

## MGA Review Discussion Paper

# Municipal Relationships and Dispute Resolution

*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 11 discussion papers exploring aspects related to the *planning and development* theme. It will explore issues related to the *MGA*'s provisions for municipal relationships and dispute resolution practices in municipalities. The objective of each discussion paper is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests,
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA*.

Below is a list of the papers that relate to the planning and development theme.

- Managing Growth and Development
- Statutory Plans and Planning Bylaws
- Municipal Planning Authorities
- Land – Administrative Decision-Making Processes
- Land Dedication (Reserves)
- Fees and Levies
- Public Participation
- Planning and Intermunicipal Appeals
- Municipal Government Board
- Municipal Relationships and Dispute Resolution
- Fundamental Changes and Municipal Restructuring

## Municipal Relationships and Dispute Resolution

Municipal relationships refers to the interactions between municipalities and ways in which municipalities may cooperate with various groups such as neighbouring municipalities, business, industry, and the public. Currently, the *MGA* supports municipal relationships and cooperation primarily through the availability of natural person powers which allows municipalities to enter into agreements with other municipalities as needed. Additional supports in the *MGA* allow for joint service delivery (regional services commissions), joint planning (intermunicipal development plans)<sup>1</sup>, and mediation to solve disputes (annexations and intermunicipal disputes), among other mechanisms. The *MGA* also requires municipalities to maintain open and responsive relationships with the public through its provisions for public participation and transparency.<sup>2</sup> Currently, there are no specific legislative provisions that address municipal relationships with business or industry groups.

The Capital Region Board<sup>3</sup> in the Edmonton area is the only instance where regional collaboration has been made mandatory through a regulation specifying membership, responsibilities and voting procedures. The CRB was established as a result of the recommendations contained within the report entitled “*Working Together – Report of the Capital Region Integrated Growth Management Plan Project Team*”, dated December 2007.

Municipal disputes are addressed through a variety of means:

- **Negotiation**: the process whereby parties resolve disputes on their own through mutual discussion.
- **Mediation**: the process by which a neutral third-party mediator helps municipalities reach an agreement or decision which is mutually acceptable. The *MGA* requires that mediation be attempted during the annexation process, disputes involving authorizations by provincial resource/utility agencies and conflicting municipal bylaws, or intermunicipal disputes arising from statutory plans or land use bylaws.
- **Appeals**: the Municipal Government Board hears disputes in a variety of cases, such as when an intermunicipal dispute exists or when there is a specific provincial interest in a subdivision appeal. Various appeals are also heard by subdivision and development appeal boards (SDABs) and assessment review boards (ARBs).<sup>4</sup>
- **Courts**: some municipal decisions may be subject to judicial review by the courts (such as an appeal on the validity of a municipal bylaw.) Further appeals may be made of decisions made by the MGB, SDAB or ARB.
- **Minister’s Powers**: the Minister may be requested to assist with intermunicipal disagreements between municipalities and may conduct investigations, make a decision

---

<sup>1</sup> Intermunicipal Development Plans are discussed in the Statutory Plans and Planning Bylaws Discussion Paper.

<sup>2</sup> Public participation practices are discussed in the Public Participation Discussion Paper.

<sup>3</sup> The Capital Region Board and growth management plans in general is discussed in the Managing Growth and Development Discussion Paper.

<sup>4</sup> Appeal processes related to the MGB, SDABs and ARBs are discussed in other discussion papers.

to settle the disagreement and implement decisions, or appoint a mediator to help resolve disputes.

## Discussion Points

Below are some identified discussion topics and questions based on a review of requested amendments, cross-jurisdictional research and issues raised by stakeholders. The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It is important to note these requests:

- i) do not necessarily represent the views of most Albertans;
- ii) do not necessarily apply to all municipalities; and
- iii) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

### 1. Voluntary Partnership

#### *Background:*

The MGA gives municipalities the option to voluntarily engage in cooperative initiatives with neighbouring municipalities through a variety of mechanisms, including intermunicipal development plans, mutual aid agreements, regional services commissions, etc. An example of voluntary partnership is the Calgary Regional Partnership, which has prepared and adopted a plan for its participating members. These mechanisms work well in situations where municipal relationships are strong. However, in instances where relationships are strained, these mechanisms are often not utilized to their full potential.

#### *Cross-Jurisdictional Research:*

- Newfoundland has committed to increasing regional cooperation initiatives and access to regional service-delivery opportunities. The province has done so by providing resources (such as mediators) to facilitate discussions and by offering grants for purposes such as feasibility studies, capital works and transitional costs.

#### *Stakeholder and Legislative Amendment Requests:*

- One municipality has said that the MGA's current provisions for intermunicipal relationships are not effective and rely primarily on voluntary cooperation; this municipality requests more clear and specific direction.
- Some stakeholders have said it is important that intermunicipal cooperation be voluntary rather than mandatory.

