Administrative Law II
for
Assessment Review Board Members
and the
Municipal Government Board Members

Government of Alberta
Municipal Affairs

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(Under "*Property Assessment & Taxation*" tab, "*Publications*" tab)

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Caution on the Use of the Materials

These materials have been prepared for informational and educational purposes and do not constitute legal advice. They are intended as an educational aid for persons in tribunal work, not a substitute for any professional advice. Before acting on this information, readers should consult their own statutes and policies, or seek out the relevant professional assistance.

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Learning Objectives

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

- what is involved in the hearing process;
- the principles of good decision writing; and
- the importance of ethical conduct related to adjudicative tribunals.

In addition, the objective of this workshop is to develop an understanding of the administrative obligations when processing a complaint, principles of fair process in an assessment hearing process, working with an assessment review panel and supporting decision writing. After this workshop, participants will have:

- Examined obligations when processing a complaint and preparing for and participating in a hearing
- Resolved potential issues during the processing of a complaint
- Applied the basic principles of fairness in a hearing scenario
- Made a decision using an integrated decision making model
- Written a decision using a decision writing model and standards

Course Description

Administrative Law II is a two-day course targeted for members of assessment review board and members of the Municipal Government Board (MGB). The course will assist participants to learn the fundamentals of administrative law. This course is designed to provide participants with a better understanding of administrative law principles and basic skills required in their roles and responsibilities under Alberta's legislative framework. The course is a companion course to *Principles of Assessment I* (for assessment review board members) and *Principles of Assessment II* (complaints within the jurisdiction of the MGB) that focus on the substantive content of the assessment of property.

Although the examples and legislative references contained in this document are generally directed towards assessment review boards, the administrative law information presented in the material is also applicable to the MGB. A MGB member may become qualified to participate in a hearing as the provincial member on a composite assessment review board, and/or as a member of a MGB panel. Therefore, the MGB member when taking the course should also reference legislation related to the Municipal Government Board in Part 12 of the Act.

Course Content
The Administrative Law II course consists of four modules.

Module 1 – Introduction to Administrative Law
In this module participants are introduced to administrative law, the principles of natural justice and the duty to act fairly. Participants learn about jurisdiction and authority, as well as the related legislation pertaining to assessment review boards. The different types and jurisdictions of assessment review boards will be examined. This module also covers how decisions are reviewed.

Module 2 – Aspects of the Hearing Process
This module provides an overview of process. Participants will also learn about the pre-hearing process and associated forms, including discussion on disclosure and hearing preparation. Preliminary matters, such as adjournment, witness exclusion, member conduct and interaction with the public will also be covered.

This module provides an overview of board procedures, including the order of proceedings and questions, rules of evidence, the role of witnesses, and case arguments. Participants learn about presiding skills, legal counsel, note taking, and confidential information.

Learnings are reinforced through case studies and take-away checklists that assist with both the hearing and pre-hearing processes.

Module 3 – Decision Making
Decision making and writing are presented in the third module, where practical exercises and case studies address the required elements for decisions and best practices in decision making. Participants learn about good writing skills, the application of costs and penalties and the appeal function.

Module 4 – Conduct and Collaboration
Participants learn about the importance of maintaining independence and accountability. This module describes the code of professional and ethical responsibilities for members of adjudicative tribunals, conflict of interest, and hearing conduct. Participants learn techniques that enhance ways to work collaboratively with board administration and other board members.

Evaluation
An assessment review board member and a Municipal Government Board member must complete this course to be qualified to participate in a hearing under the legislation. Full participation in the course and exercises is required and a passing grade on the final examination, to be presented in class, must be obtained.

Terminology

Words and acronyms used throughout this document have the following meanings, unless specifically noted otherwise:
Administrator – the administrator of the Municipal Government Board or any delegated person referred to in section 486(4) of the MGA.
ARB – assessment review board
CARB – composite assessment review board
Clerk – the clerk of assessment review boards, appointed pursuant to section 455 of the MGA.
LARB – local assessment review board
MGA or Act – Municipal Government Act, Revised Statutes of Alberta 2000 Chapter M-26
MRAC – Matters Relating to Assessment Complaints Regulation (AR 310/2009)
MRAT – Matters Relating to Assessment and Taxation Regulation (AR 220/2004)

Agenda

INTRODUCTIONS
LEARNING OBJECTIVES
AGENDA
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ADMINISTRATIVE LAW PRINCIPLES
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- Role of an Administrative Tribunal
- The Big Picture for Assessment Review Boards
- EXERCISE #1 – KNOW YOUR LEGISLATION

THE CONCEPT OF JURISDICTION
- EXERCISE SCENARIO - MS. GREEN
- EXERCISE #2 –LEGISLATION AND JURISDICTION

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THE CONCEPT OF DECISIONS
- Challenges to Decisions
- Court Review of Decisions

THE CONCEPT OF HEARING STYLE
- Assessment Review Board Style
- Exercise #3 - The Legislation and Hearing Style

THE REQUIREMENT OF "FAIRNESS" IN PROCESS
- i. The Right to Be Heard
- EXERCISE #4 – FAIRNESS: RIGHT TO BE HEARD
- ii. Bias
- The Test for Perception of Bias
- EXERCISE #5 – FAIRNESS: BIAS
- iii. A Decision from the Person(s) Who Heard the Case

12:00 pm Lunch

1:00 pm MODULE 2 – ASPECTS OF THE HEARING PROCESS
TIPS AROUND HEARINGS
A TYPICAL HEARING PROCESS
- A typical hearing agenda
- Tips on hearings

PRACTICAL ISSUES IN HEARINGS
1. Objections to Jurisdiction or Procedure
2. Adjournments and Postponements
3. Fairness or Efficiency
4. Access to Information and Disclosure
5. Evidence
6. The Role of Witnesses
7. Working with Translators
8. Case Arguments
9. Legal Counsel
10. Note Taking
11. Confidential Information

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12:00 pm	Lunch
12:30 pm	MODULE 4 – CONDUCT AND COLLABORATION MAINTAINING INDEPENDENCE AND ACCOUNTABILITY THROUGH ETHICAL CONDUCT Alberta Generic Code of Conduct for a Public Agency Tips for Working Collaboratively With Other Tribunal Staff and Members EXERCISE #9 - CONDUCT
2:40 pm	Wrap Up, Evaluations
2:45 pm	Break
3:00 pm	Exam
4:15 pm	Exam Ends

Housekeeping Details

- Turn off cell phones
- Take and return phone calls at lunch and break
- Respect the time and presence of all those present

Module 1 – Introduction to Administrative Law

In this module participants will be introduced to administrative law, the principles of natural justice and about the duty to act fairly. Participants will learn about jurisdiction and authority, as well as the related legislation pertaining to assessment review boards. This module also covers how decisions are reviewed.

Administrative Law Principles

What is Administrative Law?

Generally, administrative law deals with the organization and powers of the government and the role of law in controlling the exercise of those powers. Administrative law is created from the legislation and decisions of the courts.

Role of an Administrative Tribunal

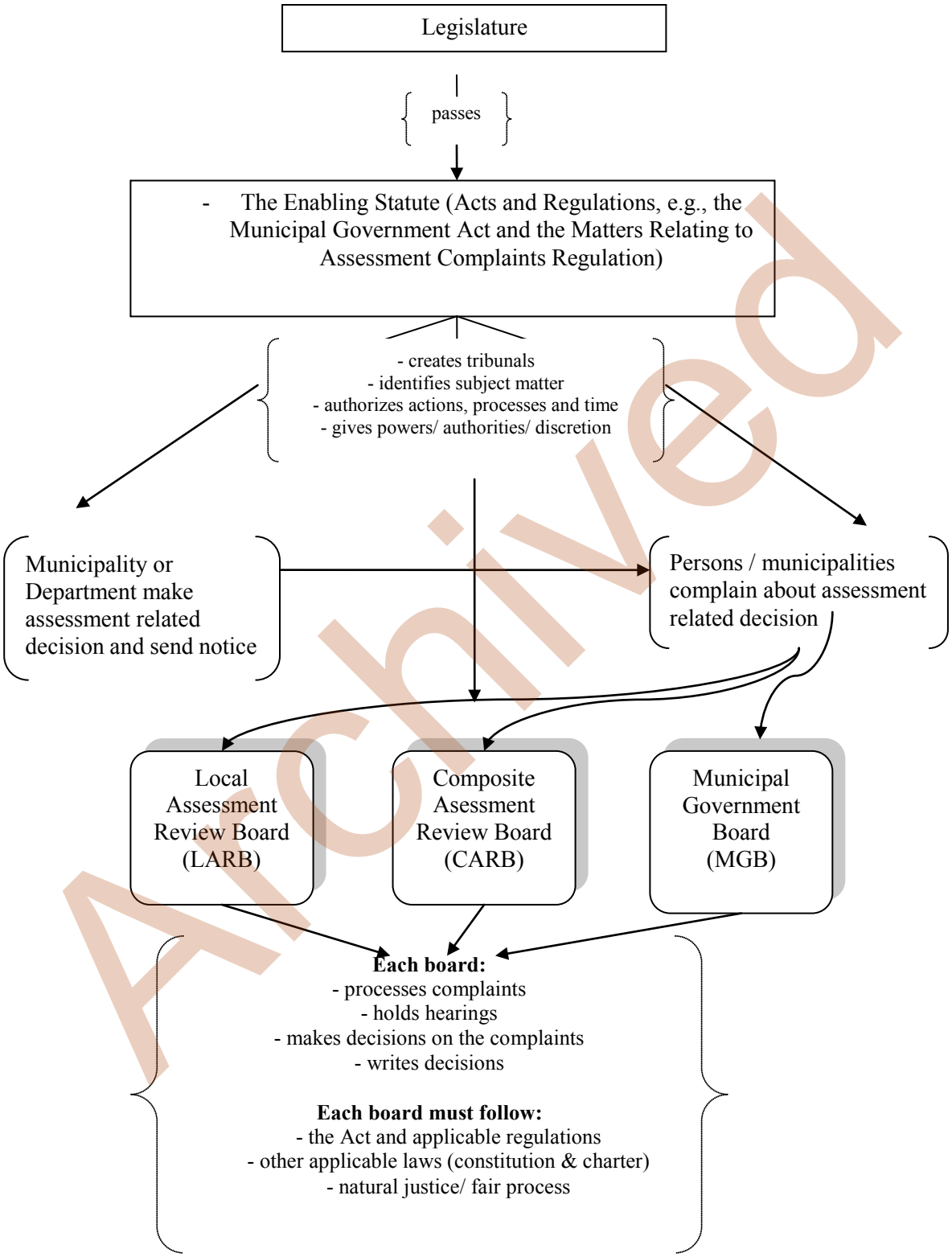
Government will frequently create and authorize an administrative tribunal to carry out certain work and make decisions in a particular field.

The Local Assessment Review Board (LARB), Composite Assessment Review Board (CARB), One Member LARB or CARB, and Municipal Government Board (MGB) are examples of administrative tribunals who deal with and make decision on assessment matters and matters on a tax notice, other than a property tax.

Administrative tribunals:

- are generally promoted as
  - accessible forums where self representation is possible
  - not bound by rules of evidence or court rules of procedure
  - less concerned with legal forms and technicalities
  - more focused on merits
  - user friendly, cheaper, faster.
- are creatures of statute
- make decisions
- work in a legislative framework
- balance quantitative efficiency with qualitative justice.

The Big Picture for Assessment Review Boards



Who are Administrative Tribunal Members?

Administrative tribunal members are the persons appointed by an authority under the legislation to:

- hear and decide cases
- apply the legislation and procedures of the tribunal
- interpret the legislation where required
- make consistent decisions
- provide fair process to the parties.

All administrative tribunals should be competent and qualified to do their roles. Some legislation outlines particular qualifications members must have and maintain. Some legislation provides term limits for members. See section 454.3 of the *Municipal Government Act* and section 49 of the Matters Relating to Assessment Complaints Regulation.

How does this Apply to Tribunal Staff?

Panel members hear and make the decisions. However, tribunal staff handles most of the processing of a complaint. Parties have more interaction with staff before and after the hearing than with the panel. Staff frequently is a valuable resource for both the panel and parties before and during a hearing. Therefore, staff will have specific procedures and time limits to implement or oversee during the case processing. The standards of fairness apply to the whole tribunal - the panel and the staff.

Exercise #1 – Know Your Legislation

The first step is to become familiar with your own legislation and where to find information in that legislation. The following exercise tests your knowledge of the legislation.

Instructions:

i. Work as a group to answer the questions.
ii. Use the *Municipal Government Act* and *Matters Relating to Assessment Complaints Regulation* to help you answer the questions.
iii. When you provide the answer, also give the section of the MGA or MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 15 minutes.

Questions:

1. Local assessment review boards include both three-member and one-member panels. T/F
2. A composite assessment review board must have one provincial member. T/F
3. A municipal council may pass a bylaw to establish one or more LARBs and CARBs. T/F
4. Every board member must successfully complete a training program approved by the Minister. T/F

The Concept of Jurisdiction

All acts and decisions of government must be founded on legal authority.

Jurisdiction: .... legal authority ..., this legal authority is found in the enabling statute.

An administrative tribunal finds its legal authority or jurisdiction within its enabling legislation (the MGA and MRAC which create the tribunal and which the tribunal applies).

Enabling legislation provides the authority to create an assessment review board and defines each board's jurisdiction. A board's jurisdiction includes:

- who it can make decisions about – see an "assessed person" (defined in section 284(1)(a) MGA) and a "taxpayer" (defined in section 1(1)(bb) MGA)
- what matters it can decide
- what remedies it can provide
- what procedures it will follow
- what timelines apply.

An enabling statute may be quite specific on some of these jurisdictional matters, but leave considerable discretion to the tribunal to determine other matters. For example, the enabling statute may say the tribunal has jurisdiction only over children, but leave it to the tribunal to determine what procedures it will follow in making decisions about children.

For the assessment review boards, this legal authority resides in the *Municipal Government Act* and the *Matters Relating to Assessment Complaints Regulation*.

Look over the MGA and MRAC.

Jurisdiction

Tribunal to operate within:
(1) statutory boundaries
(2) natural justice
(3) a standard of reasonableness for decisions

Tribunals who operate outside (1) - (3) are likely making a jurisdictional error or are operating outside their proper authority.

Courts (or supervising tribunal) may/will let the tribunal decision stand (defer) if:
- *Enabling statute contains protection (privative) clause*
- *Decision is not unreasonable.*

Exercise Scenario - Ms. Green

We are going to begin dealing with a complaint and the questions or procedures a clerk or administrator might encounter when processing a complaint. We have chosen one case, Ms. Green's complaint. During the two days you will be given more and more information about Ms. Green's case. Deal only with the information you have. Do not create any additional information.

Instructions:
1. Take 10 minutes to read the information about the case. Then we will begin to ask questions about this complaint process.

You are the assessment review board clerk receiving the complaint. Deal with the following situations as they arise during your processing of the case. Use the MGA and MRAC to guide your answers. Identify the sections of the MGA and MRAC you used.

CASE STUDY

Property: 92 Harrow Circle NW, Blue Skies
Appellant: Ms. Green
Respondent: City of Blue Skies
Tax Year: 2010
Assessment: $291,500

Ms. Green owns a house located at 92 Harrow Circle NW in the City of Blue Skies. It was built in 1975, with an area of 922 square feet, a detached double garage of 864 square feet, and lot size of 8,141 square feet, assessed in "fair" condition. Its value was first assessed as "average" condition at $316,500 and then reduced by $25,000 to reflect the value needed to bring the property to "fair" condition.

Ms. Green complains her property is over assessed. She has lived in the house since 1975, when she bought it new, and its condition has since deteriorated. She says the house is run down and in need of repairs - windows are cracked and the garage needs a new roof. Ms. Green claims that repairs of $15,923 for a new house roof and $9,000 for interior renovations are necessary. The full cost of necessary renovations to the property is more than $45,000, not including the replacement of cracked windows. She believes its condition was far worse than the "fair" condition set out in the assessment. Ms. Green invites anyone to come to her house to assess its condition.

Ms. Green's supporting documents contain some home listings, a witness statement and an appraisal report by James Know, a number of sales comparables from January and February 2010 and June 29, 2010 and newspaper articles. Ms. Green claims she has been and continues to be over taxed. She says the assessor has reduced her assessment by a further $5,000 after she spoke with him, but she needs a bigger reduction.

Ms. Green states that housing prices in 2010 have declined since 2009 and 2008 and that the sales comparisons used by the assessor from 2008 and 2009 should not be used to determine her assessment. Instead, 2010 sales and her appraisal should be used to set the subject property's assessment amount.

Exercise #2 –Legislation and Jurisdiction

The next step is to become familiar with the jurisdiction of your assessment review board.

Instructions:

i. Work as a group to answer the questions.
ii. Use the MGA and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the MGA or MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 30 minutes.

Questions:

1. A complaint is invalid if it does not contain certain information set out in the MGA and MRAC. T/F

2. A complaint must be filed within a set time limit or the panel must dismiss it. T/F

3. Ms. Green filed her complaint using a 15 page letter, with a large envelope of documents and pictures to go with the letter. The complaint contains all the information required on the complaint form but is not on the form.

    a. Does the panel have jurisdiction to hear the case? Why or why not?

4. Before the hearing begins you are reading the disclosure filed by both parties and you see that Ms. Green intends to bring six witnesses. Three witnesses are other home owners who will testify about their own property assessments. The fourth witness is the president of the Citizens Against Taxing Seniors (CATS) who will testify that Ms. Green and other seniors are overtaxed. The fifth witness is an expert property appraiser who has prepared a written report for Ms. Green about the market value of her property. The sixth witness is a property manager who will testify about the income from and costs of maintaining his fourplex property.

    a. Does the information about Ms. Green's witnesses raise any jurisdictional concerns for you?

    b. If so, what is the concern?

    c. What should you do?

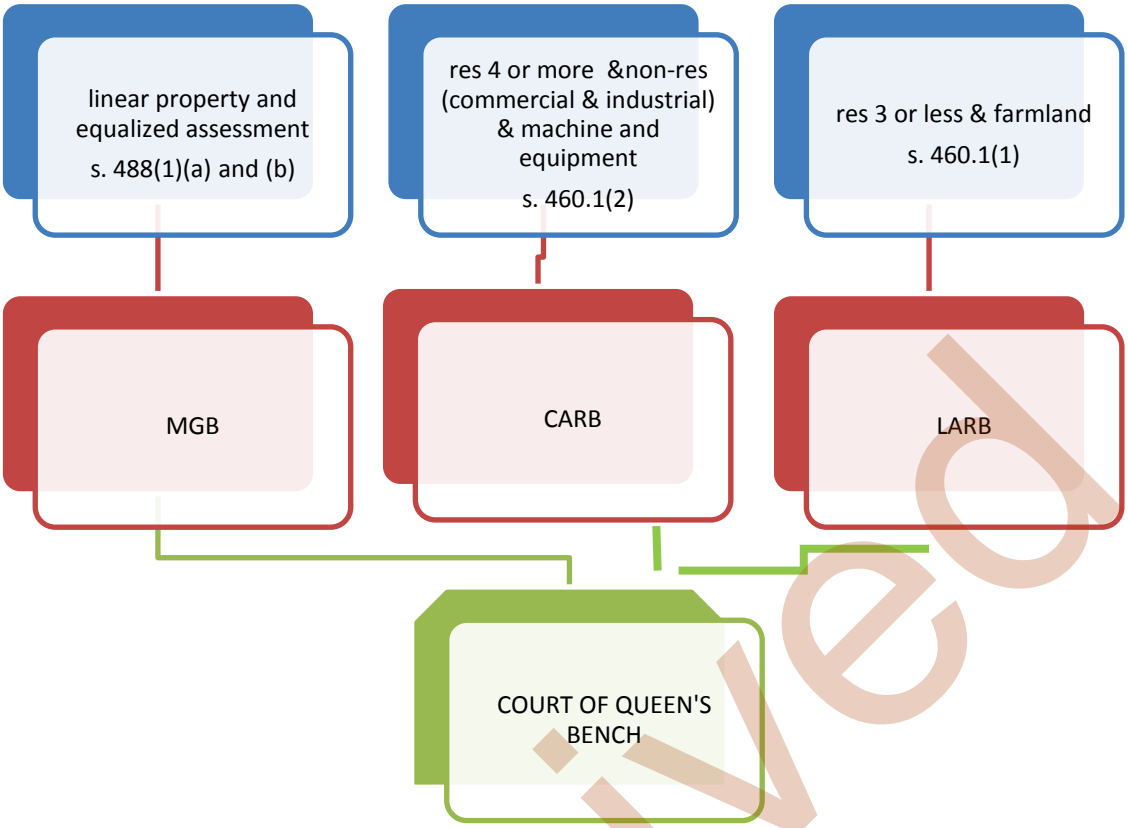


Figure 1 Subject Matter Jurisdiction of ARBs

The Department has prepared a chart for dealing with ARB Complaints by Notice Type; this chart is included at the back of the binder.

