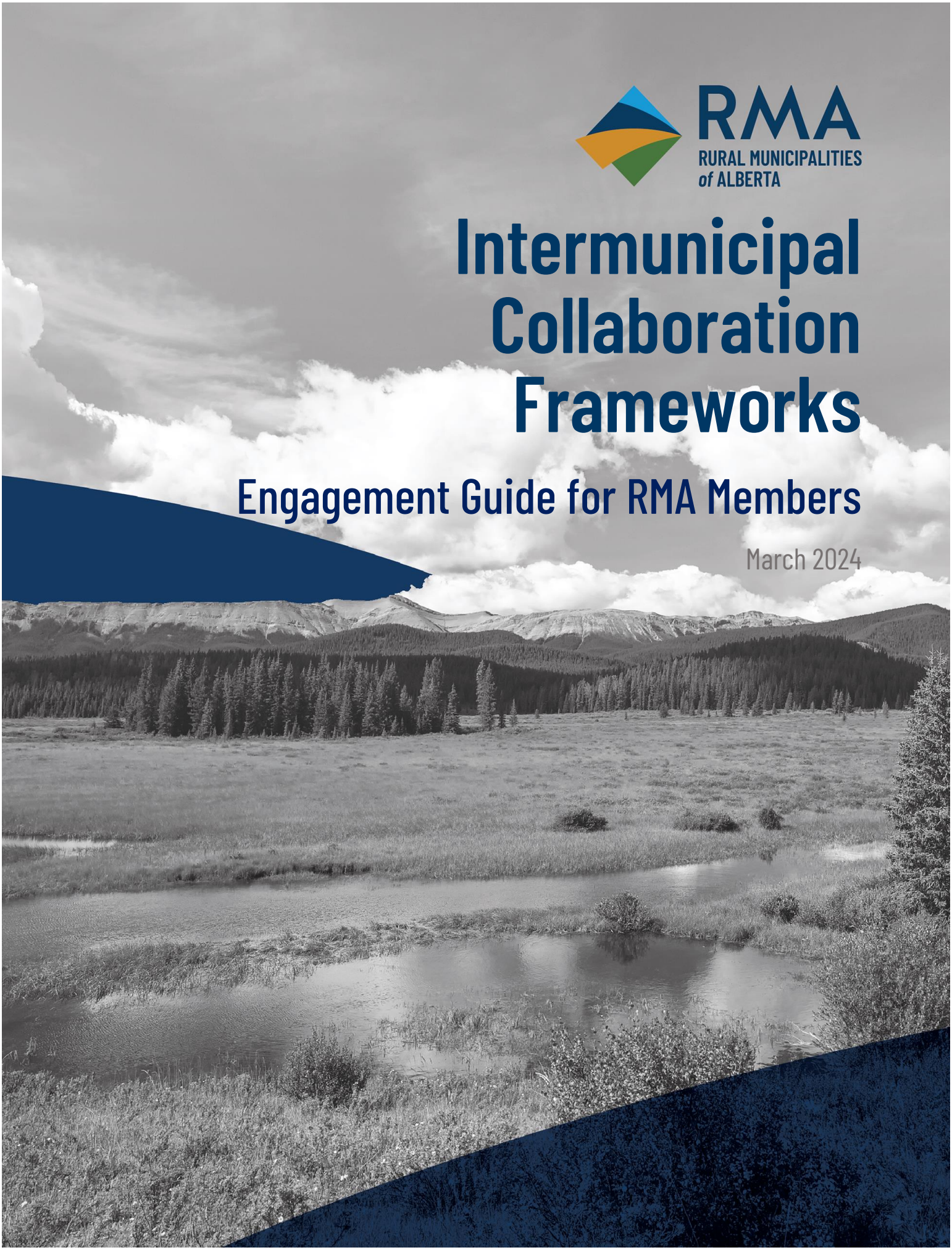

RMA
RURAL MUNICIPALITIES *of* ALBERTA

Intermunicipal Collaboration Frameworks

Engagement Guide for RMA Members

March 2024

Introduction

The *Municipal Government Act* (MGA) requires all municipalities that share a border (with the exception of those that are members of the same growth management board) to complete an intermunicipal collaboration framework (ICFs). ICFs are intended to support intermunicipal collaboration in service delivery through strategic allocation of funding and resources.

