

**Testimony of Carmelyn P. Malalis
Commissioner and Chair
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
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Good afternoon, Chairperson Eugene and members of the Committee on Civil and Human Rights. Thank you for convening this afternoon's hearing. My name is Carmelyn P. Malalis, and I am the Commissioner and Chairperson of the New York City Commission on Human Rights ("Commission"). Today I am joined by Brittny Saunders, Deputy Commissioner for Strategic Initiatives, and Lauren Elfant, my Chief of Staff.

February marked my third year as Commissioner and Chairperson at the Commission, and I am excited to be with you today to share some of what we've accomplished over the course of 2017. In a year that saw the City, like jurisdictions across the country, attempting to orient itself to a new and troubling federal reality, I am happy to report that the Commission has continued to build upon its legacy of leadership in civil and human rights, and has fought, every day, to meet the challenges of our times.

Note that I am focusing my comments – unless otherwise noted – on the Commission's work and accomplishments during calendar year 2017, consistent with our testimony in prior budget hearings. With the enactment of Local Law 63 of 2018, which passed on December 19, 2017, the Commission is transitioning to reporting on a fiscal-year basis, in line with the Mayor's Management Report. Though we are not required to publish a report during this transition period, we are in the process of developing one in an effort to showcase all that my dedicated staff has accomplished by working with different communities throughout the City in 2017.

Staff and Personnel

Thanks to the support of the Administration and the Council, the Commission has nearly tripled its headcount. This is thanks to the investments that the Administration and Council have made in our agency, most recently with the base-lined investment in the FY 18 Adopted Budget of just over \$1.8 million to expand our law enforcement capacity and \$750,000 to support the agency's critically important communications efforts. We are immensely grateful for these investments.

When I began my tenure in February 2015, we had a headcount of 56. As of today, the Commission has a headcount of 156 with 145 of these lines currently occupied. I am pleased to note that as we have hired into these positions, there have been many people dedicated to fighting for human rights who are eager to bring their experience and talents to the Commission. Some applicants approach the work from a very personal place, as they come from communities or families that have experienced discrimination or harassment firsthand. Others come from careers demonstrating a deep commitment to inclusion, and fostering dignity and respect amongst the City's most vulnerable communities. Still others are using the skills they developed within the private sector or other spaces to answer the call to public service now, at this time when the responsibility for protecting vulnerable communities is falling more heavily upon the

shoulders of local government. As a result, most of our new staff are themselves representative of the communities we have been reaching out to or come with well-developed relationships to those communities. Across the agency, our staff speak more than 35 languages, up from six just three years ago and are well positioned to work closely with impacted communities.

As noted above, we were thrilled to receive funding for 26 new lines as part of the Fiscal Year 2018 Adopted Budget. Those additional lines are allowing us to expand our general case management capacity in LEB as well as to create new units dedicated to streamlining intake, addressing discrimination on the basis of lawful source of income, investigating discriminatory harassment reports more expeditiously, and handling alleged violations of the Fair Chance Act.

The Law Enforcement Bureau

In 2017, inquiries from members of the public to the Commission continued to increase. Front line staff, fielded 9,772 inquiries via e-mail, phone calls and letters over the course of the year. Since 2015, the number of inquiries the agency receives annually has increased by nearly 85% (from 5,296 in 2015 to 9,772 in 2017). This includes 888 inquiries communicated in 18 languages other than English. The Law Enforcement Bureau (“LEB”) filed complaints in 747 cases alleging a range of discriminatory practices. Fifty percent (50%) of those cases were in employment and thirty-five percent (35%) were in housing. Disability-related claims were the most common protected class implicated, with twenty percent (20%) of claims residing in that category. Race discrimination was the next most common claim at sixteen percent (16%), with gender following at thirteen percent (13%) and national origin at ten percent (10%).

Strengthening the Commission’s capacity to undertake affirmative investigations has been a priority since my appointment in 2015. With recent shifts in civil rights enforcement and a retreat from the ethos of inclusion at the federal level, our focus on affirmative investigations at the local level is as important as ever. LEB is empowered to open such investigations into violations of the City Human Rights Law through information provided anonymously by members of the public or when the media or community stakeholders report information about general trends of discrimination. In 2017, the Commission initiated 450 Commission-initiated investigations into potential violations, an increase from 426 in 2016. As in the previous year, the greatest number of Commission-initiated investigations – 228 – were in the area of employment, and within that category, Fair Chance Act protections were the most frequently raised. Commission-initiated investigations into housing were the next most common, with 203 investigations in this area, and the overwhelming majority focused on discrimination on the basis of lawful source of income. Where Commission-initiated investigations into public accommodations were concerned, the most frequently implicated protected class was disability.

