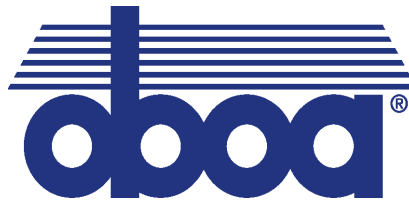


Stakeholder Sessions



Ontario Building Officials Association

Proposal for Self-Management

Consultation Document

Report to the Minister of Municipal Affairs and Housing

March 17, 2009

Submitted to:

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Ministry of Municipal Affairs and Housing
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OBOA SELF MANAGEMENT PROPOSAL Index

1.0	Purpose Statement	4
2.0	Executive Summary	4
3.0	Introduction	7
3.1	Self Management Proposal	7
3.2	The Case for Self Management	14
3.2.1	Standardization	14
3.2.2	Education	14
3.2.3	Experience	14
3.2.4	Objective Based Codes	15
3.2.5	Construction Professional Attrition	15
3.2.6	Industry Efficiency	15
3.2.7	Industry Partnerships	15
3.2.8	Enhanced Safety and Reduced Liability	15
4.0	MMAH and Stakeholders	17
4.1	Core issues to be Addressed	17
4.1.1	Public Safety	17
4.1.2	Public Interest	18
4.1.3	Municipal/Principal Authority Employee Relations	18
4.2	Accomplishment of the Self Management Proposal Goals	19
4.3	Next Steps	22
5.0	Overview of Regulated Authority and Self Management	22
5.1	Self Management – The Real Estate Example	22
5.2	The Real Estate and Business Brokers Act, 2002	23
5.3	Administrative Authority: The Safety and Consumer Statutes Administration Act (SCSAA)	23
5.4	How the SCSAA Delegates Authority	24
5.5	The Administrative Agreement	24
6.0	The OBOA as a Delegated Administrative Authority	27
7.0	OBOA Governance Principles	28
7.1	Governance Objectives of a Regulated Administrative Authority	28
7.2	Governance related to Certification, Conduct and Complaints	29
7.3	Final Considerations	30
8.0	Key Elements of the Proposed Self Management Framework	32
8.1	Scope	32
8.1.1	Persons to be Regulated	32
8.1.2	Work Functions to be Regulated	32
8.1.3	Duties, Conduct, Standards and Services to be Regulated	33
8.1.4	Scope of Complaints to be Regulated	35
8.1.5	Assignment of Administrative Responsibilities to OBOA	35
8.1.6	Prohibitions Regarding Persons not Members of OBOA	36
8.1.7	Exemptions	37

8.2	Governance	38
8.2.1	Process for Development of regulations	38
8.2.2	How are Regulations Developed?	38
8.2.3	Authority of the OBOA to Administer Examinations and Training	40
8.2.4	Authority of the OBOA to set Practice Standards	41
8.2.5	Authority of the OBOA to set Fees	43
8.2.6	Composition and Appointments to the Council/Board of Directors	43
8.2.7	Meetings of the Council/Board of Directors	47
8.2.8	Committees of the Council/Board of Directors	47
8.2.9	Powers of the Council/Board of Directors to pass bylaws and their Relationship to the Act and the Regulations	48
8.2.10	Immunity of the OBOA for Acts Done in Good Faith	50
8.3	Qualification and Certification	52
8.3.1	Foundation Studies Necessary to Enter the Profession	52
8.3.2	Internship Studies	52
8.3.3	Qualification Studies	53
8.3.4	Certification Studies	54
8.3.5	CBCO Certification	55
8.4	Complaints, Informal Dispute Resolution and Discipline Process	55
8.4.1	Rules	55
8.4.1.1	Code of Ethics	56
8.4.1.2	Incompetence and Negligence	57
8.4.1.2.1	Incompetence	57
8.4.1.2.2	Negligence	57
8.4.1.3	Rules of Professional Conduct	57
8.4.1.4	Basis of Complaints	58
8.4.2	Process Overview	58
8.4.3	Process Structure	58
8.4.4	Process Procedure	59
8.4.5	Municipal/Principal Authority Interest	63
8.5	Reporting	64
8.5.1	Annual Report to the Minister	64
8.5.2	Role of the Minister to Review Activities of the Council/Board of Directors and Advise on Implementation of the Act	64
8.6	Transition	65
9.0	Conclusions	67
Appendices		
	Appendix A – Self-Management MOU	69
	Appendix B – Internship MOU	76
	Appendix C - Court Judgment Analysis	89
	Appendix D – PEO Communication on Objective Based Codes	95
	Appendix E – OAA/PEO Joint Communication on Design	97
	Appendix F – Ontario Regulation 579/05 – REBBA	99
	Appendix G – Communication from Jeff Leal, MPP Peterborough	102

1.0 PURPOSE STATEMENT

The purpose of the report is to outline the OBOA's proposal on the implementation of a self-management model for regulation of the building official profession. The report is prepared according to the provisions of a Memorandum of Understanding (MOU) executed between Her Majesty The Queen In Right of Ontario As Represented By The Minister Of Municipal Affairs and Housing (MMAH) and the Ontario Building Officials Association (OBOA) on July 18, 2007.

2.0 EXECUTIVE SUMMARY

Over the many years that the Ontario Building Officials Association ("OBOA") has advocated in favor of greater self-regulatory authority, one issue has remained constant: there was little appetite within the provincial government to legislate full self-regulation for the Association. Instead, the discussions have centered around the concept of "self-management". When asked to describe what that concept meant, the OBOA was continually referred to the example of real estate agents – who are governed pursuant to what is generally known as the delegated administrative authority model. Therefore, when the Association developed its proposed model for self-management, it based the proposal on the delegated authority model since it was apparent that this was the most likely model to be accepted and a model that would still provide a framework for an efficient and effective process of building official practice management. It is acknowledged that there are other models and processes that might be used in implementing a professional practice regime. Nova Scotia, for example, requires Building Officials to be members in good standing of the Nova Scotia Building Officials Association by direct reference in their Building Code Act. The OBOA welcomes discussion on alternative methods that maintain the governance principles and objectives as set out in Section 7 of the proposal.

