
THE INTERNATIONAL CONSTRUCTION LAW REVIEW

A Report on the Introduction of Prompt Payment and Adjudication:
Legislation in The Province of Ontario

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A REPORT ON THE INTRODUCTION OF PROMPT PAYMENT AND ADJUDICATION LEGISLATION IN THE PROVINCE OF ONTARIO

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1. INTRODUCTION

In early 2015, the provincial government of Ontario, Canada, committed to modernising the core piece of legislation regulating commercial relationships within the construction industry, the Construction Lien Act (the “Act”).² In order to achieve this goal and ultimately to inform the development of amendments to the Act, an expert review was commissioned by the government with a mandate that included investigating opportunities to improve upon the functionality of the existing legislation while also addressing issues in relation to promptness of payment and inefficiencies in dispute resolution (the “Review”).

The Review was conducted over the course of the following 16 months, and produced a report titled “Striking the Balance: Expert Review of Ontario’s Construction Lien Act” (the “Report”).³ The Report included 101 recommendations that took into account the makeup and nature of the construction industry, input from both public and private sector stakeholders, and related experiences in international jurisdictions. Of the 101 recommendations contained in the Report, 98 were accepted by the government of Ontario and these recommendations subsequently formed the basis of extensive amendments, including renaming the Act as the Construction Act⁴ (the “Construction Act”). The legislation received Royal Assent in December 2017.

The most significant changes incorporated into the new Construction Act were a prompt payment regime and a targeted form of adjudication. Generally speaking, the prompt payment solution was developed with a view to features of US federal legislation, while a UK-inspired adjudication

¹ The authors would like to thank Singleton Urquhart Reynolds Vogel LLP associate Delia Greco as well as summer students Scott Clark and Natasha Rodrigues for their assistance in the preparation of this paper.

² Construction Lien Act, RSO 1990, c C 30, as it then was.

³ Bruce Reynolds and Sharon Vogel, “Striking the Balance: Expert Review of Ontario’s Construction Lien Act” (30 April 2016) [Report]. https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cla_report/ (last accessed 21 November 2018).

⁴ Construction Act, RSO 1990, c C 30 [Construction Act].

model was developed to operate in aid of prompt payment. In this regard, the Construction Act is intended to address two of the biggest challenges in Ontario's construction industry: a culture of late payment and inefficient dispute resolution.

In this paper, we introduce the reader to Ontario's new Construction Act by first describing the process utilised by the Review, both leading up to the delivery of the Report and, subsequently, the legislation. Then, following a summary of the key elements of the legislation, we provide a brief comparison of key elements of legislation in certain international jurisdictions, being the US, the UK and Australia.

2. THE DEVELOPMENT OF ONTARIO'S LEGISLATION

(A) Ontario's pre-existing lien legislation

The first lien legislation came into force in Canada in the provinces of Ontario and Manitoba in 1873.⁵ Of course, Ontario's lien legislation have experienced a number of cycles of amendment since 1873, but the fundamental purpose of the legislation – which cannot be contracted out of – essentially remained the same: to protect the suppliers of services, materials and, latterly, equipment to construction projects. By 2015, however, Ontario's Act had not undergone any holistic revision since 1983 and as such, had become in some respects disconnected from the realities of the modern construction industry.

(B) The expert review

In February 2015, the Ministry of the Attorney General ("MAG") (i.e. the Ministry responsible for administering the justice system in Ontario) and the Ministry of Economic Development, Employment and Infrastructure announced that they had commissioned an expert review of the Act to consider its modernisation, promptness of payment, and the effectiveness of dispute resolution.⁶ The Report that was prepared by the Review was the product of extensive research, and a thorough consultation process.

To aid in the design of the Review's overall process, the Review consulted with Mr Dennis O'Connor (former Associate Chief Justice of the Ontario Court of Appeal).⁷ In consultation with Mr O'Connor, the Review created

⁵ Bristow, D. and others, *Construction Builders' and Mechanics' Liens in Canada* (Toronto: Thomson-Carswell, 2005), section 1.1.

⁶ MAG retained Bruce Reynolds as counsel and Sharon Vogel and co-counsel to undertake the Review. James Little served as the Secretary to the Review.

