

# Maine Human Rights Commission



## 2008 Annual Report

*July 1, 2007 - June 30, 2008*

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December 1, 2008

The Honorable John E. Baldacci, Governor  
The Honorable Senate President Beth Edmonds  
The Honorable Speaker Glenn Cummings  
State House  
Augusta ME 04333

Dear Governor Baldacci, President Edmonds and Speaker Cummings:

On behalf of myself, my fellow Commissioners, and staff of the Maine Human Rights Commission, we are pleased to present you with the 2008 Annual Report of the Maine Human Rights Commission. In 2008, we welcomed Commissioner Perry as our newly appointed Commissioner. Commissioner Varner left the Commission during the year, and one vacancy remains on the Commission. As you can see by the following we are up-holding the charge of the Commission, and handling the challenges to enforce Maine's anti-discrimination laws. The following lays out much data concerning fulfilling our collective responsibilities.

- The number of new charges that were filed increased 14% from the previous year.
- Employment charges comprised the largest category of complaints filed. Housing charges decreased by more than half from the prior year; while public accommodation charges more than doubled from the prior year.
- 73.7% of charges filed were employment charges; 7.2% were housing charges; 17.3% were public accommodation charges; and 1% were education.
- Disability charges comprised the largest number of complaints filed, with the number again increasing from the previous year (to 467); the percentage of the total increased slightly to 33.5%.
- Sex discrimination charges decreased slightly from 207 to 191, and the percentage decreased comparatively (to 13.7% of the total charges filed).
- The percentage of sexual harassment allegations decreased slightly to 50% of the total of sex discrimination charges filed.
- Whistleblower's complaints again increased, both in numbers and percentage of total (201 complaints; 14.4% of total). Whistleblower's charges exceeded both number and percentage of sex discrimination charges for the first time.
- Disability, sex, and whistleblower's allegations were named in 61.6% of the new charges filed. Retaliation, age, race and national origin followed, comprising an additional 33.2% of the total. All other categories comprised the remaining 2.9%.
- Sexual orientation allegations were filed in 2.3% of the charges in the second full fiscal year since this basis was added to the Maine Human Rights Act.
- The number of charges closed decreased by nearly 5.8% from the previous year.
- 206 cases were listed on Commission agendas. 61% were uncontested and listed on the consent agenda. Commissioners heard argument in 80 cases.
- Reasonable grounds were found in 19.4% of the cases.

- At the end of FY 2008, 826 cases were pending in our inventory. The number of pending cases increased significantly from the previous year.

In addition to the above, the staff and Commissioners have participated in 24 training forums during this time period both providing and receiving the newest information pertinent to our arena.

On behalf of the Maine Human Rights Commission and Commissioners Jadine O'Brien, Sallie Chandler and Joseph Perry, we pledge our continued commitment to the promotion of diversity, tolerance, and to ensuring basic human rights for all Maine citizens and visitors to our wonderful State. We certainly look forward to the continuing relationship with the Executive and Legislative branches to assure the citizens of Maine the basic protections afforded under the Maine Human Rights Act.

Sincerely,



Paul K. Vestal  
Chairman of Maine Human Rights Commission

## THE COMMISSION

The Maine Human Rights Commission is the State agency charged with the responsibility of enforcing Maine's anti-discrimination laws. The Commission investigates complaints of unlawful discrimination in employment, housing, education, access to public accommodations, extension of credit, and offensive names. The Commission attempts to resolve complaints of discrimination to the mutual satisfaction of those who are involved. The Maine Human Rights Act authorizes the Commission to pursue remedies for unlawful discrimination in Court when necessary to enforce the Act.

The Commission was established in 1971 and has jurisdiction over allegations of discrimination in the following areas:

EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Race	Race	Race	Race	Race
Color	Color	Color	Color	--
Sex	Sex	Sex	Sex	Sex
Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation
Physical disability	Physical disability	Physical disability	--	Physical disability
Mental disability	Mental disability	Mental disability	--	Mental disability
National Origin	National Origin	National Origin	National Origin	National Origin
Ancestry	Ancestry	Ancestry	Ancestry	--
Religion	Religion	Religion	Religion	--
Age	--	--	Age	--
Worker's Comp Retaliation	Receipt of public assistance	Children (lodging only)	Marital Status	--
Whistleblower's Retaliation	Familial Status	--	--	--
Genetic Predisposition	--	--	--	--

Below is a timeline of some of the most significant additions to the Maine Human Rights Act.

