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# Statutory Adjudication and New York's Construction Industry: A Potential Supplement to New York's Prompt Payment Rules

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*Construction payment disputes in New York are complex and slow to resolve, with the current arbitration mechanism under the Prompt Payment Act rarely used due to its finality and review limitations. Abroad, countries like the UK and Ontario successfully use statutory adjudication—quick, interim decisions that help maintain cash flow and project progress. Adopting a similar model in New York could improve dispute resolution by providing faster, cheaper, and more practical interim rulings, though it would require careful adaptation to local industry and legal norms.*

Construction projects run on two things: timely and proper completion of work, and payment. But payment is often more complicated than it sounds. From the payor's perspective—owners and upstream contractors and subcontractors—payment is earned incrementally as work is completed, and there may be legitimate bases to withhold or reduce it.

From the payee's perspective—downstream contractors, subcontractors, and vendors—delayed or disputed payment can stall a project before anyone fully appreciates the damage being done. These competing perspectives yield disputes that are among the most consequential—and most complex—in the industry. They involve complex contracts, voluminous records, and technical questions that can take years to resolve through litigation or arbitration.

New York's construction industry knows this conflict well. The state's construction pipeline—exceeding $84 billion in combined public and private spending in 2024 alone—generates a corresponding volume of payment disputes, yet the mechanisms available to resolve those disputes quickly and affordably remain limited.

The New York Prompt Payment Act, N.Y. Gen. Bus. Law §§756–758, represents the legislature's principal effort to address payment delays and provides an expedited pathway to the resolution of these disputes. However, the statute's arbitration mechanism has significant structural limitations that have discouraged its use. The experience of other jurisdictions—most notably the United Kingdom and Ontario—suggests that a statutory adjudication model may deserve closer examination as a means of addressing those limitations in New York.

## The Prompt Payment Act and Its Limitations

Under the Prompt Payment Act, a party alleging a prompt payment failure has the right to pursue expedited arbitration before the American Arbitration Association after a payment dispute cannot be resolved informally. Specifically, under §756-b, an aggrieved party may serve a complaint alleging a payment failure, triggering a mutual obligation to attempt resolution; and if that effort fails, the party may refer the matter to expedited AAA arbitration no fewer than fifteen days after verified delivery of the complaint. Notably, under §756-b parties are unable to contract out of the right to pursue expedited arbitration.

On paper, this is a meaningful tool. In practice, however, the arbitration pathway has seen limited use. The reason is structural: an award issued under §756-b is final and binding, subject only to the narrow grounds for vacatur or modification set forth in N.Y. C.P.L.R. §7511. Construction disputes rarely turn on simple facts.

A payment claim may implicate change order disputes, schedule impacts, scope disagreements, and backcharges—all of which require careful factual development. Payees who submit those disputes to expedited arbitration risk an adverse, binding, and nearly unreviewable decision issued before the full record has been developed. Moreover, because the expedited arbitration is a tool designed only for the payee, the payor derives little, if any, benefit.

## The Statutory Adjudication Model

The United Kingdom confronted a similar problem in the 1990s and adopted a different solution. The Housing Grants, Construction and Regeneration Act 1996, c. 53 (HGCRA), grants any party to a qualifying construction contract the right to refer a dispute to adjudication at any time. An adjudicator must be appointed within seven days, and a decision must issue within twenty-eight days—extendable by agreement. The decision is binding and immediately enforceable, but it is interim in a critical respect: it stands only until the dispute is finally determined by litigation, arbitration, or agreement.

Parties can—and regularly do—pursue a different outcome in subsequent proceedings. Where the payee prevails, prompt payment will be required and cash flow will resume. Where the payor prevails, the enforcement of withholding rights will be vindicated and put to rest a dispute that might otherwise impair the progress of the work. While there are inevitable advantages and disadvantages, the UK experience over nearly three decades has demonstrated that the model works: adjudication has become the dominant method of resolving construction payment disputes in the UK, with tens of thousands of adjudications having been conducted since the statute took effect.