The original deadline for the completion of ICFs was April 1, 2020. This was subsequently extended to April 1, 2021, with the deadline for the completion of ICFs requiring arbitration set for April 1, 2022. The MGA requires municipalities to review ICFs every five years. A Ministerial Order extended the review deadline to seven years. The Ministerial Order expires in 2027, at which time the five-year review period would take effect unless legislative changes occur prior to that point.

As ICF agreements are currently complete (with the exception of a small number still undergoing a judicial review) and the majority of agreements are not yet subject to review and possible renegotiation, Alberta Municipal Affairs has launched an engagement process to consider municipal input on possible changes to the ICF process.

RMA position and member resolutions

Over the past decade, RMA has provided significant input to Municipal Affairs regarding ICFs. This includes during initial design, during the negotiation process, following the initial agreement deadline, and following the deadline for arbitration decisions.

RMA's feedback to Municipal Affairs has always been based on a general argument that while ICFs are a potentially effective tool in supporting regional collaboration on service delivery in circumstances where partnering makes sense and is beneficial to both municipalities, the process must be designed in a way that prevents manipulation of the process by either party. This could include misrepresenting service usage or financial data, using threats of changes or elimination of other agreements as leverage to receive enhanced support for a certain service, intentionally withdrawing from good faith negotiations to force an arbitration process, and others. Unfortunately, while the majority of ICFs were completed on-time and strengthened the relationship between neighbouring municipalities, those that did not go well showed that the current process includes gaps and loopholes that municipalities can take advantage of to undermine the collaborative intent of the ICF process. If ICFs are to develop into core municipal planning documents in the future, these gaps and loopholes must be addressed.

In addition to RMA's general perspective on ICFS, RMA members have passed two related resolutions:

ER1-23F: Limiting Third-party Services in ICF Agreements

> THEREFORE, BE IT RESOLVED THAT the Rural Municipalities of Alberta (RMA) advocate to the Government of Alberta (GOA) that third-party services should not be included in intermunicipal collaboration frameworks (ICFs) and should be left to each ICF negotiation partnership to determine external to the ICF process;
>
> FURTHER BE IT RESOLVED THAT the RMA advocate to the GOA to limit the funding demands by urban municipalities, particularly when these demands arise from their independent decisions and are based on an assumption that rural municipalities will subsidize a portion of their costs or shortages.

7-22F: Intermunicipal Collaboration Framework Reform

> THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta (RMA) request the Government of Alberta amend the Municipal Government Act to define "core municipal services" for the purpose of intermunicipal collaboration frameworks and mandate that municipalities present verifiable costs to justify cost sharing for the aforementioned defined core municipal services;
>
> FURTHER BE IT RESOLVED that the RMA request that the Government of Alberta ensure that members of a growth management board are not required to enter into an intermunicipal collaboration framework with each other.

Engagement process

At this point, the engagement process consists of an online survey. The survey includes a series of close-ended questions on the following ICF themes:

- Intermunicipal services to be included in an ICF
- ICF agreement duration
- Cost calculations
- Mediation and arbitration
- Enforcement

There is also an opportunity for open ended responses at the conclusion of the survey.

RMA is aware of targeted in-person engagement sessions scheduled with municipal administrators associations. In discussions with Municipal Affairs staff, RMA has learned that there may be additional engagement following the survey depending on the results, but this is still to be determined.

How to use this guide

This guide is intended to support RMA members in participating in the ICF engagement process, but is not intended to direct members to answer individual survey questions in a specific way.

Instead, the guide provides an overview of existing RMA positions for each of the five survey themes, as well as questions municipalities should consider when selecting answers to questions within each theme. In some cases, the guide may identify specific question response options as posing a high risk for negative impacts on rural municipal service delivery, finances, or governance, but for the most part, the guide will be framed around themes rather than questions.

Note that the survey questions are quite narrow and do not address many aspects of the ICF process that RMA considers most important. Members are encouraged to utilize the final question ("Do you have anything else you would like to share about ICFs?") to emphasize some of the points and issues outlined in this guide, existing resolutions, and their own local priorities that may not fit within the core survey questions.

Ongoing RMA Support

For specific questions about this guide, the engagement process, or how RMA can support members, please contact RMA General Manager of Policy and Advocacy Wyatt Skovron at wyatt@RMAlberta.com.

Theme 1: Intermunicipal services to be included in an ICF

Overview

Currently, the MGA does not define a "service" for the purpose of ICFs or include a list of services that must, may, or may not be included within ICFs. This open-ended approach to service definition is intended to allow maximum flexibility for the municipalities participating in the ICF negotiation process to identify the services that make sense to them, rather than work through a pre-determined suite of services that may not necessarily be well-suited to a regional approach in each local context.

