

WEBINAR

THIRD ANNUAL ADJUDICATION WORKSHOP



TUESDAY, JANUARY 19, 2021

2:00 – 3:00 p.m. ET



LEGAL DISCLAIMER

- The presentation today is not intended as legal advice.
- Because this is a high level overview, it is impossible to cover all relevant details, and your available rights and remedies will depend on the unique facts of each situation, your applicable contract or subcontract, or the nature of your project.
- For specific advice, please contact your qualified legal counsel before making any decisions or taking any action. This is of particular importance as every province and territory has its own legal regime.
- As you know, the situation is extremely fluid and is changing on a daily basis. As things evolve, your best course of action could also evolve. Please follow up to date and reliable sources for your information.

AGENDA

Time	Agenda
2:00 p.m.	Welcome & introductions (Sahil Shoor)
2:05 p.m.	Summary of adjudication rules and processes (Neil Abbott)
2:15 p.m.	Summary of ODACC update (Jacqueline Armstrong Gates)
2:20 p.m.	Lessons learned from adjudications (Patrick Lavoie and Karina Labelle)
2:45 p.m.	Adjudication contract drafting (Ted Betts and Chris Stanek)
2:53 p.m.	Alberta's Bill 37 & adjudication laws across the country (Ted Betts)
2:55 p.m.	Questions & conclusion (Sahil Shoor)

SUMMARY OF ADJUDICATION RULES AND PROCESSES

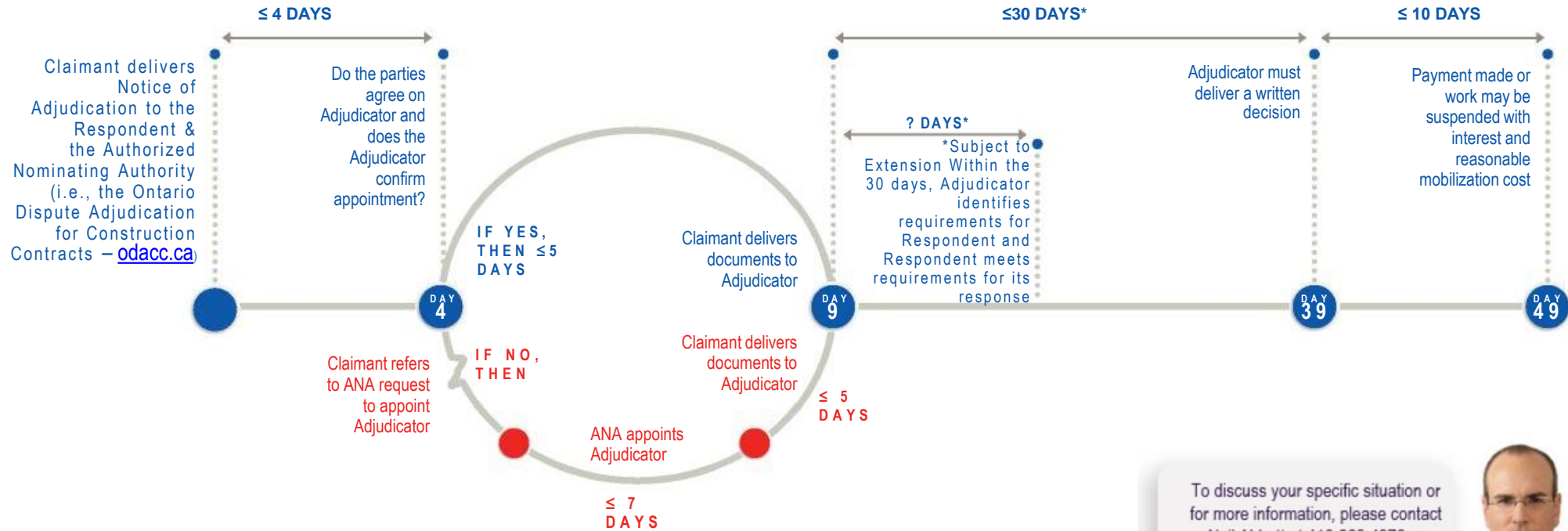
PRESENTED BY: NEIL ABBOTT

January 19, 2021



ADJUDICATION UNDER THE MODERNIZED ONTARIO CONSTRUCTION ACT

APPLIES TO PROCUREMENT PROCESSES COMMENCED, OR TO CONTRACTS ENTERED INTO, AFTER OCTOBER 1, 2019, WHICHEVER OCCURRED FIRST.



To discuss your specific situation or for more information, please contact Neil Abbott at 416-862-4376 or Neil.Abbott@GowlingWLG.com.



