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# 2006 ANNUAL REPORT

Walter J. Sullivan, Jr., Chairman

Martin S. Ebel  
Commissioner

Dorca I. Gomez  
Commissioner

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A Three-Year Report — Including Years 2004, 2005, and 2006

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# Message from the Commissioners

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Honorable Deval L. Patrick, Governor  
Honorable Robert E. Travaglini, President of the Senate  
Honorable Salvatore F. DiMasi, Speaker of the House  
People of the Commonwealth of Massachusetts

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

The years 2004–2006 have brought much success to the agency. We saw a huge victory in the Stonehill College case, we have facilitated settlements worth millions of dollars, and we have eliminated the agency’s caseload backlog. We have weathered turnover in management and staff, have reduced the average time of investigation from over two years to less than one year, and are better positioned to execute our mission of preventing and eliminating discrimination in the Commonwealth. The details of our accomplishments follow.

## History and Mission of the Agency

The MCAD and its predecessor agency, the Fair Employment Practices Commission, have been charged with the mission of enforcing the laws of the Commonwealth against employment discrimination since 1946. Its writ now runs against discrimination in housing, public accommodation, education and credit services, as well as employment. Cases of discrimination on account of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, marital status, family status (children), disability, receipt of public assistance, genetics, and military and active duty status all fall within its jurisdiction. In addition to investigating and deciding all such cases, the Commission promulgates rules and regulations; monitors and assists business and state and local government agencies in their civil rights compliance efforts; sponsors educational programs for law enforcement officials with civil rights enforcement responsibilities; and actively promotes broad public awareness of human rights issues.

In 2006, we undertook two projects — moving our Train-the-Trainer program in-house and establishing virtual office videoconferencing — to promote public understanding of human rights issues signaling our continued commitment to public service.

## Training

Since 1999, the MCAD has co-sponsored an annual discrimination prevention train-the-trainer program with Massachusetts Continuing Legal Education. During this past year, the MCAD sponsored the program independently for the first time. While MCLE provided an important forum to launch the program, we look forward to using this opportunity to broaden the program's audience.

The program now allows the agency to reach an audience including not just attorneys, but also human resource professionals and others in the field. This program is designed to help achieve our mandate of eradicating discrimination by proactive, preventive means.

Over the last three years we have seen steady increases in the number of external trainings we have conducted. In addition, the training staff have monitored the more than two hundred orders for training issued by the Commission and verified compliance in well over half of those instances.

The MCAD has designed and presented training programs in a number of different areas. A few examples include sexual harassment training, diversity training for employers, advocates, and public housing.

## Virtual Office

The MCAD is in the final implementation stages to bring its envisioned statewide presence from two full-time brick-and-mortar locations in Boston and Springfield, to a network of municipal locations using "virtual office" videoconferencing technology.

We expect this system to expand the local availability of intake counseling, investigative conferences, mediation, certification conferences, and pre-trial conferences to geographic areas that have been traditionally underserved by state government. As this technology is deployed, we anticipate the system will facilitate various legal proceedings prior to hearing, resulting in reduction of travel costs incurred by parties and their counsel.

Testing of this system was largely completed in the past year. We expect to bring this new technology online early in 2007 to increase access and to better serve the needs of people using our services. We anticipate bringing the system online first at U. Mass Dartmouth (with Fall River and New Bedford having direct bus service to the location), U. Mass Lowell (with direct bus service from downtown Lowell and downtown

Lawrence), and Quinsigamond Community College (with direct bus service from downtown Worcester).

Additional sites will be added after the pilot program is implemented. We anticipate adding sites at Berkshire Community College (in Pittsfield) and Cape Cod Community College (in Barnstable). Our goal is to place the virtual office sites so that everyone in the Commonwealth is no more than a thirty-minute ride from accessing the MCAD's services.

## Investigation

The agency is delighted to report that we have eliminated our backlog. In 2003, the MCAD had 5230 cases in inventory. Each year since 2003 has seen a steady decline in this inventory. By the end of 2006, we had reduced our case inventory to just 3193 cases. This number correlates nicely with both the number of cases filed (3198) and the number of cases closed (3298) in 2006. It indicates that the backlog is gone and that the MCAD is processing cases at a rate almost identical to the rate cases are filed.

Along with our elimination of the backlog of cases, we have made great progress in the time it takes a case to reach probable cause determination. The average time to determination dropped to approximately eleven months by the end of 2006. We hope to reduce this time a bit more in the coming year. We also are targeting to begin public hearing within thirty months of filing (for cases that stay in the system).

The agency's investigative philosophy is tailored to its caseload — roughly seventy percent of all cases are filed by Complainants not represented by attorneys. To better deploy the resources of the Commission, in Spring of 2004, the Boston office issued a Standing Order designed to allow devotion of more resources to these pro se cases. By eliminating the investigative unit devoted strictly to cases where both sides had counsel and eliminating the processes used by those attorneys, the MCAD better allocated its investigative and legal resources to improve the quality of investigations in all complaints filed with the Commission and improved our processing time.

In support of our desire to conduct high-quality and timely investigations, we have recently front-loaded the investigation process. This means that our investigators are taking affirmative steps to gather information upon receipt of the complaint. We will no longer merely seek to validate position statements as a means of closing cases — instead, we insist that staff investigate complaints. This may seem like a fine distinction, but the effect is profound on those bringing charges of discrimination.

## Probable Cause Rate

Recently there has been much discussion about the MCAD's PC rate — discussion that we believe detracts attention from the agency's mission to prevent and eradicate discrimination. The PC rate can be valuable as an analytical tool, but should not and does not drive our decision-making process.