Important note: Generally the ARB has jurisdiction to hear the case unless someone brings something to the panel's attention or the panel notices something to question its jurisdiction. Most often this means:

- a party raises an objection, or
- the clerk or the panel notices the file contains some information that raises a concern about jurisdiction, or
- someone presents evidence in the hearing which raises a concern about jurisdiction.

The Concept of Process

Every tribunal uses a process to deal with the cases that come before it. The process begins with receiving the complaint, appeal or application. It includes getting the input of all parties. A best practice process includes pre-hearing disclosure of information related to the case. The process includes some type of hearing where the parties can present their information to the panel using documents, objects and witnesses. The process includes steps for the panel to make a decision. The tribunal sends a written decision to the parties. Finally, the process often includes a step to appeal the decision of the panel to another tribunal or the courts.

More detail on process is covered later under the topic of fair process.

The overview of the process used by the ARBs is in the following charts prepared by the Department and included at the back of the binder.

1. Complaint Process and timeline for MGB – three member and one member
2. Complaint Process and timeline for a CARB – three member and one member
3. Complaint Process and timeline for a LARB – three member and one member

See also the process overview the instructor puts on the flipchart.

The Concept of Decisions

The parties come to the tribunal to get a decision. The decision usually refers to the final decision on the merits of the complaint, application or appeal. Tribunals make decisions about individual rights, benefits, entitlements, disputes between parties and many other matters. Examples of decisions that a government, or its tribunals, may take include decisions about assessment and taxation, the implementation or cancellation of programs, determination of entitlement to benefits, authorizations for indemnification or payment of compensation, the issuance or revocation of licenses or permits, etc. For assessment and some tax related matters, the outcome of the local assessment review board, composite assessment review board and Municipal Government Board processes are decisions.

Tribunal decisions are usually categorized as policy, legislative, administrative or quasi-judicial. Quasi-judicial decisions are those decisions made in a court-like manner and usually concern the rights of an individual. Generally, the courts impose a higher procedural requirement on the making of administrative and quasi-judicial decisions than they do on policy and legislative decisions.

Within the process for handling the case, the tribunal, or persons legitimately acting on its behalf, will make many other determinations that are often also called decisions. These determinations affect the process, when parties can or must take steps, who must take action, who can appear at a hearing, jurisdiction, procedural objections or applications, and evidentiary or procedural questions during the hearing. Determinations like these also affect the legitimacy and validity of the final decision on the merits.

Challenges to Decisions

The acts or decisions of government officials may be challenged by means of an application to the court to overturn or quash a decision (called judicial review or an appeal).

Legislation (here, the Municipal Government Act) and previous court decisions establish the criteria which the courts will use when they review the exercise of government decision-making authority.

People challenge tribunal decisions for a variety of reasons including:

- not agreeing with the result or the reasons
- feeling they did not get a fair hearing
- feeling the panel was biased
- believing the panel did not consider all the relevant evidence or relied on irrelevant evidence
- believing the panel did not correctly apply or interpret the legislation.

Court Review of Decisions

In 2008 the Supreme Court of Canada altered the historical tests for reviewing the decisions of administrative tribunals. In a case called *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Court eliminated the historical three tests of review and confirmed two tests going forward – correctness and reasonableness.

With this decision and several decisions which follow, the courts began to give some valuable insights into what the courts require and expect from tribunal decisions to make the task of reviewing the decision more manageable. The court in *Dunsmuir* focussed on the reasons for decision as one of the single most important aspects of the decision, after the outcome. Reasons provide the transparent, intelligent and logical justification for the findings, conclusions and outcomes reached by the panel; reasons help the court understand and observe the decision making process used by the panel. Reasons must be able to withstand some scrutiny by the court.

Under the Municipal Government Act, all appeals from assessment review board decisions go to the Court of Queen's Bench. The Act outlines:

- who can appeal
- time lines for appeal
- grounds for appeal
- how to get information on the appeal
- the requirement of the tribunal to keep an official record.
- what the court will consider when dealing with an appeal
- what the court can order in an appeal.

The clerk, under section 14 of MRAC, will normally prepare the record that will be sent to the court.

The Municipal Government Act, clarifies the court's role on assessment decisions. The court will review the ARB decision on the face of the record, meaning using the written documents from the ARB hearing only. The parties will not receive a new hearing where they can call new evidence.

Appeal

470(1) An appeal lies to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

(2) Any of the following may appeal the decision of an assessment review board:

(a) the complainant;

(b) an assessed person, other than the complainant, who is affected by the decision;

(c) a municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;

(d) the assessor for a municipality referred to in clause (c).

(3) An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision under section 469, and notice of the application for leave to appeal must be given to

(a) the assessment review board, and

(b) any other persons as the judge directs.

(4) If an applicant makes a written request for materials to the assessment review board for the purposes of the application for leave to appeal under subsection (3), the assessment review board must provide the materials requested within 14 days from the date on which the written request is served.

(5) On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant leave to appeal if the judge is of the opinion that the appeal involves a question of law or jurisdiction of sufficient importance to merit an appeal and has a reasonable chance of success.

(6) If a judge grants leave to appeal, the judge may

(a) direct which persons or other bodies must be named as respondents to the appeal,

(b) specify the question of law or the question of jurisdiction to be appealed, and

(c) make any order as to the costs of the application that the judge considers appropriate.

(7) On leave to appeal being granted by a judge, the appeal must proceed in accordance with the practice and procedure of the Court of Queen's Bench.

(8) Notice of the appeal must be given to the parties affected by the appeal and to the assessment review board.

(9) Within 30 days from the date that the leave to appeal is obtained, the assessment review board must forward to the clerk of the Court of Queen's Bench the transcript, if any, and the record of the hearing, its findings and reasons for the decision.

Decision on appeal

470.1(1) On the hearing of an appeal,

(a) no evidence other than the evidence that was submitted to the assessment review board may be admitted, but the Court of Queen's Bench may draw any inferences

(i) that are not inconsistent with the facts expressly found by the assessment review board, and

(ii) that are necessary for determining the question of law or the question of jurisdiction, and

(b) the Court may confirm or cancel the decision.

(2) In the event that the Court of Queen's Bench cancels a decision, the Court must refer the matter back to the assessment review board, and the board must rehear the matter and deal with it in accordance with the opinion of or any direction given by the Court on the question of law or the question of jurisdiction.

(3) No member of the assessment review board is liable for costs by reason of or in respect of an application for leave to appeal or an appeal under this Act.

(4) If the Court of Queen's Bench finds that the only ground for appeal established is a defect in form or a technical irregularity and that no substantial wrong or miscarriage of justice has occurred, the Court may deny the appeal, confirm the decision of the assessment review board despite the defect or irregularity, and order that the decision takes effect from the time and on the terms that the Court considers proper.

The Concept of Hearing Style

Hearing style refers to how the tribunal characterizes the type of process the tribunal uses to deal with cases. Primarily style focuses on what the hearing looks like and what order parties present their cases.

The tribunal's hearing style is important because it helps the panel members know how to act. How to act includes when and what type of questions the panel members can ask and includes whether the panel can ask for evidence or go and get evidence that fills in gaps or makes it easier or more comfortable for the panel to decide the case. Understanding the hearing style of the tribunal helps the parties know how to present their cases.

A hearing style is chosen by the tribunal in its formative year or is mandated by the legislation. There are three main types of hearing styles: A. Prosecutorial, B. Adversarial, C. Inquisitorial. A tribunal may have a hearing style that is a combination of any of the three main styles.

Type A - Prosecutorial Style

Like a criminal trial. Involves an allegation that someone has broken the law or committed an act contrary to the law or a code of conduct. Characterized by two or more parties - each representing an opposing view of the case, interacting with the panel. One party acts as the investigating officer/prosecutor for the organization. The prosecutor normally goes first to prove an alleged breach of conduct or standards and the applicable penalty. If the prosecutor does not bring the required information or sufficient information in a case, that prosecutor risks the panel not upholding the breach.

The panel will act like a judge in a trial and let the parties make their own cases as they see fit; the panel will not act as an advocate for any party. A panel member will ask clarification questions, but will not ask questions or seek information that will fill in gaps in the case or provide a fuller story than the parties

want to present. The panel makes its decision using only the information presented by the parties.

Professional disciplinary committees often use this hearing style.

Type B - Adversarial Style

Like a civil trial. Characterized by two or more parties - each representing an opposing view of the case, interacting with the panel. If the party does not bring the required information or sufficient information in a case, that party risks the panel ruling against the party.

The panel will act like a judge in a trial and let the parties make their own cases as they see fit; the panel will not act as an advocate for any party. A panel member will ask clarification questions, but will not ask questions or seek information that will fill in gaps in the case or provide a fuller story than the parties want to present. The panel makes its decision using only the information presented by the parties.

Tribunals who decide disputes between parties or deal with regulatory matters or benefit entitlements frequently use this hearing style.

Type C - Inquisitorial Style

Like a public inquiry. Characterized by a single party or sometimes two parties interacting with the panel.

The panel has the obligation to satisfy itself of all statutory requirements and will therefore take on the role of questioning the party/parties as much as necessary to obtain information.

The panel has the power to obtain additional information not produced in the hearing. The panel will satisfy itself of the statutory requirements by gathering as much information as it needs and will also apply the principles of fair process.

Environmental protection tribunals or other tribunals with a strong public interest mandate often use this hearing style.

Exercise #3 - The Legislation and Hearing Style

Instructions:

i. Work as a group to answer the questions.
ii. Use the MGA and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the MGA or MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 10 minutes.

Statement: Assessment review boards have an adversarial hearing style.

Do you agree or disagree? What sections of the MGA and MRAC assist you in answering?

The Requirement of "*Fairness*"in Process

Earlier the concept of process was explained. The most basic concept of administrative law is that the processes used to reach decisions must be, and be seen to be, fair in order to be valid.

This requirement imposes procedural requirements on the tribunal, its members and staff to:

1. give persons affected by a decision the right to be heard
2. not be tainted by bias or the appearance of bias, and
3. have the person(s) who heard the case make the decision.

Whether a procedure will be considered "fair" will depend on all the circumstances of the case. Circumstances include the legislation, the rules or procedures and the unique situations in the particular case.

The MGA and MRAC include procedural sections to ensure everyone gets fair process during a complaint.

i. The Right to Be Heard

The first concept of fairness, the right to be heard (*audi alteram partem*), really means the persons know what the case is about, have sufficient time to prepare, and a reasonable time to present their own case and respond to the case presented by others in the same hearing.

A person can "be heard" in a number of ways: face-to-face in person, by telephone, by video conference, or in writing.

The more serious the adverse consequences of a decision for an individual, the greater the procedural protections required.

Generally, in order to exercise the **right to be heard** in an effective and meaningful way, certain events must take place:

- the affected individual must be given notice that a decision is to be made;
- the notice must be given in adequate time and in sufficient detail to enable the individual to respond;
- the individual must be aware of the case to be met; i.e., information that will be given to or is held by the decision maker must be made available to those affected before the decision is made;

no one should be taken by surprise;
- the individual must be given an opportunity to present evidence and make an argument to the decision maker.

Fairness does not always require that an oral hearing be held. However, if an oral hearing is required, additional procedural rights may be imposed, for example:

- right to counsel or representation
- right to have evidence considered
- right to cross-examine witnesses
- right to an adjournment
- right to a reopening of the hearing.

It important to know there are certain rules of procedure the tribunal must follow when making decisions. The rules of procedure may be:

- specified in the MGA and MRAC
- created by the tribunal under authority given in the legislation.

Exercise #4 – Fairness: Right to Be Heard

Instructions:

i. Work as a group to answer the questions.
ii. Use the MGA and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the MGA or MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 15 minutes.

Questions:

Representation

1. Ms. Green appears at the hearing with someone to represent her at the hearing.

   a. Is Ms. Green entitled to have a representative (a person to speak for her) at the hearing?

   b. What requirements apply to having a representative at the hearing?

   c. Can Ms. Green obtain a delay in the hearing to get a representative?

Disclosure Before the Hearing

2. Before the hearing Ms. Green asked to get a copy of the information used by assessor but the assessor did not provide the information requested.

   a. Is Ms. Green entitled to see the information used by the assessor?

   b. What can the ARB do if the assessor refuses to provide information?

ii. Bias

The second concept of fairness says decision makers need to come to their work with an open mind, willing to let the evidence and the arguments from the parties present persuade them. They need to be unbiased.

Bias is lack of neutrality on the part of the decision maker regarding an issue to be decided. In other words, the decision maker has already made up his or her mind on the case. Naturally, parties want to know that their presentations and efforts have the possibility of persuading the decision maker and influencing the outcome of the case.

A tribunal should not be judge in its own case. Tribunal members should not testify as witnesses in the proceeding over which they preside. Reasonable parties may assume that when assessing credibility, the member will prefer his or her own testimony over that of other witnesses.

Two Types of Bias

The most obvious type of bias is actual bias, such as a pecuniary interest in the decision or a personal association with an interested party, but tribunals also must avoid any appearance (perception) of bias. Actual and perceived biases are both unacceptable in tribunal members.

- Actual bias means the outcome is already predetermined.
- Perception of bias is the view of one party before a panel that one or more panel members hold a predetermined result or the high likelihood they hold a predetermined result. The courts limit this category of bias to a reasonable apprehension of bias, meaning one that is objectively and independently assessed, not just the fear or view held by the party.
- A party may ask the courts to overturn a decision made by one or more biased panel members.

What Creates a Perception of Bias?

Courts have identified four common situations in which a decision maker will be perceived to be biased:

i. where the decision maker has a material 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);

ii. 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);

iii. prior participation in the process or a related process (e.g., the member previously represented one of the parties now appearing before the tribunal on the same matter or made the decision at an earlier step);

iv. 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).

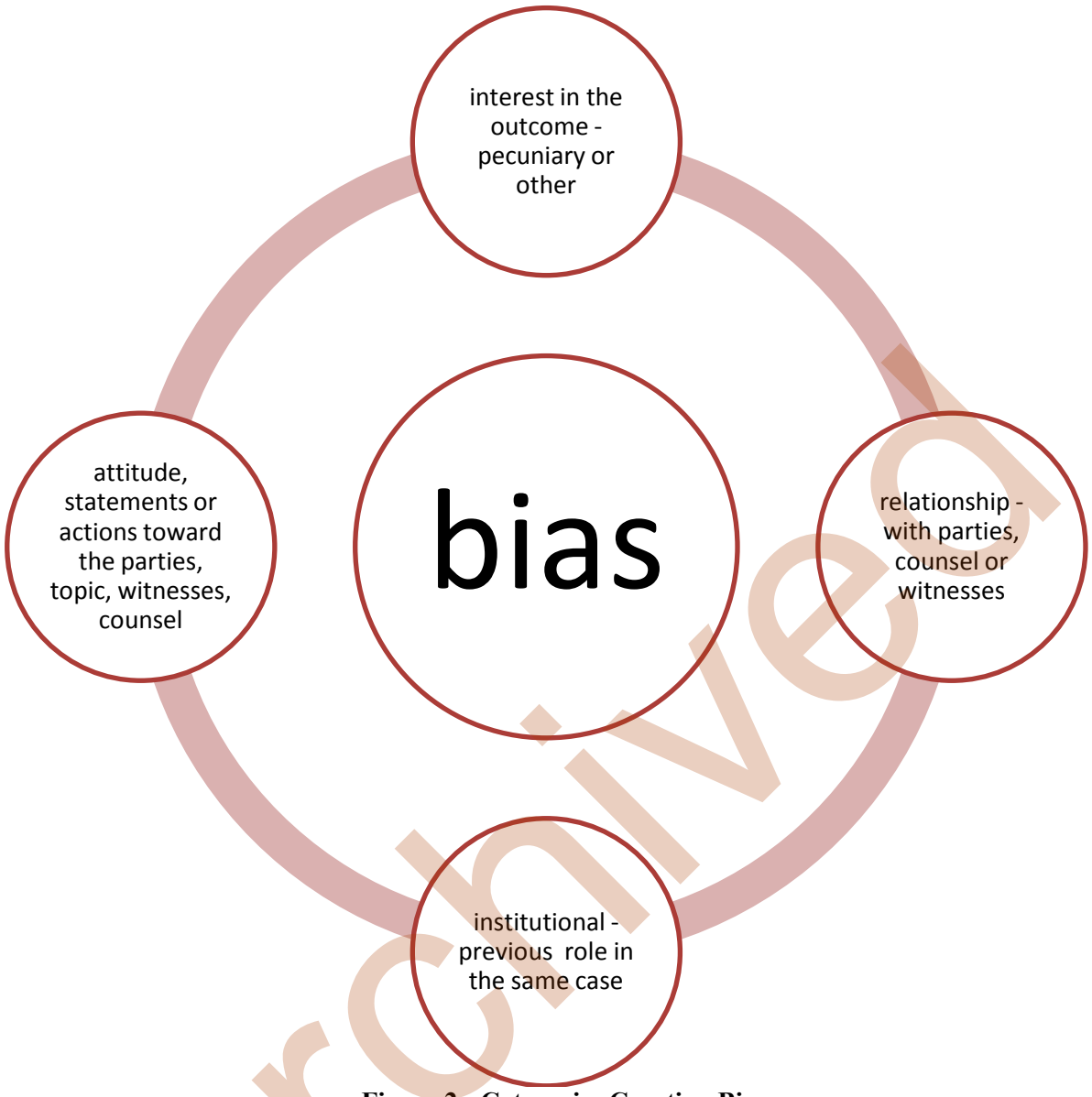


Figure 2 - Categories Creating Bias

The Test for Perception of Bias

The courts created a test to evaluate a concern about an appearance of bias. The test is the reasonable bystander test: Would a reasonable bystander informed of all the circumstances reasonably conclude the decision maker holds a predisposed result for the case?

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 could not act impartially. The objector need not show that the apprehended bias actually prejudiced one of the parties or affected the result. It is sufficient for disqualification if this *might* occur. Even decision makers who are confident that they can act impartially, notwithstanding the appearance of bias, must disqualify themselves from the case.

Exceptions to Bias

Some common exceptions around bias include:

- Topic experts who act as panel members. Panel members may be able to draw on their expertise (without adding new information) to decide the case.

- Members of tribunals that deal with complex matters are often drawn from among the experts in the field who, before their appointment, may have appeared before the tribunal on behalf of a party. The earlier professional association alone may not give rise to a reasonable apprehension of bias unless the member, before being appointed to the tribunal, had some involvement in the matter now before the tribunal.

Unbiased does not mean uninformed. It means only that the decision maker should be open to persuasion. Members of a tribunal may read information about the case before the hearing and may hold tentative views on the matters at issue. If the decision maker realizes he or she has crossed the line from informed and tentative views to convinced, then the person must disclose the bias and withdraw from the case.

Tips around Bias

- Tribunal members should not prejudge a case.
  They should not make up their minds so strongly in advance that they cannot be influenced to decide another way at the hearing. They should not hold predetermined views of the issues that would be applied regardless of merits. Evidence of prejudgment is usually found in statements made by tribunal members.

- It is unwise for tribunal members to express opinions before or during a proceeding.
  A statement that the outcome of a proceeding is a foregone conclusion indicates the existence of impermissible bias.

