



Administrative Law I for Assessment Review Board Clerks

12/1/2014

ADMINISTRATIVE LAW 1
for ARB Clerks

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Information about Assessment Review Boards and training requirements can be found at

http://www.municipalaffairs.alberta.ca/abc_municipal_government_board_intro.cfm

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Caution on the Use of the Materials

The material contained in this manual has been prepared by Alberta Municipal Affairs for information and for educational purposes. This manual is intended as an educational aid for persons in tribunal work and should not be considered legal advice or a substitute for current legislation. If there is any uncertainty with understanding or interpreting the material or information contained in this manual, readers should consult legal counsel or obtain relevant professional assistance.

Terminology

Words and acronyms used throughout this document have the following meanings unless specifically noted otherwise:

ABQB	– Court of Queen’s Bench of Alberta
Agent	– A party representing the Complainant, a Tax Agent or a lawyer for a fee
ARB	– Assessment Review Board
CARB	– Composite Assessment Review Board
Clerk	– The clerk appointed to an Assessment Review Board
Complainant	– Any assessed person, taxpayer, or person acting on behalf of an assessed person or taxpayer
Expert Witness	– Provides professional opinion on the subject matter; expertise is based on credentials of education and experience
Factual Witness	– Provides information about what they know, does not provide opinions
IA	– <i>Interpretation Act</i> , Revised Statutes of Alberta 2000, chapter I-8
Jurisdiction	– ARBs only have power to do things their enabling legislation says they can do
LARB	– Local Assessment Review Board
Legal Counsel	– Lawyer representing one of the parties or provider of legal advice to the panel

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- Merit Hearing** – The actual hearing where the complainant and respondent present their cases to the hearing panel
- MGA** – *Municipal Government Act*, Revised Statutes of Alberta 2000, chapter M-26
- MGB** – Municipal Government Board
- MRAC** – *Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009
- MRAT** – *Matters Relating to Assessment and Taxation Regulation*, Alta Reg AR 220/2004
- Preliminary Hearing** – A hearing that deals with administrative or jurisdictional issues, but does not hear any evidence that pertains to the full case
- Recuse** – When a member excuses him/herself or steps aside from a hearing for potential bias
- Representative** – A spokesperson or advocate for a party that chooses not to present their own case for which there is no fee
- Respondent** – The party that replies to a matter brought before the Board, usually the assessor
- Witness** – Individual(s) called by the parties to present information in support of their case

Course Overview

Purpose

Assessment Review Board clerks play a key role in the assessment complaint process. They are the face of the municipal government to its citizens who file complaints about matters shown on an assessment notice. To be successful in this role, you must not only understand your responsibilities, but also the principles of administrative law and natural justice and how these principles fit within the legislative framework of the assessment complaint system in Alberta.

After giving an overview of the complaint system and its fundamentals, we will examine the clerk's role in every step of the complaint process from submission of the complaint form through to decision writing and closing the file. We will focus on identifying preferred practice approaches throughout the complaint process and steps to avoid potential pitfalls. We will end with a consideration of the basic principles of natural justice and explain how they combine with the regulated procedures to create a fair assessment complaint process.

Learning Objectives

Upon completion of the course, you will be able to

- Describe your role and responsibilities in the assessment complaint process.
- Find and interpret legislation governing the complaint process.
- Apply the fundamentals of administrative law as guiding principles in your role.
- Outline the assessment complaint process and associated timelines.
- Outline the key principles of assessment complaints and the complaint system.
- Describe the types of Assessment Review Boards.
- Describe the ARB's role in the assessment complaint process.
- Facilitate the submission of complaints.

Evaluation

To become qualified as an Assessment Review Board clerk, full participation in the course and exercises is required and a passing grade (65%) on the final examination, to be presented in class, must be obtained.

Fundamentals of the Assessment Complaint System

The assessment complaint system in Alberta was built upon the following foundational principles.

- Taxpayers have the right to an understandable, effective, timely, efficient, objective and procedurally fair complaint and appeal process.
- Information must be accessible, transparent and complete while protecting confidentiality and privacy.
- Members and administrators of assessment tribunals must be impartial, competent and qualified.
- ARBs are independent bodies that make decisions at “arm’s length” from the municipality. They
 - Are administered by a clerk appointed by the municipality.
 - Are divided into LARBs (all municipal appointees) and CARBs (chaired by a Provincial appointee).
 - Receive support and policy direction from the Province.

To ensure that property owners have a voice in the property assessment system, the *Municipal Government Act (MGA)* has set out an assessment complaint system for property owners who have concerns about their property assessment or about other matters on an assessment or tax notice.

Alberta’s assessment complaint system includes procedures to let taxpayers understand and challenge information used to prepare their assessment, to bring forward correct information and to make complaints about various matters on an assessment or tax notice.

Although a person may make a complaint about numerous matters shown on an assessment or tax notice, most complaints are about property assessments. A property assessment is the estimated dollar value of a property calculated by the assessor for the purposes of taxation. The assessor multiplies this value by a tax rate to identify a tax amount. Alberta’s legislation does not allow complaints about tax rates.

The assessment complaint system in Alberta is intended to ensure the following:

- Taxpayers have access to assessment information and time to review the information and discuss issues with the assessor.

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- Standardized forms allow for consistent administration of complaints throughout the province.
- A streamlined process helps to ensure complaints are heard and decisions are issued in a timely manner.
- Mandatory training programs for Assessment Review Board clerks and board members will lead to consistent procedures and qualified persons administering complaints throughout the province.

A complaint is initiated when a completed provincial Assessment Review Board Complaint form is filed with the municipality. Filing triggers a series of events including information disclosure, followed by a hearing before an Assessment Review Board and a written decision.

Archived

The Assessment Review Board Clerk

Assessment Review Board (ARB) clerks are appointed by municipal council and must have the training set out in the legislation. As key officials responsible for administering and processing complaints, ARB clerks should strive to achieve a fair, timely and unbiased complaint process in accordance with the requirements set out in the *MGA* and its regulations.

An ARB clerk must be appointed by council.

s. 455(1) *MGA*

s. 49(1) *MRAC*

ARB clerks must meet training requirements set by the Minister.