During the 1990s, the MCAD reported its PC rate in our annual reports. This rate was expressed as a percentage and was derived from dividing the number of probable cause determinations in a year by the total number of cases closed (for any reason) during that same year. In the 1990s, the PC rate we reported averaged a little more than ten percent and ranged widely from a low of six percent (1991) to a high of sixteen percent (1993).

While the Commission believes the PC rate is useful, we do not believe that it is important as a goal we must achieve each year. Instead, the PC rate helps us understand, over the long run, whether we are properly exercising the probable cause standard and how we are performing compared to other agencies nationwide.

The MCAD remains committed to examining each case on its merits and affording every case a high-quality and timely investigation. This means that to a large extent, the PC rate is out of the agency's control. We will not, for example, quit issuing probable cause determinations in November, because we have reached some mythical target. We also will not issue unwarranted probable cause determinations to ensure meeting anyone's idea of an acceptable PC rate.

Beginning in 2000, recognizing that this method of calculation might be unsound, we discontinued reporting the PC rate, instead reporting just the component parts — the number of PCs issued and the total number of case closures. Many who independently studied our data from 2000–2003 performed their own calculations to determine the PC rate during those four years.

The method of PC rate calculation used in the 1990s appears deeply flawed because it employs a denominator that includes many closures that the MCAD has no control over and many others that should not be counted against the agency (and thereby understate the real PC rate). In analyzing the 2006 data, for example, there are approximately as many of these types of closures (~1400) as there are lack of probable cause findings (1419.)

In 2006, there were nearly 800 cases that were withdrawn from the MCAD by the Complainant because the case settled privately, was filed in court, or for other reasons.

There were approximately 400 additional cases that were settled or conciliated as a result of MCAD efforts. We also dismissed about 100 cases because the Complainants refused to cooperate with us. Finally, there were another 100 cases where we found a lack of jurisdiction — the case did not belong at the MCAD in the first place.

All of these cases described above, logically should be eliminated from the PC rate, because either the reasons for closure were beyond our control (removed, withdrawn, settled privately, failure to cooperate, lack of jurisdiction) or were directly due to the successful efforts of the Commission in resolving the matter (early mediation, conciliation). Removing such cases from the PC rate is becoming the standard nationally, and more accurately reflects the results of our investigations. Beginning with this report, the MCAD will report its PC rate using the following formula that is being adopted by civil rights agencies across the country:

$$\text{PC Rate} = \text{PC} \div (\text{PC} + \text{LOPC})$$

Where PC is the number of probable cause determinations for a given year and LOPC is the number of lack of probable cause determination for that year.

We will continue to report the number of cases granted probable cause and the total number of dispositions for each year so that those who wish to compare our current and future performance with the old metrics may do so.

The following are the PC rates for the years 2004–2006:

Year	PC Rate (new)	PC rate (old)
2004	15.9%	6.1%
2005	13.9%	6.2%
2006	18.9%	8.1%

### Court Cases

During 2004–2006, MCAD’s Commission Counsel achieved some major legal victories. Most important of these is the Supreme Judicial Court’s decision the MCAD won in *Stonehill College v. Massachusetts Commission Against Discrimination*. This case removed years of confusion about whether Respondents had a right to jury trial in an employment discrimination case. In addition to clarifying the jury trial issue, *Stonehill College* also clarified the admissibility and use of a Commission decision in court and upheld the Commission’s ability to assess and award emotional distress damages.

More than in any other period, the Commission wrote and submitted amicus curiae (friend of the court) briefs in cases where the Commission thought the court's decision would affect the civil rights laws we enforce. One of these cases, *Gasior v. Massachusetts General Hospital*, was particularly important because in it, the court decided that the death of a Complainant does not extinguish a Complainant's Chapter 151B claim.

Also of particular significance were a few other rulings that positively affected our ability to hold parties accountable. In *DeRoche v. Massachusetts Commission Against Discrimination* the Court decided that interest on damages should be available to Complainants that prevail against the Commonwealth or one of its subdivisions. In *Ocean Spray Cranberries, Inc. v Massachusetts Commission Against Discrimination*, the Court affirmed the MCAD's individualized inquiry requirement for determining whether someone is a handicapped person under Chapter 151B.

Commission attorneys appeared in approximately fifty Superior Court actions — most of these representing appeals from decisions of the Full Commission. We also handled approximately twenty-five appeals before the Appeals and the Supreme Judicial Courts.

### Settlements

Over the past three years, agency attorneys also settled hundreds of cases, including a million dollar settlement in a case filed by employees of UNICCO. The UNICCO case, settled jointly with the Attorney General's Office and the EEOC, provided compensation to workers sexually harassed and retaliated against in the workplace. The settlement also provided a \$30,000 fund shared by Crittendon Women's Union, Jane Doe, Inc., and the Chelsea Collaborative to educate women on their rights and to help them advance in the workplace.

In addition to the work done by agency attorneys, our staff mediation and conciliation personnel and our hearing officers produced wonderful results. More than 1400 cases were settled as a result of the efforts of these staff members in the period 2004–2006. The MCAD remains committed to its early mediation process and we are looking for effective ways to expand its reach.

### Hearings and Full Commission Appeals

Due largely to staff efforts to help the parties resolve cases prior to hearing, the number of public hearings and Full Commission appeals was down somewhat over this period. The Commission issued forty hearing decisions in 2004, forty-one in 2005, and thirty-three in 2006. The Full Commission issued twenty appeal decisions in 2004, ten in 2005,

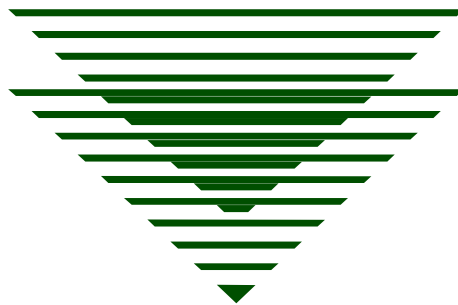
and 15 in 2006. Part of this shift is attributable to the work of Commission Hearing Officers, who have contributed greatly to increase the number of post-determination settlements during the period. During 2004–2006, settlement of these cases reached a new high, with most such including a required training component for the Respondent.

