

# ADJUDICATION IN ALBERTA'S CONSTRUCTION INDUSTRY

## A CONTRACTOR'S GUIDE

You are Being Given  
a Scissor Lift with  
Adjudication,  
Why Are You Still  
Using a Wooden  
Ladder?



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Alberta Trade Contractors Council (ATCC)



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## Introduction

Construction is the slowest paid industry in Canada. The notion of “net 30 days” has traditionally applied to every other industry in Canada except for construction. Alberta’s new **prompt payment and adjudication system** is designed to change this and help resolve these disputes quickly and keep projects moving.

This booklet explains **construction adjudication** in Alberta in plain language. It’s written for *anyone in the construction industry* – tradespeople, subcontractors, general contractors, site supervisors, and more—to understand how adjudication works and how it differs from filing a lien. This guide will take you through what adjudication is, why it’s useful, how the process works step by step, and what to consider before using it. You’ll also find **sample scenarios, checklists**, and answers to common questions. Our goal is to give you a clear and practical understanding of adjudication as a new tool for resolving payment disputes in Alberta’s construction industry.

## What is Adjudication?

**Adjudication** is an accelerated way of settling disagreements (also known as “dispute resolution”) used in the construction industry to resolve payment issues quickly and cost-effectively. In simple terms, it’s a **fast-track process** where a neutral third party, called an **adjudicator**, reviews a payment dispute and makes a decision.

Construction adjudication has been around for decades in other parts of the world. In fact, the United Kingdom introduced mandatory adjudication in its construction industry back in 1996. Since then, it’s become the go-to method for resolving construction disputes quickly and keeping projects on track. UK contractors and trades have embraced adjudication because it provides speed, fairness, and certainty—all without the time and cost of lengthy court battles. Alberta’s adjudication model draws from that success while tailoring the process to fit our own industry’s needs and values. The PPCLA<sup>1</sup> plus Bill 30 is a **made-in-Alberta approach** that reflects how we do business here: **practical, fair, and focused on getting people paid without unnecessary delay.**

Key features about adjudication:

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<sup>1</sup> *Prompt Payment and Construction Lien Act*, SA 2020, c P-26.4.

- **Focus on Payment Disputes:** Adjudication is mainly used for disputes about money—for example, unpaid invoices, the value of work or materials, change orders, or holdback (lien fund) amounts.
- **Speed:** The adjudication process is designed to reach a decision within a short timeframe (often within just a few weeks of the adjudicator getting all documents). In fact, the law sets strict deadlines—a determination is usually made about **30 days** after submissions. Overall, from starting a claim to getting a binding decision (and even enforcement), the whole process can be completed in a few months (around **95–105 days** from the Notice of Adjudication to getting paid). This is **much faster** than arbitration or a court case, which can take years:

### Adjudication

4–6

### Arbitration

18 months – 36 months

### Legal Proceedings

3 – 5 years

- **Informal and Cost-Effective:** Adjudication is less formal than court. Parties don't need to follow complicated court rules or wait for trial dates. You can represent yourself (though you can still seek a lawyer's advice). Fewer steps and a short timeline make it generally cheaper than going to court. (Keep in mind there are still fees for the adjudicator—we'll discuss costs later.)
- **Binding Decision:** The adjudicator's decision is **binding on the parties**—meaning both sides must comply with it, *just like a court order*, unless it is later overturned or suspended by a court. In Alberta, an adjudicator's decision is considered final and binding on the dispute, except for limited reasons a court might intervene. This gives the decision teeth, so the winning party can enforce it if necessary.
- **Interim Solution:** Adjudication provides a decision *during the project* to keep cash flowing. Even though it's binding, either party could still pursue further legal steps later (such as a **judicial review** in court within 30 days if they really disagree with the decision, or even arbitration/litigation later). But in the meantime, the adjudicator's order stands. This means work can continue without waiting for a final court verdict.

- **Independent Expert:** Adjudicators are neutral professionals, not employed by either party. They are certified and trained through **Nominating Authorities** (like ARCANA in Alberta) and must have **at least 10 years of relevant construction industry experience** and knowledge of dispute resolution and contract law. In other words, adjudicators generally understand construction and contracts—they could be engineers, architects, lawyers, or experienced contractors who've been specially trained. This helps ensure the person deciding your case has *industry knowledge* as well as fairness.

Adjudication provides a practical mechanism for resolving construction disputes, **ensuring cash flow is maintained** so projects can continue without major interruptions. Adjudication is *not about assigning blame or punishing anyone*—it's about getting a quick, fair decision on who owes what.

### Why Use Adjudication? (Benefits and Advantages) (also see Appendix A)

Adjudication offers **speed, efficiency, and fairness**. It doesn't replace all other legal options, but it provides a *powerful new option* to get disputes resolved and money flowing. Adjudication replaces the old way of “pay-when-paid” or chasing debts long after the project's over. Disputes can be resolved as they arise often resulting in better communication between the disputing parties and better projects.

Over time, contractors will realize that by utilizing adjudication early in a project, as their first line of defense to resolve payment disputes, they can establish precedent for payment disputes throughout the project. Appendix A

The **major benefits** of using adjudication, especially compared to traditional court action include:

- **Communication between disputing parties:** the issuance of a notice of adjudication will often result in dispute resolution. Over 50% of disputes are settled before any documentation is submitted to an adjudicator.
- **Fast Resolutions:** Adjudication is fast—an outcome can often be reached in a matter of weeks. Quick decisions will usually cost less, ensure **cash flow is restored sooner**, help avoid project delays and other costs due to unpaid bills.
- **Keeps Projects Moving:** Because adjudication is quick, it prevents small disputes from stalling an entire project. Work can continue while the dispute is being resolved, and once the decision is made, the parties have clarity on payment. The adjudicator's determination being binding means the money issues get sorted out and the project

can proceed. Even if one side is unhappy, they must pay (or be paid) right away and can sort out final details later in court if they choose. This **avoids lengthy work stoppages** that might occur if everyone waited for a lawsuit to be finished.

- **Cost-Effective:** Going to court can be very expensive (lawyer fees, court fees, expert witnesses, years of proceedings). Adjudication, by contrast, is much quicker—the main cost is the adjudicator's fee and possibly some preparation help—and therefore generally much cheaper. Many consider adjudication a “*pay as you go*” approach to justice – it's quicker and therefore more affordable upfront.
- **Less Formal, More Flexible:** Adjudication is relatively informal. There's no judge in robes or intimidating courtroom. Proceedings are often done in writing (submitting documents and written arguments). There may not even be an oral hearing. This flexibility can reduce stress and the adversarial nature of the dispute. Parties might feel more in control of their story without court rules restricting them. You **don't even necessarily need a lawyer** (though you can have one assist in preparing your documents). This levels the playing field for smaller subcontractors who might otherwise be unable to afford a court fight.
- **Expert Decision-Makers:** As mentioned, adjudicators have construction expertise. They are often experienced in the types of issues under dispute (valuation of work, change orders, delays, etc.). This can lead to a more *practical and fairer outcome*. In court, a judge might not have specific construction knowledge, and it could take a long trial with expert evidence to explain the technical details. An adjudicator can cut through a lot of that because they speak the language of construction. This **boosts confidence** in the process among industry participants.
- **Preserves Business Relationships:** As these disputes get sorted out while they are small, bad blood between the parties can be reduced. By addressing non-payment issues quickly, adjudication **avoids unnecessary tension** that festers over months. Since both parties get a resolution and can move on, there's a better chance they can continue working together on the project (and future projects). It's less combative than a lawsuit, so it may help *maintain professional relationships* that would be shattered by a long court battle.
- **Enforceable Outcomes:** The result of adjudication is an **enforceable order**. If you win, you have a right to be paid, and that decision can be acted upon (through the courts if needed). We'll explain enforcement in detail later but know that adjudication isn't just advisory—it carries legal weight. For the party who owes money, the binding nature means they can't just ignore the problem: they must deal with it promptly, which brings finality to the issue.

