



# **ANNUAL REPORT**

## **Fiscal Year 2015**

December 31, 2015

**The Five Sitting VHRC Commissioners and their Terms of Appointment:**

Mary Marzec-Gerrior, Chair	2008-2018
Nathan Besio	2007-2017
Donald Vickers	2008-2016
Mary Brodsky	2011-2019
Dawn Ellis	2015-2020

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

**Staff**

<b>Name</b>	<b>Position</b>	<b>Date of Hire</b>
Karen Richards	Executive Director	3/18/2013
Ellen Maxon	Administrative Law Examiner	10/2/2006
Nelson Campbell	Administrative Law Examiner	4/27/2010
Katherine Spence	Administrative Law Examiner	12/1/2014*
Jocelyn Bolduc	Executive Staff Assistant	3/23/2015

\*Ms. Bor Yang was hired to replace Katherine Spence on 11/30/15.

# 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
- Conciliating disputes
- Educating the public
- Providing information and referrals
- Advancing effective public policies on human rights

\* A public accommodation is an establishment such as a school, restaurant, office or store that offers facilities, goods or services to the public.

## INTRODUCTION

Where after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood that he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination.

Eleanor Roosevelt  
1958 Speech to the United Nations

The Vermont Human Rights Commission (VHRC) is the state agency having jurisdiction over claims of unlawful discrimination in housing, state government employment, and public accommodations. Public accommodations involve the provision of goods and services by businesses to the public (including but not limited to stores, restaurants, professional offices, and hospitals) and by state and local governments (including schools). The VHRC has four statutorily mandated roles: enforcement, conciliation, outreach and education, and public policy development.

The law prohibits individuals or entities from taking adverse action (discriminating) against individuals in the protected categories based on their membership in one or more of the categories. The Vermont 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. See page 5 for a list of the protected categories by type of case (federal categories are in bold type).

The VHRC staff conduct impartial investigations of allegations of discrimination under the Vermont Fair Housing and Public Accommodations Act (VFHPA), 9 V.S.A. §4500 *et seq.*, the Vermont Fair Employment Practices Act (for State government employees only)<sup>1</sup> and the anti-harassment provisions of Title 16 (education), 16 V.S.A. §11 and §570 *et seq.* VHRC staff determine whether there are reasonable grounds to believe that unlawful discrimination occurred and make a recommendation to the Commissioners. During the course of the impartial

---

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

investigation, VHRC staff seek to resolve complaints through conciliation and, if appropriate, formal mediation. If the Commissioners, after 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. If a settlement cannot be reached, the Commissioners can authorize the executive director to file suit in state court to further the public 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 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, 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.

By its enabling statute, the Human Rights Commission is an enforcement agency not a legal services or advocacy organization and does not represent either party in a complaint.

## JURISDICTION

The Vermont Human Rights Commission has jurisdiction over allegations of unlawful discrimination in the following areas (federal categories in **bold**):

<b>HOUSING</b>	<b>PUBLIC ACCOMMODATIONS</b>	<b>STATE EMPLOYMENT</b>
<b>Race</b>	<b>Race</b>	<b>Race</b>
<b>Color</b>	<b>Color</b>	<b>Color</b>
<b>Sex</b>	<b>Sex</b>	<b>Sex</b>
<b>Religion</b>	<b>Religion</b>	<b>Religion</b>
<b>National Origin</b>	<b>National Origin</b>	<b>National Origin</b>
<b>Disability</b>	<b>Disability</b>	<b>Disability</b>
Sexual Orientation	Sexual Orientation	Sexual Orientation
Marital Status	Marital Status	Ancestry
Gender Identity	Gender Identity	Gender Identity
<b>Minor Children</b>	<b>Age</b>	<b>Age</b>
Public Assistance	Breastfeeding	Breastfeeding
		HIV blood test
		Workers' Compensation
		<b>Family/Parental Leave</b>

## **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. A small fee may be charged to cover expenses.
- 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.

