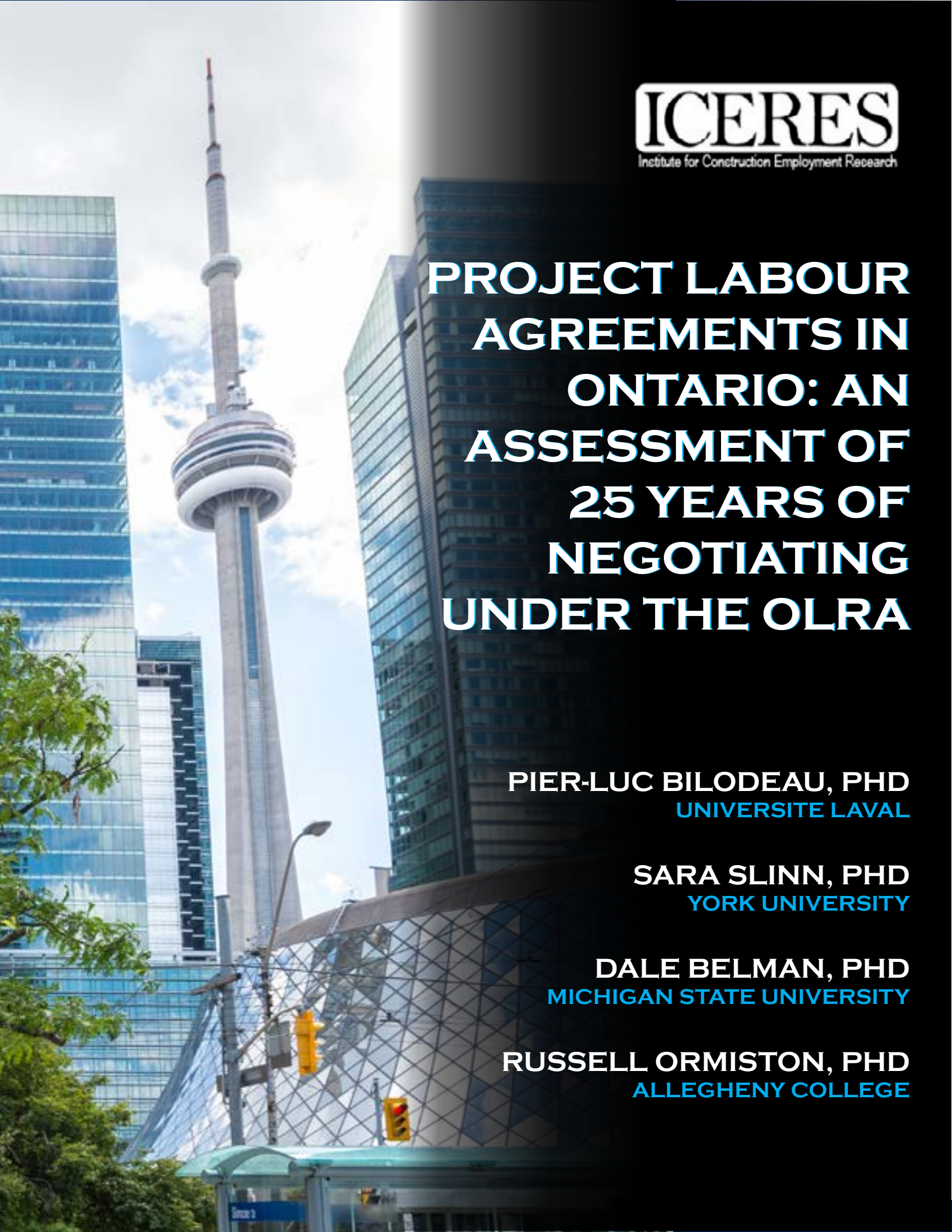

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PROJECT LABOUR AGREEMENTS IN ONTARIO: AN ASSESSMENT OF 25 YEARS OF NEGOTIATING UNDER THE OLRA

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Executive Summary

Project labour agreements (PLAs) are pre-hire contracts between a construction owner and labour organizations that establish the terms and conditions of employment on a specific construction project. PLAs have been used for decades by some of Ontario's largest companies in the industrial sector when building some of the province's largest manufacturing and other production facilities. Ontario labour law, however, has somewhat constrained the use of PLAs to the industrial sector. This has led to public policy discussions about allowing businesses and government agencies easier access to using PLAs on their respective construction projects if they deem it valuable to their organization's goals.

To inform these policy discussions, four university faculty from Canada and the United States—where PLAs are ubiquitous in both the private- and public-sectors—have partnered to produce a comprehensive analysis of project labour agreements in Ontario. This study consists of three major parts offering perspective from experts in labour relations, labour law, and economics. First, this study offers a detailed analysis of the legal framework of PLAs in Ontario, documenting the history of the relevant regulations and challenges to these agreements in the province. Second, this report includes an examination of the contents of nearly all major PLAs signed in Ontario over the last two decades; this section summarizes the primary goals of PLAs in the province, standard provisions included, and opportunities for expansion by businesses, government entities, and labour organizations. Finally, this paper features a review of the peer-reviewed economics research on the effects of PLAs on construction costs and bid competition; the analysis also directly examines a paper published by a Montreal think tank that is currently driving policy conversations on PLAs in Ontario.

Labour Relations Perspective:
A Content Analysis of Ontario PLAs

Analyzing nearly 40 PLAs signed in Ontario's industrial sector between 2000 and 2019, the authors discovered PLAs covered major construction projects from some of the province's largest corporations. This included companies from a wide range of manufacturing and production subsectors, including petrochemical (NOVA Chemicals, TransAlta), automobiles (General Motors, Toyota), primary metal (ArcelorMittal-Dofasco, Stelco), wood products and paper (Bowater) and mining (New Gold). The fact that these highly advanced companies with decades of major construction experience rely on PLAs—in many cases using them multiple times in a 20-year range—presumably speaks to the value these companies must place on these agreements in promoting timely and on-budget completion of important construction projects.

It is important to highlight that PLAs are the result of negotiation between parties. This means that there is space for these agreements to be tailored to reflect the priorities of the stakeholders involved. In reviewing the content of PLAs concluded in Ontario and examining prior research, the authors see five broad categories of provisions that are typically included in project labour agreements: (a) ensuring timely completion, (b) controlling costs, (c) worker health and safety, (d) community benefits, and (e) non-union involvement. Explorations of these five categories of provisions within Ontario PLAs are offered below:

Ensuring Timely Completion

Finishing a major construction project on time is of critical importance to nearly all organizations—public or private—and nearly all PLAs are geared towards advancing that goal. This includes investments in project planning and the harmonization of work hours and schedules across the many trades operating on a job site, an important outcome given the interdependent work across different subcontractors and what can be, at times, a chaotic environment.

To further promote on-time completion, a central element of project labour agreements in Ontario are processes that secure the timely access to skilled labour on a project. This is important in an era featuring a well-documented shortage of skilled construction tradespeople in Canada that will only get worse

as Baby Boomers continue to retire. With businesses and government agencies all competing for the services of a limited number of skilled workers, a PLA represents a key avenue to ensure timely access to labour and, thus, promote on-time completion of projects.

To ensure uninterrupted access to skilled labour, all project labour agreements in Ontario over the last two decades also contain a no strike/no lockout provision which, as outlined in the Ontario Labour Relations Act (OLRA), is the only way a contractor bound by a provincial industrial, commercial and institutional (ICI) collective agreement can obtain their unionized workforce from the building trades unions in the event of a work stoppage. These provisions have taken on greater importance in recent years given that ICI construction has just experienced its most difficult collective bargaining round in recent history. In sum, PLAs act as "insurance" for construction owners that labour conditions will not delay work on a project.

Controlling Costs

PLAs establish construction workers' wages on a project and typically establish uniform conditions regarding work schedules, holidays, overtime pay, and pay provided to workers on days when work is unavailable (e.g., inclement weather). In addition to helping plan the work process, the process of harmonizing these scheduling issues netted some construction owners cost savings as compromises needed to get uniform terms often featured concessions by unions with better compensated overtime and holiday schedules.

Worker Health and Safety

While worker health and safety provisions are standard in project labour agreements in the United States, these were conspicuously sparse in PLAs signed in Ontario. Most PLAs in the province failed to make any mention of worker health and safety issues, while others offered limited details other than the parties agreeing to comply with relevant laws and regulations. That said, there were some useful provisions in a handful of PLAs, such as the establishment of joint health and safety committees, the appointment of a health and safety representative in trades with a certain number of workers on the site, and the provision of proper shelter and sanitary facilities.

Community Benefits

In the United States, government bodies regularly use project labour agreements when constructing a major project as a means of advancing broader socioeconomic goals; this includes such things as the required employ of workers from underrepresented or disadvantaged groups and the hiring of sufficient apprentices to advance regional workforce development goals. These "community benefits" provisions were noticeably absent in all but one PLA in Ontario—program funding and training opportunities on the project for youths in priority neighborhoods in Mississauga—an outcome likely attributable to the fact that all construction owners signatory to a PLA in the sample came from the private sector. It is likely, however, that expanded access to PLAs for government agencies engaged in major construction projects would result in the proliferation of these provisions in Ontario.

Non-Union Involvement

One of the more controversial aspects of project labour agreements is the presumed preferencing of construction trades unions and unionized contractors. And it is the case that many PLAs include provisions restricting the access to the tendering process to unionized contractors. But agreements in Ontario are hardly uniform on this. In contrast, some PLAs allow non-union contractors to work on a project if they employ members of building trades unions. Other PLAs are completely silent on the union-non-union matter, simply leveling the ground by "taking wages out of the competition" between unionized and non-union contractors bidding on the project. This trend highlights flexibility in this matter. It is important to highlight, however, that government agencies in the United States are not legally allowed to exclude non-union contractors from the bidding process and, in fact, non-union employers can and do win bids on public-sector PLA projects.

Even in situations where a PLA would restrict work on a project to union members and their employers, it does not deprive the proponent of the benefits as-

sociated with competition on construction markets. Depending on the local labour market conditions and the market shares of unionized construction, the proponent can always use the building trades' interest in securing stable work for their members as a lever to obtain concessions, thus reducing their costs while also getting the advantages of unionized labour in terms of skills and access to the workforce.

Legal Perspective:
The Labour Law Framework of PLAs in Ontario

To guide public policy conversations, this report includes a detailed overview of the legal context, legislative history, case law, and ancillary legal issues involving project labour agreements under Ontario labour law. This study focuses deeply on the statutory framework for PLAs offered in the Ontario Labour Relations Act (OLRA). Emphasis is paid to section 163.1 that establishes a detailed process and requirements for the signing of these labour agreements that must remain in effect until all projects within their scope are completed or abandoned.

Section 163.1 is of critical importance to understanding the legal context of PLAs in Ontario, as it was passed in 1998 through Bill 31 amendments to the OLRA. The motivation behind this bill was to enhance competitiveness and to attract economically significant ventures to the province by providing options to promote stability and certainty for companies looking to build major construction projects, ensuring uninterrupted work and access to skilled labour. In 2000, further amendments through Bill 139 allowed for broader and more flexible PLAs, including non-construction work (e.g., maintenance agreements) and the potential incorporation of multiple projects under a single agreement.

The Ontario Labour Relations Board (OLRB) has emphasized that PLAs are voluntary instruments that can be used by "proponents" (e.g., construction owners) if they can reach agreement with a sufficient number of "bargaining agents" (e.g., individual trades unions). While PLAs can modify the terms of provincial collective agreements on a specific construction project, they cannot remove the rights of employees under the OLRA and do not change the terms of the underlying provincial collective agreements. PLAs are not considered collective agreements under the OLRA, nor do they create bargaining rights or binding obligations under collective agreements, and they do not constitute an employer's voluntary recognition of a labour union. PLAs are enforced through the OLRA.

Section 163.1 of the OLRA outlines a four-step process for negotiating and establishing a PLA on projects deemed "economically significant." First, proponents create a list of bargaining agents that are potential parties to the PLA and notify each agent of the PLA, including specific information with the notice. Step two requires the proponent to then provide a second notice to listed bargaining agents; at least 40% of bargaining agents must then provide their written agreement with the PLA within 30 days of this notice. Third, notice of approval for a PLA is then provided by the proponent if at least 60% of bargaining agents are in agreement. The PLA then takes effect if there are no challenges filed or when the OLRB declares it in force; the proponent then must give notice to all bargaining agents on the list and all relevant employer and employee bargaining agencies of whether a PLA is coming into force.

Legal challenges to a proposed project labour agreement are an important part of this process. Specifically, parties can challenge the legality of a proposed PLA at the first and third steps in the process and this report summarizes important case law regarding these objections. A critical form of challenge can occur at the first step. Sector limitations for PLAs are not clearly defined in the Ontario Labour Relations Act, however the OLRB must dismiss challenges at the first step if the project is an industrial project within the ICI sector, partly explaining the concentration of PLAs in that area. While there is limited case law on this matter, PLAs have been upheld in some circumstances outside of the ICI sector—such as when sector-based challenges are submitted after the legal challenge period.

With the exception of British Columbia, Manitoba, and Prince Edward Island, labour legislation in other Canadian jurisdictions contains project labour agreement provisions for construction projects. But even in jurisdictions such as British Columbia where labour legislation lacks specific PLA provisions, major project agreements have been established either utilizing other labour legislation provisions or a

government-created Community Benefits Agreement. The terminology and level of detail of legislative provisions vary among jurisdictions, however the OLRA PLA provisions are among the most comprehensive in Canada.

The legal chapter concludes with consideration of emerging ancillary issues relevant to PLAs in Ontario and other jurisdictions. This includes claims of PLA violation of international rights obligations protecting freedom of association, Indigenous rights, and Canadian Charter of Rights guarantees of freedom of association have given rise to legal and non-legal disputes in international and domestic forums.

Economics Perspective:
The Economic Research on PLAs

Public policy debate over whether government agencies should be allowed to use project labour agreements in overseeing large construction often hinges on a key issue: their potential effect on taxpayer costs. Given Canada's limited use of PLAs on public-sector construction to date, however, economic research on this question is lacking. However, public-sector PLAs are ubiquitous in the United States, issued for all sorts of government-funded projects, such as schools, roads, and water and sewer systems. Given the large number of PLA-built projects and the availability of data from public sources, there is a limited but growing economic literature on the effects of these agreements on construction costs in the U.S. While the authors are wary of cross-country comparisons, the established comparability of construction industries in the two countries may offer the best evidence regarding this unanswered question in Canada.

Most importantly, the three most recent and methodologically advanced studies in academic, peer-reviewed journals tell a consistent story: project labour agreements do not have a statistically significant effect on construction costs after controlling for differences in the size, complexity, and location of projects. With expanded data, one of these studies also discovered that PLAs did not have a statistically significant effect on the number of bidders on public-sector projects; some analysts have posited that while PLAs may deter some contractors from bidding, it may encourage others. To be fair, the peer-reviewed research on the economics of PLAs is limited to a handful of studies addressing school and college (i.e., institutional) construction projects and future research may reach different conclusions. But the current state of academic research suggests that PLAs may not have much of an effect, if any, on construction costs and bid competition.

Peer-reviewed research suggesting that PLAs do not have a statistically significant effect on construction costs is especially notable considering headline-grabbing projections made by some in Canada suggesting that public-sector PLAs would substantially increase taxpayer costs. But a critical analysis of Canada-based studies suggests that the methodological foundations of these estimates are sorely lacking. For instance, a recent report by the Montreal Economic Institute suggested that a PLA on the Ottawa Hospital project would increase taxpayer costs by 8% to 25%. These numbers were drawn directly from studies published by another Canadian think tank, Cardus, in describing the costs of restricted tendering policies.

But pulling back the layers of MEI's and Cardus's figures, it appears that these two numbers were drawn directly from arbitrary endpoints in a 2009 simulation on bidding practices included in a non-peer-reviewed technical report by researchers in Texas that had *nothing to do with project labour agreements.* The authors of the simulation never defined the project type evaluated or their methodology, and may or may not have used real data; this is not surprising considering that the simulation was clearly an incidental part of a much larger study.

The use of this 2009 report from Texas to estimate the cost impact of project labour agremements in Ontario is problematic. Beyond the obvious reason—it was a vague simulation that had nothing to do with PLAs—the application of those two values (8% and 25%) to project the cost impact of an agreement rests on the assumption that there are two (and only two) bidders on a PLA project. But as highlighted in this study, some PLAs in Ontario *require* more than two bidders, directly contradicting this baseline assumption and immediately putting those estimates into question.

Even if that simulation was relevant to PLAs, the

top-end estimate (25%) relies on the questionable conclusion that the removal of a PLA would lead to a four-fold increase in the number of bidders (from two to eight). This is difficult to believe. First, the only peer-reviewed study on this issue (albeit in the United States) reflected that PLAs had little, if any, effect on the number of bidders on a project. Second, every construction market has its limitation in the number of contractors capable of overseeing work on the biggest and most complex construction projects; given the state of the market in Ontario, a four-fold increase seems unlikely.

The authors of the current study appreciate the difficulty of estimating the cost effects of PLAs in Ontario given the lack of available economic data on individual projects. Because of that data vacuum, the authors cannot definitively say whether or not PLAs affect construction costs in Ontario. But given the methodological shortcomings of MEI's work and the presence of peer-reviewed research showing there is no statistically significant cost impact of PLAs in the United States, the authors conclude that MEI's projections that PLAs increase costs by 8% to 25% are, at best, unreliable and are likely misinforming public discourse over PLAs and the Ottawa Hospital project.

Conclusion

Project labour agreements have largely been limited to industrial construction projects in Ontario since the province adopted s. 163.1 of the OLRA in 1998. This comprehensive study aimed to inform public policy discussions about the possible expansion of PLAs to other parts of the economy. As PLAs are the outcome of a voluntary negotiation between proponents and local building trades, the authors suspect that their repeated use by some of Ontario's largest industrial companies to complete major construction projects reflect that these agreements likely have real economic value. Further, nothing the authors uncovered suggested that these voluntary agreements would be inappropriate for other sectors of the economy.

The authors recognize the sensitivity of presumed union preferencing in the bidding process. While many PLAs in Ontario do preference or restrict access to unionized contractors and union members, other agreements are neutral on this issue and allow union and non-union entities to bid and work on projects. This issue is likely more salient in discussing public-sector PLAs, however (a) other legal mechanisms in Canada, such as Quebec's decree system, "take wages out of competition" and (b) the United States resolves this problem by mandating that bidding on public-sector projects covered by a PLA are open to both union and non-union contractors. Further, public-sector PLAs can advance a government's socioeconomic goals through community benefits provisions as found in British Columbia and the U.S.

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The Institute for Construction Employment Research is an independent, non-profit network of academic researchers and other scholars whose mission is to facilitate academic-quality research on labor and employment issues affecting construction owners, employers and workers. For more information, visit: iceres.org.

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Introduction

Project labour agreements (PLAs) are pre-hire labour contracts between a construction owner and labour organizations that establish the terms and conditions of employment on a specific construction project. PLAs insulate owners and contractors from risk by ensuring timely access to skilled labour, the harmonization of scheduling across trades, and the prohibition of work stoppages regardless of strikes or lockouts in the local construction labour market. In return for these and other concessions, PLAs typically require that most blue-collar workers on a job site are selected through the union hiring system.

