

**RESPONSES TO POLICY ROUNDTABLE QUESTIONS**  
**PROVINCE OF ONTARIO**

**BACKGROUND – Responsibilities of Various Parties for Building Safety**

Responsibility for public safety in existing buildings is shared amongst a number of parties.

Building owners have access to the highest level of knowledge of the state of repair of their properties and are most likely to be aware of any concerns, structural or otherwise, with their buildings. They are in the best position to take steps to ensure their buildings are safe and structurally sound. Proactive building maintenance helps protect both public and worker safety, as well as an owner's investment in their buildings. Building owners, therefore have a strong interest in ensuring their buildings are properly inspected, maintained and repaired.

Lenders (financial institutions and mortgage lenders) and insurers also have a role to play as they protect their investments and minimize risk.

Professionals such as architects and professional engineers have the technical knowledge and expertise to carry out building assessments, verify structural integrity, identify areas of concern and propose options to remedy. As such, they play a key role with building owners and enforcement officials who depend on their expert information and advice throughout the construction and the life of a building.

Oversight and enforcement by regulatory bodies is also a key component to helping to ensure public safety. Enforcement bodies, such as municipal building officials (with respect to new construction and material renovations, and unsafe existing buildings), property standards officers (with respect to maintenance and occupancy of existing buildings) and the Ministry of Labour (with respect to buildings that are workplaces), are all instrumental in protecting public and worker safety in buildings.

Others may also play a role, such as employers, employees, tenants and the public, as applicable. As the day to day users of buildings, these parties can bring issues to the attention of building owners or a regulatory agency, if appropriate.

These parties may each have varying knowledge, capacity and resources, which can impact the role that they play in helping to ensure public safety in buildings.

Given the various roles that each of these parties play, clearly defining the roles and responsibilities of each party and how they communicate and interact with one another is essential to achieving the goal of public and worker safety in buildings.

## ROUNDTABLE 1 – INCREASING PUBLIC SAFETY

Monday November 18, 2013

Moderator: Peter Doody

### 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 Labour – Wayne De L'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

### 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?**

Building owners have the highest level of knowledge of the state of repair of their properties and are most likely to be aware of any concerns, structural or otherwise, with their buildings. They have a strong interest in ensuring that buildings are properly maintained and inspected, when necessary, by appropriate professionals and officials. Consideration could be given to how to involve building owners, and others such as lenders and insurers, in any requirements for periodic inspection of buildings.

The *Building Code Act, 1992* (BCA) contains a number of provisions that allow municipal officials to inspect existing buildings. However, there is no requirement for mandatory periodic inspections of existing buildings under the BCA.

Under the BCA, municipal officials may carry out inspections to determine if a property is being maintained and operated in accordance with local property standards, to determine if a building is unsafe, and to determine if orders have been complied with. The ability to carry out inspections is subject to limits on entering any room or place actually being used as a dwelling. Mandatory inspections are required under the BCA during various stages of the construction process only.

Ontario understands that many municipalities have policies guiding when inspections will be conducted, and that some policies provide that inspections will occur in response to complaints.

If periodic inspections of existing buildings by municipal officials were to be required, the capacity of municipalities to carry out such inspections should be considered. Larger municipalities may have greater capacity to carry out periodic inspections, however smaller municipalities may have less capacity to do so. The costs of mandatory periodic inspections and hiring additional inspectors to perform them may also be a consideration, as may be the question of who should bear the cost – the municipality or the building owner.

As well, consideration would need to be given to the standards for carrying out the inspections. Would inspections be tied to specific requirements in property standards by-laws or provincial regulations, or would they examine the safety of a building generally or in accordance with professional performance standards? Would the inspections be limited to a visual examination or would they involve more extensive examination (e.g. forensic inspections)?

In terms of the types of buildings to be covered, consideration could be given to the rates at which different buildings and building components age and require repair, and the comparable levels of risk to public safety associated with various types of buildings (i.e., Part 3 large buildings as opposed to Part 9 small buildings, or assembly and commercial occupancies as opposed to residential occupancies).

**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?**

The BCA gives municipal councils the ability to pass property standards by-laws governing maintenance and occupancy of property, including buildings and structures. However, there is no requirement to pass property standards by-laws and no minimum standard for what a property standards by-law should or must contain.

