

Vermont Human Rights Commission

FY 13 Annual Report

Submitted 1/6/13

The five sitting VHRC Commissioners and their terms of appointment:

| | |
|-------------------------------|-------------|
| Mary Marzec, Commission Chair | 2/08-2/2018 |
| Nathan Besio | 5/07-2/2017 |
| Donald Vickers | 2/08-2/2016 |
| Mercedes Mack | 2/11-2/2015 |
| Mary Brodsky | 2/11-2/2014 |

Staff

| | Position | Date of Hire |
|-----------------|----------------------------------|--------------|
| Karen Richards | Executive Director | 3/18/2013 |
| Paul Erlbaum | Part-time Executive Staff Ass't. | 11/16/1999 |
| Ellen Maxon | Investigator | 10/2/2006 |
| Tracey Tsugawa | Investigator | 11/16/1999 |
| Nelson Campbell | Investigator | 4/27/2010 |
| Tamar Cole | Part-time Executive Staff Ass't. | 10/8/2013 |

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
- Mediating 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

MANDATE

The Vermont Human Rights Commission 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 Commission has four statutorily mandated roles: enforcement, conciliation, education and public policy development.

The Commission is charged with enforcing Vermont's civil rights laws. It investigates allegations of discrimination and determines whether there are reasonable grounds to believe that unlawful discrimination occurred in a case. The Commission's staff seeks to resolve charges prior to a determination through conciliation, and if appropriate formal mediation. If the Commission finds reasonable grounds to believe that an entity discriminated against a person, the Executive Director then engages in post-determination conciliation efforts. If a settlement cannot be reached the Commission is authorized to file suit in court to obtain remedies for violations of the state's civil rights laws.

The Commission 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. In furtherance of these goals, the Commission's staff speaks with and provides training to individuals and groups about their rights and responsibilities under state and federal civil rights laws, works with individuals, agencies, and groups to combat bias and bigotry, and supplies information, legal analyses, and advice to the Legislative, Executive and Judicial branches.

By its enabling statute, the Human Rights Commission is an enforcement agency rather than a legal services or advocacy organization. The Human Rights Commission 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:

| HOUSING | PUBLIC ACCOMMODATIONS | STATE EMPLOYMENT |
|--------------------|------------------------------|-------------------------|
| Race | Race | Race |
| Color | Color | Color |
| Sex | Sex | Sex |
| Religion | Religion | Religion |
| National Origin | National Origin | National Origin |
| Disability | Disability | Disability |
| Sexual Orientation | Sexual Orientation | Sexual Orientation |
| Marital Status | Marital Status | N/A |
| Gender Identity | Gender Identity | Gender Identity |
| Age | N/A | Age |
| Minor Children | N/A | N/A |
| Public Assistance | N/A | N/A |
| N/A | N/A | Ancestry |
| N/A | N/A | Place of Birth |
| N/A | N/A | HIV related blood test |
| N/A | N/A | Workers' Compensation |
| N/A | N/A | Family/Parental Leave |
| N/A | Breastfeeding mothers | Breastfeeding mothers |
| N/A | N/A | Credit history |
| N/A | N/A | Flexible work hours |

Strategies to Achieve the Mission

- 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.
- Commission 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 Commission provides leadership in public policy developments 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.
- Commission staff engages in coalition and community activities that address the needs of members of protected categories; for example, working with the Interpreter Task Force to ensure equal access to services for new Vermonters who are limited in their English language proficiency, with the ADA Coalition to address accessibility issues in housing and places of public accommodation, and with community groups to address racial discrimination.

STATUS of HRC PROGRAM of 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 (Voice/TTY)
(877) 294-9200 (Toll Free TTY Line)

Fax number: (802) 828-2481

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

E-mail address: human.rights@state.vt.us

Website: hrc.vermont.gov

Staffing

There are five Human Rights Commissioners appointed by the governor for five-year terms with the advice and consent of the Senate. Commissioners may be re-appointed. The Commissioners meet 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 Commission also has a staff of six state employees. The Commissioners hire, supervise and direct the organization's executive director who also acts as the Commission's legal counsel and legislative liaison. The executive director hires, supervises and directs two part-time executive staff assistants, and three investigators/trainers. (See page 2 for a listing of staff)

Robert Appel, VHRC's executive director for 10 years, retired from state service this year and entered private practice. Karen Richards was hired as the new executive director and began her work in March 2013. VHRC thanks Robert Appel for his many years of service. At the same time, VHRC is excited to have a new leadership and a new vision. Ms. Richards was at Vermont Legal Aid for 14 years and has many years of experience as a supervisor and litigator.

