

Maine Human Rights Commission



2016 Annual Report

July 1, 2015 - June 30, 2016

TABLE OF CONTENTS

| | |
|---|----|
| Letter of Transmittal..... | 3 |
| Origin, Jurisdiction and Members of the Commission..... | 4 |
| Staffing..... | 5 |
| Process..... | 6 |
| Budget | 6 |
| Case Activity | 6 |
| Types of Complaints | 7 |
| Complaints Filed | 7 |
| Claims Filed by Basis..... | 7 |
| Complaints Filed by Jurisdiction | 8 |
| Cases Closed..... | 9 |
| <i>Before Commissioner Determinations</i> | 9 |
| <i>After Commissioner Determinations</i> | 10 |
| <i>Post-Reasonable-Grounds Conciliations</i> | 11 |
| Litigation | 11 |
| Cases with Merit and Reasonable Grounds Rates | 11 |
| Conclusion..... | 12 |



Maine Human Rights Commission

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October 25, 2016

The Honorable Paul LePage, Governor
The Honorable Michael D. Thibodeau, President of the Maine Senate
The Honorable Mark Eves, Speaker of the Maine House of Representatives
State House, Augusta, Maine 04333

Dear Governor LePage, President Thibodeau and Speaker Eves:

On behalf of the Commissioners and staff of the Maine Human Rights Commission ("Commission"), we are pleased to present you with the 2016 Annual Report of the Commission. As you will see from the following, the Commission continues to uphold its statutory charge to enforce Maine's anti-discrimination laws. A few highlights are as follows:

- The number of new complaints filed decreased by 17.3% from the prior fiscal year (from 739 to 611).
- Of new complaints filed, 77.7% were based on employment, 11.5% were based on housing, 9.7% were based on public accommodations, 0.8% were based on extension of credit, and 0.3% were based on education.
- With respect to type of allegation, *disability discrimination* represented 27% of complaints filed (a decrease from last year's 39.7%). *Retaliation* complaints increased from 13.5% to 16.5% of complaints filed, with whistleblower retaliation complaints increasing from 15.9% to 19.4%. *Sex discrimination* complaints increased from 10.1 to 12.9%; sexual harassment complaints remain almost 50% of sex discrimination complaints. *Race/color/national origin/ancestry* complaints constituted 9.6% of complaints filed, a decrease from 11.4% last year. *Age* complaints comprised 9.8%, and *sexual orientation* complaints were 1.2%, of complaints filed.
- Of the 250 cases in which Commission staff completed Investigator's Reports, 63.5% were uncontested. Commissioners heard argument in 91 of the 250 cases.
- In 28 of the 250 cases determined by the Commission after an Investigator's Report, the Commissioners found "reasonable grounds" to believe discrimination occurred, a rate of 11.2% (a decrease from the prior year's 15.4%). In these 250 cases decided by Commissioners, there were 2110 distinct claims of discrimination made; of these 2110 claims, Commissioners found "reasonable grounds" in 206 claims. The reasonable grounds rate for Commission "claims" was 9.7%.
- At the end of FY 2016, 723 cases remained pending, a 4.37% decrease in pending cases from the prior year.
- Commission staff delivered or participated in more than 54 training or outreach events during FY 2016.

The Commission continues to promote diversity and tolerance, and to work to eliminate unlawful discrimination for all citizens of and visitors to Maine. We hope this report is of assistance, as our agency seeks to work closely with the Executive and Legislative branches as we jointly assure the citizens of Maine the protections afforded under the Maine Human Rights Act.

Sincerely,

Arnold Clark
Chairman of Maine Human Rights Commission

ORIGIN, JURISDICTION AND MEMBERS OF THE COMMISSION

Established in 1971, the Commission is the quasi-independent state agency charged with responsibility of enforcing Maine’s anti-discrimination laws. Those laws, which are encompassed in the Maine Human Rights Act (“the MHRA”), are located in Title 5 of the Maine Revised Statutes, Sections 4551-4636.