While there has not been a policy decision made, the aforementioned MOU prescribed a process wherein MMAH staff and representatives of the OBOA would jointly consult and develop the potential elements of a regulatory framework that would establish the OBOA as a designated administrative authority. The identified regulatory framework would then form the basis of a public consultation process that would seek input from the general public, members of the OBOA and Ministries, agencies and associations noted in Schedule C to the MOU. (See Appendix A)

The elements identified as relevant to this process were not only of a technical and/or practice-based nature, but also included topics that established the base need for such a proposal. Further, the proposal was expected to describe the ability of the delegated authority model to support and promote the public interest,

as well as to recognize the complex relationships and needs of building official employers, specialized practitioners, large municipalities, rural and northern municipalities, chief building officials and other principal authorities.

This proposal sets out the rationale and perceived need for and benefit of a professional regulatory regime as well its structure, cites similar existing legislation for reference, lays out a governance structure including implementing legislation requirements, frames the studies stage of internship/qualification (right to practice) / certification (broader knowledge recognition) and establishes a complaints and discipline framework committed to an ongoing sensitivity to the needs of principal authorities and Chief Building Officials.

The OBOA, being a voluntary certification body for Ontario's Building Officials, (Certified Building Code Official-CBCO) is exposed to many issues of the industry in its day-to-day operation, as are its individual members. Many issues present themselves to the Board of Directors, either in its entirety through association business or individually through director portfolio activity. In addition, issues will make their way to the board through the association's provincial chapter structure. Ontario is divided into 6 regions containing a total of 22 chapters representing over 2200 Building Officials. This network provides the Board with opinion and concerns on everything from Marijuana Grow Op issues in the GTA to the difficulty of providing mentorship services to Intern Building Code Officials in northern Ontario. The need for autonomy and efficient services in Ontario's larger communities is contrasted by the need for guidance, support, and issue advocacy for small urban, rural and northern Ontario.

An improved standard of competency for Building Officials beyond that of examination alone has received support from most Building Official groups. The inclusion of mandatory education (along with prior learning and experience assessment) as well as measured on-the-job experience, as components of a competency-based qualification system, is seen as an important step in fostering a more consistent and complete level of core code knowledge amongst Building Officials. More consistent levels of competency with regard to BCA and Ontario Building Code administration across Ontario as a whole can only result in improved public safety and more efficient construction and development industry performance on a province wide basis. These two anticipated results are, in OBOA's opinion, fundamental to the public interest in Ontario. Walkerton has shown that proactive measures with regard to professional competence and consistent conduct are in the public interest.

The degree of geographic and resource variance of principal authorities across Ontario presents other issues that have been brought to the attention of the OBOA. While many larger municipalities have sufficient resources in terms of staff, monies for training and development, internal support and expertise in relation to standards of conduct/ethics, competency assessment and other oversight functions, many other principal authorities face significant challenges in these areas. As an

example, some of Ontario's larger urban centres offer in-house training featuring expertise in a given code discipline and enough enrollment to result in a thorough and productive educational session. Further, some of these entities have the internal resource and expertise to "intern" new building officials in a program that would likely meet or perhaps even exceed the experience measurement and competency assessment results of the current OBOA Internship program. In contrast, the smaller urban, rural and northern principal authorities often find themselves with a single Building Official (a Chief Building Official) who has limited access to training (due to lack of monies for development, staff resource to cover absence, lack of training in proximity etc), limited ability to procure mentorship services for an intern due to similar adjacent principal authority issues and particularly in the north, travel and area of coverage limitations.

As will be further discussed in the introduction, there are certain differences between the existing BCA regime and that which is being proposed. Qualification through examination is augmented with a mandatory experience component and maintenance of qualification will be by mandatory education and continuous learning, not re-examination. A provincially consistent conduct and ethics proposal, as well as practice qualification requirements will be supported by a complaints and discipline process that recognizes the needs of employers and the autonomy that must exist for Chief Building Officials in particular.

It is certain that while the improved professionalism of Building Officials is supported by most, the extent of the needs in this end do vary across Ontario. It is the intent of this proposal's structure to implement procedures that will accomplish the goals that are uniformly accepted as being desirable, and to also offer a defined venue for further discussion on those procedures that are desired at differing extents based on the above circumstances.

If the proposal establishes to the Minister the merit of creating a professional regulatory regime for Building Officials in keeping with the governance principals and objectives as outlined herein, the legislation drafting period is expected to last at least one year and development/implementation of the operational procedures to extend a further 2 to 3 years. It is maintained that this period of time should enable thorough consultation between all building officials and joint development of governance and procedure that will reflect the needs of both large and small Ontario principal authorities

As has been said in previous stakeholder discussions, this proposal is not so much about current Building Officials, OBOA members or not, but about the future Building Officials of Ontario.

The introduction that follows (section 3 of this report) identifies and discusses eight industry-specific issues that establish a sound basis for the delegation of administrative authority to the OBOA. Section 4 of this report deals with several

additional core issues: 1. serving public safety; 2. serving the public interest; and 3. meeting the needs of building official employers.

Sections 5,6 and 7 address the legislative basis for delegated administrative authority and sets out the governance principals of the OBOA. Other organizations that have been designated as delegated administrative authorities are used to explain the transition of the OBOA into such an authority; how the OBOA would function under the legislated designation and the natural evolution of the OBOA not only as a regulator but also as an organization that can add value to the profession of building official.