Current Enforcement Priorities

Enforcement priorities not only inform the Commission's planning of educational and outreach activities, but are also one of the criteria considered by the Commissioners in making their decisions on potential litigation. The priority areas for the Commission's work for 2013 were:

- Persons with "hidden" disabilities*;
- School harassment;
- Persons with Limited English Proficiency;
- Racial profiling;
- Equal Pay Act violations.

*Hidden disabilities include not only psychiatric conditions but also learning disabilities, seizure disorder, traumatic brain injury, chronic fatigue syndrome and the like.

Phone Contacts

In FY13, the VHRC's records indicate it received 624 calls for assistance from the general public.¹ The vast majority of these calls do not result in formal complaints being filed. Many of the calls are citizens seeking assistance for issues beyond VHRC's jurisdiction - - those are referred to other appropriate organizations. Some of the calls result in informal cases² (22 informal cases and 56 formal complaints accepted in FY13.) Other calls require a VHRC staff person to answer basic questions regarding Vermont's various discrimination laws. VHRC does not provide legal counsel or advice. Finally, many calls involve citizens who merely want someone at the State level to listen to their situation.

¹ This number is less than the actual amount, a part-time temporary administrative person failed to keep accurate track of all the calls VHRC received for a short period of time. This person was replaced in October 2013. In addition, this amount does not reflect the number of calls handled directly by investigatory staff.

² An "informal case" is a situation, many times an accessibility issue that can be resolved easily and does not require a full investigation.

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 as of July 1, 2007, gender identity (though the categories apply differently to housing, employment, and public accommodations, see chart on page 5). In addition, a person may not be denied housing because of the presence of minor children or due to receipt of public assistance.

A "complaint" as used in the annual report refers to those citizen 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*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.

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, staff investigators write Investigation Reports that are reviewed and approved by the Executive Director before they are 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 and present why they agree or disagree with the staff recommendation, and answer questions from the Commissioners about the circumstances surrounding the complaint.

Only if the Commission determines that there is sufficient evidence to show that illegal discrimination occurred does the Investigative Report become a public record. In addition, by statute, all settlements entered into by the Commission become public record. If the Commission issues a cause finding, the staff will actively pursue settlement negotiations for a period of up to six months. The Commission will attempt, either through its staff or by providing a professional mediator, to bring the parties to agreement on a settlement to resolve the matter. 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 and modest civil penalties to the VHRC.

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.)

If the Commissioners determine there are no reasonable grounds to believe that discrimination occurred, such a 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 VHRC would not be part of those actions.

The Commission does not have authority to impose any remedies or fines other than through an agreement. The Commission only has legal authority to investigate complaints, negotiate and enforce anti-discrimination provisions in settlements, and to bring an action in court after a cause 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 attorney’s fees against the Respondent as well as require remedial measures to avoid further violations of law.

Complaints Filed & Investigated

In FY11, VHRC identified a need to resolve some of the complaints that were brought to the Commission in a more informal and timely manner. In FY13, VHRC completed its second full year of processing some citizen complaints using the “informal” resolution process. In FY11 VHRC helped resolve 9 informal cases. In FY12 VHRC resolved 26 informal cases and in FY13 it resolved 21 informal complaints. VHRC believes this new approach provides better service to the citizens of Vermont and has resulted in VHRC being able process more issues in a shorter period of time. It has also resulted in a lower number of formal investigations.

