on-one process with a trained coach (OHCRM staff) to help individuals gain increased ability to manage their interpersonal conflicts and disputes.

During this reporting year the OHCRM opened files for 29 cases by providing various forms of conflict management (as described above) to members of the University community.

### New 2014 Complaints



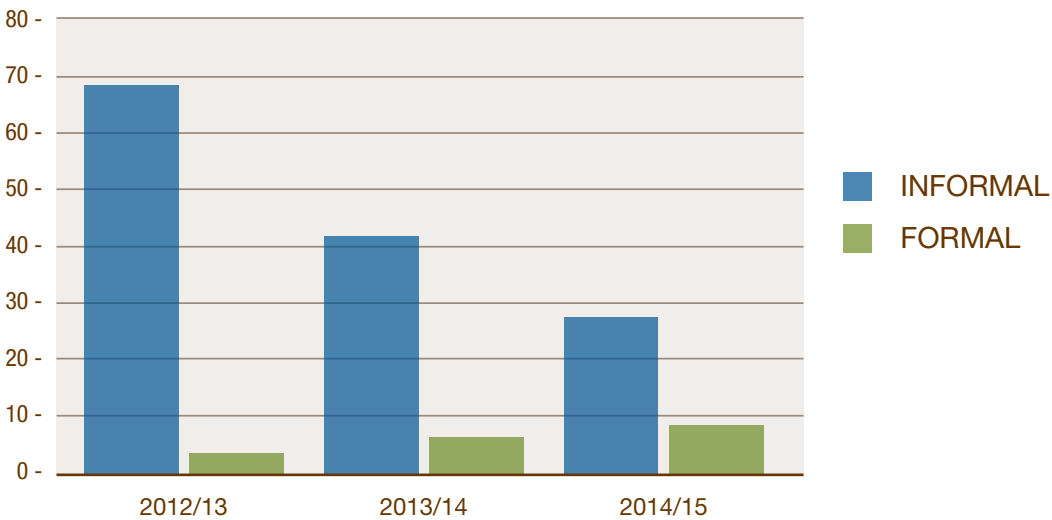
### Method of Closure of Informal Files



### Personal Harassment:

Personal harassment is objectionable and unwelcome comments or actions directed towards a specific target which serve no legitimate work or academic related purpose and have the effect of creating an intimidating, humiliating, hostile or offensive environment. Examples of personal harassment include: repeated or continuous incidents of yelling, screaming or name calling, repeated or continuous threats to terminate employment or contracts for reasons unrelated to performance, repeated or continuous threats to withdraw funding, scholarships or advancement opportunities for reasons unrelated to performance.

### Personal Harassment Files:





## Trends:

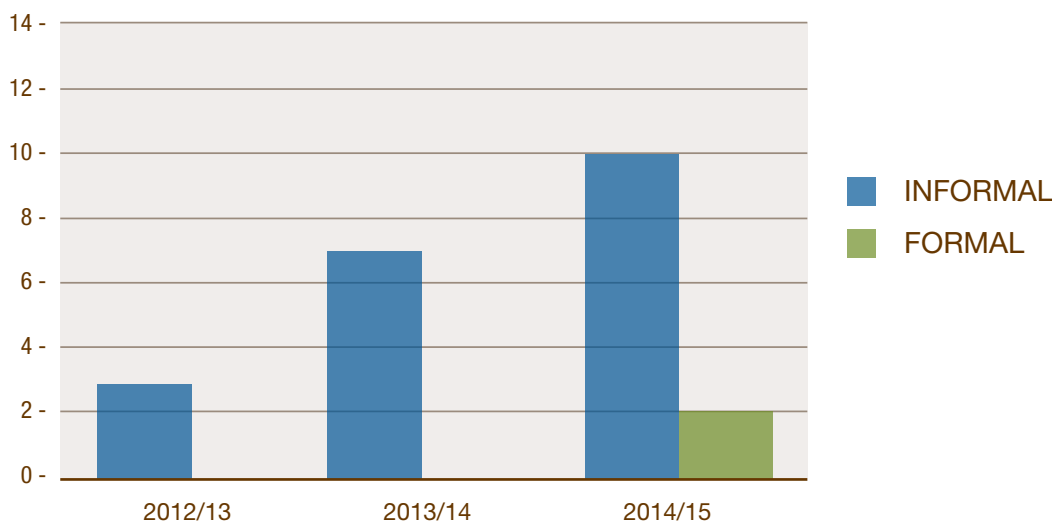
The trend of increasing numbers of formal complaints may be related to two factors. One factor could be the work done by OHRCM in presentation settings (e.g.: orientations and workshops). Further, basic awareness of the OHRCM's existence, as well as knowledge of the RWLE policy among the University community could be factors leading to the increase.

