

ADRIC-RICS Model Framework for Construction Adjudication across Canada

Questions received during the April 28th Introductory Webinar and
via email, and Answers (the webinar recording is available at no charge [here](#))

How is this aligning with ODACC of Ontario managed by ADR Chambers? Also, how qualified
construction Adjudicators with ODACC treated in this process?

Thanks for this question, certainly anticipated. This, though, is a high-level overview, essentially a
'how-to' for all 14 jurisdictions across Canada. Each jurisdiction is different, from Quebec and
Ontario that are in operation now, through Alberta and Saskatchewan that are close, and the rest
that are considering how to build the best construction adjudication systems. ADRIC-RICS has
issued the Model Framework as a guidance document to help with that process. We must address
the circumstances within each jurisdiction and figure out how to do so. Please stay in touch, and
we can discuss this in more detail if you wish. Please also see the information sheet on the [ADRIC
website](#) for details of the fee arrangement we have put in place for people undertaking the ADRIC-
RICS Adjudicator Training Program who have also completed the ODACC training.

As a mediator, I'm wondering what role, if any, mediation may have in the framework.

Adjudication provides a fast, definitive, but interim decision on a dispute and, as such, it is not
mediation. However, mediators are entirely welcome to become involved, whether as advisors or
as adjudicators if they have the required qualifications.

Required Insurance coverage - providers? type? limits?

Insurance requirements will be determined for each jurisdiction as they come 'on-stream'. Some
people working in the contractual adjudication arena already carry \$5million through Marsh under
an ADRIC program - please see the [ADRIC website](#) for details.

Will existing Quebec and Ontario adjudicators have to requalify under this framework to do work for
the feds and in other provinces?

The simple answer is, yes, but we have put in place an accommodation for people which we believe
is reasonable and fair. Please also see the information sheet on the [ADRIC website](#) for details of the
fee arrangement for people undertaking the ADRIC-RICS Adjudicator Training Program who have
also completed the ODACC training.

So does that mean there will be 14 different qualifications across the country? That doesn't seem right.

The vision of our organizations is that the training, and qualifying criteria, will be the same, or very similar, in each jurisdiction across the country.

There are not going to be enough adjudications in any Province for a provincial Authority to work financially. For example, there have only been 60 filed adjudications in Ontario as of March since inception of adjudication. ODACC is not breaking even and the adjudicators, of which there are 65 certified, are all losing money. How do you plan to address this?

The federal government is interested in a national ANA being able to service provinces and territories. That is what ADRIC-RICS is working toward with ADRIC affiliates. It is anticipated that Adjudication will take time to gain "traction" in each jurisdiction. This seems to be what is happening in Ontario. We believe, however, that a robust education program for users and representatives will assist in promoting understanding and acceptance of Adjudication.

How do design professionals come to play in this??

The legislation differs across the country. In Saskatchewan, for instance, design professionals are not covered by the legislation. It is anticipated that they will be covered in Alberta.

Will existing Chartered Arbitrators be required to requalify as adjudicators?

Yes, as mentioned during the webinar, the processes are different.

What is the cost range for adjudication and is it a sliding scale based on quantum of dispute?

In the UK, the legislation says that the adjudicator decides who pays his/her fees. The fees must be reasonable, though the Act does not define what is reasonable. In practice the basis of fees is agreed with the parties at the outset. An adjudicator does not automatically have power to allocate liability for inter-party costs. Often, the parties give the adjudicator this power. In recent years, organisations like RICS have developed adjudication frameworks for low value claims (i.e. less than £50k). These frameworks set caps on adjudicators' fees, e.g. maximum £6000, to be paid in equal parts by the parties. This is the situation in the UK, and things may not pan out in the same way across Canada. So for instance, in Ontario, s.13.16 of the Act says parties shall bear their own costs, except where a party acts frivolously, vexatiously, etc. then adjudicator can allocate costs differently.

Adjudication is governed provincially in Canada. How do you propose to make work nationally?

We will be working with our affiliates. We believe that the Provinces will, to a great extent, harmonize their legislation and regulations. Such harmonization will enable ADRIC and its Affiliates, working with RICS, to share resources, procedures, and administration, including standardized training.

Can the parties request an adjudicator?

