



Ontario Dispute Adjudication for Construction Contracts

## **ODACC Adjudicators' Code of Conduct**

### **1. Definitions**

- a) “*Act*” means the Ontario *Construction Act*, RSO 1990, c. C.30, as amended;
- b) “Adjudicator” means an individual holding a Certificate;
- c) “Adjudicator Registry” means the directory of Adjudicators maintained by ODACC;
- d) “Certificate” means the certificate of qualification to adjudicate issued to an individual by ODACC after the individual has met the eligibility and training requirements as set out by ODACC, the *Act* and the *Regulations*, has completed the adjudicator evaluation, and has been approved by ODACC to be granted a Certificate;
- e) “Code” means the ODACC Adjudicators' Code of Conduct;
- f) “Confidential Information” means any information in the possession of an Adjudicator or acquired by the Adjudicator in the course of or for the purposes of the adjudication process, whether or not it is identified as confidential, and whether recorded or not, and however fixed, stored, expressed or embodied, including, but not limited to, the names and contact information of the parties, the facts of the dispute, and information relating to the dispute. Confidential Information does not include information that is otherwise publicly available;
- g) “Conflict of Interest” means a situation where an Adjudicator has a real or perceived interest, pecuniary or non-pecuniary, direct or indirect, sufficient to appear to influence the objective exercise of the Adjudicator's duties. Conflicts of Interest include prior or current connections to the parties, perceived or actual, and prior or current involvement in the matter. A real or perceived interest of an Adjudicator's spouse, child, parent, or other close relative or person who is closely connected with the Adjudicator is considered the equivalent of an Adjudicator's interest for the purpose of this definition;
- h) “Determination” is the Adjudicator's written award;
- i) “Harassment” includes, but is not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted;
- j) “Losses” means liabilities, costs, damages and expenses (including legal, expert and consulting fees);

- k) “ODACC” means Ontario Dispute Adjudication for Construction Contracts and is the Authorized Nominating Authority for the purposes of the *Act*;
- l) “ODACC Custom System” means the technology platform used by ODACC to provide ODACC services;
- m) “ODACC Determination Guidelines” are the directions issued by ODACC for the writing of Determinations for adjudications with the purpose of establishing clarity and consistency;
- n) “Party” means the Claimant or the Respondent in an adjudication proceeding;
- o) “Parties” means the Claimant and the Respondent in an adjudication proceeding;
- p) “*Regulations*” mean all *Regulations* promulgated under the *Act*;
- q) “Social Media” means publicly available, third party hosted, interactive web technologies used to produce, post and interact through text, images, video and audio to inform, share, promote, collaborate or network.

## **2. Preamble**

2.1 ODACC is committed to achieving the highest standards of conduct by its Adjudicators in order to maintain and ensure public trust and confidence in ODACC and the Adjudicators’ Determinations for construction disputes. The Code sets out the standard of conduct Adjudicators must observe and have committed to observe.

## **3. Purpose**

3.1 The purpose of the Code is to:

- 1) establish rules to govern the professional and ethical responsibilities of Adjudicators;
- 2) maintain the principles of civility, procedural fairness, competence, proportionality, and integrity in the conduct of adjudications; and
- 3) promote public confidence in the adjudication process.

## **4. Application**

4.1 The Code will apply to all Adjudicators holding Certificates issued by ODACC. The Code governs continuing responsibilities of Adjudicators during the suspension and after the cancellation of Certificates.

## 5. Principles

### 5.1 An Adjudicator shall:

- 1) uphold the principles of
  - a. civility,
  - b. procedural fairness,
  - c. competence,
  - d. proportionality, and
  - e. integrityin the conduct of an adjudication.
- 2) conduct him or herself with decorum;
- 3) ensure the Parties are informed of the procedural aspects of the adjudication process;
- 4) listen carefully and with respect to, and read carefully the views and submissions expressed by, the Parties and their representatives;
- 5) make Determinations on the merits of the case, based on justice, the law then in effect, and the evidence; and
- 6) write Determinations in accordance with the ODACC Determination Guidelines.

### 5.2 No Adjudicator shall:

- 1) fail to observe and comply with the principles of the Code *or the requirements of the Act and Regulations*;
- 2) behave in any way that could adversely affect the reputation of ODACC or the adjudication process;
- 3) advocate on behalf of any Party to the adjudication;
- 4) act outside of his or her jurisdiction as determined by the *Act*, the *Regulations*, the law, or the Code; or
- 5) delegate to any other person any duty to decide, unless permitted to do so by the Parties or applicable law.