### Scholarships and Awards

As in past years, the MCAD continues to award the George Napolitano Internship. George Napolitano was the General Counsel from 1991 to 1997. His dedication to the mission of the commission and his work with students inspired the creation of the scholarship. This paid internship is funded by the Boston Bar Foundation and awarded annually to a law student interested in discrimination and employment law. The recipients of the internship were Nathan Jones in 2004, Ann Rudy in 2005 and Kari Stephens in 2006. The deadline for application for the 2007 program is March 15, 2007. More information is available at: <http://www.mass.gov/mcad/news.html>.

### Looking Forward

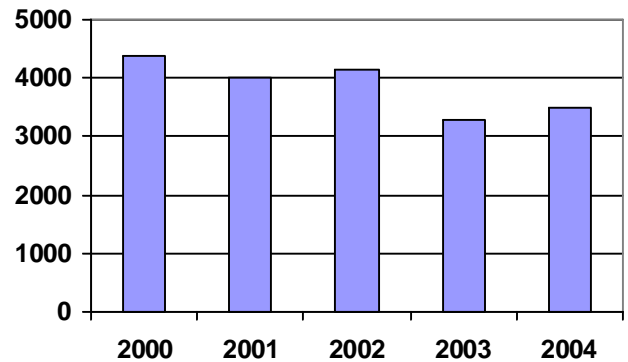
The MCAD remains committed to its mission and in the coming year will revamp certain procedures to allow greater participation by counsel for Complainants and Respondents. The Commission also plans a series of town meetings designed to allow the MCAD to reach out to attorneys, advocacy groups, and users of the Commission's services to learn how we may better serve them and our mission. Our technological innovations, procedural changes, and outreach opportunities ensure that the MCAD remains a viable and vigilant force against unlawful discrimination.



# 2004 Charts & Graphs

## 2004 Cases Filed

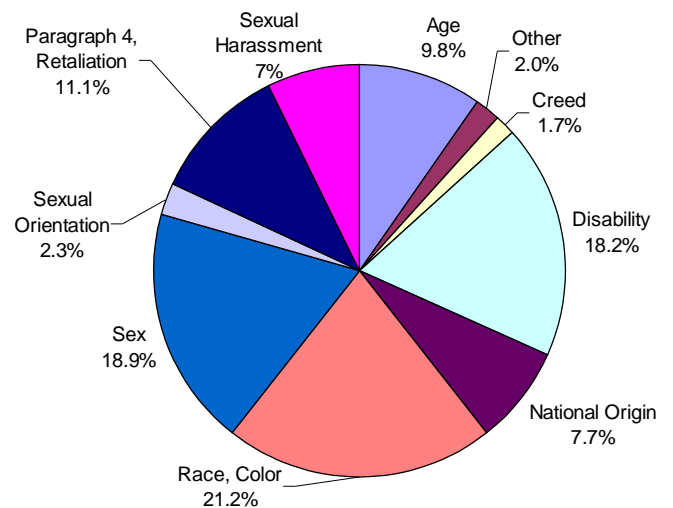
The number of complaints filed at the MCAD during 2004 increased slightly from the number filed in 2003. There were 3,496 cases filed in 2004.



## Complaints by Protected Class

The top six categories of complaints filed by protected class were:

Race	21.2%
Sex	18.9%
Disability	18.2%
Retaliation	11.1%
Age	9.8%
National Origin	7.7%

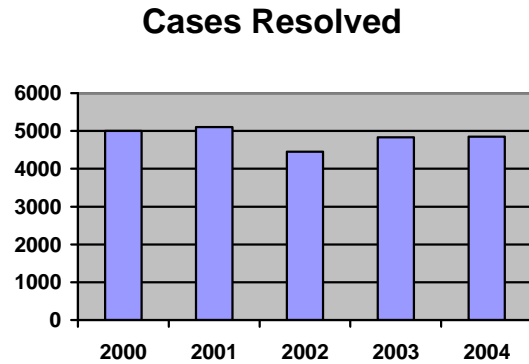


# 2004 Charts & Graphs (continued)

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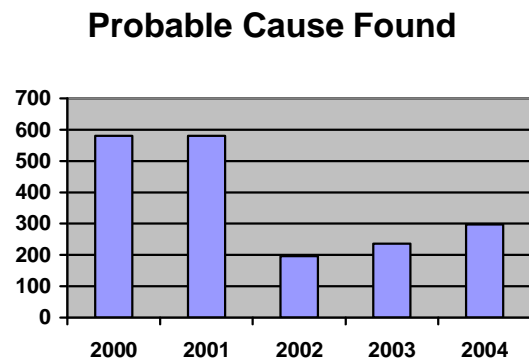
## Cases Resolved

The number of MCAD cases resolved continued to be high. We resolved 4,851 cases in 2004.



## Probable Cause Findings

The MCAD saw an increase in the number of Probable Cause findings over 2003. In 2004, 298 cases resulted in a Probable Cause finding.

