Alberta Government

Administrative Law II
for
Assessment Review Board Members

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Municipal Government Board (MGB)

Municipal Government Board
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Contents

Caution on the Use of the Materials

These materials have been prepared for educational purposes and do not constitute legal advice.

Learning Objectives

Through interactive case studies and a hands-on review of forms and procedures, you will learn about:

1. What happens during an Assessment Review Board (ARB) hearing process,
2. Legislative provisions that empower ARBs,
3. Principles of fairness and natural justice, and
4. Principles of decision writing.

After this course, participants will have:

- Examined the ARB complaint process from filing, through the hearing to a written decision,
- Resolved procedural issues that arise during a complaint,
- Participated in a fair hearing that complies with regulated procedures,
- Made a decision using a decision-making model, and
- Used a decision-writing template.

Course Description

Administrative Law II for members of Assessment Review Boards introduces participants to ARB hearing procedures and the legal principles that govern them.

Principles of Assessment I (for ARB members) and *Principles of Assessment II* (for Municipal Government Board (MGB) members) are companion courses which focus on the substantive principles of property assessment in Alberta.

Course Content

Course Introduction

The Course Introduction describes two major principles in administrative law and explains why they matter to Assessment Review Board members. It also describes the ARB's supervisory role over the assessment and assessment complaints process and the importance of independent adjudication.

Module 1 – Assessment Review Board Hearings

Module 1 describes how ARB hearings flow and explains the procedures for entering evidence for the record. It also introduces key procedural provisions in the *Municipal Government Act* (*MGA*) and the *Matters Relating to Assessment Complaints Regulation* (*MRAC*) and describes some common procedural wrinkles encountered at ARB hearings. (Learning Objective 1)

Module 2 – ARB's Enabling Legislation

Module 2 introduces basic concepts about legislation and legislative interpretation. It also looks in depth at the legislative provisions that give the ARB power to hold hearings and make decisions. These provisions are mainly in *MGA* Part 11 and the *MRAC* regulation, but a few more occur in *MGA* Parts 9 and 10.

Module 3 – Fairness and Natural Justice

Module 3 introduces concepts related to procedural fairness, and explains how they affect the ARB hearing process. Module 3 also covers procedures to follow when faced with allegations, or reasonable apprehension, of bias.

Module 4 – Decision Making and Writing

Module 4 describes the decision-making process and the components of a written decision. It also describes some common mistakes in decision writing, and reinforces learning through a case study.

Evaluation

Full class participation in the course and a passing grade on the examination are required.

Terminology

Words and acronyms used throughout this document have the following meanings:

ARB – Assessment Review Board

ABQB – Alberta Court of Queen's Bench

CARB – Composite Assessment Review Board

Clerk – The clerk of the Assessment Review Board, appointed pursuant to section 455 of the *MGA*

COPTER – *Community Organization Property Tax Exemption Regulation*, Alberta Regulation 281/1998

IA – *Interpretation Act*, Revised Statutes of Alberta 2000, chapter I-8

LARB – Local Assessment Review Board

MGA or ***Act*** – *Municipal Government Act*, Revised Statutes of Alberta 2000, chapter M-26

MGB – Municipal Government Board

MRAC – *Matters Relating to Assessment Complaints Regulation*, Alberta Regulation 310/2009

MRAT – *Matters Relating to Assessment and Taxation Regulation*, Alberta Regulation 220/2004

Parties – Complainant, Respondent, and other persons with a right to be notified of and participate in a hearing

Respondent – Municipality responding to a complaint, as represented by its Assessor

Course Introduction

Why should ARB Members Learn about Administrative Law?

ARB members must make decisions about property assessments that have important financial consequences for Alberta taxpayers and municipalities. Responsible use of this power requires an understanding of the legal rules that apply specifically to assessment appeals, as well as those that apply to appointed decision makers generally. This course explains the legislation that sets up the assessment complaint process and the specific complaint procedures ARBs must apply; in addition, it introduces participants to the basic principles of administrative law – i.e., the branch of law that governs how government officials and appointed decision makers (including ARB members) must exercise their powers and responsibilities.

Two main legal principles recur throughout this course; fortunately, common sense underlies both. First, boards and other decision-making bodies created through legislation only have the power to do what the legislation intends them to do. Second, legislation generally intends the powers it gives to be exercised fairly. In particular, decision makers must be unbiased and procedurally fair; that is, they must give affected parties a meaningful opportunity to be heard and to respond to the case against them.

The Bigger Picture

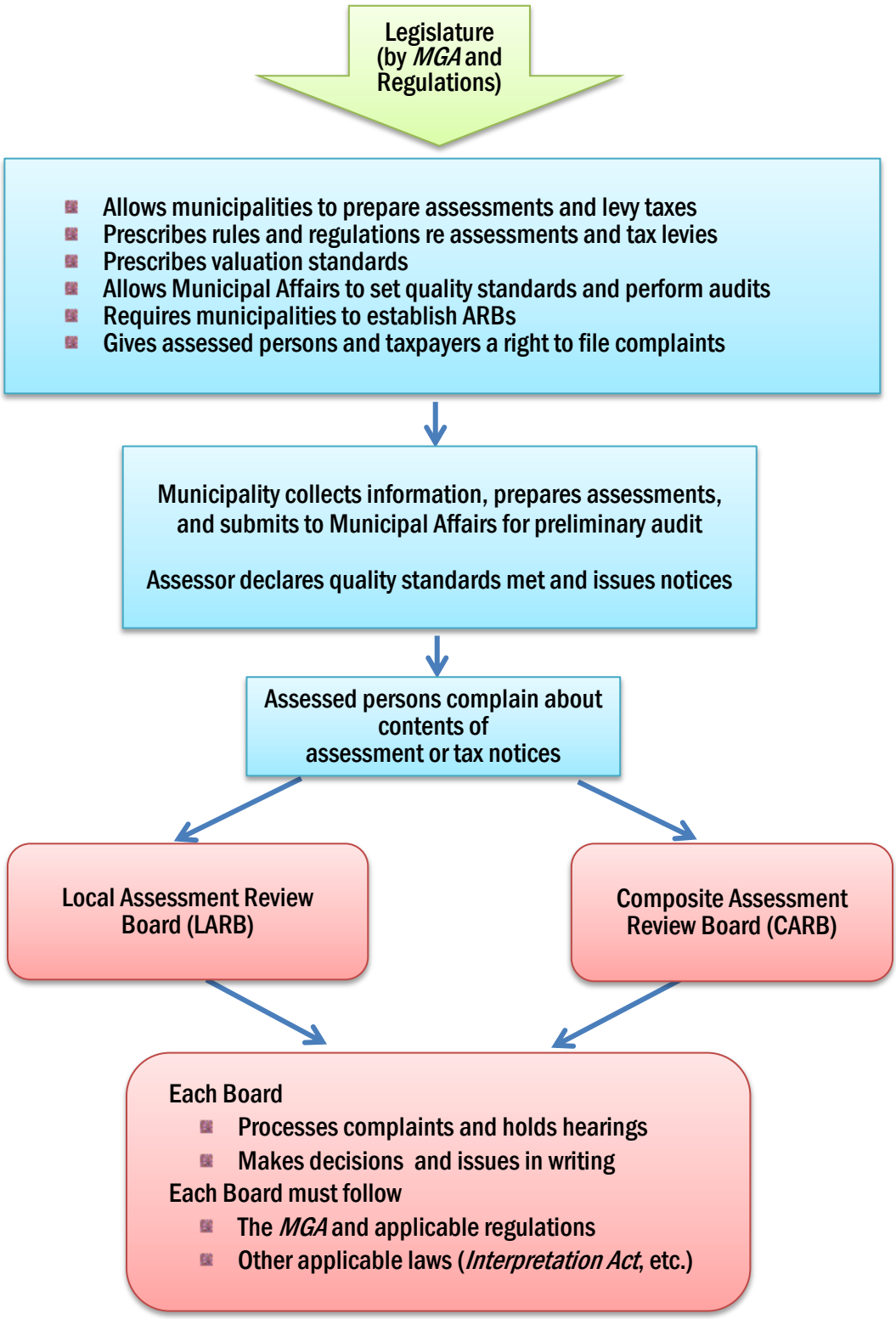
The assessment complaint process is part of a much larger assessment and taxation system established by the Provincial Legislature. The overall system is designed to let municipalities levy property taxes fairly and efficiently.

Under this system, municipal assessments must meet regulated standards and pass audits conducted by the Alberta Municipal Affairs. The standards ensure that on an overall statistical basis, a group or class of assessments will be close to market value most of the time[1]. However, given the vast number of properties to assess and the statistical methods used, it is inevitable that some individual assessments may not meet the required standard.

An assessed person who disagrees with an individual assessment can file a complaint with the ARB. The ARB's role is to examine evidence about individual assessments to see if they are fair and equitable and meet the required standard.

[1] The median assessment to sales price ratio (ASR) must be 0.95 to 1.05, with a maximum co-efficient of dispersion of 15.0 for residential properties with 3 or fewer units or 20.0 for other properties. It is important to note that not every assessment or sale price will fall within the standard – just the stratum as a whole.

ARBs and the Bigger Picture



Independence

ARB members must act independently when hearing complaints about municipal assessments. Their role when adjudicating assessment complaints is similar in important ways to a judge's role adjudicating civil disputes. In both cases, parties are entitled to a high standard of procedural fairness, independent decision making, and ethical conduct. In particular, ARB members have an obligation to:

- Administer the complaint process fairly.
- Hear and decide cases based on the evidence before them.
- Interpret and apply the assessment complaints legislation to the evidence before them.
- Understand and apply ARB procedure rules, where applicable.
- Strive for consistency in decision making.
- Treat parties, ARB staff and other members with respect.

Many boards have their own codes of conduct. The Alberta Government has also established a sample generic code of conduct for use by public agencies, which is reproduced in the Resource Materials booklet designed to accompany this Manual

MODULE 1 – Assessment Review Board Hearings

Introduction

This module looks in detail at a typical ARB hearing process. You will:

- Learn how to prepare for a hearing.
- Understand the role of ARB members in an adversarial process.
- Identify, implement and supervise the various stages of a hearing, including: board member introductions, preliminary matters, calling evidence, closing arguments, and closing comments from the panel.
- Understand procedures to set up and open a hearing.
- Understand procedures to deal with common preliminary objections and apply relevant legislative provisions in the *MGA* and *MRAC.*
- Understand the limitations around adjournments and postponements.
- Distinguish evidence from argument, and appreciate the concepts of relevance and weight.
- Administer procedures to admit evidence to the record, including questioning expert and factual witnesses.

Hearing Process

All ARBs strive for a hearing process that is understandable, easy to use, and procedurally fair. In addition, ARBs must follow rules set out in the *MGA* and its Regulations. These features mean ARB hearings across the Province are largely consistent. However, some of the larger ARBs have published their own specialized procedure rules to help them deal with complaints fairly and efficiently. If your ARB has its own procedure rules, be sure to become familiar with them before hearing any complaints.

