

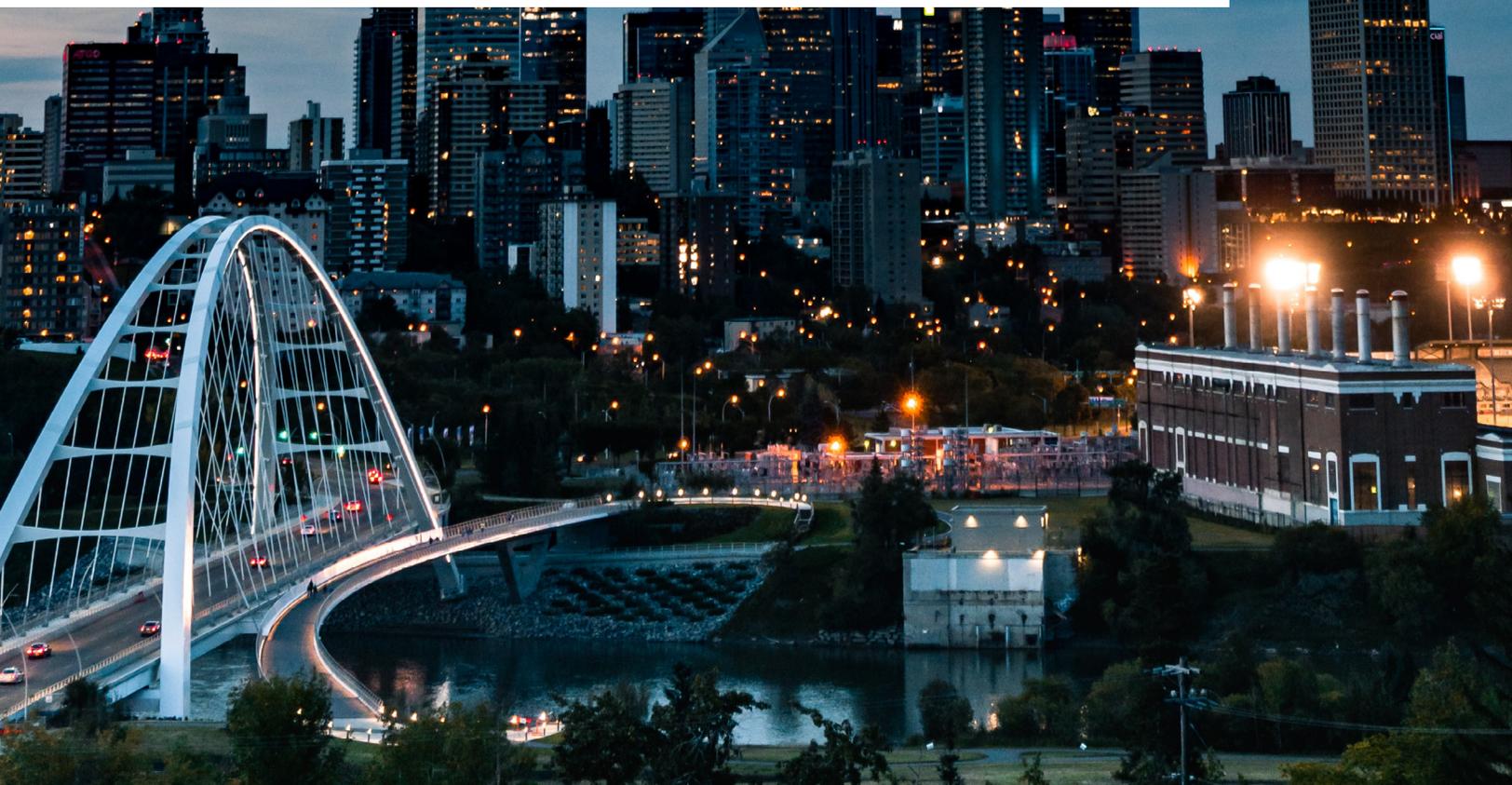
Construction Adjudication

A guide for users

In support of Alberta's Prompt Payment and Construction Lien Act



ARCANA
Alberta
Construction
Adjudication



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Glossary of terms

Adjudication	A form of expedited dispute resolution used to resolve construction disputes quickly and cost effectively that is binding in the interim
Adjudicator's Order	Accompanies the Notice of Determination and provides directions to the parties regarding compliance with the Notice of Determination
ADR	Alternative Dispute Resolution (ADR). Refers to all forms of dispute resolution that is less reliant on court and litigation
ADRIA	ADR Institute of Alberta
ADRIC	ADR Institute of Canada
ARCANA (AB)	ADR Institutes, RICS, Construction Adjudication Nominating Authority Alberta. ARCANA (AB) is the partnership between: (i) the ADR Institute of Alberta (ADRIA), (ii) the ADR Institute of Canada (ADRIC) and (iii) the Royal Institution of Chartered Surveyors RICS)
Contract	A legally binding and enforceable agreement which may be written, in one or more documents, or oral. For example, a proposal or bid to do work at a specific price, submitted by a contractor to an owner, that is subsequently agreed to by the owner
Days	Unless specified otherwise, days mean calendar days. Alberta legislation defines calendar days as excluding weekends and most public holidays for the purposes of the PPCLA
Nominating Authority / Nominating Authorities	are authorized to appoint Adjudicators on behalf of parties. They are responsible for certifying and training Adjudicators, maintaining a public registry of available Adjudicators, and establishing a code of conduct for Adjudicators
Notice of Adjudication	Written notice given by one party to the other and relevant nominating authority, indicating their intent to refer a dispute to adjudication. The Prompt Payment and Adjudication Regulation governs what is to be included in a Notice of Adjudication
