

Navigating Ontario's Construction Open Period: What Employers Need to Know

February 2025

By: Fiona Brown, Michael Horvat and Quinn Hartwig

Every three years, Ontario's construction industry enters a significant two-month window known as the Construction Open Period. Between March 1 and April 30 of the final year of most collective agreements, unionized employees in the construction industry have the opportunity to either decertify their union or switch to another through a 'raid.' For employers, this can be a time of panic and uncertainty, with potentially serious legal consequences and operational impacts. Understanding the relevant statutory framework, recognizing the signs of an impending application and preparing accordingly can help businesses navigate this frantic and challenging period effectively.

Under the *Ontario Labour Relations Act* (the "**LRA**"), employees may file **Termination Applications** to dissolve their union's bargaining rights, while rival unions may file **Displacement Applications** to take over representation through a raid. While employers are not required to participate in these proceedings, their involvement is often beneficial given the significant implications the results may have on their business. However, the window to respond is extremely tight – with employers having only two business days to reply – making preparedness crucial. To this point, employers should maintain diligent and meticulous records of job sites, employee classifications, payroll and daily work activities to ensure compliance with Board requirements, mitigate risks associated with union challenges and respond properly within the deadline.

Despite the high stakes, employers must tread carefully to avoid allegations of undue influence. The LRA strictly prohibits employers from initiating or assisting in decertification or displacement efforts. Actions such as facilitating applications, providing financial support or allowing company resources to be used for application preparation can lead to claims of unfair labour practices, resulting in dismissal of the application. Even a small gesture, such as allowing an employee to use a company computer or office materials to aid in their decertification efforts, can be problematic. In contrast, employers are still entitled to enforce workplace rules, control job site access and restrict discussions about union matters to break times, provided these measures align with standard business practices.

To navigate the Open Period effectively, employers should prioritize preparation and legal compliance. By maintaining thorough records, adhering to established workplace policies and avoiding improper involvement in union matters, businesses can protect their interests and minimize the risk of unfair labour practice claims. Staying proactively informed is the best strategy for managing the complexities of Ontario's construction labour relations landscape during this pivotal time.

Responding to termination and displacement applications involves complex, fast-paced legal proceedings and the risk of inadvertently committing an unfair labour practice. If you suspect you may soon be face such an application, we encourage you to contact our Workplace Law Group to prepare accordingly. We would be happy to help ensure your company is well prepared to file

a potential intervention or response on short notice and confirm appropriate conduct to avoid any unfair labour practices.

Have more questions about expanding into Canada? Please [click here](#) or scan the following QR code to access Aird & Berlis LLP's Market Expansion Dashboard, your one-stop-shop for market expansion resources:



Contact



Fiona Brown

Partner

T 416.865.3078

E fbrown@airdberlis.com

Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.

Fiona is pleased to offer a multitude of resources answering often-asked questions about expanding into Canada, including [this video](#) and [this one-page guide](#), all of which can be found on the [Market Expansion Resources Dashboard](#).

**Michael Horvat**

Partner

Michael is a member of the firm's Workplace Law Group. His practice focuses on all aspects of labour and employment law in both the federal and provincial jurisdictions. He advises employers in a number of industries, including manufacturing, transportation, retail, electrical distribution, construction and financial services, on various matters, including employment standards, human rights, discipline, discharge, union certification, grievances, wrongful dismissal, executive employment matters and transactions, as well as general labour and employment law issues.

Michael represents employers before the courts and administrative tribunals, such as the Ontario Labour Relations Board, the Ontario Superior Court of Justice, the Ontario Divisional Court, the Ontario Court of Appeal, the Grievance Settlement Board, the Canadian Railway Office of Arbitration, the Ontario Employment Standards Branch, the Ontario Workplace Safety and Insurance Board and in grievance arbitration and mediation.

**Quinn Hartwig**

Articling Student

Quinn summered at the firm in 2023. He recently graduated from the University of Toronto Faculty of Law. He also holds a Bachelor of Arts degree from McGill University where he majored in Sociology, minored in Communication Studies and graduated with Distinction.