



CanDACC Adjudicators' Code of Conduct

1. Definitions

“Act” means the [Federal Prompt Payment for Construction Work Act, S.C. 2019, c. 29, s.387 as amended](#);

“Adjudicator” means an individual holding a CanDACC Certificate to adjudicate;

“Adjudicator Registry” means the directory of Adjudicators maintained by CanDACC;

“CanDACC” means Canada Dispute Adjudication for Construction Contracts and is the Adjudicator Authority for the purposes of the *Act*;

“CanDACC Custom System” means the technology platform used by CanDACC to provide CanDACC services;

“CanDACC Determination Guidelines” are the directions issued by CanDACC for the writing of Determinations for adjudications with the purpose of establishing clarity and consistency;

“Certificate” means the certificate of qualification to adjudicate issued to an individual by CanDACC after the individual has met the eligibility and training requirements as set out by CanDACC, the *Act* and the *Regulations*, has completed the Adjudicator evaluation, and has been approved by CanDACC to be granted a Certificate;

“Code” means the CanDACC Adjudicators' Code of Conduct;

“Confidential Information” means any information acquired by the Adjudicator in the course of or for the purposes of the adjudication process, whether or not it is identified as confidential, and whether recorded or not, and however fixed, stored, expressed or embodied, including, but not limited to, the names and contact information of the parties, the facts of the dispute, and information relating to the dispute. Confidential Information does not include information that is otherwise publicly available;

“Conflict of Interest” means a situation where an Adjudicator has a real or perceived interest, pecuniary or non-pecuniary, direct or indirect, sufficient to appear to influence the objective exercise of the Adjudicator's duties. Conflicts of Interest include prior or current connections to the parties, perceived or actual, and prior or current involvement in the matter. A real or perceived interest of an Adjudicator's spouse, child, parent, or other close relative or person

who is closely connected with the Adjudicator is considered the equivalent of an Adjudicator's interest for the purpose of this definition;



"Determination" is the Adjudicator's written award;

"Harassment" includes, but is not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted;

"Losses" means liabilities, costs, damages and expenses (including legal, expert and consulting fees);

"Party" means a party to a dispute;

"Parties" means both or all parties involved a dispute;

"*Regulations*" mean all *Regulations* promulgated under the *Act*;

"Social Media" means publicly available, third party hosted, interactive web technologies used to produce, post and interact through text, images, video and audio to inform, share, promote, collaborate or network.

2. Preamble

2.1 CanDACC is committed to achieving the highest standards of conduct by its Adjudicators in order to maintain and ensure public trust and confidence in CanDACC and the Adjudicators' Determinations for construction disputes. The Code sets out the standard of conduct Adjudicators must observe and have committed to observe.

3. Purpose

3.1 The purpose of the Code is to:

- 1) establish rules to govern the professional and ethical responsibilities of Adjudicators;
- 2) maintain the principles of civility, procedural fairness, competence, proportionality, and integrity in the conduct of adjudications; and
- 3) promote public confidence in the adjudication process.

4. Application

4.1 The Code will apply to all Adjudicators holding Certificates issued by CanDACC. The Code governs continuing responsibilities of Adjudicators during the suspension and after the cancellation of Certificates.

5. Principles

5.1 An Adjudicator shall:

- 1) uphold the principles of
 - a. civility,
 - b. procedural fairness,
 - c. competence,
 - d. proportionality, and
 - e. integrityin the conduct of an adjudication.
- 2) conduct oneself with decorum;
- 3) ensure the Parties are informed of the procedural aspects of the adjudication process;
- 4) listen carefully and with respect to, and read carefully the views and submissions expressed by, the Parties and their representatives;
- 5) make Determinations in an impartial and independent manner on the merits of the case, based on justice, the law then in effect, and the evidence; and
- 6) write timely Determinations in accordance with the CanDACC Determination Guidelines.

5.2 No Adjudicator shall:

- 1) fail to observe and comply with the principles of the Code or the requirements of *the Act and Regulations*;
- 2) behave in any way that could adversely affect the reputation of CanDACC or the adjudication process;
- 3) advocate on behalf of any Party to the adjudication;
- 4) act outside of his or her jurisdiction as determined by the *Act*, the *Regulations*, the law, or the Code; or
- 5) delegate to any other person any duty to decide, unless permitted to do so by the Parties or applicable law.

6. Proportionality and Avoidance of Excess Expense



6.1 Adjudicators shall ensure that the costs and the time required for the adjudication are proportionate to the value of the claim and the Parties' expectations. Adjudicators shall ensure the procedure adopted for an adjudication is appropriate for the nature and value of the claim.

6.2 To ensure proportionality and avoid excess or unnecessary expense, Adjudicators must prepare appropriately for adjudications.

