

# MAINE STATE LEGISLATURE

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# Maine Human Rights Commission



## 2015 Annual Report

*July 1, 2014    June 30, 2015*

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# Maine Human Rights Commission

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October 30, 2015

The Honorable Paul LePage, Governor  
The Honorable Michael Thibodeau, Senate President  
The Honorable Mark Eves, Speaker  
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 2015 Annual Report of the Commission. As you will see by 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 increased by 13% from the prior fiscal year (from 654 to 739).
- Of new complaints filed, 73.5% were based on employment, 12.3% were based on housing, 13.1% were based on public accommodations, and 1.1% were based on education.
- With respect to type of allegation, *disability discrimination* represented 39.7% of complaints filed (an increase from last year’s 37.1%). *Whistleblower retaliation* complaints increased slightly to 15.9%. *Sex discrimination* complaints increased slightly to 10.1%; sexual harassment complaints remain almost 50% of the sex discrimination complaints filed. *Race/color/national origin/ancestry* complaints constituted 11.4% of complaints filed, a slight increase from last year’s 11.1%. *Age* complaints comprised 5.3%, and *sexual orientation* complaints were 1.7%, of complaints filed.
- Of the 227 cases in which Commission staff completed Investigator’s Reports, 66% were uncontested. Commissioners heard argument in 78 of the 227 cases. In 35 of the 227 cases determined by the Commission, the Commissioners found “reasonable grounds” to believe discrimination occurred, a rate of 15% (a slight increase from the prior year’s 14%). In these 227 cases decided, there were 1365 distinct claims of discrimination made; of these 1365 claims, Commissioners found “reasonable grounds” in 175 claims. The reasonable grounds rate for Commission “claims” was 13%.
- At the end of FY 2015, 756 cases remained pending, a 10.5% increase in pending cases from the prior year.
- Commission staff delivered or participated in more than 34 training forums during FY 2015.

The Commission continues to promote diversity and tolerance, and to work to ensure civil rights for all Maine citizens and visitors to our wonderful state. We hope to continue our strong relationship 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 Act”), are located in Title 5 of the Maine Revised Statutes, Sections 4551-4636.

Section 4566 of the Act 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**

| <b>JURISDICTIONAL BASIS</b>  | <b>EMPLOYMENT</b> | <b>HOUSING</b> | <b>ACCESS TO PUBLIC ACCOMMODATION</b> | <b>CREDIT EXTENSION</b> | <b>EDUCATION</b> |
|------------------------------|-------------------|----------------|---------------------------------------|-------------------------|------------------|
| 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              |
| 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 Act 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.<sup>1</sup>

The Commission attempts to resolve complaints of discrimination to the mutual satisfaction of those who are involved. The Act authorizes the Commission to pursue remedies for unlawful discrimination in court when necessary to enforce the Act. 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 Act 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 the final determination on all discrimination complaints that are investigated by Commission staff and not otherwise settled, withdrawn, administratively dismissed, or subject to a “right to sue” request. 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***

The Investigation Division is responsible for all aspects of case investigation, which includes fact-finding as to whether allegations are legally sufficient to constitute a claim of discrimination under the Maine Human Rights Act, and writing Investigator’s Reports that analyze facts and apply legal principles to recommend specific findings to the Commission. We have five full-time investigators.

### ***Compliance***

The Compliance Division – a division of one – is responsible for all settlement efforts of the agency. Compliance has direct responsibility for negotiating conciliation agreements after Commission findings of reasonable grounds and monitoring of agreements to ensure that terms are met. The Compliance Manager conducts pre-determination resolution efforts herself, facilitates the Commission’s Third Party Neutral Mediation Program, and reviews and monitors pre-determination settlement agreements facilitated by mediators or investigators. The Compliance Manager, who works 2/3 time, also is involved in the public education efforts of the Commission.

### ***Legal***

This Division – also a division of one – is responsible for litigation on behalf of the Commission (and the public interest) as well as 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.

### ***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 Associates, an Intake Officer, and a Public Service Coordinator responsible for information technology, human resources, financial and budgetary matters.

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<sup>1</sup> The Commission also enforces the Maine Whistleblowers’ Protection Act through the MHRA’s enforcement scheme.

