



# Project Agreement Guide

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# What is a Project Agreement?

Buyers of construction utilize project agreements (also known as project labour agreements) to maximize project stability, timely completion and quality, efficiency and productivity, and to minimize risks and any inconvenience to the public on large-scale projects. These mutually negotiated agreements create an environment for owners to invest in economically significant projects.

Across North America project agreements have been adopted in a wide range of circumstances in both the public and private sector. Project agreements have been part of Ontario's construction industry landscape for over 20 years. To date they have been primarily used, and consistently renewed, by numerous large industrial corporations including Toyota, Nova Chemical, Dofasco, and General Motors to name a few. Although rarer in Ontario, project agreements have been utilized in the public sector in both the United States and Canada. Many public sector entities in the United States utilize project agreements to ensure stability and cost efficiency on their large public sector projects.

A project agreement (PA) is a project-specific, uniform agreement covering all the trades on a project, and lasting only as long as the project. It is a comprehensive labour relations agreement that sets out the terms and conditions that apply to all employers and all trades working on the project.

A project agreement is not a 'collective agreement', rather it modifies an existing provincial ICI sector collective agreement. Where the PA is silent, the provincial collective agreements' terms are not impacted and remain in-force.

Project Agreements set the terms and conditions of employment that will apply to a specific project. These terms take precedence over any other collective agreements between the parties.

# The Legislation

In 1998, the then Conservative government amended the Ontario Labour Relations Act (LRA) to provide for the creation of project agreements in the construction industry with the intent of making the construction industry in Ontario more flexible and competitive. In 2000, this section was further amended to allow groups of projects to be covered by a single project agreement and to provide a process to add a project or projects to an existing project agreement.

Implementing a project agreement under Section 163.1 of the LRA has the following effects:

- The project agreement applies to all construction work on the project within the jurisdiction of any bargaining agent on the list.
- Each applicable provincial agreement, as modified by the project agreement, applies to the construction work on the project, even with respect to employers who would not otherwise be bound by the provincial agreement.
- Subject to the project agreement, if a provincial agreement ceases to apply while the project agreement is in effect, the provincial agreement that applied when the project agreement was approved applies to the construction work on the project until a new provincial agreement is made.
- No employees performing work to which the project agreement applies shall strike and no employer shall lock-out such employees while the project agreement is in effect even if a strike or a lock-out is called.

Trade unions cannot obtain bargaining rights for any worker employed on the project for the duration of the project agreement. The legislation states that a project agreement does not constitute voluntary recognition nor does it bind any employer to a provincial collective agreement. The grievance referral process outlined in the LRA does not apply to alleged violations of the project agreement by any of the project agreement parties.

Project agreements can also be used for commercial and/or institutional projects provided no affected trade unions files a timely objection as prescribed in Section 163.1. Outside the ICI sector, parties are free to negotiate project agreements.

# **Benefits of Project Agreements**

- Potential to save money on economically significant construction projects
- Enable projects to proceed that might otherwise not happen due to cost constraints or concerns about labour availability
- Reduced administrative burden and enhanced efficiencies resulting from the standardization of key terms and conditions of employment between trades including hours of work, shift premiums and overtime
- Jobsite stability with the implementation of No Strike / No Lockout provisions (even if the project extends beyond the expiry date of the ICI Collective Agreement)
- On-site dispute resolution mechanism
- Guarantee of provision of skilled labour
- Guarantee that the project will be union built
- Opportunity to achieve broader social and community benefit goals such as apprenticeship opportunities for diverse and at-risk youth

"The project agreement legislation has clearly benefitted the Sarnia-Lambton region. With 15 projects completed under various project agreements, over \$6.8 billion of investment has poured into the region. In my view, project agreements form an important factor in the industrial owner's decision-making process. They have been a very positive factor in attracting owner interest for new investment in Ontario."

- Andy Pilat, Executive Director, Sarnia Construction Association

# Who Can Initiate a Project Agreement?

A project agreement must be initiated by an owner or their designate (referred to as the "Proponent" in the LRA) who considers the project or group of projects to be "economically significant". [Section 163.1(1)]. The Act does not define what is meant by "economically significant."

