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# Adjudico

• EXPERT SERVICES •

## Jurisdiction of Adjudicators, Contract Existence and Parallel Actions *Guidance by Divisional Court\**

Reasons released by the Divisional Court addressed challenges to the adjudicator's jurisdiction, the existence of abandonment or terminated contracts, and conflicts between adjudication actions and parallel lien claims. The following are summary highlights:

### **1. Challenges to the adjudicator's jurisdiction:**

Any challenges to the adjudicator's jurisdiction must be first raised with and resolved by the adjudicator with Justice Ricchetti's particular citation to *Dell Computer Corp. v Union des consommateurs*, a decision of the Supreme Court of Canada. Whilst the decision of the Dell case was for jurisdictional challenges in arbitrations, the rationale was deemed in this case to be equally applicable to an adjudicator's determination under the Construction Act.

### **2. Abandoned or terminated contracts ceasing to exist:**

Justice Ricchetti confirmed that the construction contract does not cease to exist because it has been abandoned or terminated even if that happens before the adjudication has commenced. This is an important guidance on this issue, which has been subject to ongoing debate by some advocates, and effectively shuts the door on the position that a construction contract ceases to exist simply because it has been abandoned or terminated.

### **3. Adjudication action and parallel lien Claim:**

The Owner tried to argue that the adjudication was conflicted as it was commenced at the same time as when there was a lien claim by the Contractor. Justice Ricchetti found no conflict and found the two processes work harmoniously together, as they are permitted and there is a mechanism in the Construction Act by which the security posted to the credit of the lien action can be reduced following the payment of the adjudication award.

*\*October 4, 2022, Senior Justice Ricchetti, Re: Pasqualino v. MGW-Homes Design Inc., 2022 ONSC 5632 (CanLII), <<https://canlii.ca/t/js7dg>>*

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