



ADJUDICATION OF CONSTRUCTION DISPUTES

SEPTEMBER 22, 2022

AGENDA

Topic

Welcome & introductions

Alberta: Introduction of Adjudication on Construction Projects

Panel discussion: Adjudication of Construction Disputes in Ontario

Questions & conclusion

Alberta Prompt Payment and Construction Lien Act

What you Need to Know

Stephen Carter-Edwards – Partner, Gowling WLG
Maria Serrano – Associate, Gowling WLG



WHAT IS IT?

The legislation came into effect in Alberta on **August 29, 2022**.

The new *Prompt Payment and Construction Lien Act*, renames the former *Builders' Lien Act*, and introduces prompt payment, changes the existing *Builder's Lien Act*, and adds a fast track adjudication dispute resolution process.

The purpose of the new legislation is to provide consistency and speed up payment throughout the construction industry, and provide an alternative to the Courts to resolve disputes in relation to payment under a contract or subcontract during the project.



WHO DOES IT APPLY TO?

Applies To:

- Anyone who is performing work, including services, or furnishing goods or materials, with respect to an improvement in land.
- All construction sectors, from home building to large oil and gas projects, regardless of delivery model or method, or type of contract or arrangement.
- Owners, developers and consultants, including architects and professional engineers who are registered as professionals and are providing consulting services with respect to an improvement.
- Projects involving municipal, county and regional authorities, including public private partnership projects that they are involved in.

WHO DOES IT NOT APPLY TO?

Does Not Apply To:

- Federal Government projects.
- Provincial Government projects governed by the *Public Works Act*.
- Public private partnership projects involving the Provincial Government.
- The operation and maintenance portions of any public private partnership projects.
- Maintenance and Turnaround projects.

WILL IT APPLY TO YOUR PROJECT?

Yes, If It Is An Improvement

- The definition of an improvement in the current *Builders' Lien Act* has not changed.
- An improvement means anything constructed, erected, built, placed, dug or drilled on or in land that improves the land, except a thing that is not affixed to the land or intended to be or become part of the land.
- Alberta Courts have over time characterized such things as design, planning, and permitting if used, renovation, demolition, and reclamation as improvements.
- The Act applies whether your contract is in writing or oral, but you have to have an agreement of some type to provide and be paid for work or services, or goods and materials, furnished with respect to an improvement in land.

BUILDERS' LIENS

CAN A PARTY STILL REGISTER A LIEN?

- A party's ability to register a builders' lien is not affected by the new prompt payment legislation.
- Even if a party is involved in an adjudication process.
- A party can still register a builders' lien for amounts that are due and owing arising from the performance of work or services, or the provision of goods and materials, in relation to an improvement to lands.
- Parties cannot contract out of, release or waive lien rights.

ARE THERE NEW LIEN TIMELINES?

A PARTY NOW HAS LONGER TO REGISTER

- The lien period has been extended from forty-five (45) days to sixty (60) days.

WHO GETS NINETY (90) DAYS?

- Oil and gas well sites, as previously provided for in the current *Builders' Lien Act*.
- The manufacture and supply of ready-mix concrete, but not the installation of concrete.

ADJUDICATION

WHAT IS ADJUDICATION?

The new prompt payment legislation introduces a fast track dispute resolution process called adjudication, not to be confused with the much more formal process of arbitration.

- Adjudication involves the appointment of a certified adjudicator to determine a payment dispute between the parties during the performance of the contract or subcontract.
- Typically there will be no oral hearing, sworn affidavits, questioning or cross examining of witnesses.
- Intended to be a fast track process with predetermined dates to submit written submissions and supporting documents.
- The adjudicator renders a decision – a written determination and corresponding order - within thirty (30) days of receiving the parties' written submissions and supporting documents.
- Key to success is having your project records organized and being able to distill issues and access relevant project documents for easy presentation and understanding by the adjudicator.

WHAT CAN BE THE SUBJECT OF AN ADJUDICATION?

- Valuation of work or services provided or goods and materials furnished.
- An issue involving non-payment, including:
 - An invoice that is due and owing but unpaid within the legislated time periods;
 - Written change orders, whether approved or not, and proposed change orders; and
 - Release of holdback.
- Any other matter in relation to the contract or subcontract that the parties agree to have adjudicated.