Ontario adopted a comparable model through amendments to its Construction Act, R.S.O. 1990, c. C.30, which took effect in 2018 and 2019. The Ontario Dispute Adjudication for Construction Contracts (ODACC) administers the adjudication process, providing rules, nominating adjudicators, and maintaining a roster of qualified neutrals. Like the UK model, Ontario's adjudications produce interim binding decisions that can be revisited in arbitration or court. The Ontario model has been credited with reducing payment delays and providing a structured pathway for claims that might otherwise go unresolved.

## Benefits and Limitations

The case for statutory adjudication rests on three principal arguments: speed, cost, and (interim) finality. First, a twenty-eight-day decision cycle is dramatically faster than even the most expedited arbitration. Second, the simplified process—typically involving written submissions without full discovery—reduces costs substantially compared to commercial arbitration or litigation.

Third, the interim binding character of the decision delivers a practical advantage that a lengthy arbitration cannot: a successful claimant receives payment during the project, and a successful respondent gains a preliminary vindication of its decision to withhold payment. Of course, the result need not be all-or-nothing; statutory adjudication can just as easily produce a mixed outcome in which the payee and payor each prevail in part.

The limitations are also real. Critics argue that the compressed timeline is poorly suited to technically complex disputes. An adjudicator deciding a multimillion-dollar claim in twenty-eight days, on the basis of written submissions alone, may lack the full picture needed to reach a fair result. The party against whom a decision issues may be required to pay a sum that subsequent proceedings ultimately determine was not owed.

There are also at least three structural concerns that warrant further reflection. One, well-resourced parties who are repeat players in the adjudication process may enjoy structural advantages over smaller participants navigating the process for the first time.

Two, the process could lend itself to abuse by way of voluminous claims that detract from the project and undermine the underlying public policy goals—a risk that requires careful consideration of the realities and economies of scale relating to modern construction projects. Three, because construction projects ultimately involve numerous parties throughout the contractual chain of privity, questions regarding joinder and impleader loom large.

**Lessons From Abroad — And Their Limits**

None of this is to suggest that statutory adjudication is imminent in New York, or that importing a foreign model wholesale would be straightforward. The UK and Ontario frameworks developed in response to specific political and industry conditions that may not map cleanly onto New York's construction landscape, which is shaped by its own mix of public procurement rules, union labor markets, and a well-developed commercial arbitration culture.

The more modest point is that the comparative experience is instructive about the tradeoffs involved in any attempt to reform payment dispute resolution. The UK's near three decades of adjudication practice demonstrate that speed and enforceability are achievable—but that can be attributed, at least in part, to the UK tradition of courts treating adjudicators' decisions as presumptively valid.

That deliberate policy choice from our colleagues across the pond warrants further debate based on laws, public policy, and norms here in New York. The UK system accepts that some interim disputes may be incorrectly decided, in whole or part, and that future options to correct such a determination may be limited. Whether or not that risk is acceptable in New York's construction industry is a question that will need to be asked as part of any serious conversation about statutory adjudication in the Empire State.

Ontario's experience adds a further data point: institutional infrastructure matters. The ODACC's role in

maintaining a qualified adjudicator roster and administering the process has contributed meaningfully to the model's credibility. Ad hoc adjudication without that infrastructure may risk producing inconsistent results and invites collateral litigation over process rather than merits.

Most immediately relevant to New York is the basic tension within the Prompt Payment Act itself. The statute already reflects a legislative judgment that payment disputes deserve expedited resolution. The fact that the mechanism is rarely used—because the binding, nearly unreviewable character of an expedited award is too great a risk—is itself an argument that the current tool is poorly calibrated. The statutory adjudication framework could address that problem by separating the obligation to comply from the finality of the underlying determination. If New York is ready for that conversation, the experiences of other jurisdictions offer a useful baseline.

**Conclusion**

New York's construction industry is large, sophisticated, and well-acquainted with dispute resolution. It is also underserved by the mechanisms currently available for mid-project disputes. The UK and Ontario have demonstrated that statutory adjudication can provide a faster, cheaper, and more project-sensitive alternative—without foreclosing the parties' right to a full and fair final determination.

For now, the debate over whether to import such a model to New York remains largely academic. But the practical dormancy of the Prompt Payment Act's arbitration mechanism is itself telling—a gap between legislative intent and industry practice that, at minimum, invites further reflection.

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