



**TESTIMONY OF CARMELYN P. MALALIS**  
**Commissioner/Chair**  
**New York City Commission on Human Rights**  
**Before the Committee on Civil Rights**  
**December 9, 2015**

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**Int. No. 814:**

**In relation to construction of the New York city human rights law.**

**Int. No. 818:**

**In relation to the provision of attorney's fees under the city human rights law.**

**Int. No. 819:**

**In relation to the repeal of subdivision 16 of section 8-107 of such code relating to the applicability of provisions of the human rights law regarding sexual orientation.**

**Int. No. 1012:**

**In relation to repealing and replacing title 8 of the administrative code of the city of New York and making related improvements to clarify and strengthen the human rights law.**

Good afternoon, Chair Mealy and members of the Civil Rights Committee, and thank you for convening today's hearing. I am Carmelyn P. Malalis, Commissioner and Chair of the New York City Commission on Human Rights. Today I am joined by Melissa S. Woods, my First Deputy Commissioner and General Counsel, and Dana Sussman, Special Counsel to the Office of the Chairperson.

Before I turn to the four bills that are the subject of today's hearing, I want to provide you with a brief update of the Commission's ongoing agency restructuring and expansion. Thanks to the support of the Council and the Administration, we have continued to build our ranks with new staff members experienced in working with New York City's diverse communities in different languages and/or using the City's anti-discrimination protections to assist vulnerable communities. We have also been able to further develop our existing staff with trainings and other initiatives to strengthen our own internal cultural competency skills. Since I last testified before you in October, we have on-boarded seven new agency attorneys, increasing our language capacity in the Law Enforcement Bureau by seven languages; a new and bilingual Director of Training and Development to develop and supervise our Community Relations Bureau's training programs; a Policy Counsel to focus on drafting interpretative legal guidance and proposed rules, and provide support for the Office of the Chairperson; and other key staff members in Human Resources and Operations. We will be on-boarding several key staff members in the new calendar year, including an Assistant Commissioner for Law Enforcement focusing on Commission-initiated investigations and taking a primary role in coordinating our testing program.

We have continued our outreach and training efforts to increase visibility of the protections enforced by the Commission. Two major campaigns – the Stop Credit



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Discrimination in Employment Act and the Fair Chance Act – included radio ads in multiple languages on ethnic media, social media ads, subway and bus shelter ads, PSAs, the publication of interpretative legal guidance, factsheets, brochures, and regularly scheduled free trainings in all five boroughs. The Commission continues to work with sister agencies to cross-train staff and develop strategic collaborations on education and outreach. Finally, next year we will be unveiling a new, user-friendly website with streamlined procedures for submitting tips and complaints.

Today, as always, my testimony reflects the Commission’s desire to safeguard the integrity of the City Human Rights Law in accomplishing its “uniquely broad and remedial purposes,” over and above what is provided under federal or New York State civil and human rights laws, a promise codified in the law’s construction provision as well as the Civil Rights Restoration Act of 2005. My testimony also prioritizes the goals of the Commission as it continues its transition and expansion with the goals of creating a more credible venue of justice for all New Yorkers; improving transparency of Commission processes by publishing interpretative legal guidance, engaging in agency rule-making, and making Commission materials more accessible to the public; creating an efficient and effective Law Enforcement Bureau that maximizes impact through strategic enforcement; and developing a responsive Community Relations Bureau that educates both the small business and housing provider communities on their responsibilities and members of the public on their rights under the law. With these ends in mind, my staff and I considered our conversations with colleagues in the Administration, our City Council colleagues, community stakeholders, and their advocates who would be affected by the proposed legislation in formulating my testimony on these four bills.

### ■ **INTRO. No. 814: In relation to construction of the New York City Human Rights Law**

The proposed bill would amend the construction provision of the City Human Rights Law by specifically articulating that “exceptions to and exemptions from” the City Human Rights Law “shall be construed narrowly in order to maximize deterrence of discriminatory conduct.” The Commission supports this proposition. The bill also identifies three cases, one Court of Appeals decision and two Appellate Division decisions, as having “correctly interpreted and applied” the broad construction provision under Section 8-130 of the City Human Rights Law. On this point, the Commission believes a more straightforward approach provides greater accessibility to the public.

This bill serves to emphasize the mandate found in the City Human Rights Law’s construction provision, which demands broad interpretation of the law. The construction provision reads: “The provisions of this title shall 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, including those laws with provisions comparably-worded to provisions of this title have been so construed.” N.Y.C. Admin. Code § 8-130. The bill is also reflective of the mandate of the Civil Rights Restoration Act of 2005, which instructs tribunals to construe the City Human Rights Law independently from similar or identical provisions of New York state or federal statutes, such that “similarly worded provisions of federal and state civil rights laws [must be considered] a floor below which the City’s Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.” Local Law 85 (2005), § 1. The Commission supports broad interpretation of the City Human Rights Law’s protections, and therefore, supports the intent of this bill.



