



Corrigendum to Chapter 14

A number of my recommendations relating to the enforcement of minimum maintenance standards for buildings across the province conclude that they could be implemented by a regulation enacted by the Lieutenant Governor in Council, and did not need legislation to be passed by the Legislature. After the Report was printed, it came to my attention that I was incorrect. Legislation will be required to bring to fruition a number of these recommendations.

There are three provisions of the *Building Code Act*¹ (the “Act”) which together provide a framework for the creation of mandatory minimum standards for building maintenance and enforcement of those standards.

Sub-Section 34(2) of the *Act* states:

(2) The Lieutenant Governor in Council may make regulations to establish standards that existing buildings must meet even though no construction is proposed, including regulations:

- (a) prescribing any or all of the matters set out in subsection (1) [which authorizes the *Building Code*] as applicable to existing buildings;
- (b) establishing standards for maintenance, retrofit, operation, occupancy and repair ...

This provision authorizes Ontario to enact regulations establishing minimum maintenance standards for existing buildings. I recommended that it be used to establish province-wide minimum structural maintenance standards for existing buildings and to include in those standards a requirement that all buildings be watertight, structurally sound, and not unsafe, and be maintained in such a way as to keep them in that condition for a reasonable period – the “Minimum Maintenance Structural Standard”. (Recommendations 1.1 and 1.2)

Clause 7(1)(b.1) of the *Act* states:

7(1) The council of a municipality or of an upper-tier municipality that has entered into an agreement under subsection 3(5) or a board of health prescribed for the purposes of section 3.1 may pass by-laws, a planning board prescribed for the purposes of section 3.1 or the Lieutenant Governor in Council may make regulations, *applicable to the matters for which and in the area in which the municipality, upper-tier municipality, board of health, planning board, conservation authority or the Province of Ontario, respectively, has jurisdiction for the enforcement of this Act*, [emphasis added]

...

(b.1) subject to the regulations made under subsection 34(21.), establishing and governing a program to enforce standards prescribed under clause 34(2)(b) ...”

The effect of this provision is that a program to enforce minimum standards created by the province by its authority under s. 34(2)(b) can only be *established* on a piecemeal basis by the level of government responsible for enforcing the *Act* in a particular geographic area. The province is only responsible, by s. 4(1) of the *Act*, for enforcing the *Act* in a territory in which there is no municipality established. If minimum maintenance standards were to be created by the province, they could only be enforced, under the present statutory language, in those municipalities which chose to establish an enforcement program.

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¹ *Building Code Act*, SO 1992, c 23 (as amended)

A number of my recommendations were premised on the erroneous belief that the province has the authority to enact a regulation establishing a program across the province to enforce minimum maintenance standards which it had created.

Sub-section 34(2.1) of the *Act* states:

The Lieutenant Governor in Council may make regulations governing programs established under clause 7(1)(b)(b.1), including regulations,

- (a) governing the classes of buildings and area affected by a program;
- (b) governing the type and manner of inspections that are conducted under a program and the frequency of the inspections; ...

This provision gives the province, acting through the Lieutenant Governor in Council, the authority to enact regulations *governing* programs established by municipalities to enforce the minimum standards created by the government.

The effect of the present statutory provisions is that:

- The provincial government can establish minimum maintenance standards for existing buildings province wide, under s. 34(2)(b) of the *Act*;
- Programs to enforce those standards can only be established separately by by-law passed by council for each municipality;
- In municipalities where such programs are established, the provincial government can enact regulations governing them, including determining which types of buildings are affected by the program, the type and manner of inspections, and the frequency of inspections; in municipalities where no such programs are established, any minimum maintenance standards created by the province cannot be enforced.

This byzantine scheme cannot be justified. Maintenance standards created by the province should be applicable and enforceable throughout the province without requiring the consent of municipal councils. Residents of this province should receive equal protection across the province.

In my view, a simple statutory amendment would allow the province, by regulation, to both create and enforce minimum maintenance standards for buildings across the province. I recommend that the province enact legislation amending s. 34(2.1) of the *Act* so that it would read (with new language underlined and language to be removed indicated with a "strike-through"):

(2.1) The Lieutenant Governor in Council may make regulations establishing and governing programs to enforce standards prescribed under clause (2)(b) established under clause 7(1)(b.1), other than in relation to sewage systems, including regulations ...

This would track the language used in s. 34(2.2) of the *Act* and treat minimum maintenance standards prescribed for buildings in the same way as minimum maintenance standards prescribed by the province for sewage systems. Sub-section 34(2.2) reads:

(2.2) The Lieutenant Governor in Council may make regulations establishing and governing programs to enforce standards prescribed under clause (2) (b) in relation to sewage systems, including regulations...

My erroneous interpretation of the *Act* led me to conclude that a number of my recommendations could be implemented by the Lieutenant Governor in Council enacting a regulation under s. 7(1)(b.1) of the *Act*. I now correct those recommendations to replace them with a recommendation that the *Act* be amended in the manner set out above, and that the Lieutenant Governor in Council enact a regulation under the amended provisions of s. 34(2.1). This affects Recommendations 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.22, 1.25, and 1.30.