

November 1, 2013

Mr. Justice Paul R. Bélanger  
Commissioner  
Elliot Lake Commission of Inquiry  
2380 St. Laurent Boulevard  
Ottawa, Ontario  
K1G 6C4

Dear Justice Bélanger,

On behalf of Insurance Bureau of Canada (IBC), I want to thank you for the invitation to participate in the Elliot Lake Commission of Inquiry's policy roundtable on improved sharing of reports and information. The property and casualty (P&C) insurance industry welcomes the opportunity to contribute to your examination of policy responses to the tragedy at the Algo Centre Mall in Elliot Lake.

Based on the experience of Ontario insurance companies, it appears that the disaster in Elliot Lake was more of an isolated event and, generally is not indicative of the state of the structural integrity of buildings in Ontario. The main reasons why full or partial building collapses are so uncommon are the presence of comprehensive legislation and regulations on construction standards and the existence of strong financial incentives for owners to maintain their properties. One such incentive comes from P&C insurance companies. As owners of commercial buildings generally purchase insurance and re-insure annually, they are motivated to maintain their premises in adequate condition both to ensure the property remains insurable and to keep premiums as low as possible. The purchase of insurance also gives owners access to the risk management professionals insurance companies employ to help their clients reduce exposure to physical hazards.

IBC established a working group of insurance companies to review the background questions the Commission provided. Our commentary focuses on the questions for the roundtable on improved sharing of reports and information. The positions and suggestions we put forward are designed to:

- Make use of the incentives already built into the legislative/regulatory environment to encourage property owners to maintain their properties;
- Ensure an appropriate balance between the cost and benefits of regulatory measures so as to support widespread compliance; and
- Empower municipalities to focus their inspection and regulation resources on high-risk properties.

## **Enhanced Accessibility of Building Inspection Reports**

The *Ontario Building Code* requires all engineering reports concerning construction, alteration, or enlargement of commercial buildings to be provided to the Chief Building Official (CBO) of the relevant municipality. Also, the majority of municipalities require mandatory inspections prior to issuing permits for repairs or renovations. In addition to municipal governments, generally, potential purchasers have access to this information through the *Municipal Freedom of Information and Protection of Privacy Act*.

Requiring the release of voluntary private inspection reports, either through mandatory disclosure, registration on title of property or listing in a central registry could produce a variety of unintended, and costly, consequences. In particular, to the extent that inspection reports can contribute directly or indirectly to implied or unproven diminished value of the property, requiring disclosure could discourage property owners from soliciting inspection reports as part of the ongoing maintenance of their premises. There is also a concern that such disclosure could also increase the risk to those carrying out building inspections and preparing inspection reports, as they would become more vulnerable to lawsuits alleging that a report which identified concerns about a structure (and so contributed to its diminished value) had been prepared negligently. In turn, this higher risk would very likely be reflected in higher inspection and report preparation costs.

With respect to insurance inspection reports specifically, these reports are not intended to certify the safety of a structure, nor are they designed for purposes of third-party reliance. Their purpose is to assess the moral, financial and physical aspect of a risk, in order to facilitate an informed risk-transfer agreement (i.e. an insurance contract) between two parties. Mandatory disclosure of inspection reports carried out for insurance purposes could lead to misplaced and misinformed third-party reliance. For this reason, the risk of third-parties accessing these reports and relying on their conclusions for a variety of unintended purposes could compel insurance inspectors to increase the scope and thus cost of their examinations solely to protect themselves against the enhanced corresponding liability exposure.

At the same time, it is important to remember that there are incentives built into existing legislative frameworks in Ontario and in the purchase and sale of property process for property owners to disclose inspection reports to interested parties. For example, as part of a sales transaction, a potential purchaser of a property is in a position to request from the property owner all documents pertaining to the condition of the building. Also, by law, real estate agents are required to disclose all material facts of which they are aware on a property to a potential purchaser. Furthermore, a municipality can refuse to issue a building permit for repairs or renovations until the owner agrees to provide a recent inspection report detailing the building's condition. Municipalities also have the authority to register on the title of property any Municipal Compliance Order to remedy a violation of a by-law or building code.

## **Documenting Complaints**

One of the biggest challenges governments at all levels face is enforcing legislation and regulations. This is an important reason why regulations need to be framed in ways that

encourage or incent compliance. Moreover, because it is so costly for governments to actively monitor the many areas of community life that are subject to regulation, it is critical to find the means for prioritizing the application of public enforcement resources on the areas that appear to be high-risk. With respect to ensuring the structural integrity of buildings, documenting and tracking complaints is a relatively low-cost method for guiding the allocation of such resources. Specifically, where record-keeping permits the identification of specific buildings that have attracted a large number of complaints, resources can be better utilized to focus on structures where a public safety risk may exist.

Using complaints efficiently as a regulatory tool requires some means for distinguishing between serious and frivolous grievances. Thus, while protection from public disclosure is essential to encouraging people to file complaints, requiring complainants to document their names with municipal officials helps to validate their legitimacy. We understand many municipalities already use complaints records to allocate inspection resources. Consideration should be given to making the practice of maintaining and actively monitoring complaints a requirement.

### **Creating a Public Registry for Property Standards By-Law Violations**

In the current regulatory environment, Municipal Orders addressing structural by-law violations are registered in the property land registry office. When a property owner satisfies the requirements of the Order, the municipal clerk updates the file. Those violations that the property owner fails to address remain open files. Maintaining a public registry of non-compliance with Municipal Orders may incent property owners to comply. However, expanding the registry to include all violations, including those cases where the property owner fixed the problem, could discourage property owners from fixing structural deficiencies quickly.

### **Occupational Health and Safety Act Reporting Requirements**

We caution against expanding the reporting requirements in the *Occupational Health and Safety Act* to include situations where a building's structural issues may present a threat of imminent danger, accident or injury to the public. From a legal perspective, the term *imminent* is vague. Individual employers are likely to have different interpretations of situations that may constitute a possible danger to public safety.

We hope the Commission finds the information and advice set out in this correspondence helpful in its examination of policy responses. We look forward to participating at the policy roundtable on November 19<sup>th</sup>.

Sincerely,



Ralph Palumbo  
Vice President, Ontario