

*(d) providing for the appointment of committees, sub-committees and task forces, and governing their composition, responsibilities, powers, and the election or appointment of their chairs;*

*(e) establishing a curriculum, courses of study and examinations for students and members of the Association, and governing the granting of certificates to those who have successfully completed the required examinations;*

*(f) establishing classes of membership in the Association, and establishing the qualifications for,*

*(i) the class of members who are certified building code officials, and*

*(ii) other classes of members.*

*(g) regulating and governing the conduct of members of the Association by prescribing a code of ethics, rules of conduct and standards of practice, and providing for suspension, expulsion or other penalty if a member contravenes the code of ethics, rules of conduct or standards of practice, and*

*(h) providing for the establishment and designation of local chapters of the Association.*

The by-laws will be open to examination by the public at the head office of the Association during normal business hours.

#### 8.2.9(1) Authority of the OBOA under Delegated Legislation

It is clear that a delegated authority can only exercise those powers that are delegated to it. It is also clear from a review of legislation establishing delegated administrative authorities that in fact certain powers are delegated to such authorities. For example, we have noted that pursuant to REBBA, the Minister can establish regulations prescribing a code of ethics; governing the jurisdiction and procedures of committees; establishing the education requirements for members of RECO. However, it is also to be noted that the Minister can delegate that regulation power to RECO, that is, to the delegated administrative authority. That can be accomplished through an administrative agreement between the Minister and the administrative authority. Typically, the administrative agreement will delegate such powers to the administrative authority as: the composition of the board; the qualifications, terms and conditions of membership; the terms of office for members of the board, other than those individuals who are appointed to the board by the Minister; and the power for the board to use its discretion to enact provisions

covering these issues either by by-law (which would have to be approved by members, presumably at an annual general meeting or special meeting) or by resolution of the board alone. This is consistent with Subsection 3(3) of the SCSAA that provides that where an administrative authority has been designated by the Lt. Gov. in Council for the purpose of administering delegated legislation, then all provisions relating to its administration are delegated to the administrative authority except those that are specifically excepted or exempted in the legislation that designates the administrative authority. It is also consistent with section 7 of the SCSAA which provides that a designated administrative authority can undertake the administration of the delegated legislation in accordance with law, the SCSAA, the designated legislation and the administrative agreement.

It should also be noted that delegated legislation can include regulation making powers by the Lt. Gov. in Council over a number of areas that one would expect the administration authority to administer: educational requirements, term of office for board members, etc. Nevertheless, as we have noted with the real estate example, those regulations can provide for the administrative authority to set educational and certification requirements, for example.

In the result, whether the delegated legislation provides for authority in the Minister to exercise certain powers over educational requirements, board membership, etc. or whether it provides for the Lt. Gov. in Council to regulate in these areas, it is clear that these powers may be delegated to the delegated authority by the Minister or may be given to the delegated authority directly through regulation enacted by the Lt. Gov. in Council. We would, therefore, submit that regardless of which approach is taken in the delegated legislation, the OBOA could be provided with the jurisdiction or power to administer the operations of the Association in the essential areas of education, board administration, certification, etc.

#### 8.2.10 Immunity of the OBOA for acts done in good faith

Discussion:

The OBOA proposes that individuals who are engaged in the administration of the delegated legislation should be immune from civil liability in respect of any acts performed in good faith as part of their duties. More specifically, the delegated legislation should contain the following immunity provisions:

*(1) No action or other proceeding for damages shall be instituted against the Association, a board member, a member of a committee of the Association, an employee or agent of the Association, including an investigator appointed under section 29, or any other person engaged in the administration of this Act for any act done in good faith in the performance or intended performance of a duty or in the exercise or intended exercise of a power under this or any other Act or for any*

*alleged neglect or default in the performance or exercise in good faith of such a duty or power.*

*(2) The Association shall indemnify a person described in subsection (1) for all costs, charges and expenses sustained or incurred by the person relating to an action or other proceeding described in subsection (1), but not for any costs, charges and expenses that are caused by the person's own willful neglect or default.*

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### 8.3 QUALIFICATION AND CERTIFICATION

The OBOA proposes that it, as the administrative authority, should have the power to set educational requirements and training for prospective members, pursuant to regulations made by the Minister. In the initial phase of the proposal, it is anticipated that LGIC regulations will require the use of MAH examination categories. However, maintenance of qualification and re-qualification matters, as has been stated, are intended to be addressed by mandatory education in keeping with code cycles and with the advice of MMAH

#### Discussion:

Pursuant to the ability to establish regulations regarding the educational and qualification standards of individuals wishing to register as professional building officials, the association sets the framework for the following program. (Failure to complete the Internship studies or the Qualification Studies within the prescribed timeframes will result in the candidate having to re-apply to the program.)

#### 8.3.1 Foundation Studies necessary to enter the Profession:

General background consists of all the courses and programs taken and completed by individuals in their lives and their general work experience. This general background provides individuals with the requisite knowledge and abilities necessary to learn the required technical skills of the professional building official occupation.

The required background for a professional building official is

- a) High School Diploma (or equivalent)  
and one or more of the following:
- b) Successful completion of a diploma or degree program related to the building industry (e.g. Architecture, relevant engineering or engineering technology)
- c) Journeyman Provincial license in a building trade, or
- d) Five years of relevant work experience in the building industry or in the municipal standards enforcement field

#### 8.3.2 Internship Studies

Entry into the Qualification and Certification Program is at the Intern Stage, this provides individuals with the appropriate background with a point of entry into the qualification and certification program for professional building officials.