⁷ Retired Justice O'Connor had successfully conducted two high-profile public inquiries: the Walkerton Inquiry (2000-02) and the Maher Arar Inquiry (2004-2006); <http://blg.com/en/Our-People/OConnor-Dennis> (last accessed 21 November 2018).

a three-phase process that was designed to ensure transparency, inclusivity, and the collaborative engagement of stakeholders.

(i) Phase 1 – Identifying and informing the stakeholders

Phase 1 focused on preliminary matters including compiling a comprehensive list of stakeholders, based on input from MAG and construction industry associations. The list included 68 public and private stakeholders ranging from labour unions and residential homebuilders to general contractors, sub-contractors, suppliers, municipalities, provincial ministries, and utilities (generally, the “Stakeholders”).⁸ Many of the Stakeholders were industry associations. Once the Stakeholders had been identified, the Review prepared a provisional issues list and commenced researching the substantive issues in order to prepare an information package (the “Information Package”). The purpose of the Information Package was to inform Stakeholders of the issues under consideration and provide the related background information necessary to allow them to meaningfully engage in the consultation process.

The conclusion of Phase 1 was marked by the distribution of the Information Package to stakeholders on 15 July 2015. The package canvassed the 62 initial issues identified by the Review. At the same time, and in keeping with the effort to ensure a transparent process, the Review also developed and launched a website as a tool to efficiently disseminate information to the Stakeholders and the public.⁹

(ii) Phase 2 – Stakeholder submissions and consultation meetings

Phase 2 began with the process of coordinating Stakeholder meetings with the industry representatives (the “Stakeholder Consultation Meetings”). The Stakeholder Consultation Meetings included approximately 30 face-to-face meetings, as well as multiple conference calls, with the Stakeholders’ representatives. To ensure efficiency, Stakeholders were grouped where it was appropriate and the Stakeholders agreed.¹⁰ Prior to the commencement of the Stakeholder Consultation Meetings, Stakeholders were invited to provide written submissions in relation to the issues considered in the Information Package. By the conclusion of Phase 2, nearly 70 formal written submissions had been received. In addition, numerous email submissions were received from interested individuals. In January 2016, the formal Stakeholder submissions were posted on the Review’s website.

⁸ A full list of the Stakeholders is included as Appendix A to the Report.

⁹ Construction Lien Act Review website, online: <http://www.constructionlienactreview.com/> (last accessed 21 November 2018).

¹⁰ Also, at the beginning of Phase 2, a third-party consultant was retained, through a competitive process, to conduct a survey for the Review. The survey collected data which was then used to assist in assessing the written and oral submissions made by Stakeholders and analyse industry views.

The formal submissions provided the basis for dialogue for that particular Consultation Meeting.

One of the Stakeholders, Prompt Payment Ontario (an industry-based lobby group composed of trade contractors, suppliers and prompt payment advocates), commissioned their own survey utilising the consulting group Ipsos Reid (now operating as Ipsos) (the “Ipsos Reid Survey”). The Ipsos Reid Survey received 535 responses. According to the results of the Ipsos Reid Survey, the average age of industry receivables at that time was 61.3 days.¹¹ 84.7 per cent of participants reported that the average age of their current receivables was more than 30 days, and 18 per cent of participants reported an average age of current receivables of 90 days or more. Participants also indicated that they had suffered economic damage due to late payment, including being forced to lay off workers and declining to take on additional work that they could not finance.¹²

The Stakeholder Consultation Meetings provided meaningful substantive input to the Review. At virtually every meeting, a new issue was identified. Summarised accounts of each meeting were prepared and posted on the Review’s website.

Following the Stakeholder Consultation Meetings, a supplemental list of 27 additional issues was prepared and published in early 2016 and Stakeholders were once again invited to provide written submissions.

The final step of Phase 2 was to invite a number of subject matter experts to form an Advisory Group. The Advisory Group included experts that represented public and private sector interests, including owners, contractors, sub-contractors, engineers, architects, and organised labour. The members of the Advisory Group were selected based on their subject matter expertise, and for their insights into the particular views of key Stakeholder communities.¹³

(iii) Phase 3 – Advisory group meetings and submission of the report

Phase 3 consisted of five Advisory Group meetings that occurred between February and April 2016, followed by additional research and the writing of the Report and its translation into French. During its meetings, the Advisory Group discussed the potential recommendations to be included in the Report, and attempted to achieve consensus, particularly with relation to certain difficult issues. In an effort to encourage open and candid discussion, these meetings were held on a confidential basis. A broad consensus was ultimately reached with respect to modernisation and the

¹¹ Prompt Payment Ontario, *Trade Contractor Survey Results*, Ipsos Reid, November 2015 at 21; See also, the Report at section 3.1.

