



ANNUAL REPORT

Fiscal Year 2018

December 31, 2018

VHRC Commissioners and their Terms of Appointment

All appointments are for five-year staggered terms and expire on the last day of February.

Kevin “Coach” Christie, Chair	2018-2023
Nathan Besio	2017-2022
Donald Vickers	2008-2021
Mary Brodsky	2011-2019
Dawn Ellis	2015-2020

VHRC Staff

Name/Position	SOV Date of Hire
Bor Yang, Executive Director	11/30/2015 (ED since 11/13/2018)
Nelson Campbell, Administrative Law Examiner / Supervising Attorney	4/27/2010
Melissa Horwitz, Administrative Law Examiner	10/22/2018
Cassandra Burdyshaw, Administrative Law Examiner	11/26/2018
John McKelvie, Executive Staff Assistant	11/13/2018

VHRC Contact Information

Office hours: 7:45 a.m. - 4:30 p.m. Monday - Friday

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(802) 828-2480 or 828-1625 (Voice)

Fax number: (802) 828-2481

Mailing address: 14-16 Baldwin Street, Montpelier, VT 05633-6301

E-mail address: human.rights@vermont.gov

Website: hrc.vermont.gov

Vermont Human Rights Commission

MISSION STATEMENT

The mission of the Vermont Human Rights Commission is to promote full civil and human rights in Vermont. The Commission protects people from unlawful discrimination in housing, state government employment and public accommodations. The Commission pursues its mission by:

- Enforcing laws through investigations and litigation
- Conciliating disputes pre and post investigative reports
- Educating the public
- Providing information and referrals
- Advancing effective public policies on human rights

STRATEGIES TO ACHIEVE THE MISSION AND VISION

- Complaints alleging violations of anti-discrimination laws are investigated impartially and decided in a timely manner by the Human Rights Commission.
- Complainants and Respondents are offered timely and meaningful access to mediation services or informal means of conciliation that promote mutually satisfactory resolution of their dispute.
- VHRC staff offers information, referrals, educational programs and educational training to those who request these services. Additionally, VHRC staff requests relief in the form of training in all post-investigative settlements and when appropriate, in pre-investigative settlements.

- The VHRC provides leadership in public policy development with respect to civil and human rights issues in Vermont, provides testimony to the legislature on such issues, and advice to the executive and judicial branches upon request.
- VHRC staff engage in coalition and community activities that address the needs of members of protected categories.

INTRODUCTION

The VHRC has four statutorily mandated roles: enforcement, conciliation, outreach and education, and public policy development.

By its enabling statute, the Human Rights Commission enforces state anti-discrimination/civil rights laws: the Vermont Fair Housing and Public Accommodations Act (VFHPA), 9 V.S.A. §4500 *et seq.*, the Vermont Fair Employment Practices Act (FEPA) (for State government employees only)¹ and the anti-harassment provisions of Title 16 (education), 16 V.S.A. §11 and §570 *et seq.* Places of public accommodations include hospitals, prisons, roads, schools, businesses, and any office or establishment that provides goods or services to the general public. These statutes prohibit individuals or entities from taking adverse action (discriminating) against individuals in protected categories based on their membership in one or more of the protected categories.²

The attorneys who serve as Administrative Law Examiners (ALE) are independently responsible for conducting neutral investigations of complaints of discrimination and making legal recommendations to the Executive Director and Commission. During the course of the impartial investigation, the ALEs seek to resolve complaints through conciliation and identify cases suitable for formal mediation. In instances where a complaint cannot be resolved through conciliation and mediation, the ALEs provide a legal analysis of the issues and a final, legal recommendation in an investigative report based on their review of the evidence and law.

If the Commissioners, after a hearing, find reasonable grounds to believe that a person or entity discriminated against someone in a protected class, the Executive Director engages in post-determination conciliation efforts for a period of six months. If a settlement cannot be reached, the Commissioners can authorize the Executive Director to file suit in state court in furtherance of the public's interest.

The VHRC is also charged with increasing “public awareness of the importance of full civil and human rights for each inhabitant of this state;” examining “the existence of practices of

¹ Individuals with discrimination complaints concerning private employment file their complaints with the Vermont Attorney General's Office, Civil Rights Division.

