

FOR DISCUSSION PURPOSES ONLY

**INTERMUNICIPAL COLLABORATION
FRAMEWORK REGULATION**

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Definitions

1 In this Regulation,

- (a) “party” means a municipality that creates a framework with one or more other municipalities;
- (b) “representative” means a person selected by a party who
 - (i) holds a senior position with the party, and
 - (ii) has authority to negotiate for or settle a dispute on behalf of the party;
- (c) “service” includes any program, facility or infrastructure necessary to provide a service.

To clarify what is intended by these terms wherever they occur in the Regulation.

Exemptions

2 The following improvement districts are exempt from Part 17.2 of the Act:

- (a) Improvement District No. 13 (Elk Island);
- (b) Improvement District No. 24 (Wood Buffalo);
- (c) Improvement District No. 25 (Willmore Wilderness).

These Improvement Districts (ID's) have no significant assets or tax revenue. ID 13 and 24 are strictly national parks and only coordinate services within the park.

Duty to act in good faith

3(1) In creating or amending a framework, the parties must

- (a) act honestly, respectfully and reasonably,
- (b) have regard to the legitimate interests of each party,
- (c) have an appropriate communication approach,
- (d) look for the potential for joint benefit of all parties,
- (e) disclose to each other information that is necessary to understand a position or formulate an intelligent response,
- (f) meet through representatives who are equipped and fully authorized to engage in rational discussion, and

Provides clarity on what constitutes good faith when municipalities are creating or amending a framework.

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(g) be willing and be prepared to explore the issues presented by all parties and explain the rationale for their positions.

(2) In creating or amending a framework, the parties must not

- (a) act in a manner that is arbitrary, capricious or intended to cause harm to any of the parties,
- (b) make improper demands, or
- (c) engage in a process that is intended to avoid reaching any agreement.

If a municipality feels a service can benefit members of the ICF, it must provide rationale to help guide discussions on the framework, and for possible arbitration.

Proposal for other services

4(1) When a party proposes that a framework address a service referred to in section 708.29(2)(f) of the Act, the party must provide to the other parties a rationale as to why that service has a benefit to residents in the affected municipalities.

(2) In providing a rationale under subsection (1), the party must have regard to Part 17.2 of the Act.

Clarifies that all bylaws must align with the framework, other than land use bylaws, within two years.

Other bylaws must align with framework

5(1) For the purposes of section 708.4 of the Act, the parties must align their bylaws, other than their land use bylaws, with the framework within 2 years after the bylaw to create the framework is adopted.

(2) If there is a conflict or inconsistency between a bylaw and the framework, the framework prevails to the extent of the conflict or inconsistency.

Provides for consideration of proposed amendments through a notice.

Notice of amendment to framework

6 If a party wishes to amend the framework, the party must give 30 days' written notice to the other parties.

Part 1 Arbitration Process for Creating Framework

Application of Part

7 This Part applies to Division 3 of Part 17.2 of the Act.

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Arbitrator must be independent and impartial

Ensures equity and fairness in the treatment of parties and process. Municipalities may hire an individual who is impartial, as long as all parties agree to hire that individual,

8(1) Unless the parties agree otherwise, an arbitrator must be independent of the parties and impartial as between the parties in respect of the process for creating the framework.

(2) An arbitrator must not act as an advocate for any party.

Disclosure of reasonable apprehension of bias

An arbitrator is typically impartial and independent of the parties to ensure fair treatment as per the *Arbitration Act*. The arbitrator would be required to disclose information on potential conflicts of interest, at the appointment or preliminary hearing, whichever comes first.

9(1) Before accepting an appointment as arbitrator, the person must disclose to the parties any circumstances of which that person is aware that may give rise to a reasonable apprehension of bias.

(2) An arbitrator who, during arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias must promptly disclose the circumstances to the parties.

Minister-appointed arbitrator's rates and payments

Addresses potential issues with payment of arbitrators, the Minister may set the fees of an arbitrator appointed by the Minister.

10 If, under section 708.35(2) of the Act, the Minister chooses the arbitrator, the Minister may specify the arbitrator's rates and payments by agreement with the arbitrator.

Conduct of the arbitration

Ensures procedural fairness and is consistent with the *Arbitration Act*.

11(1) Subject to this Part, the arbitrator may conduct the arbitration in any manner that the arbitrator considers appropriate to facilitate the just and timely resolution of the disputed issues.

(2) Without limiting the generality of subsection (1), the arbitrator may conduct the arbitration on the basis of documents, or he or she may hold a hearing for the presentation of evidence, including a full arbitration hearing with witnesses, expert testimony and oral argument.

(3) If the arbitrator holds a hearing, the arbitrator must give the parties sufficient notice of the hearing and any deadlines for the submission of evidence and written argument.