PLAs have been adopted as standard practice for decades by many of Ontario's largest manufacturers, however their use has been largely limited to private-sector industrial construction. Recent public policy discussions, however, have centered on expanding their potential application to projects outside this narrow band of projects including, but not limited to, public-sector construction. To better inform these policy conversations, the Institute for Construction Employment Research (ICERES) has assembled a team of academic scholars from Canada and the United States to examine PLAs in Ontario through the lenses of labour relations, law, and economics.

This report is structured as follows. As the first of two brief introductory sections, Chapter 1 defines the main characteristics of PLAs and their typical contents. Chapter 2 then provides a brief overview of the history of their use in the United States, which has decades of experience with public-sector PLAs and has been the subject of nearly all of the academic-quality research on the subject. The next three chapters represent the heart of the analysis. Chapter 3 details the legal framework applicable to the PLAs in Ontario since the enactment of section 163.1 of the Ontario Labour Relations Act. Chapter 4 then offers an analysis of the contents of a sample of PLAs signed in Ontario over the last quarter century. Finally, Chapter 5 presents a critical review of the prior research on the economic impact of PLAs, including publications from Canadian think tanks.

1 The Fundamentals of PLAs

In this first section of the report, we define project labour agreements (PLAs) and provide an overview of common terms and conditions in these agreements as outlined by Belman and Bodah (2010), the most comprehensive study of the content of PLAs previously published to date. Applying this framework here and throughout this study, common PLAs provisions are associated with: (1) the timely completion of the project, (2) occupational health and safety on the job site, (3) benefits for the surrounding community and underprivileged groups, and (4) the possibility for non-union contractors and construction workers unaffiliated with the building trades unions to do work on a PLA-covered construction project.[1]

PLAs Defined

Project labour agreements are pre-hire labour contracts used in the construction industry to establish the terms and conditions of employment. Used more often on large projects of considerable duration and complexity, PLAs are designed to promote timely completion and quality construction of projects by ensuring access to skilled labour, assuring coordination between trades, expediting dispute resolution, reconciling compensation and work hours provisions across trades, and banning work stoppages. By so doing, they reduce construction risk for contractors and clients alike. More generally, PLAs mandate that work on a project continues no matter what conflicts arise on a project (e.g., grievances) or offsite (e.g., a general area strike by one or more trades). In return for these and often other concessions by labour organizations, PLAs typically require that most skilled workers on the job site are selected through the union referral system. PLAs have also included provisions that seek to improve conditions on the job site (e.g., health and safety rules) and provide benefits to the surrounding community (e.g., mandating jobs and training opportunities for local workers and/or those from disadvantaged backgrounds).

Timeliness

The timely completion of a large construction project such as a factory or a hospital is often beset by enormous logistical issues to be resolved, and any number of things can create delays in construction. This can include weather, the inability to bring qualified labour to a project in a timely manner, unavailability of materials when scheduled to be installed, financing issues, lack of availability of subcontractors when scheduled, and many other problems. While PLAs cannot solve every potential concern, these contracts promote timely completion through several mechanisms. First, PLAs—in both Canada and the United States—include provisions that commit local unions to provide labour on a timely basis. In areas in which there is a shortage of craft labour, unions may permit "travelers"—union members from outside of the local area—to work in their jurisdiction. Second, PLAs forbid work disruptions—such as strikes and slowdowns—and provide mechanisms by which disputes can be anticipated and quickly resolved.

A third and important element of project labour agreements is the harmonization of work hours to promote efficient utilization of labour. Different trades may have their own rules on matters such as start time, the number of holidays and when holidays are taken, shift schedules, and the number and timing of breaks. This can result in situations in which workers from a critical trade may be absent from a job site at specific times or days, thus stalling progress made by those in other trades. PLAs resolve this inefficient use of time by coordinating starting and ending times, determining common holidays, allowing second and third shifts, and other work rules that might otherwise slow down progress on a construction project. Finally, PLAs also facilitate the creation of labour-management committees to oversee projects, anticipating and resolving problems before they occur, and quickly resolving any unanticipated issues that might otherwise delay construction. These committees often promote project success in other ways, such as promoting safety awareness and cost awareness, protecting public interests, and reviewing workplace policies to ensure equal employment opportunities.

Health and Safety

Construction is inherently a dangerous industry in which to work. The sector features among the highest rates of injuries and workplace deaths in North America. While each jurisdiction has laws promoting safety on the jobsite, these rules are not always strictly followed for reasons ranging from worksite culture to the pressure to cut corners for time or cost considerations. Further, while many individual contractors have their own safety protocols, these programs typically vary greatly in effectiveness. And given the chaotic nature of a large job site—which may feature scores of contractors in a single location—different workers may be following different safety protocols, leading to the potential for confusion and, therefore, an increased likelihood of a workplace accident.

Project labour agreements offer a means to improve health and safety outcomes on a jobsite by codifying, but not necessarily altering, existing safety programs. PLAs may also establish a safety-specific labour-management committee to address issues pertinent to workplace safety and review current health and safety plans and procedures. These agreements may also require contractors to provide formal safety training to their employees, or explicitly establish a set of worksite safety rules that must be adhered to while on the jobsite. Provisions related to drug and alcohol testing may also be included in a PLA, as well as rules allowing the termination of employees from a project for possessing, using, or selling banned substances.

The health and safety provisions of a PLA may result in huge savings in terms of both human and financial costs. As outlined by Belman and Bodah (2010), a project labour agreement used a $3.6 billion cleanup project of Boston Harbor in the United States contributed to a 34% reduction in a lost-time incident rate on the project compared to the national average in heavy construction.[2] Keeping workers safe is not just the right thing to do: it comes with financial savings. Belman and Bodah (2010) cite that, on a $2 billion dam project in California, the consolidation of safety programs of over 250 subcontractors and 20 general contractors via a project labour agreement led to the savings of $30 million in workers' compensation insurance costs. Unfortunately, while health and safety provisions are often included in public-sector PLAs in the United States, Chapter 4 will highlight that these provisions have not been as frequently included in private-sector PLAs in Ontario.

Community Benefits

Project labour agreements also represent a form of social investment in workforce training and, in many cases, the surrounding community. Most directly, PLAs generally steer work towards contractors that employ a higher-skilled workforce and support registered apprenticeship training programs. These apprenticeship training programs provide a workforce development pathway of blue-collar workers to the types of middle-class jobs that represent a strong economic backbone for families and communities. Depending on the rules outlined in the PLA, these large construction projects provide stable work and onsite training opportunities for apprentices to help nurture a sustainable and skilled craft labour force in the community.

But PLAs can be written in various ways to ensure other types of benefits within the local community. For example, it is common for PLAs to feature requirements that the employment of local residents is prioritized, or for such citizens to be allowed to advance from pre-apprenticeship and apprenticeship programs to journeyworker status. Further, it is common for project labour agreements to include provisions that require the employment of workers from minority and historically disadvantaged communities. To demonstrate how flexible PLAs can be written to meet the needs of local communities, a limited number of PLAs also include exemptions for

small and minority-owned businesses (Belman and Bodah, 2010). While this type of language is typical of *public-sector* PLAs in the United States, Chapter 4 will highlight that such provisions are, as one might expect, absent from *private-sector* PLAs used in Ontario since 1998.

Non-Union Entities

Non-union contractors and their associations often paint PLAs as a "union-only" mechanism that provides labour unions and signatory contractors with exclusivity in the bidding process. But language in PLAs can be flexible, and decisions about the terms under which non-union firms may participate on a project covered by a PLA are the result of a negotiation between the construction owner—such as a company or a government agency—and local building trades organizations, subject to applicable laws and regulations. As a result, any concerns about union exclusivity on a public-sector PLA project can be addressed by respective government officials during negotiations.

In the seminal study of project labour agreements in the United States, Belman and Bodah (2010) highlight six considerations when evaluating the openness of a PLA to non-union participation. First and foremost is whether non-union contractors can bid on PLA work and whether owners can accept their bid. In the U.S., all public-sector and most private-sector PLAs explicitly allow contractors to bid on a project without respect to their union status. And non-union contractors regularly win bids on projects ranging from manufacturing plants to the biggest public-sector projects in the country (Belman and Bodah, 2010). A second and related consideration is whether a PLA requires all contractors to sign the local collective agreement—thus becoming "signatory"—or whether a letter of assent (i.e., an agreement to abide by the PLA) is sufficient without requiring the signing of the local labour agreement. Third, if there are concerns about how a PLA affects small and minority-owned non-union businesses, agreements can explicitly include carve-outs for contractors that meet specific conditions.

The final three considerations in evaluating the openness of PLAs to non-union participation involve the eligibility and payment of workers on the jobsite. First, while many PLAs require all contractors to hire workers via union referral systems, others allow non-union contractors to bring part or all of their existing labour force onto a project. Second, federal and some state laws in the United States may allow a PLA to require all workers on a jobsite to join labour union or pay union dues, representing a potential obstacle for non-union participation. Finally, PLAs often equalize worker compensation rates on the project; where non-union contractors are paying less, agreements may stipulate that contractors contribute the differential to union pension and benefit programs.

The union status of contractors and workers operating under a PLA is an important issue in Ontario. As will be shown later in this report, many PLAs signed under the relevant section of the Ontario Labour Relations Act (OLRA, s. 163.1) limit the possibility to work on the project to contractors bound by one or more of the industrial, commercial and institutional (ICI) collective agreements, but it is not always the case. Some PLAs also provide contractors with some freedom in the recruitment of their workforce on the project. As highlighted in Chapter 3, this issue is partly covered by the OLRA, which prevents the creation of bargaining rights with regard to a non-union contractor signatory to a PLA.

2 The American Experience

While project labour agreements have only been in use since the 1960s in Canada and differ greatly in their importance from one province to another, PLAs are far more prevalent—and have a longer history—in the United States. With most agreements negotiated between construction owners and developers with local labour unions, PLAs are ubiquitous in both the public and private sectors.[3] There is a considerably wide range of projects that have been covered by project labour agreements from public elementary schools and manufacturing plants to well-known projects such as the Trans-Alaska Oil Pipeline, Walt Disney World, and Cape Canaveral (U.S. Government Accountability Office, 1978, 1998; Dunlop, 2002).

Most relevant to current policy considerations in Canada, public-sector project labour agreements have a long history in the United States. While the authors are sensitive to making cross-country comparisons, the dearth of government-administered PLAs elsewhere in Canada means that the American experience with these agreements may best inform public policy debates in Ontario. This belief is strengthened by decades of research in the field of industrial relations that has shown that the construction industry in both countries is sufficiently similar to allow for a reasonable application of results (e.g., Goldenberg & Crispo, 1968; Rose, 1980; Weiler, 1980). Further, as will be outlined in Chapter 5, nearly all of the available economic research on public-sector PLAs are restricted to studies of the United States.

To provide some historical context, rudimentary project labour agreements between the federal government and construction labour unions in the United States date back to wartime production efforts in World War I. Modern-day public-sector PLAs, however, are considered to have developed and proliferated during World War II (McCartin, 1997; Dunlop, 2002). These evolved and expanded following WWII, as the federal government adopted PLAs on atomic energy, missile sites, and space projects (Dunlop, 2002). Over time, the use of project labour agreements filtered down to state and municipal governments and spilled over into the private-sector. In effect, the transition of PLAs from the public to the private sector in the United States is the opposite of the proposed movement of policy in Ontario.

The proliferation of public-sector PLAs in the United States has not been without controversy. The expansion of PLAs in the immediate post-WWII period was due, in part, to the fact that American construction industry was highly unionized and there was substantial desire on the part of construction users to avoid labour disputes and secure the best possible economic deal relative to local agreements (Belman et al., 2007). But opposition to PLAs grew in response to declining union market share, better organization of construction users and non-union stakeholders, and the rising capabilities of large non-union contractors (Belman et al., 2007). At the heart of anti-PLA discourse are typically concerns that (a) PLAs violate public bidding statutes that require the government to accept the lowest qualified bid and (b) eliminates the competitive advantage of non-union contractors—who are able to bid on projects—by requiring them to employ workers from union hiring halls and pay union-scale wages and benefits. As will be documented in Chapter 5, however, the limited amount of peer-reviewed research on PLAs generally do not support the position that

these agreements lead to a statistically significant increase in taxpayer costs.

Nonetheless, legal and political challenges to PLAs by the non-union construction stakeholders in the U.S. have been persistent for decades, highlighted by a lawsuit that reached the Supreme Court in 1993.[4] In a foundational case colloquially referred to by those in the industry as the *Boston Harbor* decision, the Court ruled that the National Labour Relations Act did not preempt a state government's ability to use a project labour agreement if it felt it would best serve its interest as a construction user. Later state court decisions have found that governments may use PLAs on public projects if bidding is open to all qualified bidders—both union and non-union—and due diligence is undertaken to determine whether the use of a PLA will reduce project costs. On a practical level, this means that demonstrating that the benefits outlined by the PLA may outweigh any additional costs that might arise from their use.

While the *Boston Harbor* decision cemented public-sector PLAs as legal, their *use* has become politicized over the last two decades. Over 20 states—mostly led by Republican legislatures—have passed laws prohibiting state and local government agencies from using project labour agreements. At the national level, President George W. Bush, a Republican, outlawed PLAs on federal construction projects in 2001; this was reversed eight years later by President Barack Obama, a Democrat, who encouraged federal agencies to use PLAs.[5] This was taken one step farther in 2022 by President Joe Biden, a fellow Democrat, whose Executive Order *requires* federal agencies to use PLAs (with exceptions) on construction projects of $35 million or more.[6]

Boston Harbor

3 PLAs in Ontario: The Labour Law Framework

(Note: This chapter attempts to describe the current state of knowledge and practice from an industrial relations and labour law perspective. However, its content does not, and is not intended to, constitute legal advice. In particular, this chapter is not, and should not be construed as, an exhaustive analysis of competition law even if some its elements are mentioned.)

In Ontario, labour law has regulated the negotiation of PLAs since 1998. This chapter outlines the statutory framework of the PLA system, summarizes the case law related to these provisions, sets out the legislative history of the Ontario Labour Relations Act (OLRA) PLA provisions, and offers a brief overview of PLA arrangements in other Canadian jurisdictions.[7] This chapter concludes with brief consideration of protection of rights emanating from outside the OLRA which are becoming relevant to PLAs and with a brief comment on recent changes to *Competition Act* requirements which may be relevant to PLAs.

3.1 OLRA PLA Framework

The following passage drawn from a leading OLRB decision provides a general overview of the PLA framework established by the OLRA:

> Section 163.1 of the Act establishes a process by which the owners, contractors, subcontractors, trade unions and employees who are or may be involved in the creation, development and construction of "economically significant" construction projects can become subject to a labour relations regime over which they have control and, more importantly, can avoid being bound by the provincial collective bargaining negotiations and provincial collective agreements applicable to the industrial, commercial and institutional sector of the construction industry for the work performed at those construction projects. In essence, the participants in a construction project covered by a project agreement will not have to face the possibility of a disruption to the work on that project that might otherwise take place should a provincial strike or lockout occur pursuant to section 164 of the Act following an impasse in provincial bargaining during the duration of the project agreement. As the Board observed in *U.A., Local 663 v. Sarnia Construction Assn.*, [1999] O.L.R.B. Rep. 884 (Ont. L.R.B.), at 889: Certainty and stability in the construction of a significant industrial project are, in my view, at least two of the objects of section 163.1 of the Act.[8]

3.1.1 Nature and Content of a PLA

The OLRA does not include a definition of "project agreement," but explicitly provides that, while a provincial agreement is a collective agreement, a PLA is not a collective agreement for the purposes of the Act.[9] Nonetheless, a PLA can modify terms of a provincial collective agreement.[10]

Because it is not a collective agreement, a PLA is not subject to the OLRA provisions setting out requirements (including deemed provisions) for contents of a collective agreement.[11] In particular, PLAs are not subject to the deemed recognition provision required for collective agreements.[12] Therefore, entering into a PLA does not create bargaining rights, does not constitute voluntary recognition, and PLA parties will not be bound by collective agreements. Furthermore, the OLRA deemed arbitration provisions[13] will not apply, nor is the s. 133 grievance referral process available to parties to address claims of a PLA violation.[14]

In terms of the content of a PLA, the OLRA simply specifies that PLAs must include a general description of the project or projects within its scope and a provision that it remains in effect until all projects within its scope are completed or abandoned.[15] PLAs may also include a provision that permits it to apply to additional projects which may be added to the PLA in the future.[16]

3.1.2 Effect of a PLA

The Ontario Labour Relations Board (OLRB) has provided some guidance on the effect of a PLA on other OLRA rights and on collective agreements. It has held that a PLA does not remove rights that employees otherwise have under the OLRA.[17] In that case, the right at issue was employees' right to certainty about the dates of the open period, in circumstances where PLA stated that its term was for the duration of the project and did not otherwise specify its term. The OLRB looked to the s. 58 OLRA deemed minimum one-year term applicable to collective agreements, to conclude that this PLA would also have a one-year term from the date of signing.

The OLRB has also clarified that creation of a PLA does not deprive affected provincial agreements of collective agreement status. A PLA "is simply a statutory process whereby a provincial collective agreement can be modified for the purposes of concluding a particular project" and the provincial agreement does not thereby cease to be a collective agreement.[18]

A new project may be added to an existing PLA, where the PLA contains a term permitting the proponent to add new projects, the proponent believes the new project is economically significant, and the proponent satisfies the steps set out in s. 163.1.1, which largely mirror the steps required for the initial PLA.

3.1.3 PLA Process

The process for establishing a PLA is set out as a multi-step procedure in section 163.1 of the OLRA. The PLA application process is a multi-step process initiated by a proponent in cases where the proponent regards a project (or a group of projects) a being "economically significant."[19] Section 163.1 also builds in several, discrete, opportunities for listed bargaining agents to challenge a proposed PLA. These are addressed in the relevant "steps" below.

For the purposes of the PLA provisions, "proponent" is defined to mean "a person who owns or has an interest in the land for which the project is planned and includes an agent of such a person."[20] The OLRA does not define the term "economically significant," nor does it specify the nature of the project or sector.[21] Commentators have opined that s. 161.1(1) suggests that economic significance is based on the proponent's subjective belief and there is no foundation in the OLRA for a challenge on the grounds that a project is not economically significant (Freedman, 2011, p. 5; Sack et al., para. 10.208; Wray, 2010, p. 7). We are not aware of a published OLRB decision addressing such a claim.

The OLRB has made clear that PLAs are "fundamentally voluntary instruments."[22] In the *V.K. Mason Construction Ltd*. case, the proponent sought to withdraw the proposed PLA after it failed to achieve necessary support under s. 163.1(8) (discussed below). Several bargaining agents objected to withdrawal, filing unfair labour practice complaints under s. 96 of the OLRA, seeking an order that the Board amend the PLA project. However, the objectors indicated willingness to continue negotiating the PLA but could not accept it in its current form. Given the voluntary nature of PLAs, the OLRB refused to order amendments to the proposed PLA and permitted the proponent to withdraw.

The steps for a PLA application under s. 163.1 of the

OLRA are outlined below, including discussion of relevant case law.

