DISPUTE INSIGHT LTD

ADJUDICATION IN NEW ZEALAND CONSTRUCTION

WHERE DISPUTES ARE WON AND LOST

Adjudication under the Construction Contracts Act 2002 (1) is often described as a quick way to resolve construction payment disputes. That is true, but it slightly understates the point. In New Zealand, adjudication is not simply a faster version of court or arbitration. It is a statutory payment and dispute-resolution mechanism designed to keep cash moving through the construction industry.

That design has consequences.

The Act creates a particular process: serve a compliant payment claim, which requires a compliant payment schedule, move quickly into adjudication if necessary and enforce the result with limited scope for delay. The broad philosophy is often summarised as “pay now, argue later." That does not mean the underlying merits disappear forever. It means the Act prioritises interim cash flow first, leaving the final merits to litigation, arbitration, mediation, or later agreement if required. The Act is a fast, interim, enforceable regime, supported by payment claims, payment schedules, adjudication, suspension rights, debt recovery, and entry of determinations as judgments.

That is why adjudication disputes are often won or lost before anyone gets to the elegant legal arguments. More often, the result turns on whether a payment claim was valid, whether a payment schedule was served in time, whether the adjudication claim framed the dispute properly, whether the evidence was coherent, and whether enforcement was thought about early rather than after the determination arrived. In short, adjudication rewards discipline and punishes casual contract administration. It is not glamorous, but neither is a late payment schedule.

THE ACT’S BASIC STRUCTURE

The starting point is the statutory payment regime. A payment claim must comply with s20 of the Act. It must be in writing, identify the construction contract and the relevant work, state the claimed amount and due date, explain how the amount is calculated, state that it is made under the Act, and include form 1. (2). The payer must then respond with a payment schedule under s 21. If the payer proposes to pay less than claimed, the schedule must say how much is scheduled, how that amount is calculated, and why the difference is being withheld.

The consequences of failing to serve a proper payment schedule are severe. If no valid payment schedule is served within the contractual period, or within the statutory default period where the contract is silent, the payer becomes liable for the claimed amount on the due date. The payee may then recover the unpaid amount as a debt and may have suspension rights under the Act.

Adjudication sits alongside that payment machinery. A party to a construction contract may refer a dispute to adjudication even where court or tribunal proceedings are already on foot. The Act also allows adjudication and other dispute-resolution processes to run concurrently. This is a critical point.

Adjudication is not necessarily the final word on the whole dispute, but it can be the immediate word on who must pay now.

WHERE CLAIMANTS WIN: THE PAYMENT CLAIM

For a claimant, the first battleground is the payment claim. A claimant who wants to use the Act properly should keep in mind when drafting the payment claim that it may later be placed before an adjudicator, a court, or a party deciding whether to issue a statutory demand.

A relevant case on payment claim validity is George Developments Ltd v Canam Construction Ltd.(3). In that case, the developer challenged the validity of a payment claim, arguing in substance that the claim was defective because it included earlier-period items, did not sufficiently identify work period-by-period, and included extension-of-time related costs. The Court of Appeal rejected an overly technical approach. The case records that the Court held technical quibbles should not invalidate a claim that substantively complies with the Act, that cumulative claims are permissible, and that extension-of-time related costs may be included if payable under the contract.

That is claimant-friendly, but it should not be misunderstood. George Developments does not mean near enough is always good enough. The courts may resist technical ambushes, but the claim still needs to do the statutory work. A payment claim that cannot be recognised as a claim under the Act, or whose service cannot be proved, may still fail. The practical lesson is simple: draft the payment claim for enforcement, not just for persuasion.

WHERE RESPONDENTS LOSE: THE PAYMENT

For a payer, the payment schedule is often the whole game.

If there is any genuine dispute about the amount claimed, the payer must respond properly and on time. A vague protest email is not enough. A general statement that the work is defective, incomplete, overvalued, or disputed may be commercially understandable, but it may not protect the payer under the Act. The payment schedule should identify the scheduled amount, show how it has been calculated, and explain the reasons for withholding.

Once the schedule deadline is missed, the merits may become secondary at the payment-enforcement stage. The payer may still have claims for defects, delay,

overpayment, or breach of contract, but those claims may have to be pursued later while the scheduled or adjudicated amount is paid first.

