

A large yellow mining truck is driving on a winding road in a quarry. The road is carved into a steep, layered rock face. The truck is carrying a load of dark material, likely coal or ore. The scene is captured from an elevated perspective, showing the scale of the quarry and the isolation of the road.

CONSTRUCTION CLAIMS “WILL YOU BE PREPARED?”

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March 26, 2018



INTRODUCTION

- **Canadian Construction Industries**

'13	'14	'15	'16	'17
124.6	127.9	122.1	118.1	122.7



Tort & Contract

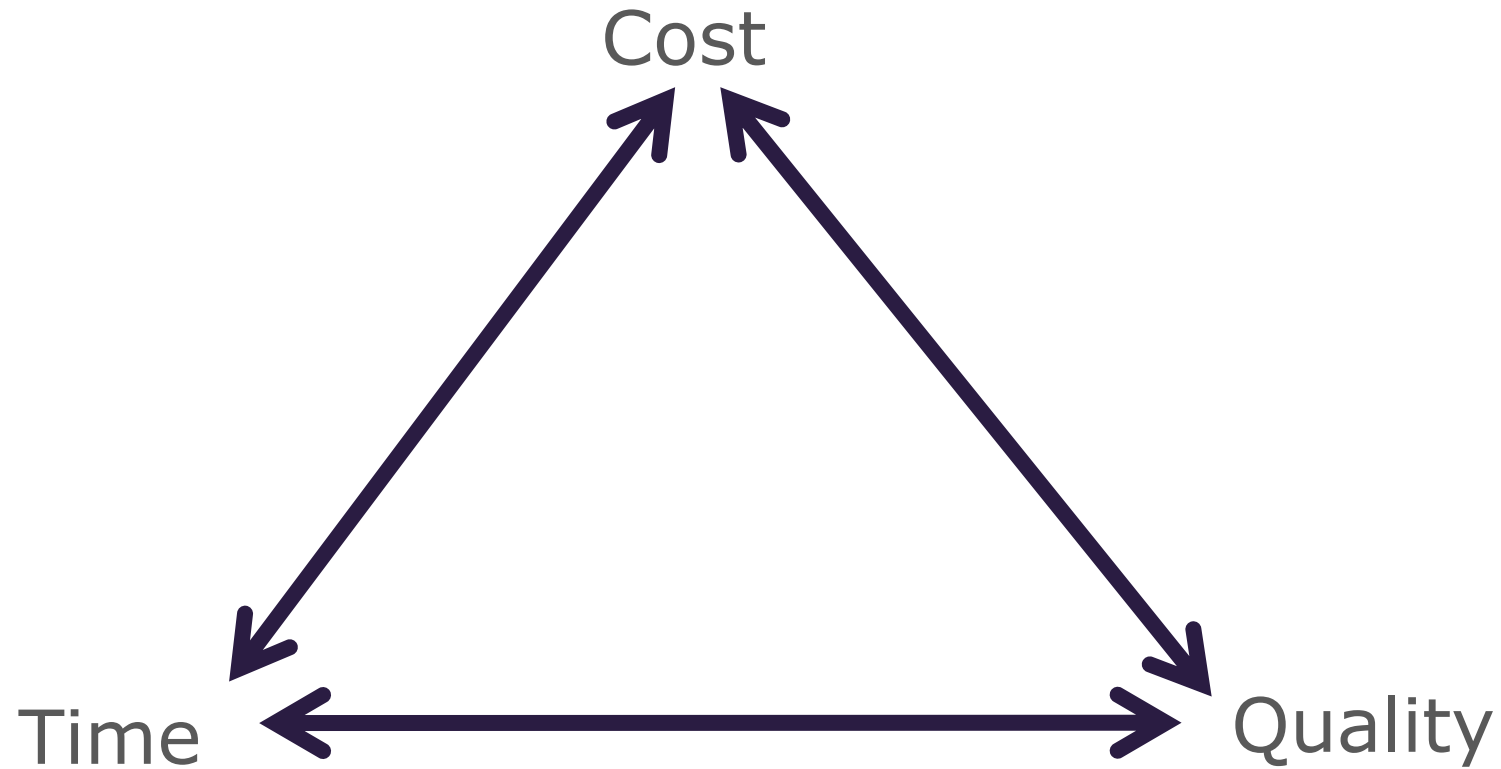


CONSTRUCTION CLAIM – BASIS IN LAW - TENDERING

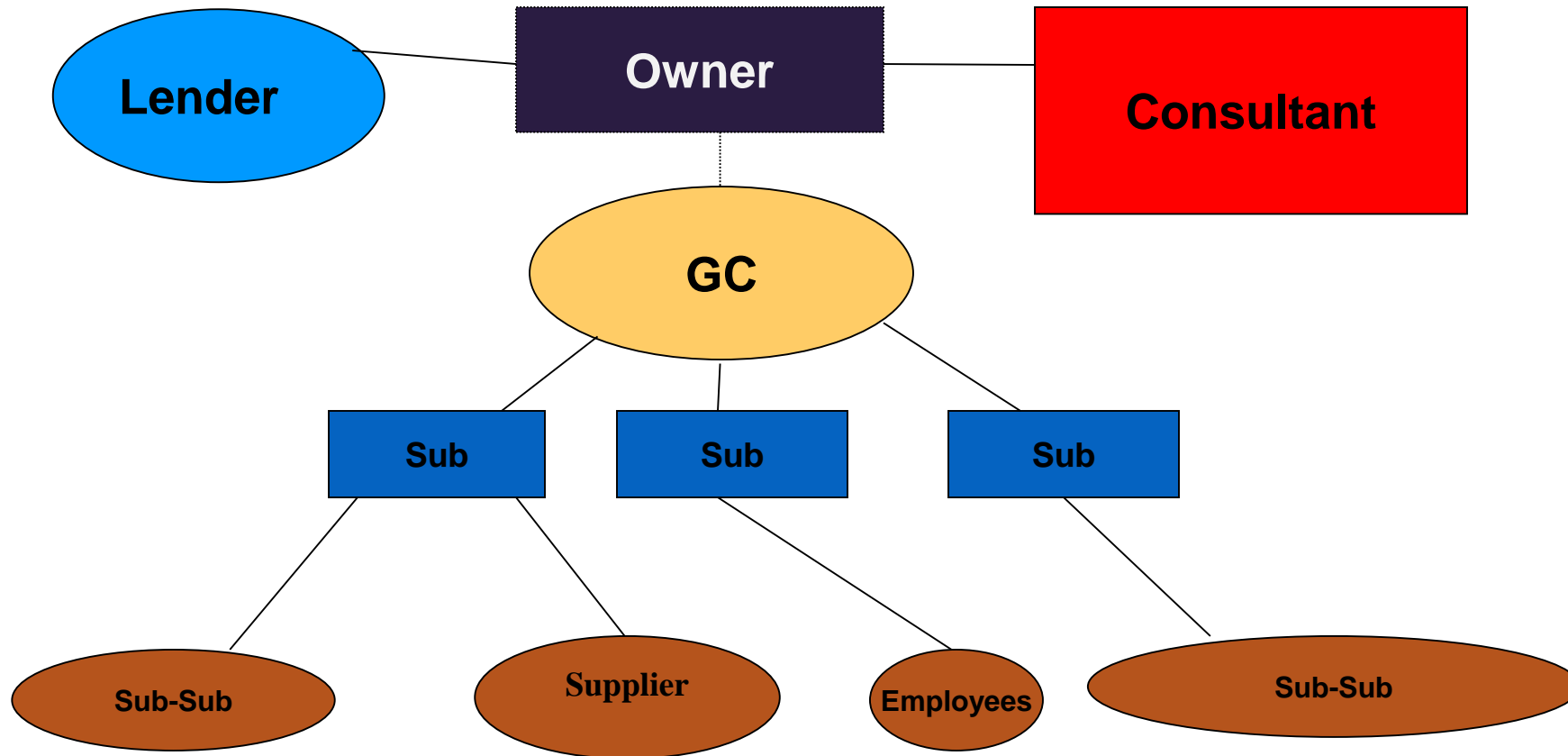


- **Call for Tender**
 - 1981 SCC: *Ron Engineering*
 - *Contract A & Contract B*

CONSTRUCTION CLAIM – BASIS IN LAW – FUNDAMENTAL VARIABLES



CONSTRUCTION CLAIM – BASIS IN LAW – BASIC RELATIONSHIPS



CONSTRUCTION CLAIM – BASIS IN LAW – BASIC CONTRACT

The image shows the front cover of a contract document. The cover is primarily green with white text. At the top right, there is a vertical label 'CCDC 2'. In the center, the text 'CCDC 2' is displayed in a white box, followed by 'stipulated price contract' and '2008' in white text. Below this, there is a white box containing the placeholder text '[Name of the Project]'. At the bottom, there is a small box with a disclaimer: 'Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 - 2008 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.' Below the disclaimer, the text 'CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE' is repeated three times.

