

TOOL H

ICF COMPLETION DISPUTE RESOLUTION OPTIONS



PURPOSE: To assist two or more municipalities to understand and determine the most appropriate dispute resolution option(s) to support completion of their ICF.

DISPUTE RESOLUTION

Municipalities have six broad dispute resolution options during the ICF process:

- i. **Negotiation without third-party assistance**
- ii. **Facilitation**
- iii. **Mediation**
- iv. **Mediation-Arbitration (Med-Arb)**
- v. **Voluntary Arbitration**
- vi. **Mandatory Arbitration**

Answering the questions below will help a municipality determine what dispute resolution process may be best suited to their ICF negotiation process. Use your answers to the questions to help inform your completion of the checklist found later in this tool.

- 1 A major indicator of the extent to which your negotiation may require external dispute resolution support is the pre-existing relationship between the municipalities involved:
 - i. Do the municipalities have a history of tension in regional land use and service delivery discussions?
 - ii. Do the municipalities have a history of collaboration?
 - iii. Do the “personalities” involved in negotiations have a history of approaching intermunicipal planning in a collaborative or combative manner?

PLEASE NOTE

It is critical to jointly determine the most appropriate dispute resolution option(s) at the outset of the ICF process as this will ensure the most efficient use of time and resources to address your ICF issues.

TOOL H

ICF COMPLETION DISPUTE RESOLUTION OPTIONS



2 The complexity of the services that require dispute resolution will inform the type of support needed:

- i. Do the municipalities have a history of successfully sharing services?
- ii. Are the services being discussed complex? Do service levels and costs vary widely between municipalities?

3 What information is needed to effectively deal with negotiations on the outstanding services that may require dispute resolution:

- i. How are the municipalities going to get the required information?
- ii. Do the municipalities have in-house resources and subject matter expertise, or will contracted resources or experts be needed?

4 If the municipalities are not able to reach agreement on some intermunicipal services by the deadline, how are those services going to be addressed?

TOOL H

ICF COMPLETION DISPUTE RESOLUTION OPTIONS



DISPUTE RESOLUTION OPTIONS CONSIDERATIONS AND CHECKLIST

Instructions

Individually review the dispute resolution options and check off the considerations or conditions that best reflect your municipality's ICF negotiations. Once both municipalities have reflected on the considerations, come to an agreement on what option(s) would best suit your situation.

i. Negotiation without third-party assistance

This option should be considered when all of the following apply:

- The services to be negotiated are:
 - Simple and straightforward
- The relationship has:
 - High levels of trust
 - History of agreement and collaboration
 - No previous intermunicipal disputes (i.e. land use, annexation, service delivery, etc.)
 - No personality conflicts

ii. Negotiation with third-party facilitator support

This option should be considered when some or all of the following apply:

- The services to be negotiated:
 - Are complex
 - Require a high level of capacity and expertise to analyze and evaluate
- The relationship has:
 - High levels of trust
 - A history of agreement and collaboration
 - No previous intermunicipal disputes (i.e. land use, annexation, service delivery, etc.)
 - No previous personality conflicts

PLEASE NOTE

Facilitator with mediation experience

- Hiring a facilitator who can also mediate is a good preventative measure to enable reaching consensus and agreement on issues so they do not escalate to a point that municipalities are not able to agree by the deadline of April 1, 2021.
- Having a facilitator who can mediate also allows for a seamless transition to resolving any disagreement that arises and saves on time, and, potentially, cost.



TOOL H

ICF COMPLETION DISPUTE RESOLUTION OPTIONS

DISPUTE RESOLUTION OPTION CONSIDERATIONS AND CHECKLIST (CONTINUED)

iii. Reach agreement through mediation

This option should be considered when some or all of the following apply:

- The services to be negotiated:
 - Are complex
 - Require a high level of capacity and expertise to analyze and evaluate
- The relationship has:
 - Medium to low levels of trust
 - A history of conflict relating to the service(s) to be negotiated
 - Previous intermunicipal disputes (i.e. land use, annexation, service delivery, etc.)

PLEASE NOTE

Recommendation: Engaging a mediator early in the process has proven to help prevent a conflict from escalating and increases the likelihood of reaching an agreement.

Intermunicipal mediation in Alberta has been used successfully for 20 years and has an 88% success rate of reaching agreement.

Mediator's Report

At the conclusion of the mediation, the mediator can provide a mediator's report on what issues the parties have reached an agreement on and for what issues disagreement remains. Municipalities should request a mediator's report at the outset of the mediation. The mediator's report will help the parties narrow the specific issues that may require arbitration, which will reduce arbitration time and costs. The mediator's report can also provide guidance to the arbitrator on the principles that were agreed upon in the mediation.

iv. Reach agreement through Med-Arb.

This option should be considered when there are similar conditions as listed above under Mediation, and the municipalities:

- Anticipate that one of the services or an aspect of a service might remain unresolved in mediation and will require an arbitrated decision
- Are comfortable having the same person that mediated the ICF process arbitrate the decision
- Want a quick transition to arbitration if needed

PLEASE NOTE

Interest Based/Facilitative or Transformative Mediation are effective options to use as part of the med-arb process. Interest based mediation tends to not require the parties to disclose "evidence", but rather focuses on the motivating factors behind the positions taken by the parties. Therefore, it can be very effective in the med-arb process. Interest based mediation tends to leave disclosure of evidence to the arbitration phase of the med-arb process which is easier to handle from a procedural fairness perspective.

Evaluative Mediation is not recommended for this process if the med-arbitrator is one and the same person. Evaluative mediation allows the mediator to voice their opinions regarding each party's case. Once this has been disclosed by the med-arbitrator, it is typically very difficult for the parties to see the med-arbitrator as a neutral decision maker for the arbitration. Mediators who choose to use evaluative mediation should seriously consider not arbitrating in a med-arb process.

TOOL H

ICF COMPLETION DISPUTE RESOLUTION OPTIONS



DISPUTE RESOLUTION OPTION CONSIDERATIONS AND CHECKLIST (CONTINUED)

v. Reach agreement through voluntary arbitration (before the required deadline of April 1, 2021).

This option should be considered when municipalities:

- Want full control of the arbitration process
- Want to vary the arbitration parameters as prescribed by the MGA
- Want to complete the arbitration before April 1, 2021
- Need a decision in order to implement a service before the legislative deadline of April 1, 2021
- Do not expect to reach agreement on a service or services through mediation

vi. Reach agreement through mandated arbitration required by the MGA after the April 1, 2021 deadline.

If municipalities are unable to approve an ICF by April 1, 2021, then the arbitration process outlined in **s708.34** of the MGA would apply. The arbitrator must be chosen by the municipalities, or if they cannot agree on an arbitrator, the Minister will choose the arbitrator. Arbitration ends if municipalities create an ICF by agreement at any time during the arbitration process.

SAMPLE TIMELINE FOR MUNICIPALITIES TO FILL IN