<b>1972</b>	<b>Race, Color, National Origin, Ancestry, Religion, Age</b>
<b>1973</b>	<b>Sex, Marital Status (Credit)</b>
<b>1974</b>	<b>Physical Disability</b>
<b>1975</b>	<b>Mental Disability, Source of Income (Housing)</b>
<b>1979</b>	<b>Pregnancy</b>
<b>1981</b>	<b>Familial Status (Housing)</b>
<b>1987</b>	<b>Worker's Comp Retaliation (Employment)</b>
<b>1988</b>	<b>Whistleblower's Retaliation (Employment)</b>
<b>1998</b>	<b>Genetic Pre-Disposition</b>
<b>2005</b>	<b>Sexual Orientation</b>

Commission policy is formulated by five Commissioners appointed by the Governor for staggered five year terms. Commissioners make the final finding on all charges of discrimination investigated by the Commission staff and not settled or administratively dismissed. The Governor designates the Chair of the Commission from among its members.

Section 4566 of the Maine Human Rights Act outlines the powers and duties of the Commission. These are summarized as follows:

- to investigate all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity;
- to investigate all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons;
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

## **STAFFING AND BUDGET**

The Commission appoints an Executive Director. The Executive Director in turn has the authority to appoint and supervise the Commission's staff. The Commission has four major divisions:

### ***Investigation***

The Investigation Division is responsible for all aspects of case processing from determining whether or not allegations are legally sufficient to constitute a charge of discrimination within the jurisdiction of the Maine Human Rights Act, to issuing Investigator's Reports which analyze facts and apply the law of discrimination and relevant Court decisions and recommending specific findings to the Commission.

### ***Compliance***

The Compliance Division is responsible for all settlement efforts of the agency. The Division has direct responsibility for negotiating conciliation agreements after findings of reasonable grounds and conducting both written and on site monitoring of such agreements to insure that terms are met. The Compliance Officer sets overall negotiation strategy, reviews and monitors pre-determination settlement agreements. This Division also provides technical assistance to employers in reviewing Affirmative Action Plans and personnel policies and is involved in the public education efforts of the Commission.

### ***Legal***

This division is responsible for litigation activity as well as providing legal advice to the staff and Commission. The Commission Counsel assures Investigator's Reports are litigation worthy, provides legal opinions, drafts legislation and proposed regulations, litigates cases and advises the Executive Director on contract matters involving governmental agencies and private parties.

### ***Administration***

The Administration Division is the division responsible for the effective operation of the office. Responsibilities include all personnel functions along with budget and other fiscal duties. Support is provided to other divisions.

## BUDGET

The Maine Human Rights Commission's fiscal year 2008 budget appropriation was \$963,474.00 including \$393,007.00 in federal funds from the Equal Employment Opportunity Commission and the U.S. Dept. of Housing & Urban Development.

Approximately 82% of the agency's budget was allocated to fixed costs such as salaries and benefits. This is due to the highly personnel intensive nature of the Commission's work in investigating, resolving, and litigating charges.

## CASE ACTIVITY

During the last fiscal year, eight hundred and nineteen (819) new charges were filed, which represents a significant increase from the previous year. Out of these charges, 1,394 bases were named in these charges, representing more complex investigations in many cases. Six hundred and thirty-nine (639) cases were closed during the same time period. The pending inventory of cases has increased by 28% since last fiscal year.

