

ADJUDICATION MATTERS: A GLOBAL OVERVIEW

To supplement Beale & Co's ongoing updates on construction adjudication across the UK and Ireland, we compare and contrast key similarities and differences regarding the adjudication regimes in various international jurisdictions and provide our specialist insights.



WHAT IS ADJUDICATION?

Adjudication serves as an important interim dispute resolution mechanism for the construction industry, aimed at delivering a decision by an independent third party that remains binding on the parties unless and until the dispute is later resolved through court proceedings, arbitration, or settlement.

The adjudication process emphasises resolving construction disputes in a more cost-effective and expeditious way compared to litigation and arbitration – the statutory aim is for a Decision to be issued within 28 days of service of the Referral.

Adjudication provides a clear and simple path to allow parties to a construction contract to resolve a dispute, typically during the course of a project, without impacting on project progress and relationships.

Adjudication was first introduced in England & Wales and Scotland by the Construction Act 1996 (1996 Act), supported by the procedure in the Scheme for Construction Contracts 1998 as amended in 2011 (the Scheme) and in Scotland by the Scheme for Construction Contracts (Scotland) Regulations 1998 as also amended in 2011 (the Scotland Scheme).

It was quickly followed in Northern Ireland by the Construction Contracts (Northern Ireland) Order 1997 (the NI Order) and the Scheme for Construction Contracts in Northern Ireland Regulations (Northern Ireland) 1999 (the NI Scheme).

Since adjudication was introduced in England & Wales and Scotland, other jurisdictions have introduced their own versions of the process. Although there are differences in the process and application across jurisdictions, some of which will be addressed in this article, the main principle is the same: to provide a forum for the quick resolution of construction disputes.

A central element of adjudication in each jurisdiction are the procedures for the judicial enforcement of valid decisions. Enforcement is a vital tool that gives adjudication its teeth; without firm support for the enforcement of Adjudicator's decisions (except in specific circumstances), adjudication would not have developed into the widely used dispute resolution tool used today.

The below focuses on the jurisdictions that Beale & Co operate in and have experience resolving construction disputes through adjudication: England & Wales, Scotland, Northern Ireland, Republic of Ireland and Canada (Ontario). We also briefly cover the UAE, where there is no statutory adjudication at this time.

This article is designed to be a summary, high-level guide but should a reader have any queries regarding adjudication in these or any other jurisdictions, or require more detail on the matters raised, then they should feel free to contact James Vernon in the first instance.

Please also note that this summary focuses on statutory adjudication. It remains that in any jurisdiction parties to a construction contract can agree as part of their contractual dispute resolution procedure to include adjudication. In the UK the procedure for contractual adjudications must be compliant with the procedure in the Scheme, but provided that is met a contractual process can provide for additional matters such as attempting to agree an Adjudicator in advance (if one is not specified in the contract) and allowing more time for submissions. Contractual adjudication can also allow for adjudication where it would not be a permissible forum under the 1996 Act and the Scheme, such as where one party is a residential occupier or where the works in question are not for "construction operations" as defined in section 105 of the 1996 Act.



ENGLAND AND WALES

Adjudication under the 1996 Act was originally intended to facilitate project progress and address straightforward payment disputes to improve cash flow within the construction industry. However by the wording of the 1996 Act any dispute (singular) arising from “construction operations” under a “construction contract” can be adjudicated and so there is no statutory restriction of the type of dispute that can be referred.

Consequently, adjudication - whether contractual or statutory - is frequently deployed on more complex, high-value disputes, such as allegations concerning breach of contract and professional negligence, termination, valuation of final accounts, and disputes involving delays or defects. The type of dispute impacts on timetable, preparation needed and potential jurisdictional challenges.

Adjudication does not provide a shortcut to the fundamental aspects of claims: the burden of proof remains with the claiming party and claims must be particularised and where applicable (for example in claims of professional negligence) they must be supported by appropriate expert evidence.