- **Supports Prompt Payment Culture:** Using adjudication sends a message that prompt payment is taken seriously. Over time, as adjudication becomes common, all players (owners, contractors, subs) will be motivated to stick to the payment timelines and deal fairly, knowing that disputes can be escalated quickly. This helps change the industry culture towards one of timely payment and communication. It's **a tool that trade contractors especially have long awaited**—a way to get paid for completed work without fear of retaliation or endless delays.

In summary, adjudication offers **speed, efficiency, and fairness**. It doesn't replace all other legal options, but it provides a *powerful new option* to get disputes resolved and money flowing. For many in the industry, this is a welcome relief from the old way of “pay-when-paid” or chasing debts long after the project's over.

### **Adjudication vs. Lien Claims: What's the Difference? (See Appendix B for more in-depth discussion)**

Adjudication and builders' liens are separate but complementary tools: a lien secures payment by encumbering the property, while adjudication resolves the underlying contract dispute quickly through an enforceable decision. They can be used together—file a lien to preserve rights, adjudicate to resolve the issue. For further discussion and analysis, see Appendix A.

### **The real meat and potatoes start here!**

#### **When Can Adjudication Be Used? (Eligibility and Jurisdiction)**

Not every construction dispute can go to adjudication. Alberta's PPCLA and its regulations set out **which contracts and issues are eligible** for adjudication. Here's a breakdown of when adjudication is available—and when it's not:

- **Work in Alberta:** the dispute needs to involve work that was performed in Alberta. Typically, if you have lien rights, then you'll have the right to adjudicate subject to what the PPCLA says specifically.
- **Construction Contracts after August 29, 2022:** The new rules apply to *all construction contracts signed on or after August 29, 2022*. If your contract was signed before that date but the work extends beyond August 29, 2024, the contract should have been amended to comply with the new Act by that date. In short, all ongoing construction contracts now fall under the prompt payment and adjudication system.

- **Who Can Use Adjudication:** Contractors, subcontractors, and any parties to a construction contract or subcontract can initiate adjudication for a dispute with another party in the contract chain. This includes trade contractors, suppliers who have contracts, and consultants (engineers/architects). **Owners** generally aren't claimants (since they pay others), but an owner could be on the receiving end of a notice if a contractor initiates it against them. You can only claim against an owner if you have a contract with that owner.
- **Types of Eligible Disputes (Jurisdiction):** The dispute must relate to the construction contract and typically involve payment issues. According to the Act, you can adjudicate disputes regarding:
  - *Valuation of services or materials provided* (e.g. how much work done is worth, including issues over change orders).
  - *Payment* (any owed amount on an invoice or contract).
  - *Disagreements over notices of non-payment* (for instance, if a contractor issues a notice that they aren't paying a subcontractor, that can be taken to adjudication).
  - *Payment or non-payment of holdback funds* (major or minor lien fund issues).
  - *Any other matter that the parties in dispute agree to adjudicate.* (if both sides say "let's adjudicate this issue," even if it's not strictly regarding payment (maybe a contract interpretation), they can do so. However, in practice, adjudication is **intended for payment-related matters**, especially those arising during an ongoing project).
- **Disputes During the Project:** Adjudication is generally meant for disputes that come up **before the contract is completed or terminated**. In fact, an **adjudicator cannot determine disputes once the contract or subcontract is complete.**<sup>2</sup> The idea is to deal with issues in real-time, not after the project is over. For example, if you discover

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<sup>2</sup> **Section 33.4(2)** *An adjudication may not be commenced if the notice of adjudication is given more than 30 days after the date of final payment under the contract or subcontract, unless the parties to the adjudication agree otherwise.*

This means that:

- Once a contract is completed, the statutory right to initiate an adjudication no longer exists—unless both parties expressly agree to adjudicate a post-completion dispute.
- "Completed" in this context means that all obligations under the contract or subcontract have been fulfilled, not merely that physical construction has ceased.
- Similarly, if the contract is terminated (whether voluntarily or for cause), adjudication is no longer automatically available unless mutually agreed upon.

immediately after finishing work that there were issues and you haven't been paid properly, you should act quickly. After the project is done, your recourse might revert to the traditional lien and court system. So, *timing matters*—don't wait until everything is wrapped up to seek help, because you might lose the option of adjudication.

- **No Court Action Started:** If either party has already started a court proceeding about the dispute, then adjudication is off the table. You can't have two processes for the same issue at the same time. For instance, if you've sued the contractor in court for non-payment, you can't then switch to adjudication (you'd have to stick with court). So adjudication is **only available if no lawsuit (or arbitration) has been initiated** on the matter. This encourages parties to try adjudication first, before going to arbitration or court. Both take longer and are more expensive.
- **Jurisdiction Limits—Adjudicator's Scope:** Adjudicators have broad authority to decide payment disputes, but there are some things they **cannot decide**:
  - They might decline disputes that are extremely complex or beyond a straightforward payment issue. For example, if non-payment is tied to a deep disagreement over a major construction defect, with delays and damages, an adjudicator may decide that a court is a more appropriate forum for that complexity. The law even allows an adjudicator to **refer a matter to court** if they believe they don't have jurisdiction or if the court would be more suitable. This means if you bring an issue to adjudication that turns out to be outside the adjudicator's comfort zone or authority, they can effectively dismiss it and you'll have to take it to court.
  - Adjudicators also must follow the Act, so if a dispute doesn't meet the criteria (for example, it's not under a construction contract, or it's a pure negligence claim, etc.), they cannot rule on it.
- **Proper Notice and Timelines:** To use adjudication, the claimant must follow the required steps (like sending a proper Notice of Adjudication). There are **set timeframes** for when certain steps must be taken after an issue arises. If those are not met, you might lose the chance to adjudicate the dispute. For instance, if a contractor issues you a Notice of Non-Payment, the Act specifies that you have a set number of days to refer it to adjudication or else you're deemed to accept it. *Always act promptly when a payment dispute comes up.*

In summary, **adjudication can be used for most payment disputes in ongoing construction projects in Alberta**, under contracts governed by the prompt payment rules. The vast majority of contractor–subcontractor payment issues will qualify. However, be

mindful of the jurisdictional boundaries: if you're dealing with a situation outside the norm (like a dispute after project completion, or something already in the courts), adjudication might not be available.

**If in doubt about eligibility, consult a legal advisor.** The Nominating Authority (ARCANA) can also guide whether a dispute is of a type they handle. Most importantly, *don't delay*—promptness is key to keeping adjudication as an option.

### The Adjudication Process: Step-by-Step

Now let's walk through **how the adjudication process works** from start to finish. We'll outline each step in simple terms:

#### **Step 1: Issue a Proper Invoice and Wait for Payment**

**Quick reference: See Appendix C Proper invoice; know and track time from delivery to day 28.**

Adjudication usually begins with an unpaid invoice. Under Alberta's prompt payment rules, contractors and subcontractors must be paid within strict timelines once they submit a **Proper Invoice**. A proper invoice includes certain required information (description of work, amount due, contract reference, etc.). If you're a contractor billing an owner, the owner must pay within 28 days of receiving your proper invoice. If they don't intend to pay, they must issue a Notice of Non-Payment within 14 days. Similarly, contractors must pay their subcontractors within 7 days of getting paid by the owner or issue a notice if not paying.

*Why does this matter?* Because adjudication is there to resolve disputes when these payments don't happen on time. So, the first step is: **send your invoice and allow the timeline to run**. If the payment deadline passes and you haven't been paid (even if you received a notice of non-payment giving a reason), then you have a dispute eligible for adjudication. It helps (though it's not necessary) if your invoice is "proper" under the law, because that triggers the prompt payment timelines. (*See Appendix C.*)

#### **Step 2: Consider Other Options (Optional)**

Once a payment is overdue or disputed, you have several choices but your ultimate recourse for timely dispute resolution of that missed payment remains adjudication. Adjudication is one of the fastest options, but it's not free (we'll cover costs). If the amount is small (for example, under \$15,000), sometimes going to small claims court or using the free mediation offered there could be more cost-effective. However, if time is critical or the amount is significant, adjudication is likely your best bet to get paid quickly. Before you proceed, it's a good idea to **consult your lawyer or advisor** about whether adjudication is right for your

situation and if you should also file a lien to protect yourself. (See the Checklist at the end of this guide for questions to ask.)

