

ONTARIO BUILDING OFFICIALS ASSOCIATION
PART 1, PHASE 1 SUBMISSION
TO THE HONOURABLE PAUL R. BÉLANGER, COMMISSIONER
ELLIOT LAKE COMMISSION OF INQUIRY

A - INTRODUCTION

1. This is the submission of the Ontario Building Officials Association ["OBOA"] to Commissioner Bélanger respecting Part 1 of Phase 1 of the Elliot Lake Commission of Inquiry ["Commission" or "Inquiry"] into the tragic collapse of the roof of the Algo Centre Mall ["Mall"] on June 23, 2012.
2. This submission is focussed on those matters before the Inquiry that:
 - (i) are of particular interest and/or concern to the OBOA; and
 - (ii) the OBOA requests the Commissioner to address in his final report.
3. The OBOA welcomes the opportunity of attending and participating in Phase 2 of the Commission's task when it gives consideration of the policy issues that arise with respect to the evidence presented and issues explored in Part 1 of Phase 1 of the Inquiry.
4. Background information respecting the history, functions and interests of the OBOA can be found in the materials filed with the Commission in support of its applications for standing and funding. Also see the OBOA's Response to Summons dated February 5, 2013; and OBOA counsel's Opening Statement to the Commission on March 4, 2013, which is attached hereto as Attachment "A".
5. While noting that Elliot Lake has been an Improvement District, a Town and a City; for convenience purposes, this submission will refer to the municipality as either the "City" or "Elliot Lake".

B - OVERVIEW

6. At all relevant times, the City has had detailed and comprehensive Building By-Laws ["BBL"] which were enacted pursuant to and complemented Ontario's in-force *Building Code Acts* and Building Codes.
7. The circumstances surrounding the issuance of the building permit(s) for the Mall and the inspections during construction suggest a less than rigorous municipal scrutiny, review and approval process were undertaken.

8. While there is some doubt as to whether the design drawings of the Mall met the requirements of the applicable Building Code, there is no doubt that the actual Mall structure, as constructed, failed to meet the then-worded general Code requirement that roofing be “installed so as to shed or drain water effectively”.
9. Once the Mall was constructed and the building permit file closed, the matter became a “property standards” building maintenance issue.
10. While possessing the explicit power to do so, the Province has not established any minimum building maintenance standards for constructed buildings.
11. At all relevant times, while the City has exercised its discretion and enacted detailed, comprehensive property standards by-laws [“PSBL”], the existence and content of those by-laws were little known, if at all, in the community.
12. Coupled with the City’s complaint-based enforcement policy, a property standards inspection was rarely, if ever, triggered.
13. Other than two instances, no proactive investigation and enforcement of the PSBL were ever initiated by the City respecting the Mall’s well known leaking roof situation.
14. In the two instances when the City’s Chief Building Official [“CBO”] took action pursuant to the PSBL, the required follow-up was either non-existent or inappropriately concluded.
15. It would appear that the City Council and staff were deferential to the first two owners of the Mall.
16. There was never any reason apparent to the City’s CBOs that the Mall’s structural integrity was so compromised at any point by the roof leaks as to warrant the issuance of an “unsafe building” order pursuant to subsection 15.9(4) of the *Building Code Act, 1992*.
17. All of the foregoing falls within the Commission’s mandate to inquire into and report upon the Mall collapse and to review relevant legislation, regulations and bylaws and relevant policies, processes and procedures of provincial and municipal governments and other parties with respect to the structural integrity of the Mall.

C - CONSTRUCTION OF THE ALGO CENTRE MALL

C-I Setting

18. Elliot Lake was experiencing one of its “boom” periods in the years immediately prior to and during the construction of the Algo Centre Mall.

The Power and the Promise
pp. 296-297 and 303-304

Exhibit 4334

Farkouh
Day 38, pp. 8381-84

19. The population in 1980 was about 20,000 and growing.

Farkouh
Day 38, p. 8375

Boom Town Blues
p.222
Exhibit 4335

20. A thousand new homes were being constructed in new subdivisions. The city's building department was inundated with residential permit applications.

Pigeau
Day 14, p. 2759

C-II Mayor Roger Taylor

21. Mayor Taylor was the only "full-time" politician on City Council, being on an extended leave of absence from his employment with Rio Algom.