The elements that are “key” to the function of the profession of building official are included in section 8. Scope, governance, qualification/certification, complaints/dispute resolution/discipline, reporting and transition are discussed in detail. Not only are processes, requirements and rules identified, but reference is made to how these elements complement and support the submissions made in support of self management (section 3) and the aforementioned core issues: public safety, the public interest and building official employer needs.

This report concludes with a summary outlining the need for regulatory change to the profession of building official through the self-management model; how the public interest would be promoted and protected; how the proposed model will respect the specific needs/concerns of parties affected by the OBOA self management proposal; and how the proposal will promote a transparent, effective and efficient model of governance for Ontario building officials.

After the public consultation, the proposal and resulting consultation comments will be forwarded (accompanied by a financial analysis of the OBOA) to the Minister MMAH for consideration.

3.0 INTRODUCTION

3.1 SELF-MANAGEMENT PROPOSAL

It has been said that the BCA is a statute looking for a profession. It is an apt statement given the vital role of building officials in facilitating construction and safeguarding public safety. In September 2007, construction in Ontario employed just over 413,000 people. Building permits issued in Ontario for 2006 amounted to more than \$23 billion. Investment in industrial, commercial and institutional (ICI) construction in Ontario increased in value from \$7.6 billion in 1998 to approximately \$10.4 billion in 2006. The figure is projected to reach \$11.6 billion in 2008.

Building Officials, as a profession, are integral ‘factors’ in these economic calculations. Building Officials oversee specifications related to structural

soundness, fire safety, health, accessibility, and building protection. They review plans for construction, addition, renovation and demolition. They ensure compliance with building codes, regulations and by-laws, and they issue regulatory orders that results in circumstances such as required compliance with the Building Code Act (BCA) Building Code, uncovering of constructed works, stopping of work, declaration of unsafe building, prohibiting use/occupancy of an unsafe building and declaration of an emergency with regard to a building or site when requirements are not met. They are instrumental in developing related legislation, and they frequently prepare information for prosecution or injunction, as well as provide expert testimony when necessary.

The Divisional Court in *Association of Professional Engineers et al. v. Her Majesty the Queen in Right of Ontario et al.* held at paragraph 59 of its decision that: "If truth be told, the Building Code is a professional regulatory act in search of a profession." While the decision in question was not in any material way directed towards Building Officials, it was, by its supporting commentary, able to determine that the BCA and the Ontario Building Code displayed evident professional regulating tendencies. The OBOA maintains that the duties and responsibilities assigned by the legislation and the regulations are professional in nature, and that Building Official is currently a profession that is ready to be recognized and moved forward to the next phase in professional evolution, self-managing status.

The Government of Ontario offered no appeal to this ruling, or any part thereof. In that regard, the OBOA respectfully submits that the Minister need not look any further than this proposal and the building official profession to remedy the Building Code deficiency as identified in the Divisional Court decision. Building officials are by their actions very much a profession. The role of building official is critical to the orderly development of Ontario communities and to the administration of a reasonable regulatory regime for the building industry in Ontario. The need for expert, well-qualified building officials was recognized with the passage of the *Ontario Building Officials Association Act* in 1992 (Private Member's legislation that confers the right to title status). The legislation also recognized the professionalism of building officials in Ontario, as does the current Memorandum of Understanding regarding the internship of building officials in Ontario. (See Appendix B)

The building official profession shares the same elements of a profession, as do other professions such as engineering, architecture, law, etc. In that regard, it is a profession that requires specialized intellectual abilities and knowledge; a relationship based on trust and confidentiality; a code of ethics to bind all members and to ensure good character, competence and service in the interests and protection of the public.

Specifically, it contains the following elements of a voluntary education and experience program administered by the OBOA, which is detailed in the Certified Building Code Official (CBCO) designation:

- a program that recognizes relevant education from institutions in Ontario and other jurisdictions
- successful completion of up to five years post-secondary school education in Ontario, or the equivalent
- a monitored experience program
- successful completion of a Provincial Qualification examination
- professional certification granted by related industry professional associations

The education component of the Certified Building Code Official program is based on:

- the recognized curriculum of a community college of applied arts and technology, and
- the requirement for building officials to know their own “body of knowledge”.
- Courses developed and offered in conjunction with the OBOA and other industry associations

The “body of knowledge” encompasses:

- the Building Code, in addition to other statutes such as the *Planning Act*, the *Fire Protection and Prevention Act*, the *Sustainable Water and Sewage System Act (2002)* and other such legislation
- the expertise accumulated from the shared experience in other jurisdictions
- the consideration of recommendations of the International Code Council – a body whose mandate is to create an international building code and standards which are relevant and applicable to public life, health and safety pertaining to shelter and habitation.
- the application of converging streams of knowledge and provincial interest as exhibited by building departments/municipalities being directly charged with responsibilities in other legislative jurisdictions, such as those related to Grow Ops and Fortification (which sees Building Officials participating, using their “expert building code knowledge”, as part of the mandated municipal response to such issues). While “grow op” response is legislatively assigned to municipalities, building officials often find themselves involved with BCA and Ontario Building Code violations of a type specific, in both cause and result, to “grow ops”.
- the ability to mold decision-making processes from common sense based principles with the results of court decisions, legislative interpretations and precedents in law.

It is crucial to note that while there is room for interpretation and the exercise of considered judgment in the types of decisions that building officials must make, there is little ambiguity or lack of clarity in what the Building Code and related legislation requires in making such a decision. The process used in making such a decision, and the competence deemed necessary to make such decisions

effectively results in a comprehensive and tight body of knowledge relevant to the building officials' profession.

