

# 2008 ANNUAL REPORT



Deval Patrick, Governor  
Tim Murray, Lieutenant Governor

Malcolm S. Medley, Chairman  
Martin S. Ebel, Commissioner  
Sunila Thomas-George, Commissioner

## ACKNOWLEDGEMENTS

This report and our 2008 accomplishments, were made possible through the commitment, dedication, and contribution of Massachusetts Commission Against Discrimination (MCAD) Commissioners, managers, and staff. We are deeply grateful to the MCAD staff for their continued dedication and deep commitment to civil rights law enforcement in the Commonwealth.

Special thanks to Barbara Green who served as editor for this Annual Report. We also acknowledge the thousands of Massachusetts residents who have entrusted their disputes and claims to the MCAD and the many respondents who have participated in the Commissions' investigative, adjudicatory, and dispute resolution processes. Thanks also to the many practitioners and advocates for their efforts on behalf of those in need.

Our acknowledgement extends to those who have supported the Commission's work through partnerships, volunteerism, and funding. Special thanks to our partners and colleagues at the United States Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, the many human rights commissions across the Commonwealth, and all those in state, local, and regional offices who address issues of discrimination in the Commonwealth.

Finally, our work would not be possible without the funding and support from the Governor and his staff, our State Legislators, and the deference and guidance from the courts of the Commonwealth.



## Message from the Commissioners

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To: Governor Deval Patrick  
Lieutenant Governor Timothy Murray  
Members of the General Court  
Citizens of the Commonwealth

In accordance with Chapter 151B, § 3(10) of the Massachusetts General Laws, we are pleased to present the 2008 annual report of the Massachusetts Commission Against Discrimination (“MCAD”).

2008 marked the first full year that this Commission’s leadership has been in place and closed a productive year for civil rights law enforcement in the Commonwealth. Cases filed with the Commission reached well over thirty-six hundred, the highest number in six years. Cases receiving probable cause findings reached almost four hundred, the highest number of probable cause finding in seven years, and a higher percentage than in previous years.<sup>1</sup> Cases resolved increased from the previous year to over three thousand cases.

By any measure, the MCAD had a productive year. However, the numbers tell only a small part of the story. The real story of 2008 is one of transformation, improvement, and innovation. The agency today is a mission-focused organization that is as committed to outreach, education, training, and partnerships as it is to its accustomed enforcement function. We have spent the past year meeting with Human Rights Commissions across the Commonwealth to gauge the needs and issues that arise in every corner of this great Commonwealth. We have joined forces with our colleagues in the Executive Office of Access and Opportunities, the Massachusetts Office on Disability, the Office of the Attorney General, and the Office of Community Development to hold town-hall style meetings across the Commonwealth, the aim of which was to hear and address issues from citizens.

Even our core enforcement function is in transition. In 2008, the MCAD experienced an overall increase in complaints filed. With public support and increased funding from the legislature, we were able to increase the size of our investigative staff for the first time in many years. We brought on seasoned attorneys to fill our Chief of Enforcement and General Counsel positions. With our new investigators and

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<sup>1</sup> A computer tabulation error incorrectly reported 2007 probable cause rate at 31%. 2007 probable cause rate was 18.5%. 2008 probable cause rate was 19.45%.

managers, the MCAD was able to continue to aggressively timely process and investigate complaints of discrimination.

MCAD users have also witnessed some significant changes. Additional staff have been put on intake duty which has reduced maximum intake wait time from 2-½ to less than 1-½ hours. Case investigation time has been reduced to approximately 18 months.

MCAD purview has expanded to include review of existing and proposed legislation to ensure compliance with the mission of eradicating discrimination in the Commonwealth. We are excited to announce an MCAD-led effort to draft proposed revisions to the Massachusetts Maternity Leave Act (MMLA). We are hopeful that modifications to this act will allow all parents to have the opportunity to take time off from work to be with their newborn or newly adopted child. As the agency that enforces and protects employee leave rights for births and adoptions, it is essential to make certain that those leave rights are given to mothers and fathers. We look forward to hearing from a working group comprised of business owners, bar leadership, state agency representatives, and other key stakeholders in advancing employee leave rights for all parents.

Yet, there is much work left to be done. Complaints of discrimination continue to rise. Statistics demonstrate that discrimination complaints based upon race, disability, gender, and sexual harassment remain high; discrimination in the employment context continues to lead all other areas, in both prevalence and scope; and women are subjected to sexual harassment and sexual discrimination at numbers far greater than their male counterparts. The Commission is seeing greater incidence of discrimination in the areas of employment termination and reduction in workforce.

Looking ahead, in 2009 the MCAD will commence a top to bottom review of its regulations and policies. Outreach and information efforts will be enhanced through a more interactive and updated website, a quarterly newsletter, and public service announcements. We have also commenced plans to reopen a statutorily required MCAD New Bedford office. We will create an electronic/online case filing process and update our Case Management System. Finally, in 2009 we will fully implement the MCAD Testing Program and will revive the agency's affirmative litigation activities. We invite everyone to join our efforts.

Sincerely,

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Malcolm S. Medley  
Chairman

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Martin S. Ebel  
Commissioner

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Sunila Thomas-George  
Commissioner

## Mission of the Massachusetts Commission Against Discrimination

*The Commission serves to eliminate discrimination on a variety of bases and in a number of areas, as required by statute, and strives to protect and advance the civil rights of the people of the Commonwealth through law enforcement, education, outreach, and training.*

The MCAD's duties are:

To investigate complaints alleging that anyone in the Commonwealth is or has been deprived of his/her civil rights, or otherwise discriminated against in the areas of housing, employment, public accommodations, admission into an educational institution, on the basis of criminal record, maternity status of a female parent, and issues involving the Commonwealth's lead paint statute;

To adjudicate complaints where after a finding of probable cause that anyone in the Commonwealth is or has been deprived of his/her civil rights, or otherwise has been a victim of discrimination;

To assist parties in reaching resolution of any dispute where it is alleged that anyone in the Commonwealth is or has been deprived of his/her civil rights, or otherwise has been a victim of discrimination, if such resolution meets the public interest;

To study and collect information relating to discrimination within the Commonwealth;

To analyze laws and policies of the Commonwealth and its subdivisions with respect to discrimination;

To serve as a conduit and clearinghouse for information regarding discrimination within the Commonwealth;

To submit reports, findings, and recommendations to the Governor and the Legislature of the Commonwealth;

To train, educate and otherwise conduct outreach to individuals, businesses, organizations, communities, governmental entities, and others regarding civil rights laws and matters of civil right law enforcement, and to discourage discrimination.

**JOINT MASSACHUSETTS COMMISSION AGAINST  
DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION INVESTIGATION RESULTS IN SETTLEMENT OF NEW  
BEDFORD IMMIGRANT DISCRIMINATION CASE.**

**IMMIGRATION ADVOCACY GROUP APPLAUDS SETTLEMENT;  
MONEY WILL HELP IN EDUCATION AND OUTREACH**

Boston, MA - The Massachusetts Commission Against Discrimination (MCAD) and the Equal Employment Opportunity Commission (EEOC) announced today that they have negotiated a settlement with Michael Bianco, Inc. (MBI) of New Bedford, MA.

Nine former employees alleged that they had been discriminated against on the basis of their national origin. As part of the settlement entered into by the MCAD, EEOC, and Michael Bianco, Inc., MBI agreed to pay each individual employee for damages and to make a donation of fifteen thousand dollars to the Massachusetts Immigrant and Refugee Advocacy (MIRA Coalition), an immigrant advocacy organization.

The former employees of Michael Bianco, Inc. were primarily of Central and South American descent. They alleged that MBI paid them less than employees of other national origins. In addition, they claimed that Michael Bianco, Inc. unfairly and discriminatorily reprimanded them for workplace conduct. Finally, they contended that Michael Bianco, Inc. wrongfully fined them for workplace infractions, using toilet paper in the bathroom, and spending more than 2-3 minutes in the bathroom during work hours.

The MCAD investigators heading this case were Abby Soto-Colon, Victor Posada, and Francisco Villalobos, working with Commission counsel William Green and Simone Liebman, and EEOC attorney Ken An.

