

Adjudico

• EXPERT SERVICES •

Adjudication Awareness Bulletin (September, 2018) Selection, Fees, Powers & Conduct of an Adjudicator

*This is further to the **Adjudication Awareness Bulletin (August, 2018)** titled “Matters Referred to Adjudication & Requirements” with respect to the Construction Act that came into force in Ontario in 2017.*

- A. Adjudicator & Selection:** An Adjudication may only be conducted by an adjudicator listed in the registry established and maintained by the Authorized Nominating Authority (“Authority”). The parties to the adjudication may agree to an adjudicator, or may request that the Authority appoint an adjudicator.
- B. Naming of Adjudicator & Appointment:** The Act prohibits the prior naming of an adjudicator, if a contract names an adjudicator, it will be of no effect. The named adjudicator is requested to consent within 4 (four) days of notification otherwise the party issuing the notice shall request that the Authority appoint an adjudicator.
- C. Adjudicator Fee:** An adjudicator shall be paid a fee for conducting the adjudication, which shall be determined before the adjudication commences. The fee payable to an adjudicator is the fee agreed to by the parties to the adjudication and the adjudicator; or if the parties and the adjudicator do not agree to a fee amount, the amount determined by the Authority on the adjudicator’s request.
- D. Equal Appointment:** The parties to the adjudication shall split payment of the adjudication fee equally, subject to the adjudicator arriving at a different determination.
- E. Documents for Adjudication:** No later than 5 (five) days after an adjudicator agrees or is appointed to conduct the adjudication, the party who gave the notice of adjudication shall give to the adjudicator a copy of the notice, together with a copy of the contract or subcontract; and any documents the party intends to rely on during the adjudication.
- F. Powers of Adjudicator:** In conducting an adjudication, an adjudicator may exercise the following powers and any other power of an adjudicator that may be specified in the contract or subcontract:
1. **Directions:** Issuing directions respecting the conduct of the adjudication
 2. **Initiatives:** Taking the initiative in ascertaining the relevant facts and law
 3. **Inferences:** Drawing inferences based on the conduct of the parties to adjudication
 4. **Inspection:** Conducting an on-site inspection of the improvement that is the subject of the contract or subcontract
 5. **Assistance:** Obtaining the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as the adjudicator considers fit, as is reasonably necessary to enable him or her to determine better any matter of fact in question
 6. **Determination:** The name of a proposed adjudicator to conduct the adjudication
 7. **Other:** Any other power that may be prescribed
- G. On-site Inspection:** The exercise of the power to conduct an on-site inspection is subject to the prior consent of the owner of the premises if the premises is a home in which the owner resides, or the owner is not a party to the adjudication; and any other person who has the legal authority to exclude others from the premises.
- H. Cost of Assistance:** If the adjudicator obtains the assistance of a person as above (item F.5.), the adjudicator may fix the remuneration of the person as is reasonable and proportionate to the dispute and direct payment of the remuneration by either or both of the parties to the adjudication.
- I. Conduct & Impartiality:** The adjudicator may conduct the adjudication in the manner he or she determines appropriate in the circumstances. An adjudicator shall conduct an adjudication in an impartial manner.

*Watch this space: The next **Adjudication Awareness Bulletin** will also explore the Adjudicator’s determination and timing.*

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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