

Via email & regular mail

October 30, 2013

Elliot Lake Commission of Inquiry
2380 St-Laurent Blvd.
Ottawa, ON
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Subject: The Elliot Lake Inquiry
LMCBO commentary on policy roundtable 1 questions

Large Municipalities Chief Building Officials (LMCBO) represents Chief Building Officials in Ontario municipalities with a population of at least 50,000 where there is a comprehensive system of *Building Code Act* enforcement in place. In this role, LMCBO has conducted over 45 professional development workshops with its member Chief Building Officials and Ministry of Municipal Affairs and Housing staff since 1990, and has been a regular contributor to government policy initiatives.

We support the important work of the Commission in conducting this inquiry, and have observed the proceedings in detail. At this juncture, considering the matters being put before the policy roundtables, we have determined that it would be appropriate to provide our perspective to the Commission.

The collapse of the Algo Mall was a singular building failure with tragic consequences for individuals and families. It had a significant impact on the community and the province, and was detrimental to public confidence. The nature of this collapse necessitates a careful examination of the critical factors that led to the failure, and the development of the most appropriate measures for reducing the likelihood of similar occurrences.

The circumstances that led to the partial collapse of the Algo Mall were unique and are not representative of the normal state of building design and regulation which is practiced in Ontario's larger municipalities today. In considering the circumstances that may have contributed to the collapse, together with risk factors that presently exist, our conclusion is that the following responses may have the most merit as properly targeted improvements to Ontario's building design and control systems.

Top 5 Recommendations

1. Enact provincial laws requiring owners to maintain the structural integrity of their buildings
2. Identify unique designs, buildings and critical components that present a potential or demonstrated risk of failure due to age, location, environmental factors, ownership, construction or occupancy type, and target a requirement for owners to commission periodic structural review reports on these buildings and components
3. Provide additional tools to municipal officials by requiring the filing of structural review reports to Chief Building Officials where they identify a structural deficiency or repair need, and by amending section 18 of the *Building Code Act* to authorize an inspector to require structural review reports on an existing building
4. Enact a requirement for provincial certification of principal authorities and the quality control programs administered by their Chief Building Officials, to ensure that suitable qualification, knowledge and enforcement resources exists at the local level
5. Harmonize the design requirements in the *Architects Act* and the *Professional Engineers Act* with the *Building Code Act*, and improve communication and cooperation between professional engineers, Professional Engineers Ontario, and Chief Building Officials

Other Positive Supporting Measures

6. Enact critical maintenance requirements for existing buildings through s. 34 of the *Building Code Act*
7. Implement professional practice standards for professional engineers undertaking structural reviews of existing buildings
8. Introduce the requirement for a prime design consultant with responsibility for coordinating design elements and regulatory compliance reporting

If applied in concert with current regulation and practice, each of these would address the circumstances that could, in rare instances, lead to a building failure due to improper design or neglect. Collectively they will reduce any public risk that may exist today, and will measurably improve the provincial building design and control system.

Our more detailed commentary on some of the specific questions being posed to the roundtables is:

**Should there be mandatory periodic inspection of all buildings? If so, by whom (province, municipality, building owner?) How Often?
What kinds of Buildings?**

Discovering and properly evaluating every potential structural defect in an existing building will require invasive investigations to expose critical elements. This is very likely to be costly and inefficient if it is generally applied to a large number of existing buildings. Municipalities are not in any position to undertake this degree of inspection of existing buildings. The capacity and skill set does not exist today, and there are unlikely to ever be sufficient public resources to successfully undertake this role. There would be very substantial public liability associated with municipalities conducting structural reviews or inspecting to identify potential defects on existing buildings. If a program is enacted, the responsibility for compliance and inspection must rest with the owner.

Regulations authorizing a discretionary inspection program in any municipality could be enacted under 34.(2.1) of the *Building Code Act*.

We could recommend instituting a targeted inspection program for certain existing buildings with the following characteristics:

- Prior to implementing the program, adequate research should be conducted to determine the target group of buildings which are considered at risk, and the critical building elements that are subject to failure
- The owner should be required to engage professional engineers to conduct a structural review and examine the degree of environmental deterioration
- Reviews and reports should be carried out to standards developed by Professional Engineers Ontario, which reports shall include the engineers determination about the structural sufficiency of the building, the need for repairs to maintain structural integrity, and the recommended next date of review
- Reports that recommend a repair action on an existing building shall be submitted to the Chief Building Official. This requirement would mirror the General Review regime now prescribed in the Building Code for new buildings, which requires professionals to review the construction of a building to determine conformity with plans, etc. associated with the issuance of the building permit, and forward such reports to the Chief Building Official.
- The Chief Building Official should have the power to request copies of any review report on a building under the program, and the power to require that a structural review be conducted where they are satisfied that one is necessary, to address any special risks or circumstances

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

A number of municipalities in larger jurisdictions have developed property standards by-laws addressing structural safety, and may apply effective enforcement strategies. A patchwork of municipal bylaws applied to varying degrees by local officers is, however, unlikely to be as effective as provincially enacted standards administered by building officials who have been trained and qualified for this purpose.