Malcolm Medley, MCAD Chairman, commented, "This shows the wonderful cooperation between MCAD and our federal partners. The MCAD and EEOC are pleased to have facilitated a settlement that includes a charitable donation to the MIRA Coalition, whose mission is to protect and promote the rights of immigrants and refugees in the Commonwealth. It is important to send a message to companies that it is unacceptable to, on the one hand, take advantage of vulnerable employees by engaging in unfair and discriminatory practices, while on the other hand, create an uneven playing field for

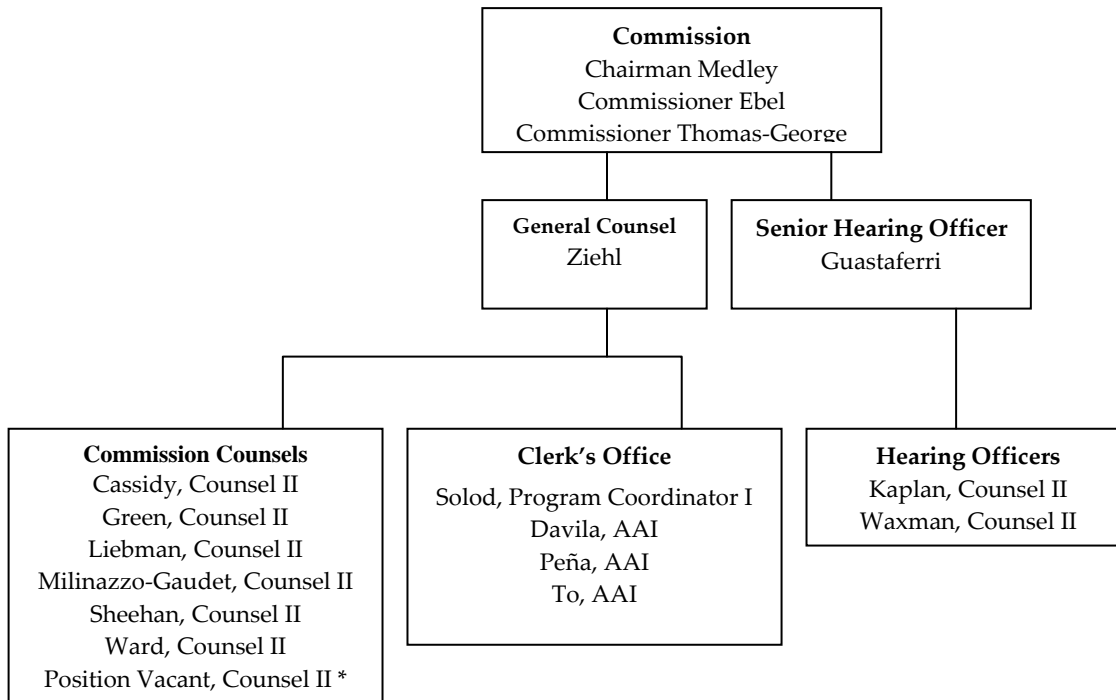
law-abiding businesses that respect our equal pay and anti-discrimination laws.” Eva Millona, MIRA Executive Director added, “MIRA Coalition is very pleased with this settlement, which brought some relief to the families involved without a protracted battle in court, while still imposing serious consequences for the company. However, this case highlights the ongoing need for comprehensive immigration reform as the only solution to avoid cases like this in the future.”

# The Organization

The Massachusetts Commission Against Discrimination is an independent agency of the Commonwealth of Massachusetts and is comprised of three Commissioners, appointed by the Governor of Massachusetts. The Governor also designates one such Commissioner to serve as Chairman of the Commission.

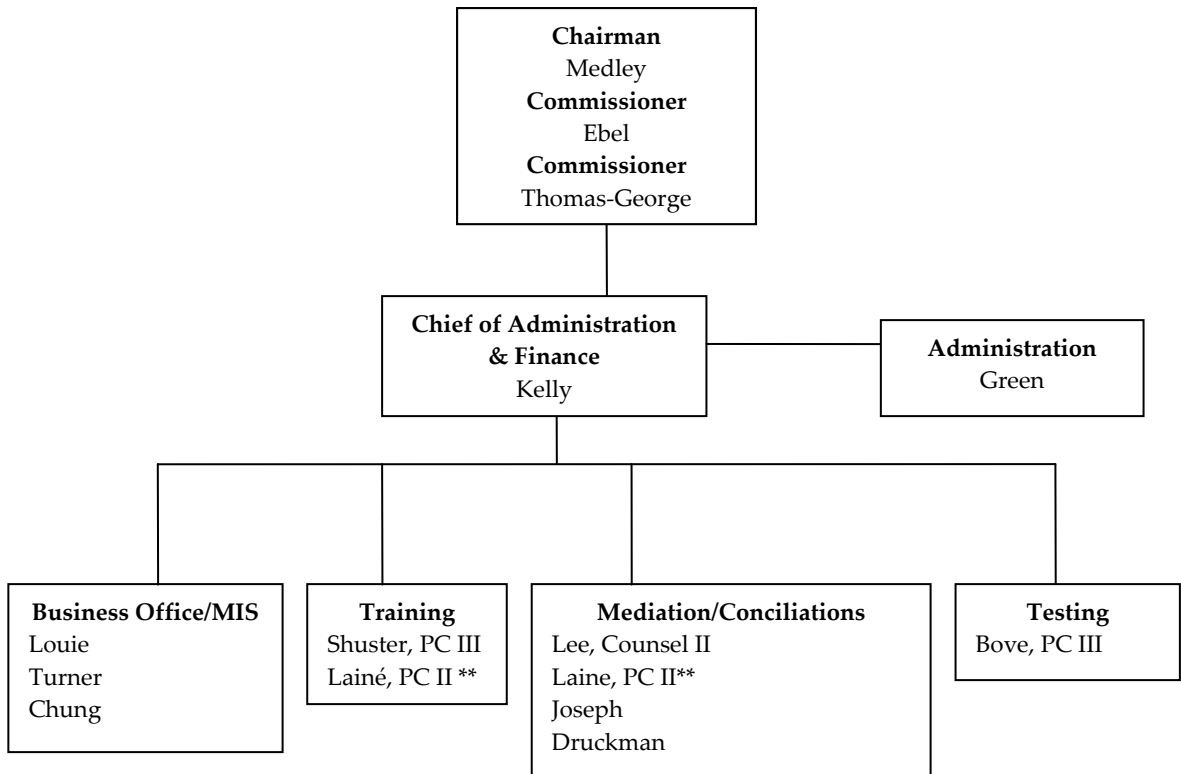
Commissioners serve appointed overlapping terms of three years. The Commissioners perform duties related to the administration of the agency and the substantive determination of matters before the Commission. The Commissioners also hold monthly public meetings and, otherwise, either as a full Commission, as single Commissioner, or through designee, convene to conduct hearings, conferences, and conciliations.