Preparing for a Hearing

Parties must file various documents well before the hearing starts. This material includes an ARB Complaint Form and any documents to be relied on as evidence. If time permits, reviewing this material before the hearing will help you form a mental outline of what the parties think is important to the complaint. This understanding will help you listen more effectively and appreciate what is said during the hearing. Some ARB administrators provide members with documents as soon as they are filed; more often, you will

MRAC ss. 4 & 8

have only a half hour or even a few minutes before the hearing begins.

To use this time effectively, start by looking at the complaint form to identify the parties and property involved as well as the "matters" under complaint. The "matters" are the items specified in section 460(5) of the *MGA* and on the complaint form. Most often, the "matter" under complaint is "an assessment", which is the third item on the complaint form list. The form should also show brief reasons for the complaint.

MGA s. 460(5)

If you have more time, review any "briefs" or summaries of argument included with the submissions. They will help you identify the issues and arguments that the parties wish to raise. "Issues" are not the same as "matters" referred to above; rather, they are the deeper points in question between the parties that represent their fundamental disagreement. They may be questions about how legislation should be interpreted or applied, purely factual questions, or a combination of both.

Finally, skim through the evidentiary documents provided. These documents may include appraisals, information about comparable properties, industry reports and so on. Familiarity with this material will help you follow the flow of evidence efficiently during the hearing.

Familiarity with the filed material will instil confidence that you understand the parties' submissions. However, beware of pre-judgment; it is important to keep an open mind both before and during the hearing and to let the parties use their best efforts to persuade you.

Overview of ARB Hearing – Basic Process

The hearing process should let the parties make their case and respond to the case against them as efficiently as possible. Most hearings use the following basic format.

1. **Introduction:** The Panel and parties introduce themselves and the panel explains the process to be followed. The Chair asks if there are any objections to the panel members or preliminary issues. The panel may also mark documents for the record at this stage. (See the "Detailed Process" below for finer points on preliminaries and record keeping.)

2. **Complainant's Evidence:** The Complainant presents evidence, and the Respondent has an opportunity to ask questions. The Panel may also ask questions to clarify the evidence.

3. **Respondent's Evidence:** The Respondent presents evidence, and the Complainant has an opportunity to ask questions. The Panel may also ask questions to clarify the

evidence.

4. **Complainant's Rebuttal (if necessary):** The Complainant responds to new areas of evidence raised by the Respondent in stage (3). Note: Rebuttal is not an opportunity to introduce evidence that could have been entered as part of the Complainant's case in stage (2).

5. **Summaries and Closing Arguments:** Each party summarizes the evidence given and explains why it supports their case. Final word goes to the Complainant.

6. **Close of hearing:** The panel closes the hearing.

As panel members, you control the process and keep the parties on track. Occasionally, you may need to make adjustments to suit particular parties or circumstances. For example, less sophisticated parties tend to switch back and forth between evidence and argument without distinguishing between them. The regulations do not bind you to any particular format, so you can accept such variations if they do not affect the fairness of the hearing.

Overview of ARB Hearing – Detailed Process

Most hearings take less than an hour or two and involve just two participants: a taxpayer and a representative of the municipal assessment department. However, sometimes there is enough at stake for the parties to hire legal counsel and call multiple witnesses. While these hearings take longer, the same basic process applies with a few modifications to accommodate preliminary issues, objections and different types of witnesses. An expanded description of the process is outlined below.

1. Call to order and welcome by the Chair or "Presiding Officer".

2. Introductions of the panel, parties and other people in the room.
   a) Names and roles of the panel members (presiding officer and side members).
   b) Name and role of the clerk, if present.
   c) Name, organization and role in the hearing of those representing the parties (agent, representative, witness).
   d) Clarify who else is present as an observer.

3. Housekeeping comments by the Presiding Officer.

   a) Asks if there are any objections to the panel's authority. If any panel member is aware of something that might raise a reasonable apprehension of bias.

   b) Explains how the hearing will proceed – what happens when, who speaks in what order, when the panel will ask questions, arrangements for recording of hearing, breaks, how the parties can get assistance during the hearing, when panel will give decision.

   c) Asks for clarity about issue(s) under appeal – sometimes the parties have already resolved some of the matters or issues that appear in the filed material. It saves time to find this out right at the start.

4. Presiding Officer asks if there are preliminary or procedural issues – e.g., allegations of bias; disclosure filed late; complaint filed late; adjournment request etc.

   a) Party raising preliminary issue makes submissions.

   b) Other parties have an opportunity to respond.

   c) First party has final word to rebut anything new.

   d) Panel rules on preliminary matter – should be a joint panel decision[2], so will likely need a short adjournment to discuss. Occasionally, panel may reserve ruling for later if more time needed for decision, and the hearing can proceed in meantime.

5. Opening statements – brief "road map" of where party intends to take the panel. (Some panels skip this step and ask the parties to save their comments for closing statements.)

   a) Complainant
   b) Respondent.

6. Entering documents into the record.

   a) Review the documents filed before the hearing; clarify with the parties how they will be numbered and entered into the hearing record. Some panels number and enter the documents as they are introduced by the parties during the hearing. Other panels number all the documents with the parties at the beginning of the hearing. This procedure saves time; however, remember that objections to some of the evidence may still be raised later on.

[2] Except for decisions about bias where the member challenged must make the final decision – see Module 3.

7. Witnesses: Each party's lawyer or representative calls his or her witnesses.

a) Complainant's lawyer introduces witnesses. For each witness

(i) He or she may be sworn (or affirmed) by a panel member before giving testimony.

(ii) If the witness is an "expert" who will give opinion evidence, the Complainant's lawyer will question them first on their curriculum vitae (cv) and other qualifications; next, the Respondent's lawyer will cross-examine on qualifications, and the panel will rule on the witness's ability to give opinion evidence.

(iii) Direct examination: Complainant (or his/her representative) asks questions of witness. Questions are neutral - not "leading".

(iv) Witness may have a copy of documents to refer to if asked questions about them.

(v) Witnesses should speak clearly and slowly enough for the panel to take notes and to help the recording if required.

(vi) Respondent's representative asks questions of witness (cross-examination). Questions need not be neutral, but should be respectful.

(vii) Complainant may ask more questions – but only to clarify anything new brought up on cross-examination.

(viii) Panel asks question of witness to clarify evidence (use neutral language and tone).

(ix) If necessary, parties may ask further questions to clarify evidence arising from panel's questions.

b) Respondent's lawyer introduces witnesses.

(i) Same procedure used as above, except that Respondent asks questions first.

c) Complainant's lawyer introduces witnesses to address evidence submitted in rebuttal.

Note: Some panels require parties to ask all questions through the Presiding Officer rather than directly to the witness. This technique helps keep control over questioning.

8. Argument and Summary.
    a) Complainant presents argument to explain how the evidence presented supports their case.
    b) Respondent does the same.
    c) Complainant has last word to address anything new from the Respondent.
9. Closing Comments by the Presiding Office.
    a) Thanks everyone for participating.
    b) Advises that the decision will be made as soon as possible and sent out via clerk.
    c) Explains who to contact after the hearing if necessary – clerk, not panel.
    d) Closes the hearing.

The Adversarial Process

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

Getting Started

There are a few things you can do before starting a hearing to make sure it goes smoothly.

- If you are the Presiding Officer, write out notes or a script to make sure you cover everything you want to in your opening and closing comments.
- If your practice is to swear in or affirm witnesses, have a pre-printed card handy with the wording of the oath or affirmation.
- Check that the hearing room is set up so all parties can see and hear the panel and one another clearly.
- If witnesses are anticipated, make sure there is a separate witness table and chair in clear view and hearing of the panel and all parties.
- Have the parties wait outside the hearing room until you are ready to start (or ask the clerk to have them wait).
- If you interact with the parties before the hearing begins, be polite but adopt a neutral tone. Do not be overly friendly to one side over the other.

- Check with the board administration before the hearing to see if they know of any preliminary or logistical issues to be raised.
- Make sure you have the right spelling for names that will appear in the written decision.
- Set aside one copy of each document filed by the parties for the official record. Do not write on these copies, except to mark them as exhibits. The clerk will need a clean copy of this material after the hearing. In some municipalities, the clerk will ensure a clean copy is set aside. However, in others, this task may be left to the panel.
- Before the parties get started with their cases, ask them to focus the issues for you.
  - ✓ What issues are still "live" – have the parties resolved any of the issues raised on the complaint form?
  - ✓ If some of the issues have been resolved, are there some parts of the evidence packages that are no longer significant?

Note: Scripts, cards and checklists are just tools – don't let them restrict your good judgment!

Room Set-up and Role of the "Presiding Officer" or "Chair"

ARB panels usually have three members. They sit together at a head-table, with the Presiding Officer – also called the "Chair" – seated in the middle and flanked by two "side panel" members. A LARB can choose any of its members as Chair; in contrast, the *MGA* requires the single provincial appointee (MGB member) on a CARB to act as its Chair.

The Chair acts as the master of ceremonies: He or she makes the introductory and closing comments, controls the order and timing of the parties' presentations, and ensures all present act professionally and respectfully. The Chair also delivers any procedural rulings after listening to the parties' submissions and consulting the two side panel members.

The parties sit at tables facing the panel. The clerk – if present – usually sits at a table toward one side so that he or she has a good view of the proceedings but does not get mistaken for a panel-member. If witnesses are involved, it helps to have a separate witness table placed so both the parties and the panel can see and hear easily.

ARB hearings are open to the public, so others may also be present. Members of the public sit in chairs or at tables behind the parties so the parties can still see and hear the panel and witnesses clearly.

Occasionally, the standard seating arrangement is not possible. For example, some ARBs hold their hearings in Council Chambers, where the furniture is fixed. In such cases, panels should

make what arrangements they can to ensure the parties have equal opportunity to make their cases and hear the cases made against them.

Note Taking

You should take notes during the hearing to help with decision making later. Some panels assign one or both side panel members particular responsibility for note taking, leaving the Presiding Officer free to conduct the flow of the hearing. You will develop your own style of note taking with practice. However, a few things to keep track of include:

- Location and dates of the hearing.
- Agenda Number/property roll numbers.
- Names of panel members.
- Names and roles of those attending the hearing (complainant, witness, counsel, etc.).
- Commitments (e.g. to provide further documentation) by any party to the panel and any deadlines to fulfil them.
- If the hearing adjourns, the point the hearing reached, the reason for the adjournment, and the time set for the hearing to reconvene.
- Objections or applications made during the hearing, together with a summary of the panel's ruling and any reasons given.
- Key issues and legal tests.
- Key evidence - with witness names, exhibit numbers or other identifiers so you can locate the evidence afterwards in the decision meeting.
- Questions you may have for each witness once parties have concluded their questioning.