¹² Prompt Payment Ontario, *Trade Contractor Survey Results*, Ipsos Reid, November 2015 at 21; See also, the Report at section 3.1.

¹³ A list of Advisory Group members is included in Chapter 2 of the Report.

introduction of prompt payment and targeted adjudication. The Report was delivered on 30 April 2016.

Subsequently, the Stakeholders expressed the view that the process developed by the Review was a success. Upon Third Reading in the Ontario Legislative Assembly, the process was described by the Attorney General of Ontario, the Honourable Yasir Naqvi, as a “model to be pursued in the future for other areas of complex law”.¹⁴

(C) Legislative history

After the Report was reviewed and considered by MAG, the Cabinet of the Province of Ontario decided, on a policy basis, to implement 98 of the 101 recommendations contained in the Report. The process of drafting an updated version of the Act took place over the following four months and culminated in Ontario’s Bill 142 (the “Bill”). The Bill was introduced for First Reading by the Attorney General of Ontario, on 31 May 2017.

Following First Reading, the Attorney General continued the consultation process, personally conducting a large number of Stakeholder feedback meetings. Subsequently, the Review conducted numerous additional meetings between June and September 2017, and five additional Advisory Group Meetings took place after the delivery of the Report and prior to Second Reading, which took place in September 2017. Inasmuch as the members of the Advisory Group were engaged at that time in reviewing the text of potential amendments to the Bill, they were each required to execute a Non-Disclosure Agreement in order to protect legislative privilege. As well, additional Stakeholders were consulted as the Bill progressed through the Legislative Assembly. In particular, it became apparent that there was another important group of Stakeholders that had not previously been active in the consultation process, namely representatives of the Alternative Financing and Procurement (“AFP”) sector. Accordingly, an AFP Taskforce was created consisting of senior infrastructure lawyers and industry representatives, including representatives of relevant provincial government agencies. The AFP Taskforce meetings occurred in September 2017 and focused on transition, prompt payment, adjudication, and surety bond issues. The result of all of the additional consultations was a significant number of amending motions, which were subsequently adopted by the Standing Committee of the Legislative Assembly.

¹⁴ The Attorney General stated: “I’ve never seen that level of detail, insight and knowledge put into any piece of legislation — definitely a model to be pursued in the future for other complex areas of law where a niche expertise exists and we can harness that expertise from the private sector to develop good public policy.” Ontario, Legislative Assembly, *Hansard*, 41st Parl, 2nd Sess (4 December 2017) at 6839. Available online: https://www.ola.org/sites/default/files/node-files/hansard/document/pdf/2017/2017-12/house-document-hansard-transcript-2-EN-04-DEC-2017_L130.pdf (last accessed 21 November 2018).

The Bill passed Second Reading on 12 September 2017. After Second Reading, the Bill was debated in the Legislature. The debates took place in six tranches between 13 September 2017, and 4 October 2017, following which Bill 142 was referred to the Standing Committee of the Legislative Assembly on 25 October 2017. The Bill was considered by the Standing Committee four times between 25 October 2017 and 22 November 2017. As part of this process, numerous industry representatives provided feedback.

Third Reading of Bill 142 occurred on 4 December 2017, at which time it was passed unanimously by all three political parties in the Legislative Assembly. It received Royal Assent on 12 December 2017.

As the reader will appreciate, the development of the Construction Act was, in essence, an exercise in consensus building.¹⁵

3. SUMMARY OF THE KEY ELEMENTS OF THE ONTARIO LEGISLATION

The Construction Act provides for the modernisation of the existing lien remedy (through amendments that came into force on 1 July 2018) and introduces prompt payment and adjudication (through amendments that will come into force on 1 October 2019). The modernisation provisions are not considered here in detail, however below we examine the Construction Act's prompt payment provisions, its adjudication regime, and, briefly, the integration of these two concepts with the lien remedy. As noted, the lien remedy will continue to exist under the Construction Act.¹⁶

(A) Prompt payment

Under Ontario's Construction Act, prompt payment applies to both public and private sector contracts. Throughout the consultation process, it was apparent that prompt payment was a concern in both sectors. This was also confirmed by the Ipsos Reid Survey, which revealed that receivables were frequently outstanding for lengthy periods of time in both the public and private sectors.¹⁷ In terms of its "vertical" application, the Ontario model of

