

DENTONS



Prompt Payment and Adjudication Toolkit in Canada

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October 2023

We have developed this Prompt Payment & Adjudication Toolkit to help Canadian companies navigate the issues they may face as provinces rollout prompt payment, adjudication, and construction lien reforms across the country. Please note that the information provided in this Toolkit does not constitute legal or professional advice or a legal opinion. We hope this Toolkit will provide you with some of the background information related to these changes. If you have any questions, please contact one of the members of Dentons Canada Construction and Infrastructure groups.



Prompt payment, adjudication, and construction lien reforms spread across Canada in recent years. The changes are meant to improve issues related to perceived payment delays in the construction industry and to provide a framework for the timing of construction payments in the construction industry. While new to Canada, similar regimes have been in effect in other jurisdictions for many years, such as in the United Kingdom. These legislative reforms aim to ensure timely payments are made to contractors, sub-contractors, and suppliers working on construction projects.

Where enacted, prompt payment legislation in Canada shares certain general characteristics, such as mandatory payment deadlines, requirements for the issuance of a “proper invoice” by the contractor, timelines by which parties must deliver notices of non-payment, and the format in which notices must be delivered. For example, in all jurisdictions where prompt payment legislation is in force in Canada, the party who is disputing an invoice must deliver a notice of non-payment to the other party by the deadline under the applicable legislation, otherwise they risk an order being made by an adjudicator requiring payment. The prompt payment framework is accompanied by a process to quickly adjudicate disputes with an authorized authority under the legislation. Adjudicators have the power to make binding interim orders for immediate payment, regardless of whether the parties seek resolution of the same claim through civil litigation or arbitration. A different determination may be made regarding a disputed invoice or payment by a court or an arbitrator, who are not bound by an adjudicator’s interim order.

Future Updates

The *Federal Prompt Payment for Construction Work Act*¹ (the “*Federal Act*”) was passed on June 21, 2019, and effectively replicates Ontario’s *Construction Act*, which created a new prompt payment and adjudication regime. Although the *Federal Act* was passed, it is still not in effect and will come into force on a day to be fixed by order of the Governor in Council.

¹ [Federal Prompt Payment for Construction Work Act](#), SC 2019, c 29, s 387 (not yet in force).



Alberta

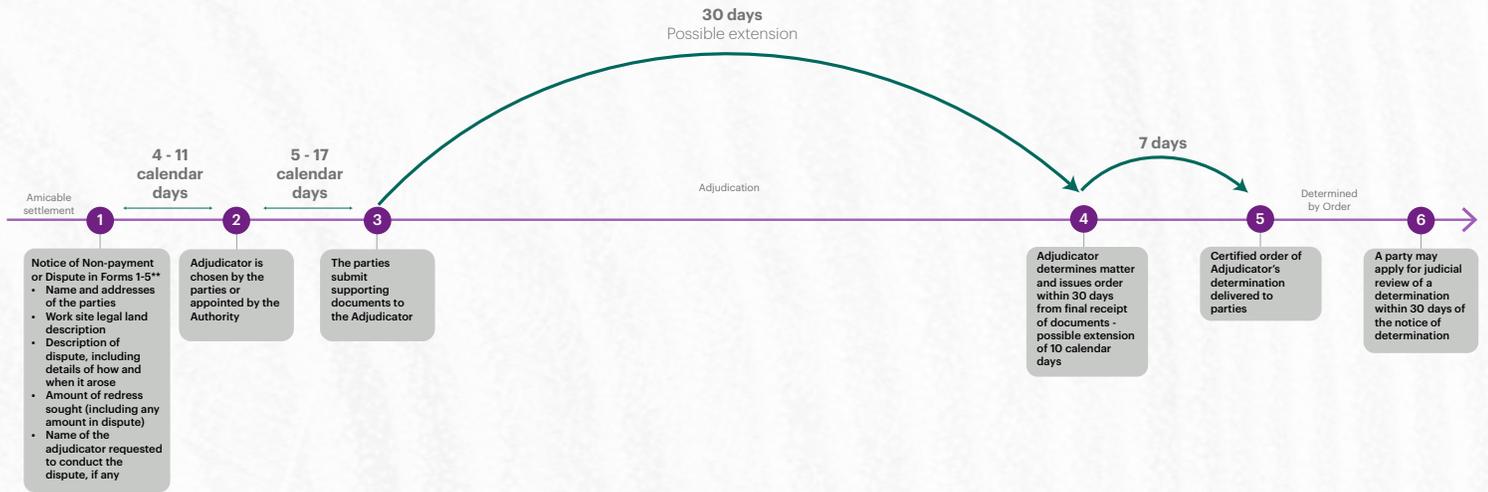
Since August 2022, under the *Prompt Payment and Construction Lien Act* (the “AB Act”, formerly known as the *Alberta’s Builders’ Lien Act*), a number of major changes have been introduced that actors in the construction sector should be aware of, including strict statutory payment deadlines, extended lien