Further, and fundamentally for enforcement purposes, given the speed of the process there are several key considerations a claiming party needs to assess before starting an adjudication: that any Adjudicator will have jurisdiction to decide the dispute referred, and whether any steps need to be taken in advance not to impact on the defending party’s right to natural justice. This includes:

- **Whether the dispute has crystallised**
 - This is more nuanced than a claiming party relying on a letter of claim and commencing an adjudication the next day – a defending party needs to have either denied a claim made or at least have been given the opportunity to admit or deny a claim being made.
 - If the first a party knows about a dispute is on service of the Notice of Adjudication, then no dispute would have crystallised and the Adjudicator will not have jurisdiction to make a decision and so will typically resign.
 - There are however instances when the knowledge of a dispute can be inferred, for example a dispute arising from one party’s failure to issue a payment notice or pay less notice and then not pay the sum due, as the dispute crystallises on the failure to make the necessary payment.
- **Understanding and following the applicable procedure**
 - Examples of potential pitfalls include not serving the Notice of Adjudication correctly (including as prescribed in the underlying contract) and not using the Adjudicator Nominating Body identified in the contract.

SUMMARY OF PROCEDURE

The procedure under the Scheme and the party whose 'action' it is, is as follows:

STEP	DAY IN PROCESS	PARTY
NOTICE OF ADJUDICATION This is a brief document that sets out the dispute, the intention to refer it to adjudication and the decision requested	-7	Referring Party
APPOINT ADJUDICATOR If no Adjudicator or Adjudicator Nominating Body (ANB) is named in the contract, use any ANB	-7 to -1	Referring Party
REFERRAL This includes the details of the dispute and to which supporting documents (witness statements, correspondence etc) is exhibited	0	Referring Party
RESPONSE The defence to the claim, including supporting documents relied on	7 to 14*	Responding Party
REPLY Typically three to seven days after the Response	10 to 17*	Referring Party
DECISION	28**	Adjudicator

* Typical period - set out in timetable issued once Referral served

** Unless extended by consent

The conduct of the adjudication is at Adjudicator's discretion – the only 'fixed' dates are to appoint the Adjudicator and serve the Referral within seven days of service of the Notice of Adjudication. Thereafter, the Adjudicator will set the timetable to enable the Decision to be made within 28 days of the service of the Referral unless the time for the Decision has been extended on consent.

As such, the Adjudicator can direct further submissions; convene a meeting; raise specific queries etc.

It is important that, where necessary, consent to extend the time for a Decision is confirmed. Without such consent, any Decision issued after the deadline will not be enforceable.

EFFECT OF THE DECISION

Adjudication serves as an important interim dispute resolution mechanism, aimed at delivering a decision by an independent third party that remains binding on the parties unless and until the dispute is later resolved through court proceedings, arbitration, or a settlement between the parties.

If a determination is made awarding a party money, the Decision will provide a time for that award to be paid which is typically seven days. If not paid, the winning party can take steps to enforce the Decision.

An Adjudicator can also be asked to make a declaration for the parties to adopt in future consideration of the underlying contract. This can include the interpretation of a contractual clause, or to implement at a future date, such as the value of an item determined in adjudication as a variation, where payment had not previously been sought in an application for payment / the works had not yet been done.

Although not for this article, the public policy and case law supports that, in the main, Decisions will be enforced by the Courts and a fast-track procedure has been established by the Technology and Construction Court to process enforcement actions quickly - the aim is for a hearing in 28 days but typically it is held within two-three months. There is a body of case law that has identified and dealt with the fundamental principles of challenging enforcement and the grounds under which such challenges could be successful. Case law has also determined the parameters for the losing party to obtain a stay to enforcement, rather than a determination that the Decision is invalid.

ADJUDICATOR'S FEES AND EXPENSES

The Adjudicator has jurisdiction to determine how their fees and expenses will be paid by the parties. Both parties remain jointly and severally liable for the fees and expenses until settled.



SCOTLAND

In Scotland the statutory adjudication process is governed by the 1996 Act and the Scotland Scheme. These regulations provide the statutory right to adjudication and outline the procedures and timelines for resolving construction disputes. Given that the procedure flows from the 1996 Act, the jurisdictional considerations highlighted above for England & Wales equally apply in Scotland.