Personal notes you make for a hearing do not become part of the official record and need not be disclosed under the *Freedom of Information and Protection of Privacy Act*. There is no obligation to share them with the parties.

You can make personal notes on your copies of exhibits. However, be sure the clerk has at least **one clean copy** for the ARB record to be filed in court if the decision is appealed – and always refrain from writing offensive or inappropriate remarks.

Dealing with "Preliminary" and Procedural Issues and Objections

Procedural objections and challenges to an ARB's jurisdiction are best raised before the hearing starts, but can happen any time. Such challenges often require the panel to examine applicable

legislative provisions - mainly in the *MRAC* regulation and Part 9 of the *MGA*. You can take a break to consider an objection in private or seek independent legal advice if necessary.

MRAC ss. 17

Some common procedural issues and the relevant legislative provisions are shown below. If in doubt about how to interpret these provisions, remember most have already been interpreted by the courts or previous ARB panels (see the list of cases in the reference materials.) Also remember to check if your ARB has established special Procedure Rules that may apply.

Issue	Some Relevant Provisions
Insufficient or inadequate notice of the hearing and instructions for disclosure	*MGA* s. 462 *MRAC* ss. 3,6,7,10
Complaint filed late	*MGA* ss. 309(1)(c), 460(2) *MRAC* s. 2
Deficiencies with complaint form: missing required content; no fee included; or not in the regulated form	*MGA* s. 460(2); 460(7) *MRAC* s. 2 *MRAC* Schedule 1
Deficiencies with complaint form: Issue is not listed	*MRAC* ss. 5(1); 9(1) (ARB practice is to hear issues if raised implicitly or explicitly in appeal form)
Compliance with a procedural order from a preliminary hearing	*MRAC* ss. 30, 36
Alleged bias	Reasonable bystander test Get comments from both sides before ruling. Panel may confer but final decision belongs to member challenged. See also s. 170; Check Code of Conduct
The matter before the ARB is beyond the powers delegated to it in the *MGA*	*MGA ss.* 460, 460.1, 467
Disclosure not made within the timelines specified	*MRAC* ss. 4–6 and 8–10 (Remember there is a difference between evidence and case law)

Disclosure made in rebuttal when it should have been introduced earlier	*MRAC* ss. 4, 5(2) and 8, 9(2)
Adequacy of service for disclosure material → By email → City Website	→ *MGA* s. 608 (email sufficient) → ARB practice has been not to accept publication of material on website as sufficient disclosure for purposes of *MRAC*
Information improperly withheld from complainant	*MGA* s. 465 *MGA* ss. 299, 300
Information improperly withheld from respondent	*MGA* s. 465 *MGA* ss. 294,295, 296
Someone needs a postponement or adjournment	*MRAC* s. 15 *MGA* s. 468
An "agent authorization" form is required	*MRAC* s. 51 *MRAC* Schedule 4
Evidence contains confidential information	*MGA* s. 301 – 301.1 Possible measures: sealing order, undertaking, summary of evidence

Dealing with procedural and jurisdictional objections or questions "up front" helps hearings proceed smoothly. Sometimes, the clerk will set a separate "preliminary" hearing days or even weeks before the merit hearing to straighten out preliminary questions. Preliminary hearings have their own accelerated timeline for disclosure and may be heard by a single member.

MRAC ss. 30, 33, 39

Whether heard separately or together with the merits, procedural or jurisdictional questions and objections follow the same basic format as a simple merit hearing: the party making the application goes first, followed by the other party, with a brief "rebuttal" from the applicant to address anything new.

It helps to keep the following points in mind when considering procedural issues:

- All parties need a chance to comment on the question. If one of the parties is caught off-guard, they may need an adjournment or postponement to let them prepare a

response.

- It is usually most efficient to rule on preliminary matters before going ahead. For example, if the ARB's authority to hear a given complaint is questioned, a ruling that it lacks authority will make it unnecessary to proceed further.
- A panel can obtain independent legal advice if necessary.
- Where preliminary issues are raised immediately before or during the merit hearing, panels usually take a brief adjournment to consider the submissions before making a verbal ruling with brief reasons. The ruling and reasons also appear later in the written decision that follows the hearing.
- In rare cases, it may be most efficient to defer a ruling until later and simply proceed with the merits: for example, the panel may need time to seek legal advice before making a ruling, but witnesses will be unavailable to come back later. In such cases, the panel should tell the parties clearly that it has opted to defer its ruling before proceeding further.

Adjournments and Postponements

The legislation sets restrictions on postponements and adjournments. Most importantly, an ARB can only order them in "exceptional circumstances".

"Postponement" usually refers to rescheduling a hearing that has not yet started, while "adjournment" refers to pausing a hearing already in progress

MRAC s. 15

The ABQB has interpreted the "exceptional circumstances" test to mean circumstances that would otherwise render the proceedings unfair. Therefore, such requests often require the panel to decide whether an adjournment is needed to give a party a fair chance to prepare their case or avoid unfair surprise.

MRAC also says requests to delay hearings must be in writing, and requires ARB panels to set new hearing dates immediately when they grant adjournments or postponements. For practical reasons, the *MRAC* requirements for written requests and "exceptional circumstances" are seldom applied to brief adjournments where the panel reconvenes the same day.

As with other procedural questions, the panel should always hear from all participants before deciding whether to grant a postponement or adjournment. When considering such requests, ARBs typically look at the following factors:

- Reason(s) for the postponement request.
- Whether declining the request will affect procedural fairness (as discussed above).
- Legislated deadlines to hear and decide cases in section 468 of the *MGA*.
- The complexity of the matter at hand.
- Financial consequences to either party from the delay.
- The amount of time the parties have already had to prepare their cases.
- The length of additional time requested.
- The efforts of the parties to be present at the hearing.
- Whether or not there have been previous postponements or adjournments.

MGA s. 468

Evidence

What Evidence Is and Is Not

Evidence includes anything that helps to prove or disprove facts - for example, oral testimony of witnesses, written reports, paper records, computer records, demonstrations, pictures, objects, maps, videos, audiotapes, letters, notes, diaries, and so on.

Evidence is distinct from argument. Parties use argument to persuade decision makers to take a certain view of the evidence rather than to prove facts. Previous board and court decisions are also not evidence. Like argument, previous decisions do not prove facts; rather, they illustrate legal principles or show how another panel dealt with similar circumstances proved in a previous hearing.

Admitting Evidence

Disclosure filed and exchanged before the hearing includes things the parties propose to use as evidence. At the hearing, the panel may refuse to admit some of this proposed evidence, in which case it cannot be used to make the decision. Alternatively, a party may decide not to submit things it disclosed as proposed evidence into the record after all.

Sometimes, the parties introduce evidence but do not speak to it at the hearing. This does not disqualify it as evidence, and the panel can still use it to make a decision. However, be cautious if you think relying on such evidence may come as a surprise to either party. In such cases, consider pointing out the evidence and asking the parties for their comments.

ARBs are not bound by the strict rules courts observe when deciding whether to admit evidence. Therefore, most panels admit any evidence that seems potentially relevant to the issues before them.

MGA s. 464

Even though the strict rules of evidence do not apply, there are some important restrictions in the *MGA* and *MRAC* that affect what evidence an ARB can look at. In particular, a board cannot hear any evidence:

- With respect to a matter that has not been identified in Section 4 of the complaint form.
- That has not been disclosed in accordance with the timetable set out in *MRAC.*

- That was requested but not disclosed under sections 294, 295, 299, or 300.

MRAC ss. 5 and 9

Marking Documents for the Record

Panels usually mark documents entered into the record for ease of reference. A common marking scheme is C1, C2, C3 … and R1, R2, R3 … for the complainant's and respondent's documents respectively.

The traditional method is to mark documents one by one as they are presented during the hearing for admission to the record. However, some panels find it convenient to "pre-mark" all the filed documents at the beginning of the hearing. In such cases, parties can still ask the panel to exclude marked documents from the record later in the hearing.

Board orders and court decisions submitted as precedents are not evidence and need not be marked, (though some panels prefer to mark them anyway). The clerk generally keeps the official list of exhibits/evidence and the names of all witnesses for later reference.

Carrying Forward Evidence

Parties sometimes agree to have certain evidence from one case "carried forward" to apply in a later case presided over by the same panel about similar properties and issues. This useful practice avoids needless repetition of evidence and saves time for both parties and the ARB; however, it also raises some logistical difficulties. If you are involved in this kind of hearing, consider:

- Whether evidence was properly disclosed ahead of time in relation to each file.
- Adjourning rather than closing earlier hearings until the last hearing is over so that the 30-day time limit to issue the related decisions falls on the same day.
- Asking the parties to clarify at the start of each hearing which part of the evidence "carried forward" is relevant to the issues for that particular hearing (including answers to previous lines of questioning).
- Adapting your exhibit numbering system to identify the hearing for which the exhibits were entered.
- Explaining in the "Background" section of each decision how the parties agreed to carry forward evidence.

Witnesses

Each party calls witnesses in the order they think best helps to build their case.

Sworn Testimony

Panels have the option of "swearing in" witnesses by oath or affirmation, but most ARBs only do so if requested by the parties. The increased formality of sworn testimony (and the potential for perjury) may make some witnesses more careful about the evidence they give. On the other hand, it may also make participants uncomfortable and self-conscious – especially those who are unfamiliar with the process.

> The oath is administered by asking the witness to raise his or her right hand (or place it on a sacred text) and assent to the following question: *Do you swear that the evidence you give about the matters before this Board shall be the truth, the whole truth and nothing but the truth. So help you God*?
>
> For an affirmation, there is no sacred text and the question becomes: *Do you affirm that the evidence you give about the matters before this Board shall be the truth, the whole truth and nothing but the truth*?

Translators

Witnesses who do not understand English need someone to translate for them. In such cases, the panel must be satisfied that the translator is competent. If the witness testifies under oath,

> A typical interpreter's affirmation [oath] is: *Do you swear that you will truthfully and accurately interpret from the English language to the* [__] *language and from the* [__] *language to the English language, the oath to the Complainant and all questions put to him/her and the answers thereto, to the best of your skill and ability.* [*So help you God.*]?

the translator is usually sworn in first.

Factual vs. Expert Witnesses

The courts distinguish between factual and expert witnesses. Most witnesses are factual. They tell the panel about what they know or have seen or heard or of actions or events they have participated in. Such witnesses do not give opinions or speak about things beyond their personal knowledge or involvement.

In contrast, expert witnesses provide the panel with an additional level of expertise on a subject matter in the hearing. These witnesses give expert opinions, which the panel can assess and

adopt as its own.

The courts have special rules about admitting opinion evidence from experts. These rules do not apply to ARBs. However, you should still find out about the qualifications and experience of witnesses called to give opinion evidence. Without relevant qualifications, such evidence – even if admitted – should carry little or no weight.