registration periods, and a new non-judicial dispute resolution process (adjudication). The AB Act now has specific prompt payment rules such as mandatory invoicing and payment scheme, enhanced access to information rights, longer holdback periods and a new adjudication process.

Mandatory payment calendar



Dispute settlement procedure with an adjudicator



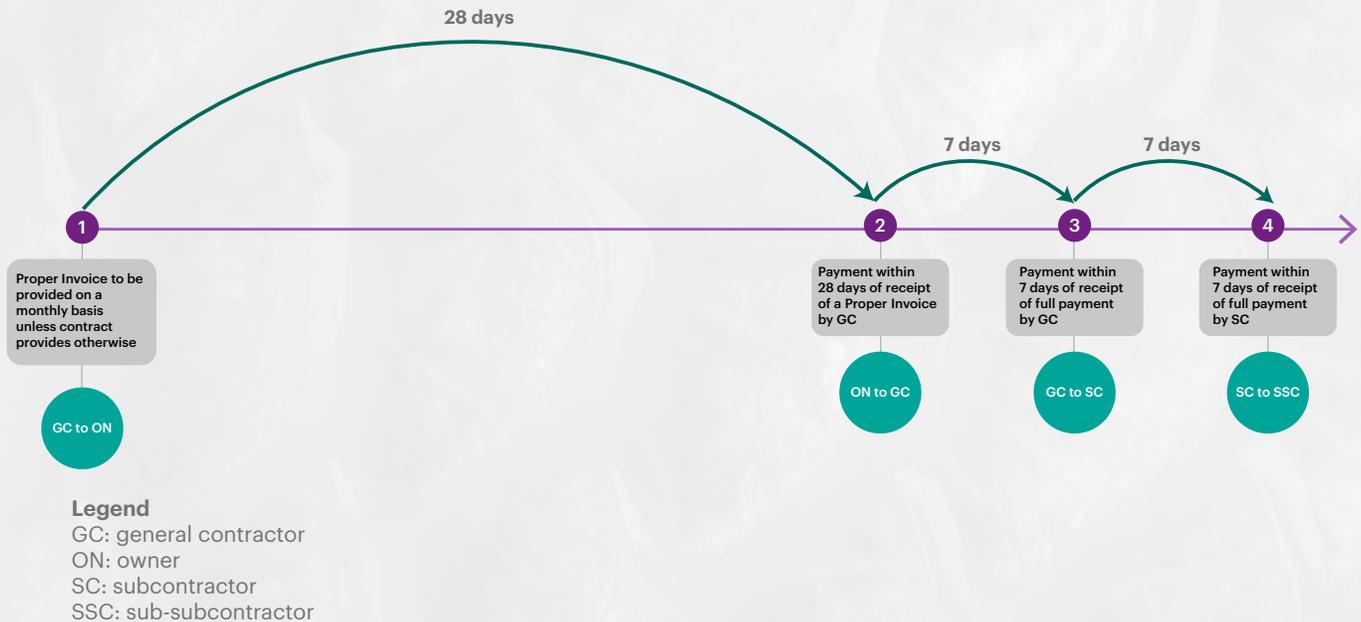
**An Owner who disputes a Proper Invoice and refuses to pay all or a portion of it must give the contractor a Notice of Dispute within 14 days of receiving the proper invoice