Whilst the terms of the Scotland Scheme are very similar to those contained in the Scheme, the Scottish courts have adopted a slightly different approach to England & Wales on the issue of when the adjudication terms of the Scotland Scheme will be implied into a contract, meaning that only such parts of the Scotland Scheme as are required for the contractual adjudication provisions to comply with the 1996 Act are implied, as opposed to wholesale incorporation of the Scotland Scheme.

As in England, adjudication in Scotland can address a wide range of disputes, including claims for payment; claims for breach of contract and professional negligence; claims related to termination including declarations as to validity; interpretation of contractual terms; and the value of final accounts.

SUMMARY OF PROCEDURE

The adjudication procedure in Scotland follows a structured timeline similar to that in England & Wales:

Step	Day in Process	Party
Notice of Adjudication	-7	Referring Party
Appoint Adjudicator	-7 to -1	Referring Party
Referral	0	Referring Party
Response	7 to 14*	Responding Party
Reply	10 to 17*	Referring Party
Decision	28**	Adjudicator

* Typical period - set out in timetable issued once Referral served

** Unless extended by consent

The same position as to adjusting timetables and the date for the Decision applies as for England & Wales, above.

EFFECT OF THE DECISION

The effect of the Decision and approach to enforcement is as for England & Wales. Scotland however does have a slightly different process for enforcement proceedings, but with the same aim for a quick process to a hearing. Proceedings are dealt with under a Commercial Action in the Court of Session if the claim value is over £100,000. The Court then determines whether a Decision is enforceable or not; there is no provision for a stay of enforcement. The Court may also consider the entitlement of 'balancing accounts' where the Claimant is insolvent and the Defendant is a creditor, allowing the set-off of debt owed to the Defendant against the award. Enforcement in Scotland will be covered in more detail in a future article on enforcement.

ADJUDICATOR'S FEES AND EXPENSES

The Adjudicator has jurisdiction to determine how their fees and expenses will be paid by the parties. Both parties remain jointly and severally liable for the fees and expenses until settled.



NORTHERN IRELAND

Statutory adjudication is provided for by the NI Order and NI Scheme. Under the NI Order, a party to a construction contract has the right to refer a dispute arising under the contract to adjudication – that right extends beyond payment disputes and the full range of disputes that can arise under construction contracts can be referred.

The NI Order then sets out what a contract should provide by way of adjudication provisions, and if not included the procedure in the NI Scheme applies.

SUMMARY OF PROCEDURE

The procedure under the NI Scheme and the party whose 'action' it is, is as follows:

Step	Day in Process	Party
Notice of Adjudication	-7	Referring Party
Appoint Adjudicator	-7 to -1	Referring Party
Referral	0	Referring Party
Response	7 to 14*	Responding Party
Reply	10 to 17*	Referring Party
Decision	28**	Adjudicator

* Typical period - set out in timetable issued once Referral served

** Unless extended by consent

The 28 days for the Decision can be extended by 14 days with the consent of the Referring Party or for a longer period with the consent of both parties. Further submissions can be directed if necessary.

EFFECT OF THE DECISION

The effect of the Decision and approach to enforcement is as for England & Wales and Scotland. There is not as much case law from Northern Ireland on enforcement, which is dealt with following the issue of a writ of summons in the Queen's Bench Division of the High Court of Justice, but the case law from England & Wales and Scotland has broadly been followed, and so serves as a useful guide for a party to consider if there is merit in any attempt to resist enforcement.

ADJUDICATOR'S FEES AND EXPENSES

The Adjudicator has jurisdiction to determine how their fees and expenses will be paid by the parties. Both parties remain jointly and severally liable for the fees and expenses until settled.



REPUBLIC OF IRELAND

In Ireland, the adjudication process is governed by the Construction Contracts Act 2013 (“CCA 2013”), which came into force on 25 July 2016.

As in other jurisdictions, the CCA 2013 was introduced to ensure prompt payment and provide a mechanism for resolving payment disputes in construction contracts via adjudication. As such, although its core follows adjudication in the UK in supporting a quick interim but binding decision, it has been restricted so that only disputes relating to payment can be referred.

However, Adjudicators have considered that they have the necessary jurisdiction under the CCA 2013 to decide adjudications that go beyond a dispute relating to an interim payment cycle or the final account. For example, adjudications have determined the entitlement to and valuation of variations and claims for extensions of time, as such decisions will have a payment/financial impact.