This point is illustrated in Rees v Firth. (6). The underlying history involved a final payment claim by Holmes Construction. The adjudicator found that the relevant parties had failed to provide payment schedules within the required time. The effect was that they could not defend the payment claims in that adjudication, and substantial sums were determined as payable. The case later became important for judicial review, but its factual background also shows the unforgiving nature of the payment schedule regime.

The practical lesson for principals, head contractors, and consultants is blunt: if a payment claim lands, diarise the response date immediately. Investigate quickly. If the valuation is incomplete, say so. If defects are alleged, identify them. If set-off is relied upon, explain it. But do not stay silent while everyone is still working through it. The Act does not reward silence.

SCOPE: THE ADJUDICATION CLAIM

The next place disputes are won or lost is in the framing of the adjudication itself.

An adjudication begins with a notice of adjudication, but after the adjudicator accepts appointment, the adjudication claim becomes the key document. The Act notes in s.36 that the adjudication claim requires a claimant to specify the nature or grounds of the dispute, with the notice of adjudication accompanying it only to the extent it remains relevant.

That distinction matters. In Canam Construction (1955) Ltd v LaHatte (4), the High Court considered the relationship between the notice of adjudication and the adjudication claim. The case confirms that the adjudication claim, rather than the original notice alone, frames the referred dispute. It also records that the adjudicator was entitled to decide the claim on the basis of the missing payment schedule and did not need to resolve all underlying merits issues once no schedule had been served.

That is strategically important for both sides. Claimants should ensure the adjudication claim is precise, organised, and tied to the relief sought. Respondents should not assume the notice of adjudication defines the limits of the dispute forever. If there is a jurisdiction objection, it should be raised early, clearly, and by reference to the Act. A broad complaint that the adjudicator has “no jurisdiction” is rarely as effective as a specific objection explaining exactly what dispute has, or has not, been referred.

EVIDENCE: ADJUDICATION IS FAST, BUT NOT CASUAL

Adjudication is compressed. That does not make evidence less important. It makes evidence more important.

Because the timetable is tight, adjudicators rely on the parties to present the clearest, best-supported version of the dispute. A claimant should provide a coherent valuation,

a clear payment history, contract extracts, variation instructions, site records, photographs, programme material where delay is relevant, and concise witness or expert evidence where needed. A respondent should do the same for defects, contra charges, delay damages, abatement, or set off.

Adjudicators usually decide based on what can be demonstrated quickly and coherently, with contemporaneous records, variation notices, site instructions, payment histories,

QS valuations, programmes, photographs, and concise witness statements often do far more work than rhetorical submissions.

This is where construction people sometimes underestimate adjudication. They assume the adjudicator will understand what happened on site. Perhaps. But adjudicators decide disputes from evidence, not vibes. If the variation register is inconsistent, the delay analysis is missing, or the defects claim is just a list of grievances without costed proof, the party relying on those matters may struggle.

A practical way to think about it is this: an adjudication bundle should be capable of being understood by an intelligent stranger under time pressure. Because that is broadly what the adjudicator is.

JUDICIAL REVIEW: AVAILABLE, BUT RARELY THE ANSWER

Parties disappointed with adjudication sometimes look to judicial review. That is understandable, especially where the determination has immediate cash-flow consequences. But New Zealand courts have been careful not to let judicial review undermine the Act.

A relevant case is Rees v Firth.(6). The Court of Appeal held that judicial review is available in principle, but the statutory context means relief will rarely be granted. The Court rejected the idea that review is limited only to jurisdictional error, but emphasised that a party unhappy with a determination should usually litigate, arbitrate, or mediate the underlying dispute rather than seek judicial review.

The Court also stressed that an adjudicator's determination remains enforceable despite judicial review proceedings, reflecting the "pay now, argue later" philosophy of the Act. That is a powerful point. Judicial review may exist, but it is not a general appeal and it is not usually a pause button.