Saskatchewan

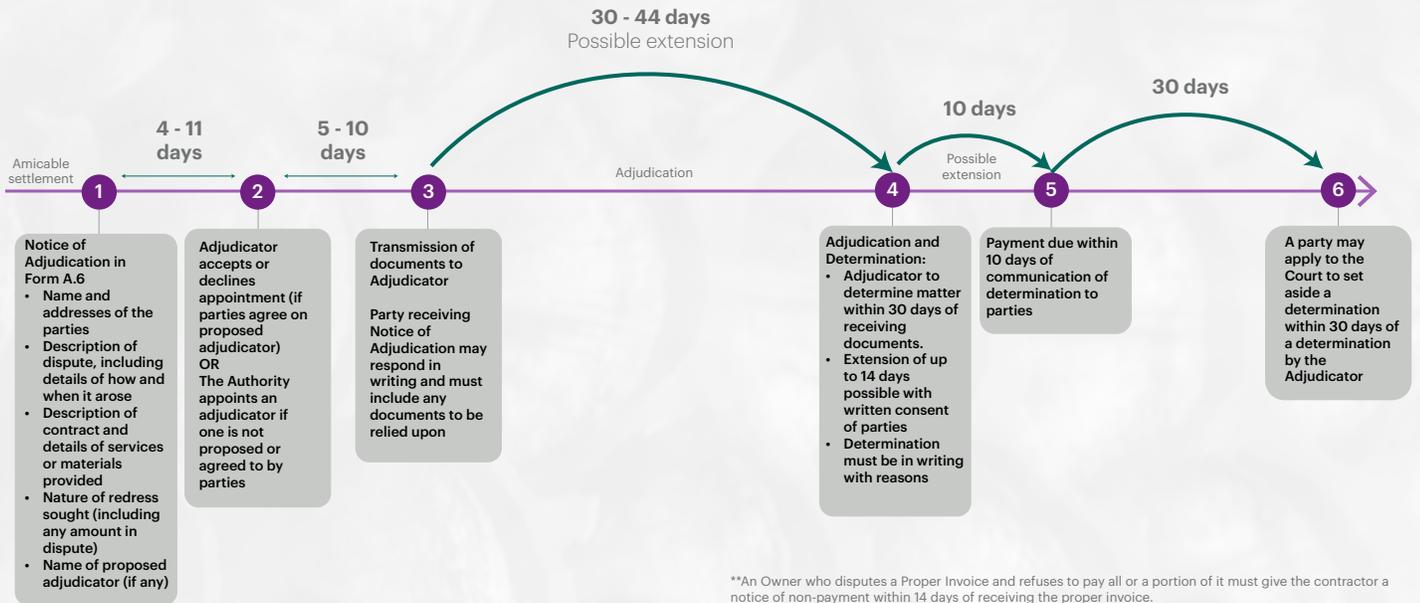
The Builders' Lien (Prompt Payment) Amendment Act, 2019 introduced the prompt payment structure to Saskatchewan by amending *The Builder's Lien Act* (the "SK Act") in May of 2019. Saskatchewan's prompt payment scheme did not come into force until March 1, 2022 when the Saskatchewan Construction Dispute Resolution Office ("SCDRO") was designated as the Adjudicative Authority under the SK Act.

The SK Act establishes requirements for proper invoicing, payment timelines for construction projects and introduces a dispute resolution process overseen by SCDRO. Architects, engineers, land surveyors, and persons supplying services or materials in relation to a mine or mineral resource (other than oil and gas) as well as in relation to an improvement to SaskPower's electrical power generation and distribution infrastructure are exempt from the SK Act.