## The Legal Department

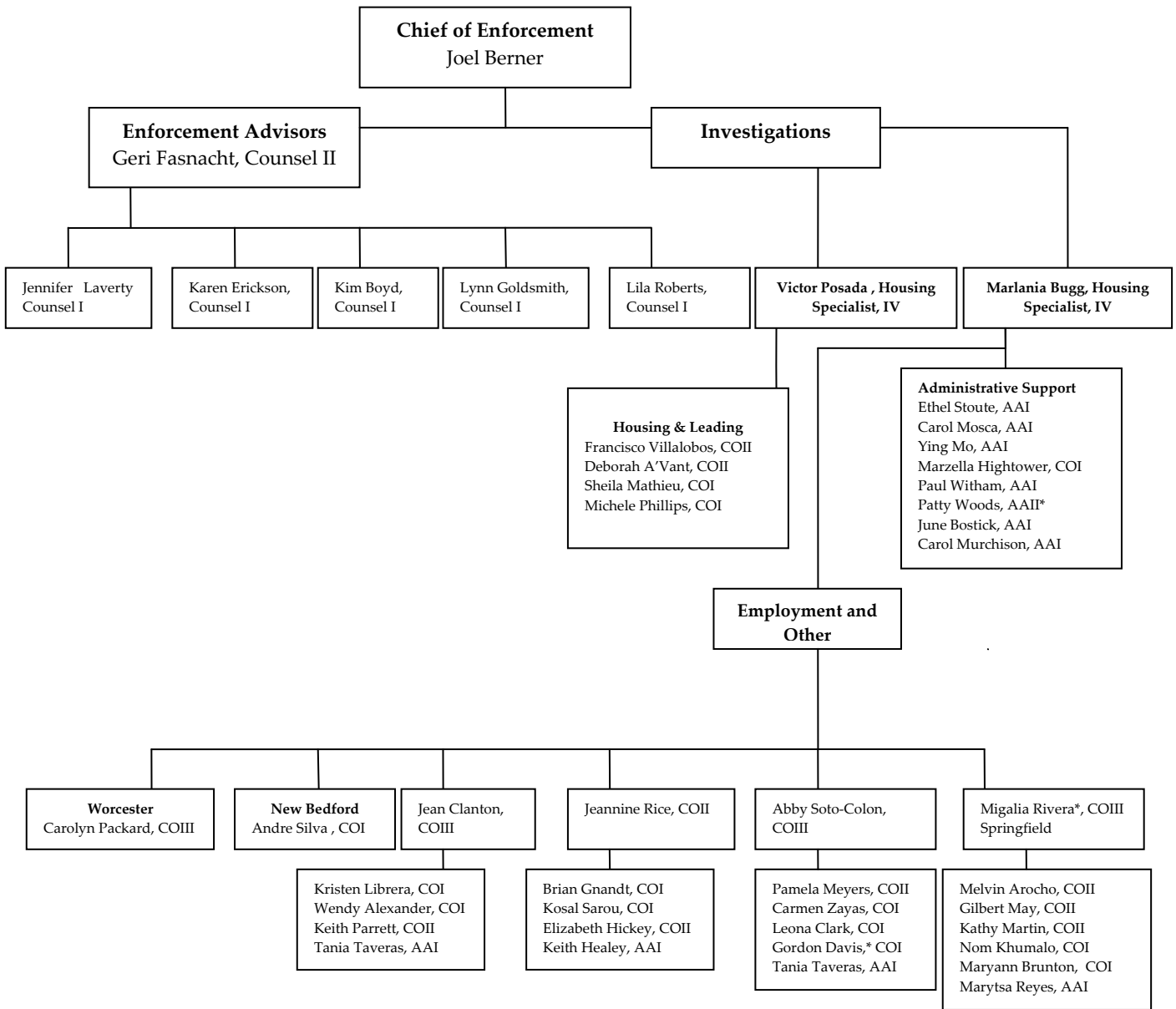




# The Administration and Finance Department



# The Enforcement Department



## Advisory Board

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Thomas Gallitano (Chair)	Christopher P. Kauders
Tani Sapirostein (Vice-Chair)	Steven S. Locke
Albert M. Toney III (Vice-Chair)	Jonathan Mannina
Margarita E. Alago	Fran Manocchio
Bonnie Brodner	Roger Michel
Nadine Cohen	Kara Fitch-Mitchell
Remona L. Davis	William Moran
Jacqueline P. Fields	Habib Rahman
Gail Gookasian	Lucinda Rivera
Jeffrey L. Hirsch	Rabbi Jeffrey A. Summit
Kimberly Y. Jones	Nancy Shilepsky
Anne L. Josephson	Thomas L. Saltonstall

**MCAD BUDGET**  
**For Fiscal Year 2008**  
**July 1, 2007 – June 30, 2008**

Budgetary Direct Appropriation:		
<b>State Appropriation</b>		
0940-0100		\$2,376,992
Retained Revenues:		
<b>HUD and EEOC Revenues for Closing Cases</b>		
<b>Private Sector and State Agency Trainings</b>		
<b>Fees from Public Record Requests &amp; Copying</b>		
0940-0101		\$1,920,010*
<b>Training: Train the Trainer</b>		
0940-0102		\$ 27,500
	Total	<u>\$4,324,502</u>
Revenues Collected:		
HUD		\$ 766,803
EEOC		\$1,161,900
<b>Training: Train the Trainer</b>		\$ 62,244
<b>State Agency Trainings</b>		\$ 17,265
<b>Private Sector Trainings</b>		\$ 80,660
<b>Public Record Requests &amp; Copying Fees</b>		\$ 12,953
	Total	<u>\$2,101,825</u>
MCAD Budget:		
<b>State Appropriation</b>		\$2,376,992
<b>Retained Revenues</b>		\$2,101,825
	Total	<u>\$4,478,817</u>

\*This retained revenue account allows the MCAD to retain and spend revenues from HUD, EEOC, private sector, and state agency trainings, as well as fees from public records requests and copying. The account is capped at \$1,920,010, allowing the MCAD to retain and spend only up to said amount. Any revenues received in excess of that amount are deposited in the general fund. The MCAD cannot spend more than the monies it receives.

## RECENT DEVELOPMENTS IN DAMAGES IN MCAD CASES

### 2008 Appeals Court

University of Massachusetts Boston v. MCAD & another, 73 Mass. App. Ct. 1112 (2008)

#### Emotional Distress Damages Affirmed

In an unpublished opinion pursuant to Rule 1.28, the Appeals Court affirmed the Commission's decision, including its award of damages to a Complainant whose termination as a campus police officer at UMass Boston was found to be racial discrimination. The Commission's award of \$100,000 for emotional distress was not specifically addressed by the Appeals Court.

Upon G.L. c. 30A review, the Superior Court had affirmed the Commission's \$100,000 award of damages for emotional distress to the Complainant as being supported by specific findings of fact. The findings were based on credible testimony from complainant and other family members that the Complainant never stopped being upset about his termination, was too depressed to look for other work, felt he had let his family down, lost his identity, and was never the same person again. The evidence included additional credible testimony that Complainant's family disarmed his firearm for fear he would harm himself, and that his marriage was adversely impacted by the termination. On appeal UMass challenged the finding of liability and the damage awards for emotional distress, lost wages, and tuition reimbursement.

Thomas O'Connor Constructors, Inc. v. MCAD, 72 Mass. App. Ct. 549 (2008)

The Appeals Court affirmed the Commission's award of \$50,000 in emotional distress damages to a victim of racial harassment as being fully supported by the record, where the evidence showed Complainant lost weight, had difficulty sleeping, came home from work very disturbed and angry, experienced physical manifestations of distress, became withdrawn and

isolated, stopped playing with his children, and ceased communicating with his wife. The Court also affirmed a \$10,000 civil penalty assessed against the employer.

Upon G.L. c. 30A review, the Superior Court had affirmed the Commission's award of emotional distress damages in the amount of \$50,000 as supported by substantial evidence, and not beyond the range of fairness. Complainant and his wife testified that after being subjected to several racial slurs in the workplace by someone with supervisory authority, Complainant hated to go to work and became withdrawn, isolated and bitter. Prior to the harassment he had loved his job and was happy, content, and punctual. The Court stated that evidence of counseling or medical treatment was not needed to conclude that the employee experienced severe humiliation and emotional suffering over several months.

## **2008 Superior Court**

City of Boston v. MCAD, Suffolk, ss. C.A. No. 2006-02650 (2/8/08)

### Emotional Distress Damages Reduced

The Superior Court upheld the Commission's finding that the Boston Public School Department was liable for disability discrimination and failure to accommodate a teacher who sought to continue in part-time job sharing positions as an accommodation for her disabilities. However, the Court reduced the Commission's award of emotional distress damages to the Complainant from \$195,000 to \$50,000, referencing the Complainant's long and complicated psychological history as a reason. The Court apparently disregarded the Hearing Officer's consideration of these circumstances in his assessment of causation and apportionment of damages. The Court held that since circumstances other than the discriminatory actions of her employer contributed to the Complainant's emotional distress, her distress could not be attributed solely to the actions of her employer. The Court also referenced the Commission's awards for emotional distress in other cases and found the award in this case to be excessive relative to those cases. The Commission has appealed.

## 2008 Commission Decisions

### Failure to Produce Evidence of Mitigation of Lost Wages

Daniel Stephan v. SPS New England, Inc., 30 MDLR 61 (2008)

The Superior Court remanded to the MCAD a handicap discrimination case, involving termination for a re-computation of back pay damages. The Hearing Officer had awarded Complainant back pay damages in the amount of \$371,220.00, where the Respondent had failed to introduce evidence at the public hearing of subsequent employment and mitigation of back pay damages. The Respondent filed a post-hearing motion for leave to introduce new evidence of Complainant's interim earnings, which was denied by the Full Commission. Upon review, however, the Superior Court remanded the case for the purpose of taking additional evidence pertaining to mitigation in order to avoid "a substantial, undeserved windfall." On remand, the Respondent introduced evidence that the actual amount of lost wages for the period between discharge and the date of public hearing was \$88,080.00 due to interim earnings. A new Hearing Officer noted the evidence, but declined to modify the previous Hearing Officer's award of \$371,220.00 because Respondent failed to provide good reason for its failure to proffer evidence of mitigation at public hearing, as is required by the Commission's regulations and case law.

### Noteworthy Emotional Distress Awards

Abel v. Kiessling Transit, Inc., 30 MDLR 43 (2008)

The Hearing Officer awarded the victim of sexual harassment \$200,000 in emotional distress damages, where she found that Complainant, a teenager, was the victim of inappropriate sexual comments and was twice sexually assaulted by a fifty-year old employee who represented himself as her manager. The Hearing Officer concluded that the company was vicariously liable for the harasser's conduct under a theory of apparent authority because it allowed him to behave and hold himself out as an authority figure in the office. The award for emotional distress was supported by medical records and testimony diagnosing Complainant with post-traumatic stress disorder (PTSD) and depression. The evidence demonstrated that the harassment had turned Complainant from a confident, ambitious, energetic, and well-adjusted

high school graduate into an alcohol and drug-abusing individual who had trouble sleeping, thoughts of suicide, and an irritable and nervous manner.