The expedited nature of the process has led to the number of applications made for the appointment of an adjudicator under the construction contracts act to increase from 54 in 2019 to 101 in 2023, the highest to date. The combined total value of payment disputes to which Adjudicators have been appointment in the last five years is €227.7 million which demonstrates the benefit of the legislation to the Construction Sector in Ireland.

When a payment dispute is referred to Adjudication, the adjudicator must issue a decision with 28 days of the referral although, as under the UK regime, this can be extended by agreement with the parties and an adjudicator’s decision is binding on the parties until it is finally settled.

Ireland’s adjudication regime has matured significantly since 2016. While modelled on the UK system, it has taken on a unique character, limiting disputes to those relating to payment, while broadening the interpretation of what constitutes a payment issue. Recent High Court decisions emphasise strict compliance with statutory and contractual processes, reaffirming the binding nature of adjudicator’s decisions.

SUMMARY OF PROCEDURE

The procedure follows a similar route with the aim for a decision within 28 days of the Referral, unless extended by the parties:

STEP	DAY IN PROCESS	PARTY
NOTICE OF ADJUDICATION Sets the scope of the payment dispute and the adjudicator’s jurisdiction	-7	Referring Party
APPOINT ADJUDICATOR If the parties cannot agree on an Adjudicator, one will be appointed by the Construction Contracts Adjudication Service (CCAS) on application by the Referring Party	-7 to -1	Referring Party
REFERRAL	0	Referring Party
RESPONSE	7 to 14*	Responding Party
REPLY	10 to 17*	Referring Party
DECISION	28**	Adjudicator

* Typical period - set out in timetable issued once Referral served

** Unless extended by consent

As in the UK, the Adjudicator may direct further submissions beyond the Reply as well as seek agreement with the parties to extend the period for reaching the Decision.

EFFECT OF THE DECISION

Adjudicator's decisions in Ireland are binding unless and until overturned in arbitration or litigation. The Irish High Court, like courts in England and Wales, has supported robust enforcement, with limited grounds for challenge. However, it is worthwhile referencing the recent High Court decision of DNCF Limited-v-Genus Homes Limited [2023] IEHC 490, where the Court cautioned against reliance on the case law of England and Wales, stating that an Irish Adjudicator's decision has an 'enhanced status' under domestic legislation and that there is express provision under the Act that it be enforced as if it were an Order of Court.

An application for enforcement is made in the High Court. To ensure it is dealt with quickly, under Practice Direction HC105, an application is made returnable on the first available Wednesday after issue and service for directions, with the matter to be heard "with all due expedition".

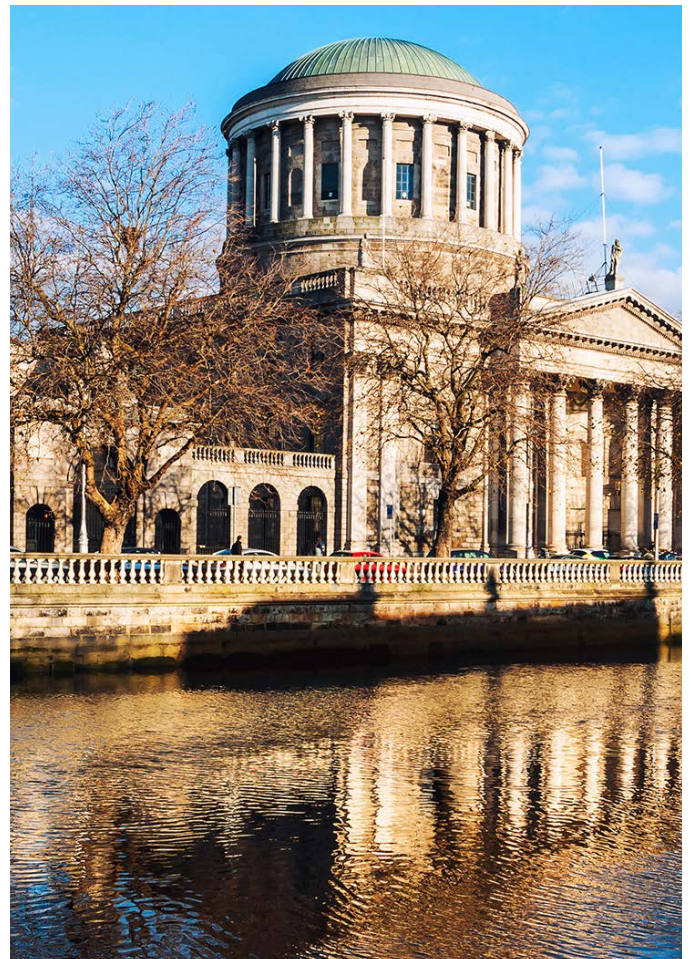
In a landmark 2025 case, *Tenderbids v Respondent*, Mr. Justice Simons refused enforcement for the first time under the Act. The failure to deliver a Notice of Intention via the agreed method (registered post) rendered the adjudication invalid. This reinforces that in Ireland strict compliance with contractual notice provisions is crucial, backed by express statutory enforcement rights and High Court involvement.

