

Adjudico

• EXPERT SERVICES •

Adjudication Awareness Bulletin (October, 2018) Adjudicator's Determination & Timing

This is further to the **Adjudication Awareness Bulletin (September, 2018)** titled "Selection, Fees, Powers & Conduct of an Adjudicator" with respect to the Construction Act that came into force in Ontario in 2017.

- A. Determination:** An adjudicator shall make a determination of the matter that is the subject of an adjudication no later than 30 days after receiving the documents required.
- B. Extension:** The deadline for an adjudicator's determination may be extended, at any time before its expiry and after the giving of documents to the adjudicator:
- i) on the adjudicator's request, with the written consent of the parties to the adjudication, for a period of no more than 14 days; or
 - ii) on the written agreement of the parties to the adjudication, subject to the adjudicator's consent, for the period specified in the agreement.
- C. Notice of Extension:** If the party who gave the notice of adjudication also gave a notice of non-payment in relation to the matter that is the subject of the adjudication, the party shall give notice of an extension specifying the period of the extension, to the person to whom he or she gave the notice of non-payment. A person who receives a notice of extension shall give notice of the extension, specifying the period of the extension, to any person to whom he or she gave notice of non-payment under in relation to the matter that is the subject of the adjudication.
- D. Delayed Determination:** Should the adjudicator make his/her determination after the determination date or agreed extension, such determination shall be of no effect.
- E. Determinations & Admissibility:** The adjudicator's determination shall be in writing and shall include reasons for the determination. The determination and reasons of an adjudicator are admissible as evidence in court.
- F. Termination of Adjudication:** At any time after the notice of adjudication is given and before the adjudicator makes his or her determination, the parties to the adjudication may agree to terminate the adjudication, on notice to the adjudicator and subject to the payment of the adjudicator's fee.
- G. Effect of Determination:** The determination of a matter by an adjudicator is binding on the parties to the adjudication until a determination of the matter by a court, a determination of the matter by way of an arbitration conducted under the Arbitration Act, 1991, or a written agreement between the parties respecting the matter.
- H. Authority of Court, Arbitrator:** Subject to an application for judicial review of a determination of an adjudicator, there is nothing that restricts the authority of a court or of an arbitrator acting under the Arbitration Act, 1991 to consider the merits of a matter determined by an adjudicator.
- I. Determination of Costs & Fees:** Generally, the parties to an adjudication shall bear their own costs. However, if an adjudicator determines that a party to the adjudication has acted in a manner that is frivolous, vexatious, abused the process or is other than in good faith, the adjudicator may provide, as part of his or her determination that the offending party pay some or all of the other party's costs, any part of the fee amount determined that would otherwise be payable by the other party, or both.
- J. Leave required & Timing:** An application for judicial review of a determination of an adjudicator may only be made with leave from the Divisional Court in accordance with the Act and the rules of court. A motion for leave to bring an application for judicial review of a determination of an adjudicator shall be filed, with proof of service, in accordance with the rules of court no later than 30 days after the determination is communicated to the parties.
- K. Dismissal without reasons & No Appeal:** A motion for leave to bring an application for judicial review may be dismissed without reasons. No appeal lies from an order on a motion for leave to bring an application for judicial review.
- L. Setting aside only for specified reasons:** The determination of an adjudicator may only be set aside on an application for judicial review if the applicant establishes one or more of the following grounds:
1. **Capacity:** The applicant participated in the adjudication while under a legal incapacity.
 2. **Contract:** The contract or subcontract is invalid or has ceased to exist.
 3. **Matter:** The determination was of a matter that may not be the subject of adjudication, or of a matter entirely unrelated to the subject of adjudication.
 4. **Others:** The adjudication was conducted by someone other than an adjudicator.
 5. **Prejudice:** The procedures followed in the adjudication did not comply with the procedures to which the adjudication was subject to and the failure to comply prejudiced the applicant's right to a fair adjudication.
 6. **Bias:** There is a reasonable apprehension of bias on the part of the adjudicator.
 7. **Fraud:** The determination was made as a result of fraud.

Watch this space: The next **Adjudication Awareness Bulletin** will also explore *Payments & Interest, Suspension of Work, Deadlines & Immunity.*

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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