SUMMARY OF ODACC UPDATE

PRESENTED BY: JACQUELINE ARMSTRONG GATES

January 19, 2021



ODACC REPORT

- On October 1, 2020, Ontario Dispute Adjudication for Construction Contracts (“ODACC”) released its first annual report (the “Report”) covering its operations for the fiscal year 2020 (ending July 31, 2020), months since the adjudication provisions of the *Construction Act* came into force on October 1, 2019.
- The Report provides key statistics on the adjudications conducted in ODACC’s first year and demographics on the adjudicator roster.
- It also provides a summary of the services available through ODACC’s custom online portal as well as an overview of the adjudication process.
- During its first fiscal year, ODACC developed its website (www.odacc.ca) and a state of the art computer system.

ADJUDICATION KEY STATISTICS

- **Adjudication is in its early stages and has not been widely adopted by the industry at this time.**
- **As of fiscal year end, 32 notices of adjudication had been submitted.**
- **For now, it appears most construction disputes continue to be resolved outside of a formal dispute resolution process or in Courts.**
- **There are more adjudications involving the residential sector as compared to the commercial/industrial or public buildings or transportation and infrastructure sectors. This could be because many of the projects in Ontario are still not subject to adjudication due to the *Construction Act's* transition.**

ADJUDICATORS

- At the time of the report, the ODACC's roster was made up of a mixture of engineers, project managers, lawyers, quantity surveyors, arbitrators, architects and accountants.
- ODACC coordinates the adjudication process and certifies adjudicators, who must have ten years relevant construction industry experience, complete a training course and pass an exam before they can take on adjudication assignments.
- The adjudicators are listed on the Adjudicator Registry available at <https://odacc.ca/en/adjudicator-registry/>
- As of the time of the Report, 65 adjudicators had been certified.
- ODACC does not plan to cap its number of adjudicators.
- Adjudicators are setting their hourly rates between \$250.00 and \$700.00 per hour. Adjudicators are willing to conduct adjudications for a flat fee rate that is proportionate to the amount in dispute. These flat fee rates range from \$800.00 to \$3,000.00.

ADJUDICATION

- **The decisions are determined quickly and typically in 39-46 days.**
- **The type of disputes for adjudication are evaluation of services and materials and notices of non-payment, including the value of change orders or disputed change orders and payment or non-payment of holdbacks or any other matter that both parties agree to adjudicate or have prescribed.**
- **The decisions from the adjudications are not public record.**

LESSONS LEARNED FROM ADJUDICATIONS

PRESENTED BY: PATRICK LAVOIE AND KARINA LABELLE

January 19, 2021



LESSONS LEARNED: ADJUDICATION

- **Means of Dispute Resolution**
- **Fast and Effective**
- **Accepted by Parties**
- **Arguments and Submissions**

LESSONS LEARNED: DOCUMENTS

- **No documents, no claim.**
- **Preparing the claim package before commencing adjudication**

LESSONS LEARNED: THE ADJUDICATOR

- **Selecting an adjudicator suited for the claim**

Adjudicator Registry

Search

Name Enter a Key Word or Phrase to Search






Geographical Areas Where Adjudicator Agrees to Travel Without Travel Time or Disbursement Charges

Profession(s)

Minimum Years of Experience Language Used for Adjudications

Maximum Hourly Rate Flat Fee Rates*

Adjudicators

	Beifuss, Richard doctomrichardbeifuss@icloud.com	English	Hourly Rate 750 Profession(s) Engineer
	Benner, Gary Edward gary@undergroundconsulting.ca	English	Hourly Rate 500 Profession(s) Engineer
	Berkow, Jack jberkow@bydlaw.com	English	Hourly Rate 500 Profession(s) Lawyer
	Boutsets, Nick nick.bouts@bell.net	English	Hourly Rate 400 Profession(s) Quantity Surveyor
	Braund, Peter pbraund@adr.ca	English	Hourly Rate 500 Profession(s) Arbitrator, Lawyer

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LESSONS LEARNED: THE ADJUDICATOR

Adjudicator Profile



Nick Boutselis

📞 Phone Number	416-818-2875
✉ Email	nick.bouts@bell.net
📅 Certificate Expiry Date	September 30, 2021
💰 Hourly Rate	\$400
💰 Flat Fee Rates*	\$800, \$1000, \$2000, \$3000

*For more information on flat fee rates, please click on the following link: [Adjudication Process](#)

Years of Experience

- 25+

Profession(s)

- Quantity Surveyor

Education

Professional Affiliations

- American Association of Cost Engineers
- Ontario Institute of Quantity Surveyors
- Canadian Institute of Quantity Surveyors
- Ministry of training and Skills Development - Electrical Journeyman / Red Seal