² The Human Rights Commission enforces state anti-discrimination/civil rights laws; it does not enforce federal laws. Vermont law is broader than federal law in terms of the categories of people who are protected from discrimination.

discrimination which detract from the enjoyment of full civil and human rights;” and with recommending “measures designed to protect those rights.” 9 V.S.A. §4552. It is within these roles that the VHRC works to ensure equal justice, equal opportunity, and equal dignity without discrimination. In furtherance of these goals, VHRC staff speak with and provide training to individuals and groups about their rights and responsibilities under state and federal civil rights laws; work with individuals, agencies and groups to combat bias and bigotry; and supply information, legal analysis, and advice to the Legislative, Executive and Judicial branches.

JURISDICTION

The Vermont Human Rights Commission has jurisdiction over the following areas:

Protected Category	Housing	Public Accommodations	State Government Employment
Race	✓	✓	✓
Color	✓	✓	✓
National Origin	✓	✓	✓
Religion	✓	✓	✓
Sex	✓	✓	✓
Disability	✓	✓	✓
Sexual Orientation	✓	✓	✓
Gender Identity	✓	✓	✓
Marital Status	✓	✓	
Age	✓		✓
Minor Children	✓		
Public Assistance	✓		
Breast Feeding		✓	✓
HIV blood test			✓
Workers’ Compensation			✓
Ancestry			✓
Place of birth			✓
Credit history			✓
Pregnancy Accommodation			✓
Crime Victim			✓

THE DUTIES AND RESPONSIBILITIES OF VHRC COMMISSIONERS AND STAFF

There are five Human Rights Commissioners appointed by the Governor, with the advice and consent of the Senate, for five-year terms. Commissioners may be re-appointed. The Commissioners are tasked with hiring, supervising, and directing the Executive Director and setting the overall policy of the organization. The Commissioners also meet regularly, usually monthly, to discuss and decide the merits of individual discrimination complaints.

The VHRC also has a staff of five state employees. The Executive Director is responsible for the administration of the office, management, and supervision of staff. The Executive Director oversees the development of civil rights training, develops the policy and legislative agenda at the direction of the Commissioners, serves as the legislative liaison and testifies before the legislature, in addition to serving on task forces and legislative committee. Additionally, the Executive Director is the legal counsel and reviews all complaints, investigative reports, provides legal advice to the Commissioners, and serves as the senior attorney on all litigation arising out of investigations at the HRC that reach a recommendation and Commission vote of “reasonable grounds.”

Karen Richards, the former Executive Director, retired on November 9, 2018. Bor Yang was hired as Executive Director and began her work on November 13, 2018. Prior to her appointment as the Executive Director, Bor Yang served the agency as an Administrative Law Examiner.

The ALE Supervising Attorney is charged with performing the duties of the Executive Director in her absence, if disabled, or if a vacancy in the office occurs. The ALE Supervisor oversees and directs functions of the investigative team and assists the Executive Director with assignment of investigations to staff. Currently, the ALE Supervising Attorney is Nelson Campbell, a licensed attorney with 20 years of legal experience. The two remaining ALEs, Melissa Horwitz and Cassandra Burdyslaw are licensed attorneys with 13 years and 6 years of legal and policy experience, respectively. All three ALEs independently investigate complaints of discrimination under all statutes within the HRC’s jurisdiction, write investigative reports, and make recommendations. They perform in-depth legal research into the federal statutes and rules that form the foundation for Vermont’s civil rights statutes. Additionally, they conciliate, educate and train the public, and assist the Executive Director with the legislative agenda by performing legal research and drafting testimony and managing the federal grant.

The primary responsibility of the Executive Staff Assistant (ESA) is to receive, analyze and respond to inquiries regarding potential complaints of discrimination in addition to serving as the administrative assistant to Commissioners, Executive Director, and ALEs. These duties include drafting complaints, resolving “informals,” preparing and performing all administrative tasks associated with Commission Meetings, monitoring legislative bills, maintaining equipment, serving as vendor and records liaison, managing agency website, maintaining systems,

performing data entry and analysis, and assisting with managing the federal grant to ensure compliance. The position is currently held by John McKelvie, who brings over ten years of management experience to the HRC.

