

Resolving Municipal Conflict

MUNICIPAL ADR – Part 3

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In the last two issues we have looked at mediation and discussed its application to the municipal sector. From that perspective, we have suggested that mediation should be considered as the primary dispute resolution mechanism in a variety of conflict areas. In general, municipalities have to deal with the following types of conflict:¹

- ▶ council conflicts brought about by a variety of factors, from lack of a common vision for the municipality through poor or unclear decision-making process and interpersonal differences;
- ▶ inter-governmental conflict, which can include conflict with another municipality, the province or a local authority;
- ▶ disputes over contracts between the municipality and the provider of goods or services, such as computer services and construction contracts;
- ▶ employment disputes between the municipality and a union with respect to a collective agreement, or between management and other non-unionized employees;
- ▶ public policy disputes (of which land use planning is the prime example); and
- ▶ disputes about municipal administration, services and by-law enforcement, involving residents or businesses.

In many ways, the subject matter of conflict is not as important to the

long-term health of the municipality, and other parties, as the way in which it is resolved. Disputes are usually resolved in one of three ways: by a negotiated agreement; by adjudication; or by the exercise of power to force the other party to comply. Most disputes are settled through negotiation. But if that is not successful, or does not occur, the second and third alternatives are looked to as the means by which to resolve the matter. As indicated in earlier articles, the traditional approach to dispute resolution is rapidly changing as disputants seek more efficient and economic means of resolution. In addition, in the public sector, governments are promoting, and in some cases imposing legislative requirements requiring, alternative dispute resolution processes as part of a general move towards efficiency and cost reduction.

In this article, we will look at how mediation has been adopted and applied in specific municipal settings. Throughout North America, alternative dispute resolution is becoming part of legislation at all levels of government. The provincial governments have set up Dispute Resolution Offices within various ministries to promote appropriate dispute resolution.

Alberta Example

An example of one of the most comprehensive approaches to municipal mediation comes from the Province of Alberta, where the Ministry of Municipal

Affairs has set up a specific mediation service whose mission is to:

Promote public confidence in local government by providing effective and innovative leadership and support to municipal organizations by encouraging intermunicipal cooperation and self directed dispute resolution through mediation and/or related dispute resolution activities.²

The program was started in 1998 to deal with disputes that would normally go to the Municipal Government Board; however, in 1999 the *Municipal Government Act* was amended to require that municipalities attempt mediation before they were allowed to go the Board. Through this service, Alberta municipalities can access dispute resolution services to assist them in developing solutions to intermunicipal issues. While participation in the Intermunicipal Dispute Resolution Initiative is “voluntary,” it is truly “mediation in the shadow of the law,” with the provincial government in the background prepared to impose a resolution if mediation is unsuccessful or not used. If it is decided that mediation is appropriate process for the dispute in question, the parties make a written request for financial assistance to pay for mediation. When granted, the parties select a mediator from the Alberta Municipal

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1 See David C. Elliott, “Creative Collaboration: A sudden outbreak of common sense?” Article prepared for the 16th Elected Officials Symposium, Red Deer, Alberta, 15 June, 1994. Available at: <www.davidelliott.ca/papers/052.htm>.

2 <www.municipalaffairs.gov.ab.ca/ms/dispute/mediation/mission.cfm>.

Affairs roster, although they may also choose a mediator who is not on the list.

As in any other mediation, the parties then agree on the time frame, ground rules of behaviour, and the subject of the mediation in general terms. In the process, the parties, with the assistance of the mediator, decide on the problem to be resolved, and work to identify their respective underlying interests. This leads to the substantive components of a solution and, as importantly, a plan to implement the agreement. A key part of mediation in this program is the identification of an appropriate alternate dispute resolution process to be used if future disagreements arise. By helping municipalities work through intermunicipal disputes, mediation creates a cooperative framework for the resolution of future conflict. This clearly recognizes that conflict is inevitable and can be resolved in a positive way.

Since its inception, the program has undertaken 29 mediations with 72 municipalities. The mediations ranged from three hours to 40 days. Disputes mediated include: annexations, land use appeals, senior's services, cost sharing, road reconstruction, operation of regional waste system and regional water issues. There has been a 100 percent success rate to date, although one of the mediations was ended at a political level. Needless to say, the program has a high satisfaction rating from its users. While the program does not become involved in disputes between a municipality and its ratepayers, the Local Dispute Resolution Initiative works with municipalities to design new conflict management systems.³

Success Story

As an example of the success of this system, mediation was used to bring about settlement of a long standing dispute between a city and the surrounding county in Alberta. The municipalities have a history of a good working relationship, including a mutual aid agreement for emergency services, sharing an emergency dispatch service, and a transfer and recycling station. Despite this,

they were unable to resolve a long standing annexation dispute.

The problem was taking both time and financial resources that were needed for other matters. With the provincial government's possible imposition of a solution on the parties, mediation was sought to help bring about a mutually acceptable resolution. This is a good example of conflict systems design where you move from interest-based, consensual processes, along a spectrum, ending up with right or power based solutions through government or adjudicative bodies.

