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Adjudico

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Construction Adjudication in Ontario ODACC Releases 3rd Annual Report¹ Highlights & Statistics

Ontario Dispute Adjudication for Construction Contracts (“ODACC”) is responsible for administering construction-related Adjudication and for training and qualifying Adjudicators under the Construction Act, R.S.O. 1990 c. C.30 and Ontario Regulation 306/18 (“Regulation”).

Section 14.(1) of the above Regulation requires ODACC to issue and make public its Annual Report no later than ninety days after the end of each fiscal year which ends on July 31, annually. ODACC has reported the third year of its operation for the Fiscal Year ending July 31, 2022, the highlights of which are as follows:

- A. Training Programs:** The Construction Adjudication and ODACC Orientation Program, comprising of online component and a two-day live (online) workshop, was developed with 19 participants and two Continuing Education Training Programs were offered to a total of 62 participants.
- B. Certified Adjudicators:** 7 individuals applied to become Adjudicators with 2 individuals (~29% of those applying) being certified as Adjudicators.
- C. Adjudication Professions:** Recognizing that some Adjudicators have more than one profession, the top 5 professions were Project Managers (~27%), Engineers (~26%), Lawyers (~19%), Quantity Surveyors (~10%), and Arbitrators (~10%).
- D. Hourly Rates:** Based on 4 pre-established hourly rates, approximately 97% of Adjudicators set their hourly rates at either \$250, \$400, or \$500. The balance (i.e. 3%) of Certified Adjudicators set their hourly rate at \$750.
- E. Flat Fee Rates:** Recognizing that most Certified ODACC Adjudicators are willing to conduct adjudications for more than one flat fee, 93% are willing to conduct adjudications at a flat fee of either \$800, \$1,000, \$2,000, or \$3,000.
- F. Spoken Language:** All Certified ODACC Adjudicators can conduct adjudications in English with 7 also able to conduct adjudications in French.
- G. Geographical Locations:** There are some Certified Adjudicators who are willing to travel to the 49 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:** 121 Adjudications were commenced at ODACC during the 2022 Fiscal Year, of which:
 - i. 67 resulted in the rendering of a determination (including 8 Adjudications that that were commenced at the end of the 2021 Fiscal Year which resulted in the rendering of 6 determinations in the 2022 Fiscal Year)
 - ii. 24 were terminated on consent by the parties
 - iii. 34 remained open as of the end of the 2022 Fiscal Year
- I. Reasons for Termination:** Of the 24 adjudications that were terminated under section 13.14 of the Construction Act, 17 were due to the parties settling the dispute, 2 were due to no jurisdiction to adjudicate the matter, 5 were for other reasons.
- J. Geography & Sector:** 50 adjudications (~75%) were completed within the time specified in Subsection 13.13(1) of the Construction Act.
- K. Matters for Adjudication:** Of the 67 adjudications that were complete, 31 dealt with “*the valuation of services or materials provided under the contract*”, 29 dealt with “*payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order*”, 3 dealt with “*disputes that are the subject of a notice of non-payment under Part I.1*” and 4 dealt with “*any other matter that the parties to the Adjudication agree to, or that may be prescribed*”.
- L. Amounts Claimed:** Of the 121 Notices of Adjudication claimed across all sectors in the 2022 Fiscal Year, the total amount claimed was \$33,537,381.32 with the average amount claimed being \$277,168.44.
- M. Amounts Paid:** The 67 Determinations required a total amount of \$3,449,619.02 to be paid with the average amount paid being \$51,486.84.
- N. ODACC Training Fees:** ODACC received a total of \$29,555 (plus HST) comprising of \$18,905 (plus HST) in Training Fees, \$1,750 (plus HST) in Qualification Examination Fees and \$8,900 (plus HST) in Continuing Training Program Fees.
- O. ODACC Other Fees:** ODACC received a total of \$423,530 (plus HST) comprising of \$399,330 (plus HST) in Adjudication Fees (split between ODACC and Adjudicators) , \$21,000 (plus HST) in Adjudication Referral Fees and \$3,200 (plus HST) in Certification Fees.

¹The ODACC’s 2022 Annual Report covers the fiscal year August 1, 2021 to July 31, 2022 (the “2022 Fiscal Year”) and can be found at <https://odacc.ca/en/annual-report/>.

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