Yes, and in the event of their not being able to agree the Nominating Authority will appoint one.

A few years ago I attended a session in Toronto where a representative from Britain (addressed the British experience. One interesting point made by the speaker was the increase in size of value of the disputes, domination of lawyers and very high increase in cost, thus discouraging smaller firms and projects from going to Adjudication. If I have remembered this correctly could you please comment on the state of Adjudication in UK today?

There are those who would argue that adjudication has evolved into an overly complex and costly process to the extent that parties involved in low value claims cannot use it. The reality is that the legislation in the UK gives the adjudicator power and an obligation to adopt a procedure that avoids unnecessary costs. The adjudicator does not need the parties to agree his/her proposed procedure. The government is alive to this and is encouraging adjudicators to adopt frameworks such as the CIC Model Procedure for Low Value Disputes when dealing with smaller cases. This framework limits the amounts of documentation that parties can submit; it caps adjudicators' fees and it ensures straightforward disputes about modest sums of money can be decided within 28 days cost-effectively.

What are the lessons learned from Ontario's ODACC?

We believe that there may be insufficient education of users and representatives of users. This may have an impact on the use of the process. We are also unaware of the extent and quality of the training available to adjudicators in that province. No criticism of the ODACC model is intended. Adjudication is a relatively new concept in Canada, and it will evolve over time as it has in the UK. However, ADRIC has learned a great deal from RICS about the nature and content of training, and the administrative structures, necessary to the success of Adjudication in Canada.

If each provincial authority is training adjudicators, and they will want to for the revenue, this means adjudicators will have to pay for the same type of training in each province they want to practise, which is cost prohibitive and not motivating for adjudicators to practice. How do we address this?

ADRIC and Affiliates have agreed that training will be done nationally, but addressing each province/territory's legislation and regulations.

So, is the framework training going to be different than the existing Ontario training?

Yes – ADRIC-RICS has its own training plan based on RICS experience in training adjudicators. Please read the Framework Document and ADRIC-RICS Adjudicator Training Program outline on the [ADRIC website](#). Please don't hesitate to contact us should you have any further questions.

In terms of late payment, the function of adjudication is supported in the UK by a statutory right to interest on late payments (for commercial debts). Do you think such an Act is a necessity for effective adjudication in Canada?

An interest "penalty" on late payments seems to be the direction that the Canadian jurisdictions are taking to enforce the prompt payment and adjudication provisions in their respective legislation.

Are RICS and ADRIC speaking with contracting drafting authorities to have Adjudication provisions into construction contracts?

We believe that this will be an important factor in the growth of adjudication across Canada. We will be engaging in these discussion with drafting authorities, including law firms and inhouse counsel at the bigger construction firms and with provincial and federal agencies that draft infrastructure contracts, and other bodies CCDC under the CCA..

Does the adjudication process follow an inquisitorial process where the adjudicator asks the questions, causes investigation etc? Or is it a situation where the parties lead evidence? It is something of a mix of the two.

An adjudicator typically has the authority to ask questions, conduct site inspections, and seek expert advice, but will also receive submissions from the parties. Adjudications also frequently take place entirely on paper. Part of the practical skill of being an adjudicator is understanding how and when to use these powers most effectively. In Ontario, s.13.12(1)(2) 'Taking the initiative in ascertaining the relevant facts and law' is being interpreted as allowing the adjudicator to take an inquisitorial approach.

How would Adjudication reach down to sub-subs of subs-etc - and small suppliers. These worst impacted by slow payments and are small functionaries on a large complex site?

The interplay of the prompt payment and adjudication provisions under the existing and contemplated legislation is such that the benefits should reach down to sub and sub-contractor/supplier levels by way of the specified payment and dispute resolution provisions. In the UK, the government is alive to this and is encouraging adjudicators to adopt frameworks such as the Construction Industry Council (CIC) Model Procedure for Low Value Disputes when dealing with smaller cases. This framework limits the amounts of documentation that parties can submit; it caps adjudicators' fees and it ensures straightforward disputes about modest sums of money can be decided within 28 days cost-effectively. Please also see the schedule of graded fees and costs set out in the Framework Document on the ADRIC website which addresses this important issue.

