

ODACC

Ontario Dispute Adjudication for Construction Contracts

2021 Annual Report



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MESSAGE FROM THE PROJECT MANAGER

Message from the Project Manager

Over the last year, Ontario Dispute Adjudication for Construction Contracts (“ODACC”) has seen adjudication grow in the Province of Ontario. As you will see in the coming pages, adjudication allows parties to a construction-related dispute to resolve their dispute in a cost-effective, streamlined and timely manner so that construction projects can continue through to completion without increased delay and related costs.



I am pleased to provide ODACC’s second Annual Report on its operation for the fiscal year August 1, 2020, to July 31, 2021 (the “2021 Fiscal Year”).

ODACC was named the Authorized Nominating Authority by the Ministry of the Attorney General on July 18, 2019. As the Authorized Nominating Authority for the Province of Ontario, 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*”).

During the 2021 Fiscal Year, ODACC experienced an increase in the number of individuals, businesses, and government entities using adjudication to resolve their construction-related disputes. ODACC also witnessed parties return to adjudication on more than one construction-related dispute. The prompt payment and adjudication provisions of the *Construction Act* came into force on October 1, 2019, and as more and more individuals and businesses learned about adjudication as a means of resolving disputes and the benefits it brings, more people will likely use adjudication to resolve their disputes.

During the 2021 Fiscal Year, fifty adjudications were commenced at ODACC and thirty-four Determinations were rendered. Eight adjudications remained open as of the end of the 2021 Fiscal Year. Other adjudications were terminated on the consent of the parties, mostly as a result of the parties settling their dispute. All of the adjudications were administered using the ODACC state-of-the-art custom system.

MESSAGE FROM THE PROJECT MANAGER

The Construction Adjudication and ODACC Orientation Program operated throughout the 2021 Fiscal Year. This program is intended for individuals seeking to become Certified ODACC Adjudicators as well as parties and representatives seeking to learn more about adjudication. During the 2021 Fiscal Year, Certified ODACC Adjudicators participated in the first Continuing Education Training Program. All training was conducted by the Stitt Feld Handy Group.

ODACC Certified Adjudicators remain committed to providing expedited and cost-effective adjudications to minimize disruptions and increased costs to construction projects. The Certified ODACC Adjudicators come from a variety of backgrounds and have a variety of experiences within the construction industry. They are committed to having a process that balances proportionality, procedural fairness, and resolving disputes in a timely manner. ODACC is committed to assisting parties, representatives, and the construction industry in resolving their disputes through adjudication.

On behalf of ODACC, I would like to thank the members of the construction industry including the numerous construction associations and industry stakeholders who invited ODACC to participate in speaking events to educate and familiarize the industry about adjudication. I thank you for your support and confidence in ODACC and look forward to continuing to work with you in the future.

ODACC is optimistic about the future of adjudication in the construction industry as an efficient, cost-effective, and expeditious dispute resolution process. To learn more about the adjudication process, please visit ODACC's website at www.odacc.ca.



Elise Teitler
Project Manager, ODACC

MESSAGE FROM THE STITT FELD HANDY GROUP

Message from the Stitt Feld Handy Group

The Stitt Feld Handy Group is pleased to have designed and delivered the Construction Adjudication and ODACC Orientation Program on behalf of ODACC during the 2021 Fiscal Year. This program is designed to:

- Provide an overview of the amendments to the *Construction Act* related to prompt payment and adjudication;
- Familiarize course attendees with the required skills to be a Certified ODACC Adjudicator and the stages of the adjudication process; and
- Allow various members of the construction industry to share ideas about the adjudication process in the province of Ontario and how best to use it in the resolution of construction-related disputes.



Elinor Whitmore



Jason Stitt

The course attendees came from a variety of backgrounds in various sectors of the construction industry with expertise in a wide array of areas. There were a number of participants from other provinces, territories, and other countries. The participants learned about the unique role of a Certified ODACC Adjudicator, the skills required to be a successful Adjudicator, and the ODACC custom online system. Some of the course attendees applied to become Certified ODACC Adjudicators. The diversity of backgrounds coupled with the various areas of expertise of the course attendees contributed to the conversations being informative and engaging.