A second factor could be the nature of personal harassment being viewed by potential complainants as equal to general-purpose unfairness. It is possible that when other avenues of formal resolution are not successful (or do not work), a complainant may apply the formal RWLE complaint mechanism. The steady decrease in informal cases may be the result of many instances of alleged personal harassment being dealt with via conflict resolution.

## Sexual Harassment:

Sexual harassment is prohibited under *The Human Rights Code, (The Code)* and the University's RWLE policy. It is defined as a course of abusive and unwelcome conduct or comment that is detrimental to the environment; a series of objectionable and unwelcome sexual solicitations or advances; a sexual advance made by a person who is in a position of power; promise of reward or threat of reprisal for rejecting a sexual solicitation or advance, and sexual assault.

## Sexual Harassment Files:



## Trends:

Given the media and other attention to the topic of sexual harassment and assault in post-secondary education (PSE) over the past years, it is no surprise that these contacts have increased. Indeed, the notion of a PSE wide "culture" of sexual harassment and assault has also featured heavily in the media, student activism and academic settings. Finally, several high-profile cases of alleged sexual harassment and/or assault have pervaded the news media this past year.

We wish to create an environment where allegations of sexual harassment and assault can be brought forward by complainants in a safe and respectful setting. The trends shown above could in part be the result of this message becoming more prevalent. It could also be the result of complainants feeling emboldened by other cases to come forward.

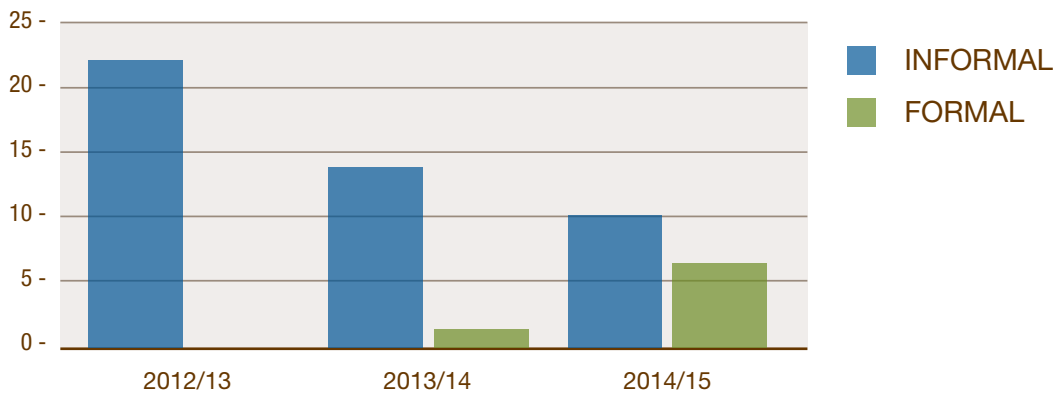
## Human Rights

Human rights discrimination is differential treatment, whether intentional or not, of individuals or groups based on the categories set out in *The Code* and the University of Manitoba's RWLE policy.

These categories include: ancestry, nationality or national origin, ethnic background or origin, religion or creed, age, sex, including pregnancy, gender identity, sexual orientation, marital or family status, source of income, political belief, association or activity, physical or mental disability and social disadvantage.

Discrimination imposes burdens on, or denies opportunities to individuals or groups and is unfair because it is not based on actual academic or job performances, or any other form of competence. Instead, it is based on the assumption that a particular individual shares attributes, usually negative, stereotypically associated with a group to which he or she is perceived to belong.

