

October 2020

# Adjudico

## • EXPERT SERVICES •

### Construction Adjudication in Ontario ODACC Releases 1<sup>st</sup> Annual Report<sup>1</sup> Highlights & Statistics

This is further to the *Adjudication Awareness Bulletin* (September 2019) titled “*Construction Adjudication in Ontario – ODACC Sets Out Recommended Adjudication Timeline*” with respect to the Construction Act that came into force in Ontario in 2017.

On October 1, 2020 Ontario Dispute Adjudication for Construction Contracts (“ODACC”) released its 1<sup>st</sup> annual report on its operation for the fiscal year ending July 31, 2020.

During the first 10 months since adjudication and prompt payment provisions of the Construction Act came into force on October 1, 2019, ODACC has reported that:

- A. Training Programs:** 10 Training Programs were offered live and online (Zoom) with 319 individuals participating which represents an average of 32 individuals per session.
- B. Certified Adjudicators:** 85 individuals (≈27% of participating attendees) applied to become Adjudicators with 65 individuals (≈76% of those applying) being certified as Adjudicators.
- C. Adjudication Professions:** Recognizing that some Adjudicators have more than one profession, the top 4 professions were Engineers (≈29%), Project Managers (≈27%), Lawyers (≈22%), and Quantity Surveyors (≈10%).
- D. Hourly Rates:** Based on 4 pre-established hourly rates, approximately 95% of Adjudicators set their hourly rates at either \$250, \$400, or \$500. The balance (i.e. 5%) of Certified Adjudicators set their hourly rate at \$750.
- E. Flat Fee Rates:** Recognizing that most Certified Adjudicators are willing to conduct adjudications for more than one flat fee, 95% are willing to conduct adjudications at a flat fee of either \$800, \$1,000, \$2,000, or \$3,000.
- F. Spoken Language:** All Certified Adjudicators can conduct adjudications in English with 6 also able to conduct adjudications in French.
- G. Geographical Locations:** There are Certified Adjudicators who are willing to travel to the 59 geographical areas in Ontario without travel or disbursement charges. The top 5 locations (in order) are Toronto, York, Peel, Hamilton and Halton.
- H. Status of Adjudications:** 32 adjudications were commenced, of which:
  - i. 3 (≈10%) resulted in the rendering of a determination
  - ii. 21 (≈68%) were withdrawn on the consent of the parties terminated (only 1 of these had an adjudicator appointed)
  - iii. 7 (≈22%) remained open as at July 31, 2020
- I. Reasons for Termination:** Of the 21 adjudications that were terminated, 3 were due to the amount of the dispute being paid in full, 14 were due to the parties settling the dispute, and 4 due to the date of the construction contract pre-dating October 1, 2019, or for other reasons.
- J. Geography & Sector:** The 3 adjudications were all completed within the time specified in the Construction Act and were in Durham (2) and Essex (1); and all were in the residential sector.
- K. Matters for Adjudication:** Of the 3 adjudications that were complete, 2 dealt with “*the valuation of services or materials provided under the contract*” and 1 dealt with “*payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order*”.
- L. Amounts Claimed:** Of the 32 notices of adjudication, the total amounts claimed across all sectors was \$2,906,514.30, calculated as an average amount claimed being \$90,825.57.
- M. Amounts Paid:** The 3 Determinations required a total amount of \$35,45.40 to be paid with the average amount paid therefore being \$11,819.80.
- N. ODACC Training Fees:** ODACC received a total of \$336,166.17 comprising of \$314,917.50 in Training Fees, \$21,248.67 in Qualification Examination Fees and \$0 in Continuing Training Program Fees (because it is still in first year).
- O. ODACC Other Fees:** ODACC received a total of \$4,975 comprising of \$3,975 in Adjudication Fees, \$1,000 in Adjudication Referral Fees and \$0 in Certification Fees. Further ODACC received Administrative Fees of \$3,975 (split between ODACC and Adjudicators).

<sup>1</sup>Section 14.(1) of Ontario Regulation 306/18 requires ODACC to issue and make public its annual report no later than ninety days after the end of each fiscal year. ODACC’s fiscal year ended on July 31, 2020. ODACC has published its first annual report at <https://odacc.ca/en/annual-report/>. The report covers the first ten months since the adjudication and prompt payment provisions of the Construction Act came into force.

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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