The Stitt Feld Handy Group is also pleased to have designed and delivered the Continuing Education Training Program on behalf of ODACC. This program is designed and delivered for Certified ODACC Adjudicators who are required to complete continuing training programs yearly.

MESSAGE FROM THE STITT FELD HANDY GROUP

The Continuing Education Training Program covers a number of issues including updates about how adjudications have progressed during the year, common issues Certified ODACC Adjudicators have faced, and how best to utilize the ODACC custom system throughout the adjudication process. There were also discussions of various strategies that Certified ODACC Adjudicators might want to use to set and manage the process for adjudications.

The Stitt Feld Handy Group looks forward to continuing to support the Ontario construction industry through the provision of the Construction Adjudication and Orientation Program and the Continuing Education Training Program for Certified ODACC Adjudicators.



Elinor Whitmore
Vice President,
Stitt Feld Handy Group



Jason Stitt
ADR Instructor and Mediator,
Stitt Feld Handy Group

2021 Annual Report

ODACC is pleased to provide this report on the second year of its operation for the fiscal year August 1, 2020, to July 31, 2021 (the “2021 Fiscal Year”).



On July 18, 2019, ODACC was named the Authorized Nominating Authority. (the “ANA”) 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.

ABOUT ODACC

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.

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

ABOUT ODACC

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.

BENEFITS OF ADJUDICATION

Benefits of Adjudication

Adjudication under the *Construction Act* is designed to help workers and businesses resolve construction-related disputes in a cost-effective and timely manner.



Adjudication refers to a process of decision-making that involves an independent third-party reviewing evidence from the parties and making a binding decision by rendering a “Determination”. The individual or organization wishing to refer a dispute to adjudication (the “Claimant”) and the individual or organization from whom money is alleged to be owing (the “Respondent”) present their dispute to the independent third party, known as the Adjudicator. The Adjudicator will render a Determination within thirty days of the Claimant submitting its supporting documents. 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.

Some of the benefits of adjudication are:

- Adjudication is available as of right. A party to a construction dispute can commence an adjudication without the other party’s consent;
- Adjudication is a quick process. After an Adjudicator receives the Claimant’s supporting documents, the Adjudicator must render a Determination within 30 days (unless the parties mutually agree to extend this date);
- The adjudication process is set by the Adjudicator, though the parties may suggest a process to the Adjudicator;
- Adjudications are less expensive than litigation and arbitration. The adjudication fees are negotiated between 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

BENEFITS OF ADJUDICATION

information on fees, please refer to the Schedule of Fees, available at <https://odacc.ca/en/claimants/fees/>;

- Determinations are binding until a decision is made in a subsequent proceeding. Either party can commence a proceeding in court or through arbitration. The Determination is binding on the parties until a final decision is made in the subsequent proceeding.

ODACC CUSTOM SYSTEM

ODACC Custom System

ODACC 's state-of-the-art custom computer system (the "ODACC Custom System") facilitates and streamlines the adjudication process.



The ODACC Custom System allows parties, representatives, and Adjudicators to work online from the initial filing of the Notice of Adjudication to the rendering of a Determination. ODACC provides administrative support to assist parties and representatives throughout. ODACC also provides step-by-step guides and videos on ODACC's website (www.odacc.ca) to assist and demonstrate to parties how the ODACC Custom System works.

Some of the 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) to create an account as a party or representative;
- Give other individuals (i.e., project managers, contract managers, clerks, or assistants) access to the adjudication and documents filed on ODACC's Custom System; and
- Receive email notifications from the ODACC Custom System each time a step or action is taken.

NOTICE OF ADJUDICATION AND RESPONSE TO NOTICE OF ADJUDICATION

Parties and 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
- Send the Forms to the parties, the Adjudicator, and ODACC electronically.