Types of Complaints Filed & Disposition FY12 v FY13

| | <u>Housing</u> <u>'12</u> | <i>Housing</i> <i>'13</i> | Public Accom. '12 | <i>Public</i> <i>Accom.</i> <i>'13</i> | Employ. '12 | <i>Employ.</i> <i>'13</i> | Total '12 | <i>Total</i> <i>'13</i> |
|--------------------------------|------------------------------|--|-------------------------|---|----------------|--|--------------|--|
| Accepted during yr | 32 | 27 | 29 | 18 | 8 | 11 | 69 | 56 |
| Closed during yr | 30 | 29 | 31 | 31 | 12 | 8 | 75 | 62 |
| Open @ close of yr | 6 | 3 | 19 | 8 | 8 | 11 | 33 | 22 |
| Informal Cases Accepted | 3 | 4 | 23 | 14 | 0 | 3 | 26 | 21 |

Discrimination issues involving the protected class of disability continue to account for the largest portion of complaints, both formal and informal, that the

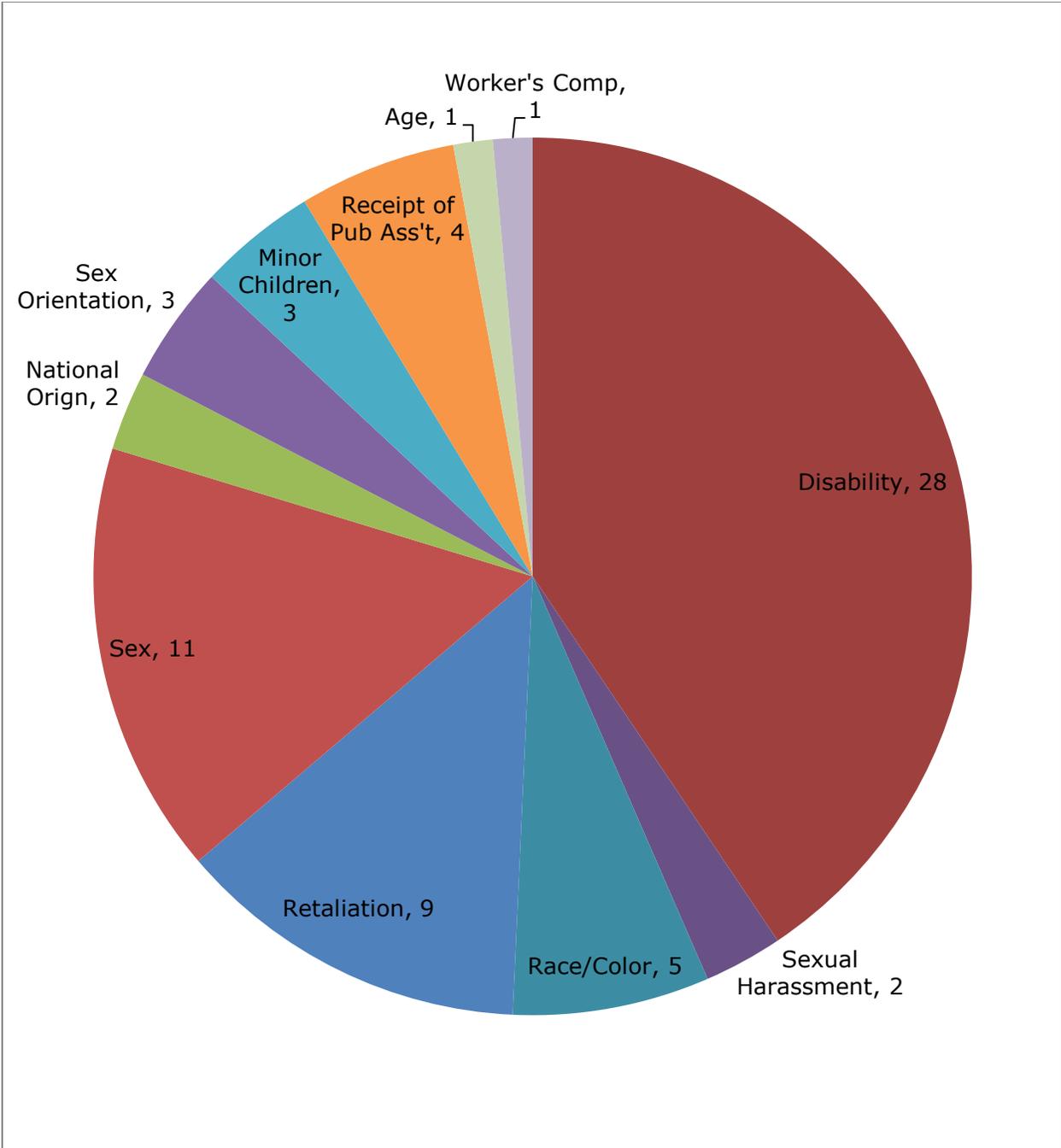
VHRC addresses. In the area of formal complaints, disability was an issue in 50% of the complaints, followed by 20% and 14% for sex and retaliation, respectively. These three protected categories accounted for 76% of the VHRC investigations during FY13.

