

Alberta's prompt payment and adjudication regulations

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Authors: [Paula Olexiuk](#), Andrew Duran, Melanie Gaston

On February 25, 2022, Alberta released the long awaited and highly anticipated [Prompt Payment and Construction Lien Forms Regulation](#) and a [Prompt Payment and Adjudication Regulation](#), providing the final missing pieces of the province's new prompt payment and adjudication regime. These regulations will come into force on August 29, 2022. See our previous [November 2, 2020](#) and [November 23, 2020](#) posts, and our [Canadian prompt payment and construction law reforms](#) page.

The new adjudication process is meant to allow owners, contractors, and subcontractors to address escalating payment disputes through a streamlined process of appointed adjudicators, and the prompt payment rules to facilitate timely payment to contractors and subcontractors.

Nominating authority for adjudicators

The Minister of Service Alberta (on an interim basis), or a ministerial nominating authority, is set to oversee the training, qualification, and appointment of such adjudicators.

The nominating authority will create a system of training and qualification for adjudicators, a publicly available registry, a fee schedule for adjudication, and a complaint process for adjudication participants. It will keep records of all adjudications made by its appointed adjudicators and publish an annual report of the aggregate results. Parties may designate a nominating authority in their contract, but not a specific adjudicator.

Adjudication dispute types

Disputes eligible to be referred to adjudication include valuation of services or materials, change orders, non-payment, and major or minor lien fund amounts owed at the end of a contract or subcontract, or any other issues agreed by the parties. Adjudications are intended to provide quick and cost-effective resolutions during the course of contract execution, and therefore includes some of the following efficiencies:

- An adjudication process is not available after contract completion unless agreed by the parties.
- The timeline for adjudication is short (i.e. determination within 30 days).
- The adjudicator can order a party to make payment or permit the cessation of services if payment is not made.
- A party's adjudications may be consolidated into one adjudication.
- Adjudicator determinations are binding and can be registered as judgment made by an

Alberta Court and are only subject to applications for judicial review within 30 days.

Transitional provisions

Section 37 of the *Prompt Payment and Adjudication Regulation* clarifies that the amended rules will only apply to contracts that are entered into prior to the coming into force of the *Prompt Payment and Construction Lien Act* if they are for a term longer than two years after the coming into force of the Act. In that case, such contracts are given a two-year grace period from the date these new regulations come into force before they need to be amended to comply with the new rules.

Miscellaneous provisions

Section 2(2) of the *Prompt Payment and Adjudication Regulation* specifies a \$10 million threshold for contracts that are subject to the mandatory release of the major lien fund and minor lien holdbacks under Section 24.1(1) of the *Prompt Payment and Construction Lien Act*. Section 24.1(1) obligates the owner to make major lien fund and minor lien fund payments to the contractor if the contract:

- has a completion schedule longer than one year and requires payment of the holdback on an annual basis, or
- requires payment of the holdback on a phased basis.

Section 35 of the *Prompt Payment and Adjudication Regulation* confirms that the *Prompt Payment and Construction Lien Act* applies to both regulated professional engineers and architects acting in a consultative capacity with respect to an improvement for purposes of section 1.1(1) of the *Prompt Payment and Construction Lien Act*.

Next steps

We continue to await further information about nominating authorities and the recruitment and training of potential adjudicators. The legislation's transition provisions will require that, for the next few years, parties will be subject to the existing or new legislation depending on when a contract was entered. It will take some time before parties become comfortable enough with the adjudication process, but the intention is to make the resolution of common disputes that arise in a construction project more efficient than the current civil disputes regimes permit. Whether the proposed adjudication process will get sufficient take up by the industry remains to be seen.