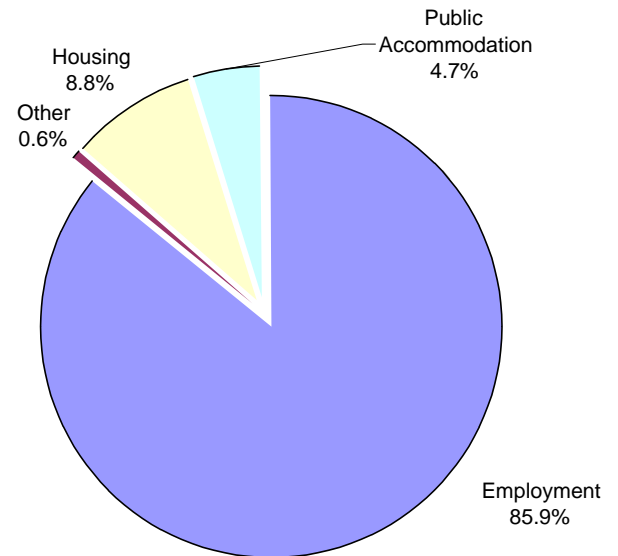


# 2004 Charts & Graphs (continued)

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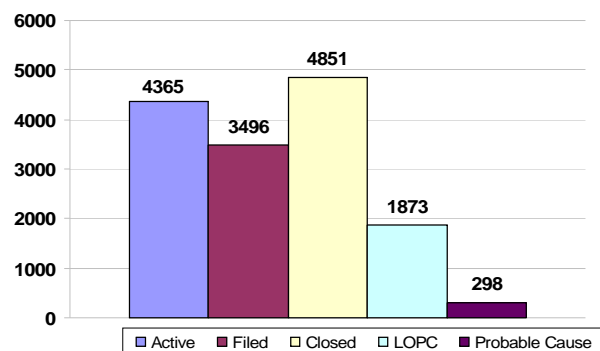
## Complaints by Type

Employment claims remained the highest type of filing at 85.9%. Housing was 8.8% and Public Accommodation was 4.7%



## Case Detail for 2004

At the end of 2004, there were 4365 active cases. During this year, 3496 cases were filed, 4851 were closed, we found Lack of Probable Cause in 1873 cases, and Probable Cause in 298.

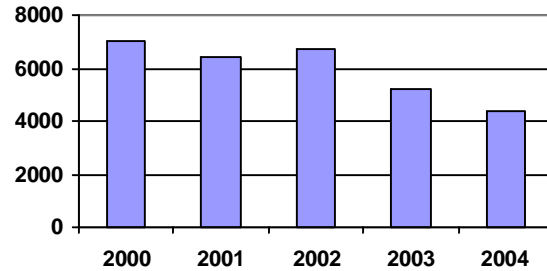


# 2004 Charts & Graphs (continued)

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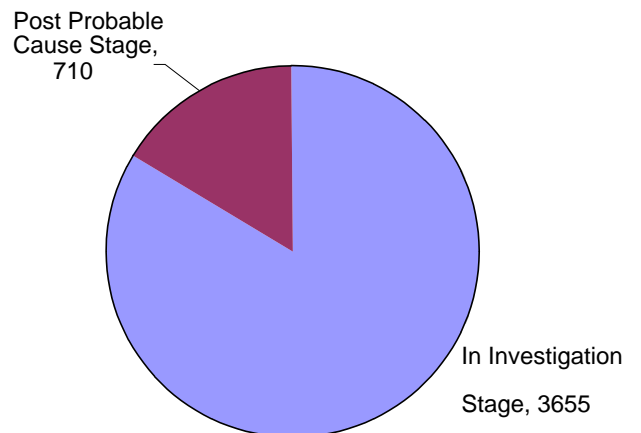
## Case Inventory

The case inventory, as shown here, decreased dramatically in 2004, to just over 4,300 cases.



## Inventory by Stage

Of the 4365 cases in inventory at the end of 2004, 710 were post-Probable Cause and 3655 were still under investigation.

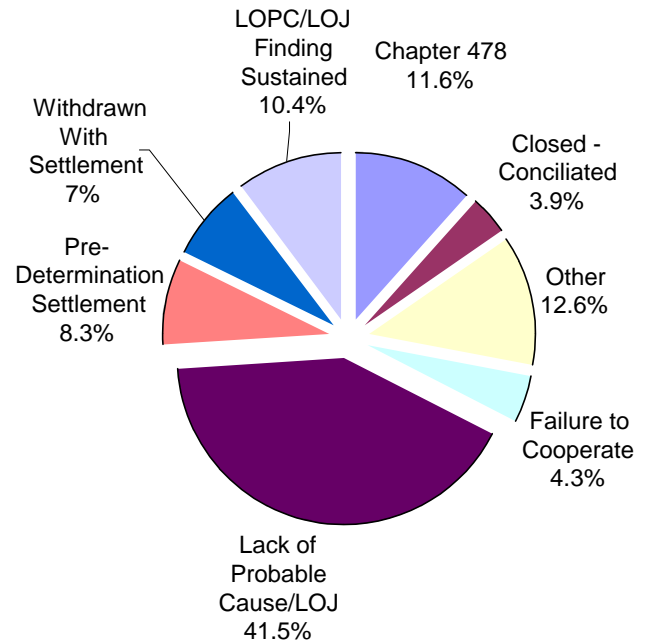


# 2004 Charts & Graphs (continued)

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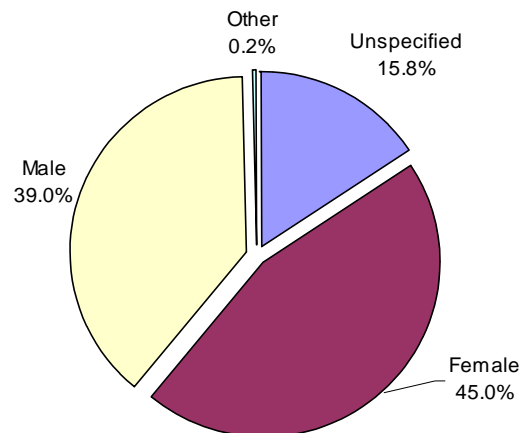
## Cases Closed Before Public Hearing

This is the breakdown of cases that were closed prior to reaching public hearing.



