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Maine Human Rights Commission



2018 Annual Report

July 1, 2017 - June 30, 2018

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Maine Human Rights Commission

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October 23, 2018

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

Dear Governor LePage, President Thibodeau and Speaker Gideon:

On behalf of the Commissioners and staff of the Maine Human Rights Commission (“Commission”), we are pleased to present you with the 2018 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 Commission received 709 new complaints in Fiscal Year 2018, a 3.2% increase from last year’s 687 filings.
- Of new complaints filed, 68% were based on employment, 16% were based on housing, 14% were based on public accommodations, and 2% were based on education.
- With respect to type of allegation: *Maine Human Rights Act (“MHRA”) retaliation* was alleged in 26% of complaints filed; *disability discrimination* was alleged in 24.9% of complaints filed; *whistleblower retaliation* was alleged in 12.8% of complaints filed; *age discrimination* was alleged in 6% of complaints filed; and *race or color discrimination* was alleged in 5.5% and 3.8% of complaints respectively. *Sex discrimination* was alleged in 13.9% of complaints filed, with *sexual harassment* alleged in 26.3% of sex discrimination complaints. Additionally, new complaints alleged sexual orientation discrimination in 1.4% of filings, religious discrimination in 0.7% of filings, source of income housing discrimination in 0.5% of filings, ancestry discrimination in 0.4% of filings, familial status housing discrimination in 0.2% of filings, gender identity discrimination in 0.1% of filings, and other (“not categorized”) discrimination in 1.1% of filings.
- A significant portion of cases processed last year (70%, or 530 of 750 cases) resolved prior to public hearing.
- Investigators wrote reports after completed investigations in 29% (220 of 750) of cases processed last year.
- Commissioners found reasonable grounds to believe discrimination occurred in 13.2% of cases with investigator’s reports (29 of 220), a slight decrease from last year’s 13.6% rate. Commissioners heard argument in 95 of the cases with investigator’s reports; the investigator’s recommendations in the remaining 125 cases with investigator’s reports were uncontested by the parties.
- The reasonable grounds rate for all cases processed in FY 2018 was 3.9% (29 of 750 cases determined).
- At the end of FY 2018, 749 cases remained pending, a 6.1% decrease in pending cases from the prior year.
- Commission staff delivered or participated in or delivered more than 54 training forums during FY 2018.

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 by the MHRA.

Sincerely,

Arnold Clark
Chairman of Maine Human Rights Commission

THE COMMISSION

Established in 1971, the Commission is a quasi-independent state agency charged with responsibility of enforcing Maine’s anti-discrimination laws, which are encompassed in the Maine Human Rights Act (“the MHRA”) at Title 5 of the Maine Revised Statutes (“M.R.S.”), Sections 4551-4636. Some of the Commission’s powers and duties are:

- 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 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” in employment, housing, education, access to public accommodations, extension of credit, genetic non-discrimination, and offensive names. 5 M.R.S. § 4612(1)(B). The Commission also investigates complaints of retaliation under the Maine Whistleblowers’ Protection Act, 26 M.R.S. §§ 831 - 834-A.

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

JURISDICTIONAL BASIS	EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION	YEAR ENACTED
Age	X	N/A	N/A	X	N/A	1972
Ancestry	X	X	X	X	N/A	1972
Color	X	X	X	X	N/A	1972
National Origin	X	X	X	X	X	1972
Race	X	X	X	X	X	1972
Religion	X	X	X	X	N/A	1972
Marital Status	N/A	N/A	N/A	X	N/A	1973
Sex	X	X	X	X	X	1973
Physical disability	X	X	X	N/A	X	1974
Mental disability	X	X	X	N/A	X	1975
Receipt of Public Assistance	N/A	X	N/A	N/A	N/A	1975
Pregnancy	X	N/A	N/A			1979
Familial Status	N/A	X	N/A	N/A	N/A	1981
Workers’ Comp Retaliation	X	N/A	N/A	N/A	N/A	1987
Whistleblower Retaliation	X	N/A	N/A	N/A	N/A	1988
Children (lodging only)	N/A	N/A	X	N/A	N/A	1989
MHRA Retaliation/Interference	X	X	X	X	X	1993
Genetic Information	X	N/A	N/A	N/A	N/A	1998
Sexual Orientation	X	X	X	X	X	2005

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 volunteer Commissioners appointed by a Governor for staggered five-year terms, and the Commissioners appoint a Commission Counsel and an Executive Director. The MHRA ensures that the Commission is not political in nature, with requirement 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.