While municipalities have broad powers to pass by-laws under the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, and a number of other statutes, municipalities are not typically required to pass by-laws. In Ontario, municipalities are recognized as mature and accountable governments with a broad range of powers.

Requiring municipalities to pass certain types of by-laws, such as property standards by-laws, would not necessarily achieve uniformity in standards across the province, because the content of by-laws is determined at the local level.

Ontario has authority under s. 34(2) of the BCA to make regulations to establish standards that existing buildings must meet even though no construction is proposed. These standards can include standards for the maintenance, retrofit, operation, occupancy and repair of existing buildings. To date, the only standards established under this provision are those in relation to the maintenance and operation of existing sewage systems in Section 8.9. of Division B of the Building Code.

If mandatory minimum property standards were to be established, consideration should be given to what types of buildings they should apply to (i.e., all buildings, or assembly and commercial occupancies only), and the scope of such standards (i.e., should they provide standards for all aspects of a building and its surrounding property, or for those matters related to public safety in buildings only). Many property standards by-laws currently address a broad range of matters other than building maintenance and safety (e.g., aesthetic issues, clean yards, etc.). In addition, consideration should be given to the risks associated with various building types and property standards types.

Municipalities and municipal property standards officers are currently responsible for enforcing property standards by-laws, and they have broad powers with respect to inspecting properties, issuing orders, taking action to cause the property to be repaired or demolished, and to prosecute offences.

Generally, the enforcement options available to property standards officers under the BCA are discretionary. This approach is typical of enforcement of similar legislative schemes that involve diagnosing areas of concern and identifying solutions to remedy those concerns. As each breach of a property standards by-law may vary, there may be difficulties with prescribing mandatory requirements that would be appropriate for all situations.

Consideration could be given to whether other enforcement options could be made available to assist property standards enforcement officials in achieving compliance. For example, would additional enforcement tools, such as administrative monetary penalties, posting of orders to comply on buildings or on a public website, etc., help ensure greater compliance with orders?

The capacity of municipalities to carry out increased property standards inspections should be considered. Larger municipalities may have greater capacity to carry out additional inspections, however smaller municipalities may have less capacity to do so. The options available to municipalities to recover costs associated with increased inspections may also be a consideration.

Consideration could also be given to the role of building owners, and others such as lenders and insurers, in ensuring buildings are appropriately maintained and structurally sufficient.

- 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?**

#### Ability to require reports under the BCA

Municipal enforcement officials have a broad range of inspection powers under the BCA to address public safety in existing buildings and to require the production of documents or the provision of reports from appropriate professionals.

Where a property standards by-law is in place, a property standards officer may enter a property at any time without a warrant (with certain limits on entering rooms or places actually being used as a dwelling) to inspect whether the property conforms with the standards in the by-law or whether an order made under the BCA has been complied with. If an officer finds that a property does not conform to the standards, they may issue an order requiring repairs to be made or the site to be cleared of all buildings, structures, debris and refuse.

Further, the BCA has powers and requirements related to unsafe buildings and emergencies. If building officials believe a building to be unsafe, they may issue orders to any person, including the building owner, to remediate the building. To address an unsafe building, officials may issue orders requiring remediation, prohibit the use or occupancy of unsafe buildings, and take any action they consider necessary for the protection of the public, including causing the buildings to be renovated, repaired or demolished. A chief building official or property standards officer may also make an emergency order where the condition of the building poses an immediate danger to the health and safety of any person. When an emergency order has been issued, the official is authorized to take any measure to terminate the danger.

In carrying out an inspection under the BCA, building officials and property standards officers may, amongst other matters:

- Require persons to provide information and produce documents,
- Be accompanied by a person with special or expert knowledge,
- Make examinations or take tests, samples, or photographs, and
- Order any person to take and supply, at that person's expense, tests and samples.

Municipal enforcement officials routinely issue orders under the BCA that require building owners to obtain a report from an architect or professional engineer regarding potential unsafe building conditions or lack of compliance with property standards by-laws.

#### Professional approval of repairs and maintenance

The BCA requires that a building permit be obtained for the construction of a building. Construction is defined in the BCA to include the material alteration or repair of an existing building. Material alteration and repair are not defined in the BCA. Part 11 of Division B of the Building Code regulation provides requirements that apply when there is a material alteration or repair of a building.