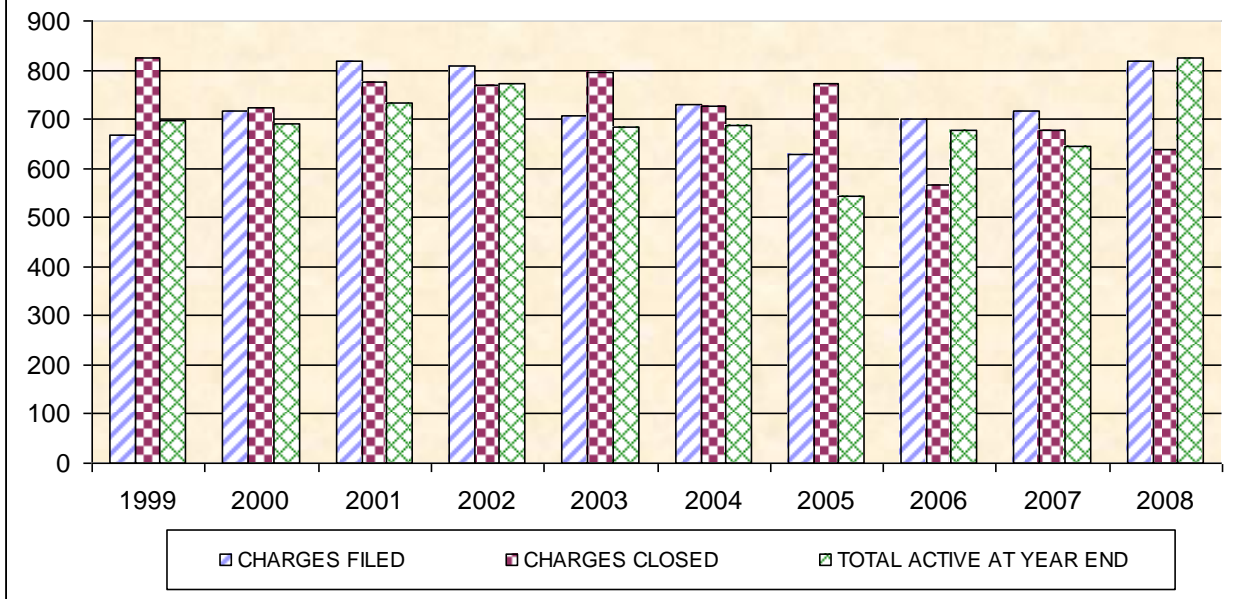
### CASE ACTIVITY FY 1999 - 2008

FISCAL YEAR	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
PREVIOUS YEAR TOTAL	855	696	689	732	771	683	688	544	679	646
CHARGES FILED	666	716	819	808	708	731	628	700	718	819
CHARGES CLOSED	825	723	776	769	796	726	772	565	678	639
TOTAL ACTIVE AT YEAR END	696	689	732	771	683	688	544	679	646*	826

\*Adjusted beginning balance FY 08 to 646 cases



## CASE ACTIVITY FY 1998 - 2008



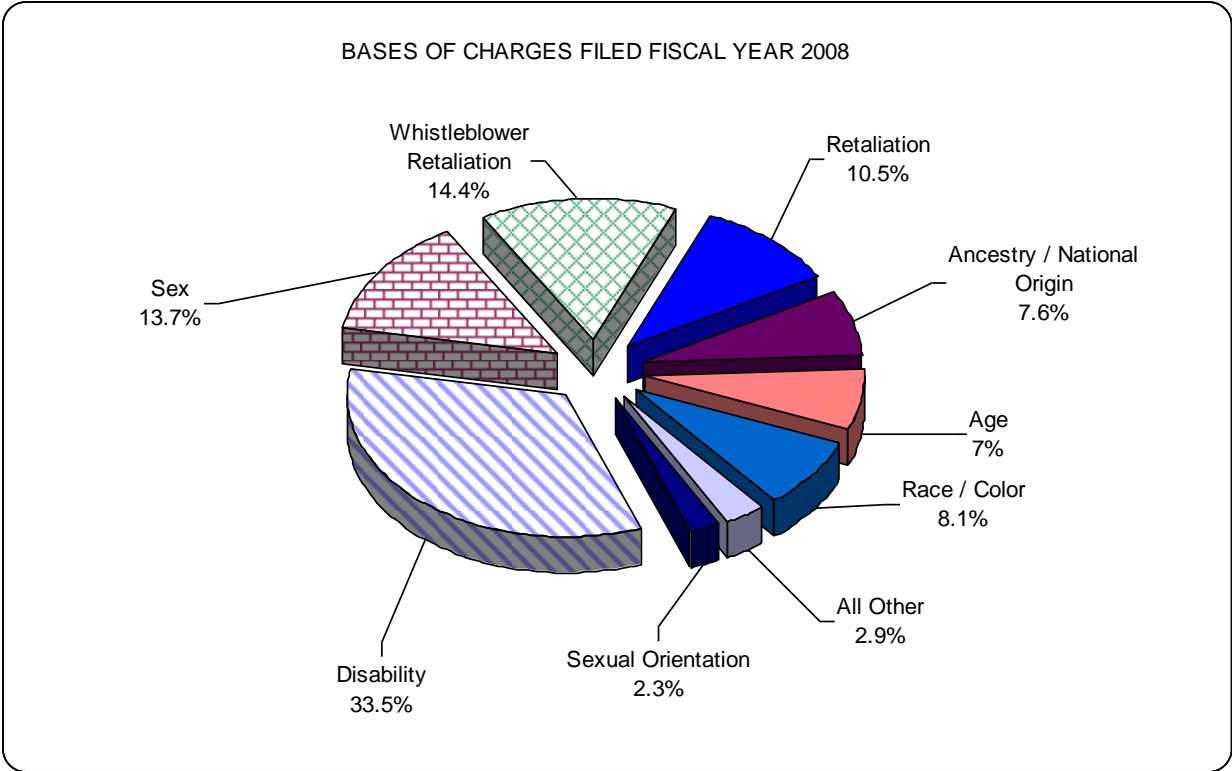
### CHARGES FILED

As in past years, the Commission continued to devote the majority of its resources to the processing of charges of discrimination filed with it.

