

Claims, Referee and Adjudication Update April 1, 2023, to October 31, 2023

Provincial Office Level Claims – (April to October)

- Received 33 new claims (24 Construction, 1 Contract Administration and 8 Maintenance) compared to 103 in F2022/23.
- 44 claim reviews have been completed compared to 130 in F2022/23
- 3 claims were withdrawn compared to 2 in F2022-23.
- 24 claims are currently active (i.e., under review) compared to 47 at the end of F2022/23.

Provincial Office Level Claims – Breakdown by GC version

- 1 claim is from a contract with the April 2010 General Conditions
- 3 claims are from contracts with the 2016 GCs
- 20 claims are from contracts with SP 100S55 (GC 3.15 clause)
- This compares to -23 (full year):
 - 2 claims were from a contract with the April 2010 General Conditions
 - 23 claims were from contracts with the 2016 GCs
 - 78 claims were from contracts with the GC 3.15 clause

• COVID-19 Claims

- 5 COVID-19 claims have been received by the Contract Claims Office in F2023-24. This compares to 5 COVID-19 claims in F2022-23, 31 claims in F2021-22 and 5 claims in F2020-21.

• Maintenance Claims

- 8 maintenance claims have been received by the Contract Claims Office in F2023-24. This compares to 2 maintenance claims in F2022-23, 3 in F2021-22 and 8 claims in F2020-21.
- 5 maintenance claims received were related to COVID-19.
- There is currently 1 active maintenance claim. 1 Maintenance claim was withdrawn.

Consultant Contract Administration (CA) Claims

- 1 consultant CA claim has been received by the Contract Claims Office in F2023-24. This compares to 3 consultant CA claims in F2022-23, zero claims in fiscal 2021-22 and 2 received in F2020-21.

- There are currently 1 active CA claims.

Referees, Adjudications, Mediations and Litigations

• **Referees**

- We had 5 request this fiscal compared to 18 requests in F2022-23, 17 in F2021/22 and 28 requests in F2020/21.
 - Note that the referee process came into the General Conditions from 2016 to 2019, before being replaced by the adjudication process.
- There have been 5 referee decision received this fiscal compared to 19 decisions in F2022-23, 21 decisions in F2021-22 and 22 decisions in F2020-21.
- There have been 3 referee proceedings that have been terminated.

• **Adjudications**

- We had 7 requests this fiscal year compared to 16 requests in F2022-23, 8 in F2021-22 and 3 in F2020-21.
- There were 8 adjudication determinations received this fiscal year compared to 11 determinations in F2022-23, 9 in F2021-22 and 2 in F2020-21.
- There are currently 3 active adjudication proceedings.

• **Mediations**

- We had 1 new mediation requests this fiscal year compared with one request in F2022-23.
- Mediation has been removed from the current dispute resolution process, replaced by the referee process in 2016 and adjudication in fall 2019.
 - While Mediation requests continue to drop, they will not be completely eliminated for some time due to existing longer term Maintenance Contracts that have mediation as an alternative dispute resolution option.

• **Litigations**

- We had 2 new litigations in Fiscal 2023-24 and two litigations have been resolved in F2023-24.
- We currently have 27 litigations underway.

• **General Comments**

- Contract Claims Office continues to adjust to the new claims process that no longer includes a field and regional level claim review. The process on contracts

awarded after October 1, 2019, involves claims coming directly to the Contract Claims Office from the field. This has resulted in a quicker inflow of claims that would have previously been reviewed at the field and regional levels and would also have resulted in some of the claims being settled at the field or regional levels.

- Historically, approximately 30% of claims were resolved at the field level and a further 30% of the claims elevated to regional level were resolved.
- COVID-19 was a unique situation, which introduced additional claims (43 claims have come to the provincial level).
- A review of the outcome of referee and adjudication decisions indicates that MTO's position on claims is reasonable as referee and adjudicator decisions are typically supportive of MTO's positions.
- As of October 31, 2023, there have been:
 - Total 96 Referee decisions (43 denials, 6 awards, 43 partial awards), and
 - Total 28 Adjudication determinations (17 denials, 2 awards, 9 partial awards).
- MTO considers that, in general, referee and adjudication decisions support MTO's position and indicate that MTO is reasonable in its assessment of claim principle and quantum.
- Approximately half (48%) of the referee and adjudication decisions/determinations were denials of the contractor claims in their entirety.
- Referee and Adjudication decisions have awarded on average 9.6% of the claim value submitted.
 - For F2023-24 the average is 11%,
 - For F2022-23 the average is 13%; and
 - For F2021-22 that average is 18%.
- COVID-19 specific referee and adjudication decisions average 2.5% of the claim value submitted.

Fiscal Breakdown for 2023-24 (April to October)

- 5 referee decision and 8 adjudication determinations.
- Of the 13 third party decisions:
 - 10 decisions supported MTO position by dismissing the claims,
- The average third party decision was 11% of the claimed value, which is consistent with the overall average of all referee/ adjudications of 9.6%.