Mandatory payment calendar



Dispute settlement procedure with an adjudicator



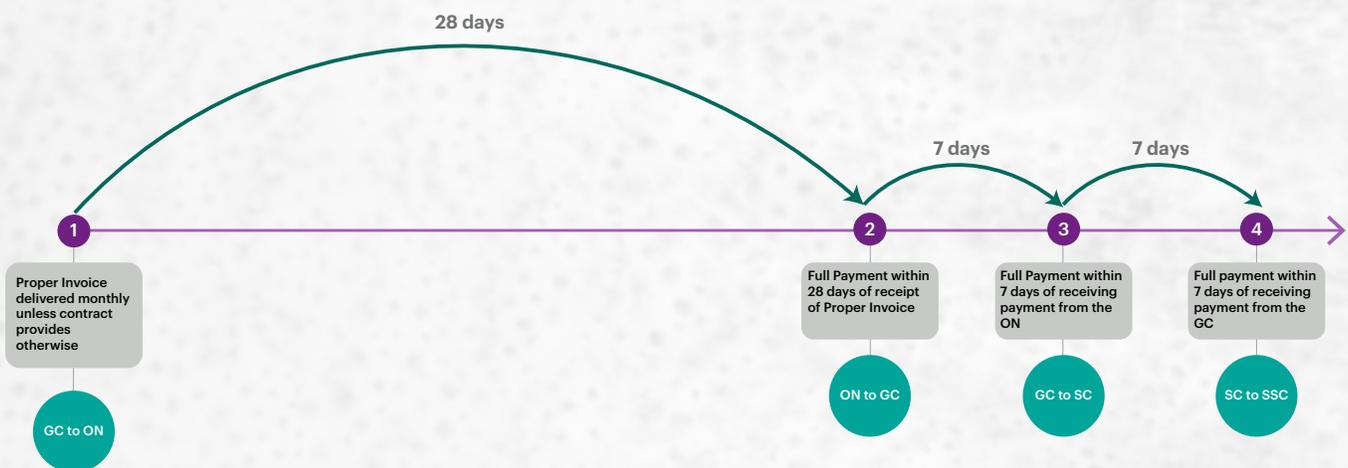
Ontario

On October 1, 2019, *Bill 142, the Construction Lien Amendment Act*¹ came into force amending the *Construction Act*² and introducing a prompt payment and an adjudication regime in Ontario. As part of earlier amendments, Ontario's *Construction Act* also extended the deadlines for preservation and perfection of liens. Ontario is the first jurisdiction in Canada to introduce legislation that combines prompt payment and adjudication alongside traditional lien legislation.

Borrowing from the long-standing UK model, the *Construction Act* now includes a comprehensive procedure for prompt payment, and adjudication. In Ontario, the Authorized Nominating Authority under the *Construction Act* is the Ontario Dispute Adjudication for Construction Contracts ("ODACC"), and several hundred adjudications have been heard since the prompt payment and adjudication provisions came into force.

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- 1 [Bill 142, Construction Lien Amendment Act](#), Ontario, 2017 (assented to on December 12 2017), SO 2017, c 24 [Bill 142].
 - 2 [Construction Act](#), RSO 1990, c C.30.

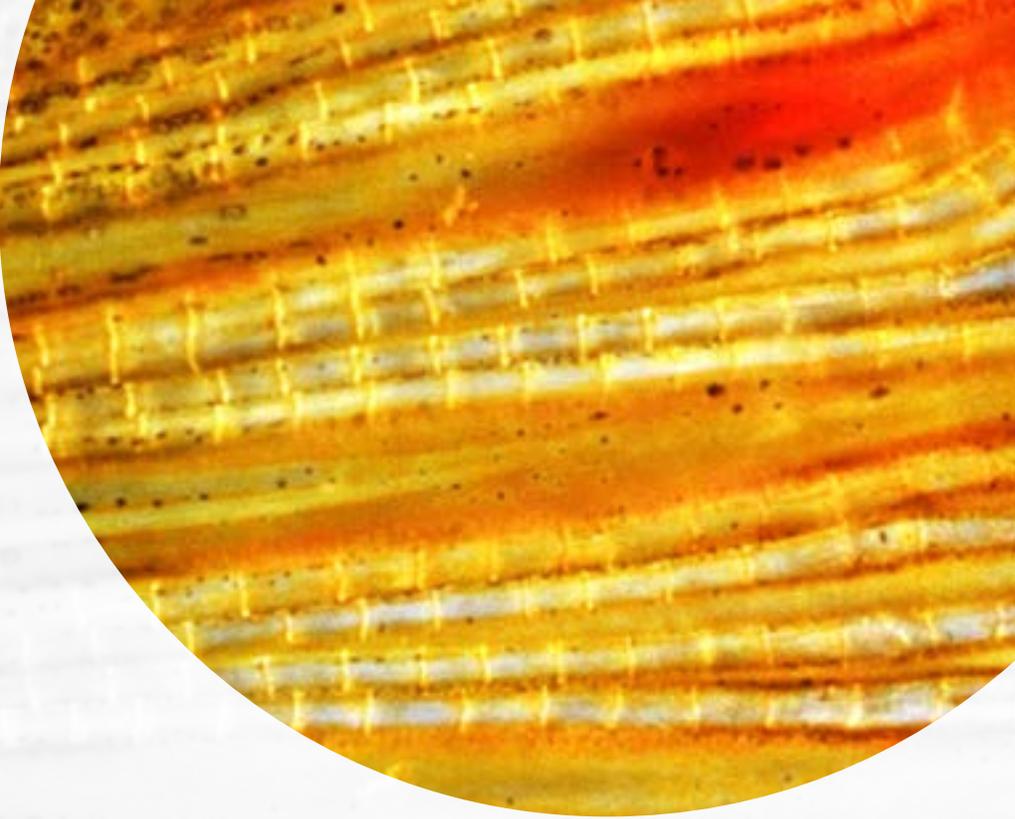
Prompt Payment Timelines under Ontario's Construction Act, RSO 1990 c. C.40