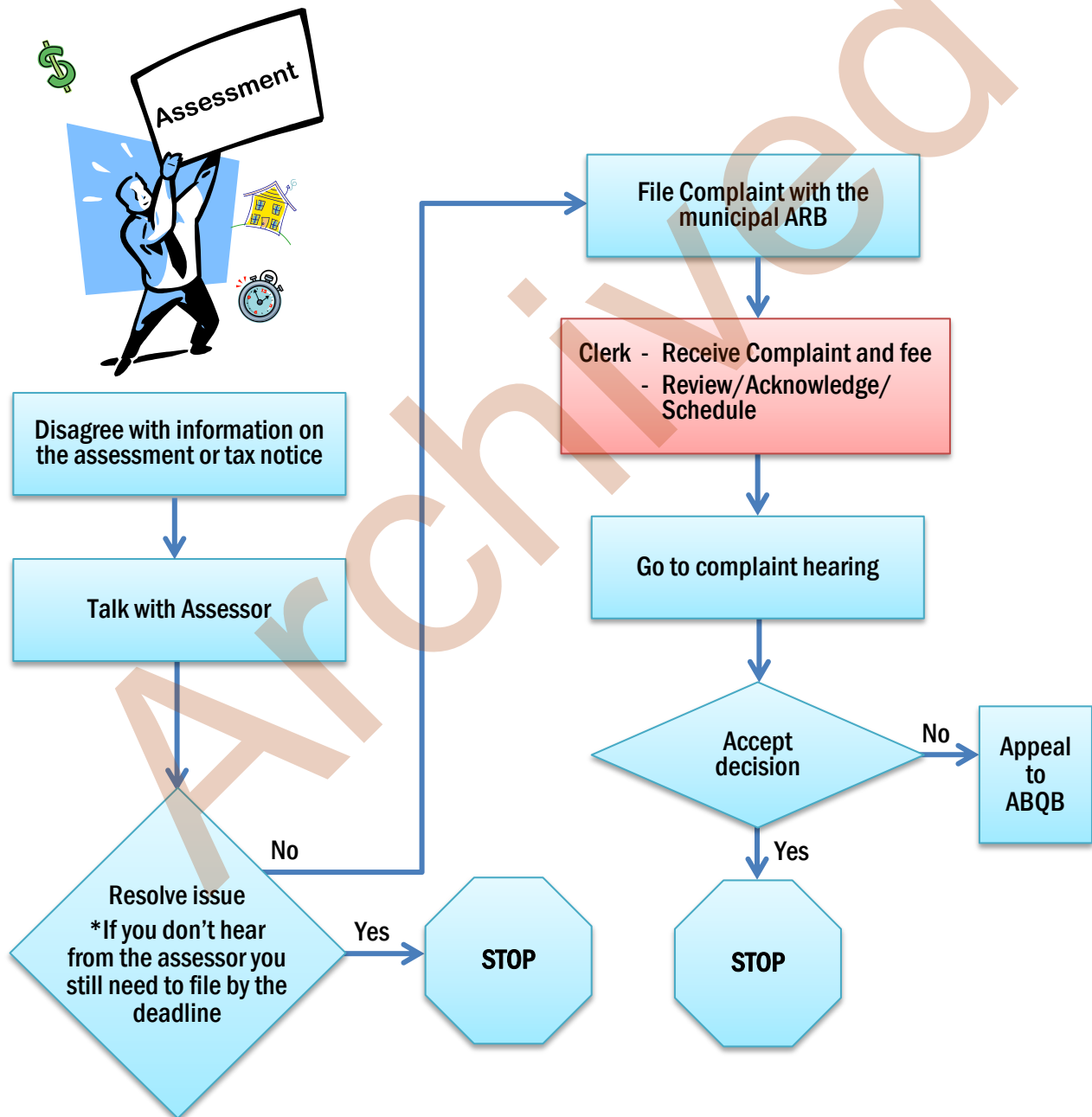
There are restrictions on who can be an ARB clerk.

s. 455(2) *MGA*

It is ARB members who hear and make decisions about the complaints. However, the clerk and ARB staff are in contact with the parties both before and after the hearing and handle much of the complaint process. Clerks interact often with the parties to complaints and are a valuable resource to them. Clerks also have important obligations to implement procedures within specified time frames during the complaint process.

The Assessment Complaint Process

The complaint process begins with the property assessment notices and tax notices being sent to the assessed person. These notices tell assessed persons how to get information about their assessment and how to file complaints. If the assessed person does not agree with a matter on the assessment or tax notice, he or she can file a complaint with the clerk within the time specified on the notice – this triggers the formal complaint process outlined below.



The Complaint Form (The Trigger)

To be heard by an ARB, the complainant must file a complaint with the ARB clerk in the form prescribed by *MRAC* along with any required fee.

s. 460(2) *MGA*
s. 481(1) *MGA*
s. 2 *MRAC*,
Schedules 1 & 2 *MRAC*

The Complainant is ultimately responsible for filling in the form properly and filing a valid complaint. However, clerks can and should help facilitate the process by providing general guidance where possible and by reviewing forms to check for obvious deficiencies. Therefore, when an assessment complaint is filed, it is good practice for the clerk to review it. To do this, the clerk should look at each section of the form to see if it appears to meet the requirements of the *Municipal Government Act (MGA)* and its regulations. If there is a question about whether a complaint is invalid, this decision must be referred to an ARB panel.

The complaint form begins with places for the municipality and tax year. The “tax year” is always the current year but the assessment is based on the previous year, or “assessment year”. Example: Tax year is 2014 and the assessment year is 2013 (valuation is as of July 1st).

The form then has seven sections covering

1. Notice Type
2. Property Information
3. Complainant Information
4. Complaint Information
5. Reason(s) for Complaint
6. Complaint Filing Fee
7. Complainant Signature

We will discuss each of these sections in more detail as we progress and consider topics and concepts that help to appreciate the full significance of the information required.

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Section 1 – Notice Type: The Assessment Review Board Complaint form identifies the type of assessment notice that an assessed person wishes to file a complaint about.

The screenshot shows the top portion of the 'Assessment Review Board Complaint' form. At the top left is the Alberta Government logo. The title 'Assessment Review Board Complaint' is centered at the top. Below the title are two input fields: 'Municipality Name (as shown on your assessment notice or tax notice)' and 'Tax Year'. A section header 'Section 1 - Notice Type' is followed by two columns of radio button options. The first column, 'Assessment Notice:', includes 'Annual Assessment', 'Amended Annual Assessment', 'Supplementary Assessment', and 'Amended Supplementary Assessment'. The second column, 'Tax Notice:', includes 'Business Tax' and 'Other Tax (excluding property tax and business tax)'. Below the 'Other Tax' option is an input field for 'Name of Other Tax'.

The most common type of assessment notice is an annual assessment notice. Other notices include amended annual assessment notices (to correct an original assessment), supplementary assessment notices (to capture the value of improvements to property completed during the tax year) and notices about various taxes (such as a local improvement tax).

Section 2 – Property Information: This section shows information about the property affected by the assessment under appeal.