Farkouh
Day 38, pp. 8377-8

22. He "ran the show" with Council and was a "strong mayor".

Farkouh
Day 38, p. 8378

23. Mayor Taylor had allowed Rio Algom to construct houses on city-owned lands it had not acquired and without building permits. He was also found to have violated the *Municipal Conflict of Interest Act* but his seat was not declared vacant.

The Power and the Promise
pp. 326-327
Exhibit 4334

24. The day after Algoten Realty Holdings exercised its option [Exhibit 473] to acquire the city-owned lands for the Mall, the Deputy Clerk wrote to CBO Gruhl on December 21, 1978 and advised "**it would be in order to issue building permits** with respect to this property **at this time.**" [emphasis added] This was 3 months before Algoten actually owned the property and 4 months before a building permit application was submitted.

Exhibit 3148

C-III CBO Bob Gruhl

25. Due to illness, Bob Gruhl ceased working with the City July 20, 1979 (except for a return to work from December 3, 1979 – February 14, 1980). He died on March 5, 1980.

Pigeau
Day 14, pp. 2792-93

26. For the majority of the time the Mall was being constructed, the City's building department consisted of a single building inspector, Frank Hollick, a young man in his early 20s, and a single plumbing inspector.

Pigeau
Day 14, p. 2794

27. The Commission's ability to ascertain Hollick's education, training, work experience and capabilities was limited. Inspection Report No. 3805 reveals his inexperience, inability and frustration in dealing with the initial occupancy of the Woolco department store, a principal tenant in the Mall.

Exhibit 293

C-IV No Approved Plans

28. There are no architectural or structural plans in existence which are either stamped or otherwise identified as having been approved by the City's CBO and upon which a building permit was issued.

Exhibit 1876

29. Former CBO Roger Pigeau [1980-1999] testified he had never seen any set of architectural or engineering plans marked, stamped or identified as having been approved and upon which building permit no. 247/79 was issued.

Pigeau
Day 14, p. 2733

30. Further, Pigeau was not aware whether the plans and drawings requested by the City in Exhibit 3150 subsequent to construction commencing on the Mall were ever submitted to the City.

Pigeau
Day 14, p. 2741

31. No other witness at the Inquiry had ever seen building permit "approved" plans or drawings for the Mall.

32. Neither building permit application for the Mall which led to the issuance of building permit numbers 247/79 and 96/80 was filled in to indicate that any plans, drawings or specifications were being submitted with such applications.

Exhibits 290 & 3262

C-V Compliance with the City's Building By-Law

33. There is little, if any, direct evidence of any compliance by the Mall's owner/developer and contractors with many mandatory requirements of the City's Building By-law No. 78-47. See Part H of this submission for further elaboration.

C-VI Conclusion

34. As there is little direct evidence respecting the circumstances surrounding:
- (i) the application for and issuance of a building permit for the Mall; and
 - (ii) the nature and quality of the inspections made during construction;

based upon C-1 to C-V above, no finding or presumption can or should be made by the Commission that the building permit process was followed completely and properly by the owner/developer, its contractors or the City when the Mall was constructed.

35. Similarly, while several significant questions have been raised which remain unanswered about the building permit and inspection process and skepticism is justified, the Commission may not be in a position to reach many definitive determinations or conclusions respecting any alleged impropriety or by-law non-compliance by the owner/developer or the City respecting same.

D – BUILDING CODE COMPLIANCE – MALL CONSTRUCTION

36. It is important to note at the outset that no one has testified definitively that they have reviewed the plans and drawings upon which building permits were issued.
37. On the presumption that the plans and drawings marked as Exhibit 1876 are or are close to what the final and approved building permit plans, the following observations have presented at this Inquiry.
38. The applicable Building Code at the time the Mall was constructed contained the requirement that roofing be "installed so as to shed or drain water effectively". No specific waterproofing standards or techniques were set out in that version of the Code.
39. There is ample evidence that the roof leaked from the outset and throughout its existence.

40. Based upon that fact alone, Roger Jeffreys was of the opinion that the Mall could not have been designed so as to have met the Code requirement cited above.

Jeffreys
Day 78, pp.19354-56

Exhibit 6227
pp. 51 & 101

41. While the NORR Report concluded that the roof design narrowly met Code, it also stated that the duty of care required in the design of this roof was not exercised.

