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Please find enclosed.

**ATU Canada's Submissions to the Standing Committee on
Finance and Economic Affairs on Bill 106**

Sincerely,

John Di Nino
President

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Finance and Economic Affairs on Bill 106**

April 6, 2022

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ATU Canada's Submissions to the Standing Committee on Finance and Economic Affairs on Bill 106, *Pandemic and Emergency Preparedness Act, 2022*, Schedules 5 and 7

Summary of Conclusions and Recommendations:

1. ATU makes two main submissions:

- Schedule 7, which would enact the *Supporting Retention in Public Services Act, 2022* ("SRPSA"), should be struck from Bill 106; and
- Schedule 5, which would enact the *Personal Protective Equipment Supply and Production Act, 2022* ("PPESPA"), should be amended to include provisions requiring the Minister of Government and Consumer Services to provide sufficient PPE and CSE to all government and public sector entities to ensure workplace health and safety.

2. As set out below, the SRPSA is not a solution to the gross infringement of constitutionally-protected bargaining rights brought about by the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* ("Bill 124"). The SRPSA exacerbates the situation by also interfering with the right of trade unions to represent their members and negotiate wages with their Employers, which itself may violate s. 2(d) of the *Charter of Rights and Freedoms*. Rather than meet its stated purpose of retaining public sector workers, the SRPSA creates a substantial risk that Employers will become disincentivized to negotiate meaningful compensation terms.

3. In turn, the PPESPA does not have the teeth it needs to protect public sector workers who provide critical services during emergencies.

Background on ATU Canada:

4. Established in 2015, ATU (“Amalgamated Transit Union”) Canada provides a strong national voice on all issues affecting the 37 Locals of the ATU across Canada. Our members represent transit workers who perform virtually every role in the provision of public transit, including driving and maintaining vehicles, fare collection and administration, customer service, transit safety, and administrative and professional support. ATU Canada regularly engages in advocacy for provincial legislative and policy change that will improve the working lives of the transit workers and strengthen Canada’s public transit systems.

Submissions on Bill 106, Schedules 7 and 5:

I. The *Supporting Retention in Public Services Act, 2022* Should Be Struck **a) The Solution the Bill 124 Problem is to Repeal Bill 124**

5. As you know, the *SRPSA* allows the Crown to create compensation programs in order to fund employers to enhance employee compensation. While much of the details of the scheme are left to be implemented through regulations, it appears that the *SRPSA* is designed to allow the Crown to unilaterally determine (i) how much funding it will provide and when it will provide that funding for compensation programs and (ii) whether that funding will take the form of wages increases, lump sum payments, or some other form of compensation. Extremely troublingly, the *SRPSA* states that such compensation programs do not have to be bargained with the union and could potentially exist outside the Collective Agreements that apply to unionized staff. Despite inserting itself into the bargaining dynamic, the Crown has also attempted to immunize itself from review for such actions, most notably by providing that no complaint under the *Labour Relations Act, 1995*

(“*LRA*”) or the *Crown Employees Collective Bargaining Act* (“*CECBA*”) can be brought with respect to payments made under a compensation program.

6. In ATU Canada's submission, the *SRPSA* is an unwanted intrusion into the collective bargaining process and the obligation of public sector employers to bargain in good faith. For large Crown Corporations like Metrolinx, which are heavily reliant on government funding for operations, there is a very real possibility that compensation programs implemented, at the Government's sole discretion, before or during collective bargaining process will interfere with the Union's efforts to obtain fair wage increases from the Employer through the governing labour relations regime. Transit workers, who have worked tirelessly throughout this pandemic with great risk to their own safety, deserve real wage increases, not piecemeal lump-sum handouts from a Government shielded from liability as an Employer. If this Government is seriously concerned with public sector retention, as it should be, the solution is to properly fund critical public services like transit and repeal Bill 124, which prevents unions from obtaining fair wage increases for their members.