#### **Proponent:**

"person who owns or has an interest in the land for which the project is planned and includes an agent of such a person" [Section 163.1 (18)]

Although the proponent (owner or agent) must officially initiate the project agreement process, building trade unions may initiate discussions with owners about the merits of project agreements.

There are two criteria necessary in order to initiate a project agreement.

- 1. The proponent considers the project or group of projects to be of **significant economic value**.
- 2. The project(s) meets the definition of "Industrial" within the Industrial / Commercial / Institutional (ICI) construction industry.

OR

If the project(s) do not meet the definition of "Industrial", the project agreement may still be achieved if there are no timely challenges to it or the proponent obtains a regulation designating the project is eligible to be subject of a project agreement.

While a considerable amount of the work required in the project agreement process can be performed by the proponent (or the agent), it is strongly recommended that qualified legal advice be used throughout the process. This will ensure:

- Proper format and submission of OLRB filings
- Proper wording of official documents
- Clear and proper wording of the Project Agreement document
- Correct interpretation of provincial agreements

# What to Include in a Project Agreement?

The negotiated terms and conditions of the project agreement define those elements that support a successful project. Project agreements can be written from scratch as a stand-alone agreement or it can be a document which only addresses specific changes to provincial agreements.

The following are examples of elements previously included in project agreements:

#### Work Rules

- **☑** Safety Practices
- ✓ Hours of Work
- Overtime Rates
- ☑ No Strike / No Lockout
- ☑ Shift Work & Premiums
- Hiring & Transfer

- Breaks
- Apprentice Ratios
- Composite Crews
- Bench Rules
- Maintenance Work

- Camp Accommodation
- Discipline Policy
- Harassment Policy
- Code of Excellence
- Pre-job Conferences

#### Agreement Administration

- Management team structure
- Training for supervision of owner, trades, & contractors
- On-site dispute resolution process
- Project agreement amendment mechanisms

#### Community / Social Benefits

- Opportunities for youth
- Opportunities for worker retraining
- Opportunities for Indigenous People
- Charitable donations based on man-hours

#### Supplemental Contract Maintenance

Section 163.1 of the LRA provides a step-by-step guide to the implementation of a project agreement. However, these activities do not have to happen sequentially. For example, negotiation of the terms and conditions of the project agreement document can take place prior to or concurrently with other events such as notice and response periods.

Prior to commencing the official project agreement process, the proponent (owner) should define the scope, schedule, budget and strategic importance of the project or group of projects and assess whether or not a project agreement would be of benefit. If the decision is to proceed, the proponent should consult with local area building trade unions and contractor associations.

#### **STEP 1** - FIRST NOTICE

During this first step, the proponent who wishes to have a project agreement must give notice to potential parties. Following this notice, a bargaining agent on the list may apply to the Ontario Labour Relations Board (OLRB) to challenge whether the project can be subject to a project agreement.

#### PROPONENT RESPONSIBILITIES

- 1. Create a list of bargaining agents (local unions) that are expected to be involved on the project
- 2. Provide written notice of intent to have a project agreement to the following stakeholders:
  - i. Each bargaining agent (local union) anticipated to be involved on the project
  - ii. Each provincial Employee/Employer Bargaining Agency that is affiliated with the above list of local unions
  - iii. Ontario Labour Relations Board (include copy of the notice and evidence that notice has been given)
- 3. Request a written response of approval or disapproval to the notice (providing a simple form that can be completed and returned is the best way to insure a response)

#### CONTENT OF THE NOTICE

- List of all bargaining agents anticipated to be involved on the project and receiving the notice
- General description of the project(s) including name of the project, duration, type of plant/facility, etc.
- Estimated cost of the project(s)
- Response form

#### FIRST CHALLENGE

A bargaining agent on the list may apply to the Labour Relations Board to challenge whether the project can be subject to a project agreement. Challenges must be made within 14 days after receiving the notice and the bargaining agent must meet the criteria for receiving the notice.