Griffin & Leftwich v. Eastern Contractors, 30 MDLR 113 (2008)

The Hearing officer awarded two victims of egregious racial harassment in the workplace \$100,000 each in damages for emotional distress. The award to one complainant was based on testimony that he was anxious and fearful that he would have a stroke after the incidents of racial harassment at work because his blood pressure got so high that he required higher doses of blood pressure medication. He also testified that he felt shunned by his co-workers who treated him like he had the plague after he complained and stood up to the harasser. There was testimony from his partner that he went from being happy-go-lucky and someone who enjoyed outdoor sports to being moody, withdrawn, and short-tempered, and not wanting to out any longer. There was also testimony that he no longer was active and patient with his young son. The other Complainant testified that he could no longer watch, nor would he permit his children to watch, videos portraying African-Americans in a negative way. He testified that he carried a great deal of anger after the incidents at work which he visited upon his family and that adversely affected his relationship with his wife and one of his sons. His wife stated that he went from someone who was active with his family and always made them laugh to being angry and argumentative. She stated that he his relationship with her teenage son is very strained and that he is no longer the same person.

Kearney v. Massachusetts State Police, 30 MDLR 149 (2008)

The Hearing Officer awarded \$100,000 in damages for emotional distress to a female State Police Sergeant who claimed she was the victim of gender discrimination and retaliation after the State Police refused to honor a settlement agreement with her resulting from a prior discrimination claim, which guaranteed her the right to mutual agreement on future transfers or assignments. The Hearing Officer's award was based on testimony from the Complainant and her demeanor at the Hearing. Complainant's distress was acutely visible during the Hearing and she cried uncontrollably when asked to describe her feelings as she struggled to enforce the settlement agreement. She testified how upset she was to be reassigned to work under the same chain of command and with individuals against whom her previous complaint had been lodged. She testified about her frustration at not being



told the reasons for her transfer and the fact that her superior officers refused to communicate with her. She felt completely alienated and ostracized by her peers, embarrassed and humiliated by her situation, and unsupported by superior officers. She testified that she completely lost her ability to trust others and had physical symptoms including difficulty sleeping and exacerbation of her asthma.

## **2007 Appeals Court**

Emotional Distress Damages Affirmed (after award was previously vacated)

City of Lowell v. MCAD, 70 Mass. App. Ct. 1111 (2007)

After initially vacating the Commission's award of damages for emotional distress and remanding for further proceedings to reconsider the award in light of the factors enumerated in *Stonehill College v. MCAD*, 441 Mass. 549, 567 (2004), the Appeals Court upheld the Commission's \$200,000 damage award for emotional distress to a Complainant who was found to be the victim of gender discrimination when she was twice passed over for promotion to the positions of Master and Headmaster at the Lowell High School. The City argued that the emotional distress award was excessive and that there was no evidence that the Complainant attempted to mitigate her damages with therapy or other measures. The Court held that there is no precise mechanism for calculating the amount of emotional distress compensation and that mitigation is only one factor among the criteria set forth by the SJC in *Stonehill College*. The Court further held that the Commission's finding that the City's denial of later promotions to Complainant was in part motivated by the employer's retaliation for her having filed earlier complaints, could support an increased award of damages, where the Complainant suffered greater distress because she felt she was being paid back for challenging the employer's earlier decisions.

## **2007 Superior Court**

Emotional Distress Damages Reduced

City of Boston v. MCAD, Suffolk, ss. C.A. No. 06-02570 (6/26/2007)

Upon review pursuant to G.L. c. 30A, the Superior Court (Quinlin, J.) upheld the Commission's finding of disability discrimination against the City of Boston School Department, in favor of a teacher who was denied specific accommodations to her disability, but reduced the Commission's \$125,000 emotional distress award to \$50,000 on the grounds that the factual basis for emotional distress damages contained in the record did not justify the amount of the award. The Court compared the case to an earlier case, where the Appeals Court vacated a Commission award of \$100,000 for emotional distress as excessive. *See Boston Public Health Comm'n v. MCAD*, 67 Mass. App. Ct. 404, 413 (2006) (discussed below) The Court held that the Complainant's ample testimony about her depression, frustration, anxiety, lost sleep, and the loss of her vocation for an entire year, testimony that was supported by her physician and a close friend, was insufficient to justify the award in this case. The court noted that the Complainant did not seek counseling or mental health treatment. The court also reduced the \$10,000 civil penalty assessed against the School Department to \$5,000.

## MCAD Hearings Unit

In 2008 the MCAD Hearings Unit completed the following:

Hearings held:	<b>28</b>
Hearing Officer Decisions issued:	<b>22</b>
For Complainant	13
For Respondent	9

**Aggregate Amounts Damages Awards:**      Back Pay      Emotional Distress

By Case:

Moran v. David's Gym	\$ 4,468	\$ 40,000
McKenna v. Boston Housing Authority	\$122,944	\$ 50,000
Abel v. Kiessling Transit, Inc.	\$ 0	\$200,000
DiAngelo v. Pandiscio	\$ 1,550	\$ 35,000
Stephan SPS New England (remand)	\$371,220	
Kilroy v. Mass. Highway Dept.	\$120,439	\$ 30,000
Archer v. Paxson Communications Corp.	\$ 15,675	\$ 30,000
McFail v. Sylvania Lighting Services	\$ 0	\$ 25,000
Douglas v. Electro-Term, Inc.	\$ 11,257	\$ 75,000
Kakavich v. Halcyon Hill Condo Trust	0	\$ 25,000
Griffin & Leftwich v. Eastern Contractors	\$ 19,609	\$200,000
Kearney v. Mass. State Police	\$ 0	\$100,000

Training Directives: 3

No. of Full Commission Decisions issued: **10**

**Attorney Fee Awards by Full Commission** **5**

Aggregate Amount of Awards \$372,313

By Case:

Faunce v. City of Fall River	\$ 23,379
Harrison v. Roller World (public accomod.)	\$ 16,515
Bridges v. ABCC	\$234,641 (reduced by Magistrate)
Hurley & Ford v. City of Melrose	\$ 75,641
McKenna v. Boston Housing Authy.	\$ 22,137

## Enforcement Department

During 2008, the MCAD Enforcement Division processed 3,645 complaints filed in the Boston, Springfield, and Worcester offices. The Commission completed and resolved 3010 cases through investigation, adjudication, or mediation. Of those investigations, 375 led to a probable cause determination.

To fulfill our statutory mandate, the Commission reopened an office in Worcester in December, 2007, thereby eliminating the need for residents of central Massachusetts to travel to Boston or Springfield to file discrimination complaints. In 2008, over 275 central Massachusetts residents were interviewed at the Worcester office and over 145 complaints were filed there. The Worcester office also responded to nearly 950 information calls from the public. To complete our statutory mandate, the Commission has solidified plans to open a New Bedford office in the Spring of 2009.

In December 2008, the MCAD's Enforcement Division comprised 23 investigators, 6 supervisors, 6 attorney advisors and 3 administrative assistants. Each investigator maintained and investigated an average caseload of over 165 cases. This year saw great professional accomplishments by every Enforcement Division investigator. Notably, of the six MCAD staff members nominated to receive the 2008 Commonwealth Citation for Outstanding Performance, five were Enforcement Division employees. Of the three MCAD employees to receive this prestigious recognition, two are Enforcement Division investigators. We are very proud of Keith Parrett, Compliance Officer-II; Boston office and Migdalia Rivera, Compliance Officer-III, Supervising Investigator, Springfield office. This year also saw the promotion of investigators Keith Parrett, Elizabeth Hickey, and Pam Myers from Compliance Officer-I to Compliance Officer-II.

Throughout the year, Enforcement Division staff has participated in numerous professional development training sessions. MCAD housing investigators participated in internal and external training pertaining to Fair Housing and Predatory Lending investigations. Three employment investigators attended a national training session sponsored by the Equal Employment Opportunity Commission's Training Institute. Every employment investigator has attended internal training for three days pertaining to employment and housing investigations. In conjunction with

the MCAD General Counsel, investigators receive regular updates on emerging legal developments and trends, and investigators have also received internal training on their role in the mediation process. The MCLE Employment Law Conference was attended by the Chief of Enforcement and every Enforcement Advisor attorney. During early 2009, we look forward to internal training sessions on Disposition Writing, and Advanced Customer Service techniques. Every training session provides an opportunity for our staff members to sharpen their knowledge and gain additional skills.

In addition to their assigned duties, Enforcement Division investigators and supervisors voluntarily conducted twelve training seminars for state agencies, associations, colleges, museums, and private companies on topics such as housing discrimination, employment discrimination, predatory lending, preventing discriminatory housing advertising, and public accommodations.