- 819 new charges were filed.
- Nearly 74% of these new charges alleged discrimination in employment.
- The largest number of complaints was filed on the basis of disability (33.5%).
- The second and third largest number of complaints were based on whistleblower's 14.4% and sex 13.7%.
- Disability, whistleblower's and sex comprised 62% of the complaints filed.
- Retaliation was the 4th largest category of complaints (10.5%), followed by
  - Race/color (8.1%)
  - Ancestry/national origin (7.6%).
  - Age (7%)
- Of the sex discrimination complaints filed, ninety-nine (99) alleged sexual harassment. This number comprised 50% of the total of sex discrimination complaints.

**BASIS OF CHARGES SUMMARY – FISCAL YEAR 2008**

BASIS	# ALLEGATIONS
Disability	467
Sex	191
Whistleblower Retaliation	201
Retaliation	147
Ancestry / National Origin	106
Age	97
Race / Color	113
Sexual Orientation	32
All Other	40
<b>TOTAL ALLEGATIONS</b>	<b>1394</b>

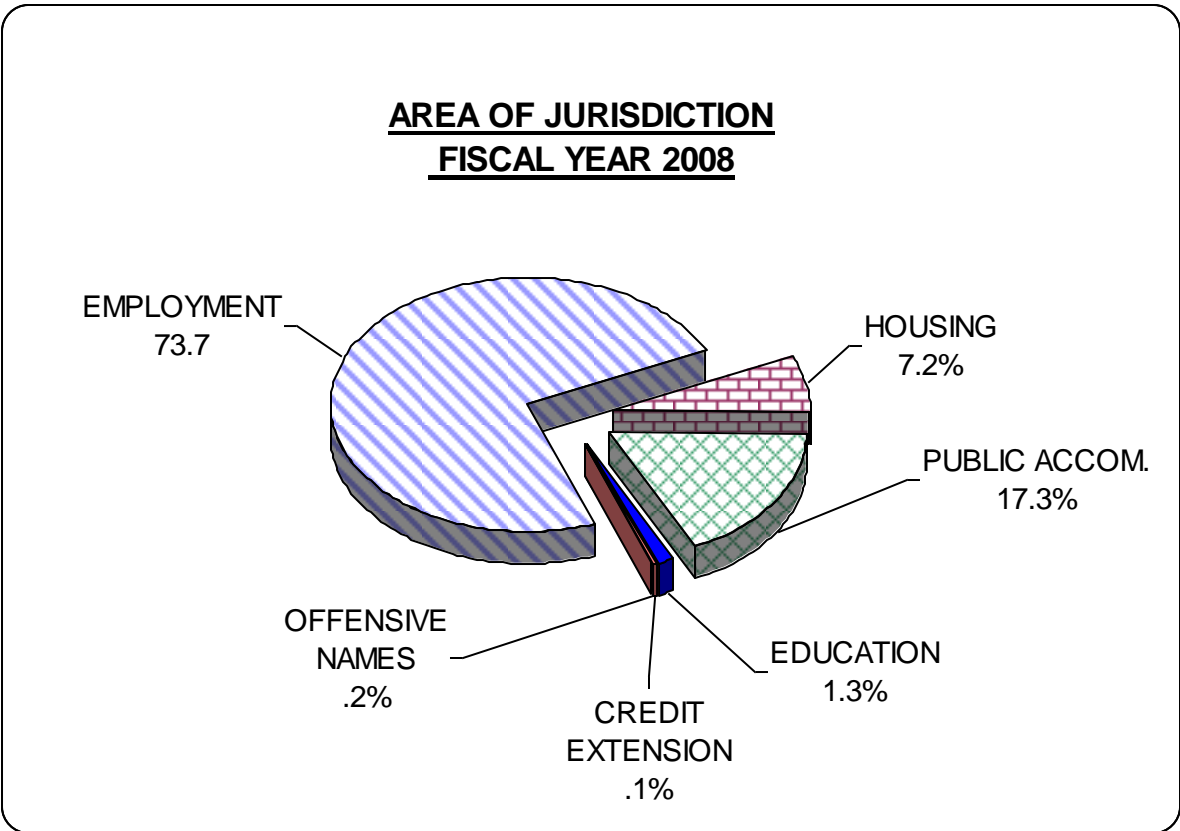


**BASES OF CHARGES FILED  
FISCAL YEARS 1999-2008**

<b>BASES</b>	<b>FY:</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
RACE / COLOR		71	68	73	97	82	64	60	64	88	113
SEX		258	263	316	296	262	258	201	236	207	196
PHYSICAL DISABILITY		213	221	267	223	203	202	201	201	244	370
MENTAL DISABILITY		72	88	81	97	117	104	80	107	102	97
RELIGION		10	14	14	17	13	18	15	10	16	25
AGE		79	99	95	117	82	95	75	66	94	97
ANCESTRY / NATIONAL ORIGIN		33	49	29	54	42	38	43	40	43	106
MARITAL STATUS (Credit only)		0	1	0	1	0	0	0	0	0	0
SOURCE OF INCOME (Housing)		4	2	4	3	7	15	10	16	8	9
FAMILIAL STATUS (Housing)		9	7	5	6	14	6	14	19	13	6
WHISTLEBLOWER RETALIATION		94	119	126	155	151	167	138	143	147	201
WORKER'S COMP RETALIATION		7	8	5	2	5	2	4	1	3	0
RETALIATION		20	43	95	82	91	72	68	98	98	147
SEXUAL ORIENTATION		N/A	N/A	N/A	N/A	N/A	N/A	N/A	13	33	32
GENETIC PRE-DISPOSITION		0	0	0	0	0	0	0	0	1	0
<b>TOTAL ALLEGATIONS</b>		<b>870</b>	<b>982</b>	<b>1110</b>	<b>1150</b>	<b>1069</b>	<b>1041</b>	<b>909</b>	<b>1014</b>	<b>1097</b>	<b>1394</b>

**SUMMARY OF CHARGES FILED BY AREA OF JURISDICTION  
FISCAL YEARS 1999 – 2008**

<b>FISCAL YEAR</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