Notice of Determination	Written notice given by the Adjudicator to the disputing parties of the Adjudicator's decision regarding the dispute
PPCLA (the Act) P-26.4	Prompt Payment and Construction Lien Act ("the Act") RSA 2000, C
PPAR (the Regulation)	Regulation 23/2022, Prompt Payment and Adjudication Regulation ("the Regulation")
RICS	Royal Institution of Chartered Surveyors
Service Alberta	The Ministry of the Government of the province of Alberta responsible for the PPCLA and PPAR
Submissions	Documents and information submitted to the Adjudicator by the parties as evidence in support of their side of the dispute.

Introduction

If a dispute arises from work performed under a construction contract, parties to the dispute may turn to adjudication to resolve the issue. Adjudicators are trained and certified through Nominating Authorities. The Government of Alberta authorizes organizations to serve as Nominating Authorities through an open procurement process. At any time, including in advance, project owners and contractors can choose the Nominating Authority that they would prefer to work with in the event of a dispute.

The rules governing the adjudication process, its relevance to new and existing construction projects, and the scope of the Adjudicators' duties are all set out in the [Prompt Payment and Construction Lien Act](#) (PPCLA), referred to as 'the Act', and the [Prompt Payment and Adjudication Regulation](#) (PPAR), referred to as 'the Regulation' in this guide, enacted in the Province of Alberta.

This user information guide is intended for information purposes only and should not be construed as legal advice. Users are urged to obtain legal advice regarding rights and obligations under the Act and Regulation.



What is adjudication and can I use it?

What is adjudication?