3.1.3.1 Step 1: First Notice to Potential Parties & Challenges

3.1.3.1.1 First Notice to Potential Parties

A proponent seeking a PLA for a project or group of projects, which it believes is economically significant, is required to compile a list of bargaining agents that are potential parties to the PLA.[23] Section 163.1(2) sets out requirements for the list of potential parties. It provides that a bargaining agent will be included on the list only if: it is bound by a provincial collective agreement, and "the proponent anticipates that any project that is proposed to be covered under the project agreement may include work within the bargaining agent's geographic jurisdiction for which the bargaining agent would select, refer, assign, designate or schedule persons for employment."[24]

The proponent then must provide to each bargaining agent on the list notice that the proponent is seeking a PLA and include with the notice a copy of the bargaining agent list, a general description of each proposed project, and estimated costs for each project. The proponent must also provide a copy of the notice to relevant employee and employer bargaining agencies. Finally, the proponent must submit to the OLRB a copy of the notice and evidence that notice has been provided to each bargaining agent on the list.[25]

3.1.3.1.2 First Notice Challenge

A listed bargaining agent has 14 calendar days from the date it receives notice in which to challenge whether the project or group of projects may be the subject of a PLA.[26] The OLRB will not entertain a challenge once this time limit has passed.[27] Parties to such a matter include the applicant (that is, the challenger) and proponent and may include other persons pursuant to regulation or as the OLRB specifies under a regulation.[28]

The OLRB must dismiss a challenge if the project is an industrial project in the Industrial, Commercial and Institutional (ICI) sector or a project designated by regulation.[29] Otherwise, the OLRB must grant the challenge and issue an order that the project may not be the subject of a PLA.[30] In cases where a challenge application is granted, the proponent may prepare a new list of potential parties.[31]

Limited case law exists to provide guidance on the question of sector limitations for PLAs.

In an early series of decisions involving the Greenfield Energy Centre, the OLRB indicated that where an objection to first notice is filed pursuant to s. 163.1(3) but later withdrawn, this will mean that there existed no timely objection to the project being the subject of a project agreement.[32] Furthermore, a trade union lacking direct interest in the work of the project, will not be granted standing by the OLRB to bring a sector-based objection.[33] Deciding not to take up the parties' argument about whether PLAs can be created only for the ICI sector, the Vice Chair stated that: "My only comment is that the Act does not prohibit project agreements that are not industrial projects, but the statute's process for imposing such agreements on dissenting trade unions would not apply."[34]

A second case, the 2009 *Cope Construction* decision, remains the leading decision on the issue of sector limits to PLAs.[35] Here the issue arose in the context of several certification applications brought for workers on two projects. The OLRB addressed the argument that s. 163.1(16) precluded the certifications because PLAs were in place. The applicants contended that PLAs could not apply to the projects because they were outside the ICI sector, arguing that the exception that the PLA provisions create from man-

datory application of provincial agreements should be strictly construed because: it excludes unions and their members from the otherwise universal, mandatory collective bargain system and restricts their access to certification; PLAs applicable outside the ICI sector could be abused, denying unions and their members access to work; PLA provisions could be misused by rival unions and competing contractors; and, only local unions receiving notice of the proposed project agreement can object to it under section 163.1(3) on the grounds that the project is not an industrial project.

In this case, the applicant had received notice and no objections were raised.

The OLRB concluded that sector challenges are to be made at the beginning of the project development: at the time the proponent gives notice of a proposed PLA. Sections 163.1(3)3 and 5 specify that if the proposed project is not ICI, or not designated in regulations as a project that may be the subject of a PLA, then the OLRB will be required to order that the project cannot be subject of a PLA.[36] However, once the 14-day time limit for challenges expires and notice has been given to the affected unions and bargaining agencies, then the PLA comes into force pursuant to s. 163.1(10) and under s. 163.1(14) the PLA applies to "all construction work on the project within the jurisdiction" of the unions receiving notice under ss. 163.1(1), (5) and (11).[37] Therefore, sector becomes irrelevant to the scope and applicability of a PLA upon expiry of the time for a s. 163.1(3) challenge to be made.[38]

The OLRB also provided the following explanation of how—and when—the ICI sector limitation is relevant to a PLA:

> ...[Paragraph 163.1(14)(1)] does not limit the work that is subject to the project agreement to work coming within the industrial, commercial and institutional sector. Rather, it establishes that the scope of the work subject to a project agreement is limited by only a trade union's jurisdiction and not by sector. Indeed, a large construction project may involve work that comes within more than one sector.... All construction work done at the project is subject to the project agreement regardless of the sector within which that work might come.
>
> The irrelevance of "sector" to the scope and applicability of a project agreement once the time for objection to it under section 163.1(3) has passed is, I believe, reinforced by the opening words section 163.1(16) of the Act. Section 163.1(16) prevents a union from obtaining bargaining rights for an employer using that union's members to do work under a project agreement based on the employment of its members with that employer if that union meets conditions established by section 163.1(15), that is, that union does not have bargaining rights for that employer and that union received notice of the coming into force of the project agreement. ...
>
> Sections 163.1 (15) and (16) of the Act contemplate union members will be working under a project agreement but in the course of doing so, may not be engaged in work within the construction industry from time to time. Moreover, there is nothing in sections 163.1(1) or 163.1(2) that limits the application of a project agreement to projects within the industrial, commercial and institutional sector of the construction industry. Indeed, section 163.1(1) only requires a construction project be "economically significant" in the opinion of its proponent for a project agreement to be proposed for a project. That provision is silent about the sector in which that project might be. Thus, I find the *Act* does permit a project agreement to encompass work outside the industrial, commercial and institutional sector of the construction industry.[39]

The OLRB explained that to permit a sector challenge after the PLA had come into existence and work had commenced would "create tremendous uncertainty and foster litigation", although recognizing that sector determinations are "not an exact science" and that the nature and character of a project can change during construction. Therefore, the OLRB held:

> ...It is because the boundaries between sectors of the construction industry are not crystal clear and are open to debate that the Act mandates that a project agreement must apply to all construction work within the jurisdiction of the unions that received notice of the project agreement on the project that is the subject of a project agreement.[40]

The OLRB also held that the possibility that unions and employers might use s. 163.1 strategically in their favour did not compel an interpretation of the provisions that would be "inconsistent with the certainty and stability established by section 163.1 for 'economically significant' construction projects covered by a project agreement."[41] The OLRB concluded that the PLAs were valid and existed prior to the certification applications and dismissed the applications.

Finally, the 2014 *Eastern Power Ltd.* decision dealt with a s. 166 application (utilizing the general sector dispute provisions of the OLRA) seeking an OLRB ruling that work at the relevant project fell within the electrical power systems sector, rather than the ICI sector.[42] The OLRB concluded that the bargaining patterns that had developed for natural gas-fired, steam-powered electric generating station construction suggested that the work was mostly in the ICI sector, although explicitly noting that it had not determined that all construction work at the project was in the ICI sector.[43] The OLRB also described the effect of the PLA provisions as follows:

> [T]he Act itself contains a process that allows the owners or developers of large scale construction projects … to attempt to negotiate and secure agreements that are specific to their objectives when they themselves undertake the construction of such projects if those projects do come within the industrial, commercial and institutional sector. The project agreement provisions set out in section 163.1 of the Act create a mechanism where the proponents of those projects, if they are able to secure agreements from the requisite number of trade unions that would likely be the source of skilled tradespeople who would work on those project, may be able to have the applicable industrial, commercial and institutional sector provincial agreements effectively amended so that the issues those owners or developers face when undertaking those projects can be addressed.[44]

Therefore, the OLRB determined, pursuant to s. 166, that the specified relevant work came within the ICI sector.

The OLRB affirmed that a PLA can only be established under s.163.1 of the OLRA in three circumstances. First, if it is in the ICI sector; second, if the project is designated by regulation as a project that may be the subject of a project agreement; or, third, if no timely objection is made on the basis of sector.[45] In this third circumstance, a commentator contends that if no timely challenge is brought, then the OLRA s. 163.1 process and rules can apply to a PLA for any project whether or not it is in the ICI or another construction sector, or outside of construction altogether (Wray, 2010, p. 7).

3.1.3.2 Step 2: Second Notice - Proposed Agreement

Where there has been no successful challenge following the first notice, and if at least 40 percent of the bargaining agents on the list provide written agreement, the proponent may give "second" notice of a proposed PLA.[46] Notice is to be provided to each bargaining agent on the list and to the OLRB and must contain a copy of the proposed PLA and specify which agents have agreed to notice being given.[47] At this stage of the process the proponent is seeking to negotiate and settle the proposed PLA terms. Bargaining agents on the list have an opportunity to give notice of approval or disapproval of the proposed PLA within 30 days of receiving the second notice and must provide a copy to the OLRB.[48]

3.1.3.3 Step 3: Third Notice & Challenges

3.1.3.3.1. Third Notice - Approval for Agreement

If the proponent determines that at least 60 percent of bargaining agents that gave notice within the time limit for doing so approved of the proposed PLA, then it will be approved.[49] The OLRB has clarified that this percentage is calculated based on the number of bargaining agents; it is not weighted based on the number of person hours on site of each bargaining agent.[50] The proponent must give notice ("third notice") of approval or disapproval to all bargaining agents on the list and to the OLRB, along with evidence of notice having been given.[51]

3.1.3.3.2. Challenge to Notice of Approval

The OLRA provides an opportunity to challenge this notice, within 10 calendar days of the date the OLRB received evidence of approval pursuant to s. 163.1(8)5, but this is only available to a bargaining agent on the list which did not give notice of approv-

al.[52] The s.163.1(9) time limit is mandatory and not directory; the OLRB does not have power to relieve against a party's failure to comply with the timeliness and notice provisions in s. 163.1(9); and, written notice of the challenge is required, although in the absence of any requirement contained in the OLRB Rules about the content of notice under section 163.1 (9), a letter simply stating that an agent is challenging the PLA is sufficient, given the tight time limits in the section.[53]

If a timely challenge is filed, then the OLRB may either declare that the approved PLA is in force, or that it shall not come into force. Specifically, s. 163.1(9) provides that the OLRB may declare that, upon a challenge, a PLA shall not come into force in the following three circumstances:

- If the notice provisions set out in s. 163.1(1)-(8) have not been complied with and this noncompliance affects the bargaining agent raising the challenge.[54]

- If the OLRB declaration that PLA shall not come into force complies with circumstances that may be prescribed in the OLRA Regulations.

- Where the proposed PLA "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"[55] the OLRB shall make an order unless it considers it inappropriate to do so.[56]

The OLRB set out its approach in calculating the rate of reduction to total wages and benefits in the context of a s.163.1(9) amendment application in a series of early *Shell* decisions.[57] As more recently described, the OLRB assesses the comparative reduction as follows:

> [The OLRB] should base the comparative reduction on a calculation of the difference in the total number of dollars paid to or on behalf of an employee to the employee or to a union or employee benefit fund for 40 hours of work in one week under the Provincial Collective Agreement on one hand and under the Project Agreement on the other....
>
> The proper manner in which to determine the proportionate reductions in the total wages and benefits of each group of employees represented by a trade is to calculate the total of all hourly payments (other than payments to an employer association fund) that an employer must make under a Provincial Collective Agreement in respect of each hour of work performed by a bargaining unit employee, as compared to the payments an employer is obliged to make for each hour of work of a bargaining unit employee under the Project Agreement, assuming the employee in both cases works a full 40 hour week.[58]

A significant dispute arose in 2011 between the Sarnia Construction Association (SCA) and the IBEW, Local 530 over the OLRB's approach to determining the proportional reductions of total wages and benefits in a s. 163.1(9) challenge. In a series of decisions addressing this dispute, the OLRB reaffirmed the approach set out in the earlier *Shell* decisions (in which SCA had been the agent for Shell) rejecting SCA's argument for adopting a different formula.[59] The OLRB also rejected SCA's argument that it should decline to exercise its s. 163.1(9)3 discretion to amend the PLA because of the trivial amount involved, holding that "[t]he value of even small amounts of money is to be determined by the parties."[60]

Instead of the *Shell* approach, under which the OLRB assesses comparative reduction on the difference in

total number of dollars paid for 40 hours of work under the provincial agreement versus the PLA, the proponent, SCA, argued that the OLRB should limit its examination to the basic hourly wage rate reduction, which was 5% among all trades and this across the board 5% reduction meant that the PLA produced no variation.[61] The SCA contended that the *Shell* approach was contrary to the intention of the PLA provisions and ignored the practical application of the provisions.[62] The SCA's argument was as follows:

> The SCA argued that a purposive approach to the Act in this context could only lead to an equal percentage wage reduction for all employees. Every member of every trade union would be undergoing the same relative reduction in wages. This, it argues, was in keeping with the words of Paragraph 2ii ….
>
> The analysis depends on the result to an employee, and each employee in the Project Agreement would see a 5% wage reduction. Benefits would remain at 100% of their Provincial Collective Agreement levels. In the SCA's view, this provides for ease of calculation and an easily ascertainable result. It argues that Paragraph 2ii exists to provide a remedy to a trade union that is being treated in a different fashion, for example required to accept a 6% wage reduction rather than a 5% wage reduction. It would also make for more comprehensible proposals and clearer negotiations between the proponents of a project agreement and of the local building trades unions.
>
> The SCA argues that the Provincial Agreement amendments were not intended to allow the type of challenge that is made by the IBEW here and that the intent of the legislative amendments were simply to ensure that the non-consenting trades were not treated adversely by those who had agreed to the project agreement.[63]

The OLRB rejected the SCA's argument as follows:

> It may well be that the SCA has a better idea of how to structure and monitor the Project Agreement provisions of the Act than what the Board has found to be the one the Legislature decided on. This is essentially a policy argument, asserting that to exercise the Board's discretion to decline to make an amendment to the Project Agreement would better reflect the way in which these provisions should have been crafted. These arguments amount to an invitation to the Board to exercise its discretion to cause section 163.1 to operate in a different fashion from the way it does. It is not an appropriate manner in which to exercise a discretionary power under the Act to apply a different policy than the one the Legislature has mandated. I decline to do so.[64]

It may be that it merits considering whether s. 163.1(9) should be reviewed, taking into consideration the policy and practical concerns raised by SCA about how comparative reductions are calculated pursuant to this provision.

3.1.3.4 Step 4: Fourth Notice – Notice of Agreement Coming into Force

A PLA comes into force either at the time the period for filing a timely challenge pursuant to s. 163.1(9) elapses without a timely challenge being made (and no OLRB decision is required in such cases), or where the OLRB makes an order declaring a PLA to be in force.[65] Section 163.1(10) does not require the Board to make a declaration that a project agreement is in force. In the absence of a challenge to the project agreement, it comes into force by operation of the statute,[66] and the OLRB has held that it has no authority to declare a PLA in force in the absence of a s. 163.1(9) challenge.[67] The proponent must give notice to all bargaining agents on the list and all relevant employer and employee bargaining agencies of whether or not a PLA is coming into force.[68]

There have been some instances of cases where a party mistakenly believes a PLA exists.[69] Because PLAs generally do not require an OLRB decision to come into force, the OLRB does not have either a list of PLAs or copies of settled PLAs. Therefore, it may be helpful to consider whether a formal declaration or registry of PLAs at the OLRB would be helpful to the construction community. It may also be helpful to consider whether PLAs, like collective agree-

ments, be statutorily required to be filed with the Minister of Labour (or, perhaps to the OLRB in the case of PLAs) and to be made available to the public (OLRA, s. 90).

3.1.5. Enforcement

The terms of a PLA are enforceable. The available enforcement mechanism depends on whether the alleged violator is a contractor or subcontractor on the one hand, or the proponent. A party to a PLA may utilize a section 133 application to enforce a provincial agreement against a contractor or subcontractor, but s. 133 is not available against a proponent. In that case, enforcement must be by way of a section 96 unfair labour practice complaint claiming violation of section 163.1(14).[70] This difference arises because, due to the language of subsections 163.1(14) and (17), "A contractor or subcontractor performing work is thus bound by the provincial agreement as modified by the project agreement whereas a proponent is not," and application of s. 133 is limited to collective agreements.[71]

3.2 Legislative History – Ontario PLA Provisions

In 1998 the Progressive Conservative provincial government introduced Bill 31 which amended the OLRA to, among other things, add PLA provisions as section 163.1 of the Act.[72] This established a two-step procedure for establishing PLAs on major industrial projects, including projects in the ICI sector, separate from province-wide construction agreements, overseen by the OLRB.

The purpose or rationale for the OLRA PLA provisions has been articulated by legislators and the OLRB. On First Reading of Bill 31, the Hon. Jim Flaherty, Minister of Labour, Solicitor General and Minister of Correctional Services, introduced the PLA framework as a product of collective efforts of employers, unions, and the Ministry, and was intended to make the province's construction industry more competitive for economically significant projects (Hansard, June 4, 1998, 1340, 1410). Minister Flaherty described the PLA amendments as follows:

> This legislation would bring about project agreements that would help businesses compete for economically significant projects with the potential to bring thousands of construction and spinoff jobs into Ontario's communities. These projects might include those contemplated by the multibillion-dollar petrochemical sector, as well as other innovative, high-technology-based industries (Hansard, June 4, 1998, 1340).

The OLRB has consistently affirmed this policy purpose, stating: "The Board agrees with the proposition that the Project Agreement provisions of the Act were enacted with the goal of bringing economically significant projects to Ontario."[73] The following passage from an OLRB decision is a commonly cited description of the purpose of the OLRA PLA provisions:

> Section 163.1 of the Act … is designed to provide stability and certainty to the participants, that is, the owners, contractors, subcontractors, trade unions and employees engaged in a massive construction project that may take several years to complete. A project agreement ensures work will continue without disruption when provincial agreements in the industrial, commercial and institutional sector are being negotiated. The owners, contractors and subcontractors will know what the wages and working conditions will be for the duration of the project, and will have access to the necessary labour and skilled trades required to complete the project in a timely way. The trade unions will have access to contractors for which they may not have bargaining rights and their members will have work opportunities available with employers that would otherwise have no obligation to employ them for the duration of the project. In effect, all employers working on the project, regardless of whether any trade union holds bargaining rights for them, would be required to apply the terms and conditions of the relevant provincial agreement as modified by the project agreement, even if they were not legally bound by a collective agreement, to all work they do on the project, including the obligation to obtain employees from the local union hiring hall and the obligation to remit the requisite union dues and fund contributions.[74]

In December 2000, the Progressive Conservative government introduced Bill 139, amending existing PLA provisions and adding s. 163.1.1, which would permit projects to be added to a PLA.[75] Bill 139 pro-

vided for broader and more flexible PLAs, including by permitting non-construction work, such as maintenance work, to be included in a PLA and permitting a construction industry project to be designated, by regulation, as one that may be a subject to a PLA.[76] These amendments also permitted multiple projects to be included in a single PLA, provided a process for a party to add a project to an existing PLA, and including resolution by the OLRB of disagreements about additional projects.

As commentators noted, these latter changes "enable a proponent to put a more enticing project up for consideration at the same time as it seeks more concessions on smaller projects. By presenting it as a package, a proponent is given an advantage in pressuring for acceptance of the group of projects" (Ontario Federation of Labour, 2000, p. 14).

In introducing Bill 139, Minister of Labour Chris Stockwell noted that these amendments would "[p]ermit project agreements to apply to multiple and future projects developed within the terms of the agreement, thereby eliminating the need to negotiate a new project agreement for each specific construction project" (Hansard, November 2, 2000, 1340).

At second reading, Progressive Conservative Member of Provincial Parliament for Bramalea-Gore-Malton-Springdale, Raminder Gill, spoke in support of Bill 139 and the PLA amendments, in particular stating that:

> Today's legislation will put the finishing touches on our commitment to make this sector more competitive. We are proposing to make three fundamental changes to ensure the continued health and vitality of this sector... It'll permit project agreements to apply to multiple and future projects developed within the term of the agreement, thereby eliminating the need to negotiate a new project agreement for each specific construction project. It also protects non-union employers hiring unionized non-construction employees on the project from certification.
>
> Ontario needs more project agreements. They are a tremendous way for the parties to design an agreement that may better reflect local business conditions than the provincial ICI agreement" (Hansard, Nov 22, 2000, 1610).