In the area of predatory mortgage lending, the Enforcement Division has dedicated one investigator to work almost exclusively on these often complex and time-consuming cases arising under Mass. Gen. Law c. 151B, Section 4, paragraph 3B. These cases often involve allegations of lenders profiting from unfair and unlawful loans, multiple mortgages, lenders that no longer are in business, discriminatory brokerage services, or real estate or financing agents who have allegedly engaged in discriminatory practices by often taking advantage of people of color, the elderly, and people with disabilities. The Enforcement Division housing unit works closely with other state law enforcement agencies and our federal partner, the U.S. Department of Housing and Urban Development.

Working with the MCAD Director of Training, the Enforcement Division continues to seek and mentor interns through our established programs with both undergraduate colleges and law schools. Participating colleges and universities include: Bunker Hill Community College, Brandeis University, University of Massachusetts (Amherst), Suffolk University School of Law, Harvard Law School, Northeastern Law School, Western New England School of Law, Boston College School of Law, and New England School of Law. Through a systematic program of outreach to law schools nationwide, the Enforcement Division has received applications for internship from students around the country. Interns in the Enforcement Division are primarily law students who are trained by MCAD staff. In addition to attending the three-day new employee training attended by all MCAD employees, Enforcement Division interns are provided the opportunity to develop their legal skills by

participating in MCAD internal training sessions to improve their knowledge and understanding of the case process and emerging legal issues. All interns receive hands-on experience assisting investigators with or conducting case intake and investigations, and they work directly with Enforcement advisor attorneys on motions, writing investigative dispositions, and conducting legal research. The George Napolitano Scholarship, awarded each year to a student who shows both academic achievement and a dedication to work in public service, was awarded to Sara Green from Boston University School of Law.

## Springfield Office

We have continued to re-align our Springfield processes and procedures to mirror those of the Boston office. Accordingly, Springfield has made a commitment to making sure every person coming in with a discrimination charge leaves with a signed copy of their complaint. This change in process was partly responsible for the increase in intake in Springfield. For the second year in a row, complaints increased by about 100 over the previous year, with 795 new charges filed in Springfield in 2008. This brought the number of active cases in the Springfield office to about 900.

To cope with this increase in caseload, an investigator from Boston and an investigator from Worcester were transferred to Springfield. We were delighted to welcome Kathy Martin and Nomxolisi Khumalo. Coupled with the departure of an investigator, these additions left the office with a net gain of one investigator. In 2008, these investigators closed a total of 644 Springfield cases and about 100 additional cases from the Boston docket.

Of the 644 Springfield cases closed, we had 305 lack of probable cause cases, 15 lack of jurisdiction cases, and 117 probable cause cases. The remaining 207 cases were removed to court, settled by the parties or through Commission mediation, or otherwise withdrawn. We conciliated an additional 50 cases and held five public hearings in the Springfield office.

We have also seen some turnover in the Springfield legal department. Sadly, longtime Commission Counsel Jerry Levinsky decided to leave the agency for new challenges in the housing discrimination field and our junior attorney, Smriti Rana, moved with her family to California. We have welcomed Jennifer Lavery as our new enforcement advisor and continue to search for an appropriate replacement for Attorney Levinsky.

The Springfield office also was the origin of a Commission-initiated complaint in 2008. Based on a relatively large number of complaints against an insurer, the Commission began an investigation into whether their claim payment may be skewed based upon national origin. This case remains under investigation.

# Alternative Dispute Resolution

## **Conciliation Program:**

The Conciliations Unit saw significantly more activity over the previous year. In 2008, this Unit scheduled almost 600 cases—approximately 200 more than the prior year. This process resulted in about 130 cases advancing to the Hearings Unit.

Notably, considering the age of the cases that were settled, more than half of the settlements were less than a year old, i.e., cases filed in 2007 or 2008.

Focusing on the stages of case processing, the bulk of the settlement effort remains at the Probable Cause stage. Recognizing that Resolution at an early stage saves work for all parties and despite the spike in overall cases scheduled, the attempt to devote resources to pre-disposition represented cases has not flagged. The Unit managed to maintain a steady 15% of the overall cases at the pre-disposition stage.

## **Pro Se Mediation Program:**

The number of cases participating in the pro se mediation program continues to be healthy, and the mediation sessions are constructive, whether the cases reach settlement or not.

Although it has not been quantified, mediation is often credited with providing a substantial savings in money, time, and other resources to the MCAD and participants alike.

Cases that voluntarily participated in the Mediation Program: 317

Cases that Mediated: 160

Cases that Settled: 88 (Approx. 55% settlement rate)



## Training Unit

During 2008, the MCAD training unit and other MCAD staff conducted 125 external employment and housing discrimination prevention training sessions and presentations, the most the Commission has ever provided in a single year. These sessions included a series of presentations for local human rights commissions by Chairman Malcolm Medley, and Commissioners Martin Ebel and Sunila Thomas-George. Our audiences included human resources professionals, supervisors and managers, line staff, landlords, realtors, and newspaper classified personnel, and range from two hours to four days.

The MCAD outreach program, “Spreading Education to End Discrimination” or “S.E.E.D.” has also continued to expand this year. This calendar year, the S.E.E.D. program completed 107 presentations reaching 2,178 individuals in a variety of settings, double the number participating during 2007. Spring, summer, and fall term interns participated in intensive training, established contacts at organizations that serve populations likely to experience discrimination, and scheduled and conducted free presentations on discrimination in employment, housing, and public accommodations. S.E.E.D. audiences included students in English as a Second Language classes, residents in transitional shelters, and members of disability organizations. A number of presentations were conducted in Spanish, Haitian Creole, and Mandarin.

Since 1999, the Commission has held an annual Employment Discrimination Prevention course, including two train-the-trainer modules and two human resources practitioner modules. The course was full to capacity again this year. In addition, the MCAD partnered with the Massachusetts Interlocal Insurance Association to offer the first ever municipal discrimination prevention train-the-trainer program in March and April 2008. To our knowledge, this was the first program of its kind in the country. The success of the program led us to offer the four-day course for a second time in October and November 2008.

The training unit also designed, facilitated, and/or managed numerous internal training sessions for the Commission’s staff this year, providing new employees and interns with three- to four-day initial training, and conducting continuing education for staff at all levels. The 2008 internal training programs included sessions on disposition writing, customer service, and

diversity awareness, and a brown bag lunch series held monthly during the spring and fall, and weekly during the summer. Enforcement Advisors Unit Supervisor Geraldine Fasnacht was our key partner in designing and delivering internal training programs.

In the spring of 2008, the training unit began managing the MCAD's internship program. With more systematic recruitment, selection, training, and supervision strategies, the program has expanded in size, scope, and outcomes.

As of the close of 2008, the training unit has monitored compliance in a total of 260 cases in which the hearing decision or settlement included a training requirement. Of those, 221 cases are no longer active, generally because the training was completed or, occasionally, because the employer has gone out of business.

## TESTING PROGRAM

The purpose of a testing unit is to identify barriers that contribute to discrimination in employment, housing, credit, mortgages, education, and public accommodation or establishment, explore strategies to improve the litigation of discrimination claims, and enhance public awareness of discrimination. The Testing Program identifies, tests, and potentially initiates claims against persons in Massachusetts that engage in discriminatory practices.

Testing is a technique whereby two or more similarly situated job seekers matched in credentials – qualifications, income, appearance – except for an immutable characteristic such as race, sex, age, apply for similar positions and the employer's response is analyzed to determine if there was a discriminatory treatment of members of the protected class. This process may assist victims of covert forms of discrimination as well as highlight pervasive unlawful employment practices.