Currently, the MGA's reference to services is quite limited. S. 708.29(1) states that

> A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

While a lack of definition or scope of services has benefits in maximizing the flexibility of individual ICF negotiations, it also risks creating an overly complex or adversarial process if each participating municipality has a different view on how a service should be defined and whether a given service has intermunicipal relevance.

The MGA is currently silent on the inclusion of third-party services. This was a point of confusion and conflict in many ICF negotiations.

RMA Position

In general, RMA has taken the position that the current lack of "service" definition and scope has significantly more risks than benefits for municipalities. RMA's 2022 ICF member survey found that approximately one-third of respondents viewed the scope of services introduced into ICFs by urban neighbours to be unreasonable. Within the context of ICFs, "unreasonable" services are typically those lacking any clear intermunicipal purpose or attempts to label a piece of infrastructure as a service without considering how and to what extent it is used.

Among those that dealt with unreasonable service expectations during ICF negotiations, most identified a lack of legislative clarity around what defines an intermunicipal service as the primary reason for unreasonable services being inserted into the negotiation process. Some specific examples of unreasonable services that RMA members encountered from municipal neighbours during negotiations include:

- Capital costs associated with roads within the neighbouring municipality because they are driven on by rural municipal residents.
- Capital costs associated with general infrastructure within a neighbouring municipality's commercial district because the commercial district is visited by residents of the neighbouring municipality for shopping, etc.
- Capital costs associated with upgrading railway crossings within the core of the neighbouring municipality because the train using the tracks transports natural resources extracted from the rural municipality.

Based on this finding, RMA has taken the position that "service" should be defined within the MGA for the purposes of intermunicipal collaboration frameworks.

In addition to defining a service (or perhaps what is not a service), there is value to amending the MGA to include a list of core services that must be addressed in an ICF. This was originally included in the MGA but was subsequently removed with the intent of simplifying the process for municipalities by allowing them to identify

the services worth discussing rather than requiring adherence to a default list. The original list included the following services:

- Transportation
- Water and wastewater
- Solid waste
- Emergency services
- Recreation
- Any other services that benefit residents in more than one of the municipalities that were parties to the framework.

Unfortunately, in some cases, the removing this list has led to a more complex process as a lack of legislative guidance led to some municipalities simply forcing a discussion of every service they deliver (and in some cases non-service items) in an effort to "see what might stick." Re-inserting a legislated list of core services to discuss should have the effect of grounding discussions, and combined with a legislated definition of "service," should ensure that any negotiations on services not in the list are based on a reasonable level of proof and justification that they may have an intermunicipal dimension.

RMA has also taken the position that third-party services (such as libraries, non-profit delivered recreation or social services, etc.) should not be allowed within ICF negotiations. While there is no reason municipalities cannot work together to support these services, an ICF is specifically intended to focus on bilateral collaboration among municipalities. Including third-party services requires including non-municipal entities into the ICF process, which will lead to confusion in terms of negotiations as well as accountability related to implementing the agreements.

Questions to Consider

- What is the right balance between local autonomy and provincewide standardization in defining services for the purpose of ICFs?
- How can legislation or the negotiation process be changed to minimize the risks of one municipality forcing a discussion of an item that is obviously not a service or not intermunicipal in scope?
- If a list of standardized services is returned to the MGA, is the previous list adequate? Are more services required? Should some services be removed?
- How can the process ensure that recourse is available if there is significant disagreement about whether a service is valid within the ICF negotiation context?

Theme 2: ICF Agreement Duration

Overview

Although the current maximum ICF agreement is seven years, this is based on a Ministerial Order that expires in 2027. Section 708.32(1) states that

> The municipalities that are parties to a framework must review the framework at least every 5 years after the framework is created, or within a shorter period of time as provided for in the framework.

While this section sets a mandatory maximum duration for when ICFs must be reviewed and renegotiated, it also states that the ICF may be reviewed at any point upon agreement by all parties. ICFs also may have shorter review periods included as an agreement within the ICF itself.

RMA Position

Assuming municipalities continue to have the ability to review an ICF when needed if all parties agree, RMA supports amending the MGA to require review every seven years. This will allow adequate time for collaborative approaches developed during the ICF process to be implemented, and will reduce the frequency or likelihood of sudden politically-motivated changes linked to elections and council turnover.