¹⁵ In addition to the work done on the Construction Act itself, beginning in early 2018, the Review continued its work to produce a series of Regulations under the Construction Act. The regulations were reviewed by the Advisory Group in early 2018 and ultimately became part of the package of amendments that came into force on 1 July 2018. The pre-existing General Regulation (R.R.O 1990, Reg 175) was revoked and three new regulations came into force (O. Reg 302/18, O. Reg 303/18 and O. Reg 304/18). A further regulation (O. Reg 306/18) in relation to Adjudication will come into force on 1 October 2019. As well, on 6 December 2018, Ontario Bill 57, S.O. 2018, C. 17 ("Bill 57"), one element of which introduced certain amendments to the Construction Act, received Royal Assent.

¹⁶ It is important to note in this regard that the legislation prohibits parties from contracting out of the rights conferred on the suppliers of services, materials and equipment.

¹⁷ Ipsos Reid Survey at 2.

prompt payment applies at the level of owner-general contractor, general contractor-sub-contractor, and downwards.¹⁸

Fundamentally, Ontario's approach is founded upon the US concept of the "proper invoice" as the trigger that starts the payment clock running. The proper invoice is, subject to certain significant constraints, an invoice of the head contractor to the owner that conforms with all applicable provisions of the contract. Once the proper invoice is delivered, the owner must pay the head contractor within 28 days. Certification or approval of the proper invoice is prohibited from serving as a contractual precondition to payment. Upon receipt of payment by the owner, the head contractor is then required to pay its sub-contractors within seven days, which are, in turn required to pay their sub-sub-contractors within a further seven days, and so on down the contractual pyramid. Of course, the requirement to pay may be interdicted where there is a legitimate reason for non-payment. Accordingly, payers are given the statutory right to deliver a notice of non-payment in appropriate circumstances.

Conditional payment provisions were the subject of serious consideration by the Review.¹⁹ Such provisions, when included in subcontracts, make a payment by a contractor to its sub-contractor conditional on the contractor receiving payment from the owner. When a subcontract does not contain such a provision, the contractor remains responsible to pay a sub-contractor for services provided regardless of whether or not it has been paid by the owner.²⁰ In Ontario, properly drafted pay-if-paid clauses are enforceable.²¹ In terms of achieving industry consensus, the Ontario General Contractors Association was firmly opposed to the prohibition of such provisions. In the result, the Construction Act does not prohibit conditional payment provisions but rather regulates conditional payment through a notice mechanism that is directly linked to adjudication.

Specifically, regarding notices of non-payment, there are two types of such notices that the contractor may provide to a sub-contractor.²² In both cases, the notice must be given within either seven days of receiving a notice of non-payment from the owner, or, if the owner fails to provide notice, before the deadline to pay the sub-contractor expires.²³

The first type of notice of non-payment requires the contractor to clearly state that some or all of the amount payable to the sub-contractor is not being paid within the specified time due to non-payment by the owner.²⁴

¹⁸ Construction Act, sections 6.4–6.6.

¹⁹ See for example, Report at section 4.2 citing E. Jane Sidnell, "Pay-When-Paid" Clauses in Construction Contracts" online: <http://www.rosellp.com/news/2014/9/26/presentation-regarding-pay-when-paid-clauses-in-construction-contracts> (last accessed 21 November 2018).

²⁰ *Ibid.*

²¹ See the Report at section 4.2.

²² Construction Act, section 6.5(5)–(6); and see section 6.6 for the parallel provisions in respect of sub-contractor notice(s) of non-payment.

²³ Construction Act, section 6.5(7).

²⁴ Construction Act, section 6.5(5)(a)(i).