### **Cost of adjudication, is it worth it for small amounts?**

**A:** Adjudication is *not free*. The main cost is the adjudicator's fee (and an NA fee). In Alberta, appointment and adjudicator fees start at around **\$3,000** and go up depending on the complexity. Usually, the Applicant pays a deposit or retainer upfront. The adjudicator can decide in the end who pays the costs—they might split it or have the loser pay, but there's no guarantee. If your claim is small (say under \$15,000), these fees are a significant factor. For smaller amounts, you might consider the Provincial Court (Small Claims), which is cheaper (around \$100 filing fee) and even offers free mediation. However, small claims court can still take many months or more, whereas adjudication is fast. If cash flow is critical, adjudication might still be worth it. A good rule of thumb: for very low dollar disputes, try direct negotiation or small claims first; for moderate to large disputes (ten thousand dollars and up), adjudication is likely worthwhile. Remember, if you win, the adjudicator might order that some/all your costs be reimbursed. Always go into adjudication with a clear understanding of fee structures (which the NA can provide) and weigh it against the amount at stake.

### **Step 3: Notice of Adjudication**

**Quick reference: file within 7 days from the 28<sup>th</sup> day after your proper invoice was delivered, Use Form ...**

To start an adjudication, the claiming party (the one who is owed money, called the *Applicant*) must deliver a **Notice of Adjudication**.<sup>3</sup> This is a written notice that formally states: *we have a dispute, and we are referring it to adjudication*. The Notice of Adjudication is given to **both the other party (Respondent)** and a **Nominating Authority (NA)**. In Alberta, the Nominating Authority is an entity authorized by the government to oversee adjudications. Currently, the primary NA is **ARCANA (AB)** (Alberta's Prompt Payment Adjudication Nominating Authority). If your contract already names a particular NA, you send the notice to that one; if not, you can choose any authorized NA (with ARCANA being the default since it's the first one appointed).

The **Notice of Adjudication** should include: the names and addresses of the parties, a brief description of the dispute (what it's about, how and when it arose), the amount claimed or relief sought, and the name of the Nominating Authority you are submitting it to. You can also suggest a specific adjudicator's name in the notice, if you have one in mind, though that's optional. Templates for Notices of Adjudication are usually available from the Nominating

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<sup>3</sup> See section 20 (1) of PPCLA Alta Reg 23/2022 for the requirements for a Notice of Adjudication <https://canlii.ca/t/55cqr>

Authority or government websites. Make sure to fill it out completely. This notice is essentially like “filing a claim”—it kicks off the process officially.

After receiving your notice, the Nominating Authority will acknowledge it and start the appointment of an adjudicator.

#### **Step 4: Appointment of an Adjudicator**

##### **Quick reference:**

Both parties have a chance to agree on an adjudicator of their choice. Once the Notice is sent, the parties should see if they can mutually agree on a specific adjudicator **within 4 days**. Alberta's NA (ARCANA) maintains a **registry of qualified adjudicators** that parties can choose from. If you know someone suitable from the list, you can propose them. If both sides agree on a name, the Nominating Authority will appoint that person by day 7 (from the notice).

If the parties **cannot agree on an adjudicator within those few days**, don't worry—the process doesn't stop. Instead, the **Nominating Authority will appoint an adjudicator** for you by about day 7 (the regulation allows a short window). The NA will pick someone from their roster who has the expertise for the dispute. By law, the appointment must happen quickly (by day 11 according to the Prompt Pay Alberta timeline).

Once an adjudicator is appointed, they will **confirm acceptance** of the role and the adjudication officially commences. You'll typically receive a notice of appointment or similar document from the NA confirming who the adjudicator is and the date of appointment.

*Side note:* The adjudicator must be independent and impartial. If there is any conflict of interest, they should decline the appointment, and another adjudicator will be appointed. All adjudicators follow a code of conduct to ensure fairness.

#### **Step 5: Submitting Your Claim (Applicant's Submission)**

##### **Quick reference:**

After the adjudicator is appointed, the real “meat” of the process begins: presenting the dispute details. The **Applicant** is usually required to provide their full submission **within 5 days of the adjudicator's appointment**. (The exact timeline can vary slightly depending on the NA's procedure, but ARCANA's guide indicates 5 days).

The Applicant's submission will include:

- A copy of the **Notice of Adjudication** (so the adjudicator knows the basics of the claim).
- All relevant **documents, records, and evidence** supporting your case. This can include the contract, purchase orders, change orders, invoices, payment certificates, emails or correspondence about the dispute, notices of non-payment, photos of work progress—basically anything that helps tell the story and prove the amount you're claiming.
- A **written statement or argument** explaining what the dispute is and why you believe you are owed the amount (or entitled to whatever remedy you seek). This is where you outline the timeline of events, reference the contract terms, point out what was done and not paid for, etc. It's often like a narrative or brief.
- Any applicable law or contract provisions you rely on (for example, "Section X of our contract says I can charge for extra work if approved, and here is the approval").
- Optionally, witness statements or expert opinions if needed (though in many cases, this is not necessary for straightforward payment issues).

The goal of the Applicant's submission is to **clearly and concisely present your case** to the adjudicator. Remember, this is meant to be a fast process, so huge volumes of unnecessary documents are discouraged. Stick to the key evidence. The Prompt Pay Alberta guide suggests "tell your best story"—outline the timeline of events leading to non-payment and include key communications and contract terms to effectively convey your case. In short, make it easy for the adjudicator to understand what happened and why you should be paid. There may be specific forms to use for the submission as well (check the NA's forms).

When you send your submission to the adjudicator, you also provide a copy to the other party (Respondent). Nowadays, much of this can be done electronically (through the NA's portal or via email, depending on the system in place).

Also at this stage, the adjudicator will usually ask for their **retainer fee** or security for fees to be paid (often split between parties or paid by the Applicant initially). According to ARCANA, the Applicant must pay the adjudicator's retainer at the time of submitting their documents. This ensures the adjudicator will be paid for their work, regardless of who the final decision orders to bear the cost.

### **Step 6: Response (Respondent's Submission)**

#### **Quick reference:**

Once the adjudicator has the claimant's materials, the other party—the **Respondent** (e.g., the party who allegedly owes money)—gets a chance to reply. The Respondent typically has

**12 days** from the adjudicator's appointment (or roughly 7 days after receiving the claimant's submission) to submit their response. The exact timing is set by regulation (the timeline shows day 28 as a key point by which all documents are in).

The Respondent's submission should include:

- Any **arguments or defenses** as to why the Applicant should not be paid the full amount (or anything). For example, they might say: the work was deficient, or the invoice is not proper, or they never approved that extra work, or they have already paid part of it, etc.
- Supporting **documents/evidence** for their position. For example, if claiming deficiencies, provide inspection reports or photos; if claiming an offset or back charge, provide those details; if a formal Notice of Non-Payment stating reasons was issued, reiterate those reasons with proof.
- The Respondent can also include any counter-calculations (maybe they agree some money is owed but less than claimed).
- Essentially, any material that was not already provided by the Applicant that helps the adjudicator see the full picture should be included.

The Respondent must also send their submission to both the adjudicator and the Applicant, so everyone has the same information.

**No "Reply" unless requested:** Adjudication is generally a one-shot exchange—Applicant submits, then Respondent submits. There usually isn't a prolonged back-and-forth like in court. However, the adjudicator might ask for more information or ask the Applicant to clarify something in reply to the response if needed. But in most cases, after the response, the adjudicator has everything they need. In the timeline, by day 28 the adjudicator notifies the parties that they have all the documents and information required.