Exhibit 3007
P. 67

42. The LardenCODE Report states that the roof design was not deficient and that it met Code.

Exhibit 6224
p. 3

43. Nevertheless, all experts agreed that there is no doubt that the actual Mall structure, as constructed, failed to meet the then-worded general Code requirement that roofing be “installed so as to shed or drain water effectively”.

44. Notwithstanding this fact, it is presumed that a final inspection of the Mall’s construction was conducted by the City and the building permit file closed.

E – SCOPE OF *BUILDING CODE ACT* & *BUILDING CODE*

45. The Building Code addresses and establishes standards for new construction. The Code does not generally apply to maintenance and repair issues.

46. The City’s practice respecting new construction projects was that, upon completion and final inspection, the building permit file would be closed. Matters respecting on-going maintenance and repair of an existing building would be a PSBL matter.

Officer
Day 31, pp. 6244-49

Ewald
Day 50, pp, 11842-43

47. Once a building permit file was closed, any new construction or renovation work could involve the necessity of securing a further building permit for same.

48. As an example, s. 9(1)(a)(vi) of BBL No. 78-47 required permits for:

“any repairs, alterations, additions, and renewals of flashings, and roof drainage (does not include eavestroughing)...”.

Exhibit 6-5

49. The City’s CBO advised the Mall owner that certain roof repairs would indeed require the application for and issuance of a building permit and issued an Order to Comply to that end.

Exhibit 303

Ewald
Day 50, p. 11796

50. There was never any reason apparent to any of the City’s CBOs that the Mall’s structural integrity was so compromised at any point by the roof leaks as to warrant the issuance of an “unsafe building” order pursuant to subsection 15.9(4) of the *Building Code Act, 1992*.

Pigeau
Day 14, p. 2762

Officer
Day 31, p. 6256

Allard
Day 34, p. 7248

Ewald
Day 50, p. 11801

F – THE DUTIES AND INDEPENDENCE OF THE CHIEF BUILDING OFFICIAL

51. The CBO’s numerous and widely varied duties are set out in the City’s current job description.

Exhibit 3905

52. Annual statistics [2009-2012] set out the CBO’s and building department’s activities in a number of areas, including building permit applications and property standards complaints.

Exhibits, 4401, 4402, 4403 & 6187

53. While CBOs Pigeau, Officer and Ewald testified that no one interfered with them in performing their jobs, CBO Allard alluded to the “hands-off” policy he thought applied to the Mall when owned by Elliot Lake Retirement Living.

Allard
Day 34, p. 7249

54. See also para. 24 *supra*.
55. With the closure of the mines in the early 1990s, Elliot Lake declined in one of its “bust” cycles. There was serious concern that the City could become a “ghost town”. The potential closure of the Mall and hotel would have been “absolutely devastating” to the community.

Farkouh
Day 37, pp. 8127-28 & 8131

Boom Town Blues
p.188-190
Exhibit 4335

56. How this scenario may have affected enforcement of the City’s PSBL is somewhat speculative.

G – THE CITY’S BUILDING BY-LAW

57. Prior to the Mall’s construction, the City had enacted a detailed and comprehensive BBL No. 78-47 which was passed pursuant to and complemented Ontario’s then in-force *Building Code Act*.

Exhibit 6-5

58. Some of the mandatory requirements of that BBL included:
- Providing notice to the City of the contractor and the architect, engineer or other person reviewing the contractor’s work [ss. 5(1)(a) & 12(2)];
 - Carrying out all work in conformity with the Building Code and the City’s BBL [s. 5(4)];
 - Submission of a report to the CBO “upon the completion of the work for which a review was required” [s. 8(4)];
 - Submission of plans, drawing and specifications for approval [s. 10(1)];
 - Submission of “large scale details” as required in respect of “waterproofing” [s.10(6)];
 - Notification for inspection calls [s. 11(1)(a)]; and

- Notification of completion and the submission of “as constructed” drawings [s. 11(4)].

Exhibit 6-5

59. There is little, if any, direct evidence demonstrating compliance with many of these requirements during and upon completion of the Mall’s construction.
60. Former CBO Roger Pigeau’s testimony was that there was little in the building permit file that would demonstrate compliance with these mandatory requirements.

Pigeau
Day 14, pp. 2712-23

61. Due to the paucity of original records from this period and the passing of most of the individuals directly involved with the Mall’s construction, mostly presumptions and speculation, rather than definitive factual conclusions, can be drawn from the evidence presented.
62. Nevertheless, the Commission would be justified in expressing reserved skepticism and doubt that:
- (i) the Mall owner/developer substantially complied with BBL No. 78-47; and
 - (ii) the City either required compliance with or sought to enforce its BBL in this instance.

H – THE CITY’S PROPERTY STANDARDS BY-LAW

63. Prior and subsequent to the Mall’s construction, the City had exercised its discretion and enacted detailed and comprehensive PSBLs which were passed pursuant to the applicable provisions of the *Planning Act* and the *Building Code Act*.

Exhibit 2103

64. The City’s Official Plan has always contained policies respecting the City’s use of PSBLs. The adoption of these policies are a required precondition to the enactment of a PSBL.

Exhibit 2101

65. PSBL Nos. 79-15 and 03-29 are both detailed, comprehensive and addressed structural sufficiency and established both minimum building and property standards. These included the requirements that:

- (i) buildings be maintained in a structurally sound condition so as to be capable of sustaining its own weight; and

(ii) roofs be maintained in a watertight condition so as to prevent water leakage into the building.

Exhibits 6-6 & 6-7

66. The City's enforcement of its PSBL was originally complaint-driven. This level of service was codified in 1995 [Exhibit 6-8] and modified in 2006 to introduce a limited level of proactive enforcement based upon a 50% vacancy factor [Exhibit 6-9].
67. Other than by searching the City's website for its PSBL, the City has made no efforts to notify its citizens about the existence or content of its PSBL and its complaint-driven enforcement policy.

Ewald
Day 50, p. 11790

68. Not surprisingly, as the public was unaware of the existence or content of its PSBL and its complaint-driven enforcement policy, no complaints were ever received by the City's CBO or building department about the Mall's leaking roof from Mall tenants, Mall workers or Mall customers.

69. Other than the following two instances:

(i) CBO Allard's Notice of Violation (2006); and

(ii) CBO Ewald's Order to Remedy Violation (2009)

no proactive investigation and enforcement of the PSBL were ever initiated by the City respecting the Mall's well known leaking roof situation.

Exhibits 175 & 3517

70. There was no follow up by the CBO to his 2006 Notice of Violation.
71. It is difficult to view the M.R.Wright (Bob Wood) Report of October 28, 2009 [Exhibit 103] as satisfactorily and completely addressing the 2009 Order to Remedy Violation. Yet the CBO accepted that Report and signed off on his Order on February 11, 2010 [Exhibit 168].

I – NO PROVINCIAL REGULATION RESPECTING BUILDING MAINTENANCE

72. There has never been an Ontario Building Maintenance Code promulgated which established standards for the maintenance, occupancy or repair of existing buildings.
73. Between 1974 and 1992, the *Building Code Act* contained no provision or regulatory power to address the maintenance of existing buildings.
74. The "new" *Building Code Act, 1992*, S.O. 1992, c. 23, ss. 34(2)(b) & (3) provided:

(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) as applicable to existing buildings;

(b) **establishing standards for maintenance, occupancy and repair**; and

(c) prescribing standards related to resource conservation and environmental protection.

(3) **A regulation made under this section applies to buildings whether erected before or after the coming into force of this Act.** [emphasis added]

Exhibit 1898

75. Subsection 34(2)(b) has been revised a few times since 1992 to add other concepts that did not affect or limit the power to promulgate a regulation respecting the maintenance of buildings. For example, clause 2(b) had the words “retrofit and operation” added to it in 1997.
76. For the past two decades, the province has chosen not to exercise this regulatory power and enact an Ontario Building Maintenance Code establishing minimum maintenance standards applicable to existing structures.
77. It should be noted that the current Building Code does address maintenance standards for existing buildings solely in respect to the operation and maintenance of sewage systems [Div. B, Part 8, s. 8.9].
- See subsections 7(1)(b.1), 15.10.1 and 34(2.1) of the *Building Code Act, 1992* which were added by the *Clean Water Act, 2006*, S.O. 2006, c. 22 and appear to address only sewage systems.
- See also O.Reg. 315/10 respecting maintenance inspections of sewage systems.
78. While the stated purposes of the *Building Code Act* include the establishment of “standards for public health and safety,...structural sufficiency,...with respect to buildings”; such current standards only apply to new buildings.
79. The establishment of standards-setting regulations respecting the on-going structural sufficiency of buildings, once constructed, and the enforcement of same currently have been left to the sole discretion of municipalities.

