

1997 BILL 202

First Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 202

CROWN CONTRACTS DISPUTE RESOLUTION ACT

MR. JACQUES

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 202
Mr. Jacques

BILL 202

1997

CROWN CONTRACTS DISPUTE RESOLUTION ACT

(Assented to , 1997)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "action" means a Court proceeding initiated by statement of claim;
- (b) "Court" means the Court of Queen's Bench;
- (c) "Crown" means Her Majesty in right of Alberta;
- (d) "mediation session" in respect of an action means a process involving a neutral third party mediator who assists the parties to the action and any other person brought in with the agreement of the parties to reach their own mutually acceptable settlement of the issues by structuring negotiations, facilitating communication and identifying the issues and interests of each participant, and the process may include, at the request of any participant, an orientation to mediation and a review of dispute resolution alternatives.

Application of
Act

2(1) This Act applies to actions arising from a contract made after

this section comes into force in which the Crown

- (a) is a party to the contract, and
 - (b) is a plaintiff or defendant in the action.
- (2) This Act does not apply to a contract
- (a) if, pursuant to the terms of the contract or an enactment, a dispute arising from the contract is to be submitted to arbitration,
 - (b) that contains a dispute resolution mechanism that meets the requirements of the regulations,
 - (c) that is a collective agreement as defined in the *Labour Relations Code*,
 - (d) that is governed by the *Public Service Employee Relations Act* or other enactment prescribed by the regulations, or
 - (e) that is of a class or type specified in the regulations.
- (3) This Act does not apply to an action that is a proceeding for judicial review governed by Part 56.1 of the *Alberta Rules of Court* (AR 390/68).

Mediation

- 3(1)** After the close of pleadings in an action, the parties shall arrange for and attend a mediation session prior to taking any further step in the action.
- (2) If there is an absconding debtor or deteriorating assets or another situation described in the regulations, a party to an action may take one or more steps in the action to deal with the situation before arranging for or attending a mediation session.
- (3) The parties shall appoint a mediator or, if the parties cannot agree on the appointment of a mediator, the parties shall apply to the Court to name a mediator
- (a) within 60 days after the close of pleadings, or
 - (b) if one or more steps in an action have been taken under subsection (2), within 60 days after the last of those steps

is completed.

(4) Within 60 days of the mediator being appointed by the parties or named by the Court, the mediator shall hold a mediation session.

(5) The costs of the mediation session shall be divided equally between the parties unless the parties agree otherwise.

(6) A mediation session may take place in an action involving more than 2 parties even though not all of the parties attend the session if the parties attending the session agree that the session should take place.

(7) After the mediation session, unless the parties agree to continue the mediation session, the mediator shall file a certificate of completion with the Court which shall be proof of the mediation session.

Non-attendance
at mediation
session

4(1) At the request of a party, the mediator shall file a certificate of non-attendance with the Court where a party did not attend the mediation session.

(2) When a certificate of non-attendance is filed, the Court may, on application

- (a) adjourn the application and order the party who did not attend the mediation session to attend,
- (b) adjourn the application and order that one or more mediation sessions take place on any terms the Court considers appropriate,
- (c) strike out the pleadings or other documents of the party that did not attend unless
 - (i) that party satisfies the Court that the party has a reasonable excuse for not attending, and
 - (ii) it would be inequitable to strike out the party's pleadings, or
- (d) grant any other relief it considers appropriate.

- Evidence not admissible **5** Evidence arising from anything said, evidence of anything said or evidence of an admission or communication made in the course of a mediation session is not admissible in any action, matter or proceeding before a court, except with the written consent of the parties to the action who attend the mediation session and any other person brought in with the agreement of the parties who attends the mediation session.
- Mediator not liable **6** No proceeding shall be instituted against a mediator for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by the mediator in
- (a) the carrying out or supposed carrying out of any duty or power conferred under this Act; or
 - (b) the carrying out or supposed carrying out of any order made pursuant to this Act.
- Regulations **7** The Lieutenant Governor in Council may make regulations
- (a) describing requirements of dispute resolution mechanisms for the purposes of section 2(2)(b);
 - (b) prescribing enactments for the purposes of section 2(2)(d);
 - (c) specifying classes or types of contracts to which this Act does not apply;
 - (d) describing situations for the purposes of section 3(2);
 - (e) respecting procedures for mediation sessions;
 - (f) respecting forms to be used in relation to mediation sessions.
- Crown bound **8** This Act binds the Crown.

Coming Into Force

9 This Act comes into force on Proclamation.