There have been no subsequent amendments to the OLRA PLA provisions.

3.2.1 Pre-Bill 31

Before PLA provisions were incorporated into the OLRA, a project agreement could have been voluntarily entered into as an amendment to the relevant provincial collective agreements. However, as this would require agreement, on a trade-by-trade basis, of every affected trade union and their bargaining agents and relevant employer agencies, and therefore could be "vetoed" by any party, this was unlikely to occur (Freedman, 2011, p. 1; Sarnia Construction Association, 2011, p. 3).

Indeed, the SCA reports that this was its experience:

> [I]n 1995 the Sarnia Construction Association attempted to negotiate a type of project agreement through the enabling provisions in the provincial agreements for a potential project at the Bayer Rubber Canada Inc. site. Ultimately, these negotiations failed because the Association did not achieve unanimous total agreement from the trades. A majority of trades (12 out of 14) did agree to make the appropriate changes for this project. Two major trades did not. As a result, all trades refused to participate further and the opportunity to attract any new investment failed. (Sarnia Construction Association, 2011, p. 3)

Therefore, the OLRB, prior to introduction of PLA provisions, lacked the flexibility that would be helpful in the case of large construction projects and discouraged investment (Sarnia Construction Association, 2011, p. 3).

3.3 Other Canadian Jurisdictions

Most Canadian jurisdictions have what is variously termed "project agreement," "project labour agree-

ment," "special project" or "special project agreement" legislation, with only British Columbia, Manitoba, and Prince Edward Island as the exceptions (see Table 3.1 on next page). Among those with this legislation, PLA provisions range from very sparse provisions, such as found in the Federal legislation (which simply expresses no prohibition on project agreements), to the detailed procedure set out in the OLRA.

Two of these jurisdictions are notable. First, in Quebec, a specific set of labour relations rules provide for mandatory province-wide, sector-based and multi-trade collective bargaining for all construction workers and contractors covered by the *Act respecting labour relations, vocational training and workforce management in the construction industry.*[77] These provisions are less detailed than that of most other jurisdictions. In that context, PLAs have been able to be negotiated since 1995, to be included as schedules to an existing sectoral collective agreement. These "special agreements" must be signed by the parties to the sectoral agreement and may only set the conditions of employment for construction projects which are expected to "require the simultaneous work of at least 500 employees at any time."[78] Notably, these provisions have rarely been utilized. Between 1995 and 2000, a handful of major construction projects, mostly in the industrial sector, were targeted by such special agreements, but the provisions haven't been used in the last two decades.

Meanwhile British Columbia has a decades-long history of major project agreements, although the *Labour Relations Code* contains no PLA provisions.[79] Instead, two alternative *Code* provisions have been utilized to achieve what are referred to as "project agreements". First, *Code* Division 5, s. 41 provisions permitting certification of councils of trade unions (referred to as "poly-party" certifications) may be used. Alternatively, the s. 20 joint application provisions may be used, which permit two or more trade unions which, together, with members making up a majority of employees in an appropriate unit, may apply as if a single trade union was applying.

Additionally, and separate from the *Labour Relations Code*, the provincial government has utilized community benefit agreements for major projects in the past, with these often referred to as "project labour agreements". In 2018 the provincial government announced a new framework for the community benefits agreement (CBA), which is an agreement between a Crown corporation established for this purpose called BC Infrastructure Benefits Inc. (BCIB) and the BCIB Allied Infrastructure and Related Construction Council of B.C. (AIRCC). AIRCC is an umbrella organization for the Building Trades Unions.[80]

3.4 Protection of Rights Considerations

The rights landscape has undergone significant changes in recent decades. One key development has been adoption by Canadian governments of certain international norms or standards, such as by incorporating them into Canadian legislation or the Canadian *Charter of Rights and Freedoms* ("*Charter*").[81] Notable among such international standards are the International Labour Organization (ILO) freedom of association and the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP). There is the potential for intersection between PLA legislation or provisions and such domestically adopted international rights.

3.4.1 Protection of Freedom of Association

The freedom of association is a principle which is recognized and protected by Section 2(d) of the Canadian Charter and by international labour standards. The conventions and jurisprudence of the ILO are generally regarded as the most influential source of international labour standards and include protection of the freedom of association.

While the federal government is obligated to respect international labour standards which it has made commitments to uphold, the provincial governments are not bound to do so. However, the Supreme Court of Canada has explicitly incorporated international labour standards, including those of the ILO, into the interpretation of the *Charter,* stating that:[82]

> [T]he Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.

It is the federal government that is signatory to, and

Table 3.1: PLA Provisions in Canadian Collective Bargaining Legislation

Jurisdiction	Ontario	Alberta	Saskatchewan
Project Type	A construction project or group of construction projects that proponent believes to be economically significant. [s. 163.1(1)]	"Project agreement" defined as a collective agreement for a construction project under s 193.3 [s. 193.1(b)]. "Project" means construction of a plant, or addition/alterations of existing plant; includes camp or catering facilities [s 194(1)(c)]. See s. 194(1)(a), definition of "plant."[i]	Collective bargaining in construction industry can be done under either or both: province-wide trade or project basis. [s. 6-64(1)(b)] "Construction Industry" defined under s 6-65(a).
Geographic Area	PLA must contain general description of project covered by it [s. 163.1(4)(a)] PA does not cover off-site work generally.[ii]	No restrictions, but Minister may prescribe the scope of the project when making designation. [s 196(2)(b)]	No restriction on geographic area.
Duration of Project	PLA must state terms that it is in effect until ever covered project is completed or abandoned [s. 163.1(4)(b)]. PA may include terms that allow additional projects to be added. [s. 163.1(4.1)]	No time limit, s. 193.3(5) states PLA applies for duration set out in agreement. S. 196(2)(c) states Minister may provide a method to determine when the project is completed for s 201.1 purposes. S. 201.1(3)(b) states that a PLA is in force until: renewal/expiry, completion of the designated project, or repeal of s 196 order designating project.	Lasts for duration of project, as negotiated by the unions, applicable employers' representative organizations and project owner(s). [s. 6-67]
Party Issuing Project Order	s. 163.1(5) at least 40% of bargaining agents entitled to notice must agree to the giving of notice. If at least 60% of bargaining agents that received notice approve of PA, and time for s. 163.1(9) challenge has expired PLA is automatically in force [s. 163.1(10)]. Board will not make declaration of PA being in force unless there is a s. 163.1(9) challenge.[iii]	Minister may designate a project if Minister believes project is of economic significance to Alberta and in public interest that person or principal contractor is authorized to bargain collectively as principal contractor of project. [s 196(1)(a) & (b)]	No specific mention of issuing party, s. 6-64 simply says collective bargaining can proceed under province-wide trade or on a project-wide basis or both.
Legislation	*Labour Relations Act,* 1995, SO 1995, c. 1, Sch. A, s. 163.1	*Labour Relations Code*, RSA 2000, c. L-1, ss. 193.1-206	*Saskatchewan Employment Act,* SS. 2013, c. S-15.1, ss. 6-64 to 6-67

Table 3.1: PLA Provisions in Canadian Collective Bargaining Legislation (continued)

Jurisdiction	Newfoundland and Labrador	Quebec	New Brunswick
Project Type	"Special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require a construction period exceeding 2 years, and includes all ancillary work, services and catering relating to the undertaking or project [s. 2(1)(u)]. Or Not withstanding s. 2(1)(u), an undertaking or fabrication of works at Bull Run site. [s. 70(1)(b)]	A "major construction project" means a construction project which, according to the estimates approved by the parties to the agreement, will require the simultaneous work of at least 500 employees at any time during the project [s. 60.2].	"Major construction projects" (defined s. 51.11), a committee appointed by Lt-Gov-in-Council shall determine the social and economic effects of a proposed project. [s. 51.21(3)]
Geographic Area	LGIC may prescribe geographic site or scope or geographic site or scope to be excluded from special project order. [s. 70(2)(a)&(b)]	No explicit geographic limit, but Special Agreement limited to the sector of the sector-based employers' association. [s. 60.2]	Lt-Gov-in-Council (LGIC) may designate a major construction project within a described geographic area, add or exclude any area described, or revoke designation. [s. 51.21(4)]
Duration of Project	No explicit limit.	No explicit limit.	No limit, but project designation can be revoked by Lt-Gov-in-Council. [s. 51.21(4)(c)]
Party Issuing Project Order	LGIC issues special project order [s. 70(2)] Employers' Organizations and Council of Trade Unions prescribed by LGIC order s. 70(2)(c) that may be involved in the special project order must include in its constitution a formula for ratification of a collective agreement and time limits for when ratification must take place. [s. 70(9)(d) & 70(10)(f)]	Sector-based employers' association and at least three associations with representativeness of at least 50% may make a special agreement for a major construction project. [s. 60.2] Sector-based employer association files collective agreement and schedules with Minister, and collective agreement takes effect on date of filing, and may be retroactive to date of signing. [s. 48]	Lt-Gov-in-Council (LGIC) issues order [51.21]. S. 51.2(1) requires appointment by LGIC a committee consisting of a chair and equal number of representatives from union and employers to make recommendations on proposed major construction projects. S. 51.21(4) provides LGIC shall not make a regulation per s. 51.2 unless the committee has, by a majority, recommended approval of a major construction project regulation.
Legislation	*Labour Relations Act*, RSNL 1990, c. L-1, s. 70	*Act respecting labour relations, vocational training and workforce management in the construction industry,* CQLR c R-20, ss 60.2, 60.3	*Industrial Relations Act,* RSNB 1973, c. I-4, ss. 51.1-51.9

Table 3.1: PLA Provisions in Canadian Collective Bargaining Legislation (continued)

Jurisdiction	Nova Scotia	Federal
Project Type	PLA is an agreement concerning designated construction projects [s. 2(n)]. A "designated construction project" means (i) a construction project that (A) involves the on-site construction of a natural gas liquefaction plant in Guysborough County or Richmond County and, subject to the regulations, may include the construction of any related infrastructure, (B) has a total projected cost or value in excess of $2,000,000,000, and (C) is expected to involve the employment of persons who are represented by three or more trade unions, or (ii) an industrial construction project designated by the regulations. [s. 2(i)]	No limit to scope, s. 7 provides that nothing in Code prevents collective bargaining on a project basis.
Geographic Area	No restrictions, but proponent must include general description of geographic area of designated project and related infrastructure to be constructed. [s. 6(2)(a)]	No explicit limit.
Duration of Project	No time limit, once declared by Board (or any amendments of PA per the Act) Agreement is in force until completion or abandonment of the designated construction project. [s. 12]	No explicit limit.
Party Issuing Project Order	Board issues order after ratification s. 8(7); see below for outline of process. S. 7 Proponent sends notice of intent to negotiate PA with Accredited Employers' Organizations and bargaining agents of employees; Board may make order on appropriateness of a party's participation. S. 8 after expiry to challenge s. 7(4) notice, parties shall enter into negotiation. S. 8(4), when 85% or more of trades reasonably expected to be involved on project, bargaining agents for unionized employees and employers' organizations approve, the PA is ratified. After receiving s. 8 (4) notice of ratification, the Board shall issue an order declaring that the PA is in force s. 8(7).	Parties identify themselves to the Minister as engaged in project basis negotiation; Minister and Board shall facilitate collective bargaining process.
Legislation	*Construction Project Labour Relations Act*, SNS 2016, c 18	*Canada Labour Code*, RSC 1985, c. L-2, s. 7

NOTES

i - Alberta Labour Relations Code, RSA 2000, c L-1 s 194(1)(a), "plant" means a plant or other works or undertakings for the production or manufacture of petroleum products, natural gas products, pulp and paper products or any other products specified in the regulations."

ii - Weyerhaeuser 2005, supra note 72 and IABSOI, Local 700 v. IBEW, Local 530 2022 CarswellOnt 5868 (OLRB).

iii - Bowater, supra note 66.

therefore obligated to comply with, these international instruments, not provincial governments. However, international labour standards set out in these instruments are indirectly applicable to domestic Canadian labour matters, which are predominantly provincially regulated, because these standards significantly influence the scope and application of *Charter* rights which apply to all levels of state action. In other words, relevant international labour instruments and jurisprudence are influential although not directly enforceable to provincial labour laws. Consequently, complaints of violations of international labour standards made to international bodies such as the ILO are of significant interest.

3.4.1.1 Freedom of Association under the Charter

The freedom of association is guaranteed by Section 2(d) of the *Charter*. Although for many years collective bargaining and the right to strike were not included within the scope of protected associational activities, in 2007 the process of collective bargaining, and in 2015 the right to strike, were recognized by the Supreme Court of Canada as protected by the *Charter* freedom of association.[83]

While not absolute, this freedom protects three kinds of associational activities: joining others and forming associations; joining others in pursuit of other constitutionally protected rights; and, joining others to meet the power and strength of other groups or entities on more equal terms.[84]

In addition to this "positive" guarantee of freedom of association, the *Charter* freedom of association has also been recognized to include freedom from compelled association,[85] and the test for violation of this "negative" right is:

> [W]hether there has been a violation of the right to be free from compelled association is whether the legislation at issue imposes a form of "ideological conformity". Accordingly, where the requirement of membership in a group forces the members to associate involuntarily with certain ideas or principles, the negative freedom not to associate within section 2(d) has been breached.[86]

The leading *freedom from association* decision, *R. v. Advance Cutting & Coring Ltd.*, involved Quebec legislation applicable to the construction industry, which required workers to join one of five unions specified in the legislation to be able to obtain a competency certificate. The legislation also made it an offence for an employer to hire a worker who did not hold such a certificate. In a 5:4 decision the Supreme Court of Canada upheld the legislation. This decision turned on a finding that the negative right to freedom from association was not necessarily violated by any form of compelled association, and the nature of the association is relevant. Here, the statutorily compelled association was, in effect, creation of a union shop, which did not compel "ideological

conformity." Therefore, obligation to join a particular union, pay dues and designating a bargaining representative was defensible either as not violating the freedom or as a reasonable limitation on the freedom.[87]

Labour relations boards, addressing employer *Charter* challenges to legislation requiring that employers join a particular representative employer's organization, have concluded that employers – in contrast to employees – are not likely entitled to *Charter* protection of the freedom of association.[88] In one of these cases, the labour board explained:

> … Having applied a purposive interpretation to the Charter provision, and having concluded that the underlying purpose of the guarantee being invoked is to promote employee empowerment through the collective bargaining process, it is clear that it does not extend to the Employer. The Employer is not a vehicle through which individual employee interests are to be protected in collective bargaining. Although some entities which present in corporate form may hold Charter-protected collective bargaining rights (as corporations), this entity does not.[89]

3.4.1.2 Freedom of Association and PLAs

Several challenges have arisen which claim that PLAs violate freedom of association. These include a complaint made to the ILO in 1998, shortly after the Ontario PLA provisions were enacted, and other challenges brought in domestic Canadian forums pursuant to the Canadian *Charter.* While some of these arose prior to the 2007 recognition by the Supreme Court of Canada that the *Charter* section 2(d) guarantee of freedom of association applies to collective bargaining, there have also been more recent challenges arising in Manitoba and British Columbia, which are detailed below.[90]

ILO Freedom of Association Complaint. Notably, the only freedom of association challenge to arise in relation to Ontario PLAs was not a *Charter* challenge but was a complaint to the Committee on Freedom of Association (CFA), a committee of the ILO.[91] This complaint was initiated in July 1998 by the Canadian Labour Congress (CLC) and asserted that the Bill 31 PLA provisions violated the principles of freedom of association because, according to these provisions, a PLA would override the terms of provincial agreements and would prohibit work stoppages.[92] The government's response did not directly address this claim.

In its first report, the CFA requested clarification from both the CLC and government and drew the legislative aspects of this case to the attention of the ILO's Committee of Experts on the Application of Conventions and Recommendations.[93] In a series of follow-up reports, and following further communications from the Canadian government, the CFA repeatedly expressed deep regret at the government's "staunch refusal to consider the Committee's recommendations" to bring the legislation into conformity with freedom of association principles.[94] Presumably conformity would require ensuring that the OLRA PLA provisions would not permit PLAs to override collective agreement terms and would not prevent work stoppages.

The complaint was still before the CFA at the time Bill 139 was passed. The government informed the CFA of the Bill 139 amendments; however, the CFA did not regard these amendments as addressing the concerns raised in the complaint.[95] It does not appear that this complaint was followed by litigation in a domestic forum.

Notably, this ILO complaint was made prior to the series of Supreme Court of Canada decisions that significantly changed the scope and application of the *Charter* s. 2(d) guarantee of freedom of association. These decisions recognized that the process of collective bargaining, including strikes, fall within the scope of protection of the *Charter*.[96] As noted above, the Supreme Court also adopted international labour standards–explicitly including ILO free-

dom of association principles-as a minimum reference point for *Charter* freedom of association.

The comments of the ILO CFA indicate that OLRA PLA provisions may not satisfy ILO freedom of association standards and, therefore, may not now satisfy *Charter* freedom of association requirements. Consequently, the issue raised in the 1998 ILO complaint may still be of concern. However, as it appears that there has been no subsequent freedom of association challenge to these provisions, it may be that stakeholders are satisfied with these provisions notwithstanding their possible encroachment on freedom of association.

3.4.1.2.1 Manitoba Charter Freedom of Association Challenge

Although Manitoba labour legislation does not contain PLA provisions, the Manitoba Hydro-Electric Board's tendering policy under the *Hydro Act* essentially adopts a PLA model: requiring contractors' workers to join specified unions for a major project. In 2016 the Merit Contractors Association, a group of unions and individuals, unsuccessfully challenged this policy and, in particular, the mandatory dues check-off provisions, as a violation of the *Charter* freedoms of association and expression.[97]

However, the merits of the challenge were not decided as the Court of Queen's Bench stayed the action on the basis that the questions implicitly asked by the proceeding fell within the exclusive jurisdiction of the Labour Board and not the court on the basis that the case involved the constitutional validity of the terms *of the collective agreements.* The appeal was rejected on essentially the same grounds: that the argument necessarily involved interpreting the clauses of the agreements in light of the *Charter*.[98] The Supreme Court of Canada denied leave to appeal. It does not appear that the applicants pursued the matter at the Manitoba Labour Relations Board. Therefore, the substance of this challenge was not been addressed by either the courts or the Labour Board.

3.4.1.2.2 BC Charter Challenge

As noted above at section 3.3 of this report, a CBA was established pursuant to the BC government's 2018 announcement that it would require that anyone working on certain large provincial construction projects must be, or become within a specified time, a member of one of the Building Trades Unions, even if the worker had joined another union or no union at all (the "Membership Requirement"). A group of unions, business organizations, contractors and individuals claimed this Membership Requirement was an unjustifiable violation of workers' Charter protected freedom of speech, association, and equality, and that these violations could only be decided by the courts.[99]

The BC Supreme Court struck out the Charter claims, holding that these matters were properly within the jurisdiction of the Labour Relations Board because the essential character of the claim was the requirement that workers join and pay dues to AIRCC affiliated unions, and that this was implemented by the CBA.[100]

In a decision issued in August 2020, the BC Court of

Appeal took a slightly different view of the essential character of the dispute, holding that although the membership requirement is the focus of the appellant's claim, these Charter issues arose from the CBA because it would be "virtually impossible to decide them without analyzing its terms and determining its validity in light of the Charter." Regarding the Labour Relations Boards' expertise valuable in this regard, the Court of Appeal upheld the lower court's decision to strike the Charter claims.[101] The Court of Appeal also concluded that the CBA "is undoubtedly a collective agreement for labour law purposes."[102]

Leave to appeal was refused by the Supreme Court of Canada, without reasons, in April 2021. However, it does not appear that this matter was brought to the BC Labour Relations Board. Therefore, the substance of this claim has not been decided by the courts or the Labour Board.