## PROCESS

The Commission receives either an intake submission (which it drafts into a complaint to assist complainant, if jurisdiction exists under the Act) 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 or assigned to an investigator for further action consistent with a preliminary investigation. Throughout further investigative processes, a complaint may be 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 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 Act occurred. The Commission staff provides reports with recommendations to Commissioners for decision at public meetings.

## BUDGET

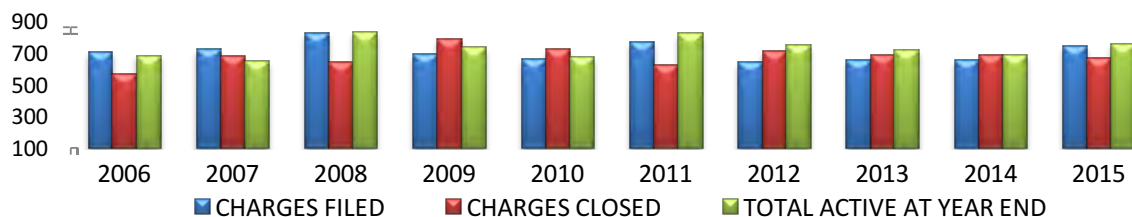
The Maine Human Rights Commission’s fiscal year 2015 revised budget appropriation was \$995,067. Approximately \$872,618 (87.7 %) of the agency’s total budget was allocated to fixed personal service costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission’s work in investigating, resolving, and litigating complaints. \$122,449 (12.3%) of the Commission’s budget was allocated to “all other” operating expenditures to support program activities. Of the total Commission budget, approximately \$463,549 (46.6%) 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, 739 new complaints were filed,<sup>2</sup> which represents a substantial increase from the previous several years. A total of 1,687 (one thousand six hundred eighty-seven) bases were named in these complaints, representing more complex investigations in many cases; this issue is discussed further on the next page of this Report. The Commission closed 667 cases during the same time period. The pending inventory of cases has increased by 10.5 % since last fiscal year.

### **CASE ACTIVITY FY 2006 – 2015**

| FISCAL YEAR         | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---------------------|------|------|------|------|------|------|------|------|------|------|
| PREVIOUS YEAR TOTAL | 544  | 679  | 646  | 826  | 729  | 670  | 817  | 746  | 713  | 684  |
| COMPLAINTS FILED    | 700  | 718  | 819  | 685  | 659  | 764  | 639  | 651  | 654  | 739  |
| CASES CLOSED        | 565  | 678  | 639  | 782  | 718  | 617  | 710  | 684  | 683  | 667  |
| TOTAL               | 679  | 646  | 826  | 729  | 670  | 817  | 746  | 713  | 684  | 756  |



<sup>1</sup> 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 2015.