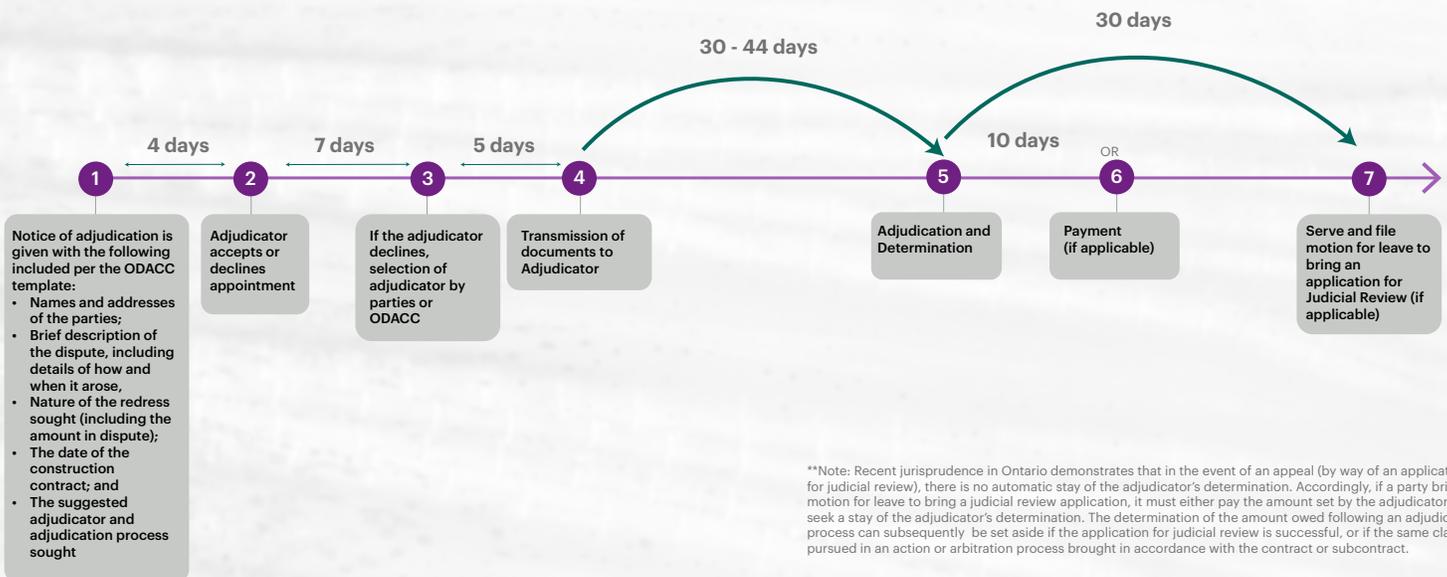
Legend

GC: general contractor
 ON: owner
 SC: subcontractor
 SSC: sub-subcontractor

**Note on Disputes: Where any party in the pyramid disputes an amount owed to the party below, it must deliver a notice of Non-Payment within the prescribed time. Otherwise, the invoice will be due and payable in accordance with the above deadlines. This chart does not include the prescribed deadlines for non-payment.