### **Step 7: Adjudicator's Review and Determination**

#### **Quick reference:**

With both sides' arguments in hand, the adjudicator analyzes the case. They will review the contract, the invoicing, the evidence of work, any reasons for non-payment, and so on. The adjudicator may contact the parties if they have questions, or even call a brief hearing if, for example, they want to hear witnesses or have the parties explain further. But often, for straightforward matters, the adjudicator can decide based on the written submissions alone.

Within **30 days** from the date the adjudicator received the Applicant's submission (or from when the adjudicator declared they had all info, which in the timeline is day 28), the adjudicator must make a **Determination** (Decision). In many cases it can be faster, but 30 days is the limit unless an extension is agreed. (The law allows the adjudicator to extend up to 10 more days if absolutely necessary or if both parties agree to it.)

The adjudicator's **Determination** will be a written document, often accompanied by an **Order**. It will state the adjudicator's findings on the dispute and what remedy is ordered. For example, it may say: "Contractor X shall pay Subcontractor Y the sum of \$50,000 plus adjudication costs by [date]." It could also include interest on late payments if applicable, or sometimes non-monetary directions (like an order to do something, but typically it's about payment).

Importantly, the adjudicator can also address the matter of **costs of the adjudication** in the decision. In Alberta, an adjudicator has discretion on allocating their fees between the parties. Sometimes, if one party's position was without merit, the adjudicator might make them bear more of the cost. Other times, costs are split or each bears their own. (Legal fees are generally not awarded in adjudication—it's mostly the adjudicator's own fees and maybe a nominal filing fee that are at stake.)

Once the adjudicator has made their decision, they will **issue the Determination and Order to both parties**, usually electronically. In Alberta's system, they also send it to the NA.

At this point, the adjudication is essentially concluded in terms of deciding the dispute. The timeline on Prompt Pay Alberta shows the determination rendered by about day 58, which aligns with the 30-day window after submissions.

### **Step 8: Correction of Minor Errors (if needed)**

#### **Quick reference: Check the adjudicator's determination for accuracy!**

After the determination is released, there is a brief period (a few days) where either party can point out any **clerical or typographical errors**. For example, if the adjudicator wrote \$500,000 instead of \$50,000 by mistake, or got a party's name wrong, those can be corrected. The parties have up to 4 days to identify typos. The adjudicator can then issue a corrected determination within 7 days. This step is just to fix slips—not to re-argue the case.

### **Step 9: Certification of the Order**

#### **Quick reference:**

The NA will then **certify the adjudicator's order** and provide a certified copy to the parties. According to the timeline, the NA does this within 7 days after the determination. Certification is basically the NA stamping or signing off that this is an official adjudication

order under the Act. This certified order is what you would use if you needed to enforce the decision through the courts.

Prompt Pay Alberta's timeline mentions: "The claimant (plaintiff) must ensure the Nominating Authority certifies the judgment with the Courts" by around day 75. What this means is that, to enforce, you take the certified order and file it with the Court of King's Bench (in Alberta) so that it is recognized as if it were a court judgment. Once filed, you can use normal civil enforcement methods on it (we'll explain enforcement in the next section).

If the losing party **complies willingly**, then great! Once the determination is out, they should pay the amount (usually immediately or by the date given). The law requires that they comply with the adjudicator's order. In many cases, especially if the Respondent wants to avoid further trouble, they will simply pay up within days of the decision. That concludes the matter, and both can move on (and hopefully continue their business relationship).

### **Step 10: Post-Adjudication Options — Stop Work or Court Review**

If the respondent does **not** comply (doesn't pay), the successful party has a couple of options:

- One unique remedy in Alberta is that the adjudicator can issue a **Stop Work Order** upon request. Under the law, after an adjudication where the payor hasn't paid, the unpaid party can ask the adjudicator to order that work on the project be stopped until payment is made. This is intended to put pressure on the non-paying party (especially if they might try to bring in someone else to finish the work). A stop work order means the contractor who is owed money (or others) does not continue work, and the party who should pay cannot simply hire an alternate to bypass them. It's a powerful tool to enforce compliance. The adjudicator will decide whether to grant a stop work order; it may depend on the circumstances and whether further work is ongoing on site. If granted, it legally prevents further work on that project until the order is lifted (presumably when payment is made or an arrangement reached). The Prompt Payment rules indicate this can be done within 30 days after the determination. It's not automatic—it must be requested, and not every case will need it (if work is mostly done, it might not matter, whereas if the project is still active, it's leverage).
- The other side of "post-adjudication" is if the losing party believes the adjudicator was wrong or overstepped, they have the right to seek court review called **judicial review**, of the adjudicator's decision in court. This is essentially an appeal process (though technically it's not an appeal on the merits, it's a review of the process and reasonableness). The **deadline to file for judicial review is short (around 30 days)**. If they miss it, the adjudicator's decision is final. Judicial review in court would argue

things like the adjudicator made a legal error, or decided something outside their jurisdiction, etc. It's not a re-do of the facts of the case. The court can uphold the decision, quash it, or send it back for re-adjudication. It's relatively rare, because it involves legal expense and uncertainty, and only a few adjudication decisions have gone to court in Alberta so far. One case (*Welcome Homes v Atlas Granite*) confirmed that unless a court overturns it, an adjudicator's decision stands as final. So judicial review is a limited safety valve. For most disputes, parties accept the adjudication result and move on.

We'll assume for this guide that no judicial review is pursued (as it's uncommon)—therefore the adjudicator's order is final and needs to be complied with.

### In summary:

1. **Dispute arises (non-payment):** ensure you issued a proper invoice and the payment is overdue.
2. **Notice of Adjudication:** start the process by notifying the other party and a Nominating Authority.
3. **Adjudicator appointed:** either by agreement or by the NA.
4. **Submissions:** Applicant submits claim info, Respondent submits response, on a tight schedule (days).
5. **Decision:** Adjudicator issues a determination with any payment order, within about a month of appointment.
6. **Compliance/Enforcement:** The losing party should pay. If they don't pay, then use tools like stop work or court filing and enforcement to get the money. The decision can be filed in court and is enforceable as if it were a court judgment.

This step-by-step process ensures that within a matter of weeks or a couple of months, a dispute over payment can be resolved, allowing everyone to focus back on the project.

### Enforcing an Adjudication Award (Getting Paid After the Decision/Determination)

An adjudication decision is only as good as the ability to enforce it. Fortunately, Alberta's system provides that an adjudicator's order can be enforced through the courts if necessary. Here's how enforcement works in practice:

After the adjudicator issues the decision and the NA certifies it, the unpaid party (if the decision was in their favor) can take that **certified adjudication order** to the Alberta Court

of King's Bench. You would file it with the Court, and the legislation says it can be entered as if it were an order of the Court. In other words, it **transforms into a court judgment** once filed (without needing a new lawsuit). This is a critical point—it means you do *not* have to sue all over again to enforce the adjudicator's award. The law streamlines it: the adjudicator's determination, once certified, is as good as a judgment.

With a judgment in hand (or the equivalent), you can use normal **civil enforcement** methods to collect the money. Typically, the steps are:

- **Hire a Civil Enforcement Agency (Bailiff):** In Alberta, private civil enforcement agencies (licensed by the province) carry out enforcement of court orders. When you engage one, they will require a copy of the judgment and some details. They will then assist in locating the assets of the debtor.
  - **Writ of Enforcement:** Commonly, you (through your lawyer or the enforcement agency) file a Writ of Enforcement against the debtor. This writ gets registered in the Alberta Personal Property Registry and against any land the debtor owns. It signals there's a debt to be paid and allows seizure of assets.
  - **Seizing Assets:** The **Bailiff** (acting under the agency) can seize and sell the debtor's assets to satisfy the debt. This can include seizing bank accounts, placing liens on vehicles or equipment, registering against homes or other property, and so on. There are some exemptions (certain tools of the trade, basic necessities, etc., are protected by law from seizure), but generally a range of property can be taken. For companies, this might mean office equipment, machines, or receivables could be seized.
  - **Sale or Collection:** Seized items can be sold at auction, or bank accounts garnished, etc. The proceeds go towards paying the debt plus enforcement costs.