Panels usually treat the question of witness qualifications as a preliminary question before hearing the evidence. The following procedure is commonly used:

- Party calling the witness takes them through their Curriculum Vitae or resume (filed ahead of time in accordance with *MRAC*).
- Other parties cross-examine on the CV.
- Panel hears any arguments from the parties about whether the witness' qualifications justify allowing him or her to proceed.
- Panel rules on whether to hear the witness. Most panels allow a witness to proceed if his or her testimony seems potentially relevant; however, they warn that the testimony will be given less weight to the extent they stray from their area of demonstrated expertise.

Questioning Witnesses - Panel as Referee

In an "adversarial" process, the parties are responsible for bringing the evidence. Therefore, the panel's role during questioning is mainly to listen so that the parties can make their cases as they see fit.

From time to time, the Chair may have to step in to ensure questioning from the parties is fair, orderly, and respectful. Common examples include:

- Repetitive questions: If the witness has already answered a question, consider politely asking the questioner to move on.
- Aggressive questions: If questioner is aggressive or disrespectful, consider cautioning them firmly but politely. It often helps to call a brief adjournment to let the participants calm down.
- Irrelevant questions: If a lengthy line of questioning seems irrelevant, consider asking politely for some clarification about the purpose of the questions.

The panel (through the Chair) may also have to rule on objections about improper questioning. Traditionally, courts discourage "leading" questions in direct examination: i.e., questions that already suggest the answer. The rationale for this rule is that witnesses are supposed to *give*

evidence – not have it put into their mouths. The rule is relaxed in cross-examination, where the purpose is to test evidence given previously, and to give witnesses an opportunity to comment on competing opinions or theories. Although the rules of evidence do not apply to ARBs, it is useful to keep these principles in mind when responding to objections – especially where parties are represented by counsel. A few common objections to questions are summarized in the table below.

Objections	Considerations
Witness has already answered the question	Politely move the questioner on to new questions
Question is irrelevant	If relevance not apparent, ask politely for clarification about the purpose of the questions
Agent or counsel is giving evidence instead of witness	Remind parties about the proper roles of witness and questioner
Question should have been asked earlier in the process instead of in rebuttal	Will allowing (or disallowing) the question take one party by surprise or give them an unfair advantage? If the question is allowed, can potential unfairness be cured by "surrebuttal"[3]?
Party is switching between evidence and argument	If the switching is distracting, remind the parties to focus on evidence during the evidentiary stage of the hearing. Remind them that there will be an opportunity for argument later in the process.
Witness is answering a legal question or one beyond their scope of expertise or knowledge	Does the witness have the expertise or background to assist the panel? If not, consider • Asking parties to stick to questions within scope of the witness' expertise. • Asking if other planned witnesses are better suited to answer the questions. • Observing that panel will take into consideration when assigning weight.

[3] "Surrebuttal" is the technical term for submissions made to rebut rebuttal submissions.

Evidence is hearsay	Is the person who made the original statement available to give the evidence themselves? Many ARB panels allow hearsay, but explain they will take this characteristic into account when assigning weight.

Questions from the Panel

Even in an "adversarial" process, there are times when panel members can and should ask questions. You need to understand the parties' evidence and arguments; therefore, if you are unclear about what has been said, you should ask for clarification. Similarly, if you are aware of an important legal test, principle, or exhibit that the parties have not addressed, it is good practice to ask them if they would like to address it.

When you ask questions, always use neutral language, and never be argumentative. Otherwise, you may be seen as "entering the fray" to make the case for one side or the other. If possible, avoid disruption by waiting until the witness or presenter has finished.

Compelling Attendance of Witnesses or Production of Documents

The parties are responsible for calling their own witnesses and producing their own documents to support their cases. Occasionally, however, a party may be unable to access a witness or document they need to make their case – for example, they may need a document that is in the custody of another person who has refused to disclose it.

MGA s. 465

In such cases, parties can ask the ARB to order attendance or production under section 465 of the *MGA*. This power helps the ARB "level the playing field" by making sure each party has a full opportunity to make their case. Such orders are rare, since parties usually co-operate by disclosing relevant information or else the information is available from another source. If someone refuses to obey a section 465 order, the ARB can apply to the ABQB for an order to enforce it.

Representatives and Agents

MRAC ss. 51 and 1(1)(b)

Some parties choose to have a spokesperson or agent represent them instead of presenting their own case. A complainant who has an agent represent him or her for a fee must complete and sign the Agent Authorization Form. It is common practice to allow the form to be filed at any time up to and including the beginning of the hearing. In addition, some ARBs do not require agent authorization forms for clients represented by lawyers, since lawyers have professional and ethical obligations not shared by other agents.

Agents usually both give evidence and make arguments for their clients. When these two functions become blurred, it is often useful to remind the parties of the distinction and the gravity of a witness' role – particularly where evidence is given under oath.

Relevance and Weight

MGA s. 464

ARBs have explicit power to determine the "relevance" and "weight" of any evidence.

Relevance refers to whether the evidence, assuming it is true, can help the panel address the issues before it. Relevance cannot be assessed without considering the purpose for which evidence is introduced. If a party cannot explain the importance of a piece of evidence that seems unconnected with the matters to be resolved, you may decide it is irrelevant and choose to exclude it. However, relevance is not always readily apparent. Therefore, panels generally admit evidence that appears potentially relevant and then give it no weight if it turns out to be irrelevant later.

Weight refers to how strong the inference or conclusion is that can be drawn from the evidence: the stronger the inference, the higher the weight of the evidence in decision making. Weight describes the value of a piece of evidence to prove a relevant fact compared to other pieces of evidence. For example, a panel may decide to place less weight on the testimony of a witness who gives conflicting evidence.

Another example of evidence that may receive less weight is "hearsay" – i.e., reported statements made by persons who are not at the hearing. Such evidence typically receives less weight, because it may not have been made under oath and cannot be tested in cross-examination; in addition, the farther removed a statement is from its source, the less reliable it becomes.

Affidavits

An affidavit is a sworn written statement. Affidavit evidence suffers from some of the same problems as "hearsay", since the witness is not usually present to answer questions. Nevertheless, it is often useful to prove non-contentious points.

Case Law

Parties often support their arguments with previous decisions, which are commonly published on websites or other reporting services.

Decisions of the Alberta courts and the Supreme Court of Canada are binding. In other words, if these courts have already decided a legal issue, every ARB must follow that decision by applying it to the case before them.

Previous ARB decisions are not binding; nevertheless, ARBs should strive to apply general principles and legislative provisions consistently. While different facts rightly drive different results, underlying principles and legal interpretations should remain consistent. Such consistency ensures those in similar circumstances receive similar treatment. It also avoids unnecessary complaints by allowing parties to predict what decision they would most likely receive without having to litigate.

Given the benefits of consistency, panel members should give respectful consideration to the decisions of other panels.

Legal Counsel

Counsel as Advisor to the Panel

MRAC s. 17

ARBs can seek legal advice when necessary. The ARB's legal counsel must be independent of the parties to the hearing. This restriction means the ARB should not use the municipality's legal department, since the municipality is a party to the complaint.

Counsel may meet with the panel privately or deal with requests from the panel and may give the panel legal advice on content and process. Counsel cannot direct the panel to make a decision or ruling; all decisions, whether substantive or procedural, remain the panel's to make.

Counsel's advice is privileged and need not be shared with the parties. However, where counsel's advice raises significant new considerations, cases or principles, the parties should receive an opportunity to address them before the panel makes a decision.

Confidential Information

Parties sometimes ask the ARB to protect submissions they consider confidential. For better or worse, the ARB's ability to protect confidential information is limited, since:

- Anything filed with an ARB may become subject to a *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (FOIP) request.
- ARB hearings are open to the public and ARBs have no authority to order a private or "in camera" hearing.
- Courts have been reluctant to let municipalities refuse to share information about how assessments were prepared even if it was collected in confidence.

However, some techniques are still available to help protect confidentiality. For example, a panel could consider:

- Undertakings: the parties sign documents stating they undertake not to use the information provided for any purpose outside of the hearing or an appeal of a decision resulting from the hearing.
- Evidence summaries: the parties summarize the information pertinent to the appeal in a way that leaves out confidential details.
- Sealing orders: in the written order, the panel identifies the confidential information and declares that it will not release the information to third parties unless required to do so by law. (Note that as public bodies, ARBs must respond to FOIP requests filed by third parties. In the event of such an application, the ARB administration would still have to determine whether the information subject to the sealing order is protected from release by the privacy provisions under FOIP.
- Any procedure to protect information that is outlined in the ARB's procedure rules.

Record of the Hearing

ARBs must make and keep a record of each hearing. The clerk normally takes on this responsibility. Members can help by making sure the clerk has a clean copy of all exhibits admitted to the record and complete lists of exhibits and witnesses.

MRAC s. 14

LARB decisions are to be kept on record for at least five years.

MRAC s. 13(3)

Costs

CARBs (but not LARBs) can order one party to reimburse another party for costs of, and incidental to, a hearing. The power to award costs discourages parties from abusing the CARB's process and causing others unnecessary inconvenience or expense. *MRAC* sets out specific limits for cost awards in cases where the CARB finds a party raised a matter that had no reasonable prospect of success.

MGA s. 468.1; *MRAC* s. 52

MGA s. 468.1; MRAC s. 52 and Schedule 3

MODULE 2 – ARB's Enabling Legislation

Introduction

As an ARB member, your job is to interpret and apply relevant provisions of the *MGA* and various other enactments. Therefore, you should understand the legislative regime that governs the assessment complaint process and how this legislation is structured. After completing this module, you should be able to:

- Describe the general features of legislation, including legislative hierarchy and structure.
- Apply the fundamental principles of statutory interpretation.
- Understand how provisions in *MGA* Part 11 and *MRAC* enable ARBs to make decisions.
- Understand procedural implications of provisions in *MGA* Parts 9 and 10.

Hierarchy

Legislation has a hierarchy. The Constitution Acts are at the top. They give the Alberta Legislature power to pass laws about various subject matters, including "municipal government". The Provincial laws, or statutes, are at the next level down. They establish rules and confer powers on various officials to achieve the Legislature's intent.

In a similar way to how the Constitution Acts let the Legislature pass laws on certain topics, Provincial Statutes often delegate power to the Lieutenant Governor in Council, the Minister or other designated individuals to create subsidiary legislation that furthers the overall statutory intent. Examples of subsidiary legislation include regulations and bylaws. This subsidiary legislation forms the lower levels in the hierarchy.