Adjudication Timelines under Ontario's Construction Act, RSO 1990 c. C.40



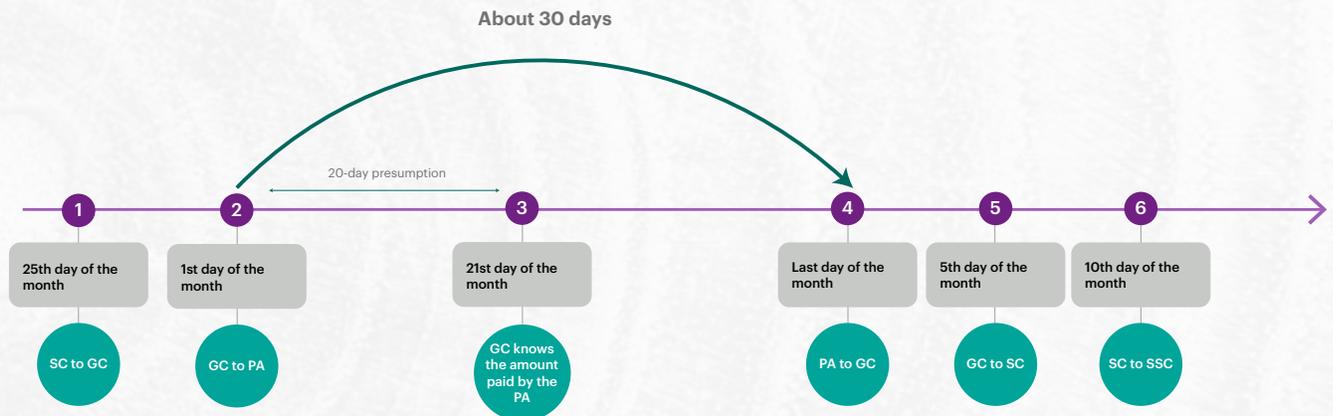
Québec

On July 18, 2018, Regulation 8.01 of the *Act Respecting Contracting by Public Bodies* (CQLR c C-65.1) was adopted by the Government of Quebec (the “Regulation”). The *Regulation* applies to public-sector construction contracts and related subcontracts, to the extent that such contracts or subcontracts arise from any of the 180 infrastructure projects listed in Schedule I of the *Act Respecting the Acceleration of Certain Infrastructure Projects* (CQLR c A-2.001). The

Regulation has two components: the establishment of a prompt payment regime, and an accelerated dispute resolution process (adjudication).

Importantly and unlike the other jurisdictions noted in this Toolkit, Quebec’s prompt payment and adjudication regime applies only to certain public-sector projects, and not more generally to all construction projects in the province.

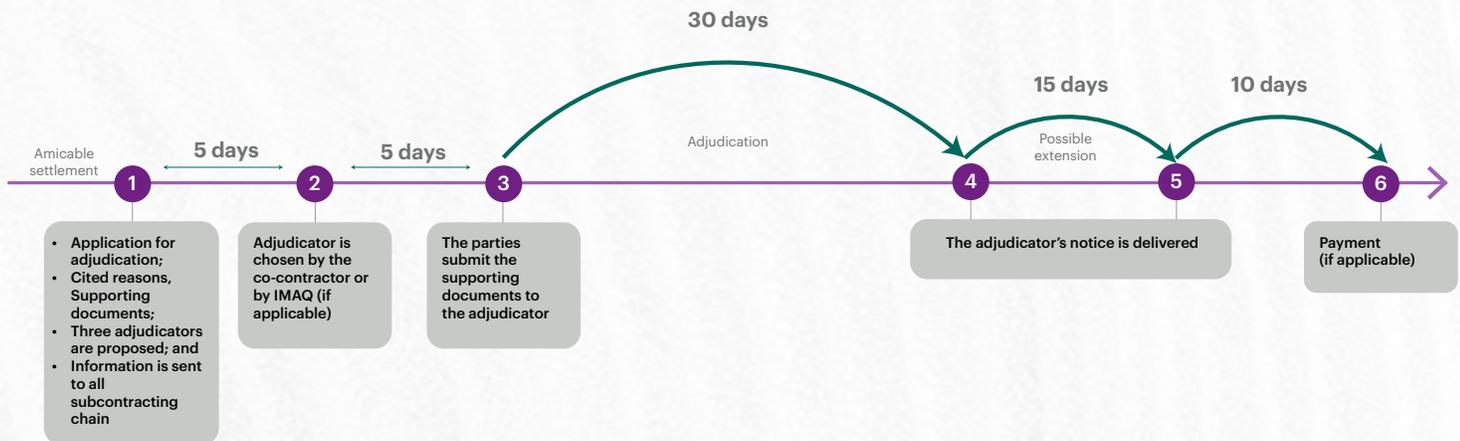
Mandatory payment calendar



Legend

SC: subcontractor
 GC: general contractor
 PA: public agency
 SSC: sub-subcontractor

Dispute settlement procedure with an adjudicator



The payment schedule is monthly and has fixed dates. Its objective is to make all the parties involved accountable.

Ultimately, this project has confirmed the need for a cultural shift towards a more collaborative process. In addition, more attention must be paid to dispute resolution clauses involving different dispute prevention and resolution processes (DRP) that can be deployed in real time and at the most appropriate times during the project.



Please note that the information provided in this Toolkit does not constitute legal or professional advice, or a legal opinion. As this Toolkit simply provides an overview of issues the legislative regime, please contact legal counsel with respect to any specific legal issues. One of the members of the Dentons Canada Construction and Infrastructure groups would be happy to advise.

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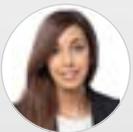
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