



# TOWNSHIP OF WILMOT

## DEVELOPMENT SERVICES *Staff Report*

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**REPORT NO:** DS 2019-29

**TO:** COUNCIL

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**DATE:** November 18, 2019

**SUBJECT:** Transforming and Modernizing the Delivery of  
Ontario’s Building Code Services

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### **RECOMMENDATION:**

**That** Report DS 2019-29 be received for information; and,

**That** Report DS 2019-29 be forwarded to the Ministry of Municipal Affairs and Housing as the Township of Wilmot’s comments on Transforming and Modernizing the Delivery of Ontario’s Building Code Services.

### **SUMMARY:**

The Ministry of Municipal Affairs and Housing released a consultation document titled Transforming and Modernizing the Delivery of Ontario’s Building Code Services on September 24<sup>th</sup>, 2019.

Comments on the changes are required prior to November 24<sup>th</sup> through the Environmental Registry of Ontario (ERO) portal.

This report summarizes the proposed changes and offers comments on specific areas of concern and/or potential impact for the Township of Wilmot.

### **BACKGROUND:**

The following summary of the consultation is taken from the Environmental Registry of Ontario (ERO) portal and describes in the provincial government's own words what they are proposing:

“The \$38 billion building industry sector is a key driver of Ontario's economy and stakeholders have raised concerns about the need for better, modern and timely services and resources to support their ability to understand and apply the highly technical and complex Building Code requirements.

Supporting an increase of housing supply, supporting jobs, and streamlining development approvals are top priorities for the government.

To help achieve this, the government is considering new and improved Building Code services which would be delivered by an administrative authority to provide modern, efficient, user-centric services to the building sector and streamline customer service to all people across Ontario who use the Building Code.

The government is considering changes to:

- strengthen public safety
- streamline customer service and approval processes
- deliver sector-driven services
- provide timely and modern tools and products
- promote consistency across the province
- enhance integrity in the system

To ensure efficient, streamlined and sector-driven delivery of services, the administrative authority would be financially self-sustaining and would operate on a full cost-recovery basis. To do this, the administrative authority would charge fees for directly delivered services and collect a small levy calculated on estimated construction value on top of municipal building permits fees.”

## **REPORT:**

### **Theme 1: Getting people working in the building sector**

The proposed enhanced and new services for consultation would look at ways to:

- modernize the current Building Code examination process to ensure that building code professionals have the required legal and technical knowledge so that public safety is protected
- help support municipalities with recruitment and retention of experienced building officials
- potentially introduce the use of Coordinated Professionals to coordinate work of professionals involved in a project
- potentially introduce the use of Certified Professionals to ensure Code compliance and streamline the permit approval process

The language used by the Province throughout the consultation generalizes that there is a service delivery problem throughout the Province and that the roadblock to efficiency is effectively the municipal enforcement and administration of the code.

The suggestion of the Province that introducing Certified Professional to ensure Code compliance and streamline the permit approval process ignores the fact that municipalities already have Certified Professionals and already strive to and are mandated to streamline the approvals process.

The elephant in the room in any attempt to streamline is the construction industry itself which is largely unregulated and which has limited requirements in terms of demonstrating code knowledge prior to swinging the hammer.

Previous governments moved to require certification of inspectors and designers but balked at proceeding to certification of the third partner – the industry itself. This, in the opinion of the Township of Wilmot, is the biggest cause of delays not only in the issuance of permits but in the progression of construction projects to completion.

The responsibility of building staff is to ensure code compliance both in approved designs and construction. When permit applications do not comply to code requirements it is the duty of staff to advise the applicant that changes are required. Based on the language the province uses throughout the consultation document it would suggest that this delay is cause for concern when in reality these types of delays protect the public which is the intent of the permit review process. When designs do not comply to the code it is a delay caused by the industry not a delay caused by municipal administration.

Similarly when inspectors fail stages of construction on site they are exercising, again, their duty to protect the public. These delays should not be viewed as problematic as they demonstrate that inspectors are exercising their duty to the public. Delays due to failed

inspections are again caused by the industry and not delays caused by municipal administration of the code.

To suggest that introducing Certified Professionals will eliminate delays caused by designers or contractors would loosely suggest that Certified Professionals would not be enforcing the code to the same extent as municipal professionals which is concerning.

Other recently proposed changes to the Aggregates Act for example also propose moving towards greater self-regulation of that industry as a means of streamlining and the Township believes that streamlining through self-regulation is an inappropriate change that will not advance the safety of the public.

## **Theme 2: Promoting sustainability and transparency in the Building Code profession**

The proposed enhanced and new services for consultation would look at ways to:

- transform the public registry (QUARTS) and registration process to be more streamlined and user-friendly
- require building code professionals to complete Continuing Professional Development activities regularly to maintain knowledge in their areas of practice so they can understand and apply new / amended Code requirements and promote public safety
- establish a comprehensive, compliance-based, enforcement framework to ensure that building code professionals are meeting their qualification and registration requirements and are operating appropriately, which could include codes of conduct and annual attestations for all building code professionals, educational tools and resources, corrective actions for non-compliance such as financial penalties, a complaints process for public concerns, and increased transparency of disciplinary actions

The consultation suggests, mistakenly and without supporting statistics, that the public registry is flawed and further that Continuing Professional Development should be required of building officials.

The public registry is indeed flawed and the largest flaw in the system is the self-regulation the province has allowed. It would be interesting for the Province to provide statistics on how many registrants are listed in QUARTS and of those listed how many have ever been scrutinized or had their Building Code Identification Number (BCIN) revoked for falsification of data. Self-regulation does not necessarily advance the industry or streamline processes.

With respect to CPD most local building officials hold membership and certification in the Ontario Building Officials Association which requires continual professional development. There is no need for the Province to add additional layers of bureaucracy and self-regulation when the OBOA already serves that purpose.

Rather than duplicate a process that already exists the Province should require building officials to be members of and comply with the requirements of the OBOA and Certified

Building Code Official (CBCO) and Building Code Qualified (BQ) designations of that organization.

