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**From:** Aaron Detlor <[aaron@detlorlaw.com](mailto:aaron@detlorlaw.com)>

**Sent:** October 31, 2022 4:45 PM

**To:** Karla Avis-Birch <[Karla.Avis-Birch@metrolinx.com](mailto:Karla.Avis-Birch@metrolinx.com)>

**Cc:** Aaron Detlor <[aaron@detlorlaw.com](mailto:aaron@detlorlaw.com)>; Jake Linklater <[jake@detlorlaw.com](mailto:jake@detlorlaw.com)>; Dwayne Geddes <[Dwayne.Geddes@metrolinx.com](mailto:Dwayne.Geddes@metrolinx.com)>; David Ayotte <[David.Ayotte@metrolinx.com](mailto:David.Ayotte@metrolinx.com)>; Eric Hovius <[Eric.Hovius@metrolinx.com](mailto:Eric.Hovius@metrolinx.com)>; Marilyn Stoye <[Marilyn.Stoye@metrolinx.com](mailto:Marilyn.Stoye@metrolinx.com)>; Jesse Pakkala <[Jesse.Pakkala@metrolinx.com](mailto:Jesse.Pakkala@metrolinx.com)>

**Subject:** Re: Follow Up| Ontario Line Advanced Works Tree Removal/Replanting

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**EXPÉDITEUR EXTERNE:** Ne cliquez sur aucun lien et n'ouvrez aucune pièce jointe à moins qu'ils ne proviennent d'un expéditeur fiable, ou que vous ayez l'assurance que le contenu provient d'une source sûre.

Good Afternoon Ms. Avis-Birch:

I wish to confirm that the proposed cutting of trees will impair, infringe and interfere with established and s. 35 constitutionally recognized and protected rights and interests.

I wish to confirm that no engagement has occurred with respect to the proposed cutting which would uphold the honour of the Crown.

In order to assist with justifying infringements we met on October 27, 2022 and proposed a means by which consent could be obtained.

We agreed on something in the range of 1701 trees. This is the number we are going to use.

We confirmed that you are proposing to permanently impair that area of land over which rights can be exercised we determined that area of land to be something in the range of 45 acres.

We advised that we needed 45 acres of land to be placed in our hands so that we could replant the lost trees and be able to exercise rights consistent with the treaty which guarantees the right to **free and undisturbed harvesting**.

We suggested three approaches for returning land back in relation to the infringements you are attempting to impose:

1. Metrolinx expropriation of 45 acres of land close to the proposed area where trees and land rights are being destroyed with land being turned over to HDI - and you might recall I pointed to the shopping mall which we would be glad to take over
2. Acquiring by purchase 'local' land in proximity to the proposed cutting at market value (and we confirmed market value at something in the range of \$3M to \$5M per acre) with land being turned over to HDI
3. Agreeing to a third value of the acreage for the purposes of acquiring land in and around Six Nations with a notional cap of something in the range of \$50,000 per acre. HDI would then use money to acquire property.

In this regard we confirmed that we have 200 acre properties ready to acquire and we confirm that we provided you with information on how those properties would be 'developed' in accordance with Haudenosaunee land values - woodlots, gardens, medicine plots etc.

I am somewhat confused by your email below and its multi font and somewhat legalistic approach. With that said I trust that we are in agreement more or less on 1701 trees being provided (and yes I am using that actual number). We will advise of the cost of the trees not to exceed \$200 per tree.

Please indicate which one of the three options you wish to commit to in principle on land replacement and then we can move forward. Until we have agreement on one of the three proposed options that we have set out we do not have agreement and the tree removal will not proceed.