INFORMAL AND FORMAL COMPLAINTS

The VHRC receives inquiries regarding potential complaints of discrimination through phone calls, email correspondence, or its website. Through consultation with the Executive Director, the ESA analyzes and responds to all inquiries. Where inquiries raise issues not within the VHRC's jurisdiction, the ESA will refer the individual to the relevant agencies. Some inquiries are opened as an "informal" investigation because they raise narrow, limited, or new legal issues that do not merit a full investigation. Informals are opened by means of an agency letter sent to the Respondent, outlining the allegation that a violation of the State's anti-discrimination laws has occurred. The Executive Director and/or ESA attempts to resolve these matters confidentially. Informals that do not resolve may be opened as a full investigation by means of a complaint. Informals have included a business's failure to adequately post accessible parking signage or failure of gas stations to post legally required accessible stickers on pumps. Currently, the VHRC is treating all violations of the new gender-neutral bathroom law (H.333) as informals to provide places of public accommodations adequate time for compliance.

Most inquiries to the VHRC that fall within the VHRC's jurisdiction are opened as formal investigations and commence with a complaint. A "complaint" as used in this report refers to those contacts that result in a formal VHRC investigation. A complaint may be drafted by the individual complainant, their representative, or the ESA and reviewed by the ED. All complaints are signed under oath. For an allegation of discrimination to become a formal investigation, a citizen must allege the *prima facie*³ elements of a violation of Vermont's discrimination laws in one of VHRC's areas of jurisdiction: housing, public accommodations or State government employment.

INVESTIGATIONS

ALEs independently investigate complaints of discrimination by developing an investigation plan and examination strategy; interviewing witnesses; requesting and reviewing evidence, including voluminous records in both electronic and hard copy formats; and researching relevant state and federal statutory and case law on all issues relevant to the three areas of jurisdiction. ALEs are statutorily responsible for making efforts to conciliate in all matters. While ALEs are impartial and neutral investigators during the course of an investigation, they represent the HRC

³ A *prima facie* case lists the facts that if proven to be true would be a violation of the specific law. (e.g., in a housing discrimination case the complainant must allege that she is a member of a protected class, that she experienced an adverse housing action and that the adverse action was due to her membership in the protected class.)

and the public interest at all stages of both the investigation and any subsequent litigation. Thus, ALEs may provide input on the strengths and weaknesses of cases to assist the parties in settling. When matters do not result in a settlement either through conciliatory efforts or mediation, ALEs write Investigative Reports that are reviewed and approved by the Executive Director. Investigative reports are lengthy, involving exhaustive factual findings and conclusions of law, and include a recommendation of “reasonable grounds” or “no reasonable grounds” to believe discrimination occurred. In many instances, an ALE may recommend a “split” finding – that is that there are reasonable grounds to believe discrimination occurred with respect to one protected category (or respondent or set of facts) but not another. Investigative reports are distributed to the parties who then have an opportunity to provide a written response and appear before the Commissioners at the next scheduled Commission Meeting.

COMMISSION MEETINGS

Commissioners review and consider the reports and responses prior to the Commission Meeting. The parties to the complaint (the complainant and the respondent) are invited to attend, present the reasons why they agree or disagree with the staff recommendation and answer questions from the Commissioners about the circumstances surrounding the complaint. The hearings are non-evidentiary. The information considered is the evidence presented in the investigative report from the ALE. Commissioners discuss the individual cases and make a determination in executive session. Commissioners vote on the record.

If the Commissioners determine there are no reasonable grounds to believe that discrimination occurred, the case is closed and remains confidential. The parties are free to make the information about the case public if they so desire. Additionally, the complaining party may decide to pursue legal or other administrative action, but the VHRC is not a party to those actions.

If the Commissioners determine that the evidence is sufficient (using a preponderance of the evidence standard) to show illegal discrimination, they reach a finding of reasonable grounds. The Investigative Report becomes a public record only when there is a majority vote by the Commissioners of reasonable grounds. In addition, by statute all settlements of complaints filed with the VHRC are also public records. If the Commissioners issue a reasonable grounds finding, the Executive Director actively pursues settlement negotiations for a period of up to six months, either directly or through a professional mediator. Past settlements have included agreements not to discriminate in the future, modification of inaccessible premises or discriminatory policies, anti-discrimination education, letters of apology, compensation for damages, attorneys’ fees and modest civil penalties, or reimbursement of costs to the VHRC.

The VHRC has legal authority to bring an action in court for injunctive relief, declaratory judgment and damages. If illegal discrimination is proven to a judge or jury, the court may

impose fines, monetary damages, costs, and attorneys' fees against the Respondent/Defendant as well as require other remedial measures to avoid further violations of law.