Questions to Consider

- How much time between reviews is required to determine whether implementation of agreements is successful?
- Should municipal election years be a consideration in when ICFs are reviewed?

Theme 3: Cost Calculations

Overview

A key aspect of ICF negotiations are determining how the costs of delivering intermunicipal services are divided among the municipalities within an agreement. The MGA has minimal references to cost calculations, aside from s. 708.29(2), which states that

> In developing the content of the framework, the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

Similar to the section on services, the MGA alludes to costs being an element of ICF development, but provides no guidance, restrictions, or methodology as to how costs should be determined.

RMA Position

RMA does not support a prescriptive methodology to allocate costs among municipalities within an ICF. There is simply too much diversity among municipalities, and too many locally-driven determiners of cost and service need to assume that a single metric or methodology could equitably distribute service delivery costs on a provincewide basis.

RMA has taken the position that a legislated standard is required for the quality of data municipalities use as proof of their current service delivery costs and service level requirements. RMA members reported several instances of neighouring municipalities relying on anecdotes, assumptions, or poor quality data to determine service cost baselines. While this was often done due to no other alternative being available, it made meaningful negotiations extremely difficult as there was no way to verify the submitted costs, leading to a loss of trust and in some cases a sense that costs were being exaggerated or even fabricated. Requiring municipalities to track their own service costs and service levels based on a pre-determined methodology, or to a certain standard (quantifiable, verifiable, etc.) would ensure that data quality and accuracy is no longer an issue moving forward, and that municipalities can focus on negotiating the proper methodology for determining proportional responsibility for costs, rather than on debating what the actual costs are.

Questions To Consider

- How would a prescribed methodology for determining cost-sharing requirements impact ICF negotiations at the local level?
- Are there other methods, best practices or legislative requirements that could help standardize service level and cost sharing methodology aside from those proposed in the survey?
- If increased expectations are placed on municipalities to provide data-driven service level and cost information as part of the negotiation process, what capacity or funding support is required to ensure that small municipalities can develop this data? What broader benefits would this requirement have?

High Priority Response

Although the “cost calculations” section only includes one question, some of the options given as a possible response are quite problematic, and swerve far from the original intent of ICFs, which is to focus on collaborative service delivery. RMA is particularly concerned about the options within the question for “equalized assessment” and “population (i.e., cost per capita)” as potential determiners of the portion of service delivery costs assumed by each municipality within an ICF.

Were one or both of mechanisms to be implemented, the outcomes could be extremely problematic for rural municipalities. While there is no detail as to how either would function, history suggests that equalized assessment would be used as an indicator of municipal fiscal capacity, and municipalities with higher fiscal capacities would be required to fund a larger share of service costs. Population would likely be used in the opposite way; those with a higher population within a given service area (typically an urban municipality) would likely receive a larger share of funding from lower-population neighbours (because there are virtually no urban-to-urban ICFs, this would almost always result in the rural municipality contributing to the urban municipality).

While considering how the two metrics would actually be translated into methodology requires speculation, both would shift the ICF process from a discussion and eventual collaboration on the service levels and costs to essentially a revenue-sharing exercise, where one municipality pays a portion based on a metric with only a partial (and typically complex) link to actual service needs. RMA has long argued that revenue-sharing is not an ideal form of collaboration (although it may work in some local circumstances) because it does not require a critical conversation around how shared revenue is used, how services are delivered, how costs are measured, etc.

With this in mind, RMA strongly recommends that members do not select equalized assessment or population as responses to question #9 in the survey. As mentioned, RMA plans to provide input recommending that standards be applied to how each municipality presents data in advance of negotiations, rather than a prescriptive method of calculating actual cost proportions. However, if a member believes that requirements around cost calculations would be beneficial, RMA suggests selecting “mutual agreement by municipality, based on a specific service,” as this will allow for a continued local dimension to ICFs.

Theme 4: Mediation and Arbitration

Overview

The MGA provides significant and specific direction on the ICF arbitration process. As the MGA does not provide the same specifics around mediation, this section will focus on arbitration.

The MGA (s. 708.34) outlines several circumstances in which municipalities must use arbitration to finalize an ICF. This includes when they are unable to agree to an ICF within the legislated review timeframe, when there is disagreement as to whether the ICF still serves the parties' interests during the review process, or when the internal dispute resolution process within each ICF has not led to the resolution of a dispute within one year of beginning.