80. It is in the public interest that minimum, provincial-wide standards of maintenance and repair of existing, publically-accessible buildings ought to be established and enforced.

POLICY ISSUES FOR PHASE 2, PART 1 OF THE INQUIRY

81. The OBOA respectfully requests that the Commission consider the following policy matters during the Phase 2 portion of the Inquiry.

82. **Mandatory “CBCO” Certification for all Building Officials**

- “The Building Code certainly bears the distinctive characteristics of a professional regulatory statute. It regulates the requirements for admission to practice in the field of submitting building plans to the various building officials for approval. There are educational and insurance requirements; allocations of responsibility for various kinds of work; rules as to the stamping of work product; administrative obligations such as giving access to client files and information; disciplinary sanctions; and revocation powers on character grounds. In scope and function, it is indistinguishable from professional regulatory acts. **If truth be told, the Building Code is a professional regulatory act in search of a profession.**” [emphasis added]

- *APEO v. Ontario [MMAH]*, 2007 CanLII 17629 (ON SCDC) at para. 59

- In light of the stated purpose of the Building Code and the role and responsibilities of building officials and inspectors under the *Building Code Act, 1992*, should it be a mandatory requirement that every building official and inspector be certified as a CBCO to be employed and practice in Ontario?
- 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.

83. **Establishment of a Minimum “Competence” Qualification Standard**

- Due to the ever increasing complexity of the Building Code’s provisions, and the significance of their duties protecting public life, health and safety, should minimum competency qualifications and knowledge maintenance standards be established and enforced for all building officials and inspectors?
- 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.

84. **Regulation of Building Officials**

- Is it in the public interest that all building officials and inspectors be regulated as a profession?

- See *APEO v. Ontario [MMAH]*, 2007 CanLII 17629 (ON SCDC).
- 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.

85. Independence of the Chief Building Official

- The CBO performs a statutory role and duties assigned under the *Building Code Act, 1992* independent of the municipal council. Nevertheless, the CBO is a municipal employee and usually performs a variety of other municipal duties and tasks [unrelated to the *Building Code Act, 1992* and Building Code] for which municipal direction is appropriate.
- Should the *Building Code Act, 1992* explicitly enshrine the "independence" of the CBO from council when performing the role and fulfilling the duties assigned to that official under that Act?

86. Establishment of Minimum Mandatory Provincial Building Maintenance Standards

- Should the Province establish an Ontario Building Maintenance Code setting minimum, provincial-wide standards for the maintenance, occupancy and repair of certain existing buildings?

87. Establishment of Minimum Mandatory Municipal Property Standards

- In the alternative to mandatory minimum provincial-wide standards, should all Ontario municipalities be required to enact a property standards by-law which contains minimum standards for the maintenance, occupancy and repair of certain existing buildings?

88. Public Awareness of Municipal Property Standards By-Laws

- How can the public become better informed about the existence and content of municipal property standards by-laws and the municipality's chosen enforcement policy respecting same?

89. Complaint-Driven Municipal By-law Enforcement

- Complaint-driven municipal by-law enforcement is, in part, a response of the current state of the law respecting liability that arises out of the negligent performance of an operational policy decision to undertake pro-active by-law enforcement.
- Should municipalities be given sufficient statutory protection from liability to encourage them to institute and undertake pro-active enforcement of their

property standards by-laws, including the determination of the structural sufficiency of existing buildings?

90. **Registry of Professional Engineering Reports**

- Should there be a statutory requirement that professional engineering reports which address the structural condition of certain buildings [e.g. those that are open to the public or meet other established criteria] be filed in a publicly-accessible registry?
- Similar to Records of Site Condition and the Environmental Site Registry as set out in Part XV.1 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended and Part III of O.Reg. 153/04?
- Similar to Archaeologist's Reports and the Registry as set out in ss. 65 & 65.1 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended?

91. **Defining a "Prime Consultant"**

- Should the term "prime consultant" be defined in the *Architects Act*, R.S.O. 1990, c. A.26, as amended; the *Professional Engineers Act*, R.S.O. 1990, c. P.28, as amended; and the *Building Code*, O.Reg. 350/06, as amended?
- Should the role, duties and obligations of a "prime consultant" be set out to ensure that such are generally understood by the profession, clients and the public?

