

Cheat Sheet for Commencing an Adjudication

In the Contract / Subcontract Itself

- consider terms and conditions which detail adjudication processes. See our Guide in that regard.

After the Contract is Signed

- consider whether or not you can agree on a list of agreeable adjudicators with the party you contracted/subcontracted with. These persons will have to be listed in the Registry of Adjudicators to be able to act. You cannot do this in the contract/subcontract itself (other than on P3 projects), but you can *after* the contract/subcontract has been signed;
- manage possible disputes before they arise on site through better record keeping. Remember, the other side can adjudicate virtually any issue at any time;
- upon becoming aware of a possible dispute, alter record keeping to best prove your case should it need to be adjudicated. Consider compiling evidence in that regard, including for example quantity take-offs, costing documentation, industry specifications or manuals, damages assessments or expert reports. Consider retaining experienced counsel to assist in preparing the claim as many will be determined in writing only and cross-examination/oral submissions will, if allowed at all, be extremely limited. Readiness with a persuasive argument on both the law and the facts is key.

Commencing an Adjudication

- consider if you have given a Notice of Non-Payment to those beneath you on the basis that you have not been paid by those above you, in which case you may have to take the person above you to Adjudication within 21 days of giving the Notice of Non-Payment;
- consider whether or not the parties have agreed, or should agree, that more than one matter should proceed together to adjudication, or if a number of adjudications dealing with the same issue (but with different parties) should be consolidated;
- read your contract/subcontract to see what adjudication provisions, beyond those provided for in the *Act*, have been agreed to. Subcontractors need to see if the Prime Contract between the Owner and Contractor has been incorporated and, if so, what the Prime Contract says about adjudication processes;
- as you control the timing, make sure you are ready with your evidence and that you have good availability to participate in the adjudication in the coming weeks. Give the Notice of Adjudication form as required by the *Act*, providing the name of a proposed Adjudicator (who is listed in the Registry of Adjudicators);
- work diligently, if possible, to come to an agreement on an Adjudicator who agrees to act on agreed upon rates. If one cannot be agreed upon within 4 days of your giving the Notice, request that the Adjudication Authority appoint an Adjudicator;
- give the documents you rely on in the Adjudication, along with a copy of the contract/subcontract at issue, to the other side (and the Adjudicator electronically in accordance with the *Act*) within 5 days of the Adjudicator being appointed;
- follow the procedures for the Adjudication as directed by the Adjudicator, as per the processes set out in the *Act* and as per any agreed upon processes that are consistent with the *Act*. Be prepared to make very concise written (and possibly oral) submissions in support of your position. As there is no right of appeal, retain counsel to assist as necessary, particularly where legal issues or substantial dollars are involved.