

Becoming an adjudicator under the Ontario Construction Act

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In this Update

- The Authorized Nominating Authority under the Ontario *Construction Act* is now Ontario Dispute Adjudication for Construction Contracts (ODACC).
- ODACC is now inviting individuals to apply to serve as construction adjudicators.
- The ODACC Adjudicator Application Package (the Application Package) includes information on Administrative and Adjudication fees, pre-designed adjudication processes, and a draft Adjudicators' Code of Conduct.

ODACC will commence operation on October 1, 2019. ODACC is now inviting individuals to apply to serve as adjudicators and has issued a formal Application Package. To become an ODACC adjudicator, applicants must complete a two-step process: first, applicants must complete an ODACC orientation program, and second, applicants must complete the ODACC online quality evaluation process. Applicants may also be required to submit a videotape to demonstrate their ability to conduct adjudications. Following the completion of the evaluation process, an applicant must submit to ODACC an application form, Adjudicator Declarations, a resume detailing at least 10 years of relevant working experience in the construction industry, and a letter of reference confirming the applicant's experience in the construction industry.

The Application Package includes a schedule pertaining to fees. In that regard, the Application Package references that: (i) an adjudication fee is payable by the parties to an adjudicator for conducting an adjudication (the Adjudication Fee); and (ii) an administrative fee is payable to ODACC by an adjudicator with respect to each adjudication that he or she adjudicates (the Administrative Fee).

The Application Package provides that the Administrative Fee payable to ODACC is calculated based on the Adjudication Fee, as set out below.

Adjudication Fee Payable by Parties	Administrative Fee Payable by Adjudicator
□ \$3,000	50% of the amount billed
> \$3,000	40% of the amount billed

As for the adjudicator fee, the Application Package provides that the Adjudication Fee payable to the adjudicator for conducting an adjudication will be determined in accordance with the Ontario *Construction Act* and will be determined before the adjudication commences. The Application Package notes that the Adjudication Fee is the fee agreed to by the parties and the adjudicator and if the parties and the adjudicator do not agree on the Adjudication Fee, the Adjudication Fee will be determined by ODACC. The Application Package indicates that ODACC will use the table set out below to determine the Adjudication Fee:

Adjudication Fee, if the Parties and Adjudicator Do Not Agree

Claim Amount at Issue in Notice of Adjudication	Adjudication Fee
□ \$9,999	\$800
\$10,000 □ \$24,999	\$1,000
\$25,000 □ \$34,999	\$2,000
\$35,000 □ \$49,999	\$3,000
\$50,000 □ \$249,999	Adjudicator Hourly Rate of \$250
\$250,000 □ \$499,000	Adjudicator Hourly Rate of \$400
\$500,000 □ \$1,000,000	Adjudicator Hourly Rate of \$500
> \$1,000,000	Adjudicator Hourly Rate of \$750

The Application Package also reflects that ODACC has pre-designed five adjudication processes and has recommended an Adjudication Fee for each of them. The processes are distinguished based on a number of factors including whether the Adjudication is in writing only, the number of pages in each party's submission, the number of pages of additional documents, and the length of the reasons for determination.

Lastly, the Application Package includes a Draft Adjudicators' Code of Conduct. The Application Package references that to be eligible to hold a Certificate of Qualification to Adjudicate, an Adjudicator must, among other things, declare that he or she will abide by the Adjudicators' Code of Conduct.

The Application Package brings to light certain details of the adjudication application process as we approach the implementation of Adjudication on October 1, 2019. We continue to closely monitor and keep our readers apprised of the developments regarding the implementation of the mandatory adjudication and prompt payment regimes in Ontario. Please [subscribe](#) to our Construction email list to receive future updates by email.