The first step challenge examines whether or not the proposed project is in the Industrial sector.

- If the project is industrial or is designated by regulation, the OLRB will dismiss the challenge.
- If the project is not industrial, the OLRB will support the challenge and declare the project cannot be subject to a project agreement.

#### APPROVAL OF FIRST NOTICE

In order to proceed to the Second Step, at least 40% of the bargaining agents must have provided written approval of the First Notice and the 14-day First Challenge window closed without challenge or a dismissal of the challenge by the OLRB.

Include all trades anticipated to be involved on the project on the First Notice list as there is no mechanism within the legislation to add a trade due to error or modified scope of work after a project agreement is in force. A separate project agreement would have to be issued and cross referenced to the original project agreement should additional trades need to be recognized.

Contractors are bound by the terms and conditions of the project agreement. Consider including them in your stakeholder discussions and providing them with copies of the notices.

#### **STEP 2 - SECOND NOTICE**

Having at obtained written approval from 40% of bargaining agents involved on the project, the Proponent may proceed to issuing the Second Notice.

#### PROPONENT RESPONSIBILITIES

- 1. Review and confirm the list of bargaining agents who received the First Notice
- 2. If additions are necessary, those bargaining agents are entitled to the same process outlined above for the First Notice and Challenge period (notify the original list of bargaining agents of the additions to the list)
- 3. Prepare project agreement document in consultation with bargaining agents
- 4. Issue Second Notice (including copy of the proposed project agreement document) to bargaining agents requesting a written response of approval or disapproval
- 5. Provide the OLRB with a copy of the notice for a proposed project agreement, copy of the project agreement document and the list of bargaining agents receiving the Second Notice

#### CONTENT OF THE SECOND NOTICE

- Copy of the proposed project agreement
- List of bargaining agents who comprised the 40% providing their approval of the First Notice for a project agreement
- Response form

#### DISTRIBUTION OF THE SECOND NOTICE

- Bargaining agents developed for the First Step Notice
- Any additional bargaining agents identified
- Ontario Labour Relations Board

Providing a simple response form that can be completed and returned is the best way to insure a response within the 30 day time limit. This form should include a reminder to the bargaining agents that they are required to send a copy of their response to the OLRB.

#### **STEP 3** – NOTICE OF APPROVAL

Bargaining agents have 30 days to provide a written response to the proponent with their approval or rejection of the project agreement. At least 60% of the bargaining agents (trade unions) that respond to the Proponent, within this 30-day window, must indicate their approval for the project agreement. Conversely, if insufficient approvals are received (below 60%), the project agreement process is terminated.

The Board has held that the 60% calculation is based on the number of trade unions and not the number of persons each trade union is expected to have working on the project (*Basell Canada Inc. Board File No. 1564-06-PR, November 22, 2006*)

#### PROPONENT RESPONSIBILITIES

- 1. At the end of the 30-day window, the Proponent will make the determination that the project agreement is in effect if at least 60% of the bargaining agents provide their approval
- 2. Send a Notice of Approval to all bargaining agents on the list that the proposed project agreement has been approved
- 3. Provide the OLRB with a copy of the Notice of Approval and evidence that the Notice of Approval has been given to each of the bargaining agents on the list

#### SECOND CHALLENGE

Only a bargaining agent on the list that did not give notice of approval of the proposed project agreement may file a challenge. This challenge must be delivered to the Board within 10 days after the proponent advised the Board of approval of the project agreement.

Section 163.1 (2) defines the grounds upon which the Board will consider a challenge, including:

- 1. Failure to provide proper notice; and/or
- 2. The "proposed project agreement would result in a reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent challenging the project agreement that is larger, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that gave notice of approval of the project agreement."

#### **STEP 4** - PROJECT AGREEMENT IN FORCE

The project agreement automatically comes into force after 10 days if there is no challenge or if the OLRB makes an order declaring the project agreement is In Force following a challenge.