CALLS AND REFERRALS

Phone Contacts

In FY18, the VHRC received 826 calls for assistance from the general public. The vast majority of these calls do not result in formal complaints. Many of the calls are individuals seeking assistance for issues beyond VHRC's jurisdiction. Those are referred to other appropriate organizations. Other calls require a VHRC staff person to answer basic questions regarding Vermont's various anti-discrimination laws. VHRC does not provide legal counsel or advice. Some of the calls result in informal cases and others in formal complaints. In FY18, there were seven (7) informal cases and sixty-two (62) formal complaints accepted for processing

Between July 1, 2017 and June 30, 2018, the agency logged 826 calls.

July – Sept. 2017	195
Oct. – Dec. 2017	219
Jan. – March 2018	261
Apr. – June 2018	151
FY18 Total	826

In comparison in FY17, the agency logged 1037 calls.

July – Sept. 2016	268
Oct. – Dec. 2016	233
Jan. – March 2017	291
Apr. – June 2017	241
FY17 Total	1037

The primary referral sources are the Attorney General's Office for private employment discrimination complaints, Vermont Legal Aid for landlord/tenant or other legal matters, law enforcement for criminal complaints, and other non-profit service providers.

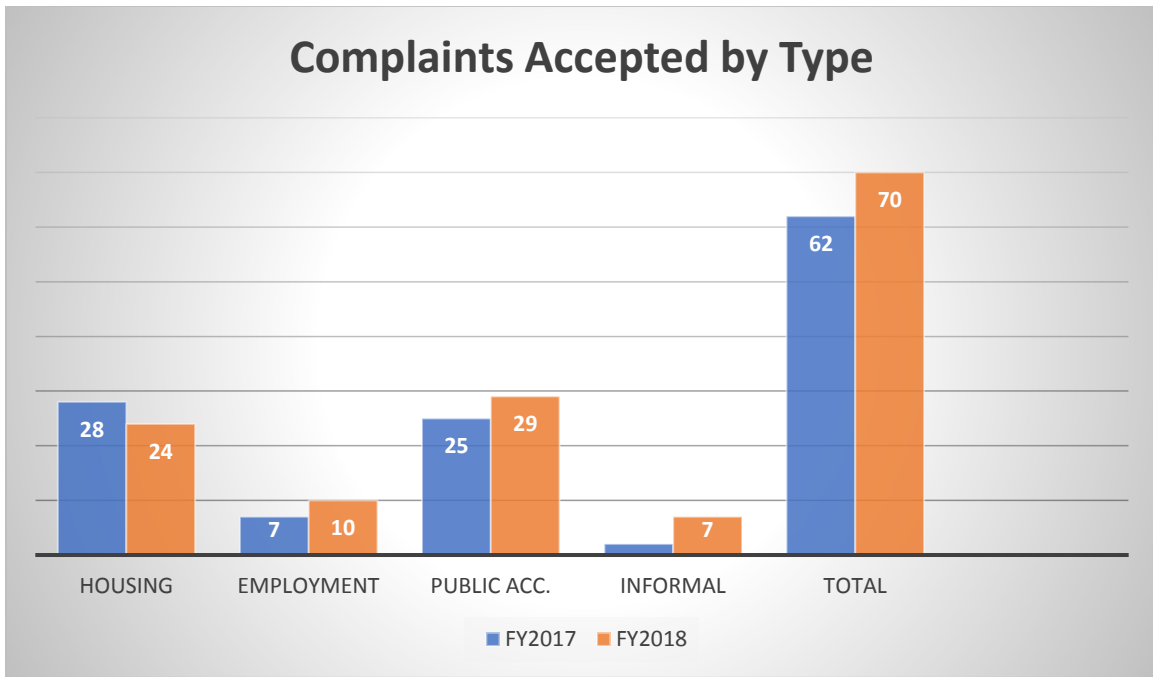
WEBSITE ANALYSIS (July 1, 2017-June 30, 2018)

This is our first full year of tracking website access. During the fiscal year there were a total of 9,484 sessions with 6,525 users, with 23,602 pageviews and an average of 2.49 pages viewed per session. Returning visitors equaled 15.4% with 84.6% new visitors to the HRC website.

Interestingly the website had visitors from other countries including Bangladesh (16), Canada (45), China (53), France (143), India (185), Pakistan (19), the Philippines (67), South Africa (34), and the United Kingdom (31). and. The most popular pages are: About us; How to file; Resources; and HRC Commission News.

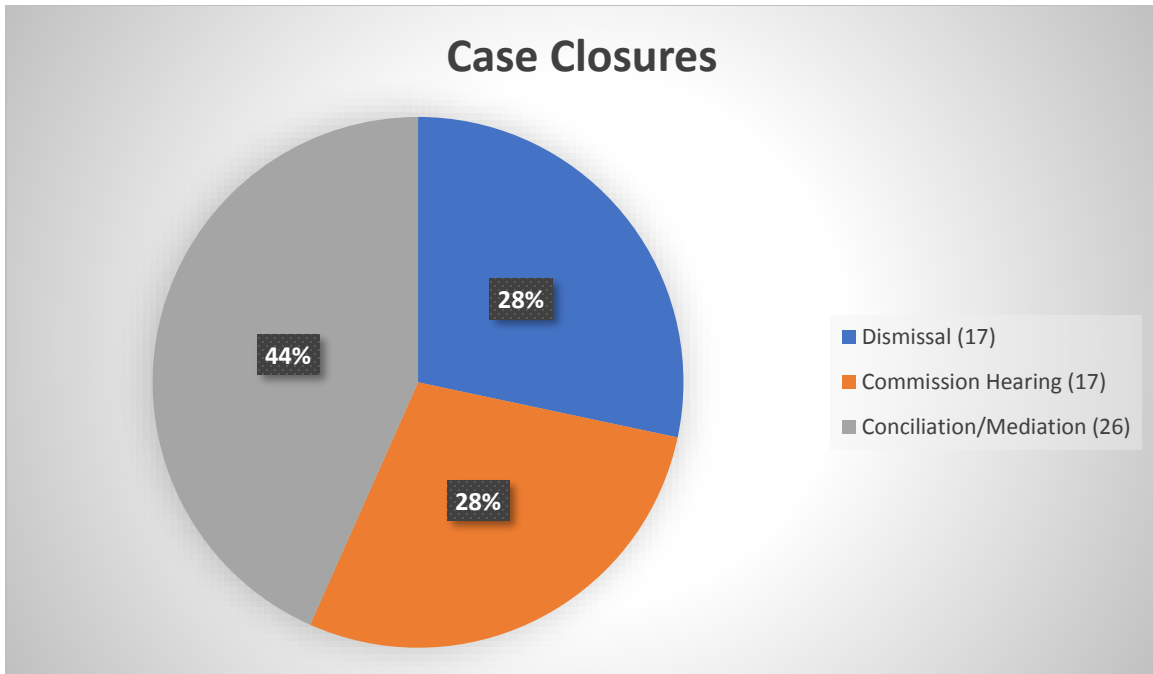
STATISTICS (July 1, 2017- June 30, 2018)

Complaints Accepted- A comparison of cases accepted through the end of the 2017 and 2018 fiscal years shows that with the exception of housing (with two fewer cases), the number of cases accepted increased during this fiscal year. The total has increased by 9%, from 62 to 70 accepted cases, which include 24 housing, 29 public accommodations, 10 employment, and 7 informal cases. Despite the slight decrease in housing cases, we met our Housing and Urban Development (HUD) performance standard of 20 dual-filed cases (cases where status is protected under both federal and state law).