Section 4566 of the MHRA outlines the powers and duties of the Commission; they include the following:

- 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; and
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

The Commission has jurisdiction over allegations of discrimination in the following areas:

AREAS OF JURISDICTION

| JURISDICTIONAL BASIS | EMPLOYMENT | HOUSING | ACCESS TO PUBLIC ACCOMMODATION | CREDIT EXTENSION | EDUCATION |
|------------------------------|------------|---------|--------------------------------|------------------|-----------|
| Age | X | N/A | N/A | X | N/A |
| Ancestry | X | X | X | X | N/A |
| Children (lodging only) | N/A | N/A | X | N/A | N/A |
| Color | X | X | X | X | N/A |
| Familial Status | N/A | X | N/A | N/A | N/A |
| Genetic Information | X | N/A | N/A | N/A | N/A |
| Marital Status | N/A | N/A | N/A | X | N/A |
| Mental disability | X | X | X | N/A | X |
| National Origin | X | X | X | X | X |
| Physical disability | X | X | X | N/A | X |
| Race | X | X | X | X | X |
| Receipt of Public Assistance | N/A | X | N/A | N/A | N/A |
| Religion | X | X | X | X | N/A |
| Retaliation | X | X | X | X | X |
| Sex | X | X | X | X | X |
| Sexual Orientation | X | X | X | X | X |
| Whistleblower Retaliation | X | N/A | N/A | N/A | N/A |
| Workers’ Comp Retaliation | X | N/A | N/A | N/A | N/A |

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

- 1972 Race, Color, National Origin, Ancestry, Religion, Age
- 1973 Sex, Marital Status (Credit)
- 1974 Physical Disability
- 1975 Mental Disability, Source of Income (Housing)
- 1979 Pregnancy
- 1981 Familial Status (Housing)
- 1987 Workers’ Comp Retaliation (Employment)
- 1988 Whistleblowers’ Retaliation (Employment)
- 1998 Genetic Information
- 2005 Sexual Orientation

The MHRA provides that the Commission “or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 4612(1)(B). Accordingly, the Commission conducts investigations of complaints of unlawful discrimination in employment, housing, education, access to public accommodations, extension of credit, genetic non-discrimination, and offensive names; it also investigates complaints of retaliation under the Maine Whistleblowers’ Protection Act.

As required by the MHRA, the Commission provides an opportunity for parties to a complaint to try to resolve the dispute by agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. 5 M.R.S. § 4612(1)(A). The MHRA authorizes the Commission to pursue remedies for unlawful discrimination in court when necessary to enforce the MHRA. The Commission also has “the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State”, 5 M.R.S. § 4566, and occasionally is called upon to present information to the Maine Legislature about proposed statutes and rules under consideration that might affect human rights in the State.

Commission policy is formulated by five Commissioners appointed by a Governor for staggered five year terms; the MHRA ensures that the Commission is not political in nature, with stipulation that no more than three Commissioners may be from any political party. Commissioners make final determinations on all discrimination complaints investigated by Commission staff that are not otherwise resolved administratively or settled. A Governor designates the Chair of the Commission from among its members.

STAFFING

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

Investigators are responsible for intake processing and case investigation; this represents a shift, as previously the Commission’s one Intake Officer processed intakes. Because persons submitting new intakes often waited from two to six months to receive draft complaints, in FY2016 the agency made the difficult decision to assign intake to investigators, who take turns as “intake officer of the day”; this did reduce the historically long wait for draft complaints. Commission investigators continue to perform their main functions: conducting fact-finding as to whether allegations of discrimination are at least as likely as not to be substantiated, and writing Investigator’s Reports that analyze facts and apply legal principles to recommend specific findings to the Commission. We currently have six full-time investigator positions, but in FY2016 there was tremendous turnover in these positions. We currently have four investigator positions filled, and the continuing staff shortage remains challenging.

Compliance

The Commission answers questions from the public about MHRA compliance, and offers parties dispute resolution. Our one paralegal and the Executive Director work on conciliation agreements after Commission findings of reasonable grounds. The Executive Director directs the Commission’s Third Party Neutral Mediation Program, and monitors compliance in pre-determination settlement agreements facilitated by mediators or investigators. The Executive Director and Commission Counsel also are involved in the public education efforts of the Commission.

