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Frequently Asked Questions



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☐ How do I commence an adjudication?

An adjudication is commenced by the party seeking the adjudication (the “Applicant”) completing and giving to both the other party to the dispute (the “Respondent”) and ARCANA(AB) a “Notice of Adjudication” (See section 20 of the Prompt Payment and Adjudication Regulation (the “Regulation”). The Applicant must also complete and deliver to ARCANA(AB) an Application form containing further information required by ARCANA(AB). These forms can be accessed on the ARCANA(AB) webpage <https://adralberta.com/prompt-payment/>.

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What are the key deadlines for Applicants and Respondents in an adjudication once it has been commenced?

Within first 4 days of commencement of the Adjudication - The Applicant and Respondent are to discuss, and possibly, agree upon an adjudicator selected from ARCANA(AB)'s roster of adjudicators which can be found at <https://adralberta.com/prompt-payment/>. An adjudication is commenced by the party seeking the adjudication (the "Applicant") completing and giving to both the other party to the dispute (the "Respondent") and ARCANA(AB) a "Notice of Adjudication" (See section 20 of the Prompt Payment and Adjudication Regulation (the "Regulation"). The Applicant must also complete and deliver to ARCANA(AB) an Application form containing further information required by ARCANA(AB). These forms can be accessed on the ARCANA(AB) webpage www.adralberta.com/prompt-payment/. (See section 22(1) of the Regulation).

Within 7 days of selection of the adjudicator by the parties or expiry of the 4 day period above - ARCANA(AB) appoints the adjudicator - either the adjudicator agreed upon by the Applicant and Respondent or, in the absence of agreement, chosen by ARCANA(AB) based upon the issues in the dispute (see section 22(2) of the Regulation).

Within 5 days of appointment of the Adjudicator - the Applicant must provide to the Adjudicator: (1) a copy of the Notice of Adjudication and (2) a copy of the contract or subcontract as the case may be. (3) The Applicant must also provide to both the adjudicator and the Respondent copies of any documents the Applicant intends to rely on during the adjudication. These documents should include a brief narrative explaining the basis of the Applicant's claim. (See section 23 of the Regulation).

Within 12 calendar days of receipt of the Applicant's materials: The Respondent must provide a response to the Applicant's materials to the adjudicator and the Applicant. This response should contain copies of any documents the Respondent intends to rely on in the adjudication together with a brief narrative explaining the basis of the Respondent's defence to the Applicant's claim.

N.B. An adjudicator can extend the deadlines of the Applicant and/or Respondent one or more times, at the request of either or both of the parties, for a period of up to 10 days. Such requests should come with an explanation.

Further deadlines and steps in the adjudication process can be found on the ARCANA(AB) webpage. An adjudication is commenced by the party seeking the adjudication (the "Applicant") completing and giving to both the other party to the dispute (the "Respondent") and ARCANA(AB) a "Notice of Adjudication" (See section 20 of the Prompt Payment and Adjudication Regulation (the "Regulation"). The Applicant must also complete and deliver to ARCANA(AB) an Application form containing further information required by ARCANA(AB). These forms can be accessed on the ARCANA(AB) webpage <https://adralberta.com/prompt-payment/>.



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What matters can an adjudicator adjudicate, ie. What matters are within an adjudicator's jurisdiction?

An adjudicator can only adjudicate disputes which relate to construction contracts, ie. contracts which give rise to an improvement to land. Furthermore, an adjudicator can only adjudicate disputes that pertain to property in Alberta. Otherwise, for contracts entered into before April 1, 2025, an adjudicator cannot adjudicate a dispute regarding a contract which has been "completed" before the dispute has been referred to adjudication (unless the parties agree otherwise) or where an action in court has been commenced before or on the same date as the matter is referred to adjudication (Legal advice should be obtained regarding the interpretation and application of this provision).