CCDC 2

CCDC 2

stipulated price contract

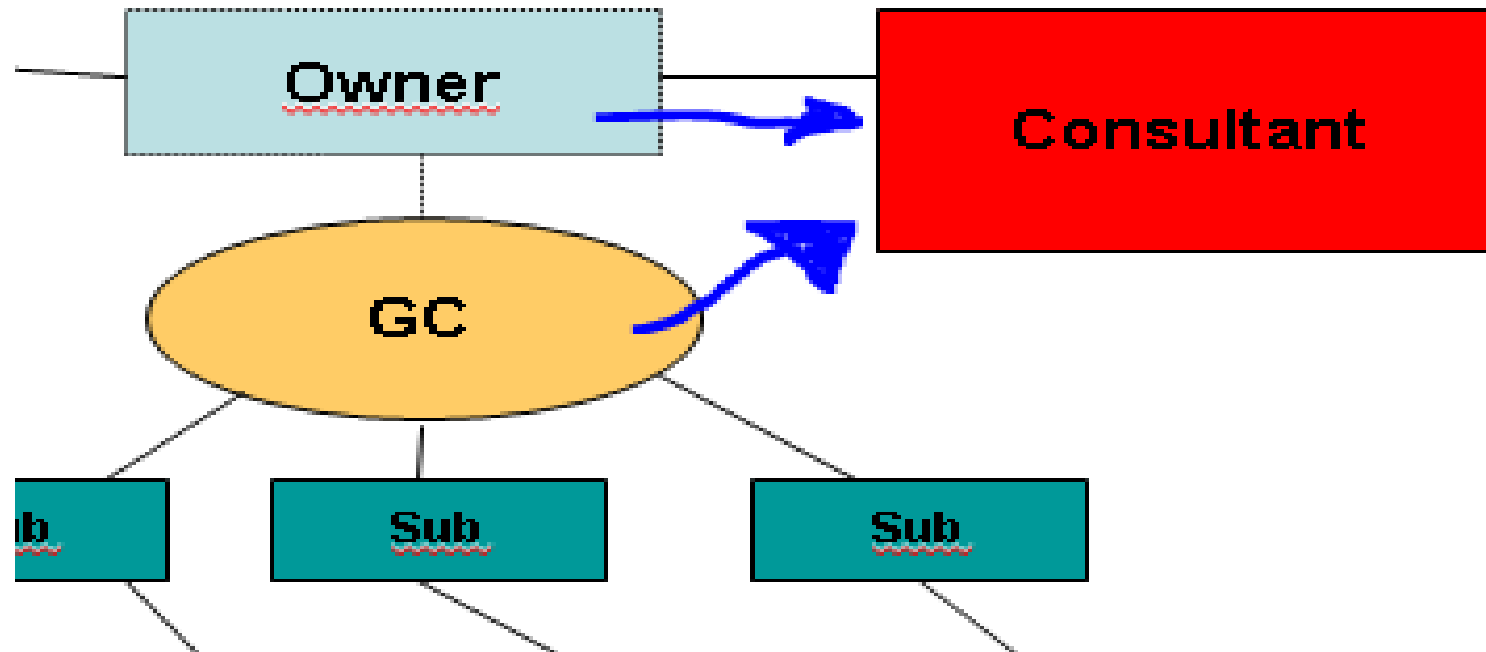
2008

[Name of the Project]

Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 - 2008 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
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CLAIMS VS DESIGN PROFESSIONALS



WHEN ALL ELSE FAILS

- **Litigation – to commence a civil action**

- Regular Action:
 - Small Claims
 - Simplified Procedure
 - ∞
- Construction Lien
- Breach of Trust Claim
- Federal Court & CITT