6.3 Adjudicators shall not delay the adjudication process.

7. Conflict of Interest

7.1 An Adjudicator shall not conduct an adjudication in which the Adjudicator has or may reasonably be perceived to have a Conflict of Interest. The Adjudicator shall ensure the Adjudicator has no Conflict of Interest and continues to have no Conflict of Interest in any adjudication for which the Adjudicator is selected or appointed.

7.2 Both before and throughout the adjudication process, an Adjudicator must disclose all interests, relationships and matters likely to affect the Adjudicator's independence or impartiality or that might reasonably be perceived as likely to do so.

7.3 Where an Adjudicator is or becomes aware that he or she is not able or may not be able to maintain the required degree of independence or impartiality, the Adjudicator must immediately:

- 1) advise the Parties of the possible Conflict of Interest and hear submissions on the issue; and
- 2) advise and request advice from CanDACC.

7.4 Where a Party to an adjudication raises an allegation of Conflict of Interest, the Adjudicator must immediately inform CanDACC of the allegation. After receiving advice from CanDACC, the Adjudicator may choose either to resign or to hear submissions from the Parties on the issue of the alleged Conflict of Interest. After submissions, the Adjudicator may resign or determine that the Adjudicator does not have a Conflict of Interest.

7.5 By agreeing to conduct an adjudication, the Adjudicator affirms the following:

1. The Adjudicator is, and shall remain, independent of the Parties.
2. The Adjudicator is, and shall remain, impartial in the conduct of the adjudication.
3. The Adjudicator has no Conflict of Interest, as defined in this Code.

The Adjudicator is not aware of any circumstances that could reasonably give rise to a perception of a Conflict of Interest or bias, and shall avoid and, if necessary, disclose to the



Parties and to CanDACC any such circumstances that may arise prior to the conclusion of the adjudication.

8. Communication

8.1 Adjudicators must communicate in an appropriate and professional manner with the Parties, their representatives and any witnesses or other third Parties involved in the adjudication.

8.2 All communications, direct or indirect, oral or in writing, with a Party, witness, witness representative, or a Party representative, must be done in the presence of all Parties and their representatives. Email and written communications to a Party, witness, witness representative, or a representative of another Party must be copied to all Parties and their representatives.

8.3 Any communication by Adjudicators that is related in any way to CanDACC business or related in any way to an adjudication shall only be conducted in a way that is pre-approved by CanDACC as appropriate and secure.

8.4 An Adjudicator shall not contact any Party, Party's representative or other person for the purpose of being selected as the Adjudicator for a dispute or adjudication.

8.5 An Adjudicator shall not make public comment or communicate with the media in any form, about CanDACC, or any adjudication, without first obtaining the written approval of CanDACC.

9. Confidentiality

9.1 Adjudicators shall not, at any time, disclose or release by any means, including Social Media, to any person, any Confidential Information, except when required by law.

9.2 Adjudicators shall take all necessary precautions against unauthorized access, use or misuse of Confidential Information. Specifically, Adjudicators shall not permit persons, other than those who are entitled thereto, to have access to Confidential Information. Adjudicators shall ensure that access to materials on their electronic devices (such as cellular phones, tablets and personal computers) is password protected and the password is not shared with persons who are not entitled to have access to the Confidential Information.

9.3 Adjudicators shall not use Confidential Information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body.

9.4 When an Adjudicator ceases to hold a Certificate or the Certificate is suspended, the duty not to disclose or release any Confidential Information continues.

9.5 If an Adjudicator becomes aware of a potential disclosure of Confidential Information, the Adjudicator shall immediately inform CanDACC in writing of the potential disclosure.



9.6 Adjudicators agree to be personally and solely liable and agree to indemnify CanDACC for any Losses arising from or related to any failure by the Adjudicator to protect the Confidential Information.

10. Competence and Fairness

10.1 Adjudicators should only accept selections or appointments to perform adjudications if they are confident that they possess the necessary experience and skill to perform their functions competently and fairly.

10.2 Adjudicators shall not make representations, whether orally or in writing, or engage in any other course of conduct, that is misleading or deceptive or likely to mislead or deceive CanDACC, the Parties, or the Parties' representatives about the Adjudicator's experience or expertise.

10.3 Adjudicators shall be familiar with the provisions of the *Act* and the *Regulations* and specifically with the sections that relate to the adjudication process and the Adjudicator's powers, duties and functions. Adjudicators shall also be familiar with the subject matter of the dispute.

10.4 Adjudicators shall maintain appropriate records for each adjudication they conduct and shall ensure that all documents are uploaded to the CanDACC Custom System on or before the release of the Determination.

11. Harassment

11.1 Adjudicators must treat Parties, one another, and CanDACC staff appropriately and with respect. They must not engage in Harassment, sexual harassment, abusive conduct, discrimination or violence.

11.2 An Adjudicator must not obstruct CanDACC, CanDACC staff, or any other Adjudicators in carrying out their responsibilities.