(4) Each party must be given an opportunity to present a case and to respond to the other parties' cases.

(5) The arbitrator may conduct the arbitration and make a decision based on the evidence presented if a party fails, without reasonable excuse in the sole discretion of the arbitrator,

(a) to appear at a scheduled oral hearing, or

(b) to produce evidence.

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Preliminary meeting

12(1) The arbitrator must convene a preliminary meeting, in person or by electronic means, with the parties within 21 days of the selection or appointment of the arbitrator

- (a) to discuss the reports provided to the arbitrator by the parties in accordance with section 708.37(1)(a) of the Act, and to identify the disputed issues,
- (b) to discuss the process and procedures to be followed,
- (c) to set time periods within which specified actions must be taken, and
- (d) to discuss other matters that the arbitrator believes will facilitate the arbitration in an efficient and timely manner.

(2) The arbitrator must give the parties a written summary of the matters discussed at the preliminary meeting as soon as possible after the preliminary meeting.

Arbitrator not bound by rules of evidence

13 The arbitrator is not bound by the rules of evidence or any other law applicable to court proceedings, and has the power to determine the admissibility, relevance and weight of any evidence.

Witnesses

14(1) Unless the arbitrator decides otherwise, a witness's evidence must be presented orally or by a written statement or declaration affirmed or sworn for its truth.

(2) If evidence is not delivered orally, the arbitrator may order that the witness be present at an oral hearing for cross-examination.

Agreed statement of facts

15 Unless an arbitrator decides otherwise, the parties must identify facts they do not dispute, and deliver an agreed statement of facts to the arbitrator.

Production of documents

16(1) A party must provide to the arbitrator and to the other parties a copy of all documents it intends to rely on in the arbitration and allow the parties to make representations in respect to those documents.

The initial meeting is for the arbitrator to gain understanding of the dispute and the parties. Ensures all parties are aware of what is expected and to hear from the parties on what process they would prefer the arbitrator to use. The arbitrator is not bound by the requests of the parties.

Provides the arbitrator to state if evidence must be sworn on, if professional designations are required for input. Allows the arbitrator to accept evidence from the parties deemed appropriate without being bound to the *Rules of Evidence*.

Witnesses must be sworn in/affirm the evidence provided is the truth. Witnesses who have provided written information may be required to participate in an oral hearing.

Parties are required to identify areas and/or facts not in dispute to expedite the arbitration process.

Ensures the arbitrator has the information required to make a decision or develop a framework.

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(2) The arbitrator may order a party to produce, within a specified time, documents that

- (a) the party has in its care, custody or control, and
- (b) the arbitrator considers to be relevant.

(3) The arbitrator must not rely on any document of which the parties have not been provided a copy.

(4) If the arbitrator conducts independent information gathering, including written submissions from the public, regarding one or more of the disputed issues, the arbitrator must share that information with the parties and allow the parties to make representations in respect of that information.

(5) The arbitrator may require the parties to enter into a confidentiality agreement with respect to the sharing of confidential information for the purpose of arbitration.

Enables the arbitrator to hire experts to aid in the resolution of the dispute or the creation of a framework.

Appointment of experts

17(1) An arbitrator may appoint one or more experts to report to the arbitrator on specific issues.

(2) The arbitrator may require the parties to give the expert any relevant information or to allow the expert to inspect property or documents.

(3) If the arbitrator holds a hearing, the expert, after making the report, must participate in the hearing, and the parties may question the expert and present the testimony of another expert on the subject-matter of the report.

(4) The remuneration for an expert is to be paid in a like manner as an arbitrator in accordance with section 708.41 of the Act.

Any public input must be considered in rendering a final order.

Submissions from public

18(1) An arbitrator may solicit written submissions from the public.

(2) If the arbitrator solicits written submissions from the public, the arbitrator must take into consideration any written submissions received.

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Provides arbitrator discretion in how public input is received.

Hearings open to public

19 Subject to the arbitrator's discretion, hearings are open to the public.

The arbitrator is required to file an order as soon as possible. No order will be filed if parties resolve the dispute on their own, though the framework will be filed with the Minister.

Arbitrator's order

20(1) Unless the parties resolve the disputed issues during the arbitration, the arbitrator must make an order as soon as possible after the conclusion of the arbitration.

(2) The arbitrator's order must

- (a) be in writing,
- (b) be signed and dated,
- (c) state the reasons on which it is based,
- (d) if the arbitrator has created a framework, include the timelines for each party to pass a bylaw adopting the framework, and
- (e) specify all expenditures incurred in the arbitration process for payment under section 708.41 of the Act.

(3) In addition to filing the order with the Minister in accordance with section 708.42 of the Act, the arbitrator must provide a copy of the order to each party.

(4) An arbitrator must not make an order

- (a) that has the effect of granting, varying or otherwise affecting any licence, permit or approval that is subject to the Act or any other enactment,
- (b) on any matter that is subject to the exclusive jurisdiction of the Municipal Government Board,
- (c) that is contrary to the *Alberta Land Stewardship Act* or any ALSA regional plan,
- (d) that is contrary to a growth plan made pursuant to section 708.02(2) of the Act,
- (e) that directs a municipality to raise revenue by imposing a specific tax rate, offsite levy or other rate, fee or charge, or

Ensures all municipalities receive a copy of the order issued by the arbitrator.

Provides general restrictions on an arbitrator.

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- (f) that directs a municipality to transfer revenue to another municipality unless the revenue transfer is directly related to services provided by a municipality that the revenue transferring municipality derives benefit from, and it is equitable to do so.

Amendment or variance of arbitrator's order

Provides for minor amendments, as required, without penalty.

21 The arbitrator may amend or vary the arbitrator's order to correct

- (a) a clerical, mathematical or typographical error, or
- (b) an omission or other similar mistake.

Ensures that the records used in the arbitration are available to the parties as these records may be needed in future disputes. Records would be subject to FOIP and handled by the municipalities.

Record of proceeding

22 On conclusion of the arbitration and issuance of an order, the arbitrator must proceed to compile a record of the arbitration and give a copy of the record to each of the parties.

Part 2 Dispute Resolution Process

Application of Part

23 This Part applies to Division 4 of Part 17.2 of the Act.

Requirements

Provides the requirements for a municipality created dispute resolution process to ensure the municipalities create functional dispute resolution processes.

24(1) A dispute resolution process under Division 4 of Part 17.2 of the Act must contain or address the following matters:

- (a) how notice of the dispute will be given and to whom;
- (b) when the parties are to meet and the process they will follow to resolve the dispute, including, without limitation, negotiation, facilitation and mediation;
- (c) how a decision maker will be chosen and what powers, duties and functions the decision maker will have;
- (d) the decision maker's practice and procedures;
- (e) a binding dispute resolution mechanism;
- (f) how any costs incurred as part of the dispute resolution process are to be shared among the parties;

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- (g) how records of the dispute resolution process are maintained, and who maintains the records;
- (h) how parties or the public, or both, are identified;
- (i) when parties or the public, or both, may be notified of the dispute;
- (j) if and how parties or the public, or both, will be engaged in the dispute resolution process.

(2) If the dispute resolution process is not completed within one year from the date the notice of the dispute is given, any party may request the Minister to appoint an arbitrator pursuant to section 6(2) of the Schedule.

Model provisions

Provides a default dispute resolution mechanism.

25 For the purposes of section 708.45(2) of the Act, the model dispute resolution provisions are those set out in the Schedule.

Framework remains in force

Ensures a framework remains in force during the dispute.

26 During a dispute in respect of a framework, the parties must continue to perform their obligations under the framework.

Part 3 Judicial Review

Arbitrator's order is final

To ensure judicial review is limited and disputes are resolved outside of the courts.

27 Except as provided in this Part, every order of an arbitrator is final and binding on all parties to the order and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

Judicial review of order

This section intends to limit the review of an arbitrator's order to natural justice or where the arbitrator commits fraud.

28(1) An order of an arbitrator may be reviewed by the Court of Queen's Bench on a question of jurisdiction only.

(2) For the purposes of a judicial review, the arbitrator is considered to be an expert decision-maker in relation to all matters over which the arbitrator has jurisdiction.

Notice of application to arbitrator

Arbitrator must be notified if their order is under judicial review.

29 Where an order of an arbitrator is the subject of any application to the Court of Queen's Bench under section 28, the

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person making the application must give the arbitrator notice of the application.

Part 4 Coming into Force

Coming into force

Indicates when the regulation comes into force.

30 This Regulation comes into force on the coming into force of section 131 of the *Modernized Municipal Government Act*.

Schedule

Model Default Dispute Resolution Provisions

Definitions

1 In this Schedule,

- (a) “initiating party” means a party who gives notice under section 2 of this Schedule;
- (b) “mediation” means a process involving a neutral person as a mediator who assists the parties to a matter and any other person brought in with the agreement of the parties to reach their own mutually acceptable settlement of the matter by structuring negotiations, facilitating communication and identifying the issues and interests of the parties;
- (c) “mediator” means the person or persons appointed to facilitate by mediation the resolution of a dispute between the parties.

To clarify what is intended by these terms wherever they occur in the Schedule.

Notice of dispute

2 When a party believes there is a dispute under a framework and wishes to engage in dispute resolution, the party must give written notice of the matters under dispute to the other parties.

The initiating party is the party that raises the dispute. The initial notice starts the timelines for next steps and overall timeline to resolve the dispute.

