

The Modernized Municipal Government Act

What do changes mean for ARBs and the MGB?

Introduction

For the past few years the Alberta Government has been in consultations with stakeholders to update the *Municipal Government Act (MGA)*. These consultations have resulted in the passing of the *Modernized Municipal Government Act (MMGA)* which contains many changes to the assessment and taxation system in Alberta.¹ Assessment Review Board professionals throughout the Province should be aware of the anticipated changes and how they will affect the processing and adjudication of assessment complaints in the future.

This document is intended to provide general information regarding significant changes in the *MMGA* that impact the property assessment complaints system in Alberta. There are additional changes not specifically addressed.

NOTE: Most of the *MMGA* is not yet in force, and the current *Municipal Government Act* continues to apply until the *MMGA* is proclaimed. Additional changes to the legislation and regulations are expected throughout 2017.

¹ Two recent Bills to amend the *Municipal Government Act*, [Bill 20](#) and [Bill 21](#), have passed in the legislature as of January 1, 2017.

Impact on Assessment Review Board Governance

The *MMGA* contains a few changes that impact how ARBs are governed and operated throughout the province. Under the *MMGA*,

- Municipalities will be required to establish a Local Assessment Review Board (LARB) and Composite Assessment Review Board (CARB), regardless of whether a complaint has been filed.
- Municipalities will be required to designate one of their ARB members as the Chair of the ARB, and prescribe the Chair’s term of office as well as remuneration, if any. The Chair may delegate their responsibilities to another board member.

Section 61 of the *MMGA* repeals and replaces all of Part 11, Division 1 “Establishment and Function of Assessment Review Boards”

Many changes, such as renaming the “designated officer” the “Clerk” bring the *MMGA* in line with common practices of ARBs throughout Alberta

- Municipalities that establish Joint ARBs must jointly appoint a Chair and a Clerk of that Joint ARB.
- The Municipality must appoint at least three members as LARB members and two as CARB members. LARB and CARB members may be cross appointed. It is the Chair’s responsibility to convene panels of members according to the type of hearing.
- The Clerk cannot be the same person who decides whether brownfield properties are property tax exempt or deferred.
- The *MMGA* also limits the ability of municipal councillors to hear a complaint, for both single municipality ARBs and Joint ARBs:

One-Member LARBs	Unless otherwise authorized by the Minister, the Chair cannot appoint a councillor as a one-member panel
Three-Member LARBs and CARBs	Unless otherwise authorized by the Minister, the Chair can only appoint one councillor to a three-member panel

Relevant Changes to Assessment

There are many changes to the way that Assessments and Assessment Rolls are prepared in the Province. Of these, a handful of changes affect ARBs.

- The *MMGA* repeals section 305(5) of the *MGA* which prevented assessors from correcting or changing an assessment roll while a property is under complaint.
- The *MMGA* clarifies the roles and responsibilities of the Provincial Assessor and Municipal Assessors, by changes to sections relating to preparing assessments, assessment rolls and supplementary assessments.
- The most important change to assessment practices in the *MMGA* is the creation of “**designated industrial property**,” which is defined as:
 - (i) facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the National Energy Board,
 - (ii) linear property,
 - (iii) property designated as a major plant by the regulations, and
 - (iv) any other property designated by the regulations;
- Municipalities are responsible for assessing machinery and equipment that is not designated industrial property.

It is proposed that, if an assessor amends an assessment after a complaint has been filed without agreement from the Complainant, the complaint process begins again

Components of regulated facilities include machinery and equipment and buildings and structures servicing or related to the facility as well as the land on which the facility is located

Designated Industrial Property	<ul style="list-style-type: none"> • Assessed by the Provincial Assessor. • Complaints are heard by the Municipal Government Board.
Machinery & Equipment	<ul style="list-style-type: none"> • M&E that has not become “designated industrial property” is assessed by a Municipal Assessor. • Complaints regarding M&E that is assessed by a Municipal Assessor are heard by the Municipality’s CARB.

Relevant Changes to Taxation

Some changes to taxation in Alberta also have an impact upon ARB professionals. Under the *MGA*, LARBs can hear complaints respecting tax notices (except property tax notices) as well as tax exemption related issues.

The *MMGA* creates a new area of tax exemption/deferral related to ‘**brownfield property**’ that has direct implications for CARBs.

- The *MMGA* permits municipalities to create a bylaw or agreement providing for tax deferral, or full or partial tax exemption for brownfield properties.
- A brownfield property bylaw:
 - Must identify the relevant properties.
 - Must specify the applicable taxation years.
 - Must specify any conditions that will cancel the exemption or deferral, and what years those conditions apply.
 - May set criteria for the properties to qualify.
- A municipally appointed designated officer then decides whether or not to grant exemptions or deferrals.
- The *MMGA* provides for differences between properties that are categorized as **brownfield properties by agreement** and **brownfield properties by bylaw**:

“**Brownfield property**” means current or former commercial/industrial property that, in the opinion of council:

- (i) is, or possibly is, contaminated
- (ii) is vacant, derelict or under-utilized,
- (iii) is suitable for development or redevelopment for the general benefit of the municipality ...

Brownfield property cannot be designated industrial property

Brownfield by Agreement	<ul style="list-style-type: none"> • Created by specific agreements entered into between a Municipality and a brownfield property owner. • Cannot generally form the subject of a CARB complaint unless the agreement specifically allows for a complaint.
Brownfield by By-Law	<ul style="list-style-type: none"> • Property owners apply to the designated officer for an exemption or deferral. • Refusals can be appealed to the ARB, the deadline of which is 60 days after the written notice of refusal is sent. • A CARB can determine whether a property is tax exempt or deferred.