The screenshot shows the 'Section 2 - Property Information' section of the form. It contains several input fields and a list of radio button options. The fields include 'Assessment Roll or Tax Roll Number', 'Property Address', and 'Legal Land Description (i.e. Plan, Block, Lot or ATS 1/4 Sec-Twp-Rng-Mer)'. Below these are radio button options for 'Property Type (check all that apply)', including 'Residential property with 3 or fewer dwelling units', 'Residential property with 4 or more dwelling units', 'Farm land', 'Non-residential property', and 'Machinery and equipment'. At the bottom are two more input fields: 'Business Name (if pertaining to business tax)' and 'Business Owner(s)'.

The Assessment Roll or Tax Roll Number, property address and legal land description and property type are all indicated on the Assessment Notice. The property type is especially important for the clerk, because he or she must use this information to decide which board must hear the appeal.

The Assessment Notice also shows the complaint deadline date.

Jurisdiction

The Legislature has created many administrative tribunals to make decisions in various fields. Local Assessment Review Boards (LARBs) and Composite Assessment Review Boards (CARBs) – including one-member LARBs and CARBs – and Joint ARBs are examples of administrative tribunals. Their specific job is to hear and make decisions about assessment matters and matters on a tax notice, other than a property tax.

Like other administrative and quasi-judicial tribunals, ARBs only have power to do things their enabling legislation says they can do. Part 11 of the *MGA* is the enabling legislation that gives ARBs the legal authority to make decisions. It tells municipalities how and when they must create LARBs and CARBs and – together with the *MRAC* regulation – defines the things they can do, including

- ✓ The matters they can decide,
- ✓ The remedies they can provide, and
- ✓ The timelines that apply.

ARB Member Requirements

Like clerks, the *MGA* requires ARB members to be appointed and to meet certain requirements before they can sit on a panel. Some of the relevant provisions are considered below.

ARB members must be appointed.

ss. 454.1(1) and
454.2(1) *MGA*

s. 454.3 *MGA*
s. 49(2) *MRAC*

ARB members must meet qualifications set by the Minister in order to perform their duties.

Legislation restricts who can be a board member.

s. 50 *MRAC*

LARB or CARB – What is the Difference?

The *MGA* enabling provisions determine which assessment complaints go where based on the type of property involved.

LARBs

LARBs usually have three members – all appointed by the municipality. They hear complaints about assessment notices for residential property with three or fewer dwellings and farmland, plus some types of tax notice.

s. 454.1(1) *MGA*

LARB s. 460.1(1)	<p><i>A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on</i></p> <p><i>(a) an assessment notice for</i></p> <p style="padding-left: 20px;"><i>(i) residential property with 3 or fewer dwelling units, or</i></p> <p style="padding-left: 20px;"><i>(ii) farm land,</i></p> <p style="text-align: center;"><i>or</i></p> <p><i>(b) a tax notice other than a property tax notice.</i></p>
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Examples of residential property assessments heard by LARBs include

- Detached homes, including acreages and farm residences
- Duplexes
- Triplexes
- Manufactured housing units
- Individual condominium units

Or

A municipality may impose taxes other than property taxes. For these, a LARB may hear complaints about specific matters shown on the tax notice. Some examples may include

- Business tax
- Business revitalization zone tax
- Community revitalization levy
- Special tax
- Well drilling equipment tax
- Local improvement tax
- Community aggregate payment levy.

s. 460.1(1)(b) *MGA*

If the complaint is not about one of the matters listed in s. 460.1(1), then it goes to a CARB

panel.

CARBs

Like LARBs, CARBs usually have three members; however, one member is appointed by the Province from the MGB and two are appointed by municipal council (usually existing LARB members). The Presiding Officer or Chair for each CARB must be the provincial member.

s. 454.2(2) MGA
s. 454.2(4) MGA
s. 48(4) MRAC

CARBs hear almost all complaints about assessment notices that are not dealt with by LARBs. In practice, this means CARBs hear complaints about residential properties with four or more dwelling units and non-residential assessments.

CARB s. 460.1(2)	<i>Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection 1(a).</i>
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Examples of properties with four or more dwelling units include

- Four-plex housing
- Apartment buildings
- Townhouse rental projects

Some examples of non-residential properties include

- Office buildings
- Retail stores
- Shopping centres
- Warehouses
- Vacant land
- Railways
- Industrial plants or special purpose properties (e.g., pulp mills)
- Machinery and equipment

In cases where property is used or designated for multiple purposes where both LARBs and CARBs have jurisdiction, the

s. 12 MRAC

complaint is heard by CARBs.

Most of the time, it is clear whether a complaint must go to a LARB or a CARB. However, if a question about jurisdiction arises, an ARB may decide it either at a preliminary hearing or as a preliminary matter at the beginning of a merit hearing.

Quorum

LARB: s. 458(1) *MGA*
CARB: s. 458(2) *MGA*

A quorum for a LARB consists of any two members. A quorum for a CARB consists of the provincial member and one other member.

Joint Assessment Review Boards

s. 456 *MGA*

Municipal councils may agree to establish joint boards enabling them to share their municipal resources.

One-member Review Boards

A municipality may establish an ARB consisting of only one member.

LARB: s. 454.1(2) *MGA* &
s. 30(1) *MRAC*
CARB: s. 454.2(3) *MGA* &
s. 36(1) *MRAC*

A one-member LARB or CARB may hear complaints about non-assessment matters on an assessment notice such as administrative or procedural matters. A one-member LARB may also hear complaints about matters on a tax notice.

LARB: s. 30(2) *MRAC*
CARB: s. 36(2)

The person appointed to a one-member CARB must be the provincial member.

s. 48(4) *MRAC*

Single-member panels are designed to deal with procedural and other preliminary matters quickly so that the merit hearing can proceed smoothly. This means tighter notice and disclosure timelines apply when one-member panels are scheduled for separate preliminary hearings.

The *MGA* and *MRAC* are very specific about some aspects of what ARBs can do but give them leeway to choose some aspects of procedure. In cases where parties disagree with a clerk's directions or understanding of how a matter should proceed, the clerk should refer the matter to an ARB panel to make a final determination.

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Section 3 – Complainant (Property Owner) Information: This area of the form provides information about the complainant.

Section 3 - Complainant Information Is the complainant the assessed person or taxpayer for the property under complaint? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Note: If this complaint is being filed on behalf of the assessed person or taxpayer by an agent for a fee, or a potential fee, the Assessment Complaints Agent Authorization form must be completed by the assessed person or taxpayer of the property and must be submitted <u>with</u> this complaint form.			
Complainant Name (if the complainant, assessed person, or taxpayer is a company, enter the complete legal name of the company)			
Mailing Address (if different from above)	City/Town	Province	Postal Code
Telephone Number	Fax Number	Email Address	
If applicable, please indicate any date(s) that you are not available for hearing			

If the complainant, assessed person or taxpayer is a company, then the complete legal name of the company is provided here, as well as the mailing address and other contact information. This section also asks the complainant to provide dates when they may **not** be available for a hearing.