12. Notice of Change to CanDACC

12.1 Adjudicators shall notify CanDACC of any change in the required information for the Adjudicator Registry.

12.2 Adjudicators shall notify CanDACC immediately if the Adjudicator ceases to meet the eligibility requirements set out in the *Act* and the *Regulations* to hold a Certificate.

13. Compliance



13.1 Adjudicators shall familiarize themselves with and be aware of their obligations under the Code.

13.2 Adjudicators may, at any time, seek advice from CanDACC with respect to any issue concerning the Code.

13.3 Adjudicators must seek the advice of CanDACC if they believe, or a Party has alleged that, there has been, or may be, a breach of any provision of the Code, the Act or the Regulations.

14. Fees

14.1 Unless the Parties and the Adjudicator agree otherwise, Adjudicators shall charge only the fees as established in the CanDACC fee schedule and by their agreement with CanDACC.

14.2 Adjudicators shall immediately advise CanDACC if they become aware that the fees for an adjudication will exceed the amount collected as a retainer.

14.3 To eliminate any doubt, all Adjudicators agree to share the full fee for all federal construction adjudications in Canada with CanDACC in the percentage as set out on the CanDACC website, whether the Adjudicator is appointed by CanDACC or selected directly by the Parties.

15. On-Site Visits or Inspections

15.1 Adjudicators may conduct on-site visits and/or inspections. If they elect to do so, they must conduct the visits and/or inspections in accordance with the requirements set out in the *Act* and *Regulations*.

16. Record-Keeping/Reporting Requirement of Adjudicators

16.1 Adjudicators must provide CanDACC with a draft Determination no later than five days prior to the date the Determination is to be made and provided to the Parties pursuant to the *Act* and *Regulations*.

16.2 Adjudicators must provide a copy of the final Determination to the Parties as required by the *Act* and *Regulations*, and must provide a copy to CanDACC on the same day.

16.3 If an Adjudicator plans to resign from an adjudication, the Adjudicator must notify CanDACC in writing one day prior to the day that the Adjudicator so advises the Parties.

16.4 If an Adjudicator needs to make a typographical correction or similar correction to a Determination, the Adjudicator must provide a copy of the Corrected Determination to CanDACC on the same day as it is provided to the Parties.



16.5 If an Adjudicator has reason to believe that the fees for the adjudication will exceed the fees that were estimated at the start of the adjudication, the Adjudicator must immediately notify CanDACC in writing.

16.6 For adjudications that are conducted on an hourly basis, the Adjudicator must provide their hours, fees and extra costs, if any, to CanDACC within 5 days of the release of the Determination to the Parties if requested by CanDACC.

16.7 Adjudicators agree to conduct all adjudications commenced under the *Act* through CanDACC.

17. Enforcement

17.1 Any person, including any member of the public, CanDACC staff, or another Adjudicator, who has reasonable grounds to believe that an Adjudicator may have contravened the Code, the *Act* or the *Regulations* may proceed with a complaint pursuant to the complaint procedure set out on the CanDACC website.

17.2 Complaints against Adjudicators will be addressed by the CanDACC Quality Assurance Committee (the "QA Committee").

17.3 A complaint against an Adjudicator will be provided to the Adjudicator at the same time it is provided to the QA Committee.

17.4 Upon completion of the QA Committee's review of the complaint, the Adjudicator will be informed in writing of the findings of the QA Committee and whether or not the Adjudicator has been found to be in breach of the Code.

18. Consequence of Failing to Adhere to the Adjudicators' Code of Conduct

18.1 Any Adjudicator who has acted in a manner that CanDACC believes is contrary to a provision of the Code, the *Act* or the *Regulations* may be given an oral and/or written warning, may have their Certificate suspended or cancelled or may be required to complete additional training or education, as deemed appropriate by CanDACC.

18.2 In addition to or in place of the consequences listed in 18.1, CanDACC may, in its sole discretion, remove an Adjudicator from the Adjudicator Registry where the Adjudicator:

- (1) fails to remain qualified to hold a Certificate in accordance with the requirements of the *Act*, the *Regulations*, or any policies or procedures set by CanDACC;
- (2) breaches any provision of this Code;
- (3) fails to meet the standards of competence, fairness, or integrity expected of Adjudicators;



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(4) engages in conduct that could bring CanDACC or the adjudication process into disrepute.

18.3 Prior to removal from the Adjudicator Registry, CanDACC shall provide the Adjudicator with notice of the intended removal and an opportunity to respond in writing within a reasonable time period specified by CanDACC.

18.4 An Adjudicator who has been removed from the Adjudicator Registry shall not conduct adjudications under the *Act* and *Regulations* unless reinstated by CanDACC in accordance with the *Act*, the *Regulations* and any applicable CanDACC policies or procedures