Impact on Information Sharing

The *MMGA* includes changes to the parties’ exchange of information outside the ARB’s pre-hearing disclosure process. Issues in the information sharing process may affect how, and whether, a complaint proceeds before an ARB.

In the *MGA*, an assessed person must provide any information necessary for the assessor to prepare an assessment or determine if property is to be assessed

- The *MMGA* permits an assessor to request, “any information in the regulations for the assessor to carry out the duties and responsibilities under parts 9 to 12 and the regulations.”

- The *MMGA* also changes what information an assessor must provide when someone requests information from them.
There are some key changes.

Sections 299 and 300 were interpreted by the Court of Appeal in *CNRL v Wood Buffalo*, in 2014²

What does “information” mean?	In the <i>MGA</i> , an assessor must provide “sufficient information” as defined in the Act. In the <i>MMGA</i> , the information is prescribed in the regulations.
The timing of an information request	The <i>MGA</i> has been interpreted by the Courts for an assessor to provide continuing disclosure once an information request has been made. In the <i>MMGA</i> : <ul style="list-style-type: none"> The assessor must disclose what is in the assessor’s possession at the time of the request; and The assessor does not have to disclose information if an ARB complaint process is ongoing.
What is included in an assessment summary	The <i>MGA</i> says an assessment summary includes “key factors, components and variables of the valuation model.” This has been replaced in the <i>MMGA</i> with the <ul style="list-style-type: none"> “key attributes of any improvements” and assessed value and any adjustments. <p>The provincial assessor must provide an assessment summary specific to designated industrial property</p>

² *Canadian Natural Resources Limited v Wood Buffalo (Regional Municipality)*, 2014 ABCA 195

Impact on Assessment Review Board Jurisdiction

The *MMGA* includes changes to the jurisdiction of LARBs and CARBs. Changes to LARB and CARB jurisdiction are described below.

- LARBs will hear tax notice complaints, except
 - Property tax notices.
 - Business tax notices.
 - Business improvement area tax notices.³

Under the *MGA*, LARBs currently have the jurisdiction to hear complaints about all tax notices except property tax notices

- CARBs will hear complaints about
 - Business tax notices.
 - Business improvement area tax notices.
 - Brownfield property exemptions and deferrals.

Designated Industrial Property

Under the *MMGA*, the MGB will hear complaints regarding land and machinery and equipment that form part of “designated industrial property”.

Brownfield property complaints are considered appeals where the CARB may substitute its decision for that of the municipality’s designated officer

- The *MMGA* will allow taxpayers to file a complaint about the extent to which a brownfield property is exempt from tax, or tax is deferred.
- In summary, jurisdiction will be as follows:

LARB	<ul style="list-style-type: none"> • Assessment complaints respecting residential with 3 or fewer dwelling units and farm land. • Tax notice complaints, except property tax notices, business tax notices and business improvement area tax notices.
CARB	<ul style="list-style-type: none"> • Assessment complaints for properties that LARBs cannot hear. • Business tax notices and business improvement area tax notices. • Complaints respecting brownfield properties.
MGB	<ul style="list-style-type: none"> • Assessment complaints respecting “designated industrial property” as described above.

³ The *MMGA* renames Business Revitalization Zone tax as Business Improvement Area Tax

Impact on Assessment Review Board Procedure

The *MMGA* contains changes that will directly impact ARB procedure. Some of these changes are contained in the *MMGA* itself, and others will be found in new regulations.

- The *MMGA* directs the Clerk to send hearing notices to any assessed person other than the complainant who is “directly” affected by the complaint.
- The regulations will contain procedures to be followed for applications in which an ARB compels a person to attend a hearing, or to produce documents or other items.
- Under the *MMGA*, parties may apply to the Court of Queen’s Bench for judicial review of an ARB decision within 60 days of the date of the decision.
- When a party files for judicial review, the *MMGA* requires the Clerk to provide the Court of Queen’s Bench with the certified record of proceedings within 30 days of the judicial review application being filed.
- ARBs will now have procedures to follow when determining whether to conduct a hearing in private, or exclude documents from the public record.

NOTE: The *MMGA* section relating to judicial review came into force on January 1, 2017. (MGA section 470.1)

Private Hearings	<p><i>An ARB may conduct all or part of the hearing in private if the ARB considers it necessary to prevent the disclosure of intimate personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing.</i></p> <ul style="list-style-type: none"> • When a hearing is in private, no party may attend the hearing unless the party files a written undertaking that they will hold in confidence any private information heard. • Otherwise, all hearings are open to the public.
Excluding Documents	<p><i>An ARB may exclude a document from the public record</i></p> <ul style="list-style-type: none"> • If the ARB is of the opinion that the disclosure of the document could reasonably be expected to disclose intimate personal, financial or commercial matters or other matters, or <ul style="list-style-type: none"> → The ARB considers that a person’s interest in confidentiality outweighs the public interest in the disclosure of the document. → If a party files for judicial review, the documents remain excluded unless otherwise ordered by the Court of Queen’s Bench.

Moving Forward – Changes and Regulations

As 2017 progresses, additional information will become available respecting the upcoming changes to the assessment complaints system in Alberta.

- Changes in the *MMGA* are not yet finalized; additional amendments to the legislation are expected.
- Many of the changes that impact ARB professionals include references to regulations that have yet to be published.

The Municipal Government Board staff will continue to be available to inform Assessment Review Board professionals of upcoming changes and assist in the transition once the *MMGA* and regulations come into force.

- For more information, contact:

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