This does not mean adjudicators can do whatever they like. Natural justice, jurisdiction, serious procedural unfairness, and failure to decide the referred dispute still matter. But a complaint that the adjudicator preferred the other side's evidence, reached the wrong factual conclusion, or valued the works incorrectly will often be better dealt with in the final dispute forum. Re-labeling a merits complaint as judicial review does not make it one.

ENFORCEMENT: THE CORRIDOR

The enforcement regime is where the Act shows its teeth.

If an adjudicator determines that money is payable and it is not paid, the successful party may recover the amount as a debt, suspend work where applicable, or apply to have the determination entered as a judgment. The CCA describes in s58 to 60 the enforcement spine of the Act. It also notes that opposition to entry as judgment is limited and that s79 prevents the court from giving effect to most counterclaims, set-offs, or cross-demands in recovery proceedings.

Caselaw relevant to this is Laywood v Holmes Construction Wellington Ltd.(5). In this case, the adjudicator found substantial sums payable. When payment was not made, Holmes Construction applied for the determinations to be entered as judgments.

The Court of Appeal considered the enforcement provisions and held that Parliament had created a special regime for enforcing adjudicators' determinations.

The Court also confirmed that the District Court's jurisdiction under s73 was not limited to claims of $200,000 or less. It reasoned that the Act was intended to provide speedy resolution of disputes and remedies for recovery of payments, and that limiting enforcement to smaller claims would leave a gap in the legislative scheme.

Perhaps most importantly, Laywood shows that enforcement is not the time to re-run the construction dispute. The Act allows only limited grounds of opposition. In practical terms, a respondent resisting enforcement must identify a statutory ground, not simply repeat that the adjudicator was wrong, that the works were defective, or that the claimant owes money back on another issue.

That is why enforcement strategy should be considered at the start of the adjudication, not after the determination. A claimant should think about debt recovery. A respondent should think about what can genuinely be raised under the Act, what must be preserved for arbitration or litigation, and whether payment can be made without conceding the final merits.

RESPONDENTS AND AFFIRMATIVE CLAIMS

A trap for respondents is treating a response as though it were a full cross-claim.

There is an important distinction between using set-off, abatement, or defects defensively to reduce or extinguish the claimant's claim and seeking a positive monetary award against the claimant.

In Sam Pemberton Civil Ltd v Robertson .(7). the issue raised is whether, and to what extent, a respondent in an adjudication can rely on set-off or cross-claims to obtain affirmative monetary relief, such as damages, liquidated damages, defect costs, or a net award in its own favour.

The practical point arising from the case is that where a respondent is seeking more than merely to defend or reduce the claimant's claim, and is instead seeking a positive monetary outcome, the safer course will usually be to commence a separate adjudication and seek consolidation if available.

The practical point is that respondents should be clear about what they are asking the adjudicator to do. Are they saying the claimant has not proved its claim? Are they saying the claimant's claim is reduced to zero? Or are they seeking payment back from the claimant? Those are not the same thing. Confusing them can result in the real dispute being poorly preserved.

CONTRACTUAL DISPUTE CLAUSES STILL MATTER

The Act gives a statutory right to adjudicate, but that does not mean the contract becomes irrelevant. Standard form contracts, engineer's decisions, notices, conditions precedent, arbitration clauses, bonds, and guarantees can all affect strategy.

In SRG Global Remediation Services (NZ) Ltd v Body Corporate,(9) it notes the importance of the interaction between s79, stay applications, contractual arbitration or engineer-referral clauses, and CCA payment enforcement. It records that the Court of Appeal upheld summary judgment, removed a stay, and rejected an arbitration stay because failure to refer the dispute to the engineer in time rendered the arbitration agreement inoperative in the circumstances.

That is a useful warning. Contractual machinery is not wallpaper. If the contract requires a dispute to be referred to an engineer or other decision-maker within a particular time, a party that misses that step may lose procedural protections it assumed were still available.

Security instruments also require care. In Hawkins Ltd v Elizabeth Properties Ltd,(8) where the High Court granted interim relief restraining a bond call pending determination of a liquidated damages dispute in adjudication. That does not mean a live adjudication automatically prevents a bond call. It means the relationship between the bond, the contract, the dispute clause, and the adjudication must be analysed carefully.