ADJUDICATOR'S FEES AND EXPENSES

In Ireland, both parties are jointly and severally liable for the adjudicator's fees and expenses. The adjudicator may determine how costs are allocated, although default rules

do not automatically award costs to the successful party, unless decided so by the adjudicator. This is broadly in line with the UK and Northern Ireland, although some jurisdictions follow more rigid statutory cost structures.

In a global context, Ireland continues to uphold the core tenets of adjudication: speed, cost-effectiveness, and enforceability, making it an increasingly vital tool in the construction sector's dispute resolution arsenal.





CANADA - ONTARIO

Construction adjudication in Canada is gaining traction, with varying approaches being taken by different jurisdictions. The province of Ontario was the first jurisdiction to enact an adjudication regime in its construction legislation in 2019. Saskatchewan and Alberta followed suit in 2022 and 2023 respectively. In December 2023, the Federal Prompt Payment for Construction Work Act came into effect, implementing an adjudication regime for federal construction projects. Other provinces, such as British Columbia, have also enacted similar legislation; however, these have not yet come into force. This update focuses on Ontario's regime.

ONTARIO

Ontario's construction adjudication regime is governed by the Construction Act, R.S.O. 1990, Chapter C.30 ("Construction Act (ON)") as amended by Bill 142 and implemented in 2019, and its regulations made thereunder. It has been in force since 1 October 2019, with Ontario as the first Canadian province to adopt a statutory adjudication regime.

Its use as a tool for resolving construction disputes has taken off over the last few years as contractors and owners become more familiar with the process.

Adjudication is an option for all construction contracts and subcontracts entered on or after 1 October 2019. Section 13.5 of the Construction Act (ON) provides that an adjudication may only address a single matter and cannot be commenced if the notice of adjudication is given after the contract in question is completed (unless otherwise agreed upon by the parties and the adjudicator). Changes

to the Construction Act (ON), which are not yet in force, will extend this to up to 90 days after the contract is completed, terminated or abandoned (unless otherwise agreed upon by the parties).

The types of disputes that are eligible for adjudication are:

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 subject to a notice of non-payment under Part I.1 (i.e., prompt payment – where the owner does not pay within the prescribed time because they disagree with the contractor's invoice).
4. Amounts retained under Section 12 (set-off by trustee) or under Subsection 17(3) (lien set-off).
5. Payment of a holdback under Sections 26.1 (payment of holdback on annual basis) and 26.2 (payment of holdback on phased basis).
6. Non-payment of a holdback under Section 27.1 (withholding of holdback).
7. Any other matter that the parties to the adjudication agree to, or that may be prescribed (i.e., by regulations under the Construction Act (ON)).

Adjudication is available even if the matter is a subject of a court action or arbitration, unless the action or arbitration has been finally determined. This is not dissimilar to the position under the 1996 Act to refer a dispute to adjudication at any time.