The Prompt Pay Alberta guide describes it in plain language: *"If you haven't received your money after a brief period, you may hire a civil enforcement agency, which will provide you with a Bailiff. Civil enforcement agencies employ bailiffs to collect on people's outstanding debts. These include court orders, which are adjudication decisions."* In short, **bailiffs can enforce adjudication orders just like any court judgment**. They might seize vehicles, put a lien on homes, take luxury items, etc., to get you paid. They often work with the local Sheriff or police if needed for safety when seizing property.

- **Stop Work Order:** As mentioned earlier, another enforcement mechanism in the Act is a **stop work order** that an adjudicator can issue if the debtor fails to pay. This is less about collecting money and more about pressuring the payer to comply. If you get a stop work order, you (the unpaid contractor) have legal cover to suspend your services, and the owner or general contractor is barred from hiring someone else to finish the work in the interim. Essentially, the project hits a legal freeze, which usually forces the hand of the non-paying party because delays can be very costly for them. Once they pay as ordered, the stop work order is lifted and work resumes.

**Interest and Costs:** The adjudicator's order may include interest on the unpaid amount (per the contract or a statutory rate) up to the payment date. If enforcement delays things, interest continues to accrue on the judgment. Also, the costs of enforcement (bailiff fees, etc.) can usually be added to what's owed by the debtor. So, a stubborn non-payer ends up paying even more in the end.

It's worth noting that **the NA does not enforce the award for you**. Once the decision is rendered and certified, it's up to the parties. If you're the winner, you must take the initiative to enforce if voluntary payment is not forthcoming. The NA's role is essentially finished after issuing the certified order.

**Is an adjudication award always paid?** In many cases, yes—especially if the debtor has assets or needs to keep their business reputation. The swift enforcement means they can't stall for long. However, there is the risk that the company owing money is insolvent or disappears. Adjudication can't guarantee recovery if the money simply isn't there (just like a court judgment can be hard to collect in such cases). This is why filing a lien in addition to working through an adjudication can be wise, as it secures an interest in the property or remaining holdback funds. If an owner still holds the 10% holdback, for instance, a lien ensures that money can cover your claim.

In summary, **to enforce an adjudication decision:** treat it like a judgment—register it with the court, then use bailiffs and legal processes to seize what's needed to get paid. Alberta has a well-established civil enforcement system to support this. It's advisable to get legal help for enforcement because it can involve technical steps (writs, registrations). The good news is that adjudication gives you a head start by providing a decision to enforce within weeks, whereas otherwise you'd first spend years suing to even get to that point.

*Example Scenario:* Suppose you, a subcontractor, win an adjudication award of \$50,000 against a general contractor, but they don't pay by the deadline in the order. You get the order certified and filed in court. You also obtain a stop work order from the adjudicator, which might prompt them to pay you so they can get back to work. If they don't, then you go to a civil enforcement agency. Through them, you discover the general contractor has a couple

of trucks and some construction equipment. The bailiff seizes one of the trucks and a skid-steer. Additionally, a notice goes to their bank to freeze and redirect funds (garnishment). Facing this pressure, maybe the general contractor pays you so they don't lose their assets. If they still don't, the truck and equipment will be auctioned and the bank will be compelled to hand over funds, until you have the \$50k (plus costs). Either way, you get paid!

## Practical Tips and Tools

In this section, we provide some practical tools—an example scenario, a checklist, and key tips—to help you apply adjudication in real situations.

### Sample Scenario: How Adjudication Works in Practice

**Scenario:** *ABC Electrical Ltd.* is a subcontractor on a commercial building project in Alberta. They complete their rough-in work and submit a proper invoice for \$100,000 to the general contractor, *MainBuild Co.*, on October 1. According to the rules, MainBuild has 14 days to issue a notice if they aren't going to pay, but they do not issue any notice. The 28-day payment deadline passes on October 29 with no payment received by ABC. ABC inquires, and MainBuild cites some issues with the work as the reason for not paying, but nothing formal is given in writing.

**Day 0:** On November 1, ABC starts adjudication. They file a **Notice of Adjudication** with ARCANA (the Nominating Authority) and send a copy to MainBuild. The notice states the dispute: "Non-payment of Invoice #1234 for electrical work at Project X, amount \$100,000, invoice due Oct 29, not paid. ABC seeks payment in full." They don't name a preferred adjudicator, leaving it to ARCANA.

**Day 4:** By Nov 5, MainBuild and ABC have not agreed on an adjudicator as MainBuild didn't respond with any suggestions. ARCANA appoints an available adjudicator from its roster on Nov 5 (within the 7-day window). Jane Doe, P.Eng., an experienced construction adjudicator, is appointed.

**Day 5:** Nov 6, Jane Doe contacts both parties to confirm she's appointed and outlines the schedule. She asks ABC to submit their detailed claim by Nov 11 (5 business days from appointment).

**Day 10:** ABC prepares a submission with the help of their project manager. They include the contract with MainBuild, a copy of the invoice, emails where MainBuild's site superintendent acknowledged the work was completed, and a short letter explaining that ABC did the work as per contract, passed all inspections, and there's no legitimate reason for non-payment. They also note that MainBuild failed to issue a formal notice of dispute within 14 days, which

under the law means the invoice should have been paid. They send this **Applicant's Submission** to the adjudicator and MainBuild on Nov 11. ABC also pays a \$3,000 adjudication fee deposit as requested by ARCANA.

**Day 11-22:** On Nov 18, MainBuild submits their **Response** (12 days from Nov 6). In it, MainBuild claims that ABC's work had some deficiencies—specifically, that some wiring had to be redone by another contractor, costing MainBuild \$20,000. They attach a deficiency report and an invoice from the other contractor. They argue they're willing to pay \$80,000 after offsetting the \$20,000 cost. They also argue ABC finished late, causing delays (though they don't quantify a backcharge for that).

**Day 22:** The adjudicator receives the response. She now has both sides of the story: ABC says work was fine and wants \$100k; MainBuild says there were problems, and they owe only \$80k after fixing issues.

**Day 23-50:** Jane Doe reviews everything by end of November. She sends out an email requesting further very brief submissions to clarify the issues. In that request, she asks ABC if they were aware of the \$20k fix. ABC says they were not informed properly at the time, and that they could have fixed any issues themselves under warranty. She asks MainBuild why no notice of non-payment was issued as required. MainBuild admits an oversight. Jane also asks if the remaining work is still ongoing (to consider a stop-work order later, if needed).

After considering the contract (which includes a clause that ABC should be notified and allowed to cure any defects) and the Prompt Payment law (which says failing to give notice means you have to pay the invoice), Jane comes to a decision. She finds that MainBuild should have raised the issue earlier. However, she also sees evidence that there were some problems with ABC's work. She decides that MainBuild is responsible for not following proper notice procedures but also that ABC's work did require \$10k of remedial work (but not \$20k as claimed as MainBuild's documentation wasn't convincing for the full amount).

**Day 30 (approx. Dec 6):** Jane Doe issues her **Determination** in writing. It says that MainBuild Co. is to pay ABC Electrical \$90,000 (the \$100k invoice minus \$10k for some deficiencies) within 10 days. She also awards interest on that \$90k from Oct 30 to the payment date. She also addresses costs: since both parties had some merit to their positions, she splits the adjudicator's fee 50/50, meaning MainBuild must reimburse ABC \$1,500 (half of the \$3k fee ABC paid). The determination notes that if MainBuild fails to pay, ABC can seek a stop work order or enforce the decision in court. Both parties receive this decision on Dec 6.

ABC is somewhat satisfied—they didn't get the full amount, but \$90k is a big win and they avoided a long fight. MainBuild is relieved they got a bit of an offset, but they were hoping to reduce more. Regardless, they decide it's best to pay and move on.

**Day 40:** By Dec 16, MainBuild **pays \$90,000 + interest** to ABC and also directly pays the other half of the adjudicator's fee to ARCANA. The matter is resolved. ABC releases the lien they had filed as security (yes, they had also filed a lien for \$100k back in late November to be safe). The project continues without further delay, and both companies continue their business relationship, each having learned to communicate better to avoid such disputes.

