

Adjudication Authority selected

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In this Update

- The new *Construction Act* introduces an interim dispute resolution mechanism known as adjudication as one of its key reforms.
- On October 1, 2019, adjudication will come into force in Ontario. Under the *Construction Act*, a single Authorized Nominating Authority (Authority) was envisaged to oversee the adjudication process, including training and qualification of adjudicators.
- On July 18, 2019, the Ministry of the Attorney General of Ontario (Ministry) selected ADR Chambers to act as the Authority.

On July 18, 2019, the Ministry selected [ADR Chambers](#) to act as the Authority to provide adjudication-related services as set out in the *Construction Act* and the associated Regulations. ADR Chambers has provided dispute resolution services across Canada for over 20 years.

As reflected in our [previous Update](#), adjudication is an inquisitorial interim dispute resolution mechanism which, if invoked by a party, aims to provide teeth to the prompt payment regime. One of the key components of the adjudication regime is the establishment of the Authority. Both adjudication and prompt payment will come into effect in Ontario on October 1, 2019, though these provisions will not apply to pre-existing contracts and procurements as a result of certain “grandfathering” rules.

Unlike the United Kingdom where there are multiple Adjudicator Nominating Bodies (ANB), Ontario’s *Construction Act* envisions a single Authority. Given the size of Ontario’s construction market, the [Striking the Balance report](#) recommended that “*establishing a single Authority to be managed and administrated by a private entity may allow the government to achieve some cost and administrative savings.*”

The duties of the Authority include training and qualifying adjudicators; maintaining a public registry of adjudicators; establishing and maintaining a code of conduct for the adjudicators; appointing adjudicators; handling complaints against adjudicators; and ensuring that the expertise and experience of adjudicators sufficiently caters to the industry sector. The Authority has powers to set fees, costs, or other charges relating to the administration of adjudication, as well as training, qualification and appointment of adjudicators. The Authority is designed to be self-funded and independent of the government.

The Authority will publish an annual report containing the following aggregated information regarding adjudication in Ontario in a particular fiscal year: (i) number of completed adjudications along with the geographical area and the subject matter of the adjudications; (ii) total and average amounts claimed in the notices of adjudication and paid under

determinations; (iii) percentage of adjudications completed within the timeline stipulated in the statute; (iv) number of terminated adjudications; and (v) total fees paid to the Authority and to adjudicators. While the information will be provided for Ontario as a whole, some information will also be provided for specific industry sectors such as transportation and infrastructure, residential, industrial and commercial, to name a few.

With the selection of the Authority now in place, the Ontario construction industry is one step closer to the implementation of adjudication. In the meantime, we are monitoring announcements regarding the details of the implementation of the Authority.

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