Prior to 2007, the BCA and Building Code set out requirements relating to the professional design of buildings. In *Association of Professional Engineers of Ontario v. Ontario (Ministry of Municipal Affairs and Housing)*, [2007] O.J. No. 1971, the Divisional Court struck down the professional design provisions for lack of statutory authority. The BCA and Building Code do contain requirements for the general review of construction by an architect, professional engineer or both.

The *Architects Act* and *Professional Engineers Act* contain requirements relating to professional design of buildings. These requirements identify which types of enlargements, alterations or repairs of buildings must be designed by an architect, professional engineer or both. Not all repairs of buildings require the involvement of an architect or professional engineer under those Acts.

Where applicable, designers (other than architects and professional engineers) who prepare designs or provide opinions concerning whether a building or part of a building complies with the BCA and the Building Code are required to have the qualifications set out under the BCA.

If approval of building repairs and maintenance of existing buildings by professionals such as architects and professional engineers were to be required, consideration should be given to clearly defining the scope of repairs and maintenance subject to the requirement. Also, as not all maintenance and repair activities require a building permit (e.g., not all maintenance activities would be a material alteration or repair within the meaning of the term "construction" as defined in the BCA), consideration should be given to the types of maintenance and repair that could be subject to such a requirement.

## Maintaining records of remedial actions

Currently the BCA does not require an owner to keep records of remedial actions taken to maintain or repair a building. Building owners would have an interest in retaining relevant maintenance and repair records regarding remedial actions in order to understand the state of their building and be aware of any recurring problems.

If building owners were to be required to maintain records of all remedial action they undertake, consideration should be given to how long those records would need to be retained as well as how such a requirement should be enforced. For example, would compliance be reviewed and enforced upon inspections for other matters, or proactively?

From the perspective of the Ministry of Labour (MOL), it is good practice for an owner/employer to keep records of remedial actions taken with respect to a building. MOL inspectors may ask workplaces to demonstrate compliance with the requirements of the OHSA and the regulations. Keeping appropriate records is a primary way in which a workplace can demonstrate compliance and due diligence.

## Workplaces

The *Occupational Health and Safety Act* (OHSA) sets out minimum standards for the protection of workers and the MOL enforces the Act in workplaces. Where a workplace happens to be one to which members of the public have access, public safety may indirectly benefit as a result of the application of the OHSA and MOL enforcement. However, the MOL does not have a mandate to protect public safety generally.

That being the case, there are various provisions in the OHSA and its regulations under which advice of a professional engineer may be required in matters involving workplace safety.

For example, in exercising his or her duties and powers under the OHSA, an inspector may require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating:

- (i) the load limits of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent,
- (ii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
- (iii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,
  - (A) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,
  - (B) in accordance with such other requirements as may be prescribed, or
  - (C) in accordance with good engineering practice, if sub-subclauses (A) and (B) do not apply [clause 54(1)(m) of the Act];

However, it must be reinforced that the enforcement of the OHSA is tied to worker safety. An inspector would not issue a requirement for an engineer's report under clause 54(1)(m) simply because an owner was contemplating repairs or maintenance to an existing building. A report could be required if the inspector had reason to suspect a structure was not in compliance with the requirements of the OHSA and, as a result, worker health and safety was at risk.

In the regulations made under the OHSA, there are many requirements that something be done or designed by a professional engineer. For example, section 26.1 of O. Reg. 213/91 (Construction Projects) requires that when a worker is exposed to a fall hazard and it is not possible to install a guardrail, the worker must be protected by a travel restraint system, a fall restricting system, a fall arrest system or a safety net, **designed by a professional engineer.**

Regulation 854 (Mines and Mining Plants) contains a requirement that the owner of a mine or mining plant must ensure that drawings, plans or specifications are **prepared or checked by a professional engineer** before proceeding with certain activities, including:

- the development or construction of a mine or a mining plant;
- the major alteration of mining technique or mining technology;
- the use of new methods of construction or of equipment installation; and
- the making of a major addition or alteration.

These are a few examples of the multiple situations under the OHSA that contemplate that the advice of a professional engineer be sought.

- 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.**

Municipal enforcement officials currently have a broad range of inspection and enforcement powers under the BCA to address public safety in buildings. Officials may inspect buildings to determine whether they are unsafe, and the BCA defines what is unsafe for purposes of the Act. To address an unsafe building, officials may issue orders requiring remediation, prohibit the use or occupancy of unsafe buildings, and take any action they consider necessary for the protection of the public, including causing the buildings to be renovated, repaired or demolished.