The hierarchy in the assessment and assessment complaints context is the:

1. Constitution
2. *MGA*
3. *MGA* Regulations – e.g. *MRAC* and *MRAT*
4. Municipal Bylaws

Municipal bylaws must be consistent with provincial regulations and are ineffective to the extent of any inconsistency **(s. 13 *MGA*)**

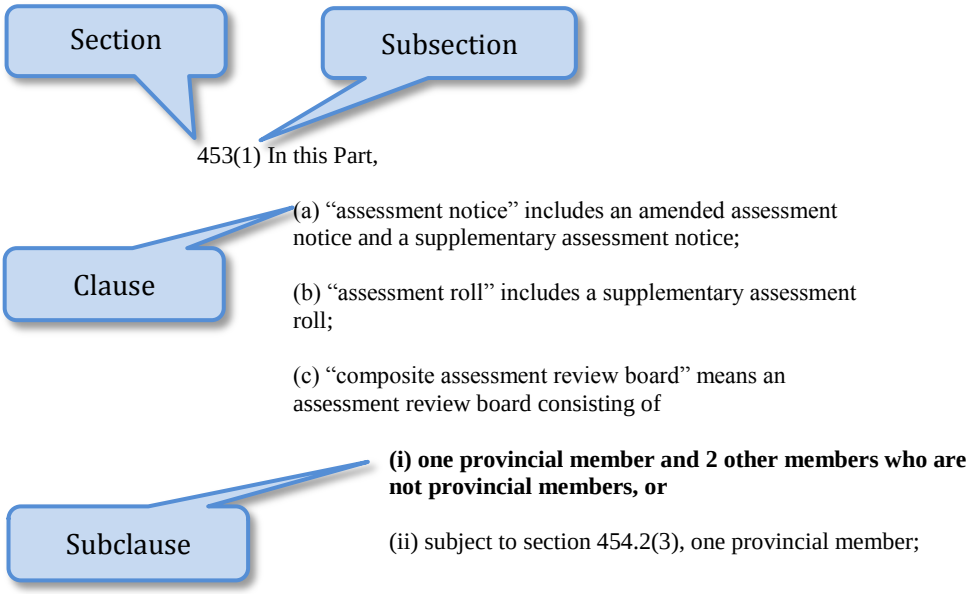
Each piece of legislation must be consistent with higher level legislation and is only legitimate to the extent of that consistency.

Structure: How Acts and Regulations Are Divided Up

Looking at the "Table of Contents" at the front of an act or regulation, you will see it is divided into "Parts" which are further divided into "Divisions". Under each Division, sections are listed in numerical order in their order of appearance. There is no reference to page numbers.

The index at the back of the act lists the subject matter in alphabetical order, but like the table of contents only references the section of the act or regulation that deals with the subject matter.

Sections of legislation are broken down further as illustrated below.



The bolded section would be stated as "section 453, subsection 1, clause c, sub-clause i" and written as 453(1)(c)(i).

Coming into Force and Repeal Provisions

The last section of an enactment usually states when it comes into force. If there is no such provision, an act comes into force on the date of Royal Assent and a regulation, on the date it is filed with the Registrar. Provisions repealing other enactments are placed near the end of the act, immediately before the coming-into-force section.[4]

[4] The recently passed *Modernized Municipal Govnernment Act* (Royal Assent Dec 9, 2016) amends the MGA. However, most of its amendments do not take effect until proclamation, with a few taking effect Jan 1, 2017.

Interpreting Legislation

The Legislature passes legislation, but courts and boards have to interpret it. As a board member, you sometimes hear arguments about what various statutory provisions really mean. A complete description of the principles of statutory interpretation is beyond the scope of this manual, but the following points are a useful introduction.

Legislation often includes definitions. These definitions usually occur in a section at the beginning of the statute or portion of the statute where they apply. For example, Section 1 of the *MGA* defines a long list of relevant terms such as "market value". Also, section 284(1) at the beginning of part 9 includes many definitions relating to the assessment and taxation of property.

The Legislature has also passed the Alberta *Interpretation Act* to explain its meaning for certain common terms. The *Interpretation Act* applies unless a contrary intent appears in the specific legislation being interpreted. Amongst the most useful sections in the assessment complaint context are those explaining computation of time.

IA s. 22

In many cases, the courts have already explained a provision's legal meaning. ARBs are bound by the decisions of the Alberta Courts and the Supreme Court of Canada. Interpretations of other ARBs are not binding. However, consistent interpretation promotes fairness and helps those affected plan appropriately; therefore, previous ARB interpretations are still persuasive.

Where there is no legislated definition or established legal meaning, you must use the principle of legislative interpretation adopted by the Supreme Court of Canada[5]:

The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

This principle requires you to look not only at the plain meaning of the provision itself, but also at nearby sections and the Act in general. You must try to identify the purpose the Legislature was trying to achieve through the provision, and interpret it consistently with that purpose. This approach means relevant policy aims, potential consequences for competing interpretations, and past amendments to the legislation may provide clues as to a given provision's legal meaning.

The ARB's Enabling Legislation: Part 11 of the *MGA*

All government acts and decisions must be founded on legal authority, and the acts and decisions of ARBs are no different. As creatures of legislation, ARBs can only do things their enabling legislation says or implies they can do. If they act outside their jurisdiction, their decisions may be challenged in court.

Part 11 of the *MGA*[6] and the *MRAC* Regulation require municipalities to create LARBs and CARBs and explain how to appoint their members. These enactments also authorize ARBs to make decisions and define the things they can do, including:

- How members are appointed
- The matters they can decide
- The remedies they can provide
- The procedures they must use, and
- The timelines that apply

ARB Member Appointments and Qualifications

The *MGA* and MRAC establish who may appoint ARB members and what requirements they must meet before sitting on a panel. Some relevant provisions are provided below.

ARB members must be appointed by Council or the Minister of Municipal Affairs.

MGA s. 454.2(1)

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

ARB members must meet qualifications set by the Minister.

An assessor, employee of the municipality, or tax agent cannot be a board member.

MRAC s. 50

LARB or CARB – What is the Difference?

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

[5] Rizzo v Rizzo Shoes [1998] 1 SCR 27

[6] The *MGA* specifically allows the Minister of Municipal Affairs to create regulations respecting the procedures and functions of assessment review boards **(*MGA* 484.1(h))**.

LARBs

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

MGA s. 454.1(1)

LARB s. 460.1(1)	*A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on* *(a) an assessment notice for* *(i) residential property with 3 or fewer dwelling units, or* *(ii) farm land,* *or* *(b) a tax notice other than a property tax notice.*

Examples of residential property assessments heard by LARBs include the following:

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

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

MGA ss. 454.2(2) and 454.2(4); *MRAC* s. 48(4)

Like LARBs, CARBS usually have three members. However, one member is appointed by the Minister of Municipal Affairs and two are appointed by municipal council. The provincially appointed member acts as the Presiding Officer and must already be a member of the Municipal Government Board.

CARBs hear almost all complaints about assessment matters 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)	*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).*

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 the following:

- Office buildings
- Retail stores
- Shopping centers
- Warehouses
- Vacant land with non-residential or multi-residential zoning
- Railways
- Industrial plants or special purpose properties (e.g., pulp mills)
- Machinery and equipment

Most of the time, it is clear whether a complaint must go to a LARB or a CARB. However, if a jurisdictional question arises, a panel can decide it either at a preliminary hearing or as a preliminary matter at the beginning of a merit hearing.

Joint Jurisdiction

MRAC s. 12

If property is used or designated for multiple purposes where both a LARB and a CARB would have jurisdiction, the complaint is heard by a CARB.

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 Establishment of ARBs

MGA s. 456

Municipal councils may agree to jointly establish ARBs, enabling them to share their municipal resources.

One-member Review Boards

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

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

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

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

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

MGA s. 454.2(3)

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

MRAC ss. 32, 33

Filing Complaints

The ARB can only hear complaints about the matters listed in section *MGA* 460(5). "An assessment" is by far the most common – but you may also see complaints about other matters on the list, including exemptions and property type.

The complaint must be in the form prescribed by *MRAC* and include any required fee. Failure to meet legislated filing requirement results in an invalid complaint: for example, if a complaint is late or missing the required fee, the ARB must dismiss it. Similarly, ARBs may be asked to consider whether a complainant has appropriately indicated all of the following:

MGA ss. 460(2), 460(5) and s. 481(1);
MRAC s. 2 and Schedules 1 & 2

- What information on the notice is incorrect.
- In what respect it is incorrect.
- What the correct information is.
- What the requested assessed value is.

MGA ss. 460(7), 467(2)

The ARB can only hear complaints filed by an "assessed person" or "taxpayer" (460(3)) – or one filed on their behalf by an agent. Agent authorization forms are often filed along with the complaint form; however, later filing of the authorization is allowed, provided it is completed by the beginning of the hearing.

MGA ss. 460(3)

MRAC ss. 51 & 1(1)(b)

Notice of Hearing

Although the clerk is responsible for notifying parties about hearings, ARB panels must sometimes determine sufficiency of notice as a preliminary question. Every hearing notice must contain the date, time and location of the hearing.

MGA ss. 462

In addition, the notice must be provided not less than **35 days** before the hearing for a LARB or not less than **70 days** before the hearing for a CARB.

MRAC ss. 3, 7

ARBs must deal with complaints even if one or more parties do not appear, **provided** (1) there is no adjournment request, and (2) the clerk has given the required notice. If notice was insufficient, the panel

MGA ss. 463

should order a postponement to give the parties a fair chance to prepare for the hearing.

Disclosure of Evidence and Argument

Parties must disclose information to each other and the ARB within the timeframes set out in *MRAC*. This disclosure must include:

- All documentary evidence to be relied upon at the hearing.
- A summary of any testimonial evidence to be given at the hearing, including signed witness reports.
- Any written argument to be presented in sufficient detail to allow for a response at the hearing.

MRAC ss. 4 & 8

The purpose of disclosure is to let each side understand and prepare for the case against them, thereby avoiding unfair surprises or delays.

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 "rebuttal" submissions that reply to new things raised by the respondent.

MRAC ss. 4 & 8

The *MRAC* timelines for disclosure are very important, because ARBs cannot look at evidence not disclosed in accordance with the rules set out in *MRAC*. However, *MRAC* recognizes its default disclosure dates sometimes need adjustment. Therefore, it gives ARBs discretion to expand times for disclosure, and abridge (shorten) them with the written consent of the persons entitled to the disclosure.

MRAC ss. 5(2) & 9(2)

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

ARB Decisions

ARBs can only make certain types of final orders. In particular, they can:

- Make a change to an assessment roll or tax roll,
- Decide that no change is required, or
- Dismiss a complaint that was not made within the proper time

MGA s. 467(2)

or that does not comply with section 460(7).

The *MGA* prohibits ARBs from altering assessments that are "fair and equitable" taking into consideration the assessments of similar property or businesses in the same municipality. The courts have interpreted the concept of "fair and equitable" assessment to mean that similar property should be assessed using the same basis or approach, since the intent of the legislation is presumably not to discriminate against an individual or class of property owners.[7] Implications of the requirement for fair and equitable assessment are explored further in the "Assessment Principles" companion course.