Legal

This Division is responsible for litigation on behalf of the Commission (and the public interest) and providing legal advice to the staff and Commission. The Commission Counsel reviews all Investigator’s Reports for legal sufficiency, provides legal opinions to the Executive Director or Commission, drafts legislation and proposed regulations, litigates cases, and advises the Executive Director on contract matters involving governmental agencies and private parties. We have one Commission Counsel and one full-time paralegal, who also assists with compliance.

Administration

The Administration Division is 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. This would

include our Executive Director, two Office Associate II's and a Public Service Manager II responsible for information technology, human resources, financial and budgetary matters. The Executive Director and Commission Counsel provide outreach and information to the public about the MHRA and Commission.

PROCESS

The Commission receives either an intake submission (which it drafts into a complaint to assist complainant, if jurisdiction exists under the MHRA) or a complaint. Complaints must be received within 300 days of the alleged discrimination for a complaint to be timely. The Commission notifies the respondent of the complaint and receives its answer to the complaint, which the Commission then shares with the complainant in order to get his/her reply supporting the complaint. At that point, a complaint may be administratively dismissed for certain reasons, withdrawn by the complainant, or resolved by the parties, or the complainant may elect to proceed directly to court. If none of these occur, the case is assigned to an investigator for a preliminary investigation and the investigator prepares a written report outlining the claims made, applicable laws, and recommended findings on each claim as to whether there are “reasonable grounds” to believe discrimination violating the MHRA occurred. The Commission staff provides reports with recommendations to Commissioners for decision at public meetings.

BUDGET

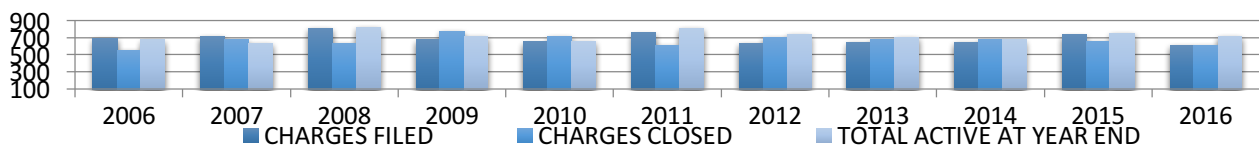
The Maine Human Rights Commission’s fiscal year 2016 revised budget appropriation was \$1,120,791. Approximately \$1,007,708 (89.9 %) of the agency’s total budget was allocated to fixed personal service costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission’s work in investigating, resolving, and litigating complaints. \$113,083 (10.1%) of the Commission’s budget was allocated to “all other” operating expenditures to support program activities. Of the total Commission budget, approximately \$392,609 (35%) were anticipated revenues from federal worksharing agreements with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development.

CASE ACTIVITY

As in past years, the Commission continued to devote the majority of its resources to the processing of complaints of discrimination filed with it. During the last fiscal year, 611 new complaints were filed,¹ which represents a decrease from previous years. A total of 2821 bases were named in these complaints, representing complex investigations in many cases; this issue is discussed further on the next page of this Report. The Commission closed 621 cases in the same time period. The pending inventory of cases has decreased by 4.37 % since last fiscal year.

CASE ACTIVITY FY 2007 – 2016

| FISCAL YEAR | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---------------------|------|------|------|------|------|------|------|------|------|------------------|
| PREVIOUS YEAR TOTAL | 679 | 646 | 826 | 729 | 670 | 817 | 746 | 713 | 684 | 756 |
| COMPLAINTS FILED | 718 | 819 | 685 | 659 | 764 | 639 | 651 | 654 | 739 | 611 |
| CASES CLOSED | 678 | 639 | 782 | 718 | 617 | 710 | 684 | 683 | 667 | 621 |
| TOTAL | 646 | 826 | 729 | 670 | 817 | 746 | 713 | 684 | 756 | 723 ² |



¹ The data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. Cases in which the Commissioners find reasonable grounds to believe discrimination occurred continue through a conciliation process and therefore may not be closed and reported within the same year the Commission decision occurred. The figures cited in this report represent cases considered by the Commission and closed in fiscal year 2016.

