

---

# GOVERNANCE AND DISPUTE RESOLUTION

## SUBCOMMITTEE REPORT - TOWNS TASK FORCE

---

Submitted to UNSM Board of Directors

September, 2014

---

### Contents

**DISPUTE RESOLUTION**..... 2

Recommendation 11: Municipal Arbitration Program ..... 2

Recommendation 12: Dispute Mechanism Clause ..... 2

Recommendation 13: Binding Arbitration Process ..... 2

MUNICIPAL ALTERNATIVE DISPUTE RESOLUTION PROCESS: ..... 3

PROPOSED LEGISLATIVE AMENDMENTS ..... 3

**GOVERNANCE CHANGES** ..... 9

Recommendation 5: Amend Legislation to Enable Commissioner ..... 9

Recommendation 6: Appointment of Commissioner ..... 10

Recommendation 7: Best Practices & Templates..... 11

Recommendation 9: Town to Village Status..... 12

APPENDIX A: PROPOSED NOVA SCOTIA INTER-MUNICIPAL MEDIATION INITIATIVE ..... 13

APPENDIX B: ALTERNATIVE DISPUTE RESOLUTION DECISION TREE ..... 16

---

## DISPUTE RESOLUTION

---

The Towns Task Force (the “TTF”) Report identified the need to provide municipalities with a process for resolving disputes in a conciliatory fashion, by focusing on mutual interests. The recommendations to implement an alternative dispute resolution process are derived from the following goal:

***Goal 3 – Create less confrontational ways to resolve service issues between municipalities, resulting in more efficient municipalities.***

The following three recommendations have been incorporated into an Alternative Dispute Resolution process that encourages municipalities to resolve disputes through mediation – a voluntary means of arriving at mutually beneficial arrangements. The TTF Report acknowledged that there are some instances where there is no incentive to participate in a voluntary mediation. Under certain conditions, binding arbitration is recommended if mediation has been attempted, but unsuccessful.

---

### **Recommendation 11: Municipal Arbitration Program**

UNSM establish a municipal arbitrator program to assist in the resolution of existing service and other issues between municipalities. This program would train former councillors and administrators as arbitrators. The program should be supplemented by having a standing offer list of professional arbitrators available for more complicated situations.

**Committee Recommendation:** The GDR subcommittee recommends the Province implement the Nova Scotia Intermunicipal Mediation Initiative. *This proposed program is attached as Appendix 1.*

### **Recommendation 12: Dispute Mechanism Clause**

All new provincial projects or programs that involve two or more municipalities should include a dispute mechanism clause.

### **Recommendation 13: Binding Arbitration Process**

UNSM develop a timely, fair process to deal with situations where a voluntary process has not been successful and where there is no other recourse. Binding arbitration should only occur when the issues between municipalities are deemed “significant”. Consideration will be given to establishing, for example, a panel of 3 arbitrators to consider all factors, including Councils' original positions on the project, the decision making process used to move the project forward

from the beginning, appropriateness of the design and size of the facility, fairness to all residents, etc. The municipality requesting arbitration will pay the cost.

**Outcome:** Recommendations 11-13 have been combined into a single Alternative Dispute Resolution Process, as described below.

**Committee Recommendation:** The GDR subcommittee recommends the Province implement the Municipal Alternative Dispute Resolution Process as described below.

---

## **MUNICIPAL ALTERNATIVE DISPUTE RESOLUTION PROCESS: PROPOSED LEGISLATIVE AMENDMENTS**

---

**Statement of Intent:** Collaboration between municipal governments has the potential to increase the quality of services and lower costs. Building and maintaining partnerships between municipalities is essential for this collaboration. However, with any form of partnership there is potential for disagreement. Currently, such disputes either remain unresolved, involve the court system, or require provincial intervention.

The TTF has identified the need to establish less confrontational ways of resolving these service related disputes. The TTF's Governance and Dispute Resolution subcommittee (the "GDR Subcommittee") has developed the following process, with the intent of providing guidance and additional tools for municipal governments to address their disputes.