3.4.2 United Nations Declaration on the Rights of Indigenous Peoples

To date, only the federal Canadian government and the province of British Columbia have passed legislation ensuring that the laws of these jurisdictions are consistent with the UNDRIP.[103] In late 2022 a dispute arose in British Columbia over whether a community benefits agreement applying to construction of a hospital violated Indigenous rights and failed to respect the province's *Declaration Act*. The hospital was being constructed on traditional Indigenous territory but, as a consequence of the CBA requirements, some Indigenous-owned contractors were excluded from the project unless their employees unionized. This dispute garnered significant attention, and the provincial government ultimately announced that Indigenous-owned contractors would be exempted from particular CBA requirements and, therefore, would be able to participate in this construction project.[104]

Unlike British Columbia, Ontario has not enacted a requirement for its legislation to comply with UNDRIP. However, the potential for such legislation to be passed in Ontario, in addition to general recognition of ensuring reconciliation with Indigenous peoples, suggest that these may be emerging issues to consider with respect to Ontario's PLA framework.[105]

3.5 Restraint of Competition

Competition law is complex and a substantial description is beyond the scope of this report. Therefore, only a brief comment is offered on this topic, and a note is made of key, recent amendments to the legislation.

In early 2023 a contractors' association submitted a complaint to the federal Competition Bureau regarding the recently created PLA for construction of the Ottawa Hospital. A news release appears to describe the basis of the complaint as allegations that the PLA violates the federal Competition Act, claiming that it is not in the public interest, is exclusive dealing, tied selling and market restriction.[106] As of the time of this writing, no decision or other public communication about this complaint has been issued by the Competition Bureau.

The Competition Act is intended to promote and protect competition and creates offences to achieve this. For instance, section 45 of the Act makes it an offence for conspiracies, agreements or arrangements between competitors to fix, maintain, increase or control prices for supply of product; to allocate sales, territories, customers or markets for production or supply of product; or to fix, maintain, control, prevent, lessen or eliminate the production or supply of product. As noted below, a new section 45(1.1) relating to criminal offences for "wage-fixing" and "no-poach agreements" came into force in June 2023. Sections 77 to 79 and section 90.1 set out a series of actions that can be reviewed by the Competition Tribunal, including exclusive dealing, tied selling or market restriction; abuse of dominant position; or agreements or arrangements preventing or substantially lessening competition.

In light of this recent Competition Act complaint against an Ontario PLA, the significant amendments to the Act in force in June 2023, and given commentators' concerns about the potentially significant negative effects of these amendments on labour relations actors, potential restraint of competition issues may be of concern in relation to PLAs.

4 A Content Analysis of Ontario PLAs

As Ontario policymakers consider the potential expansion of project labour agreements beyond industrial construction, it is important to reflect on the province's experience with PLAs over the past few decades. To those ends, this chapter offers an analysis of the content of PLAs concluded under s. 163.1 of the OLRA between 2000 and 2019. This analysis is geared to detail the common goals and language utilized by PLAs in Ontario and identify opportunities for stakeholders in both the private- and public-sector to develop PLAs that maximize the benefits for construction owners, contractors, workers and, potentially, taxpayers.

The content analysis of private-sector PLAs in Ontario is made possible by a database of agreements provided by the Ontario Construction Secretariat (OCS). This database contains information about 40 PLAs concluded in Ontario for construction projects since the enactment of s. 163.1 of the *OLRA*, and the copies of 22 of these agreements.

Although the database does not include every PLA ever concluded in Ontario, it is, to the best of our knowledge, the richest available source of information on the topic. The only comparable alternative source would be the Ontario Labour Relations Board, to which proponents must submit a set of documents for the conclusion of a PLA under the OLRA However, the Board does not keep the documents filed for this purpose nor a record of the applications. We therefore used the information provided by OCS, trying, whenever possible, to improve it by making requests to the representatives of PLA stakeholders to learn about the estimated value of specific PLAs or get copies of the ones missing from our sample.

While our starting dataset included about 40 PLAs, it is important to highlight some subsequent adjustments to our sample. First, we excluded agreements for the maintenance of an industrial client's facilities by workers in the construction trades in order to focus on the ones covering actual construction work (we kept the PLAs of ArcelorMittal-Dofasco, as they are covering both construction and maintenance). Second, we removed a so-called "project labour framework agreement" concluded in 1999 for the construction of a section of Highway 407 for the same reasons. As a result of these exclusions, we were left with 39 construction PLAs that have been used for the descriptive overview, below. Finally, as mentioned previously, the database contained the complete text of only 19 of these agreements, to which six more agreements obtained directly from stakeholders were added, leaving us with a sample of 25 PLAs signed between 2000 and 2019 that is analyzed below.

Table 4.1: Content of the OCS Database and PLA Sample, 1999-2019

Proponent	Number of PLAs Signed (Years) (BOLD indicates inclusion in sample)
NOVA Chemicals	7 (2004; **2012**; 2016; 2017; 2017; **2018**; 2019)
Arcelor-Mittal-Dofasco	4 (2007; **2008**; **2012**; **2019**)
GM Canada	4 (**2009**; **2010**; **2012**; **2018**)
Imperial Oil Ltd. (SCA)	3 (1999; 1999; 2001)
Toyota Manufacturing Canada	3 (**2012**; **2014**; **2016**)
TransAlta (SCA)	3 (**2011**; **2017**; **2018**)
Weyerhauser	2 (2001; 2001)
Abitibi	1 (2007)
Aker Construction	1 (2009)
ATCO	1 (**2010**)
Bowater Pulp & Paper Canada	1 (2000)
Cytec	1 (**2012**)
Greenfield Energy Center (SCA)	1 (**2006**)
Lanxess Inc. (SCA)	1 (**2011**)
New Gold	1 (**2016**)
Shell (SCA)	1 (**2001**)
Southdown Station Partnership	1 (**2009**)
St.Clair Power (SCA)	1 (**2006**)
Stelco	1 (**2009**)
V. K. Mason Construction -Thorold	1 (**2007**)
20 proponents	**39 PLAs (25 in the sample)**

Note: "SCA" denotes that the Sarnia Construction Association represents unionized contractors in the Sarnia-Lambton area and acts as a representative for construction clients (proponents) in the negotiation and implementation of PLAs.

4.1 Overview of Projects Covered by PLAs

As a first step, we categorized available PLAs by their sector of activity, the region in which the facility under construction is located, the duration of the projects, and their estimated value.

Thus, the 39 PLAs listed were concluded by 20 proponents. As we show in Table 4.1 (above), most of these were large domestic enterprises and Canadian subsidiaries of multinational corporations, and many of them have been party to multiple PLAs.

The agreements in the sample were concluded for the construction of facilities associated with eight industries. The petrochemical sector featured by far the most proponents (six) and PLAs (16). It was followed by automotive manufacturing (two proponents and seven PLAs), power generation (four proponents and four PLAs), primary metal manufacturing (two proponents and five PLAs), wood products and paper (three proponents and four PLAs), and mining, logistics and construction (one proponent and one PLA each).

Although we only have information on the estimated value of slightly more than half of the PLAs listed, we can say that it varies widely, ranging from $25 million (TransAlta, 2011) to $2 billion (NOVA, 2018), with an average value of around $300 million. Finally, the estimated project duration ranges from one to four years, with about 80% of the projects for which we have this information being 24 months long or less.

4.2 The Contents of Sampled PLAs

To assess the terms and conditions included in the PLAs signed under s. 163.1 of the OLRA, we use a slightly amended structure to the one presented in Chapter 1 to categorize the general features of PLAs. As such, the provisions found in our sample of Ontario PLAs will be presented under five major classifications: timeliness, cost control, health and safety, community benefits, and non-union entities.

Timeliness

As we have seen in Section 1, fostering on-time completion of major construction projects is a major goal of the parties entering into a PLA. Similar to the earlier analysis of American PLAs, proponents and unions in Ontario use four types of contents to encourage the timeliness of projects: (1) the prohibition and prevention of dispute-related disruptions, (2) the harmonization of working time, (3) the timely provision of skilled labour by building trades unions, and (4) measures concerning trade jurisdictions and apprenticeship.

Prohibiting and preventing labour dispute-related disruptions. Every one of the 25 PLAs in our sample includes a no strike/no lockout provision, preventing any interruption of work by workers or contractors alike, even in the event of a province-wide dispute over the renewal of a collective agreement. Even though the OLRA limits the possibility of sequential strikes with common expiry dates[107] for all ICI collective agreements, these provisions are important because of the single trade structure of collective bargaining in Ontario ICI construction, and the risks of disruption by sequential strikes that it entails.

Here is the underlying principle for such a provision, in the words of a building trades' representative interviewed for this report:

> "[…] when you enter into a project labour agreement, you're basically, as the building trades, bypassing your contractor partner and going to the client and saying to the client: 'we will be your partner.' So, to then get into a situation where we have a dispute with our contractor partner, and then make that a challenge or a part of our PLA partner's life I don't believe that's showing good faith. So, we are going to them and saying: 'if you sign this, we're going to guarantee you the work and we will deliver this project for you.'"

Some of these agreements explicitly extend the prohibition beyond collective bargaining disputes, as in the following excerpt from a Sarnia PLA (TransAlta, 2017):

> No Bargaining Agent or employee performing work to which this Project Agreement applies shall strike or cause a strike by picketing or through work stoppages, slowdowns, walk-offs, sympathy strikes, or other disruptive activity for any reason and no employer shall lock-out such employees while this Project Agreement is in effect even if a strike is called or authorized under subsection 164(1) or a lockout is called or authorized under subsection 164(2) of the Act.

Among other things, such a provision allows the client to be safe from industrial actions caused by jurisdictional disputes between two or more building trades, even though the *OLRA* already provides for the prohibition of any work stoppage outside of the negotiation or renewal of a collective agreement.[108]

Nearly all PLAs from the sample (22/25) go beyond the simple prohibition of work stoppages and slowdowns and provide the parties with means to prevent inter-trades jurisdictional disputes by making participation in pre-job mark up conferences mandatory for all contractors signatory to the PLA. A representative of a proponent interviewed for this report noted that:

> "[having mandatory mark up meetings] prevented a lot of the problems because [the contractors] had already done all the assignments. Because you could challenge all the assignments up front."

Some PLAs also include an internal procedure for the settlement of such jurisdictional disputes without resorting to an arbitrator (at least not directly) or the OLRB, as is the case of GM PLAs (2009, 2010, and 2012). Almost half of the agreements from the sample also include a commitment from the unions that their members "will continue to work, without interruption or slow down, in accordance with the original assignment of the contractor pending the outcome of [the dispute resolution] process" (Cytec, 2012).

Harmonizing working time. In order to facilitate coordination between trades and contractors on the job site, all but one of the agreements from our sample provide for the harmonization of the hours of work by setting a regular workday, including starting and ending hours, as well as work and meal breaks. The value of such an harmonization has been expressed by the representative of a proponent:

> "[…] if we had all the trades working the same hours, under the same rules, we could schedule better. We would know how much 'wrench time' we would have."

Many agreements allow variations in hours according to the provincial collective agreements, while others grant some flexibility by allowing a compressed work week (e.g., Shell 2001), and/or the possibility to commence work half an hour (Thorold, 2007) or one hour (e.g., Toyota, 2012, 2014, and 2016) earlier or later, and/or to change the schedule after getting approval from the local building trades council or from unions, contractors, and proponents (Cytec, 2012). Others are stricter, imposing simultaneous work and meal breaks for all trades in the absence of a mutual agreement between unions and contactors (GM, 2012).

Nineteen PLAs also mention the employment of multiple shifts ("shift work"), but only seven of them provide specific rules, including working time, breaks and associated premiums. The others simply refer to the contents of the applicable provincial collective agreements.

In addition to the regular hours of work, and to further contribute to production planning, nine PLAs from the sample also include a common list of recognized holidays for all trades working on the project, as well as the days of observance when a holiday falls during a weekend. We found that the inclusion of a list often limits the benefits of a minority of trades (e.g., the carpenters, whose collective agreement prohibits work on Labour Day except in case of emergency, while most PLAs treat this holiday like any other holiday), and sometimes extends the superior benefits of some trades to others (e.g., overtime pay for the second half of the days before Christmas and New Year's Day at ArcelorMittal-Dofasco).

Ensuring the timely provision of skilled labour by unions. As we will see later, many PLAs require all contractors involved in the project to recruit their skilled workforce through the relevant trade union's employment service (as per most provincial collective agreements). In order to ensure maximum efficiency in workforce procurement, some PLAs include a commitment by signatory trade unions to supply the required workers within a certain delay, as is the case at ArcelorMittal-Dofasco (2008, 2012, and 2019):

> 11.200 The Bargaining Agents agree to assist any Contractor performing work under this Agreement by all means in their power to secure necessary skilled and competent workforce.
>
> 11.300 When any Bargaining Agent cannot supply qualified persons within forty-eight (48) hours of the date requested, (Saturday, Sunday and Holidays excluded), then the Contractor may secure other qualified persons. In the case of emergency where qualified persons are needed immediately the Contractor may secure other qualified persons prior to the expiry of the forty-eight (48) hour period and promptly notify the Steward(s) on site. Such employees shall make application to become members of the affected local union within one week of

> commencing work. For the purposes of the paragraph an emergency shall be an unplanned or unforeseen event including, breakdowns, fires, spills, environmental hazards, accidents and start up problems. To constitute an emergency the event must be confirmed so by the Proponent.

If a union is unable to provide the needed workforce within a certain delay (usually 48 hours, or less in case of emergency, as in the above excerpt), the employer may proceed through another recruitment channel.

To fill the needs for skilled workers, the union locals signatory to these PLAs use their own members' list or, in case of insufficient available local members, call upon members of the union from other locals who are holding a valid traveling card. The fact that only five PLAs from our sample (Thorold, 2007; ArcelorMittal-Dofasco, 2008, 2012, and 2019; GM, 2018) contain such a formal commitment by the union signatories to provide the required workforce under specific conditions is an important difference with PLAs in the United States.

Transfer of employees and trade jurisdictions. Some PLAs include measures to give more flexibility and/or security to the contractors and the proponent. For example, the ArcelorMittal-Dofasco PLAs allow a contractor to transfer an employee who was originally referred by a union from one assignment covered by the PLA (or the relevant provincial collective agreement) to another assignment without having to resort to the union's employment service to do so. The same PLAs also allow contractors to make short-term work assignments departing from established trade jurisdictions in case of emergency. Other PLAs include a commitment by the unions to limit the possibility for workers to move from one contractor covered by the PLA to another (or "jumping") by enforcing a delay of 15 days before referring to another contractor an employee who quit his employment or was terminated with cause (GM, 2009, 2010, 2012; Cytec 2012).

Cost Control

On top of working time harmonization, most PLAs include provisions to limit the cost of labour resulting from the provincial collective agreements or to reduce the administrative burden associated with compensation. These provisions cover (1) the base hourly rate, (2) overtime pay, (3) situations where work is not available, (4) travel allowance, and (5) apprenticeship ratios.

Base hourly wages. While most PLAs confer hourly wages consistent with collectively bargained rates, the nine PLAs in our sample from the Sarnia area depart from that norm and offer perspective on the potential flexibility of PLAs. Specifically, these seven PLAs in Sarnia provide that every hour worked on targeted projects is paid at 95% of the prevailing rates (with the exception of electrical workers, at 95.27%). Such a provision appears in no other PLA from our sample.

Overtime pay. Setting uniform overtime premiums for all trades reduces the complexity of planning and managing work on a project. Secondly, the rules in the PLA might provide savings for the contractors and their client by setting longer regular hours or smaller premiums for overtime. As an example, Table 4.2 (next page) compares the regular hours and overtime provisions in the latest (2019) ArcelorMittal-Dofasco PLA with the 2019-2022 provincial ICI collective agreements of four trades.

As shown in Table 4.2, the ArcelorMittal-Dofasco PLA includes regular hours of work that are identical to the ones in the carpenters' ICI collective agreement, longer than the ones in the electricians' and plumbers-pipefitters' ones, and shorter than the ones in the labourers' agreement. Given the rate in

each of the aforementioned collective agreements, it makes for potential savings for the contractors and the proponent. In other words, if we were to compare the costs on the ArcelorMittal-Dofasco project with the ones on another non-PLA ICI project in the Hamilton area, we would find that every week during the Summer and Fall of 2019, for the first 40 hours of work, Dofasco's contractors would have saved $176.76 on the basic rate for every electrical worker and $85.48 for every plumber working on site, while paying the same as any other unionized contractor for a carpenter. As to contractors employing labourers, they also would have paid the same as any other unionized contractor for a 40-hour work week but would have paid $47.46 more for a 42½-hour week.

By setting the overtime rate at 1½ times the regular hourly wage for the first three hours from Monday to Friday, the PLA also reduces potential costs of labour for all four trades.

PLAs vary greatly from one another on this topic, setting different terms to match their project's operational needs. For example, the PLAs signed by Cytec (2012) and GM (2009, 2012, and 2018) set the overtime rate at 1½ times the base rate for the first two hours, from Monday to Friday (one hour less than what is included in the ArcelorMittal-Dofasco PLA), but set a 1½ times premium for all or some hours worked on a Saturday, depending on whether a trade has a 40-hour regular week or less.

As a final note on overtime pay, it is useful to add that not every PLA includes a provision regarding overtime. In fact, less than half of the PLAs from our sample do so, and in one case (ATCO, 2010) the provision simply refers to the content of the relevant collective agreements.

