

**Written Testimony of Carmelyn P. Malalis  
Commissioner and Chair  
New York City Commission on Human Rights  
March 24, 2020**

My name is Carmelyn P. Malalis, and I am the Commissioner and Chairperson of the New York City Commission on Human Rights (“Commission”). Due to measures to address the COVID-19 pandemic, all City Council budget hearings have been cancelled, and I am submitting written testimony only to share updates with you from the agency. I welcome the opportunity to testify before you in-person later this year. February marked my five-year anniversary as Commissioner and Chairperson at the Commission, and I am, as always, incredibly honored and proud to share some of what we’ve accomplished at the Commission in the past year.

My vision for the Commission is, and always has been, to create a national model of what a local civil rights enforcement agency could be, particularly when the human rights of every vulnerable group in this country are being diminished or ignored by the federal government. The Commission’s work during this political moment, combined with its ever-expanding mandate, have allowed the agency to play a central role in the preservation and expansion of civil and human rights at the local level, while also requiring the agency to be responsive to the shifting needs of New Yorkers as we seemingly go from crisis to crisis. Today, as I did at last year’s budget hearing, I am focusing my comments on Fiscal Year 2019.

### **Staff and Personnel**

As of today, the Commission has a headcount of 160, with 139 lines currently occupied. I am incredibly proud of the staff who 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 over 30 languages across the agency.

### **Law Enforcement Bureau**

In Fiscal Year 2019, the Commission fielded 9,804 inquiries from members of the public, a record high, 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. This includes 826 inquiries communicated in 17 languages other than English. The total number (9,804) represents a nearly 100% increase since 2014, when the Commission received 4,975 such inquiries.

Having launched the Early Resolution Unit in 2018, the Commission continues to expand its work to resolve cases more quickly without having to file a complaint. In Fiscal Year 2019, the Law Enforcement Bureau resolved 396 cases without filing a complaint, more than double the 141 successful interventions in Fiscal Year 2018. The most common pre-complaint interventions

involved lawful source of income discrimination, in which a tenant or prospective tenant was denied an apartment, or the renewal of a lease based on the use of rental assistance (206 interventions), and disability accommodations in housing (160 interventions).

The Commission's authority to initiate its own investigations, without a member of the public filing a complaint, is a critical tool to enforce the human rights law where the agency identifies potential widespread violations or deeply entrenched discriminatory practices. The Commission initiated 72 such investigations and filed 56 Commission-initiated complaints, up from 44 in Fiscal Year 2018.

Testing is also a critical tool that the Commission regularly deploys to determine whether there is discrimination in housing, employment, or public accommodations. As part of an investigation, the agency may send testers to perform in-person testing or have testers conduct telephone testing of potential employers, employment agencies, landlords/real estate brokers, restaurants, hospitals, gyms, 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. In Fiscal Year 2019, Commission testers tested 899 entities, an increase over Fiscal Year 2018 (691 entities tested) and calendar year 2017 (577 entities tested). An entity may be tested for violations in multiple jurisdictions and/or multiple protected classes. The most common areas tested were arrest, conviction, credit, and salary history in employment, source of income in housing, and disability and gender in public accommodations.

The Law Enforcement Bureau filed 785 public-initiated complaints of discrimination in Fiscal Year 2019, up from 751 in Fiscal Year 2018. Sixty-two percent (62%) of those cases were in employment and twenty-six percent (26%) were in housing. Disability-related claims were the most common across all areas of jurisdiction at 17%. Race (15%), gender (15%), and national origin (8%) were the other highest trending claims. As I discussed last year, the Law Enforcement Bureau has worked tremendously hard to ensure that the agency is a true venue for justice, and that recoveries and other affirmative relief are meaningful and represent a full accounting of the harm the discrimination or harassment caused. To that end, in every year of my tenure, the agency has broken records year after year with respect to damages and penalties assessed. And last year was no different. In Fiscal Year 2019, the Commission recovered \$6,094,313 in compensatory damages and civil penalties, the highest in Commission history, and nearly \$2 million more than Fiscal Year 2018 (\$4,272,562) which was the previous highest total. Of that, \$5,306,052 were awarded in compensatory damages to complainants and \$788,261 in civil penalties to the general fund of the City of New York.