EMPLOYMENT	550.5	605.0	617.0	680.0	590.0	613.0	515.5	502.5	544.0	604.0
HOUSING	33.5	35.5	69.5	14.0	53.0	69.0	75.0	136.0	114.0	59.0
PUBLIC ACCOM.	68.0	65.5	109.0	94.0	58.0	42.5	34.0	49.0	53.5	142.0
EDUCATION	14.0	10.0	23.5	20.0	7.0	6.5	3.50	11.5	5.5	11.0
CREDIT EXTENSION	0.0	1.0	0.0	0.0	0.0	0.0	0.0	1.0	1.0	1.0
OFFENSIVE NAMES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	2.0
<b>TOTALS</b>	<b>666.0</b>	<b>716.0</b>	<b>819.0</b>	<b>808.0</b>	<b>708.0</b>	<b>731.0</b>	<b>628.0</b>	<b>700.0</b>	<b>718.0</b>	<b>819.0</b>



**CHARGES CLOSED**

Six hundred and thirty-nine charges (639) of discrimination were investigated and closed during the last fiscal year.

**MERIT CLOSURES**

Merit closures are closures in which either a determination was made that there were reasonable grounds to believe that unlawful discrimination had occurred, or cases in which the Complainant received some benefit from the Respondent prior to a determination on the merits of the complaint. Merit closures include reasonable grounds determinations, with successful and unsuccessful conciliations; pre-determination settlements; and withdrawals with settlement.

During the last fiscal year, there were 228 cases closed which were reasonable grounds cases or cases that provided benefits to complainants.

The Commission encourages voluntary settlement and is willing to work with the parties to achieve a resolution that is acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement. Settlements can take two forms: 1) **a negotiated settlement agreement**, and 2) **a withdrawal with settlement**. Settlement agreements are formal documents prepared by the Commission, signed by both parties and a representative of the Commission. Terms are monitored by the Commission's Compliance Division.

Some parties reach settlements independent of the Commission, and the Complainant chooses to withdraw his or her charge. A withdrawal with settlement may contain all of the terms found in a settlement agreement, but there is no agreement to which the Commission is a party. The Commission does not monitor a withdrawal with settlement.

