



Practical application of the Construction Contracts Act 2013

Peter O'Malley

Peter O'Malley Dispute Resolution

Who am I?

Peter O'Malley:

- Commenced studies in Dublin, qualified as an architect and urban designer.
- Ex-founding and senior partner of 'LOM architecture and design', an Architect's Journal top 100 practice based in London and previously short-listed for AJ Practice of the Year.
- Worked on projects in Europe, Middle-East, West-Africa, Australia and the Caribbean.
- Worked in Common law, Civil law and Shariah law jurisdictions.
- Various qualifications in Construction Law from Ireland and the UK.
- Now primarily involved in dispute avoidance and resolution in Ireland and the UK.
- Member of the Ministerial Panel of Adjudicators under the Construction Contracts Act 2013.
- Various peer-reviewed papers and articles published on construction law.
- Immediate past-chair of the Chartered Institute of Arbitrators (Ciarb) Ireland Branch and presently a worldwide Trustee of the Institute.

Practical application of the Construction Contracts Act 2013 (CCA 2023)

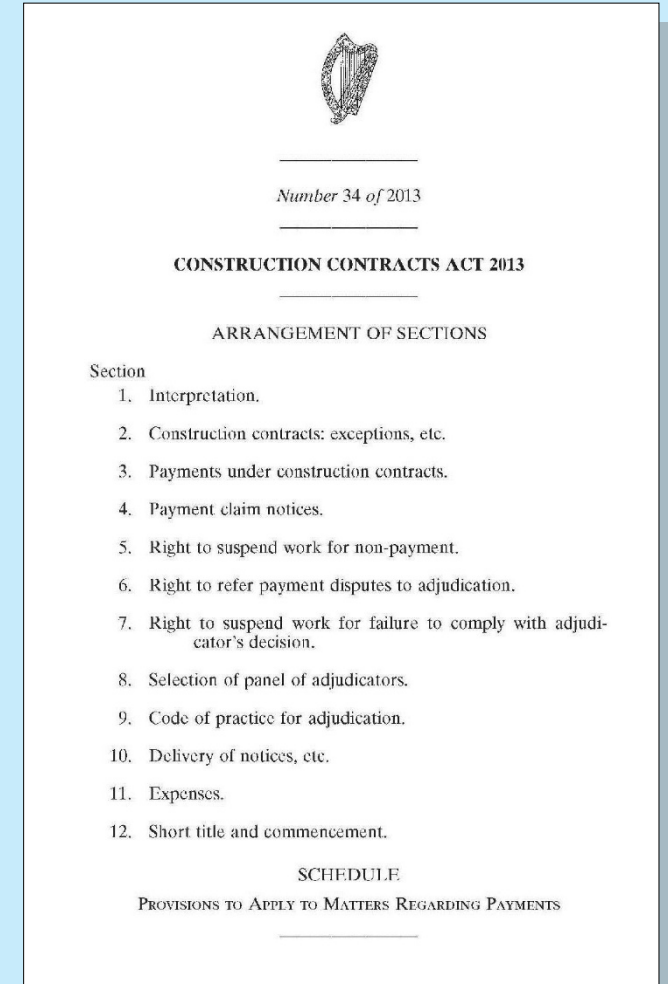
Presentation overview:

- What is the 'Construction Contracts Act 2013?'
- What contracts are excluded from the CCA 2013?
- How does the CCA 2013 regulate payments under construction contracts?
- How can the CCA 2023 assist you as an architect?
- Continued compliance with the CCA 2013.
- Court support for the CCA 2013.
- So what are the practical applications of the CCA 2013 – the key take aways?



What is the 'Construction Contracts Act 2013' (CCA 2013)?

- The CCA 2013 was enacted on 25 July 2016 to improve payment practices in the construction industry and to provide a swift mechanism for the resolution of disputes.
- The overall objective of the CCA 2013 is to impose an appropriate payment mechanism to maintain cashflow, particularly between main contractors and sub-contractors.
- The CCA 2013 applies to those who are 'carrying out' or 'arranging for' 'construction operations.' The term 'construction operations' is widely defined as a 'catch all' with limited exemptions.
- In the event of dispute, the CCA 2013 includes Statutory Adjudication, available at any time, to impose an expedient and 'to all intents' binding decision upon the dispute.
- The CCA 2013 cannot be contracted out of - even if both parties are in agreement that they want to do so.



What contracts are excluded from the CCA 2013?