MGA s. 467(3)

Judicial Review by the Court of Queen's Bench

Parties dissatisfied with an ARB decision may ask the ABQB to "judicially review" it. Judicial review is a discretionary power the courts exercise as part of their responsibility to oversee adjudicative tribunals and ensure they carry out their legislated responsibilities properly. Although the Rules of Court normally give parties 6 months to file for judicial review, section 470 requires judicial review applications about ARB decisions to be filed and served not more than 60 days after the date of the decision.[8]

MGA s. 470

[7] See Bramalea Ltd v British Columbia (Assessor for Area 9 (Vancouver)), [1990] BCJ No 2730

[8] Before January 1, 2017, the MGA established a right to seek leave to appeal ARB decisions to the ABQB on questions of law or jurisdiction. Appeals already filed under the old system may either continue under that system, or be converted to judicial review applications with consent of the parties.

Assessment and Taxation: Parts 9 and 10 of the *MGA*

Parts 9 and 10 of the *MGA* authorize municipalities to prepare assessments and levy taxes. They are supplemented by regulations including *MRAT*, *COPTER*, and the *Minister's Guidelines* for regulated property. You will find frequent references to these provisions in ARB decisions.

MGA Part 9 deals with assessment. It outlines the following:

Topic	Relevant Provisions
The duty of assessors to assess fairly and equitably	*MGA* s. 293
Prescribed valuation standards and processes	*MGA* ss. 291, 292; *MRAT* ss. 2-9
Preparation and required content for assessment rolls and notices	*MGA* ss. 302-312
Requirements for supplementary assessments	*MGA* ss. 313-316
Who are "assessed persons" and "taxpayers"	*MGA* s. 304
Rights of taxpayers and assessors to access information	*MGA ss.* 295, 299, 300
Non-assessable property	*MGA s. 298*

Part 10 deals with taxation. Since ARBs cannot hear appeals about property tax notices, tax rates or tax collection, complaints about tax notices under Part 10 are uncommon. Nevertheless, Part 10 is an important part of the assessment and taxation regime that ARBs supervise; therefore, you should be familiar with its basic contents. It covers:

Topic	Relevant Provisions
Preparation and required contents of tax roll and tax notices	*MGA* ss. 327, 329, 330, 333, 334
Liability for tax	*MGA* s. 331
Tax rates	*MGA* s. 354
Tax exemptions	*MGA* ss. 361-368; *COPTER*
Business tax and business tax exemptions	*MGA* ss. 371-379

Special tax	*MGA ss.* 382-387
Local Improvement Taxes	*MGA ss. 391-409*
Collection of taxes	*MGA ss. 410-452*

Parts 9 and 10 deal mainly with the substantive principles of assessment and taxation covered in the "Principles of Assessment" course. However, a few provisions also touch on rights to information and notice of assessment. These provisions affect procedural fairness and ARB procedures, and are considered below.

Access to Information

Duty to provide Information

Assessors need access to information from taxpayers to prepare accurate assessments. Therefore, the *MGA* allows them to request the information they need from assessed persons.

MGA s. 295

In a similar vein, assessed persons must understand how their assessments were prepared before they can decide whether to file a complaint. Therefore, the *MGA* lets them request information about their assessments and how they were prepared. An assessed person can also request assessment summaries for other properties in the same municipality; this right helps them know if their assessment is equitable in relation to similar properties. The scope and time limits for all of these requests are set out in the *MGA*.

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

Failure to Provide Information

There are penalties for not providing the information requested. An assessed person who fails to provide information requested by the assessor cannot use the same information in the context of a complaint and can lose their right to make a complaint altogether. Because losing the right to make a complaint is a serious penalty, the Courts have ruled that information requested must be *necessary* to prepare the assessment of the particular property in question rather than simply useful to check it or to prepare the assessments of other properties. In addition, the assessed person must have a fair opportunity to understand what has been requested and ample time to respond to the request.

MGA s. 295
MRAC ss. 5 & 9

Municipalities also risk penalties if they do not comply with information requests. Municipalities that fail to provide requested

MRAC ss. 5 & 9

information cannot use the same information to defend their assessment at an ARB hearing, and can be fined by the Minister following a compliance review.

MRAT s. 27.6

Notices of Assessment and Taxation - Complaint Deadlines

Notice of Assessment

The *MGA* requires each municipality to state a complaint deadline on the Notice of Assessment, which must be 60 days after it has been "sent". An ARB has no power to extend this deadline, but interpreting when the deadline occurs has proven complicated.

MGA s. 309(1)(c)

The *MGA* defines "sent" for the purposes of Part 9, as "mailed or otherwise delivered". Some ARBs have interpreted this phrase to mean the day the notice is postmarked, whereas others have chosen the day the notice is delivered to the assessed person. Since the *Interpretation Act* deems delivery to occur 7 days from the date of mailing[9], the second interpretation means the hearing cannot occur earlier than 67 days from the date the notice is mailed.

MGA s. 284(3)

So far, court decisions tend to support the second interpretation. Some municipalities have avoided controversy by giving at least 67 days' notice from the date of mailing; however, not all municipalities follow this practice.

Notice of Taxation

MGA s. 334(1)(d)

Like assessment notices, tax notices must also include a complaint deadline. However, this deadline must be 30 rather than 60 days (or more) after the notice is "sent". An exception is that an appeal of a local improvement tax may still be filed up to one year after the date the tax is imposed.

MGA s. 460(8)

Another difference is that Part 10 includes provisions that explicitly deem receipt of a tax notice 7 days after it is sent, and allow a municipal official to certify the date tax notices are "sent".

MGA ss. 336 & 337

[9] 14 days from the date of mailing if mailed to a province outside Alberta - *Interpretation Act*, RSA c-I-8 s. 22

MODULE 3 – Fairness and Natural Justice

Introduction

The rules of fairness and natural justice are legal principles the courts created to guide administrative and quasi-judicial decision makers. As judge-created "common law", rules of natural justice cannot "trump" clearly legislated procedures. However, they form a useful context to help interpret legislated procedures and apply when the legislation is silent. Therefore, understanding the rules of natural justice will also help you understand and apply the assessment complaint process established under the *MGA* and *MRAC*. After completing this module, you should be able to:

- Describe the two main principles of natural justice and understand their implications.
- Recognize connections between the rules of natural justice and procedural provisions in the *MGA* and *MRAC.*
- Apply procedures to deal with allegations of bias or a reasonable apprehension of bias.

1. Right to be Heard

One of two main principles of natural justice is that parties have a right to be heard. In other words, the parties to a complaint should know what the case is about, have sufficient time to prepare, and have a reasonable chance to present their own case and respond to the case against them. Both the complainant and the respondent have this right. Some of its implications are as follows:

Right to a hearing: Parties need an opportunity to present their case to the panel that will make the decision. A person can be "heard" in various ways: face-to-face, by telephone, by video conference, or in writing. Different methods are appropriate for different circumstances: for example, a preliminary hearing about disclosure dates may be conducted by phone, whereas a face-to-face hearing may be needed if sworn testimony is involved.

Notice: Parties must have a right to adequate notice of a hearing, since without notice there is no real 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.

Right to representation: Parties have the right to be represented by counsel or an agent so that they can make their case as effectively as possible to those hearing it.

Decision to be made by panel: Allowing non-panel members to influence a decision deprives the parties of their right to be heard by the decision makers and to respond to the case against them. This rule does not prohibit panels from recruiting assistance to draft decisions. However, the drafter must act on the panel's instructions and all panel members should review and approve the final decision.

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

Cross-examination: Once a witness has been questioned by one party, the second party must have enough time to question them too. Otherwise, the second party may not have a fair chance to 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, making it difficult to exercise a right of appeal.

As seen in the previous modules, the *MGA* and its regulations address many of the items listed above, including notice and disclosure requirements, consequences of failure to disclose, representation by agents, when to proceed in the absence of a party, and the possibility of written or in-person hearings. These legislative provisions add clarity to the degree of procedural fairness required in the assessment complaint process. However, it is helpful to keep the underlying principles in mind when interpreting these provisions, and when setting procedures where the legislation is silent.

2. Right to an Unbiased Decision Maker

The second concept of natural justice says decision makers should not be biased. They need to come to their work with an open mind, willing to let evidence and arguments from the parties persuade them.

Bias is lack of neutrality that makes a decision maker predisposed to decide an issue a certain way for reasons unrelated to the law or the evidence. Parties naturally want to know that their presentations may persuade the decision maker and influence the outcome of the case.

Actual bias versus the perception of bias

ARB members must not only *have* an open mind (subjectively); they must also be *perceived* to have an open mind (by objective observers).

- Actual bias means the member is actually predisposed to decide a matter for reasons that have nothing to do with the law or evidence.
- Perception of bias is the view of a party that particular circumstances make a panel member likely to be biased.

Quasi-judicial decision makers must not make decisions if they have actual bias or if there is a reasonable apprehension of bias. A decision made by one or more biased panel members may be challenged in court and a new hearing ordered before a fresh unbiased panel.

What Creates a Perception of Bias?

A reasonable apprehension of bias can arise in any number of ways. However, four common cases where a reasonable observer might conclude a decision maker is biased are outlined below.

- **Material financial interest in the outcome** of the case (e.g., the member or a person related to the member may benefit or suffer financially because of the decision – often called a conflict of interest or pecuniary interest).
- **Close association or prior involvement** with one of the parties (e.g., the member is related to or closely involved with one of the parties or witnesses or representatives appearing in the case).
- **Prior participation in the process** or a related process (e.g., the member previously represented one of the parties now appearing before the ARB on the same matter or made the decision now under appeal).
- **Attitude or conduct** that shows bias or hostility (e.g., a member who makes statements at the hearing or in public that leave the impression the member has made up his or her mind on the outcome before having heard all of the parties).

Informed versus Biased

A decision maker who holds fixed and unalterable views on a question at issue must disclose the bias and withdraw from the case. However, to be unbiased **does not** mean to be uninformed. It means only that the decision maker should be open to persuasion.

Members of an ARB may read filed submissions about the case before the hearing and hold tentative views on the matters at issue. Expert panel members may also draw on their general expertise to help them decide a case. The legislature created tribunals with special expertise to handle disputes that the courts are not well-equipped to hear.

How to Avoid Bias or the Reasonable Apprehension of Bias

Keep an open mind: Do not make up your mind in advance to the point you cannot be influenced to decide differently at the hearing. Do not hold predetermined views of the issues on the matters that would be applied regardless of merits.

Avoid expressing conclusions about substantive issues during a proceeding: A statement that the outcome of a proceeding is a foregone conclusion suggests bias.

Act professionally and respectfully during the hearing: Never make flippant remarks or derogatory statements about parties or anyone else. Use of intemperate language or the display of hostility toward a party may give rise to a reasonable apprehension of bias. A member who repeatedly interferes with or takes part in questioning witnesses may be suspected of having bias for or against a party.

Deal with allegations of bias as early as possible: You should deal with questions about bias as soon as the relevant circumstances become known; similarly, parties who discover such circumstances should make any objection as soon after the discovery as possible.

