

Construction Act

OAA Members Acting as Adjudicators

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Summary

Under the *Construction Act (CA)* provisions which came into force on October 1, 2019, ‘interim adjudication’ was introduced as an expedient way to resolve construction disputes. Further amendments to the *CA* came into force on January 1, 2026. The *CA* also requires that this process be administered by a certified adjudicator.

The Ontario Dispute Adjudication for Construction Contract (ODACC) is responsible for administering adjudications and for training and certification of adjudicators. Prior to January 1, 2026, adjudications could only be conducted by a “registry adjudicator”, meaning an adjudicator listed on the adjudication registry maintained by ODACC (CA Section 13.9(1)).

Alternatively, as of January 1, 2026, adjudications can now be conducted by private adjudicators. Specifically, the parties may agree to a private adjudicator if: (a) there is a written agreement signed by the parties and the adjudicator that discloses the terms applicable to the adjudication and the adjudicator fee to which they have agreed; and (b) the adjudicator fee amounts to an hourly rate of at least \$1,000, regardless of how it is charged (CA Section 13.9 (2.1) and O.Reg. 264/25 Section 21).

The parties can either agree to a registry or private adjudicator or request ODACC to appoint a registry adjudicator (CA Section 13.9(2)). It is not possible to select an adjudicator in advance for future disputes by way of a clause in a contract (CA Section 13.9(3)).

For an individual to become an adjudicator, completion of a qualification program is required in order to be certified by ODACC. OAA members and retirees with at least 10-years experience likely meet the eligibility criteria for this qualification program, and upon successful completion would be permitted to provide adjudication services under the *Construction Act*. All adjudicators are required to carry liability insurance and comply with all qualifications and practice and code of conduct requirements set out in the *CA* and O.Reg. 264/25.

Background

“Adjudication” is a form of alternate dispute resolution. It is intended to be quick in order to keep the money flowing in the construction industry. In comparison with arbitration or litigation, it is a much quicker and targeted approach - i.e. get the issue resolved and move on.

Ontario has implemented adjudication in conjunction with prompt payment provisions in the *Construction Act*. Comparable prompt payment and adjudication regimes have been implemented in most Canadian provinces and for federal construction projects. These regimes broadly mirror Ontario’s model but differ in certain respects.

Reference: Construction Act, R.S.O. 1990, c. C.30

Reference: O. Reg. 264/25: ADJUDICATIONS UNDER PART II.1 OF THE ACT

Suggested Procedure and Considerations

The following information is provided to OAA members and retirees wishing to perform services as a certified adjudicator under the *Construction Act*:

Adjudication and the Practice of Architecture: Members commonly act as contract administrators and, in that capacity, make determinations or facilitate the informal resolution of issues under construction contracts. However, adjudication as provided for in the *CA*, is not part of the practice of architecture. Adjudication under the *CA* is a practice that is separate from the practice of architecture, although each professional's experience and related expertise brings value to their role as an adjudicator.

Insurance Required for Adjudicators: Pro-Demnity Insurance Company can provide an endorsement on existing professional liability policies for Certificate of Practice holders acting as construction adjudicators regulated by the ODACC under the holder's identified Certificate of Practice (CoP). Any individuals named must be a principal or employee of the practice with appropriate accreditation, and there will be an additional premium cost. Pro-Demnity's insurance coverage available for construction adjudicators is outside of the mandatory plan and arranged fully through reinsurance.

The insurance required for adjudicators cannot be provided by Pro-Demnity to individuals who are not CoP holders or employees of CoP holders acting with the consent of the holder. Those individuals who are not employed under a consenting CoP, or do not hold a CoP, and wish to provide adjudication services will need to source insurance from the open market.

Adjudication and Conflicts of Interest: Those considering providing adjudication services should be aware of the conflict of interest rules of ODAAC and those under the *Architects Act*. Members should refrain from providing adjudication services related to any project they have provided architectural services to, and their ability to remain fair and impartial should one of the parties to an adjudication be a current or repeat client, consultant or a contractor they may have had difficulty with in the past should be considered before accepting appointment as an adjudicator in any particular adjudication.

Adjudication and Consumer Protection: Notwithstanding that adjudication is not part of the practice of architecture, members providing adjudication services can be subject to complaints and/or discipline under the *Architects Act* for the performance of those duties, while they remain professionals licensed by the OAA.

The *Architects Act* specifically states that the Registrar "shall" investigate every written complaint received. Accordingly, any complaint so received would be sent to the Complaints Committee to determine if the complaint was related to the individual's professional conduct or an outside matter. Moreover, the ODACC has their own complaints process which must be adhered to for their adjudicators with their own code of conduct. One does not take precedent over the other. Members would be responsible under both. It should be recognized that the application of allegations of professional misconduct against a member in regards to adjudication is likely limited.

References

Architect Act and Regulations
Ontario Dispute Adjudication for Construction Contracts (ODACC)
Practice Tip PT.10.0

The OAA does not provide legal, insurance, or accounting advice. Readers are advised to consult their own legal, accounting, or insurance representatives to obtain suitable professional advice in those regards.