The default procedure established by statute in Ontario (Sections 13.6 - 13.14) is slightly longer than the position in England & Wales:

SUMMARY OF PROCEDURE

1. **Notice of adjudication** - the party who wants to refer a dispute to adjudication ("Referring Party") serves the Responding Party with a written notice of adjudication (including party names, description of dispute, redress sought, name of a proposed adjudicator - and, pursuant to changes to the Construction Act (ON), which are not yet in force, information about any previous adjudications the party was involved in respect of the contract).
2. **Appointment of adjudicator** - no later than four (4) days after the notice is given, an Adjudicator must consent the adjudication. The Adjudicator must be (i) chosen by the parties via agreement, or by request to the Authorized Nominating Authority and; (ii) listed in the adjudicator registry (currently the Adjudicator Registry of the Ontario Dispute Adjudication for Construction Contracts ("ODACC")). The changes to the Construction Act (ON), which are not yet in force, will further allow for parties to the adjudication to select a private adjudicator. Parties cannot pre-select a person to act as an Adjudicator in the contract or subcontract. If an adjudicator does not consent within these four (4) days, the Referring Party shall request that the Authorized Nominating Authority appoints an Adjudicator.
3. **Referral** - no later than five days after the Adjudicator consents or is appointed, the Referring Party must provide to the Adjudicator: (1) a copy of the notice and; (2) a copy of the contract or subcontract and any other documents the party intends to rely on during adjudication.
4. **Reply** - "no later than such day as the Adjudicator may specify", the Responding Party may respond in writing. The main body of the Act does not state a specific timeframe and; the Regulations add that it is up to the Adjudicator to choose the timeframe for a Response (if any). In practice, however, the Responding Party usually seeks to respond quickly, typically within 14 days. Both the Notice and the Response are brief documents, so this should be

manageable, especially if the Responding Party promptly involves experienced counsel.

5. **Determination** - no later than 30 days of receiving the Referring Party's documents, the Adjudicator issues a determination. This 30-day timeframe is extendable by mutual consent of the Referring Party, the Responding Party, and the Adjudicator. A determination made by the Adjudicator outside of this specified timeframe is of no force or effect.
6. **Decision** - parties can agree to terminate the adjudication at any time before the determination is issued.

EFFECT OF THE DECISION

While parties cannot directly appeal an Adjudication's determination, following receipt of the Adjudicator's determination, the parties remain permitted to apply to the Divisional Court for leave to judicially review the Adjudicator's decision, attend arbitration, or agree to a different determination via written agreement.

Until a determination is made by the court, arbitrator, or written agreement, the Adjudicator's determination is binding. This position is similar to the interim binding nature of adjudication in the UK and Ireland.

Despite construction adjudication in Ontario being relatively new, adjudication matters have been considered by the Divisional Court since its implementation.

Notably, *Ledore Investments v. Dixin Construction* (2024 ONSC 598) was the first time an Ontario court considered issues of procedural fairness and the availability of judicial review to set aside an adjudicator's decision. Ultimately, the court held that there had been a breach of procedural fairness, in that the Adjudicator had reached a decision based on an issue that had not been pleaded or relied upon by either of the parties, and judicial review was therefore available in the circumstances.

In *MGW-Homes Design Inc. v Domenic Pasqualino* (2024 ONCA 422), the Ontario Court of Appeal considered the appropriate forum for hearing an appeal of an order preventing the successful party from enforcing the adjudicator's decision. This issue turned on whether the appealed order constituted a "judgment" under Section 71 of the Construction Act (ON). The Court of Appeal

held that the relevant order did constitute a “judgment” in this context (noting the Act’s purpose of promoting efficiency) and the appeal fell to be heard by the Divisional Court.

As previously noted, amendments to the Construction Act (ON) are forthcoming. These provisions are not yet in force, pending the Government of Ontario’s proclamation. Further updates from Beale & Co will follow in due course.

METHODS OF ENFORCEMENT

The Construction Act (ON) provides that a party to an adjudication has two years to file a certified copy of the determination with the court. Once it is filed, parties are required to notify the other party within 10 days.