Complainant as Party

s. 460(3) &
s. 304 MGA

Any assessed person or taxpayer who files a complaint is called a “complainant” and is a party to the proceedings. An assessed person or taxpayer can also have someone file a complaint on his/her behalf. In that case, the assessed person or taxpayer is still the true complainant and party – not the person who filed on his/her behalf.

If ownership of a property changes while a complaint is in progress, the new owner of the property or business then has the right to continue the appeal.

Representatives and Agents

Some parties will choose not to present their own case during the process or at the hearing and have a spokesperson, such as a lawyer or an agent, represent them. Under **section 51** of **MRAC**, if a complainant chooses to have representation during the complaint process or at the hearing – for which they are paying a fee or potential fee – they must complete and sign the Agent Authorization Form. The form is contained in **Schedule 4** of **MRAC** and must be made available at the municipal office. It can also be found on the Municipal Affairs website.

Respondent

The party that responds to a complaint is called the Respondent. Usually, the Respondent is

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the municipality and is represented by the municipal assessor; however, some municipalities also hire legal counsel to represent them.

Section 4 – Complaint Information: This section outlines

- (1) Details about the various matters on the assessment notice that the complaint is about, and
- (2) Whether the complainant has requested information about how the municipality prepared the assessment.

Section 4 - Complaint Information		Check the matter(s) that apply to the complaint (see reverse for coding)																			
<input type="checkbox"/>	1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input type="checkbox"/>	5	<input type="checkbox"/>	6	<input type="checkbox"/>	7	<input type="checkbox"/>	8	<input type="checkbox"/>	9	<input type="checkbox"/>	10		
Note: Some matters or information may be corrected by contacting the municipal assessor prior to filing a formal complaint.																					
If information was requested from the municipality pursuant to sections 299 or 300 of the <i>Municipal Government Act</i> , was the information provided?																		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

Matters for Complaint

The *MGA* allows assessed persons and taxpayers to file complaints about any of the following ten items listed on the assessment or tax notice:

1. The description of the property or business
2. The name or mailing address of an assessed person or taxpayer
3. Assessment amount
4. Assessment class
5. Assessment sub-class
6. The type of property
7. The type of improvement
8. School support
9. Whether the property or business is assessable
10. Whether the property or business is exempt from taxation

s. 460(5) *MGA*

At least one of these matters should be checked off on the form.

MRAC also specifies that an ARB cannot hear a matter in support of an issue that was not identified on the complaint form. Tax amounts and tax rates are **not** on the above list. Therefore, ARBs cannot hear complaints about these matters, nor can ARBs change the rates or the services provided by municipalities. If a property owner has specific concerns about these issues, he or she should discuss them with the municipality's administration or

LARB: s. 5 &
CARB: s. 9 *MRAC* &
s. 460(6) *MGA*

council.

Access to Information

The *MGA* entitles an assessed person to see or receive information about his or her property assessment as well as the assessments of other property in the municipality. It also requires municipalities to provide notice of this right along with the assessment notice.

Access to information and complete data for all parties promotes openness and transparency, leading to greater confidence and trust in assessments. People who understand clearly how their assessments were prepared are less likely to file complaints. Therefore, ARB clerks should recommend to assessed persons that they discuss their issue with the assessor, even before filing a complaint.

If the assessed person wishes to do so, they can make a formal request for information showing how the assessor prepared the assessment of their property and/or a summary of assessment on any property in the municipality. The municipality has 15 days to provide this information to the assessed person.

MGA ss. 299 & 300
MRAT ss. 27.4 & 27.5

Note: Sections 5 and 9 of *MRAC* state that an Assessment Review Board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the *MGA*, but was not provided to the complainant. If no request is made, the box at the bottom of section 6 of the form may be left blank. Since it is not mandatory for an assessed person to discuss issues with their assessor before filing a complaint, leaving this section blank has no impact on the complaint's validity.

Section 5 – Reason(s) for Complaint: The Complainant uses this section to state what information on the notice they believe to be wrong, explain why or how it is wrong, provide what they believe is the correct information and how or why they've determined this, as well as identifying the value they believe it should be.

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Section 5 - Reason(s) for Complaint **Note: An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.**

A complainant must:

- indicate what information shown on an assessment notice or tax notice is incorrect,
- explain in what respect that information is incorrect,
- indicate what the correct information is, and
- identify the requested assessed value, if the complaint relates to an assessment. Requested assessed value:

(a) include a statement that the complainant and the respondent have discussed the matters for complaint, specifying the date and outcome of that discussion, including the details of any issues or facts agreed to by the parties, **or**

(b) include a statement, if the complainant and the respondent have not discussed the matters for complaint, specifying why no discussion was held.

Note: If necessary, additional pages or documentation required to complete this section may be submitted with this complaint form.

The items listed in the bullets in section 5 of the form repeat those specified in the *MGA*, which stipulates that a complainant must

s. 460(7) *MGA*

- Indicate what information shown on an assessment notice or tax notice is incorrect,
- Explain in what respect that information is incorrect,
- Indicate what the correct information is, and
- Identify the requested assessed value if the complaint relates to an assessment.

If these spaces are left blank, the clerk may wish to ask the Complainant to consider completing them to avoid questions arising later about the validity of the complaint.

The ARB must make its decision using only the information presented by the parties.

Section 6 – Complaint Filing Fee: There are fees associated with filing LARB or CARB assessment complaints.

s. 481(1),
s. 484.1(q) *MGA*

Section 6 - Complaint Filing Fee

If the municipality has set filing fees payable by persons wishing to make a complaint, the filing fee must accompany the complaint form, or the complaint will be invalid and returned to the person making the complaint.

If the assessment review board makes a decision in favour of the complainant, or if all the issues under complaint are corrected by agreement between the complainant and the assessor and the complaint is withdrawn prior to the hearing, the filing fee will be refunded.

MRAC s. 11(1) addresses filing fees and *MRAC* Schedule 2 provides the maximum that a municipality may apply depending on the Category of Complaint.