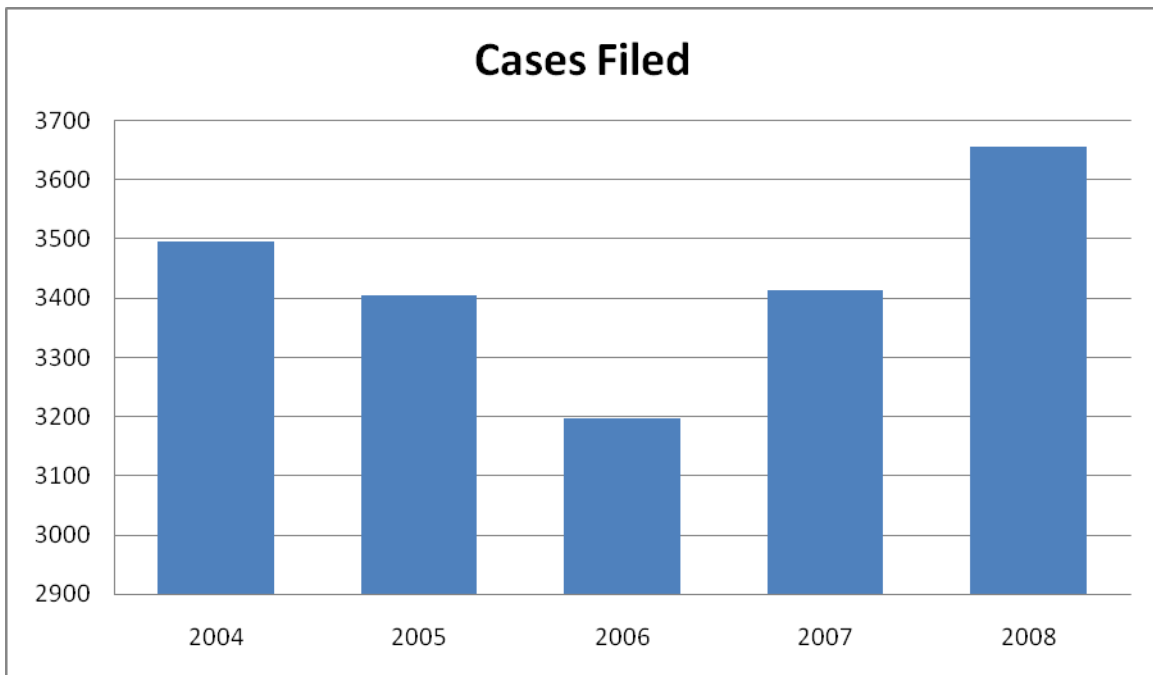
In 1992, the MCAD became the first public agency in the nation to use testing in employment cases. (The agency has conducted testing, and continues to conduct testing in the areas of housing and public accommodations.) In its six-week project, it tested about forty employers in the retail and restaurant industries for age discrimination. As a result of the testing, the MCAD issued two complaints that were resolved with the employers charged agreeing to pay monetary compensation as well as implement affirmative action plans.

In 2008, the MCAD reinstated discriminatory testing by launching its Testing Program to test for discriminatory hiring and placement practices. This program involves sending several different pairs of testers to apply for positions with a certain industry via direct application to the employer and/or an employment agency. Once the data is analyzed, the MCAD assesses whether the tests reveal discriminatory hiring or placement patterns and/or if further testing should be conducted. If discriminatory hiring patterns exist, the MCAD publicizes the results and prosecutes the responsible parties.

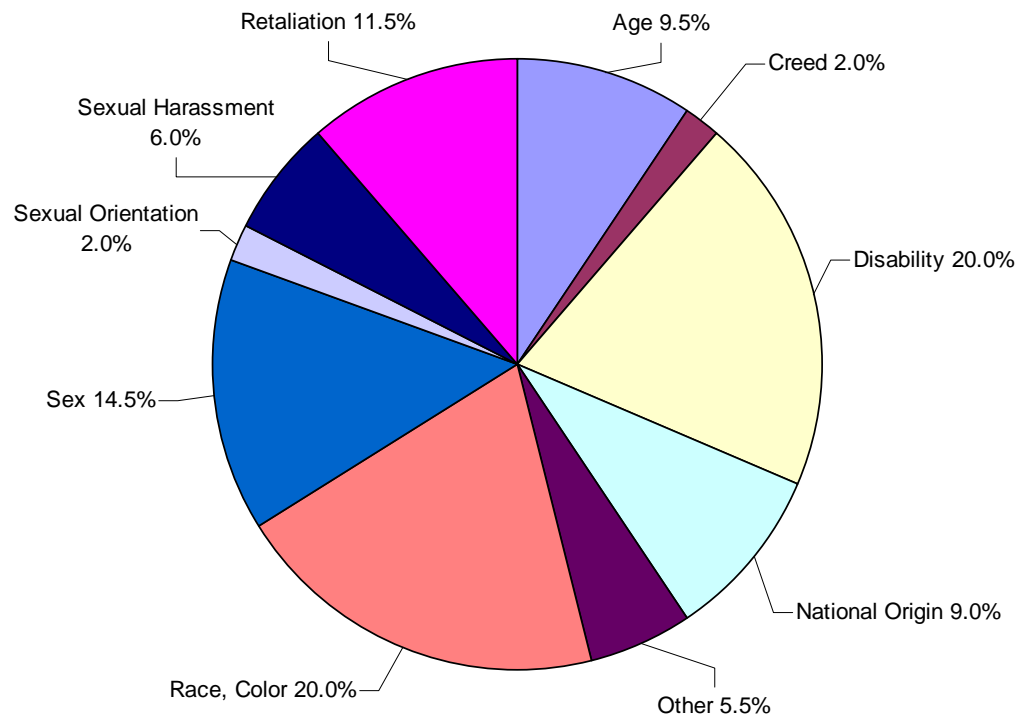
A testing program of this type seeks to promote the goal of equal access to employment, housing, credit lenders, mortgages, education, and public accommodation or establishment, and permits a more responsive state governmental approach to systemic discrimination.

# FACTS AND FIGURES

Case Filed in 2008: 3,657

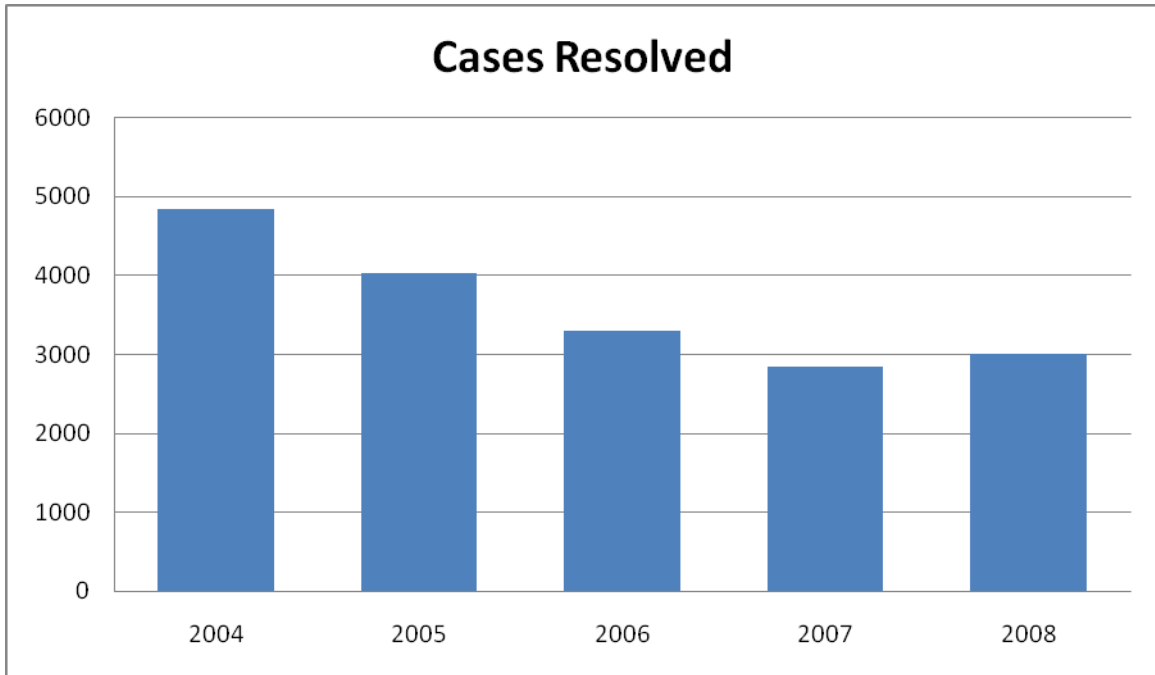


## Top Categories of Complaints Filed by Protected Class

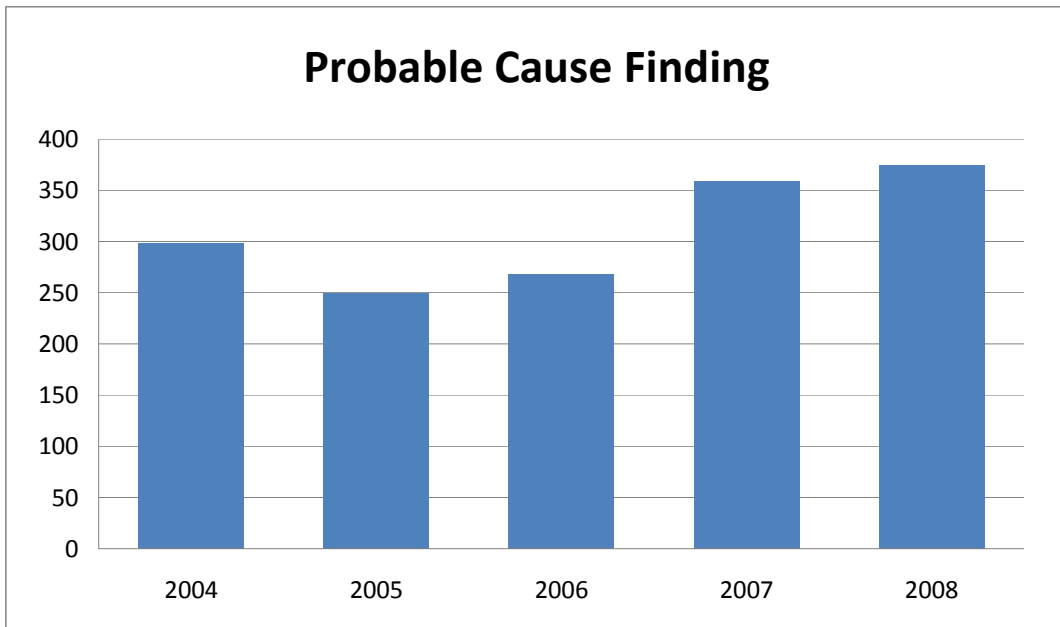


Race	20.0% (1,310)
Disability	20.0% (1,291)
Sex	14.5% (952)
Retaliation	11.5% (763)
Age	9.5% (589)
National Origin	9.0%