In carrying out an inspection to determine whether a building is unsafe or in taking steps to remedy an unsafe or emergency situation, a building official may, amongst other matters:

- Require persons to provide information and produce documents,
- Be accompanied by a person with special or expert knowledge,
- Make examinations or take tests, samples, or photographs, and

- Order any person to take and supply, at that person's expense, tests and samples.

Where a building official finds that a building is unsafe, he/she may make an order setting out the reasons why the building is unsafe and the remedial steps necessary to render the building safe. The building official may require the order be carried out within the time specified in the order.

If an unsafe building order is not complied with within the time specified in the order (or a reasonable time if no time is specified), the official may issue an order to prohibit occupancy of the building and may cause the building to be renovated, repaired or demolished, or take any other action the official considers necessary for the protection of the public.

In addition, failure to comply with an order, direction or other requirement made under the BCA is an offence under the Act and is liable to fines as determined by the courts. Municipalities often prosecute persons for failure to comply with orders. The BCA further provides that failure to comply with an order prohibiting occupancy of an unsafe building is a continuing offence subject to additional fines. Where a person has not complied with an order issued under the BCA, enforcement officials may also apply to the Superior Court of Justice for a court order directing that the person comply.

Generally, the enforcement options available to municipal officials under the BCA are discretionary. This approach is typical of enforcement of similar legislative schemes that involve diagnosing areas of concern and identifying solutions to remedy those concerns, as it allows officials to take action as they determine necessary based on their experience, training and understanding of the particular circumstances. As each unsafe situation or building may vary, it can be difficult to prescribe mandatory requirements that would be appropriate for all situations. Consideration could be given to the extent to which prescriptive, mandatory requirements for enforcement would be applicable to the wide variety of circumstances that enforcement officials encounter and if they would enhance the ability of officials to appropriately respond to dangers to public safety. Consideration could also be given to the extent to which prescriptive, mandatory requirements would allow building officials to consider individual circumstances, such as past history of compliance with respect to a particular building or building owner.

Consideration could be given to whether other enforcement options could be made available to assist enforcement officials in achieving compliance with orders issued under the BCA. For example, would additional enforcement tools, such as administrative monetary penalties, posting of orders to comply on buildings or on a public website, etc. help ensure greater compliance with orders?

Consideration could also be given to enhanced training for building officials on their powers with respect to unsafe buildings. Building officials must successfully complete qualification examinations under the BCA. The Province has also provided non-mandatory training courses for building officials that describe their powers under the BCA. Could enhanced or mandatory training assist in enhancing building officials' awareness and understanding of what constitutes an unsafe building and enforcement powers available to address unsafe situations?

With respect to the municipality undertaking remedial work at the owner's expense, the BCA generally provides that the municipality shall have a lien on the land for the amount spent on

the renovation, repair, demolition or other action undertaken pursuant to the Act, and that the amount shall have priority lien status. Consideration could be given to the ability of smaller municipalities to cover costs of remediating private property out of public municipal tax revenues, particularly if those costs may not be recoverable for an extended period of time.

### Workplaces

MOL notes that Regulation 851 (Industrial Establishments) made under the OHS Act mandates that where a structure is damaged to the extent that a collapse is likely to occur and cause injury to a worker, the structure must be braced and shored to prevent the collapse and safeguards must be provided to prevent access to the area. An MOL inspector can enforce this duty through the issuance of orders which, if not complied with, can result in prosecution – which effectively protects worker safety.

If an MOL inspector finds that a contravention of the OHS Act poses an imminent danger or hazard to the health or safety of a worker, the inspector may issue a “stop work” order, the scope of which can range from specifying that a specific piece of equipment not be used until the contravention is corrected to requiring that work stop in its entirety and that workers leave a workplace until the danger or hazard is removed.

The Policies & Procedures Reference Manual of the Operations Division of the MOL<sup>1</sup> lists the following examples of imminent hazards which require an inspector to issue a stop work order (in addition to an order to rectify the underlying hazard) because the risk to workers is so great:

- workers exposed to unshored or improperly-sloped excavation walls,
- falling hazards,
- electrical hazards,
- worker access to the die area of a punch press,
- inadequate ventilation in a mine.