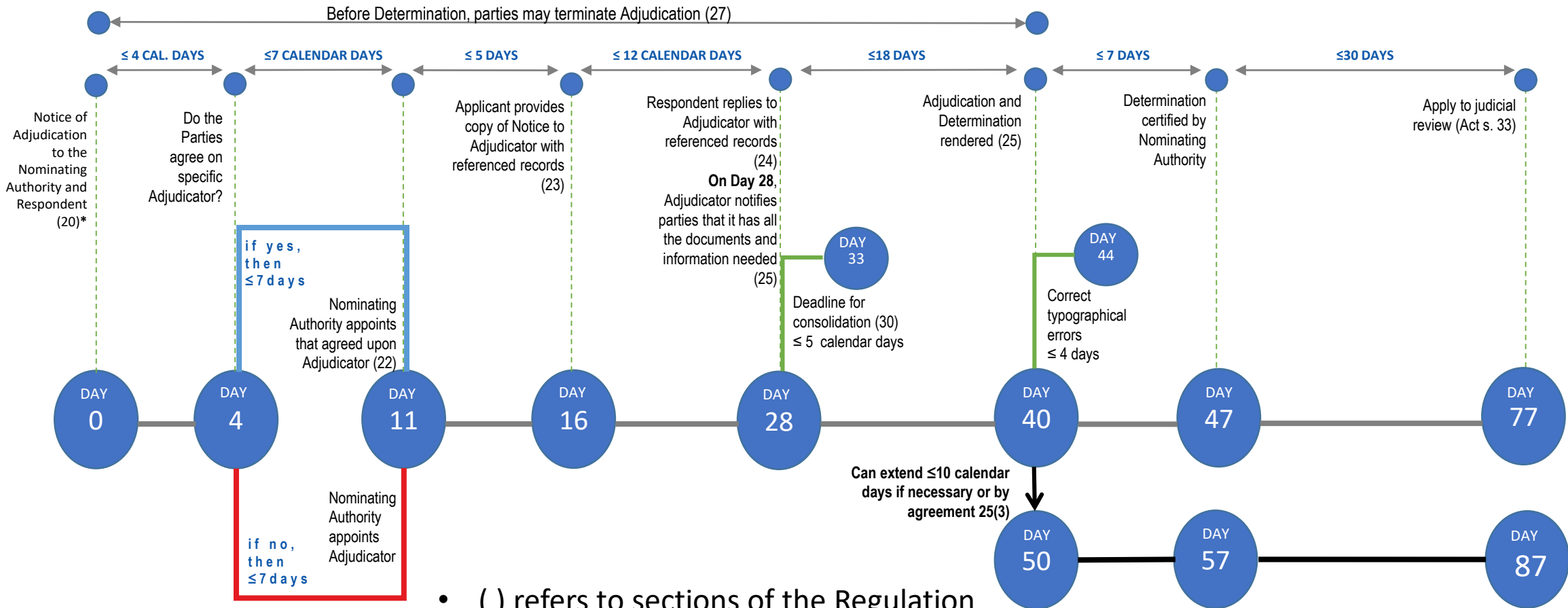
NOT EVERYTHING CAN BE SUBJECT TO AN ADJUDICATION

- Even if your contract requires disputes to be addressed through mediation, arbitration, or Court, an adjudication can still proceed, before or at the same time, but not if a Court proceeding has already been initiated by a party to the dispute relating to the same issue in dispute.
- If the matter in dispute is not permitted by the legislation – must relate to a payment issue or otherwise be agreed to be submitted to adjudication by the parties.

OR

- If the adjudicator feels that the matter in dispute is frivolous and vexatious, then the adjudicator can refuse to hear the issue.
- You can have a matter in dispute determined by an adjudication during, but not after, the completion of the contract or subcontract.

Adjudication TIMELINES



• () refers to sections of the Regulation

- AR 23/2022 'Calendar Day' excludes Saturday and Holidays
- Interpretation Act 'Day' excludes Sundays and Holidays


SPEAKERS



STEPHEN CARTER-EDWARDS

Partner

 stephen.carter-edwards@gowlingwlg.com

 +1 403 263 9193



MARIA SERRANO

Associate

 maria.serrano@gowlingwlg.com

 +1 403 298 1879

PANEL DISCUSSION: ADJUDICATION OF CONSTRUCTION DISPUTES IN ONTARIO

THANK YOU FOR ATTENDING

- Please scan the QR code below to complete our survey





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