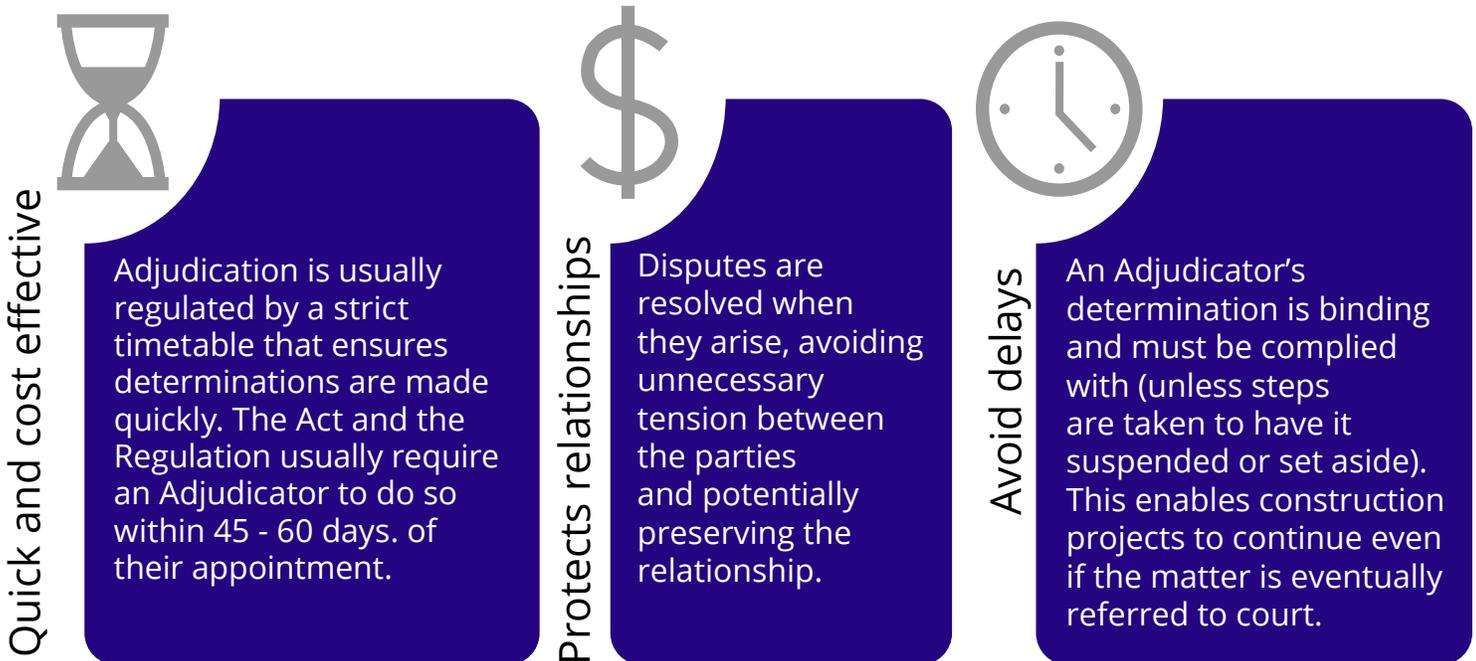
Adjudication is a form of expedited dispute resolution used to resolve construction disputes quickly and cost effectively.

An independent Adjudicator is appointed by a Nominating Authority and the Adjudicator will make a determination in accordance with the Act and the Regulation.

Adjudication is designed to be quick - the Regulation sets out a strict timetable which the Adjudicator and the parties must follow. This ensures that disputes are determined promptly - usually within one month of the Adjudicator receiving submission documents from both parties.

Adjudication is intended to be a straightforward process without the need to involve lawyers, though parties are encouraged to seek professional advice if they are involved in adjudication in order to familiarize themselves with their rights and remedies under the Act and Regulation.

The benefits of adjudication



Does my contract need to comply with the new legislation?

The right to adjudication is provided by the Act. The Regulation provides details regarding the Adjudication process.

All new construction contracts in Alberta signed after August 29, 2022, must comply with the Act and Regulation. Therefore, if a dispute arises, parties can adjudicate.

All contracts which were entered into prior to August 29, 2022, remain governed by the Builders Lien Act under which adjudication is not available unless the parties agree to adjudicate. However, if such a contract will remain in effect for longer than 2 years after August 29, 2022, its provisions must be amended by August 29, 2024, to comply with the Act and Regulation. Adjudication will then be available under the amended contract.

What types of disputes can be referred to adjudication under the Act?

Prompt payment rules apply to contractors, subcontractors, construction workers, owners, regulated professional engineers and architects who provide materials or consultative services, or who work on construction projects. The new rules apply to construction projects, materials, and work covered previously by the Builders' Lien Act.

Provided neither party has initiated court proceedings about a dispute, any party may submit a Notice of Adjudication for disputes regarding (S. 19 of the Regulation) :

- valuation of services or materials provided under the contract or subcontract
- payment
- notices of non-payment
- payment or non-payment of an amount retained as retained as a major lien fund or minor lien fund
- any other matter in relation to the contract or subcontract that the parties in dispute agree to.

Should I get professional support through the process?

While adjudication is designed to be quick, usually straightforward, and cheaper than other court or dispute resolution options, parties should be aware that it is a formal process. It is important that any notices served, or submissions made, are correct and in line with the time frames set out by the Act and Regulation.

Parties should prepare their submissions with great care. They will be relied upon by the Adjudicator and will be a critical factor in determining the merits of the case.

People frequently complete the adjudication process without any professional support. However, parties may want to consider having their submission reviewed by an experienced professional, or obtaining independent professional help, to support them through the process, especially if the dispute is complex or involves technical and/or legal issues.

How do I begin the adjudication process?



If the dispute falls under one of the areas prescribed in the Regulation*, court proceedings have not been initiated, and the matter took place within the prescribed time frame, the adjudication process can begin.