**Key takeaways from the scenario:** Use the process promptly, follow the timelines, and even if you don't get 100% of what you asked, you get a fair and fast outcome. Both parties saved the hassle of court and months of uncertainty. ABC got paid before year-end, which payment might have otherwise dragged well into the next year via litigation.

### Checklist: Preparing for Adjudication

Before and during the adjudication process, use this quick checklist to ensure you cover all bases:

- **Proper Invoice Issued:** Did you issue a **proper invoice** as defined by the Act (including description of work, amount due, contract reference, etc.)? A proper invoice starts the clock on prompt payment timelines. If not, consider issuing one before adjudication if possible.
- **Payment Deadline Passed:** Ensure the payment is actually overdue per the contract and prompt payment rules (e.g., more than 28 days since owner got invoice, or 7 days since contractor got paid by owner, etc.). Alternatively, a formal Notice of Non-Payment was received, which itself can be disputed via adjudication.
- **Within Project Timeline:** Is the project still ongoing or recently completed? Adjudication is not for disputes long after completion. Initiate while the work is still in play if you can.
- **No Existing Court Action:** Neither you nor the other party has started a lawsuit or arbitration on this dispute. If they did, adjudication likely isn't available.
- **Contract Covered by Act:** The contract is subject to PPCLA (signed after Aug 29, 2022, or amended to be compliant). If it is an older contract not amended and near completion, adjudication might not apply unless both agree.
- **Consulted on Lien Deadline:** Check your lien deadline and **file a lien** if it's approaching or passed *during* adjudication. Don't lose lien rights while waiting.

- **Decision to Adjudicate:** Consider if adjudication is the right path (amount in dispute vs cost, relationship factors, etc.). Discuss options with a mentor or lawyer. For smaller amounts, is small claims court mediation an alternative?
- **Chosen Nominating Authority:** If your contract names an NA, use that; if not, decide which NA to use (likely ARCANA). Have their contact info ready (e.g., ARCANA's email/portal).
- **Notice of Adjudication Ready:** Fill out the Notice form. Include all required info. Double-check names, addresses, description of dispute, and relief sought. Attach a copy of the contract or relevant sections if required by NA.
- **Send Notice Properly:** Deliver the Notice to the other party (email and maybe registered mail for proof) and to the NA. Note the date sent—timeline starts from this day.
- **Adjudicator Selection:** Be prepared to suggest an adjudicator or respond if the other side suggests one. Review the roster of adjudicators (perhaps pick someone with relevant trade experience).
- **Gather Evidence:** Collect all relevant documents *beforehand*: contract, change orders, invoices, notices, emails, photos, delivery receipts, timesheets—anything supporting your claim. Organize them chronologically.
- **Write Your Story:** Draft a concise timeline of what happened: contract signed -> work done -> invoice -> no payment -> follow-ups -> result. This will form the backbone of your submission narrative.
- **Know Your Ask:** Be clear on what you want from adjudication (e.g., “Payment of \$X plus interest” or “decision that this extra work order is payable”). Adjudication can give specific relief, so be specific.
- **Submission Prepared:** Follow any format guidelines from the NA. Typically, you'll write a position statement and attach documents. Keep it factual and refer to exhibits (e.g., “See Exhibit B: Email dated \_\_\_ confirming completion”). Remove irrelevant fluff—adjudicators appreciate brevity due to time crunch.
- **Legal/Expert Help (if needed):** If the dispute involves complex contract law or technical issues, consider including an expert opinion or have a lawyer help frame the arguments. But ensure this can be done within the short timeline.
- **Responding to Defense:** Try to anticipate the other side's arguments. Address them proactively in your submission if possible (e.g., “The contractor may claim deficiency in lighting, but the attached inspection report shows compliance”).

- **Stay Within Scope:** Only ask the adjudicator to decide matters they have jurisdiction over (payment issues, contract issues agreed by parties). Don't bring up unrelated grievances.
- **Timeline Management:** Mark all key deadlines on a calendar: notice sent date, +4 days (for adjudicator agreement), adjudicator appointment date (expected), +5 days (your submission due), +12 days (response due), +30 days (decision due), +10 days (potential payment due). This helps you track the fast pace.
- **Communication:** Check email regularly (including spam) for any communication from the adjudicator or NA. Respond promptly to any requests.
- **Confidentiality:** Adjudication is private. Do not discuss the proceedings publicly or on social media. Focus on resolving the matter professionally.
- **Plan for Enforcement:** If you win, are you prepared to enforce? Identify a civil enforcement agency you might use, or talk to your lawyer about filing the judgment. Also, if you anticipate needing a stop work order, be ready to request it quickly.
- **Professionalism:** Keep the tone respectful throughout. Emotional venting or personal attacks can undermine your case. Stick to facts and contract terms.
- **Questions for Your Lawyer:** If you have counsel, ask:
  - “Should I also register a Certificate of Lis Pendens (CLP) when I file a lien, to secure it during adjudication?” (In Alberta, a CLP is filed when starting a lien action—might not be applicable if adjudicating instead, but lawyer can advise.)
  - “What if the owner hasn't paid the general contractor—can I still adjudicate against the general?” (Yes, prompt pay ensures pay when paid is not a defense but confirm specifics.)
  - “How do I ensure the adjudicator's order is correctly filed in court if I need enforcement?”
  - “If I lose, could I be on the hook for the other party's legal costs or just the adjudicator's fees?” (Generally, just adjudicator fees in Alberta.)
  - Any other case-specific legal questions.

Using this checklist can improve your readiness and confidence in the adjudication process. Being organized and informed is half the battle in any legal proceeding—even an expedited one.

## Conclusion

Adjudication is a **game-changer** for Alberta's construction industry. It provides a fast, fair, and effective way to resolve payment disputes without derailing projects. By understanding how adjudication works, you can take advantage of this tool to protect your cash flow and rights under a contract. Remember these key points as takeaways:

- **Adjudication is not scary or overly complex**, it's meant for regular construction folks to use when they're not getting paid or have a contract issue. Use plain facts and documentation to make your case.
- **It's complementary to the lien system**, not a replacement. Know when to file a lien and use adjudication to get a decision on the money issue.
- **Speed and interim binding effect** are what make adjudication powerful. Don't hesitate to use it if you need a quick resolution—justice delayed is justice denied, as they say.
- **Choose adjudication carefully** for the right situations (mostly payment disputes during projects). If used appropriately, it can save time, money, and relationships compared to a court fight.
- **Enforcement is available**. An adjudication award has “teeth” through the courts and civil enforcement. But also be aware of the costs and steps to enforce, should it come to that.
- **Stay informed and seek help when needed**. The first few times using adjudication, you might consult resources like the Prompt Pay Alberta website, government guides, or legal advisors to ensure you're doing it right. As the industry gets more familiar with adjudication, it will become a routine part of payment discussions.

The Alberta government and industry groups introduced adjudication to create a better payment culture—one where **work done means timely payment received**, and if not, there's a quick fix. By reading this booklet, you've taken the first step in equipping yourself with knowledge about adjudication. When a payment issue arises on your project, you'll know that you have this tool in your toolbox.

**With adjudication now part of Alberta's construction law tool crib, contractors have been handed a powerful new tool—like being offered a scissor lift to get the job done faster, safer, and with less strain. But some are still reaching for the old wooden ladder out of habit or hesitation. Adjudication isn't perfect, but it's a major step forward in making sure you get paid fairly and promptly. Ignoring it means missing out on a more**

**efficient and enforceable path to resolving disputes. Alberta built this system to support the people who build Alberta—don't leave the scissor lift parked on the sidelines.**

Stay safe on the job and remember: getting paid for your work is not just about business, it's about fairness. Adjudication aims to ensure that fairness promptly. It's there to help *you*, the people who build Alberta, keep building with confidence that the money will follow the work.

