

**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 morning, Chairperson Eugene and members of the Committee on Civil and Human Rights. Thank you for convening today'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 Brittany Saunders, Deputy Commissioner for Strategic Initiatives, and Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy.

February marked my four-year anniversary as Commissioner and Chairperson at the Commission, and I am, as always, proud to share some of what we've accomplished at the Commission in the past year. Our commitment to holding up and supporting communities under relentless attack by white nationalists or under federal policies only deepened in 2018. We continue to be steadfast in our work to protect the rights of all New Yorkers, especially the most vulnerable, in this deeply troubling climate.

Before I begin, I note that the information I am reporting on, unless otherwise noted, focuses on Fiscal Year 2018. Unlike previous budget hearings when my comments were focused on a prior calendar year's work, I am focusing my comments this year on *fiscal year* information pursuant to Local Law 63, which was passed in 2018 and required the Commission to transition from a calendar year reporting cycle to a fiscal year reporting cycle consistent with the Mayor's Management Report.

Staff and Personnel

As of today, the Commission has a headcount of 157, with 146 lines currently occupied. I am incredibly proud of the staff that have joined the agency, people who share our commitment to serve, foster connections to, and support the most vulnerable communities in New York City, and are committed to upholding the dignity and respect of all New Yorkers. As I have mentioned in prior years, our staff continues to be representative of many of the communities in New York City that are vulnerable to human rights abuses. We are a small but diverse staff, and speak 35 languages across the agency.

The Law Enforcement Bureau

In Fiscal Year 2018, the Commission fielded 9,513 inquiries, in the form of phone calls, emails, letters, visits to Commission offices, and queries to mobile intake units dispatched to community sites or Commission events. The number represents a nearly 100% increase since 2014, when the Commission received 4,975 such inquiries. This includes 896 inquiries communicated in 17 languages other than English. The Commission increased its efforts to intervene in appropriate situations before filing a complaint in order to provide an immediate response and prevent future

harm. To expand the Commission's work in this area in Fiscal Year 2018, our Law Enforcement Bureau launched its Early Intervention Unit, which assists members of the public with issues that may be resolved quickly without filing a complaint. The newly created Source of Income Unit, which I will discuss a bit later, also fulfills this role. In Fiscal Year 2018, LEB resolved 141 cases without filing a complaint, a steep increase from calendar years 2017 (47 cases), 2016 (30 cases), and 2015 (13 cases), significantly reducing the time it takes to get to a resolution than if the complaining party filed a complaint.

As my colleague, Dana Sussman, previously testified earlier this year, the Commission has significantly expanded its Commission-initiated investigatory work. In Fiscal Year 2018, Commission-initiated investigations covered 25 different protected categories, including claims of retaliation and interference with protected rights. The agency launched 583 Commission-initiated investigations in Fiscal Year 2018, a significant increase over 450 such investigations in calendar year 2017, and 426 in calendar year 2016.

As many of you know, the Commission uses testing as an investigative tool to confirm whether there is discrimination in housing, employment, or public accommodations. As part of an investigation, the agency may send testers to potential employers, landlords/real estate brokers, restaurants, hospitals, stores, or other public accommodations to see if our testers are treated differently or are given different information because they belong to a protected class. This is an historically effective tool used in civil rights litigation. In Fiscal Year 2018, Commission testers tested 691 entities, an increase over calendar year 2017 in which the testers performed tests on 577 entities, and over 2016, when the Commission performed 426 tests.

The Law Enforcement Bureau ("LEB") filed 751 complaints in Fiscal Year 2018 arising from allegations of discrimination, an increase over 747 complaints filed in calendar year 2017. Fifty percent (50%) of those cases were in employment and thirty-six percent (36%) were in housing. Disability-related claims were the most common (18%). Race (15%), gender (11%), and national origin (10%) were the other highest trending claims.

A priority of the agency under my leadership has been to establish the Commission as an equivalent venue for justice to state or federal court. This has been no small effort. It has required that the agency raise its standard for investigations, conduct in-depth investigations to identify pattern-and-practice violations, and obtain 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. More thorough investigations and awards equitable to those in civil actions has translated into more real changes in policy and practice throughout New York City, as well as New Yorkers receiving real relief for damages suffered because of discrimination. It should not be the case that you get discount justice at the Commission because you are low income or have less resources than people resourced enough to file in court. Discrimination is discrimination; the amount someone suffers should not be valued less in different venues. We have been doing a lot to change that. What it has also meant, however, is that increases in recoveries have accompanied increases in case processing time, so that increased from 468 days in Fiscal Year 2017 to 553 days in Fiscal Year

2018. Knowing that prolonged justice, however, sometimes means an undercutting of justice, the Commission continues to explore different mechanisms to bring that time down. The positive effects from LEB's investment in cases are undeniable as is clear by looking at the increases in the amount of monetary recoveries and civil penalties ordered by the Commission. In Fiscal Year 2018, the Commission ordered the payment of \$4,272,562 in combined civil penalties and compensatory damages, up significantly from previous years (\$2,666,695 in 2017, \$1,452,136 in 2016, and \$1,351,984 in 2015). In Fiscal Year 2018, 125 cases involved an award of compensatory damages (\$3,785,312) and 35 cases concluded with orders directing the payment of a civil penalty (\$487,250) to the General Fund of the City of New York. Eleven cases involved both. This represents an average compensatory award of \$30,282, higher than any prior year.

