

# Adjudication Checklist

## Is Adjudication available?

1. A party to a contract or subcontract may only refer the following matters before an adjudicator:
  - a. The valuation of services or materials provided under the contract (including a written or proposed change order, whether approved or not) (19(a) of the *Regulations*)
  - b. Payment under the contract or subcontract (including a written or proposed change order, whether approved or not) (19(b) of the *Regulations*)
  - c. Disputes relating to a notice of non-payment under Part 3 of the *Act* (19(c) of the *Regulations*).
  - d. Payment or non-payment of an amount retained as a major lien fund or minor lien fund and owed to a party during or at the end of a contract or subcontract (19(d) of the *Regulations*)
  - e. Any other matter relating to the contract or subcontract that the parties refer to adjudication by agreement to (19(e) of the *Regulations*).

## Is Adjudication precluded?

2. Has a Party commenced an action in court with respect to a dispute?
  - a. Yes
    - i. Adjudication process is not available (33.4(1)). [Where adjudication and a court action commence on the same day then the adjudicator will discontinue the adjudication (33.4(3)).]
  - b. No
    - i. Adjudication process is available (33.4(1)).
      1. Has the notice of adjudication been given after the date the contract or subcontract is completed?
        - a. Yes
          - i. Adjudication is not available, unless the parties to the adjudication otherwise agree (33.4(2))
        - b. No
          - i. Adjudication is available (33.4(2))

### Has notice of Adjudication been properly given?

1. If the party referring the matter to adjudication given notice to the other side which includes the following criteria, then notice has been properly given (section 20(1) of the *Regulations*):
  - a. The names and address of the parties in dispute
  - b. The nature and a brief description of the dispute including how and when it arose
  - c. The name of the Nominating Authority who the party serving the notice intends to submit the notice
  - d. The name of the adjudicator requested to conduct the adjudication (if any).
  - e. A copy of the notice was given on the same day to the relevant Nominating Authority.

### Appointing an Adjudicator

1. Do the parties agree on an adjudicator?
  - a. Yes
    - i. The parties must inform the Nominating Authority within 4 calendar days after notice is given to the other party (22(1) of the *Regulations*).
  - b. No
    - i. The Nominating Authority must within 11 calendar days after notice is given appoint an adjudicator (22(3) of the *Regulations*).

### Which Adjudication Procedure should be followed?

1. Are there adjudication procedures set out in the contract or subcontract?
  - a. Yes
    - i. Do these adjudication procedures conflict with the procedures set out by the regulations or procedures established by the Nominating Authority or Minister?
      1. Yes
        - a. The procedures in the contract will not be followed and the procedures set forth in the regulations or as established by the Nominating Authority will take precedent (33.5(2)).
      2. No
        - a. Follow the procedures in the contract.

- b. No
  - i. Follow the procedures set forth by the Regulations or as established by the Nominating authority (33.5(1)).
- 2. Do the procedures set out by the regulations and the procedures established by the Nominating Authority conflict?
  - a. Yes
    - i. Follow the procedures set forth by the regulations (33.5(3)).
  - b. No
    - i. Follow the procedures (33.5(3))

#### **Is a hearing and determination of the matter by an adjudicator appropriate?**

- 1. Does the adjudicator have jurisdiction to hear the matter?
  - a. Yes
    - i. Does the Adjudicator have the opinion that Court would be a more appropriate forum?
      - 1. Yes
        - a. Refer the matter to Court (33.6(2))
      - 2. No
        - a. Is the dispute frivolous or vexatious?
          - i. Yes
            - 1. The Adjudicator may refuse to hear the dispute (33.6(3)).
          - ii. No
            - 1. The Adjudicator may hear the dispute (33.6(2) & 33.6(3)) and will issue a written notice of determination accompanied by an adjudicator's order (33.6(3)).
  - b. No
    - i. Refer the matter to Court (33.6(2))

## Information Disclosure

1. Once an adjudicator is appointed, within 5 days the party who gave the notice of adjudication will provide the adjudicator and all parties with a copy of the notice, the contract, and copies of documents the party intends to rely on during the adjudication (23(a)(b) of the *Regulations*).
2. A party responding to a notice of adjudication must (section 24(1) of the *Regulations*):
  - a. Provide copies of the response to the adjudicator and all other parties within 12 calendar days of receiving all copies of documents the party intends to rely on.

## Determination of a Matter Process

1. The Adjudicator will notify the parties to the adjudication when the adjudicator has all information required to make a determination (25(2) of the *Regulations*).
  - a. If applicable, the Adjudicator may consolidate multiple related adjudications before 5 calendar days have passed since the adjudicator received all information required to make a determination (30(4) of the *Regulations*).
    - i. An adjudicator will make an order within 30 days of receiving the documents (26(1) of the *Regulations*)
      1. An Adjudicator will make an order directing a party to make a payment due to another party and allow one party to stop providing services or materials under the contract until the order expires (26(2) of the *Regulations*)
        - a. The adjudicator's order will be certified by the relevant Nominating Authority within 7 days after the determination is made (26(3) of the *Regulations*)

## Is the determination of a matter by an adjudicator binding on the parties to the adjudication?

2. Has a Court made an order in respect of the matter?
  - a. Yes
    - i. Not binding (33.6(5)(a)).
  - b. No
    - i. Has a party applied for judicial review of the decision under section 33.7?
      1. Yes
        - a. Not binding (33.6(5)(b))
      2. No
        - a. Have the parties entered into a written agreement to appoint an arbitrator under the *Arbitration Act*?

i. Yes

1. Not binding (33.6(5)(c))

ii. No

1. Have the parties entered into a written agreement that resolves the matter?

a. Yes

- i. Not binding (33.6(5)(d))

b. No

- i. It is binding (33.6(5)) unless appealed (33.6(6)).

### Does an Adjudicator's Order meet the requirements to be registered as an Order of the Court?

1. Was the Order submitted to the clerk of the court not less than 30 days after the parties received the order *and* within 2 years after the date the written notice of decision was made? Or, if the decision was judicially reviewed and the application did not result in the adjudicator's order being set aside, was it made within 2 years of the court's determination under judicial review?

a. Yes

- i. Has either party applied for judicial review of the decision under section 33.7?

1. Yes

- a. The Order cannot be registered as an order of the court (33.61(1)(b)).

2. No

- a. Have the parties entered into a written agreement to appoint an arbitrator under the *Arbitration Act*?

i. Yes

1. The Order cannot be registered as an order of the court (33.61(1)(c)).

ii. No

1. Have the parties entered into a written agreement that resolves the matter?

a. Yes

- i. The Order cannot be registered as an order of the court (33.61(1)(d)).

- b. No

- i. An Order can be registered as an order of the court, subject to any new regulations introduced (section 33.61(1)(e)) and it must be served within 10 days on the other party after the court registers the order (33.61(5)).

- b. No

- i. The Order cannot be registered as an order of the court (33.61(1)(a) & 33.61(3)(a))

### **Is the Decision of the Adjudicator being Judicially reviewed?**

1. If a party has applied for judicial review of the decision of the adjudicator under section 33.7, was it done within 30 days from the date of the notice of determination?
  - a. Yes
    - i. Judicial review will be allowed (33.8)
  - b. No
    - i. The limitations period for judicial review is over (33.8)