#### PROPONENT RESPONSIBILITIES

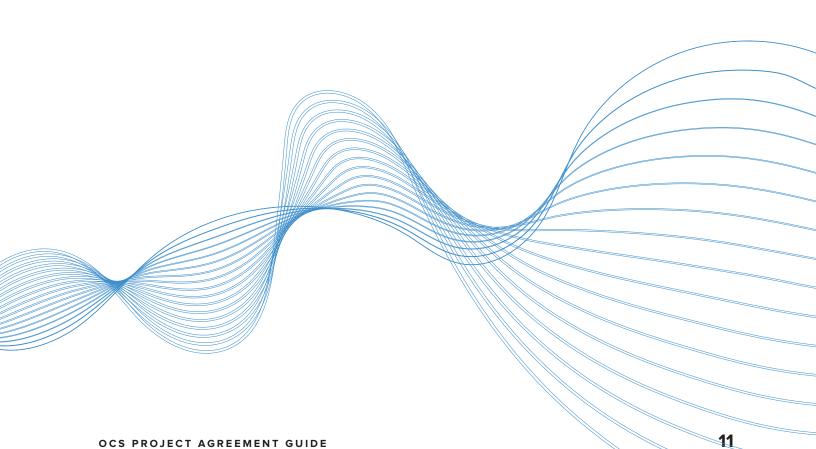
- 1. Provide notice to the following stakeholders that the Project Agreement is In Force or not In Force:
  - i. All bargaining agents on the list
  - ii. Affiliated Provincial Employer and Employee Bargaining Agencies
  - iii. Ontario Labour Relations Board

# Resources

- 1. Section 163.1 Labour Relations Act Project Agreements
- 2. Industry Contacts

(Click on each link below to download contacts or visit <u>iciconstruction.com</u> and go to Resources)

- Provincial Employee and Employer Bargaining Agents
- Local Area Unions
- Regional Building Trades Councils
- Local Area Contractor Associations



Trade	Collective Agreement
Boilermaker	Articles of Agreement Between The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers on its own Behalf and on Behalf of Local Lodge 128 and the Boilermaker Contractor' Association including The Boilermaker Contractors' Association of Ontario Governing Wages and Working Conditions on all Field Construction Work in Ontario
	Effective: July 28, 2019 to April 30, 2022
Bricklayers, Stone Masons, Plasterers	BACU Brick Provincial Collective Agreement 2019 – 2022 for Bricklayers, Stonemasons and Plasterers, their respective Apprentices, Improvers and Working Forepersons between the Brick and Allied Craft Union of Canada and its Locals 1, 2, 5, 10, 12, 23, 25, 28, 29 and The OMCA/BACU Bargaining Committee
	OPC Brick Provincial Collective Agreement 2019 – 2022 for Bricklayers, Stonemasons and Plasterers, their respective Apprentices, Improvers and Working Forepersons between the Ontario Provincial Council (OPC) and The Masonry Industry Employers Council of Ontario ("MIECO")
	Effective: May 1, 2019 to April 30, 2022
Carpenters	Provincial Collective Agreement between Carpenters' Employer Bargaining Agency and Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America
	Effective: May 1, 2019 to April 30, 2022
Cement Masons, Waterproofers	Provincial Collective Agreement between The Cement Finishing Labour Relations Association; The Construction Labour Relations Association of Ontario; The Industrial Contractors Association of Canada; Waterproofing Contractors Association of Ontario and The Operative Plasterers and Cement Masons International Association of the United States and Canada; and, Local Union 598
	Effective May 1, 2019 Expires April 30, 2022
Demolition Labourers	Demolition Agreement Between Ontario Association of Demolition Contractors Inc. and The Labourers' International Union of North America, and The Labourers' International Union of North America Ontario Provincial District Council, 183, 493, 506, 527, 607, 625, 837, 1036, 1059, and 1089
	Effective: May 1, 2019 to April 30, 2022
Electrical Workers	Principle Agreement made and entered into between The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario (and all other Signatories to this Agreement) and The International Brotherhood of Electrical Workers and The IBEW Construction Council of Ontario representing the following affiliated Local Unions 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, and 1687
	Expiry date: April 30, 2022
Elevator	Ontario Provincial Collective Agreement between the National Elevator & Escalator Association and the International Union of Elevator Constructors
	Effective: May 1, 2019 – April 30, 2022