The Commission transformed its Office of Mediation and Conflict Resolution ("OMCR") in early 2017, continuing to develop the Commission's voluntary mediation program. Mediation at the Commission had been effectively discontinued in the last administration. Since mediation provides a neutral and empowering process for all parties to facilitate a quick, efficient, and mutually acceptable resolution of claims, all at no cost, I resurrected the program when I started at the Commission, and in the past four years, we have continued to develop it. OMCR is staffed by a Director and a Mediation Coordinator. In Fiscal Year 2018, the OMCR Director successfully mediated 26 cases to resolution – the highest in this category since 2009 – representing, in the aggregate, \$1,415,775.12 in damages and penalties, excluding non-economic terms such as agreements to provide reference letters and conduct trainings.

I want to highlight a couple of areas of increased enforcement at the Commission. The Law Enforcement Bureau continues to see an increase in workplace gender-based discrimination claims. In Calendar Year 2018, the Commission filed 113 cases of gender-based discrimination in the workplace which include a harassment claim. Fifty-six (56) such cases were filed in Calendar Year 2017, representing a doubling of gender-based harassment claims in a single year. The Commission launched its Gender-Based Harassment Unit, with dedicated staff able to triage cases and move more quickly to respond. Where there are reports of egregious or ongoing harassment, the unit has intervened quickly to gather further information, preserve and obtain evidence, or obtain remedial action where appropriate.

The Source of Income Unit launched in January 2018. In Calendar Year 2018, the SOI unit completed over 70 successful pre-complaint interventions which resulted in either finding homeless and housing unstable New Yorkers housing or keeping a tenant at risk of eviction in place, and has achieved about 60 additional successful interventions in the first three months of 2019 alone. This marks a dramatic increase over 2017, in which 12 such interventions were achieved. With respect to filed complaints alleging SOI discrimination, the SOI unit closed 100 cases in Calendar Year 2018, compared to 51 in Calendar Year 2017. To address the most critical emergency cases, the SOI unit designated staff to, in appropriate circumstances, work with individuals within one hour of denial from housing to gather information necessary to intervene before the apartment was rented to another applicant. This small team is working around the clock to respond as quickly as possible when individuals come forward with

immediate discriminatory denials, and since February 2018 has obtained housing opportunities for approximately two dozen homeless or housing unstable families. The SOI unit has also done extensive outreach and training with housing providers, homeless prevention advocacy groups, Housing Court Judges and attorneys, and real estate brokers.

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. This mandate is particularly vital today, as forces that espouse hate and seek to divide us have been given a platform and a mantle at the national level. In the wake of the presidential election in 2016, the Commission relaunched its Bias Response Team, an initiative with its origins at the Commission in the 1990s, in which Commission staff respond to publicly reported incidents of discrimination, harassment, and bias by, where appropriate, contacting the victim to inform them of their rights, providing instructions on how to file complaints, and engaging in community-based actions, including meetings with local leaders, days of action, literature dissemination, and other creative responses. In Fiscal Year 2018, the Bias Response Team responded to 146 bias incidents – a greater than 200% increase compared to the previous fiscal year.

The Commission is also deepening its engagement with Black communities across the City in its efforts to combat race discrimination, both discrete and systemic, and we are using every tool at our disposal. Through the agency's Community Relations Bureau, the Commission has hosted several community conversations and events in 2018 focusing on bringing communities together to discuss, acknowledge, and provide a space for community healing and reconciliation in the face of racial tensions. For example, after a widely-publicized incident in Brooklyn's Flatbush neighborhood, in which a white woman accused a young Black boy of groping her in a bodega when surveillance footage later revealed that his backpack had inadvertently brushed up against her, the Commission immediately galvanized its resources and community partners in order to provide a strategic response.

Within just a few days' time, the Commission hosted a community-focused listening session, which provided a space for Flatbush residents, community leaders, and racial justice experts to share concerns pertaining to gentrification and white neighbors' weaponization of law enforcement against them in their neighborhoods. This community convening loosely replicated a model the Commission has employed for similar events held in Harlem and Bedford-Stuyvesant in the past two years.