### **Theme 3: Building Code administration and enforcement**

The proposed enhanced and new services for consultation would look at ways to:

- enhance municipal enforcement to promote public safety by allowing the use of administrative penalties to help municipalities address non-compliance and contraventions of the *Building Code Act, 1992* and the building code
- support local building service delivery by providing the option for smaller, rural, and/or northern municipalities to enter into an agreement with the administrative authority to deliver full or partial building services on their behalf
- provide a more active enforcement approach in unincorporated areas

A significant area of agreement with the tone of the consultation document is the need to introduce administrative penalties to the toolbox of municipal building officials.

Allowing fines to be levied for construction without a permit and other blatant violations of the Building Code Act would be a significant step forward and certainly streamline the enforcement process by eliminating much of the costly court process currently required to enforce orders.

The tools for small municipalities to partner with neighbouring municipalities or with Registered Code Authorities (RCA's) already exists. While supplementing those opportunities with support from the proposed Administrative Authority is not of particular concern it is questionable whether it is necessary or whether it is an attempt to justify the creation of an Administrative Authority.

### **Theme 4: Improving building sector supports**

The proposed enhanced and new services for consultation would look at ways to:

- promote a consistent understanding and application of building code requirements by looking into additional and more comprehensive tools and services in a timely manner to provide clear, standardized, technical advice and interpretation
- enable modern, digital services, which may include development of a digital version of the Building Code that meets the needs of users and supports municipal efforts to reduce building permit approval timelines
- improve the quality and quantity of building industry data and research

Additional work to provide technical supports, clear and standardized technical advice and interpretations would certainly be beneficial, in particular to the construction industry who increasingly appear to be struggling to stay current with the constant changes to the Building Code.

Digital services supporting the needs of all users would certainly be beneficial and welcomed. In particular any effort to ensure or require that permit holders have access to and working knowledge of the Building Code would be a significant advancement to the Province's goals of accountability, streamlining and promotion of public safety.

### **Theme 5: Funding Better Service Delivery**

The final theme demonstrates perhaps the Province's interest in justifying the creation of an Administrative Authority and that is to tap into the \$38 billion industry it identifies in the first sentence of the consultation document.

The promise of streamlining and greater self-regulation comes at a cost and as such the province is introducing what it describes as a nominal levy of .016% of the construction cost of each building project which would be collected and remitted by the municipality. Based on an annual value of \$38 billion this would 'nominally' generate approximately \$6 million in revenue for the Province to fund the new Administrative Authority.

The Province suggests that the levy would be reviewed on a regular basis to ensure it is recovering the costs of delivering services to the sector and it is not difficult to anticipate that in time this will lead to full taxation of building permits as a significant source of revenue for the Province.

### **ALIGNMENT WITH THE TOWNSHIP OF WILMOT STRATEGIC PLAN:**

Communication of proposed changes to Provincial legislation promotes an informed community.

Providing comments to MMAH on proposed changes to the administration and enforcement of the Ontario Building Code and its implementing regulations affords the opportunity to promote the protection of our quality of life and our belief that approvals should be transparent and open to public input and review.


### **FINANCIAL CONSIDERATIONS:**

Financial impacts of the proposed consultation document to municipalities are largely unknown at this time given the generality of the proposals.

Calculation, collection and remittance of a "nominal provincial levy" on building permits will minimally increase the costs of enforcement and administration efforts and initially cause a minimal increase in the cost of building permits to residents. Over time however staff would anticipate that the "nominal Provincial levy" will increase annually.

### **ATTACHMENTS:**

Attachment 1: Discussion Paper  
Transforming and Modernizing the Delivery of Ontario's Building Code Services



# **Transforming and Modernizing the Delivery of Ontario's Building Code Services**

**Discussion Paper**

Ministry of Municipal Affairs  
and Housing

Fall 2019 Consultation

# Table of Contents

<b>A New Path Forward for Building Code Services</b>	<b>1</b>
About this Consultation	2
<b>1. Getting People Working in the Building Sector</b>	<b>3</b>
1.1 Examination Development & Delivery	4
1.2 Pre-Qualification Training	6
1.3 Recruiting Experienced Building Code Professionals	6
1.4 Using Coordinating Professionals	8
<b>2. Promoting Sustainability and Transparency in the Building Code Profession</b>	<b>9</b>
2.1 Public Registry and Registration Process	11
2.2 Continuing Professional Development	12
2.3 Registration Compliance and Enforcement	14
<b>3. Building Code Administration and Enforcement</b>	<b>16</b>
3.1 Enhanced Municipal Enforcement	17
3.2 Supporting Local Building Service Delivery	18
3.3 Unincorporated Areas	20
<b>4. Improving Building Sector Supports</b>	<b>20</b>
4.1 Promoting a Consistent Application of Code Requirements	21
4.2 Digital Service Transformation	22
4.3 Building Sector Data and Research	23
<b>5. Funding Better Service Delivery</b>	<b>24</b>
<b>6. Seeking Your Input</b>	<b>25</b>



# A New Path Forward for Building Code Services

The building sector is a \$38 billion industry and a key driver of Ontario's economy. It is essential that the people working in this sector have the support they need to keep Ontario's economy growing. 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.

Historically, the Ministry of Municipal Affairs and Housing (the ministry) has provided a suite of building code services. However, over time, the delivery of these services has not kept pace with the needs of the sector, making this 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.

To do this, the ministry is proposing to establish a new administrative authority to deliver a suite of enhanced and new user-driven services.

## What is an Administrative Authority?

Administrative authorities are private, non-profit corporations, that deliver regulatory programs on a cost-recovery basis.

Transferring service delivery to an administrative authority would enable new, modern, user-driven services to be delivered to the building sector. An administrative authority can scale and deliver services more nimbly and would also be tasked with providing streamlined customer service to all Ontarians. It would also promote a consistent approach to building code interpretation and application, while still protecting public health and safety. To achieve this the administrative authority would operate on a full cost recovery basis, funded by the sector.

## What is the Building Code Act, 1992?

The Building Code Act, 1992 (BCA) and Ontario's Building Code govern the construction of new buildings and the renovation of existing buildings, by promoting the safety of buildings with reference to public health, fire protection, accessibility, and structural sufficiency.

The building code first came into effect in 1975 and since then its scope and policy intent have continued to expand to address the ongoing and growing needs of the building sector.

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)

Enforcement of the Building Code is the responsibility of principal authorities, primarily municipalities, which issue building permits and conduct inspections during construction.

## About this Consultation

The transformation and modernization of building code services would:

- strengthen public safety
- streamline customer service and approval processes
- deliver sector-driven services
- provide timely and modern tools and products
- promote consistency across the province
- enhance integrity in the system

The ministry wants to hear from people across Ontario about their experiences with building code services and the proposed changes that are being considered.

This discussion paper outlines existing building code services, identifies concerns that have been raised regarding their delivery, asks questions about how they might be improved or enhanced, and proposes potential changes. In addition, the discussion paper outlines areas where there might be a need for new services to be delivered.

Your feedback will help inform enhancements to current building code services and the development of new services.

There are several ways that you can provide feedback. For additional details on how to provide your feedback, please see page 25 of this document, or visit the Environmental Registry of Ontario.

## 1. Getting People Working in the Building Sector

In 2006, the ministry implemented the building code qualification and registration program to promote public safety by ensuring that building code professionals have the required legal and technical knowledge for their area of practice. To become a qualified building code professional in Ontario, generally, individuals are required to pass a building code examination on the legal requirements of the Building Code Act, 1992 (BCA), as well as in every area of the Building Code they wish to practice (e. g., House, Small Buildings, Large Buildings, Plumbing, Structural, Septic Systems, etc.).

The ministry is responsible for developing 16 technical and legal examinations, which are delivered through Humber College. Each examination consists of 75 questions. Individuals are allowed three hours to complete each examination, and a minimum mark of 70% must be achieved.

Examination outlines are posted publicly through Ontario.ca, detailing the content areas that each examination covers. Although building code professionals are not required to take formal training, the ministry, through an agreement with George Brown College of Applied Arts and Technology, offers building code training courses to help people prepare for building code examination. George Brown College offers self-study manuals, as well as online training courses and in-class training courses.

## What is a Qualified Building Code Professional?

**The Building Code Act, 1992 requires the following practitioners be qualified and registered:**

- Chief Building Officials (CBO)
- Inspectors
- Designers (other than engineers and architects)
- Registered Code Agencies (RCA)
- Persons engaged in the business of constructing, installing, repairing, servicing, cleaning or emptying on-site sewage systems

# Overview of Building Code Exams

- General Legal/Process
- Powers and Duties of CBO
- Powers and Duties of RCA
- Designer Legal/Process
- House
- Small Buildings
- Large Buildings
- Complex Buildings
- HVAC-House
- Detection, Lighting and Power
- Building Services
- Building Structural
- Plumbing-House
- Plumbing-All Buildings
- Fire Protection
- On-site Sewage Systems

Building sector associations also offer training that building code professionals may opt to take to either support them with their examinations or to keep their building code knowledge current. For example, the Ontario Building Officials Association (OBOA) provides extensive training to support people who wish to take building code examinations, but also in a variety of other areas to help people get a better understanding of what is required in their areas of practice.

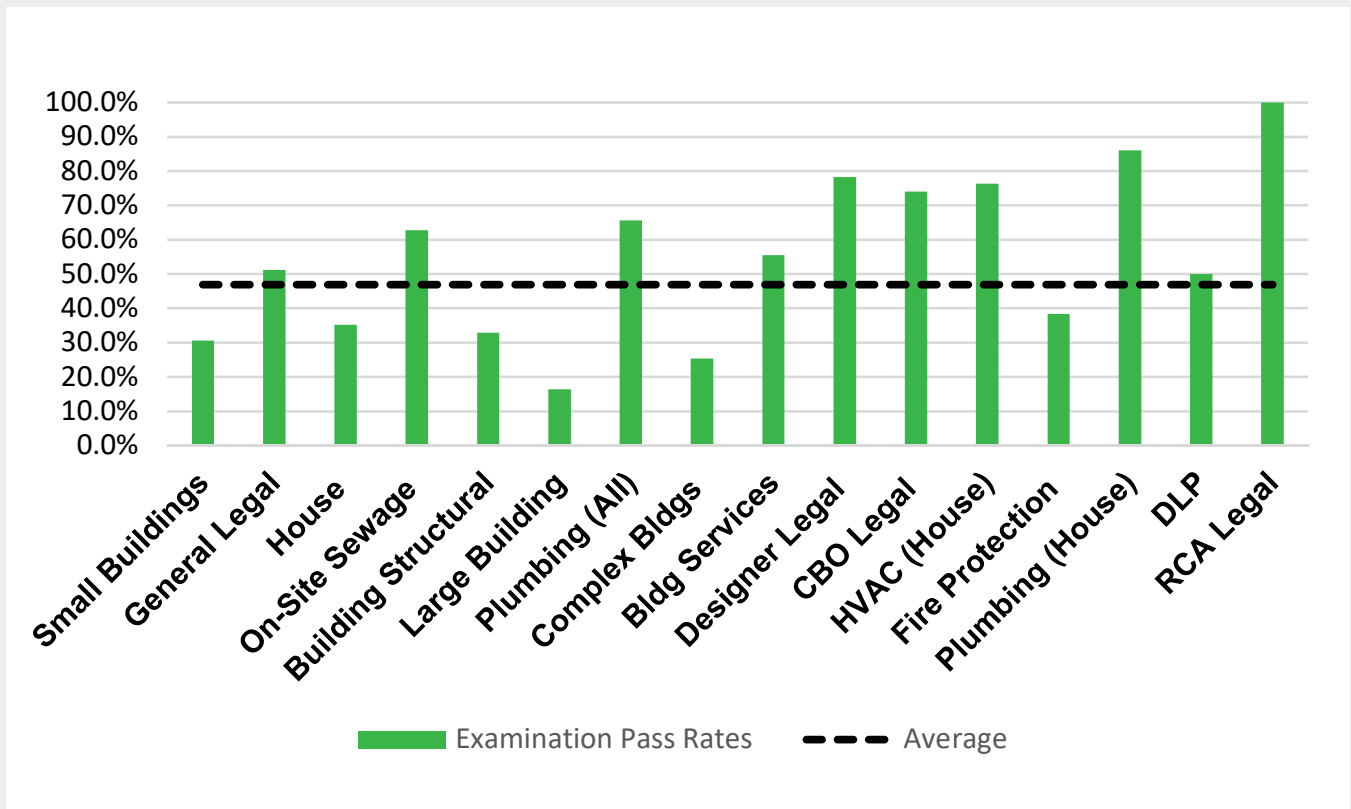
## 1.1 Examination Development & Delivery

Stakeholders have raised concerns about the clarity of questions and the lack of sufficient time provided to complete the examinations, given the complexity of the questions. Overall, examination statistics have demonstrated a relatively low pass rate across the 16 examination categories.

Factors that may be contributing to the low pass rates, could include:

- The varying amount of materials covered across the 16 examination categories (e.g., some examinations cover as few as 280 pages of content, while others cover as many as 1,255 pages - yet all examinations contain 75 questions to be completed within 3 hours)
- The current structure of examinations may be inefficient. Current examinations that have "nesting" may contribute to confusion for stakeholders on what classes of buildings they can perform work on.
- The suitability of current examination questions for areas of practice given the wide range of professionals that take the exam.

## Examination Pass Rates



## What is Nesting Qualification?

Nesting is when you can qualify for two classes by writing one examination. For example, the “House” Examination is nested under the “Small Buildings” examination. Therefore, if an individual passes the “Small Buildings” examination they are qualified for both small buildings and houses. However, if a person passes the “House” examination they are not qualified under “Small Buildings.”

## What Do You Think?

1. How could the current examination design, content and/or delivery be improved?

## 1.2 Pre-Qualification Training

In 2014, the ministry entered into an agreement with George Brown College to develop and deliver building code training courses to assist individuals preparing to write building code examinations. The training courses can be taken either online or in-class (2-week courses). Sector associations representing various building code professions also deliver training to support their membership. For example, the Ontario Building Officials Association and the Ontario Onsite Wastewater Association both develop and deliver training to support their respective members in taking building code examinations. Other jurisdictions, such as Alberta and some U.S. states, require building professionals to complete some form of mandatory training prior to or as a requirement of qualification.

The ministry is considering ways to improve building code training programs that are currently administered through George Brown College, support sector associations to better meet individuals' needs, and help maintain confidence in the safety of Ontario's buildings.

### What Do You Think?

1. Are the current training offerings meeting your needs? If not, how could they be improved?
2. Do you see a role for the administrative authority in the delivery of training for building code professionals?

## 1.3 Recruiting Experienced Building Code Professionals

Municipalities, Boards of Health and Conservation Authorities have indicated that there are not enough building code professionals employed or entering the sector with the necessary technical knowledge and/or experience to enforce the building code as a building official. This is particularly evident in rural and northern Ontario.

Currently, there is no educational program offered to specifically support becoming a building official, rather, post-secondary institutions across the province offer educational programs that complement the career path, such as Construction Engineering Technician/Technologist, Architectural Technician/Technologist, Engineering and Architecture. It is unclear if people moving through the education system would be aware of a building official as a viable career, given there is no direct educational pathway.

To support challenges with building sector recruitment, the ministry has entered into agreements with the Ontario Building Officials Association and the City of Ottawa to implement internship programs for building officials, including training and development. Those enrolled in an internship program may be exempt from examination requirements if they conduct the work of building inspectors in municipalities under the supervision of an appropriately qualified inspector or Chief Building Official. Generally, enrolment in these internship programs has declined since their implementation.

Other jurisdictions that have also experienced similar recruitment issues have taken steps to address the problem. For example, Florida offers provisional licences for new municipal employees entering the building sector as an opportunity to conduct plans review and other duties associated with a building official.

Ontario municipalities have generally indicated a desire to modernize, promote, and/or increase internship programs and opportunities.

## What are provisional licences?

A provisional licence is a temporary licence that allows practitioners to gain on-the-job experience before attempting the ministry exams and becoming fully qualified.

## What Do You Think?

- 1a. What factors could contribute to the low take-up of the current internship programs?
- 1b. What role could an administrative authority play in internship programs?
2. Would implementing a provisional licence framework help with municipal recruitment challenges and what should be considered?
3. Are there other ways to help building code enforcement bodies attract and retain experienced building professionals?

## 1.4 Using Coordinating Professionals

Stakeholders have indicated that lengthy approval processes delay the construction of buildings, costing significant time and money. For example, there may be disputes about building code interpretations, or permit applications may be incomplete or may not comply with building code requirements. The government is committed to streamlining the development approval process, including building permit approvals. Over the years, stakeholders have asked the government to consider leveraging professional expertise to support building code enforcement.

The Elliot Lake Commission of Inquiry Report, released in 2014, recommended that owners designate a Professional Engineer or Architect to the role of “Prime Consultant” who would coordinate designs and field work (e.g., coordinate inspections) of professionals involved in a project. Prime consultants could be contracted to ensure designs are complete, ensure designs are in compliance with the technical requirements of the building code, and act as a one-window contact for development projects, thereby supporting quicker approvals.

The use of professional expertise has been cited in industry-led reports as an opportunity to improve approval processes in the province, including the use of professional design coordination, like British Columbia’s Certified Professional program.

In British Columbia, engineers and architects who have taken additional building code training and examination(s) can review building plans and perform site inspections for large buildings to support the building permit process. Municipalities in British Columbia may voluntarily choose to run their own programs where Certified Professionals take on some of the traditional functions of the Chief building official, but with enhanced documentation through “letters of assurance”. Letters of assurance are required before building permits or occupancy permits are granted by the Chief building official for buildings using Certified Professionals, to confirm code compliance. Municipalities with such programs are still involved in the approval process. They coordinate with Certified Professionals to determine what permits and inspections are needed, confirm all letters of attestation have been signed, and are responsible for issuing permits. Certified Professionals could help to promote building innovation(s) and the streamlining of permit approval processes, which, in turn, may reduce permit delays and help protect public health and safety.



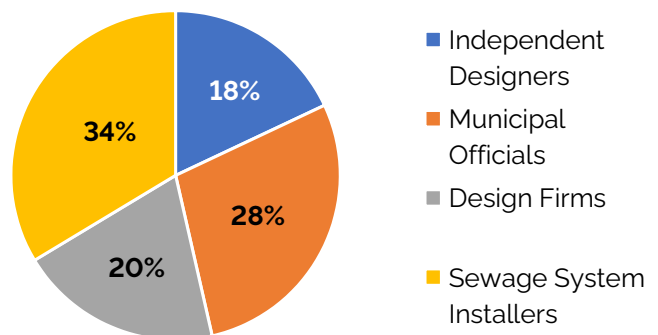
## What Do You Think?

