

IN THE MATTER OF the *Public Inquiries Act, 2009*, S.O.
2009, c. 33, Sched. 6

AND IN THE MATTER OF the Elliot Lake Commission of
Inquiry, established by Order in Council 1097/2012

**SUBMISSIONS OF THE
ONTARIO BUILDING OFFICIALS ASSOCIATION**

[In response to Procedural Order No. 9 and No. 11 regarding the
1988 *Report of the Advisory Committee on the Deterioration,
Repair and Maintenance of Parking Garages*]

June 13, 2014

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Leo F. Longo

Tel: 416.865.7778
Fax: 416.863.1515
Email: llongo@airdberlis.com

Solicitors for the Participant,
Ontario Building Officials Association

Introduction

1. The Ontario Building Officials Association [the “OBOA”] files this submission in response to Procedural Order Nos. 9 and 11.
2. The OBOA has not yet been able to determine whether it ever received or was aware at the time of the 1988 *Report of the Advisory Committee on the Deterioration, Repair and Maintenance of Parking Garages* [the “Report”].
3. This submission will address two aspects of the “Enforcement” Chapter 5 of the Report.

Existing Regulatory Framework

4. Under s. 5.3 of the Report, it is stated:

“Maintenance and occupancy standards by-laws can be passed by municipalities pursuant to Section 31 of the *Planning Act*. However, the ability of municipalities to deal with certain matters is limited by the *BCA* and the *Fire Marshal's Act*, as **there is no current provincial "Property Standards Act". Maintenance and occupancy standards bylaws vary from municipality to municipality in substance and in process**; this was graphically presented in the report done by the Residential Improvement Division of CMHC dated September, 1986. It also was shown that such bylaws vary significantly right across Canada.” [emphasis added]
5. Recall that in 1997, the property standards provisions were removed from the *Planning Act* and inserted into the *Building Code Act, 1992*.
6. Notwithstanding that legislative amendment, the substantive comments quoted in s. 4 above remain true today:
 - (i) there has not been promulgated a Provincial regulation that establishes a Province-wide “Property Standards / Building Maintenance Code”;
 - (ii) a municipality retains the discretion whether to even enact a property standards by-law; and
 - (iii) municipal property standards by-laws vary greatly in content and process.
7. It is in the public interest that buildings accessible to the public be properly maintained and meet minimum safety standards.
8. It is in the public interest that any established maintenance standards be effectively enforced.

Options to Address Problem

9. The Report noted:

“The options which the Sub-committee has considered are:

5.4.1 - Mandatory Retrofit Under the BCA

Mandatory retrofit for structural safety, enforceable across the province, could be accomplished under the general structure of the present BCA. However, **this would require new regulations to be filed under the BCA which would deal with structural safety in existing buildings.** This option would also require some amendments to the BCA itself pursuant to the Regulations Authority section.

5.4.3 - Specific Standards Bylaws

A specific standards by-law could be drafted which could be adopted optionally by municipalities and enforced through their own maintenance and occupancy standards by-laws.” [emphasis added]

10. Both of these options involved action by the Province.
11. To our knowledge, the Province did not pursue either.
12. The Report appropriately noted:

“If the Committee as a whole recommends a minimum standard which would be mandatory and provincial in nature, then the BCA, with appropriate amendments and with the addition in the regulations of a **"code for existing buildings" becomes an attractive approach because:**

(a) The legislation is to a large extent in place. It provides for the delegation of authority, the identification of building officials, the description of procedures, appeal structures, protection of building officials from civil liability, etc. In short, a good deal of the necessary machinery is already contained in the BCA.

(b) The method chosen to enforce the mandatory province-wide standards should probably not be significantly different from current established practice.

(c) The use of the BCA may help in avoiding proliferation of legislation which we believe should be one of the goals in the legislative process.

(d) The use of a new or different method of enforcement for parking garages alone distorts the picture; there are other building safety issues which, in the near future, or indeed presently, must be addressed including such things as exterior cladding, balconies and other new problems with respect to parking structures and highrise developments which are today newly emerging as problems for tomorrow. We therefore must not lose sight of other structural safety and related problems which can be accommodated by amendments and further regulations under the BCA.

(e) We believe great care must be taken in drafting any amendments to the BCA to ensure that the implication of the new standards are reasonably applied.” [emphasis added]

13. Should the “code for existing buildings” option be implemented, it will require inspectors who possess appropriate education, skill, training, professional certification and experience to properly fulfill their obligations to enforce such a code and enhance public safety.
14. As noted above, building officials will be well-positioned to be able to inspect and enforce any such “code for existing buildings”.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of June, 2014.

“ Leo F.Longo”

Leo F. Longo

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Leo F. Longo

Tel: 416.865.7778
Fax: 416.863.1515
Email: llongo@airdberlis.com

Solicitors for the Participant,
Ontario Building Officials Association

**THE ELLIOT LAKE
COMMISSION OF INQUIRY**

**SUBMISSIONS OF THE
ONTARIO BUILDING
OFFICIALS ASSOCIATION**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place, Suite 1800
181 Bay Street
Toronto, ON M5J 2T9

Leo F. Longo
Tel: 416.865.7778
Fax: 416.863.1515
Email: llongo@airdberlis.com

Solicitors for the Participant,
Ontario Building Officials Association