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Delivered via Email: CEO@metrolinx.com

Phil Verster, President & CEO
Metrolinx
97 Front Street West
Toronto, ON M5J 1E6

Mr. Verster:

Re: Amalgamated Transit Union, Local 1587

I have been retained by the Amalgamated Transit Union, Local 1587 (“Local 1587”) in the matter of Metrolinx’s failure to take adequate steps to protect the health and safety of Metrolinx employees who are members of Local 1587. Take notice that Metrolinx’s continued failure to provide employees with adequate personal protective equipment (e.g. N95 masks) despite the ongoing COVID-19 public health crisis constitutes a serious violation of s. 25(2)(h) of the *Occupational Health and Safety Act* and also a serious violation of s. 217.1 of the *Criminal Code*.

Your Obligations Under the Occupational Health and Safety Act (OHSA)

The general duty clause, s. 25(2)(h), of the *OHSA* creates an obligation on employers to “take every precaution reasonable in the circumstances for the protection of a worker”. Employers commit a provincial offence when they do not comply with this section of the *OHSA*.

In the current public health crisis it is critical that Metrolinx takes all reasonable precautions to protect the health and safety of their employees. This means instituting protective policies and measures and taking all reasonable steps to ensure they can, and will, be followed. In the COVID-19 crisis, these steps include implementing and facilitating physical distancing measures, providing personal protective equipment, including n-95 respirators and erecting appropriate physical barriers (e.g. plexi-glass dividers) where necessary to prevent the spread of the coronavirus.

By not effecting all of these measures Metrolinx is committing an offence and is liable to prosecution under the *OHSA* and will be liable to serious penalties under the *OHSA* and common law.

I note that Metrolinx secured a supply of N-95 respirators for use by frontline workers but they are not available to those workers because after Metrolinx received the respirators Metrolinx donated those respirators to some other employer.

Your Obligations Under the *Criminal Code*

Section 217.1 of the *Criminal Code*, enacted in the wake of the Westray mining disaster, places a clear burden on employers to safeguard the health of their employees from exposure to preventable bodily harm and death. Section 217.1 reads:

Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

By continuing to place its employees at risk of infection for coronavirus, Metrolinx is in violation of this section. In the event of injury to or death of any Metrolinx employees as a result of exposure to coronavirus while in the course of their employment, Metrolinx will be liable to prosecution for criminal negligence causing bodily harm, criminal negligence causing death and, potentially manslaughter.

Please note that section 22.1 of the *Criminal Code* unambiguously extends criminal liability for negligence to organizations such as Metrolinx. The terms of that section makes an organization a party to a criminal offence if:

1. a representative or representatives of the organization acting within the scope of their authority were a party to the offence; and,
2. a senior officer responsible for the aspect of the organization's activities relevant to the offence, departed markedly from the standard of care that could reasonably be expected to prevent the representative from being a party to the offence.

Organizations found liable for criminal negligence are liable to severe penalties. The *Criminal Code* places no limit on the amount of any fine levied against an organization for committing an indictable offence such as criminal negligence causing death. Representatives and senior officers who are convicted of these offences may be imprisoned.

My client requires that you take immediate steps to correct the above mentioned failure to protect the health and safety of its members.

Yours truly,

URSEL PHILLIPS FELLOWS HOPKINSON LLP

A handwritten signature in blue ink, appearing to be 'Zachary Kerbel', written in a cursive style.

Zachary Kerbel
ZK/jg

c. Manny Sforza MSforza@atu.org