PROCESS

The Commission receives either an intake (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. After a reasonable-grounds finding, the Commission attempts to resolve the dispute by agreement (“conciliation”); if conciliation is unsuccessful the complainant and Commission both may file lawsuits in court.

STAFFING

The Executive Director has authority to hire and supervise Commission staff, which is as follows:

Investigators: Our Chief Investigator and five Investigators are responsible for processing intakes and investigating cases, supervised by the Commission Counsel and Executive Director. Last year they shared the burden of reviewing 1,204 intakes to determine if they stated legally valid claims and preparing/sending a “screen-out” letter or a draft complaint as appropriate. The investigators’ core function is to conduct fact-finding as to whether allegations of discrimination are at least as likely as not to be substantiated, and to write Investigator’s Reports that analyze facts and apply legal principles to recommend specific findings to the Commission. Four of the Investigator positions have undergone unremitting turnover in recent years, and the continuing staff shortages and turnover remains challenging.

Legal: Commission Counsel is responsible for agency litigation in the public interest and providing legal advice to the Commission and its staff. Counsel reviews all investigator reports for legal sufficiency, providing legal frameworks to investigators and legal opinions to the Executive Director or Commission, drafting proposed regulations, and advising the Executive Director on legislative and contract matters. Our Commission Counsel has the assistance of one Paralegal, who also: prepares initial document requests for new complaints; assists the Executive Director in negotiating, implementing and monitoring agreements to settle post-decision resolutions; monitors implementation of some pre-decision resolutions; and assists the Executive Director in arranging outreach efforts.

Administration: The Executive Director is ultimately responsible for all agency activity and oversees its staff, including the agency’s three supporting legal associates (who handle all case processing and Commission meeting matters) and a Public Service Manager II (who manages all personnel, budget/fiscal, information technology, and office matters). The Executive Director conducts most agency outreach activity around the State and Legislative information-sharing.

BUDGET

The Commission’s Fiscal Year 2018 revised budget appropriation was \$1,379,127. Approximately \$1,099,658 (80%) 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. \$279,469 (20%) of the Commission’s budget was allocated to “all other” operating expenditures to support program activities. Of the total Commission budget, approximately \$538,791 (39%) were anticipated revenues from federal worksharing agreements with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development.

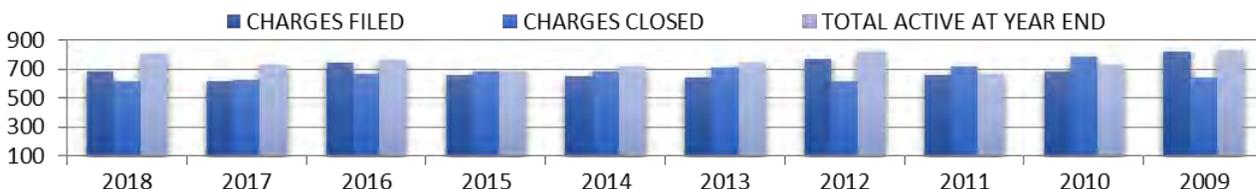
CASE ACTIVITY

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 Fiscal Year 2018, 709 new complaints were filed, which represents an increase from the previous year. A total of 3,380 claims 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 755¹ cases in the same time period. The pending inventory of cases has decreased by 6.1 % since Fiscal Year 2018.