Provincial standards for structural safety and environmental resilience in existing buildings could be enacted in s. 34.(2) of the *Building Code Act* to provide benchmarks for the structural review program. It is not necessary to establish a broader set of provincial minimum standards for existing buildings to address the subject matter of this inquiry. It may in fact draw resources away from and dilute the effectiveness of any structural review.

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?

The Ministry of Labour is primarily responsible for the safety of workers, and public safety matters during the construction of buildings. Municipal building and fire departments are responsible for building and occupant life safety matters. Provided the *Building Code Act* is harmonized with the *Architects Act* and the *Professional Engineers Act* in terms of the requirements for professional design, existing tools provide sufficient powers to municipalities to appropriately require the participation of a professional in reviewing a repair.

Review reports and building permits that are filed concerning significant material repairs are an accessible public record.

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.

The *Building Code Act* and regulations were enacted for this specific purpose and already provide the necessary tools and guidance for effective and efficient public safety protection in emergencies and unsafe situations. The unique circumstances associated with each case make it exceptionally difficult to imagine a one size fits all approach that would be an effective or efficient use of resources. Experience with enforcement and a review of case law reinforces this.

Is the training for building officials, in particular, for property standards officers, sufficient? Should there be mandatory training, competency qualifications and certification for 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?

Provincial standards for qualification of Chief Building Officials and inspectors were introduced in 2005. Inspectors and Chief Building Officials working today in larger centres have passed provincial examinations in any technical or legal area they are responsible for, and are provincially registered.

Building a provincial system of training, qualification and certification of local property standards officers would not appear to be the most effective or consistent way to address structural safety in existing buildings. The required skill sets for local property standards officers will necessarily vary according to the municipal context and the scope of local by-laws, more so than is the case with Chief Building Officials and inspectors who have the advantage of enforcing the same provincial laws.

The *Building Code Act* now contains provisions for property standards that appear to mirror or overlap with the role Chief Building Officials and inspectors to some extent. It may be useful to address any confusion this creates in terms of who is doing what, should revisions to the *Act* require owners to conduct a periodic review of the structure of their properties and report the need to remedy unsafe conditions to the Chief Building Official. Critical building safety matters on new and existing buildings should be provincially consistent and administered by chief building officials and inspectors who are trained and provincially qualified for this purpose.

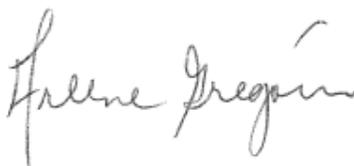
The design of new buildings is presently governed by detailed mandatory standards. The duties and responsibilities of designers and building officials are clearly prescribed in the *Building Code Act* and the Building Code. Chief Building Officials and inspectors are accountable to a local principal authority, but are provided legislative protection from any obstruction or interference. This would appear to strike the proper balance between the need to protect the public and enforce important safety matters independently, while being properly responsive to the local environment. The purpose, benefits and consequences of repositioning local officials into an independent professional role are unclear. It appears likely to diminish the effectiveness of principal authorities.

Provincial legislation that required qualification and examination for Chief Building Officials and inspectors introduced the role of a principal authority, but did not prescribe any necessary characteristics for these authorities. To address concerns about the wide range of skills, resources, policies and enforcement routines that may exist at the local level in terms of building enforcement, the authority could be provincially certified. A certification system could require that a principal authority be prequalified to demonstrate the sufficiency of its regulatory oversight program, in a manner similar to what is presently required for bodies such as Registered Code Agents.

Inspections *were* conducted at Elliot Lake. They did not effect a solution because of financial roadblocks, neglectful management and perhaps other factors. On the enforcement side, it is entirely possible that a diligent and well informed official, using the available information and making their best efforts, may well have been frustrated by the financial, ownership, municipal, legal and court procedures in place.

Buildings will assuredly decay and fail if they are not maintained, and the need for aging infrastructure and buildings to be maintained by owners is increasing. Building maintenance and repair needs to be addressed primarily through financial support mechanisms and regulation of building owners. There is a greater need to invest in the buildings themselves rather than in dramatic increases in administrative systems or oversight.

Yours truly,

A handwritten signature in cursive script, reading "Arlene Gregoire".

Arlene Gregoire, B.A., L.L.B.
Chair, LMCBO