**Cases Resolved in 2008: 3,010**

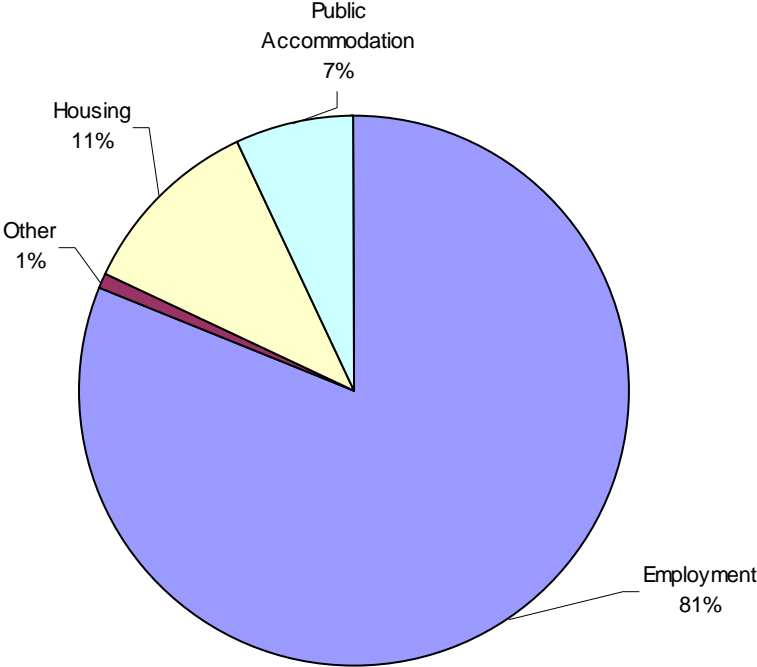


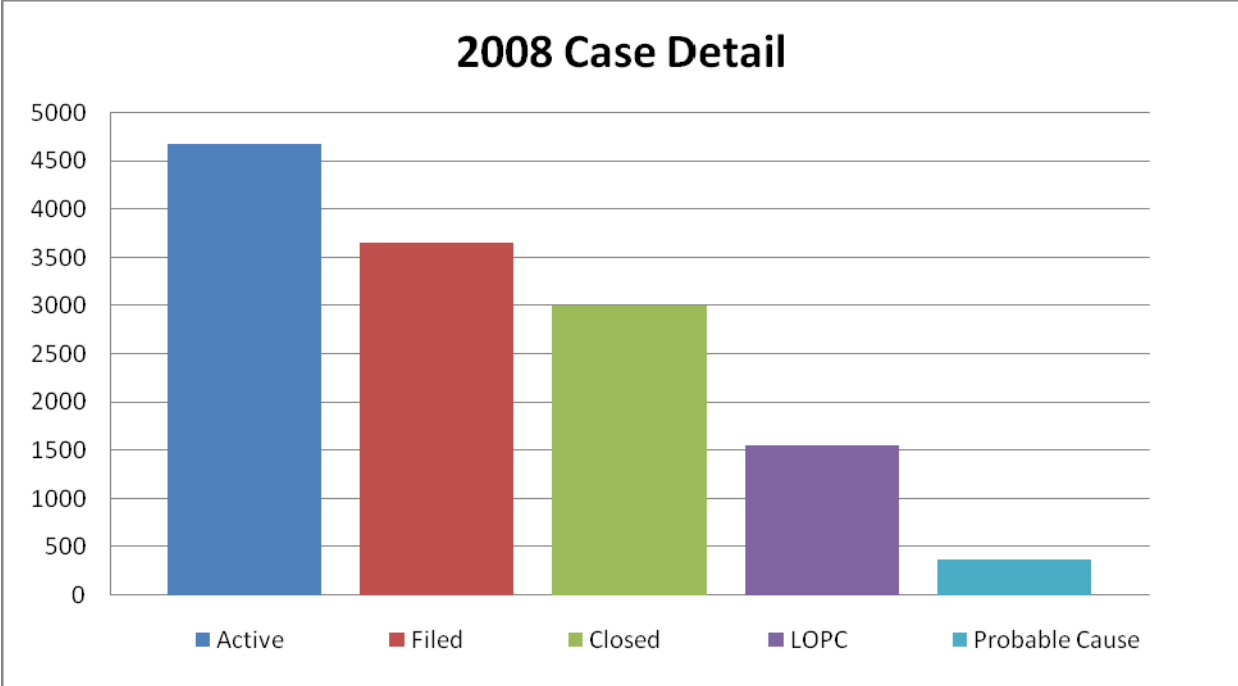
**PC Findings in 2008: 375**



# Complaints by Type

Employment	81% (2,947)
Housing	11% (422)
Public Accom.	7 % (272)
Other:	1 % (16)

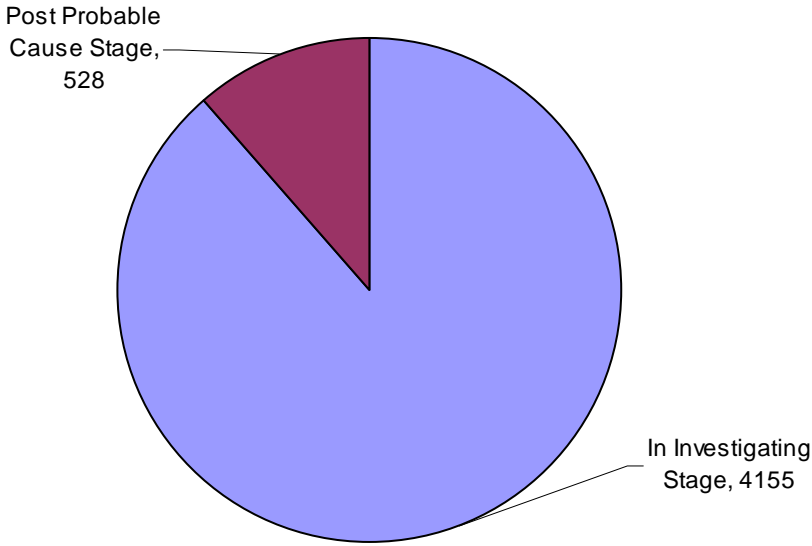
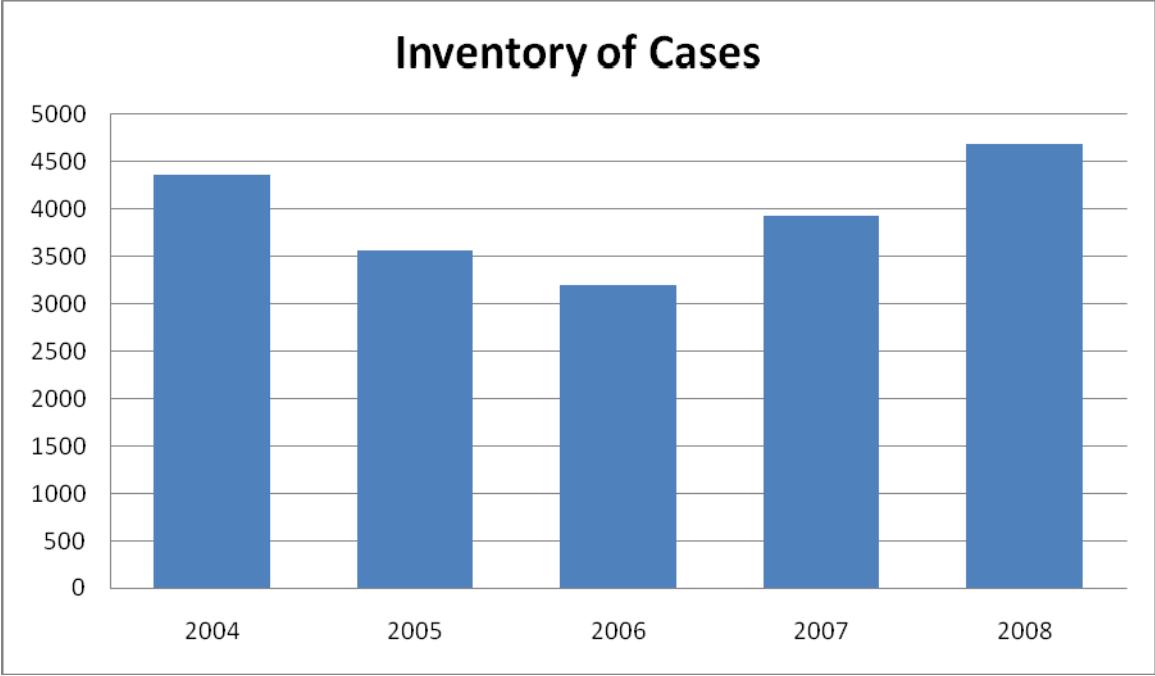