² After updating inventory data, the ending inventory was adjusted down from 746 was to 723 cases active at the end of the 2016 Fiscal Year to account for litigation matters that should have been closed on the database earlier.

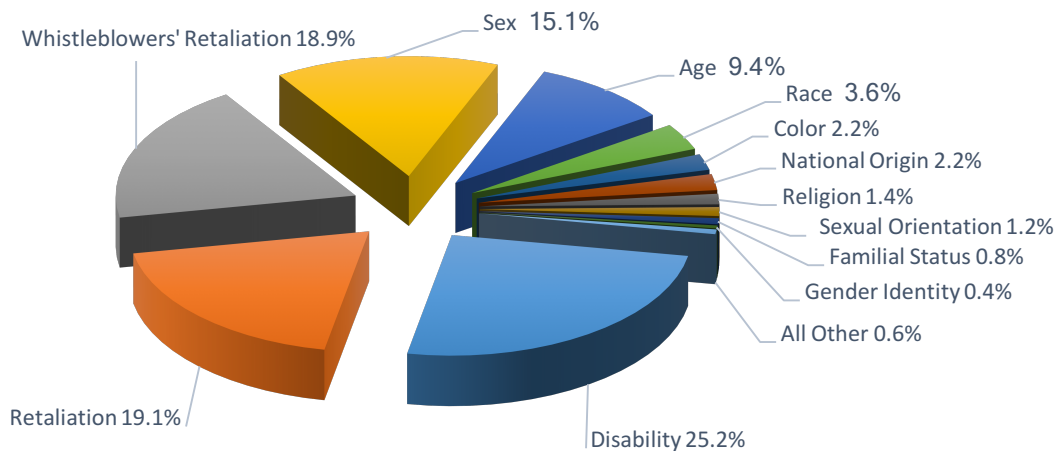
TYPES OF COMPLAINTS

In the 2016 fiscal year, 611 new complaints were filed with the Commission. Very often, a single complaint will contain multiple distinct allegations of discrimination, or “claims”, that require different factual and legal analysis. These more complex investigations require substantially increased staff and Commission work. For that reason, we have begun tracking outcomes by “claims” decided in addition to “cases closed”, so as to more accurately reflect the nature and depth of our work and resources required.

As usual, the vast majority of complaints in FY2016 (73.5%) alleged employment discrimination. Also as usual, disability was the protected class most often invoked in complaints (27%). The second and third largest numbers of complaints filed were based on retaliation, either for protected “whistleblower” activity (16.5%) and or for asserting rights protected by the Act (19.4%). These top three bases for complaints - disability and retaliation either for whistleblowing or assertion of protected rights - collectively comprised (62.9%) of the complaints filed. The fourth largest number of complaints filed was based on sex (12.9%); it is disappointing to note that almost half of sex discrimination filings (44.9%) alleged sexual harassment. Complaints alleging age discrimination were the 5th largest categories of complaints (9.8%), followed by race (3.9%), color (2.5%), national origin (2.5%), familial status (1.3%), religion (1.3%), sexual orientation (can include gender identity and expression) (1.2%), and “all other” (1.6%) (includes ancestry, equal pay, gender identity, and source of income).

BASIS OF CLAIMS FILED SUMMARY FY 2016

| BASIS | # ISSUES ALLEGED |
|------------------------------------|------------------|
| Disability | 711 |
| Retaliation | 538 |
| Whistleblowers' Retaliation | 532 |
| Sex | 427 |
| Age | 264 |
| Race | 101 |
| Color | 61 |
| National Origin | 61 |
| Religion | 40 |
| Sexual Orientation | 34 |
| Familial Status | 23 |
| Gender Identity | 11 |
| All Other | 18 |
| TOTAL | 2,821 |