The TTF believes there should be less confrontation and more cooperation between municipalities in dispute resolution. The ADR process proposed here would begin with informal negotiations between municipalities. In the event that the issue is unresolved, Municipal Advisors would then attempt to facilitate a dialogue, and, if necessary, encourage the use of a mediator. Participating in the mediation process is voluntary.

"Mediation" is simply an *interest-based* process that allows municipal governments in conflict to resolve their dispute themselves, often making for better outcomes, saving time and money, and avoiding the significant direct and indirect costs that comes with unresolved or litigated issues. Mediation is nothing more than negotiation, with the assistance of a neutral third party whose focus is on helping all sides reach an agreement that satisfies their interests. The

proposed inter-municipal mediation program would assist municipalities interested in pursuing mediation to resolve disputes.

The TTF believes that municipalities should voluntarily enter a dispute resolution process to resolve inter-municipal disputes. However, the TTF recognizes that there are limited instances when some form of binding arbitration should also be available in the event that mediation is attempted but unsuccessful. Arbitration is the process under which a neutral third party hears the evidence and positions of the municipalities in dispute, and is authorized to make a decision that is final and binding on them.

The use of this binding tool would be restricted to significant issues, when all other means to resolve an issue have been exhausted. In such cases, if the necessary pre-conditions below have been met, any municipal unit identified by the municipality seeking binding arbitration (for purposes of this proposal, the “Applicant”) would be required to participate in the process and would be subject to the arbitrator’s ruling.

### **Legislative Amendments**

A detailed description of the alternative dispute resolution process could be included as a regulation of the *Municipal Government Act*. Suggested wording parameters are given below, and are subject to appropriate legal wording changes by legal counsel responsible for drafting the regulation:

#### **Mediation Process:**

1. For disputes related to services, related infrastructure, and/or land use planning, a municipality may enter into a mediation process with one or more other municipal governments.
2. Municipalities participating in a mediation shall do so in good faith, and share equally in its costs.
3. Everything said, done or presented during a mediation is confidential, privileged and inadmissible in any arbitration or other proceeding involving the same parties, but evidence that would be admissible in an arbitration or other proceeding shall not be considered inadmissible or non-discoverable just because it was used in the mediation.
4. Unless otherwise agreed by the parties to a mediation, the mediator shall be disqualified from also serving as arbitrator in the binding arbitration process below.

5. The mediation may continue after the commencement of an arbitration if all the municipalities involved agree.

**Binding Arbitration Process:**

6. For disputes related to services, related infrastructure and/or land use planning, a municipality may apply for binding arbitration with one or more other municipalities, provided the following conditions are met:
  - a) The earlier of the following:
    - i. ninety days have gone by since a municipality sent a formal written request for mediation to the other municipal government or governments in connection with the dispute; or
    - ii. one of the municipalities involved in the dispute has declined to participate in the mediation; or
    - iii. mediation has been attempted but proven unsuccessful;
  - b) No review of the cost sharing formula has occurred in the past three fiscal years; and
  - c) The issue qualifies as significant, defined as:
    - i. The number of non-host users for the service in dispute exceeds thirty percent in a given year; or
    - ii. The annual operating costs for the service in dispute exceed five percent of the host municipality's operating budget.
7. In disputes related to the cost sharing of a planned facility or service where neighbouring municipal units were consulted and were unwilling to participate in it, the issue cannot be brought to binding arbitration until after the fifth anniversary of the date of completion of the facility or service in question.
8. Once a dispute meets the conditions under Section 6, the Applicant may request that any other municipality be included in the binding arbitration process. This request shall be made by way of a written notice (the "Notice") from the Applicant to the Minister and any other municipal government involved, and the Notice shall set out the subject of the dispute and the relief the Applicant requests. All municipal governments named in the request **shall** participate in the arbitration.