Starting an adjudication requires:

1. Submitting a Notice of Adjudication

You begin by sending a written Notice of Adjudication to the other party and ARCANA (AB). The person submitting the notice and starting the procedure is the Applicant and the other party or parties are known as the Respondent(s).

2. Appointment of an Adjudicator by ARCANA (AB) as the Nominating Authority

This falls into four stages:

- The written Notice of Adjudication
- Submission of application form and payment of Appointment fee (including GST)
- Potential agreement of a specific Adjudicator
- Appointment of the Adjudicator by ARCANA (AB).

* Parties can agree to adjudicate matters outside the Regulation by mutual agreement provided that the adjudication procedures agreed to by the parties do not conflict with the procedures set out in the regulation or established by the Nominating Authority.

The written Notice of Adjudication

An adjudication starts when the Applicant sends a written Notice of Adjudication to the other party.

The notice must be provided to all parties involved and copied to ARCANA (AB) as the Nominating Authority.

The notice must cover the following as prescribed in the Act and Regulation:

- Names and address of the parties in dispute (and their legal representatives if applicable)
- Nature and brief description of the dispute, including details respecting how and when it arose
- Nature of redress/remedies being sought and the amount in dispute
- Name of the Nominating Authority to whom the Applicant intends to submit the notice: ARCANA (AB)
- Name(s) of the Adjudicator(s) requested, suggested or excluded (if any) to conduct the adjudication.

ARCANA (AB) has produced a suggested Notice of Adjudication [template](#). Parties can use their own templates but must ensure compliance with the requirements of the Regulation.

The notice is an important document. It describes what the Adjudicator is to decide and provides the appointed Adjudicator with key information and issues regarding the dispute. Therefore, it is crucial that the Applicant produce a comprehensive notice covering all issues and aspects of the dispute.

What happens when you receive a notice of adjudication?

Upon receiving a Notice of Adjudication, the Respondent must decide:

1. Can the dispute be settled immediately without the need for adjudication?
2. Can an Adjudicator be agreed upon with the Applicant (see below)?
3. If the support of a professional advisor is necessary to complete the response.

Note: The Applicant will be considering the same questions.



Appointment of an Adjudicator

Potential agreement and appointment of an Adjudicator

Once the notice has been correctly served, the parties have 4 days to agree on an Adjudicator from the ARCANA (AB) online [Roster](#). Adjudicators are fully trained and certified by ARCANA (AB) which publishes an online roster.