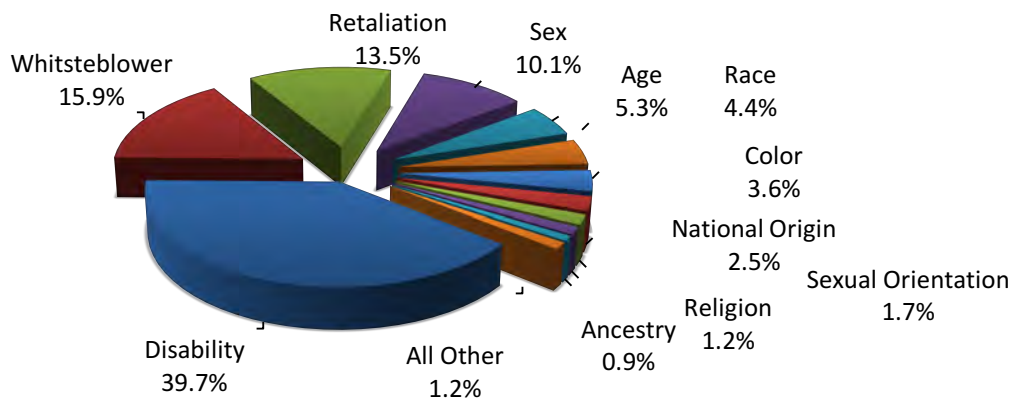
**TYPES OF COMPLAINTS**

In the 2015 fiscal year, 739 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 FY2015 (73.5%) alleged employment discrimination. Also as usual, disability was the protected class most often invoked in complaints (39.7%). The second and third largest numbers of complaints filed were based on retaliation, either for protected “whistleblower” activity (15.9%) and or for asserting rights protected by the Act (13.5%). These top three bases for complaints - disability and retaliation either for whistleblowing or assertion of protected rights - collectively comprised 69.1% of the complaints filed. The fourth largest number of complaints filed was based on sex (10.1%); it is disappointing to note that almost half of sex discrimination filings (49.1%) alleged sexual harassment. Complaints alleging age discrimination were the 5<sup>th</sup> largest categories of complaints (5.3%), followed by race (4.4%), color (3.6%), national origin (2.5%), sexual orientation (can include gender identity and expression) (1.7%), religion (1.2%), ancestry (0.9%), and “all other” (1.2%) (includes familial status, source of income, equal pay, gender identity and transgender status).

**BASIS OF CLAIMS FILED SUMMARY FY 2015**

| BASIS                    | # ALLEGATIONS |
|--------------------------|---------------|
| Disability               | 670           |
| Whistleblower            | 268           |
| Retaliation              | 228           |
| Sex                      | 171           |
| Age                      | 89            |
| Race                     | 74            |
| Color                    | 61            |
| National Origin          | 42            |
| Sexual Orientation       | 28            |
| Religion                 | 21            |
| Ancestry                 | 15            |
| All Other                | 20            |
| <b>TOTAL ALLEGATIONS</b> | <b>1687</b>   |





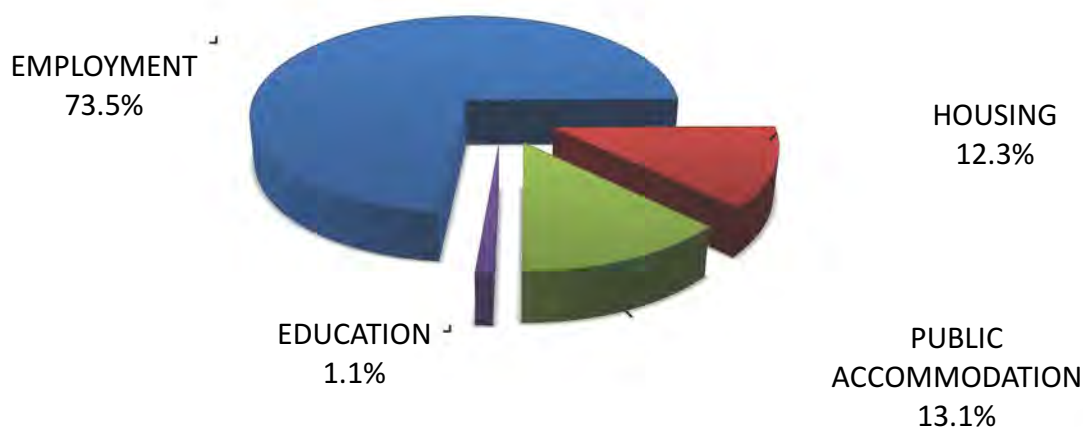
### CLAIMS FILED BY BASIS FY 2006 - 2015<sup>3</sup>