## VHRC PROGRAM OPERATIONS

### VHRC Contact Information

Office hours:	7:45 a.m. - 4:30 p.m. Monday - Friday
Telephone number:	(800) 416-2010 (Toll Free Voice Line) (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:	<a href="http://hrc.vermont.gov">hrc.vermont.gov</a>

### Staffing

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 meet regularly, usually monthly, to discuss and decide the merits of individual discrimination complaints, as well as to set the overall policy of the organization. (See page 2 for a listing of the Commissioners)

The VHRC also has a staff of five state employees. The Commissioners hire, supervise and direct the organization's executive director who also acts as the VHRC's legal counsel and legislative liaison. The executive director hires, supervises and directs the executive staff assistant, and three administrative law examiners/trainers. (See page 2 for a listing of staff)

Karen Richards was hired as the executive director and began her work in March 2013. Ms. Richards has many years of experience as a supervisor and litigator.

## **Phone Contacts**

In FY15, the VHRC's records indicate it received 957 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<sup>2</sup> and others in formal complaints. In FY15, there were fifteen (15) informal cases and sixty-one (61) formal complaints accepted for processing.)

## **COMPLAINTS**

### **Enforcement Programs**

Vermont's anti-discrimination laws protect people from discrimination based on race, color, sex, sexual orientation, religion, national origin, mental or physical disability, age, marital status and, gender identity. Different categories are protected in each area: housing, employment, and public accommodations. (See chart on page 5). For example, in addition to the above reasons, a person may not be denied housing because of the presence of minor children or due to receipt of public assistance (including housing assistance).

A "complaint" as used in this report refers to those contacts that result in a formal VHRC investigation. For an allegation of discrimination to become a formal investigation, a citizen must allege the *prima facie*<sup>3</sup> elements of a violation of Vermont's discrimination laws in one of VHRC's areas of jurisdiction - - housing, public accommodations or State government employment.

The staff receives and impartially investigates allegations of unlawful discrimination only after an individual has signed a complaint under oath. At the conclusion of the investigation, administrative law examiners write Investigation Reports that are reviewed and approved by the executive director. They are then

---

<sup>2</sup> An "informal case" is a situation, (often an accessibility issue), that can be resolved easily and does not require a full investigation.

<sup>3</sup> 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.)



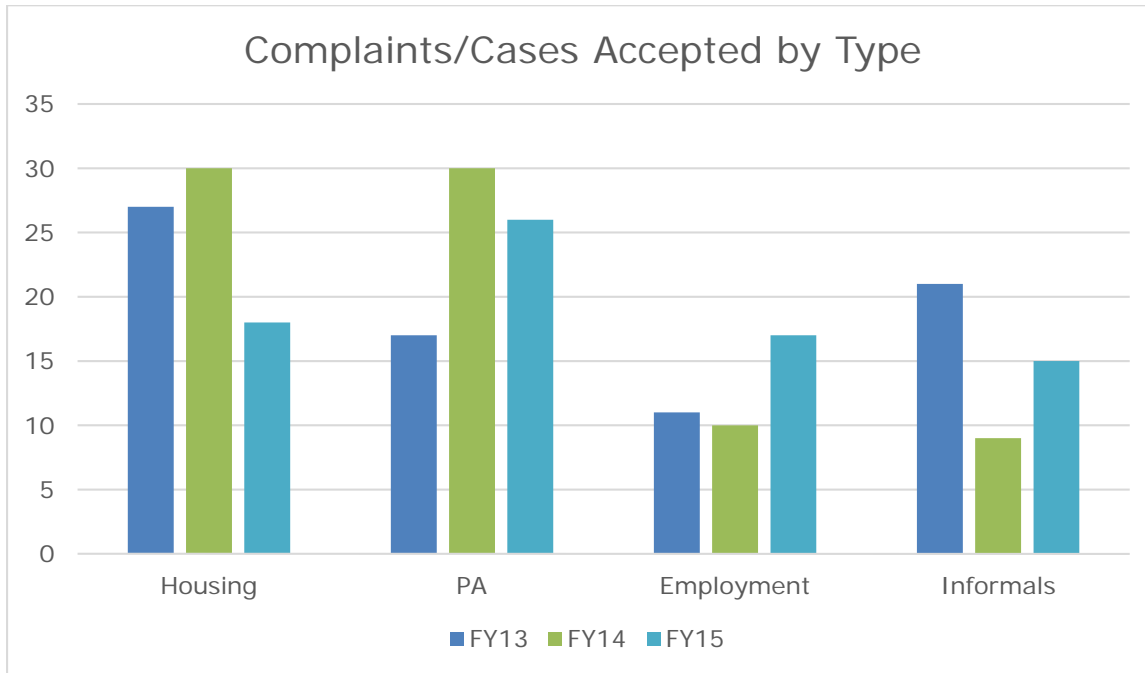
distributed to the parties and to the Commissioners who consider these reports at their monthly meeting for their review and determination in executive session. The parties to the complaint (the complainant and the respondent) are invited to attend, present the reasons why they agree or disagree with 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 administrative law examiner.