**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?**

### Qualification requirements for property standards officers

The BCA establishes the powers and duties of building officials and property standards officers. The BCA also establishes qualification requirements for certain building practitioners, including building officials (chief building officials and inspectors), designers (other than architects and professional engineers), registered code agencies and persons involved in the construction on site, installation, repair, servicing, cleaning or emptying of sewage systems.

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<sup>1</sup> This Manual has been previously produced to the Commission of Inquiry in its entirety. See Module 5-D-I (Orders and Requirements-Orders-Issuing Stop Work and Barrier Orders) for additional details on issuing stop work and barrier orders. Exhibit 4124.

Qualifications requirements for building officials are set out in the BCA and Building Code. Becoming qualified requires that officials pass the Ministry of Municipal Affairs and Housing's Building Code qualification examinations. The examinations include legal/administrative, as well as the categories of buildings for which inspectors will carry out plans review or inspections (e.g. large buildings, complex buildings, building structural, etc.).

There are currently no such mandatory qualifications for property standards officers.

If property standards officers were to be subject to qualification requirements under the BCA, consideration could be given to whether the requirements should be similar to existing qualification requirements for building officials, if qualifications should be expanded to require mandatory training and continuing education or other components (e.g. education, experience), and how such qualifications should be administered and enforced.

### Training

To support implementation of the BCA and Building Code and the qualification requirements for building practitioners, MMAH makes available technical training courses. Ontario has provided non-mandatory training courses on the BCA and Building Code that are available to the public, including building officials and property standards officers.

Consideration could be given to enhanced opportunities and requirements for training for building officials and property standards officers to assist them in understanding their powers and duties under the BCA. If training were to become a mandatory requirement, consideration could be given to whether it should be required as an entrance qualification only, or as a continuing requirement similar to that for lawyers.

### Regulation of building officials and property standards officers as a profession

The Ontario Building Officials Association and Ontario Association of Property Standards Officers each have private Acts (1992, c. Pr38 and 1992, c. Pr8) governing their members and granting them the right to use an exclusive designation or title. However, these Acts do not grant the exclusive right to practice or work as building officials or property standards officers. Currently, persons who are not members of OBOA or OAPSO may still carry out the work of building officials or property standards officers.

Self-regulation would confer exclusive practice rights and include control over the admission to these occupations and the way in which they are practiced. With self-regulation, only members of those bodies would be able to carry out the work of building officials or property standards officers.

A number of considerations may be relevant to proposals for self-regulation, given the significance of self-regulation and the impact on the ability of individuals to practice their professional or occupation. For instance, would self-regulation of building officials and property standards officers enhance the protection of public health and safety? Is there a benefit to public health and safety that would be achieved beyond that currently addressed through qualification requirements under the BCA? How would the costs (service delivery, accountability, compliance assurance, practitioner oversight, economy of scale) of self-regulation be addressed? How can capacity of the sectors best be built to achieve effective self-regulation and accountability?

### Degree of Independence of property standards officers

Building officials are statutory appointees under the BCA. The council of each municipality is required to appoint a chief building official and such inspectors as are necessary for the enforcement of the BCA in the area in which the municipality has jurisdiction. Under the BCA, the municipal clerk issues a certificate of appointment to the chief building official and each inspector appointed. Chief building officials and inspectors have certain duties and powers specifically set out in the BCA (e.g., issuing building permits under s. 8(2)), their role is described in s. 1.1(6) and (7), and they are subject to municipal codes of conduct established under s. 7.1.

The BCA does not specify that property standards officers must be appointed. Not all municipalities have property standards by-laws, and many property standards by-laws currently address a broad range of matters other than building maintenance and safety (e.g., aesthetic issues, clean yards etc.). The definition of “officer” in the BCA provides that property standards officers are those who have been assigned the responsibility of administering and enforcing property standards by-laws passed under the BCA.

Consideration could be given to matters such as whether property standards officers should be appointed in a manner similar to that for building officials, whether the role of property standards officers should be specifically described in the BCA similar to that of building officials, and whether property standards officers should be subject to municipal codes of conduct established under the BCA, recognizing the broad scope of many property standards by-laws.

**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?**

1. Affected government organizations should consider working together to develop a document that clearly outlines the responsibilities of all relevant levels government and regulatory bodies with respect to safety in buildings (e.g. MOL enforces the OHSA in workplaces, the *Fire Code* falls under MCSCS jurisdiction, MMAH administers the *Building Code*, and municipal building officials enforce the *Building Code*). This document could also address roles that may be played by non-government actors (such as building owners, lenders and insurers), with reference to the differing areas of expertise, capacities and resources of the various parties.