- **ADR**

- Mediation
- Arbitration
- Med-Arb & Adjudication

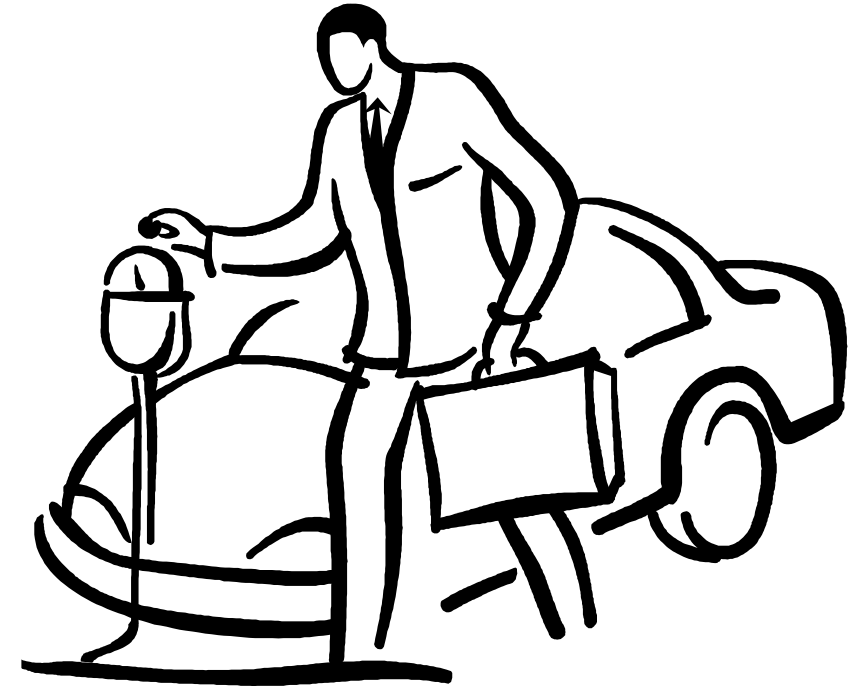
Adjudication?



THE OBJECTIVE

- **Time has Value**

- Dispute are not like fine wine
 - They don't age well
- Legal fees
- Accounting and expert fees
- Interest on the money being fought over
- Your time involved in the dispute



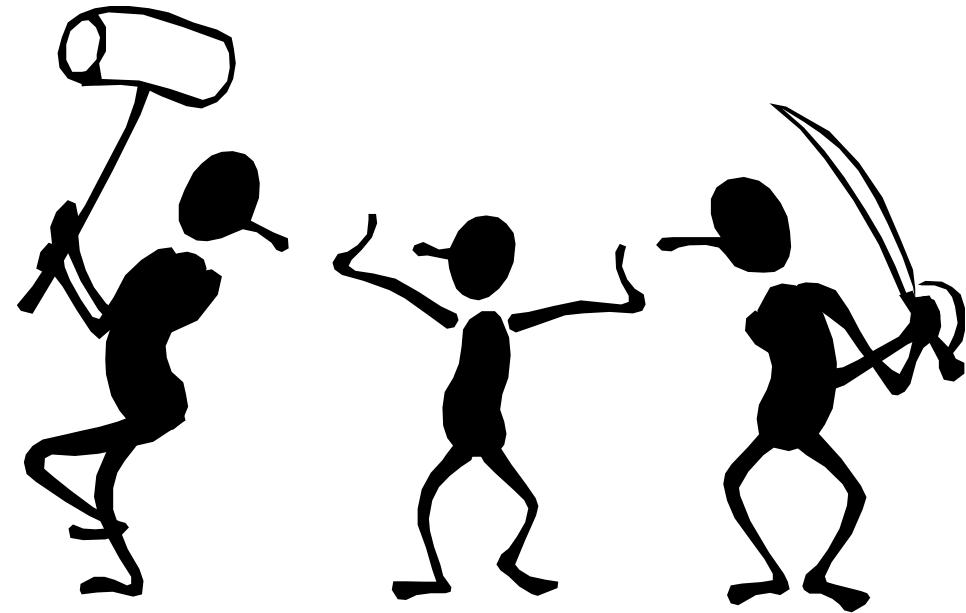
ADR - MEDIATION

- Independent person
- Confidential
- Voluntary - mandatory
- Not binding
- Success factors
- Clients control outcome