Trade	Collective Agreement
Glaziers	Seventeenth Ontario Architectural Glass and Metal Technician Institutional Commercial and Industrial Agreement between Architectural Glass and Metal Contractors Association and The International Union of Painters and Allied Trades and the Ontario Council of the International Union of Painters and Allied Trades
	Effective: 2019-2022
Insulators	Provincial Collective Agreement Between The Master Insulators' Association of Ontario Inc. and The International Association of Heat and Frost Insulators and Allied Workers and The International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Revison 4)
	Effective: May 29th, 2019 To April 30th, 2022
Ironworkers	Collective Agreement Ontario Erectors Association, Incorporated (a designated Employer Bargaining Agency) and Ontario Erectors Association (an Accredited Employer Association) and International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers and Ironworkers District Council of Ontario comprised of Local Unions 700, 721, 736, 759, 765, and 786
	Effective: May 1, 2019 to April 30, 2022
Labourers	Provincial ICI Collective Agreement Between Construction Labour Relations Association of Ontario; Ontario Masonry Contractors Association; Industrial Contractors Association of Canada; Waterproofing Contractors Association of Ontario; Cement Finishing Labour Relations Association and The Labourers' International Union of North America, and The Labourers' International Union of North America Ontario Provincial District Council, on behalf of its affiliated Local Unions 183, 493, 506, 527,607, 625, 837, 1036, 1059, and 1089
	Effective: May 1, 2019 to April 30, 2022
Millwright	Provincial Collective Agreement between the Millwright Regional Council, United Brotherhood of Carpenters and Joiners of America on behalf of Affiliated Locals 1007, 1151, 1244, 1410, 1425, 1592, 1916, and 2309 and The Association of Millwrighting Contractors of Ontario, Inc.
	Effective May 26, 2019 to April 30, 2022
Operating Engineers	Provincial Collective Agreement Between Operating Engineers Employer Bargaining Agency and Operating Engineers Employee Bargaining Agency
	Effective: May 1st, 2019 - April 30th, 2022
Painters	Provincial Collective Agreement between The Ontario Painting Contractors Association; Acoustical Association Ontario; Interior Systems Contractors Association of Ontario and The International Union of Painters and Allied Trades and The Ontario Council of the International Union of Painters and Allied Trades
	Effective: May 1, 2019 – April 30, 2022

Plasterers	Durational Diocharana American Debuggar The Maille and Calling Control American
	Provincial Plasterer's Agreement Between The Walls and Ceilings Contractors Associations and The Construction Labour Relations Association of Ontario and The Operative Plasterers and Cement Masons International Association of the United States and Canada Local 124
	Effective: 2019 - 2022
Plumber, Pipefitter, Steamfitter	Ontario Provincial Collective Agreement Between Mechanical Contractors Association of Ontario and The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada
	Effective: May 1, 2019 – April 30, 2022
Pre-Cast	Provincial Precast Collective Agreement Between <b>Ontario Precast Concrete Manufacturers' Association</b> and <b>The Labourers' International Union of North America, and The Labourers' International Union of North America Ontario Provincial District Council, on behalf of its affiliated Local Unions 183, 493, 506, 527,607, 625, 837, 1036, 1059, and 1089</b>
	Effective: May 1, 2019 – April 30, 2022
Refrigeration Workers	I.C.I. Construction Collective Agreement 2019 Between The Ontario Refrigeration and Air Conditioning Contractors Association and Local 787 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada
	Effective: May 1, 2019 – April 30, 2022
Rodworkers	Rodmen Provincial Collective Agreement Between The Rodmen Employer Bargaining Agency and The Rodmen Employee Bargaining Agency
	Effective: May 1, 2019– April 30, 2022
Roofers	Provincial Collective Agreement The Labour Relations Section of the Ontario Industrial Roofing Contractors' Association and Ontario Sheet Metal Workers' & Roofers' Conference of the Sheet Metal Workers' International Association on behalf of the following affiliated Bargaining Agents 30, 47, 235, 269, 397, 473, 504, 537 and 562 and Sheet Metal Workers' International Association
	Effective: May 1, 2019 – April 30, 2022
Sheet Metal Workers	Provincial Collective Agreement Ontario Sheet Metal Contractors Association and Sheet Metal Workers' International Association and Ontario Sheet Metal Workers' Conference for Locals 30, 47, 235, 269, 397, 473, 504, 537, and 562
	Effective: May 1, 2019 - April 30, 2022