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 at that point. 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.

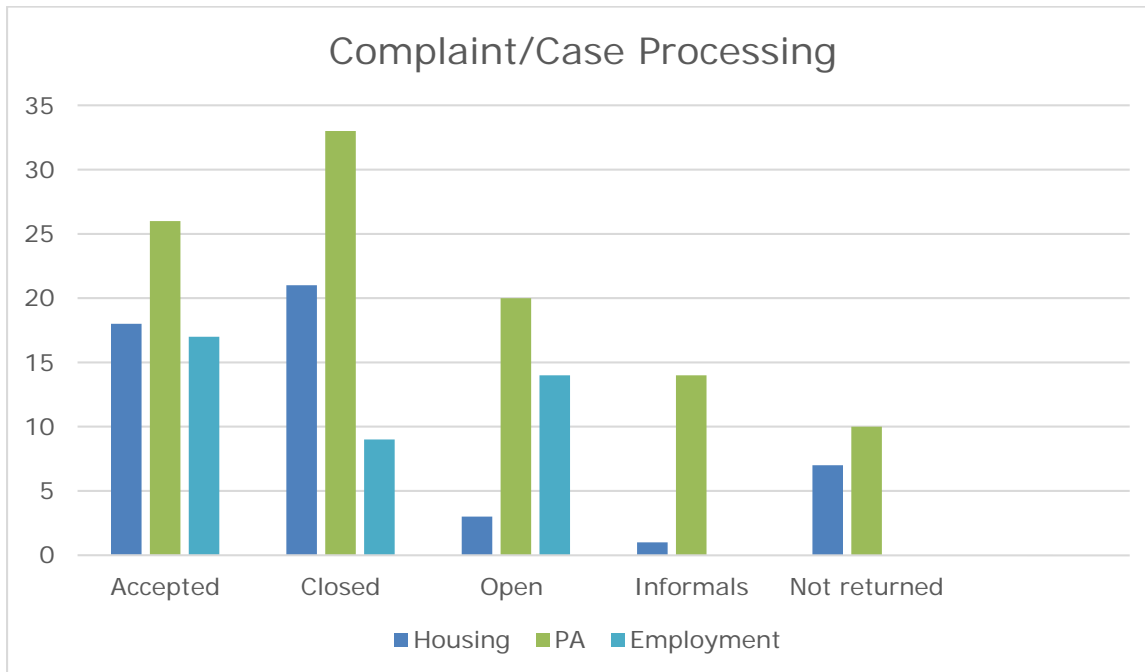
If the Commissioners determine there are no reasonable grounds to believe that discrimination occurred, the case is closed and remains confidential. The parties are free to make the information about the case public if they so desire. Additionally, the complaining party may decide to pursue legal or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

The VHRC only has legal authority to investigate complaints, negotiate and enforce anti-discrimination provisions in settlements, and to bring an action in court after a reasonable grounds finding and failed efforts to resolve the dispute informally or to enforce a settlement agreement. If illegal discrimination is proven to a judge or jury, the court may impose fines or monetary damages, costs and attorneys' fees against the Respondent/Defendant as well as require other remedial measures to avoid further violations of law.