The Commission has also deployed its enforcement resources to address blatant acts of discrimination and harassment by those who have been emboldened by the recognized emergence of white supremacy in our national discourse. Such was the case last August, when the Commission announced an investigation into allegations of tenant harassment at a Queens building where Nazi and Confederate imagery, swastikas and other hate symbols had been displayed in the lobby. The investigation followed reports from a Council member’s office that

tenants and condo owners were being subjected to a hostile environment and tenant harassment by their property manager. In launching this investigation, which was resolved by February of this year, the Commission sent a powerful signal that discrimination and harassment would not be tolerated.

Testing remains an important investigative tool for LEB, allowing the Bureau to understand whether landlords, real estate brokers, restaurants, stores, hospitals and other public accommodations treat individuals differently on the basis of their membership in a protected class. In 2017, LEB performed 577 tests, compared to the 557 that were conducted the previous year. In 2017, 335 tests were conducted to investigate discrimination on the basis of conviction or arrest record, race, or salary history in the area of employment. In the housing context, 206 tests were carried out to investigate discrimination on the basis of source of income, race, presence of children, disability and immigration status. And in the public accommodations context, 36 tests were carried out to investigate discrimination on the basis of disability or gender.

Another priority of the Commission in the last three years has been establishing the agency as an equivalent venue for justice to state or federal court. As I have noted in the past, doing so required raising the standard for investigations, conducting in-depth investigations to identify pattern and practice violations, and obtaining respondents' full compliance with all areas of the City Human Rights Law. The Commission also remains committed to ensuring that complainants' recoveries, through settlement, conciliation, or litigation, are equivalent to what they would receive if they chose to litigate their claim in state or federal court. As a result, LEB in some cases chooses to hold cases open longer to garner a broader impact. This has caused the case processing time to slightly increase from 536 days in 2016 to 581 days in 2017. This average time reflects the fact that the Commission continued to see an increase in reporting from the public for the second year in a row. At the same time, LEB continued its approach of conducting in-depth investigations into discrimination to ensure entities were fully complying with the City Human Rights Law, spending more time reviewing policies and interviewing witnesses and victims to determine whether there were additional violations. Notably, the Commission closed significantly more cases in 2017 than in previous years—609 cases--up from 436 in 2016 and 354 in 2015.

The Community Relations Bureau

The Commission's Community Relations Bureau ("CRB") is charged with cultivating understanding and respect among the City's many diverse communities. At a time when the forces of hate and division seem to be disturbingly empowered, CRB is working to counter these forces through education, outreach and relationship building. Our CRB Community Service Centers ("CSCs"), located in all five boroughs, work actively with local communities, community leaders, community boards, houses of worship, elected officials, small businesses, community-based organizations, and schools to provide vital know-your-rights and know-your-obligations information. CRB hosts quarterly trainings and workshops in our CSCs and strives to deliver programming and services that reflect the needs of the surrounding communities. In 2017, Commission's newly formed Bias Response Team responded to 86 bias incidents,

primarily arising from incidents of targeting based on perceived gender identity and religion. The Bias Response Team contacted victims to inform them of their rights, provided instructions on how to file complaints, and engaged in community-based actions, including literature drops, local events and days of action. Instances of Bias Response Team intervention reflect the disturbing trends we have all observed in recent years. For example, the team responded to tenant harassment in Queens. It conducted workshops for Bronx Community Board 7 in the wake of anti-Semitic incidents at a local institution. The team also provided our Know Your Rights training at an Islamic Center in Bay Ridge following an incident of Islamophobic vandalism.

The Commission has also developed programming that is responsive to bias incidents, racism, and xenophobia. In 2017, racial justice emerged as an important focus for some of these efforts. In May, for example, after an immigrant street vendor from Burkina Faso was brutally assaulted in the South Bronx, the Commission hosted its first annual forum for African immigrant communities at the Metropolitan College of New York. CRB staff educated participants about their rights under the City Human Rights Law, and over 20 community-based organizations and City agencies were on hand to provide information on government resources and legal protections for African immigrants. The Commission also hosted a series of events focused on racial justice. These included a panel discussion on the impact of gentrification in Bed-Stuy, a mobile legal services clinic at a neighborhood church in Bed-Stuy, and a community response effort that included providing know-your-rights information and legal screenings to Brooklyn community members following reports of racial discrimination in a local restaurant. In Harlem, we have begun partnering with community-based organizations with a similar focus in order to identify how the Commission's outreach and enforcement resources can support community residents. We look forward to even deeper engagement in Bed-Stuy, Harlem and other parts of the City in 2018 as part of our racial justice efforts.

