

## Deadline Dilemma: How A Missed Notice Didn't Derail Adjudication Enforcement

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### Key Takeaway

Failure to give notice of filing an adjudication determination with the court within the 10-day notice period is unlikely to be fatal to its enforcement.

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### Application to Your Organization

Although parties are required to comply with statutory requirements, courts will not allow formalism to prevail over the spirit of prompt payment. To avoid unnecessary costs and delays, parties should comply with statutory requirements, however, failure to comply with the notice requirement in question will be unlikely to render an adjudication decision unenforceable.

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### What Happened?

The Ontario Divisional Court<sup>1</sup> recently considered a situation where a contractor sought to enforce the determination of an adjudicator, which required that the owner pay the contractor for services previously rendered.

The *Construction Act* facilitates enforcement by providing that an adjudicator's determination may be filed with the court and, upon filing, becomes enforceable as though it were a court order.<sup>2</sup> In this instance, the

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contractor filed the adjudicator's determination with the court, but failed to provide the owner with notice within 10 days of filing, as expressly required by the *Construction Act*.<sup>3</sup>

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## Question(s) Considered by the Court?

Was the contractor's failure to give the required statutory notice fatal to the enforcement of the adjudicator's determination?

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## What Did the Court Say?

The Court concluded that failure to give the required statutory notice was not fatal to the enforcement of the adjudicator's determination. In its reasoning, the Court noted that there should be consequences for non-compliance with the statutory requirement, and that when the statute does not specify the consequences then it is a matter for the court to determine based on the circumstances.

The Court noted that considerations in determining the appropriate consequences include the extent of the non-compliance, any explanation for the non-compliance, the prejudice or absence thereof to the payor arising from the failure to give notice, and any other relevant circumstances.

In this case, the Court voided the enforcement steps taken prior to notice being given, but the Court was clear that this decision was based on contractor applicant having accepted this sanction as being appropriate. The Court held that such a sanction was sufficient and given the contractor's position the Court did not consider whether a lesser sanction would be appropriate. Further, the Court noted that a failure to provide notice will rarely, if ever, render an adjudicator's decision unenforceable.

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## Learn More

[MGW Homes Design Inc. v Pasqualino](#), 2024 ONSC 2852

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<sup>1</sup> [MGW Homes Design Inc. v Pasqualino](#), 2024 ONSC 2852; see also [MGW Homes Design Inc. v Pasqualino](#), 2023 ONSC 411 for lower court decision.

<sup>2</sup> RSO 1990, c C.30, subsection 13.20(1).

<sup>3</sup> Subsection 13.20(3).

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*This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.*