

Timelines for Adjudication under the *Construction Act*

An Adjudicator's decision is not a guarantee of payment, so claimants should weigh the risk of letting lien rights or bond claims expire. The timelines for adjudication under the *Act* are tight. All days set out below are calendar days. The Adjudication Authority is ADR Chambers www.adrchambers.com/odacc.

Commencing the Adjudication

- any party to a contract or subcontract may commence an Adjudication by giving the other side and the Authority a Notice of Adjudication (available from the Authority) at any time prior to completion of the contract or subcontract at issue. The Notice must set out the names and addresses of the parties, a brief description of the dispute, the nature of the redress sought and the name of a proposed authorized Adjudicator.
 - the parties can agree to a Notice being given after contract/subcontract completion;
 - how adjudication documents are to be given is complicated. Unless they have agreed otherwise, parties may wish to serve the initial documents as they would serve a Court Document. Once an Adjudicator is appointed, the manner of giving documents can be determined by the Adjudicator;

The Appointment of an Adjudicator

- upon the Notice of Adjudication being given, the parties have **4 days** to appoint an authorized adjudicator who agrees to conduct the adjudication at agreed upon rates.
 - if no agreement is reached, the person who gave the Notice of Adjudication must ask the Authority to appoint an adjudicator. The Authority will then do so (from its roster, at roster rates) within **7 days**;
 - parties might strive to agree on an adjudicator, to ensure the adjudication is before a person whose skill and background is appropriate for the dispute, even if the rates are higher than roster rates. To be clear, where legal (and not merely factual) matters are in dispute, the Adjudicator will make legal assessments and decisions;

The Adjudication Process

- within **5 days** of the Adjudicator's appointment, the claimant shall give the other side and the Adjudicator a copy of the contract or subcontract along with any documents it intends to rely on. The Adjudicator must be given a copy of the Notice of Adjudication;
- the Adjudicator then has **30 days** (unless the parties agree otherwise) to make a decision. In that time, he or she must determine a process, obtain the submissions of both parties, consider and act on any site visit, expert or oral submission requirements, consider the evidence and write a decision. It is not very much time. Parties accordingly need to be prepared to adjudicate a dispute on very short notice. This means having site and office administrative practices geared to adjudication readiness in relation to any potential disputes with those above or below them in the ladder.
- an Adjudicator's decision is as enforceable as a Judgement. If a contractor or subcontractor is entitled to be paid, it may suspend work until payment and collect its (and its subtrades') demobilization, remobilization and work suspension costs as well;
- there is no Appeal from an Adjudicator's decision (although a 'Judicial Review' is possible in very limited circumstances). The Adjudicator's decision is, however, only interim. It is binding until a party successfully obtains a different outcome through traditional litigation processes. It could, however, take years to overcome an unsuccessful adjudication, at substantial risk and cost. Readiness is accordingly key.