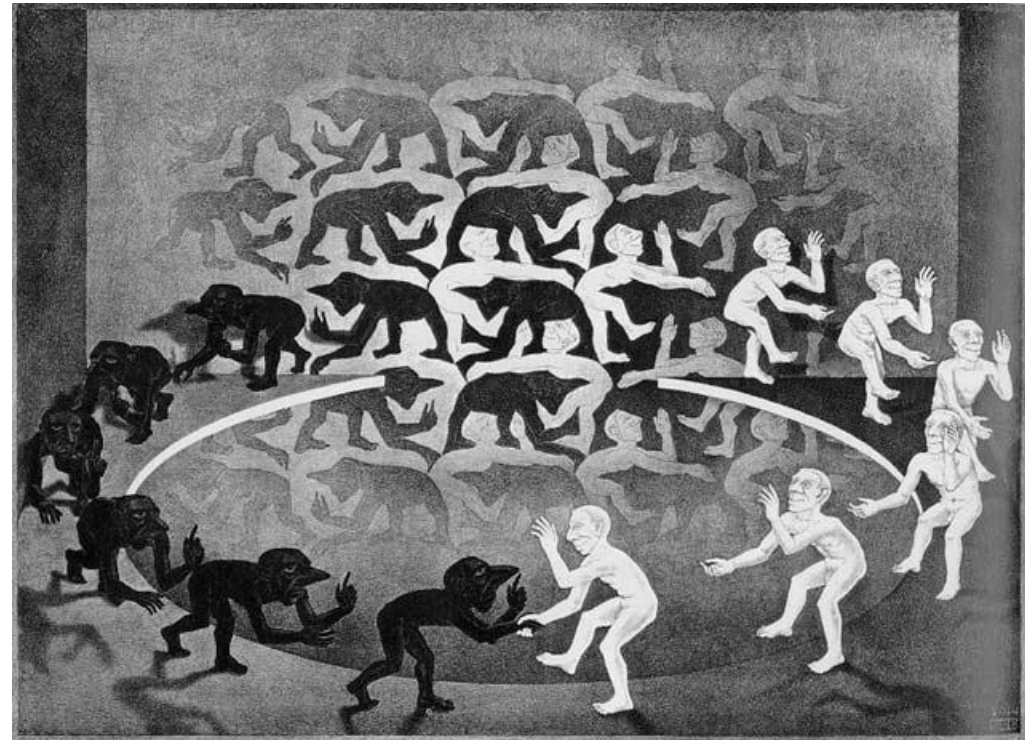
ADR - ARBITRATION

- It's essentially a private lawsuit
- Confidential
- Arbitrator = like a judge
- Decision binding
- Appeal rights very restricted
- Costs
- Agreement – to the rules – contract
- Relaxed rules of evidence



HOW DO YOU GET TO ADR?

- **CCDC/CCA**
standard documents
- **Contracts**
- **Voluntary**
- **Civil action**

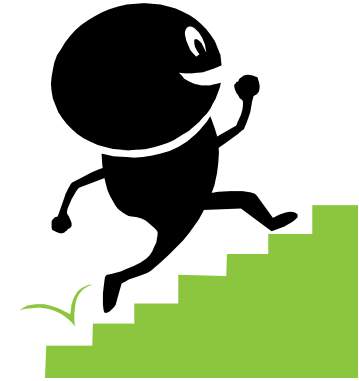


LITIGATION – FORUM COMPARISON

C. Act	45/60 + 45/90 days 2 yr breach of trust claim	All	EFD order or K	Fees Recover	Settlement conference Adjudication
SCC Rules	2 yrs	<\$25K	None	15%	Settlement conference
SR Civ Pro	2 yrs	<\$100K	2 hours	Propor.	Mediation + pre-trial
∞ Civ Pro	2 yrs	≥\$100K	7 hours	\$	Mediation + pre-trial

LITIGATION - MAJOR STEPS

- PLEADINGS
- DISCOVERY (DOCUMENTS - EXAMINATIONS)
- MEDIATION / PRE-TRIAL / SETTLEMENT CONFERENCE
- TRIAL



STRATEGIES

- **Contract Issues and Communications**

1. keep a proper and thorough paper trail – contemporaneous evidence is more credible
2. abide by the terms of the contract – it's difficult to rely upon a notice provision in court when the contract was ignored by both parties
3. be judicious in the use of email