ODACC CUSTOM SYSTEM

SELECTION OF THE ADJUDICATOR

Parties and representatives can:

- Propose an Adjudicator from ODACC's Adjudicator Registry and can 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 an agreement on the selection of an Adjudicator cannot be reached between the parties.

SELECTION OF ADJUDICATION PROCESS

Parties and representatives can:

- Recommend to an Adjudicator a type of process for adjudication. They may recommend one of the 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.

FEES, RETAINERS, AND PAYMENTS

Parties and representatives can:

- Negotiate the adjudication fee with the Adjudicator and view the adjudication fee and any other agreed-upon costs or fees;
- View the amount of the retainer requested by the Adjudicator and paid by each party to cover the expected adjudication fees;
- View and download the adjudication fee retainer invoices and pay the retainer directly on the ODACC Custom System; and
- View the parties' accounts, detailing payments and refunds.

ODACC CUSTOM SYSTEM

PARTIES' SUPPORTING DOCUMENTS

Parties and representatives can:

- 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 on ODACC's Custom System.

MESSAGES

Parties and representatives can:

- Communicate to all parties, the Adjudicator, and ODACC by using the Messages page so that all parties are privy to the communications; and
- Receive email notifications from the ODACC Custom System each time a message is sent by one of the parties or the Adjudicator.

EXTENDING THE DETERMINATION DATE

Parties and representatives can:

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

TERMINATION REQUESTS

Parties and representatives can:

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

ODACC CUSTOM SYSTEM

DETERMINATIONS RENDERED BY THE ADJUDICATOR

Parties and representatives can:

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

ADJUDICATOR TRAINING AND CONTINUING EDUCATION TRAINING PROGRAMS

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 Adjudicators. ODACC developed this program in partnership with the Stitt Feld Handy Group. The training program is called *Construction Adjudication and ODACC Orientation Program* (The “Program”).



The Program is designed for people interested in becoming a Certified ODACC Adjudicator (individuals who hold certificates of qualification to adjudicate) and for people who wish to learn more about adjudication and the adjudication process.

There is an online and in-person (or live on the Zoom videoconference platform (“Zoom”)) component to the Program. The online component is completed individually and usually takes between two to six hours to complete. The in-person (or Zoom) component takes place over two full days. To learn more about the Program, please visit <https://odacc.ca/en/adjudicators/certification-process/>

During the 2021 Fiscal Year, the Stitt Feld Handy Group offered the Program on three occasions. The in-person Program was offered live and online, via Zoom. The total number of participants in the Program was forty-one.

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 a “refresher” program for Certified ODACC Adjudicators. The Continuing Education Training Program takes place live and online via Zoom for half a day. ODACC also developed this program in partnership with the Stitt Feld Handy Group.

During the 2021 Fiscal Year, the Continuing Education Training Program was offered by the Stitt Feld Handy Group on two occasions. There was a total of sixty-seven participants in the two Continuing Education Training Programs.

CERTIFIED ODACC ADJUDICATORS

Certified ODACC Adjudicators

Upon completing the Program offered by the Stitt Feld Handy Group, Adjudicator applicants can apply to ODACC for Adjudicator certification to become a Certified ODACC Adjudicator by submitting an application.

As part of the application, Adjudicator applicants are required to answer questions, draft sample Determinations and prepare a short video (among other things). ODACC assesses the responses and determines whether the Adjudicator applicant is qualified to adjudicate.

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 ten years of relevant working experience in the construction industry.

Fifteen individuals applied to become Certified ODACC Adjudicators during the 2021 Fiscal Year. ODACC did not certify any additional 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

ENGINEERS
PROJECT MANAGERS
ARCHITECTS
LAWYERS
ACCOUNTANTS
QUANTITY SURVEYORS
ARBITRATORS
MEDIATORS

CERTIFIED ODACC ADJUDICATORS

PROFESSIONAL BACKGROUNDS OF CERTIFIED ODACC ADJUDICATORS

Professions

Certified ODACC Adjudicators include engineers, project managers, architects, lawyers, accountants, quantity surveyors, arbitrators and mediators. The various professions are listed below in Table 1.