RETENTIONS: A PARALLEL RISK AREA

Retention money is now a major compliance issue in its own right. Retention money under the Act is trust property, that information must be provided as soon as practicable after retention arises and then at least every three months, and the strengthened 2023 amendments apply to new and renewed commercial contracts from 5 October 2023, but not to contracts with homeowners or residential occupiers.

That matters because payment disputes often expose wider weaknesses in contract administration. A party already under pressure in an adjudication does not help itself by also having poor retention records. In a credibility

contest, sloppy retention compliance is not a charming side plot.

SO WHERE ARE DISPUTES REALLY WON AND LOST?

In New Zealand adjudication, disputes are commonly won and lost at seven points.

First, the payment claim. If it is compliant, clear, and properly served, the claimant starts strongly. If not, the claimant may have a grievance but not an enforceable statutory debt.

Second, the payment schedule. If the payer responds on time and with proper reasons, the merits are preserved. If not, the payer may find itself paying first and arguing later.

Third, the adjudication claim. It must frame the dispute clearly. A muddled claim invites jurisdiction arguments and factual confusion.

Fourth, the response. A respondent must do more than complain. It must produce a structured answer, supported by valuation, records, and evidence.

Fifth, jurisdiction. Real jurisdiction objections should be raised early. Weak objections should not be dressed up as grand points of principle.

Sixth, enforcement. Once a determination produces a payable amount, the available grounds of resistance narrow sharply.

Seventh, final dispute strategy. Adjudication is often interim. Parties should know whether they are using it as a cash-flow tool, a settlement lever, a precursor to arbitration, or a final practical resolution.

CONCLUSION

Adjudication in New Zealand construction is not just about who has the more persuasive version of events. It is about statutory compliance and strategy. The Construction Contracts Act 2002 creates a deliberately practical regime. It rewards parties who understand the payment claim and payment schedule process, preserve records as the project progresses, and act quickly when a dispute arises.

The case law shows a consistent pattern. George Developments Ltd v Canam Construction Ltd confirms that the courts will not usually allow technical objections to defeat a payment claim that substantially complies with the Act. Canam Construction (1955) Ltd v LaHatte reinforces the importance of how the adjudication claim frames the dispute and the need for adjudicators to act within the scope of what has properly been referred. Laywood v Holmes Construction Wellington Ltd confirms the strength of the enforcement regime and the limited grounds available to resist entry of an adjudicator's determination as judgment. Rees v Firth confirms that judicial review is available in

principle, but will rarely be the practical answer where a party is simply dissatisfied with the adjudicator's decision.

Cases like Sam Pemberton Civil Ltd v Robertson, Hawkins Ltd v Elizabeth Properties Ltd, and SRG Global Remediation Services (NZ) Ltd v Body Corporate, show that adjudication does not sit in isolation. Set-off, affirmative claims, bonds, engineer referral clauses, arbitration clauses, and wider contractual machinery may all affect strategy. The Act gives parties a statutory pathway, but the contract and the evidence still matter.

The core lesson is that in adjudication, parties usually do not lose because they lacked a dramatic argument. They lose because a document was late, vague, unsupported, poorly served, misframed, or aimed at the wrong procedural target.

That may sound unforgiving, but it reflects the purpose of the Act. Adjudication is designed to keep money moving through the construction industry while leaving the deeper merits to be argued later if necessary. In that environment, good project administration is not background paperwork. It is often where the dispute is won or lost.

References

1. *Construction Contracts Act 2002*
2. *Construction Contracts Regulations 2003*
3. *Canam Construction Limited v George Developments Limited NZHC 1222*
4. *Canam Construction (1955) Ltd v Lahatte [2009] NZHC 1476, [2010] 1 NZLR 848.*
5. *Laywood v Holmes Construction Wellington Ltd [2009] NZCA 35, [2009] 2 NZLR 243.*
6. *Rees v Firth [2011] NZCA 668, [2012] 1 NZLR 408.*
7. *Sam Pemberton Civil Ltd v Robertson [2024] NZHC 272.*
8. *Hawkins Ltd v Elizabeth Properties Ltd [2024] NZHC 561.*
9. *SRG Global Remediation Services (NZ) Ltd v Body Corporate 197281 [2022] NZCA 5*