



ONTARIO
DISPUTE ADJUDICATION
FOR
CONSTRUCTION CONTRACTS



2023 ANNUAL REPORT

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MESSAGE FROM THE DIRECTOR

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.30 (the “Construction Act”) and Ontario Regulation 306/18 (the “Regulations”).



In its fourth year of welcoming Adjudication for construction disputes to the Province of Ontario as an alternative dispute resolution process, ODACC is pleased to report that it has seen the number of Adjudications initiated in its 2023 Fiscal Year more than double from the 2022 Fiscal Year. 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. ODACC continues to see parties return to Adjudication to resolve new disputes once they have experienced it and appreciate its benefits.

During the 2023 Fiscal Year, 269 Adjudications were commenced at ODACC and 161 Determinations were rendered. Thirty-one Adjudications remained open as of the end of the 2023 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 custom on-line computer system.

Adjudication allows businesses at both the contractor level and subcontractor level to continue to provide services to construction projects through to completion without significant delay and costs. Adjudication benefits all disputants as it allows them to resolve their disputes in a condensed time frame.

ODACC, along with other members of the construction community continue to work together to provide information and education about the Adjudication process and how to use it to resolve disputes. ODACC appreciates the collective involvement of the construction community to continually provide this information and education to interested business, individuals and associations.

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 2023 Fiscal Year, Certified ODACC

Adjudicators participated in the Continuing Education Training Program which provided ongoing required educational training during the year. All training was conducted by the Stitt Feld Handy Group.

ODACC would like to thank the various construction associations in Ontario, industry stakeholders and the members of the construction industry at large who continue to involve ODACC in educating their members and assist in familiarizing the industry about Adjudication. We look forward to continuing to work with you to promote Adjudication in Ontario.

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

ODACC'S 2023 Fiscal Year has demonstrated that Adjudication is growing at a fast pace in Ontario and has proven to be a viable dispute resolution process. In providing this service to the members of the construction industry in Ontario, ODACC remains committed to assisting the construction industry as well as parties, and representatives in resolving their disputes through Adjudication.

Thank you,

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

Elise Teitler
Director, ODACC

MESSAGE FROM THE STITT FELD HANDY GROUP

The Construction Adjudication and ODACC Orientation Program is a program offered to individuals seeking to become Certified ODACC Adjudicators as well as to parties or representatives interested in learning more about Construction Adjudication in Ontario. For the fourth year in a row, the Stitt Feld Handy Group delivered the program. The program provides an overview of the provisions of the Ontario *Construction Act* and the *Regulations* relating to Prompt Payment and Adjudication. The program also offers information about the ODACC Adjudication process and the role of an ODACC Adjudicator.

The Construction Adjudication and ODACC Orientation Program is comprised of an online component and a two-day live (online) workshop. During the live component of the program, workshop participants have an opportunity to learn about different components of the Adjudication process, the role of a Certified ODACC Adjudicator and the various issues that may arise during an Adjudication. The participants also have an opportunity to discuss and practice some of the important skills required to be successful at adjudicating disputes. The course also offers participants an introduction and overview of the ODACC custom online computer system and the system features available to the Adjudicators and parties participating in Adjudications.

The program participants include individuals involved in the construction industry in many different ways including Engineers, Lawyers, Project Managers, Quantity Surveyors to General Contractors, and Subcontractors and other professionals. 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.

During the 2023 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 for Certified ODACC Adjudicators as required training to maintain their certification as Adjudicators. The training is designed to help Adjudicators update their skills and discuss best practises for a construction Adjudicator. The forum also allows the Certified ODACC Adjudicators an opportunity to discuss strategies that Adjudicators might wish to use to set and manage the adjudication process and how to manage other issues Adjudicators have faced in their adjudications during the previous year.

The Stitt Feld Handy Group looks forward to continuing to support the construction industry by offering the Construction Adjudication and ODACC Orientation Program to potential Adjudicators and other interested parties as well as the Continuing Education Training Program for Certified ODACC Adjudicators. It has been a pleasure to work with so many members of the construction industry and with the ODACC team.