### Human Rights Files



### Trends:

It is notable that the respective decrease and increase in informal and formal complaints somewhat mirrors the statistics shown for PH in this same report. The reasons for this trend may be partially related to ongoing education by OHRCM (staff and student orientations).

## **RWLE Presentations: 64**

Presentations provide a means to educate members of the University of Manitoba's community regarding their rights and responsibilities under the RWLE Policy. This year's presentations have either been provided by the office alone or in conjunction with the following units or departments: Learning and Organizational Development, Student Advocacy, Student Accessibility Services and Faculty of Graduate Studies. Of note, the number of presentations from last year has increased by 56%.

## **Other Activities**

The HRCMO was the conference Chair for the Canadian Association for the Prevention of Discrimination and Harassment in Higher Education Conference. The conference took place in Winnipeg May 7-9, 2014 and along with members of the University of Manitoba, the following from Manitoba were on the planning committee: University of Winnipeg, Red River Community College, Brandon University, University College of the North, Manitoba Institute of Trade and Technology.

In 2014 a conflict management advisor position was created and in July it was filled.

The HRCMO attended the Alternative Dispute Resolution Institute of Canada conference in Montreal Oct 23- 24, 2014.

The OHRMC sponsored LGBTTQ Training on January 15, 2015.

## **Service**

The HRCMO is a member of the President's Advisory Committee on Respect and also sat on the Mental Health Strategy Advisory Committee. The HRCMO along with a representative from Student Accessibility provided Cooper Commission presentations to units across campus. Both the HRCMO and the CMA are members of the following: Sexual Assault Working Group (including membership on "Education and Awareness" and "Protocols and Website" subcommittees); the College of Medicine's Cultural Inclusiveness Working Group, Diversity Working Group; Digital Identity Working Group.

The OHRMC participated in the following Orientations: College of Medicine, Access Awareness Day, and New Faculty Orientation.

# Copyright Office

## Executive Summary

The University of Manitoba established the Copyright Office in 2011 to ensure that faculty, instructors, staff, and students have the supports they require to be successful in their teaching, research, and studies. The University recognizes that it is a major creator and user of copyrighted material, and that issues relating to copyright continue to be complex. The main roles of the Copyright Office are to:

- Provide educational programs and advice on copyright issues.
- Monitor the University's compliance with copyright rules, and encourage appropriate practices.
- Provide a copyright clearance service.

In 2014/15, the Copyright Office was staffed by one Copyright Officer and one Copyright Assistant. The University created a Copyright Advisory Committee in 2014 to help guide the University in its decisions and policies related to copyright. The Committee provided valuable input and feedback on the University's approach to copyright. In particular, the Committee worked to develop a copyright transition plan and budget, as well as a copyright compliance strategy, after the decision was made not to renew the University's agreement with Access Copyright, a Canadian copyright collective. As a result, a Copyright Strategy Manager was hired in March 2015 to implement the overall copyright compliance strategy, and a plan was in place to hire a Copyright Coordinator who would offer a personalized copyright service to faculty and instructors.

The Copyright Office continued to focus on an education campaign and to review course content in learning management systems (LMS) as part of its due diligence program. Because copyright rules have been a moving target in the past few years, educating all University community members with current information is an ongoing challenge.

The following table summarizes Copyright Office statistics from 2014/15:

<b>Copyright Office statistics 2014/15</b>	
Group presentations	14
Attendees at presentations	380
Learning management system courses reviewed	75
Copyright queries answered	1,088
Requests for copyright clearance processed	90
Fees paid for copyright clearances	\$66.15

The following table summarizes Copyright Office statistics since it opened in 2011:

<b>Copyright Office statistics 2011/15</b>	
Group presentations	141
Attendees at presentations	2,641
Learning management system courses reviewed	459
Copyright queries answered	5,342
Requests for copyright clearance processed	639
Fees paid for copyright clearances	\$1,897.26

The Copyright Office reports to the Director of the Office of Fair Practices and Legal Affairs and General Counsel. The Office is located at the Fort Garry Campus in the Allen Building.