The document could describe the roles of each of the regulatory bodies during an emergency situation in which the structure of a building is compromised.

Consideration should be given to making the document publicly accessible so all Ontarians understand the roles and responsibilities of relevant parties with respect to building safety.

2. To reduce their own financial liabilities, non-government actors such as insurers and lenders (banks and other financial institutions) have an inherent interest in ensuring the safety and structural integrity of structures that they insure or mortgage. Consideration

should be given by the industry to studying ways in which this interest could be utilized to support structural safety of buildings to which the public has access in Ontario. For example, are there ways to more closely tie insurance in buildings open to the public to the structural integrity of those buildings?

Ontario looks forward to participating in the Phase I Policy Roundtable process and assisting the Commission in discussing recommendations within the mandate of the Commission.

## ROUNDTABLE 2 – IMPROVED SHARING OF REPORTS AND INFORMATION

Tuesday November 19, 2013

Moderator: Mark Wallace

### 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
- Association of Ontario Municipalities, Stuart Huxley, Senior Legal Counsel, City of Ottawa

- 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**
  - 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**
  - c. To the municipality whenever a building permit is required for repairs and renovations?**
  - d. to a provincial agency**

Generally, there are no current requirements under the *Building Code Act, 1992* (BCA) for building owners to keep secure records of building conditions or to make them available to any person or agency.

Municipalities may, by by-law, require that applications for building permits be accompanied by such plans, specifications, documents and other information as is prescribed in the by-law. In addition, a municipal building official or property standards officer may, in some circumstances, require information and documents be provided on the condition of an existing building and that professional consultants be retained by building owners to provide reports, as needed, as part of an inspection under the BCA.

If building owners were required to provide documentation about repairs and maintenance of existing building to municipal building officials, consideration could be given to whether

provision of the documentation should be a condition to issuing a building permit or lifting an order made under the BCA.

### Workplaces

In exercising his or her duties and powers under the *Occupational Health and Safety Act* (OHSA), an inspector may require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same [clause 54(1)(c)]. To the extent that any document relating to the condition of a building is relevant to compliance with the OHSA or its regulations, an inspector is legally entitled to require that the document be produced to him or her. In some cases, the inspector will make a copy of a document produced.

When a document is collected by an MOL inspector, it is maintained by the ministry in accordance with record keeping requirements. These records may be available to third parties through information sharing agreements and the access request procedures of the *Freedom of Information and Protection of Privacy Act*.

Additionally, subsection 57 (10) of the OHSA provides an individual with the statutory right to obtain a copy of a posted inspection report resulting from that person's complaint. That person need not be a worker. If a third party made a complaint to the MOL about the condition of a workplace and an inspector conducted a field visit in response, the third party would be entitled to the field visit report (which would indicate whether any orders were issued to a workplace party to comply with a provision of the OHSA or the regulations).

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

Currently there is no requirement under the BCA for registration of building information on the title to the property. Changes to enable such registration may impact statutes such as the *Land Titles Act* and *Registry Act*. These Acts are administered by the Ministry of Government Services and outside the scope of the BCA.

The principles underlying the land titles system relate solely to *title* to land. The *Land Titles Act* does not deal in any way with the manner in which property is used or the condition of any improvements on a property nor provide any mechanism for registering instruments that do not create or affect an interest in title. Any amendment to the *Land Titles Act* to permit it to deal with such matters would be a significant departure from the principles upon which the land titles system is based and would therefore require significant policy and legislative amendment. Most properties in Ontario are now registered under the *Land Titles Act* and it is intended to repeal the *Registry Act* as soon as the remaining properties can be brought under the *Land Titles Act*. In any event, the intention of the *Registry Act* is also that only instruments that affect an interest in land can be registered under it.

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

See answer above.

- 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?**

The scope of information to be provided on such a registry should be considered. Would the information include all reports relating to a building, or would it focus on information such as outstanding orders relating to the building? Consideration could be given to the broader public's capacity to understand technical matters (such as structural issues) and when a building maintenance matter poses an immediate danger to public safety. Are there other options to make information available to interested parties such as professional consultants or financial and insurance institutions?