Additionally, the Commission recently developed a City Human Rights Law workshop on race and color discrimination, which provides education on the history of structural and institutional racism in New York City, a contemporary history of white nationalism and racial justice movements in the City, and tools for dismantling racism and white supremacy. While the workshop was developed for the benefit of City employees and is now being offered to City agencies, the Commission has offered the workshop to select audiences upon request since January 2019.

The Commission further expanded its work addressing lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights work in Fiscal Year 2018 as a core agency partner of the First Lady's initiative, the Unity Project, partnering with DOHMH and the Mayor's Center for Faith and Community Partnerships to launch the Unity Project Faith Network – a group of LGBTQ-affirming faith leaders, houses of worship, and community-based organizations that are committed to providing resources for leaders and houses of worship. The Commission hosted an LGBTQ Youth and Family Resource Fair at the LGBT Center during Pride Month to provide necessary resources and support to parents and families, with over thirty organizations participating in the event. The Commission also partnered with DOE to launch new programming with LGBTQ youth by working with schools' Gender and Sexuality Alliances to hold roundtable conversations regarding discrimination, harassment, and bullying experienced by LGBTQ youth and provide youth with resources to support safe and more welcoming school environments. The program was piloted in six DOE schools last year and is expanding this year. CRB conducted 139 workshops and outreach activities for nearly 3,000 attendees with LGBTQ community members, including our Second Annual LGBTQ Community Iftar and co-sponsoring an LGBTQ Eid Al Adha celebration, and conducting over fifty workshops on fostering transgender and gender non-binary inclusion for thousands of City employees.

I could go on about the Community Relations Bureau's work educating the public on their housing rights, including their protections against source of income discrimination; negotiating with landlords to obtain disability accommodations for tenants; and leading peer mediation sessions and convening youth-led town halls, among other activities the team does on a daily basis, but I know my time is limited. I encourage you to read further about this work in our Fiscal Year 2018 Annual Report.

Office of the Chairperson

I established the Office of the Chair early in tenure to centralize and expand the agency's policy, legislative, rulemaking, adjudicatory functions and implement major Commission projects. Fiscal Year 2018 was another busy year for this small team. The Office serves as the point of contact for the Commission's inter-agency and external partnerships; it negotiates legislation and promulgates rules, legal enforcement guidance, and other outward facing materials providing clarity and interpretation of new provisions of the City Human Rights Law; it convenes our appointed Commissioners on a quarterly basis; and it serves the Commission's adjudicatory functions, including ruling on appeals of decisions from the Law Enforcement Bureau and issuing final decisions and orders in Commission cases. The Office is also regularly engaging with members of the public, including business interests and advocates alike, on the implementation of new laws.

In spring 2018, the Commission published a report on workplace sexual harassment, a follow up to our public hearing in December 2017, with a launch event with the First Lady at Gracie Mansion. The report included policy recommendations and best practices, informed by the testimonies taken at the hearing by the brave individuals who came forward to testify and share their stories and the stories of their clients. The Commission is implementing many of the laws passed last year as part of the Stop Sexual Harassment in NYC Act, including a new notice and

posting requirement, the expanded statute of limitations for gender-based harassment claims, and the reduction in the four-employee minimum for gender-based harassment claims.

In addition, one week from today, on April 1, pursuant to Local Law 96 of 2018, the Commission will launch a first of its kind in the nation online, interactive anti-sexual harassment training for employers to use to meet the new annual anti-sexual harassment training requirement for their staff. The training will launch in English and Spanish first, and will be published in nine additional languages in the coming months. The agency has worked closely with the Mayor's Office for People with Disabilities to ensure it is accessible for people who are blind, with low vision, deaf, hard of hearing, and who have limited mobility, and it will be optimized for use on smartphones. The Commission's dedicated sexual harassment webpage on its website will be updated to house this training and extensive information on how employers can meet the new training requirement. The Commission has worked closely with our state counterparts to ensure the training meets state anti-sexual harassment training requirements as well, so we anticipate that millions of workers, across New York City and even New York State, will be using this training.

The Commission has also focused extensively on issues related to pregnant, breastfeeding, and caregiving workers. In January of this year, in partnership with Commission on Gender Equity and the Department of Health, the Commission held a Citywide public hearing on the topic and will be publishing a report later this spring. The Commission is currently implementing new amendments to the City Human Rights Law that create additional requirements for lactation accommodations. As part of this implementation, the Commission published three model policies and a model request form for employers to use to develop lactation policies and key informational materials and resources including extensive frequently asked questions to help provide employers and employees with the information they need to understand both obligations and rights under the City Human Rights Law.