When you say content expertise what does this look like? Will it be broad enough to include those who are not engineers or in the construction industry?

While there will be no requirement for engineering experience specifically, the existing and contemplated legislation across the country will require adjudicators to have, typically, 10 years of

relevant experience in the construction industry. Our model does, accordingly, include this same requirement.

Does USA have adjudication or similar process in their construction dispute regulations?

We are not familiar enough with the USA experience across all 50 States to answer this question authoritatively, but our understanding is that the USA has not enacted adjudication legislation as is being promulgated in Canada. However, there are provisions for contractual adjudication in some construction contracts.

Using an ANA looks to be a provincial judge appointment, right?

ANA's or "Authorities" will be set up at the Provincial and Federal level. Adjudicators will, indeed, perform a quasi-judicial function in that they will make interim binding decisions. They will not, however, be considered to be provincial judges.

In Ontario, the ANA regulates (in part) the fees to be charged by adjudicators, and also takes a % of the final fee. Also, a prospective adjudicator must pay about \$1,500 in fees to become certified. How does that compare to adjudication in other jurisdictions?

In the UK, DRS charges an appointment fee of £425 to make a standard adjudicator appointment and £250 under the CIC Model Procedure for Low Value Disputes when dealing with smaller cases. RICS does not take a percentage of the adjudicator's fee in the UK. In Australia, by contrast, RICS does not charge an appointment fee, but takes up to 25% of the adjudicator's fee depending on which state you are in. The remuneration structure that ADRI-CRICS has developed in Canada is a combination designed to provide best value for money for users of the service through modest, stepped appointment fees; an equitable 20% commission on the adjudicators' fees, together yielding a sensible but viable rate of return for the Nominating Authority. Please see more on this subject in the Framework Document on the [ADRI-CRICS website](#). In the UK, adjudicators are required to complete the 18-month RICS Diploma in Adjudication as a prerequisite for admission to the UK Panel. This currently costs £4355, plus £1895 for the panel interview process. They are also required to attend a minimum of two rolling Adjudication Competency sessions per year – these cost £790. The comparative costs for the Canada ADRI-CRICS process are set out in the Framework Document and ADRI-CRICS Adjudicator Training Program outline on the [ADRI-CRICS website](#). They provide real value for money.

I echo this issue in Ontario the ODACC system and costs is discouraging many from becoming adjudicators. If cost become even higher with fees to each ANA provincially and then Federally only those able to afford it will proceed and that is a weakness that deprives industry of many knowledgeable experienced people from offering their services as adjudicators.

This question has by and large been responded to in the answers above. We are very alive to this issue and have, we believe, developed a system which is designed to ensure the high quality of the

ADRIC-RICS training and panel, but with an equitable financial accommodation for people who have done training elsewhere.

Are you able to provide any general comments on the application/response of professional E&O insurance policies in an adjudication where an insured-consultant's design is at issue?

This is a question to be directed by the insured design consultant to the relevant insurer to ensure that the determination made by an adjudicator and the process leading up to it are insured risks under the policy.

Is a practicum being considered to give those new to the work eventual access so there is also some equity in who gets the work. Selecting the right one for the claim could be a challenge as Rob is indicating.

RICS has run panels of arbitrators, adjudicators, and mediators for nearly fifty years in which time we have made about a quarter of a million appointments. The appointment process provides a sieve by which properly trained and qualified, but less experienced, panelists are selected for smaller cases in which they can gain experience. This system works very well to provide a cost-effective service for the public and to nurture adjudicator talent on the panel. Some of the people who started off this way in the early nineties are now among our most eminent and successful adjudicators.

One of the speakers suggested concerns about the Ontario training. Can you elaborate? "We are also concerned about the extent and quality of the training available to adjudicators in that province."

This has been answered on behalf of ADRIC and RICS above. Please also see the information sheet on the [ADRIC website](#) for details of the fee arrangement we have put in place for people undertaking the ADRIC-RICS Adjudicator Training Program who have also completed the ODACC training.

This all works only if you folks win the role in province.

This is partly true. However, we hope that the model for training, adjudication appointment administration, and panel quality management that we have designed for Canada as a whole will, eventually, be emulated in other jurisdictions whether or not ADRIC-RICS becomes the Authority in those jurisdictions.

