

Adjudico

● EXPERT SERVICES ●

Adjudication Awareness Bulletin (November, 2018) Payment & Interest, Suspension of Work, Deadlines & Immunity

This is further to the Adjudication Awareness Bulletin (October, 2018) titled “Adjudicators Determination and Timing” with respect to the Construction Act that came into force in Ontario in 2017.

- A. Amounts Paid & Stay:** If the Divisional Court sets aside the decision of an adjudicator, the Court may require that any or all amounts paid in compliance with the determination be returned. An application for judicial review of a decision of an adjudicator does not operate as a stay of the operation of the determination unless the Divisional Court orders otherwise.
- B. Subject to Holdback:** Payment is subject to any requirement to retain a holdback in accordance with the Act.
- C. Enforcement of Amounts Payable:** A party who is required under the determination of an adjudicator to pay an amount to another person shall pay the amount no later than 10 days after the determination has been communicated to the parties to the adjudication.
- D. Interest on Late Payments:** Interest begins to accrue on an amount that is not paid when it is due to be paid, at the prejudgment interest rate determined under subsection 127 (2) of the Courts of Justice Act or, if the contract or subcontract specifies a different interest rate for the purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract.
- E. No Interest on Interest:** There is no interest applicable on the interest already charged on late payments.
- F. Suspension of Work:** If an amount payable to a contractor or subcontractor under a determination is not paid by the party when it is due under this section, the contractor or subcontractor may suspend further work under the contract or subcontract until the party pays the following amounts:
1. **Amount Outstanding:** The amount required to be paid under the determination
 2. **Interest Accrued:** Any interest accrued on late payments
 3. **Reasonable Cost:** Any reasonable costs incurred by the contractor or subcontractor as a result of the suspension of work
- G. Costs of Resumption:** A contractor or subcontractor who suspends work due to none payment as mentioned in F. above, is entitled to payment, by the party, of any reasonable costs incurred by him or her as a result of the resumption of work following the payment of the said amounts.
- H. Enforcement by Court:** A party to an Adjudication may, no later than the deadline date stipulated under the Act, file a certified copy of the determination of an adjudication with the court, on filing the determination is enforceable as if it were an order of the court. 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. Deadline:** The filing of a determination with the court for enforcement may not be made after the later of:
- i) the second anniversary of the communication of the determination to the parties; and
 - ii) if a party makes a motion for leave to bring an application for judicial review of a determination of an adjudicator, the second anniversary of the dismissal of the motion or, if the motion was not dismissed, the final determination of the application, if it did not result in the adjudicator’s determination being set aside.
- J. Notice of Filing:** A party shall, no later than 10 days after filing a determination for enforcement by court, notify the other party of the filing.
- K. Effect of Requirement to make Payments:** If a determination requiring that an amount be paid to a contractor or subcontractor is filed for enforcement by court, any related requirement of the contractor or subcontractor, as the case may be, to make payment to a subcontractor is deferred pending the outcome of the enforcement by court.
- L. Immunity:** No action or other proceeding shall be commenced against an adjudicator or his or her employees for any act done in good faith in the execution or intended execution of any duty or power or for any alleged neglect or default in the execution in goodfaith of that duty or powers.
- M. Testimonial Immunity:** An adjudicator shall not be compelled to give evidence in any action or other proceeding in respect of a matter that was the subject of an adjudication that he or she conducted.
- N. Application to Surety Bonds:** If the regulations so provide, A person to whom payment is guaranteed under a labour and material payment bond required under the Act may refer to adjudication.

Watch this space: Further Adjudication Awareness Bulletins will follow!

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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