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

Elinor Whitmore
Vice President
Stitt Feld Handy Group



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

Jason Stitt
ADR Instructor and Mediator
Stitt Feld Handy Group

2023 ANNUAL REPORT

ODACC is the Authorized Nominating Authority (the “ANA”) under the Ontario *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#BK14>

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

Section 14.(1) of *Ontario Regulation 306/18* requires ODACC as the ANA 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 fourth year of its operation for the fiscal year August 1, 2022, to July 31, 2023 (the “2023 Fiscal Year”).

ODACC’S DUTIES AND POWERS

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

- (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:

- (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 administrative support services for Adjudications.



ADVANTAGES TO ADJUDICATION

Adjudication is designed to help workers, businesses and other entities resolve construction-related disputes in a timely and cost-effective manner.

Adjudication under the *Construction Act* is available to, businesses, individuals and other entities as of right. This means that 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.

An ODACC Certified Adjudicator, will review the evidence provided by the parties to the dispute. This evidence may include the initiating document known as the Notice of Adjudication, and the Response to Notice of Adjudication from the other party. It may also include the contract between the parties, and other documents or statements the parties submit to the Adjudicator. The Adjudicator is then required to 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 party such as 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 amount required to be paid under the Determination.

The Determination is binding on the parties unless and until a final decision is made in a subsequent court proceeding or through arbitration.

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 mutually agree on the Adjudication Fee, ODACC will set the Adjudication Fee based on the amount of money in dispute and pursuant to its Fee Schedule. For more information on the Adjudication Fee, and related fees please refer to the ODACC Fee Schedule available at: <https://odacc.ca/en/claimants/fees/>

Adjudication is a quick dispute resolution process. Adjudicators are required to render a Determination within 30 days after the Claimant submits its supporting documents, (unless the parties mutually agree to extend this date).

ODACC CUSTOM ONLINE COMPUTER SYSTEM

ODACC oversees and administers Adjudication through its custom online computer system (the “ODACC Custom System”). The ODACC Custom System streamlines the Adjudication process by allowing parties, representatives, and Adjudicators to work online through the system portal to communicate with one another, set the Adjudication process, file documents and supporting evidence and release the Determination to parties.

ODACC facilitates the Adjudications and provides administrative support to assist parties and representatives throughout the Adjudication process. ODACC also provides step-by-step guides at <https://odacc.ca/en/> to assist parties how the ODACC Custom System works.

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 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.

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 agree 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.

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

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 ADJUDICATOR

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. 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

In partnership with the Stitt Feld Handy Group, ODACC developed its training program known as *Construction Adjudication and ODACC Orientation Program* (the "Program").

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 2023 Fiscal Year, the Stitt Feld Handy Group offered the Program on one occasion. The total number of participants in the Program was twenty.

A continuing education training program for Certified ODACC Adjudicators is required for Adjudicators to take each year in order to renew their certification as a Certified ODACC Adjudicator. ODACC is also responsible for developing and overseeing this required refresher training program called the *Continuing Education Training Program*. 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 2023 Fiscal Year, the Stitt Feld Handy Group offered the *Continuing Education Training Program* on two occasions. There was a total number of 59 participants in the *Continuing Education Training Program*.

APPLYING TO BECOME A CERTIFIED ODACC ADJUDICATOR

Once individuals complete the Program, they are offered the opportunity to apply to ODACC to become a Certified ODACC Adjudicator. 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.

Under the *Construction Act*, ODACC is responsible for evaluating Adjudicator applicants. During the application process Adjudicator applicants are required to provide information about their experience in the construction industry, answer questions, draft a sample Determination and provide a short video answering some additional questions (among other requirements). Upon receipt of the completed applications ODACC assesses the applications and determines whether the Adjudicator applicants are qualified to adjudicate and receive certification.

During the 2023 Fiscal Year, five individuals applied to become Certified ODACC Adjudicators. ODACC certified one of the five Adjudicator applicants 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*.