Active 4,683  
Filed 3,657  
Closed 3,010  
LOPC 1,553  
PC 375

**Case Inventory: 4,683**

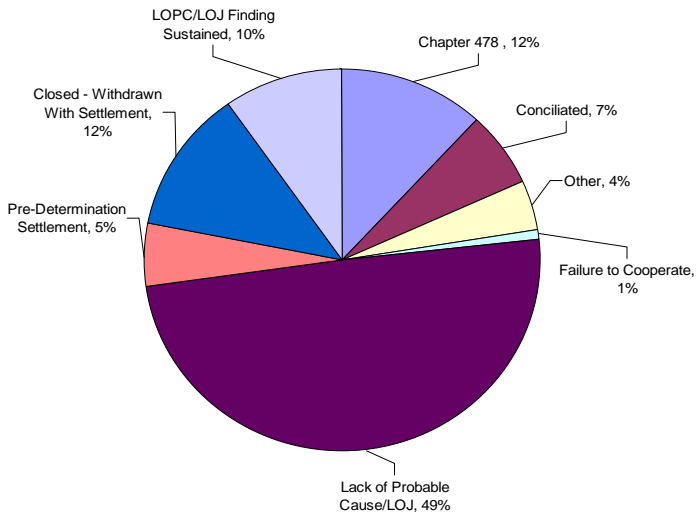




Post Probable Cause: 528  
Under investigation: 4,155

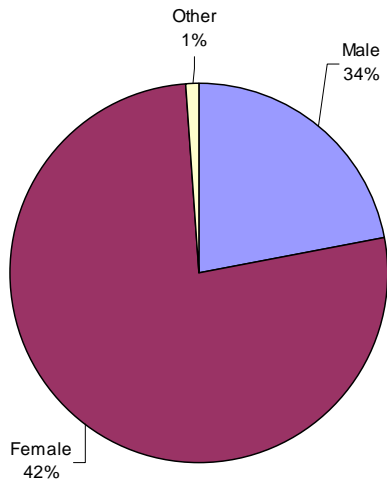
## Cases Closed Before Public Hearing

LOPC/LOJ Sustained:	10%	(320)
Chapter 478	12%	(389)
Conciliated	7%	(213)
Withdrawn w/ Settlement	12%	(401)
Pre-Determination Settlement	5%	(167)
Lack of Probable Cause/LOJ	49%	(1,618)
Failure to Cooperate:	1%	(28)
Other:	4%	(138)

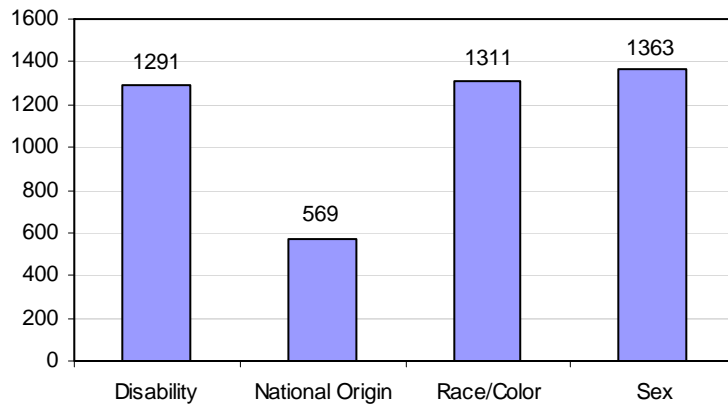


## Complaints with Basis of Sex

Female	77%	(725)
Male	22%	(204)
Other	1%	(6)



**Complaints Filed in 2008**

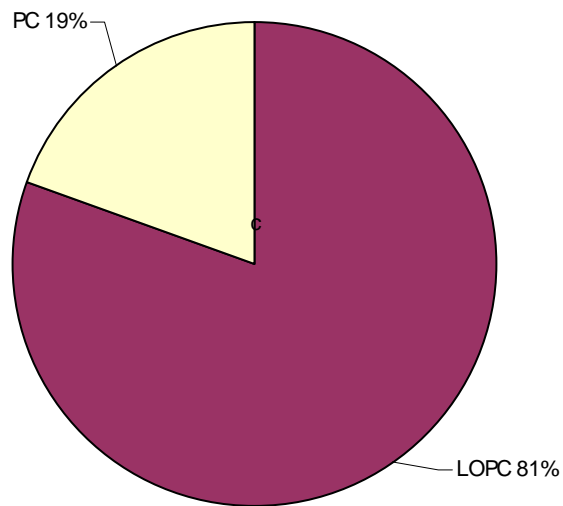


**Substantive Resolutions**

LOPC 1,553

PC 375

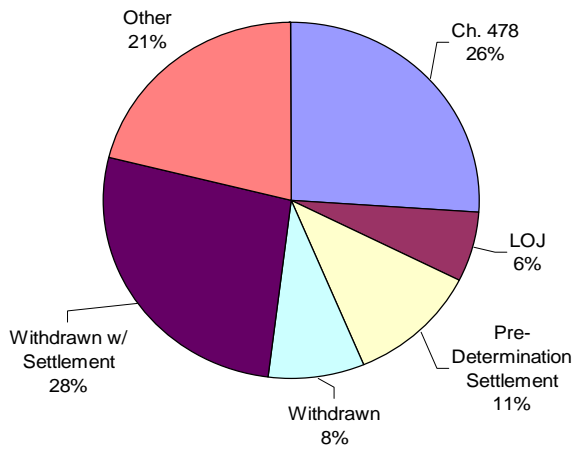
**Substantive Resolutions 2008**



## Administrative Resolutions

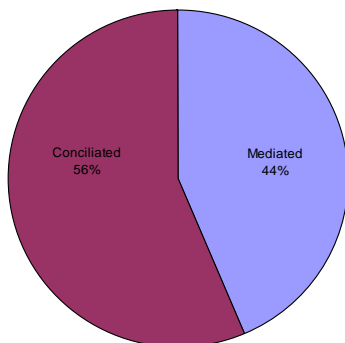
Chapter 478	390
LOJ	93
Pre-Determination Settlement	167
Withdrawn	126
Withdrawn w/Settlement	401
Other	313

**Administrative Resolution 2008**



## Mediations/Conciliations

Mediated	167
Conciliated	216



## 2008 STAFF

**Chairman Malcolm S. Medley**

**Commissioner Martin S. Ebel**

**Commissioner Sunila Thomas-George**

Wendy Alexander

Melvin Arocho

Deb A'Vant

Joel Berner

June Bostick

Eric Bove

Maryann Brunton

Kimberly Boyd

Marlania Bugg

Wendy Cassidy

Jean Clanton

Leona Clark

Vanessa Davila

Gordon Davis

Karen Erickson

Geri Fasnacht

Lynn Goldsmith

Barbara Green

William Green

Eugenia Guastaferrri

Keith Healey

Elizabeth Hickey

Marzella Hightower

Judith Kaplan

Theresa Kelly

Nomxolisi Khumalo

Johny Lainé

Jennifer Laverty

Shirley Lee

Simone Liebman

Kristen Librera

Melanie Louie

Katherine Martin

Sheila Mathieu

Gilbert May

Lynn Milinazzo-Gaudet

Ying Mo

Carol Mosca

Carol Murchison

Pamela Myers

Carolyn Packard

Keith Parrett

Yudelka Peña

Michelle Phillips

Victor Posada

Marytsa Reyes

Jeannine Rice

Migdalia Rivera

Kosal Sarou

Caitlin Sheehan

Rebecca Shuster

Andre Silva

Myrna Solod

Abigail Soto-Colon

Ethel Stoute

Tania Taveras

Nancy To

Francisco Villalobos

Beverly Ward

Betty Waxman

Paul Witham

Patty Woods

Carmen Zayas

Catherine Ziehl

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