

## MGA Review Discussion Paper

# Assessment Complaints and Appeals

*This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.*

*These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.*

*The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit [mqareview.alberta.ca/get-involved](http://mqareview.alberta.ca/get-involved).*

## Preamble

The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance and administration*; *assessment and taxation*; and *planning and development*.

This paper is one of 12 discussion papers exploring aspects related to the *assessment and taxation* theme. Property tax valuation systems should be designed to maximize equity among property taxpayers and visibility or openness, while minimizing administrative complexity and confusion<sup>1</sup>. Alberta's property assessment and taxation framework must be considered with the following principles in mind:

- Clarity
- Fairness
- Efficiency
- Predictability
- Stability
- Transparency

This paper focuses on market value assessment and administration as outlined in the *MGA* and its attendant regulations. Below is a list of the 12 papers that relate to the *assessment and taxation* theme.

- Market Value Assessment and Administration
- Linear Property Assessment
- Machinery and Equipment Assessment
- Farm Property Assessment
- Railway Property Assessment
- Airport Property Assessment
- Supplementary and Progressive Assessment
- Equalized Assessment
- Taxation
- Exemptions and Other Special Tax Treatment
- Assessment Complaints and Appeals
- Municipal Revenue Sources

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<sup>1</sup> International Association of Assessing Officers (IAAO). *Standard on Property Tax Policy*. Kansas City: IAAO, 2010.

## Assessment Complaints and Appeals



The assessment process values properties for property taxation purposes. The MGA sets out a complaints system for property owners who have concerns about their property assessments and provides property owners the ability to ask for an independent review of their property assessment.

The current assessment complaints and appeals system came into effect in January 2010 following a major review and consultation in 2008-2009. Alberta transitioned from a two level assessment appeal structure to become the only jurisdiction in Canada with a one-level complaints structure. The one-level complaint system is intended to promote efficiency in the assessment complaints process so complaints are dealt with fairly and in a reasonable time.

While there is a one level complaint structure, there are three bodies that hear complaints, dependent on the type of property being assessed. They are:

- Local Assessment Review Boards (LARB) hear complaints respecting assessments of residential property with three or fewer dwelling units, farmland, and any tax notice other than a property tax notice.
- Composite Assessment Review Boards (CARB) hear complaints respecting assessments of residential property with four or more dwelling units, non-residential property and all regulated properties, except for farmland and linear.
- The Municipal Government Board (MGB) hears complaints respecting linear property assessments and equalized assessments.

A LARB panel is comprised of three members appointed by a municipal council. A CARB panel is comprised of two members appointed by a municipal council, and one member appointed by the Province; who is a member of the MGB. An MGB panel is comprised of three persons drawn from a pool of eligible members. In all cases, one member panels may be used for preliminary matters<sup>2</sup>. All board members must complete a training course in basic assessment principles and administrative law.

If there is an error in law or jurisdiction made by a board, a complainant may appeal that decision to the Court of Queen's Bench of Alberta. All of these boards follow nearly identical rules of procedure set out by MGA regulations: they specify timelines for complaints and hearings, rules for disclosure of evidence and decision writing.

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<sup>2</sup> Preliminary matters may be scheduled to take care of administrative matters such as postponements, adjournments and disclosure issues.

To promote municipal collaboration and cooperation, the MGA also permits municipalities to establish regional Assessment Review Boards (ARB) which have the responsibility of either the LARB or CARB but serve a number of neighbouring municipalities. Examples in the province include the Red Deer Regional ARB and the Capital Regional Assessment Services Commission ARB. Regional ARBs allow municipalities to share the costs and the resources required to conduct ARB hearings.

The following is a summary table the outlines the jurisdiction, membership and training of each board:

**Table 1: Board membership, jurisdiction and training**

<b>Board</b>	<b>Jurisdiction</b>	<b>Membership</b>	<b>Training</b>
<b>LARB</b>	<ol style="list-style-type: none"> <li>1. Residential with 3 or fewer units;</li> <li>2. Farm Land and;</li> <li>3. And any tax notice other than property tax.</li> </ol>	3 members appointed by municipal council.	<ol style="list-style-type: none"> <li>1. Assessment Principles, and</li> <li>2. Administrative Law.</li> </ol>
<b>CARB</b>	<ol style="list-style-type: none"> <li>1. Residential with 4 or more units and;</li> <li>2. All non-residential property, including regulated, except for linear and farm land properties.</li> </ol>	<ol style="list-style-type: none"> <li>1. 2 members appointed by municipal council, and</li> <li>2. 1 member appointed by the Province from the MGB.</li> </ol>	<ol style="list-style-type: none"> <li>1. Assessment Principles, and</li> <li>2. Administrative Law.</li> </ol>
<b>MGB</b>	<ol style="list-style-type: none"> <li>1. Linear property and;</li> <li>2. Equalized assessment.</li> </ol>	3 member panels appointed by the Province out of a pool of trained board members.	<ol style="list-style-type: none"> <li>1. Assessment Principles, and</li> <li>2. Administrative Law.</li> </ol>

## Discussion Points



Below are some discussion topics and questions identified through a review of requested amendments, cross jurisdictional research and issues raised by stakeholders.

