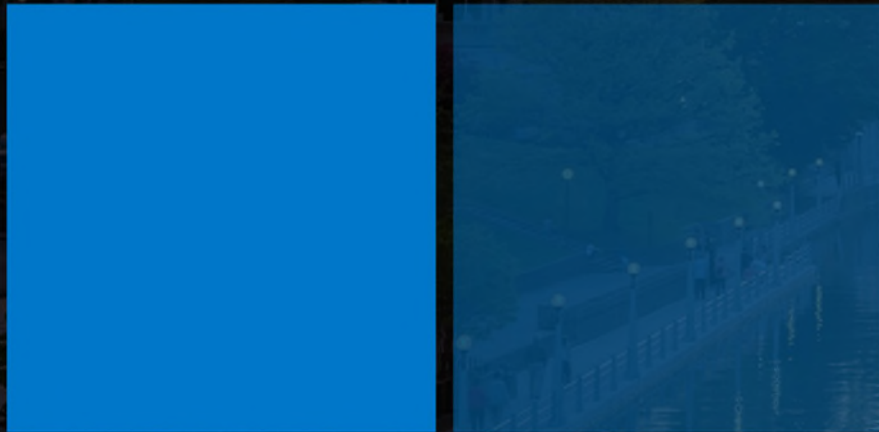


Adjudication & Prompt Payment Ontario vs Federal Regimes

Updated Ontario Construction Act and Federal Prompt
Payment Framework



Broadened Scope of Adjudication – Overview

- Former Act: primarily payment-focused disputes
- Current regime: payment plus scope, price, and time

Broadened Scope – Former s. 13.5 (Old Act)

- Valuation of services or materials
- Payment disputes (including change orders)
- Notices of non-payment
- Set-offs and holdback payment issues
- Other matters only if parties agreed

Broadened Scope – Regulation 306/18, s. 19

- Core payment matters retained
- New disputes that can be adjudicated:
 - scope of work determinations
 - contract price change requests
 - time extension requests

Consolidation of Multiple Adjudications

- Permitted for same or related matters
- NOW: any party may require consolidation
- BEFORE: only the contractor could compel consolidation
- Requires adjudicator consent
- Strict 5-day notice deadline

90-Day Expiry of Adjudication Rights

- Contracts: 90 days from completion, termination, or abandonment
- Subcontracts: earliest of completion, certification, or last supply
- Deadline extendable by agreement only

Private Adjudicator – Qualifications

- Minimum 10 years relevant construction experience
- Authority-approved adjudicator training
- Not an undischarged bankrupt
- No indictable offence convictions

Private Adjudicator – Certification & Restrictions

- Certified and regulated by the Authority
- Cannot hold registry and private certificates simultaneously
- Minimum fee: \$1,000 per hour

ODACC vs CanDACC – Federal Projects in Ontario

- Ontario is a designated province
- GC vs Crown: CanDACC (federal regime)
- Subcontract disputes: ODACC (Ontario Act)
- Parallel adjudications may be required

ODACC Adjudication – Key Timeline

- Notice of adjudication within 90 days
- Documents within 5 days of adjudicator appointment
- Determination ~30 days after response
- Payment due within 15 days

CanDACC Adjudication – Key Timeline

- Proper invoice triggers federal deadlines
- Payment due in 28 working days
- Adjudication within 21 calendar days of non-payment
- Determination 20 working days after the day on which the response is received
- Can be extended for up to 5 working days
- Payment of a determination due in 10 calendar days

Federal FPPCWA – Meaning of “Working Day”

- Used instead of calendar days in certain of the timelines
- Excludes Saturdays and Sundays
- Excludes federal statutory holidays
- Excludes Dec 24 to Jan 1 and provincial construction holidays

FPPCWA Provisions Calculated in Working Days

- 28 working days: federal owner must pay proper invoice
- 21 working days: notice of non-payment deadline
- 5 working days: claimant adjudication materials
- 20 working days: respondent response to adjudication

Effect on Subcontractor Payment Under Ontario Construction Act

- Ontario Act counts calendar days
- Contractor must pay subcontractors within 7 days of receipt
- Federal owner payment may arrive much later
- Ontario obligation is triggered only upon receipt

Same Invoice, Two Clocks – Timeline Comparison

Ontario Construction Act (Calendar Days)
Invoice Issued → 28 days (owner)
Contractor receives payment
+7 calendar days → Pay subcontractors

Federal FPPCWA (Working Days)
Invoice Issued
28 working days exclude weekends, holidays, Dec 24–Jan 1
Contractor receives payment later
+7 calendar days (Ontario) to pay subs

Example – Invoice Issued November 30

- Invoice issued: November 30
- Federal owner payment: 28 working days
- Excludes weekends and Dec 24–Jan 1
- Payment lands mid-January
- +7 calendar days → subcontractor payment due

Impact of Subcontractor Adjudication on Federal Projects

- Subcontractors may adjudicate under the Ontario Construction Act
- Federal Act limits adjudication to payment-only disputes
- GC may face binding interim determinations it cannot pass upstream
- Risk of parallel but non-aligned adjudications
- Creates cash-flow, coordination, and litigation risk for GC

Key Risks for Contractors Managing Both Regimes

- Miscounting working days vs calendar days
- Assuming faster downstream payment obligations
- Cash-flow strain during extended federal timelines
- Exposure to adjudication and interest
- Need for contract and accounting alignment

GC–Sub–Crown Relationship on Federal Projects

FEDERAL CROWN
(FPPCWA – payment only adjudication)

GENERAL CONTRACTOR
Bridge between regimes

SUBCONTRACTOR
(Ontario CA adjudication – broad scope)

Contract Drafting Strategy for Federal Projects (GC Focus)

- Carefully drafted pay-when-paid provisions (within statutory limits)
- Align notice of non-payment language with both regimes
- Flow-down adjudication and notice obligations clearly
- Address interim payment risk expressly in change order clauses

Defensive Practice Checklist for GCs (Federal Projects – Ontario)

- Track all deadlines using two clocks (working vs calendar days)
- Calendar upstream payment dates before committing downstream funds
- Early legal review when subcontractor adjudication is threatened
- Preserve contractual and statutory notice rights meticulously
- Communicate payment timing risks transparently with subcontractors



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