If building condition information was required to be filed with chief building officials, the scope of information to be provided to chief buildings officials should also be considered. Would the information include all information about maintenance and repairs of buildings, or would it be limited to specific types of information (e.g., professional reports, orders issued under other legislation such as the OHSA)?

- 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 report or document 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.**

The government does not directly regulate in this area. Any proposals to change the types of information on property transactions should involve discussions with relevant stakeholders, including Professional Engineers Ontario.

- 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?**

Procedures that could help ensure that relevant technical information respecting a building is made available to successor professionals may be of benefit both to building owners and regulators seeking to assess risks associated with the building. That being said, any proposals regarding the sharing of information among professionals should involve discussions with relevant stakeholders, including the Ontario Association of Architects and Professional Engineers Ontario.

- 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?**

The BCA does not require that municipalities establish processes for receiving complaints about buildings.

Consideration could be given to whether municipalities should establish complaints processes related to public safety in buildings as part of their property standards by-law, and how information obtained through complaints should be acted upon in enforcing the property standards by-law. In addition, consideration could be given to methods for cost recovery to ensure effective capacity to enforce the by-laws.

Consideration could also be given to how building owners should be involved in processes to receive and address complaints, how information received through complaints to building owners could be provided to municipal enforcement officials and how such information should be used by municipal officials in exercising their powers under the BCA.

Considerations that could be taken into account with respect to a publicly available registry could include whether such registries would be local in nature or provided on a broader basis.

It is the practice of the MOL to document and maintain all oral and written complaints, including those for which the complainant wishes to remain anonymous. In some cases, the complainant will not provide his or her name; in others, the person will provide a name but indicate a desire to remain anonymous. In the latter situation, the MOL would take precautions to protect that person's anonymity (for example, an inspector performing a reactive inspection in response to the complaint would not reveal the person's identity to the workplace parties).

- 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 situation 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?**

The MOL is of the view that expanding the notice requirements as contemplated would not confer any additional benefit with respect to advancing worker health and safety.

Part V of the OHS Act (Right to Refuse or to Stop Work where Health or Safety in Danger) already contemplates scenarios in which there is or may be an imminent danger to worker health and safety and provides two separate mechanisms by which such a situation can be

addressed immediately by those in closest proximity, namely the workplace parties themselves.

Under s. 43 of the OHSA, a worker may refuse to do work if he or she has reason to believe that,

- any machine, equipment or tool that the worker is using or is told to use is likely to endanger himself or herself or another worker [clause 43(3)(a)]
- the physical condition of the workplace or workstation is likely to endanger himself or herself [clause 43(3)(b)]
- workplace violence is likely to endanger himself or herself [clause 43(3)(b.1)]
- any machine, equipment or tool that the worker is using, or the physical condition of the workplace, contravenes the Act or regulations and is likely to endanger himself or herself or another worker [clause 43(3)(c)]

The OHSA sets out a specific procedure that must be followed in any work refusal. A worker exercising his or her right to refuse work must immediately tell the supervisor or employer and explain the circumstances of the refusal [subs. 43(4)]. The supervisor or employer must investigate the situation immediately in the presence of the worker and a member of the joint health and safety committee (JHSC), the health and safety representative or another worker who has been chosen on the basis of knowledge, experience and training. If the situation can be resolved at this point (known informally as a “first stage” work refusal) by the workplace parties themselves, then the worker returns to work.

The worker may continue to refuse work following the first stage and the employer’s investigation if he or she has reasonable grounds for believing that the circumstances that caused the worker to initially refuse work continue [subsection 43(6)]. At this point, the “second stage” of a work refusal begins. At this point, the MOL must be notified.

An inspector investigates the refusal (in consultation with the employer and a worker representative) and makes a determination as to whether the circumstance that led to the work refusal is likely to endanger the worker or another person [subs. 43(8)]. If the inspector finds that the circumstance is not likely to endanger anyone, the refusing worker is expected to return to work. If the inspector finds that the circumstance is likely to endanger, the inspector will typically order the employer to remedy the hazard.<sup>2</sup>

This process reflects the underlying principle of the OHSA, the internal responsibility system (IRS), which encourages workplace self-reliance with respect to occupational health and safety by placing responsibility for identifying and addressing health and safety issues (in the first instance) on workplace parties themselves. As the s. 43 work refusal procedure demonstrates, there is a mechanism by which the MOL becomes involved if parties are unable to come to a resolution with respect to a hazard that a worker feels presents an imminent danger. There would be no benefit in the MOL receiving notice earlier in the process (e.g., at the first stage) and, arguably earlier involvement of the MOL could

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<sup>2</sup> For additional details, see Part V of *A Guide to the Occupational Health and Safety Act*, previously produced to the Commission as Appendix A of *Ministry of Labour: An Overview of the Occupational Health and Safety Act, and the Roles and Responsibilities of Industrial Inspectors*, Exhibit 4121.