Regards,

Aaron Detlor

ps. We are not requiring and will not accept any less than what has been offered in past circumstances to those who do not even hold s.35 rights and interests

<https://www.thestar.com/news/gta/2021/12/14/metrolinx-signs-50m-deal-for-new-thorncliffe-park-islamic-centre-amid-opposition-to-ontario-line-rail-yard.html>

On Oct 31, 2022, at 3:14 PM, Karla Avis-Birch <[Karla.Avis-Birch@metrolinx.com](mailto:Karla.Avis-Birch@metrolinx.com)> wrote:

Thank you for the discussion with the team last Thursday Oct 27, regarding the impact of the tree removals for the Ontario Line North Advanced Works to recognized and/or asserted rights to HCCC/HDI. We are committed to agreeing to a way forward, so if there is anything that appears to be inconsistent with the intentions or requires further discussion, I will make myself available at your convenience.

- Metrolinx agrees to providing HCCC/HDI with an equivalent number of trees (either actual vegetation or a dollar value amount) to the number of trees being removed
- Metrolinx will make best efforts in the first instance, seek land in the same area or close by, to replant the trees being removed.
  - If land in the same area or close by is not suitably found, or any other suitable lands for replanting is not found, Metrolinx will determine a dollar value accommodation for those trees not replanted in the same area, close by, or at a new locations as agreed.
- Metrolinx agrees to the initial rough order of magnitude of 1,200 to 1,700 trees covering approximately 45 acres for the OL Advanced Works, which are to be validated once actual removal of the trees are complete.
- As a tool to keep track, Metrolinx agrees to establishing a log (ie “bank”) that will document on a rolling basis, tree accommodation calculations for Metrolinx projects (beyond the current calculations for OL Advanced Works) to be drawn down on, when reasonable, for the use of replanting trees for HDI/HCCC.

While, as discussed, it is intended we adopt a consistent model for calculating and administering accommodations to impacted rights holders, this arrangement is without prejudice:

- specific to the Ontario Line Advanced Works, and if there is any termination of change to Rights Holders and this is not a recognition that we have removed any rights, as we do not own the lands and in the end state, there will be access to the lands as a multi-use public area, as it is now.
- does not abdicate any obligations through the City of Toronto, and any of its agencies, permitting process.
- Is subject to Provincial policy and guidelines.

Hoping that over the next few weeks, we can use this as a model to help formalize and document a process going forward for other projects.

Regards,

**Karla Avis-Birch**

Chief Planning Officer, Metrolinx

Mobile 416-458-2982

Serve with Passion. Think Forward. Play as a Team.

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**From:** Aaron Detlor <[aaron@detlorlaw.com](mailto:aaron@detlorlaw.com)>

**Sent:** December 16, 2022 3:46 AM

**To:** Diana Miles <[DMiles@lso.ca](mailto:DMiles@lso.ca)>

**Cc:** Mirka Adamsky-Rackova <[MAAdamsky@lso.ca](mailto:MAAdamsky@lso.ca)>; Brian Doolittle <[ganowa@me.com](mailto:ganowa@me.com)>; Tekarihogen Allen McNaughton <[orionateka4@aol.com](mailto:orionateka4@aol.com)>; Roger Silversmith <[rogersilversmith2@gmail.com](mailto:rogersilversmith2@gmail.com)>; Cleve Thomas Dehatgahdos <[cjthomas21@hotmail.com](mailto:cjthomas21@hotmail.com)>; Colin Martin <[jowahaise@gmail.com](mailto:jowahaise@gmail.com)>; Kris Hill <[kmk55@aol.com](mailto:kmk55@aol.com)>; Mike Mitchell <[mkmitchell1760@hotmail.com](mailto:mkmitchell1760@hotmail.com)>; Tracey General <[traceyghdi@gmail.com](mailto:traceyghdi@gmail.com)>; williams todde@gmail.com <[williams.todde@gmail.com](mailto:williams.todde@gmail.com)>; Janice Williams <[janicewilliams@hdi.land](mailto:janicewilliams@hdi.land)>; sharanmartin <[sharanmartin@hdi.land](mailto:sharanmartin@hdi.land)>; jake linklater <[jake@otsikwakowa.com](mailto:jake@otsikwakowa.com)>; chazz pitts <[chazz@otsikwakowa.com](mailto:chazz@otsikwakowa.com)>; Daniel Kalichman <[danielkalichman.work@gmail.com](mailto:danielkalichman.work@gmail.com)>; josh@otsikwakowa.com <[josh@otsikwakowa.com](mailto:josh@otsikwakowa.com)>; Diio Maracle <[diio@otsikwakowa.com](mailto:diio@otsikwakowa.com)>; Eric Hovius <[Eric.Hovius@metrolinx.com](mailto:Eric.Hovius@metrolinx.com)>; bryan hendry <[bryan@otsikwakowa.com](mailto:bryan@otsikwakowa.com)>