- VHRC had eleven (11) State employment complaints this past year and seven (7) of those eleven (11) complaints involved the protected category of sex.
- 63% of VHRC’s formal housing complaints involved disability
- 50% of VHRC’s public accommodation complaints involved disability

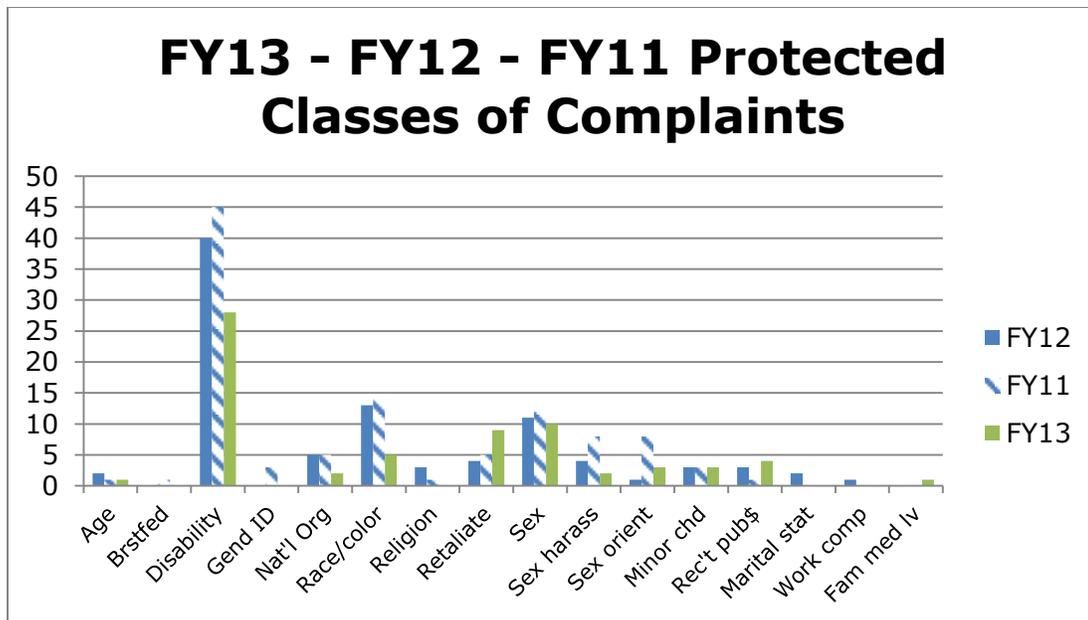
Protected Classes in Complaints Filed in FY13*

| Protected Class | Housing | Public Accommodations | State Employment | Total |
|------------------------------|-----------|-----------------------|------------------|----------|
| Age | 0 | n/a | 1 | 1 |
| Breastfeeding | n/a | 0 | 0 | 0 |
| Disability | 17 | 9 | 2 | 28 |
| Gender Identification | 0 | 0 | 0 | 0 |
| National Origin | 1 | 0 | 1 | 2 |
| Race/Color | 2 | 2 | 1 | 5 |
| Religion | 0 | 0 | 0 | 0 |
| Retaliation | 2 | 1 | 6 | 9 |
| Sex | 2 | 1 | 8 | 11 |
| Sexual Harassment | 1 | 0 | 1 | 2 |
| Minor Children | 3 | n/a | n/a | 3 |
| Receipt of Public Assistance | 4 | n/a | n/a | 4 |
| Marital Status | 0 | 0 | n/a | 0 |
| Family Leave | n/a | n/a | 1 | 1 |
| Workers Comp | n/a | n/a | 1 | 1 |
| Sexual Orientation | 0 | 2 | 1 | 3 |
| Total | 32 | 15 | 23 | * |

*Totals will not equal total number of actual complaints because many cases allege discrimination based on more than one protected class.



Protected Classes
FY13 Formal Complaints



Informal Complaints

The informal complaint process allows VHRC to resolve simple matters without having to use the more complex, timely and costly formal investigative procedure. Many times informal complaints are related to public accommodation accessibility issues and the property owner is very willing to fix the problem.