**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	29
Architect	3
Lawyer	20
Accountant	1
Quantity Surveyor	10
Arbitrator	11
Mediator	4

**Some Adjudicators have more than one profession*

HOURLY RATES CHARGED

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 2023 Fiscal Year for each hourly rate.

TABLE 2: CERTIFIED ODACC ADJUDICATORS' HOURLY RATES

Hourly Rate	Number of Certified Adjudicators
\$250	18
\$400	23
\$500	19
\$750	2

FLAT FEE RATES CHARGED

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	46
\$1,000	50
\$2,000	54
\$3,000	57

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

LANGUAGES SPOKEN

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



GEOGRAPHICAL LOCATIONS

**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	19
Brant	33
Bruce	28
Chatham-Kent	25
Cochrane	17
Dufferin	32
Durham	39
Elgin	27
Essex	24
Frontenac	26
Grey	29
Haldimand	30
Haliburton	27
Halton	43
Hamilton	44
Hastings	26
Huron	29
Kawartha Lakes	34
Kenora	16
Lambton	25
Lanark	25
Leeds and Grenville	26
Lennox and Addington	26
Manitoulin	17
Middlesex	25
Muskoka	33
Niagara	37
Nipissing	20

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

Geographical Area	Number of Adjudicators Willing to Travel to the Geographical Area Without Charging Travel Fees or Disbursements
Norfolk	27
Northumberland	29
Ottawa	30
Oxford	29
Parry Sound	26
Peel	44
Perth	29
Peterborough	36
Prescott and Russell	22
Prince Edward	28
Rainy River	14
Renfrew	23
Simcoe	37
Stormont, Dundas, and Glengarry	26
Sudbury	20
Thunder Bay	13
Timiskaming	14
Toronto	51
Waterloo	39
Wellington	35
York	46

STATISTICS

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

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

During the 2023 Fiscal Year, 269 Adjudications were commenced at ODACC. Of the 269 Adjudications, 140 Adjudications resulted in the rendering of a Determination during the 2023 Fiscal Year. Thirty-six Adjudications that were commenced at the end of the fiscal year ending July 31, 2022 (the “2022 Fiscal Year”) resulted in the rendering of 21 Determinations in the 2023 Fiscal Year. Therefore, in total 161 Determinations were rendered in the 2023 Fiscal Year.

Thirty-one Adjudications remained open as of the end of the 2023 Fiscal Year. Other Adjudications were terminated on consent of the parties or were closed as a result of consolidation.

The 161 Adjudications that were completed in the 2023 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.



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

Geographical Area	Number of Adjudications Completed During the Fiscal Year	Industry Sector
Algoma	16	5 Commercial, 1 Industrial, 1 Residential, 9 Transportation and Infrastructure
Brant	1	Transportation and Infrastructure
Cochrane	1	Commercial
Durham	6	2 Commercial, 4 Residential
Essex	1	Transportation and Infrastructure
Haldimand	2	1 Commercial, 1 Transportation & Infrastructure
Halton	3	1 Commercial, 1 Public Buildings, 1 Transportation & Infrastructure
Hamilton	2	1 Residential, 1 Public Buildings
Hastings	3	2 Commercial, 1 Residential
Kawartha Lakes	2	2 Residential
Lambton	3	3 Transportation & Infrastructure
Lanark	3	1 Public Buildings, 2 Residential
Leeds and Grenville	2	1 Public Buildings, 1 Residential
Lennox and Addington	1	1 Residential
Middlesex	7	3 Commercial, 1 Residential, 3 Transportation & Infrastructure
Muskoka	1	Residential
Niagara	5	2 Commercial, 1 Public Buildings, 2 Residential
Nipissing	1	Residential
Norfolk	1	Residential