For contracts entered into on or after April 1, 2025 (the date of amendment of the Prompt Payment and Construction Lien Act (the "Act") by Bill 30) an adjudicator cannot adjudicate a dispute where the dispute has been referred to adjudication after 30 days from the "date of final payment" (See section 33.4 of the amended Act. "Final Payment" is a defined term in the Prompt Payment and Construction Lien Act, as amended by Bill 30. Legal advice should be obtained regarding the interpretation and application of this provision). An adjudicator may also be able to adjudicate a dispute regardless of when an action is commenced in court regarding that dispute (Legal advice should also be obtained in this regard as there is some lack of clarity in the Act regarding the amendments concerning adjudication and court actions. See sections 33.4(1) and (5) of the amended Act).

Otherwise, an adjudicator's jurisdiction is set out in section 19 of the Regulation which provides that an adjudicator can resolve disputes regarding the following matters:

1. The valuation of services or materials provided under the contract or subcontract, including in respect of a written change order, whether approved or not, or a proposed change order, as the case may be;
2. Payment under the contract or subcontract, including in respect of a written change order, whether approved or not, or a proposed change order;
3. Disputes that are the subject of a notice of non-payment under Part 3 of the Act;
4. Payment of non-payment of an amount retained as a major lien fund or minor lien fund and owed to a party during or at the end of a contract or subcontract as the case may be;
5. Any other matter in relation to the contract or subcontract, as the case may be, that the parties to the dispute agree to, regardless of whether or not a proper invoice was issued or the claim is lienable.

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☐ **What should I include in my submissions to the adjudicator as either an Applicant or a Respondent?**

See the answer to FAQ # 2 above. Parties should keep their submissions concise, but addressing each aspect of the party's position, and including only the key documents supporting their positions. They should keep in mind that the adjudicator is seeing the dispute, and the relevant documents, for the first time and that the adjudicator has a limited time in which to make his/her determination.

☐ **If I obtain an adjudicator's determination in my favour how do I enforce it?**

A party receiving a determination with an order which directs that a payment be made can enforce that order by filing it with the Clerk of the Court. The order cannot be filed with the court until 30 days following receipt of the adjudicator's order by the parties (See section 33.61 of the unamended and amended Act). Thereafter it can be enforced in the same manner as any court order. Further information in this regard can be found on the ARCANA(AB) webpage <https://adralberta.com/prompt-payment/>. ARCANA(AB) and the adjudicator lack the jurisdiction to assist the parties with enforcement of an adjudicator's order.

☐ **Is the issuance of a "proper invoice" necessary before a dispute can be resolved by an adjudicator?**

No. The jurisdiction of an adjudicator is as set out in the answer to FAQ # 3 above. Only one of those areas of jurisdiction relates to the issuance of a "proper invoice", namely, section 19(c), ie. "disputes that are the subject of a notice of non-payment under Part 3 of the Act". Part 3 of the Act is that part of the Act that provides the legislation governing requirements regarding issuance and responses to "proper invoices".

☐ **If I file a construction lien as security for a claim can my dispute over that claim still be resolved by an adjudicator? Similarly if I commence an adjudication can I still file a construction lien?**

The answer to both questions is "Yes". A party can file a construction lien and still proceed to adjudication. Similarly, commencing an adjudication does not affect the right of a party to register a construction lien. While an adjudicator lacks the jurisdiction to enforce a construction lien, the adjudication can often resolve the dispute underlying the construction lien claim and, thereby, simplify the subsequent lien enforcement process.



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☐ If I obtain an adjudicator's determination in my favour is it inevitable that the dispute goes to litigation in any event?

No. A court action can be commenced by either party to a dispute following (or even during the course of) an adjudication. However, that court action does not affect the enforceability or binding effect of the determination and order. That determination and order only become unenforceable, thereby requiring either litigation or arbitration to resolve the dispute, under the following circumstances:

A. For contracts entered into before April 1, 2025.

- A court order is made in respect of the matter.
- Either party has applied to court for judicial review of the determination and order.
- The parties have entered into a written agreement to appoint an arbitrator under the Arbitration Act.
- The parties have entered into a written agreement that resolves the matter.