CASE ACTIVITY FY 2009 - 2018

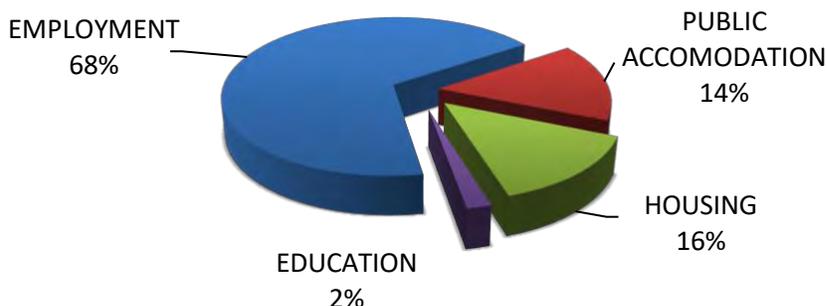
FISCAL YEAR	2018	% +/-	2017	2016	2015	2014	2013	2012	2011	2010	2009
ACTIVE CASES FY START	795 ²	+9.5%	726 ²	756	684	713	746	817	670	729	826
+ CASES FILED	709	+3.2%	687	611	739	654	651	639	764	659	685
- CASES CLOSED	755	+22.8%	615	621	667	683	684	710	617	718	782
ACTIVE CASES FY END	749	-6.1%	798	723	756	684	713	746	817	670	729



As usual, in FY2018 the vast majority of complaints filed (68%) alleged employment discrimination.

COMPLAINTS FILED BY JURISDICTION FY 2009 – 2018

JURISDICTION	FY:	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
EMPLOYMENT		492	482	480	548	518	483	528	618	492	653
HOUSING		113	103	60	92	73	104	74	78	113	122
PUBLIC ACCOMMODATION		104	105	71	98	63	64	37	72	52	64
EDUCATION		14	5	5	8	3	3	4	4	9	10
CREDIT EXTENSION		-	-	2	2	-	-	-	-	-	-
OFFENSIVE NAMES		-	-	-	-	-	-	-	-	-	-
TOTALS		723 ³	695	618	748	656	654	643	772	666	849



COMPLAINTS FILED

In FY 2018, 709 new complaints were filed with the Commission. MHRA complaints involve protected classes that vary depending on the unique jurisdictions each case falls under. Very often, a single complaint will contain multiple distinct

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 2018.

² After updating inventory data, the FY 2018 beginning inventory was adjusted down from 798 to 795 in the 2018 Fiscal Year and up from 723 to 726 cases active at the beginning of the 2017 Fiscal Year due to coding discrepancies.

³ Because 14 of the 709 new complaints filed fell under dual jurisdictions, there were a total of 723 complaints filed by jurisdiction.

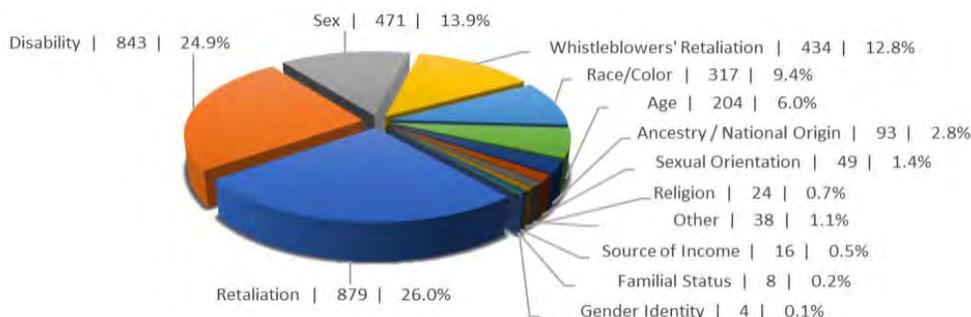
allegations of discrimination, or “claims”, that require different factual and legal analysis. These more complex investigations require substantially increased staff and Commission work. The Commission tracks both cases and the details of each claims identified in each case in order to accurately reflect the nature and depth of our work and resources required.