STRATEGIES

- ***Dispute Resolution Provisions***
 1. don't ignore them
 2. appoint project mediator
 3. court will enforce dispute resolution provisions
 4. court will appoint project mediator where parties can't agree



MITIGATION OF DISPUTES

- **construction disputes can be reduced through:**
 1. complete contract documents and specifications
 2. agreed upon structure for resolution of disputes as they occur (e.g. appointment of project mediator at outset of project)
 3. well-drafted terms and conditions (e.g. reasonable allocation of risk)



OVERVIEW OF THE ADJUDICATION PROCESS

Notice of Adjudication



Adjudicator Confirmation



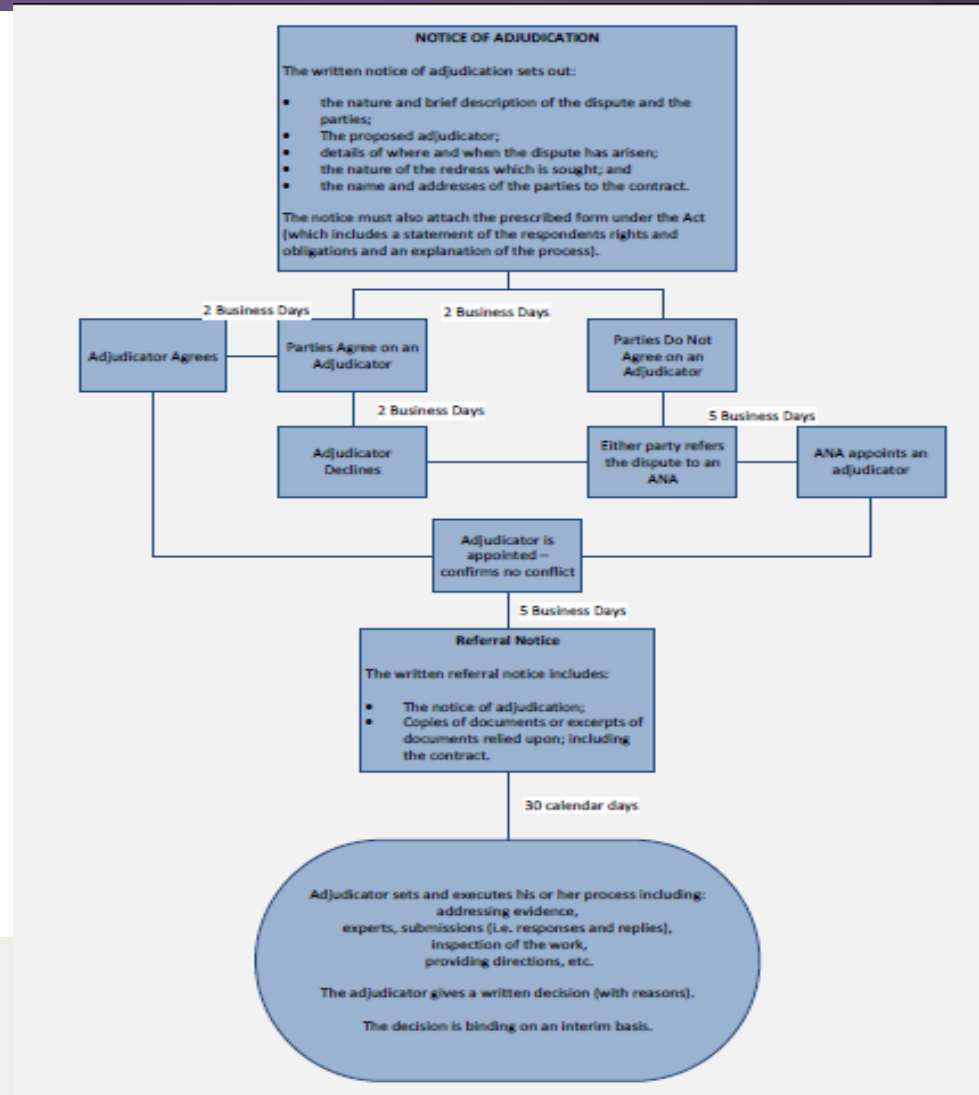
Claim Documents Submission
and Response



Setting up Adjudication,
Submissions and Decision

OVERVIEW ... IN THE REPORT

- Page 240 of the Report



QUESTIONS?

GOWLING WLG SPEAKER



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