It is clear that under Canadian law building inspectors and municipalities owe a duty of care to the owners and users of a building, and that this standard of care includes omissions as well as actions. A municipality is responsible for ensuring that a building meets Building Code requirements for the sake of quality and safety. Therefore when a building is discovered to be non-compliant with building code requirements and approval for the building is granted by the municipality notwithstanding the deficiencies, municipalities have been held liable.

The damages awarded in some of these cases have been significant, while in other cases they have been small. Nonetheless, properly trained and certified building officials would reduce exposure to these lawsuits and save principle authorities the legal costs incurred in defending claims resulting from the negligent acts of poorly trained building officials.

To underscore the OBOA's concern for ensuring that only properly qualified and trained (including elements of education and measured experience) individuals occupy positions as building officials in the future, we have summarized various court judgments that illustrate the risk to principle authorities where errors of judgment and lack of professionalism occur. We believe these instances of negligence support our contention that mandatory – not voluntary – membership in OBOA is required for all building officials so that every member is required to meet stringent practice standards, enhanced knowledge requirements and rigorous regulatory control that will promote uniformity in application of the Building Code across Ontario. Attached to this report, as Appendix C is our analysis of relevant court judgments.

In our view, there are valid reasons for seeking enhanced statutorily recognized approval of the OBOA as a self-managed professional organization that on that would be given the mandate for the certification and training for all building officials.

With the introduction of an "objective based code", the requirement for evaluation, interpretation and judgment becomes even greater. It will place more emphasis on the professional capability of the building official. It is clear that while an objective based code will not materially change the body of knowledge of the profession, it will clearly increase the degree of expertise required in the application of that body of knowledge. The need to assess submissions of Professional Architects and Professional Engineers raises concerns with regard to matters of practice in the case of the related professions. (see Appendix D)

There is therefore a greater need for enhanced professional standards and training of building officials. One method that can be utilized is self-management legislation that will change its status and establish the OBOA as the professional body for all

building officials, with standard setting and regulatory powers commensurate with a professional body complying with its mandate of service in the public interest.

Despite this reality, the body in Ontario predominately representing professional building officials the Ontario Building Officials Association (OBOA) cannot truly govern the profession and maintain accountability the same way comparable bodies such as the Ontario Association of Architects (OAA) and the Professional Engineers of Ontario (PEO) can.

As a self-governing, not-for-profit professional association, the OBOA is committed to maintaining the highest degree of professionalism in the field of building official competence, Building Code administration and building safety. Through committee work, training and education, the Association strives for uniform enforcement and code interpretation across Ontario. While uniformity cannot be guaranteed, any sustained objective based on improving and promoting uniformity is beneficial to this important industry and certainly in the public interest.

Because membership in the OBOA is voluntary, however, the reality is that enforcement and interpretation can vary greatly from one municipality to another. This professional disparity is ironic given the fact that building officials are given certain legislative power and responsibility with regard to building and design plans submitted by engineers and architects.

Such disparity underscores the need for enhanced, mandated professionalism among building officials. Hence the OBOA's advocacy for self-management and, consequently, the Memorandum of Understanding (MOU) it has entered into with the Ministry of Municipal Affairs and Housing (MMAH). The purpose of the MOU is to identify the elements of a self-management model that could lead to 'right to practice' legislation.

The primary reason for the OBOA's advocacy as it pertains to self-managing professional status is the belief that the scope of work of a building official has advanced to that of a professional (as evidenced by the BCA itself in terms of internship, qualification and conduct provisions), yet the current regime falls short of closing the circle with regard to important related aspects such as mandatory education, measured workplace experience, consistent application of the BCA/Ontario Building Code and consistent enforcement of qualification requirements and other provisions of the legislation. It must be noted that while this report focuses on specific improvements to current BCA and Ontario Building Code administration, the significant gains that have made, in terms of the increased professionalism of Building Officials, through Bill 124 and other MMAH initiatives since then, are extensive. Ontario took the initiative to introduce minimum qualification requirements to practice as a Building Official (as well as designers) in addition to mandating principal authority codes of conduct for Building Officials. This important first step has recognized the professional nature of the Building

Official (as will be further discussed in the proposal), and for that reason among others, the OBOA on behalf of its member Building Officials respectfully acknowledges the invaluable efforts of MMAH staff to improve the delivery of building code services to the people of Ontario

The current requirement to practice as a building official consists of having passed examinations, one typical to all practitioners on the legal aspects and obligations set out in the BCA and the Ontario Building Code, and at least one other associated with a specific technical part of the Ontario Building Code (ie. House / Large Buildings / plumbing /hvac /on site sewage). An internship component exists that allows a person to function as a building official in a limited capacity under supervision until they have completed the required examinations. Once the examinations are complete, they are considered to be qualified and leave the internship program, with no minimum experience in the area of work required. One exception to the examination process is the “Advanced Standing” that is offered based on older “technical courses” completed with regard to Part 9 of the Ontario Building Code.

The professional regulatory regime proposed in this document would build on the basic platforms that MMAH implemented under Bill 124, those being examination and internship. OBOA would add the platforms of mandatory education, measured experience requirements in the work environment and qualification maintenance to provide a whole approach to the matter of professional regulation. Included in this approach would be the resolve to enforce legislation as it stands now and would in the future, with particular regard to practice without qualification as an example.