In the FY 2018, MHRA retaliation was the protected class most often invoked in complaints (26%). The second and third largest basis of complaints filed were disability (24.9%) and sex (13.9%). It is disappointing to note that sexual harassment was alleged in 26% of sex discrimination filings (in 82 out of 153 cases). These top three bases for complaints collectively comprised 65% of the complaints filed. The fourth largest number of complaints filed was based on whistleblower retaliation (12.8%). Complaints alleging race or color were the fifth largest categories of complaints (9.3%), followed by age (6.0%), ancestry or national origin (2.7%), sexual orientation (1.4%) (by statute can include gender identity and expression), religion (0.7%), source of income (0.5%), familial status (0.2%), and gender identity (0.1%). Not all complaints filed with the MHRC fall under the jurisdiction of the MHRA and are dismissed for lack of jurisdiction. In the fiscal year, 38 cases were identified systemically as “other” bases, approximately (1.1%) of the 3,380 complaints filed in 2018.

BASES OF COMPLAINT ALLEGATIONS FILED BY FISCAL YEAR

ALLEGED BASES	2018		F17 - F18	2017	2016	2015	2014	2013	2012	2011	2010
	Count	%	Change +/-								
RETALIATION	879	26%	12%	783	538	228	245	137	158	109	96
DISABILITY	843	25%	2%	830	711	670	581	448	445	450	438
SEX	471	14%	14%	414	427	171	153	159	155	152	147
WHISTLEBLOWER RETALIATION	434	13%	56%	278	532	268	240	200	261	235	197
RACE / COLOR	317	9%	54%	206	162	135	114	99	77	132	101
AGE	204	6%	-8%	221	264	89	107	93	83	109	75
ANCESTRY / NATIONAL ORIGIN	93	3%	-9%	102	71	57	60	51	32	51	35
SEXUAL ORIENTATION	49	1%	49%	33	34	28	26	35	25	45	50
RELIGION	24	1%	-23%	31	40	21	20	13	13	23	20
SOURCE OF INCOME (Housing)	16	1%	-11%	18	5	4	4	11	2	10	10
FAMILIAL STATUS (Housing)	8	0%	33%	6	23	9	12	20	21	21	22
GENDER IDENTITY	4	0%	100%	2	11	5	2	-	-	-	-
EQUAL PAY	0	-	-	-	3	1	2	-	-	-	-
GENETIC INFORMATION	0	-	-	-	-	-	-	-	-	-	-
TRANSGENDER	0	-	-	3	-	1	1	-	-	-	-
WORKERS' COMP RETALIATION	0	-	-	-	-	-	-	-	-	-	-
TOTALS	3,380			2,927	2,821	1,687	1,567	1,266	1,272	1,337	1,191

FISCAL YEAR 2018 CHART



CASES CLOSED

The Commission closed 755 cases in the Fiscal Year 2018⁴. Of the 755 cases, 34 cases were from post reasonable grounds cases activities. 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 “reasonable grounds” rate statistics to be less than fully informative, so we report in more detail the various ways in which Commission cases close.

BEFORE Commission Determination

- *Settlements (159)*. 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). During FY2018, 159 cases resolved via settlement agreement or withdrawal of complaint with benefits before the Commission issued a determination; complainants obtained \$2,889,453 in monetary relief in merit closures.
 - Our Third Party Neutral Mediation Program, available for a small fee, is very successful in resolving claims; in FY2018, our skilled mediators facilitated settlement in 62% (62 out of 102) 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.
- *“Right-to-Sue” letters (160)*. 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 160 right-to-sue letters in Fiscal Year 2018.
- *Administrative Dismissals (162)*. 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). During Fiscal Year 2018, the Executive Director dismissed 162 cases: 43 for lack of jurisdiction; 116 due to complainant’s failure to cooperate/proceed with the investigation; and 3 additional cases for other reasons such as failure to substantiate a claim.
- *Withdrawals (49)*. 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 49 complaints during Fiscal Year 2018.

Public Hearings Determinations (229)

If a case is not administratively resolved as described above, an investigator prepares a report recommending 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 at public hearing adopts the recommendations in all

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 2018 Fiscal Year but which were not counted in as closures in our computer system for technical reasons.