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Filing fees must be paid before the complaint deadline. There is no complaint without the fee, and failure to file fees before the complaint deadline will very likely result in an invalid appeal.

s. 2(1) & (2)
MRAC

Filing Fees – Refund

Fees are refunded if the ARB changes an assessment or if the complaint is withdrawn with the assessor’s agreement to reduce the assessment. MRAC s. 11(2) addresses refunds. A good practice is to use a form such as a *Withdrawal to Correct*, which requires signed agreement from both parties.

s. 11(2) MRAC and
s. 305(6)(a) MGA

If the complainant withdraws and there is no agreement, then the municipality has discretion as to whether or not to issue a refund.

Section 7 – Complainant Signature: The complaint form should be signed and dated by the complainant.

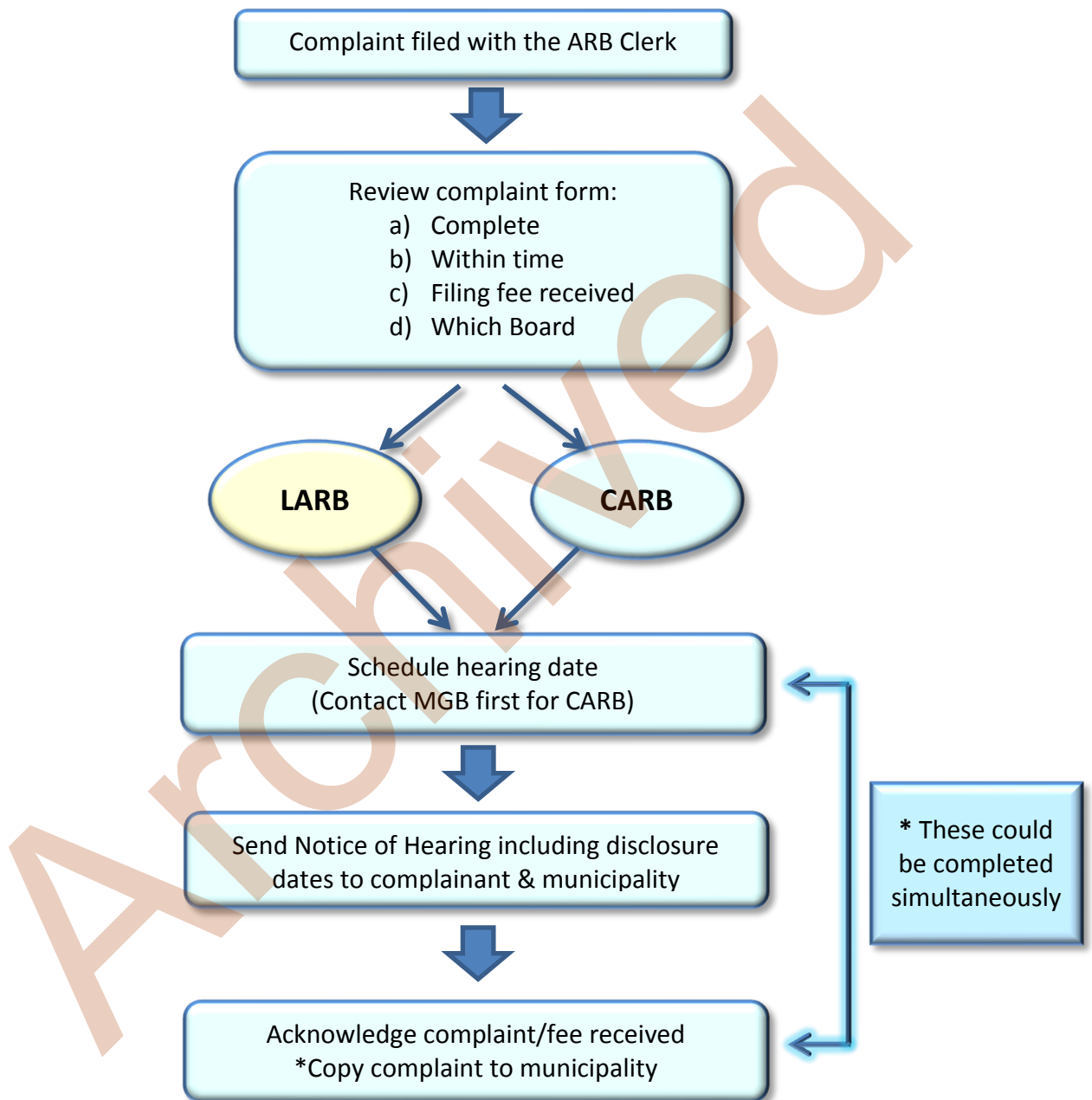
Section 7 - Complainant Signature		
Signature	Printed Name of Signatory Person and Title	Date (yyy-mm-dd)
Important Notice: Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.		

Assessment Review Board Clerk Use Only: Completion of this section by the ARB clerk is not mandatory and will depend on your board’s practice. However, the items listed in this section make a useful checklist. If the answer to any of the questions is “no” the clerk may consider asking the complainant if he or she wishes to provide the missing information. In cases where the appeal is filed late or appears to be a complaint about something an ARB cannot hear (e.g. a complaint about tax rate), the clerk may consider setting a preliminary hearing for a panel to decide the issue.

***** ARB Clerks cannot decide if a complaint is invalid as a result of non-compliance; this must be a decision by an ARB.**

Assessment Review Board Clerk Use Only				
Was the complaint filed on time?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Is the required information included on or with the complaint form?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Was the required filing fee included?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	Date received <input type="text"/>
Was a properly completed authorization form attached?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	
Complaint to be heard by:	<input type="checkbox"/> LARB	<input type="checkbox"/> CARB		

Reviewing the Complaint Form - Next Steps



Acknowledge Receipt of the Complaint

The first steps after reviewing the complaint form is to

- a) Confirm receipt of the complaint and filing fee.
- b) Address any issues such as missing information (where possible), jurisdictional issues, etc.
- c) Provide the municipality, the Minister (when applicable) and any other person or taxpayer other than the complainant who is affected by the complaint with a copy of the complaint within the specified timelines.

Note the following important timelines

Legislation requires that the municipality be provided with a copy of the complaint within **30 days** of the complaint being filed with the ARB.

s. 462 MGA

As discussed further below, the clerk must also schedule a hearing, at minimum **35 days** after the hearing notice is provided for a LARB and **70 days** for a CARB.

MRAC
s. 3 – LARB &
s. 7 – CARB

In the interests of efficiency, clerks may wish to acknowledge receipt of the complaint and the complaint fee and notify the municipality using a single hearing notification letter.