Similar to the current requirement, a new building official would have to complete a legal exam prior to registering in the internship program. While the building official completes required exams, the experience gained in the workplace under a mentor will be recorded in terms of time. When the official completes the required examinations, they will enter a phase of work no longer restricted by the limited duties of an intern, but they shall work under the continued guidance of a mentor in the aim of gaining three years experience as a building official. Time spent in the initial phase of internship (prior to exam completion) will be included in this three year total. On completing the three-year experience requirement, the candidate will be considered to be “qualified” in the disciplines in which they have successfully undertaken the required examination. This process will also recognize the specialty areas such as plumbing, on-site sewage, HVAC, and fire protection. A candidate may complete the legal exam, enroll in the internship program, complete the Plumbing House and Plumbing All Buildings exams (as an example within six months) and would then work with no restriction on duties under a mentor for another two years and six months. At this point, the candidate has completed the required exams, has amassed the required experience and is now in possession of the “right to practice” qualification for Plumbing House and All Buildings.

The three years experience required is general in nature and directed toward developing the broad skills of a Building Official such as plans review, inspection, note taking, legal processes including the collecting/giving of evidence and report preparation. Once the 3 years of experience has been gained, it will not have to be repeated, even in part. Using the plumbing example above, if the qualified person completes Building Services examination for example, they would then also possess the “right to practice” qualification for Building Services.

The enforcement of legislative provisions within the current regime is of significant concern to Building Officials. The requirements for principal authorities to have and administer codes of conduct for their Building Officials is left to a form of “self-policing” by the principal authorities. Some have extensive codes of conduct, internal review processes and enforcement policies while others have some, little or none of these. While it is recognized that more advanced and resourced jurisdictions may have no issue in this regard, it is true nonetheless that others struggle in providing a complete approach to the matter, which leads to inconsistent overall application of the provisions of the legislation in Ontario. Further, the legislative requirement to practice as a Building Official only in those areas where one is qualified sees virtually no enforcement province wide. When persons and organizations are challenged by various circumstances while trying to comply with safety-oriented legislation, in an environment where there is little enforcement of the applicable legislation, a negative result is not something that is difficult or unreasonable to predict.

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 will take 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 need to be considered as requiring proactive attention in keeping with the lessons of Walkerton.

The complaints and discipline provisions outlined in the proposal seek to bring about uniformity in conduct and ethics by assisting those in need in improvement and affecting those with well-established procedures as little as possible. While professional complaints and discipline systems exist in harmony within other areas of principal authority business, it is understood that this application will need to be well thought-out and thoroughly discussed with all principal authority and Building Official stakeholders prior to the drafting of any potential legislation. In terms of practice without qualification, the intent of the complaints and discipline process is to bring Building Officials into compliance and to offer assistance in overcoming any obstacles in doing so. In OBOA’s opinion, a reliable, efficient and fair complaints and disciplinary process is the best method to address the above intent.

As a self-managed body, operating in a manner similar to that of the Real Estate Council of Ontario (RECO), the OBOA would function under delegated authority. It would regulate itself in the areas designated by the Ministry, with the Ministry retaining ultimate legislative control. Membership in the OBOA would be mandatory, enabling it to effectively regulate the industry and function as a true professional association.

3.2 THE CASE FOR SELF-MANAGEMENT

The OBOA has been advocating self-management for a number of years, the reasons for which become increasingly compelling.

3.2.1 Standardization

As noted earlier, the OBOA is a professional organization. It is recognized by both federal (written recognition of the importance of the professional contributions of Building Officials made in Canada, in particular the OBOA) and provincial governments. However, membership is voluntary. Thus, aside from the minimum qualification requirements introduced under Bill 124 (as a positive first step), there is no single set of rules—no mandated code of ethics or conduct—governing all professional building officials in Ontario. The proposed self-management legislation will ensure a uniform set of standards and qualifications that, under mandatory membership, can be consistently applied across the province.

3.2.2 Education

A key reason the OBOA exists is to ensure members of its industry are properly educated and trained. However, just as OBOA membership is voluntary, so is its training and certification. Moreover, the academic curricula on which Building Official credentials are frequently based don't necessarily provide adequate training specific to building codes to all building officials. Self-management will provide the structure to accommodate consistent, mandatory training for all Ontario building officials.

3.2.3 Experience

OBOA has long held, as evidenced in its CBCO certification requirements, that experience is a vital component in the development of a competent and knowledgeable professional building official. There is currently no mandatory requirement for or recognition of experience in OBC qualification requirements. OBOA proposes to develop a certification process that will mandate and effectively measure that experience that is fundamental in the competence base of building officials.

3.2.4 Objective-based codes

The 2006 introduction of objective-based building codes, designed to help users better understand the reasons behind the requirements, are intended to promote innovation and flexibility in construction. These codes will also, however, require more complex decision-making on the part of building officials. While the OBOA currently provides specialized training, once again, the training is not mandatory for all building officials. As previously stated, this matter raises practice matters between building officials and associated professions.

3.2.5 Construction Professional Attrition

The Ontario Chamber of Commerce's 2003 Skilled Trades Survey reported that within the next 15 years, 52 percent of skilled tradespeople are expected to retire. Forty-one percent of Ontario's skilled trades said that within five years they anticipate skills shortages in their respective industries. Construction is one such industry, with a looming mass attrition that will result in a considerable loss of intellectual capital and collective industry experience. The potential impact, on the quality of work, of this loss is going to make it doubly important that related professionals such as building officials are sufficiently regulated and qualified.

3.2.6 Industry Efficiency

More consistent conduct of building officials, more consistent core knowledge and experience required of building officials, the availability of an informal dispute resolution process and the ability of Practice Guidelines and Practice Standards to offer useful instruction in matters of interest or practice to building officials are seen as tools that can be used to improve the overall efficiency of the building regulatory process in Ontario.

3.2.7 Industry Partnerships

There are many inter-industry partnerships that OBOA could add value to, such as that of the Professional Engineers of Ontario and the Ontario Association of Architects. As will be discussed in this report, lines of influence and the need to work co-operatively and formally together to address industry issues would seem to indicate that a relationship outside of the Building Code should be considered. To be a contributing partner in that relationship, OBOA would work best as a self managed professional body.