(See section 33.61 of the unamended Act).

B. For contracts entered into after April 1, 2025

1. A court order is made affecting the binding nature of the determination and order (ie. a stay) or resolving the same dispute.
 2. The issuance of a court order setting aside the determination and order at an application for judicial review.
 3. An arbitration has commenced and is in progress under the Arbitration Act..
 4. The issuance of an award by an arbitrator respecting the same dispute.
 5. The parties have entered into a written agreement that resolves the matter in dispute.
- (See sections 33.6(5) and 33.61 of the amended Act).

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☐ If I commence an adjudication can I still commence an action in court?

Yes. Whether under the unamended or amended Act, a party to an adjudication can still commence a court action. The adjudication and court action can then proceed in tandem. However, a court order in the action may terminate the adjudication.

☐ If an action has already been commenced in court by me or another party respecting a dispute can an adjudication still be commenced regarding that dispute?

1. For contracts entered into before April 1, 2025

No. Section 33.4(1) of the unamended Act specifically prohibits the commencement of an adjudication if a court action regarding that dispute has already been commenced.

2. For contracts entered into on or after April 1, 2025

Perhaps. The amended Act has removed the following words from section 33.4(1) "Provided that no party has commenced an action in court with respect to a dispute...". However, subsequent language in section 33.4(5) of the amended Act which permits "adjudication and the action in court to both proceed" where "a party commences an action in court with respect to a dispute on or after the day the dispute is referred to adjudication..." may well prevent an adjudication and court action to proceed in tandem unless the court action is commenced on the same day as, or subsequent to, the commencement of the adjudication.

☐ What does it mean when an adjudicator's jurisdiction is challenged?

A challenge of an adjudicator's jurisdiction is the contention by one party (invariably the Respondent) that the adjudicator lacks the authority under the Act and Regulation to adjudicate the merits of the dispute.

☐ What should I do, as an Applicant, if the Respondent includes in its submissions to the adjudicator under section 24 of the Regulation a challenge of the adjudicator's jurisdiction?

The Applicant should request from the adjudicator an opportunity to reply to the jurisdictional challenge if the Applicant's original submissions do not already address the Respondent's submissions in this regard.



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☐ **What do I do if I, as an Applicant, anticipate that the Respondent will challenge the jurisdiction of the adjudicator?**

If an Applicant becomes aware, before or at the outset of an adjudication, that the Respondent will challenge the adjudicator's jurisdiction, an Applicant (and the Respondent as well) should promptly notify the adjudicator in this regard, and obtain directions from the adjudicator on the procedure in the adjudication for resolving the jurisdictional challenge. The adjudicator will invite submissions from the parties in this regard and possibly set a specific procedure, including deadline extensions, for the resolution of the jurisdiction issue.

☐ **What do I do if I, as a Respondent, have received from an Applicant a Notice of Adjudication and I wish to challenge the jurisdiction of the adjudicator?**

As in the case of an Applicant (see answer to FAQ#13) the Respondent should notify the adjudicator, as soon as possible following receipt of the Notice of Adjudication, of the Respondent's intention to challenge the adjudicator's jurisdiction. The adjudicator will then deal with the challenge as set out in the answer to FAQ#13.

☐ **What should I do, as an Applicant, if the Respondent includes in its submissions to the adjudicator under section 24 of the Regulation a challenge of the adjudicator's jurisdiction?**

Yes. However, an adjudicator cannot resolve a jurisdictional challenge without affording both parties an opportunity to make submissions to the adjudicator in this regard. See the answers to FAQ#'s 12, 13, and 14 above. Since jurisdictional challenges are often made by the Respondent in its submissions in response to those of the Applicant, the adjudicator will already have received submissions from both parties regarding the merits of the dispute. The adjudicator may well, then, invite submissions from the parties, and give a direction, regarding whether the adjudicator will make a decision on the jurisdiction issue separate from his/her determination on the merits.

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☐ What are some typical jurisdictional challenges?

