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New strategies for resolving construction contract disputes

With 2019 legislation introducing adjudication processes into the construction litigation landscape in Ontario, we are now seeing this alternative form of dispute resolution become increasingly prevalent. Litigation partner [David Outerbridge](#) has shared his insights on some strategies that parties to a contract could implement when dealing with adjudication processes.

A [Daily Commercial News](#) article explains that the province's new adjudication process offers another way to settle issues between parties to a construction contract or subcontract. The process is intended to be efficient and commercially minded as its short timelines can help keep construction projects on track—and it is also a means to avoid commencing a law suit.

The article continues, saying that while there are restrictions to consider with the adjudication process, a “pre-selection of an adjudicator could be critical”.

The *Ontario Construction Act* prevents parties from stipulating the adjudicators in their contract. But once a contract is signed, David said parties could have a separate agreement dealing with the adjudicator selection.

“I think the reason is to make sure that the more powerful party negotiating the contract doesn't impose their adjudicator on the other side through their negotiating power,” David said.

“You could enter into your contract and then the next day enter into an adjudication agreement that says, ‘If we have a dispute on this project under which we have already entered into a contract, we then agree to who the adjudicators might be should there be a dispute.’

“Another option might be to just say, ‘We will agree on an adjudicator to be appointed by, for example, ADR Chambers, who is legally trained.’ Therefore, if you can't agree amongst yourselves, when the time comes you will at least have agreed on the pool from which the adjudicator will be picked.

“This third party would pick from a list of adjudicators, perhaps a list of retired lawyers or judges, and do so within 24-hours in order to get a jump on the ODACC (Ontario Dispute Adjudication for Construction Contracts) regime.”

David said while these may be effective strategies for contracting parties, time will have to tell how the construction industry will engage with the still-new adjudication process.

Read more of Torys' [Litigation and Dispute Resolution](#) insights on the relevant practice page.

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