Schedule Disclosure Dates

MRAC s. 4 – LARB
& s. 8 – CARB

Before the hearing, there is a formal process for exchange of information, called disclosure, between the complainant and the respondent. Once the hearing date is determined, the clerk must determine the disclosure exchange dates as set out in *MRAC*. The *MRAC* disclosure dates differ for LARBs and CARBs but are generally arranged so that

- The complainant files its submissions.
- The respondent reviews the complainant's submissions before filing its own.
- The complainant reviews the respondent's submissions before filing a "rebuttal" containing submissions in reply to matters raised for the first time by the respondent.

The *MRAC* timelines and disclosure are very important, because ARBs cannot look at evidence that is not disclosed in accordance with the rules set out in *MRAC*. Further, ARBs must make their decisions using only the information presented in accordance with the procedures set out by legislation. Parties have an obligation to provide complete disclosure, to each other and the ARB, within the timeframes set out in *MRAC*.

ADMINISTRATIVE LAW 1
for ARB Clerks

It is important to note that the clerk, other than scheduling and monitoring disclosure dates and receiving disclosure information from the parties on behalf of the ARB, does not become involved in the disclosure exchange process between the parties.

The purpose of this disclosure is to let each side understand and prepare for the case against them, thereby avoiding unfair surprises or delays. *MRAC* recognizes the disclosure dates it sets out may need to be adjusted in some circumstances. Therefore, it gives ARBs discretion to expand the time for disclosing evidence or other documents; likewise, ARBs may also shorten (abridge) this time with the written consent of the persons entitled to the evidence or other document.

s. 6 *MRAC* – LARB
s. 10 *MRAC* – CARB

Hearing Notification

There are a number of things to keep track of between receiving the complaint and the time of hearing.

- (a) Once the merit hearing dates have been determined, the clerk must notify the parties, within the prescribed time, of the date, place and time of the hearing; along with the disclosure of evidence schedule for each party.
- (b) Following distribution of the hearing notice, the clerk will monitor the disclosure dates and submissions for each party.
- (c) The clerk may follow up with either of the parties that have not made submissions by the due dates.
- (d) The clerk will then receive and process the pre-hearing disclosure of information relevant to the complaint and note if it has been provided within the timelines specified in the regulations. The process then moves to the next stage – the hearing – where the parties can present their information to the panel using *documents, pictures and witnesses*.

LARB & CARB: s.462 *MGA*
LARB: s. 3(c) *MRAC*
CARB: s. 7 (d) *MRAC*
MGB: s. 494 (1) *MGA* &
s. 20(c) *MRAC*

As indicated earlier, it may become necessary for the Board to make rulings about any number of procedural or other preliminary matters before the merit hearing. For example, there may be questions about

- Adjusting the disclosure deadlines set out in *MRAC* or the scheduled hearing date.
- The jurisdiction or authority of the ARB to consider a matter under complaint.
- Whether a complaint was filed in time, or whether it is otherwise valid.
- Whether the parties have made adequate disclosure.

MRAC allows single-member CARBs or LARBs to make decisions about such matters and sets a single disclosure date of **7 days** before the preliminary hearing for both parties.

ss. 30, 33 MRAC- LARB
ss. 36, 39 MRAC- CARB

Postponement/Adjournment of Hearings

Realistically, hearings cannot always be expected to proceed and be completed at the first sitting. From time to time hearings must be “postponed” or “adjourned”. Postponement delays the beginning of the hearing, whereas adjournment refers to an interruption during the hearing. Postponements and adjournments can only be granted in “exceptional circumstances” determined by the ARB.

s. 15 MRAC -
LARB & CARB

The courts have tied the notion of “exceptional circumstances” to procedural fairness. In other words, circumstances where refusing an adjournment or postponement would stop one party from responding to the other party’s case or otherwise preparing for the hearing are likely “exceptional”.

All postponement requests must be submitted in writing with reasons. If the ARB agrees with the request, it must reschedule the date, time and location of the hearing at the time that the adjournment or postponement is granted.

If a panel adjourns after hearing some evidence about the merits of the complaint, the same members must hear the balance of the complaint when the hearing reconvenes.

Note: the ARB is still required to render its decision on the complaint no later than December 31 of the complaint year.

Reaching an Agreement Prior to the Hearing

At any point during the complaint process, the assessor and the complainant may reach an agreement regarding the issues, whereby

- The assessor and the complainant agree to make a joint recommendation to the ARB for its decision, or
- Assessor and complainant agree to Withdraw to Correct (*MGA* s. 305(6)(a)), or
- The complainant may withdraw the complaint.

Agreements – Refunding Fees

If the complainant withdraws a complaint upon agreement with the assessor to correct any matter or issue under complaint, the complaint filing fee must be refunded to the complainant.

If the complainant withdraws the complaint with no change to the matter or issue under complaint, it will be the decision of the municipality on whether the complaint fee is refunded.

LARB & CARB: s. 11(2) *MRAC*
s. 481(2) or s. 481(3)(b) *MGA*

Hearing Preparation

Every board establishes its own procedures, which may include the clerk

- Preparing a hearing agenda that identifies the complainant, respondent and any witnesses.
- Distributing copies of complaint and disclosure submissions to the hearing panel (3 copies for merit hearing; 1 copy for a one-member hearing).
- Meeting with panel members immediately before the hearing to discuss procedures.
- Setting up the hearing room with tables for panel, parties and witnesses.
- Ensuring that a Bible or other sacred text is available should the board procedures include a swearing-in process for witnesses.

The panel may ask the clerk to attend the hearing to ensure the record is complete, take notes, assist with numbering/tracking of submissions and other administrative duties, depending on board procedures.

Note: The clerk does not give evidence in the hearing or take any part in decision making.

Natural Justice and Procedural Fairness

It is clear that many of the legislative provisions referenced so far are designed to ensure fair process. However, the courts have developed the concept of procedural fairness over many years to guide administrative and adjudicative decision making. A basic understanding of this concept should give a deeper appreciation of the complaint system and help interpret relevant legislative provisions.

The principles of fairness and natural justice involve two central ideas.

- (1) The right to be heard
by an
- (2) Unbiased decision maker(s).

Some implications of these principles are as follows:

Notice: Parties must have a right to adequate notice of a hearing, since without notice there is no realistic opportunity to be heard.

Disclosure: Parties must have access to enough information to prepare their case and respond to the case against them if they are to have a meaningful opportunity to be heard.

Communication with the panel: Parties should not discuss their case with members unless the other parties are present (or at least have had a reasonable opportunity to be so); otherwise, the other parties may be deprived of a fair opportunity to respond.

Decision to be made by panel: The decision must be made by the panel. Allowing outsiders to influence the decision deprives the parties of their right to be heard by the decision maker and to respond to the case against them.

Decision to be based only on evidence presented at the hearing: If outside evidence influences a decision, parties do not have a fair opportunity to understand and respond to the case against them.