Jurisdictional challenges to date have included the following:

1. The contract has been “completed” within the meaning of section 33.4(1) of the unamended Act.
2. An aspect of the dispute (specifically a delay claim) is outside the jurisdiction of the adjudicator under section 19 of the Regulation.
3. The invoice upon which the claim is based is not a “proper invoice”.
4. The adjudicator lacks jurisdiction as the result of the transitional provisions under the Act.
5. The dispute is the more appropriate forum for hearing the matter (N.B. Technically this is not a jurisdictional issue as it is in the discretion of the adjudicator to make this decision. It is, however, included here as this submission is typically made as a jurisdictional challenge).
6. Whether an action has been commenced under the unamended Act by the posting of security into Court to bond of the Lien
7. Whether an adjudicator can proceed in face of zero participation from the respondent, i.e. how to provide the Reg s. 25(2) notice

The results of these jurisdictional challenges cannot be published due to the confidentiality of the adjudication process. Suffice it to say, in this regard however, that jurisdictional challenges frequently fail.

☐ Do I compromise my case by sharing my best arguments and supporting documents with the adjudicator and the other party sooner than would be the case in a court proceeding or arbitration?

No. Whether the parties are involved in settlement discussions, mediation, arbitration, litigation, or adjudication, it is always best to put one's best arguments and supporting documents to the other party sooner rather than later. In the case of an adjudication, even if the dispute is not resolved by the adjudicator, the exchange of arguments and documents in the adjudication process will often result in the subsequent settlement of the dispute.

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□ If I am dissatisfied with the outcome of an adjudication what are my remedies?

A dissatisfied party may commence an action in court or, if there is an arbitration clause in the contract, initiate arbitration proceedings. An application to court for judicial review of the adjudicator's determination may also be made. In the case of contracts entered into before April 1, 2025 this application will have the effect of immediately staying the binding effect of the determination. However, in the case of contracts entered into on or after April 1, 2025, the dissatisfied party will first need to apply to court to obtain a stay of the effect of the determination. The parties may also settle the dispute by way of a written agreement to that effect. (See also the answer to FAQ#6).

□ If I file an application for judicial review of an adjudicator's determination does it stay or pause the effect of the determination?

A. For contracts entered into before April 1, 2025

Yes. Filing of an application for judicial review stays the binding effect of the determination pending an outcome of the application.

B. For contracts entered into on or after April 1, 2025

No. A court order staying the binding effect of the determination must be obtained by way of court application.

□ Does a "pay when paid" clause in a contract prevent a claimant from using the "prompt pay" provisions of the PPCLA or from commencing an adjudication?

No. A "pay when paid" clause in a contract does not prevent a party from utilizing the "prompt pay" provisions of the Act and Regulation, including the issuance of a "proper invoice", and commencing an adjudication regarding a dispute in that regard. However, the recipient of a "proper invoice" may also utilize the "prompt pay" provisions of the Act and Regulation in order to invoke the "pay when paid" clause.



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□ Does the presence of an arbitration clause in my contract prevent me from commencing an adjudication?

No. Whether an arbitration clause is included in either a contract entered into before, or on or after, April 1, 2025, the mere presence of an arbitration clause in a contract does not prevent the commencement or conduct of an adjudication. For contracts entered into before April 1, 2025 the parties must have entered into a written agreement to appoint an arbitrator under the Arbitration Act to preclude the commencement of an adjudication. For contracts entered into on or after April 1, 2025 the commencement of an arbitration under the Arbitration Act will, however, prevent the enforcement of a determination where the arbitration is still in progress (See section 33.61(1)(c) of the amended Act). Oddly enough, however, the determination may still be binding on the parties if the arbitrator hasn't yet made an award (See section 33.6(5)(b) of the amended Act). Legal advice should be sought in this regard as there is some lack of clarity in the provisions of sections 33.6(5) and 33.61

□ If an arbitration has been commenced regarding a dispute can that dispute still be resolved by adjudication?

See answer to FAQ#20.