7. It is clear from context that the Government is enacting the *SRPSA* as a work-around to its Bill 124 problem. In its preamble, Bill 124 states that its purpose was to “maintain important public services that matter to the people of Ontario,” “ensure the sustainability of public services,” and “protect front-line services and the jobs of people who deliver them.” The last three years have demonstrated that Bill 124 has had the opposite effect. An obvious example is the experience of healthcare workers. In the first half of 2021 alone, there was reportedly a 56% increase in nursing vacancies in Ontario resulting from the pressures of the COVID-19 pandemic, combined with the lack of wage

increases and abundance of alternative jobs.¹ In the latter half of that year, hundreds of emergency room physicians signed an open letter to Premier Doug Ford demanding an increase in nurses' pay and the repealing of Bill 124 as nurses were leaving "in droves."² It is obvious public sector retention is a deep-seated problem that cannot be solved by piecemeal payouts. Workers need to be free to bargain the true value for their work through their unions, with a full ambit of economic sanctions available to them.

8. As you are aware, as recently as March 2022, the Government began offering \$5,000 retention bonuses to nurses. This short-sighted measure has been rejected by nurses across the province and will do nothing to alleviate nurses from the sky-rocketing rates of inflation and cost of living.³ They will not result in a wage increase. These bonuses are not pensionable and not calculated in determining overtime. The Government is now likely to rely on these discretionary payments to avoid bargaining real wage increases at the bargaining table.

9. Amalgamated Transit Union, Local 1587 represents transit workers employed by Metrolinx. These workers are just entering their first round of bargaining under the Bill 124 regime, and it has already resulted in delay and substantial problems with respect to collective bargaining. Despite being deemed essential workers through the pandemic, if Bill 124 continues in effect, these members will be subject to below-sector wage increases, placing them significantly behind their peers employed by municipalities. If the Government wants to retain public sector workers, it needs to fund public services and

1 Westoll, Nick, "What is Bill 124 and how is it affecting Ontario's nurses, public-sector workers?", November 15, 2021, available online: <https://toronto.citynews.ca/2021/11/15/bill-124-ontario/>

2 Neufeld, Abby, "Over 300 Ontario physicians sign open letter to Ford demanding pay increases for nurses", August 30, 2021, available online: <https://toronto.ctvnews.ca/over-300-ontario-physicians-sign-open-letter-to-ford-demanding-pay-increases-for-nurses-1.5566494>

3 Ontario Council of Hospital Unions, Nursing retention bonus Q&A, available online: <https://ochu.on.ca/2022/03/07/nursing-retention-bonus-qa/>

allow workers to negotiate their own wages. Further Bill 124 places caps on increases that result in significant real wage cuts for these front line workers. The Employer and the Union are best positioned to determine through the bargaining process what type of wage terms will be most beneficial to the workforce.

10. Clearly, additional funding is needed for public sector workers. It should not be in the form of piecemeal lumpsum payments to employees of the Government's choosing, which the enactment of the *SRPSA* would allow for. Rather, Bill 124 should be repealed. In that way, unionized public sector employees would be able to speak for themselves regarding their specific compensation needs and would be able to obtain long-term increases, through their constitutionally protected right to collectively bargain, which allows for appropriate trade-offs on terms with their Employers.

11. The unilateral mechanism that the *SRPSA* provides to the Government for the provision of funding for compensation plans operates outside of and undermines collective bargaining. As you know, under existing labour relations schemes, both employers and unions are required to bargain in good faith pursuant to section 17 of the *LRA* and section 31 of the *CECBA*, which is integral to effective labour relations. Both parties are subject to the unfair labour practices provisions in these schemes. While the *SRPSA* may seek to set up a vehicle that allows the Government to intrude into bargaining with impunity, it actually sets the Government up for further challenges under s. 2(d) of the *Charter of Rights and Freedoms*.

12. ATU Canada is also greatly concerned that there is currently no indication in the *SRPSA* regarding the enforceability of any compensation promised by the Government. On the contrary, the *SRPSA* includes provisions barring any causes of action resulting

from its enactment in section 8 and preventing the creation of an employment relationship between the Crown and the employees receiving compensation through compensation enhancement programs, in section 9. Empty promises will not improve retention amongst public sector workers.

II. The *Personal Protective Equipment Supply and Production Act, 2022* Should Include Entitlements To PPE and CSE For Workers

13. Schedule 5 of Bill 106 would enact the *Personal Protective Equipment Supply and Production Act, 2022* (“*PPESPA*”). ATU Canada commends the Government for taking some steps to ensure a supply of personal protective equipment (“PPE”) and critical supplies and equipment (“CSE”) during times of emergency. However, in order to effectively protect government and public sector workers, the Government needs to do more than merely set up a right to engage in supply chain management.

14. In ATU Canada’s submission, the *PPESPA* is lacking in two major aspects. First, there is no indication regarding what the standard of prescribed requirements will be. The *PPESPA* currently states the following with respect to supplies, leaving the details to be prescribed by regulations:

Requirement to maintain supply of PPE and CSE

2 (1) The Minister shall, in accordance with such requirements as may be prescribed, maintain a supply of personal protective equipment and critical supplies and equipment.

15. Instead, the *PPESPA* should require the Minister of Government and Consumer Services (the “Minister”) to maintain a supply of PPE and CSE sufficient for all government and public sector workers to ensure the safe operation of critical government services.

The *PPESPA* should provide all workers of public sector entities with a substantive right to PPE and CSE in times of emergencies.

16. Second, and relatedly, section 3 of the *PPESPA* only allows, but does not require the Minister to provide or support supply chain management in respect of PPE and CSE for government and public sector entities:

Supply chain management, government entities and public sector entities

3 (1) The Minister may provide notice to a government entity or a public sector entity stating that the Minister will provide or support supply chain management in respect of personal protective equipment and critical supplies and equipment, on behalf of the entity on a specified date.

17. The *PPESPA* does not indicate on what basis a Minister should make a decision regarding whether to provide or support supply chain management nor how such support would be provided. Including such details within the Act would make it more effective, however, the best solution is to require the Minister to provide supply chain management for PPE and CSE for all government and public sector entities whose workers require these for their health and safety.

18. It is important to note that public transportation has been deemed an essential service for the purposes of Government-mandated COVID-19 shutdowns. It is critical to keep transit workers safe so they can continue to provide this service. This requires PPE and CSE, which will be even more important with restrictions being lifted in Ontario. The lifting of restrictions has already led to an increase in ridership on Metrolinx and the same is expected for the TTC and other transit agencies.⁴

⁴ Winterburn, Mike, "The journey back to GO Transit – We climb aboard the train as more and more riders are returning", March 28, 2022, available online: <https://blog.metrolinx.com/2022/03/28/the-journey-back-to-go-transit-we-climb-aboard-the-train-as-more-and-more-riders-are-returning/>; TTC 2022 Annual Service Plan, February 10, 2022, at page 3, available online: <https://ttc-cdn.azureedge.net/>

19. While ridership is increasing, COVID-19 cases and hospitalizations are also increasing.⁵ According to the head of Ontario's COVID-19 Science Advisory Table, we were in the middle of yet another wave – the sixth wave – of the pandemic at the end of March 2022.⁶ Even in the months leading up to March, there was a significant number of transportation workers contracting COVID-19. For example, as of November 2021, 884 TTC workers, out of approximately 12,000 workers, had contracted the virus.⁷ Other transit agencies have reported high numbers of COVID-19 cases. This includes 70 daily absences among 750 Hamilton Street Railway workers and 24 COVID-19 cases out of 650 London Transit Commission workers.⁸ The *PPESPA* should ensure that all workers have at least PPE and CSE by requiring the Minister to provide or support supply chain management wherever and whenever necessary.

III. RECOMMENDED AMENDMENTS

20. Based on the foregoing, ATU Canada submits that Schedule 7 should be struck from Bill 106 and that Schedule 5 be amended to include provisions requiring the Minister of Government and Consumer Services to provide PPE and CSE to all government and public sector entities whenever they are needed for workers' health and safety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2022/February-10/Reports/9_2022_Annual_Service_Plan.pdf?rev=33257ffa4b1b454d802db427f27e847e&hash=52EE32F5FEC9414A7C548209A75ABD6

5 Science Table COVID-19 Advisory for Ontario, available online: <https://covid19-sciencetable.ca/ontario-dashboard/>

6 Freeman, Joshua, "Very clear' Ontario is in 6th wave of COVID-19 pandemic driven by easing restrictions, science table head says", March 29, 2022, available online: <https://www.cp24.com/news/very-clear-ontario-is-in-6th-wave-of-covid-19-pandemic-driven-by-easing-restrictions-science-table-head-says-1.5840466>

7 Coronavirus Cases, ATU Local 113 website, available online: <https://wemovetoronto.ca/coronavirus-cases/>

8 Sherman, Josh, "How Ontario's transit systems are faring during Omicron", January 18, 2022, available on: <https://www.tvo.org/article/how-ontarios-transit-systems-are-faring-during-omicron>