## **6. Proportionality and Avoidance of Excess Expense**

6.1 Adjudicators shall ensure that the costs and the time required for the adjudication are proportionate to the value of the claim and the Parties' expectations. Adjudicators shall ensure the procedure adopted for an adjudication is appropriate for the nature and value of the claim.

6.2 To ensure proportionality and avoid excess or unnecessary expense, Adjudicators must prepare appropriately for adjudications.

6.3 Adjudicators shall not delay the adjudication process.

## **7. Conflict of Interest**

7.1 An Adjudicator shall not conduct an adjudication in which the Adjudicator has or may reasonably be perceived to have a Conflict of Interest. The Adjudicator shall ensure the Adjudicator has no Conflict of Interest and continues to have no Conflict of Interest in any adjudication for which the Adjudicator is selected or appointed.

7.2 Both before and throughout the adjudication process, an Adjudicator must disclose all interests, relationships and matters likely to affect the Adjudicator's independence or impartiality or that might reasonably be perceived as likely to do so.

7.3 Where an Adjudicator is or becomes aware that he or she is not able or may not be able to maintain the required degree of independence or impartiality, the Adjudicator must immediately:

- 1) advise the parties of the possible Conflict of Interest and hear submissions on the issue; and
- 2) advise and request advice from ODACC.

7.4 Where a Party to an adjudication raises an allegation of Conflict of Interest, the Adjudicator must immediately inform ODACC of the allegation. After receiving advice from ODACC, the Adjudicator may choose either to resign or to hear submissions from the Parties on the issue of the alleged Conflict of Interest. After submissions, the Adjudicator may resign or determine that the Adjudicator does not have a Conflict of Interest.

7.5 By agreeing to conduct an adjudication, the Adjudicator affirms the following:

1. The Adjudicator is, and shall remain, independent of the Parties.
2. The Adjudicator is, and shall remain, impartial in the conduct of the adjudication.
3. The Adjudicator has no Conflict of Interest, as defined in this Code.
4. The Adjudicator is not aware of any circumstances that could reasonably give rise to a perception of a Conflict of Interest or bias, and shall avoid and, if necessary, disclose to

the Parties and to ODACC any such circumstances that may arise prior to the conclusion of the adjudication.

## **8. Communication**

8.1 Adjudicators must communicate in an appropriate and professional manner with the Parties, their representatives and any witnesses or other third Parties involved in the adjudication.

8.2 All communications, direct or indirect, oral or in writing, with a Party, witness, witness representative, or a Party representative, must be done in the presence of all Parties and their representatives. Email and written communications to a Party, witness, witness representative, or a representative of another Party must be copied to all Parties and their representatives.

8.3 Any communication by Adjudicators that is related in any way to ODACC business or related in any way to an adjudication shall only be conducted in a way that is pre-approved by ODACC as appropriate and secure.

8.4 An Adjudicator shall not contact any Party, Party's representative or other person for the purpose of being selected as the Adjudicator for a dispute or adjudication.

8.5 An Adjudicator shall not make public comment or communicate with the media in any form, about ODACC, or any adjudication, without first obtaining the written approval of ODACC.

## **9. Confidentiality**

9.1 Adjudicators shall not, at any time, disclose or release by any means, including Social Media, to any person, any Confidential Information, except when required by law.

9.2 Adjudicators shall take all necessary precautions against unauthorized access, use or misuse of Confidential Information. Specifically, Adjudicators shall not permit persons, other than those who are entitled thereto, to have access to Confidential Information and they shall ensure that access to materials on their electronic devices (such as cellular phones, tablets and personal computers) is password protected.

9.3 Adjudicators shall not use Confidential Information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body.

9.4 When an Adjudicator ceases to hold a Certificate or the Certificate is suspended, the duty not to disclose or release any Confidential Information continues.

9.5 If an Adjudicator becomes aware of a potential disclosure of Confidential Information, the Adjudicator shall immediately inform ODACC in writing of the potential disclosure.

9.6 Adjudicators agree to be personally and solely liable and agree to indemnify ODACC for

any Losses arising from or related to any failure by the Adjudicator to protect the Confidential Information.

## **10. Competence and Fairness**

10.1 Adjudicators should only accept selections or appointments to perform adjudications if they are confident that they possess the necessary experience and skill to perform their functions competently and fairly.

10.2 Adjudicators shall not make representations, whether orally or in writing, or engage in any other course of conduct, that is misleading or deceptive or likely to mislead or deceive ODACC, the Parties, or the Parties' representatives about the Adjudicator's experience or expertise.

10.3 Adjudicators shall be familiar with the provisions of the *Act* and the *Regulations* that relate to the adjudication regime and to the subject matter of the dispute.

10.4 Adjudicators shall maintain appropriate records for each adjudication they conduct and shall ensure that all documents are uploaded to the ODACC Custom System on or before the release of the Determination.

## **11. Harassment**

11.1 Adjudicators must treat Parties, one another, and ODACC staff appropriately and with respect. They must not engage in Harassment, sexual harassment, abusive conduct, discrimination or violence.

11.2 An Adjudicator must not obstruct ODACC, ODACC staff, or any other Adjudicators in carrying out their responsibilities.

## **12. Notice of Change to ODACC**

12.1 Adjudicators shall notify ODACC of any change in the required information for the Adjudicator Registry.

12.2 Adjudicators shall notify ODACC immediately if the Adjudicator ceases to meet the eligibility requirements set out in the *Act* and the *Regulations* to hold a Certificate.

## **13. Compliance**

13.1 Adjudicators shall familiarize themselves with and be aware of their obligations under the Code.

13.2 Adjudicators may, at any time, seek advice from ODACC with respect to any issue concerning the Code.

13.3 Adjudicators must seek the advice of ODACC if they believe, or a Party has alleged that, there has been, or may be, a breach of any provision of the Code.

## **14. Fees**

14.1 Unless the parties and the Adjudicator agree otherwise, Adjudicators shall charge only the fees as established in the ODACC fee schedule and by their agreement with ODACC.

14.2 Adjudicators shall immediately advise ODACC if they become aware that the fees for an adjudication will exceed the amount collected as a retainer.

14.3 To eliminate any doubt, all Adjudicators agree to share the full fee for all construction adjudications in Ontario with ODACC in the percentage approved by the Minister of the Attorney General and as set out on the ODACC Website, whether the Adjudicator is appointed by ODACC or selected directly by the parties.

## **15. On-Site Inspections**

15.1 Adjudicators may conduct on-site inspections. If they elect to do so, they must conduct the inspections in accordance with the requirements set out in the *Act*.

## **16. Record-Keeping/Reporting Requirement of Adjudicators**

16.1 Adjudicators must provide ODACC with a draft Determination within 25 days of the Claimant providing all documentation to the Adjudicator upon which the Claimant intends to rely or in the case of a Determination due date extension no later than five days from the extended Determination due date.

16.2 Adjudicators must provide a copy of the final Determination to the Parties as required by the *Act* and *Regulations*, and must provide a copy to ODACC on the same day.

16.3 If an Adjudicator plans to resign from an adjudication, he or she must notify ODACC in writing one day prior to the day that the Adjudicator so advises the Parties.

16.4 If an Adjudicator needs to make a typographical correction to a Determination, the Adjudicator must provide a copy of the corrected Determination to ODACC on the same day as it is provided to the Parties.

16.5 If an Adjudicator has reason to believe that the fees for the adjudication will exceed the fees that were estimated at the start of the adjudication, the Adjudicator must immediately notify ODACC in writing.

16.6 For adjudications that are conducted on an hourly basis, the Adjudicator must provide his or her hours, fees and extra costs, if any, to ODACC within 5 days of the release of the Determination to the Parties.

16.7 Adjudicators agree to conduct all adjudications commenced under the *Act* through ODACC.

## **17. Enforcement**

17.1 Any person, including any member of the public, ODACC staff, or another Adjudicator, who has reasonable grounds to believe that an Adjudicator may have contravened the Code, may proceed with a complaint pursuant to the complaints procedure set out on the ODACC website.

## **18. Consequence of Failing to Adhere to the Adjudicators' Code of Conduct**

18.1 Any Adjudicator who has acted in a manner that ODACC believes is contrary to a provision of the Code may have his/her Certificate suspended or cancelled or may be required to complete additional training or education, as deemed appropriate by ODACC.

18.2 In addition to or in place of the consequences listed in 18.1, ODACC may, in its sole discretion, remove an Adjudicator from the Adjudicator Registry where the Adjudicator:

- (1) fails to remain qualified to hold a Certificate in accordance with the requirements of the *Act*, the *Regulations*, or any policies or procedures set by ODACC;
- (2) breaches any provision of this Code;
- (3) fails to meet the standards of competence, fairness, or integrity expected of Adjudicators;
- (4) engages in conduct that could bring ODACC or the adjudication process into disrepute.

18.3 Prior to removal from the Adjudicator Registry, ODACC shall provide the Adjudicator with notice of the intended removal and an opportunity to respond in writing within a reasonable time period specified by ODACC.

18.4 An Adjudicator who has been removed from the Adjudicator Registry shall not conduct adjudications under the *Act* and *Regulations* unless reinstated by ODACC in accordance with the *Act*, the *Regulations* and any applicable ODACC policies or procedures.