



MEMBER BULLETIN

November 1, 2020

Commencing an Adjudication Under Ontario's New *Construction Act*

By now, the majority of our members have experience operating under the new *Construction Act* regime. That is, the company has undertaken a contract connected to a procurement which commenced on or after October 1, 2019 and is therefore subject to all of Ontario's new *Construction Act* provisions, including prompt payment and adjudication.

For contracts subject to the *Construction Act*, parties to the contract are entitled to refer disputes to adjudication, a new interim dispute resolution process. This process had been designed to provide a quick, cost effective, and more streamlined approach to dispute resolution with experienced construction Adjudicators. The Adjudicator's decision is binding and may be enforced as if it were a court order. Absent of a time extension, the adjudication will be determined within 46 days and any payment specified as part of the Adjudicators' order must be made within 10 days of Determination.

Subject to subsection (3), a Party to a contract or to a subcontract may refer a dispute to adjudication, respecting any of the following matters:

1. The valuation of services or materials provided under the contract.
2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.
3. Disputes that are the subject of a notice of non-payment under Part I.1.
4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
5. Payment of a holdback under section 26.1 or 26.2.
6. Non-payment of holdback under section 27.1.
7. Any other matter that the parties to the adjudication agree to, or that may be prescribed.

(3) An adjudication **may not** be commenced if the notice of adjudication is given after the date the contract or subcontract is completed, unless the parties to the adjudication agree otherwise.

Overview of Adjudication Process:

1. **Commencing Adjudication** – Claimant serves Notice of Adjudication to Respondent (ODACC sends electronic copy as well) and Respondent provides Response to Notice of Adjudication.
2. **Within 4 days** – Parties must agree on Adjudicator and adjudicator must consent to hear dispute. After an Adjudicator consents, the Adjudicator will contact the Parties to negotiate the Adjudication Fee – each Party is responsible for their own costs regardless of the outcome.
3. **Within 7 days** – If the Parties cannot agree on Adjudicator, ODACC will appoint an adjudicator within seven days of receiving the appointment request.
4. **Within 5 days** – The Claimant’s supporting documents are due within five days of the appointment of the Adjudicator. Adjudicator will notify the Respondent as to when it must submit its supporting documents.
5. **Within 30 days** - The Adjudicator will make a Determination within thirty days from the day the Claimant submits its documents.
6. **Within 10 days** - Once the Determination has been rendered, any payment specified as part of the adjudicators’ order must be made within 10 days.

Please see the **following page** for an easy to read diagram of the Adjudication process.

To create an account on the ODACC custom system please visit: <https://app.odacc.ca/en-CA/Identity/Account/Login?ReturnUrl=%2F>.

For a detailed step by step “Commencing an Adjudication” guide, please see the following link: <https://odacc.ca/en/claimants/commencing-an-adjudication/> or download the guide at: <https://odacc.ca/wp-content/uploads/2020/05/2.-Commencing-an-Adjudication.pdf>.

If you have any questions about Adjudication, please contact Krisha Ruchlewicz (905-629-0587 ext. 227 or krisha.ruchlewicz@oswca.org).

ODACC ADJUDICATION PROCESS

Construction Act, R.S.O. 1990 c. C.30 (the "Act") and Ontario Regulation 306/18 (the "Regulations")