Unavailable work/inclement weather. In addition to the harmonizing of work hours and overtime premiums, a few PLAs set uniform compensation for situations where the work assigned to an employee is unavailable when he reports to work at the job site, be it for inclement weather or other causes. Here again, the uniform compensation included in the PLA may help in reducing the labour costs, but not in all cases. For example, the 2009 GM agreement includes the

Table 4.2. Comparison of Regular Hours and Overtime, Example PLA vs. Collective Agreements

	ArcelorMittal-Dofasco PLA	Carpenters CBA[i]	Electrical Workers CBA[ii]	Plumbers-Pipefitters CBA[iii]	Labourers CBA[iv]
Regular Workday/Workweek	8/40, Mon-Fri	8/40, Mon-Fri	8/36, Mon-Fri	8/36, Mon-Fri	8½-42½, Mon-Fri
Regular Daily Hours	7:00-3:30 M-F ± 1 hour	8:00-4:30 M-F	8:00-4:30 M-T 8:00-12:00 F	8:00-4:30 M-T 8:00-12:00 F	7:00-5:00 M-F
Overtime	1st 3 hrs: 1½x 4 hrs.+: 2x Other: 2x	1st 2 hrs: 1½x 3 hrs.+: 2x Other: 2x	All overtime: 2x	Friday PM: 1½x All other overtime: 2x	1st 2 hrs: 1½x 3 hrs.+: 2x Other: 2x

NOTES:
i - Provincial collective agreement between the Carpenters' Employer Bargaining Agency (E.B.A.) and The Carpenters' District of Ontario, United Brotherhood of Carpenters and Joiners of America (C.D.C.), May 1, 2019 to April 30, 2022, article 6 - schedule D (L.U. 18).
ii - Principal Agreement made and entered into between The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and The International Brotherhood of Electrical Workers and IBEW Construction Council of Ontario, May 1, 2019 to April 30, 2022, clause 800; section 22, local appendix, L.U. 303, Niagara Peninsula, clause 800.
iii - Ontario Provincial Collective Agreement between The Mechanical Contractors Association of Ontario and The Ontario Pipe Trades Council, May 1, 2019 to April 30, 2022, articles 108 and 109.
iv - Provincial ICI Collective Agreement between Construction Labour Relations Association of Ontario; Ontario Masonry Contractors Association; Industrial Contractors Association of Canada;
Sealant and Waterproofing Association; Concrete Floor Contractors Association of Ontario and Labourers' International Union of North America and the Labourers' International Union of North America, Ontario Provincial District Council, May 1, 2019 to April 30, 2022, Local union schedule for local 837 – Hamilton, article 1.

following clause:

> An employee who reports for work at the regular starting time and for whom no work is provided shall receive pay equivalent to two (2) hours at the applicable hourly rate. Any employee who reports for work and for whom work is provided shall be paid for actual time worked but not less than two (2) hours. If after working two (2) hours, the employee is prevented from working a full eight hours, the employee shall be paid for actual hour's worked. It is the intent of this agreement that an employee who shows up for work shall be paid at least two (2) hours of a shift, except when the employee has been notified, at the employer's expense, not to report by direct contact by the employer. If an employee leaves the job on their own accord, they will be paid for actual hours worked. If an employee reports to work in a condition unable to work, they will not be eligible for reporting pay.

Table 4.3 (below) reproduces the contents of four provincial collective agreements in case of unavailable work. As we can see in the table, the compensation included in the PLA is similar to what we find in the collective agreements of the carpenters and the labourers, but less generous, at least for inclement weather, than the electrical workers and plumbers-pipefitters ones. That being said, we also found cases (e.g., GM 2018; ArcelorMittal-Dofasco 2019) where the provision included in the PLA is in line with the more generous mechanical trades collective agreements, a reminder that (1) the provisions of a PLA are the outcome of a negotiation process and that (2) harmonizing terms and conditions as a mean to simplify the management on a project is also valuable to the proponent and the contractors.

Travel allowance. Provisions for travel allowance are included in eight PLAs from the sample. Three of them aim to limit the hiring of workers from outside the immediate area of the project (Dofasco, 2008, 2012, and 2019). Two of them are for remote location job sites, provide for nearby accommodation by the proponent, and restrict the use of travel allowance by workers (ATCO, 2010; New Gold, 2016). Two of them set (partly or entirely) uniform travel allowance for all workers on the project (Thorold, 2007; Cytec, 2012; GM, 2018).

Apprenticeship ratios. Ten PLAs from the sample include a clause in which the parties agree on the importance of using the apprenticeship ratios set up in the provincial agreements to their fullest potential, while the ArcelorMittal-Dofasco (2008, 2012, and 2019) and GM (2018) PLAs include a provision allowing the parties to negotiate apprenticeship ratios different from the ones in provincial collective agreements. While these provisions can undoubtedly contribute to the training of more workers in the trades, they also grant a financial advantage to

Table 4.3. Comparison of Compensated Hours when Work is Unavailable, Collective Agreements

	Carpenters CBA[i]	Electrical Workers CBA[ii]	Plumbers-Pipefitters CBA[iii]	Labourers CBA[iv]
General (any cause other than weather)	2 hours	3 hours	---	2 hours
Inclement Weather	1 hour	3 hours	4 hours	1 hour

NOTES:
i - Provincial collective agreement between the Carpenters' Employer Bargaining Agency (E.B.A.) and The Carpenters' District of Ontario, United Brotherhood of Carpenters and Joiners of America (C.D.C.), May 1, 2007 to April 30, 2010, Schedule D (L.U. 18), article 6.
ii - Principal Agreement made and entered into between The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and The International Brotherhood of Electrical Workers and IBEW Construction Council of Ontario, May 1, 2007 to April 30, 2010, clause 804.
iii - Ontario Provincial Collective Agreement between The Mechanical Contractors Association of Ontario and The Ontario Pipe Trades Council, May 1, 2007 to April 30, 2010, article 102.
iv - Provincial ICI Collective Agreement between Construction Labour Relations Association of Ontario; Ontario Masonry Contractors Association; Industrial Contractors Association of Canada;
Sealant and Waterproofing Association; Concrete Floor Contractors Association of Ontario and Labourers' International Union of North America and the Labourers' International Union of North America, Ontario Provincial District Council, May 1, 2007 to April 30, 2010, Local union schedule for local 837 – Niagara, article 5.

contractors and their client, as the base hourly rate for apprentices is set as a certain percentage of the journeypersons' rate for each period of apprenticeship (e.g., a first period electrical apprentice usually make 40% of the journeyperson's base rate while a fifth period apprentice make 80%).

Health and Safety

Only nine PLAs from the sample include provisions dealing with occupational health and safety. The PLAs containing health and safety clauses are limited, for the most part, to providing for one of the following measures: the establishment of a joint health and safety committee (ATCO, 2010), the appointment of a health and safety representative in trades with a certain number of workers on site (ArcelorMittal-Dofasco, 2019), the provision of proper shelter and sanitary facilities, and the requirement to use personal protection equipment (Thorold, 2007). The provisions in some of these PLAs do not go further than affirming employees' responsibility for their own safety and a commitment of the parties to comply with relevant laws and regulations (Toyota, 2012, 2014, and 2016).

Community Benefits

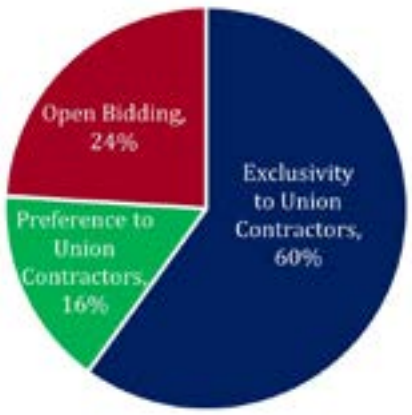
As we have seen in Chapter 1, PLAs can be used to impel social investments in workforce training and the surrounding community. By supporting apprenticeship programs and providing onsite training opportunities, they can foster good middle-class employment, and contribute to the development of a sustainable and skilled craft labour force. PLAs can also be written to offer these and other types of benefits to the local community and/or workers from minority and historically disadvantaged groups.

Thus, an important finding of our analysis of the sample is the almost total absence of community benefits in the PLAs concluded under s. 163.1 of the OLRA. The lone exception in our sample is the inclusion of a clause by which the proponent agrees to support (financially or otherwise) the "Hammer Heads Project" of the Central Ontario Building Trades, supporting the recruitment of youths from underprivileged neighborhoods, as in the following example, from the Southdown Station PLA (2009):

> The Proponent agrees to support the COBT's Hammer Heads Project to assist youth in priority neighbourhoods, primarily in Mississauga and thereafter in Toronto, in gaining construction experience and the opportunity for employment in the unionized trades. In particular, in consideration of a lump sum payment by the Proponent to the Hammer Heads Project in the amount of $177,000 on or before August 1, 2010, COBT will deliver a 12-week program for up to 15 Mississauga youths referred to the Hammer Heads Project by agencies of the City of Mississauga. The COBT thereafter agrees to assist youths who successfully complete the Hammer Heads program to commence the appropriate apprentice training program with contractors at the Project and in the Mississauga area. The Proponent also agrees to make the Project available for United Way/Hammer Heads fundraising and awareness events as the Project progresses.

Unlike PLAs in British Columbia (Griffin Cohen and Braid, 2000) and in the United States (Belman and Bodah, 2010), the overwhelming majority of the agreements signed in Ontario under s. 163.1 of the OLRA provide neither incentives for the recruitment and training of workers from local communities or First Nations, nor incentives or hiring targets for certain "equity groups". This is not terribly surprising considering that our sample consists solely of private-sector projects (in contrast to analyses of American and British Columbia public-sector PLAs in which government bodies prioritize community benefits in agreements).

Figure 4.1. Bidding Preferences for Union Contractors, Sample of 25 PLAs, 1999-2019



Involvement of Non-Union Entities

Given the criticisms raised against PLAs regarding the possibility for non-union contractors and construction workers to be employed on PLA-covered construction projects, such restrictions are an important topic. PLAs from our sample present multiple outcomes relating to non-union involvement in PLA projects and can be classified by using the following dimensions as explained by Belman and Bodah (2010, p. 32):

1. The union status of contractors;
2. PLAs and the collectively bargained terms and conditions of employment;
3. The procurement of skilled labour by unions, and the union affiliation of workers.

Union status of bidding contractors. Regarding the possibility for a non-union contractor to bid on a PLA-covered construction project, we have found three scenarios in our PLA sample. As presented i Figure 4.1 (above), 15 PLAs out of 25 (60%) make it only possible for contractors bound by one or more ICI provincial collective agreements to bid on the project, except in situations where work needs to be done by a specialty vendor. Four PLAs (16%) are more permissive, giving preference to unionized contractors as long as a certain number of them are prequalified for the tendering process. If the required number of prequalified unionized contractors is insufficient, the proponent can choose any bidder without regard to the union status (Arcelor-Mittal-Dofasco, 2008, 2012, 2019; GM, 2018). Finally, six PLAs (24%) either don't include language regarding the proponents' freedom in the tendering process, or explicitly reaffirm this freedom as long as they provide a list of bidding contractors on which the unions are allowed to comment. Beyond its own significance – the fact that the conclusion of a PLA under s. 163.1 of the *OLRA* does not necessarily means that non-unionized contractors will be prohibited from participating on the project – we will see below that the silence of an agreement on this matter can lead to two possible scenarios: (a) the PLA requires all contractors on the project to hire union members, or (b) the PLA does not include rules about the union status of workers hired for the project, which means it either allows non-union contractors to use their usual (non-union) workers on the project or defers to the union security rules of the applicable ICI collective agreements.

PLAs and the collectively bargained terms and conditions of employment. With regard to the ICI provincial collective agreements, all PLAs from our sample require contractors working on a project to implement the rules included in the relevant collective agreements where the PLA is silent on a subject matter (e.g., Cytec, 2012):

> It is agreed that all executing contractors at whatever tier shall sign, accept, and shall be bound by the terms and conditions of this PA. It is further agreed that the terms and conditions of this PA shall supersede and override terms and conditions of any and all other provincial or local collective bargaining agreements. It is understood that this is a self contained agreement in accordance with Section 163.1 of the Ontario Labour Relations Act and that upon the signing of this PA, the executing contractors will not be obligated to sign any other local or provincial agreements for the work covered on site by this PA.

> It is agreed that if this PA is silent on an issue, then the terms and conditions of the applicable Provincial ICI collective bargaining agreement for the union or unions shall apply.

Most of the agreements from our sample also provide for the continuing effectivity of an expired collective agreement until its renewal by the Bargaining Agencies.

Union procurement of skilled labour and union affiliation of workers. Finally, there are two aspects to the issue of which workers are allowed to work on a project covered by a PLA: (a) whether or not they are members in good standing of their trade union, and (b) the channel through which contractors can obtain their skilled workforce.

In 16 of the 25 PLAs, the agreement provides for the exclusive employment of members in good standing or member-travelers of the union with jurisdictional rights on the work to be done, while five PLAs from the sample are silent on the matter. In four of these, the PLAs refer explicitly to the applicable collective agreements, most of which include a union security clause of some sort (see the Cytec, 2012, PLA above; also see GM 2009, 2010, and 2012).

The fifth case (New Gold, 2016) is less clear. While it provides that: "All other terms and conditions will be as per the respective collective agreement applicable to the trade," the fact that it aims to "ensure contractors signatory to member unions of the BTC are able to competitively bid on the Project" leaves us unsure as to whether a non-unionized contractor selected in the tendering process would be allowed to use their regular non-union employees.

ArcelorMittal-Dofasco (2008, 2012, and 2019) and Thorold (2007) PLAs are in between as they allow contractors to hire from any other source when a union is unable to provide them with the required skilled workforce, within a certain delay. The newly hired employees get a referral slip and must join the union within a week of their hiring. Given this possibility, the PLAs also set a sequence giving priority to local members and travelers over non-member applicants in case of layoffs.

These PLAs also allow contractors to select (or "name hire") up to 25% (Thorold, 2007) or even 50% (ArcelorMittal-Dofasco, 2008, 2012, 2019) of its total workforce on the project, as long as these workers are members in good standing of the appropriate union.

4.3 General Observations

As can be gathered from the foregoing, PLAs are often similar in form and contents, even though they can differ in some measure, depending on the nature of specific projects and the needs of the parties involved. By entering into a negotiation, the parties come up with terms and conditions that can be satisfactory to both of them, given their respective goals. In this last section of the chapter, we address some of these goals, and their significance in the context of Ontario's unionized construction.

The PLA as the Outcome of a Negotiation

The notion that PLAs are negotiated locally implies

a certain measure of liberty, stemming from the absence of a strict framework (as seen in Chapter 3). However, when we take a step back and have a holistic look at the contents of all 25 agreements from our sample, we notice much similarity as to the subject-matters covered and even the specific terms and conditions provided. This can be explained (1) by the fact that the parties to many PLAs share similar goals, and (2) by the existence of a pattern dynamic among the building trades involved in PLAs.

More importantly, we will highlight how the manner in which PLAs come into existence—a real negotiation among and between the many stakeholders—add to their value to proponents.

Goals. Most PLAs from the sample share similar objectives that are pursued by the signatories, as is evident from the preamble of many of them.

Many proponents in our sample are major corporations operating in competitive markets. As such, the preambles of many PLAs (e.g., Stelco, 2000; ATCO, 2010; NOVA Chemicals, 2012 and 2018) unsurprisingly include a mention of "increased investment opportunities" as a goal. Nowhere has it been expressed more vigorously than in the Sarnia area (Sarnia Construction Association, 2011). Timeliness, stability and cost control (or effectiveness) are also common themes across PLAs. In many cases, these themes come down to the proponent's need of a skilled workforce in sufficient numbers. A building trades representative interviewed for this report offered that:

> "If [the proponent] could get key trades at their door on a regular basis, I don't think they would be as committed to our PLA, but because of the [labour] shortage, because of the uniqueness of the building trades' travel cards system, because of the way we can communicate to [other regions] and we can pull trades people in, [the proponent] works with us."

For the building trades, such a concern with investments is equated with "employment opportunities" for their members, a major issue considering the pervasiveness of intermittent employment in construction, the cyclical and seasonal nature of its demand, and the competition between the unionized and non-unionized segments of the sector. Fifteen PLAs include a mention of this goal, in one form or another.

These goals set the parameters of the negotiation between the representatives of a proponent, looking for a skilled workforce in sufficient number and at a good price, and building trades unions, looking to secure stable employment for their members. They create a situation of relative mutual dependence which is used by the parties to obtain the most favourable possible terms (Bacharach and Lawler, 1988).

Contents and Emerging Patterns

Regarding the substantive contents of the PLAs in our sample, they generally appear similar to what we know about American ones (see Chapter 1). PLAs in Ontario are strongly oriented toward timeliness and simplicity of management and a little less toward cost reduction--with the obvious Sarnia exception--even though the rules regarding overtime often allow contractors and proponents to save money. Given this apparent importance of timeliness, one difference stands out: the fact that only about 20% of Ontario PLAs include a commitment by the unions to provide the required skilled workforce within a certain delay.

There are, however, two issues about which PLAs in Ontario differ substantially from American agreements. While provisions about health and safety and community benefits seem to be an important part of American PLAs, they are characteristically absent, or at least very limited, in Ontario PLAs. Considering how critical occupational health and safety is

in construction, and how beneficial the related PLA provisions have been in major construction projects in the United States, it might come as a surprise to find so few contents on the topic in our sample. A possible explanation might reside in different occupational health and safety regulations in Ontario and the United States, leading to different priority level to include such provisions in PLAs.

The second striking difference between Ontario PLAs and those described in the United States is the almost total absence of community benefits provisions in the province. The explanation for this, however, is simpler: The vast majority of Ontario PLAs have been concluded for private-sector projects, where the issues at stake are limited to the immediate interests of the construction client (a private firm), the building trades and their members and, to a certain degree, the unionized employers, whereas in public-sector projects, which are most common in the United States and in British Columbia, the client (the State or a public authority of some sort) also pursues a larger mission of public interest. The fact that the recently negotiated agreement for the Ottawa Hospital Civic Redevelopment Project includes a joint commitment by the parties to promote workforce training, especially for so-called "equity groups", supports this private sector/public sector distinction.

The fact that PLAs are locally negotiated does not mean that they differ completely from one another. Despite the limited number of agreements, it is possible to identify three emerging patterns, which depend largely on the area where the construction project is to take place. The first, and most obvious, pattern concerns the nine PLAs signed in the Sarnia area that are included in our sample, which are nearly identical in their contents. The explanation for this resemblance resides largely in the role played by the Sarnia Construction Association as an agent for all proponents signatory to these PLAs, making it easier for a template agreement to be reproduced in every single one of them. A second one covers the four PLAs negotiated at ArcelorMittal-Dofasco between 2008 and 2019, and the 2018 GM PLA which have been completely rewritten by the parties, using the ArcelorMittal-Dofasco structure and contents. The third discernible pattern covers the PLAs signed by the members and representatives of the Lincoln-Welland-Haldimand Building Trades Council until 2018, when they began using the ArcelorMittal-Dofasco PLA as a template for the renewal of the GM PLA (GM, 2009, 2010, 2012; Cytec, 2012). Emerging patterns in the contents of the sampled PLAs suggest that the parties hold a real control over the contents of their negotiated agreements.

The Benefits of Negotiating PLAs

The very fact that PLAs are negotiated and not imposed upon the parties is a crucial fact as not only does it allow the stakeholders to come up with terms and conditions that are tailor-made for a specific project, but it also contribute to make PLAs truly interesting for proponents.

As we know from years of studying collective bargaining (e.g., Walton and McKersie, 1991), any negotiation between collective bodies (especially when coalitions are involved) is in fact three negotiations: one between the parties and one among the constituents of each of them. This is very important to understand PLAs.

As we have seen, many PLAs include uniform terms and conditions for issues such as regular hours, overtime, holidays and travel allowance. In order to do so, representatives from the building trades involved must first agree on acceptable compromises among themselves, compromises which usually land somewhere between the collectively bargained conditions of the trades enjoying larger market shares in the area and those of trades in a less favourable position. As we have shown earlier in this

chapter, the outcomes of this process not only provide the proponents with the means to better plan and control the work process of their projects, they also allow them to save on the labour costs for some trades. As the representative of one proponent summarized it:

> "We realized that those building trades were helping us make money!"

For this very reason, this process of negotiation is regulated in the OLRA, which allows a Bargaining Agent to challenge a tentative PLA that would include conditions disproportionately disadvantageous for its members (see Chapter 3).

We can conclude from what precedes that even in situations where PLAs restrict work on a project to union members and their employers, it does not deprive the proponents of the benefits associated with competition on construction markets as these will always come into play at different stages of the negotiation of the PLA, depending mostly on the market shares of local building trades and unionized contractors, taken individually (when acceptable compromises are agreed upon by the unions) or as a whole (when these proposals are discussed by the parties).