## Complaints/Cases



Overall complaints and informal cases are running almost even with prior years. In FY13, there were 76 accepted, in FY14 there were 79 and in FY15 there were 76. Most concerning, in light of federal funding that is based on case intake, is the category of housing. Complaints are down significantly from the previous years. Many complaints are simply not returned (see below). This is clearly an area that requires more robust outreach. As a way of getting information out to those who might be experiencing discrimination but are unaware of the VHRC, the VHRC is currently running public service announcements (PSAs) on WCAX TV and is looking into place similar PSAs on other Vermont stations. Employment complaints, on the other hand, are up significantly, as are informal cases compared to FY14. We are doing more public accommodations accessibility cases informally as that is often the most expedient way to resolve the more minor accessibility issues such as accessible parking, access with a service dog, etc. that are usually a matter of lack of knowledge or information on the part of the potential Respondent and thus are easy to resolve.



This chart shows the manner in which complaints and informal cases were processed for the FY15 including the number closed, some of which were opened in prior fiscal years. It also shows the number of complaints remaining open at the end of the fiscal year and therefore carried forward into FY16. The total closed complaints was (63); remaining open (37); not returned (17) (0-Employment, 7 Housing and 10 Public Accommodations).

### **Complaints Brought Before the Commission for Hearing**

In FY15, the Commissioners heard 17 complaints, compared to 8 in FY14. Of the complaints heard, the Commissioners found no reasonable grounds with regard to 15 complaints and reasonable grounds in 2 complaints.

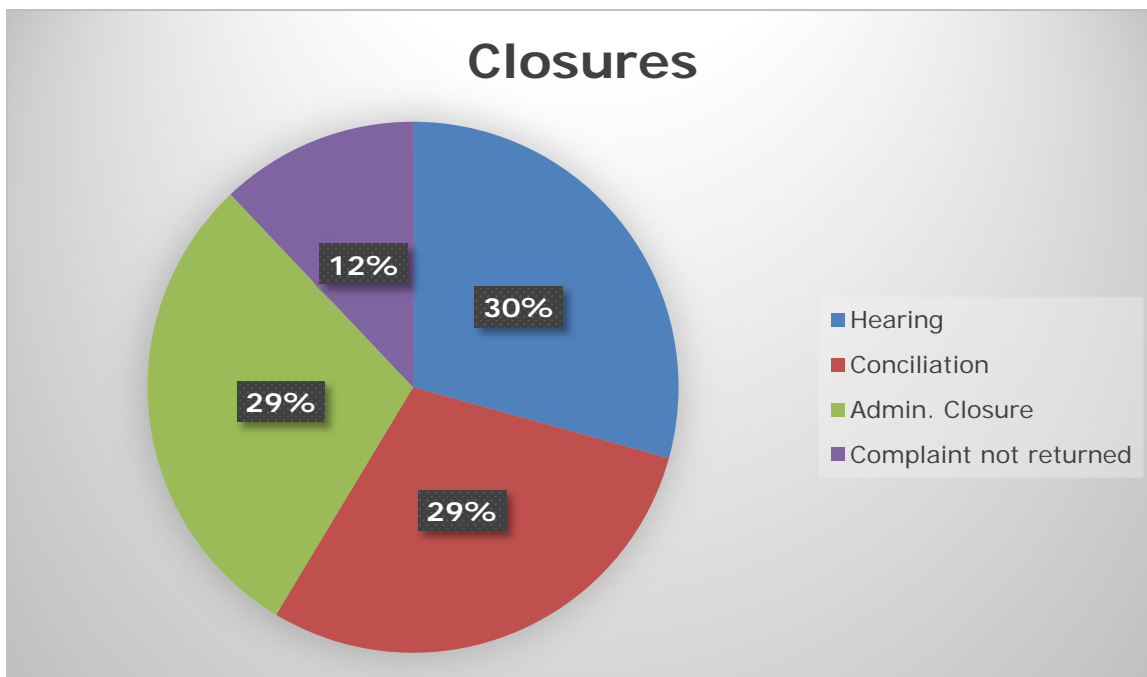
<b>Outcome</b>	<b>Employment</b>	<b>Housing</b>	<b>Public Accommodations</b>
Reasonable Grounds	0	1	1
No reasonable grounds	4	4	7

The discrepancy between the number of complaints brought to hearing and those where a reasonable grounds finding is recommended and ultimately upheld by the Commissioners is due to the fact that in most of the complaints, where there appears to be liability, a settlement is reached prior to an investigative report being

written. Thus the complaints that go to hearing are, for the most part, those where settlement was not achieved because the underlying discrimination is unable to be established by a preponderance of the evidence. This occurs either because what appeared to be discrimination was a misunderstanding of some sort or because discrimination is often subtle, there are rarely witnesses and the situation simply becomes a "he said, she said," which is insufficient to meet the legal standard.