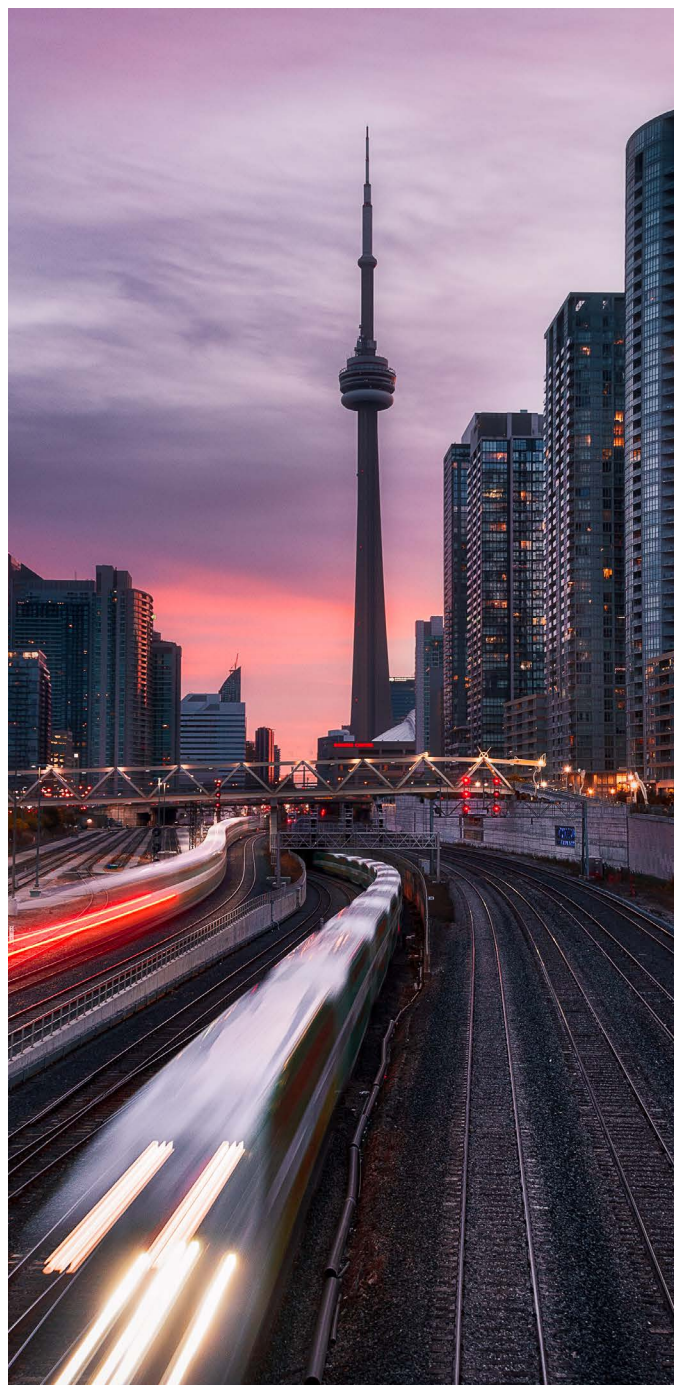
To enforce the adjudication determination, Rule 60 of the Rules of Civil Procedure (R.R.O. 1990, Reg 194) sets out the methods of enforcement of an order for the payment of money, including but not limited to, a writ of seizure and sale, garnishment, or the appointment of a receiver.

ADJUDICATOR’S FEES AND EXPENSES

In Ontario, adjudication fees may be agreed upon among the Parties and the Adjudicator. If the Parties cannot agree on an adjudication fee, ODACC sets it out as follows (excluding taxes and disbursements):

Amount Claimed on Notice of Adjudication	Adjudication Fee
≤ \$9,999	\$1,100
\$10,000 ≤ \$24,999	\$1,300
\$25,000 ≤ \$34,999	\$2,300
\$35,000 ≤ \$49,999	\$3,300
\$50,000 ≤ \$249,999	Adjudicator hourly rate of \$275
\$250,000 ≤ \$499,999	Adjudicator hourly rate of \$425
\$500,000 ≤ \$1,000,000	Adjudicator hourly rate of \$550
> \$1,000,000	Adjudicator hourly rate of \$800

The Construction Act (ON) provides that, except in the case of a consolidated adjudication, the Parties are to split payment of the adjudication fee equally, unless the Adjudicator decides otherwise.