TABLE 1: CERTIFIED ODACC ADJUDICATORS' PROFESSIONS

PROFESSION	NUMBER OF CERTIFIED ADJUDICATORS*
Engineer	26
Project Manager	28
Architect	2
Lawyer	20
Accountant	1
Quantity Surveyor	10
Arbitrator	8
Mediator	1

**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 adjudicators during the 2021 Fiscal Year that ODACC has for each hourly rate.

TABLE 2: CERTIFIED ODACC ADJUDICATORS' HOURLY RATES

HOURLY RATE	NUMBER OF CERTIFIED ADJUDICATORS*
\$250	20
\$400	22
\$500	21
\$750	1

CERTIFIED ODACC ADJUDICATORS

Flat Fee Rates

Ninety-five percent of the 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	50
\$1,000	54
\$2,000	58
\$3,000	58

**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 across Ontario. ODACC has Adjudicators who are willing to travel across Ontario 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 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 GEOGRAPHICAL AREA WITHOUT CHARGING TRAVEL FEES OR DISBURSEMENTS
Algoma	10
Brant	27
Bruce	22
Chatham-Kent	19
Cochrane	11
Dufferin	23
Durham	34
Elgin	19
Essex	16
Frontenac	18
Grey	22
Haldimand	25
Haliburton	19
Halton	37
Hamilton	38
Hastings	21
Huron	22
Kawartha Lakes	24
Kenora	8
Lambton	17
Lanark	19
Leeds and Grenville	19
Lennox and Addington	20
Manitoulin	9
Middlesex	18
Muskoka	24
Niagara	30
Nipissing	11

CERTIFIED ODACC ADJUDICATORS

TABLE 4 CONTINUED: 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 GEOGRAPHICAL AREA WITHOUT CHARGING TRAVEL FEES OR DISBURSEMENTS
Norfolk	21
Northumberland	21
Ottawa	23
Oxford	22
Parry Sound	17
Peel	41
Perth	22
Peterborough	28
Prescott and Russell	17
Prince Edward	21
Rainy River	8
Renfrew	16
Simcoe	28
Stormont, Dundas, and Glengarry	16
Sudbury	12
Thunder Bay	7
Timiskaming	7
Toronto	49
Waterloo	31
Wellington	27
York	45

**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 2021 Fiscal Year, fifty adjudications were commenced at ODACC. Of the fifty adjudications, twenty-nine adjudications resulted in the rendering of a Determination during the 2021 Fiscal Year. Five adjudications were commenced at the end of the fiscal year ending July 31, 2020 (the “2020 Fiscal Year”) which resulted in the rendering of five Determinations in the 2021 fiscal Year. In total, thirty-four adjudications resulted in Determinations being rendered in the 2021 Fiscal Year. Eight adjudications remained open as of the end of the 2021 Fiscal Year. Other adjudications were terminated on consent by the parties.

The thirty-four adjudications that were completed in the 2021 Fiscal Year and resulted in Determinations being rendered were completed in the following geographical areas and related to the following industry sectors.

STATISTICS

TABLE 5: NUMBER OF ADJUDICATIONS COMPLETED IN THE 2021 FISCAL YEAR, BY GEOGRAPHICAL AREA AND INDUSTRY SECTOR

GEOGRAPHICAL AREA	NUMBER OF ADJUDICATIONS COMPLETED DURING THE 2021 FISCAL YEAR	INDUSTRY SECTOR
Algoma	2	Commercial, Transportation and Infrastructure
Brant	1	Industrial
Halton	2	Residential, Transportation and Infrastructure
Hamilton	3	Residential, Public Buildings, Transportation and Infrastructure
Kenora	1	Transportation and Infrastructure
Middlesex	4	Transportation and Infrastructure
Ottawa	2	Commercial, Public Buildings
Peel	1	Residential
Rainy River	1	Transportation and Infrastructure
Stormont Dundas & Glengarry	1	Commercial
Toronto	11	5 Residential, 1 Commercial, 5 Transportation and Infrastructure
Waterloo	2	Residential
York	3	Residential, Commercial, Public Buildings