Do not comment on cases outside the hearing: Panel members have lives outside the hearing room and inevitably interact with others in their communities. However, refrain from expressing opinions about cases before you, and avoid activity that would encourage a perception of impartiality toward one party over another.

Procedure to Deal with Allegations of Bias

When a party raises an allegation of bias, the panel should give the parties an opportunity to address the question. Having heard from the parties, the panel may adjourn to discuss the submissions, but the member in question must make the final decision about whether to withdraw.

Similarly, if you become aware of circumstances that may reasonably cause parties before you to think you are biased, disclose the circumstances as soon as possible and allow the parties to either waive any objection or ask you to withdraw. Alternatively, if you learn of circumstances before the hearing that raise a reasonable apprehension of bias, advise the ARB clerk as soon as

possible so that another member can be scheduled.

The Test for Reasonable Apprehension of Bias

The legal test to evaluate concerns about appearance of bias is the reasonable bystander test: would an informed person, viewing the matter realistically and practically – and having thought the matter through - conclude it is more likely than not that the member, whether consciously or unconsciously, would not decide fairly?[10]

Regardless of whether a member is consciously or unconsciously biased, or even unbiased, what matters is whether a reasonable, informed person looking at all the facts would conclude that the decision maker would probably not act impartially. The objector need not show that the apprehended bias actually prejudiced one of the parties or affected the result. If the test is satisfied, even decision makers who are confident that they can act impartially, notwithstanding the appearance of bias, must disqualify themselves.

[10] *Committee for Justice and Liberty* v. *National Energy Board* [1978] 1 S.C.R. 369 at 394-5

Module 4 – Decision Making and Writing

Introduction

This module looks at the intimately connected topics of decision making and decision writing. After completing it, you should be able to:

- Identify legislated requirements for decisions.
- Choose and implement a decision making process.
- Identify issues and relevant evidence.
- Evaluate evidence and make findings.
- Select a decision outline using common decision headings.
- Draft a clear decision that explains to the parties – especially the losing party – why the panel made its decision and what it thought about the evidence presented.

Legislated Requirements for Written Decisions

MRAC says ARB written decisions must include the following elements:

MRAC s. 13

- A brief summary of the matters or issues on the complaint form.
- The board's decision in respect of each matter.
- The reasons for the decision, including any dissenting reasons.
- Any procedural or jurisdictional matters and the board's decision in respect of those matters.

MGA s. 468(1)

In addition, ARBs must render their decisions within 30 days of the hearing or by December 31 - whichever comes first. Different timelines apply for complaints about supplementary assessment notices, amended assessment notices, and tax notices.

MGA s. 468(2)
MRAC s. 53

The processes for decision making and writing explained in the rest of this Module will help you meet the legislated requirements; more importantly for your readers, they will help you write clear decisions that explain how they are supported by the law and evidence.

Decision Making

Good decision writing starts with good decision making. A principled decision making process leads the panel to an informed, well founded and logical decision that is easy to explain and justify. It identifies clear issues and findings based on comprehensive reasons that explain to the loser why the panel found their evidence and argument did not support the requested result.

The Decision Meeting

The decision making and writing process will run more smoothly if you meet with your panel as soon as possible after the hearing while the submissions are still fresh in your mind. Once you convene, decide collectively on a process to make sure you discuss and evaluate all the evidence and argument. The model process outlined in the next section will works well for this purpose.

Once you have agreed on the process, follow through. Choose a facilitator from amongst the panel (or ARB staff if available) to keep you focused. For complex hearings, the facilitator should use flip charts or white board to help the panel work through each step of the process as a group.

In addition, identify the person who will be writing the decision at the beginning of the decision meeting. If you are chosen for this task, you will find yourself asking thoughtful questions to ensure you have captured the reasons that support the panel's decision!

Remember that decision making is a co-operative exercise. Be collegial, and do not take disagreement personally. Thorough discussion of the issues and relevant evidence usually results in consensus and always yields a deeper understanding of the issues in dispute.

A Model Decision-making Process

Always use a decision-making model similar to the one outlined in this section to help you reach your decision. Used conscientiously, it will yield results that are easy to convert to clear, logical, well supported written decisions.

1. Identify relevant legislation.
2. Identify the issues.
3. Sort the evidence by relevance to each issue.
4. Evaluate the evidence and make findings in relation to each issue.

5. Apply the facts to the legislated tests.
6. Reach the decision.

1. Identify the relevant legislation

- Identify any relevant legislative provisions and make a list of any legal tests, conditions, standards, or pre-requisites you need to decide the case.

2. Identify the issues

- This step goes beyond listing the matters already on the complaint form. Ask yourself: At the deepest level, what was really at issue between the parties? What questions must the panel answer to reach a decision? For example, the parties may have listed "an assessment amount" on the complaint form. However, if the parties' real disagreement was about how to calculate the capitalization rate, the main issue might be "What is the market capitalization rate for the purposes of an appropriate value assessment under the Act?"
- Issues may reflect disagreements about facts, legal interpretations, or both. In complicated cases, you may find there are several deep issues to be decided. If so, order the issues logically. For example, if the board's jurisdiction has been questioned, it would be most logical to deal with that issue first.

3. Sort the evidence and argument by relevance to each issue identified in step 2

- Review all the evidence from the hearing and decide how each piece relates to each issue identified in the last step. If evidence is not relevant to any issue, say why.
- Similarly, review the legal arguments and any caselaw the parties presented. Decide how they relate to each issue.

4. Evaluate the evidence and argument to reach findings

- Analyze and weigh the evidence you sorted by issue and see what findings they lead you to make. Make sure you justify your findings by explaining what you think about the evidence. Where evidence conflicts, explain why you prefer some over the rest.
- Some considerations that may help when weighing evidence include:
  - Does the evidence prove something directly, or is it circumstantial?
  - How does the evidence intertwine with other evidence on this point? Is it consistent?
  - Is the oral evidence supported by the documentary evidence?

- Did the other party have a chance to test the evidence – e.g., by cross-examination?
- If comparable sales are provided, how similar are the properties to the subject; how many adjustments were made? (see the companion POA course for more tips on weighing valuation evidence.

- When dealing with competing experts, consider:
  - What factual assumptions did the experts make? On what grounds?
  - Which expert has the most relevant education and experience?
  - Which expert used the most timely information?
  - Did the expert cite third party journal articles / expert literature in support? If so, were the sources cited properly so the other party's expert could respond?
  - Which expert is best able to explain their opinion and the basis for the opinion?
  - How independent is the expert? Are they an employee of one of the parties?

5. Apply any factual findings to the legislated tests

- Explain how your findings apply to any legal tests or requirements. If there is a question about interpretation, state how you interpreted the legislation and explain why.

6. State the final decision

- Once you have made findings for each issue and applied the legal tests, the overall decision should be obvious.

Burden and Standard of Proof

When making findings and reaching a final decision, the panel must know which party has the obligation to convince the panel and what level of proof is required.

Burden of Proof

The party seeking a decision has the obligation to show the facts legally required to obtain that decision have been met. This obligation is often called the "legal", "persuasive", or "ultimate" burden of proof. In assessment hearings, it is borne by the assessed person who filed the complaint.

Since the complainant bears the legal burden, the ARB must weigh all the evidence brought by all the parties after the hearing is over to decide if it supports the decision the complainant has

requested – usually a reduced assessment. For example, a homeowner dissatisfied with her property assessment might introduce evidence about recent sales of similar homes she believes show the assessment is above market value (the legislated standard). In response, the assessor might provide evidence about sales of other similar houses, or evidence to show the homeowner's sales are in fact unreliable indicators of market value (e.g., they were not arm's length transactions). Once all the evidence is in, the panel must weigh it to decide if it shows on balance that the assessment is higher than market value.

A similar rule applies to individual facts; that is, the party who asserts a fact has the obligation to prove it. One exception occurs when all the information needed to prove a fact at issue is in the exclusive possession of another party (particularly if that party has refused to disclose it). In such cases, the burden may shift to the party with the exclusive means to prove or disprove it.

"Evidential burden"

In addition to the legal burden, there is also the "evidential" burden of proof. To meet the evidential burden, the complainant need only introduce evidence that - if believed and not contradicted - could convince the panel to decide in their favour. If the complainant does not meet this threshold, the respondent does not have to enter any evidence to secure a favourable decision. On the other hand, once the evidential burden is met, the respondent would be well advised to enter evidence of its own to counter the potential for a decision in the complainant's favour. This position is sometimes expressed by saying the evidential burden has "shifted" to the respondent, or that the complainant has made a *prima facie* case.

The "shifting burden" terminology is slightly misleading, since a finding that a complainant has met the evidential burden does not *necessarily* imply the respondent *must* enter contrary evidence to avoid an unfavourable decision. Rather, it means the panel must consider the question at issue carefully and decide whether the evidence before it is actually credible and supports the factual findings asserted that would justify the decision requested (see below for the level of proof required). Having said this, panels may find it hard to resist conclusions supported by unanswered credible evidence. Likewise, courts will likely overturn ARB decisions that ignore uncontradicted evidence about crucial facts, particularly if they fail to explain very carefully why such evidence is not credible or reliable.[11]

[11] See *Ross v Edmonton (City)* 2016 ABQB 730 and *1544560 v Edmonton (City)*, 2015 ABQB 520, where the Court overturned ARB decisions that did not explain clearly why the ARB disregarded evidence that made a *prima facie* case for the Complainant.

Standard of Proof

"Standard of proof" is the level of certainty a panel must have to conclude an asserted fact is true. The standard of proof for ARB hearings is the civil standard – namely, a "balance of probabilities". This standard means the panel must be satisfied that the facts to be proven are "more likely than not" or have a likelihood of "fifty percent plus one". The civil standard should not be confused with the much higher criminal standard of "beyond a reasonable doubt".

Given that the civil standard applies, the ultimate question ARB panels must usually answer is: Does the evidence before the panel demonstrate on balance that it is more likely than not that a property under complaint would have sold for significantly less than its assessed value on the assessment date? If so, the ARB should reduce the assessment.

Writing the Decision

At your decision meeting, identify someone to be responsible for drafting the order. Sometimes that person will be the presiding officer – but not always. Side panel members, board counsel, and ARB staff can also help to draft orders. Some ARBs have their own internal procedures as to who will write the draft. When someone other than a panel member drafts the order, the panel should take care to give detailed instructions so the decision reflects only the panel's reasoning.

Like decision making, written decisions focus on the deep issues behind the complaint. For each issue identified, the decision should record the parties' positions, the panel's findings and the reasons for those findings. Of course, the written decision also records the panel's final direction, and background information for readers unfamiliar with the context.

Templates

Some ARBs have decision templates. If your ARB doesn't, you can use the template in the reference materials that accompany this manual or adapt one from another ARB. Templates help you structure your decision and can keep you focused. However, remember they are tools of which you are the master. There is no legislated template, so do not hesitate to make adjustments if doing so will help the logic of the decision, or make it easier to read and understand.