There are narrow and limited exceptions:

- A contract of less than €10,000.
- A single dwelling with a floor area not exceeding 200 sqm.
- An owner occupier of a dwelling - actual or intended.
- An employment contract.
- A contract between the State and a Public Private Partnership (PPP).
- A contract primarily outside the wide definition of 'construction operations' but containing an element of construction operations, where the CCA 2013 will then apply to these works.

2.—(1) A contract is not a construction contract—

(a) if the value of the contract is not more than €10,000, or

(b) if—

(i) the contract relates only to a dwelling, and

(ii) the dwelling has a floor area not greater than 200 square metres, and

(iii) one of the parties to the contract is a person who occupies, or intends to occupy, the dwelling as his or her residence.

(2) A contract of employment (within the meaning of the Organisation of Working Time Act 1997) is not a construction contract.

(3) A contract between a State authority and its partner in a public private partnership arrangement, as those terms are defined in the State Authorities (Public Private Partnership Arrangements) Act 2002, is not a construction contract.

(4) Where a contract contains provisions in relation to activities other than those referred to in the definition of a construction contract and *section 1(2)*, it is a construction contract only so far as it relates to those activities.

How does the CCA 2013 regulate payments under construction contracts?

- The construction contract shall define interim and final payments due under the contract or provide a mechanism for determining these amounts.

Or

- Provide a payment claim date, or mechanism to determine a payment claim date, for each amount due together the payment period and the date on which the amount is due.
- In the absence of these provisions the 'Schedule – Provisions to apply to matters regarding payments' within the CCA 2013 will apply.

3.—(1) A construction contract shall provide for—

- (a) the amount of each interim payment to be made under the construction contract, and
- (b) the amount of the final payment to be made under the construction contract,

or for an adequate mechanism for determining those amounts.

(2) A construction contract shall provide for—

- (a) the payment claim date, or an adequate mechanism for determining the payment claim date, for each amount due under the construction contract, and
- (b) the period between the payment claim date for each such amount and the date on which the amount is so due.

(3) The *Schedule* shall apply to a main contract if and to the extent that it does not make provision for the matters specified in *subsections (1) and (2)*.

How can the CCA 2013 assist you as an Architect?

- The definition of a 'construction contract' extends to an agreement to provide services ancillary to a construction contract.
- For recalcitrant clients where fees, are being unreasonably withheld and in dispute, the matter can be settled quickly through the adjudication provisions within the CCA 2013.
- It is not unusual for accounts to be quickly settled at the start of the adjudication process, once invoked.
- The availability of adjudication, as an efficient and expedient dispute resolution process, continues to impose discipline to ensure prompt payment, where the threat of invoking should not be under-estimated.
- In the year 2023/2024 there were two adjudicator appointments made for disputes between an Architect and an Employer.

(2) In this Act references to a construction contract include an agreement, in relation to construction operations, to do work or provide services ancillary to the construction contract such as—

- (a) architectural, design, archaeological or surveying work,
- (b) engineering or project management services, or
- (c) advice on building, engineering, interior or exterior decoration or on the laying-out of landscape.

Continued compliance with CCA 2013.

- Ensure your invoices contain the note that they are a 'payment claim notice', to ensure clarity.
- Ensure that you adopt a regular payment pattern of 30 days.
- If you are a lead consultant, be aware that your sub-consultants will also have the protection of the CCA 2013, you should ensure that you have a payment schedule with your sub-consultants.
- Ensure continued compliance with Clause 4.-(3)(a) - always ensure, or advise, that a response is made to a payment claim notice, to avoid a later adjudicator decision that could direct a default payment of the full claim, regardless of merit.
- If you are considering invoking adjudication ensure to stay entirely within the bounds of process, e.g. compliance with Article 5 of the RIAI Yellow or Blue forms, if being used.

(3) If the other party or specified person referred to in *subsection (1)* contests that the amount is due and payable, then the other party or specified person—

(a) shall deliver a response to the payment claim notice to the executing party, not later than 21 days after the payment claim date, specifying—

(i) the amount proposed to be paid,

(ii) the reason or reasons for the difference between the amount in the payment claim notice and the amount referred to in *subparagraph (i)*, and

(iii) the basis on which the amount referred to in *subparagraph (i)* is calculated,

and

(b) if the matter has not been settled by the day on which the amount is due, shall pay the amount referred to in *paragraph (a)* to the executing party not later than on that day.