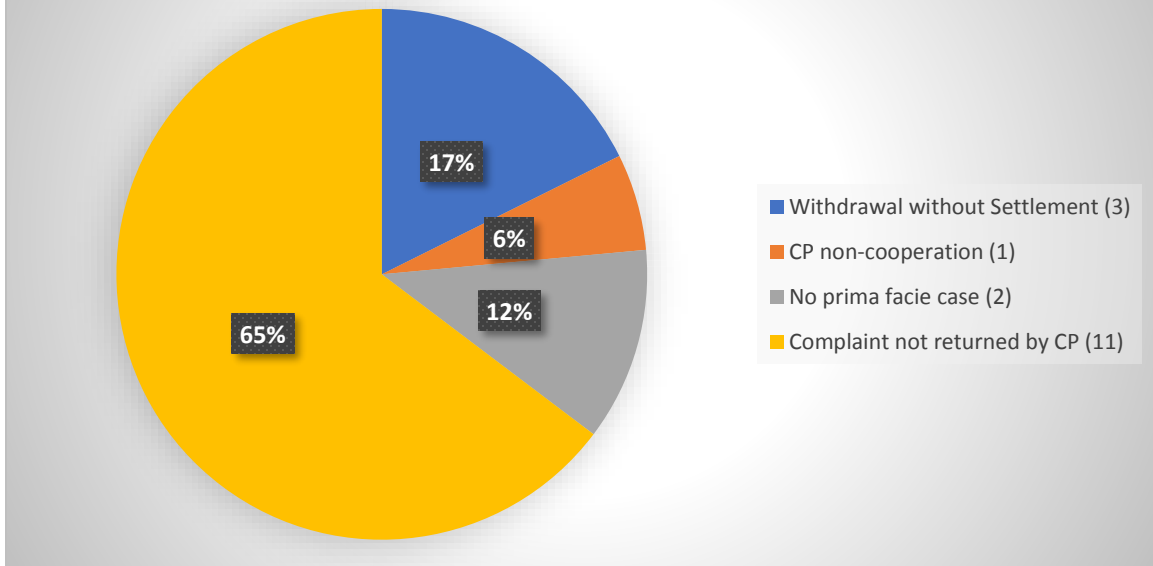
Disposition of Closed Cases- Cases are disposed of by hearing, conciliation, or administrative closure. 52% (37) of the 70 cases accepted in FY18 were resolved by the end of the fiscal year. 59 cases in total were resolved during FY18, including 3 cases accepted in FY16 and 19 cases accepted in FY17. 74% of the cases resolved in FY18 went to a Commission hearing (17) or were settled through conciliation, either pre- or post-cause.

One case involving a split finding from the Commission (both RG and NRG) also involved a mediation process, hence the appearance of 60 cases in the chart below.



Administrative Dismissals- Administrative closure or dismissal occurs for several reasons once a complaint has been filed, including failure to return the complaint for processing in the first instance. Administrative closures also include cases that are withdrawn by the complainant without settlement. Eleven (11) cases were not returned for processing; three (3) cases were withdrawn without settlement; two (2) cases were dismissed due to lack of a *prima facie* case; and one (1) case was dismissed for failure of the complaining party to cooperate with the investigation.

Administrative Dismissals



COMPLAINTS BROUGHT BEFORE THE COMMISSION FOR HEARING

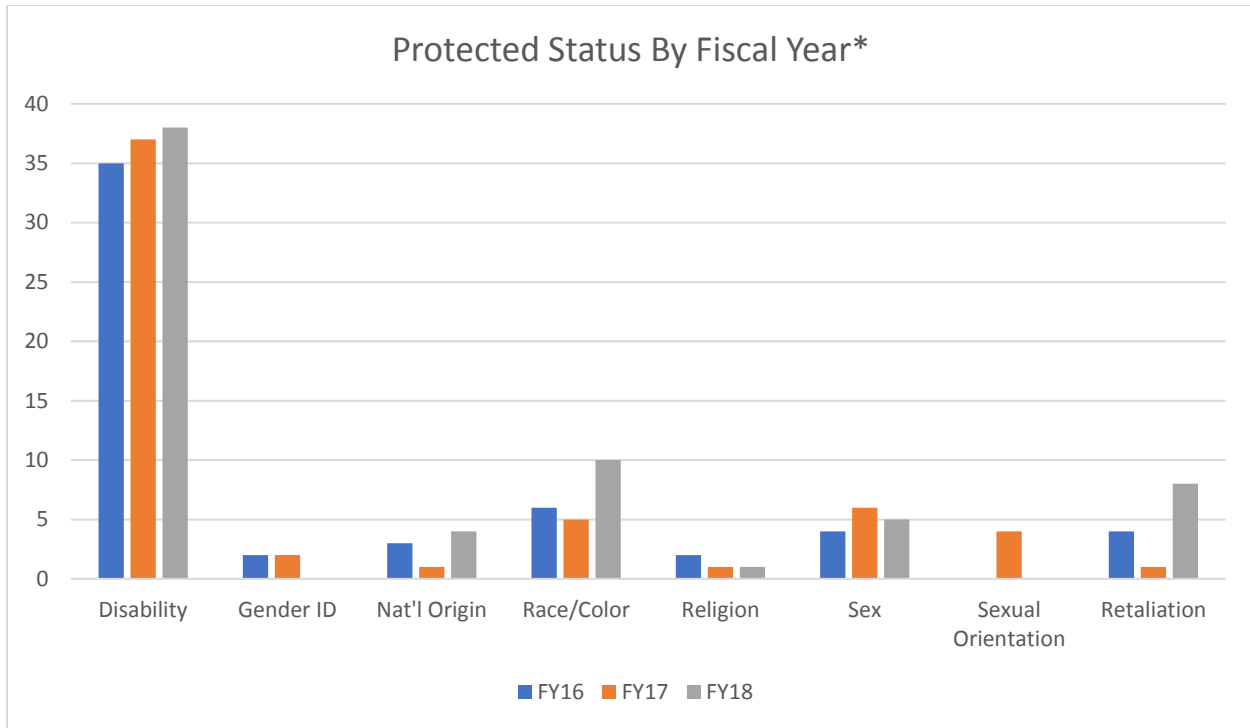
In FY18, the Commission heard 17 cases but made 18 findings, (including 1 split finding-RG and NRG in a housing case), compared to 12 cases in FY17. Of the cases heard, the Commission found no reasonable grounds in ten (10) cases and reasonable grounds in seven (7) cases. The breakdown by case type is as follows:

Outcome	Employment	Housing	Public Accommodations	Totals
Reasonable Grounds	1	3	3	7
No Reasonable Grounds	2	6	3	11

Protected Categories by Type of Complaint/Case FY18

Protected Category	Housing	PA	Employment	Total ⁴
Age	1	n/a	0	1
Breastfeeding	n/a	0	0	0
Disability	15	19	4	38
Gender ID	0	0	0	0
National Origin	1	3	0	4
Race/Color	1	7	2	10
Retaliation	5	1	2	8
Religion	1	0	0	1
Sex	1	2	2	5
Minor Children	2	n/a	n/a	2
Public Assistance	0	n/a	n/a	0
Marital Status	0	0	n/a	0
Family/Parental Leave	n/a	2	n/a	2
Workers Comp	n/a	n/a	0	0
Sexual Orientation	0	0	0	0

⁴ Totals will not equal the number of actual complaints because many cases allege discrimination based on more than one protected category.



While disability-related cases have remained relatively stable over the last several years, race and national origin cases rose significantly during the last fiscal year. Twice as many cases were filed in each category. This appears to be reflective of a national and state trend towards more openly expressed animus against both people of color and immigrant populations.

RELIEF OBTAINED IN CASES FOR FY18

Type of Case	\$ Relief for CP	Non-\$ for CP	Public Interest
Public Accommodation	\$302,443	Apology (2) Issuance of library card Provision of coffee maker, grinder and coffee Reinstatement to training program Accessible parking signage brought into compliance (5)	Contract with tele-phonetic interpreter service Training (6) Adoption or revision of policies (6) Notice to customer (2) Posting of rights (2) Data collection and reporting Monitoring by HRC/DOJ
Housing	\$32,635	Waiver of notice of sale CP moved to top of waitlist Allowed CP to use candles for religious reasons Installation of grab bars and wall switch for bedroom	Fair Housing Trainings (6) Policy changes (2) Publication of fair housing ads Notice to tenants

		Resolution of eviction (3) Letter provided to CP acknowledging faulty criminal background check	Publication of non-discrimination language in future advertisements Notice of House Rules posted Lease changed to advise tenants of right to request a reasonable accommodation
Employment	\$76,556	State made retro contributions to retirement New position and 40 hours paid leave time Written reprimand removed from file Supervisory training for managers	Training re implicit bias, bystander responsibilities, etc. Policy changes Dissemination of anti-discrimination policy and sign off Protocol re reassignments for safety
Total	\$411,078	n/a	n/a

OUTREACH AND TRAINING

During the fiscal year, the VHRC trained a total of 874 people.

Type	Number of events	Number trained
Housing	7	197
PA	16	411
Employment	2	56
Implicit Bias	12	210
Totals	37	874

For the 2018 fiscal year, VHRC staff conducted thirty-seven (37) training events. Entities trained included employees and managers of the State, law enforcement, community members, victims' advocates, private employees, housing providers, individual landlords, private and non-profit attorneys, and service providers. Much of the public accommodations training was related to conciliation agreements requiring training for employees.

SUMMARY OF REASONABLE GROUNDS CASES

After the Commission finds reasonable grounds to believe that discrimination occurred, the Executive Director makes attempts to resolve the matter either informally or through formal mediation. If these attempts are unsuccessful, the Commissioners can authorize the filing of suit. While this is discretionary in non-housing cases, HUD requires the HRC to file suit in any

reasonable grounds housing case if it cannot be resolved. Below is a summary of each case brought before the Commission in FY18 wherein the Commission found reasonable grounds to believe that discrimination occurred.