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

The following is a breakdown of the thirty-four adjudications that were completed during the 2021 Fiscal Year as they relate to the matters listed under section 13.5 of the *Construction Act*:

STATISTICS

- (i) Thirteen adjudications dealt with “The valuation of services or materials provided under the contract”;
- (ii) Fourteen adjudications dealt with “Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.”;
- (iii) Five adjudications dealt with “Disputes that are the subject of a notice of non-payment under Part I.1”; and
- (iv) Two 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.

TABLE 6: NUMBER OF ADJUDICATIONS COMPLETED DURING THE 2021 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 <i>CONSTRUCTION ACT</i>	NUMBER OF ADJUDICATIONS COMPLETED DURING THE 2021 FISCAL YEAR
1. The valuation of services or materials provided under the contract.	13
2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.	14
3. Disputes that are the subject of a notice of non-payment under Part I.1.	5
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.	2
Total	34

STATISTICS

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

In the 2021 Fiscal Year, fifty notices of adjudication were filed. The total amount claimed for the fifty notices was \$8,709,658.98 The average amount claimed was \$174,193.18.

Table 7 lists the total and average amounts claimed during the 2021 Fiscal Year, broken down by industry sector.

TABLE 7: TOTAL AND AVERAGE AMOUNTS CLAIMED DURING THE 2021 FISCAL YEAR, BROKEN DOWN BY INDUSTRY SECTOR

INDUSTRY SECTOR	NUMBER OF NOTICES OF ADJUDICATION GIVEN DURING THE 2021 FISCAL YEAR	TOTAL AMOUNT CLAIMED	AVERAGE AMOUNT CLAIMED
Residential	19	\$508,799.49	\$26,778.92
Commercial	10	\$996,466.43	\$99,646.64
Industrial	3	\$3,738,322.23	\$1,246,107.41
Public Buildings	3	\$97,895.35	\$32,631.78
Transportation and Infrastructure	15	\$3,368,175.48	\$224,545.03
All Sectors	50	\$8,709,658.98	\$174,193.18

(D) THE TOTAL AMOUNT AND THE AVERAGE AMOUNT REQUIRED TO BE PAID UNDER DETERMINATIONS MADE DURING THE 2021 FISCAL YEAR;

During the 2021 Fiscal Year, fifty adjudications were commenced at ODACC. Of the fifty adjudications, twenty-nine adjudications resulted in the rendering of a Determination during the 2021 Fiscal Year. Five adjudications were commenced at the end of the 2020 Fiscal Year which resulted in the rendering of five Determinations in the 2021 Fiscal Year.

STATISTICS

In total thirty-four adjudications resulted in Determinations being rendered in the 2021 Fiscal Year.

The total amount required to be paid pursuant to the thirty-four Determinations is \$908,122.83. The average amount required to be paid under the thirty-four Determinations is \$26,709.50.

Table 8 lists the total and average amounts required to be paid pursuant to the Determinations during the 2021 Fiscal Year, broken down by industry sector:

TABLE 8: TOTAL AND AVERAGE AMOUNTS REQUIRED TO BE PAID UNDER DETERMINATIONS MADE DURING THE 2021 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
Residential	11	\$105,416.40	\$9,583.31
Commercial	5	\$148,620.47	\$29,724.09
Industrial	1	\$0	\$0
Public Buildings	3	\$41,782.03	\$13,927.34
Transportation and Infrastructure	14	\$612,303.93	\$43,736.00
All Sectors	34	\$908,122.83	\$26,709.50

(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-nine percent of the Determinations (or twenty-seven Determinations), that were rendered during the 2021 Fiscal Year were made within the timeline specified in subsection 13.13(1) of the *Construction Act*.

