



Administrative Law I
for
Assessment Review Board Clerks
and the
Municipal Government Board
Administrator

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2013 Edition

ISBN 978-1-4601-1433-9 (Print)

ISBN 978-1-4601-1434-6 (PDF)

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Course Overview

Caution on the Use of the Materials

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

Purpose

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

Through this course we will examine the role of the clerk in every step of the complaint process from submission of the complaint form filed with the municipality through to decision writing and closing the file. We will focus on identifying preferred practice approaches throughout the complaint process and the steps you can take to avoid any potential pitfalls and traps.

After an introduction to the basics of administrative law, the course will work through the complaint process, as it relates to the clerk, and demonstrate how the administrative law principles are combined with the legislated requirements to ensure that the complaint process is fair and equitable.

The administrative law information presented in this material is applicable to Assessment Review Board (ARB) Clerks or the Municipal Government Board (MGB) Administrator. The legislative references are generally directed toward ARB clerks; the MGB administrator should reference legislation related to the MGB in Part 12 of the Act.

Learning Objectives

Upon completion of the workshop, you will be able to:

- Describe your role and responsibilities in the assessment complaint process.
- Interpret legislation governing the complaint process.
- Apply the fundamentals of administrative law as guiding principles in your role.
- Outline the assessment complaint process and associated timelines.
- Outline the key principles of the assessment complaints and complaint system.
- Describe the types of assessment review boards and their focus.
- Describe the clerk's role in the assessment complaint process.
- Describe the board's role in the assessment complaint process
- Facilitate the submission of a complaint to the board.
- Reference legislation in support of facilitating the assessment complaint process.

Evaluation

To become qualified as an Assessment Review Board clerk or the Municipal Government Board administrator, 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:

ARB – assessment review board

CARB – composite assessment review board

Clerk – the clerk appointed to an assessment review board, and the Municipal Government Board administrator.

CQB – Court of Queen's Bench of Alberta

IA – Interpretation Act

LARB – local assessment review board

MGA – Municipal Government Act, Revised Statutes of Alberta 2000 Chapter M-26

MGB – Municipal Government Board

MRAC – Matters Relating to Assessment Complaints Regulation (AR 310/2009)

MRAT – Matters Relating to Assessment and Taxation Regulation (AR 220/2004)

Introduction to Administrative Law

In this module, you are introduced to administrative law, the principles of natural justice and the duty to act fairly. You will learn about jurisdiction and authority, and legislation relevant to assessment review boards. You will learn the importance of maintaining independence and accountability through ethical conduct. You will learn techniques that enhance ways to work collaboratively with other board staff and members. This module also covers how decisions are reviewed.

Administrative Tribunals

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 administrative tribunals that deal with and make decisions on assessment matters and matters on a tax notice, other than a property tax.

ARB members hear and make the decisions; however, it is the clerk and ARB staff that handle most of the assessment complaint process before and after the hearing. The clerk typically has more interaction with the parties to a complaint and is a valuable resource to them.

ARB clerks have specific procedures and time frames to implement or oversee during the complaint process. Clerks, like ARB members must be appointed in order to administer the ARB complaint process. Appointment and qualifications of both the clerk and ARB members are set through legislation.

Legislation stipulates that an ARB clerk or ARB member must be appointed.

s. 454.2(1) MGA
s. 454.2(1) MGA
s. 455(1) MGA

Legislation outlines that ARB clerks and ARB members must meet qualifications set by the Minister in order to perform their duties.

s. 454.3 MGA
s. 49(1) MRAC

Legislation restricts who can be an ARB clerk and board member.

s. 455(2) MGA
s. 50 MRAC

Hearing Styles

Hearing style refers to how a tribunal characterizes the type of process they use to deal with cases. Style centers around the process the hearing must follow with respect to the panel and the parties to the complaint.

An ARB's hearing style is important because it helps the panel members know how to conduct the hearing. Conduct 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 an ARB helps the parties know how to present their cases.

There are three main types of hearing styles:

- A) Prosecutorial
- B) Inquisitorial, and
- C) Adversarial.

Type A - Prosecutorial Style

Similar to 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 - Inquisitorial Style

Similar to 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.

Type C - Adversarial Style

Similar to 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.

Assessment Review Board Style

Assessment review boards have an adversarial hearing style. This means the parties must come prepared to present a clear and convincing case to the panel. The panel does not have the authority to conduct its own investigations or inquiries. The panel must decide the case based on the evidence disclosed prior to the hearing and the arguments in support of that evidence presented at the hearing. The panel has no authority to deal with matters not identified on the complaint form. This will be discussed in more detail later.

Administrative Law and Principles of Natural Justice

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. 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. The concept of fairness imposes procedural requirements on assessment review board clerks, members and staff. Fairness to individuals in processes, hearing style and treatment of individuals includes:

- i) **The right to be heard.** This is a fundamental right for individuals to be heard when they have something to say. This right appears when we vote, and it appears in the ARB process as individuals have the right to a hearing if they have a complaint.
- ii) **The right to an unbiased decision maker:** In order to get a fair decision, the decision makers must be neutral and unbiased when they hear a complaint and make their decision.
- iii) **A decision from the person(s) who heard the case:** When someone is making a decision, that decision should not be influenced by anyone who was not present while the information was being presented first hand.

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

The MGA and MRAC include legislated requirements and procedural sections to ensure everyone gets fair process during a complaint. Although these principles of natural justice may not appear in specific sections of legislation the courts do give them weight. For example, violating any of these principles of natural justice may cause the court to overturn a decision.

The Right to be Heard

The first concept of fairness, the right to be heard, means the parties to a complaint 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 party can “be heard” in a number of ways: face-to-face in person, by telephone, by video conference, or in writing.

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 complaint has been filed, and a decision is to be made;
- the notice must be given in adequate time and in sufficient detail to enable the affected individual to respond;
- the affected 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 parties to the complaint must be given an opportunity to present evidence and make an argument to the decision maker.

It is important to know there are certain legislated requirements an assessment review board must adhere to when making decisions. These requirements are contained in the MGA and MRAC.

The Right to an Unbiased Decision Maker

Bias is the lack of neutrality on the part of the decision makers and others involved in the process. Decision makers especially need to be conscious of bias and come to their work with an open mind, willing to let the evidence and the arguments from the parties present persuade them. Parties want to know that their efforts and presentations have the possibility of persuading the decision maker and influencing the outcome of the case.

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 ARB clerks, members and staff must also avoid any appearance (perception) of bias. Actual and perceived biases are both unacceptable.

- **Actual bias** means the outcome is already predetermined.
- **Perceived bias** is the view of one party before a panel that one or more of the panel members hold a predetermined result or a high likelihood that 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 panel members who have exhibited bias.

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 (i.e., 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 (i.e., 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 (i.e., 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 (i.e., 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).

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 for Clerks around Bias:

- Everyone handling the complaint must avoid creating the perception of bias. Bias perceptions can start with the first interaction at the front desk of the office. Bias can arise at any time during the ARB'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.
- ARB members should not prejudge a case. They should not make up their minds in advance or hold predetermined views of the issues that would influence their decisions regardless of the merits of the case. Evidence of prejudgment is usually found in statements made by ARB members. If the clerk suspects this they should speak to the panel member or the panel chair to bring it to the member's attention so the appropriate action can be taken.
- It is inappropriate for ARB 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. If the clerk hears this they should speak to the panel member or the panel chair to bring it to the member's attention so the appropriate action can be taken.
- Improper conduct by ARB members during the hearing may indicate bias. ARB members or any ARB staff should never make flippant remarks or derogatory statements about parties or anyone else. Use of intemperate language or the display of antagonism or hostility toward a party may give rise to a reasonable apprehension of bias against that party. A single impropriety may not give rise to a reasonable apprehension of bias, but a series of incidents may. If the clerk witnesses this behavior

from a board member they should speak to the panel member or the panel chair to bring it to the member's attention so the appropriate action can be taken.

- 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, and
- convey expectations and do peer evaluations.

The clerk may wish to remind panel members who are assigned to cases to be cautious.

What happens when allegations of bias are made?

Any action in an allegation of bias would involve the parties to the complaint and the panel members. However, the clerk should understand the process and be able to explain it to panel members, parties and the public.

A panel must not 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. Before accepting an appointment to a case panel and continually during the hearing, the panel member 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, representatives and witnesses, and relationships and prior dealings.
- consider the case for any financial interest in the outcome or any previous dealings in this case.
- consult the legislation, previous cases on bias, the panel chair and/or legal counsel.
- if an actual bias exists, step back from the case.
- if potential bias exists, disclose the bias to the panel chair, clerk and if necessary, the parties. The parties can waive any concern of bias if they are informed.
- 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 ARB in a timely way, usually in the form of a preliminary objection to the hearing. If a party was aware of bias during the proceedings but failed to object, they may not complain later if the decision goes against them. An objection must be stated when the bias first comes to the party's attention.

As a best practice, all panels should ask, at the beginning of the hearing, if either party has an issue with the make-up of the board that will hear the case.

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 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. As this is considered a decision of the board, the decision must contain all of the information required by the legislation and regulations.

A Decision from the Person(s) who Heard the Case

The third principle of fairness says the panel hearing the case is required to make the decision. Any person(s) not present for the full case or who do not have the authority can make or influence the decision.

Decision makers have to be cautious about relying on:

- advice or feedback from advisors or outsiders
- previous decisions in other cases (each case must be decided on its own merits)
- input from persons who did not hear the entire case
- drafters or reviewers who impose or substitute their own decision.

The Concept of Decisions

The parties to a complaint come to the ARB or MGB for a decision. The decision of the board is based on the facts given in evidence (merits), and must be in adherence with the governing legislation.

Within the process for handling a case, the ARB or the MGB 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.

For example, when a board must rule on the validity of a complaint, this is considered a decision of the board, and would be handled in a preliminary hearing. All parties to a complaint must be notified of this hearing in accordance with the regulations. Most matters that require a decision, that do not involve an assessment matter, may be dealt with by a one member panel. Any assessment matter must be heard by a three member panel at what is referred to as the “merit hearing”.

Determinations like these also affect the legitimacy and validity of the final decision on the merits.

Challenges to Decisions

Under the MGA, all appeals from ARB and MGB decisions go to the Court of Queen’s Bench of Alberta (CQB). The Act outlines:

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

Persons wishing to appeal must make an application for leave to appeal to the Court of Queen’s Bench of Alberta (CQB) who may review the decision only on a question of law or jurisdiction with respect to a decision of a board.

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

The MGA clarifies the court’s role on assessment decisions. The court will review the ARB or MGB decision on the face of the record, using the written documents from the ARB or MGB hearing only. The parties will not receive a new hearing where they can call new evidence.

Legislation (MGA and MRAC) and previous court decisions (precedence) establish the criteria which the courts will use when reviewing ARB and MGB decision-making authority. Because the courts are not experts in assessment matters, they are providing deference to the ARB's as experts in assessment matters and will apply the standards of correctness and reasonableness in reviewing ARB decisions.

The courts focus 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.

Tips for Clerks around Board Decisions:

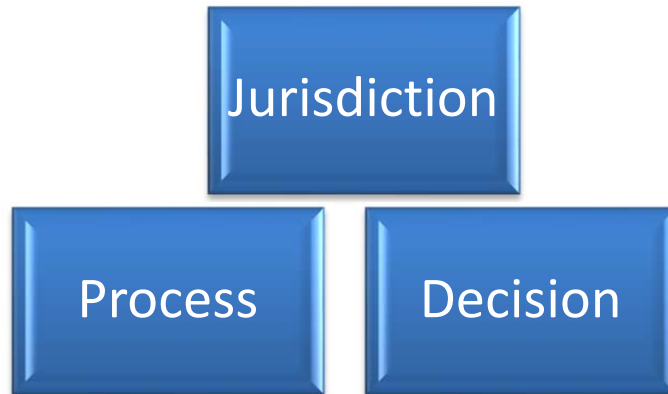
- Do not answer questions for the panel or give advice to the panel which might appear to be influencing or giving the decision to the panel – the panel must make its own decisions on administrative matters or on the complaint. Remember, only the panel has authority to make a decision – no one else. Everyone has to guard and protect this authority.
- The panel should not make a decision until it has heard all the evidence and representations from the parties – if they appear to do so before all evidence and representations are heard, caution them about the risk of bias.
- The panel's independent legal counsel and professional staff can give advice but must leave the actual choices or decisions or conclusions to the decision maker(s).
- Another person may assist the panel to write or edit a decision document, after the panel has made its decision. If the panel asks the clerk to assist with writing, ask the panel to clearly identify its decision, the evidence it found persuasive, and its reasons and rationale for the decision. Have the panel review and approve the draft decision.

Exercise 1

1. What is the hearing style of an assessment review board?
2. What are the principles of natural justice?
3. What can create a perception of bias?
4. Explain the “reasonable bystander test”.
5. In what ways might a clerk create the perception of bias?
6. As an ARB clerk, can you write a decision for the board? Explain.

Administrative Law & Legislation

The actions and operations of administrative bodies such as ARBs are governed by administrative law. This area of the law ensures the activities of the boards and administrative supports such as the clerk's role are authorized by Parliament or provincial legislatures and that the law (i.e. MGA, MRAC, MRAT) is implemented and administered in a fair and reasonable manner.



Administrative law ensures that ARBs observe the limits of their authority and that citizens who are affected by unlawful acts of such boards have effective remedies to address such acts. Simply put, administrative law ensures administrative decision makers such as the ARB:

- have jurisdiction over matters being decided
- follow proper process in making decisions
- make fair decisions that align with their governing legislation

The MGA and MRAC provide the legislated authority to create an assessment review board and define each board's jurisdiction. A board's jurisdiction includes:

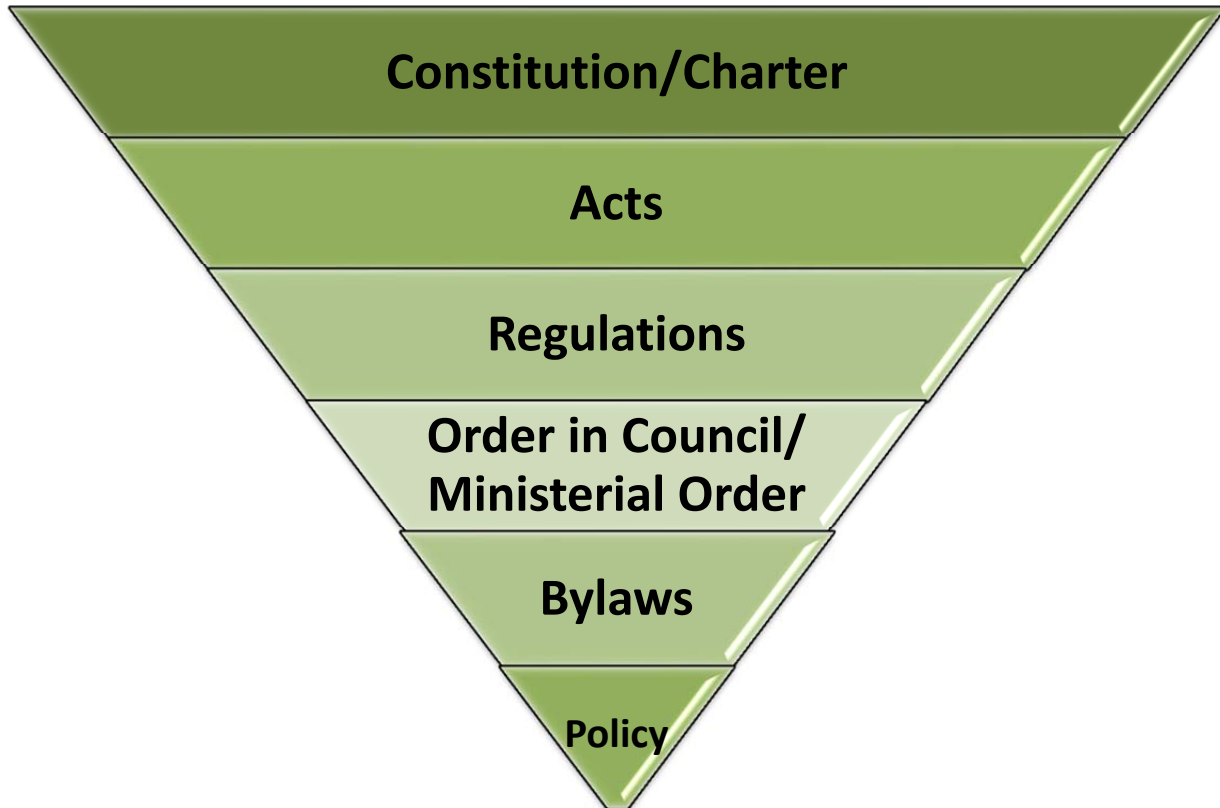
- who it can make decisions about – an "assessed person" and/or a "taxpayer"
- what matters it can decide
- what remedies it can provide
- what procedures it must follow
- what timelines apply.

The MGA and MRAC are quite specific on some of these jurisdictional matters, but also allow discretion to the board to determine other matters.

When a party to the complaint believes that the ARB has made an error in law or jurisdiction, they can file a leave to appeal with the Court of Queen's Bench of Alberta.

Using Your Legislation

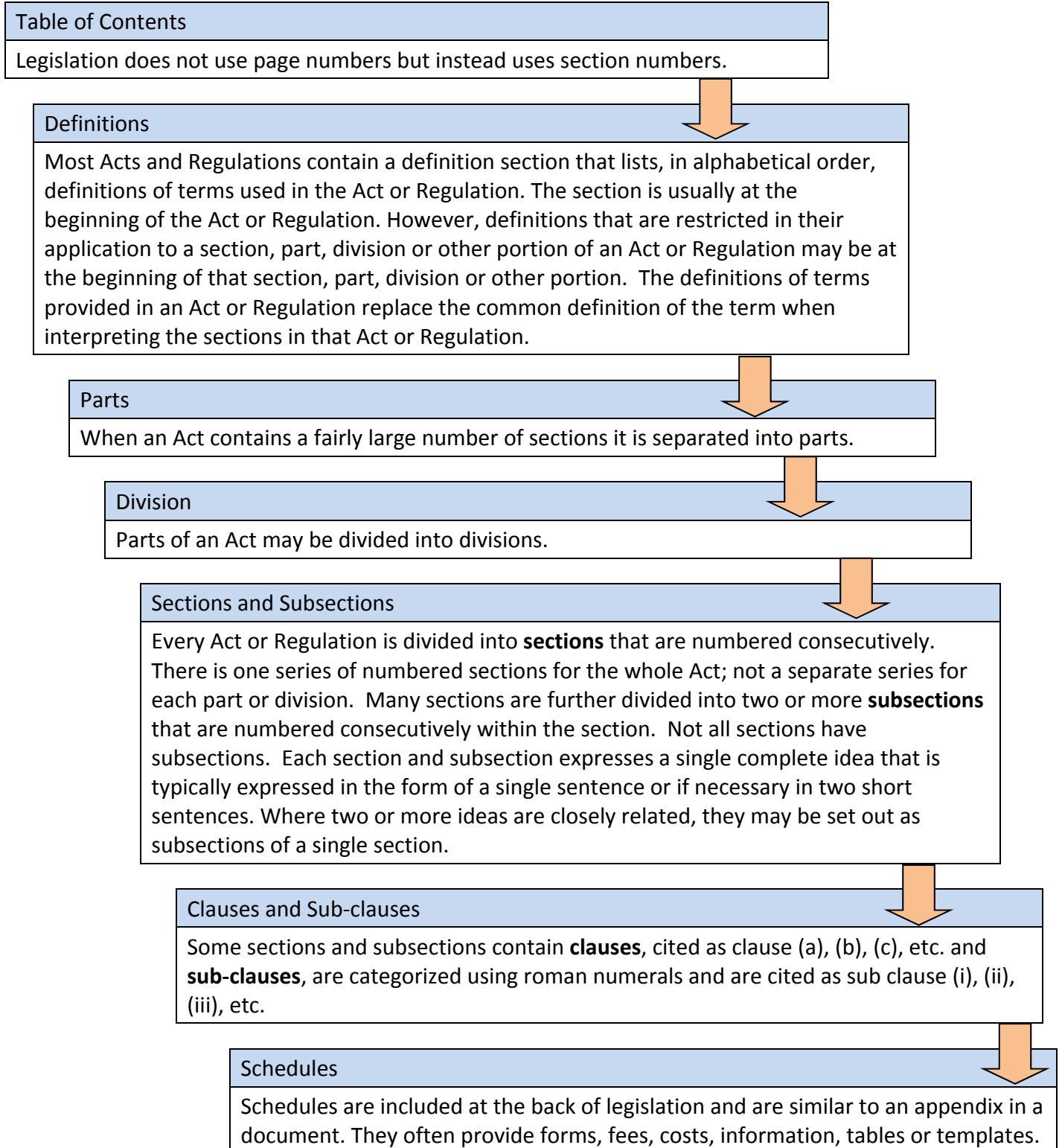
To facilitate a common understanding, the form, structure and arrangement of provisions within legislation are governed by standards used for all legislation.



When discussing legislation it is essential to have a common understanding of the organization of legislation, standard terms used to refer to sections within the legislation, as well as the language used in the legislation.

Organization of Legislation

Although there is variation in the content of different legislation, writers of legislation try to maintain and follow established models when arranging provisions within an Act or Regulation.



Use of Language

A central characteristic of all legislation is consistency. If an idea is expressed in a specific way, the same language is used to express this idea throughout the legislation. If different language is used this indicates a difference or variation in the idea.

The *Municipal Government Act* must be read closely to be interpreted correctly. Some words or expressions are used repeatedly to signal specific meanings. This is done to establish accepted legal meaning or usages for relevant terms.

“May,” “Must” and “Shall”

The *Interpretation Act* provides general definitions for *may*, *must* and *shall*. They are defined as follows:

Section 28 (2) (c) provides that “may” is permissive and empowering.

Section 28(2) (d) provides that “must” is to be construed as imperative.

Section 28 (2) (f) provides that “shall” is to be construed as imperative.

According to the definitions set out by the *Interpretation Act* “**may**” is permissive but allows for the exercise of discretion. Alternatively “**must**” and “**shall**” are mandatory.

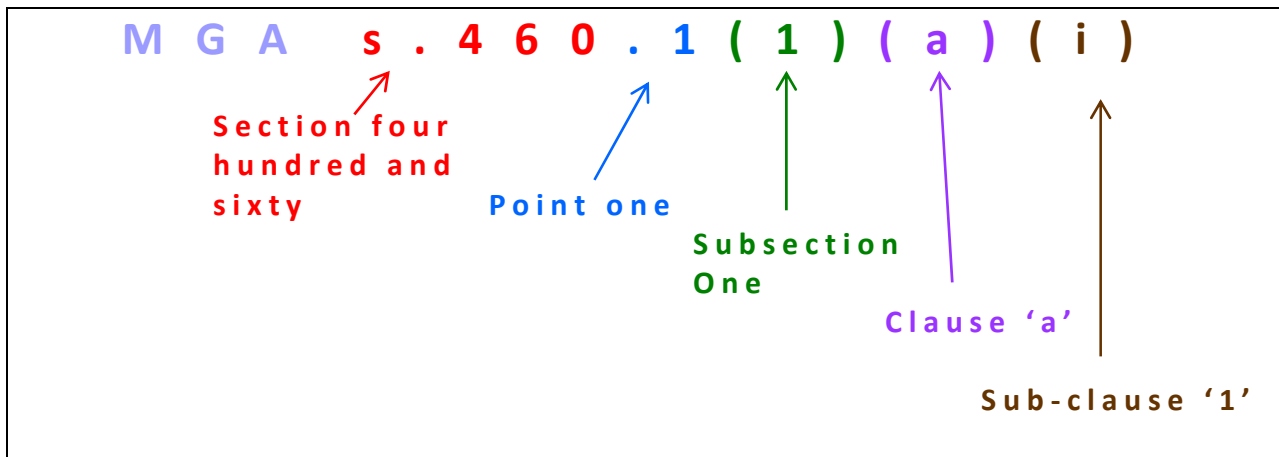
“And” and “Or”

“And” always signals the accumulation of the possibilities listed before and after the “and.”

Every listed possibility is necessarily included: both a and b; all of a, b and c.

“Or” always indicates that the things listed before and after the “or” are alternatives.

Citing Legislation:



Fundamentals of the Assessment Complaint System

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

- Taxpayers have the right to an understandable, objective and procedurally fair complaint and appeal process.
- All parties are entitled to, and have an obligation to, make the complaint system effective, efficient and timely.
- Municipalities will have autonomy for local assessment review boards, yet there must be provincial oversight.
- Information and disclosure must be accessible, transparent and complete while protecting confidentiality and privacy.
- Members and administrators of assessment tribunals must be impartial, competent and qualified.

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

Alberta's assessment complaint system incorporates a taxpayer's right to challenge information about their assessment, to make complaints about other matters on an assessment or tax notice and to bring forward correct information.

Although a person may make a complaint about several matters shown on an assessment or tax notice other than an assessment, most complaints are about property assessments. The property assessment is the estimated dollar value on a property which is used for primarily taxation purposes.

The first step in the process of making a complaint involves filing a completed provincial complaint form with their municipality. A complaint cannot be made on a matter relating to a tax rate.

The assessment complaint system in Alberta provides the following:

- Taxpayers have improved access to assessment information and more time for them to review the information and discuss issues with the assessor. Improved access to information is intended to reduce the overall number of complaints.
- Standardized forms allow for consistent administration of complaints throughout the province.

- A streamlined process helps to ensure complaints are heard and decisions are issued in a timely manner.
- Mandatory training programs for assessment review board clerks and board members are intended to lead to consistent procedures and better qualified persons hearing complaints throughout the province.

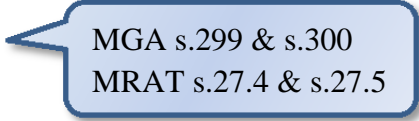
Access to Information

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 should 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 at any time during the tax year.

Prior to an assessed person filing a complaint, an ARB clerk should recommend they discuss their issue with the assessor.

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

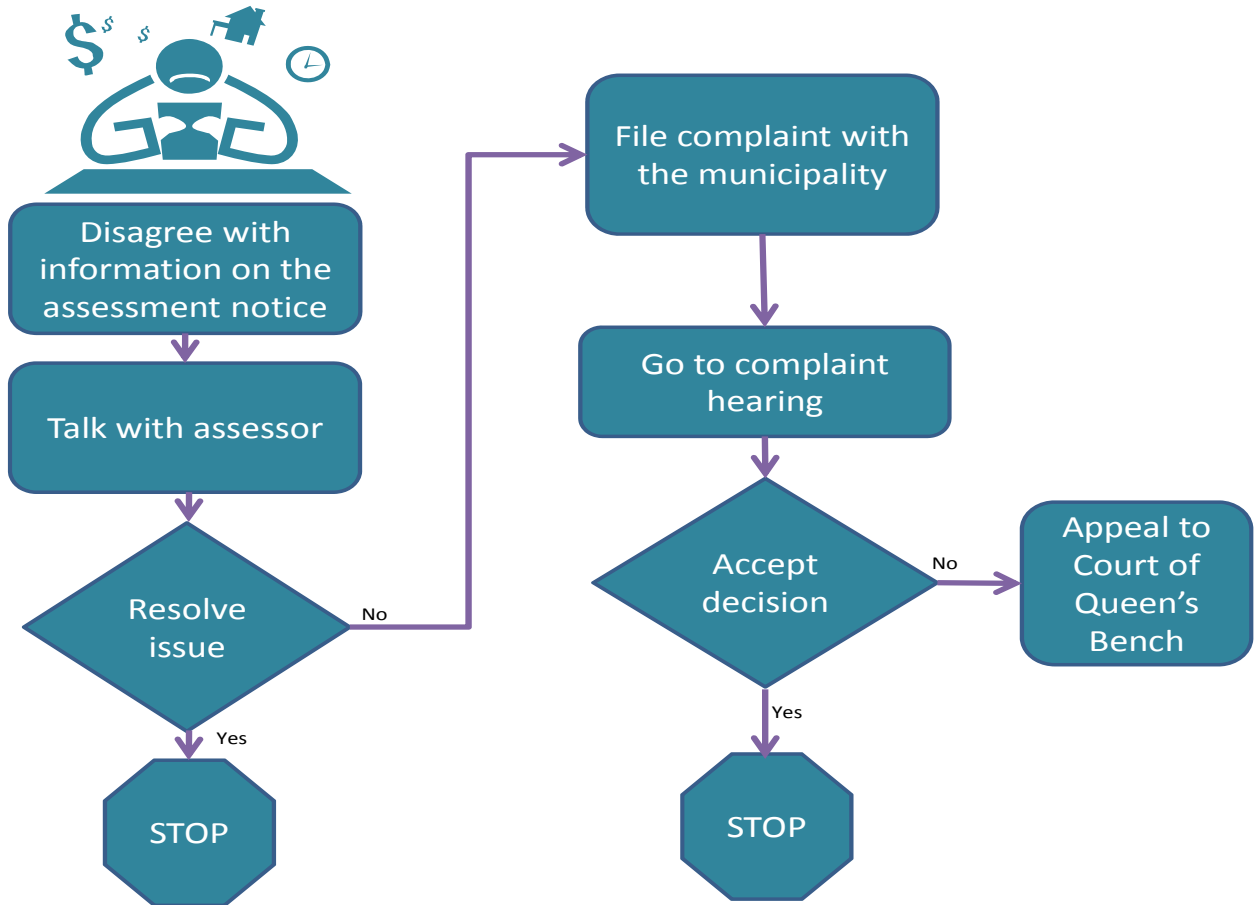


MGA s.299 & s.300
MRAT s.27.4 & s.27.5

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

The Assessment Complaint and Hearing Process

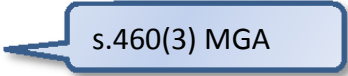
The complaint process generally begins with the property assessment notices and/or tax notices being sent to the assessed. If the assessed person reviews that notice and has concerns or does not agree with a matter on the assessment or tax notice, he/she can file a complaint.



Parties involved in the Complaint and Hearing Process

Complainant

Any assessed person, taxpayer, or person acting on behalf of an assessed person or taxpayer may file an assessment complaint.



s.460(3) MGA

If ownership of a property changes while a complaint is in progress, the new owner of the property or business then becomes the complainant involved in any proceeding before the board.

Respondent

The party that responds to a complaint, most often the assessor, is the party that replies to a matter brought before the Board to which a decision is sought.

Representatives and Agents

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

Legal Counsel

Legal counsel participates in hearings in two ways: as a representative of one of the parties or as a provider of legal advice 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.

The complainant must complete the Agent Authorization form before counsel can represent them at an ARB hearing (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 the clerk or staff to provide the record of the hearing 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, must be made by the panel.

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). 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.

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.

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 applicable, pay their witnesses fees or expenses as arranged between them.

Types of Witnesses

A *factual witness* represents most witnesses in hearings. This witness can tell the panel about what he or she knows, but should not give opinions and cannot speak about things beyond that person'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. 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. ARBs may consider experts' credentials, education, and experience in weighing their opinions or in deciding whether to listen to the evidence at all.

Compelling Attendance of Witnesses

An ARB has the legislative authority under section 465(1) (a) of the MGA to order witnesses to attend the hearing.

Some general considerations of a panel when dealing with requests to compel attendance of witnesses include:

- All witnesses that will appear at a hearing must be disclosed prior to the hearing. The witness must not bring new evidence to the hearing. Any evidence that was not disclosed in accordance with MRAC must not be heard by the board.
- Some boards 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.

If the board issues a “Notice to Attend” or “Subpoena to a Witness” (see sample in appendix) and the witness does not attend the hearing as required, the board may request a court order to compel attendance. The board may also adjourn the hearing to a later date if the absence was the result of an extraordinary circumstance.

Types of Questions Witnesses can Expect

Witnesses can expect questions about:

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

Tips for Clerks around Witnesses:

- obtain proper spelling of names for the record and decision document
- as a best practice, provide information to witnesses about the hearing process
- swear or affirm witnesses if required
- ensure a separate chair and table are available for the witness at the hearing – in clear view and hearing of the panel and all parties
- determine and understand the authority of the board to order witnesses to appear or produce documents

Translators

Occasionally, a translator may be required to allow a complainant or witness to be understood by the panel. The board needs to ensure the translator will accurately translate what is said in either language.

Interpreters or translators assist the board by translating the questions to a witness and translating the witness' answer to the panel. 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?

Roles and Responsibilities of ARB Clerk & Board Members

Both the Board Members and the ARB Clerks perform important roles in the assessment complaint system. All assessment review boards are encouraged to develop a set of procedures that the Board (all members) and the clerk(s) can follow. Key roles and responsibilities are as follows:

Clerk	Board Member
<ul style="list-style-type: none"> • Accepting and reviewing complaints for compliance, (e.g., filed within time frame, fee is included; form is complete, initial determination of which ARB has jurisdiction). • Administering the filing fee, if any. • Providing the municipality, the Minister, and any other person or taxpayer other than the complainant who is affected by the complaint, when applicable, with a copy of the complaint within the specified timeline. • Scheduling hearings and sending hearing notices to all parties within the timelines. • Informing the parties of the timelines for disclosure. • Providing an ARB with all documentation including disclosure documents received from all parties, and ensuring that the disclosure has been made within the timelines specified. • Compiling a transcript or recording of the hearing. • Compiling the record of the hearing. • Sending decisions of an ARB to all parties, including the Minister if required. 	<ul style="list-style-type: none"> • Ensuring communication and processes are clear and understood between ARB Clerk and Board Members. • Preparing for hearing by identifying potential administrative or jurisdictional issues that may likely arise. • Ensuring a fair process throughout the hearing. • Applying and interpreting legislation related to issues arising during hearing. • Applying and interpreting legislation during the decision making and decision writing process. • Making the final decision on which Board has jurisdiction to hear the matter.

Exercise 2

1. Provide the legislative reference that allows an assessed person to see information showing how their assessment was prepared. (hint: MGA, Part 9)
2. Who can file a complaint on a property assessment? Cite the legislative reference. (hint: MGA, Part 11 and Part 12)
3. How can the clerk assist with the attendance of witnesses?
4. Whose responsibility is it to identify potential administrative or jurisdictional issues prior to a hearing?
5. Who establishes an assessment review board? (hint: MGA, Part 11 and Part 12)
6. How many people can make up an assessment review board? (hint: MGA, Part 11 and Part 12)

Jurisdiction of the Boards

When a complaint is filed, it is generally the ARB clerk that determines which board has jurisdiction to hear the complaint. It is important that the clerk has an understanding of the various property types and which board has jurisdiction to hear them. If the clerk is unable to decide which board will hear a matter, the issue can be brought forward to a one member panel to review and decide which board has jurisdiction to hear the case.

<p>LARB s.460.1(1)</p>	<ul style="list-style-type: none"> • Residential properties with 3 or fewer dwelling units • Farmland • Tax notices other than property tax
<p>CARB s.460.1(2)</p>	<ul style="list-style-type: none"> • Residential properties with 4 or more dwelling units • Non-residential <ul style="list-style-type: none"> • Railway • Commercial/Industrial • Machinery and equipment • Multiple purpose properties • Includes “provincial member”
<p>MGB s.488(1)(a) &(b)</p>	<ul style="list-style-type: none"> • Linear property <ul style="list-style-type: none"> • Such as: electric power systems, telecommunication systems and pipelines • Equalized assessments

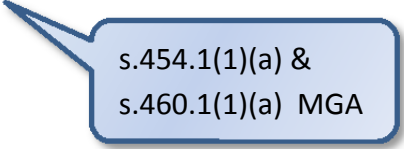
All acts and decisions of the board must be within their legal authority or jurisdiction which is defined within their enabling legislation. Enabling legislation provides the authority to create an ARB and defines each board’s jurisdiction. A board’s jurisdiction includes:

- Who it can make decisions about.
- What matters it can decide.
- What remedies it can provide.
- What procedures it will follow.
- What timelines will apply.

LARB

There are three members on the LARB who are appointed by the municipality. A LARB may hear complaints about matters on an assessment notice for residential properties with three or fewer dwellings or farm land. These property types include:

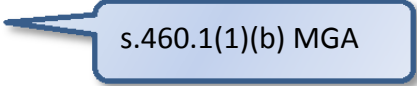
- detached homes, including acreages and farm residences
- duplexes
- triplexes
- manufactured housing units
- individual condominium units



s.454.1(1)(a) &
s.460.1(1)(a) MGA

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

- business tax
- business revitalization zone tax
- community revitalization levy
- special tax
- well drilling equipment tax
- local improvement tax
- community aggregate payment levy

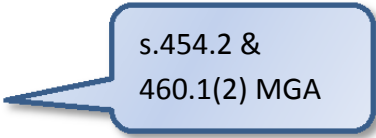


s.460.1(1)(b) MGA

CARB

The CARB is comprised of three members, two of whom are appointed by the municipality and one-member appointed by the Minister of Municipal Affairs (the province). The provincial member acts as presiding officer of a CARB to provide oversight and a provincial perspective. The CARB hears complaints on assessment notices for residential properties with four or more dwelling units such as:

- four-plex housing
- apartment building
- townhouse rental projects



s.454.2 &
460.1(2) MGA

And for non-residential properties such as:

- office buildings
- retail stores
- shopping centers
- warehouses

- industrial plants or special purpose properties (e.g., pulp mills)
- railway
- machinery and equipment

In cases where property is used or designated for multiple purposes where both LARB and CARB have jurisdiction the complaint is heard by CARB.

s.12 MRAC

If jurisdictional issues arise an ARB may conduct a preliminary hearing to decide on the issue. If it is determined that the issue required a preliminary hearing, notice of the hearing must be sent to all parties and rules of disclosure are required, including adherence to timelines. Often a one-member ARB may hear the matter.

Examples of jurisdictional issues include but are not limited to the following:

- The owner of a property operates a bakery on the main floor and maintains a residence on the second floor.
- A property owner lodges a complaint about their taxes being too high.
- A LARB wants to award costs because the complainant's representative delayed hearing proceedings.

Quorum

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

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

Joint Assessment Review Boards

Municipal councils may agree to establish joint boards enabling them to share resources, including the provincially appointed member.

s.456 MGA

One-member Review Boards

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

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

A one-member LARB or CARB may hear complaints about non-assessment matters on an assessment notice and administrative and procedural matters.

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

A one-member LARB may also hear complaints about matters on a tax notice.

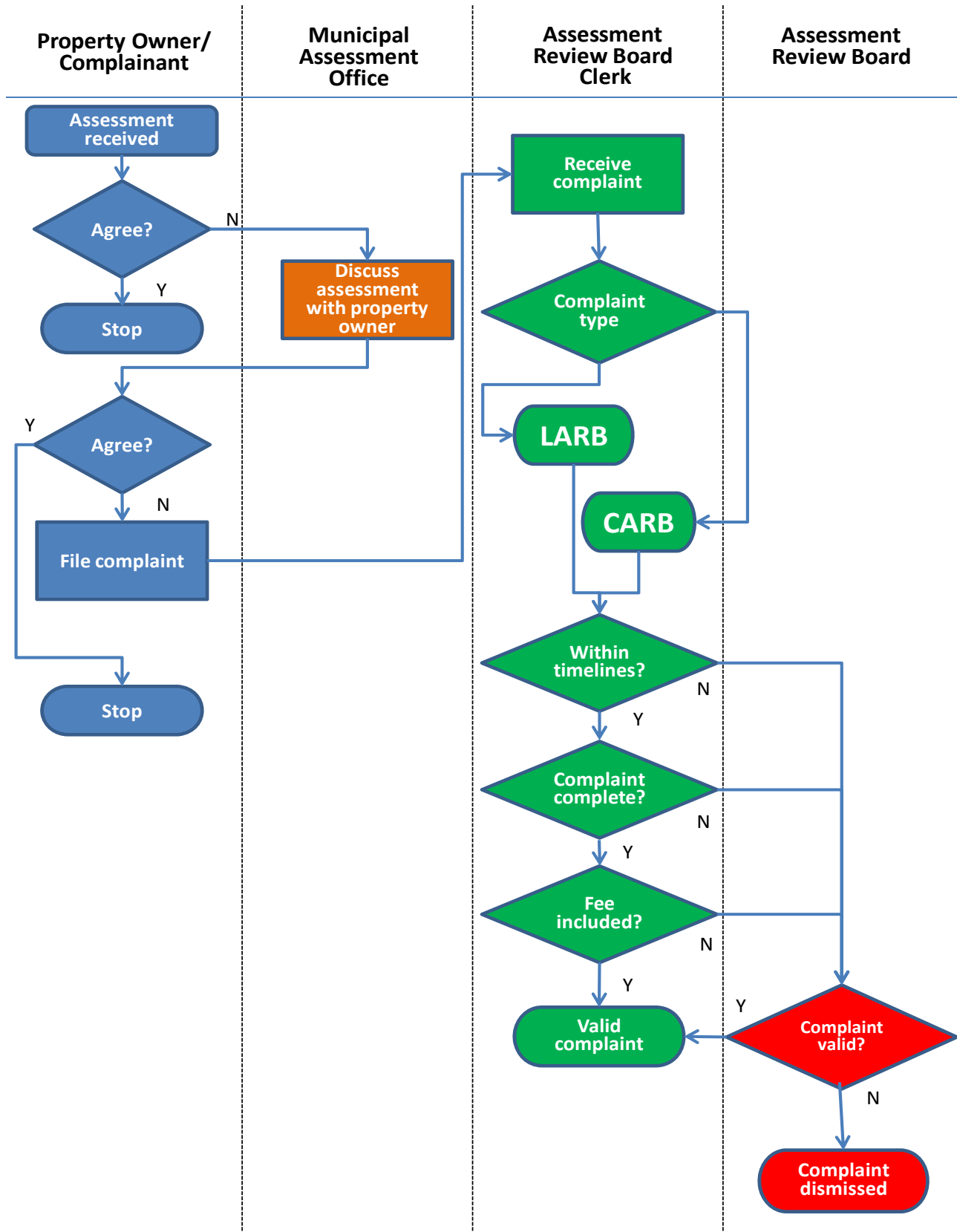
The person appointed to a one-member CARB must be the provincial member.

s.454.2(4) MGA

A one-member ARB cannot hear complaints about property assessment.

LARB: s.30(2)(e) MRAC
CARB: s.36(2)(d) MRAC

Pre-Complaint and Receiving Complaints



If after receiving and reviewing their assessment or tax notice, an assessed person/taxpayer feels the information on the notice is not accurate, they should talk to the assessor for their municipality. Errors or omissions on the assessment or tax notice may be resolved without making a formal complaint if discussed with the Assessor.

A best practice for clerks is to ask the complainant, “Have you discussed this with the assessor?”

If the issue cannot be resolved with the assessor, the assessed person/taxpayer can file a complaint with their municipality’s ARB.

The assessed person/taxpayer has 60 days from the date of the assessment notice or tax notice was sent to them to file a complaint with the clerk of the ARB. When a complaint has been filed, the ARB clerk reviews the complaint for compliance, (e.g., filed within time frame, fee is included, form is complete). If complaint is compliant, the clerk categorizes the complaint as LARB or CARB.

s.309(1)(c) MGA

The ARB clerk cannot decide if a complaint is invalid as a result of non-compliance. This must be a decision by an ARB.

Form of Complaint

To be heard by an ARB the complainant must complete and file a complaint with the ARB clerk in the form prescribed by MRAC and be accompanied by the fee if any. This includes:

- type of notice
- property information
- complainant information
- complaint information

s.460(2) MGA
LARB & CARB: s.2 MRAC

MGB: s18 & 19 MRAC
Schedule 1 MRAC

Complainant must:

s.460(7) MGA


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

MRAC specifies that an ARB cannot hear a matter that was not identified on the complaint form or was not disclosed within the set timelines. The ARB must make its decision using only the information presented by the parties.

Matters for Complaint

A complaint may be filed about any of the following ten items listed on the assessment or tax notice:

- a) The description of the property or business
- b) The name or mailing address of an assessed person or taxpayer
- c) Assessment amount
- d) Assessment class
- e) Assessment sub-class
- f) The type of property
- g) The type of improvement
- h) School support
- i) Whether the property or business is assessable
- j) Whether the property or business is exempt from taxation



s.460(5) MGA



s.460(6) MGA

The ARB cannot hear complaints about the amount of property taxes or tax rates. ARBs cannot change the tax rates or the services provided by the municipality. If a property owner has specific concerns about these issues, he or she may discuss them with the municipality's administration or council.

Accepting and reviewing complaints for compliance

1. Has the complaint been filed within time frame?
 - a) Assessment or Amended Assessment notices identify the complaint deadline – MGA s. 309(1)(c)].
 - b) Was section 605(1) of the MGA considered when checking to see if the complaint is filed on time?
2. Is the form is complete?
 - a) The clerk refers to the criteria set out in the MGA s. 460(5) to ensure this is met.
 - b) If incomplete, contact the complainant to resolve where possible.
3. Is the filing fee included?
4. Is the complaint filed by the assessed person or taxpayer – MGA s.460(3)?
5. Is there an Agent Authorization?
 - a) If an agent is submitting the complaint or representing the assessed person or tax payer, an agent authorization form must be submitted.
6. Determine which board (LARB or CARB) will hear the complaint based on property type.
7. Determine if the complaint has to do with an administrative, tax, or assessment matter.
8. Determine if the complaint will be heard by a one-member or three-member ARB.

Potentially Invalid Complaints

In some instances an ARB will have to decide if a complaint is invalid. A complaint may be invalid if:

- The complaint is not filed within the legislated timeframe (60 days for a complaint about a matter on an assessment notice; a minimum of 30 days for a complaint about a matter on a tax notice). s.309(1)(c) MGA
- The required information is not provided on the complaint form. s.334(1)(d) MGA
- The complaint filing fee, if required, is not included.

Potentially invalid complaints are issues for which a preliminary hearing may be scheduled; a one-member ARB may hear the matter.

Tips for Clerks around Receiving Complaints:

- If at all possible, discuss the issue with the complainant and have them resolve it. (i.e. submit information, provide the fee, etc.) The clerk should not be providing advice to the complainant regarding the content of the complaint.
- Flag for the ARB any issues that may indicate a potentially invalid complaint.
- Be sure to check jurisdiction with respect to the property type and matter of complaint to ensure hearing is schedule with the correct board.

Note: Clerks do not have the authority to make a decision about jurisdiction, invalid complaints etc. Only a panel of the board, be it a one or three member panel, has the authority to decide these matters.

Exercise 3

Work with your group to answer the following questions. Cite the legislative reference for each.

1. What is the jurisdiction of the following boards? Cite the legislative references. (hint: MGA, Part 11 and Part 12)

LARB

CARB

MGB

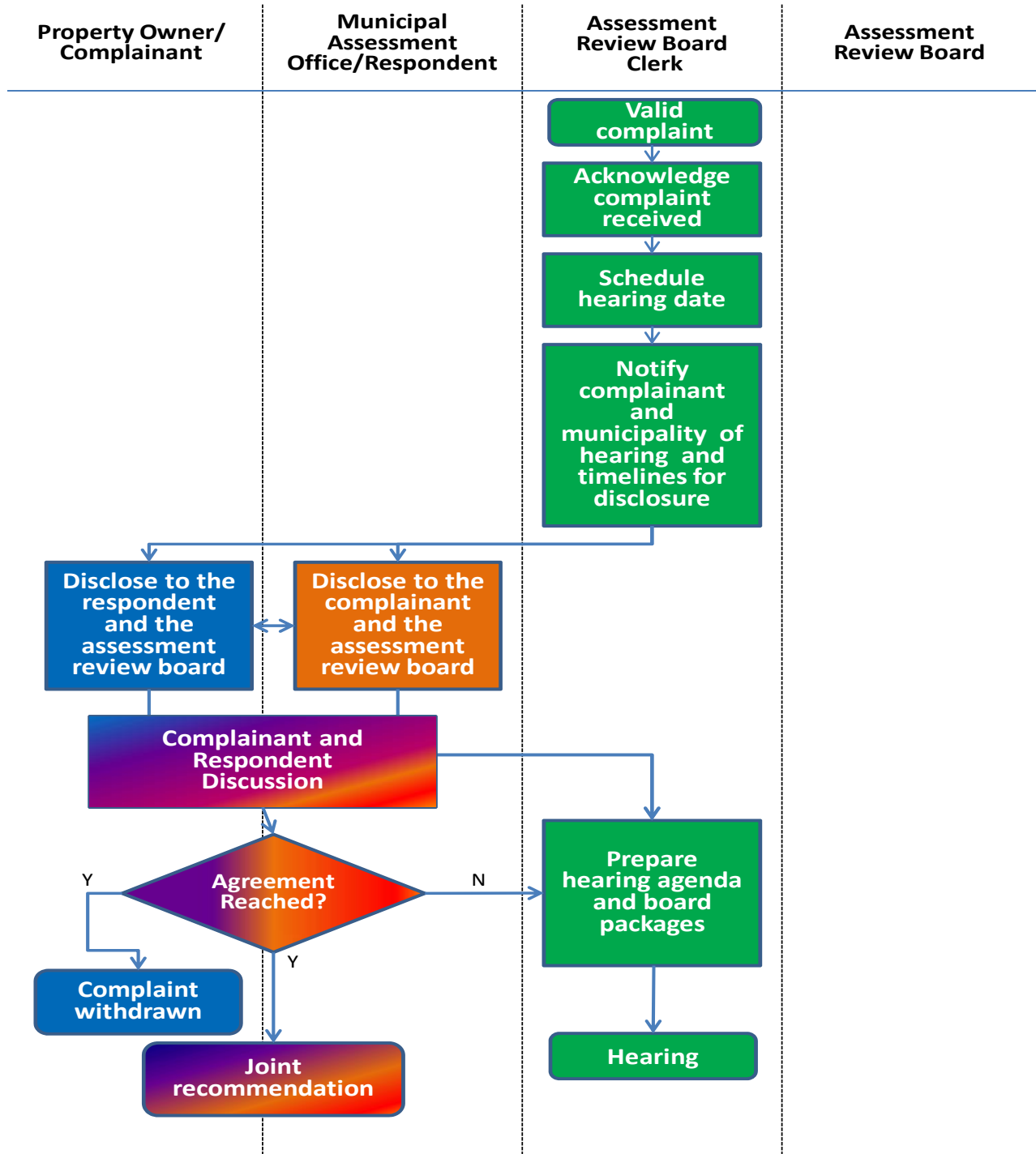
2. If a complaint is filed late, the clerk can refuse to accept it? True/False
3. If a complaint is filed in handwriting on a piece of plain paper and not on the regulated form, but contains all of the required information, is it invalid? Yes/No
4. Where in the legislation can you find the complaint form? (hint: MRAC)
5. What matters on an assessment or tax notice can a complaint be made on? (hint: MGA, Part 9 and Part 10)

(Exercise continued on next page)

6. For each of the issues listed below, indicate which board (LARB, CARB, MGB) would hear the issue, and the number of board members (one or three) required:

Issue	Board
1. A condominium unit owner's complaint about the tax rate.	
2. A store owner's complaint about an incorrect calculation of a local improvement tax imposed by the Municipality.	
3. A complaint related to assessment amounts for machinery and equipment used in a greenhouse.	
4. A complaint related to an electric power system.	
5. A complaint about the number of units assessed for an apartment building.	
6. A complaint about the assessed value of a railway trunk line that runs onto industrial property.	
7. A complaint about the type of property indicated for a rental townhouse rental project.	
8. A concern that a complaint is invalid.	
9. A complaint about an incorrect mailing address for a warehouse building.	

Schedule Hearing and Disclosure



Once the complaint form has been filed and it has been determined to be a valid complaint the ARB clerk acknowledges receipt of the complaint, sets a hearing date, and notifies all parties of the hearing date, the timelines by which disclosure of evidence is required to be provided to the other parties and to the board, and the rules for the disclosure of evidence. As well, the ARB clerk prepares the agenda for the hearing.

Acknowledge receipt of the complaint

- a) Confirm receipt of the complaint and filing fee. The process may vary depending on ARB procedures.
- b) Address any issues such as missing information (where possible), jurisdictional issues, etc.
- c) Provide the municipality, the Minister (when applicable), and any other person or taxpayer other than the complainant who is affected by the complaint with a copy of the complaint within the specified timeline.
- d) Legislation requires that the municipality is provided with a copy of the complaint within 30 days of the complaint being filed with the ARB.

s.462 MGA

For example (LARB):

<i>Complaint deadline (60 days)</i>	<i>Municipality to provide copy of Complaint (30 days)</i>
Mar 15	April 14

Suggestion: If possible, acknowledge receipt of the complaint and the complaint fee, and notify the municipality within the hearing notification letter.

Schedule hearing

The hearing must be scheduled, at minimum, 35 days after receiving the complaint for a LARB and 70 days for a CARB. For example (LARB):

<i>Complaint Deadline (35 days from March 15)</i>	<i>Hearing</i>
March 15	April 21

If the complaint deadline is March 15th, the earliest date that a hearing could be scheduled would be April 19th.

Schedule Disclosure Dates

Prior to the hearing there is a formal process for the exchange of information, otherwise known as disclosure, between the complainant and the respondent. All parties have an obligation and are accountable for providing complete disclosure within the timeframes set out in the legislation.

Once the hearing date is determined, the clerk must determine the disclosure exchange dates.

Continuing with the previous example for the hearing date, now work backwards from the hearing date to determine the disclosure dates for each of the parties:

<i>Complaint Deadline</i>	<i>Complainant Disclosure</i>	<i>Respondent Rebuttal & Disclosure</i>	<i>Complainant Rebuttal</i>	<i>Hearing</i>
March 15	March 30	April 14	April 18	April 21

An ARB or MGB may abridge (shorten) or expand the time for disclosing evidence or other documents with the written consent of the persons entitled to the evidence of other document.

Hearing Notification

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

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

Postponement/Adjournment of Hearings

Realistically, hearings cannot always be expected to proceed and be completed at the first sitting. From time to time hearings must be postponed or adjourned. Postponement of a hearing delays the beginning of the hearing. Adjournment refers to an interruption during the hearing. Postponements or adjournments can only be granted under exceptional circumstances determined by the ARB. All requests complete with reasons must be submitted in writing. If the ARB agrees with the request, they must reschedule the date, time and location of the hearing at the time that the adjournment or postponement is granted.

LARB & CARB: s.15 MRAC
MGB: s.27 MRAC

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

Reaching an Agreement Prior to the Hearing

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

- The assessor and the complainant agree to make a recommendation to the ARB for their decision, or
- The complainant may withdraw the complaint.

Filing Fees – Refund

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

LARB & CARB: s.11(2) MRAC
MGB: s.24(2) MRAC

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

Hearing Preparation

- a) The clerk will prepare a hearing agenda which identifies the complainant, respondent and any witnesses, as well as the evidence that will be presented.
- b) The clerk distributes copies of complaint and disclosure submissions to the hearing panel according to board procedures. (3 copies for merit hearing; 1 copy for a one-member hearing.)

- c) The clerk may attend the hearing to take notes, assist with numbering/tracking of submissions, and other administrative duties, depending on board procedures.

Note: The clerk does not participate in the hearing.

Tips for Clerks around Scheduling:

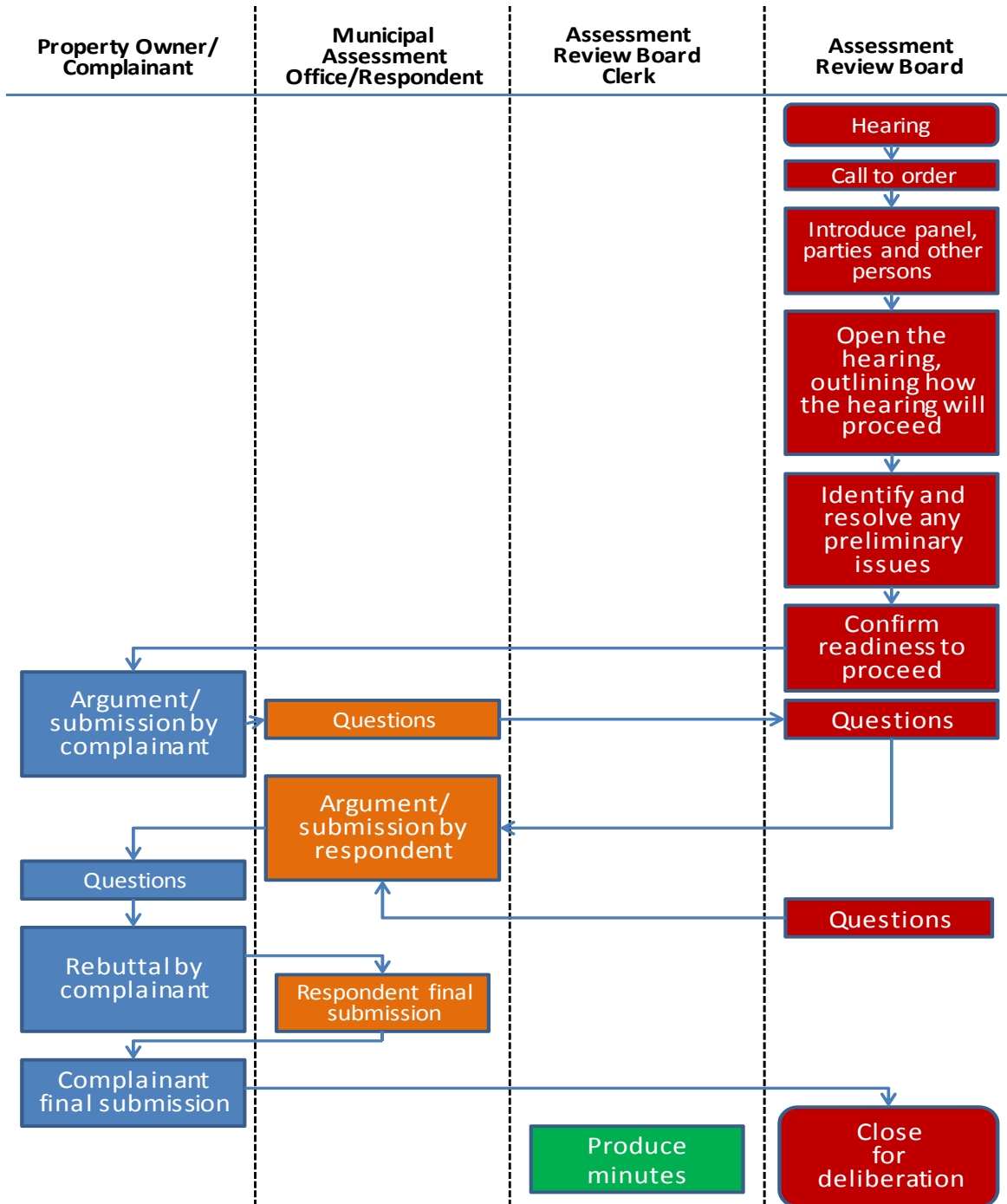
- Provide municipality (LARB or CARB) with a copy of the complaint within the legislated timeframe (30 days for LARB/CARB). If a CARB complaint, the MGB must be provided with a copy.
- Ensure the hearing board members are available when setting the hearing date. For a CARB hearing, contact the MGB Administrator to schedule the provincial member.
- Ensure notice of hearing is sent to all affected parties to a complaint as required and in accordance with the timelines.
- Ensure parties receive the disclosure schedule.
- Prepare agenda to ensure board members are aware of overall schedule, the parties involved, the complaint, and the evidence.
- Ensure all evidence has been recorded and marked for easy reference by board members.

Exercise 4

1. A clerk can schedule a hearing as soon as a complaint is filed. True/False
2. When determining the day in which complaints must be filed, day one of the filing period starts the day after the notices are sent. True/False
3. The clerk should consult with board members to confirm availability prior to scheduling the hearing. True/False
4. For a CARB hearing, the clerk must contact the MGB administrator to schedule the provincial member. True/False
5. What are the timelines for complainants and respondents to disclose evidence for each ARB (one-member and three-member)?
6. For each of the ARB's, can scheduling and notice of hearing be abridged (shortened)? Expanded? If yes, what is required?
7. Can timelines for disclosure for the ARB be abridged? Expanded? If yes, what is required?

The Hearing Process

The clerk does not participate in the hearing or decision-making process, however depending on board procedures, the clerk may be required to attend the hearing to take notes and assist the panel in other administrative matters, and/or assist the panel in preparing the written decision.



Hearing Style

ARBs use an adversarial hearing style which is characterized by two or more parties - each representing an opposing view of the case, interacting with the board. The board will act like a judge in a trial and let the parties make their own cases as they see fit; the board will not act as an advocate for any party. A board 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.

Overview of a Typical Hearing Process

1. Call to order and welcome by the Chair
2. Introductions of the panel, parties and other persons in the room
 1. name, organization and role in the hearing (agent, representative, witness, observer, etc.)
3. Opening comments by the Chair
 1. role and composition of the panel
 2. role of the parties
 3. purpose of this hearing
 4. issues surrounding the matters in the hearing
 5. legislative section(s) that applies
 6. 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
 7. 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
 8. any preliminary matters?
 - i. challenges on bias?
 - ii. objections to the panel’s authority – time, process, subject matter?
 9. ready to proceed?
4. Evidence from the parties and experts
 1. start with documents filed / disclosed before the hearing (the evidence)
 2. review each document and give it a number or identify it for the record.
 3. explain the MGA and MRAC sections dealing with new evidence. (evidence not disclosed prior to the hearing must not be heard by the board)

4. re-state 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
 5. explain procedure for witnesses , and which party calls witnesses first
 6. 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
 7. witnesses need to speak clearly and slow enough for the panel to take notes and to help the recording if required
5. Arguments / Submissions by the parties
1. 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
 2. each party presents their argument
 3. panel asks questions to the parties
6. Closing Comments by the Chair
1. thank everyone for participating
 2. confirm the issues surrounding the matters that the panel will be deciding using the evidence and arguments presented
 3. when and how the decision will be sent
 4. who to contact after the hearing – staff, not panel
 5. firmly close the hearing.
7. Adjournment

Awarding of costs

A CARB or the MGB have been given the authority in MRAC to award costs when there is misconduct by a party with respect to the hearing process. If the CARB determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amounts specified in MRAC, against the party that unreasonably caused the hearing to proceed. The Table of Costs is contained in Schedule 3 of MRAC.

Post Hearing – The Decision Process

ARBs must follow proper processes when arriving at a decision. These processes stem from the principles of natural justice and support fairness of the decision. The MGA and MRAC set out the basic procedures that govern the process of decision making including what information must be shared, with whom, and by when.

To be valid, the processes used by a board to reach decisions must be, and be seen to be, fair. The requirement of fairness imposes the following procedural requirements on the board, its members and staff to ensure a fair decision is made by adhering to the following two principles of natural justice, as discussed earlier:

- a) The right to an unbiased decision maker.
- b) The person(s) who heard the case must decide the case.

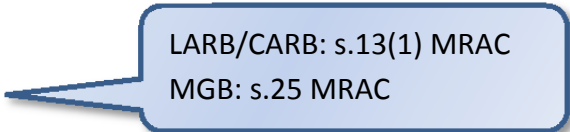
Writing the decision

The final stage of decision process is writing the decision. The written decision is the method of communicating the decision and reasons for the decision to the parties. Boards issue written decisions to provide clarity and certainty about their decisions.

Writing the decision includes documenting the decision, the findings of fact on which the board based its decision and the reasons for the decision. Dissenting reasons must be included in the decision. There is an expectation that while the specific information of written decisions cannot be identical, the format and general content (e.g., evidence of written decisions will be consistent from decision to decision. That is, that all written decisions will have a similar format and include similar types of information.

The requirements for an ARB decision 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, and
- any procedural or jurisdictional matters that arose during the hearing and the ARB's decision on each.



LARB/CARB: s.13(1) MRAC
MGB: s.25 MRAC

Basic Pieces of a Written Decision

The typical pieces of a well written decision include the following. A panel need not use these labels and may change the order to make the most sense for a particular case. The amount of

time the panel has to write the decision will naturally affect how extensive it makes each section.

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 regulation (i.e. the meaning of “complete” if not defined)
- for reaching the conclusions reached by the panel (we conclude because ...)
- 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 use 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

Reviewing the Draft Decision

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, comprehension, logic, flow and 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 writers

Decision Making Timelines

s.468(1)MGA
s.500 MGA

s.469 MGA

After hearing all presentations and the decision making process takes place, the board must render its decision with reasons, in writing no later than 30 days after the hearing date or before the end of the year in which the complaint has been made, whichever is earlier. The ARB clerk must, within 7 days, of the decision being rendered send notice of the decision, including reasons, to the parties notified of the hearing.

Tips for Clerks around the Decision-Making Process:

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

The Clerk may be supportive by:

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

Closing the Complaint

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

A municipality must retain a record of all decisions of a local assessment review board for at least five years.

s.13(3) MRAC

Record of Hearing

An assessment review board must make and keep a record of each hearing.

The Record of Hearing must include:

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

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

Appeal of the ARB Decision

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

LARB/CARB: s.470(3)
MGB: s506(3) MGA

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

s.506(9) MGA

Tips for Clerks around Records:

- Ensure evidence is marked clearly.
- Ensure written submissions from board members are properly recorded and supported in their documentation.
- Ensure final draft of the decision is approved by all members of the ARB.
- Ensure record of hearing is complete.

Exercise 5

1. What must the decision of an assessment review board include? (hint: MRAC)
2. Name some ways in which the clerk can assist the board with the written decision.
3. How long does the clerk have to send the board's written decision to the parties to the hearing? (hint: MGA, Part 11)
4. How long must a municipality retain a record of all decisions of the local assessment review board? (hint: MRAC)
5. What must the record of hearing include? (hint: MRAC)

Working Collaboratively With Other ARB Staff and Members

It sounds like motherhood and apple pie to say that everyone in an ARB 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 ARB – one example is *Let's Talk*, a guide to resolving workplace disputes by Alberta Employment and Immigration

Maintaining Independence and Accountability through Ethical Conduct

To carry out its legislative role, an ARB must be independent of its appointing authority. At the same time, the ARB is 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.