## 2. Mandatory Partnership

### *Background:*

Currently, the only instance where the Province has mandated that municipalities work together in a partnership is the Capital Region Board; however, the *MGA* does have other provisions whereby the Province could require that an intermunicipal development plan be developed by municipalities. Some stakeholders have suggested that mandatory partnerships might be necessary in situations where there is a need to address overall regional interests or unresolved disputes between neighbouring municipalities. The mandatory partnership that exists to date focuses primarily on growth management and other specific regional issues within an area of the Province. Some stakeholders have requested that mandatory partnerships could be used to address other issues such as cost sharing, regional service delivery, etc.

### *Cross-Jurisdictional Research:*

- In B.C., all local governments (municipalities) are encompassed within 27 regional districts. In areas where there are no local governments (e.g., unincorporated rural areas), the regional district is the local government. In addition to regional planning, B.C.'s regional districts provide a wholesale delivery of regional services such as water and wastewater services, and solid waste management to their customers – the municipalities.

### *Stakeholder and Legislative Amendment Requests:*

- Some citizen groups have requested the establishment of a regional planning framework to alleviate conflict in development and to strengthen intermunicipal cooperation.
- Some stakeholders have indicated that forced regionalization is ineffective and that the only instance when mandatory partnerships should be considered are as a final option and only under certain conditions (e.g. when all other options have been attempted, agreement that an impasse exists, the benefits outweigh the costs, and a regional need is not being met).
- Some stakeholders have requested legislation that authorizes the Lieutenant Governor in Council to determine whether a growth plan is required for any region/area in the province and to enable cost/benefit sharing among municipalities within the region.

## 3. Mediation

### *Background:*

Within the *MGA*, there are provisions stating that municipalities must “attempt to mediate” or “negotiate in good faith” (e.g., during the annexation process or intermunicipal disputes). However, no definition of these terms is included in the legislation. This has sometimes led to confusion and difference of opinion between the parties that are undertaking mediation. Furthermore, mediation has sometimes been regarded as the last resort attempt to resolve disputes, or as an obstacle to completing their legislative requirements in situations such as annexations or intermunicipal disputes on planning bylaws. Consequently, mediation is sometimes viewed as a negative process or a process to avoid.

Occasionally, during a mediation process that occurs prior to the MGB reviewing an application (e.g., annexation), agreements are made between parties. However, once the MGB hearing occurs, the agreement may be amended by the MGB recommendation, regardless of what was previously agreed to.

*Cross-Jurisdictional Research:*

- In Ontario, intermunicipal conflicts are filed with the Ontario Municipal Board and then the appeals are sent on to mediation, motion, pre-hearing or hearing. The mediation can occur at any stage, before or during the pre-hearing or hearing, and it may replace the hearing if a mutual agreement is reached during the mediation.
- In B.C., if a dispute occurs an application is submitted to the dispute resolution officer with the BC provincial government. The dispute resolution officer reviews the dispute and attempts to help the parties resolve the dispute through any process necessary. This can include mediation, voluntary binding arbitration, mandatory binding arbitration, final proposal arbitration, or full arbitration.
- Manitoba has adopted the Alberta model for mediation.

*Stakeholder and Legislative Amendment Requests:*

- Some stakeholders have requested that dispute resolution mechanisms should have a mandatory mediation process with guidelines, followed by a mandatory arbitration process.

#### 4. Court Involvement with Disputes

*Background:*

For some types of disputes which arise among municipalities, businesses, or the public, the only recourse available is through the courts, such as matters related to disqualification of councillors<sup>5</sup> or appeals of a municipality's calculation of off-site levies. Accessing the courts to resolve disputes can be expensive and time consuming, which in turn may deter some from pursuing a resolution to an issue.

*Cross-jurisdictional Research:*

- In Saskatchewan, appeals of development levies may be filed with the Saskatchewan Municipal Board.

*Stakeholder and Legislative Amendment Requests:*

- Some representatives of the development industry have asked for the right to appeal of an off-site levy bylaw<sup>6</sup> to the Municipal Government Board.

---

<sup>5</sup> Disqualification of councillors is discussed within the Municipal Governance Discussion Paper.

<sup>6</sup> Off-site levy bylaws are discussed within the Fees and Levies Discussion Paper.

## Discussion Questions

- 
1. What additional provisions, if any, should the *MGA* incorporate to help foster intermunicipal cooperation and partnerships?
    - a) What mandatory provisions, if any, should exist in the *MGA* for municipal cooperation? Why?
  2. In regions that include urban centres, what is the appropriate balance in the interest of individual municipalities with the metropolitan interest as a whole?
    - a) Should the *MGA* include provisions to allow for the creation of regional bodies such as the Capital Region Board, in other areas of the province? If so, when would it be appropriate to establish a regional body?
    - b) Should the establishment be mandatory or voluntary? Why or why not?
    - c) What, if any, powers should lay within the jurisdiction of a regional body? Should regional boards be able to supersede local planning? Why or why not?
  3. What additional provisions, if any, should be included within the *MGA* to clarify requirements related to mediation or negotiation in relation to the annexation process, intermunicipal disputes, or other municipal matters?
  4. What other appeal mechanisms, if any, should be considered so that an appeal to the courts is not the only avenue of recourse available for disputes or appeals on matters such as disqualification of councillors, off-site levies, or the validity of disputed bylaws?