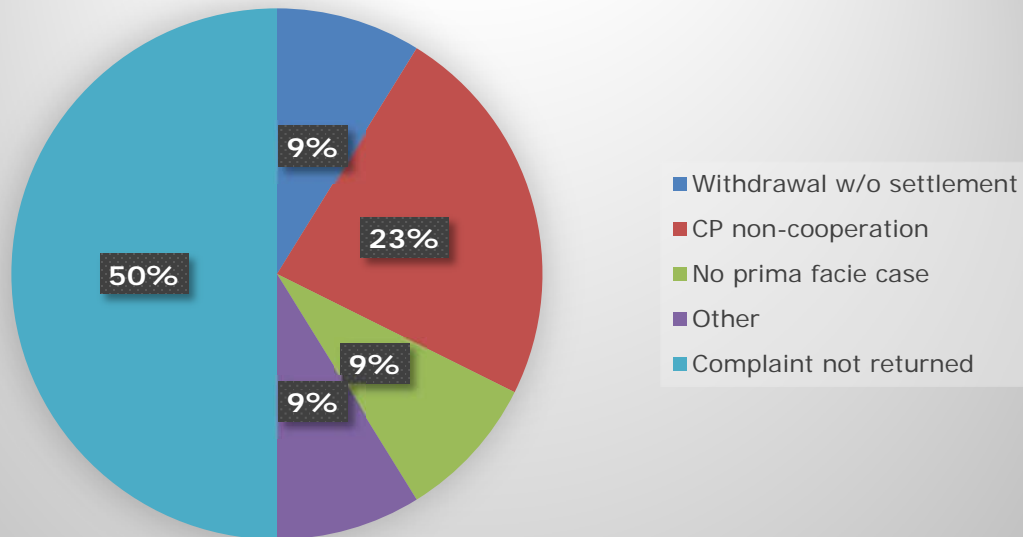
### Disposition of Closed Complaints

Complaints are generally disposed of in three ways: Hearing, Conciliation/ settlement or Administrative Dismissal. This chart shows how many complaints were disposed of in each category.



There is fairly even distribution across the closure categories. Complaints not returned are technically within the category of administrative dismissal but are shown here separately. If added into administrative closures, the percentage would be 41%. Complaints not returned are concerning. The Executive Staff Assistant makes several attempts to contact Complainants when the complaint is not received back in the requested (but not required) 14-day period. If the complaint is not returned within 60 days, it is dismissed. The Complainant can re-file at any point, as long as the last act of discrimination was within one year. The Commission is actively pursuing ways of decreasing the number of complaints that are not returned for processing.