*discourage* workplace parties from attempting to resolve issues themselves and run counter to the philosophical underpinnings of the OHSA.

The other mechanism by which the OHSA provides for the addressing of an imminent danger is the 'work stoppage process' set out in s. 44-49. These provisions permit specified persons to order the employer stop work in "dangerous circumstances" which are defined in s. 44 to mean that,

- (a) a provision of the Act or the regulations is being contravened,
- (b) the contravention poses a danger or a hazard to a worker, and
- (c) the danger or hazard is such that any delay in controlling it may seriously endanger a worker.

If a certified member of a JHSC representing workers and a certified member representing management both find that dangerous circumstances exist, the certified members may effect a bilateral work stoppage and direct the constructor or employer to stop the relevant work or stop the use of any part of a workplace or any equipment [subs. 45(4)]. An employer must comply with this direction immediately [subs. 45(5)].<sup>3</sup>

As in the work refusal scenario, a workplace party may involve the MOL. Subs. 45(6) provides that if the two certified members do not agree whether dangerous circumstances exist, either one may request that an MOL inspector investigate. He or she would do so and provide a determination as to whether dangerous circumstances exist. The inspector would ensure appropriate steps are taken to protect workers from the hazard, typically by issuing appropriate orders to address the contravention that has given rise to a hazard.

The MOL is of the view that the current work stoppage process provides a more suitable procedure for addressing imminent hazards that require prompt attention than would a notice requirement to the ministry. Because workplace parties are already in the workplace, they are better placed to immediately deal with urgent scenarios than the MOL is. If the IRS functions as it ought to, there could potentially be many scenarios in which an urgent situation can be immediately addressed by the workplace parties themselves with no additional role to be played by an MOL inspector. If **both** the worker and employer representatives are satisfied with how an imminently hazardous situation is addressed in a workplace, there would be no benefit in having a statutory requirement that the ministry receive notice when an 'imminent' hazard has arisen.

It always remains open to any person (worker, supervisor or even a member of the general public) to contact the MOL when there is a potential violation of the OHSA or its regulations. In workplaces where the IRS is not functioning as well as it might, the ministry anticipates that it would learn about hazards that remain unaddressed through the existing complaint mechanism. The ministry already prioritizes its reactive visits to workplaces based on the level of the potential threat to worker health and safety. A new notice requirement would arguably not affect the MOL's current response procedures.

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<sup>3</sup> The OHSA also permits unilateral work stoppages in certain limited cases in which the Ontario Labour Relations Board has issued a declaration that bilateral work stoppage process is insufficient to protect worker safety in a specific workplace. See the Guide, *ibid*, for additional details.

**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?**

Subsection 9(1) of the *Regulatory Modernization Act, 2007* (RMA), authorizes a person who is lawfully present in any place exercising statutory powers to (i) record any observation that is likely to be relevant to the administration or enforcement of another Act (or regulation), and (ii) disclose it to a person who administers or enforces the other Act.<sup>4</sup>

Government organizations whose enforcement staff are regularly present in buildings and potentially in a position to make observations respecting structural integrity should consider working together to put subs. 9(1) of the RMA to effective use.

For example, MOL inspectors are regularly present in workplaces and may make observations that are relevant to municipal enforcement of building standards. MOL could explore how it might work with municipalities (or umbrella organizations representing municipalities) to ensure that such information in the possession of the MOL is referred to the appropriate municipal building officials for follow up as appropriate.

Ontario looks forward to participating in the Phase I Policy Roundtable process and assisting the Commission in discussing recommendations within the mandate of the Commission.

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<sup>4</sup> Subsection 9(1) of the RMA reads in full:

**Observing and disclosing**

**9. (1)** A person who is lawfully present in a place in the exercise of powers or performance of duties under an Act or regulation and who makes an observation, visual or otherwise, that is likely to be relevant to the administration or enforcement of another Act or regulation may record the observation and disclose it to a person who administers or enforces the other Act or regulation.