**Resources:**

- Prompt Pay Alberta (ATCC): Comprehensive information on adjudication process, timelines, and guides for applicants and respondents [promptpayalberta.ca](http://promptpayalberta.ca)
- Alberta.ca – Prompt Payment Rules: Official government explanation of the new payment timelines and adjudication rules [alberta.ca/alberta.ca](http://alberta.ca/alberta.ca).
- Prompt Payment and Construction Lien Act & Regulation: The legislation governing adjudication (available on Alberta Queen's Printer and [open.alberta.ca](http://open.alberta.ca)) [alberta.ca](http://alberta.ca).

By using these resources and the information in this booklet, anyone in the construction sector—from a small tradesperson to a large general contractor—can navigate adjudication with a lot more clarity. Here's to **building a stronger payment culture** in Alberta's construction industry!

## Appendix A: Why Use Adjudication

## APPENDIX A

# WHY USE ADJUDICATION?



Adjudication offers speed, efficiency, and fairness. It doesn't replace all other legal options, but it provides a powerful new option to get disputes resolved and money flowing.

**COMMUNICATION BETWEEN DISPUTING PARTIES**

The issuance of a notice of adjudication will often result in dispute resolution.

**FAST RESOLUTIONS**

Adjudication is fast—an outcome can often be reached in a matter of weeks.

**KEEPS PROJECTS MOVING**

Because adjudication is quick, it prevents small disputes from stalling an entire project.

**COST-EFFECTIVE**

Adjudication is much quicker and therefore generally much cheaper than going to court.

**LESS FORMAL, MORE FLEXIBLE**

Adjudication is relatively informal—there's no courtroom, and proceedings are often done in writing.

**EXPERT DECISION-MAKERS**

Adjudicators have construction expertise, which can lead to a more practical and fair outcome.

**PRESERVES BUSINESS RELATIONSHIPS**

Non-payment issues are addressed quickly, reducing tension and helping maintain professional relationships.

**ENFORCEABLE OUTCOMES**

The result of adjudication is an enforceable order, giving a right to be paid if you win.

## Appendix B: Liens and Adjudication

How does adjudication relate to the traditional **builders' lien** process? It's important to understand that **adjudication is *not* a substitute for a lien**—they are different tools that serve different purposes. You may even use both in some cases. Let's compare them in simple terms:

- **A Builders' Lien** (also called a construction lien) is basically a **charge on the property** for the value of unpaid work or materials. If you haven't been paid, you can register a lien against the title of the property. This **secures your claim** by encumbering the property—the owner typically can't sell or refinance the property without dealing with your lien. A lien is a way to protect yourself and ensure there's money set aside (holdback) to pay you. However, a lien **does not by itself get you the money**; it's a security. You still need to negotiate payment or, if it comes to it, go to court to enforce the lien and get a judgment.
- **Adjudication**, on the other hand, is a **dispute resolution process**. It doesn't create a charge on the land. Instead, you present your case to an adjudicator and get a decision on whether you're owed money (and how much). The adjudicator's **order for payment** can then be enforced like a court judgment. Adjudication directly addresses the *contractual dispute* (who should pay whom, and how much, under the contract). It is *independent of any lien rights* you may also have. In fact, "the adjudication process exists to determine contractual rights, not lien rights". You can pursue adjudication whether you have filed a lien or not or even have a right to a lien.

### Key differences:

- **Purpose:** A lien's purpose is to secure payment by tying it to the property; adjudication's purpose is to decide the payment dispute quickly.
- **Scope of Issues:** Liens are about unpaid value of work on a project/property. Adjudication can cover a broader range of contract issues (as long as parties agree)—for example, valuation of change orders or disputed extras—not just the existence of debt but the **quantum** (how much is owed) and possibly reasons for non-payment.
- **Timeline:** Liens have strict deadlines to register (in Alberta, generally within **60 days** from the last day you worked or supplied materials, or 90 days for oil/gas well sites). If you miss the lien deadline, you're outta luck. Adjudication can be commenced as long as the contract is ongoing (or very soon after. If the contract is completed, adjudication might not be available—more on that later). There isn't a fixed "days" count like lien, but prompt action is encouraged.

- **Process:** Filing a lien is relatively simple (a form at Land Titles). Adjudication is a multi-step process involving notices, submissions, and an adjudicator's review. It requires a bit more effort upfront (essentially preparing your case).
- **Outcome:** An adjudication gets you a decision on who owes what; a lien doesn't decide anything by itself—it just preserves your right to get paid from that property's value. To actually get paid on a lien, you may need to commence a lawsuit (foreclose on the lien) or force a settlement. With adjudication, you *get a determination of the issue* without a full trial.
- **Enforcement:** If you have a lien and obtain a court judgment, you can force sale of the property in some cases to get paid (extreme scenario). With an adjudicator's order, you enforce it like any money judgment (seizing assets, etc., but not the property unless you also had a lien on it).

**Can (and should) you use both?** Often, yes. Filing a lien is a protective step—it secures your claim to the extent of the holdback funds or the property's value. **Adjudication is a quicker way to actually resolve the dispute.** They can complement each other. For example, you might file a lien within the 60-day deadline to preserve your rights and simultaneously proceed with adjudication to get a decision. If the adjudication results in full payment, you can then remove the lien. If not, your lien is still there as backup security. Remember: **adjudication does not extend lien deadlines or replace the need to file a lien.** If time is running out on your lien period, file the lien even if you plan to adjudicate, to be safe.

On the flip side, pursuing a claim for lien does not necessarily get you paid promptly. Adjudication offers something a lien process doesn't: a faster resolution. Even if you file a lien, you might prefer to adjudicate the dispute rather than sue on the lien, because suing could take much longer. In Alberta's system, lien rights and adjudication are kept separate. In fact, the law says that starting an adjudication does not affect your lien rights either way, and vice versa—they are **independent remedies**. The courts have noted that lien processes and adjudication processes are separate, even if they arise from the same issue.

**Important Recap:** *Adjudication does not eliminate lien rights.* It's an additional tool. The Alberta court has clarified that a party cannot use adjudication to avoid proving their lien if required (except in one case where the court indicated an adjudicator's decision on the contract may effectively decide the issue, since adjudication is binding). The bottom line: **Use adjudication to get your money issue decided quickly and always remember to file a lien within the deadline, if you need security for that money.**

If you're unsure, talk to a lawyer about a strategy. Many contractors now file a lien first (to not miss the deadline) and then immediately start adjudication. This way, you have both bases covered. Once paid, the lien is discharged; if the adjudication isn't honored, you still have the lien and can press on in court.

The ATCC wishes to thank the ongoing support of

**Dan Leduc, law partner at Soloway Wright LLP for this guide.**

Appendix C Proper Invoices 32.1(1) PPCLA

# REQUIREMENTS FOR A PROPER INVOICE



**CONTRACTOR'S NAME AND ADDRESS**



**DATE OF THE PROPER INVOICE**



**DESCRIPTION OF THE WORK DONE**



**WHEN PAYMENT IS DUE**



**AMOUNT PAYABLE**



**AMOUNT PAYABLE**



**STATEMENT THAT THE INVOICE IS INTENDED TO BE A PROPER INVOICE**



**CONTRACTOR'S PAYMENT TERMS**



## Appendix D: Common Questions and Concerns

Adjudication is new in Alberta, and it's natural to have questions or concerns. Let's address some of the **frequently asked questions and common concerns** industry members have about this process:

### **Q: Does adjudication cost money? Is it worth it for small amounts?**

**A:** Adjudication is *not free*. The main cost is the adjudicator's fee (and an NA fee). In Alberta, appointment and adjudicator fees start at around **\$3,000** and go up depending on the complexity. Usually, the Applicant pays a deposit or retainer upfront. The adjudicator can decide in the end who pays the costs—they might split it or have the loser pay, but there's no guarantee. If your claim is small (say under \$15,000), these fees are a significant factor. For smaller amounts, you might consider the Provincial Court (Small Claims), which is cheaper (around \$100 filing fee) and even offers free mediation. However, small claims court can still take many months or more, whereas adjudication is fast. If cash flow is critical, adjudication might still be worth it. A good rule of thumb: for very low dollar disputes, try direct negotiation or small claims first; for moderate to large disputes (ten thousand dollars and up), adjudication is likely worthwhile. Remember, if you win, the adjudicator might order that some/all of your costs be reimbursed. Always go into adjudication with a clear understanding of fee structures (which the NA can provide) and weigh it against the amount at stake.

### **Q: If I win in adjudication, will I definitely get paid?**

**A:** You have a legally binding decision in your favor, but it's possible the other party still resists payment. In that case, you will need to enforce the decision (as detailed in the previous section). That could mean hiring a bailiff to seize assets. In most cases, adjudication awards are paid because the consequences of not paying are serious (stop work orders, asset seizures, damage to business reputation, etc.). Also, the amounts in adjudication are often not huge unpayable sums—they're usually what the paying party can manage if they prioritize it. That said, adjudication is **not a 100% guarantee**; if the debtor is bankrupt or insolvent, collection is challenging. This is why adjudication isn't a replacement for lien rights. A lien can secure some money via holdback or property, which improves your odds of recovery. To maximize your chance of getting paid, make sure you use all tools available: lien for security and adjudication for quick decision, if appropriate. The misunderstanding some have is "adjudication automatically gives me money"—it only gives you an order. You might still have to chase the money, but at least you have the law firmly on your side.

### **Q: What if the adjudicator gets it wrong? Can I appeal?**

**A:** There is no standard appeal like in a court case. The adjudicator's decision is intended to be final and binding. However, you (or the other party) can apply for **judicial review** in court within 30 days if you believe there was a jurisdictional error or unfairness. This is a high bar—courts typically will *not* reopen the merits of the dispute; they'll only intervene if the adjudicator violated natural justice or decided something outside the scope of the Act. The court could then set aside or correct the decision. But if it's just a disagreement on the adjudicator's judgment call, that likely won't be enough. Another possible outcome is that after the project, the parties could still have the dispute determined in detail via arbitration or litigation (especially if the contract allows it), effectively overwriting the adjudication. But until that happens, the adjudication stands. In essence, **adjudication is meant to be quick and final for the moment**—you don't get a full appeal, which is the trade-off for speed. The best approach is to put your best case forward during adjudication. Don't treat it lightly thinking you can appeal later.

**Q: Do I need a lawyer for adjudication?**

**A:** Not necessarily, but it can help. The process is designed to be accessible without a lawyer ("less formal"). If the amount is modest and the issues straightforward, many contractors prepare their own documents. The Prompt Pay Alberta site notes that parties can represent themselves. However, you do need to be comfortable preparing a clear written submission and organizing evidence. A lawyer or consultant experienced in construction adjudication can assist in drafting the notice, framing the arguments, and ensuring you meet all requirements and deadlines. They can also advise on strategy (e.g., what to include, whether to also file a lien, etc.). Using a lawyer might increase your upfront cost, but if the dispute is complex or a lot of money is on the line, it could be worth it. One compromise is to at least have a lawyer **consult or review** your notice and submission, even if you handle the rest. Remember, any costs for hiring a lawyer are generally not recoverable in adjudication (unlike in court where a winner sometimes gets legal costs). Budget accordingly. For many trade contractors, adjudication will be the first time they formally present a case—getting professional advice can boost your confidence and the quality of your submission.

**Q: Will adjudication damage my working relationship with the other party?**

**A:** It's understandable to worry that initiating a legal process could sour relations. However, adjudication is actually designed to be **less adversarial** than a lawsuit. It's a private process (not public record like court) and it resolves the issue quickly, preventing prolonged hostility. Many see it as a business decision to adjudicate, not a personal attack. That said, any time you escalate a dispute there could be tension. It helps to communicate—for example, you might warn the other party: "I value our partnership, but I have to invoke adjudication to get this resolved promptly." Often, the mere notice of adjudication can bring the other side to the table to negotiate seriously, precisely because they *do* want to maintain a good relationship

and avoid the process. In the long run, clearing the air and getting paid can actually **preserve the relationship**, because both sides can continue the project with that issue behind them. Contrast that with a lien or lawsuit which can breed mistrust for months or years. While there might be short-term strain, adjudication's quick resolution can reduce long-term damage. The government pitched adjudication as a way to "avoid unnecessary tension between the parties and potentially preserve the relationship"—and many contractors are finding that to be true.

**Q: What if the dispute involves technical issues or defects—can the adjudicator handle that?**

**A:** Adjudicators can handle quite complex matters, but they are constrained by time. If the core issue is *why* you're not paid (e.g., an allegation of poor workmanship or delay), the adjudicator will have to touch on that. They won't be doing a full expert analysis like a trial might. However, they can make a fair call based on available evidence and their own expertise. If a dispute is extremely technical (e.g., a major structural defect claim with multiple expert reports), the adjudicator might decide it's beyond the scope of a quick process and refer it to court. This is at their discretion. In many cases, though, what seems technical is still ultimately a payment dispute they can decide (perhaps by ordering payment of part of an invoice and leaving the final complex claim to later resolution). Remember, adjudicators have industry backgrounds; they're not easily intimidated by technical construction issues. They might not get into exact calculations of delay damages in a 30-day process, but they could decide who should bear costs now pending final resolution. In short, most disputes *related to payment* will be heard. Truly complex, multi-faceted disputes might get bounced out. If you're unsure, you can still attempt adjudication—at worst, it's referred to court, but at least you haven't lost much time.

**Q: Who is the Nominating Authority and what is their role?**

**A:** The Nominating Authority (NA) is an entity authorized by the province to administer adjudication. **ARCANA (AB)**—which is affiliated with the ADR Institute of Alberta—is the first NA appointed in Alberta. The NA's functions include: receiving Notices of Adjudication, maintaining the roster of adjudicators, appointing adjudicators when needed, and overseeing the code of conduct and training of adjudicators. They also provide guidance materials, forms, and sometimes manage the online platform for submissions. The NA does *not take sides* in disputes; they are more like the administrators or "clerks" of the system. If you have questions on process, you can reach out to the NA. For instance, ARCANA (AB) can provide information on adjudicator fees, how to file documents, etc. They also handle complaints about adjudicators. In short, the NA is your point of contact to initiate adjudication and they ensure the process moves along properly.

**Q: Should I still file a lien if I go to adjudication?**

**A:** Often, yes. As discussed previously, a lien is separate and is a security for payment. Adjudication does not give you a lien or affect your lien rights. If your lien filing deadline is approaching (60 days from last work, generally), you should file the lien to be safe—even if you plan to adjudicate or are in the middle of an adjudication. Filing a lien can coexist with adjudication (just don't start a court action to enforce the lien, as that would conflict with adjudication). After adjudication, if you get paid, you can discharge the lien. If you don't get paid, your lien is still valid, and you can enforce it through the courts. Think of the lien as Plan B security and adjudication as Plan A dispute resolution. The prudent approach is to **never miss a lien deadline**, because adjudication doesn't extend it.

**Q: What if the other party files for bankruptcy during this process?**

**A:** If a company or individual goes bankrupt, it complicates things. An adjudication could be halted because, once bankruptcy protection is in place, creditors (which you would be, seeking money) cannot continue collection efforts without court permission. If you already got an adjudication order, you become one of the creditors in the bankruptcy and you'd have to line up in that process (often getting only a portion of what's owed if the estate is insolvent). A lien might secure some priority in a bankruptcy (because lien claimants can rank ahead of some other creditors for that property). Bankruptcy is beyond this guide's scope, but the lesson is: act quickly on disputes, because if a company is in financial trouble, adjudication and liens done sooner give you a better chance.

These FAQs cover some major points of concern. In general, while adjudication is new and different, it has been functioning in other jurisdictions (like Ontario and the UK) effectively, and the feedback is that it's a useful tool when used with proper understanding. If you have more questions, consult the resources at the end of this booklet or contact the Prompt Payment Alberta helpdesk for guidance.