92. **Other Policy Issues**

- The OBOA will address these and other relevant policy issues as may be permitted during the Phase 2 proceedings of the Inquiry.

93. The OBOA hereby expresses its gratitude to Commissioner Bélanger, Commission Counsel and Staff, and all Participants' counsel and representatives for:

(i) the attention and consideration given to all aspects of the OBOA's Inquiry participation;

(ii) the courtesies extended to its counsel throughout the Part 1, Phase 1 Inquiry proceedings; and

(iii) their common effort and shared goal of ensuring the complete and successful fulfillment of the Inquiry's Terms of Reference.

Respectfully submitted this 8th day of August, 2013.

ONTARIO BUILDING OFFICIALS ASSOCIATION
By its Counsel
Leo F. Longo
Aird & Berlis LLP
Barristers & Solicitors

ATTACHMENT “A”

ELLIOT LAKE INQUIRY - OPENING STATEMENT

ONTARIO BUILDING OFFICIALS ASSOCIATION

LEO F. LONGO

MARCH 4, 2013

GOOD AFTERNOON.

MY NAME IS LEO LONGO.

I AM A SENIOR PARTNER AT THE LAW FIRM OF AIRD & BERLIS LLP.

I AM COUNSEL TO THE ONTARIO BUILDING OFFICIALS ASSOCIATION.

THE OBOA WAS FOUNDED IN 1956 AS AN ORGANIZATION COMMITTED TO ESTABLISHING AND MAINTAINING A HIGH PROFESSIONAL STANDARD IN THE FIELD OF BUILDING CODE ADMINISTRATION AND ENFORCEMENT. THE ASSOCIATION HAS BEEN CONTINUED AS A SELF-GOVERNING, NOT-FOR-PROFIT PROFESSIONAL ASSOCIATION BY A SPECIAL PROVINCIAL ACT IN 1992.ⁱ

OUR CLIENT’S MEMBERS ARE APPOINTED BY THEIR RESPECTIVE MUNICIPALITIES TO ADMINISTER AND ENFORCE PROVINCIAL LAWS, MUNICIPAL BY-LAWS, CODES AND STANDARDS RELATING TO THE CONSTRUCTION OF ALL TYPES OF BUILDING AND STRUCTURES TO ENSURE THAT THE PUBLIC’S LIFE, HEALTH AND SAFETY ARE PROTECTED.

THE PURPOSE OF THE BUILDING CODE IS

to establish standards for public health and safety, fire protection, structural sufficiency, conservation, including, without limitation, energy and water conservation, and environmental integrity [i.e. sustainability], and to establish barrier-free requirements [i.e. accessibility], with respect to buildings.ⁱⁱ

AS SUCH, THE ROLE AND RESPONSIBILITIES OF BUILDING OFFICIALS HAS PROGRESSIVELY EXPANDED IN RECENT YEARS.

THE OBOA HAS AND CONTINUES TO PLAY A LEADING ROLE IN THE EDUCATION, TRAINING AND PROFESSIONAL DEVELOPMENT OF ONTARIO’S MUNICIPAL BUILDING OFFICIALS.

THE OBOA WAS PLEASED TO HAVE BEEN GRANTED STANDING TO PART 1 OF THIS INQUIRY AND IS GRATEFUL FOR THE COMMISSIONER’S RECOMMENDATION THAT THE ASSOCIATION RECEIVE PROVINCIAL FUNDING TO ALLOW IT TO PARTICIPATE IN THE IMPORTANT WORK OF THIS INQUIRY.

THE OBOA PERCEIVES ITS ROLE AT THIS INQUIRY AS BEING TWOFOLD:

THE FIRST IS THAT OF OFFERING ASSISTANCE TO THE COMMISSION AND ALL PARTICIPANTS IN BETTER UNDERSTANDING THE STATE OF THE LAW AND PRACTICES RESPECTING:

- THE INSPECTION OF BUILDINGS WHILE UNDER CONSTRUCTION AND CODE ENFORCEMENT; AND
- THE INSPECTION AND MAINTENANCE OF BUILDINGS ONCE CONSTRUCTED.

THE SECOND IS TO SUGGEST LEGISLATIVE AND POLICY CHANGES THAT WILL ADDRESS AND POSITIVELY IMPROVE UPON THE MATTERS THE COMMISSION HAS BEEN CHARGED TO INVESTIGATE AND CONSIDER AS PART OF ITS TERMS OF REFERENCE.