The notice must also specify the amount that will not be paid and the contractor must include a copy of the notice of non-payment provided by the owner,²⁵ and an undertaking to refer the matter to adjudication no later than 21 days after the notice is provided to the sub-contractor.²⁶ In other words, although the contractor can at least temporarily transfer the effect of an owner's non-payment, if the contractor wishes to avoid making payment to its sub-contractors, the contractor cannot avoid the obligation to pursue the owner for payment.²⁷

The second type of notice of non-payment applies if the contractor, although itself paid, disputes the sub-contractor's entitlement to payment of an amount under the contract.²⁸ Under this exception, the contractor is required to specify the amount that is not being paid and the reasons for non-payment.²⁹

Importantly, the right of set-off has been subjected to a new constraint. Specifically, the right to set-off is limited to amounts owing for improvements under a particular contract and the set off of outstanding debts, claims or damages for *other* projects is not allowed, except where the payee is insolvent.³⁰

In practice, set-offs are often used by an owner in response to a claim by the contractor, and the owner may not provide an adequate explanation for the assertion of such a set-off. An unsubstantiated assertion of set-off seriously impacts the flow of payment, with adverse implications for sub-contractors and suppliers. Under the Construction Act, owners are required to deliver a notice of non-payment within 14 days of receiving a proper invoice,³¹ and the notice must specify the amount that is not being paid and include *all* reasons for non-payment.³²

If a payer does not comply with the prompt payment requirements of the Construction Act, the payer is subject to mandatory interest charges and the right to initiate an adjudication becomes available to the payee. Pre-judgment interest rates are applied based on the rates set out under section 127(2) of the Courts of Justice Act, however if the parties have specified a different interest rate in the contract, the greater of the two rates will apply.³³ The right to suspend arises only if the payer fails to respect an adjudicator's decision within 10 days from the date the decision is delivered.³⁴

²⁵ Construction Act, section 6.5(5) (a) (ii), section 6.5(5) (b).

²⁶ Construction Act section 6.5(5) (a) (iii).

²⁷ Construction Act, section 6.5(5) (a) (i).

²⁸ Construction Act, section 6.5(6).

²⁹ Construction Act, section 6.5(6).

³⁰ Construction Act, section 17(3); Karen B. Groulx, "Welcome to Ontario's new Construction Act" (15 January 2018) online: <https://www.dentons.com/en/insights/alerts/2018/january/15/welcome-to-ontarios-new-construction-act> (last accessed 21 November 2018).

³¹ Construction Act, section 6.4(2).

³² *Ibid.*

³³ Construction Act, section 6.9; Courts of Justice Act, RSO 1990, c C 43, section 127(2).

³⁴ Construction Act, section 6.9.

(B) Adjudication

Prompt payment is aided by a targeted system of adjudication. Here, Ontario has borrowed from adjudication regimes developed in other jurisdictions, most notably the UK. Importantly, Ontario has adopted a circumscribed approach to the types of dispute that are eligible for adjudication. The Construction Act lists the following types of disputes that can be adjudicated:

- (1) the valuation of services or materials provided under the contract;
- (2) payment under the contract, including in respect of a change order, whether approved or not, or a proposed change order;
- (3) disputes that are the subject of a notice of non-payment;
- (4) amounts retained as set-offs;
- (5) payment of a holdback;
- (6) non-payment of holdback; and
- (7) any other matter that the parties to the adjudication agree to, or that may be prescribed.³⁵

Of course, a central strength of adjudication is the utilisation of competent construction industry experts as decision makers. Here, Ontario is aligned with most other jurisdictions as it will have prescribed qualification requirements for its adjudicators.³⁶ The criteria include at least 10 years of relevant working experience in the construction industry; successful completion of adjudicator training;³⁷ and agreeing to abide by the requirements for holders of certificates.

In Ontario, there will be a single Authorised Nominating Authority (“ANA”). The ANA will be responsible for the training and certification of adjudicators. The ANA will also nominate an adjudicator where the parties are unable to agree on an adjudicator. In addition, Ontario’s ANA is required to establish a Code of Conduct for adjudicators and to handle any complaints regarding the conduct of adjudicators.³⁸

Significantly, under the Construction Act the adjudicator can only be selected after the dispute has arisen, and cannot be named in the contract. This approach was taken based on the potential for owners to impose their choice of adjudicator through the tendering process.³⁹ Subject to this

³⁵ Construction Act, section 13.5(1).

³⁶ Adjudications Under Part II.1 of the Act, O. Reg 306/18, section 3 [Construction Act Adjudication Regulation].

³⁷ This requirement is subject to the ANA’s ability to waive this requirement on or before the first anniversary of the regulation coming into force if the ANA is of the view the applicant has experience and education qualifications that are at least equivalent to the successful completion of the training programmes.

³⁸ Construction Act Adjudication Regulation at section 3.