## Copyright Trends and News

Significantly, the University created a Copyright Advisory Committee with an aim to ensure compliance with Universities Canada's (formerly AUCC) Fair Dealing Guidelines and the Copyright Act. The Committee began discussing important issues such as the renewal of the Access Copyright agreement, the production of course packs, copyright compliance in the LMS, course reviews, library copying practices, and the creation of a copyright policy. The Committee worked to implement best practices seen by other Canadian universities in similar situations. The Copyright Office worked collaboratively with the Committee to encourage copyright compliance and to mitigate risk.

The most important trend in copyright during the reporting period was the decision by many educational institutions across Canada not to renew their agreements with Access Copyright and instead rely on the Copyright Act's Fair Dealing exception, other legal exceptions, and Canadian common law which favours copyright users. The University's Copyright Advisory Committee worked toward reaching this goal, and in 2015 confirmed that it would not renew its agreement with Access Copyright. A continued decline in copyright clearance fees is expected as more instructors apply the Fair Dealing exception and we shift toward more use of materials already licensed by Libraries.

The Access Copyright lawsuit against York University remains before the courts. Similarly, Copibec, the Quebec counterpart to Access Copyright, launched a lawsuit against Université de Laval in 2014. The lawsuits challenge the interpretation of Fair Dealing adopted by the universities. Phase 1 of the York University litigation should end in May 2016 and will likely develop into the leading precedent on users' rights.

The biggest challenge for the Copyright Office is to keep faculty and instructors updated with new copyright rules. It is believed that many faculty members and instructors attended an information session only once and do not have current information about copyright. The Copyright Office will endeavour to re-train faculty and instructors about the new copyright environment.

The "Notice-and-Notice" provision of the Copyright Act came into force in January 2015. This mechanism will allow a rights holder to send a notice of infringement to an ISP who must then forward that notice to the infringing user. The Copyright Officer worked with the Legal Office to determine if and how the UM must prepare in the event it receives this type of notice for infringing content found on UM websites.

In order to stay up to date on current copyright issues and trends, the Copyright Officer attends the annual copyright conference. The Copyright Officer also keeps up to date by reading postings by several copyright experts (through listservs, blogs, RSS feeds, social media, etc.). Among those followed are Michael Geist, Howard Knopf, Ariel Katz, Sam Trosow, Barry Sookman and Lesley Ellen Harris.

The Copyright Office will endeavour to continue providing fast, efficient services to all University community members seeking advice and assistance about copyright to increase copyright compliance campus-wide.

## Publicity and Presentations

Presentations provide attendees with general information about copyright, as well as specific ways to exercise copyright compliance.

Presentations are offered to teaching units, administrative units and researchers upon request. The Faculty of Graduate Studies schedules information sessions presented by the Copyright Officer to graduate students several times per year. Group presentations and one-on-one meetings with faculty, instructors, researchers, staff and graduate students continued to be offered during the reporting period. For example, the Copyright Officer was invited to present to the UM Leaders group, new administrators, new faculty, library reference staff, as well as to specific faculties and units. In addition, the Copyright Officer presented at a Research Ethics & Compliance Workshop with representatives from the Privacy, Student Advocacy and Research Quality Management offices. A session prepared by the Copyright Office and Student Advocacy to review copyright and plagiarism issues was attended by 105 staff members from the UM External Relations units.

The Copyright Officer presented 14 group information sessions with 380 University community members in attendance during the reporting period, a decrease from the previous period.

Year	Group presentations	Attendees at presentations
2014/15	14	380
2013/14	25	465

Because there were changes in how the University interprets copyright, the following publicity material was updated or revised: the copyright notice and news item in the LMS, the MSpace brochure for graduate students; copyright permission letters for students, instructors and researchers; the copyright checklists for instructors and UM Leaders; and presentation slides for instructors, researchers, UM Leaders and graduate students. The Copyright Office website was updated as needed.

In addition, information about copyright was prepared for inclusion in the following new material: the University syllabus template; the ROASS policy; the Student Advocacy website; an online course for graduate students; a Copyright Checklist for Researchers; and a library guide about disabled library patrons. The Copyright Office website was updated with short copyright-related videos recorded by Office staff.