I see in Ontario, though the ODACC, licensing is provided for construction adjudicators under the relevant act in that province. What is the interface between persons licensed under that act/ANA and under the ADRIC model framework?

Currently the only interface is, as stated above, that construction adjudicators licensed through ODACC, wishing to be accredited under the ADRIC-RICS model, will have to take the full

ADRICS/RICS training, but the fees which they paid to take the ODACC training will be credited toward the cost of the ADRI-C-RICS training.

Estimated proportion of legal versus technical adjudicators required based on experience in UK? Australia/New Zealand? Ontario?

Of 66 ODACC adjudicators, 45 are technical people (engineers, project managers or quantity surveyors); 2 are architects; and 19 are lawyers. 3 lawyers and 19 technical people have two or more qualifications.

Martin said that approximately 70% of adjudicators on the RICS panel were quantity surveyors. It would be helpful to stress here again the need for a broad spectrum of expertise. When we (RICS) first set out to establish a roster of adjudicators we realized early on that the roster should be comprised of a mix of professionals, e.g. surveyors, lawyers, engineers, designers/architects, etc.

We established an initial roster in the UK in around 1997/8. At that time we were uncertain about how many people on the roster should be surveyors, lawyers, etc. By 01 May 1998, when adjudication became a statutory right, the initial roster was probably about 80% surveyors, 15% lawyers and the rest were engineers or architects.

Over time, as adjudication became established and requests for nominations increased, we recruited new adjudicators to the roster and drew on what we had learned in terms of demand for professional knowledge and experience. Very quickly, i.e. within 12 months, the composition of the roster was 70% surveyor and 30% other (mainly lawyers). This composition has served RICS well for the past 23+ years.

The composition of the RICS adjudicator roster in Australasia is similarly driven by user demand and is currently comprised mainly of surveyors with lawyers and engineers making up the rest

Is adjudication in UK also limited to only construction, like Ontario?

S.108 of the Housing Grants Construction and Regeneration Act 1996 says that all construction contracts as defined by the Act must enable a party to a contract to refer any dispute arising under the contract to be referred, at any time, to the decision of an adjudicator.

The Act does not provide for adjudication as a right in any contract that is not a construction contract.

What is key here is the definition of a construction contract as set out in the Act. If a contract does not include express provisions for adjudication, which comply with the Act, then the right to adjudication and the process parties must follow, are implied via secondary legislation, known as the Scheme for Construction Contracts Regulations (The Scheme).

The Scheme is, in effect, an adjudication clause and prescriptive procedure which is implied into a construction contract, which does not include express provisions for adjudication

The primary focus of adjudication under the legislation is the quick resolution of business to business disputes. This perhaps explains why the Act precludes adjudication from being implied into contracts where one of the parties is a residential owner/occupier and the contract works are carried out on his/her residence. However, if there is an express provision for adjudication in the contract, a residential occupier will normally be bound by it.

A construction contract is defined in sections 104 and 105 of the Act as an agreement to undertake the following operations

- construction, alteration, repair, maintenance, extension and demolition or dismantling of structures forming part of the land and works forming part of the land, whether they are permanent or not;
- the installation of mechanical, electrical and heating works and maintenance of such works;
- cleaning carried out in the course of construction, alteration, repair, extension,
- painting and decorating and preparatory works

Contracts with architects, designers, engineers and surveyors are also included, as is the giving of advice on building, engineering, decoration and landscaping.

Contracts for the following are excluded:

- Work on process plant and on its supporting or access steelwork on sites where the primary activity is nuclear processing, power generation, water or effluent treatment, handling of chemicals, pharmaceuticals, oil, gas, steel or food and drink (but not warehousing).

This exclusion is somewhat vague and a number of cases have gone to court in an endeavour to clarify it. The outcome of these cases suggests that, as a rough rule, in deciding whether a particular contract is excluded from the Act you should look at the purpose of the contract works: that is, whether the contract works are integral to the process (for instance, pipework joining turbines, which would be excluded from the definition) or whether they are not part of the process (for instance, scaffolding, which would not be excluded).

Are RICS/ADRIC trained adjudicators to determine disputes which ODACC would have jurisdiction over?