**Subject:** Re: Metrolinx Osgoode Hall Ontario Line Project (Project)

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Good morning Ms. Miles

About an hour ago I began dismantling a fence that was infringing and impairing my ability to exercise treaty rights.

A security official from the law society approached me and asked me what I was doing and I tried to explain to him the situation.

Despite my best efforts to advise that the property that I was on was not law society property he ignored my input and called the police.

I continued on my merry way with the dismantling of the fence and the police took grave exception to my conduct on the basis that I was trespassing on law society property.

I explained the situation to the police who were very much disinterested in anything that I had to say.

They indicated that I was going to be arrested if I continued and I made the very specific inquiry as to why I was going to do arrested and they indicated that I was interfering with law society property.

It would be of assistance if you could advise your security officials with respect to where the new property lines are located.

I would only add that the young man who is working for you was exceptionally polite, composed, diligent and an all around very nice person who was placed in a very unfortunate position.

Regards

Aaron Detlor

On Fri, Dec 9, 2022, 12:01 PM Aaron Detlor <[aaron@detlorlaw.com](mailto:aaron@detlorlaw.com)> wrote:  
Dear Ms. Miles:

Thank you for meeting with us by way of zoom conference call today.

I confirm that Mr. Linklater and I were on the call for HDI.

As indicated we are concerned with the lack of engagement undertaken on the part of Metrolinx, where Metrolinx activities are impairing and infringing upon the established rights and interests of the Haudenosaunee which you are aware are protected by s. 35 of the *Constitution Act, 1982*.

We have advised Metrolinx and its contractors that we will be on-site lawfully exercising treaty rights and that any proposed work on the site is incompatible with the exercise of those rights. We confirm that we communicated our position that the regulatory approach adopted by the Province of Ontario to date falls short of upholding the honour of the Crown and in this regard we referenced the deficiencies of O.Reg. 341/20. We can confirm that we were denied any funding to participate in any of the approval process for the Ontario Line.

We asked that the LSO contemplate its position on the appropriate process for engagement with respect to 'Indigenous' rights and interests relative to the assertion of rights versus the process required in the case of established rights and interests. I confirm my very brief review of *Tsilhqot'in* (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>) which we say requires the Crown to obtain consent and or justify infringements (which necessarily involves the discharge of fiduciary duties).

I can advise that we take issue with the process advanced by the Province of Ontario, in part, where it has excluded accommodation from the outset which we say puts it offside of the SCC in *Grassy Narrows First Nation* at paragraph 52 (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14274/index.do>).

I can confirm that we are committed to a resolution that addresses a broad spectrum of rights and interests, including the LSO, and that we will continue to communicate in an open and transparent manner to canvas and incorporate those rights and interests as we move forward.

I can also confirm that it is not our intention nor will we unnecessarily disrupt or interfere with work being undertaken by the LSO or the Ontario Court of Appeal. We look forward to meeting monthly if possible to continue to communicate with you with respect to on-going on the ground 'next steps' so that we can address any concerns you or the OCA may have arising from the exercise of our rights and interests.

We look forward to receiving any information you have in relation to the proposed development including the 'slides' that we quickly reviewed.

You will note that we have copied counsel for Metrolinx, Mr. Eric Hovius.