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However, codifying three judicial decisions whole cloth, as is also proposed in this bill, may make the City Human Rights Law more confusing to the general public. The Commission is not aware of any other circumstance in which proposed legislation has sought to codify whole judicial decisions in this manner, and I believe that it makes the law less accessible instead of more accessible to the general public. Rather than reading a straightforward statement of what is intended, as currently exists in the construction provision and the Civil Rights Restoration Act of 2005, practitioners, pro se litigants, and advocates will have to discern the meaning and intent of three separate judicial decisions. While students are taught how to read case law in law school, it is not easy for non-lawyers to understand judicial decisions, which inherently reference other judicial decisions.

Instead of incorporating the three judicial decisions as proposed in the bill, the Commission believes it can accomplish the same objective of emphasizing the relevant holdings from the decisions by publishing straightforward information and guidance, similar to what the Commission has done for the Stop Credit Discrimination in Employment Act and the Fair Chance Act. For these reasons, the Commission supports the intent of the bill and believes there are more practical and less confusing ways to accomplish the intent of Intro. No. 814 than incorporating the three judicial decisions into the City Human Rights Law.

#### ■ **INTRO. No. 818: In relation to the provision of attorney's fees under the City Human Rights Law**

The proposed bill will make complainants' attorneys' fees, expert fees, and other costs available at the Commission when cases are brought to the Commission and are subject to a final Decision and Order, relief that is not currently available at the Commission. The proposed bill also requires that, to the extent a complainant's attorney's fee award is based on the attorney's hourly rate, the Commission must "apply the highest hourly market-rate fee charged by attorneys of similar skill and experience within all of the jurisdictions located within the city." Because the Commission is located in Manhattan, and courts generally consider Manhattan rates at a higher level than other jurisdictions, this provision confirms that the Commission would consider such levels in determining the hourly rate of attorneys' fees.

The Commission supports this provision because it represents a significant step in creating a credible venue of justice for New Yorkers. Currently, attorneys' fees are available in state court for claims under the City Human Rights Law, but not at the Commission. The great majority of complainants at the Commission are pro se. It is hardly surprising that few attorneys in the private bar bring cases to the Commission, intervene on behalf of complainants, or assist complainants in filing claims at the Commission. Making reasonable attorneys' fees available for complainants' attorneys where they prevail at the final stage in the Commission's adjudicatory process will ensure that the Commission is a viable venue for justice, resulting in more administrative decisions and orders addressing a wider variety of claims and situations the City Human Rights Law is intended to cover, and will encourage the private bar to represent clients with City Human Rights Law claims.

The proposed bill also instructs courts, in cases involving the City Human Rights Law, to apply the "highest hourly market-rate fee charged by attorneys of similar skill and experience within all of the jurisdictions within the city when determining a reasonable hourly rate." Because this provision speaks to cases brought under the City Human



Rights Law in state or federal court, and not at the Commission, the Commission does not take a position on this provision.

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■ **INTRO. No. 819: In relation to the repeal of Subdivision 16 of Section 8-107 of such code relating to the applicability of provisions of the Human Rights Law regarding sexual orientation**

The Commission supports this bill, which would remove antiquated language regarding sexual orientation discrimination from the City Human Rights Law. Specifically, the bill would remove subdivision 16 from Section 8-107 of the City Human Rights Law, which, among other things, sought to ensure that the sexual orientation discrimination protections could not be construed to “make lawful any act that violates the penal law of New York,” and “endorse any particular way of life.” The removal of this antiquated and offensive language is long overdue and the Commission strongly supports doing so.

■ **INTRO. No. 1012: In relation to repealing and replacing Title 8 of the Administrative Code of the City of New York and making related improvements to clarify and strengthen the Human Rights Law**

The proposed bill will completely reorganize and renumber the entire City Human Rights Law, which is over one hundred pages long, and will make some non-substantive changes to the law to correct inconsistencies and errors. The Commission supports the Council’s efforts to make the City Human Rights Law more organized and easier to understand and wants to applaud the Council for its leadership in this area. We look forward to a thorough examination of the proposed reorganization bill with the Council, external stakeholders, and sister agencies to ensure that the bill achieves its goals of better informing New Yorkers of their rights and responsibilities under the law, and ensures that the reorganization does not unintentionally undermine the City Human Rights Law’s broad protections. So that this committee understands the laudable investment of time that the Council has devoted to this bill, and the equally important investment of time and resources the Commission would need to spend to make sure there are no unintended consequences in this massive undertaking, I think it may be helpful to explain the impact of such a reorganization on the Commission from both a practical standpoint and a legal standpoint.