| BASES                      | FISCAL YEAR: | 2006        | 2007        | 2008        | 2009        | 2010        | 2011        | 2012        | 2013        | 2014        | 2015        |
|----------------------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| DISABILITY                 |              | 308         | 346         | 467         | 450         | 438         | 450         | 445         | 448         | 581         | 670         |
| RETALIATION                |              | 98          | 98          | 147         | 56          | 96          | 109         | 158         | 137         | 245         | 228         |
| WHISTLEBLOWER RETALIATION  |              | 143         | 147         | 201         | 180         | 197         | 235         | 261         | 200         | 240         | 268         |
| SEX                        |              | 236         | 207         | 196         | 149         | 147         | 152         | 155         | 159         | 153         | 171         |
| RACE / COLOR               |              | 64          | 88          | 113         | 123         | 101         | 132         | 77          | 99          | 114         | 135         |
| AGE                        |              | 66          | 94          | 97          | 60          | 75          | 109         | 83          | 93          | 107         | 89          |
| ANCESTRY / NATIONAL ORIGIN |              | 40          | 43          | 106         | 51          | 35          | 51          | 32          | 51          | 60          | 57          |
| SEXUAL ORIENTATION         |              | 13          | 33          | 32          | 19          | 50          | 45          | 25          | 35          | 26          | 28          |
| RELIGION                   |              | 10          | 16          | 25          | 15          | 20          | 23          | 13          | 13          | 20          | 21          |
| FAMILIAL STATUS (Housing)  |              | 19          | 13          | 6           | 19          | 22          | 21          | 21          | 20          | 12          | 9           |
| SOURCE OF INCOME (Housing) |              | 16          | 8           | 9           | 10          | 10          | 10          | 2           | 11          | 4           | 4           |
| GENDER IDENTITY            |              | -           | -           | -           | -           | -           | -           | -           | -           | 2           | 5           |
| EQUAL PAY                  |              | -           | -           | -           | -           | -           | -           | -           | -           | 2           | 1           |
| TRANSGENDER                |              | -           | -           | -           | -           | -           | -           | -           | -           | 1           | 1           |
| WORKERS' COMP RETALIATION  |              | 1           | 3           | -           | -           | -           | -           | -           | -           | -           | -           |
| GENETIC INFORMATION        |              | -           | 1           | -           | -           | -           | -           | -           | -           | -           | -           |
| <b>TOTAL CLAIMS</b>        |              | <b>1014</b> | <b>1097</b> | <b>1399</b> | <b>1132</b> | <b>1191</b> | <b>1337</b> | <b>1272</b> | <b>1266</b> | <b>1567</b> | <b>1687</b> |

### COMPLAINTS FILED BY JURISDICTION FY 2006 – 2015

| JURISDICTION         | FISCAL YEAR: | 2006       | 2007       | 2008       | 2009       | 2010       | 2011       | 2012       | 2013       | 2014       | 2015       |
|----------------------|--------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| EMPLOYMENT           |              | 503        | 544        | 604        | 653        | 492        | 618        | 528        | 483        | 518        | 548        |
| HOUSING              |              | 136        | 114        | 59         | 122        | 113        | 78         | 74         | 104        | 73         | 92         |
| PUBLIC ACCOMMODATION |              | 49         | 54         | 142        | 64         | 52         | 72         | 37         | 64         | 63         | 98         |
| EDUCATION            |              | 12         | 6          | 11         | 10         | 9          | 4          | 4          | 3          | 3          | 8          |
| CREDIT EXTENSION     |              | 1          | 1          | 1          | -          | -          | -          | -          | -          | -          | 2          |
| OFFENSIVE NAMES      |              | -          | -          | 2          | -          | -          | -          | -          | -          | -          | -          |
| <b>TOTALS</b>        |              | <b>700</b> | <b>718</b> | <b>819</b> | <b>849</b> | <b>666</b> | <b>772</b> | <b>643</b> | <b>654</b> | <b>656</b> | <b>748</b> |

#### AREA OF JURISDICTION CHART FISCAL YEAR 2015



<sup>3</sup> This is the first time our annual report 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 667 complaints of discrimination during the last fiscal year.<sup>4</sup> 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. 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.

### ***BEFORE Commission Determination***

#### Merit closures (340)

During the last fiscal year, there were 340 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.* During the last fiscal year, there were 155 cases settlement agreements or withdrawals with benefits by complainants before the Commission issued any determination. 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 which a Commission investigator, Compliance Manager or neutral mediator facilitated (usually resulting in a settlement agreement shared with the Commission). The Commission’s Third Party Neutral Mediation Program is available for a small fee, and is very successful in helping claims resolve; in FY2015, our highly skilled mediators facilitated settlement in 22 out of 32 cases they mediated.<sup>5</sup> It should be noted that in addition to monetary awards, settlements often include such non-monetary, equitable relief as an 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. In FY2015, total monetary relief complainants obtained in merit closures was \$1,554,986.
- *“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 185 right-to-sue letters in the last fiscal year.

It is worth noting that the Act allows cases to end with a “reasonable grounds” or “no reasonable grounds” finding. 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.

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<sup>4</sup> 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.