STATISTICS

Subsection 13.13(1) of the *Construction Act* states:

Determination

13.13 (1) Subject to subsection (2), an adjudicator shall make a determination of the matter that is the subject of an adjudication no later than 30 days after receiving the documents required by section 13.11.

Twenty-one percent of the Determinations (or seven Determinations), that were rendered during the 2021 Fiscal Year, the deadline for an Adjudicator's Determination as set out in subsection of 13.13(1) of the *Construction Act* was extended before its expiry and after the provision of documents to the Adjudicator, in accordance with subsection 13.13(2) of the *Construction Act*, on the consent of all parties to the adjudication.

Subsection 13.13(2) of the *Construction Act* states:

13.13 (2) The deadline for an adjudicator's determination may be extended, at any time before its expiry and after the provision of documents to the adjudicator under section 13.11,

- (a) on the adjudicator's request, with the written consent of the parties to the adjudication, for a period of no more than 14 days; or
- (b) on the written agreement of the parties to the adjudication, subject to the adjudicator's consent, for the period specified in the agreement. 2017, c. 24, s. 11 (1).

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

Twelve of the fifty adjudications that were commenced during the 2021 Fiscal Year were terminated under section 13.14 of the *Construction Act*.

Section 13.14 states:

STATISTICS

Termination of adjudication

13.14 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 twelve adjudications that were terminated, an Adjudicator was appointed in six 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
8	The parties settled the dispute.
3	The date of the construction contract or procurement process that is the subject of the construction contract pre-dates October 1, 2019
1	Other

(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 twenty nine of the fifty adjudications that were commenced during the 2021 Fiscal Year, Determinations were rendered and ODACC received fees. These cases were subsequently

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closed during the 2021 Fiscal Year. ODACC also received fees for five adjudications that were commenced at the end of the 2020 Fiscal Year and where Determinations were rendered during the 2021 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 2021 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 2021 Fiscal Year, ODACC received \$223,335 (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.

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 2021 Fiscal Year, ODACC received \$10,500 (plus HST) in Adjudication Referral Fees.

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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 “Certification Fee”) 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 2021 Fiscal Year, ODACC received \$1500 in Certification Fees.

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 2021 FISCAL YEAR
Adjudication Fee*	\$223,335 (plus HST)
Referral Fee	\$10,500 (plus HST)
Certification Fee	\$1,500 (plus HST)
Total	\$235,335 (plus HST)

*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/>

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Training Fee

According to the Schedule of Fees, individuals who participate in the Construction Adjudication and ODACC Orientation Program (the “Program”) offered by the Stitt Feld Handy 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 2021 Fiscal Year, ODACC received \$40,995CDN (plus GST/HST) in training fees.

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 (the “Program”) and wish to complete the application process to receive a Certificate to adjudicate.

During the 2021 Fiscal Year, ODACC received fifteen applications from Adjudicator applicants, and ODACC received \$3750 (plus GST/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 Adjudicators.*

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

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During the 2021 Fiscal Year, ODACC received \$7,600 (plus HST) in continuing education training program fees.

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

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

TYPE OF FEE	AMOUNT RECEIVED BY ODACC DURING 2021 FISCAL YEAR
Training Fees	\$40,995 (plus GST/HST)
Qualification Examination Fees	\$3,750 (plus GST/HST)
Continuing Training Program Fees	\$7,600 (plus GST/HST)
Total	\$52,345 (plus GST/HST)

(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.