Resolution was achieved with a preliminary agreement that outlined boundary stability for the next 30 years, and a condition that no future annexations would take place without mutual agreement. The benefits of mediation went far beyond the agreement, and saved the significant expense of litigation and/or administrative hearings.⁴

Land Use Planning Applications

Mediation is now recognized as a key component of planning in the context of the relationship between community, land use and agriculture, and it is also an important part of the environmental assessment process. The Ontario Ministry of Municipal Affairs, *Citizens Guide to Land Use Planning System in Ontario* contains a useful overview of mediation, and could easily be adapted to other areas of municipal concern and potential conflict.⁵

Mediation can play an even more important role in the future as we strive to balance the competing interests necessary for healthy communities. One area where the potential for conflict has never been higher is the rise of factory farms in rural municipalities, bringing about significant nutrient management issues. The evidence is overwhelming that factory farms are potentially hazardous to the environment. Ontario's *Nutrient Management Act, 2002* and its regulations provide an example of how even an extremely sensitive issue, where there is overlapping jurisdiction between government ministries, can be brought within the framework of mediation.

Under the regulations, the council of a municipality may establish a committee to address nutrient management issues in the municipality. The members of the committee are required to be residents of the municipality and have knowledge of nutrient management practices. The representation of various stakeholder groups is set out in the requirements for membership of the committee.⁶

Some issues, that the local advisory committees can address include neighbour disputes and concerns regarding the timing of nutrient application. The legislation provides for the committees to be involved in mediation and conflict resolution. The mediation process begins through complaints received by the municipality, or reports to the Ministry of the Environment or the Ministry of Agriculture and Food. If a matter is referred to the local advisory committee, the referring party must ensure that the person who complained does not object to having the committee involved. After permission has been obtained from that person, the matter is sent to the committee chair, who forms a panel of three to conduct the mediation. The panel members are required to have knowledge of both nutrient management and the mediation process and is a subject of some debate. (This is quite interesting, as normally there is no requirement beyond process knowledge for mediators.)

If the panel finds no basis for the complaint or report, that ends the process. If they find a basis for the complaint or report, they will meet with the farmer and the person who made the complaint to attempt to reach a resolution of the matter. This is the actual me-

3 Information received from Mr. Bill Diepeveen of the Alberta Program.

4 See Conflict Resolution Network Canada, Reporting Canada, July 2002.

5 Available at: <www.nicr.ca/reportingcanada/single.asp?StoryID=6> Available at <www.mah.gov.on.ca/userfiles/HTML/nts_1_3121_1.html>.

6 See Local Advisory Committees, Nutrient Management Act Regulation, Ministry of Agriculture and Food. July 2003. Available at: <www.gov.on.ca/omfra/english/nm/regs/sumdoc/sumdoc10.htm>.

diation portion of the process. If either of the parties is not satisfied by the outcome of the mediation, they may pursue other options. (This is consistent with mediation in general in that you do not give up other options if you participate in mediation.)

Mediations are confidential, and information disclosed during mediations cannot be used to prosecute individuals. However, the panel must stop mediation if it appears that the matter they're investigating is more serious than originally thought. If mediation uncovers a larger problem, it may become necessary to notify the Ministry of the Environment.

Although called mediation, the process is actually a hybrid, involving a fact-finding component in addition to mediation itself. It is a good example of the flexibility of alternative dispute resolution processes, and how they can be adapted to provide almost individual-

ized designs to meet the requirements of specific disputes.

Developing a Policy

In order to benefit from alternative dispute resolution, municipalities should develop a specific dispute resolution policy. The goals of this policy include establishing both systems to deal with conflict in its early stages and prevent escalation, and processes to fairly manage disputes when they arise. This means, where possible, choosing the appropriate dispute resolution process from the available range. Depending on the circumstances, this could be litigation, or a form of alternative dispute resolution.

Included in the systems design should be a commitment from council to prevent disputes or to resolve them by collaborative methods whenever practicable. At a minimum, municipalities should incorporate dispute resolution systems in all contracts, and include an alternative dispute resolution clause in all bid and tender documents. By instituting systems for

the more efficient resolution of disputes and examining alternatives to the traditional public hearing process for establishing a dialogue as shown by forward-looking municipalities can transform the culture of dispute resolution in a positive way.⁷

Municipalities using an interest-based dispute resolution process such as mediation, can expect:

- ▶ improved working relationships between participating parties;
- ▶ better understanding of and respect for different viewpoints;
- ▶ better informed, more creative, and sustainable agreements; and
- ▶ shared responsibility for process, results and implementation.

From resolving neighbourhood disputes to improving by-law enforcement strategies, the application of innovative alternative dispute resolution processes is virtually unlimited. Only the imagination to see a better way of resolving disputes and improving relationships is needed to implement mediation into the everyday routines of municipal government. *MW*

7 <www.city.hamilton.on.ca/Clerk/archives/committee-of-the-whole/2003/May20/PD03105.pdf>

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