9. The Notice shall not be delivered before all conditions in Section 6 have been met; **provided that** when the dispute is one covered by Section 7, the Notice shall be delivered no earlier than forty-five days before the fifth anniversary of the completion of the facility or service in issue.
10. Municipalities participating in the arbitration process shall cooperate with one another in selecting a single arbitrator and in scheduling the arbitration proceedings.
11. If the participating parties cannot come to agreement on a single arbitrator within thirty days after receipt of the Notice, a single arbitrator shall be assigned promptly by the Minister.
12. The Minister's decision on the single arbitrator will be final and binding on the parties to the arbitration.
13. The arbitrator shall complete the arbitration hearing within six months from receipt of the Notice.
14. The arbitrator shall have the same authority as a court of competent jurisdiction to make interim orders, including granting an injunction, upon written request and after all municipalities to the arbitration have an opportunity to be heard.
15. Costs of arbitration will be assigned by the arbitrator.
16. The arbitrator's final award will be final and binding on the municipal governments involved in the arbitration, and may be converted to a judgment of a court of competent jurisdiction upon application by any party.

### **Planning and Development**

Under Planning and Development, Part VIII of the *Municipal Government Act* (the "MGA" or the "Act") the use of mediation is allowed under Section 259:

*The Minister, a council or the Board [UARB] may, if the person or body considers it appropriate, at any time before a decision is made pursuant to this Part [Planning and Development], use **mediation**, conciliation or other dispute resolution methods in attempt to resolve concerns or disputes.*

This section needs to remain, as it is a tool to be used at the Minister or Board's discretion. They may choose to initiate an ADR process, but may not want to be subject to binding arbitration.

The Land Use Planning Committee has proposed the following amendments to Section 215 of the MGA: Intermunicipal planning strategy:

### **Suggested MGA amendments to Section 215 – Already Submitted to Government**

The Land Use Planning Subcommittee of the TTF was tasked with Encouraging Regional Planning: “In future, there should be joint provincial/municipal review of financial incentives and/or legislation in order to encourage more holistic regional planning models”.

The Subcommittee has recommended the following amendments to Section 215 of the MGA. These recommendations have been approved by the UNSM Board, and sent to the Minister of Municipal Affairs for consideration as of March 18, 2014:

- 1) *Councils of two or more municipalities may engage in collaborative intermunicipal planning, including but not limited to:*
  - a) regional planning, for a geographic region that encompasses at least two municipalities, or
  - b) joint area planning, for a geographic area of mutual interest to adjacent municipalities.
- 2) *The collaborating municipalities may enter into an intermunicipal agreement to provide a framework for intermunicipal planning. The geographic area, nature, scope and level of detail of the intermunicipal planning, is a decision of the collaborating municipalities.*
- 3) *Matters included in collaborative intermunicipal planning may include, but not limited to, cost sharing, land use, including residential, commercial and industrial, transportation networks and traffic /commuter patterns, municipal water supplies and systems as well as sanitary and storm sewer systems, other municipal services/infrastructure, and other matters that cross municipal boundaries.*
- 4) *Where the collaborating municipalities agree to adopt an intermunicipal planning strategy, it shall be mutually binding and the provisions of this Act that apply to a municipal planning strategy apply to an intermunicipal planning strategy. Planning documents, including secondary strategies of individual municipalities that are party to an intermunicipal planning strategy shall be consistent with any applicable intermunicipal planning strategy.*
- 5) *The regulation of development pursuant to intermunicipal planning is only permitted by way of planning documents adopted under this Part of the Act.*

- 6) *The provisions of this Act regarding mediation apply to intermunicipal planning. With respect to joint area planning, where one municipality desires to engage in joint area planning and the adjacent municipality refuses to participate, the former may apply for an Alternate Dispute Resolution process. [Note the exact wording will be updated to reflect the outcomes of the GDR Subcommittee.]*

### **Intermunicipal Agreements**

Intermunicipal cooperation is broadly described in Sections 60 and 61 of the MGA under Part III- Powers. The GDR Subcommittee recommends the following amendment to section 60. The ‘may’ in subsection 3 should be replaced by a ‘shall’ (as emphasized below) to ensure agreements are complete and include provisions for dispute resolution:

- (3) *An agreement made by a municipality or village pursuant to subsection (1) **shall** include*
- (a) *a description of the services to be provided pursuant to the agreement;*
  - (b) *the area for which the services are to be provided;*
  - (c) *how and by whom the services are to be provided and administered;*
  - (d) *how the cost of services, both capital and current, is to be paid, the proportions of the cost to be paid by each party to the agreement or a method of determining those proportions, when the respective shares are to be paid and a rate of interest payment in default of payment;*
  - (e) *where the power to provide the service is delegated to a committee, whether the committee to which for the service is delegated is a separate body corporate, and the corporate powers that it may exercise;*
  - (f) *the ownership of any capital assets to be created under the agreement;*
  - (g) *provision for the disposition of a capital asset before or at the termination of the agreement;*
  - (h) *provision for the sharing of any liabilities before or at the termination of the agreement;*
  - (i) *provision for amending, reviewing or terminating the agreement;*
  - (j) *provision for resolving disputes among the parties to the agreement*

(k) such other terms and conditions as the parties to the agreement may determine.

---

## **GOVERNANCE CHANGES**

---

Implementation of the Towns Task Force recommendations has proceeded alongside the Provincial Municipal Fiscal Review (PMFR), another joint initiative examining opportunities to improve municipal finance powers, governance structures and funding programs. There is significant overlap between the recommendations of the PMFR and TTF in relation to municipal governance. The goal of achieving sustainable municipal structures is shared by both initiatives:

***Goal 2: Governance changes may be necessary to achieve viability, and legislation and programs should support this.***

The timing of these initiatives is such that the PMFR had provided their recommendations in advance of the Governance and Dispute Resolution subcommittee addressing the TTF recommendations pertaining to this goal. In order to avoid duplication of effort, this subcommittee reviewed the PMFR recommendations to determine if the TTF tasks were adequately addressed, or where additional work was necessary.

After much discussion, the GDR subcommittee agreed, by motion, that the governance recommendations, originally tasked to this subcommittee would be more appropriately handled by PMFR. This decision was made on the basis of timing: PMFR had already developed a comprehensive approach to governance changes. The GDR subcommittee was satisfied with their proposal and wished to avoid a duplication of effort.

### **Recommendation 5: Amend Legislation to Enable Commissioner**

Establish new provision in the Municipal Government Act to enable the appointment of a Commissioner to oversee municipal governance change. These provisions should include matters such as the role, powers and duties of the Commissioner, and include what type of studies and consultation must take place. The Commissioner should be responsible for carrying out a study, with public engagement as part of the process. If the study recommends change and all parties agree to move forward, an agreement would be prepared and agreed to. This would include financial and other issues associated with the transition. The agreement itself would be ratified by the Province and the union of the municipalities would take place through Provincial action. (This is similar to the process to establish regional municipalities.)

**Outcome:** A commissioner, as recommended above, would serve two major functions: First, determining what studies and consultation are necessary to inform a decision to change governance structures. Second, in cases where a municipality chooses to pursue a change in governance, the commissioner would coordinate this transition.

The subcommittee agreed that this first role of a commissioner, to inform a structural change through studies, is largely addressed by comprehensive review, recommended by the Fiscal Review. In cases where a municipality exceeds a threshold, based on the Financial Conditions Index (FCI), a comprehensive review and public consultation will be conducted by a consultant or panel of experts.

In terms municipalities agreeing on a plan to move forward following a review, the process recommended by PMFR would require all affected municipalities submit an Action Plan outlining how the identified outcomes would be met. When multiple municipal units are coordinating their Action Plans, mediation may be used to facilitate an agreed upon plan. This plan would then be ratified by a Ministerial Order.

**Committee Recommendation:**

The process developed by the PMFR will satisfy recommendation #5. However, the committee does recommend the following addition:

The panel of experts should include a mix of experience and expertise including former/current elected officials, retired/current CAO's, municipal finance experts and governance experts. Particular indicators with low scores will dictate type of experts required.

---

**Recommendation 6: Appointment of Commissioner**

Provide for the appointment of a Commissioner in one of two ways, depending on whether all the municipal parties involved agree that a governance change review process is the best way forward.