In FY13 VHRC handled twenty-six (26) informal complaints. Twenty-one (21) of these originated in FY13, and five (5) were holdovers from FY12. Six (6) of the complaints were resolved successfully. Eighteen (18) informal complaints were closed for other reasons including complainants not wanting to pursue a formal complaint, complainants seeking resolution in a different forum and no evidence of discrimination. Several complaints became formal cases. Two informal complaints were carried over to FY14.

Closure of Formal Complaints

In FY13, sixty-eight (68) formal complaints were closed. Twenty-seven (27) of the complaints or 36% were resolved pre-determination through VHRC's conciliation/mediation process (56% of the housing cases, 29% of the public accommodation cases and 8% of the employment cases).

In eight (8) cases or 11% the Commission found that there were reasonable grounds to believe that illegal discrimination had occurred and in twenty-three (23)

cases or 31% the Commission found there were no reasonable grounds to believe that illegal discrimination had occurred.⁴

Finally, 12% of the cases were either dismissed for various administrative reasons or withdrawn by the complainant. Four cases were withdrawn with settlement and resulted in a total of \$42,561 in payments to four complainants. Dismissals or withdrawals can take place at any point in the investigative process.

Summary of Some Reasonable Grounds Cases

When the VHRC finds reasonable grounds in a case the executive director attempts to settle the case through conciliation efforts or formal mediation. This settlement process lasts for up to six-months after the determination. If this process is not successful, VHRC can and many times does file a lawsuit against the responding party. (See section below for more specific information.) Many times the mediation process results in a settlement with the complainant withdrawing the VHRC complaint. More often than not a reasonable grounds case is not resolved in the same fiscal year as the determination was made.

Below are summaries of some of the cases heard in FY13 in which the Commissioners found there were reasonable grounds to believe that discrimination had occurred.

Housing:

Lambert v Smart Suites on the Hill (SSH) – (disability – accessible parking) In December, Ms. Lambert, a SSH resident with a mobility disability asked the SSH staff to install appropriate accessibility parking signs for its accessible parking spaces. Ms. Lambert was concerned that in winter the painted stripping on the ground would not be visible because of snow and ice. (The signs are required under Vermont law.) The staff did not engage in an interactive process with Ms. Lambert regarding her request, Ms. Lambert experienced times when there was no accessible parking space available and signs were not put in place until mid-February. The signs placed in February did not comply with legal requirements.

Employment:

Bertrand v VT Dept. of Corrections (DOC), VT. Dept. of Human Resources, VT. Agency of Human Services, Vermont Agency of Administration, and Southeast State Correctional Facility – (Equal Pay Act)

Ms. Bertrand, a DOC employee, earned less than the male worker even though the work she does is essentially the same and she has more seniority. The State

⁴ A no reasonable grounds determination does not necessarily mean that there was no illegal discrimination - - many times it means there was not enough evidence to prove the allegation by a preponderance of the evidence.

denied that Ms. Bertrand and her male counter-part did “equal work on jobs requiring equal skill, effort and responsibility.” Additionally, the State denied that Ms. Bertrand and Mr. Doe performed their jobs “under similar working conditions.”

Deblois v VT Dept. of Corrections (DOC), VT. Dept. of Human Resources, VT. Agency of Human Services, Vermont Agency of Administration, and Southeast State Correctional Facility – (Equal Pay Act)

Ms. Deblois, a DOC employee, earned less than the male worker even though the work she does is essentially the same and she has more seniority. The State denied that Ms. Deblois and her male counter-part did “equal work on jobs requiring equal skill, effort and responsibility.” Additionally, the State denied that Ms. Deblois and Mr. Doe performed their jobs “under similar working conditions.”

Public Accommodations:

Berthold v Rock River Cottage & Antiques – (sexual orientation)

Mr. Berthold made a reservation for himself and his partner at Rock Cottage. When he arrived from California he discovered that there had been a miscommunication and the cottage had been rented to another party. Through many communications the owner eventually agreed to return his deposit. However, when a negative review appeared on the cottages website, presumably from Mr. Berthold, the owner refused to return his deposit and sent him numerous emails that included gay slurs and derogatory remarks about gays.