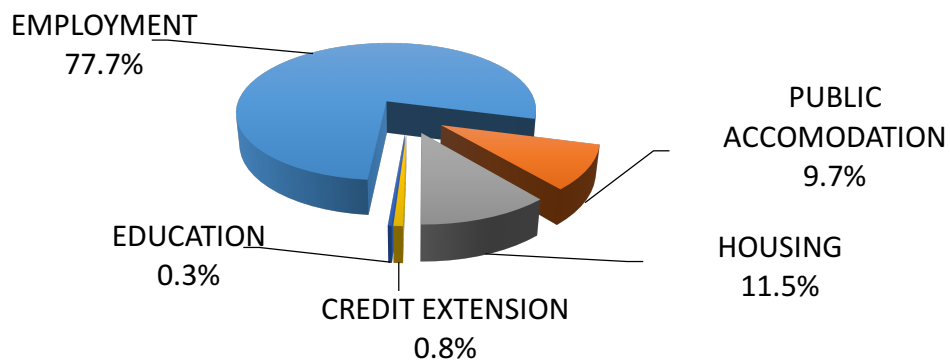
CLAIMS FILED BY BASIS FY 2007 - 2016³

| BASES | FISCAL YEAR: | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|----------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| DISABILITY | | 346 | 467 | 450 | 438 | 450 | 445 | 448 | 581 | 670 | 711 |
| RETALIATION | | 98 | 147 | 56 | 96 | 109 | 158 | 137 | 245 | 228 | 538 |
| WHISTLEBLOWER RETALIATION | | 147 | 201 | 180 | 197 | 235 | 261 | 200 | 240 | 268 | 532 |
| SEX | | 207 | 196 | 149 | 147 | 152 | 155 | 159 | 153 | 171 | 427 |
| AGE | | 94 | 97 | 60 | 75 | 109 | 83 | 93 | 107 | 89 | 264 |
| RACE / COLOR | | 88 | 113 | 123 | 101 | 132 | 77 | 99 | 114 | 135 | 162 |
| ANCESTRY / NATIONAL ORIGIN | | 43 | 106 | 51 | 35 | 51 | 32 | 51 | 60 | 57 | 71 |
| RELIGION | | 16 | 25 | 15 | 20 | 23 | 13 | 13 | 20 | 21 | 40 |
| SEXUAL ORIENTATION | | 33 | 32 | 19 | 50 | 45 | 25 | 35 | 26 | 28 | 34 |
| FAMILIAL STATUS (Housing) | | 13 | 6 | 19 | 22 | 21 | 21 | 20 | 12 | 9 | 23 |
| GENDER IDENTITY | | - | - | - | - | - | - | - | 2 | 5 | 11 |
| SOURCE OF INCOME (Housing) | | 8 | 9 | 10 | 10 | 10 | 2 | 11 | 4 | 4 | 5 |
| EQUAL PAY | | - | - | - | - | - | - | - | 2 | 1 | 3 |
| TRANSGENDER | | - | - | - | - | - | - | - | 1 | 1 | - |
| WORKERS' COMP RETALIATION | | 3 | - | - | - | - | - | - | - | - | - |
| GENETIC INFORMATION | | 1 | - | - | - | - | - | - | - | - | - |
| TOTALS | | 1,097 | 1,399 | 1,132 | 1,191 | 1,337 | 1,272 | 1,266 | 1,567 | 1,687 | 2,821 |

COMPLAINTS FILED BY JURISDICTION FY 2007 – 2016

| JURISDICTION | FISCAL YEAR: | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|----------------------|--------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| EMPLOYMENT | | 544 | 604 | 653 | 492 | 618 | 528 | 483 | 518 | 548 | 480 |
| HOUSING | | 114 | 59 | 122 | 113 | 78 | 74 | 104 | 73 | 92 | 60 |
| PUBLIC ACCOMMODATION | | 54 | 142 | 64 | 52 | 72 | 37 | 64 | 63 | 98 | 71 |
| EDUCATION | | 6 | 11 | 10 | 9 | 4 | 4 | 3 | 3 | 8 | 5 |
| CREDIT EXTENSION | | 1 | 1 | - | - | - | - | - | - | 2 | 2 |
| OFFENSIVE NAMES | | - | 2 | - | - | - | - | - | - | - | - |
| TOTALS | | 718 | 819 | 849 | 666 | 772 | 643 | 654 | 656 | 748 | 618 |

AREA OF JURISDICTION CHART FISCAL YEAR 2016



³ This is the second annual report that has reflected gender identity, equal pay and transgender status as distinct bases. The lack of data regarding these bases in years prior does not indicate that there were no complaints related to these bases in the past; our reporting simply has not separated out those bases in the past.

