


MGA Review Discussion Paper

Regional Services Commissions



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.

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*; *assessment and taxation*; and *planning and development*.

This paper is one of 12 discussion papers exploring aspects related to the *governance* theme. It focuses on *MGA* provisions related to Regional Service Commissions. The objective of each discussion papers 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 governance theme.

- Municipal Powers
- Provincial Powers
- Municipal Structures
- Municipal Governance
- Municipal Administration
- Financial Administration
- Liability and Risk Management
- Service Provisions
- Controlled Corporations
- Regional Service Commissions
- Compliance and Accountability
- Special Areas and Improvement Districts

Regional Services Commissions

A Regional Services Commission (RSC) is a corporate entity through which municipalities partner to provide services regionally.¹ These commissions consist of at least two municipal entities and can include First Nations reserves, Métis Settlements or armed forces bases. Economies of scale may facilitate a RSC's recruitment of skilled staff and may improve service delivery in a region. Recent provincial policy and grant funding programs have also created incentives for municipalities to regionalize the delivery of some municipal services.

Many jurisdictions do not provide for RSCs, rather leaving joint service provision to entities such as a regional level government, municipally controlled corporations, delegation to another municipality, or contract or joint venture agreements among municipalities.

Each RSC is established by an individual regulation outlining the services it will provide and drafted to meet the needs of its members. Each regulation is approved through a Cabinet Order. The Province appoints a RSC's first board of directors, fixes their term, and designates the board's chair. Currently, RSCs provide services such as water and wastewater management, waste management, emergency services, airport management, land-use planning, and assessment.

The *MGA* outlines the powers of government related to RSC, including governance, finance, and operations. It also outlines the commission's decision-making powers, financial responsibilities, and other powers such as expropriation. A commission's structure and operations are influenced by:

- Natural Persons Powers: A RSC, like a municipality, has the powers of a natural person and can enter into contracts, negotiate easements, and undertake other such agreements.
- Profit: The *MGA* is silent on whether a commission should be earning a profit; however, many commission regulations require ministerial consent to operate for-profit and distribute surpluses to commission members. While some commissions may generate surpluses, generating a profit is not intended as their main objective.
- Exclusive Rights: A municipality may grant a commission the exclusive rights to provide a public utility within a designated area for up to 20 years.
- Finance: Property owned by a commission may be assessable in some instances, but is also exempt from taxation. The commissions are subject to financial controls, including the *Regional Services Commission Debt Limit Regulation*. This regulation reflects similar standards placed on municipalities regarding debt limits.

Depending on the issue that is contested, RSCs' disputes are directed to the appropriate board or tribunal. These tribunals and boards include the Alberta Utilities Commission, the Alberta

¹The topics of service provision, controlled corporations, and intermunicipal relationships, are discussed in other *MGA* Review discussion papers.

Transportation Safety Board, or any other board or tribunal created by an enactment. Issues not addressed by these boards' may be heard by the Municipal Government Board.

DRAFT

Discussion Points

Below are some discussion topics and questions identified through 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 important to note these requests:

- i) do not include all the requests Municipal Affairs has received in the past 18 years;
- ii) do not necessarily represent the views of most Albertans;
- iii) do not necessarily apply to all municipalities; and
- iv) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

1. Establishment and Disestablishment

RSCs are currently established by individual regulations. The regulations need to be reviewed and updated periodically. The review of one of these regulations creates an opportunity to improve the commission's operations; however, these periodic reviews may also influence the commission's ability to plan for the future.

The MGA and the RSC regulations do not contain provisions for disestablishing a commission. All disestablishment-related matters must therefore be addressed by Cabinet through a further regulation. If a commission disestablishes, its assets and liabilities may be difficult to distribute. For example, assets such as landfills, lagoons, pipelines, and any other property firmly attached to land are not easily distributed among municipalities. Clear and predictable disestablishment provisions could inform key decisions by a RSC or municipalities considering the establishment of a new commission.

Alberta Legislation governing business corporations, societies, cooperatives and condominium corporations provides a variety of disestablishment options dependent on the type of organization and its circumstances. Some of these options include a directors' or members' vote, a registrar's dissolution, or a court ordered dissolution.

Cross- jurisdictional Research

- Newfoundland and Labrador Regional Service Boards are created by cabinet order.
- In New Brunswick, Cabinet has legislated authority to create regulations regarding the dissolution of a RSC.

Stakeholder and Legislative Amendment requests

- Municipal Affairs has received requests to have RSCs established by Cabinet (i.e. Order in Council), and not by the Minister, and that RSC regulations not be subject to periodic reviews.

2. Set-up Charges and Transmission Fees

Municipalities may enter into agreements to join or create RSCs that require large upfront financial contributions and debt many years before the commission is able to deliver the agreed-upon services. These upfront payments are necessary if a municipality wants representation on the commission board – representation which gives them input into decisions that affect the commission's long-term viability and the cost of its services.