### 1. ARB Jurisdiction and Membership

#### *Background*

Prior to 2010, assessment complaints were heard by a municipal ARB with the option to appeal the decision to the MGB. Since the 2010 complaint structure came into place, assessment complaints are heard once by the municipal LARB or CARB with a statutory right of appeal to the courts with leave on a matter of law or jurisdiction.

#### *Cross-jurisdictional Research*

- In British Columbia, there are two levels of property assessment appeals. The Assessment Review Panel is comprised of three members appointed by the Minister and hears the assessment complaint first. On appeal, the complaint goes to the Assessment Appeal Board. This board is made up of six members selected by the Province through a merit-based process.
- In Saskatchewan, a complaint is first heard by a three member Board of Revision at the municipal level. If the complaint is appealed, it is heard by the Saskatchewan Municipal Board.
- In Ontario, a property owner may make a request to the provincial assessment corporation for reconsideration of the assessment or they may choose to go directly to the provincial Assessment Review Board.

#### *Stakeholder and Legislative Amendment Requests*

- Several taxpayer stakeholders believe that this one level system has eroded their rights as property owners because they cannot appeal to a higher board like they could before 2010.
- Industry stakeholders have requested more provincial oversight at the assessment review boards; they believe that appointing two provincial members to CARBs instead of one would provide for a more objective decision process.
- Municipal and industry stakeholders have requested that the MGB assume responsibility for hearing complaints on major industrial facilities (e.g. refineries and lumber mills). They believe these types of complaints are highly complex and MGB members have extensive experience adjudicating these types of complaints.
- Some stakeholders have requested a more comprehensive mandatory training requirement for ARB members to provide sufficient training to members in order to hear complex assessment complaints.
- Citing concerns that assessment appeal decisions have budgetary consequences, some have suggested that councillors sitting on ARBs is a conflict of interest.

## 2. Preliminary and Procedural Matters

### *Background*

In 2010, a new assessment complaints and appeals system took effect with new preliminary and procedural standards with the intent of making the assessment complaints process more efficient while still preserving natural justice in the complaints system. The new provisions include a longer complaint filing period, a requirement to provide more information when making a complaint, disclosure timelines, rules for adjournments and postponements, costs against parties for abusing the process, and required provincial training for board members. In addition to those legislated standards, some municipalities set their own procedures specific to their boards so long as they don't conflict with the legislated standards.

### *Cross-jurisdictional Research*

- In Ontario, the ARB preliminary matters are governed by the Assessment Review Board Rules of Practice and Procedure made under the *Statutory Power and Procedures Act*, which outlines disclosure timelines, adjournments and decisions.
- British Columbia has a similar set of rules to that of Ontario established under the *Administrative Tribunals Act*.

### *Stakeholder and Legislative Amendment Requests*

- Stakeholders have raised concerns around clarifying the legislation. Some of these amendments include:
  - Some municipal stakeholders have suggested that additional clarification is needed around current procedures for withdrawing an assessment complaint.
  - Municipal ARB clerks want more clear direction in legislation on the grounds for rejecting an invalid complaint.
  - Municipal stakeholders have requested that clarity be added to allow an assessor to adjust an assessment during the hearing process if the complainant discloses new information that warrants an adjustment in the assessment.
  - Some industry stakeholders have asked for a set of rules of practice and procedures for assessment review boards province-wide, apart from the requirements in regulations, to ensure consistency. Currently, boards make their own procedures.
- Stakeholders have raised concerns respecting the procedures of ARBs. Some of these include:
  - Municipal and taxpayer stakeholders have requested that postponements be granted at the consent of both parties to a hearing (currently, postponements may be granted only in 'exceptional circumstances').
  - Taxpayer stakeholders have requested the ability to have their complaints reconsidered after an initial hearing.
  - ARBs have asked for the ability to correct a decision without having to go to court to quash their decision.
  - Municipal stakeholders have expressed concern that boards are hesitant to award costs against parties who abuse the process and are seeking more direction from the province on the awarding of costs.

- Municipal stakeholders have expressed concerns that boards are gravitating towards a site specific standard of review rather than a mass appraisal standard of review during the complaint process.
- Taxpayer stakeholders have requested additional privacy protection when disclosing sensitive income and business related information (rental and vacancy rates) during a hearing.

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## Discussion Questions



1. Is a one-level complaint structure appropriate? Why or why not?
2. Should there only be one board to hear all assessment complaints? Why or why not?
  - a. If not, which boards (LARB, CARB or MGB) should hear assessment complaints for each property type (residential with 3 or fewer dwelling units, residential with 4 or more dwelling units, farm land, non-residential, machinery and equipment, linear and equalized)?
  - b. What is the necessary scope and nature of provincial oversight for assessment review boards?
3. What qualifications, pre-requisites or training should the MGA specify as mandatory for assessment review board members?
  - a. Should any provisions be added to the MGA to address potential conflicts of interest on ARBs and the MGB?
4. Which preliminary matters or procedural standards need further attention (e.g. postponements, adjournments, rejecting complaints)?
  - a. What changes, if any, should be made to preserve a mass appraisal standard of review during the complaint process?
  - b. Are the timelines for assessment complaints appropriate? Why or why not?