Decision maker(s) must give reasons: Without reasons, parties will not know if the panel heard and understood their position before making a decision. Also, parties will have no record of why the decision was made, and it will be difficult to exercise any right of appeal.

The MGA and its regulations add clarity to the degree of procedural fairness required for the assessment complaints process. The legislation is binding and takes precedence over the

common-law principles described above. However, it is helpful to keep these principles in mind when interpreting the provisions and when responding to enquiries and requests from parties. Clerks play a vital role in ensuring many of these requirements are fulfilled – particularly as they relate to notice and timelines.

The Adversarial Process

ARBs use an “adversarial” hearing style where the parties present their cases to the board. The ARB acts much like a judge in a trial and lets the parties make their own cases as they see fit. The board does not act as an advocate for any party. Board members may ask questions, but these are generally to clarify points made by the parties rather than to fill in major gaps in the evidence or introduce arguments beyond what the parties have presented.

Overview of a Typical Hearing Process

Some ARBs have published formal rules of procedure. The panel may also give specific instructions about procedures to suit the individual case before them. The format for hearings is generally similar to the following:

1. Call to order and welcome by the Chair
 2. Introductions of the panel, parties and other persons in the room
 - Name, organization and role in the hearing (agent, representative, witness, observer, etc.).
 3. Opening comments by the Chair
 4. Evidence as previously disclosed
 - (a) Complainant’s Evidence
 - (b) Respondent’s Questions
 - (c) Board’s Questions (if any)
 - (d) Respondent’s Evidence
 - (e) Complainant’s Questions
 - (f) Board’s Questions (if any)
 - (g) Complainant’s rebuttal evidence (if any)
 - (h) Questions from Respondent (if any)
 - (i) Board’s Questions (if any)
 5. Argument/Summation
 - (a) Complainant
 - (b) Respondent
 - (c) Last word by Complainant
-

6. Closing Comments by the Chair

Hearing Curve Balls

1. **Costs**

CARBs have authority in MRAC to award costs when there is an abuse of the complaint process by a party. Costs may be dealt with at the end of the merit hearing or in a separate hearing.

s. 468.1 *MGA* &
s. 52(2) &
Schedule 3 *MRAC*

2. **Independent Legal Counsel**

In some cases the ARB may need to hire legal counsel that must be independent from the municipality's counsel.

3. **Postponements/Adjournments**

It may be necessary to reschedule the hearing for exceptional circumstances.

4. **Party No-Shows/Written Submissions**

A hearing will proceed in the absence of a party who has received the proper notice and has chosen not to come.

s. 463 *MGA*
s. 28 *MRAC*

After the Hearing – The Decision Making Process

After a hearing, the panel members will meet privately to make a decision about what they have heard. Most members prefer to hold a decision meeting as soon as possible after the hearing so that the presentations are still fresh in their minds.

Decision

The requirements for an ARB decision include

LARB & CARB
s. 13(1) *MRAC*

- A brief summary of the matters or issues contained on the complaint form,
- The ARB's decision on each matter or issue,
- The reasons for decision, including any dissenting reasons, and
- Any procedural or jurisdictional matters that arose during the hearing and the ARB's decision on each.

Basic Pieces of a Written Decision

The typical pieces of a well-written decision include the following. A panel need not use these labels and may change the order to make the most sense for a particular case. The amount of time the panel has to write the decision will naturally affect how extensive it makes each section.

Background

Explains

- Physical description of the property (which may or may not include location).
- The “matters” under appeal (as noted on the complaint form).
- Any relevant facts that are not in dispute.

The Issue(s)

Lists

- What in particular the parties disagree about.
- Often framed as questions.

Legislation

Reproduces relevant provisions

- Identify any legislation that is relevant to the application.
- Need not be a stand-alone section – can include legislative provisions in the Reasons and/or Background sections.

Party positions

Explains what each party said about the issues identified above

- Often separated into “Complainant’s Position” and “Respondent’s Position”.
- Should not regurgitate all submissions but summarize all the evidence and argument pertaining to each issue.

Findings

Lists panel’s findings about issues in dispute

- Arrange in logical order or structure (chronological, by subject, etc.).
- Only include relevant findings.
- Short and succinct.

Reasons

Explains

- Why the panel made the findings it did – for example, why it preferred one party’s evidence over the other’s.

- Why it interpreted the legislation or regulation in a particular way.
- How the panel applied any legislated tests.

Conclusion

- Succinct statement of decision.

Summary

- Summarizes in a paragraph or two the essence of the case.

Reviewing the Draft Decision

All the panel members should review and approve the decision before sign off. The panel may also request someone else to review the draft for style and flow. If you are asked to review a decision, keep the following points in mind.

- Respect the final decision but look for the way the written document conveys that decision.
- Look at the decision from the parties' perspective – will they (especially the “loser”) understand the decision and reasons for decision?
- Provide feedback on accuracy, clarity, comprehension, logic, flow and structure.
- Flag where the decision does not include pieces required by *MRAC* s. 13.
- Provide suggestions on grammar but respect the final choice may rest with someone else.
- Compare the decision to any style guide adopted by the tribunal to see that the style guide has been followed and if not make suggestions for improvement.
- Point out gaps in logic or flow but leave the final alteration to the writer and final choices to the panel.
- Respect that writing is difficult work, often done in a time crunch and that your writing style and choice of words may not be the same as the writer's.
- The decision belongs to the panel, not the reviewer. Be careful not to insert your own ideas or reasoning into the decision.

Decision-Making Timelines

s. 468(1) MGA
s. 500 MGA

After hearing all presentations and the decision-making process takes place, the board must render its decision with reasons, in writing, no later than **30 days** after the hearing date or before the end of the year in which the complaint has been made, whichever is earlier.

s. 469 MGA

The ARB clerk must, within **7 days** of the decision being rendered, send notice of the decision, including reasons, to the parties notified of the hearing.

Tips for Clerks around the Decision-Making Process

The decision-making process is the responsibility of the ARB members. It is important that the clerk support them, yet not influence (or bias) their decision in any way.

You can be supportive by

- Providing helpful templates for the Board to keep track of their reasoning as they deliberate.
- Providing transcripts, information and notes taken during the hearing.
- Researching legislative references to support the Board's deliberations.
- Providing administrative advice/expertise for formatting, editing or advice to make language clear and concise.
- Asking the Board to thoroughly review any draft decision a clerk has transcribed or edited to ensure the intent, voice, reasons and decision are solely the Board's decision.
- Ensuring the final decision is in the proper format and meets the requirements set out in *MRAC* s.13.
- Making sure the Board is aware of the decision timelines it must meet.