Currently, only ODACC licensed adjudicators are authorized to run adjudications under the process set out in the Construction Act, R.S.O. 1990, c. C.30.

So having completed the ODACC training which covered what you just mentioned does this mean we now have to do your training? More cost more duplication. There needs to be an effort to consolidate all training and costs.

We agree, and if our approach to a unified adjudication regime across Canada comes to be accepted, this will happen over time. In the meantime, please see the information sheet on the

[ADRIC website](#) for details of the fee arrangement we have put in place for people undertaking the ADRIC-RICS Adjudicator Training Program who have also completed the ODACC training.

A number of the speakers have mentioned that expertise in the subject matter is very important and ANA will assign cases based on subject matter expertise, among other things. For someone with no or minimum construction background, if they are accredited, would that mean there is little chance they will get assigned and nominated as the adjudicator?

We would not accept anyone for training who does not qualify under the applicable legislation to become an adjudicator. This inevitably requires professional experience in the construction sector. 'Construction Adjudication' is what it says on the can: a construction sector-specific means of dispute resolution in which, to be credible, adjudicators require a high level of sector expertise and experience. ADRIC-RICS also offers training for those looking for a general overview of adjudication, and for those who are users, advisors or party representatives, who want much more detail, but who do not intend to become adjudicators. Please see the ADRIC-RICS Adjudicator Training Program outline which can be accessed [here](#)

Could you provide insight into how adjudicators deal with costs of the adjudication in low end dollar value claims? The model fee structure makes great sense, but in the low end if costs are shared by default, there is little incentive for acting reasonably to resolve the dispute before adjudication. If one is on the weak side of the argument, adjudication is a free kick at the cat if there is no fee penalty.

The legislation in Ontario and Saskatchewan does, for example, permit the adjudicator to award costs against a party when that party is found to have acted in a frivolous or vexatious manner, or in a manner that is an abuse of process or not in good faith. Presumably, Alberta is headed in the same direction. All we can say is that this has not been borne out by the experience in the UK. The business of taking a matter to and through adjudication is a serious one and ultimately, if it is not taken seriously, parties realize that the matter will still go to court and so do not overly abuse the process.

We heard from you about the adjudication regimes in many of the provinces. I practice in British Columbia. This presentation caught me by surprise as I have not heard of any such regime in BC, and indeed your presentation seems to have mentioned all the major provinces except BC. What is BC doing to address construction adjudication, if anything?

As mentioned during the webinar, we are aware that there has been industry support for the adoption of prompt payment/adjudication legislation in B.C. However, to our knowledge the B.C. Government is not drafting or considering such legislation at this time.

Since provinces have jurisdiction over construction and payment, each province is setting up their own ANA. Canada seems to be deferring to provincial regime if it is similar and thus the provincial ANA would apply. How do we get consistency if each ANA is uniquely hired by each province?

As stated above, we hope that as the provinces become increasingly aware of what is being done elsewhere and the dangers inherent in creating an overly fragmented process become better understood, consistent legislation across the country will enable provincial, territorial, and federal ANA's to harmonize their approaches.

Are there plans to incorporate this model framework into Canadian standard form contracts e.g CCDC/CCA similar to how FIDIC has incorporated adjudication?

We believe that this will be an important factor in the growth of adjudication across Canada. We will be engaging in these discussions with standard form drafting organizations, as well as law firms and inhouse counsel at the bigger construction firms and with provincial and federal agencies that draft infrastructure contracts, and other bodies including CCDC under the CCA..

After 20+ years of adjudication in the UK you are doing 1,500 adjudications per year. What is your expectation for Canada?

It is impossible to predict accurately: Canada has a population just over half that of the UK, but it has a vibrant construction sector. Also, the Canadian legislation is designed to encourage the use of adjudication as soon as disputes arise, rather than saving them up for one big compendium adjudication at the end of the project, this encourages larger numbers of cases. Adjudication has also become overly legalistic and expensive in the UK. Canada has the opportunity to avoid these pitfalls as it starts off down this route, and the ADRIC-RICS approach as set out in the Framework Document is designed to assist with this. Adjudication in Canada, just as it did in the UK, will start off small and grow incrementally as confidence in the system develops. It would perhaps not be unrealistic to expect upwards of 1000 cases per annum within five years.