Similarly, some communities are accessing utility products (e.g., water, wastewater) that pass through multiple municipal, RSCs and/or controlled corporation systems before arriving at the delivery location. A transmission fee may be charged by each commission or corporation for their handling of the product. For example, water from EPCOR passes through several commissions before reaching the Alberta Central East Water Corporation. Water costs begin at \$0.72/m³ for EPCOR clients and rise in cost with each commission until they reach \$3.54/ m³. Transmission fees influence the long term viability of all commissions involved and result in increased costs to the end user in commissions further down the line.

Cross-jurisdictional Research

- In Saskatchewan, Municipalities partnering to provide a water or wastewater servicing must have all rates, charges, tolls and rents approved by the Saskatchewan Municipal Board.
- New Brunswick RSCs may have cost sharing formulas defined in the regulation which forms the RSC. If no such formula is present, cost sharing is determined by resolution of the Board.

3. Financial Management

Some RSCs have a fee system that fully supports their current operations, but do not account for fluctuations in future revenue or properly allocate for long-term capital costs (for example, uncontrolled funding sources, such as grants, may be relied upon to address large portions of long term capital costs). Some commissions provide essential services, so it is crucial they manage their finances in a sustainable manner. If a commission's reserve fund is not sufficient to cover long-term infrastructure costs, its member municipalities may be called on to provide additional financial support to the commission. A lack of funds to cover long-term capital replacement costs poses an unaccounted for liability and financial risk to commissions, member municipalities, and the Province.

Cross-jurisdictional Research

- RSCs in New Brunswick are required to create a balanced budget each year that accounts for operating and capital expense as well as revenues. They must also submit financial statements and notices of key financial votes to the Minister.

Stakeholder and Legislative Amendment requests

- Municipal Affairs has received requests that an RSC's liability for any work undertaken that negatively affects other peoples' property values be governed by the same liability rules as municipalities. This may provide greater liability protections for an RSC's operations.

- Municipal Affairs has received requests from municipalities asking that rules respecting the debt of an RSC be clarified, particularly in respect of whether a municipality may have to assume that debt.

4. Transparency and Accountability

The existing legislation provides several possibilities for the resolution of issues related to RSCs. Currently, the *MGA* directs certain public utility related issues to the Alberta Energy Regulator in respect of service fees, compensation for RSCs acquisition of municipal facilities, and RSCs use of municipal transportation systems. Expropriation concerns are brought before the Land Compensation Board or the Municipal Government Board, depending on the issue. Other disputes go to the Transportation Safety Board under the *Transportation Safety Act*, or to the Municipal Government Board, if there is no other forum for the dispute.

Cross-jurisdictional Research

- In Saskatchewan, Municipalities partnering to provide a service may resolve disputes either through a mutually agreed upon process or by submitting a complaint to the Saskatchewan Municipal Board.

5. Governance and Administration

Currently, no legislative requirements exist for qualifications of commission employees or directors. The staff of a RSC is responsible for setting up its governance framework, and determining reporting procedures. As well, sometimes the commission staff must manage a type of service delivery that requires specific knowledge and expertise (e.g., water and wastewater treatment). The hiring of under-qualified staff or appointment of unqualified directors can lead to poor governance models, inadequate reporting and inefficient service delivery, all of which creates a potential liability to municipalities and the Province.

Cross-jurisdictional Research

- The Quebec equivalent of an RSC must include a regional municipality, and allows for partnerships with the private sector. If a RSC includes a partnership with a private sector entity, a call for tenders, which includes a review of private sector expertise, is required.
- In New Brunswick each board consists of the mayors of the member municipalities and must hire an executive director who is in charge of staffing decisions, but no qualifications are set for staff.
- Queensland State, Australia, requires that tasks may not be delegated to employees unless those employees are suitably qualified to carry out the task.

Discussion Questions

1. What services and governance requirements are best suited for RSCs?
 - a) How should the *MGA* provide for an RSC's establishment (e.g. Regulation, Cabinet Order, other means)?
 - b) How should the *MGA* address the disestablishment of an RSC with respect to the distribution of assets (e.g. lagoons, landfills, pipelines, and property)?
 - c) How, if at all, should the *MGA* address the qualifications of staff and directors for existing and future RSCs?
2. How should the financial management of a RSC and responsibility for financial shortfalls be addressed in the *MGA*?
 - a) What provisions in the *MGA* could facilitate RSC establishment and fair rates for the end user (e.g. third party approval of RSC rates, required cost sharing formulas etc.)?
 - b) How should RSCs account for their tangible capital assets (e.g. roads, bridges, water systems)?
 - b) What authority, if any, should the Province have to increase local tax/mill rates to make up costs should an RSC fail? How would this authority be exercised?
3. *What provisions should be in place to ensure transparency and accountability?*
 - a) In what instances should RSCs be subject to or exempt from AUC oversight?
 - b) Which appeal board(s) are best suited to hear specific appeals?
4. *What types of revenue generation models are best suited for RSCs (e.g. profit, not for profit)?*
5. How should the *MGA* address existing and future RSC governance models? (e.g. allow private sector participation, board member eligibility criteria)?