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Commissioner and Chair

Testimony of Carmelyn P. Malalis
Before the Committee on Civil Rights

Intro. 689—In relation to establishing a housing discrimination testing program.
Intro. 690—In relation to establishing an employment discrimination testing program.
Intro. 421—Amendment to the Administrative Code of the City of New York, in relation to the powers and duties of the Commission on Human Rights

March 3, 2015

Thank you, Chair Mealy, members of the Civil Rights Committee, and Council Members for convening today's hearing and inviting me to testify on these important pieces of legislation. As the newly appointed Chair and Commissioner of the Commission on Human Rights, I can say without reservation that the Commission strongly supports what it understands to be the goals of these three bills – robust enforcement of the City Human Rights Law, supporting the existing testing work of the Commission, and providing the public with greater transparency of the Commission's work, particularly with regards to the investigations initiated by our agency, so that the public can better assist us in identifying the areas and industries in which serious violations of the Human Rights Law occur and the identities of the repeat violators of the law. These goals are consistent with the Mayor's commitment to aggressively enforcing the Human Rights Law and safeguarding the rights and dignity of all people in New York City.

I. New Commissioner/Chair of the Commission

As part of that commitment, Mayor de Blasio appointed me to helm this very important agency, and I proudly assumed my role as Chair and Commissioner almost two weeks ago. My personal stake in building on the prior work of the Commission to make it an even more robust enforcer of our very expansive law, proactively educating our different stakeholders in their rights and obligations under the law, and finding collaborative, non-adversarial ways of accomplishing

the mandates of the Commission is not insignificant. I am the daughter of Filipino immigrants, my wife is an immigrant from Ethiopia, and we are raising our two biracial children in our family and extended family comprised of many different faiths and belief systems – the Commission’s mandates to “foster mutual respect and understanding”¹ among different people and communities, and “encourage equality of treatment”² for all are indeed personal mandates for me. My wonderful “modern family” is my daily reminder of why working to combat discrimination and intolerance in this great city is so important and why I accepted the very important responsibility of leading the Commission.

Taking on prejudice, discrimination and bigotry is my life’s work. It is my great honor to bring that knowledge and experience to my work at the Commission. I have spent more than a decade representing and litigating on behalf of clients with claims under the Human Rights Law, assisting and consulting with legal advocacy organizations that work with and advocate on behalf of individuals and communities affected by the discrimination and harassment that the law was meant to protect against, and working with counsel for employers and businesses to resolve issues proactively and non-litigiously. When representing clients who were victims of discrimination, retaliation or harassment as an employee advocate, I always investigated to see if my client was able to raise a claim under the Human Rights Law. Not only is the Human Rights Law expansive in the number of different bases of protection provided, but actually written into the law is the requirement that its provisions be “construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws . . . have been so construed.”³ I was an avid enforcer of the law as an employee advocate, and I intend to be an even more avid enforcer of the law in this new capacity, especially with this administration’s commitment to equality and justice and the support of the City Council.

¹ Id. § 8-104(1).

² Id. § 8-104(2).

I am also eager to continue developing and growing relationships with different Commission stakeholders, and creating new collaborations to help the Commission better serve the public in both our Law Enforcement Bureau and our Community Relations Bureau. While enforcement of the law is important and speaks to my history as an advocate, I also come to this role cognizant of the fact that much can also be accomplished through the very important work of the Commission's Community Relations Bureau. For example, in addition to educating individuals on their rights, we want to support businesses in New York City by providing opportunities for education and training tailored to their needs. A multi-pronged strategy of enforcement, outreach, education, and training is necessary if the Commission is to accomplish what the public asks of it and what the law requires.

Given the breadth of the Human Rights Law's protections, the multiple communities and stakeholders I plan to reach out to in building on the Commission's prior enforcement work and community relations networks, time is a valuable commodity. In a moment, I will address the three pieces of proposed legislation, and I do want to thank the Speaker and the Council for prioritizing the Commission's work and putting the Commission in the forefront. As a threshold matter, however, I do ask this Committee and the Council to allow for a timeline that would enable the Commission to develop effective, lasting strategies and implement them. Having been in this role for just shy of two weeks, I am just beginning the process of reviewing all of the Commission's operations as well as its policies and procedures, familiarizing myself with the Commission's current docket, and speaking with stakeholders who have already reached out to welcome me into this role and offer resources from their firm, organization, or community. I have been shuttling between our agency's five locations to meet and get to know the hard-working City employees who, in 2014 alone, have helped the Commission secure over \$1 million in damages for complainants and almost \$200,000 in civil penalties through enforcement, and assist over

³ Administrative Code of the City of New York § 8-130.

90,000 people in the City through projects and activities administered through the Commission's Community Relations Bureau, not to mention the many more people the Commission reaches through its media and ad campaigns. Building on the successes of the Commission's prior work and implementing the multi-pronged strategy I have described will take some time, and I am concerned that placing any additional obligations on the Commission with short timelines – such as those included in the proposed legislation – may actually be counterproductive to making the Commission more effective, more visible, more accessible, more transparent, more responsive or more impactful.