- Improper conduct by tribunal members during the hearing may indicate bias.
  Tribunal members should never make flippant remarks or derogatory statements about parties or anyone else. Use of intemperate language or the display of feelings of antagonism and hostility toward a party may give rise to a reasonable apprehension of bias against that party. A tribunal member who repeatedly interferes with cross-examination or takes part in the questioning of witnesses to such an extent as to appear to descend into the arena may be suspected of having bias for or against a party. A single impropriety may not give rise to a reasonable apprehension of bias, but a series of incidents might do so.

- Bias can arise at any time during the tribunal's processing of a case (from the time the appeal is filed until the written decision is sent out).
  Many people deal with the case and the parties during this process. Each person dealing with the case has an obligation to prevent an appearance of bias by the decision makers.

- Bias can arise because of the decision maker's actions outside the hearing.
  Panel members, whether full time or part time, frequently:
  - interact in the community
  - invite feedback and suggestions
  - consult on changes to process
  - build rapport and relationships
  - convey expectations and do peer evaluations.

What Happens When Allegations of Bias are Made?

The actions taken are by the parties and the panel members.

A panel is not to be paralyzed every time someone alleges bias. If the panel decides that a reasonable apprehension of bias on the part of one of its members exists, that member should be replaced before the proceeding commences. If a panel member is replaced for bias, then the hearing must begin again from the start.

Step 1. The panel member, before accepting an appointment to a case panel and continually during the hearing, needs to determine if he or she has a bias or reasonable apprehension of bias. The panel member must:

- consider the names of the parties, representative and witnesses for relationships and prior dealings.
- consider the appeal for any financial interest in the outcome or any previous dealings in this case.
- consult the legislation, previous cases on bias, the panel chair or legal counsel.
- if an actual bias exists, step back from the case.
- if a potential bias exists, disclose the bias to the panel chair, clerk and if required the parties. The parties can waive any concern of bias if they are informed.
- decide to either step back from the case or inform the parties and ask for a waiver. If the parties say no waiver, then step back.
- if no bias exists, accept the appointment.

Step 2. A party who suspects bias on the part of a decision maker must raise the concern with the tribunal in a timely way, usually in the form of a preliminary objection to the hearing. If a party was aware of bias during the proceeding but failed to object, it may not complain later if the decision goes against it. An objection must be stated when the bias first comes to the party's attention.

Step 3. When an allegation of bias is made, the panel must conduct an inquiry and make a decision. The member should examine Step 1 first. If Step 1 does not resolve the concern, then the panel as a group (or a one member panel) needs to hear from all parties about the bias allegation and then make a decision. The member alleged to have the bias can participate in the discussions and determination of the result, but cannot give evidence or add any information the parties do not share. If the panel rules the member is not biased, it may continue with the proceedings.

An important note: The parties can waive any concern about bias if they are aware of the information creating the potential bias.

Exercise #5 – Fairness: Bias

Instructions:

i. Work as a group to answer the questions.
ii. Use the MGA and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the MGA or MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 15 minutes.

Questions:

Bias

1. At the beginning of the hearing, the chair introduces each panel member and asks the parties if they have any objections to the panel members sitting. The complainant objects to one member of the panel. The details of the objection are set out below.

In which of these cases would the panel decide to continue with the current panel and why?

a. the member ran for municipal council in the same city as Ms. Green's property and Ms. Green ran against him in the recent election but neither got elected

b. within the last 6 months the member has lived on the same block as Ms. Green

c. the member has recently done consulting work for the Respondent and has not yet been paid

d. the member has made recent public statements in the local paper that there should be a strict application of the words "fair and equitable" so as to reduce the ARB's workload.

e. The member was on a panel of the MGB who determined the identical case in the 2008 tax year.

Clerk

2. Ms. Green is a very difficult person. The clerk had almost lost patience with her. One time she called before the hearing and told the clerk she said she thought the ARB was not treating her fairly and she may as well give up before the hearing.

a. Could the clerk's treatment of Ms. Green cause her to challenge the final decision on the basis of bias?

iii. A Decision from the Person(s) Who Heard the Case

The third principle of fairness says the persons hearing the case are required to make the decision, not persons who were not present for the full case or who do not have the authority to make the decision.

Decision makers have to be cautious about relying on:

- preset policy that limits discretion or applies a formula
- advice or feedback from advisors or outsiders
- previous decisions in other cases
- input from persons who did not hear the entire case
- decision drafters or reviewers who impose or substitute (by persuasion) their own decision.

Best practice tips:

- The decision maker(s) must have heard all the evidence and representations from the parties.
- The decision maker(s) must consider all the relevant evidence and information and cannot consider any information not disclosed to the parties.
- The decision maker(s) must apply the legislative requirements and tests to the evidence.
- Legal counsel and professional staff can give advice but must leave the actual choices or decisions or conclusions to the decision maker(s).
- The decision maker(s) must be able to explain the logic for the decision.
- Another person may assist the decision maker to write or edit a decision document, after the decision maker has made the decision.

Natural Justice and Procedural Fairness

Excerpted from Victoria University http://www.vu.edu.au/library/pdf/natural%20justice%2015%20OCT%202001.pdf
This article provides another perspective on the whole concept of fairness.

What is Natural Justice?
In a nutshell, natural justice is about the concept of fairness encapsulated in an old adage: justice should be done *and* be seen to be done. In procedural terms, a decision maker should not only act in good faith and without bias but also should grant a hearing to any person whose interests will be affected by the exercise of that decision before the decision is made.

There are two primary rules underlying the concept of natural justice.

I. *Audi alteram partem* - ("hear the other side") ie a person whose interests will be affected by the decision should be given a hearing before that decision is made.

II. *Nemo debet esse judex in propria sua causa* - ("no one shall be judged in his own case") ie the decision maker must be unbiased. If a person has preconceived opinions, a vested interest or personal involvement in a matter they should not attempt to settle that matter. Conventionally, a person is expected to declare any interest and step aside if it could be deemed that the decision was arrived at for reasons other than the merits of the case.

Foremost rules of procedural fairness required by these primary rules in the resolution of disputes, grievances and complaints:

I. The respondent must be given full details of the accusations. That is, the factual issues and allegations to be examined and discussed should be specified in sufficient detail to enable adequate preparation of a defence and a reasonable opportunity of adequate refutation.

II. Relevant documents used in judgment on a case must be disclosed to both parties.

III. Decisions to admit or exclude evidence should be based on whether it is relevant, reliable and logically valid, capable of being tested in some form. The evidentiary basis for determination in harassment and discrimination cases is "on the balance of probabilities" as opposed to "beyond all reasonable doubt".

IV. There should not be undue delay in hearing the matter. (If a complainant/respondent fails to appear on a number of occasions the case might be determined on the evidence of the party appearing).

V. Notice of a hearing or conciliation conference should be served on the parties with reasonable time to enable them to prepare their case. The time and place must be clearly specified.

VI. Unless there are exceptional circumstances, do not hear one side in the absence of the other.

VII. Give each party the opportunity to state their case adequately.

VIII. Give each party the opportunity to correct or contradict any statement prejudicial to their case.

IX. Witnesses, if any, should be examined or questioned and allowed to be questioned by the other party. Adequate time should be allowed for this "cross-examination".

X. If there are different allegations by different complainants against the same respondent in the same subject area, it may be a breach of procedural fairness to hear the evidence or allegations together rather than separately as one may unreasonably influence the other (*Chambers* v *James Cook University* 1995). It is also improper in such a case to inform the complainants of the nature or details of each other's complaints.

Foremost rules and procedures to be followed by any person or body charged with the duty of adjudicating upon disputes:

1. Act fairly:
    I. in good faith
    II. without bias
    III. in a judicial temper
2. Give each party the opportunity to state their case adequately:
    I. to correct or contradict any statement prejudicial to their case
    II. to not hear one side in the absence of the other
3. Not to act in your own cause - declare any interest
4. Gain full knowledge of the accusations
5. Ensure relevant documents used in judgment of a case are disclosed to both parties

Module 2 – Aspects of the Hearing Process

This module provides an overview of jurisdiction and authority, as well as the related legislation pertaining to assessment review boards. The different types and jurisdictions of assessment review boards is examined.

Participants learn about the pre-hearing process and associated forms, including discussion on disclosure and hearing preparation. Preliminary matters, such as adjournment, witness exclusion, member conduct and interaction with the public will also be covered.

This module provides an overview of ARB procedures, including the order of proceedings and questions, rules of evidence, the role of witnesses, and case arguments. Participants learn about presiding skills, fact finding, legal counsel, note taking, and confidential information.

Learnings are reinforced through case studies and take-away checklists that assist with both the hearing and pre-hearing processes.

Tips Around Hearings

These tips are for both the panel and the clerk. Each person needs to be aware of what everyone else is or should be doing to make the hearing process fair.

Before:

- panel check for biases; staff identify potential concerns about bias
- staff ensure the proper documents are filed, received, shared before the hearing within the proper time limits
- staff answer inquiries from the parties – about process, legislation, time limits etc.
- staff make the hearing arrangements and send out notice of hearing
- staff prepare the hearing package/file for the panel
- staff and panel come to the hearing well rested and prepared to participate
- staff bring the legislation, rules etc
- panel and staff read the materials or determine when to read them and how to deal with questions the panel may have
- panel and staff read the legislation and procedures and anticipate any concerns that might arise at the hearing
- staff ask questions of the panel chair if unsure
- panel keep an open mind

During:

- panel (and staff) remain sensitive to situations raising potential biases
- help maintain the hearing decorum – apply the procedures
- panel ask appropriate questions – if member is unsure, request a recess to speak with the panel
- panel keep an open mind
- panel keep own notes to help with decision making
- staff keep the hearing record, list of evidence and witnesses and transcript of the hearing
- staff and panel keep hearing fairness in mind at all times

After:

- panel set aside the appropriate time to discuss the case to make a decision
- panel and staff remain sensitive to situations raising potential biases
- staff and panel - use a decision making model to help the panel
- determine what the standard for decision making is
- panel keep an open mind until you've reviewed all the evidence
- members voice input in the decision making
- determine who will write the decision and when the panel will review the draft
- panel (and staff) review the draft to provide meaningful feedback
- panel and staff keep fairness in mind
- staff finalize the record
- staff publish the decision and deal with inquiries about it

A Typical Hearing Process

Every tribunal has its own unique hearing procedure. However, parties who appear before multiple tribunals prefer to see some consistency and predictability in hearing procedures. Hearing procedures need to be open, clear, transparent and understandable by the parties. Procedures need to demonstrate the tribunal's commitment to fair process.

A typical hearing agenda is:

1. Call to order and welcome by the Chair
2. Introductions of the panel, parties and other persons in the room
    i. name, organization and role in the hearing (agent, representative, witness, observer etc)
3. Opening comments by the Chair
    i. role and composition of the panel
    ii. role of the parties
    iii. purpose of this hearing
    iv. issues in the hearing
    v. legislative section(s) that applies
    vi. how the hearing will proceed – what happens when, who goes in what order, time, breaks, hearing being recorded or not, whether the panel will interact with the parties in breaks, whether the panel will ask questions, how the parties can get process assistance during the hearing, whether the panel will give a decision today
    vii. formality in the hearing – rules of evidence do not apply, witnesses may be sworn or affirmed, how to address the panel and members, courtesy and respect in the hearing
    viii. any challenges on bias?
    ix. any objections to the panel's authority – time, process, subject matter?
    x. ready to proceed?
4. Evidence from the parties and experts
    i. start with documents filed / disclosed before the hearing (the proposed evidence)
    ii. review each document and if the parties agree it can become evidence in the hearing give it a number or identify it for the record. If the parties do not agree, the document or evidence has to be introduced by the party through one of its witnesses.
    iii. restate the matters to be decided, from the complaint, which creates the relevant base for the evidence and enables the panel to more easily deal with applications or objections during the hearing about new documents or documents not provided when requested or within time
    iv. explain the MGA and MRAC sections dealing with <u>new</u> evidence
    v. explain one witness will testify at a time and how each witness is participating in the hearing
    vi. explain if witnesses will be sworn or affirmed to tell the truth by the chair or clerk (the witness has the choice of being sworn or affirmed)

vii. explain which party calls witnesses first

viii. explain what happens for each witness – direct examination, cross examination, redirect examination, questions from the panel

ix. tell the parties if questions to the witness are asked directly to the witness or through the chair

x. confirm with the parties if witnesses will be located outside the hearing room until they testify (excluded until they testify)

xi. witnesses to be given copies of all the marked documents (exhibits) – by staff – so they can refer to a document if asked questions about it

xii. witnesses need to speak clearly and slow enough for the panel to take notes and to help the recording if required

xiii. expert witnesses to be questioned first on their qualifications and a decision made by the panel if the witness is an expert and in what field or topic; experts then questioned on the content of their evidence

xiv. deal with each witness and then thank them for attending

5. Arguments / Submissions by the parties

   i. Chair explains what the process involves – who goes first, second etc; if the panel will ask questions; if the parties can debate between them; any time limits on the presentation; whether parties should read from their briefs or cases

   ii. each party presents their argument

   iii. panel asks questions to the parties

6. Closing Comments by the Chair

   i. thank everyone for participating

   ii. confirm the issues the panel will be deciding using the evidence and arguments presented

   iii. when and how the decision will be sent

   iv. who to contact after the hearing – staff, not panel

   v. firmly close the hearing.

7. Adjournment

Tips on hearings

- Scripts can greatly assist the panel chair to handle opening and closing comments.
- Cards can provide ready access to a typical oath or affirmation.
- Checklists can help the chair and staff deal with objections, concerns or applications that occur during the hearing.

Practical Issues in Hearings

This section deals with a number of common procedural questions that can arise when processing a file, getting to the hearing or at the hearing.

1. Objections to Jurisdiction or Procedure

Objection or challenge to a tribunal's jurisdiction or procedure usually occurs before a hearing starts but a motion challenging the jurisdiction of the tribunal or objecting to a procedure may be brought at any time.

A challenge to jurisdiction or procedure should be raised by the party and then with proper notice to the other parties. The challenge should carefully set out the grounds on which the moving party intends to rely.

Examples of challenges to jurisdiction or procedure might include:

- insufficient or inadequate notice of the hearing;
- failure to comply with any applicable legislation;
- failure to comply with procedural order;
- alleged bias;
- the matter before the tribunal is beyond the powers provided in its enabling act;
- a party has applied to a court to have the proceedings stopped;
- someone did not do what they were to do or within the time set;
- parties did not get the information required to prepare; or
- someone needs an adjournment.

Tips for Dealing with Objections

- Try to have any procedural or jurisdictional objections dealt with before the hearing so the merits of the hearing proceed more smoothly.
- All parties need to be able to provide their comments on the question. Sometimes a party will need extra time to prepare its response. This might require an adjournment or postponement of the hearing.
- The panel will need to decide if it has jurisdiction before it can continue to decide the matters. Sometimes the panel can decide immediately and other times it may be best for the panel to reserve its decision and proceed with the hearing or recess until the panel can get the legal advice it needs to decide the motion. This is particularly so when the motion involves complex questions of law.
- Staff can assist by attempting to reveal any jurisdictional or procedural questions well before the hearing and assisting the parties to exchange all the information about the questions.

2. Adjournments and Postponements

Realistically, hearings cannot always be expected to proceed and be completed at the first sitting. From time to time hearings must be postponed or adjourned.

The term **postponement** refers to rescheduling a hearing which has not yet started, but for which a date for commencement has been set. The term **adjournment** refers to the setting of a date for the continuation or rescheduling of a hearing which is in progress.

Tribunals are generally entitled to adjourn or postpone their proceedings at any time. Parties must request an adjournment or postponement in writing and, whenever possible, the request should be made in advance. The tribunal should canvass the views of the other participants before making a decision with respect to granting a postponement or adjournment.

Some tribunals have the statutory authority to award costs against a participant when they request an adjournment or postponement that could reasonably have been anticipated, if it results in inconvenience or increased expense to any other participant.

When considering whether or not to grant a postponement or adjournment, the tribunal should consider its legislative authority, the complexity of the matter at hand, the amount of time already afforded the parties for the preparation of the case, the efforts of the parties to be present at the hearing, whether or not there have been any previous postponements or adjournments, and any other relevant factors. See: section 15 MRAC.

3. Fairness or Efficiency

All matters concerning processing, scheduling, and hearing a case involve a balancing of the demands of fairness and efficiency. Hard and fast guidelines are not possible, as each case and each request must be looked at on its own merits. It is important, however, to bear in mind that common sense lies at the root of any decision in these matters.

Ensuring that the parties are provided with a fair hearing in accordance with the principles of natural justice is, of course, the paramount concern of any tribunal, but efficiency is also essential to the proper conduct of the tribunal's affairs. If cases are allowed to drag on without proper reason, the overall quality of the tribunal's work is diminished.

4. Access to Information and Disclosure

Parties need access to information before the hearing so they can come prepared to make their presentations at the hearing. Proper prehearing disclosure makes the hearing more focused, makes the hearing shorter and helps to prevent or avoid or lessen objections and applications about process, jurisdiction and evidence.

The MGA and MRAC can set disclosure obligations and time limits. Staff begins enforcing these obligations. Panels may have to decide preliminary matters about disclosure and give directions. In some cases, panels may awards costs for a party's failure to comply or for a party's actions that contribute to an extended hearing or unnecessary hearing.

Pre-Hearing Filing or Disclosure of Potential Evidence

Once a complaint has been filed, a formal process exists for the exchange of information between the complainant and the respondent before the hearing. This exchange of information, otherwise known as disclosure, includes the following:

- all relevant facts supporting the matters of complaint,
- all documentary evidence to be presented at the hearing,
- a list of witnesses who will give evidence at the hearing,
- a summary of testimonial evidence,
- the legislative grounds and reason for the complaint, and
- relevant case law and any other information the complainant considers relevant.

All parties have an obligation and are accountable for providing complete disclosure within the timeframes set out in MRAC. The parties to a hearing should not be surprised by the introduction of evidence of which they were not aware. An assessment review board must not hear any evidence that has not been provided to the other party in accordance with the legislation, or that has not been disclosed within the timelines. See sections 5 and 9 MRAC.

Access to Information – MGA sections 294, 295, 299, 300 and 465

Improved access to information and complete data for all parties will promote openness and transparency, leading to even greater confidence and trust in assessments, which will in turn hopefully reduce the number of complaints.

An assessed person is entitled to see or receive information about his/her property and other assessed property in the municipality, and as such the municipality must inform the persons of that right on or with the assessment notice. See: *Matters Relating to Assessment and Taxation Regulation* for the process around access, disclosure and penalties.)

A municipality must inform assessed persons

- where they can see or get the information about their property or about other assessed property in the municipality;
- what the procedures and timelines are for receiving the information; and
- where to get copies of the complaint form

Persons can expect to receive:

- descriptions, characteristics and condition of property for current tax year only
- factors that contribute to the value of property

Information may be provided:

- with assessment notice,
- in hard copy or
- through website

Timelines for providing information:

- 15 days for assessed person's property
- 15 days for 5 or fewer comparables

Penalties for non-compliance

Compliance Review

- 45 days to request review
- Minister to conduct review
- Penalties payable to Provincial Treasurer.

Tips for panel members when dealing with access to information requests and disclosure obligations

- determine all legislative requirements and times
- deal with all requests or applications in a timely way – who can make the decisions (staff or the panel chair or the panel?)
- be consistent in the messages – parties do not appear in isolation
- obtain sufficient information to make procedural decisions as required; ensure fair process to all parties when dealing with requests or objections
- before the hearing review all actions and times required and the actions taken to see what is outstanding – this may prompt a postponement of the hearing
- consider and use, as appropriate, the power to award costs.

Note: Sections 5 and 9 of MRAC say an assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the MGA, but was not provided to the complainant.

Question for Discussion: How would an ARB member know whether requested information was or was not provided to the complainant?

5. Evidence

Evidence is a complex subject and this section gives only an introduction to the concepts of disclosure, admissibility, relevance, hearsay, and weight of evidence.

Evidence Is

Evidence includes all the means of proving or disproving any matter, for example, oral testimony of witnesses and experts, written records, demonstrations, pictures, objects, reports, maps, videos, audiotapes, letters, notes, diaries, computer or data records, etc. The term **evidence** does not include arguments on behalf of the parties (sometimes called submissions or representations) which are made to persuade the decision maker to take a certain view of the evidence.