In SK the legislation in the Act has the filing of the determination with the Court. My question is the Court rules of court - arriving at the Court Clerk with a determination without any rule of court in place seems to be problematic for me. Have there been discussions about amendments to the various rules of court to interface with the Act?

We have not been asked by any jurisdiction to provide any advice or direction on what, if any, Rules amendments may be necessary. In Ontario under s.13.20(1), a certified copy of the adjudicator's determination may be filed with the Court and, within prescribed time limits, enforced as if it were an order of the court. However, I am unsure whether Ontario made any revisions to its Rule of Court to enable the filing of Determinations as court orders. Internationally, in general, once legislation is passed, courts have little choice but to amend their rules to accommodate the changes necessary to give effect to it.

What are the most common issues that are adjudicated in the UK?

Adjudication only comes into play when a dispute has 'crystallised'. There are several ways that this can occur, including:

- where one party makes a claim and the other party rejects it;

- where a claim is made but the other party remains silent for a period; and
- where a dispute is inferred from prevarication by one of the parties.

Under UK legislation, any dispute arising under the contract can be adjudicated. Common types of disputes included issues around costs of variations, extensions of time and non-payment. In larger projects there can often be multiple change events that lead to claims for additional sums or compensation.

Under the Act a party cannot just not pay for works, which they may, for example, feel have not been undertaken properly, and then have an argument. They must first issue a notice of their intention to withhold all or part of the agreed price. This can then act as the trigger for a dispute.

Two issues that adjudicators often deal with concern amounts parties are entitled to be paid (quantum issues) or interpretation of contract (e.g. whether parties are entitled to payment)

Is it possible to choose an adjudicator in Ontario without referring to ODACC?

Currently, only ODACC licensed adjudicators are authorized to run adjudications under the process set out in the Construction Act, R.S.O. 1990, c. C.30. For adjudications under the Construction Act, s.13.1 defines an "adjudicator" as a person qualified as an adjudicator by ODACC, and that adjudications may only be conducted by an adjudicator listed in the ODACC Registry, s.13.9(1).

There are many pros of adjudication, what are some cons or challenges?

If people are not careful, adjudication can become overly complex, drawn out and legalistic – 'mini-litigation' or 'arbitration light'. This has happened in the UK, which is why new forms of low-cost adjudication are being introduced by bodies such as RICS. Nominating Authorities should also appoint the right adjudicator to each case – right in terms of experience, sector expertise and fee levels – using a next on the list system only serves the interests of the Nominating Authority and the adjudicators on the adjudicator panel, not the parties looking to use the service. The costs including the cut taken by the Nominating Body should be modest or uptake of the service will stall. Finally, adjudicators should not just be lawyers and arbitrators – adjudication is a construction-specific process and adjudicators should be drawn in the main from the construction industry.

Can you give a brief discussion of so called "smash-and-grab" adjudications that have developed in the UK - how they have arisen, and how you recommend the Canadian system be tailored to avoid the perils?

Where a client has failed to issue a document which can be categorized as a payment or pay-less notice, UK law says the debt is due as a notified sum, and the adjudicator must award it without reference to the underlying merits of the case. The English courts have rolled back from a completely unquestioning approach to this principle, thereby much reducing the opportunity for these adjudications, but this unfortunate situation can best be avoided by not introducing this principle into Canadian legislation in the first place.

Have you considered creating industry specific list of adjudicators (plumbing/electrical and so on)? All ADRIC-RICS adjudicators are required to state in detail what their specific areas of professional expertise are; and are then interviewed to confirm that they in fact hold these specialist skills. This process is central to the efficacy of the ADRC-RICS appointment service.

Do you see any recognition given for existing certified ODACC Adjudicators, or everyone is expected to start over?

Answered above. Please see the information sheet on the [ADRIC website](#) for details of the fee arrangement for people undertaking the ADRIC-RICS Adjudicator Training Program who have also completed the ODACC training.

Seems disingenuous to suggest ODACC training is inferior to your model framework if you don't have a comprehensive comparison.

This is not what we are suggesting: please read the [information sheet](#) to understand why our approach is as it is.

Do you see team or panel adjudicators - a person with industry experience and a lawyer - who both are certified adjudicators?