CASES CLOSED

As noted above, the Commission closed 621 complaints of discrimination during the last fiscal year.⁴ How a case closes *can* (but does not always) indicate whether the case had “merit”. Merit closures are cases resolved in such a fashion as to indicate that there was some merit to the claims, such as when (a) the Commission made a determination that there were reasonable grounds to believe unlawful discrimination occurred, or (b) the complainant received some benefit from the respondent prior to a Commission vote on whether discrimination occurred, either by settlement agreement or with withdrawal of complaint, or (c) a complainant requests to proceed directly to court before the investigation is complete (a “right-to-sue” closure). Non-merit closures may occur when the Executive Director administratively dismisses a complaint before a determination, if a complainant wishes no longer to proceed with the complaint but does not receive any benefits to withdraw the complaint, or upon a Commission finding that there were no reasonable grounds to believe discrimination occurred.

It is worth noting that the MHRA itself provides only for two statutory results in cases: a finding of “reasonable grounds” or a finding of “no reasonable grounds”. Since cases that are withdrawn related to settlement or which end via a right-to-sue letter are not “reasonable grounds” findings, they actually are dismissed pursuant to the Act as “no reasonable grounds” findings. This can leave our statistics on “reasonable grounds” rates to be less than fully informative, which is why we attempt to look more deeply at merit versus non-merit closures here.

BEFORE Commission Determination

Merit closures (239)

During the last fiscal year, there were 239 closures that indicated cases had merit – settlement agreements, withdrawals where a complainant indicated he/she received a benefit from respondent, or right-to-sue letters indicating the complainant intended to proceed directly to court.

- *Settlements.* The Commission encourages voluntary settlement and works with the parties to achieve a resolution that is mutually acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement; a pre-determination agreement can be one which the parties work out on their own (usually resulting in a request by complainant to withdraw the complaint) or one which a Commission investigator or neutral mediator facilitated (usually resulting in a settlement agreement shared with the Commission). Our Third Party Neutral Mediation Program, available for a small fee, is very successful in resolving claims; in FY2016, our skilled mediators facilitated settlement in 22 out of 32 cases mediated.⁵ In addition to monetary awards, settlements often include non-monetary, equitable relief such as an offer of a job or housing unit, modifications providing accessibility, reinstatement, cleared personnel records, policy changes, recommendation letters, and non-retaliation provisions. During FY2016, 111 cases resolved via settlement agreement or withdrawal of complaint with benefits before the Commission issued a determination; complainants obtained \$1,784,718 in monetary relief in merit closures.
- *“Right-to-Sue” letters.* If the Commission has not completed its investigation within 180 days of a complaint’s filing, a complainant may request that the Commission issue him/her a right-to-sue letter, which terminates the Commission’s investigation and authorizes the complainant to proceed to court with Act remedies intact. Complainants requested 128 right-to-sue letters in the last fiscal year.

⁴ As noted above, data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. There were additional case closures that occurred in the fiscal year but which were not counted in as closures in our computer system for technical reasons.

⁵ The Commission’s FY2016 mediation budget was \$16,500. In FY 2016, parties paid \$17,400 in fees (\$200 by each party in a case) to pay mediators to perform 43 mediations. Of the \$17,400 in fees collected, \$15,225 (87.5 %) was reserved to pay mediators (a set fee of \$350/case). The remaining balance of fees collected (\$2,175 or 12.5%) was reserved to pay the State of Maine’s mandatory tax on all funds collected/administered in state agency accounts (\$1,318, or 7.5% of the mediation funds collected) and to fund mediations for indigent parties and/or to pay for interpreter services required in mediations (\$857, or 5% of mediation funds collected).

Non-merit closures (135)

During the last fiscal year, there were 135 cases closed via non-merit closures – administrative dismissals, or withdrawals of claims – before the Commission issued any determination.