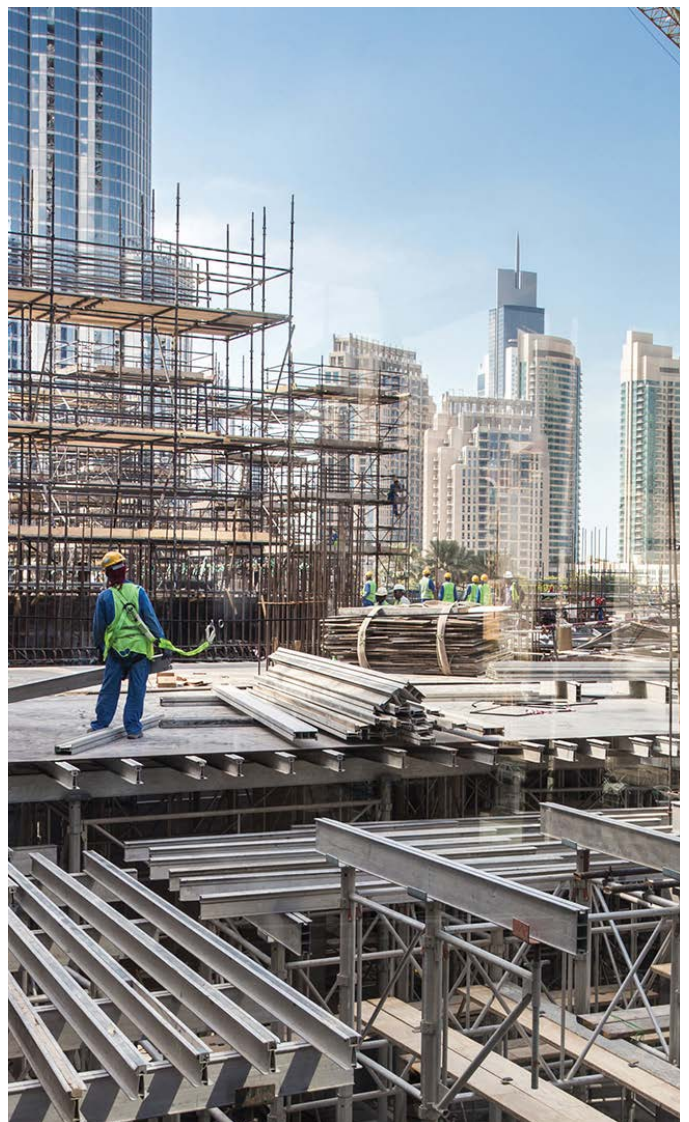




UAE

There is no statutory framework for adjudication in the UAE. While there remains the opportunity for parties to a construction contract to include adjudication as a forum for dispute resolution, the preference remains for the use of dispute boards and arbitration.

For this reason, any potential for adjudication in the UAE will turn on the terms of the contract. With no minimum procedure set down by statute, this can adopt a broader timetable and/or allow for multiple disputes to be referred at the same time.





CONCLUDING THOUGHTS

The UK, Ireland and parts of Canada have statutory frameworks for adjudication, but the UK regimes are more established, having largely been in place since 1996, while Ireland's and Canada's regime is relatively new.

The UK regimes generally allow for a broader range of disputes to be adjudicated, including complex and high-value matters. In contrast, Irish adjudication is for disputes related to payment and the Canadian regime currently focuses more on payment disputes and cash flow issues.

All regimes aim for quick resolution, with the UK typically completing adjudication decisions within 28 days of the

Referral Notice, and Canada within 30 days. However, the specific procedures and timelines varies between jurisdictions (and on a case-by-case basis with the parties' agreement).

In the UK, Ireland and Canada, Adjudicators' decisions are binding on an interim basis and are generally enforced by the courts. The grounds for resisting enforcement are limited in all jurisdictions. This means that adjudication remains an effective dispute resolution tool within the construction industry and will continue to expand to additional jurisdictions.

FIND OUT MORE

Beale & Co offer international perspective and legal expertise in various jurisdictions across the globe. For further details of our wider international experience and offering, please visit our website.

For further information on the above, or support on applying these to your adjudication disputes, please contact:

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