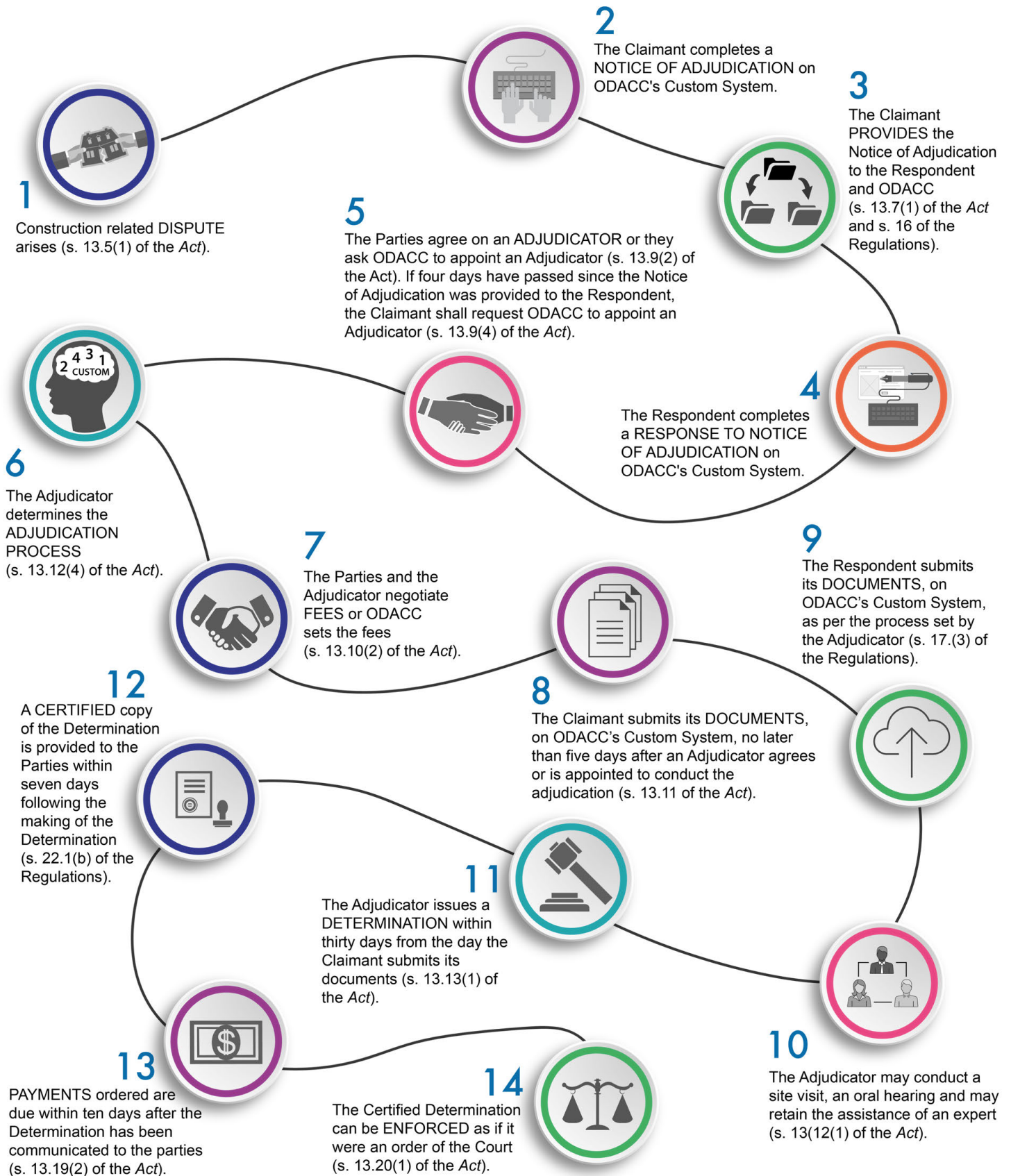
- Where the Adjudication Fee is \$3,000 or less (not including HST), the Administrative Fee will be fifty percent of the amount paid by the Parties;
- Where the Adjudication Fee is over \$3,000 (not including HST), the Administrative Fee will be forty percent of the amount paid by the Parties;
- and
- 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.

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During the 2021 Fiscal Year, ODACC received \$223,335 (plus HST) in Adjudication Fees. ODACC kept an Administrative Fee of \$92,309 (plus HST) and ODACC paid Adjudicators \$131,026 (plus HST).

ODACC ADJUDICATION PROCESS

Construction Act, R.S.O. 1990 c. C.30 (the "Act") and Ontario Regulation 306/18 (the "Regulations")



CONTACT INFORMATION

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