Typical Structures for ARB Decisions

ARB decisions typically include the following components. However, as the sample decision

reproduced later in this module illustrates, some of the components can be subsumed under a common heading if doing so improves the decision's flow for a given case.

Heading

- Name of ARB.
- Names of parties and their roles (complainant usually listed first, then respondent).
- Date, roll numbers, etc.

Background

- Sets the stage for the reader by identifying:
  - The parties.
  - The subject matter – usually a brief description of the property under appeal.
  - The "matters" in dispute as listed on the complaint form.
  - Agreed facts.

Preliminary issues

- Identifies procedural or jurisdictional issues.
- States party positions for each issue.
- States ARB decision for each preliminary issue and gives the panel's reasons for the decision.

Issue(s)

- Concise statement of the key things the panel must decide to resolve the dispute.
- Often posed as questions.
- Should be ordered logically. Sometimes, findings about one issue make other issues unnecessary to decide.

Legislative Tests

- Describes the legislative scheme and identifies key provisions.
- Can be omitted if key provisions are specified clearly elsewhere in the order – for example, in the reasons section. Alternatively, lengthy portions of legislation can be included in an appendix so as not to disrupt the flow of the decision.

Parties' positions

- Summarize the key points – don't simply regurgitate.

- Make reference to arguments not expressly considered by the panel and why those arguments were not addressed.
- Usually included in the reasons section or stand-alone section.

Findings

- Findings of panel.
- Decide on logical order or structure (chronological, by subject, etc.).
- Dealing with conflicting testimony (credibility).

Reasons

- Explains why the panel made factual findings and how the evidence supports those findings.
- Explains how the facts relate to any legal tests that must be met. Where the meaning of legislation is in question (*MGA*, *MRAC*, etc.), explains how the panel has interpreted the relevant provisions
- States clearly the conclusions reached by the panel.
- Some things to avoid: "leap of faith" (i.e., no real explanation); "cut and paste"; repetition; extensive quotations.
- Makes the loser see the panel understood their position and the reasons why the panel rejected it – i.e. explains the flaws in the loser's case.

Decision

- Succinct statement of decision.

Summary

- Synopsis of the issues and panel's decision and reasons.

Sample Decision

The following is an example of a typical ARB decision. As you read through it, note the panel's attempt to explain the "deep" issue and explain how it weighed the evidence in coming to a conclusion about that issue. If you were the losing party, would you understand why you lost?

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: 18 JULY 2011
PRESIDING OFFICER: M. CHILIBECK
PANEL MEMBER: V. KEELER
PANEL MEMBER: D. HOAR
BOARD CLERK: S. PARSONS
BETWEEN:

XX PLAZA LTD.
Represented by: YY, Complainant

And

CITY OF RED DEER
Represented by: ZZ, Respondent

This is a complaint to the Red Deer Regional Assessment Review Board and heard by the Composite Assessment Review Board in respect of a property assessment prepared by the Assessor of the City of Red Deer and entered in the 2011 Assessment Roll as follows:

Roll No. 3013395 & 3013400

Address: 6730 – Red Deer Dr

Assessment: $1,821,600 & $8,723,600

Procedural or Jurisdictional Matters:

No procedural or jurisdictional matters were raised by either party.

Property description

The two subject properties are located in the northwest quadrant of the City of Red Deer at the northwest corner of Red Deer Drive and 67th street; these roads are major arterial roadways. Roll 3013400 (the south property) comprises 3.43 acres with 28,611 sq. ft. of rentable building area and adjoins the northwest corner. Roll 3013395 (the north property) comprises 0.69 acres with 5,281 sq. ft. of rentable building area and adjoins the north boundary of the south property.

There are five stand-alone buildings and two multi-tenant buildings on the two properties; four buildings were constructed in 2006, two were constructed in 2007 and one was constructed in 2008. Five buildings are occupied by single tenants and two buildings are occupied by several tenants. Four buildings each have a tenant with drive-thru services. Both properties are operated by the owner as one entity and are commonly known as Red Deer Plaza.

Issue(s)

At the time the complaints were filed, the Complainant identified the matter of the assessment under complaint on each property and listed several grounds or reasons for the complaint. At the outset of the merit hearing the Complainant confirmed that only one issue needs to be decided by the Board:

I) The assessed rental rate for the various categories of tenancies, except for the Lube Shop and Cervus Credit Union, is in excess of market lease rates as of July 1, 2010.

Complainant's Requested Values:

Roll No. 3012295 Address: 6730 - Red Deer Dr Assessment: $1,669,800

Roll No. 3013400 Address: 6730 - Red Deer Dr Assessment: $7,764,400

Board's Findings in respect of the issue(s):

The Complainant requests that the assessed rental rates for both properties, except for the Lube Shop and Credit Union areas, be reduced to $20 per sq. ft. of rentable area supported by several lease rate comparables from recently signed leases of retail properties within the City of Red Deer market.

Two lists of recent lease rate comparables from throughout the City of Red Deer were presented by the Complainant; a list of 14 comparables with lease rates effective from August, 2009 to April, 20I0 and a list of five comparables that include two current listings, one pending negotiation and two negotiated leases effective February and March, 2010. The Complainant admitted that one comparable, located in Gasoline Alley south of the City of Red Deer, is not a reasonable comparable because it is outside of the City and is one of the lowest lease rates at $13 per sq. ft.

The average lease rate for the comparables as calculated by the Complainant is $18 per sq. ft. and these rates range from $12 to $26. Nine lease rates are less than $20, three are more than $20 and one is at $20. The Complainant argued these comparables support his request at $20 per sq. ft, because the leases are for retail space and the start dates commence in the analysis period of one year prior to the valuation date of July I, 2010 versus the subject's lease start dates that are mostly in 2006.

The Respondent supplied four lease rate comparables and a rent roll for the subject properties. The comparables are from throughout the City of Red Deer with one for a fast food restaurant in the same quadrant as the subjects at $34.60 per sq. ft. The rent roll shows the building lease rates range from $21.00 to $27.50 per sq. ft. with the majority of leases negotiated in 2006.

The Respondent provided an assessment valuation summary for each subject property showing the category of tenancy, tenant area, rental rate and income. Some of the categories are multi-tenant CRU food services, stand-a-

lone CRU food services, multi-tenant CRU retail, stand-alone CRU retail, standalone CRU banking & lube shop, etc. and the assessed rental rate ranges $21 to $30 per sq. ft. for an average of $24.45. Not including the two categories for which the Complainant is not disputing the rental rate, the average assessed rate is $23.30.

The Board is not convinced by the Complainant's argument and lease rate comparables to change the assessed rental rates and thereby reduce the assessment for the subject properties.

The Board finds that the Complainant did not supply sufficient information on the comparables. Even though these comparables are commercial retail properties, it was not identified for the Board the type of development these are a part of, the quality of the development and the category of tenancy.

The Board notes that the stand-alone and multi-tenant retail categories are assessed at $21 per sq. ft., the lowest rate of all the assessed categories, the multi-tenant food services at $24 and stand-alone food services at $28. The Complainant's comparables, with lease start dates more recent than the subject's leases, support the assessed rate for the retail category; however in making this finding, there is no evidence to support a change to the food services category.

The Complainant argued that two recent leases of the subject properties with lease start dates of January 2008 and 2009 together with his lease rate comparables support a downward trend in lease rates. The Board is not convinced by this notion. The Board notes the rent roll for the subject properties shows three leases with start dates of August and September, 2006 at lease rates similar to the Complainant's comparable lease rates and the two recent leases of the subject; the Board finds this indicates that recent leasing activity has not resulted in reduced lease rates from 2006 to 2010, the assessment year.

DECISION

Based on the foregoing the Board confirms the assessment for both properties as follows:

Roll 3013395

Roll 3013400

6730 - Red Deer Dr

6730 - Red Deer Dr

Dated at the City of Red Deer in, the Province of Alberta this 7th day of August, 2011.

M. Chilibeck, Presiding Officer

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, R.S.A. 2000, c.M-26.

Common Mistakes

Overlooking the "why"

Many writers focus too heavily on what the parties said and neglect to explain carefully why the panel decided the way it did. If your decision has several pages of "party positions" and only a paragraph or two of reasons, you have fallen into this trap.

Parties often say the same thing several times, and sometimes present irrelevant evidence and argument. Try to describe the essence of their positions without regurgitating repetitious or irrelevant submissions. Then explain carefully why you adopted one position over another. Make the losing party understand why you came to the conclusion you did and why you rejected his or her evidence and argument.

Poor Organization

Complex hearings often raise many interrelated issues. In such cases, take care to organize the issues logically. Then approach each as a separate "mini order" with separate party positions, findings and reasons. If you do not, the result will be confusing.

Decisions that list each party's position for all of the issues at once are hard to read, because related information is spread out across the whole order. Readers naturally forget what the first party's position on the first issue is by the time they get to the second party's position and reasons. Grouping all of the related information together avoids this problem. It also sharpens the logic of the order and avoids unnecessary repetition.

Forgetting who the audience is

Most of the time, the primary users of your decision are the parties themselves. They want to understand your decision and why you reached it, and they want to do so quickly. Some writers frustrate their audience by:

- Using multisyllabic, arcane or "legalese" vocabulary, when simpler words would do.
- Using acronyms no-one understands.
- Using complicated sentences (As a rule of thumb, consider rewording sentences more than 3 lines long).
- Including irrelevant details.
- Making the same point more than once – e.g., by quoting several authorities to support the same principle.

- Using condescending or “preachy” language.

In rare cases, you will have a wider audience, including: other municipal officials and taxpayers, other ARB panels, the public, or the judiciary. For example, you may intend a decision about a controversial legal issue to be used as a lead decision by other panels, municipalities and taxpayers. In such cases, you will need to spend more time on details and legal concepts to give detailed guidance. However, always use language that will let your readers understand what they need to as clearly and efficiently as possible.

Reviewing Drafts

The decision belongs to the panel – not to a single author. Therefore, all panel members should have an opportunity to review and approve the draft before it is signed off. If someone other than a panel member has drafted the order, all members should review the draft with particular care to ensure it reflects the panel’s reasoning accurately. Most ARBs have staff members who can review the draft before sign off. The scope of this review varies from formatting and printing the order on appropriate letterhead to reviewing for typos, style, logic and flow. However, in all cases the final decision must be the panel’s – not the reviewer’s.

When you review a draft, make sure it covers the issues raised at the hearing and reflects the logic of your decision. Provide the author with useful feedback about accuracy, clarity, understandability, logic, flow, and structure. Remember that writing is difficult work, often done in a time crunch, and that your preferences on finer points of style may not be the same as the writer’s.

In some cases, reviewing the draft will reveal substantial flaws in logic or content not addressed adequately at the decision meeting. In such cases, you may need to meet again. The more thorough the initial decision-making process, the less likely you are to need subsequent meetings.

Further Reading

Robert W Macaulay and James L H Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomson Reuters, 2004) (Loose-leaf).

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