⁵ The Commission’s FY2018 approved mediation budget was 34,000 (which is entirely self-funded). In FY 2018, the Commission received \$35,600 in program fees (\$200 by each of party in a case) from parties for Mediations. In FY2018 mediators were paid \$30,000 (a set fee of \$350/case) to for completing 85 mediations. The Controller of the State of Maine collected \$2,471 in STA-CAP tax (or 8.2%) of expenditures. (STA-CAP tax is a mandatory tax for non-exempt accounts administered by the State of Maine.)

Consent Agenda reports without argument. 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 FY2018, Commissioners received and voted on 220⁶ cases resulting in 229 determinations. Before looking into this data in closer detail, it is 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 29 cases; this equates to a reasonable grounds rate of 13% of cases decided. Out of the 29 reasonable grounds cases voted on in the period, 18 were cases were closed and 11 remained open at the end of the period.

- Uncontested determinations (125). A majority of recommended determinations by Commission staff were not contested by the parties in FY2018. In 125⁷ of the 220 cases voted on (57%), neither party contested the recommended decisions; these cases appeared on the Commission’s Consent Agenda. For uncontested cases listed on our Consent Agenda, Commissioners made no-reasonable-grounds findings in 120 cases, and reasonable-grounds findings in 5 cases.
- Contested determinations (95). In 95 of the 220 cases voted on by Commissioners (43%), one party contested the recommended decision. These 95 contested cases were scheduled for hearing. After our hearings ended, Commissioners found no reasonable grounds to believe that discrimination occurred in 80 contested cases, and reasonable grounds to believe that discrimination occurred in 24 contested cases⁸.

Post-Reasonable-Grounds Conciliations

If the parties reach a conciliation resolution including public interest remedies for the Commission, there is a formal agreement by the Commission, complainant and respondent with the Commission monitoring implementation of terms. If the parties reach a resolution of a post-reasonable grounds case but do not include the Commission in the agreement, or there is no resolution at all, the Commission determines whether to pursue relief in the public interest on its own. During Fiscal Year 2018, nine conciliated cases resolved, with eight of them successfully reaching agreement. In successful conciliation agreements with public interest and private relief, the monetary value of these benefits was \$8,000, and significant non-monetary relief in the form of improved policies and training, postings, and monitoring also was achieved.

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 reasonable-grounds cases in which conciliation failed. Commission Counsel makes recommendations to the Commission after each failed conciliation, 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 2018, Commission Counsel filed four new court complaints and one amicus curiae brief on behalf of the Commission, and continued litigation of four cases that were pending when the 2018 Fiscal Year started. Three litigated cases resolved during the 2018 Fiscal Year, with two resolving through settlement and one ending only after a bench trial; in the case that went to trial, the Commission and complainant prevailed in proving housing discrimination based on sex and retaliation. At the end of Fiscal Year 2018, there were five cases pending in court in which the Commission was a party.

REASONABLE-GROUNDS RATES

Given the 750 new complaints determined in FY2018, and the fact that there were reasonable-grounds findings in 29

⁶ The disparity between these two rates is because 9 of the 229 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.