I am incredibly proud of the Law Enforcement Bureau's work over the past year but I particularly want to highlight some creative resolutions that reflect the Commission's focus on restorative justice principles, negotiating some of the most impactful case resolutions I am aware of, and changing the landscape of what is possible in civil rights enforcement.

Specifically, following a national outcry over the display and sale of international retailer Prada's "Pradamalia" merchandise in December 2018, the Commission immediately issued a cease and desist letter and launched an investigation into the company, and announced a settlement in

February of this year. A figurine from the collection evoked images of Sambo, a caricature that, over generations, has been used to mock and dehumanize Black people. In lieu of civil penalties, the settlement includes groundbreaking and far-ranging measures requiring Prada to invest in meaningful restorative justice efforts to combat anti-Black racism and promote diversity and inclusion in Prada's business activities, advertising, and products. Prada will: ensure that NYC employees and Milan executives receive racial equity training; develop a scholarship program for people historically underrepresented in fashion; within 90 days, present the Commission with CVs of candidates for a senior, director-level diversity and inclusion officer who will review Prada's advertising and products sold in the United States, as well as review and monitor Prada's anti-discrimination policies; maintain Prada's Diversity and Inclusion Council, launched by Prada in February of 2019, with a minimum of 3-5 members for a period of at least 6 years, with regular reporting by Prada on the council's progress to the Commission; and consult with Dr. Joyce Brown, president of the Fashion Institute of Technology, who sits on the Diversity and Inclusion Council. All of Prada's NYC employees will undergo New York City Human Rights Law training by a licensed attorney with substantial knowledge of antidiscrimination training.

Similarly, on the heels of the Commission's February 2019 landmark legal enforcement guidance making it explicit that discrimination on the basis of natural hair and hairstyles most commonly associated with Black people is, in fact, race discrimination, the Commission announced its first-ever hair discrimination settlement in November 2019. The settlement with Sally Hershberger Salon and Sharon Dorram Color also features investments in communities most impacted by the discriminatory grooming policies imposed by the respondents on their employees. Specifically, the settlement requires that the businesses partner with a NYC-based styling school that specializes in the care and styling of natural hair and hairstyles closely associated with Black people in order to: train current salon employees to cut and style natural hair; and create a multicultural internship program which will provide professional opportunities to hair stylists from underrepresented groups. In addition, an owner and a senior stylist will complete 35 hours of community service with a racial justice organization – to be approved by the Commission – that works to combat hair discrimination and promote Black beauty. The businesses were also mandated by the Commission to complete trainings on racial justice and equity and to identify several experts to provide such trainings. The salon has engaged Dr. Gillian Scott-Ward, psychologist, natural hair advocate, and director of the documentary *Back to Natural*, to lead the trainings. Further, the settlement carries a \$70,000 civil penalty, as well as training on the City Human Rights Law.

These creative, far-ranging, and deeply impactful case resolutions take time to develop, negotiate, and resolve. It would be far easier to seek a nominal civil penalty and end the Commission's engagement with the respondent there. Instead, we thoughtfully engage communities and advocates to best understand what meaningful resolutions would look like, structure them in such a way that ensures communities feel the benefit, and create restorative practices to ensure the conditions that allowed for the discrimination to occur are fundamentally altered such that it minimizes the likelihood that it will ever happen again.

As you may recall, I resurrected the Commission’s Office of Mediation and Conflict Resolution several years ago; it is staffed by a Mediation Director and a Mediation Coordinator. In Fiscal Year 2019, the Mediation Director and her staff successfully mediated 37 cases to resolution—the highest in this category since 2009—representing, in the aggregate, damages for complainants totaling \$1,193,500. The average time from the acceptance of a case in mediation to its closure was 186 days.

## **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. As I mentioned last year, the Commission relaunched its Bias Response Team in late 2016, 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 2019, the Bias Response Team responded to 235 bias incidents, nearly one hundred more than last year, and nearly four times as many as calendar year 2017, its first full year in operation since relaunching. The Commission’s bias response work is tailored to the needs and wishes of the individuals and communities impacted. For example,

- In the fall of 2018, following a series of anti-Semitic incidents in Brooklyn, the Commission’s Bias Response Team launched a multi-pronged approach to engage with the community. The team led a day of visibility in a Hasidic neighborhood on Kingston Avenue in Crown Heights and another in Prospect Heights. The events were organized in partnership with the Mayor’s Office of Immigrant Affairs and Repair the World NYC. Commission staff also handed out over 2,500 flyers at transit locations educating community members about their protections under the New York City Human Rights Law and inviting them to participate in a bystander intervention training the Commission was hosting in Crown Heights.
- In the Bronx, after a Black Muslim woman was harassed by young people on a bus, the Commission mobilized a day of visibility to bring awareness to this incident and educate New Yorkers about their rights under the New York City Human Rights Law. The Commission coordinated the day of visibility with the Mayor’s Office of Immigrant Affairs, Action Network, the Bronx Borough President’s African Advisory Council, the African Immigrants’ Commission of New York and Connecticut, the Young African Network, and the Guinean Community of America.
- In response to anti-Chinese graffiti in Bensonhurst, the Commission’s Bias Response Team organized a day of visibility in partnership with other City agencies and community partners to create awareness about discrimination and share information on how to report to incidents to the Commission. The Commission was joined by the Mayor’s Office of Immigrant Affairs, Community Affairs Unit, and Public Engagement Unit as well as local community based-organizations, Chinese American Social Services

Center, and United Chinese Association of Brooklyn. The agencies and organizations collectively distributed more than 1,000 multilingual flyers on protections from discrimination under the New York City Human Rights Law as well as information on how to report incidents in three different locations in Bensonhurst. The Commission's multilingual staff engaged with the community members and many business owners agreed to display the flyers in their store windows.

In recognition of the importance of reaching our youngest New Yorkers and fostering positive and inclusive environments among young people in schools and other settings, the Commission recently announced a significant expansion of its youth programming and the launch of its first-ever youth advisory council. The Commission's program, Youth for Equity and Solidarity, incorporates student-led community and school action plans, expanded programming in issue areas relevant to the lives of young people in New York City today, and a tailored human rights reading list. The youth council will help guide our youth programming and events by providing feedback on workshops and trainings, informing us of issues and incidents related to bias and discrimination, and planning youth related events. Commission staff will support youth council members with trainings and other opportunities that will build their advocacy and organizing skills using a human rights framework. The Commission announced expanded curriculum, which includes seven different workshops, varying in length from one session to eight sessions, and covering topics spanning gender justice, gender identity and sexual orientation discrimination, racial justice, peer mediation, and understanding Muslim experiences and combating anti-Muslim bias. The Commission is partnering with over sixty organizations and schools to provide this programming to students and faculty. As schools have recently shifted to remote learning, so too will the Commission's school-based and community-based programming. We are exploring several different platforms and formats for training, outreach, and education, and will be launching new online trainings and learning opportunities in the coming weeks.

### **Office of the Chairperson**

As I have mentioned in years past, 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 2019 was yet 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.

Last year, I testified one week prior to the launch of the Commission's online, interactive sexual harassment prevention training, made available for employers to use to meet the new annual anti-sexual harassment training requirement for their staff. The training launched on April 1, 2019,

originally in English and Spanish, with nine additional languages published in the weeks after. In its first year, the training has been completed nearly 450,000 times, which we estimate to be a significant undercount, given our limited ability to track users, of total completions. It has received universal praise for its comprehensiveness, accessibility, thoughtfulness, and efforts to include real life and intersectional examples of how sexual harassment impacts people in different industries, interpersonal dynamics, races, genders, and sexual orientations, among other categories. Components of the training are now being adopted by other jurisdictions, most notably, the state of California, in the development of their online training to be made available to all employers in the state.

