

Algo Centre Mall Collapse Inquiry

BOMA Canada Response to Roundtable Questions

November 1, 2013

ROUNDTABLE 1 – INCREASING PUBLIC SAFETY

MONDAY, NOVEMBER 18, 2013

Moderator: Peter Doody

CONFIRMED PARTICIPANTS:

- Randal Froebelius is BOMA Canada's Secretary-Treasurer and also the Principal of Equity ICI Real Estate Services.
- Association of Ontario Municipalities, Stuart Huxley, Senior Legal Counsel, City of Ottawa
- Dean Findlay, Ontario Building Officials Association
- Warwick Perrin, Ontario Association of Property Standards Officers
- Ministry of Labor - Wayne DeL'Orme, Director – Mining Health and Safety Review
- Ministry of Municipal Affairs and Housing - Brenda Lewis, Director of the Building and Development Branch
- Ann Borooah, Chief Building Inspector, City of Toronto
- Peter Sharpe, former CEO, Cadillac-Fairview

- 1) Should there be mandatory periodic inspection of all buildings? If so, by whom (province, municipality or building owner)? How often? What kinds of buildings?

Any buildings involving the public or employment need to meet minimum standards of maintenance and repair. Ontario has Codes and Professional Standards in place to address public and workplace safety. BOMA Agrees that it is vital that safety of occupants and neighbours must come first, but we are not sure that mandatory periodic inspections is the best way to achieve optimal safety. Although it may be expedient to require mandatory periodic inspections, a review of existing regulations, legislating faster response times to complaints, placing higher responsibility on building owners (similar to the way responsibility for worker safety in the construction industry is directly linked to contracting firm ownership) and potentially creating a cross disciplinary task force to examine how we can better communicate concerns, may be more effective.

- 2) Should there be mandatory minimum property standards for all buildings? If so, who should establish them (province or municipality?) How should they be enforced?

Yes, the Ontario Building Code should rule and be administered by the municipality. In smaller jurisdictions, counties or regions should pool resources or create a shared body for administration.

- 3) Should those who have responsibility for public safety in buildings (municipalities, MOL etc.) have the power, or be required, to force owners to retain a professional (engineer or architect) to approve proposed repairs or maintenance to existing buildings? Should a record be kept of all remedial actions undertaken by the owners?

Definitely. An example is the roof anchor approval system we have in Ontario, administered by MOL. This is a very effective system. The issuance of building permits for repair work can also be examined. Presently some owners may not be obtaining permits for repair work which perhaps should require a permit. An active communications program by municipalities could be an effective way to improve this.

- 4) Should clear guidelines be established in the regulations governing the Chief Building Official in cases where public safety may be at risk based on the degree and imminence of the threat and the response of the owner, making it clear that in cases where an owner is either unwilling or unable to take steps necessary to avoid risks to human safety that (a) an order be promptly issued; (b) a clear period of time be allowed for compliance; (c) at the end of that time, the city must take further enforcement steps to prosecute, conduct the work at the owner's expense or to close and condemn the structure.

Yes. TSSA elevator maintenance enforcement is an example.

- 5) Is the training for building officials, in particular, for property standards officers, sufficient? Should there be mandatory training, competency qualifications and certification of property standards officers? What degree of independence should property standards officers have from other municipal officials? Should building officials, including property standards officers, be regulated as a profession?

In general, there is a perceived distinction between a Property Standards Officer and a Building Official in the jurisdictions that we have been involved in. PSO's seem to be typically tasked with enforcing less serious by-laws with respect to property maintenance, signage, cleanliness, clutter, disputes regarding rental properties, etc. Unfortunately the work load on these individuals seems high.

Our perception is that Building Inspectors/Officials have a higher level of authority; they are a highly effective, well-respected group within the Province. This could be leveraged further.

Both groups should be independent from any “political” influence that may exist from municipal officials, albeit there often seems to be potentially more influence from other internal groups on Property Standards Officers. For example, small retailers defending a signage infraction may call their councilor to complain about the impact on their sales for compliance, etc. Further, promises to comply can have more lenient timeframes on the property standards front.

We would support further study around whether Building Officials should be a regulated profession.