- *Administrative Dismissals.* The Commission’s Executive Director has authority to dismiss a complaint where a complainant has failed to substantiate a claim of discrimination, the Commission lacks jurisdiction, the complaint is untimely, a complainant fails to cooperate, or a respondent declares bankruptcy. See Commission Procedural Rule, 94-348 Code of Maine Regulations Ch. 2, § 2.02(H). The Executive Director dismissed 108 cases in the fiscal year, with 33 dismissed for lack of jurisdiction and 75 dismissed due to complainant’s failure to cooperate with the investigation.
- *Withdrawals.* At any time before the Commission issues a report summarizing its investigation, a complainant may choose to withdraw a complaint of discrimination. After a report has been issued, the Commission may allow a complaint to be withdrawn. Withdrawals most often occur when complainants, after reviewing the respondents’ written answers to the complaint or hearing the facts presented by respondents at a conference, decide that they do not wish the Commission to continue processing their case any longer. Complainants withdrew 27 complaints during the last fiscal year.

AFTER Commissioner Determinations

If a case is not settled, withdrawn, ended via right-to-sue letter, or administratively dismissed, a report prepared by an Investigator recommends a finding as to whether reasonable grounds exist to believe that unlawful discrimination occurred. The Commission sets these reports for public hearing. If neither party submits a written objection to the recommended findings, the Commission places the report on its Consent Agenda and then at public hearing votes to adopt the recommendations in all Consent Agenda reports without argument on those cases. If one party does submit a written objection to the recommendations, the Commission hears oral argument on the case at a public meeting and then votes on each recommendation.

In FY2016, Commissioners voted on 250 cases which contained 2,110 distinct disputed *claims* of discrimination.⁶ This is not the same group of cases/claims that were filed in the fiscal year (reported above on page 8); it is pending cases that were closed in the fiscal year. It is also worth noting that not every claim of discrimination leads to a distinct determination by the Commission – many claims are grouped together or subsumed in one determination. In the final analysis, the Commission found reasonable grounds to believe discrimination occurred in 28 of 250 cases voted on (or 206 of the total 2,110 claims voted on). This equates to a reasonable grounds rate of 11.2% of cases voted on or 9.7% of claims voted on. The disparity between these two rates is because 8 of the 250 cases voted on contained a split finding - one claim in the case led to a finding of reasonable grounds but another claim in the case led to a finding of no reasonable grounds.

- Uncontested recommendations. A majority of recommended determinations by Commission staff were not contested by the parties in FY2016. In 159 (63.5%) of the 250 cases voted on, neither party contested the recommended decisions; these cases appeared on the Commission’s Consent Agenda. For uncontested cases listed on our Consent Agenda, Commissioners found reasonable grounds to believe discrimination occurred in 16 cases (94 claims) and no reasonable grounds findings in 145 cases (1,215 claims).⁷
- Contested recommendations. In 91 of the 250 (36.5%) cases voted on by Commissioners, one party contested the recommended decision. These 91 contested cases (containing 801 claims) were scheduled

⁶ The more detailed measures of the Commission’s reasonable-grounds rate are provided for analysis based on the outcome of each claim alleged.

⁷ Again, cases with split findings account for calculation anomalies.

for hearing.⁸ After our hearings ended, Commissioners found no reasonable grounds to believe that discrimination occurred in 85 contested cases (689 claims), and reasonable grounds to believe that discrimination occurred in 12 contested cases (112 claims).

Merit cases are not closed at this juncture: 28

Non-merit closures: 222

Post-Reasonable-Grounds Conciliations

The MHRA requires the Commission to undertake formal conciliation efforts in all reasonable-grounds cases in which it is determined that reasonable grounds exist to believe that unlawful discrimination has occurred. After a Commission reasonable-grounds finding, a merit closure can occur by negotiated agreement, either with or without Commission participation. If the parties reach resolution and the Commission also reaches agreement on public interest relief, this is a formal agreement by the Commission, complainant and respondent; terms are monitored by the Commission's Compliance Division. If the parties reach a resolution of a post-reasonable grounds case, but do not include the Commission in the agreement, the Commission determines whether to pursue relief in the public interest on its own. During the last fiscal year, there were 29 cases closed with reasonable grounds determinations; of those, three resulted in successful conciliation agreements with public interest and private relief. The monetary value of these conciliations was \$6,500. Significant non-monetary relief in the form of improved policies and training, postings, and monitoring also was achieved through conciliation agreements.

