



PCA

PROGRESSIVE
CONTRACTORS
ASSOCIATION
OF CANADA

PCA RESPONSE TO MINISTRY OF LABOUR CONSULTATION

Construction Industry 'Open Periods' Proposal

Proposal Number:
26-MLITSD005



Progressive Contractors
Association of Canada



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ABOUT PCA

PCA is a national construction association representing more than 140 contractors who employ over 40,000 skilled workers that belong primarily to the CLAC union. We act as the advocate for our members and conduit between government, industry and their affiliated unions to help our members access opportunities and grow their business.

PCA has been at the forefront of the construction industry, representing a collective group of contractors, entrepreneurs and business owners whose workforces have chosen the progressive unionized model. We provide our members with action-based advocacy, labour management advice, business-to-business networking opportunities and resources to help them access workers and opportunities to build and maintain capital and infrastructure projects across Canada.

PCA applauds the government for the proposed changes to the Ontario Labour Relations Act that would shorten the open period in construction. This change will provide more labour stability during a contentious time in the collective bargaining process. **Out of the two options outlined, we would prefer Model B** as it allows parties to fully invest in the bargaining process post open-period without the destabilizing effects of an open period that calls into question the negotiations taking place.



MODEL B PREFERENCE

Model B insulates the active bargaining period from the threat of displacement or termination applications. Under the current two-month open period framework, and similarly under Model A's last-month open period, displacement or termination applications can be filed at precisely the moment when parties are most deeply engaged in the negotiation of a renewed collective agreement.

This creates a profoundly destabilizing dynamic for both employer and employee sides of the wicket. When a displacement application is filed during active bargaining, it introduces uncertainty that undermines the good-faith bargaining process. The current union's negotiating authority is brought into question, the employer faces uncertainty as to who its lawful bargaining agent will be, and both parties may be less inclined to make meaningful concessions or compromises in the knowledge that the agreement they are negotiating may be rendered obsolete by the outcome of a raid application.

Model B resolves this problem by design. By placing the open period in the second-last month of the collective agreement, the window for displacement and termination applications is closed before bargaining reaches its most intense and contentious phase. Employers and unions can enter the final month of the agreement's operation and the bargaining that accompanies it with the assurance that no raid application will be filed during that period.

As important, democratic rights of the workers are still preserved as the month-long open period still allows workers to make a democratic choice on their preferred union without interfering with bargaining.

REDUCING ADMINISTRATIVE AND LEGAL COSTS FOR SMALL AND MEDIUM SIZED BUSINESSES

Displacement and termination applications filed during active bargaining impose significant costs on construction industry employers. Employers must retain labour counsel to assess the application, respond to Ontario Labour Relations Board proceedings, and manage the uncertainty of potentially dealing with a new bargaining agent mid-negotiation. These costs are multiplied when applications are filed at the most sensitive point in the bargaining cycle.

By confining the open period to the second-last month of the collective agreement under Model B, the Ministry would reduce the likelihood of displacement and termination applications being weaponized during bargaining, thereby reducing the frequency with which employers are brought into Board proceedings at precisely the moment they can least afford the distraction and expense.

ALIGNMENT WITH GOVERNMENT'S POLICY INTENT

The Ministry's stated objective in shortening the open period from two months to one month is to enhance stability in the construction industry's labour relations framework. PCA endorses this objective and submits that Model B better achieves it than Model A.

Reducing the open period from two months to one month will, on its own, reduce the window during which displacement activity can occur. However, if that reduced window is placed in the last month of the agreement (as under Model A), it continues to overlap with the most sensitive period of bargaining. The reduction in duration would provide only partial relief to the instability problem.

Model B achieves the Ministry's stated goal more fully by both shortening the open period and relocating it to a point in the agreement's term where its disruptive potential is lower.

FURTHER INFORMATION NEEDED FOR MODEL B

We look forward to receiving further information specific to implementation of Model B, including, but not limited to:

1) The Use of Conciliation Officers

A) The Current Use:

Conciliation Officer appointed at any time prior to end of Open Period promptly ends the Open Period EVEN IF a new collective agreement is not in place at the end of open period/previous collective agreement conclusion

B) In Model B Proposal:

Will open period close on the last day of the 35th month regardless of conciliation officer appointment?

a. Is there an expectation that the collective agreement negotiations are to be finalized at the end of the 35th month? If they have not will open period continue?

2) Re-opening Open Period in the 37th Month

A) Current:

If parties have not reached agreement at the end of 36 months, open period continues indefinitely unless conciliation officer is appointed

B) In Model B Proposal:

Will Open Period resume (be re-opened) in the 37th month if parties have not reached an agreement at the end of the 36 months?

CONCLUSION

PCA respectfully suggests the Ministry to proclaim Model B into force once Bill 105, Protecting Ontario's Workers and Economic Resiliency Act, 2026 passes. The placement of the one-month open period in the second-last month of the collective agreement represents the most effective and balanced approach to shortening the open period while ensuring that employers and unions can bargain freely and productively during the final and most critical phase of the agreement's term.

The construction industry deserves a labour relations framework that encourages stability, promotes genuine bargaining, and protects employers from the disruption of poorly timed representation challenges. Model B delivers on all three counts. PCA looks forward to the Ministry's continued engagement with industry stakeholders on this and related issues.



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