³⁹ Consultation Document, Proposed Security of Payment Legislation for the Construction Industry, Development Bureau of the Hong Kong Administrative Region Government (June 2015) online at: https://www.devb.gov.hk/filemanager/en/content_880/SOPL_Consultation_Document.pdf (last accessed 21 November 2018) at p. 4; Report, section 5.2.2.

restriction, however, the Construction Act allows the parties to set out the adjudication process in the governing contract or subcontract, so long as they comply with the requirements of the Act.⁴⁰ If the parties do not address adjudication in the contract or subcontract, or if the contract or subcontract does not comply with Part II.1, the adjudication process will follow the default process set out in the Construction Act and its regulations.⁴¹

Under the Construction Act, the adjudicator is given a high degree of control over the inquisitorial procedure to be utilised during the adjudication.⁴² Depending on the dispute at issue, the adjudicator may decide to proceed on a documents-only basis. On the other hand, the adjudicator may deem it appropriate to conduct a site visit with the parties, conduct a hearing, or enhance the procedure in other ways.⁴³ This approach was adopted from the UK.⁴⁴ Ontario, like most jurisdictions, also provides for adjudicator immunity⁴⁵ so as to attract appropriately qualified individuals to serve as adjudicators.

The process begins with the party to the contract wishing to refer a dispute giving a written Notice of Adjudication. The party delivering the notice names a proposed adjudicator. The parties then have four days to agree on an adjudicator, failing which one will be chosen for them by the ANA.⁴⁶ Within five days of the adjudicator accepting or being appointed to an adjudication, the referring party must provide the adjudicator with the Notice of Adjudication, a copy of the contract or subcontract, and any documents they intend to rely on.⁴⁷ No later than 30 days after receiving these documents, the adjudicator must make a determination of the dispute unless there is written consent among the parties and the adjudicator to extend the deadline for a determination.⁴⁸ Therefore, the entire process is to be concluded within 46 days.

While it may seem somewhat counterintuitive that a process meant to be time efficient and simple allows for the consolidation of matters, consolidation at the discretion of the contractor was an issue that was the subject of considerable discussion during the Review. Few jurisdictions provide for consolidation of adjudications. Providing for consolidation at the initiative of the contractor was an essential element of achieving industry consensus in Ontario.

⁴⁰ Construction Act, section 13.6 (1).

⁴¹ Construction Act, section 13.6(2).

⁴² Construction Act, sections 13.6 and 13.12.

⁴³ Construction Act, sections 13.12(1).2 and 13.12(4).

⁴⁴ Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998 No 649), online: <http://www.legislation.gov.uk/ukSI/1998/649/schedule/made> (last accessed 21 November 2018) [*UK Scheme*] at section 13.

⁴⁵ Construction Act, section 13.21-13.22.

⁴⁶ Construction Act, section 13.7(1).

⁴⁷ Construction Act, section 13.11. Ontario Bill 57 included a new subsection 13.11.1, which provides an express right of reply for a party that receives a Notice of Adjudication.

⁴⁸ Construction Act, sections 13.13(1) and (2).

The Construction Act provides that the basic rule is that the parties are to bear their own costs of an adjudication,⁴⁹ and split the fees of the adjudicator. Because of the cost saving features of adjudication, implementing adjudication may have the effect of balancing out financial inequities between the parties. Moreover, with most fees not being recoverable (barring frivolous, vexatious or abusive behaviour),⁵⁰ parties face less financial exposure should they be unsuccessful in an adjudication.

Generally, the adjudicator's fees can be agreed to by the parties or be determined by the ANA.⁵¹ The exception to these general rules is if the adjudicator determines a party has acted "in a manner that is frivolous, vexatious, an abuse of process or other than in good faith," then the adjudicator may require that party to pay some or all of the other party's costs.⁵²

The enforcement of an adjudicator's determination is summary in nature. A party to the adjudication may file a certified copy of the determination, at which point the determination is enforceable as if it were an order of the court.⁵³ As well, rights of judicial review are limited. A party to adjudication under the Construction Act can make an application for judicial review of the adjudicator's determination; but it can only be made with leave of the Divisional Court upon a motion filed no later than 30 days after the determination is communicated to the parties.⁵⁴ If a motion for leave is denied, no reasons are required; and there is no appeal from an order on a motion for leave.⁵⁵ Before the court will set aside the determination, the adjudicator's determination must fall into one of an enumerated set of grounds, namely: