

Landmark Adjudication Case (February, 2019)

Macob – 20 Year Anniversary, A Significant Decision

February 12th, 1999 marked a significant date in the launch of Adjudication as a commonly used method of dispute resolution. On this date, a court in the United Kingdom held that a decision by an Adjudicator remained and could be enforced even if one party challenges its validity.

This established summary judgment as the normal way to enforce an Adjudicator's decision which has been preceded by proceedings for failure to pay further to an Adjudicator's determination. This case resulted in the first judgement in the United Kingdom after the introduction of the Housing Grants, Construction and Regeneration Act 1996 ("the Act").

This landmark case for statutory Adjudication was *Macob Civil Engineering Ltd. v Morrison Construction Ltd.* [1999] BLR 93. Macob as the Contractor, attempted to resist the decision of the Adjudicator (Mr Eric J. Mouzer) on the basis that there was a breach of natural justice, and that it was not a valid "decision" as one party had refuted its validity.

Significantly, in this case, The Honorable Mr. Justice Dyson declined Macob's attempt to seek a mandatory injunction to serve payment and stated that it should be paid the amount awarded by the Adjudicator.

Had the Defendant, Morrison Construction Ltd. prevailed in its arguments, then enforcement would not have been possible as the decision was disputed and the matter would have been referred to arbitration under the Contract.

Such a first decision after the introduction of statutory Adjudication would have certainly dented the intent of having an expedited, temporary method of dispute resolution. After two decades, it is important to reflect on the decision in Macob, which reaffirmed statutory Adjudication in the United Kingdom.

Noteably, the Honorable Mr. Justice Dyson stated that "*The intention of Parliament in the Act was plain. It was to introduce a speedy mechanism for settling disputes in construction contracts on a provisional basis, and requiring the decisions of adjudicators to be enforced pending the final determination of disputes by arbitration, litigation or agreement...*".

Features of the Macob Case

1. Macob applies to enforce Adjudicator's decision
2. Morrison contends stating that decision was in breach of rules of natural justice
3. Macob served an arbitration notice
4. Morrison applied for a stay
5. Judge confirmed the decision of Adjudicator was enforceable summarily
6. The decision was enforceable and binding until the challenge was finally determined
7. The Judge declared that the amounts were properly owing

Today, there is legislation for payment and Adjudication in Australia, Ireland, Malaysia, Mauritius, New Zealand and Singapore. Canada has taken important steps in legislating prompt payment and Adjudication with Ontario taking the lead in the introduction of the Construction Act in 2017. In parallel, other jurisdictions in Canada (Manitoba, Saskatchewan, etc.) are at various stages of enacting legislation for prompt payment and interim dispute resolution.

Further **Special Bulletins** will follow.

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