## Cases By Gender

Of the cases filed in 2004, 45% were by females, 39% by males, and nearly 16% were unspecified.

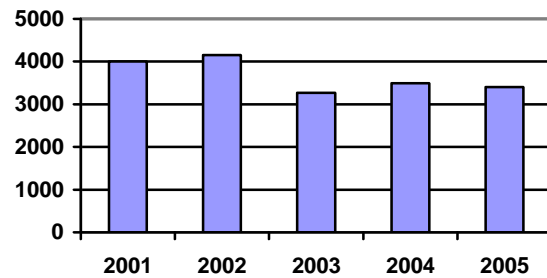


# 2005 Charts & Graphs

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## 2005 Cases Filed

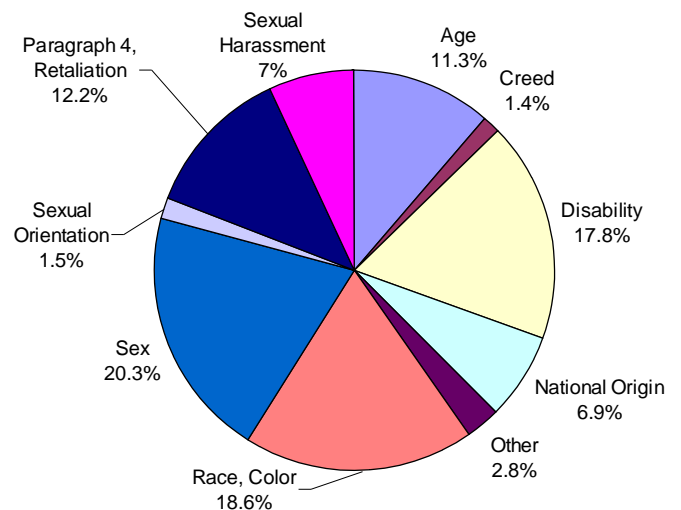
The number of complaints filed at the MCAD in 2005 dipped slightly from 2004. There were 3,406 cases filed in 2005 versus 3,496 in 2004.



## Complaints by Protected Class

The top six categories of complaints filed by protected class were:

Sex	20.3%
Race	18.6%
Disability	17.8%
Retaliation	12.2%
Age	11.3%
Sexual Harassment	7.0%

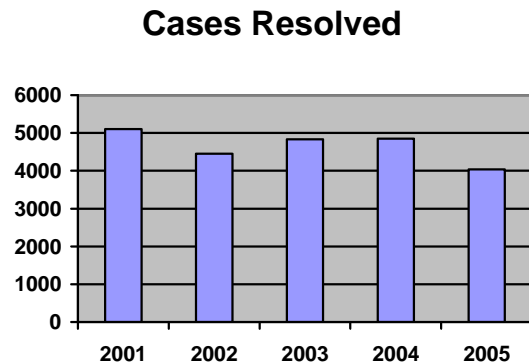


# 2005 Charts & Graphs (continued)

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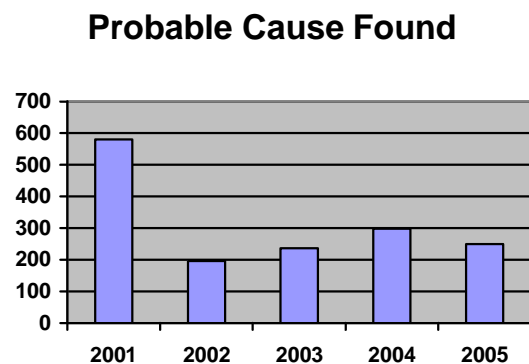
## Cases Resolved

The number of cases resolved in 2005 was 4,033. Although fewer than 2004, closures were still greater than the number of claims being filed.



## Probable Cause Findings

Consistent with the slight decrease in cases resolved, in 2005, 249 cases resulted in a Probable Cause finding.

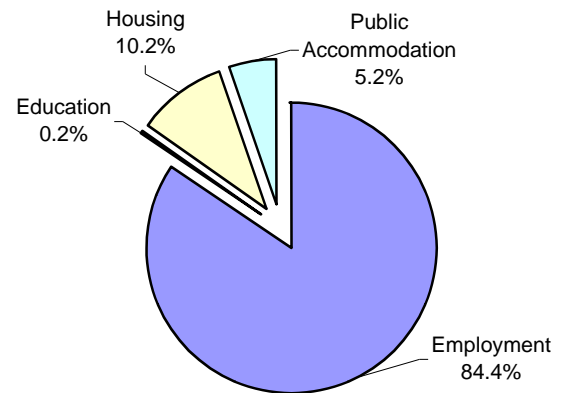


# 2005 Charts & Graphs (continued)

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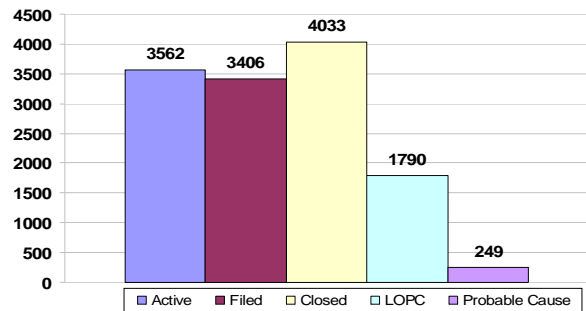
## Complaints by Type

Employment claims remained the highest type of filing at 84.4%. Housing was 10.2% and Public Accommodation was 5.2%



## Case Detail for 2005

At the end of 2005, there were 3652 active cases. During this year, 3406 cases were filed, 4033 were closed, we found Lack of Probable Cause in 1790 cases, and Probable Cause in 249.