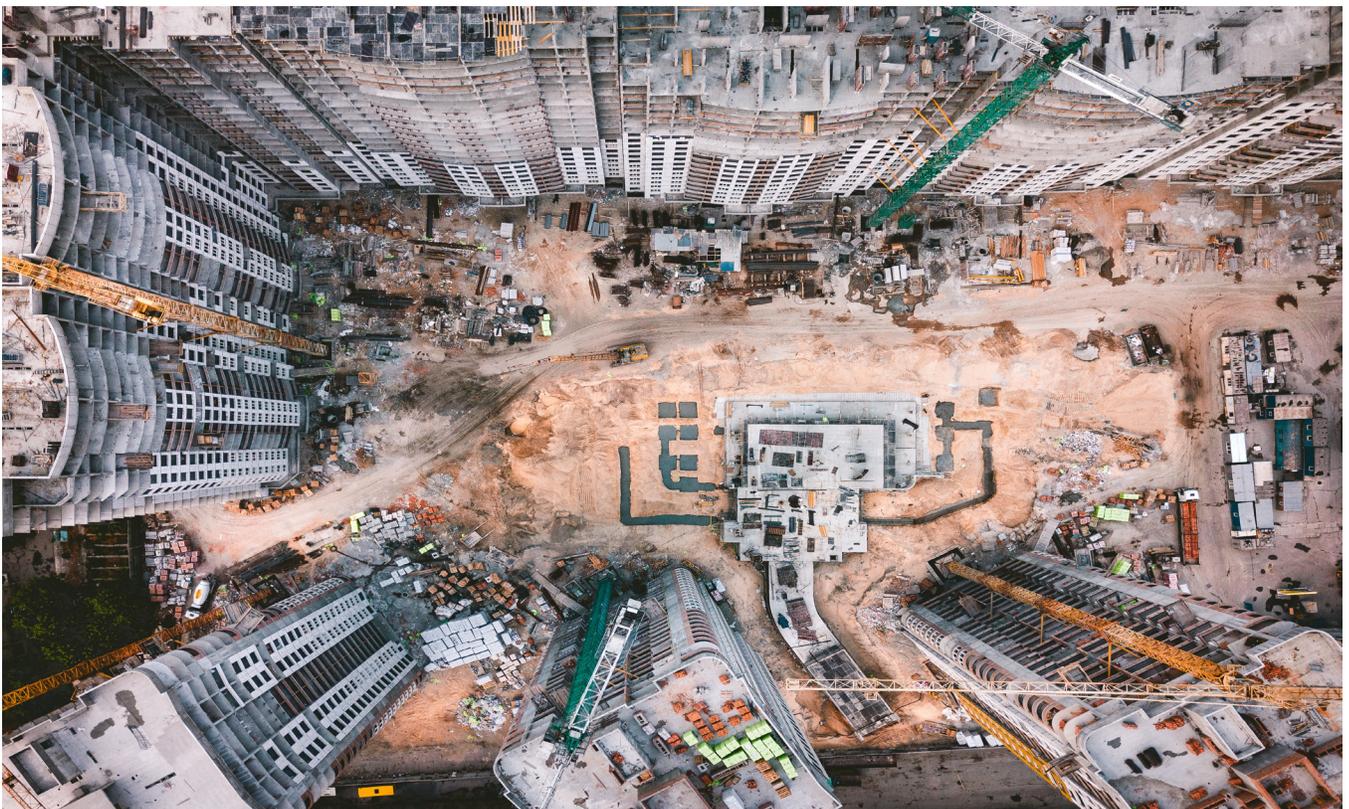
If all parties agree on the Adjudicator, they must within the 4-day timeline complete and submit the application form to notify ARCANA (AB) of their preferred Adjudicator. ARCANA (AB) will confirm the availability, suitability, and willingness of the Adjudicator and will issue the appointment within 7 days of being notified. ARCANA (AB) will require an Appointment fee, usually paid by the Applicant (see costs section below).

Nominating Authority appointment of an Adjudicator

If the parties are unable to agree within the 4-day window, ARCANA (AB) will review the completed application form and will proceed to appoint an Adjudicator on behalf of the parties. ARCANA (AB) has 7 days to issue the appointment. ARCANA (AB) will require an Appointment fee, usually paid by the Applicant (see costs section below).

On notification of the appointed Adjudicator

ARCANA (AB) will invite the Adjudicator and the parties to access a secure document transmission portal where all documents relating to the dispute can be viewed and stored.



The adjudication process

What happens once the Adjudicator is appointed?

After the Adjudicator is appointed, a fixed timeline comes into play.

Within 5 days of the Adjudicator's appointment, the Applicant must supply to both the Adjudicator and the Respondent copies of:

- The Notice of Adjudication
- A copy of the contract or subcontract (see "*Glossary of Terms*")
- Copies of all documents and supporting information the Applicant intends to rely on.

At this point, the timeline for the Adjudicator to decide the dispute begins. The timeline for the Adjudicator to make a determination is 30-days which includes weekends, but not public holidays.

The Respondent has 12 days of receipt of the Applicant's submissions to upload their documentation, unless the Adjudicator directs a shorter timeframe. Jurisdictional challenges should be uploaded within the first 5 of these days. The Respondent should include the following:

- A brief description of the basis upon which the Respondent disputes the claim; and
- Copies of all documents and supporting information that the Respondent intends to rely on to dispute the Applicant's claims.

Please note: The Adjudicator can extend any deadline. The Adjudicator can make an extension of up to 10 days each time that the Adjudicator considers it necessary to do so, or the parties to the adjudication agree and the Adjudicator also consents. Examples of such instances would be to permit extra time for parties to upload submissions, to make payment or for the Adjudicator to make a determination.

How will the Adjudicator reach a determination?

The Adjudicator will carry out their duties in accordance with the Act and Regulation to make a determination. They will review the submissions uploaded by the parties, and the Adjudicator may issue directions to seek clarifications, if needed. However, this is at the Adjudicator's discretion.

The Adjudicator must act impartially and avoid incurring unnecessary expense or delay. They can also obtain information through independent research and obtain assistance from construction industry professionals, if they believe this will assist them to determine the matter. Site-visits or expert advice may involve extra cost.

The Adjudicator will inform the parties when they have all the documents and information needed to make a determination on the matter. However, they can ask either party to supply additional documents, if the Adjudicator requires. This can include further written statements.