- 6) Considering the information you have gleaned from the proceedings of the Elliot Lake Commission of Inquiry, can you provide your top five recommendations as to what should be done to ensure that a similar tragedy does not occur again in Ontario or Canada? If possible, identify the sort of buildings or occupancies which should be the highest priority?
- i) Through the ongoing administration of the Ontario Building Code, MOH should continue to research and issue directives regarding technical issues that affect buildings. For example, when membranes became a requirement for suspended parking structures, could a directive have been issued requiring the installation of a membrane on all structures within a designated timeframe? Or perhaps could mandatory annual inspections with reports issued to the municipal Chief Building Official be mandated during a phase-in period?
 - ii) Physical testing with sampling could be made a mandatory requirement of garage inspections within specified timeframes and ages. We understand from our member in Quebec there are new regulations in place regarding the frequency of inspections related to parking structures and curtain wall. The Regie du bâtiment du Québec put these in place last year and the municipalities’ follow-up on the complaints and the inspections.
 - iii) More responsibility on Building Owners with more severe consequences, perhaps on a more direct individual level. Similar to the MOL approach in construction related to the safety of workers and potential charges for direct supervisors up to the President of the corporation.
 - iv) A province wide database in conjunction with PEO could be created. When a professional is charged with incompetence in front of a disciplinary committee, an immediate communication should be considered for issuance to Building Officials in all jurisdictions where the professional has practiced

so that reviews of other structures designed (or inspected) by the individual or firm can be reviewed. This could apply to at least those buildings that face similar issues. For example, we understand that the Sault Station Mall roof collapse was designed by and subsequently inspected by the same engineering firms that performed the design and inspections on the Algo Centre Mall.

- v) A requirement for professionals who prepare consulting reports on buildings to disclose any issues or concerns that could potentially affect public safety to the Owner and to report those concerns to the local building official should those issues or concerns not be addressed within a specified timeframe. Perhaps a voluntary Code of Ethics for professionals engaged in such reports could be created as well.

The Building Owners and Managers Association of Canada and its 11 Local Associations across Canada provide a number of educational programs, seminars and resources to our members. We would encourage all property management professionals in our province to visit or contact their BOMA local in Toronto or Ottawa to take advantage of the resources available.

We would add that BOMA is currently leading an effort to set nationally recognized standards for Building Operators through an accredited Building Operator Certification Course. Though we are at the very earliest stages, we believe that there is a strong need for certification and that the many benefits of certification would include enhanced awareness of maintenance issues of the sort that might have prevented the tragedy at the Algo Centre Mall. We will likely need the moral and financial support of the Province of Ontario if this important endeavour will succeed.

ROUNDTABLE 2 – IMPROVED SHARING OF REPORTS AND INFORMATION

TUESDAY, NOVEMBER 19, 2013

Moderator: Mark Wallace

CONFIRMED PARTICIPANTS:

- Randal Froebelius is BOMA Canada's Secretary-Treasurer and also the Principal of Equity ICI Real Estate Services.
- Ministry of Labour - Vivien Wharton-Szatan, the Provincial Coordinator for the Industrial Health and Safety Program

- Ministry of Municipal Affairs and Housing, Brenda Lewis, Director of the Building and Development Branch
 - Ryan Stein, Director, Policy, Insurance Bureau of Canada
 - Ann Borooah, Chief Building Inspector, City of Toronto
 - Alan Shaw, Ontario Building Officials Association
- 1) Should the Owner of a building be required to keep a secure record of and provide the information relating to the condition of a building (all private, as well as public, documents and information dealing with the condition of those buildings over their lifetime, including information on the nature and extent of the services provided by an engineer and an architect, the name, identity and contact information of those professionals and any remedial actions taken as a result of inspections)
- a. to any purchaser or other person seeking to acquire an interest in the building, financial or otherwise

Asset sales are a commercial transaction and potential purchasers will typically perform their own due diligence review. All relevant data is typically made available, but we would not recommend that an obligation to disclose be placed on owners because during the very long history within the life of a property there may have been several reports issued. Owners will not be able to guarantee that every report ever issued is provided and they may not be aware of the existence of every report. To establish this requirement could place an almost impossibly high standard on owners.

The due diligence process will typically include the casting of a broad net for the collection of data, including calls to the local Building Department with a request for any outstanding work orders associated with a property. Other requests typically include inquiries with the MOE regarding historical usage, any known contaminants, the Record of Site Condition, etc. Perhaps an expanded provincial database could be established to create a permanent record of serious safety related building issues for certain types of buildings. This could be kept on the public record (similar to the MOE) and referenced by parties performing due diligence. However, a process for “clearing” any issues off of this register once addressed should be established.

This issue is a very serious one for the real estate investment community. Commercial property sales are complex transactions and involve detailed physical and financial due diligence. Without question, public safety is paramount; however, owners will expect fairness in the archiving of any reports that will potentially impact value. One question from building

owners would be whether a report outlining a concern that is subsequently addressed would or should remain listed in such a registry?