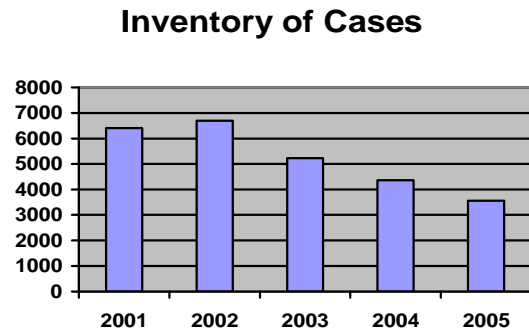


# 2005 Charts & Graphs (continued)

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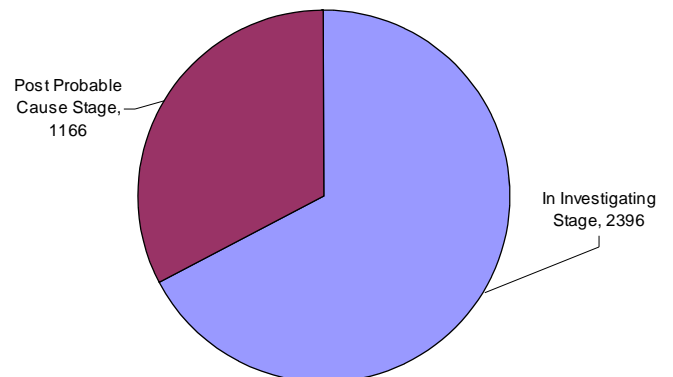
## Case Inventory

The case inventory, as shown here, decreased dramatically again in 2005, to just over 3,500 cases.



## Inventory by Stage

Of the 3562 cases in inventory at the end of 2005, 1166 were post-Probable Cause and 2396 were still under investigation.

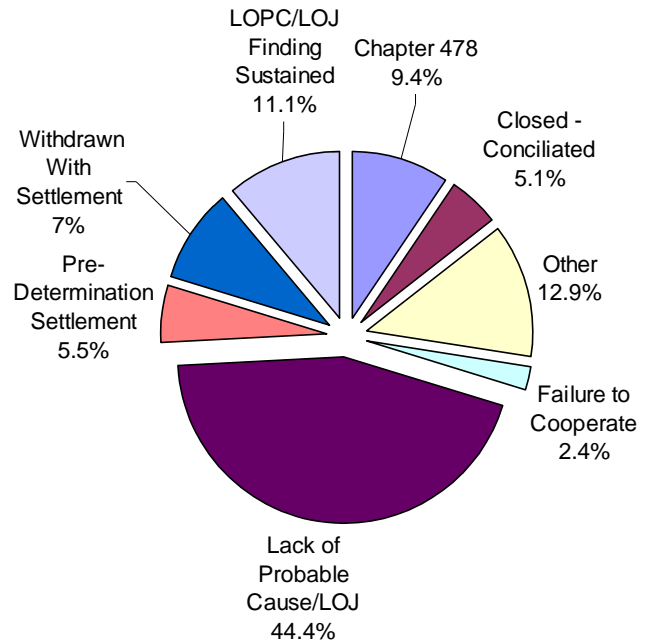


# 2005 Charts & Graphs (continued)

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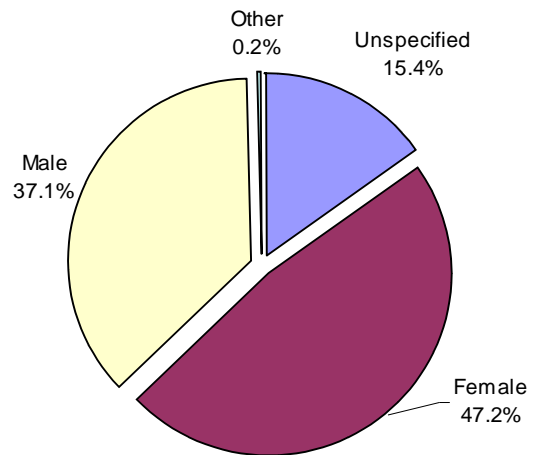
## Cases Closed Before Public Hearing

This is the breakdown of cases that were closed prior to reaching public hearing.



## Cases By Gender

Of the cases filed in 2005, about 47% were by females, 37% by males, and nearly 16% were unspecified.

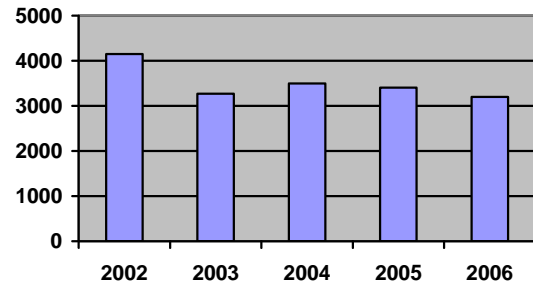


# 2006 Charts & Graphs

## 2006 Cases Filed

The number of complaints filed at the MCAD during 2006 decreased slightly from the number filed in 2005. There were 3,198 cases filed in 2006.