Court support for the CCA 2013

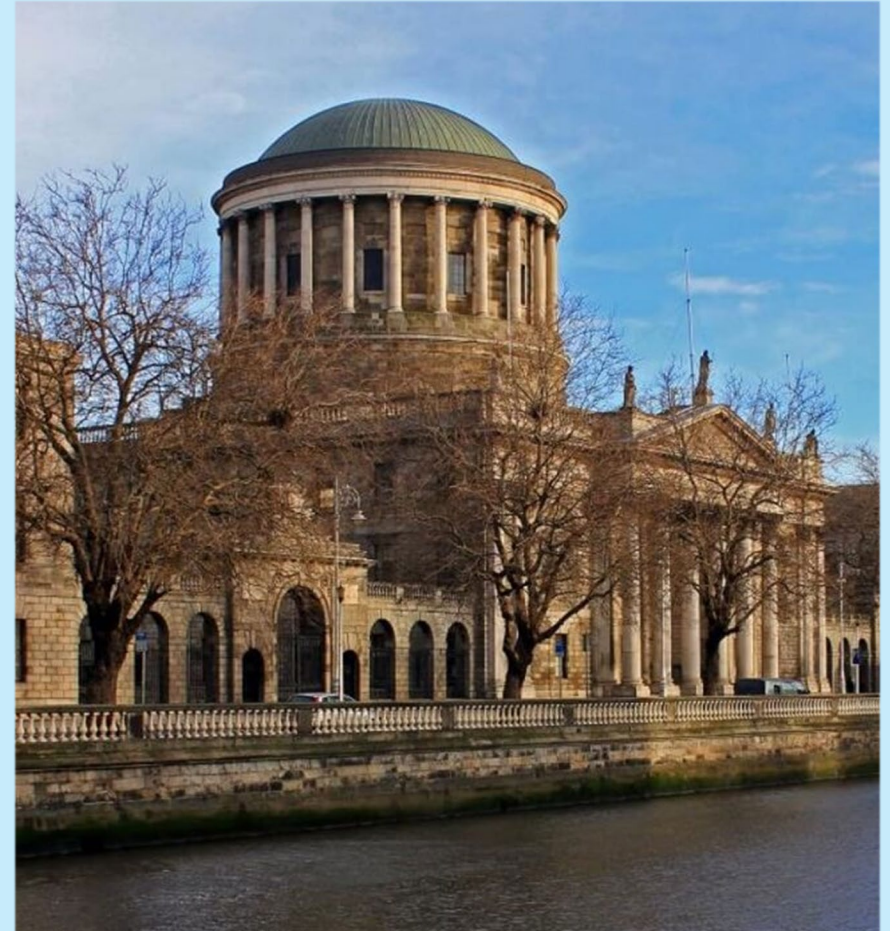
The courts have determined that they:

“.....will only refuse to enforce an adjudicator’s decision on the grounds of procedural unfairness where there has been a blatant or obvious breach such that it would be unjust to enforce the immediate payment obligation.”

and that they:

“.....will not be drawn into a detailed examination of the underlying merits of an adjudicator’s decision under the guise of identifying a breach of fair procedures.”

To date, there has only been one successful challenge, or a refusal, to enforce an adjudicator’s decision by the courts in Ireland *Tender Bids Ltd and Electrical Waste Management Ltd* [2025] – due to a technical error in serving the notice to adjudicate.



So, what are the practical applications of the CCA 2013 – the key take aways?

- Be aware that the Act exists, it cannot be 'contracted out' of and it can be invoked by a party to a construction contract at any time.
- Include a note on your invoices that they are 'payment claim notices' under the CCA 2013, to eliminate any doubt.
- Always ensure that you respond, and advise your clients that they should respond, to a payment claim notice within 21 days of receipt - ensure discipline in the payment cycle.
- Set up your own Excel spreadsheet with payment claim notice and the associated response dates.
- Do not ignore your responsibilities as the 'Employers Representative' to ensure that the payment process is being correctly managed.



So, what are the practical applications of the CCA 2013 – the key take aways?

- Be aware that there are still many professionals who are still unaware that the Act exists.
- Do not delay the settlement of a Final Account, in particular the whole sum due because only a small portion is in question.
- The invoking of adjudication is rarely a surprise, be vigilant to any indication that it may be commenced.
- Adjudication is now becoming more accepted across the construction industry, there is now as increasing familiarity and less reticence to using the process.
- Always remember that the CCA 2013 is there to protect parties to ensure prompt payment where 'its bark is just as effective as its bite' – the presence of the CCA 2023 serves to encourage the early settlement of potential disputes.



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RIAI

Thank you

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