## Reviewing Courses for Copyrighted Content

The Copyright Office continued to randomly review courses located in learning management systems, taking the opportunity to provide copyright information to instructors in its correspondence about the individual reviews. Data showed that improvement is needed by instructors in the use of citations, particularly for images used in teaching slides.

The Copyright Office reviewed 75 courses from learning management systems during the reporting period, slightly down from the previous period. The decrease is largely due to the resignation of the Copyright Assistant in November.

Courses Reviewed in Learning Management Systems	
2014/2015	75
2013/2014	84

## Copyright Queries

Copyright Office staff continued to respond to queries via email, telephone and in person. Questions about copyright come from across all faculties and schools, administrative units, and students. During the reporting period, Copyright Office staff responded to 1,088 queries, somewhat fewer than the previous reporting period.

Copyright Queries	
2014/2015	1,088
2013/2014	1,375

The Copyright Office received several questions about iThenticate, a software package purchased by the University to verify if plagiarism is present in research. Another recurring question by graduate students reflected the confusion about who owns raw data collected during the research phase. The Copyright Office was once again approached for advice regarding an instructor who had created and sold course packs to students, a violation of the "Textbook and Course Material Ordering" policy.

The Copyright Officer continues to receive questions from other copyright specialists across Canada for advice on various topics, such as how to establish a copyright office and improve copyright compliance at a university. Interestingly, the Privy Council Office requested permission to adapt the Copyright Office's Copyright Quiz for their own needs.

## Copyright Clearances

Even with the resignation of the Copyright Assistant during the reporting period, 90 requests for copyright clearance were processed, more than double the amount from the previous reporting period. Payments for copyright clearances remained quite low at \$66.15.

Copyright Clearance Processed	
2014/2015	90
2013/2014	41

## Other Copyright Office Activities

The following describes some of the major copyright projects that Copyright Office staff worked on during the reporting period.

- **Copyright Advisory Committee:** The Copyright Officer participated in the development of the University's Copyright Advisory Committee and drafted its terms of reference. The Copyright Officer contacted several universities across Canada for input on their compliance strategies and drafted an overall copyright strategy for the University of Manitoba as well as action plans for several University units. The Copyright Advisory Committee took steps to begin implementing the copyright compliance strategy, with an aim to mitigate the risk of copyright infringement by assisting faculty and instructors in determining appropriate uses of course material, and to educate the University community on copyright. The initial focus was on ensuring course packs and LMS courses were copyright-compliant, reviewing library copying practices, studying the practice of reviewing course content, and assessing human resource needs. The Copyright Officer also prepared a first draft of a copyright policy.

- **ABC Copyright Conference:** The Copyright Officer attended the 2014 ABC Copyright Conference in Victoria. The Copyright Officer, with assistance from the copyright representatives of the University of Winnipeg and Brandon University, organized and planned the 2015 ABC Copyright Conference which was scheduled to take place in Winnipeg for the first time. The Copyright Officer created a conference website, selected conference speakers, reserved venues, monitored registration, maintained a budget, and organized other aspects of the conference.
- **Libraries/Faculty of Graduate Studies:** The Copyright Officer worked with Legal Counsel to review graduate thesis licences and release forms.
- **Faculty of Graduate Studies Professional Development Workshops Committee:** The Copyright Officer was a member of the Faculty of Graduate Studies Professional Development Workshops Committee which hosted information sessions on many topics of interest to students, including copyright.
- **Staff development:** The Copyright Officer participated in several staff development opportunities (for example, the copyright conference, an information session about open access, and recorded copyright debates presented at the 2014 Congress).
- **Human resources:** A part-time summer staff member was hired to assist with reviewing courses in the LMS. The full-time Copyright Assistant resigned from her position in November. With input from the Copyright Advisory Committee, plans were made to create two new Copyright Office positions: a two-year term Copyright Strategy Manager and a full-time Copyright Coordinator. It was decided to consider replacing the Copyright Assistant at a later date. The Copyright Officer began a reduced appointment, working four days per week, in July 2014.
- **Office tasks:** The Copyright Office continued to update the procedures manual as new procedures were established.