The MGA outlines the powers of the arbitrator and the timeline by which an arbitration must be resolved, either through agreement by the municipalities or by a decision of the arbitrator. S. 708.38(1) outlines that matters that the arbitrator may consider, which includes the following:

- the services and infrastructure provided for in other frameworks to which the municipalities are also parties,
- consistency of services provided to residents in the municipalities,
- equitable sharing of costs among municipalities,
- environmental concerns within the municipalities,
- the public interest, and
- any other matters that the arbitrator considers relevant.

The municipalities are required to amend their bylaws and adopt an ICF consistent with the arbitrator's ruling.

Unless the parties agree on how the costs of the arbitrator are distributed or the arbitrator makes a specific ruling on costs, s. 708.41(2) states that the proportion of arbitrator costs assumed by each municipality is based on their comparative proportion of equalized assessment.

The MGA does allow arbitration appeals, but only on issues of jurisdiction (s. 708.48(5)).

RMA Position

While the majority of ICF negotiations did not result in arbitration, municipalities that did require an arbitrator reported significant concerns with the arbitration process. In fact, 25% of respondents to RMA's ICF member survey indicated that they agreed to an ICF with terms they were uncomfortable with to avoid the risk of arbitration. Multiple issues contributed to rural municipal arbitration concerns. Firstly, the arbitration cost allocation formula's reliance on equalized assessment means that in most cases, rural municipalities are responsible for most of the costs of arbitration, as well as their own legal costs. Secondly, the MGA gives the arbitrator wide latitude in reaching a final decision, as well as on considering issues or information that was not the subject of the original negotiation between the parties. In other words, once a negotiation reaches arbitration, the arbitrator can essentially consider any issues they deem relevant, and decide on any final outcomes that they deem appropriate (with a few exceptions outlined in the MGA). As rural municipalities are typically the party responsible for contributing to costs of services delivered by the urban municipality, this places them in a position of high risk during arbitration, as an arbitrator could reach a decision based on a rationale or methodology not discussed during the negotiation that could have major fiscal impacts on the rural municipality.

Rural municipalities that did participate in arbitration reported instances of this issue, in part because arbitrators tended to lack an understanding of municipalities, and in particular rural municipal cost drivers, service levels, and fiscal challenges, and often assumed that any service available in an urban municipality should be equally contributed to by a rural neighbour even if such a service was not historically available or fiscally feasible to offer in a rural context.

Based on these member concerns, RMA has several existing positions relating to the ICF arbitration process, including the following:

- Municipalities should not be permitted to introduce services into the arbitration process that were not addressed in the initial negotiation process.
    - This will mitigate the risks of municipalities adding new services to increase the costs of the actual arbitration process or to treat arbitration as a "cash grab" opportunity.
- Arbitrators should be required to demonstrate a certain level of municipal experience or complete municipal-specific training.
    - While arbitrators are highly skilled in the actual arbitration process, municipal issues are nuanced and require technical background in municipal legislation and governance. Ensuring arbitrators have some level of municipal training will mitigate the risk of real or perceived arbitrator bias.
- The portion of arbitration costs paid by any one municipality should be capped.
    - While there is merit to linking arbitration costs to a municipality's ability to pay, there also must be some level of accountability on the part of all municipalities for not reaching an agreement during negotiations. Capping the portion of costs assumed by either municipality at 90% will ensure that both municipalities have a stake in the arbitration process, and an incentive to have the process proceed as efficiently as possible.
- The arbitration appeal process should be broadened.
    - RMA members reported instances of arbitrators relying on anecdotal evidence or assumptions to make decisions with significant fiscal impacts. Given the stakes involved, if a municipality believes that the arbitrator misused or misinterpreted information, they should have an opportunity to seek an appeal.

      While an expanded appeal process would improve fairness and transparency, there are risks that appeals could be used to obstruct the completion of the process. For this reason, shifting the initial appeals process for issues related to interpretation and weighing of evidence away from the Court of Queen's Bench toward the Minister or a third party quasi-judicial panel may allow for such appeals to initially be screened to avoid spurious or unmerited complaints, with those deemed valid forwarded on to the Court of Queen's Bench.

Questions to Consider

- How can the arbitration process be modified to better distribute the risks and benefits of arbitration to all involved parties?
- What is the appropriate scope for an arbitrator? Should requirements for evidence and data be the same or different in arbitration compared to the initial negotiation process?
- Are there any cases in which an arbitrator should be permitted to consider issues not raised during initial negotiations? If so, why?

Theme 5: Enforcement

Overview

The MGA gives the Minister significant powers to ensure compliance with ICFs, particularly in the case of arbitrated outcomes, and conduct enforcement in cases where municipalities refuse to implement requirements in the agreement. The Minister may also establish a binding framework upon two or more municipalities.

S. 708.43(3) lists the enforcement actions that a Minister may take, which include suspending the authority of a council to pass bylaws associated with any matter in the agreement, withholding grants to the municipality, and others.

RMA Position

RMA has not taken a position on the scope and processes of the Minister's enforcement powers. It is important to note that the questions in the survey focus on giving the Minister more authority in relation to taking action to force a municipality to implement an arbitrated decision that they disagree with. It is crucial that municipalities are not required to comply with an arbitrator's decision if it is still subject to an appeal, as the costs and administrative impacts of complying could be significant, and reversing them may be difficult for both municipalities if the arbitrator's decision is overruled by the Courts.

Questions to Consider

- How can the legislation balance ensuring municipalities abide by arbitrated decisions with allowing appeals to play out in the Courts?
- If the Minister is given the ability to overrule or dismiss a decision of an arbitrator, if and how should the Minister be required to justify this decision?

High Priority Response

Question #14 considers giving the Minister significant power to make decisions on behalf of municipalities. Some of the options presented would not only infringe on municipal autonomy, but may allow the Minister to force municipalities to implement arbitrator decisions while appeals have not yet been ruled upon. Some urban municipalities have advocated for this change, and RMA is concerned that if implemented, it would prevent appeals due to the challenges associated with potentially implementing and subsequently reversing ICF elements.

Question #15 contemplates whether the Minister should be able to overrule an arbitrator's decision if they view it as having an unfair impact or overreach the legislated provisions of ICFs. Enabling this may partially offset the risks inherent with arbitration outlined in theme 4, but it would likely require an especially outrageous situation for the Minister to Act on this power. While RMA recommends that members support this power, they should emphasize that it be implemented in combination with changes to the arbitration process.

Other Themes

Given the narrow parameters of the survey, there are other priority positions that do not align with the survey questions, but that members should consider emphasizing in an open-ended response to question 16. These include the following:

Define a scope or threshold for "intermunicipal"

The lack of structure related to how intermunicipal benefits are defined or quantified led to the inclusion of services with questionable or unproven intermunicipal benefits into some ICF negotiations. Without a definition or threshold as to when a particular service can be considered intermunicipal in nature, ICF negotiations are at high risk for manipulation. It is important to note that in most cases, both municipal partners could easily agree on whether a particular service provided notable benefits across municipal boundaries, but in cases where agreement is not reached, the parties involved (or arbitrator) must have some sort of threshold to measure a proposed intermunicipal service against. This could potentially include verified service usage data indicating a significant level of regional usage, a documented history of both municipalities discussing or planning for the service, or other methods.

Municipalities should be required to include consideration of how shared input is provided for shared services

ICFs focus primarily on how and to what level services are provided across municipal boundaries, and how costs for delivering the service are divided. What is absent in both the ICF development and arbitration processes is any requirement to consider if and how decision-making related to shared services should be determined. In many cases, both municipal partners are comfortable leaving decision-making around how a particular service is delivered to the municipality that already provides it, with the other municipality simply providing a set monetary contribution to recognize the fact that its residents access the service. However, in some cases reported by RMA members, the contributing municipality was uncomfortable with how a particular service was being delivered and the associated costs in delivering it.

From the perspective of rural municipalities, which in most cases are responsible for contributing to services delivered by urban municipalities but accessed to some extent by rural residents, it is quite problematic to expect contributions without any consideration of a corresponding portion of input into service level determination and service delivery mechanisms. Some examples of this issue include rural contributions to urban-delivered recreation services, after which the urban municipality increased user fees for rural residents without consulting with the rural municipality. In this case, the rural municipality viewed the urban municipality as "double-dipping" by using an intermunicipal tool to gather contributions directly from the rural municipality, and using local decision-making to further increase their revenues directly from rural residents. If the rural municipality is contributing to the service at a level proportionate to its residents' usage levels, they should expect to have input into the service at a similar proportion, and at the very least an assurance that its residents will have equitable access. Under the current structure there is no requirement that municipalities even discuss decision-making collaboration, which places the contributing municipality at great risk in comparison to the municipality responsible for delivering the service.