<sup>5</sup> When the FY2015 budget year began, the Commission’s Third Party Neutral Mediation Program was providing mediation services free of charge. When the agency budget proved unable to sustain that program model, the agency began providing mediation services under a fee-for-service model. The Commission’s FY 2015 mediation budget was \$16,500. In FY 2015, parties paid \$9,200 in fees (\$200 by each party in a case) to pay mediators to perform 23 mediations. Of the \$9,200 in fees collected, \$8,050 (87.5%) was paid directly to mediators (a set fee of \$350/case). The remaining balance of fees collected (\$1,150 , or 12.5%) was reserved to pay STA-CAP 644 (7%) and to fund mediations for indigent parties and/or to pay for interpreter services \$506 (5.5%).

### Non-merit closures (134)

During the last fiscal year, there were 134 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 109 cases in the fiscal year, with 30 dismissed for lack of jurisdiction and 54 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 25 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 FY2015, Commissioners received and voted on 227 cases, which contained 1365 distinct disputed *claims* of discrimination.<sup>6</sup> In the final analysis, the Commission found reasonable grounds to believe discrimination occurred in 35 of 227 cases voted on (175 of the total 1,365 claims voted on). This equates to a reasonable grounds rate of 15% of cases voted on or 13% of claims voted on. The disparity between these two rates is because 14 of the 227 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 FY2015. In 149 of the 227 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 12 cases (93 claims) and no reasonable grounds findings in 142 cases (849 claims).
- Contested recommendations. In 78 of the 227 cases voted on by Commissioners, one party contested the recommended decision. These 78 contested cases (containing 423 claims) were scheduled for hearing.<sup>7</sup> After our hearings ended, Commissioners found no reasonable grounds to believe that discrimination occurred in 64 contested cases (341 claims), and reasonable grounds to believe that discrimination occurred in 23 contested cases (82 claims).

Merit cases are not closed at this juncture: 35

Non-merit closures: 192

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

<sup>7</sup> It is worth noting that in 18 of the cases scheduled for hearing, the party contesting the recommended decision did not appear at hearing. For that reason, only 60 cases were decided after oral argument.

### ***Post-Reasonable-Grounds Conciliations***

The Act 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 twenty (20) cases closed with reasonable grounds determinations; of those, eight (8) resulted in successful conciliation agreements with public interest and private relief. The monetary value of these conciliations was \$53,139. 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 2015, Commission Counsel filed five complaints and one amicus brief on behalf of the Commission. Six cases were resolved that had been referred to Counsel for litigation or amicus filings. The Commission was a party in eight court cases throughout the year, and an amicus in one case. At the end of Fiscal Year 2015, there were two cases pending in court in which the Commission was a party, and one case pending in which the Commission filed an amicus 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 FY2015 closures the Commission considers to be merit closures, with something of benefit flowing to the complainant. Closures in this category would include 155 pre-determination settlements (or withdrawals with benefits to the complainant), 185 right-to-sue letters, 35 reasonable-grounds case votes, eight post-reasonable grounds conciliation agreements, and six post-conciliation settlements. Totalling 383, these represent 57% of the 667 cases closed in FY2015.

That rate of merit closures is important to keep in mind when one considers the overall findings in Commission closures. Given the 667 cases the Commission closed in FY2015, and the fact that there were reasonable-grounds findings in 35 cases, the Commission's reasonable-grounds rate for all cases closed in the year was 5%. This could be interpreted to mean that 95% of cases closed in FY2015 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 FY2015, the Commission's overall rate of finding reasonable grounds to believe discrimination occurred in cases where an Investigator's Report was issued was 15% for cases (13% of claims).

It is significant to note that two-thirds of cases with Investigator's Reports (66%) were not contested. For cases with contested recommended decisions, the reasonable-grounds rate was 29% (23 of 78) of cases and 19% (82 of 423) claims.

Viewed conversely, this means that in fiscal year 2015, a respondent in a contested case stood an 85% chance of successfully defeating a Commission case (or an 87% 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 71% chance of successfully defeating a MHRA complaint (or an 81% chance of defeating any given claim).

## **CONCLUSION**

This Annual Report has outlined the Commission's activities for FY2015, including: investigating 739 new complaints (with 1687 distinct claims of discrimination); continuing investigative work on 684 complaints pending from a prior fiscal year; closing 667 cases; participating in 34 trainings; and providing testimony at the Maine Legislature. Given all of this, and our extremely small staff of 12, the sheer volume of the Commission's work in FY2015 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.