Closing the Complaint

When the decision has been signed off, the clerk will distribute the decision to the parties. The clerk will retain an original signed copy of the decision, the complaint and all submissions from all parties, witness lists, etc., as set out in the record of hearing. For a CARB decision, a copy of the decision is provided to the MGB.

A municipality must retain a record of all decisions of a local Assessment Review Board for at least five years.

s. 13(3) MRAC

Record of Hearing

An Assessment Review Board must make and keep a record of each hearing.

The Record of Hearing must include

- (a) The complaint form,
- (b) All documentary evidence filed in the matter,
- (c) Lists of witnesses who gave evidence at the hearing,
- (d) Transcripts or recordings of the hearing or, in the absence of a transcript or recording, a summary of all testimonial evidence given at the hearing,
- (e) All written arguments presented at the hearing,
- (f) Written lists that are prepared at the end of the hearing that identifies those matters or issues from the complaint form about which evidence was given or argument was made at the hearing, and
- (g) The decision of the ARB, as set out in s. 13 *MRAC*.

LARB & CARB:
s. 14(2) *MRAC*
s.26(2) *MRAC*

Appeal of the ARB Decision

If any party affected by the decision is in disagreement with the decision, they may file an application for leave to appeal to the ABQB. The appeal can only be on a question of law or jurisdiction. The application must be made within **30 days** of the parties being notified of the decision.

In the event of a leave to appeal being granted by the Court of Queen's Bench, the record of hearing must be forwarded to the Court within **30 days**.

s. 470(3) *MGA*

Provincial Member Scheduling (CARBs)

For Regular Hearing (Merit)

The Municipal Government Board (MGB) provides the presiding officer to all Alberta municipalities' Composite Assessment Review Boards.

Once the Assessment Review Board clerk has received a complaint that is to be heard before the Composite Assessment Review Board, he/she is responsible for the following:

- Choosing a (merit) hearing date.
- Contacting the local ARB members to confirm their availability.
- Contacting the MGB to confirm the availability of an MGB Member to sit as a presiding officer on the chosen date(s) and forwarding a copy of the complaint(s) to the MGB.**
- Once the date is confirmed, the notices of hearing may be sent out to the parties.
- When complaints are resolved or withdrawn, contact the MGB immediately so that we may cancel the date on our calendar, notify the assigned board member and cancel any travel arrangements that may have been made. Provide a copy of the withdrawal to the MGB.

For postponements and adjournments of hearings, follow the same process as above.

** There are several dates throughout the year when no MGB members are available due to full MGB workshops or heavy scheduling on certain days.

For Preliminary Hearing

Sometimes it is necessary to schedule a preliminary or jurisdiction hearing before a one-member panel to determine preliminary issues that arise. Some common preliminary issues include: whether a complaint was filed late and cannot be heard; whether disclosure was filed late and must be excluded; whether the board should order additional disclosure; and whether the complaint belongs with a CARB or a LARB. For larger hearings, it is often useful to schedule a preliminary hearing to help the parties sort out logistical problems such as extended disclosure dates and a hearing schedule suitable for both parties and the ARB.

When a preliminary hearing needed, the clerk is responsible for the following:

- Choosing a preliminary hearing date.
- Contacting the MGB to confirm availability.

ADMINISTRATIVE LAW 1 for ARB Clerks

- The notice for the preliminary hearing and the notice for the merit hearing may be sent out at the same time after confirming board member availability for both dates.
- Where the decision at the preliminary hearing is to dismiss the complaint, notify the MGB that the second date is no longer required and can be removed from our calendar.

ARB Clerk

It is the responsibility of the CARB clerk to keep track of hearing dates scheduled and other requirements. The MGB does not administer the complaints so may not be aware of the number of ARB hearings you may have on a date, the withdrawal of complaints, or if a previous decision affects a later scheduled hearing in full or in part.

The MGB also has to be aware of the need for certain members to continue an adjourned hearing. While the members may know that they are continuing a hearing on a future date, the CARB clerk must confirm this with our administration. Conflicting duties or hearings may affect the availability of a member so we have to know that they are committed to certain places and hearings.

Contact Assigned Member

The MGB will provide an assigned member report 2 months in advance of scheduled hearings and includes assigned member(s) contact information. This information is provided to allow direct contact between the clerk and assigned provincial CARB member.

CARB Decisions

After the hearing, the MGB will require a copy of the decision be sent to our office so that it may be posted on the MGB website.

http://www.municipalaffairs.alberta.ca/abc_MGB_board_order_search.cfm

Contact the MGB

To forward copies of complaints, request a board member, or to notify us of withdrawals/cancellations please e-mail mgbmail@gov.ab.ca. This e-mail address has the capacity to receive unlimited attachments and is monitored closely by MGB staff.

For general inquiries, assistance with complaint questions, clerk process/procedures, or to discuss the board member requirements please contact: Luisa Adams, CARB Administrator, phone 780-422-8317 or e-mail at luisa.adams@gov.ab.ca.

MGB Resources

Although Municipalities are responsible for administering their assessment complaints, the MGB is often able to draw on its experience with appeals across the Province to provide information or insight that CARB clerks may find helpful in scheduling their complaints. The Board also employs staff with legal, assessment and administrative expertise who can provide information on appropriate circumstances.

Ken Lesniak, Chairman, 780-427-4864

Mike d'Alquen – Legal Counsel to MGB, 780-427-4864

Dennis Woolsey – Director, Projects & Administration, 780-427-4864

Luisa Adams – CARB Administrator, 780-422-8317

Susan Lukian – Program Support Manager, 780-427-4864

LARB Member Scheduling

For Regular (Merit) Hearing

Once the Assessment Review Board clerk has received a complaint that is to be heard before the Local Assessment Review Board, he/she is responsible

- For choosing a (merit) hearing date.
- For contacting the LARB members to confirm the availability to sit on the chosen date(s).
- Once the date is confirmed, the notices of hearing may be sent out.
- If complaints are resolved or withdrawn, contact the LARB members immediately to inform them of the cancellation.
- Depending on your board procedures provide copies of party submissions in advance of hearing.

For Preliminary Hearing

Sometimes it is necessary to schedule a preliminary or jurisdiction hearing before a one-member hearing panel to determine if the complaint is valid or to determine other preliminary issues that arise. The clerk is responsible for

- Choosing a preliminary hearing date.
- Contacting LARB member(s) to confirm availability.
- Once confirmed, the notice for the preliminary hearing and the notice for the merit hearing may be sent out at the same time after confirming board member availability for both dates.
- Where the decision at the preliminary hearing is to dismiss the complaint, the second date is no longer required and can be removed from the LARB calendar.