In February 2019, as I mentioned earlier, the Commission published 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. And last year I testified that it was our hope and expectation that other jurisdictions will use the guidance as a roadmap to a similar legal conclusion. I am pleased to report that other jurisdictions have, in fact, followed suit, with several states, including New York, New Jersey, California, and Colorado, and several cities, passing laws prohibiting discrimination on the basis of hair. New York City was the first to do it, and others followed. I could not be more thrilled that the Commission's guidance has been cited in many of these bills as the reference point for this movement. And the Commission is grateful for the scholars and advocates who pushed for this recognition long before the Commission published its guidance.

Last fall, the Commission also published legal enforcement guidance on discrimination on the basis of national origin and immigration status. The guidance, like the hair guidance, made national news as the Commission sought to address emergent issues the agency is seeing in communities and through cases being prosecuted in the Commission's Law Enforcement Bureau. The guidance states explicitly that the use of the term "illegal alien," when used with intent to demean, humiliate, or harass a person, is illegal under the City Human Rights Law. Further, the guidance stipulates that harassing or discriminating against someone for their use of another language or their limited English proficiency, and threatening to call ICE on a person based on a discriminatory motive, are considered to be in violation of the law. The Commission has seen an increase in these cases and developed the guidance with these cases, and the long-standing protections of the City Human Rights Law against discrimination and harassment on the basis of immigration status and national origin in mind.

## **Communications and Marketing**

The Commission launched a highly successful campaign on social media and digital platforms, and in community and local press, supporting Jewish New Yorkers and combating anti-Semitism in the face of raising anti-Semitism and bias incidents. The campaign responds to a rise in anti-Semitism in New York City, in surrounding communities, and around the country, and affirms the rights of all Jewish New Yorkers to be treated with dignity and respect. The campaign also provided information on how to report harassment and discrimination to the Commission. Full-page ads will appear in several Orthodox and Hasidic Jewish print outlets: Hamodia, Jewish Press, and Mishpacha. The Commission also invested in paid digital placements in Jewish Week.

The ads reached a broad audience on the Commission’s social media channels through paid posts.

The campaign reflects some of the diversity of Jewish New Yorkers and includes those who have faced the brunt of recent anti-Semitic attacks—Hasidic and Orthodox Jewish people. The images and copy affirm Jewish New Yorkers as an essential part of the fabric of New York City and invite non-Jewish New Yorkers to stand in solidarity against anti-Semitism and support their Jewish neighbors.

Social media engagement grew exponentially this fiscal year, with each of the Commission’s existing channels gaining over 1,500 followers each. The Commission overhauled its LinkedIn and Medium channels and are steadily gaining followers. Social media posts garnered over 3.2 million organic impressions in Fiscal Year 2019. In tandem with increased social media engagement, the Commission’s website visits increased to over 1.6 million visits. The Commission invested over \$60,000 in community and ethic media buys, representing 100% of its digital and print media buys.

Working with local, national, and international outlets, the press office saw over 1,000 positive stories about the Commission’s work in Fiscal Year 2019. Most notably, in February 2019—following coverage in the New York Times on the Commission’s Legal Enforcement Guidance on Race Discrimination on the Basis of Hair—the story was syndicated in every state across the nation and went viral. The success of the placement propelled the Commission’s work onto the international stage and helped increase its credibility as a venue for justice for New Yorkers. Additional stories included coverage of the Commission’s “While Black” campaign, a landmark settlement in housing discrimination, and the Commission’s pregnancy and caregiver discrimination report.

## **Budget**

The Fiscal Year 2020 Adopted Budget provided for a total budget of \$14,157,148 which consists of \$11,842,543 in Personal Services (“PS”) and \$2,314,605 in Other Than Personal Services (“OTPS”) funding.

\*\*\*\*\*

It is the honor of my professional life to lead this agency during these deeply troubling times. I am inspired everyday by the dedication of the Commission staff who do the work, day in and day out, to protect the rights of their fellow New Yorkers to live and work free from discrimination and harassment. We will continue to live these principles and carry out the mission of this agency with integrity with the continued support of the Administration and the Council. Thank you.