The parties bring the evidence to support their cases and to demonstrate to the panel that they meet the legislative requirements for a decision in their favour.

The panel uses the evidence to determine whether the party has met the obligation to prove its case. Has the party proven what it must prove to win the case or obtain the result it seeks? The panel uses only relevant evidence and in decision making, weighs that evidence by determining the value of the evidence in the decision making task.

The documents, witness names, witness statements and other items disclosed by a party before the hearing is proposed evidence only. At the hearing the panel may refuse to accept or admit some of the proposed evidence and then it will not be used to make the decision. This concept reinforces the notion that a panel can read information before a hearing, but must keep on open mind because the information may not be used after the hearing.

Not Bound by Strict Rules of Evidence

Administrative tribunals are not bound by all the legal and technical rules of evidence that would apply in a court of law. Some statutes expressly provide that the tribunal has the discretion to accept any evidence and information that it sees fit, whether or not the evidence is admissible in a court of law.

The important factor is for the tribunal to follow the legislative requirements and if possible, to obtain all of the information it needs to make a reasoned, rational decision.

However, it is helpful to have some understanding of the standards that courts apply when considering evidence, as they can serve as a useful guide in determining the **weight** or importance a tribunal should give to a particular piece of evidence.

Two key concepts that universally apply to evidence in administrative tribunal hearings are:

1. relevance and
2. reliability.

Relevance refers to whether the evidence, assuming it is true, can assist the panel in answering the matters before it as listed on the complaint. This is the common test for admitting or allowing evidence into the hearing process.

After the hearing, the panel decides the reliability of the evidence and gives it weight or priority among the evidence when making a decision. The weight of the evidence refers to how much reliance the panel should place on the evidence in coming to a conclusion in the case.

A panel often finds it difficult to gauge the relevance and reliability of a particular piece of evidence until all the evidence has been heard. Whenever the panel makes decisions about admissibility of evidence or weight of evidence, it must be prepared to provide the reasons for its determination.

Admitting Evidence

Evidence is admitted during the hearing. A tribunal may accept all kinds of evidence during the hearing. Often it is easier and faster in the hearing to accept the evidence and then determine its relevancy and weight after the hearing.

Generally, all evidence offered to a panel by the parties may be **admitted**, that is, accepted for consideration. Evidence is **admissible** if it is relevant to the matters in the case and there is no law or custom preventing it from being received.

When the panel admits evidence, it or the staff should mark the evidence as part of the official record. Generally tribunals "mark" witnesses by recording their names and administering the oath/affirmation before hearing the witness' testimony. Other evidence (whatever it is) can be "marked" by giving it the next sequential number in the hearing (exhibit 1, 2, 3 etc). The clerk keeps the official list of exhibits/evidence and the names of all witnesses.

How to Mark an Exhibit:

File #: _____

Exhibit No. _____

Date: _____

Entered by: _____
(name of party or by agreement)

Relevance of Evidence

Generally we understand that evidence is relevant if it can assist the panel in some way to answer the matters or issues before it. Evidence assists the panel to reach logical conclusions on the issues.

Relevance cannot be assessed in isolation. It is always necessary to consider the purpose for which the evidence is to be introduced. If a party cannot provide a good explanation as to why the panel should accept a piece of evidence that on its face seems unconnected with the issues to be resolved, the evidence should not be accepted. However, a piece of evidence may, at first, appear to be irrelevant. In the context of the entire hearing, it may turn out to be relevant, although of low probative value. Care should therefore be taken before rejecting any evidence.

A party might be allowed to submit certain evidence at a hearing, but this does not mean that the panel has conclusively decided that the evidence is relevant. If, after hearing all the evidence, the panel decides that the evidence in question is not relevant, the reason should be stated and the evidence ignored in decision making. The tendency generally is to admit evidence and to decide later what weight, if any, should be assigned to the evidence.

Weight of Evidence

Weight of the evidence refers to how strong the inferences or conclusions are that can be drawn from the evidence. The stronger the inferences, the higher the weight or value in decision making. In other words, how valuable is one piece of evidence to prove the facts compared to another piece of evidence.

Weight must be viewed in the context of the whole case. Decisions regarding weight can usually only be made in decision making, once all the evidence has been heard. More of this is presented in decision making where the panel makes findings of fact.

One Common Exception in Tribunal Hearings - Hearsay Evidence

Hearsay evidence consists of written or oral statements made by persons who are not testifying at the trial or hearing, which are presented as proof of the truth of those statements, i.e., hearsay is a second-hand account of events.

For example, suppose that Mr. X is testifying about a motor vehicle accident and states that he did not see the accident, but he heard Ms. Y say that the traffic light was red at the time of the accident. The purpose for which this evidence is offered is vital to its classification as **hearsay** or **non-hearsay**. Mr. X would be giving direct evidence (non-hearsay) of the fact that Ms. Y made such a statement. He would be giving only second-hand (hearsay) evidence as to the truth of whether the light was in fact red.

One problem with allowing the testimony of Mr. X to be admitted at a hearing is that Ms. Y was not under oath when she made the statement, and testimony under oath, one of the cornerstones of our

judicial system, is usually considered necessary in order to ensure that statements are made honestly. A greater problem with Mr. X's testimony is that Ms. Y is not available to be cross-examined on her statement. Under cross-examination, Ms. Y could be questioned on whether she was in a good physical location for viewing the scene of the accident, whether she had good eyesight, whether she was sober at the time, whether she had any particular self-interest in making the statement, or whether she might otherwise be biased in her view of events. A thorough cross-examination would help in determining the probative value of the testimony.

Additional reasons for skepticism or reluctance in accepting hearsay evidence are that:

a. the farther removed a statement is from its source, the less reliable it becomes;
b. fraud may be more easily perpetrated;
c. decisions based on second-hand evidence may not be as good as decisions based only on the best evidence; and
d. hearings may be unduly lengthened if every possible piece of evidence is introduced.

Tribunals generally refuse to accept hearsay evidence, although they make exceptions. A tribunal may accept hearsay evidence, but in so doing it should remain aware of the limitations of such evidence.

Despite the problems with hearsay evidence, the courts have not absolutely excluded hearsay evidence at trial and have developed many exceptions to the general rule against accepting hearsay evidence. The exceptions have developed in a haphazard way as needed to solve particular problems and have usually arisen when the person making the statement is not available to testify and the statement is the only cogent evidence available. Affidavits are hearsay evidence.

Some of the exceptions recognized by courts to the rule against admitting hearsay evidence include:

a. declarations against a person's own interest (on the basis that people are not likely to make untrue statements that harm themselves);
b. declarations made in the course of a business duty (where the records were made at the time and there was no motive for fabrications); and
c. statements made in public documents (because ordinarily public officials will be honest and careful in preparing documents intended to be retained and kept as a public record, available at all times for inspection).

These are only a few examples of a very detailed and complex area of the law. In accepting hearsay evidence, courts recognize that **second-hand** evidence can at times have sufficient inherent trustworthiness to be of value. This is especially true in circumstances where it would not ordinarily be in the speaker or writer's interest to make a false statement.

The point here is that hearsay evidence may be very reliable or very unreliable depending on the circumstances of a particular case. Therefore, evidence should not automatically be rejected as having no value simply because it is hearsay in nature.

Affidavits

An affidavit is a sworn written statement by a person that can provide information:

- Based on personal knowledge and observation
- Based on belief that information provided to the person by another is true
- Contained in documents which are attached to the affidavit.

Essentially, an affidavit is the "direct examination" portion of a witness' testimony, put on paper. It is the information which the witness chooses, in his or her own words, to tell. It does not necessarily contain all the information that the witness knows.

The courts are generally reluctant to admit affidavit evidence to prove facts other than formal or non-contentious points. However, it may be allowed if their are sufficient reasons.

6. The Role of Witnesses

Witnesses participate in hearings to provide information to the panel that can assist the panel in its decision making. Parties determine which witnesses to call in support of their cases and determine the order the witnesses appear. Generally a party calls the witnesses in a way that makes most sense to how they present their case. This order may or may not make sense to the panel at the outset.

Types of Witnesses

A factual witness, which is most of the witnesses in most hearings, can tell the panel about what the witness knows or has seen or heard or of actions or events in the witness has participated. This witness should not give opinions and cannot speak about things beyond the witness's personal knowledge or involvement.

An expert witness may give evidence from personal knowledge or involvement, but frequently provides the panel with an additional level of expertise on a subject matter in the hearing. This witness can also give a professional opinion, which the panel can assess and adopt as its own.

Questions Witnesses can Expect

Witnesses can expect questions about:

- their name, role, organization
- general background – may include education, experience, length of service, age, family information
- general questions leading to the context of the specific information the witness has
- details of the specific information held by the witness
- contrasting versions of events from other witnesses
- clarification of information given by them
- authoring or receiving documents.

Section 466 requires witnesses to answer all questions

> **Protection of witnesses**
>
> **466** A witness may be examined under oath on anything relevant to a matter that is before an assessment review board and is not excused from answering any question on the ground that the answer might tend to
>
> (a) incriminate the witness,
>
> (b) subject the witness to punishment under this or any other Act, or
>
> (c) establish liability of the witness
>
> (i) to a civil proceeding at the instance of the Crown or of any other person, or
>
> (ii) to prosecution under any Act,

> but if the answer so given tends to incriminate the witness, subject the witness to punishment or establish liability of the witness, it must not be used or received against the witness in any civil proceedings or in any other proceedings under this or any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.
>
> 1994 cM-26.1 s466

Expert Witnesses

Opinions from experts are more reliable than other opinions, and courts will allow **experts** to give opinions on technical matters that involve the area of their special expertise.

Tribunals may consider experts' credentials, education, and experience in weighing the expert's opinions or in deciding whether to listen to the evidence at all.

Process for Qualifying an Expert

The following is a frequently-used method for qualifying an expert witness:

- Expert is sworn / affirmed
- Party calling the expert normally files the expert's curriculum vitae (C.V.) or resume in advance, enters it as an exhibit, and supplements the C.V. with a few questions at the outset of examination. The purpose is to establish the person's expertise using their education and/or experience in a particular area.
- Other parties are given on opportunity to cross examine the expert on his or her qualifications to establish "expertness" and to lessen the impact of later testimony.
- Other parties may ask tribunal to refuse to hear opinion evidence from the expert if the qualifications are not proven.
- Panel hears any arguments from the parties about whether to recognize the witness as an expert.
- Panel makes a ruling on whether to accept the witness as an expert and in what area.
- If the panel accepts the witness as an expert, the chair says "we recognize _____ as an expert in _____(area of expertise)_____.
- If qualified as an expert, the party calling the expert witness continues with the rest of the questions in direct examination.
- The tribunal may decide to waive the formality of qualifying a witness under the following circumstances:
  - if the tribunal already knows the witness to be an expert in the area in which she or he proposes to testify, or
  - if the evidence will be limited to an area where the tribunal has reason to be confident of its own expertise.

Tips for panel members around witnesses:

- deal with the witness only in the hearing
- obtain proper spelling of names for the decision document
- in the hearing be prepared to provide information to witnesses about the hearing process
- swear or affirm witnesses if required
- ensure a separate chair and table for the witness at the hearing – in clear view and hearing of the panel and all parties

- determine and understand the authority of the tribunal to order witnesses to appear or produce documents – does the authority exist, who can exercise the authority, when, in what form
- parties are responsible to identify their witnesses, determine the order to call the witnesses at the hearing, inform their witnesses when to attend the hearing and where, pay their witnesses fees or expenses as arranged between them.

Compelling Attendance of Witnesses

A tribunal may have the legislative authority to order witnesses to attend the hearing and require the witnesses to bring documents to the hearing or provide documents to a party before the hearing. Section 465 of the MGA gives the ARB this power.

> **Notice to attend or produce**
>
> **465(1)** When, in the opinion of an assessment review board,
>
> (a) the attendance of a person is required, or
>
> (b) the production of a document or thing is required,
>
> the assessment review board may cause to be served on a person a notice to attend or a notice to attend and produce a document or thing.
>
> **(2)** If a person fails or refuses to comply with a notice served under subsection (1), the assessment review board may apply by originating notice to the Court of Queen's Bench and the Court may issue a warrant requiring the attendance of the person or the attendance of the person to produce a document or thing.
>
> 1994 cM-26.1 s465

Some tribunals require the parties to use a form to apply for a Notice to Attend or Notice to Produce Documents. For example, see the Alberta Labour Relations Board at http://www.alrb.gov.ab.ca/forms.html.

A one member panel could deal with this type of application. Some general considerations of a panel when dealing with requests to compel attendance of witnesses include:

- the statute may enable the parties to call any witnesses they deem fit [ARBs cannot hear any evidence that was not contained in the prehearing disclosure.]
- the tribunal may have a practice of compelling the attendance of any witness requested by a party and dealing with any objections related to that witness at the hearing
- some tribunals will deal with requests to compel attendance of witnesses as pre-hearing procedural matters which may give rise to additional questions about sufficiency of time for the hearing, relevance of evidence, or other procedural matters
- some tribunals will deal with requests to compel attendance as "ex-parte" applications that are not discussed with the other parties before the hearing in order to protect the witness from "pressure" by the other parties.

If the tribunal issues a Notice to Attend or Subpoena to a Witness and the witness does not attend the hearing as required, the party seeking the witness must decide how to proceed. Generally, the party seeking the witness' evidence would, if the matter is serious enough, ask the tribunal to file the decision to compel attendance in the courts (subject to statutory limitations) and then the party would enforce that order as an order of the court.

Requiring Production of Documents s 465 MGA

Often parties seek production of documents held by another party or person in advance of the hearing so that they can properly prepare for the hearing. The initial purpose of the request for production of documents is to gain access to documents held by another person or party. Once the party seeking production has seen and examined the documents, the party may choose not to introduce all or some of those documents as evidence in the hearing.

Some considerations to keep in mind when dealing with requests to compel production of documents include:

- statutory powers of the tribunal around what can be compelled and for when
- documents should be relevant to the issues before the tribunal and the onus rests with the party seeking the documents to convince the panel that the documents are relevant
- production of documents can put a party to extensive costs in time and resources to search out and produce documents. A balancing of interests may be necessary.
- Persons or organizations who are not parties to the hearing should be given an opportunity to speak to the request for production of documents before the panel makes its decision
- Generally, the party being asked to produce the documents should be given the opportunity to make comments to the panel before the panel makes its decision. A party may voluntarily agree to produce all or some of the documents.
- The panel may have to give directions to protect documents or preserve confidentiality or to set time lines for production and copies.
- Where the notice directs production at a time and place other than at the hearing, it normally directs the receiver's attendance at a specified location at a specified date and time
- The party requesting such a notice should suggest appropriate dates, places, and times for attendance.

Sample Subpoena /Notice to Attend / Production of Documents

(Letterhead and Logo of the Tribunal)

TO: (name and address of person being sent the notice)

You are required to attend before the _____ on:

Date, time and place

and at such times and places as the hearing may continue until concluded,

to give evidence in a hearing between _____names of parties _____ concerning _____description of the case _____.

Or

You are required to produce the following documents to:

Name, Date, time and place

In relation to a hearing between _____names of parties _____ concerning _____description of the case _____.

(The tribunal may want to insert a caution about the failure to appear or adhere to the order)

Date and signature of a tribunal official

7. Working with Translators

Translators assist witnesses who testify in a language not understood by the panel. The tribunal wants to ensure the translator will accurately translate what is said in either language.

Interpreters or translators assist the tribunal by translating the questions to a witness and translating the witness' answer to the panel and counsel. Translators must be sworn or affirmed before the witness is sworn or affirmed. The purpose of the translator oath or affirmation is to ensure he or she is fairly and honestly translating what is transpiring.

A typical interpreter's oath is:

> *Do you swear that you will fairly and accurately translate the questions asked and the evidence given at this hearing so help you God?*

A typical interpreter's affirmation is:

> *Do you solemnly affirm to fairly and accurately translate the questions asked and the evidence given at this hearing?*

8. Case Arguments

Parties will often refer to previously decided cases in support of their arguments to the panel. Those cases may be publicly available on a website or in a library.

Previous cases help the parties assess the merits of their own case and determine if they should proceed to hearing and the likely outcome.

Previous decisions help the panel by showing how other panels interpret and apply the legislation and procedural principles. The closer the facts of the previous case to the case at hand, the more persuasive the previous case can be to the panel. Previous decisions of another panel are never binding on the panel, but the decisions of the Alberta courts or Supreme Court of Canada are binding.

Panel decisions should be consistent with earlier decisions from the same panel or from a similar panel to provide the best benefit to the public, parties and future panels. Consistency refers to the way in which the panel deals with matters of principles, legislative terms, legislative interpretation and legislative application, not with the facts of a case.

Panel members need to read and be aware of decisions of other panels. Staff can assist by being aware of new and leading decisions and bringing those decisions to the attention of the panel.

9. Legal Counsel

Legal counsel participates in hearings in two ways: as a representative of one of the parties or as an advisor to the panel.

Counsel as Advocate

When legal counsel for a party participates in the hearing, counsel must adhere to all the requirements and standards of the process required of the party.

In addition, in ARB hearings the complainant must complete the Agent Authorization form before counsel can attend the hearing to represent the complainant (sec. 51 MRAC).

Counsel will frequently interact with staff before the hearing to learn about process, deal with disclosure and access to information, and identify and resolve prehearing or procedural matters. Post hearing, counsel may challenge the decision in court, prompting staff to prepare the record for the court application.

Counsel as Advisor to the Panel

Section 17 of MRAC says the ARB may only seek legal advice from a lawyer who is independent of the parties to the hearing.

When legal counsel acts as the advisor to the panel, the counsel is an independent advisor only to the panel. 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 on any matter; all decisions, whether substantive or procedural, remain the panel's to make.

Most often counsel's advice is not shared with the parties. In some cases, tribunals have standard practices to disclose most information from its independent counsel to the parties (some information counsel would advise against sharing).

Important note: Where the counsel's advice raises new information or a new legal case or principle, the parties should be informed and given the opportunity to respond before the panel makes a decision.

10. Note Taking

Parties take their own notes in the hearing. Panel members should take their own notes to assist them with the decision making. The clerk should make notes to assist with creating the official record under section 14 of MRAC.

Tips for the panel's notes

- times of activities in the hearing
- witness names
- evidence numbers and identifiers
- names of panel members
- names of those attending the hearing and roles
- dates of the hearing
- location of the hearing
- any commitments by any party to the panel and when required (to follow up)
- any commitments or cautions by the panel to the parties and timelines
- if the hearing recesses or adjourns, the point the hearing reached and the reason for the adjournment
- any objections or applications raised in the hearing and a summary of the panel's decision and any reasons given during the hearing.

11. Confidential Information

Confidential information may be presented or demanded before or at a hearing. Assessment hearings are part of the provincial and municipal process, so provincial legislation about personal or confidential information applies. Provincial legislation provides exceptions to administrative tribunal processes from the general rules which apply to personal or confidential information. These exceptions ensure panels can do their work and make decisions based on solid information.

Panels and Staff Need to

- know the legislative protections for personal, business or confidential information
- know the exceptions in the legislation for tribunal hearing processes
- understand that the hearing process and solid decision making can be undermined by excluding information because of the confidentiality shield
- be sensitive to how they handle confidential or personal information
- deal with objections or applications in a way that enables consideration of all the factors
- balance the need for information in the hearing with the concept of confidentiality
- find ways to manage the information so that concerns about personal and confidential information can be minimized or protected during the hearing process

12. Representatives and Agents

Some parties will choose not to present their own case during the process or at the hearing. Some parties will choose to have another spokesperson or a lawyer or an agent represent them. Under section 51 of MRAC, a complainant who wants to have an agent represent him or her during the complaint process or at the hearing must complete and sign the Agent Authorization Form. Section 1(1)(b) of MRAC defines agent.

Tip: Read the agent authorization form to see what the assessment person on taxpayer acknowledges to, and what the agent is authorized to do.

Exercise #6 – Hearing Process

Instructions:

i. Work as a group to answer the questions.
ii. Use the MGA and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the MGA and MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 15 minutes.