The PLA as a "Barrier to Entry"?

The issue as to whether PLAs constitute a protectionist device used by building trades unions and their affiliated contractors to exclude non-union contractors and their employees, as well as members of alternative unions, from working on specific construction projects is a current topic of public debate which needs to be addressed.

As was just mentioned, a major goal of the building trades unions when entering into a PLA is to secure employment opportunities for their members especially if they do not benefit from strong market shares in the area. A building trades representative summarized it best:

> "When we're negotiating, depending on our market share, I can have one affiliate in the room that gets 80% market share, but then I have another affiliate that only has 15% of market share or 10% of market share, so this PLA, on a couple of different levels, tends to be a tool that the owner-clients want to use that they can maybe help offset or help enhance their own labour force and then, on the building trades side, the blanket PLA brings everybody to the table, no matter what your market share is."

In order to do so, a PLA can effectively restrict the access to work on a construction project by making the tendering process open only to contractors signatory to one or more of the ICI provincial collective agreements, but that is not the case of all PLAs from our sample. As a matter of fact, nearly a quarter of these agreements don't include such a requirement, some stating explicitly that: "[t]he owner has the absolute right to select any qualified bidder for the award of contracts on their project" (GM, 2009).

The situation is different with the union status of workers hired to work under the PLA as 96% of the agreements from the sample provide for some form of mandatory union membership, directly or through the union security clauses of the ICI collective agreements.

What this means is that PLAs can be used as a protectionist device to ensure union exclusivity on a major construction project, however that is not necessarily the case. PLAs have been used to level the field and "take wages out of competition" by ensuring that no contractor bidding on the project can be awarded a contract by pushing its labour costs below those paid by other contractors taking part in the tendering process, thus making competition between unionized and non-unionized firms rests on other factors such as workmanship and the efficient use of technology.[109] Such a goal is explicitly mentioned in one of the most recent PLAs from our sample (New Gold, 2016):

> Whereas, the parties wish to ensure contractors signatory to member unions of the BTC are able to competitively bid on work on the Project;

Whether the securing of employment is achieved by restricting access to the project or by setting the terms and conditions of employment in force, the PLAs from our sample all include concessions made by one or more local unions. The extent of these concessions largely depends on internal negotiations taking place among the local building trades affiliates involved in the project, and the outcomes of these negotiations vary, in turn, depending on the state of the local economy and on the market shares of each building trades union.

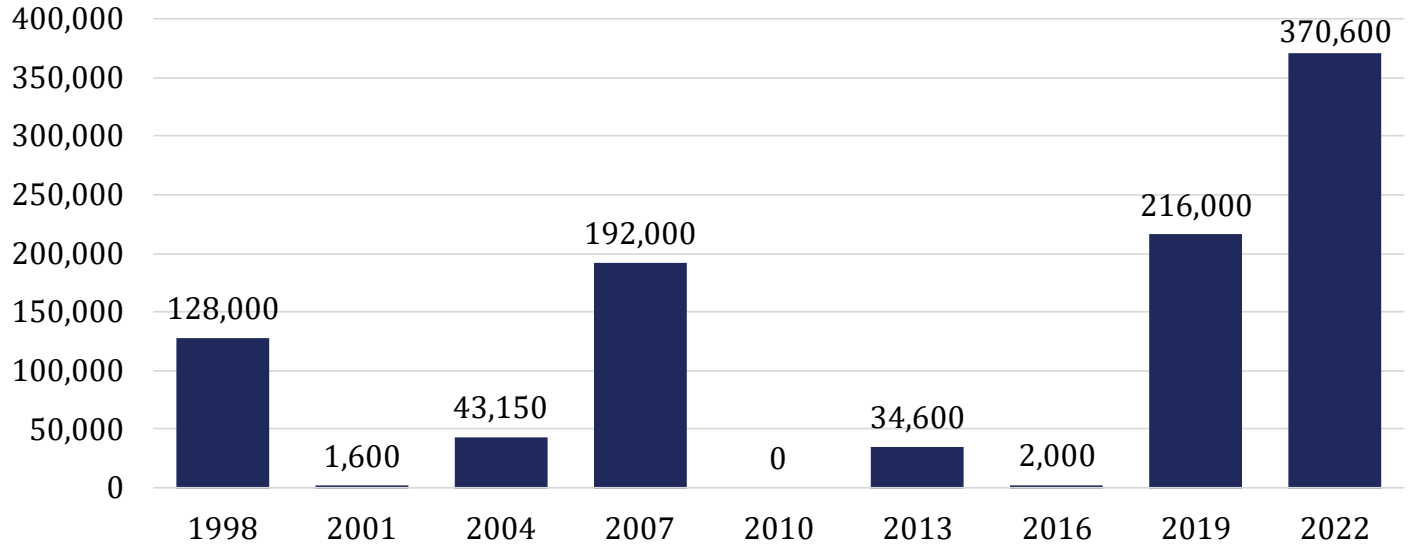
The PLA as an Industrial Peacemaking Device

Based on this study and our knowledge of the American experience, "no strike/no lockout" are standard provisions in PLAs. Proponents' interest in insurance against disruption is self-evident, given the large sums invested and the time sensitivity of construction projects, but it is of a particular importance in the context of Ontario's ICI construction, and not only for industrial projects, as delays in the delivery of schools and healthcare facilities can create major difficulties for students, patients and their family.

During the 1970s, the Province of Ontario gradually implemented trade-based, province-wide collective bargaining to put an end to years of high strike activity and rapid increases in bargained wage rates made possible by the effective use of "whipsawing" and "leapfrogging" bargaining tactics by building trades unions (Rose, 1980). Over the years, the collective bargaining regulation has been refined and includes specific measures, such as harmonized expiry dates of all collective agreements, to reduce the incidence of labour disputes, and sequential strikes in particular (Rose, 2011). But the fact that negotiations in the ICI sector are fragmented over 25 different bargaining tables still causes uncertainty for construction clients, and even for individual contractors who do not have full control over the bargaining rounds' proceedings.

When considering the data on work stoppages in Ontario ICI construction, one cannot fail to notice that the sector is not more peaceful today than it was 25 years ago, when section 163.1 of the *OLRA* was enacted. As shown in Figure 4.2 and Table 4.3 (next page), the 2019 and 2022 ICI collective bargaining rounds have seen the most strike activity in recent history, with five work stoppages and over 370,000 person-days lost in 2022 only.

Figure 4.2. Person-Days Not Worked in ICI Construction, 1998-2022



Source: Ontario Ministry of Labour, Immigration, Training and Skills Development (2022); provided by Ontario Construction Secretariat.

Given that unions are prevented by the OLRA to supply workers to a contractor represented by an employers' association taking part in a strike or a lockout,[110] a duly signed PLA is the only way for a proponent to really shield their project from the risks of a work stoppage. Also, considering the importance of the right to strike in collective bargaining (which has been reaffirmed, in 2015, by the Supreme Court of Canada[111]), its voluntary renunciation by building trades unions should be considered an important concession, highlighting, once again, the fact that PLAs are the outcome of a true negotiation.

Table 4.3. Number of Work Stoppages in ICI Construction, 1998-2022

ICI Bargaining Round	Number of Work Stoppages
1998	2
2001	1
2004	2
2007	3
2010	0
2013	2
2016	1
2019	2
2022	5

SOURCE: Federal Mediation and Conciliation Service, 2023.

5 Economic Research on PLAs

Project labour agreements are ubiquitous in the United States, as they are used often in both the private- and public-sector. While PLAs in America's private-sector may somewhat mirror those in Ontario—namely being concentrated in large industrial construction projects—the proliferation of public-sector PLAs is a considerable way in which the two countries' construction environments differ. Government agencies in the United States use PLAs for all sorts of construction projects, including schools, roads, and water and sewer installation. Due to political reasons outlined in Chapter 2, public-sector PLAs are more pervasive in Democratic strongholds (urban areas, left-leaning states).

The proliferation of public-sector PLAs in the United States has been a boon for researchers interested in studying the economic effects of these agreements. Not only can scholars identify large numbers of projects featuring a PLA, but public records requests (and other sources) provide researchers with nearly ideal data to evaluate claims made by those made in support and opposition to public-sector agreements. While the academic, peer-reviewed literature on PLAs is emerging—it is currently limited to a handful of articles—recent political fights over their use has reenergized research interest in this area.

Before summarizing research on the economic effects of public-sector PLAs in the United States, the authors acknowledge their sensitivity in making cross-country comparisons. However, Chapter 2 highlighted the well-documented comparability between the Canadian and American construction sectors that should alleviate much of this concern. Perhaps more importantly, similar academic-quality research on the economic effects of PLAs *in Canada* has never been published. This is likely because of both the smaller number of PLAs and the lack of data available to researchers considering that many elements of construction would be proprietary to construction owners and contractors. As such, while any cross-country comparison offers some concern, the peer-reviewed data on PLAs in the United States would seem to offer the best insight to their economic effects in Ontario.

5.1 Peer-Reviewed Research

The political tug-of-war over public-sector PLAs in the United States occurs for many reasons, however public discourse often focuses on their potential influence on bid competition and construction costs borne by taxpayers. Attention to these concerns has led to a torrent of politically driven articles seeking to influence public opinion, often citing incomplete or low-quality economic research. However, the study of public-sector PLAs has also been the topic of study by academic scholars publishing in peer-reviewed journals; while this literature is limited to a few studies, its results are informative given that they represent the most complete and well-developed economic analyses of public-sector PLAs (Ormiston and Duncan, 2022).

The question of whether project labour agreements affect bid competition on public projects has been directly addressed in only a single peer-reviewed study. Philips and Waitzman (2021) analyzed bids on 263 construction projects among California community colleges between 2007 and 2016. After accounting for differences between projects—such as size and location—the authors concluded that the presence of a PLA did not have a statistically significant effect on the number of bidders on the project. Ormiston and Duncan (2022) surmise that this finding may mean that while PLAs deter some contractors from bidding, it may encourage others. Nevertheless, while the research on this question is in its infancy—and future research may reach con-

tradictory conclusions—the findings of Philips and Waitzman (2021) are consistent with a consensus of other peer-reviewed studies showing that labour regulations do not necessarily have a statistically significant effect on the number of bidders on public projects in the United States.[112,113]

Concerns about bid competition are implicitly tied to the leading policy concern when it comes to public-sector PLAs in the United States: whether they raise construction costs and, thus, increase the burden on taxpayers. To that question, however, the three most recent and methodologically advanced studies in peer-reviewed journals tell a consistent story: project labour agreements do not have a statistically significant effect on public construction costs. In the most extensive study of the subject to date, Belman et al. (2010) concluded that PLAs did not have a statistically significant impact on school construction costs in Massachusetts after accounting for differences in project size, complexity, and location. Philips and Waitzman (2021) reached the same conclusion in their study of community colleges in California. Waddoups and May (2014) echoed these findings while examining the impact of responsible contracting policies—which included PLAs—on school construction costs in Ohio. While the scope of projects analyzed are limited to public education construction and sample sizes are relatively small, it is nevertheless revealing that the three most recent and developed peer-reviewed studies conclude that PLAs do not have a statistically significant effect on construction costs.[114]

Despite the consensus of these recent peer-review articles, opponents of public-sector PLAs in the United States routinely argue that these agreements increase public construction costs by around 15% to 20% (Ormiston and Duncan, 2022). This argument is rooted in the findings of an older, methodologically less-developed study in the peer-reviewed literature on school construction (Bachman and Haughton, 2007) and a series of non-academic studies published by think tanks that applies the same overly simplistic empirical approach.[115] In a critical review of peer-reviewed economic research on project labour agreements, Ormiston and Duncan (2022) demonstrated that these studies suffer from a fundamental methodological flaw—"omitted variable bias"—that renders them, at best, misleading about the relationship between PLAs and construction costs. The authors show that these studies fail to account for the fact that projects built under PLAs are larger, more complex, and more often built in an urban area than projects built without PLAs. By failing to adequately account for the systematic differences between projects, Ormiston and Duncan (2022) show that such studies misattribute the cost differentials associated with more complex projects and urban construction with the presence of project labour agreements, leading to statistically biased results.

Independent of methodological concerns, Ormiston and Duncan (2022) question the viability of estimates suggesting that project labour agreements increase costs by up to 20% (a similar claim to ones offered in Canada, as discussed in the next section). Using data from the U.S. Economic Census of Construction, the authors highlight that labour costs account for just 23% of total contractor costs in the American construction industry. Taken together, this would mean that these older and less developed studies are suggesting that PLAs have an effect nearly equivalent to the doubling of labor costs on a project (assuming the price of materials is fixed).

Duncan and Ormiston (2022) argue that this seems implausible. Specifically, they identify that many of the studies touting these large cost effects on public-sector projects were conducted in states with prevailing wage laws, which minimize wage differentials between workers on projects built with and without a PLA and thus contradict any arguments

that the proposed cost differential must be attributable to labor costs. So while the limited peer-review research on the relationship between PLAs and bid competition makes it difficult to provide definitive answers, the academic literature provides are both logical and methodological reasons to be initially skeptical of estimated cost effects of project labour agreements reaching 20%.

5.2 Analyzing Economic Research in Canada

While mostly limited to school construction, the most advanced peer-reviewed research on project labour agreements in the United States tell a consistent story: PLAs do not have a statistically significant effect on construction costs. Unfortunately, there has yet to be any peer-reviewed research on the effect of PLAs on construction costs in Canada likely due to data limitations. As a result, the subsequent vacuum of high-quality research has been filled by reports published by think tanks. The authors of the current report acknowledge the difficulty in assessing the economic impact of PLAs in Canada in the absence of sufficient data, however a critical analysis of such reports offers concerns that their estimates and conclusions exhibit considerable weakness.

As a primary example, a study by the Montreal Economic Institute estimates that a PLA used on a $2.1 billion Ottawa Hospital project will have cost taxpayers an additional $168 to $525 million.[116] To reach these estimates, the authors explicitly cite a study by another think tank—Cardus—that posits that restrictive bidding increases construction costs by 8% to 25%, a range resembling the discredited values in the United States about the cost impact of PLAs.[117] To evaluate these claims about PLAs, it is important to ask where these estimates came from. Digging through layers of Cardus studies, it strongly appears that these parameters were drawn from a 2009 simulation by researchers in Texas that attempted to examine the relationship between the number of bidders and construction costs (Damnjanovic et al., 2009). But researchers at MEI overlooked that this simulation had nothing to do with project labour agreements, was presented in a dated non-academic technical report, never defined the types of projects used in the simulation, and failed to provide any other details of the simulation's methodology or any acknowledgement of whether or not it used real-world bid data (likely because the simulation was an incidental part of the Texas report).

Even if the Texas simulation was relevant to PLAs in Ontario, MEI's application of the report implicitly relies on the assumption that only two contractor bids would ever be placed on a PLA project. The presumed 8% cost reduction comes from the estimated cost savings in moving from two to three bidders; meanwhile, the projected 25% cost savings would come from moving from two to eight bidders. It is important to note that this 25%—which has been the foundation of Cardus studies and parrotted in multiple news articles as a critical number—was simply an arbitrary endpoint by the Texas scholars who stopped their simulation at eight bidders with no reason provided. Its relevance is simply unclear.

Ignoring the fact that all of these numbers come from a simulation in Texas that has nothing to do with project labour agreements, the problems stemming from the use of these values to project costs of PLAs moving forward are substantial. First, the starting assumption made--that PLA projects have two and only two bidders on them--ignores that some PLAs mandate a minimum number of bidders. For example, ArcelorMittal-Dofasco PLAs require a minimum of three bidders. General Motors PLAs require a "sufficient number of qualified contractors available to bid work in accordance with Proponent's current purchasing practices for selection of Contractors." Finally, this study reflects that many PLAs in the province feature open bidding. In other words, the very foundation upon which MEI and Cardus build

their estimates (8% to 25%) are in distinct violation of the direct language of PLAs themselves.

If this were not enough, the assumption that the removal of a PLA would lead to a four-fold increase in the number of bidders (from two to eight) on some of the province's largest and most complex industrial projects is difficult to believe. First, any construction market is limited in the number of contractors capable of handling the largest and most complex projects. Considering union market share in many of these sectors, suggestions of a four-fold increase in bidding on these projects when removing a PLA is highly unlikely. Second, this four-fold increase runs directly counter to peer-reviewed research showing that these agreements had little, if any, effect on the number of bidders in the United States.

To connect the dots, this all means that the public proclamation by the MEI that PLAs increased construction costs on the Ottawa Hospital project by hundreds of millions of dollars is based on a seemingly misguided interpretation of an older *simulation* in Texas that had no connection to PLAs, did not define the project type used, may or may not have used any real-world data, was based on arbitrary endpoints, and was an incidental part of a technical report that was not published in an academic journal. Further, the application of these estimates requires an assumption about the effect of PLAs on bid competition that is in direct violation of PLA language in Ontario and has not been borne out thus far in the peer-reviewed research (Philips and Waitzman, 2021) even if that literature is limited and based in the U.S.

Applying this questionable approach to project enormous cost impacts of PLAs is especially bewildering given the existence of multiple peer-reviewed studies that concluded, using real-world data on project labour agreements elsewhere in the United States, that PLAs did not have a statistically significant effect on municipal construction costs. It is acknowledged that estimating cost effects attributable to project labour agreements *in Canada* is extraordinarily difficult given an absence of available economic data, and the authors of the current study cannot definitively say whether or not PLAs affect construction costs in Ontario. But it is hard to escape the conclusion that the estimates offered in the MEI study are, at best, unreliable, and are likely misinforming public discourse.

Conclusion

For a quarter century, the OLRA has made it possible for clients in the institutional, commercial and industrial construction sector to negotiate pre-hire labour contracts known as project labour agreements (PLAs) with building trades unions for the purpose of setting the terms and conditions of employment for specific projects. By doing so, PLAs contribute to the timely, on budget, completion of construction projects by securing the required skilled workforce, simplifying the management of the work process, and ensuring peaceful labour-management relations on the job site. In Ontario, the negotiation of a PLA to meet these ends is especially critical given the importance of building trades unions as providers of skilled labour on major construction projects, and given the centralized structure of collective bargaining in the ICI sector. For the building trades unions signatory to these agreements, PLAs are a powerful tool to provide their local members with stable employment opportunities in an industry characterized by economic insecurity. At the same time, PLAs create favourable conditions to attract private investments for the local economy.

The amendments made in 1998 to the Ontario Labour Relations Act (OLRA) regarding PLAs broadly define such agreements and provide a specific framework in which they can be negotiated voluntarily by a proponent and local representatives of the building trades unions. The voluntary character of PLAs manifest itself through the elaborate process allowing the bargaining agents to challenge a PLA before it comes into force. Over the years, the section of the OLRA covering PLAs has been amended only once, in 2000, to give more flexibility to proponents and union representatives as to the possible range and scope of PLAs. Finally, even if the OLRA PLA provisions could be at odds with some aspects of the ILO freedom of association standards, they have yet to be the topic of a litigation case.

