



November 22, 2019

**Via email and Regular Mail**

Brenda Lewis  
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Ministry of Municipal Affairs and Housing  
777 Bay Street, 12<sup>th</sup> Floor  
Toronto, ON M5G 2E5

Subject: Transforming and Modernizing the Delivery of Ontario's Building Code Services, Discussion Paper and Consultation

Dear Mrs. Lewis,

Thank you for the opportunity to provide comments in response to the Ministry of Municipal Affairs and Housing consultation on "Transforming and Modernizing the Delivery of Ontario's Building Code Services".

The following is the formal City of Brampton submission subject to the Council approval and any changes.

In the discussion paper published on September 24, 2019, it was identified that the building sector is a \$38 billion industry and a key driver of Ontario's economy. The discussion paper stated that the building sector stakeholders have been asking for better, more modern and timely services and resources to support their ability to understand and apply the highly technical and complex building code requirements.

As was explained in this paper, "MMAH has provided a suite of building code services in the past but over time the delivery of these services has not kept pace with the needs of the sector, making the model unsustainable. The ministry needs to implement a model that will enable the delivery of improved services to promote consistency and better support the sector."

The City of Brampton recognizes and would like to acknowledge that the creation of an alternate service deliver model and this transformation consultation has become necessary to address the obvious and visible reduction of ministry staff

over many years to the point that the resources are no longer available to provide the service within the ministry.

### **Streamlining and RESCON Report**

As you are aware, significant changes were made through the enactment of *Building Code Statute Law Amendment Act, 2002, S.O.2002, c.9-Bill 124* to include prescriptive timelines for permit review and issuance, and qualification of chief building officials, inspectors and designers. This was a bold initiative and was enacted, in part, to address expediting permit issuance as well as ensuring applications were in accordance with the requirements of the BCA. Unfortunately, the qualifications and registration requirements that were implemented under this statute is not mandatory for all practitioners in the building industry and accountability is focused mainly on regulators at the municipal level. Also, the authorities that govern the applicable law requirements do not follow these, or similar, timelines.

In fact, the RESCON Report published in 2017 and the Ministry's Process Mapping Exercise conducted in 2019 both confirm that the delays are not in the review of permit application but rather with the applicable law requirements that need to be satisfied in accordance with the BCA such as site plan approvals, MECP, MTO and conservation authorities. Chief Building Officials are always looking for opportunities to work with these agencies and approval authorities to streamline processes and support development.

It is unclear what streamlining opportunities will be presented through the establishment of an Administrative Authority especially in the absence of training, qualification and accountability for others in the building sector who are not regulators.

The streamlining referenced in the Discussion Paper is about the functions not currently being provided by the ministry, i.e. intent statement, interpretations, bulletins, etc.

#### **The AA model:**

Through this consultation, the ministry explained that 10 different models were explored, including the OFM model and this AA model was the preferred option. It would be beneficial for stakeholders to understand how this decision was made and what criteria was considered in that decision making process. Was consideration given to how this AA will be able to operate independently, at arm's length from the ministry, funded by the industry but report back to MMAH? Would it not be more suitable to have a similar model to the OFM and report to the Solicitor General to maintain the integrity of the BCA and OBC?

Since the industry was not consulted on the needs analysis to determine how the Ministry could better deliver services, we are lacking clarity in how the

Administrative Authority model decision was made. The City is interested in the background information that was considered in choosing the AA as the preferred option since other models related to oversight on public safety legislation (i.e. OFM) seem to be successful and mirrors many of the same functions the ministry is planning to transfer.

Historically, the ministry did provide those services. It is our understanding that these services are no longer available due to a lack of resources. As identified in "the paper", the ministry is responsible for:

- Setting policy direction and establishing regulatory building standards;
- Overseeing the qualification and registration of building practitioners; and
- Providing support to consumers (e.g. publishing guides and resources and explaining policy intent of code requirements)

It has become apparent that the ministry is only interested in, "Setting policy direction and establishing regulatory building standards." All other functions, previously provided by the ministry would be transferred to the Administrative Authority (AA).

The Minister of MMAH may select criteria for board of directors and has the authority to appoint chair of the board of directors. The minister develops the legislative and regulatory framework that defines the scope of the AA's authority and lays out key accountability provisions, has oversight functions and maintains control of the AA function. Therefore, it is not an independent, private corporation. It could appear to have political, self serving, and conflicting interests between the building sector stakeholders and the regulations.

With the challenges that CBOs have experienced with the acknowledgement in the Building Code Act in regard to the "independence of the CBO", the governance model of the AA could further complicate this issue. Special attention must be given to the board composition to ensure that the directors are knowledgeable practitioners of the BCA and OBC regulations and have experience working in the building industry. The mandate of the AA board cannot be politically driven; it must be reflective of the life safety regulations of the BCA and OBC, create standards for competencies for all practitioners, and provide code interpretations, quarterly bulletins, and intent statements.

Should the minister decide to proceed with an AA model, please consider that the governance model for the AA include a balanced representation of all the industry including design, constructors, regulators and legal from both the public and private sector. Specifically we recommend that representation must include the following organizations: City of Toronto, the City of Ottawa, LMCBO, OBOA, PEO, OAA, OHBA, Legal, MMAH.