CRB also has an important role to play in the Commission's efforts to combat housing discrimination. In 2017, the agency continued to educate housing providers and community groups on their rights and obligations under the law, offering 263 fair housing workshops and presentations and hosting its fifth annual Fair Housing Symposium at Hostos College in the Bronx. Commission staff provided our Know Your Rights workshops to over 200 tenants, advocates, service providers, attorneys, and tenant organizations with a special focus on combating lawful source of income discrimination. As is our practice, we also brought our Law Enforcement Bureau's mobile intake lawyers to this community event, ensuring attorneys were on site to address questions and take housing complaints on the spot from attendees.

CRB's Project Equal Access ("PEA") is central to the agency's efforts to address discrimination faced by individuals with disabilities. PEA identifies barriers to accessibility in housing, workspaces, and public accommodations, resolving them prior to intervention by LEB. In situations where immediate intervention – rather than going through a litigation process – allows people to engage in basic life functions, like leaving one's home, PEA is invaluable. PEA staff regularly conduct workshops and engage in collaborative discussions with relevant parties to address accessibility issues and encourage quick resolutions. In 2017, PEA successfully negotiated 216 modifications across the City. These included accessibility improvements like the

addition of ramps and automatic door openers in restaurants and apartment buildings, the creation of accessible supermarket checkout lanes, and the addition of lifts in medical facilities. As a result of PEA's work, not only are access issues addressed on a faster timeline, but cases are diverted from the LEB pipeline saving valuable enforcement resources.

Office of the Chairperson

In the three years since I established the Office of the Chair, it has grown into a critically-important department. It is the point of contact for the Commission's inter-agency and external partnerships; it negotiates legislation and promulgates rules and legal guidance; it convenes our appointed Commissioners on a quarterly-basis; and serves the Commission's adjudicatory functions, including issuing decisions and orders. Increasingly, the Office of the Chair has been responding to legal inquiries from the public regarding the Commission's work, often about newly-implemented changes to the law.

Building upon its work in the last two years, the Office of the Chair was intensely active in 2017. The Commission issued new rules on the Fair Chance Act, which requires employers to consider an applicant's qualifications and extend a conditional offer of employment before inquiring into their criminal history, and new rules on the Stop Credit Discrimination in Employment Act, which prohibits consideration of an applicant's credit history for most jobs in New York City. Both sets of rules represent the first substantive rulemaking by the Commission in decades.

In 2017, two new protections were added to the City Human Rights Law. As of October 31, 2017, the law prohibits employers from asking job applicants about their salary history during the hiring process. To provide transparency on the Commission's enforcement of the new provision, we issued an FAQ and materials advising applicants and employers of their respective rights and obligations under the law. Consistent with the Commission's commitment to transparency and public education, the agency also convened a roundtable with employers and met with hundreds of employment lawyers to help inform the City's employers and business communities about the law's new salary history protections. Also, in partnership with the Department for Veterans' Services, the Commission published educational materials to inform the public about new protections for current and former members of the military against discrimination in employment, housing, and public accommodations, which went into effect on November 19, 2017. The Office of the Chair also provided guidance about preexisting protections that frequently impact veterans, including protections based on disability and lawful source of income.

I am especially proud of the efforts the Commission has made this year to both drive and be responsive to the public dialogue on civil and human rights. One such effort was another project coordinated by the Office of the Chair, the Commission's 2017 survey of Muslim, Arab, South Asian, Jewish and Sikh New Yorkers, which was conducted at a time when reports of hate and bias-based attacks against these groups were on the rise. The agency collected data from members of these communities across the five boroughs in order to understand their experiences with discrimination, bias, and bias-motivated harassment and violence. More than 3,000 New Yorkers completed the survey, which was available in Arabic, Bengali, English, French, Hindi,

Punjabi, Russian, Urdu, and Yiddish, among other languages. The data collected will inform a report to be published in 2018. Our hope is that the recommendations therein will inform the Commission and other City agencies about how to better address and combat bias-motivated harassment, discrimination, and violence against Muslim, Arab, South Asian, Jewish, and Sikh communities in New York City.

Months before the #MeToo movement achieved its current prominence, the Office of the Chair began planning a public hearing on sexual harassment in the workplace. On December 6, 2017, the Commission convened the citywide hearing, which was the first Commission hearing on gender discrimination since one of my predecessors, now-Congressperson Eleanor Holmes Norton, held the country's first public hearings on sexual harassment in the workplace over forty years ago. The December hearing furnished an opportunity for workers, advocates, and activists from a wide range of industries – among them construction, fashion, media, domestic work, tech, finance, hospitality, and others – to speak about the harassment and discrimination they or others in their fields have experienced. People also testified regarding the challenges—whether related to byzantine policies, unsupportive employers or outright retaliation – involved in addressing the behavior. The Commission heard testimony from some of New York City's most vulnerable workers, including women in male-dominated industries, women of color, immigrant workers, low wage workers, workers in isolated workspaces, and LGBTQ workers. We also continued to receive written testimony through the end of the year. The agency is currently analyzing all the submissions and this analysis will form the basis for a report and policy recommendations that will be released later this year.

The Commission published seven Decisions and Orders after a hearing in 2017. These cases involve gender discrimination and retaliation in employment, lawful source of income discrimination in housing, disability-based discrimination and harassment among other issues. In these Decisions and Orders, we have mandated tens of thousands of dollars in damages as well as fines and civil penalties. We are proud of the role that each of these findings plays in reinforcing that discrimination and harassment will not be tolerated by the Commission.

Communications and Marketing

In 2017, the Office of Communications and Marketing (“OCM”) at the Commission worked to amplify not only the work of the Commission but the values that distinguish this city. In 2017, the Commission garnered some 700 earned media hits (publicity gained through promotional efforts other than paid media advertising) across print, online, TV, and radio. This is nearly double its press coverage from 2016. OCM has managed to do this while also prioritizing reaching vulnerable New Yorkers who need our resources most. In 2017, almost half of all press hits (358) were in ethnic and community media providing accessible means for New Yorkers to learn about their rights, regardless of language, religion, or national origin.

In 2017, we built upon our previous experience fielding compelling, timely campaigns such as #BeYouNYC and #IAMMuslimNYC to launch a new effort. In June, the Commission launched a citywide anti-discrimination campaign, “You DO Have the Right NYC,” to affirm every New Yorker's right to live, work, and pray free from discrimination and harassment. The campaign,

which was accompanied by the hashtag #YouHaveRightsNYC, helped to further establish the Commission as a venue for justice for three target audiences: New Yorkers of faith, people of color, and immigrants. These target audiences were selected based on data from complaints and bias-based incidents occurring across the City. With powerful eye-catching imagery and text, the campaign conveyed a simple yet powerful message: no New Yorker deserves to be subjected to discrimination or harassment and those who do, can count on the Commission for support. Over the course of the six-week campaign, more than 3,400 placements were made citywide. Advertisements appeared in 25 ethnic and community newspapers and radio stations, and 77 million impressions generated through online and outdoor media. Campaign videos garnered nearly a million views on Facebook, Hulu, and YouTube.

The Commission has continued its focus on investing in New York City's rich ethnic and community media outlets. Through these outlets, the Commission provides essential information to our City's most vulnerable and hard-to-reach communities. In 2017, 100% of our radio and print advertising budget was either in community or ethnic media. The Commission regularly produces and places advertisements on its initiatives and programs in ethnic media and social media in various languages other than English including Arabic, Spanish, Chinese, Korean, and Urdu.

The Office also played an instrumental role by developing and disseminating materials to educate New Yorkers about changes to the City Human Rights Law, including the ban on salary history inquiries and protections for members and veterans of the uniformed services.

Budget

The Commission's annual budget for Fiscal Year 2018 was \$14,856,979 in City tax-levy money and grants, and approximately \$350,000 in additional grant funding through a contract with the EEOC pursuant to our workshare agreement. The Mayor's Preliminary Budget (tax-levy) for Fiscal Year 2019 provides for a budget of \$14,137,300.

As I review our accomplishments in 2017, I am extremely proud of both the good we have been able to do in the service of the people of New York and the ways in which we have strengthened an agency consistent with its legacy. With the support of the Administration and the Council, we have demonstrated the power of strategic enforcement, as well as the flexibility to dynamically adjust to the changing political environment. We have expanded and deepened our relationships with New Yorkers and their understanding of their rights and obligations to one another. We have leveraged the agency's policymaking capacity and partnered with our sister agencies and offices for deeper impact and we have lifted our voices across a variety of platforms to stand up for the values that make this city great. While our current landscape is a challenging one, I am grateful to this work each day and deeply appreciate your continued partnership.

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Thank you for convening this hearing, and thank you for your support of the Commission as we continue to rebuild and reinvigorate it. I look forward to your questions.