Sometimes, if required, the Adjudicator may hold a meeting, hearing or site-visit. Again, this is at the Adjudicator's discretion, and will depend on what the adjudicator feels is necessary in the case.

What to expect from an Adjudicator's determination?

The Adjudicator's determination will be issued electronically as a written Notice of Determination and will be accompanied by the Adjudicator's Order.

The Adjudicator may make an Order directing a party to make a payment to the other party or parties in the dispute within a specific time frame. The Adjudicator will also allocate the costs of the adjudication process equally or unequally between the parties.

The Order may also allow the other party or parties to stop providing services or materials under the contract or subcontract, as the case may be, if the time for payment specified in the Order expires.

Within 4 days after the Notice of Determination and Order are issued the parties to the adjudication may seek corrections of any typographical errors.

An electronic copy of the updated Order must be sent to all parties on the same day as the correction is made.

A copy of the Adjudicator's Order (the final copy including any changes) must be certified by the ARCANA (AB) and provided to the parties within 7 days.

If the Order is not complied with within 30 days, the party seeking enforcement of an Adjudicator's Order can file it with the Clerk of the Court. If filed in this fashion, the Order has the same legal effect as if it were an Order of the Court. Neither the Court nor ARCANA (AB) provide enforcement services.



What will it cost?

ARCANA (AB) offers a consistent and fair fee structure to users. Fees depend on the amount of the claim that is in dispute (not the overall value of the contract).

There are two fees payable:

- **Appointment fee** – a nominal fee charged by the Nominating Authority for the appointment of the Adjudicator. This will vary depending on whether the parties can agree on the specific Adjudicator to be appointed or not (within the first 4 days).
- **Adjudicator's professional fee** – the fees charged by the Adjudicator. A retainer is normally required at the time of appointment, ideally shared by the parties.

Appointment fee

If the parties agree on a preferred Adjudicator to determine the dispute, they will pay the relevant Appointment fee in Column A.

If the parties do not agree on an Adjudicator, and require the Nominating Authority to select a qualified Adjudicator for them, they will pay the relevant Appointment fee in Column B.

Under all circumstances, 5 days after receiving the Notice of Adjudication, ARCANA (AB) will begin the independent appointment and the Applicant will be required to pay the relevant Appointment fee in column B (assuming this payment has not already been completed).

Appointment Fee		
The amount in dispute	Column A Appointment fee if the parties agree upon an Adjudicator	Column B Appointment fee if the parties do not agree on an Adjudicator
Under \$15,000	\$250 (+GST)	\$500 (+GST)
\$15,001 - \$100,000	\$500 (+GST)	\$1,000 (+GST)
\$100,001 - \$500,000	\$1,250 (+GST)	\$2,500 (+GST)
\$500,001 - \$5,000,000	\$3,500 (+GST)	\$7,000 (+GST)
Over \$5,000,001	\$5,000 (+GST)	\$10,000 (+GST)

Note:

- A 50% refund will be issued if the appointment fee has been paid, but the parties **settle their dispute** after day 4 but before an Adjudicator is appointed
- A 50% refund will be issued if the parties have paid the appointment fee in Column B but subsequently **agree on the Adjudicator** within 4 days of ARCANA (AB) receiving the Notice of Adjudication.

Adjudicators' professional fees

Parties need to pay the Adjudicator's professional fees prior to the Adjudicator commencing deliberations.

To help control the cost of the adjudication, ARCANA (AB) has introduced a system of tiered fees depending on the value of the dispute, as well as fee caps for lower value disputes. ARCANA (AB) Adjudicators will charge the hourly rate for time spent dealing with the adjudication, up to the capped fee. The capped fee is the maximum fee an adjudicator will charge – their fees will not exceed this amount, although there could be fees for things like site visits and expert advice.

Adjudicator's Professional Fee		
The amount in dispute	Adjudicator's hourly rate	Capped fee
Under \$15,000	\$200 (+GST) *	\$2,500 (+GST) *
\$15,001 - \$100,000	\$300 (+GST) *	\$5,000 (+GST) *
\$100,001 - \$500,000	\$400 (+GST) *	No cap
\$500,001 - \$5,000,000	Hourly rate to be negotiated with the Adjudicator. There is no fee cap.	
Over \$5,000,001		

*Maximum hourly rates and fee caps are binding unless both parties and the Adjudicator agree to change them.

