

Cost certainty for resolving building and construction disputes: extension to the BDT Adjudication Low Value Claim Scheme

By Belinda Green

One of the main barriers to dispute resolution is cost: no one wants to risk spending more than the amount they recover. With inflation and construction costs always on the rise, BDT is extending its Low Value Claim (LVC) Scheme for adjudication to ensure that more people can take advantage of this cost-effective and cost-certain process.

Why adjudication?

Statutory adjudication under the Construction Contracts Act is the most commonly used dispute resolution process in New Zealand for resolving building and construction disputes.

There are a number of reasons that adjudication is so popular. It's fast: most disputes are resolved in less than six weeks from the time the process is started. It's also efficient: you don't have to get the agreement of the other side to start an adjudication, and the process is fixed by the Act, so you don't have to waste time agreeing the rules that will apply. The first step in the process is to serve a Notice of Adjudication on the other party to the dispute. (It's important that the Notice of Adjudication frames the dispute clearly – take a look at our template [Notice of Adjudication](#) for more guidance).

Adjudication is also cost effective: while the initial costs of filing a court proceeding may be low, there are all manner of costs and fees that apply along the way. In an adjudication there are no hidden costs. Also, don't forget the legal fees: it's very difficult to run a court case without legal assistance, but adjudication can be managed by the parties themselves if they wish, taking legal advice only when needed at particular points along the way to resolution. That said, we would always recommend taking independent legal advice if you are uncertain about your legal rights or obligations or just need a bit of help along the way. By engaging in a clear and fixed process, it also makes it easier for advocates (both legal and lay) to provide more efficient services.

In all, adjudication is a "fit for purpose" dispute resolution scheme, recognising that many building and construction disputes are either comparatively "low value" or need immediate resolution to enable the project to proceed or a payment claim to be dealt with.



What is the LVC Scheme?

Adjudication is already cost effective. What the LVC Scheme gives you is cost certainty. If your dispute qualifies for the Scheme, a fixed fee will be charged for the adjudication.

That fixed fee covers:

- The appointment of an experienced adjudicator within 24 hours.
- All time spent by the adjudicator in considering the claim and making their determination, and any fees or costs they incur in doing so.
- Access to an assigned BDT Registrar, who administers the process and can answer questions you may have as to the process or point you in the direction of our useful resources and templates (many of which are available online on our website: <https://www.buildingdisputestribunal.co.nz/adjudication/guides-and-resources/>).
- Scrutiny of the determination before it is given to the parties, to ensure that a quality decision with clear directions is issued.

The adjudicator makes their determination based on the documents submitted by the parties (including the claim, response, and any reply or rejoinder), and the process results in a determination that is binding on the parties unless or until the dispute is finally determined by arbitration or court proceedings (or resolved by agreement between the parties).

BDT's LVC Scheme has been so successful a similar scheme has been adopted in the UK by the [Construction Industry Council](#) after consultation with us.

To see if you qualify for the LVC Scheme, visit <https://www.buildingdisputestribunal.co.nz/adjudication/fees/low-value-claim-scheme/>.

What kinds of disputes qualify for the LVC Scheme?

When the LVC Scheme was introduced, a claim had to be valued at less than \$50,000 including GST to qualify. The demand for adjudication has grown over 90% in the last 10 years, and construction costs have also increased in that time. So as from 16 September 2021 claims for a value of under \$100,000 now qualify for the scheme. This will ensure that more people can take advantage of this cost-effective and cost-certain process.

To qualify, your dispute must also involve no more than three issues, and the length of the documents that you can file to support your claim must also be limited.

Subject to those limitations, any type of dispute arising under a construction contract can be brought within the fixed fee scheme, whether brought on the basis of default liability or on the merits,

Typical merits-based disputes include dispute in relation to:

- non-payment for work undertaken;
- contract interpretation – what the parties actually agreed;
- scope of work;
- quality of work;
- quality of materials;
- time for completion;
- payment – the value of the work undertaken in the absence of express agreement as to price;
- estimates versus actual cost;
- variations – whether certain work is in fact a variation to the agreed scope of work and the value of that varied work;
- defective work;
- scope and cost of rectification work;
- repudiation/cancellation of the contract; and
- damages for breach of contract.

Our Registrars are available to answer any questions you may have, and can point you in the right direction if you need additional advice.

ABOUT THE AUTHOR



Belinda is a solicitor in NZDRC's KnowHow Team.* She has over 16 years' experience, working in both private and government sectors. Belinda has joined us from the Parliamentary Counsel Office where she drafted commercial legislation, and prior to that she practised as a commercial property lawyer.

* Building Disputes Tribunal is a part of the NZDRC Group.