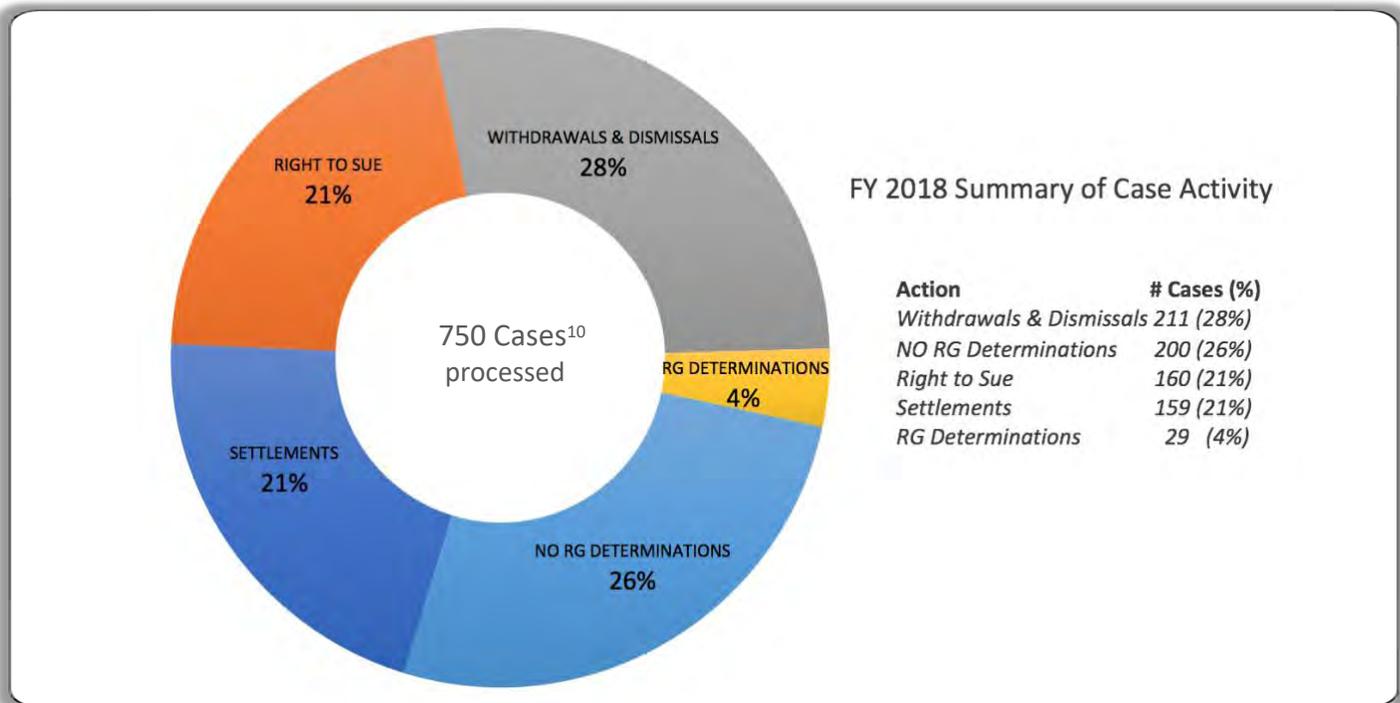
⁷ Nine cases resulted in a split finding vote of both reasonable grounds and no reasonable grounds.

⁸ There were 759 case outcomes; of the 750 individual cases, nine cases had split reasonable grounds and no reasonable grounds findings.

cases, the Commission’s reasonable-grounds rate for all new cases processed in the year was 4%. This could be interpreted to mean that 96% of cases processed were 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 FY2018, the Commission’s overall rate of finding reasonable grounds to believe discrimination occurred in cases where an investigator’s report was issued was 13%.

It is worth noting that 57% of cases with Investigator’s Reports (125 of 220 cases) were not contested. When recommended decisions were contested, the reasonable-grounds rate was much higher: 25% of cases (24 of 95).

Viewed conversely, this means that in Fiscal Year 2018, a respondent in a fully contested Commission matter decided on its merits stood a 75% chance of prevailing in the case⁹.



CONCLUSION

This Annual Report has outlined the Commission’s activities for FY2018, including: investigating 709 new complaints (with 3,380 distinct claims of discrimination); continuing investigative work on 795 complaints pending from the 2017 Fiscal Year; closing 755 cases; participating in/delivering 54 trainings; and providing testimony at the Maine Legislature. Given all of this, and our extremely small staff of 13, the sheer volume of the Commission’s work in FY2018 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 2018 Fiscal Year, and look forward to doing so in the next.

⁹ 24 out of 95 cases contested were reasonable grounds cases.

¹⁰ 750 cases resolved at public hearings, 9 cases had split reasonable grounds and no reasonable grounds findings. The total of 759 has been adjusted down by the 9 cases for accuracy.