

Construction Act

OAA Members Acting as Adjudicators

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Summary

Under the *Construction Act* provisions which came into force on October 1, 2019, ‘interim adjudication’ was introduced as an expedient way to resolve construction disputes. The Act also requires that this process be administered by a certified Adjudicator. For an individual to become an adjudicator, completion of a [qualification program](#) is required in order to be certified by the Ontario Dispute Adjudication for Construction Contracts (ODACC), the authorized naming authority. Architects and Licensed Technologists OAA with 10-years experience are likely to 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.

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 mediation, 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*. There is a bill before the federal parliament and in Alberta to implement prompt payment and adjudication, and other jurisdictions are contemplating doing so. The proposal being considered federally is very similar to that in Ontario, which should come as no surprise since it was conceived by the same lawyers who guided the development of the Ontario law.

[Reference: Construction Act, R.S.O. 1990, c. C.30](#)

[Reference: O. Reg. 306/18: ADJUDICATIONS UNDER PART II.1 OF THE ACT](#)

Suggested Procedure and Considerations

The following information is provided to Architects and Licensed Technologists wishing to perform services as a certified adjudicator under the *Construction Act*.

Adjudication and the Practice of Architecture: Members may routinely act as informal adjudicators of construction contract, however; Adjudication as provided for in the *Construction Act* is not part of the practice of architecture. Adjudication under the *Construction Act* is a practice that is separate from the practice of architecture, although each professionals’ experience and related expertise brings value to their role as an Adjudicator.

Insurance Required for Adjudicators: Pro-Demnity Insurance Company will provide an endorsement on existing professional liability policies for adjudication services being performed by Architects and/or Licensed Technologists OAA under the identified Certificate of Practice (CofP). Any individuals named must be a partner or can be an employee of the firm and there will be an additional premium cost. This required insurance of \$5 million is outside of the plan and arranged fully through reinsurance.

The insurance required for Adjudicators cannot be provided by Pro-Demnity to individuals who are not CofP holders or employees of CofP holders acting with the consent of the holder. Those individual members, who

are not employed under a CofP or hold a CofP, and wish to provide adjudication services will need to source insurance from the open market.

Adjudication and Conflicts of Interest: Members 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 trump the other. Members would be responsible under both. It should be recognized that the application of allegations of professional misconduct against an architect in regards to adjudication is likely limited.

References

[*Architect Act and Regulations*](#)

[Ontario Dispute Adjudication for Construction Contracts \(ODACC\)](#)

[OAA Practice Advisory September 6, 2019](#)

[OAA Practice Advisory October 4, 2019](#)

[PT.10.0 V3.1](#)

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.