3.2.8 Enhanced Safety and Reduced Liability

Building officials sometimes review building and design plans that reflect limited knowledge of the Building Code. They conduct inspections where faulty building construction or design may pose a serious health or safety risk to residents or tenants.

Safety and, consequently, liability, are considerable concerns. Principal authorities are largely responsible for the decisions made by building officials. Because of the complex nature of knowledge required and special knowledge needed to enforce building codes, municipal / local governments and other principal authorities face

the mounting risk of litigation, made evident by the increasing trend in successful lawsuits holding municipalities accountable for substandard construction.

The ability to consistently enforce and monitor the standards of conduct of members will enable the OBOA to better protect public safety and, in turn, reduce the liability of municipalities currently responsible for the actions of officials not governed by any one set of rules.

The professionalism of building officials has a direct impact on the well being of Ontarians, socially and economically. In support of that professionalism and well being, and in accordance with the MOU with the Ministry, the report that follows outlines the OBOA model of self-management.

The OBOA and MMAH have a unique and longstanding relationship built on education, training and co-operation. It is hoped that in fully defining the principles of self-management—its scope, governance, certification, reporting, and final transition—this cooperation will evolve to a joint understanding that prompts the introduction of legislation supporting the model.

DRAFT

4.0 MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING AND STAKEHOLDERS

The September 2006 proposal by the OBOA to the Ministry of Municipal Affairs and Housing (“MMAH”) prompted significant interest such that both parties entered into a Memorandum of Understanding (MOU). The MOU would see both parties jointly develop and consult on the elements of a legislative/regulatory framework that would establish the OBOA as a designated administrative authority through legislation, and which would govern the scope and conduct of such an authority and its members.

4.1 CORE ISSUES TO BE ADDRESSED

The OBOA understands the need for the OBOA to communicate to the MMAH and stakeholders a clear and cogent rationale for proceeding with self-management. We offer three predominant themes for consideration:

1. How is public safety enhanced by the proposal?
2. How is the public interest enhanced by the proposal? and
3. How will the OBOA ensure the continuity of the principal authority employer/employee relationship as it pertains to building officials?

While we have touched upon these issues previously, it is important that they be given consideration.

4.1.1 Public Safety

The most serious risk a member of the public faces related to the work of building officials is exposure to an unqualified or incompetent building official. Bill 124 introduced minimum qualification requirements (based on examination alone) required to practice as a Building Official. This proposal intends to further that positive recognition of the important role that Building Officials perform in the industry. While it is the responsibility of a principal authority employer to hire only qualified building officials to enforce the BCA and the Building Code, it is also crucial to public safety that a building official be able to prove that he or she is qualified to undertake work assigned to them.

While we are not likely seeing an epidemic in Ontario, there are numerous anecdotal instances of persons appointed and performing duties as building officials who do not possess the required qualifications. Currently the OBOA is not able to address this matter, and the MMAH has in good faith elected to trust principal authorities to take action in such circumstances. With respect, we are of the view that leaving the authority to enforce building official practices under the Building Code Act in the hands of more than 400 independent municipalities and various other principal authorities is not, in the opinion of the OBOA and others, supporting the intent of the legislation or promoting public safety. Further, it may place an

undue burden of verification of credentials on principal authorities. Therefore, a proposal intended to ensure the application of a consistent standard of conduct with regard to building official qualification and competence is, in our respectful opinion, an appropriate foundation for the preservation and enhancement of public safety.

4.1.2 Public Interest

The consistency with which building code administration services are delivered in Ontario directly affects the general quality of consumer purchased development and the efficiency in which the design and construction segments of industry are able to operate. The extent of principal authority resources, the BCA knowledge of employers and the presence/quality of building official knowledge will vary from principal authority to principal authority. While the Building Code Act has worked to address plans review, permit issuance and inspection service levels in terms of time frames, levels of service with regard to building official knowledge, competence and ethical conduct have not necessarily been addressed and are bound to be inconsistent from one jurisdiction to another. While we can only point to anecdotal accounts of such practices, it is nevertheless the case that they exist and are of grave concern to the OBOA. By establishing a Code of Conduct that focuses predominantly on matters of practice; by providing for a fair, efficient, rigorous and effective process to consider, hear and deal with complaints of conduct and consistency of decisions; and by establishing and enforcing mandatory standards of practice that would be applied uniformly across Ontario, the OBOA submits that its self-management proposal will improve the consistency of the services delivered to the public, as well as to the construction and development industry. Within that context, we are convinced that our proposal will greatly serve and enhance the public interest.

4.1.3 Municipal/Principal Authority Employee Relations

We acknowledge that there is much concern on the part of principal authority employers about their ability to maintain their authority over employees who are appointed as building officials, should Building Official self-management occur. The OBOA has given this issue a great deal of consideration. A review of municipal and provincial authority workforces demonstrates the presence of members of numerous self-regulating professions within principal authority scopes of authority, such as lawyers, accountants, etc. To date, there has been little or no interference with how principal authorities direct these professionals as employees. The OBOA does acknowledge, however, that the direction given to building officials as employees will affect a larger proportion of employees within a single department, and such direction is not typical of the relationship between municipalities and other professionals.

In many municipalities' and principal authority's codes of conduct, reference is made to the obligation of employees to conduct themselves in accordance with the requirements of the professional organizations to which they belong. When a

principal authority recruits individuals with professional credentials, or when a professional designation is required as a condition of employment in a particular work category, the principal authority is relying not only on the employees to comply with the standards of the profession, but it is also relying on the professional organization to ensure that the persons bearing their professional designation are competent to perform the work they are hired to perform. In the event that a person forfeits his or her designation as a result of a finding of professional misconduct, the principal authority must decide if that employee can be assigned other work not requiring the professional designation. In the alternative, the principal authority can decide that the misconduct was so grave as to require termination of employment.