6.1 Parties Agree – If the municipalities agree that a governance change is the best way forward, then these parties should be empowered to appoint a Commissioner. The overall role of the Commissioner would be to review the request and facilitate an agreement among all the parties.

6.2 Parties Do Not Agree – In cases where one party believes change may be required but the other does not, the municipality that does wish to consider the governance changes should be able to request that the UNSM appoint a Commissioner. The UNSM will establish a committee to set criteria and qualifications for commissioners. All parties would be invited to the table and all information shared. The aim of the process is still to reach a solution that meets the needs of the both municipalities and to come to an

agreement. After the work of the Commissioner is finished and if no agreement has been reached, the Commissioner or one of the municipalities may submit the report to the UARB for further action. Costs associated with the Commissioner should not be the responsibility of municipalities that are not in agreement with the governance review.

**Outcome:** The Structural Review Process, as recommended by the PMFR, encourages municipalities to voluntarily request a viability review. In other cases, when a review is triggered by a FCI threshold, all impacted municipalities will be included. In either case, the review will provide a list of outcomes that will be required for municipal viability.

Following such a review, all impacted municipalities will submit an action plan outlining the ways of achieving these outcomes. Mediation is explicitly encouraged in developing a plan that is mutually beneficial to all impacted municipalities. If these municipalities decide that a governance change is the best course of action, the PMFR process does not define the transition process, or the appointment of a Transition Coordinator. As such, the GDR Subcommittee recommends that this appointment be agreed upon by all impacted municipalities.

**Committee Recommendation:** The GDR Subcommittee agrees that PMFR structural review process satisfies recommendation #6, provided the following recommendation is adopted: If Province determines a Commissioner or Transition Coordinator should be appointed to look at governance, all impacted municipalities must agree to the appointment.

---

## Recommendation 7: Best Practices & Templates

Assemble best practices materials and create templates from lessons learned with respect to past experience on governance changes and keep these up to date.

**Outcome:** The PMFR committee has not identified which elements of comprehensive reviews & action plans will be public documents. There may be some benefit to sharing the success and challenges of going through this newly developed process.

**Committee Recommendation:** In the case where a town wants to relinquish its charter, Fiscal Review should undertake further research to ensure some level of autonomy for the former town. This may be achieved through establishing a Business Improvement District (BID) to promote economic development in the downtown.

## Recommendation 8: Provincial Cost Sharing

The Province should provide programs to share with the costs of the Commissioner and the transition and to assist in this process overall.

**Outcome:** The PMFR has recommended that the Province develop a comprehensive suite of financial support programs to assist any municipality initiating a consolidation process. The recommendation is to remove the financial disincentive to the municipality that receives the dissolving unit.

**Committee Recommendation:** The GDR Subcommittee is satisfied that the financial assistance outlined in the PMFR process satisfies recommendation #8.

---

## Recommendation 9: Town to Village Status

The MGA should be reviewed to determine if there is merit in providing an easier process for a town to revert to village status, while maintaining provisions for a rural municipality to have input into the decision making.

**Outcome:** The opinion of the Fiscal Review committee is that since the MGA came into force in 1999, villages have become an inefficient level of government that create administrative redundancies.

**Committee Recommendation:** The GDR subcommittee has determined that an easier process for reverting a Town to Village is not appropriate in the context of PMFR recommendations.

---

## Recommendation 10: Other Governance Forms

There are different governance forms in other jurisdictions than those which exist in Nova Scotia. In the longer term there should be studies undertaken to look at the merits of creating a new type of municipality to meet the needs of Nova Scotians.

**Outcome:** The jurisdictional scan of municipal structural reform included in the Structural Review options paper examines alternative forms of governance and representation, including two-tiered local government. The general findings are that there has been a shift towards regional cooperation, but two tiered systems have generally been eliminated in Canada.

**Committee Recommendation:** The subcommittee has determined that the research conducted under the PMFR satisfies recommendation #10.

---

---

## APPENDIX A: PROPOSED NOVA SCOTIA INTER-MUNICIPAL MEDIATION INITIATIVE

---

### Overview

The Nova Scotia Inter-municipal Mediation Initiative (NSIMI) is a provincial program that encourages the use of mediation to resolve inter-municipal conflicts, rather than referring issues to higher authorities such as the Utility and Review Board or the Province.

Where appropriate, NSIMI provides for a cost-sharing arrangement between municipalities and the Province. **The Department of Municipal Affairs may cover 1/3 funding for mediation services up to a (yet to be determined) maximum per distinct dispute.**

### What is Mediation?

Mediation is a powerful tool for tackling disputes creatively and privately, allowing parties in dispute the opportunity to reach a mutually acceptable agreement themselves, with the assistance of a trained mediator.

### Who is the Mediator?

The mediator is a neutral third party with no prior connection to the dispute. The mediator is not an advocate for either side, and is not a judge or arbitrator. No outcome is imposed on anyone. Instead, the mediator relies on specialized training to help the parties get their interests on the table and then negotiate solutions to meet those interests.

### The Service

NSIMI is a service entered into voluntarily by municipalities who feel a neutral third party could help them negotiate an agreement. Municipal Advisors from the Department of Municipal Affairs will help municipalities assess whether mediation is appropriate in a given situation, and can then help convene the process and ensure all the prerequisites are in place.

Municipalities contract directly with private mediators for their services. To facilitate this process, a roster of qualified mediators will be developed by the NSIMI committee and comprised of provincial and municipal officials (herein known as the "Committee"). Municipalities must agree on a mediator from the roster provided.

Provincial staff will assist municipalities in completing the necessary forms to access grant money.

The service can be accessed at any time, regardless of the level of conflict escalation.

### **Municipal Issues that can be Resolved through Mediation**

NSIMI can address a wide range of inter-municipal issues, which include but are not limited to the following:

#### *Land Use Planning*

Section 259 of the MGA states that with respect to land use planning, a municipal council may, at any time before a decision is made, use mediation, conciliation or other dispute resolution methods to attempt to resolve concerns or disputes.

#### *Cost Sharing*

Cost-sharing is becoming increasingly commonplace as municipalities seek to achieve efficiencies by working together to provide services to residents. In cases where there are differences of opinions concerning how costs can be shared, or where difficulties arise in negotiations, municipalities are encouraged to seek the services of a trained mediator. Mediations addressing these issues are eligible for support under the Inter-municipal Mediation Initiative.

#### *Service Provision*

Disputes can arise in areas where municipalities have joined together to provide services on a regional basis such as fire protection, water or sewer services. Mediation services are available to the parties to assist in resolving these disputes and to create inter-municipal cooperation protocols.

### **Accessing Trusted Mediators**

The Province will maintain an up-to-date electronic roster of approved mediators (the “Roster”) as prepared by the Committee.

### **Getting on the Mediator Roster**

Mediators on the Roster are required to have:

- A Qualified Mediator (or “Q. Med”) designation in good standing, or a Chartered Mediator (“C. Med”) designation in good standing (*the C. Med denoting more mediation experience than the Q. Med.*), each from the ADR Institute of Canada; **or**

- Subscribed to a code of ethics or conduct of a relevant professional association or society, have completed training in interest-based conflict resolution at least equivalent to the current minimum requirements for the Q. Med designation (which are currently set out at <http://www.adrcanada.ca/resources/qmed.cfm>) and have documented mediation ability, all to the satisfaction of the provincial-municipal committee (sometimes, the “Committee”); **and**
- Knowledge of the *Municipal Government Act* to the satisfaction of the Committee; **and**
- Three (3) references satisfactory to the Committee.

Provision will be made by the Committee to grandfather individuals to the Roster, on a case-by-case basis, who, by their past history, have demonstrated an ability to assist Nova Scotia municipal governments in resolving disputes. The Committee may also consider current or former municipal elected officials and staff who have demonstrated experience in dealing with inter-municipal conflict or disputes.

The Committee will evaluate applications to ensure mediators meet the above criteria. If selected, the mediator must submit an electronic copy of her or his resume to the Committee, which will be placed on the electronic Roster.

## APPENDIX B: ALTERNATIVE DISPUTE RESOLUTION DECISION TREE