1. Do you think the use of a Prime Consultant, under certain circumstances, would support a more streamlined building permit application process?
2. Do you think the use of Certified Professionals, under certain circumstances, would support a more streamlined building permit application process?
3. If the ministry decides to move forward and allow the use of such professionals, what do you think needs to be considered in implementing this change?

## 2. Promoting Sustainability and Transparency in the Building Code Profession

Once qualified, building code professionals must register in the Qualification and Registration Tracking System (QuARTS) Registry. The QuARTS Public Search Registry manages the registration of over 7,000 individuals and firms and serves as a consumer information tool to verify the qualification information and registration status of building code professionals in Ontario. Individuals, municipalities and design firms can be searched using information such as unique Building Code Identification Numbers (BCIN), organization name, or categories individuals are qualified to practice in.

The ministry takes a self-reporting and individual-based approach to regulating building code professionals. This means that individuals are required to ensure that the information they enter into the public registry is accurate and that their annual registration fees are paid.



## What is a BCIN?

The Building Code Identification Number (BCIN) identifier allows individuals and firms to register and renew their qualifications, receive registration renewal and expiry notices, upload insurance forms to the registry and receive notification of applications and transitions. It is the unique identifier by which the ministry keeps track of all building code professionals in the province.

A registration will remain active and searchable on the public registry for a 12-month period, at which time all individuals must re-register and pay an annual registration fee. While registrations and payments are individually-based, municipalities that have multiple registered individuals employed by their organization can submit registration fees for all their registered employees in one-time bulk payment as a means of streamlining the registration process.

Currently, building code professionals that are qualified and registered through QuARTS are not required to undertake any additional education or professional development activities once they have completed their mandatory pre-qualification examinations. However, the building code provides for the ability to require knowledge maintenance in the form of an examination. Rather than ordering knowledge maintenance examinations, the ministry has taken an educational approach by providing resource material to help the sector understand amendments to the building code.

In 2012, a rooftop parking garage collapsed in Elliot Lake resulting in the deaths of two people and injuries to several others. In response, the Elliot Lake Commission of Inquiry made a series of recommendations to government and other bodies. The Commission's recommendations directed to the ministry, included implementing a continuing professional development program for building officials and greater oversight and enforcement abilities related to qualification and registration of building code professionals. The Building Code Act, 1992 was amended in December 2017 to partially address these recommendations.

The Building Code Act, 1992 permits enforcement actions to be taken in certain circumstances, including where conditions of an individual's registration have not been met. If registration compliance or enforcement actions need to be taken, the available options are limited to either refusing, suspending, or revoking a building code professional's registration, or prosecution through the courts. The ministry has no formal process to receive and investigate complaints about bodies that enforce the building code

(i.e., municipality, Conservation Authorities, Boards of Health) and no ability to intervene in local administration and enforcement of the building code. Additionally, only building officials are subject to a code of conduct, while other registered building code professionals are not.

## 2.1 Public Registry and Registration Process

Stakeholders have identified concerns with the user-interface of the public registry, indicating that the system is not intuitive and can be confusing when inputting information. Since information is self-reported, the technical difficulties associated with navigating the registration software can result in incomplete or inaccurate information being displayed on the public registry.

In addition, some building code professionals have had trouble determining which registration class to select as there is little clear guidance available to individuals during the registration process. For example, building code professionals self-register online once they are qualified, and designers often encounter challenges in determining their particular designer category (e.g., "Independent Designer" vs. "Other Designer") which can lead them to improperly registering, potentially risking their professional reputation and public safety. Streamlining the registration process can make it easier for building code professionals to navigate the registration system and provide better consumer protection and awareness.

The individual-based approach allows the ministry to keep track of the individual qualification and registration status of building code professionals and protects the security and privacy of their personal and financial information. Only ministry staff or individual registrants have the ability to update their information on QuARTS, which can result in a delay in having current information in the system. Inaccurate or out-of-date information on the registry creates a gap in consumer awareness.

Service transformation offers an opportunity to modernize the current registry to make it more user- focused and easy to navigate, without adding burden to existing processes. The ministry is proposing to transform the user interface of the public registry to help simplify and modernize the registration system. Changes to the public registry and registration process can also offer additional functionalities, such as storing and displaying information on continuing professional development and disciplinary action.

## What Do You Think?

- 1a. If you are a registered building code professional, what are the key issues you face with the current QuARTS system?
- 1b. What registration functionality would you find helpful that is not currently available in QuARTS?
2. As a member of the public, what information would you like to see made publicly available on the registry to help you make an informed decision on hiring a qualified building code professional?

## 2.2 Continuing Professional Development

Continuing professional development (CPD) is a common mandatory requirement for a number of professions (e.g., architects, lawyers, etc.) to ensure an individual's knowledge is up-to-date with new developments in their respective fields and to support maintaining licences to practise. In other professions, CPD is required to maintain professional accreditation with a governing association and the use of a title (e.g., Construction Engineering Technologist, Registered Interior Designer, etc.). However, it is not mandatory for qualified and registered building code professionals to take CPD courses or join these associations.

Generally, CPD requires a mix of formal and informal learning, training or other types of educational activities (e.g., in-class courses, online training, reading professional journals, attending work conferences or meetings) related to the respective field. Some CPD programs in other jurisdictions require minimal activity (6-8 hours) while others require 30 to 60 hours over a 3 to 5-year period. Fulfillment of these CPD requirements is then monitored by the regulating body or association to ensure they are being met.

Some building officials in Ontario choose to be part of the Ontario Building Officials Association (OBOA) Certification Program, which requires completion of a mix of informal and formal activities over a 3-year cycle to receive the professional designation of Certified Building Code Official (CBCO) or the professional designation of Building Code Qualified (BCQ). The program requires members every 3 years to complete 60 credits, based on the type of activity. For example, OBOA courses are worth 1 credit per hour and mentoring is worth 1 credit per hour, with a maximum of 15 per cycle. Members are required to track their total credits earned and compliance is monitored through random audits on 1-3% the membership by asking for proof of total credits earned.

Similarly, some designers are members of the Ontario Association of Certified Engineering Technicians and Technologists (OACETT), which has a certification program requiring one formal activity and three additional activities to be completed every 3 years. Formal activities consist of prescriptive self-directed or in-class courses concerning technical knowledge or leadership/management training. Other activities include contributions to informal learning and development that contribute to the profession or connect professionals within and across multiple jurisdictions.