Funding of this model is concerning because the sector providing the funding will want to have a major representation on the board and affect the decision making

of the board. This is a conflict of interest. Given the recent Auditor General's report on concerns with TARION, this should serve as a cautionary note on the risks with establishing a private, not-for-profit Corporation funded by developers.

### **Prime Consultant and Certified Professional**

The City of Brampton is in support of creating a legislative requirement for the Prime consultant to coordinate designs and field reviews of the professionals involved in a project to ensure accurate, coordinated and completed submissions.

The use of a Certified Professional, such as that used in British Columbia's Certified Professional program, is not recommended. This program would be similar to the implementation of an RCA which is provided for in the BCA as part of the Bill 124 improvements and has received very limited interest.

In Ontario, the BCA provides for the possibility of obtaining conditional building permits to "get shovels in the ground" most expeditiously, where BC does not have this option.

Ontario currently has tools available that are not being utilized, such as cross jurisdictional agreements to allow approved plans from one municipality for the issuance of permits in another, RCA's and sharing of workload across jurisdictions. The main deterrent against the use of these tools in Ontario has been the existence of "Joint and Several Liability". If this liability could be removed in Ontario, the existing tools could be implemented.

Should the Ministry choose to implement a Certified Professional program it would be necessary for the PEO and OAA to agree to the required training and testing requirements. Building Code training should be integrated into the educational curriculum for Engineering and Architectural degrees and diplomas. Significant consideration needs to be given to how the industry would maintain independence of the Certified Professional from the hiring contractor and how to remove the municipality from liability under the existing "Joint and Several" liability regime.

### **Training & Continuous Professional Development (CPD)**

Should the Ministry choose to implement the AA model, the AA could establish a robust "standards" committee to improve upon the consistency of the interpretation and application of the building code in Ontario.

The committee should include all areas of the building sector (i.e. regulators, designers, & builders). A comprehensive competency framework that is practical for regulators in all areas of Ontario should be considered.

Delivery of training and the examination program should continue to be provided by others who are experts in the industry or in education (i.e. OBOA, George Brown College, etc.).

The Ontario College of Trades and Ministry of Training, Colleges and Universities should include more OBC content, including code examination to obtain qualifications in the curriculum, as a requirement of the Architectural and Engineering degrees and diplomas. This will ensure they are knowledgeable practitioners (in theory) when they graduate. This will also assist in boosting available qualified professionals for employment in both the private and public sector.

Training needs to be more than just an exam for a practitioner to be functional and capable. The framework of competencies should also reflect the necessary skill sets to be demonstrated under the supervision of a mentor and validated to confirm adequate experience.

Training programs must be audited and could be done by ministry (or AA). Continuous Professional Development (CPD) should follow the same protocol and take into considerations the CPD requirements of other professional organizations of which regulators may already be members.

### **Registration and Qualifications**

Qualification requirements should include all building practitioners on both sides of the counter. Private sector and public sector. Engineers, architects, constructors, site supervisors.

Amend BCA language to require a code of conduct and standards of practice for all practitioners (not just regulators).

A function of the AA could be investigation of complaints and confirmation of qualification and registration requirements being met for all practitioners. The results of the investigation should include recommendations that are forwarded to the ministry for action and made publicly available.

Currently there is a gap in Building Code knowledge amongst designers and constructors whom are not bound to standards of performance. This is evident in the quality of permit application submissions being received by Building Divisions and the construction methods and management practices used on construction sites.

### **Supporting Local Building Service Delivery and the Unincorporated Areas**

Should an Administrative Authority be established, this AA could provide the administrative function for networking opportunities and service level agreements across municipalities (or a pool of qualified resources) able to travel across Ontario to provide services through a fee for service contractual arrangement. The service would be provided by a qualified individual or individuals, already qualified and working in Ontario, and not employed directly by the AA. The AA acts solely as the administrator of the contract for transparency. This type of cross municipal contract could also work for emergency response to significant events, to support for peak periods, and strikes occurring as a result of collective agreement bargaining.

### **Additional Information**

The City of Brampton is an active member of the Large Municipalities Chief Building Official group and we work together to address issues facing building officials and Chief Building Officials across the province. We support provincially mandated policies while balancing the need for safe, sustainable and accessible buildings. We also work with other ministries and the building industry to improve service delivery, streamline processes and to facilitate applicable law approvals where possible.

PEO and OAA are currently not required to prove code knowledge to ensure they are compliant and up to date with the ever-changing regulations. This has demonstrated delays in processing application submissions and installation methodologies that do not meet minimum code requirements. Municipalities submit annual performance measurement metrics to the Province which will speak to the adherence to the legislated review times but does not identify where applications are either incomplete or deficient. Alterations to the performance metrics to include the number of incomplete or deficient applications may assist in narrowing down the areas that are causing delays in the processing of permit applications.

Thank you for the opportunity to provide comments in response to the Ministry of Municipal Affairs and Housing consultation on "Transforming and Modernizing the Delivery of Ontario's Building Code Services".

Sincerely,



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Rick Conard  
Director of Building Planning & Development Services  
City of Brampton