As you might have heard, the Commission recently published new legal enforcement guidance on race discrimination based on hair, defining discrimination on the basis of natural hair and hairstyles, which disproportionately impact Black people, under the City Human Rights Law. The Commission was motivated to tackle this issue after seeing heartbreaking footage from across the country of children being turned away from school, or forced to cut their hair, because their hair did not conform to white, Eurocentric notions of neatness or professionalism. And the Commission has at least seven such cases in which employers have discriminated against individuals because of their natural hairstyles. While federal courts have held under federal civil rights law that such policies are not discriminatory, no court has interpreted the City Human Rights Law in such a way, and we felt it important to create a clear and well-reasoned counterposition to that legal theory. It is our hope and expectation that other jurisdictions will use the guidance as a roadmap to a similar legal conclusion. The guidance made national and international news, and confirmed for us that this was an issue passionately and deeply felt by many, and we are hopeful the Commission's position – that policies that ban natural hair, or hairstyles like locs, braids, twists, fades, and Afros, are racist, plain and simple – will be replicated elsewhere.

As I mentioned earlier, the Commission is confronting anti-Black racism in a multitude of ways, including through a new artistic partnership. In Fiscal Year 2018, the Commission was pleased to announce its Public Artist in Residency with Department of Cultural Affairs and artist Tatyana Fazlalizadeh, a muralist who created Stop Telling Women To Smile, a street art project aimed at confronting misogyny and street harassment. Tatyana's residency with the Commission focuses on art addressing anti-Black racism and sexism, informed by community conversations facilitated by the Commission and community-based organizations, and she installed her first piece of her residency at Bronx Defenders late last year. Tatyana's residency continues with the Commission through the end of this fiscal year, and she will be installing large-scale murals across the City this spring that center the experiences of Black people, primarily Black women, and their struggles and triumphs navigating an often racist and misogynist society. Art speaks to people in ways that government cannot, and the power of art to shift the conversation is what drew the Commission to Tatyana's work. The Commission is thrilled to partner with such an esteemed artist and looks forward to the completion of her residency.

Communications and Marketing

In Fiscal Year 2018, the Communications and Marketing team significantly increased earned media attention on the Commission's law enforcement efforts, community engagement, public campaigns, and new protections. In Fiscal Year 2018, the Commission earned more than 1,100 earned media hits across print, online, TV, and radio, a 50% increase from calendar year 2017 and early double the press coverage from calendar year 2016. In Fiscal Year 2018, the Office of Communications and Marketing sent 16 press releases, 10 media advisories, four statements, and had two Letters to the Editor published in the New York Times.

We aim to make our Communications and Marketing efforts strategic and impactful with a focus of reaching as many New Yorkers across our City as possible. To that end, 40% of all press hits (440) were in ethnic and community media, and the Commission dedicated 100% of its print advertising to community and ethnic media in several languages, including Arabic, Spanish, Chinese, Korean, and Urdu.

In spring 2018, the Commission unveiled a Citywide, multilingual media campaign to combat sexual harassment in the workplace, "It's Sexual Harassment. Report It. End It." The ads ran in English and Spanish for six weeks, across social media, the LinkNYC network, subway cars, bus shelters, posters placed in communities, and online across various websites – all linking to the Commission's newly-published landing page on sexual harassment. The campaign sought to educate New Yorkers of their rights against sexual harassment and encourage people to report incidents to the Commission, a venue for justice that will investigate their claims, support them, and believe them. The digital campaign garnered over 11.5 million impressions and 30.2k clicks to the landing page, while the outdoor and print elements netted an additional 43.3 million impressions for a combined total of 54.8 million.

And as I hope you are aware, the Commission just launched a six-week Citywide campaign aimed at combatting anti-Black racism. The campaign, which has 1,000 placements across the LinkNYC network, subway cars, bus shelters, posters placed in communities, and in community

and ethnic media, affirms the experiences of Black people who have been targeted for discrimination, harassment, and intimidation while simply going about their day-to-day lives, and puts those who would seek to discriminate, harass, or intimidate Black New Yorkers on notice that bigotry and bias will not be tolerated in New York City.

Budget

The Commission’s annual budget for Fiscal Year 2019 was \$13,949,625 in City tax-levy funds. The Mayor’s Preliminary Budget (tax-levy) for Fiscal Year 2020 provides for a budget of \$14,168,931, which consists of \$11,842,543 in personnel budget and \$2,326,388 non-personnel budget.

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While the past few years have brought many occasions to feel hopeless, disillusioned, and saddened by the relentless attack on civil and human rights by our federal government, the Commission is steadfast in its commitment to serve as an example of what government can be, what it can look like, and how it can serve the most vulnerable communities around us. I am honored to work with Commission staff every day in this work. The Commission continues to build creative strategies, whether it be through policy, law enforcement, or community engagement, to shift the narrative, create dialogue, and change expectations.