

# Adjudico

● EXPERT SERVICES ●

## Adjudication Awareness Bulletin (August, 2018) Matters Referred to Adjudication & Requirements

*This is further to the Adjudication Awareness Bulletin (July, 2018) titled “Role of the Authorized Nominating Authority” with respect to the Construction Act that came into force in Ontario in 2017.*

- A. Disputes Referred to Adjudication:** A party to a contract may refer to adjudication a dispute with the other party to the contract in respect of any of the following:
1. **Valuation** of services or materials provided under the contract.
  2. **Payment** under the contract, including in respect of a:
    - a) Approved change order, or
    - b) Unapproved change order, or
    - c) Proposed change order.
  3. **Disputes** that are the subject of a notice of non-payment.
  4. **Set-Off** amounts retained by trustee or in respect of liens.
  5. **Holdback** payment or non-payment.
  6. Any other matter(s) that the parties to the adjudication agree to.
- B. Subcontract Referral to Adjudication:** A party to a subcontract may refer to adjudication a dispute with the other party to the subcontract in respect of any of the matters referred to above.
- C. Expiry of Adjudication Period:** 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.
- D. Single and Multiple Matters:** An adjudication may only address a single matter, unless the parties to the adjudication and the adjudicator agree otherwise.
- E. Adjudication Despite Other Proceedings:** A party may refer a matter to adjudication even if the matter is the subject of a court action or of an arbitration under the Arbitration Act, 1991, unless the action or arbitration has been finally determined.
- F. Applicable Adjudication Procedures:** An adjudication is subject to the adjudication procedures set out in the contract or subcontract, if they comply with the requirements of the Act.
- G. Overriding Adjudication Procedures:** If the contract or subcontract does not address adjudication procedures, or if the adjudication procedures set out in the contract do not comply with the requirements of the Act, then the adjudication is subject to the adjudication procedures set out in the Act.
- H. Notice of Adjudication:** A party to a contract or subcontract who wishes to refer a dispute to adjudication shall give to the other party a written notice of adjudication that includes the following:
1. **Parties:** The names and addresses of the parties;
  2. **Dispute:** The nature and a brief description of the dispute, including details of how and when it arose;
  3. **Remedy sought:** The nature of the redress sought; and
  4. **Proposed adjudicator:** The name of a proposed adjudicator to conduct the adjudication.
- I. Notice Protocols:** A party who gives notice shall provide a copy of the notice, in the prescribed manner, to the persons or entities, as set out in the Act.
- J. Consolidated Adjudications:** If the same matter or related matters are the subject of disputes to be adjudicated in separate adjudications, the parties to each of the adjudications may agree to the adjudication of the disputes together by a single adjudicator as a consolidated adjudication.
- K. Contractor Requirement to Consolidate:** If the same matter or related matters are the subject of disputes to be adjudicated in separate adjudications but the parties to each of the adjudications do not agree to consolidated adjudication, the contractor may, in accordance with the Act, nevertheless require the consolidation of the adjudications.

*Watch this space: The next Adjudication Awareness Bulletin will also explore the appointment of an adjudicator, fees documents, conduct, determination and remedies.*

Note: This Adjudication Awareness Bulletin is issued for informational purposes only and does not constitute legal advice. Further, Adjudico Inc. is not liable for reliance by any party in respect of any and all statements contained within this Adjudication Awareness Bulletin.

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