You are the panel dealing with Ms. Green's complaint. A summary of the information you have now is set out below. Deal with the following situations as they arise before, during and after the hearing on the case. Use the MGA and MRAC to guide and explain your answers.

CASE STUDY

Property: 92 Harrow Circle NW, Blue Skies
Appellant: Ms. Green
Respondent: City of Blue Skies
Tax Year: 2010
Assessment: $291,500

Ms. Green owns a house located at 92 Harrow Circle NW in the City of Blue Skies. It is was built in 1975, with an area of 922 square feet, a detached double garage of 864 square feet, and lot size of 8,141 square feet, assessed in "fair" condition. Its value was first assessed as "average" condition at $316,500 and then reduced by $25,000 to reflect the value needed to bring the property to "fair" condition. She completed the Complaint form and only checked box #3 assessment. She seeks an assessment of $240,000.00.

Ms. Green complains her property is over assessed. She has lived in it since 1975, when she bought it new, and its condition has since deteriorated. She says the house is run down and in need of repairs - windows are cracked and the garage needs a new roof. Ms. Green claims that repairs of $15,923 for a new house roof and $9,000 for interior renovations are necessary. The full cost of necessary renovations to the property is more than $45,000, not including the replacement of cracked windows. She believes its condition was far worse than the "fair" condition it was assessed at. Ms. Green invites anyone to come to her house to assess its condition.

Ms. Green's supporting documents contain some home listings, a witness statement and an appraisal report by James Know, a number of sales comparables from January and February 2010 and June 29, 2010 and newspaper articles. Ms. Green claims she has been and continues to be over taxed. She says the assessor has reduced her assessment by a further $5,000 after she spoke with him, but before she filed her complaint. She says she needs a bigger reduction.

Ms. Green states that housing prices in 2010 have declined since 2009 and 2008 and that the sales comparisons used by the assessor from 2008 and 2009 should not be used to determine her assessment. Instead, 2010 sales should be used for the subject property's assessment.

The Respondent says the assessment is correct, fair and equitable, and confirms there was a further $5000.00 reduction before Ms. Green filed her complaint. The property was assessed on the direct sales comparison approach to value. The Respondent provides three comparable sales of homes with detached garages, all smaller than the subject, and all in average condition.

Address	Garage Size	Year Built	Lot Size	Net Building Size	Influences
92 Harrow Circle (Subject)	864	1975	8141	922	-
4722 128 A Avenue	570	1974	7638	1183	Traffic/Multi- residential
122 Henry Avenue	440	1975	6386	864	-
29 Henry Avenue	621	1975	9189	1181	Multi-residential/Park

Address	Sale Date	Time Adjusted Sale Price	Assessment	ASR
92 Harrow Circle Subject	-	-	$291,500	-
4722 128 A Avenue	01-Nov-08	$316,380	$320,500	1.01
122 Henry Avenue	07-Mar-09	$289,392	$284,500	0.98
29 Henry Avenue	20-Jun-08	$362,814	$345,000	0.95

The Respondent's documents say that the first comparable sale, at 4722 - 128A Avenue, has a moderate traffic allowance because it is directly in front of Hermitage Road, and has a further negative impact of directly facing a multi-family project. It is much less desirable than Ms. Green's because of its location and nearby noise. The third comparable sale also has a negative traffic factor. The second comparable sale is a bit smaller than Ms. Green's. Based on location, Ms. Green's house is far superior to the three comparables. In the assessor's personal opinion the location of Ms. Green's house increases its value over the comparables' location by ten to fifteen percent, although the mass appraisal model makes a nearly insignificant adjustment for this factor.

The Respondent says "fair" condition is an appropriate assessment of the condition of the subject property. The negative traffic factor is about the same as the difference between "average" and "fair" condition. The Respondent's assessor visited Ms. Green's property at one point and also tried to contact Ms. Green to inspect the house, but without success. The Respondent's documents state it has had no evidence of the subject property's condition, because to properly confirm condition, an inside inspection is necessary. The Respondent requests the LARB confirm the assessment.

The hearing has been set and the notice of hearing sent to all parties.

Questions:
Jurisdiction

1. You are the presiding officer for the local assessment review board. At the start of the hearing the assessor questions the panel's jurisdiction. The assessor is not sure if a LARB or CARB should hear the case.

a. Who decides? How is the decision made? What process would the panel use to decide the jurisdiction question?

b. Does the LARB or the CARB have jurisdiction to hear all the matters in Ms. Green's complaint? Why or why not?

Postponements

2. The Complainant sends a letter and requests the hearing be postponed.

What should/can you do in each of these situations and what is the likelihood that a postponement will be granted? What section of the MGA and MRAC applies?

a. It is 13 days before the hearing and the Complainant says that her husband lost the package of information she received from the Assessor.

b. The day before the hearing, the Complainant sends a letter to the ARB stating her godmother in Arizona is dying and she must leave town to be with her.

c. Thirteen days before the hearing the Complainant sends a letter to the ARB requesting an adjournment so she can find a qualified agent to represent her. She states the respondent's material, which has just been sent to her, is too complicated for her to understand.

d. Forty days before the hearing the Complainant sends a letter to the ARB that states: "I wish to be granted an adjournment as a result of a personal emergency. In the alternative, I authorize my brother to attend on my behalf."

Timelines

3. The Complainant has requested additional time to file her rebuttal evidence stating that as English is not her first language; she is having some of the documents given to her by the Respondent translated. She states that the Respondent will agree to an extension of the filing deadline.

a. Can the timeline be extended and if so, under what circumstances?

4. On the day of the hearing, the Complainant shows up and states that she has relevant documents that were not disclosed to her by the Respondent until the day before the hearing. (Assume that the documents are in fact relevant and were not disclosed to her in accordance with the timelines in MRAC.)

a. What remedies can the ARB provide for this failure to disclose?

Records

5. After the hearing has been completed and the decision published, Ms. Green appeals to court. The ARB must put together the Record of Hearing.

a. List the documents that must be included in the Record, the source/author of each documents and where you would find the document, or who you would go to, if it was missing.

Document	Source/author	Who to go to if missing

b. How would / could the ARB mark or organize the evidence where all the evidentiary material except witness testimony is filed in advance of the hearing?

Evidence

6. At the hearing, the Complainant states that all of the evidence that she has is contained in the documents that she has filed with the ARB and which are before you now. There are over 65 pages of information and you note that there are about 30 pages that are highlighted in yellow. The Complainant begins by turning your attention to the first of these highlighted sections and then proceeds to read out loud. It becomes clear that she intend to read each of the sections to you during the hearing.

    a. Do you let her continue and if not, what do you do?

7. After the hearing you are reading through the material which you prevented the Complainant from reading to you. In fact you had not read the material before the hearing and you realize that you have a number of unanswered questions.

    a. What can or should you do?

8. During the disclosure process, you are informed that the Complainant's neighbour, Ms Smith, will appear and give evidence about certain critical parts of the Complainant's case. On the day of the hearing Ms Smith is unable to attend but has sent a signed statement containing her evidence. All of the evidence in the statement was previously told to the Complainant who now wants to tell you what Ms Smith said to her. In particular, the Complainant wants to tell you:

        i. What an appraiser said to Ms Smith about the effect that the location of their houses had on their value, and
        ii. How many square feet of space Ms Smith told the Complainant that she added to her house and what renovations she had done.

    a. Should you accept the signed statement?
    b. Should you hear the evidence regarding what Ms Smith said?
    c. If you do hear the evidence, what weight should be given to i. and ii?

9. After the hearing concludes but before the panel sends out its decision, Mrs. Green sends in a letter enclosing a sworn statement from another witness that could not be present at the hearing. The letter and statement have not been copied to the other party. The clerk tells you about the letter and statement.

    a. What do you do?

Costs

10. Ms. Green has been a very difficult party during the process and at the hearing. The respondent says it has incurred additional expenses because of the hearing and claims Ms. Green should not have filed her complaint. At the hearing the respondent asks the ARB to award costs because the complainant did not have a reasonable chance of success on her complaint.

    a. What costs apply in cases like Ms. Green's? Why?

Module 3 – Decision Making and Writing

Decision making and writing are presented in the third module, where practical exercises and case studies will address the required elements for decisions and best practices in decision making. Participants learn about good writing skills, the application of costs and penalties and the appeal function.

Decision Making

The ultimate goal of the party before an administrative tribunal is to obtain the decision of the panel who is hearing the case. Hearings help the panel gather the information to make factual decisions and hear the arguments from the parties about how to interpret and apply the legislation.

The decision making process[1] of the panel includes four stages:

1. identifying the legislation and framing the issues/questions and conditions or legislative requirements of each issue
2. identifying the relevant evidence and making findings of fact on the evidence
3. applying the facts to the legislation to reach conclusions and expressing the decision maker's rationale for the conclusion
4. reaching the decisions and formulating the directions for implementation.

Each stage involves separate action by the panel; each stage progresses the panel to an informed, well founded and logical decision which is easy to explain and justify. The four stages are:

1. Identifying the legislation and framing the issues/questions and conditions or legislative requirements of each issue

- The assessment complaint raises the issues; the panel cannot deal with issues not raised in the complaint.
- The panel then searches the applicable legislation to determine the sections that apply.
  - To determine if the panel has the jurisdiction (or authority) to deal with the case.
  - To read the sections and make a list of the conditions, standards, pre-requisites that must exist for it to decide the case. This becomes the list of the factual items the parties must prove to obtain the answers they seek (the conditions, criteria, required elements, etc).
- Next, the panel will state the issues and conditions as questions to focus themselves and to move them towards answering the questions for the parties.

The panel's discussion about how and why it makes the choices it does becomes the panel's reasons for decision.

[1] This decision making model is copyright to the Foundation of Administrative Justice and was created by FAJ in 2001 as part of its regular training program. FAJ has given permission for GOA to use the model in its assessment review board training.

2. Identifying the relevant evidence and making findings of fact on the evidence

- The panel sorts the evidence received in the hearing according to the list of conditions under each issue. The key to sorting the evidence quickly is to apply the relevance test.
- Then the panel takes each group of evidence and assesses it to determine if the condition has been met or proven or not.
- The panel repeats the previous step over and over until all the evidence has been examined.

The panel's discussion about how and why it makes the choices it does become the panel's reasons for decision.

3. Applying the facts to the legislation to reach conclusions and expressing the decision maker's rationale for the conclusion

- The panel goes back to the list from Stage 1 and the legislation to determine what conditions are mandatory and what conditions are optional for the party to prove. Mandatory conditions must be established through evidence or the complainant will not be successful. Optional conditions mean the party may be able to prove only one of a list or prove the item in a number of different ways.
- Then the panel does a comparison of the list from stage 1 (what must be proven) to the list in stage 3 (what has been proven) to come to a logical answer to the questions posed in the issues. Has the legislative test been met?
- Where the two lists match, the legislation will direct the panel to the answer on the issue.
- Where the two lists do not match, the panel will not have the authority to give the answer the complainant seeks and will have to dismiss the complaint or deny the application.

The panel's discussion about how and why it makes the choices it does become the panel's reasons for decision.

4. Reaching the decisions and formulating the directions for implementation

- Finally, the panel collects all of its decisions on the issues and reaches its final decision on the complaint.
- The panel then identifies the directions or remedies the case requires and any details of implementation.

A Typical Alberta Assessment Decision Making Model

Section 467 of the MGA outlines what an ARB must consider when it makes a decision.

Decisions of assessment review board

467**(1)** An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

(4) An assessment review board must not alter any assessment of farm land, machinery and equipment or railway property that has been prepared correctly in accordance with the regulations.

Section 499 of the MGA outlines what the MGB must consider when it makes a decision.

499**(1)** On concluding a hearing, the Board may make any of the following decisions:

(a) make a change with respect to any matter referred to in section 492(1), if the hearing relates to a complaint about an assessment for linear property;

(b) make a change to any equalized assessment, if the hearing relates to an equalized assessment;

(c) decide that no change to an equalized assessment or an assessment roll is required.

(2) The Board must dismiss a complaint that was not made within the proper time or that does not comply with section 491(1), (2) or (3).

(3) The Board must not alter

(a) any assessment of linear property that has been prepared correctly in accordance with the regulations, and

(b) any equalized assessment that is fair and equitable, taking into consideration equalized assessments in similar municipalities.

(4) The Board may, in its decision,

(a) include terms and conditions, and

(b) make the decision effective on a future date or for a limited time.

Following the decision making template above, the decision making process for an Alberta assessment review matter on a residential assessment might look like the following.

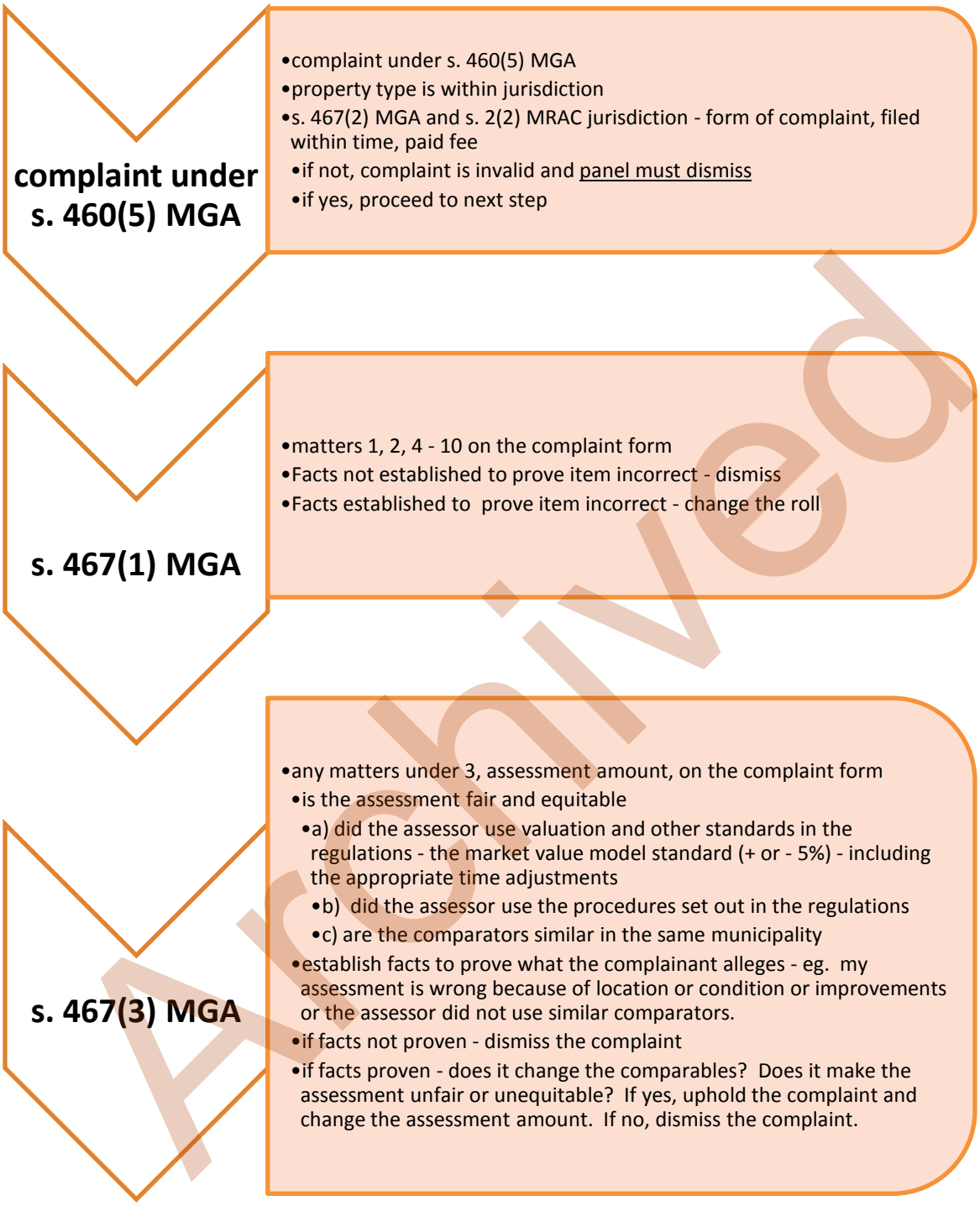


Figure 3 – Sample - Alberta's Assessment Decision Making Model on Residential Property

The Burdens of Proof and the Standard of Proof

When the panel is making its final decision, it must know and consider which party had the obligation to bring enough evidence to convince the panel in its decision. The panel must also know how much evidence is required to convince the panel. The courts call these terms the legal burden of proof and the standard of proof.

Each party who alleges some set of facts or circumstances before the panel has the obligation or burden to prove what it alleges. This is called the "evidentiary burden of proof". For example, if Ms. Green alleges the repairs to the roof will cost $9,000.00, she must prove that cost to the panel. She proves the cost by bringing evidence in the hearing, such as the written estimate from a window supplier or the verbal testimony of the estimator from the window supplier. Sometimes the other party will agree and the proof comes from the agreement of the parties. For example, the assessor may agree with Ms. Green that the windows will cost $9,000.00 to repair; then she does not need to provide the written estimate or have the estimator testify.

A second burden of proof is the "legal burden of proof". The party who starts the case (the applicant, complainant or appellant) carries the obligation (or burden) to convincingly prove its case in order to obtain the outcome it seeks. The legal burden of proof is measured at the end of the case, using all the evidence brought by all the parties. This means the party starting the case can use its own evidence and any evidence from the other party that helps to demonstrate everything the law requires the complainant to prove.

In 2009 the Supreme Court of Canada clarified for everyone that the "standard of proof "the tribunal must apply in a civil case is the balance of probabilities. ARB cases are civil cases; therefore the balance of probabilities is the standard of proof before the ARBs. This means the panel considers all the evidence at the end of the hearing and decides whether the party who started the case has proven their case on a balance of probabilities (sometimes stated as "more likely than not" or "fifty percent plus one".

Weighing the Evidence and Making Findings of Fact

The panel weighs the evidence at the end of the hearing and makes any required findings of fact. A panel does not have to weigh the evidence if the parties agree to the fact or if the evidence about the fact is undisputed (evidence from one party is not contradicted by the other party); the panel needs only confirm the fact.

Where the parties disagree about the fact and call competing evidence, the panel must sort through the evidence and assess its value or priority in assisting the panel to find the fact. This is a common occurrence when dealing with competing experts. Some tips and questions on weighing the evidence include:

- prefer direct evidence (first hand) over circumstantial (proven by indirect means)
- decide if corroboration is required and if so does it exist
- be clear about the purpose of the evidence – what is intended to prove
- who brought the evidence – has the party met its evidentiary burden
- how does the evidence intertwine with the other evidence on this point
- how does the oral evidence compare to the documentary evidence
- is the party attempting to prove a fact using only hearsay evidence
- how do the various pieces of evidence on this point compare
- which witness has more qualifications
- which witness had the most direct view or participation
- which witness took notes at the time

When dealing with competing experts consider:

- the qualifications of the experts
- which expert has the most direct education and experience
- which expert has the best experience
- which expert used the most similar process to the one under consideration
- which expert used the most timely information
- which expert used information most similar to the information in the assessment
- how did the experts perform their tests or research
- which expert is best able to explain their opinion and the basis for the opinion.

Grid for Decision Making and Making the Record[2]

Matter in the Complaint	Positions of the Parties	Evidence Presented on the Issue - Documents	Evidence Presented on Each Issue - Witnesses	What must be proven in this issue	Findings of Fact	Reasons to include in the award	Decision
1. Jurisdiction or Procedural Matters raised							
2. eg Assessment	Complainant Respondent	Document/Exhibit 1: Document/Exhibit 2:	Witness A: Witness B:	a. b. c. d. e.	a. b. c. d. e.		
3. eg Name on Roll	Complainant Respondent	Document/Exhibit 1: Document/Exhibit 2:	Witness A: Witness B:	a. b. c. d. e.	a. b. c. d. e.		