Language Used for Adjudications

- English

Geographical Areas Where Adjudicator Agrees to Travel Without Travel Time or Disbursement Charges

- Bruce
- Chatham-Kent

Nick is a licensed tradesperson/journeyperson and qualified Cost Engineer/Quantity Surveyor who has worked in the construction industry for 31 years, primarily in Corporate Real Estate platforms. Accumulating enhanced experience in strategy & development with interior office improvements & renovation's, mission critical facilities, pharmaceutical institutions and performing arts centers, high-rise residential and commercial spaces. His areas of expertise are strategic development & planning, schedule and risk assessment contributing to successful project delivery, with design-build or construction management at risk project methodology. Mechanical and Electrical energy efficiency technologies, green & sustainable building design, ASHRAE's and ANSI's respective standards and regulations, risk and schedule management process, as well as procurement and financial control are amongst his areas of proficiency. He is also abundantly experienced in contract negotiation, change management, vendor and consultant management, mitigation/claims resolution, and cross discipline team building and leadership. Nick's focus for the past 16 years has been with large international interior office new builds & renovation, projects and technical projects but is proficient in all areas of building design and construction. Nick has frequently been the program/project lead for large complex projects with direct reports.

Over the years Nick has accrued his experience with three employers, starting from an Ontario based mechanical / electrical construction firm, progressing to a global Mechanical /Electrical Consulting firm, and currently is a consultant with several of Canada's largest financial institutions. Nick has undertaken major initiatives in the Asia Pacific Region where he has led a collaborative project team from the onset of strategy, feasibility, through design, procurement and into execution. He has taken managerial roles such as a Project /Program Manager, Project Executive and is proficient in preparing corporate strategic plans saving millions of dollars in capital.

LESSONS LEARNED: EXPERT

- **Consider retaining an expert**
- **S. 13.12(1) of the *Act* allows an adjudicator to retain an expert to assist in factual determinations, if necessary**

LESSONS LEARNED: STARTING AN ADJUDICATION

- **Through ODACC's Custom System**

Create Notice of Adjudication

1 Start — 2 Claimant — 3 Representative — 4 Respondent — 5 Case Information

Getting started

Please make the appropriate selection

Claimant Claimant's Representative

Is the Claimant a Contractor as defined by the Construction Act, R.S.O. 1990, c. C.30?

Yes No

Industry Category of the Construction Contract *

Date of Construction Contract *

LESSONS LEARNED: RESPONDING TO A NOTICE OF ADJUDICATION

- **Email to Respondent to confirm notice of adjudication has been filed.**
- **Per section 13.11.1 of the *Act*, Respondent may (in accordance with regulations) respond to notice of adjudication in writing.**
- **Per O. Reg. 306/18 (section 17):**
 1. Respondent shall provide copy of response to adjudicator and claimant.
 2. The response shall be provided no later than such day as the adjudicator may specify, but must be provided to the adjudicator and every other party on the same day.

LESSONS LEARNED: ODACC DASHBOARD

Steps to Complete

Description	Complete By	Date Completed
ODACC Asked to Proceed Without the Response to Notice of Adjudication	Aug 07, 2020	Aug 06, 2020
Adjudicator to Communicate Adjudication Fee to the Parties	Aug 12, 2020	Aug 12, 2020
Adjudicator to Communicate the Adjudication Process to the Parties	Aug 12, 2020	Aug 24, 2020
Claimant to Upload Supporting Documents	Aug 14, 2020	Aug 14, 2020
Adjudicator to Send Draft Determination to ODACC	Sep 11, 2020	Sep 16, 2020
Adjudicator to Communicate the Determination to the Parties	Sep 18, 2020	Sep 16, 2020
ODACC to Submit the Certified Determination to the Parties	Sep 23, 2020	

Milestones

Description	Date Completed
Notice of Adjudication Created	Jul 31, 2020
Notice of Adjudication Received by Respondent (or Respondent's Representative)	Aug 06, 2020
Proceeding without Response to Notice of Adjudication	Aug 06, 2020
ODACC Invited an Adjudicator to the Adjudication	Aug 06, 2020
The Adjudicator Consented to Adjudicate	Aug 07, 2020
The Determination was Submitted to ODACC for Review	Sep 16, 2020
The Determination was Communicated to the Parties	Sep 16, 2020

LESSONS LEARNED: DOCUMENTS

- **Upload of documents**

1. ODACC's Custom System

Add Documents

1. Select Files.

Select Files

Allowed file extensions are: .jpg, .jpeg, .png, .bmp, .xls, .xlsx, .doc, .docx, .pdf, .txt

Maximum file size is 20 Mb

2. Upload Files

Upload Files

1. ts.

