

September 3, 2024

## Contract Completion and Adjudicator's Jurisdiction under the Construction Act

### Key Takeaways

The adjudicator failed to apply settled and longstanding jurisprudence to the meaning of deemed “*contract completion*” under the *Construction Act*. The date a contract is “*completed*” within the meaning of Subsection 13.5(3) of the *Construction Act* is determined by reference to the value of uncompleted contract work – not the value of outstanding claims for payment.

The adjudicator also failed to request parties to make submissions on this material point regarding jurisdiction. Had this opportunity been presented, the adjudicator may have been persuaded to reassess their analysis and consider the correct law.

### Judicial Review

In *Jamrik v. 2688126 Ont. Inc.* ([2024 ONSC 2854](#)), Stephen Jamrik sought judicial review of an adjudicator's determination ordering Jamrik to pay 2688126 Ont. Inc. (Turnkey Construction) \$564,812.87 under the prompt payment provisions of the *Construction Act*.

Jamrik argued that the adjudicator had no jurisdiction to hear the matter because the notice of adjudication was given after the date the underlying contract had been “*completed*” within the meaning of Section 13.5(3) of the *Construction Act*.

The adjudicator found, without citing any legal authority, that the underlying contract was not completed because more than 1% of the contract price was owing and unpaid – referring to the value of outstanding claims for payment as between Jamrik and Turnkey Construction.

The Divisional Court found that the adjudicator was “*plainly wrong*” as they had misconstrued the plain meaning of the *Construction Act* and had failed to apply settled and longstanding jurisprudence to the meaning of deemed “*contract completion*” under the *Construction Act*.

Subsection 13.5(3) of the *Construction Act* states:

*An adjudication may not be commenced if the notice of adjudication is given after the date the contract or subcontract is completed, unless the parties to the adjudication agree otherwise.*

Subsection 2(3) of the *Construction Act* states:

*A contract shall be deemed to be completed and services or materials shall be deemed to be last supplied to the improvement when the price of completion, correction of a known defect or last supply is not more than the lesser of,*

- (a) 1 per cent of the contract price; and
- (b) \$5,000.

Justice Corbet made clear that the concepts of “*completion*”, “*substantial completion*”, and “*last supply*” of services and materials to an improvement all relate to the status of performance of contract work and not to the state of accounts between contracting parties. Otherwise, there would be no time-bar to the assertion of construction liens except where the value of a dispute was *de minimis*.

The prompt payment and adjudication provisions of the *Construction Act* exist because of a recognition that money should continue to flow, and work continue to be done, pending final determination of claims through the litigation process. The principled basis for interim payment determinations through adjudication disappears once a contract is completed.

Justice Corbet also noted that while an adjudicator may decide not to address alternative theories of a point under decision, it is a service to the parties and to the administration of justice to make factual findings in respect of alternative arguments. Here, the adjudicator failed to request submissions on jurisdiction, and failed to make any factual determination with respect to whether any contract work remained for completion and, if so, its value.

As a result, Justice Corbet was forced to refer all issues back for determination before a different arbitrator, to determine if the contract was complete, and whether or not adjudication was available to the parties.



[Simren Sihota](#), Associate  
T. 647-794-1564  
[ssihota@margiestrub.com](mailto:ssihota@margiestrub.com)



[Jacob Lokash](#), Associate  
T. 289-805-0851  
[jlokash@margiestrub.com](mailto:jlokash@margiestrub.com)