Denise Cheney v Dept of Corrections – (religion)

Ms. Cheney is Abenaki. As part of her religion she wore sacred beads in her hair that were blessed by her elders. When she was incarcerated a DOC officers cut the beads out of her hair even though Ms. Cheney objected. DOC alleged that some of the beads had sharp edges. Ms. Cheney denied this and stated that Christian inmates were allowed to wear crosses.

Summary of some Post-determination cases

During FY13 VHRC had sixteen (16) cases in various post-determination settlement stages. Twelve of those cases closed during FY13. Below are summaries of some of the FY13 post-determination cases and their status.

Settled:

Brittenham v Montpelier Middle School & Montpelier School District – (disability)

A middle school student with a mobility disability uses a power wheelchair. His teacher scheduled a field trip to a local venue that was inaccessible to wheelchair users. The student was unable to attend the event with his classmates. In a post determination settlement agreement the school agreed to develop a check list to

use for future fieldtrips, to re-stripe the accessible parking spaces at the high school, to provide training to its staff on ADA issues and the field trip policy and to ensure that the accessible entrances at the school are open during school hours and after-hours public or school events.

In litigation:

Silloway, Bertrand and Deblois v VT Dept. of Corrections – (Employment - Equal Pay Act)

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 has been filed in state court in Washington County. The case is in the discovery stage. Ms. Bertrand and Ms. Deblois, who allege essentially the same facts as Ms. Silloway have been added as plaintiffs. The individual plaintiffs have their own attorneys and VHRC represents the public interest.

HRC et al v. Hartford Elks - (Public Accommodations – sex) – filed in 7/98, jury verdict 4/05 for complainants. The Elks have never paid voluntarily on the judgment which has now reached over \$700,000 due to interest and litigation costs incurred by the women and VHRC, including nearly \$200,000 owed to the VHRC in civil penalties and attorney's fees. A separate action has been filed against individual members of the Elks Club after the Vermont Supreme Court determined that some members may be individually liable due to the fact that the Elks corporate status had lapsed during the period of the initial litigation. The parties are currently scheduled for mediation in April 2014.

PUBLIC EDUCATION ACTIVITIES

VHRC staff members serve on a number of state-wide committees/task forces including but not limited to the Vermont Language Connection advisory board, Uncommon Alliance, immigration/migrant farmers committees, fair housing committees, and the (school) Harassment Council. 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. Attendance at these meetings provides another opportunity to advocate for civil human rights and to educate the public about anti-discrimination laws in the State of Vermont.

The VHRC staff was also involved in formal trainings on various and relevant discrimination issues. Some of the trainings and public educational events provided by VHRC staff during FY13 include:

- Conducted biannual statewide three-day training on investigating complaint of bullying and harassment in the fall of 2012 and spring of 2013 for school personnel on investigating harassment and cyberbullying complaints (325 educators and school staff attended.);
- Conducted two-day trainings on investigating complaints of bullying and harassment for 6 supervisory unions/school districts.
- Guest on Vermont Edition in April 2013 and the Agency of Education's "Join the Conversation" in June 2013 to discuss bullying and harassment.
- Facilitated "Reading to End Racism" at the Montpelier Union Elementary School.
- Attended a dinner at the Islamic Society of Vermont during which staff were available to members of the congregation to answer questions regarding civil rights issues.
- Conducted fair housing training for two condominium boards.
- Conducted several one-on-one fair housing trainings for respondents in fair housing complaints.
- Conducted fair housing training for groups of respondents to discrimination complaints
- Conducted fair housing training for residents at a Section 8 housing project – regarding harassment by and between other residents.
- Conducted two fair housing trainings at Vermont housing provider conferences
- Published two editions of Fair Housing News and distributed them electronically to an ever expanding list of interested parties (distribution of 1100.)
- Employment law training at UVM for a graduate class of counselors and mental health workers (attended by 20 students.)
- VHRC designed and printed updated VHRC general pamphlets in FY13. It also printed pamphlets addressing gender identification issues in public accommodations, housing and employment.

RECOMMENDATION for IMPROVED HUMAN RIGHTS ADVOCACY & ACTIVITIES

Given the amount of training that is requested and needed in the state, the VHRC believes a position dedicated to providing training, in particular bullying and harassment training to schools, would greatly improve VHRC's ability to provide this important resource. Additionally, money to better advertise VHRC's role as a neutral investigative agency with limited jurisdiction and powers would help the Vermont citizenry to receive assistance with discrimination problems encountered in their day-to-day lives.