This would double the cost of the adjudication and is not something that has proven necessary elsewhere. In appointing a suitable adjudicator, the Nominating Authority will be aware of the nature of the dispute and will appoint an adjudicator with the skills needed to address it. In the UK a number of adjudicators have become dual qualified as construction industry professionals, such as quantity surveyors, and solicitors, but this is the exception rather than the norm: construction professionals understand enough law to deal with the legal aspects of predominantly technical cases, and lawyer adjudicators, given that their practice focuses on construction, understand the technical issues well enough to deal with cases which are more about the interpretation of construction contracts.

What are the ethics of misrepresentation to the adjudicator?

Because of the nature of the adjudication process, an Adjudicator will have a limited ability to assess credibility in a proceeding. An adjudicator does have the authority to draw inferences and award costs based on the conduct of the parties.

Can subs of subs initiate an adjudication?

Yes

Is there an example of Adjudication that has multiple (Global) jurisdiction and which body would take precedence?

Statutory adjudication regimes tend to have the geographic limitations to their applicability set out in the relevant legislation. Contractual adjudication on multi-national construction contracts tends to be governed by an interpretation of the contract concerned and where conflict of laws issue arise,

they will need to be resolved using the arcane principles of this branch of law, generally best understood by one of the relatively few specialists in this field.

In my particular circumstance, some years ago, the training included adjudication, which was just coming to the fore at that time. Completion of the training allowed me to gain full membership of the RICS, the Society of Construction Law and also the Chartered Institute of Arbitrators in the UK. I relinquished the latter as I did not practice as an arbitrator and did not want to pay membership dues when this was not the primary focus of my work, however I have retained my membership of RICS going on 20-years now. I note you state that prior training would be considered an "asset". Could you elaborate? For example, would this prior training be recognized such that credits could be given? Similarly, would training as an arbitrator through ADRIA be recognized as prior training? From the RICS perspective, we would look into this carefully on a case by case basis. As for the ADRIA arbitration training, our answer must be that arbitration training would be considered a valuable skill in order to seek appointment to the panel. It would not, however, exempt a candidate from taking any aspect of the adjudication course.

Is this training going to be common across Canada? In other words, is the training going to be harmonized with the training those adjudicators already appointed in Ontario would have had to attain?

We hope that the ADRIA-RICS model of training will be adopted across Canada with, of course, modifications made to suit the legislative regime in each jurisdiction. Regarding Ontario, as stated above, a credit will be afforded to those having taken the ODACC training.

You mention that ADRIA will be putting in its own bid, and mention the GoA has stated that it would like to see a list of trained adjudicators included in the bid. If I understand this correctly, I would then pay for the adjudication training (approximate cost of \$4,000) with no guarantee that ADRIA will be successful. Are the other bidders also offering training to potential adjudicators? If so, would they recognize the ADRIA-RICS training? You mention the adjudicators should be accredited – who is this accreditation with – the RICS?

We do, indeed, intend to train adjudicators with no guarantee that ADRIA or ADRIA-RICS will be selected as a Nominating Authority. Unfortunately, given the process that the Government of Alberta currently has underway, we appear to have no alternative but to proceed in this fashion. We are confident, however, that we will be successful in being selected as one of the Authorities in this province and that, at a minimum, the training we will provide will meet the regulatory requirements of the Alberta legislation. We are unaware of any training being provided by other interested bidders. Accordingly, we would expect that our training would be acceptable to those parties. As for accreditation, that will be provided jointly through ADRIA-RICS. ADRIA-RICS also offers training for those looking for a general overview of adjudication, and for those who are users, advisors or party representatives, who want much more detail, but who do not intend to become

adjudicators. Please see the ADRIC-RICS Adjudicator Training Program outline which can be accessed [here](#)

With regards to ongoing CPD, would this be through RICS? Those of us that are members of RICS already have an annual CPD requirement – would that be recognized as meeting the CPD requirements?

The CPD requirement will be designed jointly by ADRIC-RICS. For many years, all members of RICS dispute resolution panels have been required to complete 20 hours dispute resolution-specific CPD in addition to the twenty hours of general surveying CPD required of them as members of RICS. The ADRIC-RICS CPD would overlap with former rather than the latter.