II. Consideration of Expansion of the Commission's Testing Program Is Underway

I joined the agency at a time when it was preparing its 2014 Year-End Report, which just became available to the public, and shows the work the agency has been engaged in prior to my arrival. In 2014, the Commission initiated 124 investigations into employment and housing discrimination resulting in the filing of 125 Commission-initiated complaints (some of the cases filed in 2014 were investigated in 2013). The Commission's testers were involved in all 125 situations leading up to a Commission-initiated complaint, indicating the effectiveness of the testing program in identifying violations of the law. Consistent with the procedure proposed in Int. Nos. 689 and 690, Commission testers referred incidents of actual or perceived discrimination to the Law Enforcement Bureau, which then initiated investigations and filed complaints.

Currently, the Commission's testing program is staffed by two full-time staff and six part-time staff who identify possible violations of the Human Rights Law in the employment and housing contexts, and then may go out into the field as testers to determine if employers, real estate agents and brokers, and other entities with obligations under the law are in fact violating the law. A January 2015 grant of funds from Housing Preservation and Development will support the Commission's testing work until June 2015, and has enabled the Commission to deploy testers in even more situations.

Exploration of ways to expand the Commission's testing program in target and scope is already underway. I have been carefully reviewing the Commission's practices and procedures to identify types of matters that may be appropriate for testing, and time is needed to assess the necessary strategy for expanding our program. This includes the possibility of reaching out to community partners and a diversity of legal advocates to help us strategically pinpoint appropriate targets and collaborating with such groups to further diversify our pool of testers addressing the Human Rights Law's different protections. In the last decade, the Commission's testing program has focused primarily on matters involving gender-based discrimination in employment, and discrimination based on lawful source of income or family status in housing. Matters involving discrimination based on race, sexual orientation, gender identity and gender expression, religion, arrest or conviction record, and other bases covered by the Human Rights Law would also benefit from the Commission's program. Investing time into building partnerships with community groups and legal advocacy organizations and thinking strategically about the Commission's investigations will help us test in those different areas.

The Commission agrees that the type of testing contemplated by Int. Nos. 689 and 690 would be helpful to combatting discrimination in employment and housing, and that such testing is a powerful tool for the Commission's Law Enforcement Bureau. As the Commission's testing program has been effective, and considerations to expand the reach of the program are being reviewed, I am concerned that the timelines imposed in the bills may actually be counterproductive to the Commission expanding an effective testing program, which includes community partners and advocacy organizations that can help with a thoughtful expansion.

III. New Reporting Requirements Under Int. No. 421

The Administration has a clear commitment to accountability and understands why the information to be reported under Int. No. 421 helps to keep the Commission accountable and how it also helps the public assist the agency. However, I believe that allowing the Commission to

build momentum while engaging key stakeholders will enable us to evaluate and implement strategy, and address the new reporting requirements contemplated in Int. No. 421 in a manner that would best serve the public. In accepting this appointment and meeting with members of the community and legal advocacy organizations, I am excited to harness the power entrusted to the Commission to seek out and address discrimination, retaliation and harassment in our city, and to work with Corporation Counsel to that same end.

As I alluded to earlier, in broadening the scope and targets for Commission-initiated investigations and complaints, and further emboldening and animating the Commission's enforcement activities, I want to do so strategically, thoughtfully and effectively, which takes time. Though the information sought in Int. No. 421 could be provided in the Commission's 2015 annual report as contemplated by the bill, I believe that such information is not likely to capture the efforts underway and that are more likely to materialize in annual reports for 2016 or 2017. Some of the information required by Int. No. 421 is already available in another format in the Commission's year-end report or website.⁴ However other information sought would likely not be reflective of efforts underway if reported in 2015. Also, efforts to address some of the recommendations in the Comptroller's recent audit report are already underway as a result of this administration's prioritization of the need for improvement. For example, the Commission is already working with DoITT to acquire, adapt and implement Law Manager, a well-regarded case-tracking software that will help us capture our statistics more reliably. We expect implementation to begin in the second quarter of Fiscal Year 2016. Another priority consistent with the

⁴ The proposed bill would require the Commission to quantify specific agency publications and reports in its annual report. See Int. No. 421(10)(b)(iv). The Administrative Code of the City of New York already empowers the Commission to issue this information – “publications and reports of investigations designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby” see Section 8-105(7) – and the Commission has been accomplishing this goal through the creation of the literature that is distributed to the public and media reports regarding the Commission each year, both of which are already included in the Commission's year-end report and/or available on its website.

Comptroller's recommendations is to conduct a review of the Commission's policies and operating procedures to determine how we might clarify and refine them. Having begun with the Commission less than two weeks ago, I am only at the beginning of this strategic process. Rather than rushing through the planning process, I submit that it is essential for the Commission to take the requisite amount of time to engage the various stakeholders, as well as to review and revise necessary procedures, assess and implement infrastructure that strategically responds to the public's needs, and build the relationships necessary to create a more robust program for Commission-initiated investigations with Corporation Counsel.

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Make no mistake. I share your urgency in prosecuting more cases of discrimination and across more bases covered under our expansive Human Rights Law, and understand the utility of transparent reporting so that the public can help us identify the areas and targets appropriate for Commission attention. I want to proceed thoughtfully and strategically to accomplish those ends. I thank you, again, for inviting me to speak on behalf of the Commission and look forward to our continued partnership on the important goals of these proposed bills.