During the last fiscal year, one hundred and ninety-one (191) cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$1,381,487 for Complainants. It should be noted that in addition to monetary awards, settlements typically include provisions that may include the offer of a job or housing unit, modifications providing accessibility, reinstatement, attorney's fees, cleared personnel records, policy modifications, letters of recommendation, and non-retaliation provisions.

Also during this time period there were fifteen (15) successful conciliations of the forty (40) reasonable grounds determinations. The Maine Human Rights Act requires the Commission to undertake formal conciliation efforts in all cases in which it is determined that reasonable grounds exist to believe that unlawful discrimination has occurred. The monetary value of these conciliations was \$327,474. Total monetary relief for merit closures was \$1,708,961.

## **ADMINISTRATIVE DISMISSALS**

Cases can be administratively dismissed for several reasons prior to a Commission determination. Complainants may choose to **withdraw** their charge of discrimination. Withdrawals most often occur when the Complainant, after hearing the facts presented by a Respondent at a fact finding conference, or reviewing the Respondent's written answers to the charge, decides that they do not wish the Commission to continue processing their case any longer. Thirty-six (36) charges were withdrawn during the last year.

Complainants may also obtain **Right To Sue** letters from the Commission after 180 days from the filing of a charge. If the Commission issues a Right To Sue letter, the case is closed and the Complainant can file a lawsuit in court. One hundred and eleven (111) Right to Sue letters were issued in the last fiscal year.

Other cases are **administratively dismissed** by the Executive Director for such reasons as lack of jurisdiction, failure by the Complainant to cooperate with the investigation, or failure by the Complainant to substantiate a complaint. One hundred and thirty-two (132) cases were closed during the last year for such reasons.

<b>WITHDRAWALS AND DISMISSALS FISCAL YEAR 2008</b>	
<b>TYPE</b>	<b>NUMBER</b>
CHARGE WITHDRAWN	36
RIGHT TO SUE	111
FAILURE TO COOPERATE/PROCEED	68
NO JURISDICTION	24
OTHER	4
<b>TOTAL</b>	<b>243</b>

### **NON MERIT CLOSURES**

In addition to cases closed finding reasonable grounds and/or providing some remedy to the Complainant, and cases administratively dismissed, One hundred sixty-six (166) cases were dismissed after a finding that no reasonable grounds existed to believe that unlawful discrimination had occurred.

### **COMMISSIONER DETERMINATIONS**

If a case cannot be settled, the Complainant does not withdraw, or the matter is not administratively dismissed, a report is prepared by the Investigator assigned to the complaint and a recommendation is made to the Commission as to whether reasonable grounds exist to believe that unlawful discrimination occurred.

Two hundred-six (206) cases came before the Commission in fiscal year 2008 for a determination. One hundred and twenty-six (126) cases had no written objection to the Investigator's recommendation, and were placed on the Commission's Consent Agenda. In those cases, Commissioners adopted the recommendation of the Investigator without argument. The Commission found reasonable grounds to believe that unlawful discrimination had occurred in forty (40) cases, which was 19.4% of the cases they considered. The Commission found no reasonable grounds to believe that unlawful discrimination occurred in one hundred sixty-five (165) cases. Not all cases in which the Commission makes determinations are closed within the same fiscal year. Cases in which the Commissioners find reasonable grounds continue through a conciliation process. The above figures represent cases considered by the Commission in fiscal year 2008. The figures following represent cases actually closed during fiscal year 2008.

**TYPES OF CASE CLOSURES**

A summary of types of case closures in fiscal year 2008 follows:

CASES CLOSED FY 08	MERIT CLOSURES: <b>36%</b>			NO RG DETERMINATIONS <b>26%</b>	ADMINISTRATIVE DISMISSALS <b>38%</b>
	SETTLEMENTS	SUCCESSFUL CONCILIATIONS	UNSUCCESSFUL CONCILIATIONS		
<b>639</b>	191	15	25	165	243

**LITIGATION**

The Maine Human Rights Act authorizes the Commission to file a lawsuit in Superior Court in the name of the Commission, for the use of the Complainant, in cases where reasonable grounds are found to believe that unlawful discrimination has occurred, and where conciliation has failed. The Commission Counsel directs the legal efforts and represents the Commission.

During Fiscal Year 2008, the Commission directed Counsel to litigate three cases on behalf of the Commission and file two amicus curiae briefs. Three cases were resolved that had been referred to the Counsel for litigation or monitoring. The Commission was a party in seven court cases throughout the year. As of the end of Fiscal Year 2008, there are six cases pending in the court in which the Commission is a party.