Employment

Francois v. Department of Mental Health, E17-0002- Complainant, a person of color, alleged that she was subjected to harassment based on her race and color by other employees and placed in unsafe positions by managers at the Vermont Psychiatric Care Hospital (VPCH). The case settled with relief for Ms. Francois in the form of paid leave, re-employment rights and the right to return to her position as well as public interest relief for the Commission. Part of the public interest relief included publication of the State's anti-discrimination policy to all employees, direction to supervisors about allowing for staffing changes when employees felt unsafe, and training conducted through an outside provider on the topics of implicit bias, bystander responsibilities, and other ways of changing culture in the workplace.

Housing

Tenant v. Macy, HV17-0011- Complainant, an individual with disabilities alleged that he was retaliated against after asserting his fair housing rights. The case settled after the HRC finding with complainant receiving \$2000 and public interest relief for the Commission including advertisements for the units to include an anti-discrimination statement, posting of house rules, and training for the respondent on implicit bias and fair housing laws.

Tenants v. Co-Tenant, HV17-0028- Complainants, women in a same sex relationship, alleged that their neighbor harassed, intimidated and threatened them based on their protected status. The case settled with an apology and training for the respondent.

Tenant v. Churchill Realty, HV18-0003- Complainant, an individual with a disability alleged that his landlord discriminated against him based on his disability by refusing to renew his lease. Settlement negotiations are under way.

Public Accommodations

Nolan v. WESCO d/b/a Capital Deli, PA17-0002- Complainant, an individual with a disability alleged that he was told to remove his service animal from the premises. The case settled with \$500 to complainant, a \$250 donation to the ASPCA and public interest relief requiring revision of respondent's service animal policy and employee sign off on its review, posting of the two questions employees are permitted to ask at the register in every store, and training for all of respondent's employees on service animals in places of public accommodation.

Minor v. AIR Development d/b/a Apple Island Resort, PA17-0003- Complainant, an individual with a mobility impairment filed a complaint alleging that the common areas of the resort (office, store and clubhouse) lacked appropriate accessible signage and that the resort would not allow

individuals an accommodation to drive and park golf carts at the clubhouse in order to avoid pushing a wheelchair up a 150 foot walkway. The case settled with placement of proper signage and an agreement to allow the complainant and anyone else with a mobility impairment to park a golf cart next to the clubhouse. Public interest relief included development of a Reasonable Accommodations Policy that was disseminated to all employees and signed off on, as well as posted in the office. All employees also received training from the VHRC on requirements of the ADA, including accessibility, reasonable accommodations, and service animals.

W.M. v. Department of Corrections, PA16-0018- Complainant, an individual with a mental impairment, was ordered by the court into a psychiatric hospital bed after being determined to be a danger to herself or others. Because there were no beds available and she had pending criminal charges, she was sent to a correctional facility as a delayed placement person. While incarcerated, she was subjected to multiple uses of force for behaviors that were not within her control at the time. Complainant received \$65,000 in damages.

LITIGATION

Human Rights Commission (C.S.) v. Department of Corrections, Docket No. 743-12-16 Wncv. C.S., an individual with mental impairments alleged that he was kept continuously in segregation for 2.4 years while incarcerated at Southern State Correctional Facility and was deprived of his right to be in a more integrated setting, denied access to programs and services not available to inmates in segregation, and denied reasonable accommodations that would have allowed access to programming and more out-of-cell time. The case settled with Complainant receiving damages of \$27,500 and public interest relief that requires the DOC to develop directives related to minimum out-of-cell time, tracking of out-of-cell time in one place (rather than three places as is current practice), directions to casework staff to review and share any relevant evaluations with medical providers, and in the event of a disciplinary rule violation, determine whether a mental health condition contributed to the behavior. The HRC continues to provide input to DOC on this issue.

Fortin v. Hayes Hospitality Operations d/b/a Grey Fox Inn, Docket No. 661-11-17- Complainant alleged that she and her husband were refused a room at the Grey Fox Inn in Stowe upon disclosing that she was traveling with a service animal. At around the same time suit was filed, the Inn was sold at a loss and there were no assets to pay any judgment. The matter was voluntarily dismissed with an order from the court for defendant to reimburse the Commission for its costs of service in the amount of \$170.43. Interest will accrue on this amount at 12% per year.