Contact us

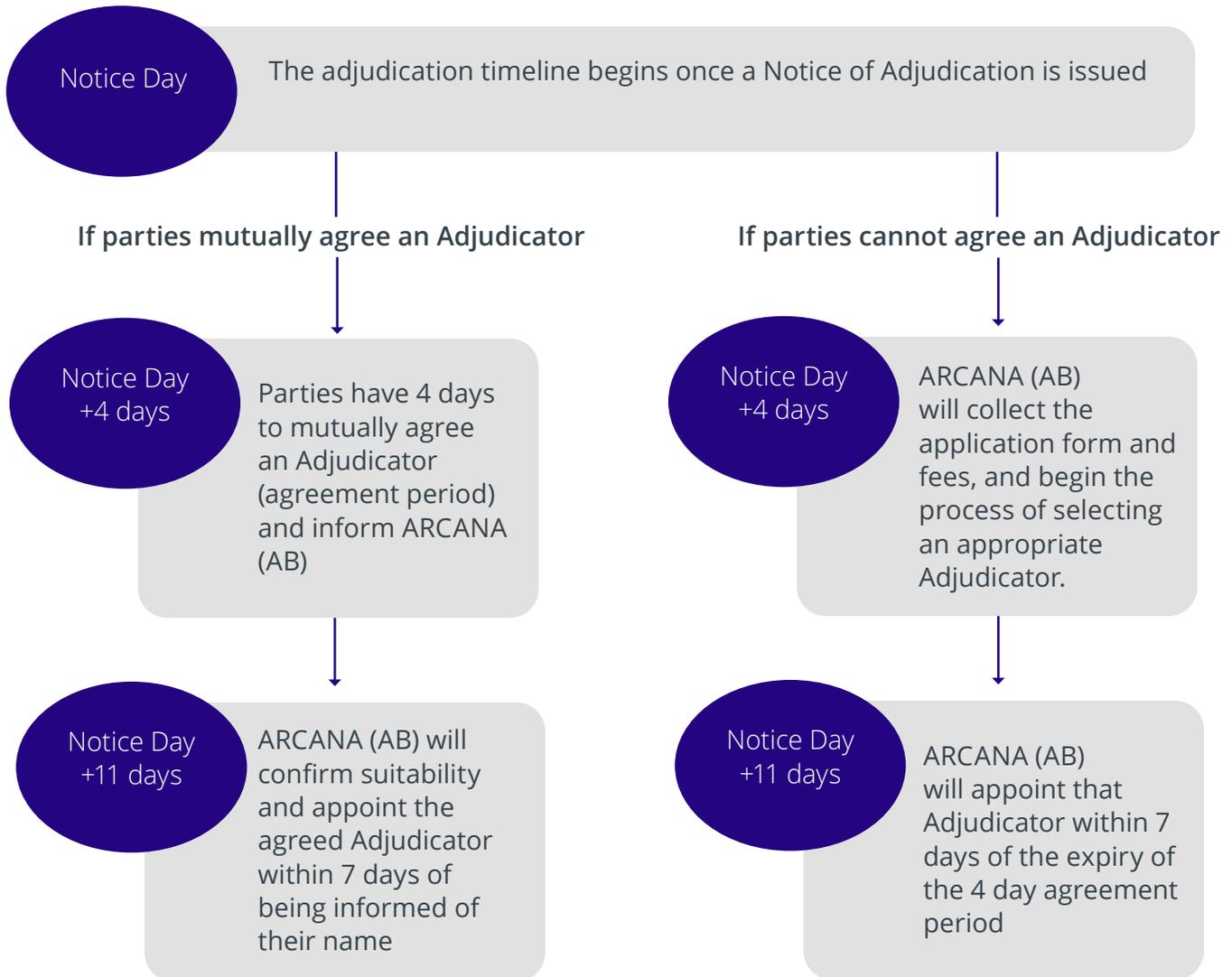
Please contact arcana@adralberta.com or arcana@rics.org if you have any questions or would like further information.



Appendix A: Timelines

The adjudication appointment timeline

Adjudication is designed to be quick and efficient. Legislation therefore sets a strict timeline for the adjudication appointment process.



The adjudication process timeline

Whilst they are required to operate within the parameters set out in legislation, an Adjudicator still has the authority to determine how to administer the adjudication. This will depend on the circumstances of each case.

The following is an indication of how a typical adjudication may run:

