



# Ontario Dispute Adjudication for Construction Contracts

## 2022 Annual Report



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# MESSAGE FROM THE DIRECTOR

## Message from the Director

ODACC is now in the third year of welcoming Adjudication for construction disputes to the Province of Ontario as an alternative dispute resolution process. As the Authorized Nominating Authority for the Province of Ontario, Ontario Dispute Adjudication for Construction Contracts (“ODACC”) is responsible for administering construction-related Adjudications and for training and certifying Adjudicators under the *Construction Act, R.S.O. 1990. c. C.3* (the “*Construction Act*”) and Ontario Regulation 306/18 (the “*Regulations*”). ODACC is pleased to report that in ODACC’s third year of operating, there has been a significant increase in both the number of cases using Adjudication to resolve disputes and also in the number of parties and type of parties choosing to resolve their disputes using Adjudication. Contractors, subcontractors, businesses and other individuals have elected to use the Adjudication process to resolve their disputes so that their conflict can be resolved in a streamlined, timely, and cost-effective manner. Adjudication allows construction projects to continue through to completion without significant delay and costs.



Many subcontractors have increasingly utilized Adjudication as a means of resolving their construction disputes. ODACC continues to see parties return to Adjudication to resolve new disputes once they have experienced it and appreciate its benefits. More businesses and individuals are being educated about the Adjudication process and how to use it to resolve disputes. Adjudication benefits all disputants as it allows them to resolve their disputes in a condensed time frame.

During the 2022 Fiscal Year, 121 Adjudications were commenced at ODACC and 67 Determinations were rendered. Thirty-four Adjudications remained open as of the end of the 2022 Fiscal Year. Other Adjudications were terminated on the consent of the parties, primarily because the parties settled their dispute. All Adjudications were administered using the ODACC state-of-the-art custom on-line computer system.

The *Construction Adjudication and ODACC Orientation Program* continued to offer a two-day educational course on Adjudication to individuals seeking to become Certified ODACC Adjudicators as well as to parties and representatives seeking to learn more about Adjudication. During the 2022 Fiscal Year, Certified ODACC Adjudicators participated in the *Continuing Education Training Program* which provided ongoing educational training during the year. All training was conducted by the Stitt Feld Handy Group.

On behalf of ODACC, ODACC would like to once again thank the members of the construction industry, the various construction associations in Ontario, and industry stakeholders who continue to involve ODACC in educating their members and assist in familiarizing the industry about Adjudication. Thank you for your confidence in ODACC and we look forward to continuing to work with you to promote Adjudication.

ODACC would also like to thank the ODACC Certified Adjudicators who offer their services in a cost-effective, timely, and professional manner, ensuring that the process of Adjudication is proportionate to the amount in dispute. The Certified ODACC Adjudicators have a minimum of ten years' experience in the construction industry with many of the Adjudicators having more years of experience. The Adjudicators' professional backgrounds range from Project Managers, Quantity Surveyors to Engineers, Lawyers, Mediators and other professionals. Their diverse backgrounds and professional designations provide a complete and varied Adjudicator Registry. The ODACC Certified Adjudicators remain committed to procedural fairness, and resolving disputes in a professional, cost effective and timely manner.

This past year proves that Adjudication is a viable alternative dispute resolution process that continues to grow each year. ODACC remains committed to assisting parties, representatives, and the construction industry in resolving their disputes through Adjudication.

ODACC is optimistic about the future of Adjudication and believes Adjudication will continue to be a viable option for businesses and individuals in the construction industry.

ODACC is pleased to provide ODACC's third Annual Report for its operation for the fiscal year August 1, 2021 to July 31, 2022 (the "2022 Fiscal Year"). ODACC invites you to visit the ODACC website at [www.odacc.ca](http://www.odacc.ca) to learn more about the Adjudication process.

A handwritten signature in blue ink, appearing to be 'Elise Teitler', with a long horizontal line extending to the right.

Elise Teitler  
Director, ODACC

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## MESSAGE FROM THE STITT FELD HANDY GROUP

For the third year in a row, the Stitt Feld Handy Group delivered the *Construction Adjudication and ODACC Orientation Program*. The program is offered to individuals seeking to become Certified ODACC Adjudicators as well as to parties or representatives interested in learning more about Adjudication. The *Construction Adjudication and ODACC Orientation Program* is comprised of an online component and a two-day live (online) workshop. This program provides an overview of the *Construction Act* provisions relating to prompt payment and Adjudication. The program also offers information about the ODACC Adjudication process and the role of an ODACC Adjudicator.

During the live component of the *Construction Adjudication and ODACC Orientation Program*, workshop participants have an opportunity to discuss many different components of the Adjudication process. The Program brings together individuals involved in the construction industry from Project Managers, General Contractors, and Subcontractors to Quantity Surveyors, Engineers, and Lawyers as well as other professionals. The facilitators lead discussions on the Adjudication process itself, the role of a Certified ODACC Adjudicator and the various issues that may arise during an Adjudication. The participants also have an opportunity to practice some of the important skills required to be successful at adjudicating. The course also offers participants a first-hand look at the ODACC custom online computer system and the features available to the Adjudicators and parties participating in Adjudications. Some of the course participants applied to become Certified ODACC Adjudicators and others used the opportunity to learn more about construction-related Adjudication in Ontario.

In addition, during the 2022 Fiscal Year, the Stitt Feld Handy Group also designed and delivered the *Continuing Education Training Program* on behalf of ODACC. This program is provided each year and is required for Certified ODACC Adjudicators as “refresher” training.

The *Continuing Education Training Program* provides a forum for Adjudicators to discuss strategies that Certified ODACC Adjudicators might wish to use to set and manage the process for Adjudications, and common issues Certified ODACC Adjudicators have faced. Adjudicators also discuss the appropriate Adjudication process to use for different

## MESSAGE FROM THE STITT FELD HANDY GROUP

types of disputes. The forum also provides a refresher on “best practices” in acting as an Adjudicator and information on how Adjudications have progressed during the past year.

The Stitt Feld Handy Group appreciates the opportunity to support the construction industry by providing the *Construction Adjudication and Orientation Program* to potential Adjudicators and other interested parties as well as the *Continuing Education Training Program* for Certified ODACC Adjudicators.



A handwritten signature in black ink, appearing to read 'E. Whitmore'.

Elinor Whitmore  
Vice President  
Stitt Feld Handy Group



A handwritten signature in blue ink, appearing to read 'Jason Stitt'.

Jason Stitt  
ADR Instructor and Mediator  
Stitt Feld Handy Group

## 2022 Annual Report

On July 18, 2019, ODACC was named the Authorized Nominating Authority (the “ANA” or the “Authority”) by the Ministry of the Attorney General.

The Adjudication and Prompt Payment provisions of Ontario’s *Construction Act* came into force on October 1, 2019.

Section 14. (1) of *Ontario Regulation 306/18* requires ODACC to issue and make public its annual report no later than ninety days after the end of each fiscal year.

ODACC is pleased to provide this report on the third year of its operation for the fiscal year August 1, 2021, to July 31, 2022 (the “2022 Fiscal Year”).



## About ODACC

ODACC is the ANA under the *Construction Act* and is responsible for administering construction-related Adjudications and for training and qualifying Adjudicators. ODACC derives its powers from the *Construction Act* and *Ontario Regulation 306/18*, accessible at the following links:

*Construction Act*, R.S.O. 1990 c. C.30: <https://www.ontario.ca/laws/statute/90c30>

*Ontario Regulation 306/18*: <https://www.ontario.ca/laws/regulation/180306>

## ODACC'S DUTIES AND POWERS

Section 13.3(1) of the *Construction Act* sets out ODACC's duties, as follows:

13.3 (1) The Authority shall,

- (a) develop and oversee programs for the training of persons as adjudicators;
- (b) qualify persons who meet the prescribed requirements as adjudicators;
- (c) establish and maintain a publicly available registry of adjudicators;
- (d) appoint adjudicators for the purposes of subsection 13.9 (5); and
- (e) perform any other duties of the Authority set out in this Part or that may be prescribed for the purposes of this Part.

## ABOUT ODACC

Section 13.3(2) of the *Construction Act* sets out ODACC's powers, as follows:

13.3 (2) The Authority may,

- (a) subject to the regulations, set fees, costs or other charges related to the administration of adjudication under this Part, including fees, costs or charges for the training and qualification of persons as adjudicators or for the appointment of adjudicators, and require their payment; and
- (b) exercise any other power of the Authority set out in this Part or that may be prescribed for the purposes of this Part.

Further duties and powers of ODACC are listed in sections 6 through 15.1 of *Ontario Regulation 306/18*. These additional duties and powers relate to:

- The Adjudicator Registry;
- The Adjudicators' Code of Conduct;
- Training programs for Adjudicators;
- The Schedule of Fees;
- Complaints regarding Adjudicators;
- Educational materials;
- ODACC's Annual Reports;
- Accessibility; and
- The administration of Adjudications.

## ADVANTAGES TO ADJUDICATION

### Advantages to Adjudication

Adjudication under the *Construction Act* is available to individuals, businesses and other entities as of right. A party to a construction dispute can commence an Adjudication without the other party's consent. This allows a party who has a construction-related dispute to refer its dispute to Adjudication. Adjudication is designed to help workers, businesses and other entities resolve construction-related disputes in a timely and cost-effective manner.



An independent third-party neutral, known as an ODACC Certified Adjudicator, will review the evidence from the parties. This evidence may include the initiating document known as the Notice of Adjudication, the Response to Notice of Adjudication from the other party, the contract between the parties, and other documents or statements the parties submit to the Adjudicator. The Adjudicator will then provide a written binding decision known as a "Determination" which may be filed with the court for enforcement purposes.

If the Adjudicator orders one party to pay the other party, the payment must be made within ten days of the Determination being communicated to the parties. If an amount payable to a Contractor or Subcontractor under a Determination is not paid by the party when it is due, the Contractor or Subcontractor may suspend further work under the contract or subcontract until the party pays the amounts required to be paid under the Determination.

Either party can commence a proceeding in court or through arbitration to resolve their dispute; however, the Determination is binding on the parties until a final decision is made in the subsequent proceeding.

## ADVANTAGES TO ADJUDICATION

Adjudication is a quick process. After an Adjudicator receives the Claimant's supporting documents, the Adjudicator must render a Determination within the next 30 days (unless the parties mutually agree to extend this date).

Adjudications are less expensive than litigation and arbitration. The Adjudication fee is negotiated among the parties and the Adjudicator. If the parties and the Adjudicator cannot come to an agreement on the fees, ODACC will set the fees pursuant to a schedule and based on the amount of money in dispute. For information on fees, please refer to the Schedule of Fees, available at: <https://odacc.ca/en/claimants/fees/>

# ODACC CUSTOM ONLINE COMPUTER SYSTEM

## ODACC Custom Online Computer System

ODACC 's state-of-the-art custom online computer system (the "ODACC Custom System") facilitates and streamlines the Adjudication process by allowing parties, representatives, and Adjudicators to work online through the system portal to file documents and supporting evidence.



ODACC provides administrative support to assist parties and representatives throughout the Adjudication process. ODACC also provides step-by-step guides and videos ([www.odacc.ca](http://www.odacc.ca)) to assist and demonstrate to parties how the ODACC Custom System works.

Features of the ODACC Custom System are listed below:

### PARTIES' ACCESS TO PARTICIPATE IN THE ADJUDICATION PROCESS

Parties and representatives can:

- Visit the ODACC website ([www.odacc.ca](http://www.odacc.ca)) to create an account as a party or a representative;
- Request ODACC grant other individuals (i.e., project managers, contract managers, clerks, or assistants) access to the ODACC Custom System and to the documents filed in the case; and
- Receive email notifications from the ODACC Custom System each time a step or action is taken in the Adjudication.

# ODACC CUSTOM ONLINE COMPUTER SYSTEM

## NOTICE OF ADJUDICATION AND RESPONSE TO NOTICE OF ADJUDICATION

Parties (and their representatives) can:

- Create a Notice of Adjudication and Response to Notice of Adjudication (the “Forms”) on the ODACC Custom System;
- View and download PDFs of the Forms; and
- Electronically send the Forms to the parties, the Adjudicator, and ODACC.

## SELECTION OF THE ADJUDICATOR

Parties (and their representatives) can:

- Propose an Adjudicator from those individuals listed on ODACC’s Adjudicator Registry;
- Accept or reject the other party’s proposed Adjudicator;
- Ask an Adjudicator to consent to adjudicate a dispute; and
- Ask ODACC to appoint an Adjudicator if the parties cannot reach agreement on the selection of an Adjudicator.

## SELECTION OF ADJUDICATION PROCESS

Parties (and their representatives) can:

- Recommend to an Adjudicator a type of process for Adjudication. They may recommend one of the suggested Pre-Designed Adjudication Processes or a Custom Adjudication Process. For information on Pre-Designed Adjudication Processes, please visit <https://odacc.ca/en/claimants/adjudication-process-2/>; and
- View the details of the Adjudication process set by the Adjudicator.

# ODACC CUSTOM ONLINE COMPUTER SYSTEM

## FEES, RETAINERS, AND PAYMENTS

Parties (and their representatives) can view on the ODACC Custom System:

- The Adjudication fee negotiated with the Adjudicator, and any other agreed-upon costs or fees;
- The amount of the retainer requested by the Adjudicator and paid by each party to cover the expected Adjudication fees;
- The Adjudication fee retainer invoices. The parties can also pay these invoices online; and
- The parties' accounts, detailing payments and refunds.

## PARTIES' SUPPORTING DOCUMENTS

Parties (and their representatives) can use the ODACC Custom System to:

- Upload their supporting documents for the Adjudicator and the parties to view; and
- View and download supporting documents that the Adjudicator and the parties have uploaded.

## MESSAGES

Parties (and their representatives) can use the ODACC Custom System to:

- Communicate to all other parties, the Adjudicator, and ODACC; and
- Receive email notifications each time a message is delivered by one of the parties or the Adjudicator.

# ODACC CUSTOM ONLINE COMPUTER SYSTEM

## EXTENDING THE DETERMINATION DATE

Parties (and their representatives) can use the ODACC Custom System to:

- Propose an extension of the Determination due date; and
- Accept or reject a proposal of the Determination due date extension.

## TERMINATION REQUESTS

Parties (and their representatives) can use the ODACC Custom System to:

- Request that the Adjudication be terminated; and
- Respond to a request to terminate an Adjudication by one of the parties.

## DETERMINATIONS RENDERED BY THE ADJUDICATOR

Parties (and their representatives) can use the ODACC Custom System to:

- View and download the Determination; and
- View and download the Certified Determination.



## CERTIFIED ODACC ADJUDICATORS

### Adjudicator Training and Continuing Education Training Programs

ODACC is responsible for developing and overseeing programs for the training of individuals who are interested in becoming Certified ODACC Adjudicators. ODACC developed its program in partnership with the Stitt Feld Handy Group. The training program is called *Construction Adjudication and ODACC Orientation Program* (the “Program”).

The Program includes a two-day course on Adjudication that is offered to individuals seeking to become Certified ODACC Adjudicators as well as to parties or representatives interested in learning more about Adjudication.

There is an online component and a two day live online workshop to the Program. The online component is completed by individuals on their own time and usually takes between two to six hours to complete. The live online workshop takes place over two days. To learn more about the Program, please visit <https://odacc.ca/en/Adjudicators/certification-process/>.

During the 2022 Fiscal Year, the Stitt Feld Handy Group offered the Program on two occasions. The total number of participants in the Program was nineteen.

ODACC is also responsible for developing and overseeing continuing education training programs for Certified ODACC Adjudicators. This training program is called the *Continuing Education Training Program* and is designed as refresher training for Certified ODACC Adjudicators. It is required for Adjudicators to take the refresher each year in order to renew their certification as a Certified ODACC Adjudicator. The *Continuing Education Training Program* takes place via Zoom for half a day. ODACC also developed this program in partnership with the Stitt Feld Handy Group.

During the 2022 Fiscal Year, the *Continuing Education Training Program* was offered by the Stitt Feld Handy Group on two occasions. There was a total of 62 participants in the two *Continuing Education Training Programs*.

# CERTIFIED ODACC ADJUDICATORS

## Certified ODACC Adjudicator

Individuals who complete the Program are offered the opportunity to apply to ODACC to become a Certified ODACC Adjudicator.



Under the *Construction Act*, ODACC is responsible for evaluating Adjudicator applicants and for certifying Adjudicators. To be eligible to receive a certificate to adjudicate, an Adjudicator applicant is required to meet the criteria set out in s. 3(2) of the *Ontario Regulation 306/18*, including having at least 10 years of relevant working experience in the construction industry.

Adjudicator applicants are required to answer questions, draft sample Determinations, and prepare a short video (among other things). ODACC assesses the applications and determines whether the Adjudicator applicants are qualified to adjudicate.

During the 2022 Fiscal Year, 7 individuals applied to become Certified ODACC Adjudicators. ODACC certified 2 of the seven Adjudicators for the ODACC Adjudicator Registry.

The Certified ODACC Adjudicators are listed in the ODACC Adjudicator Registry available at <https://odacc.ca/en/adjudicator-registry/>. Only Certified ODACC Adjudicators listed in the ODACC Adjudicator Registry are permitted to conduct Adjudications and make Determinations under the *Construction Act*.

# CERTIFIED ODACC ADJUDICATORS

## Professional Backgrounds of the Certified ODACC Adjudicators

Certified ODACC Adjudicators include Engineers, Project Managers, Architects, Lawyers, Accountants, Quantity Surveyors, Arbitrators and Mediators. The number of Certified ODACC Adjudicators in each profession is listed below in Table 1.

**TABLE 1: CERTIFIED ODACC ADJUDICATORS' PROFESSIONS**

PROFESSION	NUMBER OF CERTIFIED ADJUDICATORS*
Engineer	26
Project Manager	27
Architect	3
Lawyer	19
Accountant	1
Quantity Surveyor	10
Arbitrator	10
Mediator	3

*\*Some Adjudicators have more than one profession.*

## Hourly Rate

Adjudicators set their hourly rate at \$250, \$400, \$500, or \$750 per hour. Table 2 lists the number of the Certified ODACC Adjudicators during the 2022 Fiscal Year for each hourly rate.

**TABLE 2: CERTIFIED ODACC ADJUDICATORS' HOURLY RATES**

HOURLY RATE	NUMBER OF CERTIFIED ADJUDICATORS
\$250	17
\$400	23
\$500	19
\$750	2

## CERTIFIED ODACC ADJUDICATORS

Ninety-three percent of Certified ODACC Adjudicators are willing to conduct Adjudications for a flat fee rate that is proportionate to the amount in dispute. Table 3 lists ODACC’s suggested flat fee rates for lower-value Adjudications and the number of Adjudicators who are willing to conduct Adjudications for that rate.

TABLE 3: FLAT FEE RATES OF CERTIFIED ODACC ADJUDICATORS

FLAT FEE RATE	NUMBER OF CERTIFIED ADJUDICATORS*
\$800	45
\$1,000	49
\$2,000	53
\$3,000	56

*\*Most Adjudicators are willing to conduct Adjudications for more than one flat fee rate.*

### Spoken Language

All of the Certified ODACC Adjudicators can conduct Adjudications in English. Seven of the Certified ODACC Adjudicators can conduct Adjudications in French as well.

### Geographic Locations

Adjudication is available throughout Ontario. ODACC has some Adjudicators who are willing to travel in Ontario, if required, without charging travel fees or disbursements. The list of Ontario’s geographical areas and the number of Certified ODACC Adjudicators who are willing to travel to (or live in) those areas without charging travel fees or disbursements are set out in Table 4 below.

## CERTIFIED ODACC ADJUDICATORS

**TABLE 4: GEOGRAPHICAL AREAS WHERE CERTIFIED ODACC ADJUDICATORS ARE WILLING TO TRAVEL WITHOUT CHARGING TRAVEL FEES OR DISBURSEMENTS**

GEOGRAPHICAL AREA	NUMBER OF ADJUDICATORS WILLING TO TRAVEL TO THE GEOGRAPHICAL AREA WITHOUT CHARGING TRAVEL FEES OR DISBURSEMENTS
Algoma	12
Brant	28
Bruce	23
Chatham-Kent	19
Cochrane	11
Dufferin	26
Durham	33
Elgin	19
Essex	17
Frontenac	20
Grey	22
Haldimand	25
Haliburton	20
Halton	38
Hamilton	39
Hastings	22
Huron	22
Kawartha Lakes	26
Kenora	8
Lambton	18
Lanark	20
Leeds and Grenville	20
Lennox and Addington	21
Manitoulin	10
Middlesex	19
Muskoka	25
Niagara	30
Nipissing	13

## CERTIFIED ODACC ADJUDICATORS

**TABLE 4 CONTINUED: GEOGRAPHICAL AREAS WHERE CERTIFIED ODACC ADJUDICATORS ARE WILLING TO TRAVEL TO (OR LIVE IN) WITHOUT CHARGING TRAVEL FEES OR DISBURSEMENTS**

GEOGRAPHICAL AREA	NUMBER OF ADJUDICATORS WILLING TO TRAVEL TO (OR LIVE IN) THE GEOGRAPHICAL AREA WITHOUT CHARGING TRAVEL FEES OR DISBURSEMENTS
Norfolk	21
Northumberland	23
Ottawa	24
Oxford	23
Parry Sound	19
Peel	42
Perth	23
Peterborough	28
Prescott and Russell	18
Prince Edward	22
Rainy River	8
Renfrew	17
Simcoe	29
Stormont, Dundas, and Glengarry	20
Sudbury	13
Thunder Bay	7
Timiskaming	9
Toronto	48
Waterloo	34
Wellington	30
York	43

*\*Most Adjudicators are willing to travel to multiple locations.*

## Statistics

Under section 14.(1) of *Ontario Regulation 306/18*, ODACC is required to report the following aggregated information for Adjudication in Ontario.

(A) THE NUMBER OF ADJUDICATIONS COMPLETED DURING THE FISCAL YEAR, AND THE GEOGRAPHICAL AREA IN WHICH THE ADJUDICATIONS WERE COMPLETED;

During the 2022 Fiscal Year, 121 Adjudications were commenced at ODACC. Of the 121 Adjudications, 67 Adjudications resulted in the rendering of a Determination during the 2022 Fiscal Year. Eight Adjudications were commenced at the end of the fiscal year ending July 31, 2021 (the “2021 Fiscal Year”) which resulted in the rendering of six Determinations in the 2022 fiscal Year (and two terminations). Thirty-four Adjudications remained open as of the end of the 2022 Fiscal Year. Other Adjudications were terminated on consent by the parties.

The 67 Adjudications that were completed in the 2022 Fiscal Year and resulted in Determinations being rendered were completed in the following geographical areas and related to the following industry sectors as provided in Table 5 below:



## STATISTICS

**TABLE 5: NUMBER OF ADJUDICATIONS COMPLETED IN THE 2022 FISCAL YEAR, BY GEOGRAPHICAL AREA AND INDUSTRY SECTOR**

GEOGRAPHICAL AREA	NUMBER OF ADJUDICATIONS COMPLETED DURING THE 2022 FISCAL YEAR	INDUSTRY SECTOR
Algoma	4	1 Industrial, 1 Public Buildings, 1 Residential, 1 Transportation and Infrastructure
Chatham-Kent	1	Commercial
Cochrane	1	Transportation and Infrastructure
Durham	2	1 Residential, 1 Transportation and Infrastructure
Haldimand	1	Commercial
Halton	4	1 Industrial, 3 Residential
Hamilton	5	5 Residential
Hastings	1	Residential
Lambton	1	Public Buildings
Middlesex	1	Transportation and Infrastructure
Muskoka	3	1 Commercial, 2 Residential
Niagara	1	Transportation and Infrastructure
Nipissing	1	Transportation and Infrastructure
Ottawa	4	1 Public Buildings, 3 Residential
Peel	3	2 Commercial, 1 Residential
Prescott and Russell	1	Residential
Simcoe	5	3 Residential, 2 Transportation and Infrastructure
Stormont Dundas & Glengarry	1	Transportation and Infrastructure
Thunder Bay	1	Transportation and Infrastructure



## STATISTICS

Toronto	9	2 Commercial, 6 Residential, 1 Transportation and Infrastructure
Waterloo	7	4 Commercial, 2 Residential, 1 Transportation and Infrastructure
Wellington	3	1 Commercial, 2 Residential
York	7	4 Residential, 3 Transportation and Infrastructure

(B) THE NUMBER OF ADJUDICATIONS COMPLETED DURING THE 2022 FISCAL YEAR, BROKEN DOWN BY EACH MATTER LISTED UNDER PARAGRAPHS 1 TO 7 OF SUBSECTION 13.5 (1) OF THE *CONSTRUCTION ACT*;

The following is a breakdown of the 67 Adjudications that were completed in the 2022 Fiscal Year and resulted in Determinations during the 2022 Fiscal Year as they relate to the matters listed under section 13.5 of the *Construction Act*:

- (i) Thirty-one Adjudications dealt with “The valuation of services or materials provided under the contract”;
- (ii) Twenty-nine Adjudications dealt with “Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.”;
- (iii) Three Adjudications dealt with “Disputes that are the subject of a notice of non-payment under Part I.1”; and
- (iv) Four Adjudications dealt with “any other matter that the parties to the Adjudication agree to, or that may be prescribed”.

No Adjudications were completed that dealt with the matters listed under items 4, 5, and 6 of subsection 13.5(1) of the *Construction Act*. Table 6 below summarizes this information.

## STATISTICS

**TABLE 6: NUMBER OF ADJUDICATIONS COMPLETED DURING THE 2022 FISCAL YEAR, BROKEN DOWN BY EACH MATTER LISTED IN S. 13.5(1) OF THE CONSTRUCTION ACT**

MATTER LISTED UNDER PARAGRAPHS 1 TO 7 OF SUBSECTION 13.5(1) OF THE CONSTRUCTION ACT	NUMBER OF ADJUDICATIONS COMPLETED DURING THE 2022 FISCAL YEAR
1. The valuation of services or materials provided under the contract.	31
2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.	29
3. Disputes that are the subject of a notice of non-payment under Part I.1.	3
4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).	0
5. Payment of a holdback under section 26.1 or 26.2.	0
6. Non-payment of holdback under section 27.1.	0
7. Any other matter that the parties to the Adjudication agree to, or that may be prescribed.	4
<b>Total</b>	<b>67</b>

**(C) THE TOTAL AMOUNT CLAIMED IN ALL NOTICES OF ADJUDICATION GIVEN DURING THE FISCAL YEAR, AND THE AVERAGE AND MEDIAN OF THE AMOUNTS CLAIMED DURING THAT YEAR;**

In the 2022 Fiscal Year, the total amount claimed for the 121 Notices of Adjudications was \$33,537,381.32. The average amount claimed was \$277,168.44 and the median amount claimed was \$73,398.75.

Table 7 lists the total, average and median amounts claimed during the 2022 Fiscal Year, broken down by industry sector.

## STATISTICS

**TABLE 7: TOTAL, AVERAGE AND MEDIAN AMOUNTS CLAIMED DURING THE 2022 FISCAL YEAR, BROKEN DOWN BY INDUSTRY SECTOR**

INDUSTRY SECTOR	NUMBER OF NOTICES OF ADJUDICATION GIVEN DURING THE 2022 FISCAL YEAR	TOTAL AMOUNT CLAIMED	AVERAGE AMOUNT CLAIMED	MEDIAN AMOUNT CLAIMED
Residential	52	\$4,312,623.27	\$82,935.06	\$17,925.56
Commercial	23	\$3,949,902.22	\$171,734.88	\$117,433.98
Industrial	6	\$10,126,035.00	\$1,687,672.50	\$2,188,597.50
Public Buildings	10	\$1,677,533.87	\$167,753.39	\$119,942.44
Transportation and Infrastructure	30	\$13,471,286.96	\$449,042.90	\$277,178.43
<b>All Sectors</b>	<b>121</b>	<b>\$33,537,381.32</b>	<b>\$277,168.44</b>	<b>\$73,398.75</b>

**(D) THE TOTAL AMOUNT AND THE AVERAGE AND MEDIAN AMOUNT REQUIRED TO BE PAID UNDER DETERMINATIONS MADE DURING THE 2022 FISCAL YEAR;**

During the 2022 Fiscal Year, of the 121 Adjudications that were commenced, 67 Adjudications resulted in the rendering of a Determination during the 2022 Fiscal Year. This includes the eight Adjudications that were commenced at the end of the 2021 Fiscal Year which resulted in the rendering of six Determinations in the 2022 Fiscal Year.

## STATISTICS

The total amount required to be paid pursuant to the 67 Determinations is \$3,449,619.02. The average amount required to be paid under the 67 Determinations is \$51,486.84. The median amount required to be paid under the 67 Determinations is \$19,640.66.

Table 8 lists the total, average and median amounts required to be paid pursuant to the Determinations rendered during the 2022 Fiscal Year, broken down by industry sector.

**TABLE 8: TOTAL AVERAGE AND MEDIAN AMOUNTS REQUIRED TO BE PAID UNDER DETERMINATIONS MADE DURING THE 2022 FISCAL YEAR, BROKEN DOWN BY INDUSTRY SECTOR IN**

INDUSTRY SECTOR	NUMBER OF DETERMINATIONS MADE	TOTAL AMOUNT REQUIRED TO BE PAID UNDER DETERMINATIONS	AVERAGE AMOUNT REQUIRED TO BE PAID UNDER DETERMINATIONS	MEDIAN AMOUNT REQUIRED TO BE PAID UNDER DETERMINATIONS
Residential	35	\$1,032,217.99	\$29,491.94	\$10,553.37
Commercial	12	\$836,078.25	\$69,673.19	\$29,768.23
Industrial	2	\$119,314.00	\$59,657.00	\$59,657.00
Public Buildings	3	\$41,250.92	\$13,750.31	\$20,625.46
Transportation and Infrastructure	15	\$1,420,757.86	\$94,717.19	\$81,853.29
<b>All Sectors</b>	<b>67</b>	<b>\$3,449,619.02</b>	<b>\$51,486.84</b>	<b>\$19,640.66</b>

**(E) THE PERCENTAGE OF ADJUDICATIONS COMPLETED DURING THE FISCAL YEAR IN WHICH THE ADJUDICATOR MADE A DETERMINATION WITHIN THE TIMELINE SPECIFIED IN SUBSECTION 13.13 (1) OF THE ACT;**

Seventy-five percent of the Determinations (or 50 Determinations), that were rendered during the 2022 Fiscal Year were made within the timeline specified in subsection 13.13(1) of the *Construction Act*.

## STATISTICS

### (F) THE TOTAL NUMBER OF ADJUDICATIONS THAT WERE TERMINATED UNDER SECTION 13.14 OF THE ACT DURING THE FISCAL YEAR;

Twenty-four of the 121 Adjudications that were commenced during the 2022 Fiscal Year were terminated under section 13.14 of the *Construction Act*.

Section 13.14 states:

#### **Termination of Adjudication**

**13.13** At any time after the notice of Adjudication is given and before the adjudicator makes his or her determination, the parties to the adjudication may agree to terminate the adjudication, on notice to the adjudicator and subject to the payment of the adjudicator’s fee.

In the 24 Adjudications that were terminated, an Adjudicator was appointed in 12 of those Adjudications. The other Adjudications were terminated before an Adjudicator consented to adjudicate the matter.

Table 9 lists the reasons why these Adjudications were terminated.

TABLE 9: REASONS FOR TERMINATION OF ADJUDICATION	
NUMBER OF ADJUDICATIONS THAT WERE TERMINATED	REASON FOR TERMINATION
17	The parties settled the dispute.
2	No jurisdiction to adjudicate the matter.
5	Other

## STATISTICS

### (G) THE TOTAL AMOUNT OF FEES, COSTS, OR OTHER CHARGES PAID DURING THE FISCAL YEAR TO THE AUTHORITY;

#### Amounts Related to Adjudications

The Schedule of Fees, as approved by the Attorney General of Ontario on September 13, 2019, lists the fees that are payable to ODACC. The Schedule of Fees is available at <https://odacc.ca/en/claimants/fees/>.

In 67 of the 121 Adjudications that were commenced during the 2022 Fiscal Year, Determinations were rendered and ODACC received fees. These cases were subsequently closed during the 2022 Fiscal Year. ODACC also received fees for eight Adjudications that were commenced at the end of the 2021 Fiscal Year and Determinations were rendered in six of those Adjudications during the 2022 Fiscal Year. In some of the Adjudications that were terminated under section 13.14 of the *Construction Act*, ODACC also received fees.

The fees for Adjudications that remained open at the end of the 2022 Fiscal Year will be reported during the next fiscal year.

#### **Adjudication Fee**

The Adjudication Fee is the fee paid by the parties for the Adjudication. The Adjudication Fee may be agreed upon among the parties and the Adjudicator. If the parties and the Adjudicator cannot agree on the Adjudication Fee, ODACC will set the Adjudication Fee, on the Adjudicator's request, pursuant to subsection 13.10(2)(b) of the *Construction Act* and in accordance with the Schedule of Fees.

During the 2022 Fiscal Year, ODACC received \$399,330 (plus HST) in Adjudication Fees. ODACC retains a portion of the Adjudication Fee and pays the Adjudicator the remaining amount, as explained below under the heading Administrative Fee.

## STATISTICS

### **Adjudication Referral Fee**

The Adjudication Referral Fee is the fee paid by the Claimant to commence the Adjudication process. The Adjudication Referral Fee is:

\$0 where the amount claimed in the Notice of Adjudication is less than \$50,000; or  
\$500 (plus HST), where the amount claimed in the Notice of Adjudication is equal to or over \$50,000.

During the 2022 Fiscal Year, ODACC received \$21,000 (plus HST) in Adjudication Referral Fees.

### **Certification Fee**

Pursuant to subsections. 22(1)(b) and 22(3)(b) of *Ontario Regulation 306/18*, ODACC certifies Determinations. The fee charged by ODACC for the certification (the “CertificationFee”) will be as follows:

\$0 where the amount claimed in the Notice of Adjudication is less than \$50,000; and \$100 (plus HST), where the amount claimed in the Notice of Adjudication is equal to or over \$50,000.

The parties to the Adjudication will split the cost of the Certification Fee unless the Adjudicator orders otherwise.

During the 2022 Fiscal Year, ODACC received \$3,200 in Certification Fees.

## STATISTICS

Table 10 lists the amounts received by ODACC related to Adjudications.

TABLE 10: AMOUNTS RECEIVED BY ODACC RELATED TO ADJUDICATIONS	
TYPE OF FEE	AMOUNT RECEIVED BY ODACC DURING 2022 FISCAL YEAR
Adjudication Fee*	\$399,330 (plus HST)
Referral Fee	\$21,000 (plus HST)
Certification Fee	\$3,200 (plus HST)
<b>Total</b>	<b>\$423,530 (plus HST)</b>

*\*The Adjudication Fee is payable by ODACC to the Adjudicator. ODACC retains an Administrative Fee, as explained at <https://odacc.ca/en/adjudicators/fees/>*

### Amounts Related to Training of Adjudicators

The Schedule of Fees, as approved by the Attorney General of Ontario on September 13, 2019, lists the fees that are payable by Certified ODACC Adjudicators to ODACC. The Schedule of Fees is available at <https://odacc.ca/en/adjudicators/fees/>.

#### Training Fee

According to the Schedule of Fees, individuals who participate in the *Construction Adjudication and ODACC Orientation Program* offered by the Stitt FeldHandy Group must pay a training fee, as follows:

A fee of \$995 plus HST will be payable to ODACC by participants and Adjudicator applicants for the Program.

During the 2022 Fiscal Year, ODACC received \$18,905 (plus HST) in training fees.



## STATISTICS

### **Qualification Examination Fee**

The Schedule of Fees states:

A fee of \$250 plus HST is payable to ODACC by Adjudicator applicants who complete the *Construction Adjudication and ODACC Orientation Program* and wish to complete the application process to receive a Certificate to adjudicate.

During the 2022 Fiscal Year, ODACC received seven applications from Adjudicator applicants, and ODACC received \$1,750 (plus HST) in qualification examination fees.

### **Continuing Education Training Program Fee**

Certified ODACC Adjudicators are required to complete continuing education training programs yearly. According to the Schedule of Fees:

A fee of \$200 plus HST will be payable by each Adjudicator to ODACC for an online “refresher” continuing education training program each year. The refresher program must be completed every year by certified ODACC Adjudicators. \*

\*Certified ODACC Adjudicators who did not adjudicate an ODACC case paid a fee of \$100 (plus HST) for the continuing education training, rather than the \$200 (plus HST) paid by those who adjudicated at least one case.

During the 2022 Fiscal Year, ODACC received \$8,900 (plus HST) in continuing education training program fees.

Table 11 summarizes the amounts that were received by ODACC for training and qualifying Adjudicators.

## STATISTICS

**TABLE 11: AMOUNTS RECEIVED BY ODACC FOR TRAINING AND QUALIFYING ADJUDICATORS**

TYPE OF FEE	AMOUNT RECEIVED BY THE STITT FELD HANDY GROUP DURING 2022 FISCAL YEAR
Training Fees	\$18,905 (plus HST)
Qualification Examination Fees	\$1,750 (plus HST)
Continuing Training Program Fees	\$8,900 (plus HST)
<b>Total</b>	<b>\$29,555 (plus HST)</b>

### (H) THE TOTAL AMOUNT OF FEES PAID DURING THE FISCAL YEAR TO ADJUDICATORS.

#### Administrative Fee

According to the Schedule of Fees:

A fee is payable by an Adjudicator to ODACC for each Adjudication (the “Administrative Fee”). The Administrative Fee is based on the Adjudication Fee.

- Where the Adjudication Fee is \$3,000 or less (not including HST), the Administrative Fee will be fifty percent of the amount paid by the parties;
- Where the Adjudication Fee is over \$3,000 (not including HST), the Administrative Fee will be forty percent of the amount paid by the parties; and
- Where the parties agree to terminate an Adjudication under s. 13.14 of the *Construction Act*, the Administrative Fee is payable by the Adjudicator to ODACC with respect to the Adjudication Fee paid by the parties.

During the 2022 Fiscal Year, ODACC received \$399,330 (plus HST) in Adjudication Fees. ODACC kept an Administrative Fee of \$167,904.49 (plus HST) and ODACC paid Adjudicators \$231,395.50 (plus HST).



## 01 step

Construction related **DISPUTE** arises (s. 13.5(1) of the Act).



## 02 step

The Claimant completes a **NOTICE OF ADJUDICATION** on ODACC's Custom System.



## 03 step

The Claimant provides the **Notice of Adjudication** to the Respondent and ODACC (s. 13.7(1) of the Act and s. 16 of the Regulations).



## 04 step

The Respondent completes a **RESPONSE TO NOTICE OF ADJUDICATION** on ODACC's Custom System.



## 05 step

The Parties agree on an **ADJUDICATOR** or they ask ODACC to appoint an Adjudicator (s. 13.9(2) of the Act). If four days have passed since the Notice of Adjudication was provided to the Respondent, the Claimant shall request ODACC to appoint an Adjudicator (s. 13.9(4) of the Act).



## 06 step

The Adjudicator determines the **ADJUDICATION PROCESS** (s. 13.12(4) of the Act).



## 07 step

The Parties and the Adjudicator negotiate **FEES** or ODACC sets the fees (s. 13.10(2) of the Act).



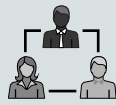
## 08 step

The Claimant submits its **DOCUMENTS**, on ODACC's Custom System, no later than five days after an Adjudicator agrees or is appointed to conduct the adjudication (s. 13.11 of the Act).



## 09 step

The Respondent submits its **DOCUMENTS**, on ODACC's Custom System, as per the process set by the Adjudicator (s. 17.(3) of the Regulations).



## 10 step

The Adjudicator may conduct a site visit, an oral hearing and may retain the assistance of an expert (s. 13.12(1) of the Act).



## 11 step

The Adjudicator issues a **DETERMINATION** within thirty days from the day the Claimant submits its documents (s. 13.13(1) of the Act).



## 12 step

A **CERTIFIED** copy of the Determination is provided to the Parties within seven days following the making of the Determination (s. 22.1(b) of the Regulations).



## 13 step

**PAYMENTS** ordered are due within ten days after the Determination has been communicated to the parties (s. 13.19(2) of the Act). If an amount payable to a contractor or subcontractor under a determination is not paid by the party when it is due the contractor or subcontractor may suspend further work under the contract or subcontract until the party pays the required amounts (s. 13.19(5) of the Act)



## 14 step

The Certified Determination can be **ENFORCED** as if it were an order of the Court (s. 13.20(1) of the Act).

# ODACC

Ontario Dispute Adjudication for Construction Contracts

180 Duncan Mill Road, 4<sup>th</sup> Floor

Toronto, ON

M3B 1Z6

Tel: 1-888-221-3721 | Fax: 1-877-862-8825

Email: [authority@odacc.ca](mailto:authority@odacc.ca)

[www.odacc.ca](http://www.odacc.ca)