



**ONTARIO BUILDING OFFICIALS ASSOCIATION**

pro bono publico “for the public good”

**ELLIOT LAKE INQUIRY**

**PART 1 – PHASE 2**

**ONTARIO BUILDING OFFICIALS ASSOCIATION  
INITIAL RESPONSE TO ROUNDTABLE QUESTIONS**

**ROUNDTABLE NO. 1**

**PUBLIC SAFETY**

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## ROUNDTABLE 1 – INCREASING PUBLIC SAFETY

[MONDAY, NOVEMBER 18, 2013]

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?

OBOA Response:

It is agreed that periodic inspections would be beneficial and would assist in the safe maintenance of existing buildings [to be determined] which are currently not regulated. The requirement to conduct these periodic inspections should fall to property owners as part of their responsibilities of ownership. The inspections should be conducted by qualified persons at a frequency, based on classification of building (construction type, size, use, etc.). See Recommendation No. 5 below.

For such regulated buildings, these inspections should be conducted by a Professional Engineer. We would suggest that a standard of report be developed jointly between the PEO and the Ministry to allow for clarity and consistency in reporting. In the event where unsafe structural issues are discovered, Engineers should be required to provide the report to the Chief Building Official or the authority having jurisdiction. We would not recommend submission of all reports to municipalities as documentation would be overwhelming. Upon receipt of a report, the Chief Building Official or the authority having jurisdiction are already required and obligated to follow up to ensure that corrective action is taken.

As part of ensuring these reports are undertaken, we would recommend inclusion of these obligations in legislation, including the requirement to provide such reports to the Ministry of Labour and Fire officials upon request.

Thought needs to be given to what legislation such rules would be made under, who enforces it and what are the procedures for addressing non-compliance. Not just fines, but if the owner fails to act, does any agency have jurisdiction to undertake the report in place of the owner.

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?

OBOA Response:

The development of mandatory property standards for all buildings is warranted. In order to have provincial-wide consistency, the Province could mandate the requirement of all municipalities to enact and enforce a Property Standards By-Law. The Province could further identify standards required to be included in all by-laws based upon the use, size and/or classification of certain buildings.

We would warn against becoming too prescriptive in this initiative, however, as it easily could become too burdensome for property owners. We have identified the need to allow municipalities the ability to draft their own by-laws to implement these core requirements and allow some flexibility in the administration of the by-law. In many cases, municipalities would look to supplement the by-laws to include items beyond the core areas.

See also Recommendation No. 3 below.



These Property Standards By-laws should not address or venture into any building code disciplines such as structural, fire protection, egress, etc. There should be some clear indication in such by-laws when building conditions warrant Building Code attention. See Recommendation No. 4 below.

OAPSO and its membership are well-positioned to enforce Property Standards By-Laws described above.

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?

OBOA Response:

As a preliminary matter, we note that this question speaks of the engineer or architect “approving” proposed repairs and maintenance. We would suggest that such professionals “design and review” such repairs and maintenance. Only Chief Building Officials “approve” such repairs [that require a permit].

The current *Building Code Act* regime gives municipalities and Chief Building Officials the ability to require professional design for repairs where a building permit is required.

The *Act* [s. 15.8(c)] also allows property standards officers the power to require property owners to provide information and [professional] reports concerning property standards matters.

Finally, an “unsafe building” order [s. 15.9(4)] can set out the remedial steps necessary to render a building safe. This can include the requirement for the submission of a professional report addressing and assessing the unsafe condition and any recommended repairs.

We would support granting Chief Building Officials greater power to require professional reports in more situations and circumstances than currently exist.

Property owners should keep records of these reports and any remedial action undertaken.

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.

OBOA Response:

The *Building Code Act* currently grants these powers. Time lines are not yet specified [and should be carefully reviewed before establishing same]. Building Officials’ competence in utilizing existing powers and these “best practices” are most appropriately addressed through mandatory certification [education, training and work experience] and required knowledge maintenance and professional development programs.

As was noted in our Opening Statement to the Commissioner on the initial day of the inquiry:

MATTERS THAT WE SUGGEST OUGHT TO BE ADDRESSED WILL INCLUDE:



- 1) MANDATORY CERTIFICATION...BE REQUIRED OF AND OBTAINED BY ALL BUILDING OFFICIALS IN OUR PROVINCE;
- 2) ESTABLISHMENT OF A MINIMUM “COMPETENCE” QUALIFICATION STANDARD FOR BUILDING OFFICIALS WHICH REQUIRES EDUCATION, TRAINING & EXPERIENCE [IN ADDITION TO THE CURRENT MMAH EXAM]; AND KNOWLEDGE MAINTENANCE ONCE QUALIFIED;
- 3) ESTABLISHMENT OF A LEGISLATIVE FRAMEWORK FOR THE REGULATION OF BUILDING OFFICIALS WHICH ENCOMPASSES THE AFOREMENTIONED MINIMUM “COMPETENCE” QUALIFICATION STANDARD; AND
- 4) RECOGNITION AND ACKNOWLEDGEMENT OF THE CHIEF BUILDING OFFICIAL’S “INDEPENDENCE” FROM THEIR MUNICIPAL COUNCIL & EMPLOYMENT TERMS THAT IMPLEMENT SAID INDEPENDENCE.

See Response to Question 5) and Recommendation No. 1 below.

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?