Our analysis of a sample of 25 PLAs negotiated between 2000 and 2019 revealed that as far as terms and conditions of employment are concerned, PLAs negotiated in industrial construction in Ontario have much in common with what we know of PLAs signed in the United States given their emphasis on timely construction, cost control, standardization of work schedules and the avoidance of work stoppages. However, they differ greatly in terms of provisions regarding topics such as occupational health and safety and community benefits. The nature of the project (private or public) and the surrounding regulation of work and employment certainly explain some of these differences and help making sense of the negotiation priorities of the parties. On the question as to whether PLAs are protectionist devices used by unions and unionized contractors, we found that while most of the PLAs from our sample include provisions making these projects exclusively "union", 24% of these PLAs do not provide such an exclusivity and some of them are simply leveling the field by "taking wages [and other conditions of work] out of competition."

From an economics perspective, a review of the emerging (albeit limited) peer-reviewed literature on PLAs in the United States suggests that these agreements do not have a statistically significant effect on construction costs, a conclusion contrary those espoused by think tanks in Canada. While economic data on PLA-built projects in Ontario is not available to researchers, the continued use of these agreements by some of the province's largest and most experienced industrial construction owners in the private-sector would seemingly reflect that these companies perceive that these agreements add value and/or reduce the costs of construction.

Finally, a critical analysis by two economists among the authors highlight critical and potentially egregious methodological missteps by those think tanks claiming that PLA substantially increase construction costs. While it is acknowledged that peer-reviewed economic research is still developing regarding PLAs and future research may prove otherwise, the authors encourage *considerable* caution in putting too much weight on the economic studies on PLAs advanced by these think tanks.

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Endnotes

1 Belman and Bodah (2010) originally advanced six categories of PLA provisions, however we have incorporated "Improve Efficiency and Encourage Innovation" and "Resolve Disputes" into a broader "Timeliness" category.

2 Belman, Dale, and Matthew Bodah. 2010. "Building Better: A Look at Best Practices for the Design of Project Labor Agreements," Economic Policy Institute. Accessed at: https://files.epi.org/page/-/pdf/BP274.pdf.

3 There are a limited number of national PLAs that establish terms and conditions across numerous projects, often negotiation between the owner and North America's Building Trades Unions (NABTU).

4 *Building and Construction Trades Council v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.,* 507 U.S. 218 (1993). Accessed at: https://caselaw.findlaw.com/us-supreme-court/507/218.html.

5 See Executive Orders 13202 and 13502 accessed at the Federal Registry: https://www.federalregister.gov/presidential-documents/executive-orders.

6 Executive Order 14063.

7 Ontario, *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A. All references to legislation in this chapter are references to the OLRA unless otherwise specified.

8 *L.I.U.N.A. v. Cope Construction & Contracting Inc.,* [2009] 169 C.L.R.B.R. (2d) 51 at para. 5 [*Cope Construction*].

9 OLRA, s. 1(1) ""collective agreement" means an agreement in writing between an employer or an employers' organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers' organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers' organization, the trade union or the employees, and includes a provincial agreement and does not include a project agreement under section 163.1"; also see *Weyerhaeuser Engineering Services*, [2003] 98 CLRBR (2d) 92, OLRB Rep. Nov./Dec. 1093 at 1099 [*Weyerhaeuser 2003*] where the OLRB held that the combination of the s.1(1) definition and s.163.1 provisions "demonstrate a clear and consistent legislative intention that a proponent not become a party to, nor bound by, a provincial ICI Collective Agreement merely be entering into a project agreement."

10 OLRA, s. 163.1(14)(2).

11 *Ibid.,* ss. 45-52.

12 *Ibid.*, s. 45.

13 *Ibid.*, s. 48.

14 *Weyerhaeuser 2003*, *supra* note 9.

15 OLRA, s. 161.1(4).

16 *Ibid.*, s. 163.1(4.1).

17 *LIUNA, Local 183 v Ellis-Don Construction Ltd.*, 2003 CanLII 40747 (ON LRB).

18 Electrical Trade Bargaining Agency of the Electrical Contractors Assn. of Ontario v. V.K. Mason Construction Ltd., [2009] O.L.R.B. Rep. 985.

19 OLRA, s. 163.1(1).

20 *Ibid.*, s. 163.1(18).

21 See *Cope Construction, supra* note 8 at paras. 15-18.

22 *BNA CA DFA Inc. v Ontario Council of IUPAT, Bricklayers, Local 6,* 2021 CanLII 40304 (ON LRB), <https://canliia/t/jfwl8> at para. 10.

23 OLRA, s. 163.1(1)1.

24 *Ibid.*, s. 163.1(2).

25 *Ibid.*, s. 163.1(1)2-5.

26 *Ibid.*, s. 163.1(3); *The Sarnia Construction Association,* [1999] OLRB Rep. Sept./Oct. 884; reconsideration dismissed [1999] 56 CLRBR (2d) 52 (ON LRB) (addressing "calendar days") [*Sarnia 1999*].

27 *Cope Construction, supra* note 8.

28 OLRA, s. 163.1(3)1, 2. The Lieutenant Governor in Council may make a regulation prescribing the parties to a s. 163.1(3) application or governing the specifying of such parties by the OLRB (OLRA, s. 125(1)(l.1). The OLRB has refused standing to a union on the basis that it was not on the bargaining agent list (*Ontario Pipe Trades Council v Greenfield Energy Centre LP,* 2007 CanLII 10771 [*Greenfield 2007*]).

29 OLRA, s. 163.1(3)3, 4.

30 *Ibid.*, s. 163.1(3)5.

31 *Ibid.*, s. 163.1(3)6.

32 *Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 663 v. Greenfield Energy Centre LP*, 2006 CanLII 43170 [*Greenfield 2006*] at para. 3.

33 *Greenfield 2007, supra* note 28 at para. 7. This challenge was brought pursuant to s. 166 sector dispute provision of the OLRA.

34 *Ibid.*

35 *Cope Construction, supra* note 8.

36 See discussion of regulations, *supra* note 28.

37 *Cope Construction, supra* note 8, at para. 21.

38 *Ibid.,* at 17.

39 *Ibid.,* at paras. 16-17.

40 *Ibid.,* at para. 22.

41 *Ibid.,* at para. 23.

42 *Eastern Power Ltd. v. LIUNA, Local 1089*, [2014] 238 C.L.R.B.R. (2d) 15, 2014 CanLII 6673 (ON LRB).

43 *Ibid.,* at paras. 56. 63.

44 *Ibid.,* at para. 57.

45 *Ibid.,* at para. 58, affirming *Cope Construction, supra* note 8. Regarding regulations, see see section 163.1(3)¶4 and *supra* note 28.

46 OLRA, s. 163.1(5).

47 *Ibid.*, s. 163.1(6),(7).

48 *Ibid.*, s. 163.1(8)1,2.

49 *Ibid.*, s. 163.1(8)3.

50 *International Brotherhood of Electrical Workers, Local 530 v. Basell Canada Inc.*, 2006 CanLII 39590 (ON LRB).

51 OLRA, s. 163.1(8), 3-6.

52 OLRA, s. 163.1(9); *Sarnia 1999, supra* note 26.

53 *Sarnia 1999, supra* note 26.

54 OLRA, s. 163.1(9)5.

55 *Ibid.*, s. 163.1(9)2-4.

56 *Ibid.*

57 *I.B.E.W., Local 530 v. Shell Canada Products,* [2001] O.L.R.B. Rep. 1075, reconsideration granted *I.B.E.W., Local 530 v. Shell Canada Products,* [2001] O.L.R.B. Rep. 1243 [*Shell*].
58 *Sarnia Construction Assn. v. B.B.F., Local 128*, [2011] O.L.R.B. Rep. 460 at paras. 8, 31.
59 *Sarnia Construction Assn. v. B.B.F., Local 128*, 2011 CarswellOnt 9397; *Sarnia Construction Assn. v. B.B.F., Local 128*, 2011 CarswellOnt 8495; *Sarnia Construction Assn. v. B.B.F., Local 128*, 2011 CarswellOnt 8005; *Sarnia Construction Assn. v. B.B.F., Local 128*, 2011 CarswellOnt 7476, referencing *Shell, supra* note 57.
60 *Sarnia Construction Assn. v. B.B.F., Local 128*, 2011 CarswellOnt 9397 at para. 9.
61 *Sarnia Construction Assn. v. B.B.F., Local 128,* 2011 CarswellOnt 8495 at para. 7.
62 *Ibid.,* at para. 9.
63 *Ibid.,* at paras. 10-13.
64 *Sarnia Construction Assn. v. B.B.F., Local 128,* 2011 CarswellOnt 9397 at paras. 10-11.
65 OLRA, s. 163.1(10).
66 *International Brotherhood of Electrical Workers, Local 530 v. Basell Canada Inc*., 2007 CanLII 32658 (ON LRB).
67 *Bowater Pulp & Paper Canada Inc. v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, Locals 555 & 128*, 2000 CanLII 8612 (ON LRB).
68 OLRA, s. 163.1(11)-(13).
69 See e.g. *Carpenters' District Council of Ontario, UBCJA v. Construction Demathieu & Bard (CDB) Inc*., 2022 CarswellOnt 6324.
70 *Durr Industries Inc. v SMWIA, Local 562,* 2014 CanLII 70270 (ON LRB) [*Durr Industries*]; *Weyerhaeuser Engineering Services*, 2003 CanLII 22917 (ON LRB). The OLRB has held that section 96 of the Act clearly permits the Board to inquire into allegations of violations of a PLA (*UA, Local 663 v. FourQuest Energy Inc*., 2023 CarswellOnt 1464 at para 2, affirming *UA, Local 663 v. FourQuest Energy Inc*. 2022 CarswellOnt 17348).
71 *Durr Industries*, *supra* note 70 at para. 9.
72 Bill 31, *Economic Development and Workplace Democracy Act, 1998*, 2nd session, 36th Leg, Ontario, 1998 (assented to 26 June 1998) SO 1998, c 8, s.21, in force 26 June 1998.
73 *S.M.W.I.A., Local 397 v. Weyerhaeuser Engineering Services*, 2005 CarswellOnt 4732, 118 C.L.R.B.R. (2d) 129 (ON LRB) at para 23 [*Weyerhaeuser 2005*]; *UA, Local 663 v. Aecon Group Inc*., 2021 CarswellOnt 15344 (ON LRB) at para. 23.
74 *L.I.U.N.A. v. Cope Construction & Contracting Inc.,* [2009] O.L.R.D. No. 2545, 169 C.L.R.B.R. (2d) 51 at para 15.
75 Bill 139, *An Act to amend the Labour Relations Act, 2000,* 1st session, 37th Leg, Ontario, 2000 (assented to 21 December 2000) SO 2000, c 38, ss. 35-36, in force 30 December 2000.
76 See discussion of such regulations *supra* at note 28.
77 CQLR c. R-20.
78 R-20, s. 60.2.
79 British Columbia, *Labour Relations Code,* RSBC 1996, c. 244.
80 See: Community Benefits Agreement between BC Infrastructure benefits Inc. and Allied Infrastructure and Related Construction Council of British Columbia, entered into 17 July 2018, amended and restated 1 March 2022. Online: https://www.bcib.ca/wp-content/uploads/Amended-and-Restated-Community-Benefits-Agreement-March-1-2022-Fully-Executed.pdf. Specific projects constructed pursuant to this CBA are, themselves, referred to as community benefits agreements and, sometimes, colloquially referred to as "project labour agreements".
81 Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B of the Canada Act, 1982 (U.K.) c. 11 [Charter].
82 *Health Services & Support-Facilities Subsector Bargaining Assn. v. British Columbia,* 2007 SCC 27 at para. 70 [*Health Services*].
83 *Ibid.*; *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (SCC).
84 *Canadian Encyclopedic Digest*, CED Constitutional Law X.1.(b).(v) at §558 [*CED*].
85 *Lavigne v. O.P.S.E.U.,* [1991] 2 SCR 211 (SCC); *R. c. Advance Cutting & Coring Ltd.*, 2001 SCC 70 (SCC).
86 *CED*, *supra* note 84 at §559.
87 Similarly, a challenge to Quebec legislation consolidating fragmented health sector bargaining units by mandating four comprehensive units, specifying bargaining at two levels (local and/or regional) for specified matters with final offer selection as the dispute resolution mechanism for those matters, also survived a *Charter* challenge at the Court of Appeal level (*C.S.N. c. Québec (Procureur général)*, 2011 QCCA 1247 (C.A. Que.)).
88 *Hibernia Management and Development Co. and C.E.P., Local 2121,* [2014] L.R.B.D. No. 10 (N.L. L.R.B.); *IUOE, Hoisting & Portable & Stationary, Local 870 v. KDM Constructors LP*, 91 C.L.R.B.R. (3d) 47 (Sask. L.R.B.) [*KDM Constructors*].
89 *KDM Constructors, supra* note 88 at para. 56.
90 *Health Services, supra* note 82.
91 The assessment that this is the sole freedom of association challenge to Ontario PLAs is based on our review of decisions issued by tribunals and courts. It may be that a challenge was brought but withdrawn or settled without a decision being issued.
92 Case No 1975 (Canada) Online: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2904820 at para. 239.
This Complaint also involved other provisions of Bill 31 and of Bill 22, the *Prevention of Unionization Act (Ontario Works), 1998,* SO 1998, c 17, which are not addressed here.
Note that, at the time of this complaint, Canada had ratified some but not all of the relevant ILO conventions relating to freedom of association. It had ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but not the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) or the Collective Bargaining Convention, 1981 (No. 154). Canada subsequently ratified Convention 98 on 14 June 2017, but has not yet ratified Convention 154. The ILO regard all member states as committing, through membership, to respect all conventions, whether or not ratified by the member state.
93 *Ibid.* at para. 274.

94 See follow-up reports: 321st Report; 323rd Report, paras. 45-48; 324th Report, paras. 27-29; 327th Report, paras. 36-38; 330th Report, paras. 35-38; 333rd Report, paras. 20-21.
95 324th Report at para. 29.
96 *Health Services, supra* note 82; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (CanLII); *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 (CanLII).
97 *Millen v. Manitoba Hydro-Electric Board,* 2015 MBQB 91, 261 C.L.R.B.R. (2d) 1; affirmed *Millen v. Manitoba Hydro-Electric Board*, 2016 MBCA 56 (Man. C.A.); leave to appeal to Supreme Court of Canada refused, 2016 Carswell 397.
98 *Ibid.*
99 *Independent Contractors and Businesses Association v. British Columbia (Transportation and Infrastructure*), 2019 BCSC 1201; varied by *Independent Contractors and Business Assn v British Columbia (Ministry of Transportation and Infrastructure),* 2020 BCCA 243 [*ICBA 2020]*; leave to appeal to Supreme Court of Canada refused *Independent Contractors and Business Association, et al. v. Ministry of Transportation and Infrastructure, et al.* 2021 CarswellBC 945, 2021 CarswellBC 946.
100 *Independent Contractors and Businesses Association v. British Columbia (Transportation and Infrastructure*), 2019 BCSC 1201 at para. 94.
101 *ICBA 2020, supra* note 99 at para. 55.
102 *ICBA 2020, supra* note 99. Although not mentioned by the Court, the CBA explicitly states that "These provisions constitute a Collective Agreement and an agreement under the applicable laws of the Province of British Columbia" at MS 3 OF MS 56. Online: https://www.bcib.ca/wp-content/uploads/Amended-and-Restated-Community-Benefits-Agreement-March-1-2022-Fully-Executed.pdf.
103 Canada, *An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples*, S.C. 2021, c. 14 (s.5 provides that "The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration."). British Columbia, *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 ("*Declaration Act"*) (s. 3 provides that: In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.) British Columbia has also adopted a document setting out an interim approach to implementing the legislation (British Columbia, Declaration Act Secretariat, *Interim Approach to Implementing the Requirements of Section 3 of the "Declaration on the Rights of Indigenous Peoples Act"*, Online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/9052_das_interim_approach_to_section_3_of_the_declaration_act_report_final.pdf.
104 Darrian Matassa-Fung and Kristen Robinson, "Union-Favouring Community Agreement Seemingly at Odds with Indigenous Rights in Duncan, B.C.", *Global News,* 5 February 2023, Online: https://globalnews.ca/news/9462578/duncan-bc-union-favouring-agreement-indigenous-rights/; Rob Shaw, "NDP Community Benefits Agreements Create Policy Conflict for Eby", *BIV*, 21 February 2023, Online: https://biv.com/article/2023/02/rob-shaw-ndp-community-benefits-agreements-create-policy-conflict-eby; Evan Saunders "Cowichan Contractor says CBAs Overstep Indigenous Community's Rights", *Journal of Commerce,* 17 May 2023, Online: https://canada.constructconnect.com/joc/news/government/2023/05/cowichan-contractor-says-cbas-overstep-indigenous-communitys-rights.
105 Note that the dispute in British Columbia occurred despite the fact that the CBA in British Columbia is a product of government policy, not legislation, and therefore may not have been subject to the province's *Declaration Act*.
106 Canada, Competition Act, RSC 1985, c C-34. Progressive Contractors Association of Canada "Competition Bureau Urged to Investigate Ottawa Hospital Expansion Deal" News Release 6 February 2023. Online: https://www.pcac.ca/competition-bureau-urged-to-investigate-ottawa-hospital-expansion-deal/.
107 OLRA, s. 162 (3).
108 OLRA, s. 79.
109 This effect of PLAs is not dissimilar, in some respect, from the effect of the decrees system in Quebec, which allows the government to extend the terms and conditions of a collective agreement to other workplaces in a particular area, regardless of their unionization status. For a presentation of the system, see: Bergeron and Veilleux (1996).
110 OLRA, s. 140 (2).
111 *Saskatchewan Federation of Labour, supra* note 96.
112 One potential concern about the generalizability of the results of Philips and Waitzman (2021) is that public construction in California is also covered by the state's prevailing wage law. In the United States, governments use prevailing wage laws to establish a minimum hourly wage for construction workers operating on large, publicly-funded projects; in some jurisdictions, this is established as the union wage rate. As a result, it could be argued that Philips and Waitzman (2021) is only analyzing the effect of public-sector PLAs on bid competition among firms that bid on prevailing wage projects. But this argument is undermined by an extensive peer-reviewed literature that establishes that state prevailing wage laws have no statistically significant effect on the number of bidders on public projects (Kim et al., 2012; Duncan, 2015; Duncan and Waddoups, 2020; Onsarigo et al., 2020; Duncan et al., 2022).
113 The presumption that labour regulations must decrease bid competition is undermined in two ways. First, the peer-reviewed research on state prevailing wage laws—identified in the previous footnote—all demonstrate that the introduction of regulation did not have a statistically significant effect on the number of bidders on public projects. Second, Bilginsoy (1999) found that the introduction of minimum construction wages in British Columbia was associated with an *increase* in bid competition that diminished over time.
114 The focus of researchers on the cost effects of project labour agreements on educational buildings is attributable, in part, to their ubiquitous nature of school construction that provides researchers with a relatively large sample of somewhat comparable public projects (Ormiston and Duncan, 2022).
115 Many of the most commonly-cited studies claiming that public-sector PLAs increase construction costs by 15% to

20% have been published by the Beacon Hill Institute. For a list of its published studies on PLAs, see: https://beaconhill.org/labour-economics/.

116 Ouellette, Miguel, and Maria Lily Shaw. 2022. "How to Reduce Construction Costs in Ontario: Modernizing the Construction Industry." Montreal Economic Institute. https://www.iedm.org/wp-content/uploads/2022/02/note012022_en.pdf.

117 Dijkema, Brian. 2018. "Shortchanging Ontario's Cities." Cardus. Accessed on January 8, 2023, at: https://www.cardus.ca/research/work-economics/reports/shortchanging-ontarios-cities.

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