TO DATE, WE HAVE PROVIDED INPUT TO COMMISSION COUNSEL RESPECTING THE CONTENT OF CERTAIN OVERVIEW REPORTS WHICH WILL BE FILED AT THIS INQUIRY. THE ASSOCIATION HAS ALSO RESPONDED TO THE COMMISSION'S REQUEST FOR PRODUCTION OF SPECIFIC DOCUMENTATION TOUCHING UPON A VARIETY OF ASSOCIATION-RELATED OBJECTIVES AND ACTIVITIES.

WE WILL PARTICIPATE IN THIS EVIDENTIARY PHASE OF THE PART 1 PROCEEDINGS TO THE EXTENT NECESSARY TO FULFILL OUR PERCEIVED ROLE.

WE INTEND TO BE MORE DIRECTLY INVOLVED IN THE PHASE 2 PORTION OF PART 1 INQUIRY WHICH WILL ADDRESS, AND HOPEFULLY RECOMMEND, LEGISLATIVE AND POLICY CHANGES RESPECTING BUILDING CODE ADMINISTRATION AND ENFORCEMENT THAT WILL ENSURE THAT:

- THE PUBLIC INTEREST IS BETTER SERVED AND LIFE, HEALTH AND SAFETY PROTECTION IS ENHANCED IN THE FUTURE; AND
- THE TRAGEDY SUFFERED BY THE VICTIMS OF THIS ROOF COLLAPSE AND THIS COMMUNITY WILL NOT GO UNHEEDED OR BE REPEATED.

THE ASSOCIATION BELIEVES THAT THE CURRENT LAW AND PRACTICES RESPECTING BUILDING CONSTRUCTION, CODE ENFORCEMENT AND BUILDING MAINTENANCE SHOULD BE IMPROVED UPON.

MATTERS THAT WE SUGGEST OUGHT TO BE ADDRESSED WILL INCLUDE:

1) MANDATORY "CBCO" CERTIFICATION; THAT IS, THE "CERTIFIED BUILDING CODE OFFICIAL" 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.

IN AN OBOA SUBMISSION TO THE MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING DATED JULY 14, 2009 AND ENTITLED “OBOA SELF-MANAGEMENT FINAL REPORT”, THE FOLLOWING OBSERVATION WAS MADE BY MY CLIENT RESPECTING THE UNEVEN ENFORCEMENT OF BUILDING CODE LEGISLATION:

In line with this thought, a proposal to improve public safety and to further the public interest should not have to arise from a Coroner or Provincial Inquest or from a history of failings. If Ontario takes one lesson from the Walkerton event, it is that there is a need to ensure strong and certain competence assessment and enforcement procedures exist in the application of public safety legislation. When circumstances of diminished competence, inconsistent professional and ethical conduct and lacking enforcement of legislation align themselves; a failure or even a tragedy may result. Ontario's buildings are not falling down around us, but circumstances exist within the province that require proactive attention in keeping with the lessons of Walkerton.ⁱⁱⁱ

WE ARE HOPEFUL THAT ONE OF THE LASTING OUTCOMES OF THIS INQUIRY WILL BE LEGISLATIVE AMENDMENTS THAT RECOGNIZE THE IMPORTANCE OF BUILDING OFFICIALS AS A PROFESSION AND REQUIRE THAT ALL BUILDING OFFICIALS HAVE THE REQUISITE CORE KNOWLEDGE AND EXPERIENCE TO PROPERLY ADMINISTER AND VIGILANTLY ENFORCE THE LIFE, HEALTH AND SAFETY STANDARDS OF THE BUILDING CODE.

THE OBOA WELCOMES THE OPPORTUNITY OF BEING PART OF THIS INQUIRY AND CONTRIBUTING TO THE FORMULATION OF RECOMMENDATIONS THAT WILL ARISE FROM THIS INQUIRY’S INVESTIGATIONS AND PROCEEDINGS.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

THANK YOU.

15168103.1

ⁱ *Ontario Building Officials Association Act, 1992*, S.O. 1992, c. Pr38

ⁱⁱ Subsection 34(5)(a) of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended

ⁱⁱⁱ “OBOA Self-Management Final Report, Part 2 of 2”, July 14, 2009, p. 12 of 95