To further support the Elliot Lake Commission recommendation and building code knowledge maintenance, the ministry is considering CPD requirements for all types of qualified building code professionals. For example, having qualified building code designers maintain knowledge through CPD requirements could help improve the quality of designs submitted to municipal building department counters, potentially speeding up review and approval timelines.

Designing a CPD program for a wide variety of building practitioners can be challenging and needs to be fair. There are numerous categories of practice that building practitioners can be qualified in (up to 12 categories). For example, a septic system installer may be required to complete fewer CPD activities than a Chief Building Official who may be qualified in multiple technical qualification categories. Additionally, the CPD program would need ensure there is no undue burden or duplication with knowledge maintenance requirements .that a building code professional may be required to meet as part of their membership or accreditation in a professional association.

## Other Regulated Professionals That Require CPD

- Lawyers
- Chartered Professional Accountants
- Architects
- Teachers

## What Do You Think?

1. How many activities or hours of CPD do you feel is reasonable to require of building code professionals?
2. What is the right mix of formal and informal CPD activities that building code professionals should be required to complete (e.g., courses, training, examinations, reading professional/technical journals or documents, volunteering in the sector, attending relevant conferences, etc.)?
3. What is a reasonable timeframe for completing CPD requirements to ensure knowledge is maintained (e.g., annually, at every new Building Code cycle which is usually 5-7 years, other)?
4. Are there already mechanisms, materials, or offerings that would give building code professionals options on how they could meet their CPD requirements?

### 2.3 Registration Compliance and Enforcement

Registration requirements are only effective if they are actively monitored. Ensuring that building code professionals are meeting their qualification and registration requirements and are operating appropriately in the sector is essential to promoting public safety.

Some of the issues the ministry has heard and experienced include individuals practising as a building code professional without being qualified, poor-quality and non-compliant building designs delaying permit issuance and processing, and the improper use of Building Code Identification Numbers (BCIN) by unregistered individuals.

The Building Code does not define expectations for building code professionals' behaviour and quality of work, which can limit certain enforcement actions that can be taken. Expected behaviour and standards for professionals are instead generally laid out in professional codes of conduct. The Building Code Act requires municipalities to have codes of conduct in place for their building officials. While municipal building officials are subject to a code of conduct, the absence of clear conduct standards for other building code professionals may contribute to poor quality building permit applications, resulting in additional costs, delays and frustration for building permit applicants.

In addition, the ministry currently has limited powers to promote and enforce registration compliance and these powers are not consistent across all building code professional categories and are not always proportionate to the severity and frequency of non-compliance.

The ministry is proposing a comprehensive, escalation-based, compliance enforcement framework that would define disciplinary actions in proportion to the severity and/or frequency of non-compliance as well as the level of risk to public safety that the infraction poses. This would allow for a more measured, responsive and cost-effective enforcement process that promotes compliance, while also allowing for appropriate corrective actions to be taken. This framework could include:

- Increasing compliance through the delivery of tools and resources, such as education and awareness campaigns, training seminars, online educational tools and videos to promote practitioner awareness of their registration requirements.
- A mandatory code of conduct and annual attestations for all building code professionals. Attestations could be used for confirmation of completion of CPD requirements, acknowledgement of responsibilities and expected behaviour under the qualification and registration program, and their understanding of the consequences of non-compliance actions.
- A formal, documented complaints process that would give the public a way to raise concerns regarding the work of certain building code professionals.
- The use of remedial training, re-taking examinations, or financial penalties, as potential corrective actions.
- The publication of offences and the resulting disciplinary actions to inform the public of an individual's history of non-compliance and to help ensure transparency.

## Potential Risk-Based Enforcement Actions

- Education and awareness campaigns
- Warning letters
- Orders to comply
- Re-education (through training or re-examinations)
- Mediation and/or conciliation
- Compliance agreements
- Administrative penalties and/or fines
- Supervision of work
- Conditions/limitations on a licence
- Suspension or revocation of a licence



## What Do You Think?

1. What types of compliance measures should be put in place to ensure building code professionals are meeting the requirements of their registration?
2. What types of accountability mechanisms do you think might be appropriate if a body enforcing the building code (i.e., municipality, Conservation Authorities, Boards of Health) is found not to be meeting its responsibilities under the Building Code Act, 1992?
3. Do you see any challenges with requiring all building code professionals to adhere to a code of conduct?
4. What should be considered when increasing the number of available enforcement tools and using an escalating enforcement model?
- 5a. Under what circumstances do you think it would be appropriate for financial penalties to be used as a means of encouraging compliance with registration requirements?
- 5b. How could these penalties be set so that they are fair?

## 3. Building Code Administration and Enforcement

Principal authorities, which include municipalities, Conservation Authorities and Boards of Health, are responsible for enforcing the building code. Enforcement includes reviewing building permit applications, issuing permits and conducting on-site inspections of construction. Principal authorities can take enforcement action where they find contraventions of the Act or the building code, and where buildings are found to be in an unsafe condition or pose an immediate danger to health and safety. For example, a stop work order or order to not cover can be issued to prevent the construction of buildings that do not meet building code requirements.

Principal authorities are generally required to appoint a qualified Chief Building Official (CBO) and as many inspectors as needed to carry out enforcement of the Building Code Act, 1992 and the building code within their jurisdiction. CBOs have prescribed roles and responsibilities under the Building Code Act, 1992 and the building code, are required to be appropriately qualified and registered and are regulated by the ministry. It is the role of the CBO and inspectors to exercise their powers and perform all their duties under the Act in an



independent manner. Principal authorities are also required to have a Code of Conduct in place for its CBOs and inspectors.

The Building Code Act, 1992 allows principal authorities to set fees (e.g., building permit application fees and inspection fees) at a rate that does not exceed the cost of administration and enforcement. The Act provides principal authorities with the flexibility to enter into alternative agreements for the provision of enforcement, such as with another municipality, an upper tier municipality, a health unit or conservation authority, or with a private-sector provider (certain conditions).

Unincorporated areas in Ontario are geographic regions in Northern Ontario not governed by a formal local municipality. Currently, the ministry is responsible for building code enforcement in these areas. Recognizing the low building activity in these areas, the ministry has taken a relatively reactive approach to enforcement. However, all buildings must still comply with the building code, even in the absence of active enforcement.