OBOA Response:

See response above and Recommendation No. 1 below.

Current provincial qualification levels for building officials are too minimal and based on displayed code knowledge only and does not include work experience, skills-based training or knowledge maintenance.

Our association sets education, examination, and work experience as the minimum for certification in our by-law. We also require ongoing minimum maintenance criteria be met in order for a CBCO to maintain certification. We have recently revised and increased the requirements of our Certification Program.

There is a need for stronger, more intensive training and accountability in our profession. This requires mandatory certification of building officials and property standards officers.

The OBOA has for some time advocated for full professional regulation of building officials...and still does. The objectives of enhanced public safety and more consistent Code interpretation/application through measured competency, mandatory experience and continuing education have always been the mainstay of OBOA's policy platforms. See the OBOA's Response to Summons dated February 5, 2013; including “OBOA Self-Management Final Report”, 2 Volumes, July 14, 2009; in Attachments 2 & 3 thereto.

The primary issue seems to be that we have many different enforcement entities (municipalities) that have varying levels of staffing, expertise, training abilities, hiring/recruitment expertise and the need for specialized support services in these areas. It is further recognized that Ontario's larger municipalities have the resources to address many if not all of these challenges.



If these public inquiries are going to succeed in the most basic of measurements, the lessons learned through testimony and evidence review need to be heeded. One general but critical determination that resulted from the Walkerton Inquiry was that true competence in a professional job function needs to be determined on the basis of education, examination and experience, in conjunction with ongoing education and knowledge maintenance via education.

This competency determination would be best and most efficiently addressed by mandating an existing, recognized and tested certification regime. As this certification was present in Elliot Lake, it cannot be stated that it would have prevented the tragic building failure. Yet, if the certification was mandatory now, OBOA, affiliated organizations and the building official community could be making changes to the process and requirements of the certification based on the evidence presented, and the findings yet to be made. This would be similar to the pro-active steps that PEO is taking with regard to engineers and the review and report process.

Enhanced and mandatory certification would be of assistance to municipalities such as Elliot Lake. Many municipalities in urban, rural and northern Ontario require support, mentorship and training for CBO's and building officials alike. Groups like LMCOB and TACBOC provide support and development tools for CBO's in municipalities over 50,000 in population. Municipalities and their CBO's not in that size designation are not included. The primary support structure for these municipalities, their CBO's and building officials is the OBOA.

Increasing building code complexity, along with the withdrawal of MMAH from training and other support requirements, are making the situation one of great concern. Addressing these concerns and issues has been at the core of OBOA advocacy in recent years. Elliott Lake is not alone in the challenges that have been faced and are being faced now, and the time to recognize this and act is at hand.

Although Chief Building Officials fulfill statutory duties and are independent from council, this is often not recognized at the local level. As such, specific statutory recognition of this independence is warranted. See Recommendation No. 2.

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?

OBOA Response:

In consideration of the above responses and for further reasons which will be discussed at the Roundtable, the top five OBOA recommendations respecting improving public safety are listed below.

1) In order to practice in Ontario, all building officials should:

- (i) be required to obtain and maintain certification. [Related to this requirement would be the repeal of s. 11 of the *Ontario Building Officials Association Act*, 1992, S.O. 1992, c. Pr38]; and
- (ii) possess and meet minimum educational, training and work experience criteria in order to obtain one's certification. In addition, maintenance of such certification would be required and achieved by satisfying appropriate on-going professional development and knowledge maintenance criteria.



2) The *Building Code Act, 1992*, S.O. 1992, c. 23 should be amended to codify judicial decisions and explicitly provide that Chief Building Officials exercise their powers and fulfill their duties under that Act independently from the Council that employs such Official.

3) The Province should either:

(i) establish, pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23, s. 34(2), a Building Maintenance Code setting minimum standards for the maintenance, retrofit, operation, occupancy and repair of existing buildings; or

(ii) make it mandatory that all municipalities enact a Property Standards By-Law which includes Province-established minimum standards for the maintenance, retrofit, operation, occupancy and repair of existing buildings.

4) Respecting the structural sufficiency of existing buildings:

(i) the Province should establish minimum standards related to the required structural sufficiency of existing buildings for Chief Building Officials to administer and enforce;

(ii) structural sufficiency standards for existing buildings should not be placed in municipal Property Standards By-Laws;

(iii) a property owner's assessment of the structural sufficiency of existing buildings should only be undertaken by qualified persons; and

(iv) a property owner should be responsible for undertaking required remedial work. Enforcement powers of standards related to the required structural sufficiency of existing buildings ought to be assigned to appropriate authorities.

5) Detailed consultation should be held with the industry stakeholders to establish:

(i) the type of buildings [e.g. due to their design, age, location, construction material, occupancy or use] which property owners would be legally required to inspect;

(ii) the frequency of such inspection;

(iii) the qualified person(s) who might undertake and perform such inspection;

(iv) the prescribed inspection protocols and required report content and format;

(v) whether such reports ought to be provided contemporaneously to the Chief Building Official and any other public authorities; and

(vi) appropriate response protocol and timeframes for completing any recommended repairs.

The OBOA looks forward to participating in the upcoming Roundtable discussions to elaborate upon this submission and comment upon the responses of the other participants.

Further material may be prepared and presented as is deemed necessary.



Respectfully Submitted this 1<sup>st</sup> of November, 2013

Ontario Building Officials Association

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