- b. to any person or agency conducting or supervising any inspection, assessment, repair or renovation of a building before any such inspection, assessment, repair or renovation begins

Qualified yes, but only if a report contains any unresolved issues, with similar concerns as listed in a) above. This could be a requirement similar to the issuance of the Hazardous Building Material Survey required by the OOHSA prior to the start of any renovation work.

- c. To the municipality whenever a building permit is required for repairs and renovations?

Same as b) above.

- d. to a provincial agency

It would depend on the nature and purpose of the agency.

- 2) Should the Owner of a building (and perhaps those who prepared the building information?) be required to register the information (i.e. Reports) relating to the condition of a building on the title to the property?

This requirement could discourage owners from having reports prepared, or it will minimize report preparation so that only those legislated are performed. Far more benefit will be gained by studies or reports generated at the request of responsible owners than by creating such a regime.

However, any authors of any reports that are prepared that contain any findings or information that could cause harm to the public should be required to a) notify the owner immediately of any such concerns and b) require them to notify the authorities having jurisdiction immediately if there is an imminent threat. This is essentially the practice in our industry now.

- 3) If so, should the availability of this information apply to all buildings or just commercial buildings?

Any building constructed for public occupancy or employment purposes.

- 4) If there is no requirement to register the information (i.e. Reports) relating to the condition of a building on title to the property, should the information be made accessible to the public by some other means such as a central registry? Or should they at least be filed with the Chief Building Official?

Not necessarily. As per our answer in Question 2, any authors of any reports that are prepared that contain any findings or information that could cause harm to the public should be required to a) notify the owner immediately of any such concerns and b) require them to notify the authorities having jurisdiction immediately if there is an imminent threat. This could include the Chief Building Official.

- 5) Should the building owner be required to complete an Affidavit as mandatory closing document that states at a minimum the following:

1. The owner has disclosed all engineering reports that have been conducted while the building has been owned by the present owner.
2. That the owner has undertaken appropriate inquiry in order to obtain the history of all engineering reports on the property and there are stated here.
3. There are no reports or documents that the owner is aware of with respect to this real property that deal in any way with the structural assessment or condition of this building that has not been disclosed to the purchaser.

We suggest that an alternative that narrows the scope and focuses directly on public safety such as the following be explored (otherwise this can be a very broad request):

1. The owner has disclosed all engineering reports related to the structural assessment of the building that have been conducted while the building has been owned by the present owner.
2. There are no reports or documents that the owner is aware of with respect to this real property that deal in any way with the structural assessment or structural condition of this building that have not been disclosed to the purchaser.

- 6) Should any and all engineers and architects who have provided services to an owner of a building make available all information in their possession to successor engineers or architects requesting such information?

Yes, with the consent of the present owner. We believe there are PEO regulations in this regard as well.

- 7) Should municipal governments be required to document all oral and written complaints, even if the person wishes to remain anonymous? Should municipal governments be required to keep a public registry of all property standards bylaw violations that deal with the safety and soundness of a building structure, including any follow up action taken by the municipality and remedial action taken by the owner or municipality?

If municipal governments are required to document all oral and written complaints, will they be subject to Freedom of Information requests? We would be concerned about the abuse of this process considering the logging of “anonymous” reports.

Municipal governments should be required to maintain a record of by-law violations with respect to safety and follow-up.

- 8) The *Occupational Health and Safety Act* (sections 51 and 52) currently provides for certain obligations on employers to provide notice to the Ministry of Labour where a person is critically injured or killed at a workplace or a person is disabled from performing his/her work or requires medical attention because of an accident, explosion, fire at a workplace. Should these notice obligations be expanded to include situations of imminent danger, accident or injury? In addition, should an employer be required to report to the Ministry of Labour any health and safety recommendation made by a joint committee or a health and safety representative which is not followed and may lead to critical injury?

With respect to structural issues or other building conditions with imminent safety implications, yes.

- 9) Considering the information you have gleaned from the proceedings of the Elliot Lake Commission of Inquiry, can you provide your top five recommendations as to what should be done to ensure that a similar tragedy does not occur again in Ontario or Canada? If possible, identify the sort of buildings or occupancies which should be the highest priority?

Our response is the same to the final question in Roundtable Number 1:

- i) Through the ongoing administration of the Ontario Building Code, MOH should continue to research and issue directives regarding technical issues that affect buildings. For example, when membranes became a requirement for suspended parking structures, could a directive have been issued requiring the installation of a membrane on all structures within a designated

timeframe? Or perhaps could mandatory annual inspections with reports issued to the municipal Chief Building Official be mandated during a phase-in period?

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