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

Geographical Area	Number of Adjudications Completed During the Fiscal Year	Industry Sector
Ottawa	12	7 Commercial, 2 Public Buildings, 3 Residential
Oxford	1	Commercial
Parry Sound	1	Residential
Peel	10	1 Commercial, 2 Residential, 7 Transportation & Infrastructure
Perth	2	1 Residential, 1 Transportation & Infrastructure
Peterborough	6	4 Commercial, 2 Residential
Prescott and Russell	1	Residential
Prince Edward	1	Residential
Simcoe	9	1 Commercial, 1 Residential, 7 Transportation & Infrastructure
Sudbury	3	1 Industrial, 1 Residential, 1 Transportation & Infrastructure
Timiskaming	4	2 Industrial, 2 Transportation & Infrastructure
Toronto	25	5 Commercial, 1 Industrial, 6 Public Buildings, 11 Residential, 2 Transportation & Infrastructure
Waterloo	10	6 Commercial, 1 Public Buildings, 3 Residential
Wellington	2	Commercial
York	13	3 Commercial, 2 Industrial, 7 Residential, 1 Transportation & Infrastructure

(B) ADJUDICATIONS COMPLETED DURING THE 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 161 Adjudications that were completed in the 2023 Fiscal Year and resulted in Determinations during the 2023 Fiscal Year as they relate to the matters listed under section 13.5 of the *Construction Act*:

- i. Sixty-eight Adjudications dealt with “The valuation of services or materials provided under the contract”;
- ii. Sixty-three Adjudications dealt with “Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.”;
- iii. Twenty Adjudications dealt with “Disputes that are the subject of a notice of non- payment under Part I.1”;
- iv. Three Adjudications dealt with “Payment of a holdback under section 26.1 or 26.2”;
- v. Four Adjudications dealt with “Non-payment of holdback under section 27.1”;
- vi. Three 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 of subsection 13.5(1) of the *Construction Act*. Table 6 below summarizes this information.

TABLE 6: NUMBER OF ADJUDICATIONS COMPLETED DURING THE 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 Fiscal Year
1. The valuation of services or materials provided under the contract.	68
2. Payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order.	63
3. Disputes that are the subject of a notice of non-payment under Part I.1.	20
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.	3
6. Non-payment of holdback under section 27.1.	4
7. Any other matter that the parties to the Adjudication agree to, or that may be prescribed.	3
TOTAL	161

(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 2023 Fiscal Year, the total amount claimed for the 269 Notices of Adjudication was \$68,870,376.04. The average amount claimed was \$256,023.70 and the median amount claimed was \$102,819.45.

Table 7 lists the total, average and median amounts claimed in the 269 Notices of Adjudication during the 2023 Fiscal Year, broken down by industry sector.

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

Industry Sector	Number of Notices of Adjudication Given During the Fiscal Year	Total Amount Claimed	Average Amount Claimed	Median Amount Claimed
Residential	91	\$20,002,076.26	\$219,803.04	\$60,000.00
Commercial	81	\$25,257,534.98	\$311,821.42	\$144,163.87
Industrial	11	\$6,598,733.27	\$ 599,884.84	\$155,375.00
Public Buildings	22	\$ 4,662,173.75	\$211,916.99	\$138,861.67
Transportation and Infrastructure	64	\$12,349,857.78	\$192,966.53	\$86,952.42
All Sectors	269	\$68,870,376.04	\$256,023.70	\$102,819.45

(D) THE TOTAL AMOUNT AND THE AVERAGE, AND MEDIAN AMOUNT REQUIRED TO BE PAID UNDER DETERMINATIONS MADE DURING THE FISCAL YEAR.

During the 2023 Fiscal Year, of the 269 Adjudications that were commenced, 161 Adjudications resulted in the rendering of a Determination during the 2023 Fiscal Year. This includes the 36 Adjudications that were commenced at the end of the 2022 Fiscal Year which resulted in the rendering of 21 Determinations in the 2023 Fiscal Year.

The total amount required to be paid pursuant to the 161 Determinations is \$24,381,989.90. The average amount required to be paid under the 161 Determinations is \$151,440.93. The median amount required to be paid under the 161 Determinations is \$8,242.42.

Table 8 lists the total, average and median amounts required to be paid pursuant to the 161 Determinations rendered during the 2023 Fiscal Year, broken down by industry sector.