### 3.1 Enhanced Municipal Enforcement

Where orders are not complied with, the only recourse currently available to principal authorities is to apply to the Superior Court of Justice for a court order directing compliance or conduct a prosecution for failing to comply with the order. Court processes are costly and often do not reflect the severity of risk to public safety. Principal authorities that have gone to the courts have found that the court fines that are administered do not recover the cost the principal authorities have spent enforcing the matter.

Recent changes to the Building Code Act, 1992 allowed the ministry to establish an administrative penalty framework that would serve as an additional enforcement tool for principal authorities, to help ensure the technical requirements of the building code are being complied with. Administrative penalties are already used by many municipalities in Ontario for by-law violations like parking and property standards.

## What is a Principal Authority?

- a. the Crown (e.g., ministry)
- b. the council of a municipality
- c. an upper-tier municipality that has entered into an agreement under subsection 3(5), 6.1 (1) or a board of health that has been prescribed for the purposes of subsection 3.1(1) or has entered into an agreement under subsection 6.1(2) or (3) or 6.2(2)
- d. a planning board that has been prescribed for the purposes of subsection 3.1(1), or
- e. a conservation authority that has been prescribed for the purposes of subsection 3.1 (1) or has entered into an agreement under subsection 6.2 (2)

The ministry is proposing to develop an administrative penalty framework that would enhance principal authorities' powers to address non-compliance and address contraventions of the Building Code Act, 1992 and the building code to promote public safety.

## What is an administrative penalty?

An administrative penalty is a penalty, often monetary, the regulator can impose for certain contraventions under the Building Code Act, 1992 and regulations.

Unlike charges laid under law, there is no criminal element when administrative penalties are imposed. Administrative penalties are intended to promote compliance rather than be a punishment for wrongful activity.

## What Do You Think?

1. What types of orders do you think administrative penalties could be used for? What do you think the province should consider in developing an administrative penalty framework?
2. Are there enforcement tools that would help principal authorities ensure compliance with technical requirements of the building code?

## 3.2 Supporting Local Building Service Delivery

Municipalities with limited construction and development activity often do not generate the revenue through building permit and inspection fees needed to cover the cost of a CBO and any necessary enforcement activity. This can result in either the CBO taking on many roles and responsibilities within a municipality to ensure cost-efficiency, or the municipality subsidizing the cost of building enforcement from the general municipal tax base.

Smaller municipalities generally don't receive many applications for large and complex building construction. Municipalities may choose to hire building officials qualified in the house and small building categories to ensure they have expertise for the type of applications they are in fact receiving. However, this can lead to a qualification gap should large or complex building permit applications be made in those areas. The ministry

wants to find ways to help these municipalities close the qualification gaps they may be experiencing.

Several municipalities have entered into sharing agreements for building code enforcement to mitigate these challenges. Other jurisdictions in Canada, the U.S. and Australia have allowed local jurisdictions to defer the delivery of building services to the higher order government (i.e. province/state) to ensure that there are no public safety or regulatory gaps when a local jurisdiction is unable to administer their respective building codes.

The ministry is considering providing the option for smaller, rural, and/or northern municipalities to enter into an agreement with the administrative authority to deliver full or partial building services on their behalf.

## Did You Know?

In 2017, Statistics Canada estimates that of the 414 municipalities in Ontario, over 18% reported no new residential or non-residential construction value for building permits.

Of the 414 municipalities in Ontario, 237 or 57% of these municipalities have some sort of sharing arrangement with either a conservation authority, health unit, or Upper-Tier municipality for Part 8 Building Code Coverage.

## What Do You Think?

1. Would it be beneficial for municipalities to have the ability to transfer some or all of their building service delivery to the administrative authority?
2. If you live in a smaller, rural and/or northern municipality, how would you feel more supported at your municipal building counter?

### 3.3 Unincorporated Areas

Buildings that are not constructed to meet building code requirements may result in unsafe and unhealthy living conditions (e.g., as buildings become more airtight, incorrect construction could result in black mould which has impacts on air quality and health). Unincorporated areas are not subject to permitting and inspection requirements, but the building code has become increasingly complex over time.

The ministry is considering a more active enforcement approach in unincorporated areas, which is proposed to be delivered by the administrative authority. Active enforcement could take the form of full permitting and inspection, equivalent to what is currently delivered by municipalities. Alternatively, a risk-based approach could be taken, that could for example, require full permitting and inspection to be applied to large, public assembly buildings.

#### What Do You Think?

1. What kind of framework should the province consider for dealing with building code compliance and enforcement in unincorporated areas?
2. If you live or work in an unincorporated area, what guidance, resources and/or support do you need for your building projects?

## 4. Improving Building Sector Supports

The building code has historically been updated on a five to seven-year cycle. As part of the government's commitment to national construction code harmonization in support of the Canada Free Trade Agreement, the province will update its code in line with the five-year national code development cycle. Through this process, the degree of variation between Ontario's building code and the national constructions codes will be reduced. The province will work with the national system to promote changes that reflect technological advancements and new construction practices which would open new markets for manufacturers and bring building costs down.

When changes are made to the building code, there may be accompanying guides, resources and/or technical bulletins issued to the building sector that assist with the interpretation and application of those new requirements. Currently, the ministry publishes

the Building Code Compendium and the Code and Construction Guide for Houses in hardcopy format.

The ministry also offers informal code advisory services administered by technical experts within the ministry. Through telephone and e-mail correspondence, these advisors provide building code guidance, and provide helpful code-related information to the public or building code professionals.

Product manufacturers who develop innovative building materials currently have the option of bringing their product to the Building Materials Evaluation Commission (BMEC) to be examined and authorized for use in Ontario. BMEC, which is currently supported by the ministry, is an agency of the province that has the authority under the BCA to conduct research on, examine, and authorize the use of innovative construction materials, construction systems, and building designs, which are not currently included in the building code. The average length of time for a decision to be made on an application is 90-120 days and the cost of an application is \$11,000. The ministry is proposing that the administrative authority assume responsibility for product authorization functions.

## 4.1 Promoting a Consistent Application of Code Requirements

Despite the supports provided, there are still many difficulties faced by the building sector when interpreting and applying building code requirements.