[2] © High Clouds Incorporated 2004

Decision Making Tips

- bridge gaps to consensus
- use a structure for decision making - same for all panels
- discuss the process and the merits each time
- remember-it's all about the decision not the panel or staff: "don't take it personally"
- ground the decision in legislation
- deal with one issue at a time instead of everything together
- sort evidence by issue and legal tests
- use evidence evaluation tools
    - agreed
    - uncontested
    - similar
    - contested
- apply code of conduct, if required, to resolve collegial disagreements among the panel
- be collegial
- express curiosity rather than defensiveness
- work to the result not from the result
- do not ask a panel member to defend a personal decision made during decision making - rather, re-examine the pieces in decision making and the evidence and legislation. If the panel member persists in the dissenting decision, the panel member is able to more clearly express the reasons for the dissenting opinion in a written dissent.

Exercise #7 - Decision Making

Instructions:
1. You are the panel who heard Ms. Green's case. The hearing is finished. Now you need to make a decision as a panel. Use the information from the hearing in Exercise #6. Do not use any additional information from the questions in exercise 6, only the original scenario.
2. Working as a group, using the decision making steps on the previous pages, identify the issues in Ms. Green's case and make the decision on each issue.
3. Flipchart your points under each stage of the decision making model- use bullets rather than full sentences.

1. Identify the legislation and frame the issues/questions and conditions or legislative requirements of each issue

2. Identify the relevant evidence and make findings of fact on the evidence

3. Apply the facts to the legislation to reach conclusions and express the decision maker's rationale

4. Reach the decisions and formulate the directions for implementation

Decision Writing

A Written Decision Is ...

A written decision is the method of communicating the decisions and reasons of the panel to the parties. It is the voice of the panel in written format. The quality of the decision reflects the quality of the decision making process. A panel cannot clearly write a decision it has not made; do not use the decision writing process as a substitute for decision making. Panels issue written decisions to provide clarity and certainty about their decisions.

Just as different panels would **speak** their decisions in different ways, so will panels write their decisions differently. Although Alberta Municipal Affairs cannot expect that every decision will be identical, it can expect that decisions will follow a consistent format and contain consistent information. The decision should be identifiable as an assessment decision from the quality and general format, not from the use of boilerplate terminology.

Why Tribunals Write Decisions?

- to explain
- to persuade
- to inform
- to educate
- to meet the statutory requirement
- to prevent arbitrary decisions

Who do Panels Write For?

- the complainant
- the respondent
- assessors
- professionals in the industry
- assessment organizations and groups
- other panels
- the courts
- the department and future legislators
- the public.

What Defines a Well Written Decision?

A well written decision:

- meets legislative requirements
- is published within the mandated timelines
- clearly states the questions/issues the panel will address
- identifies and explains the law and policy applicable to each issue
- explains how the panel interpreted the legislation and policy and applied it to the facts of the case
- is clear, succinct and understandable
- has a structure and a logical flow
- can be implemented without further clarification
- uses plain, everyday language where-ever possible and where not, uses and explains terms in a consistent manner
- uses headings, tables of contents, bullets, addendums, summaries, lists and similar tools to enhance the readability of the decision
- is accurate in spelling, names, quotes and references, grammatically correct, logical.

A well written decision also:

- demonstrates the panel considered the information and arguments put before it
- reveals the panel heard and weighed the evidence before it, showing how it made findings of fact relevant to the questions
- reflects the expertise of the panel in its reasons and considerations
- where there is conflicting relevant evidence, shows how the panel resolved the conflicts and which evidence it relied upon and why
- shows the panel used a logical, orderly process to make its decision and that each decision flows from and melds with the previous decision and leads to a logical conclusion that resolves the issues
- makes the panel's decision-making thought process clear and understandable.

Basic Pieces of a Written Decision

Sections 13 and 25 of MRAC set out the requirements for an ARB decision which include:

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

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

Nature of Application/Introduction
- identify the parties, relevant statutory provisions, subject matter and what is being sought (who, what, when, and where)
- state in own terms (versus "pleadings")

The Issue or Issues
- the matters raised in the complaint
- identify at outset (part of introduction or separate)
- guidepost to what is relevant

Positions of the Parties
- may not require separate section
- do not regurgitate submissions, just summarize
- make reference to arguments not expressly considered by the panel and why those arguments were not addressed
- usually included in the Analysis section or stand alone section

Legislative Tests
- drawn from the Act or Regulations (both MRAC and MRAT can apply)
- identify the tests the panel applied
- usually included in the Analysis section or stand alone section

Relevant Facts
- not the evidence but findings of panel
- decide on logical order or structure (chronological, by subject, etc.)
- dealing with conflicting testimony (credibility)
- documentary evidence
- only the relevant facts (may want to allude to irrelevant testimony)
- ensure accuracy (ire of parties and prejudice on appeal)
- usually included in the Analysis section or stand alone section

Reasons
- for factual findings
- for any interpretations of the legislation or MRAC (e.g. the meaning of "complete" if not defined)
- for reaching the conclusions reached by the panel (we conclude <u>because</u> …)
- usually included in the Analysis section or stand alone section
- some things to avoid: "leap of faith" (i.e., no real explanation); "cut and paste"; overuse of precedent; extensive quotations

Reasons / Analysis – An Alternate
- essence of reasons: why was the decision reached?
- logical progression (conclusion appears obvious from facts and discussion of legal principles)
- includes legislative tests, relevant facts, reasons
- some things to avoid: "leap of faith" (i.e., no real explanation); "cut and paste"; overuse of precedent; extensive quotations
- may be a combined section incorporating Reasons, Legislative Tests, Relevant Facts, and Positions of the Parties

Conclusion

- succinct statement of decision on the appeal
- may want to have summary for each issue in longer decisions and a case conclusion of all the issues

Order

- clear statement of the directions and times given to the parties to implement

Sample Decision Template for Assessment Review Boards

Assessment review boards must issue their decisions, in writing, within 30 days from the last day of the hearing, or before the end of the taxation year.

Panels can ease the writing obligation by using a standard structure for their decisions which prompts them to provide certain information in every case. One such sample might be the one on the following page.

The answer key to Exercise 7 may show a different version of this sample.

ORDER No. 0015444

DECISION
BEFORE THE (LOCAL/COMPOSITE) ASSESSMENT REVIEW BOARD
On _____

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT, STATUTES OF ALBERTA 2000, CHAPTER M- 26.

AND IN THE MATTER OF THE ASSESSMENT COMPLAINT

BETWEEN:

_____ Complainant

AND:

_____ Respondent

Topic: (type of complaint)
Property: (address)
Tax Year: _____
Assessment: **$**_____

Matters Identified on the Complaint Form: (the matters are checked)

Complaint Topic	Matters from sec. 460(5) MGA	Decision	Reasons	Any Dissenting Reasons?
	1. the description of the property or business			
	2. the name or mailing address of an assessed person or taxpayer			
	3. an assessment			
	4. an assessment class			
	5. an assessment sub-class			
	6. the type of property			
	7. the type of improvement			
	8. school support			
	9. whether the property or business is assessable			
	10. whether the property or business is exempt from taxation			

Overview of the Property and Initial Assessment:

The property is ___(description)_____. The property is assessed in _____ condition for an assessed value of $_____.

ISSUES (use the ones you need)

1. Is the _____(item 1, 2, 4 – 10) correct?

2. Is the subject property fairly and equitably assessed? (see section 467 of the MGA)

3. Can the ARB deal with Mrs. Green's complaint about _____ (eg being over taxed)?

PROCEDURAL AND JURISDICTIONAL MATTERS ARISING DURING THE

HEARING

Identify the matter, what the ARB ruled and why. If none raised, say none raised or delete this section from the decision.

DECISION

Under section 467(1) the ARB changes the assessment roll as follows: OR the ARB finds no change is required to the assessment roll. As a result, the complaint is granted / dismissed.

[The assessment value is set at $_____.] [The ARB has no jurisdiction to hear _____.] Use pieces that fit the case.

Summary of Complainant's Position

_____ complained that _____. The complainant asked that the property assessment be set at $_____.

Summary of the Respondent's Position

The Respondent stated that the assessment set by the ARB was correct or / and fair and equitable.

Summary of the Evidence on the Issue of _____: (repeat for each issue)

The complainant's evidence included:

1. Her testimony that
a. _____

2. _____ testimony as the expert appraiser and his appraisal report showing the current market value of the property at _____ is $_____.

3. Documents showing _____

The Respondent's evidence included:

1. documents showing

2. the assessor's testimony that _____.

REASONS and LEGISLATION

Issue _____ – Assessment Amount

Under the *Municipal Government Act*, the ARB cannot change an assessment which is fair and equitable.

MGA 467 (3) says

> *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*
>
> *(a) the valuation and other standards set out in the regulations,*
>
> *(b) the procedures set out in the regulations, and*
>
> (c) *the assessments of similar property or businesses in the same municipality.*

The ARB examines the assessment in light of the information used by the assessor and the

additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the ARB that the assessment is not fair and equitable. The ARB reviews the evidence on a balance of probabilities. If the initial assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the ARB will not alter the assessment. Within each case the ARB may examine different factors, depending on what the complaint raises as concerns.

In this case, we first examined the evidence about the condition of the property. _____ We find the property to be in _____ condition.

Next, we looked at _____. We examine the comparables provided by both parties. Under the *Matters Relating to Assessment and Taxation Regulation*, an assessment must be based on the market value of the property on July 1 of the year before the assessment. In this case the date is July 1, 2009, this being a 2010 assessment.

> *1 In this Regulation,*
> *(f) "assessment year" means the year prior to the taxation year;*
> *2 An assessment of property based on market value*
> *(a) must be prepared using mass appraisal,*
> *(b) must be an estimate of the value of the fee simple estate in the property, and*
> *(c) must reflect typical market conditions for properties similar to that property.*
>
> *3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.*
>
> *6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.*

The Complainant _____
The Respondent presented pre-valuation comparables that support the assessment. _____. There is no evidence of merit to vary the assessment further.

Issue _#2_____ – Overtaxed

The ARB has no jurisdiction to hear a complaint about a property tax because the Act does not allow it.

_____ did not raise the matter in her complaint and section 5(1) of the Matters Relating to Assessment Complaints Regulation says this ARB has no authority to hear matters not marked on the complaint.

Dated at Edmonton, Alberta this 10th day of November, 2010 and signed by the Presiding Member on behalf of all three panel members who agree with this decision.
John John, Presiding Member
LARB/CARB

Tips for the Author

- use the outline and notes from the decision making session to create the outline, findings, reasons and results of the decision
- flesh out the outline so it makes sense to a reader – use bullets or full sentences or a combination
- insert headings to help the reader
- check the content against MRAC to ensure you have everything included
- compare the decision to the style guide to see that the style guide has been followed and if not make changes
- once the first draft is complete, leave it overnight if possible before beginning to edit
- read the decision again – does it make sense? Does it accurately set out the decision of the panel or majority? Is it clear? Begin to edit until satisfied.
- respect that writing is difficult work, often done in a time crunch.

Reviewing a Decision in Draft

Either one of the panel members or someone else may write the decision after the panel has made the decision and is able to convey its reasons.

A best practice for decision writers is to have someone else review the draft decision. The following tips can assist a person to collaboratively review a decision drafted by someone else.

Tips for Commenting on a Decision Written by Someone Else

- respect the final decision but look for the way the written document conveys that decision
- look at the decision from the complainant's perspective – will the complainant understand the decision and reasons for decision?
- provide feedback on accuracy, clarity, understand ability, logic, flow, structure
- point out where the decision does not include the pieces required by MRAC
- provide suggestions on grammar but respect the final choice may rest with someone else
- compare the decision to any style guide adopted by the tribunal to see that the style guide has been followed and if not make suggestions for improvement
- point out gaps in logic or flow but leave the final alteration to the writer and final choices to the panel
- respect that writing is difficult work, often done in a time crunch, and that your choice of words may not be the same as the writer's

Costs and Penalties

Part of the decision making obligation of panels can be to award costs or penalties for actions or positions taken during the process. Each tribunal may have different powers and different legislative requirements.

A CARB and the MGB have authority to award costs under section 52 of MRAC. A LARB does not have authority to award costs. Under section 52of MRAC:

- any party to a hearing can apply to have the CARB or MGB award costs
- a party must apply no later than 30 days after the hearing ends
- when deciding whether to award costs after an application, the CARB or MGB may consider
    - whether there was an abuse of process
    - whether the party applying for the costs incurred additional or unnecessary expenses as a result of an abuse of process.
- the CARB or MGB can decide on its own initiative and at any time to award costs
- the panel can only award costs set out in Schedule 3
- MRAC dictates who pays the costs
- Schedule 3 states a CARB or MGB may award costs if it determines a hearing was required to determine a matter that did not have a reasonable chance of success.

Important Notes:

- Before a panel decides to award costs or how much, it must (as part of fair process) allow each party to present its evidence and arguments about costs.
- Costs under section 52 and Schedule 3 of MRAC are punitive in nature.
- MRAC does not define abuse of process but Schedule 3 outlines the types of conduct that might guide a panel to determining whether an action is an abuse of process.
- Generally a panel would not award costs if the complainant withdraws a matter during the disclosure process or if the complainant withdraws a matter after disclosure but before the hearing begins.
- MRAC does not define reasonable chance of success in Schedule 3 and panels will have to decide what that phrase means. Generally the mere fact the complaint was not successful does not mean the complaint did not have a reasonable chance of success.

Tips When Dealing With Costs or Penalties

- Determine if the legislative standard is mandatory or discretionary
- If the panel has a discretion to set or alter the costs or penalties, consider all the evidence and arguments about what circumstances exist for lesser, higher, prescribed or no costs or penalties
- Determine what meaning to give to words like “abuse of process” – is this mere inconvenience or extra work or time? Is it intentional conduct which undermines the fairness of the process; is it something else?
- Consider any information from the parties that might excuse or justify the action or position
- Consider any information showing the other party has contributed to the offending action
- Consider any information about prejudice arising from the offending action
- Consider what will be fair to the other party in all the circumstances
- Take a balanced approach – cases will arise which are better or worse than this case.

Exercise #8 - Decision Writing

Instructions:

- You need to now write a draft decision by a panel which heard and decided the Ms. Green case used in the earlier exercises. Use the decision you made in Exercise #7.
- In your group, answer the questions.

1. What requirements does the MGA or MRAC impose on the content and timing of decisions?

2. If a panelist dissents, what does the panelist need to include in the written dissent?

3. Draft the written decision in pieces as directed by the instructor (introduction and issues, procedural and jurisdictional matters, summary of the evidence, legislative tests, analysis and reasons, directions) and include all the content required by MRAC. Also include the key parts of a well written decision discussed earlier. Put your draft on flipchart paper to compare with others. You will stop and debrief each piece before proceeding to the next piece.

Module 4 – Conduct and Collaboration

Participants learn about the importance of maintaining independence and accountability. This module will also describe the code of professional and ethical responsibilities for members of adjudicative tribunals, conflict of interest, and hearing conduct. Participants also learn techniques that will enhance ways to work collaboratively with ARB administration and other ARB members.

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Maintaining Independence and Accountability through Ethical Conduct

To carry out its legislative role, a tribunal and its members must be independent of its appointing authority. At the same time, the tribunal and its members are accountable for:

- the decisions they make
- the hearings they conduct
- confidentiality of the information received
- the procedures it adopts and implements
- the budget under its authority
- the collegial support of its members and staff
- the reputation of the process, tribunal and panel members.

A code of conduct can assist the tribunal (its members and staff) to meet reasonable standards and goals in its accountability. A code of conduct can be broad or general, detailed or simplified. Usually the ARB members adopt a code of conduct at some point and then continually refine and refresh the code as required to meet current standards and demands.

Tribunals may express the code of conduct in different ways, such as in a particular document named a code or through other tribunal publications like the mission and goals. Three examples of codes of conduct or standards set for the board and members are from the Municipal Government Board and the Labour Relations Board and the generic code of conduct from the Alberta Agency Governance Secretariat.

Municipal Government Board

MGB Mission, Vision, and Goals

MISSION

The Municipal Government Board shall provide timely, independent, quasi-judicial appeal adjudication to all parties in the areas of assessment matters, planning, subdivision appeals, inter-municipal disputes and annexation recommendations, that yields fairness and equity consistent with the authority of the Municipal Government Act.

VISION

The Alberta Municipal Government Board will be a leader among tribunals with a reputation for excellence in adjudication.

All Albertans shall have access to a fair and independent process with strict adherence to the principles of natural justice and in which all individuals are treated fairly and without bias in an open, orderly and impartial manner.

This Vision will be attained by:

- providing benchmark decisions.
- advocating excellence and providing guidance in decision making to stakeholders.
- demonstrating efficiency, effectiveness and timeliness in the appeal process.
- respecting rights of individuals, businesses, corporations and municipalities.
- ensuring that all property assessments are equitable, fair and correct in accordance with legislation.
- striving for consistency and predictability based on evidence presented.

V A L U E S

In service to stakeholders the Municipal Government Board values:

- our strength through the diversity of our members and the quality of our staff.
- the right to natural justice and timeliness in the adjudication process.
- respect for and responsiveness to our stakeholders.
- provision of quality service to stakeholders.
- consistent interpretation of legislation.
- commitment to the Code of Ethics and Conduct.
- organizational alignment and a team approach to problem solving.
- innovative use of automated information services.
- continuous organizational development, self-improvement and self-evaluation.
- enriched and rewarding work environment which recognizes productivity.

G O A L S

Organizational Effectiveness: The Municipal Government Board will be an effective organization, roles and accountabilities will be clear and understood, and processes and relationships will be purposely aligned.

Processes: The Municipal Government Board will reflect accessibility, efficient scheduling, timely decisions and fair hearing procedures consistent with the principles of natural justice.

Quality Decisions: Municipal Government Board decisions will be legislatively correct, well reasoned, consistent with evidence and relevant case law and will be issued on a timely basis.

Stakeholder Satisfaction: The Municipal Government Board will be proactive and responsive to stakeholder feedback and satisfaction. A stakeholder is defined as all people who have a vested interest in the outcomes of the Municipal Government Board. This would include Board members, staff, and all external parties who come before the MGB, the department and the Minister.

Budget Plan: The Municipal Government Board budget will reflect the business plan and will provide for effective and efficient use of financial resources to support MGB priorities.

MGB Board Appointments

The Municipal Government Board is an independent quasi-judicial tribunal providing timely appeal adjudication in the areas of assessment matters, planning, intermunicipal disputes, annexation recommendations, and subdivision appeals.

APPOINTMENT PROCESS

"An Independent and Impartial Process"

The appointment process to the Municipal Government Board (MGB) is as follows:

- the Government's Guidelines for appointments to Boards are followed
- the process is conducted through the Personnel Administration Office (PAO) of the Alberta government
- public advertisements for applicants are published in the two major newspapers (Edmonton Journal and Calgary Herald) and on the Alberta Government website at http://www.alberta.ca/ under Jobs in Alberta.
- applicants are screened based on the skill criteria required by the MGB
- to qualify applicants must have experience in more than one of the following criteria:
- legal

- major quasi-judicial tribunal experience
- industry (oil & gas)
- municipal (elected/administrator)
- property valuation (AAA, AIC, Real Estate)
- other professions (e.g. planning, engineer, architect, agriculture)
- initial interviews are conducted with a Committee comprised of the Board, stakeholder representatives, and an independent consultant
- first stage interviews are based on general suitability, knowledge, skills and experience
- indepth second stage interviews are conducted which include detailed case studies
- recommendations are made based on interview results.

The final decision for appointments to the MGB rests with the Minister and Cabinet through an Order in Council. The Municipal Government Board is a working Board requiring a commitment of 15-20 days per month from its members. The initial training period for new members takes approximately five months. Additional training is conducted throughout the year for all members.

Labour Relations Board

Principles of Conduct for Members of the Labour Relations Board

Introduction/Purpose

The purpose of the Principles of Conduct is to:

- Provide guidance to members, Chairs and Vice Chairs, and
- Maintain and enhance client and public confidence in
  the integrity and competence of members
  the fairness and efficiency of hearings
  the justice of decisions rendered.

The Labour Relations Board is a quasi-judicial administrative tribunal which has a number of roles:

- administering and enforcing Alberta labour relations laws
- making judgments about the rights and liabilities of the parties that appear before it
- setting Board policy and administrating the legislation and Board procedures
- educating and communicating with the labour relations community.