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

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	54	\$11,543,723.49	\$213,772.66	\$9,834.20
Commercial	46	\$4,918,062.46	\$106,914.40	\$1,266.70
Industrial	7	\$3,027,245.75	\$432,463.68	\$65,412.88
Public Buildings	14	\$811,732.84	\$57,980.92	\$750.00
Transportation and Infrastructure	40	\$4,081,225.36	\$102,030.63	\$6,488.62
All Sectors	161	\$24,381,989.90	\$151,440.93	\$8,242.42

(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.

Sixty-five percent of the Determinations (or 105 Determinations) rendered during the 2023 Fiscal Year were made within the timeline specified in subsection 13.13(1) of the *Construction Act*.

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

Eighty of the 269 Adjudications that were commenced during the 2023 Fiscal Year were terminated under section 13.14 of the *Construction Act*.

Section 13.14 states:

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 80 Adjudications that were terminated, an Adjudicator was appointed in 36 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

Reason for Termination	Number of Adjudications that were Terminated
The Parties settled the dispute	40
The Parties agreed to resolve the dispute through other means	24
No jurisdiction to adjudicate the matter	3
Other	13

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

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

Amounts Related to Adjudications

In 161 of the 269 Adjudications that were commenced during the 2023 Fiscal Year, Determinations were rendered and ODACC received fees. These cases were subsequently closed during the 2023 Fiscal Year. ODACC also received fees in respect of 36 Adjudications that were commenced at the end of the 2022 Fiscal Year that resulted in 21 Determinations being rendered during the 2023 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 2023 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 Fee Schedule.

During the 2023 Fiscal Year, ODACC received \$1,304,982.50 (plus applicable taxes) 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 applicable taxes), where the amount claimed in the Notice of Adjudication is equal to or over \$50,000.

During the 2023 Fiscal Year, ODACC received \$81,000 (plus applicable taxes) 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 of the Determination (the “Certification Fee”) is as follows:

- \$0 where the amount claimed in the Notice of Adjudication is less than \$50,000; and
- \$100 (plus applicable taxes), 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 2023 Fiscal Year, ODACC received \$10,700 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 the Fiscal Year
Adjudication Fee*	\$1,304,982.50 (plus applicable taxes)
Referral Fee	\$81,000 (plus applicable taxes)
Certification Fee	\$10,700 (plus applicable taxes)
Total	\$1,396,682.50 (plus applicable taxes)

**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 Fee Schedule, 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 Fee Schedule is available at <https://odacc.ca/en/adjudicators/fees/>.

Training Fee

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

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

During the 2023 Fiscal Year, ODACC received \$19,900 (plus applicable taxes) in training fees.

Qualification Examination Fee

The Fee Schedule states:

- A fee of \$250 plus applicable taxes 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 2023 Fiscal Year, ODACC received five applications from Adjudicator applicants, and ODACC received \$1,250 (plus applicable taxes) in qualification examination fees.

Continuing Education Training Program Fee

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

- A fee of \$200 plus applicable taxes 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 applicable taxes) for the continuing education training, rather than the \$200 (plus applicable taxes) paid by those who adjudicated at least one case.

During the 2023 Fiscal Year, ODACC received \$10,000 (plus applicable taxes) 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 the Stitt Feld Handy Group During Fiscal Year
Training Fees	\$19,900 (plus applicable taxes)
Qualification Examination Fees	\$1,250 (plus applicable taxes)
Continuing Training Program Fees	\$10,000 (plus applicable taxes)
Total	\$31,050 (plus applicable taxes)



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

Administrative Fee

According to the Fee Schedule:

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 applicable taxes), the Administrative Fee will be fifty percent of the amount paid by the parties;
- Where the Adjudication Fee is over \$3,000 (not including applicable taxes), 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 2023 Fiscal Year, ODACC received \$1,304,982.50 (plus applicable taxes) in Adjudication Fees. ODACC kept an Administrative Fee of \$535,331.75 (plus applicable taxes) and ODACC paid Adjudicators \$769,650.75 (plus applicable taxes).

ODACC ADJUDICATION PROCESS

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



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

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