



## Raiding season is just about here

The Ontario Labour Relations Act, 1995 provides for a two month “open period” at the end of each collective agreement. With our agreements ending April 30, 2022, the open period begins March 1, 2022. During this open period, employees may apply to have a union de-certified. This occurs occasionally but not very often.

During the same period, rival unions can apply to represent employees who are currently represented by another union. For one union to displace another it must bring an application for certification. This is called a raid. Once the application has been filed with the Ontario Labour Relations Board (OLRB), an employer is placed under very tight timelines to file a response and full legal submission with the OLRB. The response to a raid or decertification application is due two business days after the application is served on the employer. If not filed, or not filed in a timely fashion, the employer can lose their ability to participate in the process.

## These days, construction is a volatile industry. Is the risk worth the reward?

Most construction projects are bid on a firm lump sum basis, meaning the bidder is on the hook for any errors or unstated omissions from the bid specifications. It is not uncommon to be bidding on a project where your site presence may be six months down the road. In a pre-pandemic world, and with a proper take off, a contractor could be reasonably sure of material costing and committed delivery schedules. While putting labour hours to a project was an educated guess, based on prior productivity level experience, they were still susceptible to on-site conditions, absenteeism and weather-related issues.

Today is a new ball game. Material pricing is fluctuating wildly, with many suppliers unwilling to commit to holding their prices for forty-five days, never mind the life of the contract. Supply chain issues are interrupting material deliveries. The lack of experienced personnel is impacting the contractor’s anticipated productivity level. All of this leads to higher costs, with a contractor attempting to cover their risk while trying to be competitive. Contractors are now seeing the downloading of additional risk from the owner to the general and subcontractors.

In its June 2020 report, *The Next Normal In Construction*, McKinsey & Company wrote that construction is the biggest industry in the world and yet, even outside crises, it is not performing well. Construction has seen meager growth of one percent annually for the past two decades. Earnings before interest and taxes are only around 5 percent despite the presence of significant risk in the industry.

## Bargaining agency not to act in bad faith

Clause 167 of the Ontario Labour Relation Act advises that a designated or certified employer or employee bargaining agency shall not act in a manner that is arbitrary, discriminatory or in bad faith. As employers and employee bargaining agencies, we must bargain in good faith in representing the affiliated bargaining agents in the provincial unit of the affiliated bargaining agents for which we bargain, whether members of the designated or certified employee or employer bargaining agency or not in representing employees or employers, whether members of an affiliated bargaining agency or not.



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