Although the basic principal authority/professional association relationship is reflected in the OBOA self-management proposal, the legislated requirement for principal authorities to have Chief Building Officials and Inspectors and the specific responsibilities assigned to each warrants additional consideration of provincial authority interests. Resources and geographic locations provide certain challenges to principal authorities in meeting these requirements, and therefore, situations in different principal authorities must be taken into account when a professional practice framework is developed for building officials. The OBOA will present a unique dispute resolution and complaints and discipline process that ensures that employers have input into proceedings under that process.

4.2 ACCOMPLISHMENT OF SELF MANAGEMENT PROPOSAL GOALS

OBOA has included key issues raised by various stakeholders in its internal framework for regulating the building official profession. One of the keys to ensuring public safety – an important objective raised by stakeholders – is to ensure that the scope of the legislation providing for self-management reasonably captures those persons that act as building officials (practitioner scope) and the activities that they perform that will be subject to regulation (practice scope).

The underlying principle driving the scope of the proposed self-management model of regulation is that any person appointed under the authority of the BCA to administer and enforce any part of the BCA or the Building Code will be deemed to be a building official and subject to the requirements and obligations of the legislation. Engineers, architects, plumbing inspectors, septic system inspectors, fire prevention officers and persons acting as Registered Code Agencies (RCA) and who are appointed in the manner described above will be subject to the regulatory proposal under consideration. Property Standards officers, while appointed under the BCA, are not appointed as inspectors and are therefore not included in the scope of the proposal. Ensuring that all persons who act as building officials are members of the OBOA, meet the qualification requirements of the OBOA, and are subject to practice review, professional development and the disciplinary requirements of the OBOA, will establish a minimum level of competence across Ontario that will enhance public safety. It is important to note that the reference to

RCA's is intended to include the individual person performing the work, and not the collective company/agency.

The public interest will be served by the OBOA self-management proposal in several other ways. Consistent levels of core knowledge and experience improve the consistency of Building Code administration services in Ontario. A complaints/dispute resolution/discipline process that seeks to resolve issues utilizing the concepts of personal betterment, lifelong learning, peer review, negotiation and mutual agreement will orient the profession to stronger relations with affiliated professional bodies (PEO, OAA, Ontario Association of Engineering Technicians and Technologists (OACETT)). This proposal will also improve access to professional standard development for the industry and the public. This will result in improved communication between professions and a more transparent view of building official practice.

The standard of the three "E"s in professional development (Education Examination and Experience) are all addressed in the OBOA's proposal for the development and establishment of the self-management model. The existing MMAH examination structure has initiated mandatory qualification to practice. This milestone was further entrenched in the OBOA internship program, developed to allow new building officials to begin practice and serving their principal authority prior to obtaining full qualification. In consideration of the work involved in establishing the above processes, OBOA proposes to incorporate them entirely within the initial elements of the practice structure. The current examinations will continue to constitute a part of the practice requirements, while internship will allow candidates time to gain these qualifications while providing a measure of experience. In addition to these processes, a requirement of three (3) years' experience will be required (under mentorship as currently required in the internship program) to obtain the full right to practice. Time spent in internship will be credited towards this requirement.

The CBCO designation has been separated from the right to practice certification process in the proposal. The CBCO designation will be developed in a manner consistent with its current mandate, which is to recognize a more comprehensive level of overall Building Code knowledge and an elevated level of experience.

Mandatory continuing education is another important component of professional standing. The OBOA intends to introduce a maintenance program for right to practice and CBCO certification. The maintenance program will be modeled on the current CBCO maintenance structure; a point based system that recognizes time spent in technical sessions, related professional training and provincial examinations. A minimum number of recognized Building Code courses will be added to the maintenance program to ensure current Building Code knowledge development is taking place. In addition to MMAH courses, assessments would be made of training provided by stakeholders such as Ontario Municipal Fire

Prevention Officers Association, Ontario Plumbing Inspectors Association, Heating Refrigeration and Air Conditioning Institute and others in the aim of recognizing the diverse body of knowledge of building officials.

The OBOA submits that the development of a process that establishes direct working structures and processes with other Building Code professions; that establishes consistency in building official qualification and competency; and that incorporates mandatory examination, education and experience components in the establishment of professional qualification of building officials is, we believe, in furtherance of the public interest.

The OBOA also submits that in keeping with general principal authority reliance on professional associations who regulate persons in municipal employment, and acknowledging the need of principal authorities to govern their employees in a manner consistent with their policy, the OBOA's proposal to grant municipal and principal authority participation in the complaints, dispute resolution and discipline processes, where warranted, will further public safety and enhance the public interest. The OBOA believes that the granting of "intervenor status" to employers to participate in such proceedings will permit their issues to be considered, both in leading evidence and in the right to cross-examine witnesses. This right will be extended to all principal authorities.

A member's right to practice will be curtailed or removed only after a discipline hearing, which has been conducted on the basis of the rules of natural justice, determines this action to be in the public interest. However, the OBOA also proposes extensive alternative dispute resolution methods, where appropriate, and which will dispose of complaints in an efficient, fair and cost effective manner consistent with the public interest.

