

4th National Conference on Construction Adjudication

Session 4

The Future of Adjudication: Evolution or Revolution

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Three changes I would like to see in the years ahead.

- Broadening of an adjudicator's jurisdiction
- Allowing an upstream party to apply for adjudication.
- Allowing parties to choose their adjudicators.

Narrowing of the scope of claims that can be heard by an adjudicator.

SOP Amendment Act (2019) example:

Section 17(3) – *“In determining an adjudication application, an adjudicator must disregard any part of a payment claim or a payment response related to damage, loss or expense that is not supported by —*

(a) any document showing agreement between the claimant and the respondent on the quantum of that part of the payment claim or the payment response; or

(b) any certificate or other document that is required to be issued under the contract.”

Statistics on Number of AAs and ARAs.

YEAR	AA	ARA
2016	503	6
2017	414	2
2018	481	4
2019	465	4
2020	341	17
2021	338	16
2022	243	12
2023	290	15
2024	337	15

Observations:

- Significant decrease in the number of AAs.
- Significant increase in the numbers of ARAs.

Decrease in the number of AAs.

- Did number of construction disputes decrease?
- Was decrease due to the narrowing of the types of claims an adjudicator can hear?

Increase in the numbers of ARAs.

- Section 18 – Claimant can also apply for ARA.

Rationale for Section 17(3)

Second reading of the SOP (Amendment) Bill:

*“The Building and Construction Industry Security of Payment Act, or SOP Act in short, was introduced in 2005 to facilitate cash flow in the construction industry. The SOP Act introduced a **fast and low-cost** adjudication mechanism to deal with payment disputes...*

The Act has served the industry well. When the Act was first introduced, the industry was unfamiliar with how the adjudication process could assist them. Over the years, industry players are now more aware that adjudication is an effective mechanism to resolve payment disputes quickly, as compared to arbitration or litigation which can be lengthy and expensive...

In the initial years of administering the Act, there were less than 100 applications per year. This has now increased to more than 400 applications per year since 2014. We are happy to see that the industry is increasingly using the Act to resolve their payment issues. As of mid-2018, the adjudication process has facilitated payments of over \$940 million...”

Rationale for Section 17(3)

“Another issue that this Bill will address is the **lengthening of the adjudication process due to submission of complex claims.** We have observed that some claimants have started to include complicated prolongation costs, damages, losses or expenses when applying for adjudication.

This goes beyond the original scope of the SOP Act, which is intended to cover claims for work done or goods and services supplied. For example, one adjudication case took 129 days as the adjudicator needed more time to go through the claims for prolongation costs, which made up 70% of the total claimed amount. In contrast, a typical adjudication case takes only about 21 to 28 days from application to payment...”

Observation:

- Decrease in numbers of AAs suggests that claimants find the SOP Act less useful.

Questions:

- What objectives should SOPA achieve?
- Only value of work done and services supplied? Is speed so critical?
- Should we be more ambitious?
- Should we aspire to provide an efficient and low cost dispute resolution mechanism for parties to a construction contract to resolve **all** their disputes?

Questions:

➤ Do we have the resources to expand the types of claims an adjudicator can decide?

- SMC has more than 100 adjudicators with varied skill sets
- Adjudicators were already dealing with delay and loss and expense claims before Section 17(3).

➤ Does Section 17(3) really bar all complex issues?

Questions:

- If we want to provide an efficient and low cost dispute resolution mechanism for parties to a construction contract to resolve all their disputes.
- Should we allow an upstream party to apply for adjudication as well?
 - An upstream party has issues and claims that need resolution as well.
 - Scope of work, delay, liquidated damages, defects etc.

Allow parties to choose their adjudicators

- Is there time?
- What if the identity of adjudicator is contractually agreed?

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