

Adjudication Under the *Construction Act* for Contracts Procured after October 1, 2019

The Scope of what can be adjudicated is broad and is set out at s. 13.5 of the *Act*. Virtually any dispute over payments, changes, backcharges, or cost of the work can be adjudicated.

- only one matter can be raised per Adjudication unless the parties and the Adjudicator agree otherwise. However, the Contractor can require the consolidation of separate adjudications over the same or related matters;
- unless the parties agree on an adjudicator, one will be appointed from a roster of accountants, architects, engineers, quantity surveyors, project managers, arbitrators, lawyers or others with 10 years relevant working experience in construction. Parties may wish to agree on one to ensure that he or she has the specific expertise required;
- the *Act* allows parties to agree on aspects of the adjudication process – at times only with the consent of the Adjudicator. The Agreements can be made, in advance and both within and outside a contract or subcontract, so long as the *Act* is complied with. (The Adjudicator cannot be named in a contract or subcontract, except under a P3 project);
- absent a valid agreement by the parties, the Adjudicator will have a wide discretion to determine the process to be followed. He or she can hear evidence, retain experts and order site visits of non-residential premises;
- in relation to small claims, the Authority has created four “pre-designed” processes which it has recommended be used:

“pre-designed” process No.	No. 1	No.2	No.3	No.4
recommended for claims of	<\$10,000	<\$25,000	<\$35,000	<\$50,000
written submissions only?	Yes	Yes	Yes	No. (*3)
max no. of pages per submission (*1)	2	5	5	10
no. of pages of allowable backup (*2)	0	0	10	25
reasons for decision	½ page	1 page	2 pages	4 pages

*1 – not including a copy of the contract or subcontract that may be submitted

*2 – ie. supporting documents, witness statements, expert or quantity surveyor reports

*3 – a 30 minute oral presentation is allowed (by phone or video but not in person)

- for claims over \$50,000.00 the Authority recommends the Adjudicator convene a conference call to establish the process, timetable and rules for the adjudication;
- unless the parties and Adjudicator agree otherwise (which the parties may need to consider), an Adjudicator appointed by the Authority will be paid the following fees:

at Issue	Fee	at Issue	Fee	at Issue	Fee	at Issue	Fee
<\$10,000	\$800	<\$35,000	\$2,000	<\$250,000	\$250/hr	<\$1 mill	<\$500/hr
<\$25,000	\$1,000	<\$50,000	\$3,000	<\$500,000	\$400/hr	>\$1 mill	\$750/hr

- adjudication and admin fees are to be split between the parties, unless the Adjudicator decides to award costs against a party that has acted “in respect of the improvement” in a way that is frivolous, vexatious, an abuse of process or not in good faith.