From a practical standpoint, the reorganization of the law would lengthen Law Enforcement Bureau investigations during an indefinite transition period while Bureau attorneys and counsel acclimate to the new provisions. The City Human Rights Law has existed for well over half a century. Lawyers and advocates committed to civil rights and human rights have become quite familiar with its provisions, and will understandably need some time to acclimate to a different statutory schema. Since the new statutory citations would not match up with the citations found in well-established City Human Rights Law cases or other case law supporting parties’ positions, Law Enforcement Bureau attorneys and private litigants will need to spend more time on briefings and matters generally reconciling the different statutory citations.

Also, as this committee is well aware, the Commission has been undergoing its own reorganization and transformation since I assumed my role in February. Thanks to the investment of funding and support from the Council and the Administration, the



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Commission has been in the process of reviewing, revising, updating and creating internal and external procedures, mechanisms, programming and initiatives to better serve New York City. This agency-wide review process has been undertaken so that the Commission can follow through on its mandates of enforcing the many and broad protections of the City Human Rights Law through law enforcement, and providing education and outreach through community relations initiatives. My office, the Office of the Chairperson, and our Office of Communications and Marketing has also been revamped to amplify outreach efforts across the agency and increase transparency of agency operations. Over the past eight months, we have undertaken and invested in a comprehensive review of legal templates, internal and external trainings and procedures, guidance, the agency's website, communications and public relations materials, and other materials, and have been rapidly developing new and revised content for existing protections and programs as well as new protections raised by the Stop Credit Discrimination in Employment Act and the Fair Chance Act. In line with the Commission's priority of making our materials accessible to the City's diverse communities, we have invested in translating many of our materials into seven to ten languages.

In the midst of this activity, the proposed reorganization, without a thorough process in place, will force the Commission to divert personnel, time and financial resources from its agency review. The Commission will need to re-train staff on the new provisions and in understanding well-established case law in the context of new statutory cites; update, translate and re-publish new interpretative enforcement guidance and supporting materials; update and translate internal and external training materials and presentations; update legal templates, forms and correspondence sent to the public; and revise newly developed training manuals and on-boarding materials for staff. As the Office of the Chairperson is primed to undertake its first rule-making process in several decades on the Fair Chance Act, with plans to engage in rule-making in several others areas, that process will also need to be put on hold if an immediate reordering and reorganization of the entire City Human Rights Law begins. In short, the reorganization will require the Commission, in this pivotal time of transformational change, to divert resources away from its critical substantive work unless there is ample time to think through the reorganization and implement it.

The proposed bill also seeks to make some non-substantive corrections to the City Human Rights Law. The Commission supports and applauds the Council's efforts to correct some of these changes and wants to further the impact of this reorganization by also taking the opportunity to correct many other drafting errors and inconsistencies within the City Human Rights Law. To this end, the Commission has identified several key areas that can be corrected as part of the overhaul, and wants to work with the Council to make sure they are included in the bill. The Commission also wants to work with the Council to make sure that new provisions in the proposed legislation do not inadvertently cause harm to the City Human Rights Law. As you can see from the sheer number of pages in this bill – 137 – such a critical undertaking warrants a long-term structured review process, with input from stakeholders, to ensure a comprehensive review of both the reorganization itself and a full accounting of the non-substantive corrections and revisions that should not be overlooked.

I think it is also worth noting that the City Council has proposed several bills to amend the City Human Rights Law. In the spirit of conserving resources and efficiency, we suggest that the Council consider timing some of these bills in the context of this long-term reorganization to avoid duplicative work in drafting and re-drafting and implementing legislation.



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I want to reiterate that the Commission appreciates the Council's work on this incredible undertaking and looks forward to working with the Council on this bill. We are supportive of the Council's efforts to improve the organization and consistency of the City Human Rights Law, and look forward to investing in a drafting process consistent with the bill's broad scope. We want to map out a thoughtful process to continue thinking through and revising the bill over the next year so that we can work together with the Council as well as stakeholders who also have an interest in streamlining the City Human Rights Law and making it more accessible. The Commission can work with the Council on a thorough process that generates regular input and feedback from community stakeholders, our partners in the Administration, and the Law Department in shaping this bill.

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The Commission thanks Chair Mealy and the members of the Committee for calling this hearing. We look forward to continuing our dialogue on how to strengthen the Commission and the City Human Rights Law to ensure respect and dignity for all New Yorkers. I welcome your questions and comments. Thank you.