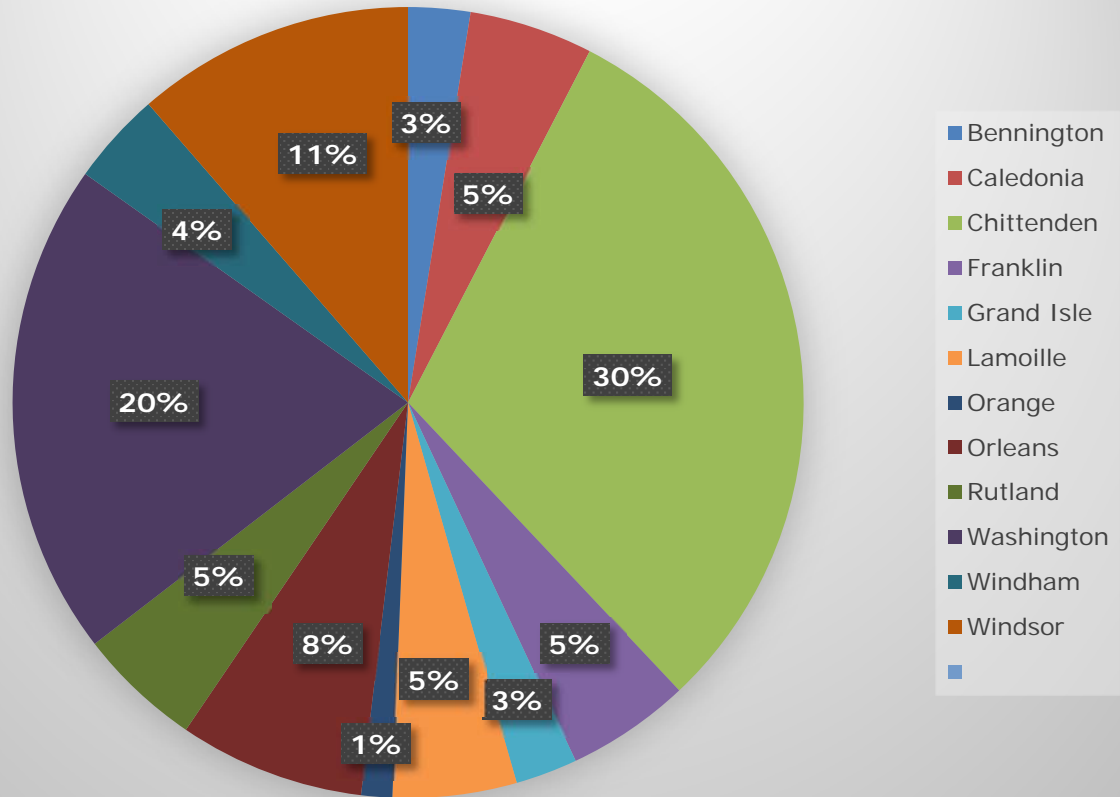
## Administrative Dismissals



The largest category, other than complaint not returned, is Complainant non-cooperation and it consists of individuals who file a complaint and then fail to keep in contact with the administrative law examiner during the course of the investigation. Multiple attempts are made to reach Complainants with email, telephone, and certified and regular mail warning of dismissal before a complaint is actually dismissed. Other Complainants, for a variety of reasons, decide not to pursue the matter and withdraw their complaints. Finally, in some instances, the Respondent moves to dismiss the complaint for lack of a *prima facie* case or some other legal argument that may have arisen during the investigation of the complaint. The executive director then determines whether to dismiss or deny the motion.

Of the reasons for administrative dismissal, all but the lack of a *prima facie* case, indicate a matter that the VHRC executive director believed stated a *prima facie* case of discrimination but ultimately an investigation was unable to be completed due to reasons beyond the VHRC's control (i.e. the lack of cooperation of the individual lodging the complaint). Since this is 62% of the total complaints filed, VHRC staff work hard to keep complaints open so that a full investigation can occur.

## Complaints by County



This chart shows the complaints accepted in FY15 by county of residence of the Complainant. The VHRC received complaints from all counties except Addison and Essex. The largest number of complaints came from Chittenden (24) and Washington (16). With the exception of Rutland County (4), it appears that the numbers are generally consistent with relative county population. Bennington (2), Caledonia (4), Franklin (4), Grand Isle (2), Lamoille (4), Orleans (6), Windham (3) and Windsor (9). The Windsor number is likely elevated slightly by the presence of the correctional facility. We have had a number of public accommodations complaints from inmates at Southern State Correctional Facility.

## Protected Categories by Type of Complaint/Case FY15

Protected Category	Housing	PA	Employment	Total
Age			3	<b>3</b>
Breastfeeding		1		<b>1</b>
Disability	16	34	8	<b>58</b>
Gender ID		1		<b>1</b>
National Origin		3		<b>3</b>
Race/Color		3	2	<b>5</b>
Retaliation			9	<b>9</b>
Religion		1		<b>1</b>
Sex	1		4	<b>5</b>
Minor Children	4			<b>4</b>
Public Assistance	4			<b>4</b>
Marital Status				
Family/Parental Leave				
Workers Comp			2	<b>2</b>
Sexual Orientation			2	<b>2</b>

The category of disability continues to generate the most significant number of complaints across all three jurisdictional areas. Anecdotally, there should be more race and gender identity complaints, given statistical evidence of fairly widespread discrimination against these protected categories nationally, but VHRC is not seeing these cases.