Trade	Collective Agreement
Sprinkler Fitters	Collective Agreement Between the Canadian Automatic Sprinkler Association and on Behalf of the Nova Scotia, and Newfoundland Construction Labour Relations Associations Limited and Local Unions 56, 179, 254, 488, 496, 740, 170, 325 and 853 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada
	Effective: May 1, 2019 to April 30, 2022
Steeplejack	Restoration Steeplejacks' Provincial Collective Agreement between The Steeplejack and Masonry Restoration Contractors Association and The Operative Plasterers and Cement Masons International Association of the United States and Canada Local 598
	Effective: May 1, 2019 – April 30, 2022
Teamsters	Collective Agreement Between the <b>Teamster Construction Council of Ontario</b> and <b>The Construction Site Teamster Employer Bargaining Agency</b>
	Effective: June 17,2019 - April 30,2022
Tile & Terrazzo	BACU-GUILD Province-wide ICI Collective Agreement for Marble, Tile, Terrazzo, Cement Masons, Resilient Floor Layers and their Helpers Between Brick and Allied Craft Union of Canada and its Locals 1, 5, 6, 7, 10, 12, 23, 25, 28 and 31 and Terrazzo, Tile & Marble Guild of Ontario, Inc.
	OPC-GUILD Provincial ICI Collective Agreement for Marble, Tile, Terrazzo, Cement Masons, Resilient Floor Layers and their Helpers Between <b>The Ontario Provincial Conference</b> and <b>The Terrazzo, Tile &amp; Marble Guild of Ontario, Inc.</b>
	Term: April 1, 2020 to April 30, 2022

# **Current & Historical Listing of Ontario Project Agreements**

1999	IOL Ethylene-Polyethylene Incremental Capacity Hydrogen Recovery Project IOL HUIS
2000	Stelco - Lake Erie Hot Strip Mill Bowater Pulp & Paper Canada Inc Toyota Cambridge Project Maintenance Agreement (updated in 2005 and 2008)
2001	Shell Gasoline Hydro-Treating Unit TransAlta Co-Generation Project Weyerhauser Trus Joist Kenora Operations Weyerhauser
2002	IOL Co-Generation Project
2004	NOVA Modernization Project
2005	Greenfield Energy Centre
2006	St. Clair Power
2007	Thorold Co Generation Plant Abitibi Paper Arcelor Mital Dofasco
2008	Arcelor Mital Dofasco Southdown Station
2009	ATCO Structures - G8 Temporary Accommodation Facility General Motors 6-Speed RWD Transmission Toyota Woodstock Project Maintenance Agreement Aker Construction

# **Current & Historical Listing of Ontario Project Agreements**

2010	General Motors 6-Speed FWD Transmission General Motors
2011	TransAlta
2012	General Motors Gen V Engine Project Arcelor Mital Dofasco Cytec Canada Phosphine Product Facility NOVA Feedstock Conversion Project Toyota Cambridge Lexus Project
2014	Toyota Cambridge RX Major Model Launch Bio-Amber Succinic Acid Plant
2016	New Gold - Rainy River Gold Mine Toyota Cambridge-Woodstock Project RAV NOVA Chemicals Modification Project
2017	NOVA Corunna 4th Boiler Project NOVA Moore Emissions Reduction Project
2018	General Motors BioGas NOVA Corunna - COP3E Project (expansion of existing ethylene facility)
2019	Arcelor Mital Dofasco NOVA Corunna - AST2 Project (World Scale Polyethylene Project)