While an objective-based code allows for flexibility and innovation, it can also lead to inconsistent interpretation of requirements across the province. Due to the evolving technical requirements of the building code, it may also be confusing for the public to understand what requirements they need to follow for their construction projects.

Key guides and resources (e.g., secondary suites or tall wood construction guides) are released to help people understand major changes to the code. Building code professionals have been requesting more comprehensive tools and services in a timely manner that provide clear, standardized technical advice and interpretations.

The ministry is considering providing a variety of supports which could include:

- Developing and distributing additional guidance materials on a regular basis
- Increasing the use of technical bulletins and establishing formal processes for code interpretation requests
- Enhancing code advisory services to include the ability to provide technical opinions and/ or interpretations

- Working with the building sector to develop specific checklists, resources and tools to assist with the application of code requirements
- Enabling 24-hour front-line web service access to building code information and guidance

## What Do You Think?

1. Would you support the issuance of technical bulletins and/or code interpretations? Please explain.
- 2a. If additional resources and guides to help with code interpretation were created, what types of resources (e.g., type of content, format, etc.) would be most useful?
- 2b. Would the addition of more visual guidance materials for specific building code issues be helpful?
3. As a member of the public, what resources and tools would you need to assist you with understanding code requirements for your small or personal construction projects (e.g., minor renovations, decks, sheds etc.)?

## 4.2 Digital Service Transformation

The province has committed to a digital-first strategy to modernize and improve the services it provides to Ontarians. As part of this strategy, the ministry has begun refreshing the Ontario Building Code's web page to increase usability, functionality and access to digital resources that will help the building sector and all Ontarians. Building code professionals have identified additional service needs, including a digital version of the building code with increased functionalities such as:

- Compatibility with mobile devices
- Enhanced search functionality
- Compatibility with municipal electronic permitting and mobile inspection systems

The goal in implementing a strong, modernized digitally-based suite of building code resources would be to issue guides and resources quickly for use after code updates. This would improve front-line service delivery by supporting municipal efforts to reduce building permit approval timelines.

## What Do You Think?

1. If you would use an electronic version of the Code, on what type of electronic device would you most frequently view/use it on? (e.g., laptop/desktop, mobile device)
2. In addition to digital versions of the Ontario Building Code Compendium, what other digital guides, resources or tools would you find most useful?

### 4.3 Building Sector Data and Research

Reliable building industry data and research play an important role in evidence-based policy development and providing effective support to the building sector. The ministry currently uses a range of data and research from the building industry. This allows the ministry to use real-time data and identify key trends and patterns within Ontario's municipal and building sectors.

Currently, data is used from a variety of sources including the model National Building Code, the National Research Council, Statistics Canada, procurements for research and data related to a specific issue(s), online research, code change proposals, and stakeholder input and feedback.

The ministry is considering opportunities for broadening the scope of its data collection efforts and improving the quality and quantity of data that is collected by allowing the administrative authority to identify gaps, coordinate data collection, and make the data available to the building sector. Access to more robust sector data could support the activities and data needs of industry professionals. While enhanced data collection would provide the ministry and the sector with valuable evidence-based data, it may also add to the municipal reporting burden.

## What Do You Think?

1. Does your organization collect building sector data? Do you have any policies in place for data collection, management, and/or transparency?
2. How could the potential increase in municipal reporting burden be mitigated?
3. Do you think it would be beneficial if the administrative authority conducted research on behalf of the sector?

## 5. Funding Better Service Delivery

To ensure the efficient, streamlined, and sector-driven delivery of building regulatory services, the administrative authority would be financially self-sustaining and would operate on a full cost-recovery basis. The ministry is proposing to fund service delivery through a blended revenue model that includes allowing the administrative authority to charge fees for directly delivered services (e.g., registration fees, product authorization fees, etc.) and collect a small levy on top of municipal building permits fees.

### Example of a Levy Calculation

For a building project that has an estimated construction cost of \$500,000, the levy would be approximately \$80 on top of building permit fees already charged by municipalities.

The Building Code Act, 1992 provides the ability to recover costs of delivering services through fees. The ministry already collects fees for services such as building code professional registrations, product authorization (e.g., Building Materials Evaluation Commission) applications, and examination fees. It is anticipated that the administrative authority would continue to collect these fees for similar services it would deliver.

To achieve full cost-recovery, the administrative authority would charge an additional, nominal fee on municipal building permit applications. The levy would be calculated as a small percentage of the estimated construction value, which is self-reported on every building permit application. Based on the estimated total program cost for service delivery, the levy amount is anticipated to be 0.016% of the construction cost estimate noted on a building permit application.

The levy would be collected by principal authorities (e.g., municipalities) and then remitted to the administrative authority. Construction value is a transparent, reliable, and fair way to measure the amount of services a project would require since larger, more complex projects would generally require more services. The levy would be reviewed on a regular basis to ensure that the revenue being collected does not exceed the actual cost of delivering services to the sector.

Services offered by the administrative authority will be available to all Ontarians, regardless of the number of building permits or amount of building permit revenue collected. This



model would not impact existing building permit revenue that principal authorities collect as they would be separate revenue streams.

## What Do You Think?

1. Is the proposed funding model a reasonable approach to delivering improved services to the sector?
2. Are there impacts in implementing such a fee model that the government should consider?

## 6. Seeking Your Input

Public consultation is an important part of developing legislation, regulations and policy in Ontario. By providing your feedback on this consultation paper, you can help the Ministry of Municipal Affairs and Housing develop and transform service delivery to the building sector into a responsive, efficient, and modern model.

We look forward to your feedback. Your involvement helps to ensure that potential building code changes are fully informed to best meet the needs of Ontarians and the building sector, and that they are technically and economically feasible and enforceable. Your input is valued and will be seriously considered before the government makes final decisions on changes to the current regulatory building service delivery model and the associated suite of existing or proposed building code services.

### **You can send comments in writing to:**

Ministry of Municipal Affairs and Housing Building Services Transformation Branch  
16th Floor – 777 Bay St.  
Toronto, Ontario M5G 2E5

Or by email to:

[buildingtransformation@ontario.ca](mailto:buildingtransformation@ontario.ca)

**The ministry requires your feedback by November 25, 2019.**

Ministry of Municipal Affairs and Housing

08/19

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