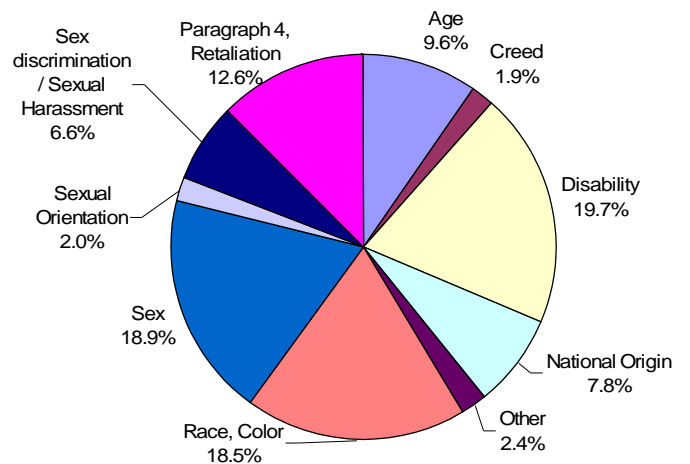
**Cases Filed**



## Complaints by Protected Class

The top six categories of complaints filed by protected class were:

Disability	19.7%
Sex	18.9%
Race	18.5%
Retaliation	12.6%
Age	9.6%
National Origin	7.8%

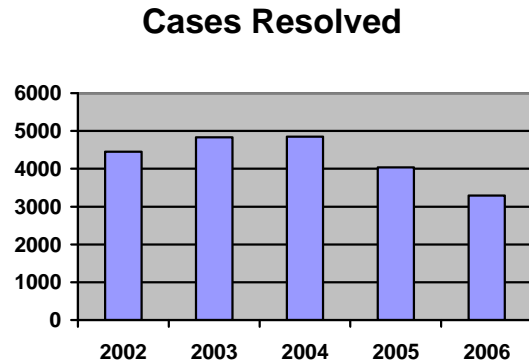


# 2006 Charts & Graphs (continued)

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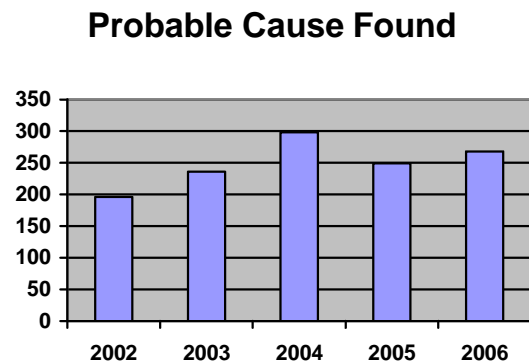
## Cases Resolved

The number of MCAD cases resolved was 3,293 in 2006. This number is slightly higher than the number of cases filed.



## Probable Cause Findings

Even though the number of cases closed was significantly lower than in 2005, the MCAD issued 268 Probable Cause findings in 2006.

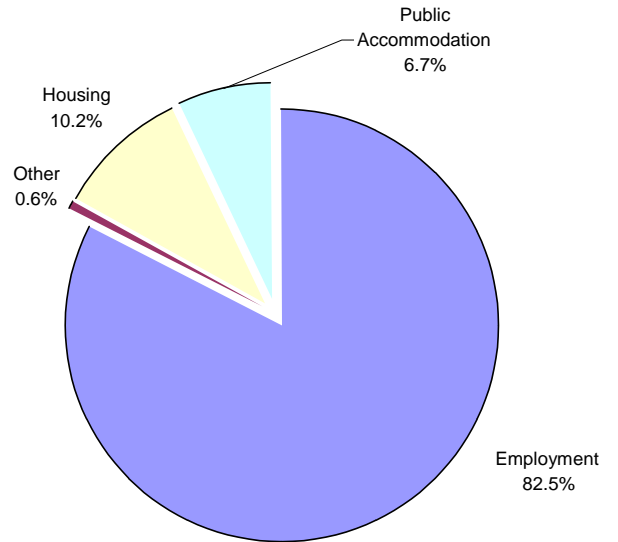


# 2006 Charts & Graphs (continued)

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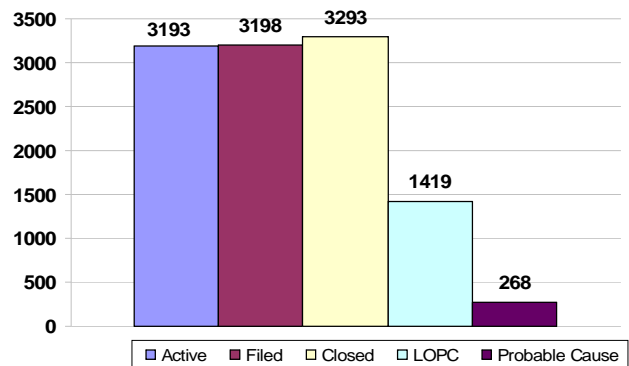
## Complaints by Type

Employment claims remained the highest type of filing at 82.5%. Housing was 10.2% and Public Accommodation was 6.7%



## Case Detail for 2006

At the end of 2006, there were 3193 active cases. During this year, 3298 cases were filed, 3293 were closed, we found Lack of Probable Cause in 1419 cases, and Probable Cause in 268.