LITIGATION

The Act authorizes the Commission to file a lawsuit in 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 makes recommendations to the Commission in each post-reasonable grounds case in which conciliation has failed, to assist the Commission in deciding whether to file a lawsuit in each of the cases. Where the Commission decides to file a lawsuit, Commission Counsel directs these legal efforts and represents the Commission.

During Fiscal Year 2016, Commission Counsel filed three new court complaints and two amicus curiae briefs on behalf of the Commission, and continued litigation of five cases that were pending when the fiscal year started. One case was resolved that had been referred to Counsel for litigation or was in litigation. At the end of Fiscal Year 2016, there were eight cases pending in court in which the Commission was a party, and one case pending in which the Commission filed an amicus curiae brief.

CASES WITH MERIT, AND REASONABLE-GROUNDS RATES

The Commission frequently is asked to consider how many of the complaints filed here are complaints that are valid (e.g. have merit) versus those complaints which might have been filed for non-meritorious reasons. Because so many cases close without actual Commissioner determinations, this can be difficult to discern. To that end, it is valuable to review how many FY2016 closures the Commission considers to be merit closures, with something of benefit flowing to the complainant. Closures in this category would include 76 pre-determination settlements (or withdrawals with benefits to the complainant), 128 right-to-sue letters, 28 reasonable-grounds case votes, 3 post-reasonable grounds conciliation agreements, and 35 post-conciliation settlements. Totalling 270, these represent 43.5% of the 621 cases closed in FY2016.

⁸ It is worth noting that in 30% of the cases scheduled for hearing, the party contesting the recommended decision did not appear at hearing. For that reason, only 70% of contested cases were decided after oral argument.

That rate of merit closures is important to keep in mind when one considers the overall findings in Commission closures. Given the 621 cases the Commission closed in FY2016, and the fact that there were reasonable-grounds findings in 28 cases, the Commission's reasonable-grounds rate for all cases closed in the year was 4.5%. This could be interpreted to mean that 95.5% of cases closed in FY2016 closed in the respondent's favor, but that would not be truly accurate, as so many cases which technically had to be closed with a "no reasonable grounds" finding actually resulted in benefits flowing to complainants via settlement agreements and right-to-sue letters.

A more relevant statistic that reflects the Commission's actual rate of finding reasonable-grounds or not in cases is to look at cases decided after full pleading and argument: cases in which an Investigator's Report was issued. In FY2016, the Commission's overall rate of finding reasonable grounds to believe discrimination occurred in cases where an Investigator's Report was issued was 11.2% for cases (9.7% of claims).

It is significant to note that two-thirds of cases with Investigator's Reports (63.5%) were not contested. For cases with contested recommended decisions, the reasonable-grounds rate was (12.4%) (12 of 97) of cases and 13.9% (112 of 801) claims.

Viewed conversely, this means that in fiscal year 2016, a respondent in a contested case stood an 89% chance of successfully defeating a Commission case (or an 90% chance of defeating any given Commission claim) decided on its merits by a recommended decision. Even if the parties argued their positions all the way to a public hearing, a respondent still stood an 87.6% chance of successfully defeating a MHRA complaint (or an 86.1% chance of defeating any given claim).

CONCLUSION

This Annual Report has outlined the Commission's activities for FY2016, including: investigating 611 new complaints (with 2821 distinct claims of discrimination); continuing investigative work on 756 complaints pending from a prior fiscal year; closing 621 cases; participating in 54 trainings; and providing testimony at the Maine Legislature.⁹ Given all of this, and our extremely small staff of 13, the sheer volume of the Commission's work in FY2016 was staggering (and accomplished with very limited resources). Each Commissioner and staff member at the agency feels responsible to the public to enforce the Act in Maine in the manner in which that law was written and intended. We appreciate the opportunity to have done that in the last fiscal year and look forward to doing so in the next.

⁹ It is also worth noting that during the entirety of FY2016, the Commission was cooperating with -and providing information and data to- a Review Panel established by executive order of the Office of the Governor. The Review Panel's stated mandate was to determine whether the Commission is (or is perceived to be) biased against the business community, and why.