Negotiation

3 Within 14 days after the notice is given under section 2 of this Schedule, each party must appoint a representative to participate in one or more meetings, in person or by electronic means, to attempt to negotiate a resolution of the dispute.

To ensure that municipalities continue to meet the framework timelines and that the process for appointing representatives.

Mediation

4(1) If the dispute cannot be resolved through negotiations, the representatives must appoint a mediator to attempt to resolve the dispute by mediation.

Sets out the powers and procedures of mediation and the role of the mediator. In most cases, the role of a mediator will be a Municipal Affairs mediator.

(2) The initiating party must provide the mediator with an outline of the dispute and any agreed statement of facts.

(3) The parties must give the mediator access to all records, documents and information that the mediator may reasonably request.

(4) The parties must meet with the mediator at such reasonable times as may be required and must, through the intervention of the mediator, negotiate in good faith to resolve their dispute.

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(5) All proceedings involving a mediator are without prejudice, and, unless the parties agree otherwise, the cost of the mediator must be shared equally between the parties.

Sets out the requirements for a report that provides an arbitrator, and potentially the Minister, with critical information about the dispute.

Report

5(1) If the dispute has not been resolved within 6 months after the notice is given under section 2 of this Schedule, the initiating party must, within 21 days, prepare and provide to the other parties a report.

(2) Without limiting the generality of subsection (1), the report must contain a list of the matters agreed on and those on which there is no agreement between the parties.

(3) Despite subsection (1), the initiating party may prepare a report under subsection (1) before the 6 months have elapsed if

- (a) the parties agree, or
- (b) the parties are not able to appoint a mediator under section 4 of this Schedule.

Sets out the process for appointing an arbitrator.

Appointment of arbitrator

6(1) Within 14 days of a report being provided under section 5 of this Schedule, the representatives must appoint an arbitrator and the initiating party must provide the arbitrator with a copy of the report.

(2) If the representatives cannot agree on an arbitrator, the initiating party must forward a copy of the report referred to in section 5 of this Schedule to the Minister with a request to the Minister to appoint an arbitrator.

(3) In appointing an arbitrator under subsection (2), the Minister may place any conditions on the arbitration process as the Minister deems necessary.

Sets out the overall powers, duties and procedures used by an arbitrator and the arbitration process used for dispute resolution.

Arbitration process

7(1) Where arbitration is used to resolve a dispute, the arbitration and arbitrator's powers, duties, functions, practices and procedures shall be the same as those in Division 3 of Part 17.2 of the Act and Part 1 of this Regulation.

(2) In addition to the arbitrator's powers under subsection (1), the arbitrator may do the following:

- (a) require an amendment to a framework;
- (b) require a party to cease any activity that is inconsistent with the framework;
- (c) provide for how a party's bylaws must be amended to be consistent with the framework;
- (d) award any costs, fees and disbursements incurred in respect of the dispute resolution process and who bears those costs.

Sets out the maximum time (1 year) for a resolution following the initial notice. If the arbitrator fails to resolve the dispute, the Minister may appoint a new arbitrator with any conditions necessary to resolve the dispute (consistent to *MGA*, section 570).

Deadline for resolving dispute

8(1) The arbitrator must resolve the dispute within one year from the date the notice of dispute is given under section 2 of this Schedule.

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(2) If an arbitrator does not resolve the dispute within the time described in subsection (1), the Minister may grant an extension of time or appoint a replacement arbitrator on such terms and conditions that the Minister considers appropriate.

Sets out the process for an arbitrator's order.

Arbitrator's order

9(1) Unless the parties resolve the disputed issues during the arbitration, the arbitrator must make an order as soon as possible after the conclusion of the arbitration proceedings.

(2) The arbitrator's order must

- (a) be in writing,
- (b) be signed and dated,
- (c) state the reasons on which it is based,
- (d) include the timelines for the implementation of the order, and
- (e) specify all expenditures incurred in the arbitration process for payment under section 708.41 of the Act.

(3) The arbitrator must provide a copy of the order to each party.

(4) If an order of the arbitrator under section (2) is silent as to costs, a party may apply to the arbitrator within 30 days of receiving the order for a separate order respecting costs.

The costs of arbitration for the creation of a framework have been taken from *MMGA*. Ensures payment of a mediator.

Costs of arbitrator

10(1) Subject to an order of the arbitrator or an agreement by the parties, the costs of an arbitrator under this Schedule must be paid on a proportional basis by the municipalities that are to be parties to the framework as set out in subsection (2).

(2) Each municipality's proportion of the costs must be determined by dividing the amount of that municipality's equalized assessment by the sum of the equalized assessments of all of the municipalities' equalized assessments as set out in the most recent equalized assessment.