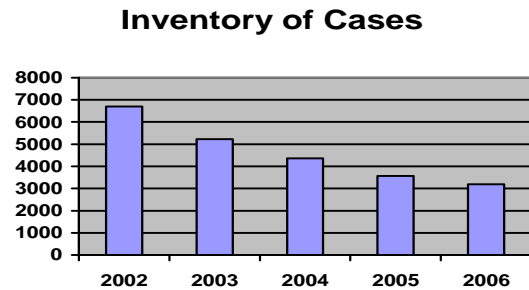


# 2006 Charts & Graphs (continued)

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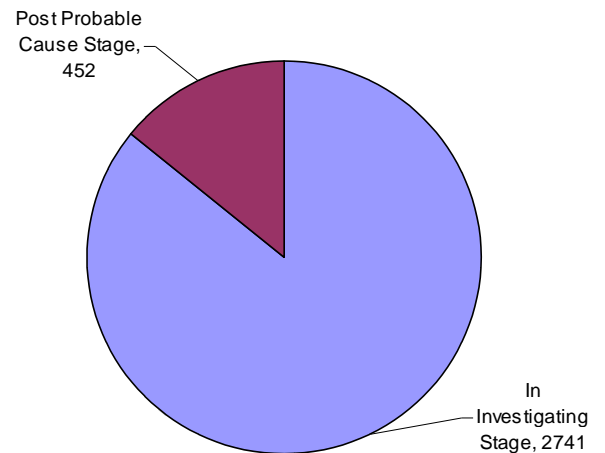
## Case Inventory

The case inventory, as shown here, continued to decrease in 2006, to just under 3,200 cases.



## Inventory by Stage

Of the 3193 cases in inventory at the end of 2006, 452 were post-Probable Cause and 2741 were still under investigation.

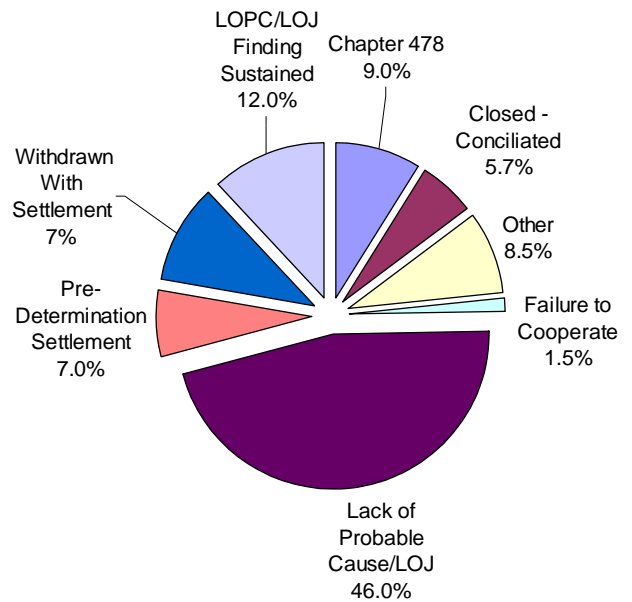


# 2006 Charts & Graphs (continued)

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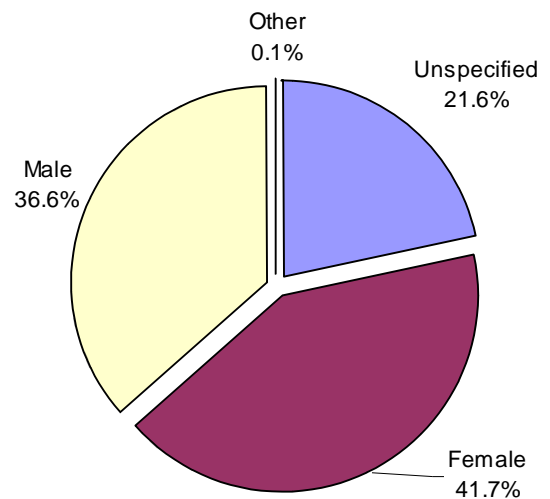
## Cases Closed Before Public Hearing

This is the breakdown of cases that were closed prior to reaching public hearing.



## Cases By Gender

Of the cases filed in 2006, nearly 42% were by females, nearly 37% by males, and nearly 22% were unspecified.







**MCAD BUDGET**  
**For Fiscal Year 2006**  
**July 1, 2005 – June 30, 2006**

Budgetary Direct Appropriations:

State Appropriation

1150-5101	\$1,665,012
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Retained Revenues:

HUD and EEOC Revenues for Closing Cases

1150-5105	\$2,467,982*
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Training

1150-5116	\$ 14,089
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Total	\$2,482,071
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Revenues:

HUD	\$ 625,006
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EEOC	\$1,719,000
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Training	\$ 14,089
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Total	\$2,358,095
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MCAD Budget:

State Appropriation	\$1,665,012
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Retained Revenues	\$2,358,095
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Total	\$4,023,107
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\* This account is a retained revenue account allowing the MCAD to retain and spend revenues from HUD and EEOC. The account is capped at \$2,467,982; allowing the MCAD to retain and spend only up to this amount. Any revenues received in excess of this amount are deposited in the general fund. The MCAD cannot spend more than the monies it receives.



**MCAD BUDGET**  
**For Fiscal Year 2007**  
**July 1, 2006 – June 30, 2007**

Budgetary Direct Appropriation:

State Appropriation

1150-5102	\$2,313,830
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Retained Revenues:

HUD and EEOC Revenues for Closing Cases Private Sector and State Agency Trainings Fees from Public Record Requests & Copying 1150-5106	\$1,901,000*
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Training: Train the Trainer 1150-5116	\$ 14,089
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Total	\$4,228,919
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Revenues collected to date (2/23/07):

HUD	\$ 677,740
EEOC	\$1,095,950
Training: Train the Trainer	\$ 65,799
State Agency Trainings	\$ 7,550
Private Sector Trainings	\$ 17,690
Fees from Public Record Requests & Copying	\$ 8,218

Total	\$1,872,947
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MCAD Budget to date:

State Appropriation	\$2,313,830
Retained Revenues	\$1,872,947

Total	\$4,186,777
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\* This account is a retained revenue account allowing the MCAD to retain and spend revenues from HUD and EEOC. The account is capped at \$2,467,982; allowing the MCAD to retain and spend only up to this amount. Any revenues received in excess of this amount are deposited in the general fund. The MCAD cannot spend more than the monies it receives.