### Settlements

There were a total of 18 settlements, 17 pre-determination and one post-determination. Given that the post case was also a reasonable grounds case, this means that 34 complaints were resolved either by hearing or conciliation. Thus 50% were settled and 50% were heard.

## Relief Obtained

Complaint/Case Type	Monetary Relief	Non-monetary Relief/ Public Interest
<b>Employment (6)</b>	\$154,893	
		5.5 weeks of vacation Red circled
		Promotion
		Dismissal changed to quit
		Restoration of service credits & retirement, transfer, 2d shift, moving costs
		Attorney's fees & given job requested
<b>Housing (5)</b>	\$3400	Fair Housing Training (4)
		Reasonable Accommodations (3)
		Non-discrimination terms added to lease
		Policy changes
<b>Public Accommodations (7)</b>	\$13,600	Neutral recommendation
		Apology (2) Revocation of no trespass order
		Policy, Contract, Monitoring changes (3)
		Purchase of new TTY
<b>Total</b>	<b>\$154,893</b>	

## Summary of Reasonable Grounds Complaints

After the VHRC finds reasonable grounds in a matter, the executive director attempts to settle the complaint through conciliation efforts or formal mediation. This settlement process lasts for up to six months after the determination. If this process is not successful, the VHRC can file a lawsuit against the responding party. Many times the mediation process results in a settlement with the Complainant withdrawing the VHRC complaint. More often than not a reasonable grounds complaint is not resolved in the same fiscal year that the determination was made.



Below are summaries of the complaints heard in FY15 in which the Commissioners found there were reasonable grounds to believe that discrimination occurred.

### **Housing:**

**Willard v. Volodina**- (familial status) Complainant and her boyfriend were searching for housing for themselves and their five children. They contacted the Respondent about a three-bedroom house that was for rent. The Respondent told them that she would not rent to them with minor children. Testing of the case by a private fair housing organization confirmed that Respondent made statements indicating a preference for a family without children and a limitation on renting to a family with children. These discriminatory statements violate the fair housing act. The case settled with training for the Respondent and nominal damages for the Complainant.

### **Public Accommodations:**

**Nolen v. City of Montpelier and Capitol Plaza**- (disability- accessible parking). Complainant attempted to use an accessible parking space in a lot owned by the Capitol Plaza and maintained for snow removal by the City. Snow had been plowed and left for a period of time in the accessible space making it unusable. The City and the Plaza tightened up their agreement regarding plowing, moved the accessible space to make it easier to maintain and paid the complainant \$2500.

### **Cases in Litigation**

**Vermont Human Rights Commission, Lynne Silloway et als. v. Department of Corrections and Department of Human Resources**, Docket No. 778-11-12 Wncv (Equal Pay)- Ms. Silloway, a DOC employee, earned approximately \$10,000 a year less than the male worker doing essentially the same work. Ms. Silloway also had more seniority. A complaint was filed in state court in Washington County. Ms. Bertrand and Ms. Deblois, who allege essentially the same facts as Ms. Silloway were added as plaintiffs. The individual plaintiffs have their own attorneys and VHRC represents the public interest. In October 2014, the Superior Court entered a summary judgment in favor of the State. The matter was appealed to the Vermont Supreme Court and is presently awaiting a decision.