LESSONS LEARNED: ODACC UPDATES

 Reply  Reply All  Forward

Fri 2020-09-04 8:45 AM



communications@odacc.ca

RE: [REDACTED] -Adjudication - [REDACTED]'s Reply Submissions

To [REDACTED]; Lee, Jessica; [REDACTED]; Gregoire, Louis-Pierre; Lavoie, Patrick; Reid, Stephanie; [REDACTED]

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Le français suit.

PLEASE DO NOT REPLY TO THIS EMAIL

There's a new message from [REDACTED] in ODACC's Custom System regarding adjudication number [REDACTED]. You must log in to ODACC's Custom System to view and reply to the message. You can log in by clicking on the following link: [ODACC Custom System Login](#).

If you require technical support, please contact us at support@odacc.ca.

Regards,


The ODACC TEAM

Ontario Dispute Adjudication for Construction Contracts











www.odacc.ca | support@odacc.ca

Tel: 416-307-0008 | Toll-free Tel: 1-888-221-3721 | Fax: 416-362-8825 | Toll-free Fax: 1-877-862-8825

ADJUDICATION: ODACC MESSAGES

Search x 

[+ New Message](#)

Preview	From	Subject	Date ↓
	Patrick Lavoie	██████ - Adjudication - ██████ Reply Submissions	Sep 11, 2020 1:06 PM
	██████	RE: ██████ v ██████ ODACC Case No. ██████ - Fees	Sep 09, 2020 12:09 PM
	Patrick Lavoie	RE: ██████ -Adjudication - ██████'s Reply Submissions	Sep 04, 2020 2:42 PM
	██████	Examination Transcript	Sep 04, 2020 10:26 AM
	██████	RE: ██████ -Adjudication - ██████'s Reply Submissions	Sep 04, 2020 8:44 AM
	██████	RE: ██████ -Adjudication - ██████'s Reply Submissions	Sep 03, 2020 3:35 PM
	Patrick Lavoie	██████ -Adjudication - ██████'s Reply Submissions	Sep 03, 2020 3:26 PM
	██████	RE: ██████ v ██████; ODACC Case No. ██████ - Direction re: Process and Timetable	Sep 03, 2020 1:58 PM
	██████	RE: ██████ v ██████; ODACC Case No. ██████ - Fees	Sep 02, 2020 2:39 PM
	Patrick Lavoie	RE: ██████ v ██████ Case Number: ██████ ██████'s Answers to Undertakings	Sep 02, 2020 11:04 AM

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ADJUDICATION CONTRACT DRAFTING

PRESENTED BY: TED BETTS AND CHRISTOPHER STANEK

January 19, 2021



ADJUDICATION CONTRACT DRAFTING

- **Typical adjudication-related provisions:**
 - Expanding the matters that can be adjudicated
 - Establishing specific notice provisions
 - Agreeing on adjudication procedures
 - Dealing with multiple adjudications
 - Pre-conditions to adjudication – risky!
 - Agreeing to adjudicators or roster of adjudicators – risky!
- **Updating other standard provisions**
 - May want to confirm how adjudication fits within other dispute resolution procedures
 - Adding additional references to adjudication, eg. CCDC 2-2020

ADJUDICATION CONTRACT DRAFTING

- **Part II.2 of the *Construction Act* is mandatory and parties cannot contract out**
- **Risk of unenforceability by court, arbitrator or even adjudicator**
- **Most common “overreach” in drafting (so far):**
 - Notice requirements or pre-conditions that limit access to adjudication
 - Agreements on adjudicators
 - Imposing adjudication procedures
 - Imposing limits on adjudicator’s discretion to make determination

ALBERTA'S BILL 37 & ADJUDICATION LAWS ACROSS CANADA

PRESENTED BY: TED BETTS

January 19, 2021



ADJUDICATION ACROSS CANADA

- **Ontario**: In force as of October 1, 2019
- **Alberta**: Bill 37, *The Builders' Lien Prompt Payment Amendment Act, 2020* – royal assent December 9, 2020 [not in force]
- **Federal**: *Prompt Payment for Construction Work Act* – passed June 21, 2019 [not in force]
- **Nova Scotia**: *Builders' Lien Act* – royal assent May 15, 2019 [not in force]
- **Saskatchewan**: *The Builders' Lien (Prompt Payment) Amendment Act, 2019* – royal assent April 12, 2019, further amended August 2020 [not in force]
- **Quebec**: related oversight legislation *Bill 108, An Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marchés publics* passed December 1, 2017 and pilot project underway
- **British Columbia, New Brunswick, and Manitoba**: legislative initiatives or law reform commissions

QUESTIONS?


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