A potential overlap in principal authority codes of conduct and a provincial-wide OBOA code of conduct can be perceived as being in favor of public interest. In processes such as registrar's investigation, dispute resolution and discipline, regard may be given to other sources of conduct policy and remedial actions. Where conduct of a building official may violate a local and provincial code, consideration may be given to the jurisdiction (local or provincial) whose policies best address the matter and when action is taken, if that action is in keeping with the principals of justice and in support of the public interest. A more seamless application of principals of conduct may result from such a circumstance. As evidence of this possibility, it is found that many principal authority codes of conduct require employees to abide by the rules of conduct established by the certification bodies to which the employee belongs as a condition of their employment.

4.3 NEXT STEPS

The OBOA has commenced a review of its educational and examinations course ownership. Indeed, partial or full ownership of all education and examination material is a long-term goal of the self-management proposal. The continued co-operation between OBOA and MMAH could be of great and lasting benefit in this matter.

In the meantime, continuing with the current examination material and delivery programs minimizes the cost and any destabilizing effect of implementing the proposal during the period of transition from the current right to title legislation to the requested right to practice legislation. A three-year transition proposal, in consideration of the proposed experience requirement of 3 years, means that any building official practicing up to the date of implementation of delegated authority legislation will have 3 years to assemble the required experience (3 years) in order to obtain right to practice certification.

The OBOA self-management proposal, like other professional regulatory regimes, will evolve over time. For example, concepts raised in the Large Municipalities Chief Building Officials Group's (LMCBO) submission to the Government of Ontario in 1995 are still valid and appropriate today and ought to be considered. More will be said about this. Furthermore, while the OBOA self-management proposal currently incorporates the advocacy function within the Association, a future division of the regulatory and advocacy functions could, and will, no doubt, be considered. It is anticipated that multi stakeholder input will direct the OBOA on this issue in the future.

5.0 OVERVIEW OF DELEGATED AUTHORITY AND SELF-MANAGEMENT

5.1 SELF-MANAGEMENT: THE REAL ESTATE EXAMPLE

Since the delegated administrative authority model established pursuant to the *Real Estate and Business Brokers Act 2002* (REBBA) was referred to the OBOA as a possible self-management model, it is essential to understand how it operates in practice.

The Real Estate Council of Ontario (RECO), the delegated administrative authority under the REBBA operates under a self-management model similar to that proposed by the OBOA.

Under this model, RECO has a dual mandate:

1. to administer the regulatory requirements of the real estate industry as set down by the Government of Ontario

2. to protect consumers and members through a fair, safe and informed marketplace

On behalf of the Ministry of Government Services, RECO administers REBBA. Under the Act, all licensed real estate agents in Ontario must be members of RECO, and all members of RECO must abide by its regulations. These include by-laws RECO has adopted that provide for effective governance of the profession.

RECO is governed by a 12-member Board of Directors: Nine are elected representatives and three are Ministerial appointees.

RECO operates on a not-for-profit basis.

5.2 THE REAL ESTATE AND BUSINESS BROKERS ACT, 2002

The *Real Estate and Business Brokers Act, 2002*, embodies provisions typically included in professional regulatory legislation. These provisions relate to:

- selecting officers of RECO
- prohibiting practice unless registered as a member of RECO
- mandatory member registration
- complaints, inspection and discipline processes
- conduct and offences
- regulations governing the industry and protecting the public

With regard to regulations, the Minister of Government Services may set down the legislation for:

- establishing a code of ethics
- governing the jurisdiction and procedures of committees
- educational requirements

However the Minister may also, subject to his or her approval, delegate this regulatory power to RECO.

5.3 ADMINISTRATIVE AUTHORITY: THE SAFETY AND CONSUMER STATUTES ADMINISTRATION ACT (SCSAA)

In the Schedule of the Safety and Consumer Statutes Administration Act, 1996 (SCSAA), certain Acts are named that may be administered by conferring regulatory powers to a designated administrative authority.

An administrative authority is a not-for-profit organization that:

- has no share capital
- is incorporated under the laws of Ontario or Canada

- operates in Ontario but does not form part of the Government of Ontario, any other government, or a government agency

To date, the Acts designated by the SCSAA to operate administrative authorities include the Cemeteries Act; Electricity Act; Film Classification Act, 2005; Funeral, Burial and Cremation Services Act, 2002; Real Estate and Business Brokers Act, 2002; Technical Standards and Safety Act, 2000; and the Travel Industry Act, 2002.

5.4 HOW THE SCSAA DELEGATES AUTHORITY

The following provisions taken from the SCSAA relate to the delegation of authority. Section 3(3) is especially noteworthy.

Section 3(1): The Lieutenant Governor in Council may, by regulation, designate an Act named in the Schedule, a regulation made under that Act or provisions of that Act or that regulation as designated legislation for the purpose of this Act. 1996, c. 19, s. 3 (1).

Section 3(2): Subject to section 4, the Lieutenant Governor in Council may, by regulation, designate one or more administrative authorities for the purpose of administering designated legislation. 1996, c. 19, s. 3 (2).

Section 3(3) Subject to subsection (4), if the Lieutenant Governor in Council designates an administrative authority for the purpose of administering designated legislation, all provisions in the legislation relating to its administration are delegated to the administrative authority unless specifically exempted in the designation of the administrative authority or the legislation. 1996, c. 19, s. 3 (3).

Section 3(4), which follows, provides that where legislation specifically assigns regulatory powers to a Minister or Cabinet, those powers cannot be delegated to the administrative authority:

Section 3(4) The powers to make regulations that designated legislation confers on the Lieutenant Governor in Council or the Minister responsible for the administration of the designated legislation are not delegated to the designated administrative authority. 1996, c. 19, s. 3 (4).

5.5 THE ADMINISTRATIVE AGREEMENT

Subsection 4(1) of the SCSAA states that Cabinet may not designate an administrative authority until the Minister and the authority have entered into an administrative agreement.

The administrative agreement includes:

- the portion(s) of legislation to be delegated to the authority