

Adjudico

• EXPERT SERVICES •

Adjudication Awareness Bulletin (June, 2018) Dramatic Changes – Prompt Payment & Adjudication

1. What are these dramatic changes? On December 12, 2017 the Construction Act came into force in Ontario and introduced significant changes. In addition to liens and other reforms, this included prompt payment and Adjudication which will be coming into force on October 1, 2019. Similar changes are being considered by other jurisdictions in Canada and by the Federal government.

2. What is the purpose of these changes? These changes are aimed at implementing a mandatory prompt payment regime to ensure cash flows quickly and a mandatory fast track dispute resolution process that has the characteristics of both arbitration and expert determination i.e. Adjudication. This will be mandatory on all sizes and types of construction projects.

3. What types of matters get referred to Adjudication? The Construction Act targets the swift resolution of payment disputes by reference to Adjudication, such as the value of work (services or materials), payment under the contract/changes, disputes of notices of non-payment, set-offs, hold back payments, non-payment of holdback, and any other issues as agreed by the parties to be referred to Adjudication.

4. What is the significance of Adjudication? Adjudication under the Construction Act is aimed at ensuring cash flows quickly and reducing the time and cost of disputes. Adjudication takes place in private and often provides a decision which is immediate, practical and substantial. Based on experience of other jurisdictions, only a small number of matters typically go from Adjudication to Litigation or Arbitration.

5. What are the qualifications and skills of Adjudicators? An Adjudicator is an approved professional with the required expertise and competencies. Adjudicators will ensure that they manage time (their own, that of the parties, and the process). Review all submissions, grasp and focus on the issues quickly, treat the parties fairly, and in a courteous manner.

6. How does Adjudication work? One of the parties to a construction contract delivers a notice of Adjudication to the other party. The receiving party has limited time to agree with the Adjudicator proposed. Following this, the alleging party issues backup documents to the Adjudicator who is required to provide a written decision within 30 days, unless the parties agree to extend this duration.

7. How is the Adjudicator's decision delivered? An Adjudicator's decision is delivered in writing after a review of the submissions received from the disputing parties. Like an Arbitrator, the Adjudicator is required to identify the issues and apply analytical skills to determine the dispute and render a decision.

8. What happens if the Adjudicator's decision is not obeyed? In the event that the Adjudicator's decision is that payment is due from one party to the other and the party expecting payment has not received payment, then, the aggrieved party is entitled to suspend or terminate all work under the contract as detailed in the Construction Act.

9. Who maintains a list of Adjudicators? An Adjudicator Nominating Authority maintains a roster of Adjudicators and, at the request of the parties to a dispute, appoints Adjudicators. It is understood that there is to be a single Adjudicator Nominating Authority which will be tasked to ensure that it provides the "infrastructure" to support fast, simple, efficient and effective Adjudication.

10. What are the next steps? Understand the reforms introducing Adjudication, prepare to achieve the specific expectations of the Construction Act, seek assistance through the process of Adjudication, and implement procedures to achieve the efficient and timely resolution of construction disputes using Adjudication. Further Adjudication Awareness Bulletins will follow.

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