This means Board members have a three part role:

1. adjudicative
2. policy/administrative
3. ambassador.

The members of the Board are experienced labour relations practitioners. Members are appointed because of their activity and expertise in the field of labour relations. Members are not appointed simply as representatives of, or delegates from, particular interest groups. While the advice of the various interest groups in the labour relations community is customarily sought in making an appointment, the appointment is in part a reflection of the appointee's overall credibility in the labour relations field. No person or organization has any right to recall or censure any member, or has a right to any influence over the member's conduct in respect of that member's Board related activities. *These guidelines are not intended to negate an individual Board Member's perspective, union or employer.*

Adjudicator

In the role as adjudicator, the Board member participates as a member of a panel, normally comprised of a Chair, one management Board member and one union Board member. Persons who appear before the Board are entitled to know that their rights will be decided fairly. Where those rights depend on policy considerations, as well as interpretations of fact and law, parties are entitled to be confident that the policy matters will be addressed fairly and impartially, free of irrelevant and inappropriate influences.

Board Policy/Administration Role

The Board exercises its policy role when sitting in full caucus. Board members also participate in committees, which recommend policy to the caucus. In this policy discussion environment, the Board member is free to bring to bear any relevant considerations the member's experience may have to offer on a topic in issue. It is vitally important that the Board fully explore all the consequences of any policy it may adopt.

Ambassador

The Board member also acts as an ambassador for the Board. Board members serve an important role in explaining the Board's role to those in the labour relations community. The members help the rest of the Board, including those who serve full-time and the Board staff, to keep up to date with the concerns of those who work in the field. In turn, the member helps keep the parties informed about changes in Board procedures and policies.

Basic Principles of Conduct

PRINCIPLE 1	A Board Member shall act impartially and independently.
PRINCIPLE 2	A Board Member shall disclose all matters which would create a reasonable apprehension of bias.
PRINCIPLE 3	Board Members shall preserve confidential information obtained as a result of their appointment.
PRINCIPLE 4	A Board Member shall decline assignments to panels with other members whom the Board Member has appeared before as a witness, counsel, spokesperson or instructing representative until the decision in that case is released.
PRINCIPLE 5	A Board Member shall act with integrity.
PRINCIPLE 6	Board Members shall foster their expertise and professional competence and knowledge in adjudication, relevant law and hearing procedure.
PRINCIPLE 7	A Board Member shall treat all participants with dignity, respect and fairness.
PRINCIPLE 8	A Board Member shall foster a collegial approach in performing official duties and responsibilities.
PRINCIPLE 9	Board Members are encouraged to express and exchange strongly held views in panel discussions on an issue of substance, as they work towards consensus in decision making, and in their discussions in Caucus or committee meetings.
PRINCIPLE 10	A Board Member shall be active in Board affairs.

Alberta Generic Code of Conduct for a Public Agency

The Generic Code of Conduct for a Public Agency (Generic Code) is a sample Code of Conduct for use by agencies.

The Alberta Public Agencies Governance Act (APAGA) requires that each agency have a Code of Conduct (Code) for its members and employees and have a process for administering it. The Generic Code meets the requirements of the APAGA and may be used as a starting point to assist agencies in developing a Code that reflects their unique situation and mandate.

The document, Guidelines for Developing a Code of Conduct for a Public Agency, provides suggestions and examples to consider when modifying this Generic Code or developing a new Code.

[NAME OF AGENCY]
CODE OF CONDUCT

I. Preamble

The Code of Conduct (Code) for *[name of agency]* applies to all members and employees. The Code reflects a commitment to the agency's values and provides a framework to guide ethical conduct in a way that upholds the integrity and reputation of the agency. Members and employees are expected to behave in a way that aligns with this Code. They understand that this Code does not cover every specific scenario. Therefore, they use the spirit and intent behind this Code to guide their conduct, and exercise care and diligence in the course of their work with the agency.

To demonstrate commitment to transparency and accountability, this Code is available to the public on the agency's website.

II. Core Values

a. Members and employees act with impartiality and integrity.

b. Members and employees demonstrate respect and accountability.

c. [*Other values]*.

III. Guiding Principles

These principles guide the behaviour and decisions of members and employees:

a. The actions and decisions of members and employees are made to promote the public interest and to advance the mandate and long-term interests of the agency.

b. Members and employees are responsible stewards of public resources.

c. To serve the public interest, members and employees have a responsibility to uphold the agency's mandate.

d. Members and employees have a responsibility to act in good faith and to place the interests of the agency above their own private interests.

e. Members and employees behave in a way that demonstrates that their behaviour and actions are fair and reasonable in the circumstance.

f. Members and employees enjoy the same rights in their private dealings as any other Albertan, unless it is demonstrated that a restriction is necessary in the public interest.

g. When a member or employee, as an individual, is subject to more than one code of conduct, the member or employee must consider the expectations in all. Members and employees understand that this Code is not intended to conflict with other Codes of Conduct, and will discuss any potential conflicts with their supervisor or the Code Administrator.

h. The Code applies to all members and employees unless a specific exemption is granted by the Code Administrator.

i. Members and employees know that when they become aware of a real or apparent conflict of interest, they must at the first opportunity disclose this conflict to their supervisor or the Code Administrator.

j. Members and employees understand that disclosure itself does not remove a conflict of interest.

k. Members and employees encourage their colleagues to act fairly and ethically and know that they are able to raise concerns about a suspected breach by another to their supervisor or the Code Administrator without fear of reprisal.

l. Members and employees know that breaches of this Code may result in disciplinary action, up to and including removal of the member or termination of the employee.

m. Members and employees know that if they have any questions about the Code, or are not sure how to apply these principles, they should consult with their supervisor or the Code Administrator.

n. Each member and employee confirms *[on an annual basis]* their understanding of, and commitment to, the Code's expectations.

IV. Behavioral Standards

Behavioral standards help members and employees make appropriate decisions when the issues they face involve ethical considerations. Behavioral standards cannot cover all scenarios but provide guidance in support of day-to-day decisions. All members and employees must adhere to the following standards:

a. Members and employees must not engage in any criminal activity and comply with all relevant laws, regulations, policies and procedures.

b. Members and employees must not use their status or position with the agency to influence or gain a benefit or advantage for themselves or others.

c. Member and employee conduct contributes to a safe and healthy workplace that is free from discrimination, harassment or violence.

d. Members and employees must not use drugs or alcohol in a way that affects their performance and safety or the performance and safety of their colleagues, or that negatively impacts the reputation or operations of the agency.

e. Members and employees must act in a way that is consistent with the agency's protocols on public comment.

f. Members and employees must take reasonable steps to avoid situations where they may be placed in a real or apparent conflict between their private interests and the interests of the agency. In other words, actions or decisions that members and employees take on behalf of the agency must not provide them with an opportunity to further the private interests of themselves, their families, their business associates or others with whom they have a significant personal or business relationship.

1. Confidential Information
   Members and employees must respect and protect confidential information, use it only for the work of the agency and do not use it for personal gain. Members and employees must comply with protocols that guide the collection, storage, use, transmission and disclosure of information.

2. Gifts and Gratuities
   Members and employees must not accept or receive gifts and gratuities other than the normal exchange of gifts between friends or business colleagues, tokens exchanged as part of protocol or the normal presentation of gifts to people participating in public functions.

3. Outside Activities

Members and employees must avoid participating in outside activities that conflict with the interests and work of the agency. For example:

i. Business Interests: Members and employees must not hold interests in a business directly or indirectly through a relative or friend that could benefit from, or influence, the decisions of the agency.

ii. Employment: Members must not take employment, and employees must not take supplementary employment, that affects their performance or impartiality with the agency.

iii. Political Activity: Members and employees may participate in political activities including membership in a political party, supporting a candidate for elected office or seeking elected office. However, they must not participate directly in soliciting contributions for a political party. In addition, any political activity must be clearly separated from activities related to the work for the agency, must not be done while carrying out the work of the agency and must not make use of agency facilities, equipment or resources in support of these activities.

iv. Volunteer Activity: If members and employees are involved in volunteer work, the activity must not influence or conflict with decisions relating to the agency.

4. Pre-Separation

Members and employees considering a new offer of appointment or employment must be aware of and manage any potential conflicts of interest between their current position and their future circumstance, and must remove themselves from any decisions affecting their new appointment or employment.

5. Post-Separation

Once members and employees have left the agency, they must not disclose confidential information that they became aware of during their time with the agency and must not use their contacts with their former colleagues to gain an unfair advantage for their current circumstance.

6. Property

Members and employees may have limited use of the agency's premises and equipment for authorized incidental purposes providing such use involves minimal additional expense to the agency, must not be performed on the member or employee's work time, must not interfere with the mission of the agency and must not support a personal, private business.

7. Related Persons or Parties

Members and employees must avoid dealing with those in which the relationship between them might bring into question the impartiality of the member or employee.

V. Administrative Processes

Administrative processes help members and employees manage ethical dilemmas, including any real or apparent conflict of interest concerns.

a. Administration

The Code Administrator for members and the Chief Executive Officer (CEO) is the *[e.g., Chair; Governance Committee]*. The Code Administrator for employees other than the CEO is the *[e.g., CEO; Governance Committee]*.

The Code Administrator receives and ensures the confidentiality of all disclosures and ensures that any real or apparent conflict of interest is avoided or effectively managed. As well, the Code Administrator is responsible for providing advice and managing all concerns and complaints concerning potential breaches of the Code, including conflicts of interest within the agency. Even

though an agency may have a delegated process for responding to and managing concerns, the Code Administrator is responsible for ensuring procedural fairness.

b. Disclosure

It is the responsibility of each member and employee to declare in writing to the Code Administrator those private interests and relationships that they think could be seen to impact the decisions or actions they take on behalf of the agency. When there is a change in their responsibilities within the agency or in their personal circumstance, members and employees shall disclose in writing any relevant new or additional information about those interests as soon as possible. Where a real or apparent conflict of interest cannot be avoided, members and employees must take the appropriate steps to manage the conflict.

Members and employees disclose these real or apparent conflicts of interest so that the Code Administrator is aware of situations that could be seen as influencing the decisions or actions they are making on behalf of the agency. This provides members and employees, following a review by the Code Administrator, an opportunity to take action to minimize or remove the conflict. To actively manage a conflict of interest, options include:

- removing themselves from matters in which the conflict exists or is perceived to exist;
- giving up the particular private interest causing the conflict; and,
- in rare circumstances, resigning their position with the agency.

c. Reporting a Potential Breach by Another

Members and employees are encouraged to report in writing a potential breach of this Code by another to their supervisor for employees or the Code Administrator for members and employees. When reporting a potential breach in good faith and with reasonable grounds, members and employees are protected from retaliation for such reporting.

d. Responding to Potential Breach

Once a potential breach has been reported, the agency's procedures for responding to and managing a potential breach will be promptly initiated. The Code Administrator will review the circumstance and details of the potential breach and will notify the alleged member or employee. The alleged member or employee has the right to complete information and the right to respond fully to the potential breach. The identity of the reporter will not be disclosed unless required by law or in a legal proceeding. The Code Administrator makes a decision and completes a report of the review in a timely manner. The decision may range from finding no potential breach to one that reveals suspected criminal conduct.

e. Consequences of a Breach

Members and employees who do not comply with the standards of behaviour identified in this Code including taking part in a decision or action that furthers their private interests, may be subject to disciplinary action up to and including removal of the member or termination of the employee.

f. Review of a Decision

Members and employees can request in writing that the *[e.g., Ethics Commissioner; external party]* review a decision that has been made by the Code Administrator about a real or apparent breach of the Code, including a conflict of interest involving that member or employee.

VI. Other Resources

a. Where to Get Advice

When members and employees require advice and guidance in determining whether misconduct or a conflict exists, or need clarification, they may discuss their issue with:

- A supervisor for employees
- The Code Administrator for members and employees
- *[Other - e.g. ethics officer, ethics committee, compliance officer]*

b. Questions to Consider

When members and employees are faced with a difficult situation, the following questions may help them decide the right course of action:

- Have I reflected on or consulted with my supervisor or the Code Administrator about whether I am compromising the Code's values, principles or behavioural standards?
- Have I considered the issue from a legal perspective?
- Have I investigated whether my behaviour aligns with a policy or procedure of the agency?
- Could my private interests or relationships be viewed as impairing my objectivity?
- Could my decision or action be viewed as resulting in personal gain, financial or otherwise?
- Could my decisions or actions be perceived as granting or receiving preferential treatment?

VII. Affirmation

The Code of Conduct for *[name of agency]* was introduced on *[date]* and is reaffirmed *[annually]* by the Board to ensure it remains current and relevant.

Tips for Working Collaboratively With Other Tribunal Staff and Members

It sounds like motherhood and apple pie to say that everyone in a tribunal has to work collaboratively to achieve satisfactory results. Some tips for working collaboratively include:

- work from the same information – different information generates differing viewings and reactions
- set clear processes and time lines
- identify clear role descriptions and expectations
- vocalize expectations – do not encourage mind reading or assumptions
- focus on the bigger picture and goals, not personal agendas, personal priorities or personal pride
- discuss when cases are or expect to be difficult – work out a joint plan for dealing with the case proactively – consult the parties as needed
- solicit information about what did not happen as expected – be prepared to accept reasonable explanations and give a little leeway for different approaches or methods
- focus on the project and actions, respect the personalities and feelings – remember you are dealing with people
- be prepared to examine alternate ways of doing the work – there may be more than one way to accomplish the task
- treat everyone else as you would wish to be treated
- protect the reputation of the board and the credibility of its processes
- stay involved – inactive persons lose touch
- do your part and do it well
- share the praise and the pain equally
- adopt a dispute resolution process within the tribunal – one example is *Let's Talk*, a guide to resolving workplace disputes by Alberta Employment and Immigration
- appreciate the equal roles of the three panel members; the presiding officer may facilitate the discussion but needs to also express his/her own views and should not be acting as a controller or superior person on the panel.

Exercise #9 - Conduct

Instructions:
1. You are still dealing with Ms. Green's case.
2. Work as a group to answer the questions.
3. Use the Generic Code of Conduct to determine what sections might assist to answer the question.
4. Identify a spokesperson for your group to participate in the class debrief.
5. You have 15 minutes.

Staff and Members

1. During the processing of the case, the clerk became ill and her duties were covered by another person between the time the notice went out and the hearing began. When the hearing began the panel learned that the complainant had not filed a response because she did not receive the letter about the need to file her reply evidence. The acting clerk missed sending the letter out on time. One panel member is very upset that the panel has come to a hearing that was not ready to proceed. After the hearing the panel member vents his anger at the regular clerk (who is now back from sick leave).

    a. What can the panel member do to resolve the situation with the clerk?

Panel and Party Conduct

2. You are arriving at the hearing and discover that your pastor is one of two people (who you later learn are the Ms. Green and her son – the pastor) attending the hearing. The pastor/son tells you they are going to a hearing (first time for them) with the LARB and they don't know what to expect. They ask if you know anything about it and could you help them.

What do you do or say? Why?

3. After the hearing you return to your regular business/job. The next day, you receive a call from the Ms. Green's son, who thanks you for being so open minded in the hearing. He says he knows he will get a call and letter from the LARB about the decision, but asks if you can remind him when the decision will be released and, in the meantime, can you give him a hint into what the decision will say.

How do you react/what do you do? Why?

References and Resources

Foundation of Administrative Justice Certificate Program Courses www.FOAJ.ca

Administrative Decision Writing, A.C.L. Sims, February 14, 1994 C.I.A.J. Conference http://www.ciaj-icaj.ca/

Reasons for Decision by Administrative Tribunal, Kerans, J., February, 1994 C.I.A.J. Conference

An Editing Checklist, Maryhelen Vicars, February, 1994 C.I.A.J. Conference

A Few Chose Verses from the Plain English Bible, Maryhelen Vicars, February, 1994 C.I.A.J. Seminar "The Decision Writing Process"

Plain English for Lawyers (2nd edition), Richard Wydick, (1985) Carolina Academic Press

Practice and Procedure Before Administrative Tribunals, MaCaulay & Sprague

Citation, Canadian Citation Committee, (2001) www.lexum.umontreal.ca/citation./en/index.html

Hallmarks of Quality Appeal Division Decisions, (2001) B. C. Workers' Compensation Reporter, Vol. 17, Appeal Division Decision No. 33

Standards for the Preparation, Distribution and Citation of Canadian Judgements in Electronic Form, Canadian Judicial Counsel (1996) www.cjc.gc.ca

Powers and Procedures for Administrative Tribunals in Alberta (December, 1999) Alberta Law Reform Institute

Plain Language, Clear and Simple (1991) Canada Communication Group - Publishing

Advising the Board: The Scope of Counsel's Role in Advising Administrative Tribunals, Murray Rankin and Leah Greathead, CDN. Journal of Administrative Law & Practice 7 C.J.A.L.P. 29

Preparing to Write Clearly, (1996) Harper and Associates, B.C. Council of Administrative Tribunals http://www.bccat.net/

Fact Finding and the Judiciary, Judge Gerald T. G. Seniuk and John C. Yuille, Ph. D., (1997) C.C.A.T. Conference

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All About Decision Letters: WCB Style for Decision Letters (1999) Sims Group http://www.simsgroup.com/

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Handling the Evidence from Pre-Hearing to Final Reasons, Justice J.I. Laskin ON. C.A. (2002) C.C.A.T. Conference

The Hearing is Over: Writing Languages in Plain Language, David C. Elliott http://www.davidelliott.ca/
Black, Henry Campbell. *Black's Law Dictionary*, Abridged Fifth Edition, Set-Paul, West Publishing Co., 1983.

Blake, Sara. *Administrative Law in Canada*, Toronto, Butterworths, 1992.

Canadian Bar Association. Report of the Task Force on the Independence of Federal Administrative Tribunals and Agencies in Canada, Ottawa, 1990.

Canadian Journal of Administrative Law Practices

Jones and De Villars. *Principles of Administrative Law*, Toronto, Carswell, 1994.

Law Reform Commission of Canada. *Independent Administrative Agencies*, Working Paper 25, Ottawa, Minister of Supply and Services Canada, 1980.

Macaulay, R.W. and Sprague, J.L.H. *Practice and Procedure Before Administrative Tribunals*, Toronto, Carswell, 1994.

Reid, Administrative Law *Administrative Law: An Overview*, document prepared by the Legal Services Sector of the Department of Justice and modified for use by the National Transportation Agency.

Members' Handbook, prepared by the Immigration and Refugee Board.

Members' Orientation Book, prepared by the Canadian Radio-television and Telecommunications Commission.

Powers and Procedures of Administrative Tribunals Alberta Law Reform Institute Consultation Memorandum No. 13, Sept 2008 Edmonton.

A User's Guide to Legislation

From Alberta Justice website at http://www.justice.gov.ab.ca/law/legislative_pubs.aspx

Statutes of Alberta: annual volumes

Each year the public acts and private acts enacted by the Legislature that year (bills that receive Royal Assent) are published by the Queen's Printer in a hard-cover volume. The volume also contains reference materials. The annual volumes of the *Statutes of Alberta* are the authoritative source for interpreting and applying Alberta's acts.

Public acts include entirely new public acts, public amendment acts, repeal acts and appropriation acts. Private acts are brought forward (or "petitioned") by Members of the Legislative Assembly, and do not affect the population as a whole.

The annual volume contains:

- a table of contents that lists the acts by chapter number
- an alphabetical list of acts
- public acts enacted in that year
- private acts enacted in that year
- reference materials.

The first page of each act contains the following information:

- the bill number under which the act was introduced in the Legislative Assembly (in the upper left hand corner)
- the title of the act
- the chapter number assigned to the act
- the date on which the act was given Royal Assent.

Statutes of Alberta: loose-leaf

The Queen's Printer also publishes a 15-volume loose-leaf consolidation of the public acts, excluding appropriation acts. These volumes are updated as soon as possible after new acts are enacted or amendments come into effect. Volumes 1 to 15 consolidate the public acts enacted by the Alberta Legislature. Volume 15 also contains those amendment acts from the Revised Statutes of Alberta 2000 that are still awaiting proclamation, RSA 2000 Schedules A to D, proclamation tables, and the Table of Public Statutes (printed on pink paper).

