

Construction Dispute Interim Adjudications: Adjudicators and Fees

Construction Dispute Interim Adjudication (“Adjudication”) became law in Ontario on October 1, 2019. This new regime for the timely adjudication of construction disputes is the first of its kind in Canada. According to the transition rules, an Adjudication is only available where the contract between the owner and contractor was entered into on or after October 1, 2019 and where the owner started the tendering process for the project on or after October 1, 2019. While it may be some time until the first adjudicator is hired, the infrastructure needed to run the Adjudication process is taking shape.

This newsletter will focus on information relevant to adjudicators.

Pursuant to the *Construction Act*,¹ (the “Act”) and Ontario Regulation 306/18 (the “Regulation”) made under the *Act*, the Authorized Nominating Authority is tasked with certain duties with respect to the appointment and training of adjudicators, which include:

- Developing programs for the training of potential adjudicators²;
- Qualifying individuals that comply with the Regulation’s requirements as adjudicators³;
- Establishing an online, publicly available registry of adjudicators⁴;
- Appointing adjudicators⁵;
- Maintaining a Code of Conduct for adjudicators⁶;
- Establishing a fee schedule for adjudicators and making it publicly available⁷; and
- Creating public educational materials for adjudicators⁸.

On July 18, 2019, ADR Chambers was selected as the Authorized Nominating Authority, known as the Ontario Dispute Adjudication for Construction Contracts (the “Authority” or the “ODACC”). An application package for anyone interested in becoming an adjudicator has been released, and as of October 1, 2019, the website for the ODACC is live.

Adjudicator Applications

In order to receive a Certificate of Qualification to Adjudicate (“Certificate”), adjudicator applicants are required to:

1. **Complete the orientation program** offered by Stitt Feld Handy Group, where attendees will learn about the purpose of Adjudications, the specific disputes that are capable of being adjudicated, fee structure,⁹ and other valuable

information listed on the website (<https://sfhgroup.com/odacc-program/>). Orientation sessions are ongoing and the next sessions are set to take place on November 12-13 in Ottawa, November 27-28, 2019 and February 12-13, 2020 in Toronto.

2. **Complete the Quality Evaluation Process** online. This process may require an applicant to submit a video demonstrating their skills and capabilities as adjudicators.¹⁰
3. **Complete Adjudicator Application Form**,¹¹ which includes personal information, hourly rate, region in which the applicant will adjudicate, and other information. It also includes Declarations for the applicant to sign.¹²
4. **Two Page Resume and Letter of Reference.**

Fee Structure

ODACC also released a fee structure for the fees payable by parties to the adjudicator (the “Adjudication Fee”) and the fees payable by the adjudicator to ODACC (the “Administrative Fee”). The Adjudication Fee can be agreed upon by the parties. If not agreed upon, the Adjudication Fee is prescribed based on the amount of the claim at issue in the Adjudication, as follows:¹³

| Amount claimed | Adjudication fee |
|-------------------------------------|----------------------------|
| Under \$10,000.00 | \$800.00 |
| \$10,000.00 - \$24,999.99 | \$1,000.00 |
| \$25,000.00 - \$34,999.99 | \$2,000.00 |
| \$35,000.00 - \$49,999.99 | \$3,000.00 |
| \$50,000.00 - \$249,999.99 | Hourly Rate: \$250.00/hour |
| \$250,000.00 - \$499,999.99 | Hourly Rate: \$400.00/hour |
| \$500,000.00 - \$1,000,000.00 | Hourly Rate: \$500.00/hour |
| Amounts greater than \$1,000,000.00 | Hourly Rate: \$750.00/hour |

ODACC also introduced an Administrative Fee that an adjudicator must pay back to ODACC. This Administrative Fee is either 40% or 50% of the Adjudicative Fee. If the Adjudication Fee is equal to or less than \$3,000.00, then 50% of the total amount billed by the adjudicator must be paid to ODACC by the adjudicator. If the Adjudication Fee is greater than \$3,000.00 then the adjudicator must give 40% of the entire fee back to the ODACC.¹⁴

Information about the adjudicator's Code of Conduct, adjudicator registry, continuing training programs and other useful information is also available on the ODACC website.

Conclusion

It will be some time before Adjudication becomes a mainstream process. In the early days, the roster of persons holding a Certificate of Qualification to Adjudicate will be short. Since only ODACC qualified adjudicators are permitted to adjudicate, those interested in becoming adjudicators are encouraged to apply to ODACC for certification.

¹ *Construction Act*, RSO 1990, c C.30.

² *Construction Act*, supra fn 1, s 13.3(1)(a).

³ *Construction Act*, supra fn 1, s 13.3(1)(b).

⁴ *Construction Act*, supra fn 1, s 13.3(1)(c).

⁵ *Construction Act*, supra fn 1, s 13.3(1)(d).

⁶ *Adjudications Under Part II.1 of the Act*, O Reg 306/18, s 7(1) ("Adjudication Regulation").

⁷ *Adjudication Regulation*, supra fn 6, s 9.

⁸ *Adjudication Regulation*, supra fn 6, s 13.

⁹ *Construction Adjudication and ODACC Orientation Program*, online: Stitt Feld Handy Group <<https://sfhgroup.com/odacc-program/>>

¹⁰ *ADR Chambers: The Authorized Nominating Authority for Construction Disputes in Ontario*, online: <<https://adrchambers.com/odacc/>>

¹¹ ODACC, *Adjudicator Application Package*, online <<https://adrchambers.com/wp-content/uploads/2019/08/Application-ODACC.pdf>> ("Application Package").

¹² *ADR Chambers: The Authorized Nominating Authority for Construction Disputes in Ontario*, online: <<https://adrchambers.com/odacc/>>

¹³ Application Package, supra fn 12, p. 16.

¹⁴ Application Package, supra fn 12, p. 10.



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Pallett Valo LLP Construction Practice

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