## **PUBLIC EDUCATION ACTIVITIES**

### **Committees and Task Forces**

VHRC staff members serve on a number of state-wide committees/task forces. Attendance at these meetings provides an opportunity to advocate for civil and human rights and to educate the public about anti-discrimination laws in the State of Vermont. Membership on these various committees helps VHRC fulfill its mandate to advance effective public policy on civil and human rights for the Vermont public. Staff also attend public meetings such as school board meetings, legislative hearings and other public forums where issues of human rights are discussed. These include but not limited to:

Vermont Language Connection, Inc. Advisory Board- This volunteer advisory board is made up of representatives from the judiciary, medical providers, interpreter providers, interpreters, law enforcement, VHRC and non-profits that are focused on improving the availability and quality of interpreter services for Vermont's new Americans at a reasonable cost. The advisory board facilitates free training events for interpreters and helps to coordinate services and educate providers about their responsibility under Title VI of the Civil Rights Act to provide meaningful language access to programs.

Fair Housing Council- This task force meets regularly to discuss statewide issues related to fair housing. Members include representatives of government agencies, non-profits, and housing authorities, among others. The group provides advice to the Agency of Commerce & Community Development's Housing Division including input on the Consolidated Plan and the Analysis of Impediments.

Vermont Justice Coalition- This coalition is made up of stakeholders from state agencies, non-profits, former offenders and others interested in reforms to the criminal justice system that would reduce prison populations and ensure that all Vermont offenders are housed in correctional facilities within the state. Efforts focus both on ways to reduce the number of people entering correctional facilities using treatment (addiction and mental health), diversion and restorative justice, improving conditions within the facilities that will better prepare offenders to lead productive lives when released and providing better re-entry programming and services to help offenders be successful and reduce recidivism.

Hazing, Bullying and Harassment Prevention Advisory Council- This council was created by the legislature to address these issues in Vermont schools. Members

include the VHRC, other state agencies, the school boards', superintendents' and principals' associations, non-profits, parents and others.

Vermont Dignity in Schools Coalition- This grass roots coalition seeks to address disparities based on race, disability and socio-economic status, in school discipline, specifically suspension and expulsion.

## **Training and Outreach to the Community**

### **Education Provided by VHRC Staff to Others**

<b>Type</b>	<b># of Events</b>	<b># of People</b>
<b>Employment</b>	<b>5</b>	<b>41</b>
<b>Housing</b>	<b>19</b>	<b>512</b>
<b>Public Accommodation</b>	<b>8</b>	<b>319</b>
<b>Implicit Bias</b>	<b>11</b>	<b>172</b>
<b>Total</b>	<b>43</b>	<b>1041</b>

This is the first year that VHRC has had accurate information about education and outreach activities. Not captured in this data is training required by a settlement but conducted by a third party with VHRC approval. Those figures would add significantly to the number of people reached. Implicit bias is a new diversity training area and generated much interest from those who experienced the course.

### **Training Received by Staff**

In addition to providing training/education to others, VHRC staff participated in training to improve their own knowledge and skills:

August 4-5, 2014	FHEO Regional Training-Boston
September 11-12	John Marshall Law School-Fair Housing- Chicago
October 3, 2014	Schwemm Fair Housing Legal Update-Montpelier*
January 26-30, 2015	NFHTA Public Sector Attorneys-D.C.
March 12-13, 2015	Fair Housing Conference at Suffolk Law School-Boston
March 30, 2015	Diversity Conference- Burlington
April 2, 2015	Dignity in Public Schools/Community-Burlington
June 2, 2015	Fair Housing Accessibility Training-Randolph

\*The October 3, 2014 Fair Housing Legal update featured Professor Robert Schwemm, a nationally recognized fair housing expert. The conference was sponsored by the Vermont

Human Rights Commission and attracted over 60 participants from Vermont and the broader New England region.

## **Legislation**

The Human Rights Commission works actively on legislation that furthers its statutory mandate to increase public awareness of the importance of full civil and human rights for each inhabitant of this state; to examine the existence of practices of discrimination which detract from the enjoyment of full civil and human rights; and to recommend measures designed to protect those rights.

The executive director actively worked on several bills during the legislative session including:

- Fair and Impartial Policing- S.185/Act 193
- Amendments to VHRC's enabling statute enhancing protection against coercion, harassment and interference with the exercise of statutory rights. H.256/Act 9
- Amendments to the VHRC enabling statute providing a means of protecting information otherwise confidential under other state or federal laws from disclosure to parties in VHRC cases. H.18/Act 29
- School Discipline- S.67