The loose-leaf version is an unofficial consolidation. The original acts, in the hard cover volumes of the Revised Statutes of Alberta 2000 and the annual *Statutes of Alberta,* should be consulted for all purposes of interpreting and applying the law.

The Alberta Gazette Part II

Regulations filed under the *Regulations Act*, except those exempted from publication under that act, are published in Part II of The Alberta Gazette within a month of being filed. The Gazette is available from the Queen's Printer.

Other Formats

Alberta Statutes and Regulations are also available in pamphlet form, and on the Queen's Printer web site.

How to cite statutes (Acts)

Statutes (Acts) are referred to by their titles. For court and other legal purposes, a complete citation would consist of the title of the act followed by a reference to the more recent of

- the most recent statute revision in which that act was included
- the year in which the act was enacted (received Royal Assent)

plus the chapter number of the act.

Entirely new public acts are given alpha-numeric chapter numbers; other acts are numbered Chapter 1, 2, 3 etc.

The statute revision is cited in this form: Revised Statutes of Alberta 2000. This may be abbreviated as RSA 2000.

Years of enactment are cited in this form: Statutes of Alberta, 2002. This may be abbreviated as SA 2002.

Here are some examples of citations of acts:

Cooperatives Act (SA 2001 cC-28.1);

Hospitals Act (RSA 2000 cH-12);

Public Works Amendment Act, 2002 (SA 2002 c21).

How to cite regulations

A regulation may be cited by its title, or as "Alberta Regulation" or "Alta. Reg." or "AR" followed by its number, a slash and the last two figures of the calendar year of the filing of the regulation. For example, the Partnership Regulation may be cited as:

- Partnership Regulation, or
- Partnership Regulation, Alberta Regulation 276/99, or
- Partnership Regulation (Alta. Reg. 276/99), or
- Partnership Regulation (AR 276/99)

Beginning with regulations filed in the year 2000, all four figures of the calendar year are used in Alberta Regulation numbers; for example, Change of Name Regulation (AR 16/2000).

Interpretation Act

Users of the Statutes of Alberta should be aware of the *Interpretation Act* (RSA 2000 cI-8). It sets out various presumptions, definitions, and rules of statutory interpretation and construction that apply to all Alberta acts and regulations. For example, the *Interpretation Act* contains definitions that apply to words and phrases used in all acts, except where an act indicates otherwise.

Reference Materials

Reference aids are placed at the end of the annual volume and in the supplement volume of the loose-leaf statutes. The reference materials included are:

Proclamation Tables - (printed on white paper)

These tables list:

- all enactments brought into force by proclamation
- unproclaimed public enactments
- acts amended by unproclaimed enactments
- acts repealed by unproclaimed enactments
- public enactments that expire on named dates
- public enactments that come into force on named dates.

Table of Public Statutes - (printed on pink paper)

Part 1 of the table shows all acts in the *Revised Statutes of Alberta 2000*, all amendments to those acts, and all other public acts and amendments enacted between December 31, 2000 and the date stated in the first paragraph of the table.

Part 2 of the table shows public acts enacted before December 31, 2000 for which no express repeals have been found, and which were not consolidated in or repealed by the *Revised Statutes of Alberta 2000*.

Table of Private Statutes of the Province of Alberta - (annual volume only: printed on blue paper)

The table shows all the private acts, and amendments to them, enacted up to the date printed under the title of the table.

RSA 2000 Schedules - (loose-leaf statutes)

Schedules A to D to the Revised Statutes of Alberta 2000 are included in the last volume of the loose-leaf statutes.

- Schedule A: Acts Consolidated in RSA 2000
- Schedule B: Acts Omitted from and Repealed by RSA 2000
- Schedule C: Acts Not Consolidated Nor Repealed by RSA 2000
- Schedule D: Table of Concordance

Organization of a Statute (Act)

Preambles

Some acts begin with a preamble. The preamble is part of the act and may be used to interpret the act.

Definitions

Most acts contain a definition section that lists, in alphabetical order, definitions of terms used in the act. The definition section is usually at the beginning of the act. However, definitions that are restricted in their application to a section, part, division or other portion of an act may be at the beginning of that section, part, division or other portion.

Marginal Notes and Section Headers (Sidenotes)

Marginal notes and section headers (sidenotes) are not part of the statute and should not be relied on to interpret the act. They are included only for convenience of reference and may be changed editorially whenever appropriate.

Sections, Subsections, etc.

Every act is composed of numbered sections, cited as section 1, 2, 3, etc.

- many sections are further divided into two or more subsections, cited as subsection (1), (2), (3), etc.
- some sections and subsections contain clauses, cited as clause (a), (b), (c), etc., subclauses, cited as subclause (i), (ii), (iii), etc.,paragraphs, cited as paragraph (A), (B), (C), etc., and subparagraphs, cited as subparagraph (I), (II), (III), etc.

Decimal Numbering

The numbering system can be easily understood by regarding each section number as if it were followed by a decimal point and some zeros that are not shown; that is, section 4 can be thought of as 4.0 or 4.00 etc.

In applying the system, only one decimal place is usually needed, so that between sections 4 (4.0) and 5 (5.0) sections 4.1 to 4.9 can be added (4.10 is not used since it is the same as 4.1), for a total of nine sections.

By later amendments, up to nine more sections can be added between any two sections by using two decimal places, for example:

- between section 4 and 4.1, sections 4.01 to 4.09 can be added,
- between sections 4.1 and 4.2, sections 4.11 to 4.19 can be added, and
- between sections 4.9 and 5, sections 4.91 to 4.99 can be added

and in the same manner a further nine sections can be added between any of those sections by using three decimal places.

If it is necessary to add more than nine sections in the same place at the same time, then some of the sections are numbered using an additional decimal place.

The same rules apply to adding new subsections, clauses, subclauses and paragraphs, so that

- subsections are numbered (1.1) to (1.9),
- clauses are numbered (a.1) to (a.9),
- subclauses are numbered (i.1) to (i.9),
- paragraphs are numbered (A.1) to (A.9), and
- subparagraphs are numbered (I.1) to (I.9).

Parts, Divisions

Some acts are divided into numbered parts, cited as Part 1, Part 2, etc. A part may be divided into divisions cited as Division 1, Division 2, etc.

Transitional Provisions

If an act or provision cannot come into force on an intended day without hardship or confusion occurring, the act may contain a transitional provision. Transitional provisions are used to provide for the transition from an earlier act to the act that replaces it, or to phase in how a new or an amending act applies to persons affected by it. A transitional provision may be included in an act if, for example, certain provisions of the previous act will apply for a significant period of time or if the provisions may affect many persons. Transitional provisions are usually located near the end of the act.

Consequential Amendments

Consequential amendments in an act amend other acts that are affected by that act. Consequential amendments are included in the acts as published in the annual volume.

In the loose-leaf statutes and office consolidations, all amendments are incorporated into the amended acts. If an act made consequential amendments to other acts, an editorial note to that effect is included in the consolidated amending act.

Repeal Provisions

Provisions repealing other acts are placed near the end of the act, immediately before the coming into force section.

Coming Into Force Provisions

The section dealing with the coming into force of an act or of provisions of an act is usually the last section of the act. If there is no coming into force provision in an act, the *Interpretation Act* (RSA 2000 cl-8) provides that the act comes into force on the date of Royal Assent. The Royal Assent date is on the first page of each act in the annual statute volume, following the chapter number.

If an act, or a portion of an act, comes into force in a manner other than by Royal Assent, the last section of the act will set out the method. The act, or portion of the act, may come into force on proclamation or on a named future date, or may be deemed to have come into force on a named previous date.

Citations (Historical References)

Each section of a consolidated act is followed by the citation for that section and the citations of any amendments to that section. Citations do not form part of the act. They are added editorially.

Relevant Legislative Sections

1. ***Municipal Government Act as amended by the Municipal Government Amendment Act, 2009***

2. ***Matters Relating to Assessment Complaints Regulation, 2009 (AR 310/2009)***

3. ***Matters Relating to Assessment and Taxation Regulation, 2009 (AR 220/2004)***

4. ***Minister's Guidelines***

Attached Documents:

1. ***Complaint Form***
2. ***Notice Types***
3. ***Complaint Process and timeline for a LARB***
4. ***Complaint Process and timeline for a CARB***
5. ***Complaint Process and timeline for the MGB***
6. ***Process for Administrative Clerks***

The Assessment Review Board Complaint Form Page 1

Government of Alberta

Assessment Review Board Complaint

Municipality Name (as shown on your assessment notice or tax notice) | Tax Year

Section 1 - Notice Type

Assessment Notice:
- ☐ Annual Assessment
- ☐ Amended Annual Assessment
- ☐ Supplementary Assessment
- ☐ Amended Supplementary Assessment

Tax Notice:
- ☐ Business Tax
- ☐ Other Tax (excluding property tax and business tax)

Name of Other Tax

Section 2 - Property Information

Assessment Roll or Tax Roll Number

Property Address

Legal Land Description (i.e. Plan, Block, Lot or ATS 1/4 Sec-Twp-Rng-Mer)

Property Type *(check all that apply)*
- ☐ Residential property with 3 or less dwelling units
- ☐ Residential property with 4 or more dwelling units
- ☐ Farm land
- ☐ Non-residential property
- ☐ Machinery and equipment

Business Name (if pertaining to business tax) | Business Owner(s)

Section 3 - Complainant Information

Is the complainant the assessed person or taxpayer for the property under complaint? ☐ Yes ☐ No

Note: If this complaint is being filed on behalf of the assessed person or taxpayer by an agent for a fee, or a potential fee, the Assessment Complaints Agent Authorization form must be completed by the assessed person or taxpayer of the property and must be submitted with this complaint form.

Complainant Name (if the complainant, assessed person, or taxpayer is a company, enter the complete legal name of the company)

Mailing Address (if different from above) | City/Town | Province | Postal Code

Telephone Number *(include area code)* | Fax Number *(include area code)* | Email Address

Section 4 - Complaint Information

Check the matter(s) that apply to the complaint (see reverse for coding)

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10

Note: Some matters or information may be corrected by contacting the municipal assessor prior to filing a formal complaint.

If information was requested from the municipality pursuant to sections 299 or 300 of the *Municipal Government Act*, was the information provided? ☐ Yes ☐ No

Section 5 - Reason(s) for Complaint

Note: An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

The reasons for a complaint must accompany the complaint form, including:
- what information shown on an assessment notice or tax notice is incorrect;
- in what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues;
- what the correct information is;
- if the complaint relates to an assessment, the requested assessed value.

Requested assessed value:

(a) include a statement that the complainant and the respondent have discussed the matters for complaint, specifying the date and outcome of that discussion, including the details of any issues or facts agreed to by the parties, or
(b) include a statement, if the complainant and the respondent have not discussed the matters for complaint, specifying why no discussion was held.

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

Section 6 - Complaint Filing Fee

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

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

Section 7 - Complainant Signature

Signature | Printed Name of Signatory Person and Title | Date *(mm/dd/yyyy)*

Important Notice: Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

Assessment Review Board Clerk Use Only

Was the complaint filed on time?	☐ Yes	☐ No		
Is the required information included on or with the complaint form?	☐ Yes	☐ No		
Was the required filing fee included?	☐ Yes	☐ No	☐ N/A	Date received
Was a properly completed authorization form attached?	☐ Yes	☐ No	☐ N/A	
Complaint to be heard by:	☐ LARB	☐ CARB		

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The Assessment Review Board Complaint Form Page 2

MATTERS FOR A COMPLAINT

A complaint to the assessment review board may be about any of the following matters shown on an assessment notice or on a tax notice (other than a property tax notice).

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

Note: To eliminate the need to file a complaint, some matters or information shown on an assessment notice or tax notice may be corrected by contacting the municipal assessor. It is advised to discuss any concerns about the matters with the municipal assessor prior to filing this complaint.
If a complaint fee is required by the municipality, it will be indicated on the assessment notice. Your complaint form will not be filed and will be returned to you unless the required complaint fee indicated on your assessment notice is enclosed.

ASSESSMENT REVIEW BOARDS

A Local Assessment Review Board will hear complaints about residential property with 3 or less dwelling units, farm land, or matters shown on a tax notice (other than a property tax notice).
A Composite Assessment Review Board will hear complaints about residential property with 4 or more dwelling units or non-residential property.

DISCLOSURE

Disclosure must include:

All relevant facts supporting the matters of complaint described on this complaint form.
All documentary evidence to be presented at the hearing.
A list of witnesses who will give evidence at the hearing.
A summary of testimonial evidence.
The legislative grounds and reason for the complaint.
Relevant case law and any other information that the complainant considers relevant.

Disclosure timelines:

For a complaint about any matter other than an assessment, the parties must provide full disclosure at least 5 days before the scheduled hearing date.
For a complaint about an assessment - Local Assessment Review Board:
Complainant must provide full disclosure at least 21 days before the scheduled hearing date.
Respondent must provide full disclosure at least 7 days before the scheduled hearing date.
Complainant must provide rebuttal at least 3 days before the scheduled hearing date.
For a complaint about an assessment - Composite Assessment Review Board:
Complainant must provide full disclosure at least 42 days before the scheduled hearing date.
Respondent must provide full disclosure at least 14 days before the scheduled hearing date.
Complainant must provide rebuttal at least 7 days before the scheduled hearing date.

DISCLOSURE RULES

Timelines for disclosure must be followed;
Information that has not been disclosed will not be heard by an assessment review board; and
Disclosure timelines can be reduced if the disclosure information is provided at the time the complaint form is filed. Both the complainant and the assessor must agree to reduce the timelines.

PENALTIES

A Composite Assessment Review Board may award costs against any party to a complaint that has not provided full disclosure in accordance with the regulations.

IMPORTANT NOTICES

Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

The assessment review board clerk will notify all parties of the hearing date and location.

For more details about disclosure please see the *Matters Relating to Assessment Complaints* Regulation.

To avoid penalties, taxes must be paid on or before the deadline specified on the tax notice even if a complaint is filed.

The personal information on this form is being collected under the authority of the *Municipal Government Act*, section 460 as well as the *Freedom of Information and Protection of Privacy Act*, section 33(c). The information will be used for administrative purposes and to process your complaint. For further information, contact your local Assessment Review Board.

Table 1 – Notice Types

Matters for a complaint s. 460(5) for LARB and CARB	Notice Types								
	CARB res. with 4 or more units and non-res.	LARB res. with 3 or less units and farm land	LARB Tax Notices, not including a property tax notice						
	Assessment notice, incl. suppl.	Assessment notice, incl. suppl.	Business tax, incl. suppl. (tax notice)	BRZ (tax notice)	CR levy (tax notice)	Special tax (tax notice)	Well Drill Equip. (tax notice)	Local Improv. (tax notice)	CAP levy (tax notice)
(a) description of a property or business	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(b) name and mailing address of an assessed person or taxpayer	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(c) an assessment	Yes	Yes	Yes (s. 374(1))	Yes (AR89/05)	ref. to assessed value	ref. to asmnt.		ref. to asmnt.	
(d) assessment class (see s. 297(1))	Yes	Yes							
(e) assessment sub-class (see s. 297(2))	N/A (vacant only)	Yes							
(f) "type" of property	Yes	Yes							
(g) "type" of improvement (see s. 284(1)(j))	Yes	Yes							
(h) school support (responsibility of municipality)	Yes	Yes							
(i) whether property is assessable (see s. 298)	Yes	Yes	Yes (s. 374.1)						
(j) whether property is taxable or business is exempt from taxation under Part 10	Yes	Yes	Yes			Yes		Yes	

Table 2 – Local Assessment Review Board Timelines

Local Assessment Review Board (LARB) Timelines Step and Timeline	Residential property, 3 or less dwelling units, or farm land Assessments LARB	Business tax Assessment LARB	Non-assessment Matters on Assessment Notice One-member LARB	Matters on Tax Notice One-member LARB	Administrative or Procedural Matters One-member LARB
Assessment or tax notice sent					
(a) Number of days for filing a complaint	60 days	30 days	60 days	30 days	n/a
Complaint filed					
(b) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	30 days or less	30 days or less	n/a
(c) Soonest hearing date after complaint is filed	35 days	35 days	n/a	n/a	n/a
(d) Number of days before hearing to notify parties of time and place of hearing	35 days	35 days	15 days	15 days	15 days
(e) Number of days before hearing for complainant disclosure	21 days	21 days	7 days	7 days	7 days
(f) Number of days before hearing for respondent disclosure	7 days	7 days	7 days	7 days	7 days
(g) Number of days before hearing for complainant rebuttal	3 days	3 days	n/a	n/a	n/a
Merit hearing					
(h) Issue written decision	30 days	30 days	30 days	30 days	30 days
(i) Send decision	7 days	7 days	7 days	7 days	7 days

Table 3 – Composite Assessment Review Board Timelines

Composite Assessment Review Board (CARB) Timelines Step and Timeline	Residential property and 4 or more dwelling unit Assessment CARB	Non-Residential property Assessment CARB	Non-assessment Matters on Assessment Notice One-member CARB	Administrative or Procedural Matters One-member CARB
Assessment or tax notice sent				
(a) Number of days for filing a complaint	60 days	60 days	60 days	n/a
Complaint filed				
(b) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	30 days or less	n/a
(c) Soonest hearing date after complaint is filed	70 days	70 days	n/a	n/a
(d) Number of days before hearing to notify parties of time and place of hearing	70 days	70 days	15 days	15 days
(e) Number of days before hearing for complainant disclosure	42 days	42 days	7 days	7 days
(f) Number of days before hearing for respondent disclosure	14 days	14 days	7 days	7 days
(g) Number of days before hearing for complainant rebuttal	7 days	7 days	n/a	n/a
Merit hearing				
(h) Issue written decision	30 days	30 days	30 days	30 days
(i) Send decision	7 days	7 days	7 days	7 days

Table 4 –Municipal Government Board

Municipal Government Board Timelines Step and Timeline	Linear Property Assessment	Non-assessment Matters on Linear Property Assessment Notice	Equalized Assessment (report of all equalized assessments)	Administrative or Procedural Matters
Assessment notice sent				
(j) Number of days for filing a complaint	60 days	60 days	30 days	n/a
Complaint filed				
(k) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	7 days or less	n/a
(l) Soonest hearing date after complaint is filed	70 days	n/a	70 days	n/a
(m) Number of days before hearing to notify parties of time and place of hearing	70 days	15 days	70 days	15 days
(n) Number of days before hearing for complainant disclosure	42 days	7 days	42 days	7 days
(o) Number of days before hearing for respondent disclosure	14 days	7 days	14 days	7 days
(p) Number of days before hearing for complainant rebuttal	7 days	n/a	7 days	n/a
Merit hearing				
(q) Issue written decision	30 days	30 days	30 days	30 days
(r) Send decision	7 days	7 days	7 days	7 days

Table 5 – Process for Administrative Clerks

Assessment Review Board Clerk Duties and Responsibilities	
Complaint is filed	**Receive and categorize complaint (LARB CARB)**
Municipality establishes ARBs including one-member ARBs	**Municipality appoints members**
MGB informed of CARB complaints	**Presiding Officer assigned by MGB**
Complaint reviewed for compliance	**i. Time** **ii. Content** **iii. Standardized Complaint Form complete**
Complaint reviewed for disclosure process and timelines	**Based on property type, a complaint would follow either the LARB or CARB disclosure process and timelines**
Where all parties have consented:	**The disclosure timelines for LARB may be substituted for the disclosure timelines for CARB, and conversely, the disclosure timeline for CARB may be substituted for the disclosure timeline for LARB**
Notify Municipality / Assessor of complaints	**Notice to be given within 30 days of receiving complaints**
Schedule Hearings	**i. Length of hearing, one-member board, etc** **i. For CARB complaints, hearings at least 90 days after complaint is filed (currently 45 days before the hearing date)** **ii. For LARB complaints, hearings at least 45 days after the complaint is filed**
Notify parties of hearings	**i. For CARB complaints, notify parties of time and location of hearing at least 70 days before the hearing (currently 45 days)** **ii. For LARB complaints, notify parties at least 35 days before the hearing (currently 14 days)**

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Municipal Affairs

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