To become an “Intern” in the Qualification and Certification Program, the following exam must be successfully completed

General Legal for Inspectors and Designers;  
Powers and Duties of CBOs, and RCAs or a recognized equivalent.

The internship stage consists of a choice of two tiers.

Tier 1 will encompass qualification exams necessary to advance to the stage of Qualified - Residential. (House, Plumbing-House, HVAC-House)

Tier 2 will encompass qualification exams necessary to advance to either Qualified – Small Buildings, Qualified- Large Buildings, Qualified – Large Buildings Advanced or Qualified – Specialty (Small Buildings, Large Buildings, Complex Buildings, Building Services, Building – Structural, Plumbing – All Buildings, On Site Septic)

Tier 1 Interns may be enrolled for not longer than 18 months, except that a further period of 6 months may be added for personal hardship.

Tier 2 Interns may be enrolled for not longer than 12 months, except that a further period of 6 months may be added for personal hardship.

The Intern stage of qualification and certification will include a supervised practical internship conducted by a mentor who has reached the “Certified” stage in the qualification and certification program in the area being supervised. The intern must remain a member in good standing.

Individuals who have documented compliance to the existing MAH qualification levels may be exempt from this stage and enter directly into the Qualification stage if they meet the exam requirements listed in the matrix and have successfully completed the General Legal for Inspectors and Designers Exam or Powers and Duties of CBOs, and RCAs Exam.

Initially, intern work functions will be limited to the functions currently permitted under Building Code requirements.

### 8.3.3 Qualification Studies

The Qualification process of the program consists of 6 different levels of specialty studies. These levels are independent and may be achieved individually.

- a) Qualified - House
- b) Qualified – Small Buildings

- c) Qualified – Large Buildings
- d) Qualified – Large Buildings Advanced
- e) Qualified – Specialty (i.e. On Site Sewage Systems, Plumbing –House and All Buildings, Building Services, Fire Protection)
- f) Qualified – Management/CBO

The Qualification stage will outline the additional educational courses necessary for an individual to advance to the certified stage while gaining supervised experience in the stage of qualification.

Building Officials in this process will not be restricted to the work functions of an intern.

**Note: To be developed is a matrix table of the qualification levels above, with examinations required and mandatory courses.**

An individual must remain in the Qualification stage for a minimum of 3 years and a maximum of 5 years.

Failure to complete the Internship Studies component or the Qualification Studies component within the prescribed timeframes may result in the candidate having to re-apply to the program. While in the program, an individual must remain a member in good standing.

#### 8.3.4. Certification Studies

An individual is acknowledged as certified in the one of the 6 qualified elements once they have met the additional education requirements and mandatory experience requirement for that element.

- a) Certified - House
- b) Certified – Small Buildings
- c) Certified – Large Buildings
- d) Certified – Large Buildings Advanced
- e) Certified – Specialty (i.e. On Site Sewage Systems, Plumbing –House and All Buildings, Building Services, Fire Protection)
- f) Certified – Management/CBO

### 8.3.5 CBCO Certification

An individual may be awarded a CBCO certification if they have advanced to the certified stage in following levels of qualification as noted in the Qualification Studies section:

- Certified – House
- Certified – Small Buildings
- Certified – Large Buildings
- Certified – (To be determined - Under Review)

To maintain 'Certified' status in the Qualification and Certification Program, it is necessary to be a member in good standing in the Association. This includes:

- *Complying with a Code of Ethics and/or Code of Conduct*
- *Remain Current to Code –undertake mandatory training as established by the OBOA within 3 years of the introduction of a new code edition*
- *Commitment to a minimum of 30 hours of continuing education or commitment to 30 hours of service to the Association in a 5 year period*

***NOTE – continued 'appointed' status is not required to maintain 'Certified' status***

## 8.4 COMPLAINTS, INFORMAL DISPUTE RESOLUTION AND DISCIPLINE PROCESS

### 8.4.1 Rules

All professional regulatory bodies have as their mandates the protection of the public. In that regard, an element common to all such bodies is the responsibility of defining the expected conduct and competencies of their members. In doing so, these organizations prescribe the limits of acceptable actions and decisions, as well as the basic competencies required to practice in the applicable profession. When these "rules" are established, a process must be developed to hear complaints about alleged member violations of these rules. Typically, a professional organization will also establish a discipline process designed to apply corrective action and, where required, to impose penalties in the interests of public safety, the betterment of the profession and to ensure that justice has not only been done but seen to have been done in the circumstances.

OBOA envisions rules that will set out three primary areas of expected conduct:

- ethical behaviour
- competence, and
- actions.

These will be addressed primarily through the following elements of the complaints and discipline program:

1. an OBOA Code of Ethics
2. definitions of Incompetence and Negligence, and
3. OBOA Rules of Professional Conduct

#### 8.4.1.1 Code of Ethics

The following shall be the Code of Ethics of the *Association*:

- (a) No *member* shall commit an indictable offence or other offence prosecuted under indictment under the Criminal Code (Canada) or similar criminal legislation in the United States of America, or in any municipality, province, state, district or territory of Canada or the United States of America, or any other offence which affects their ability to perform the practice of a Professional Building Official or that brings discredit or embarrassment to other *Members* or chapters of the *Association*.
- (b) No *Member* shall commit any offence or serious misconduct pertaining to the funds and/or property of any branch of government.
- (c) No *Member* or shall be guilty of serious and improper action in the performance of their duties that brings discredit and/or embarrassment to other *Members* or the *Association*.
- (d) *Members* shall resist any encroachment of stated responsibilities that would interfere with the legislated duties or members' freedom to carry out official policies and handle any issue without discrimination on the basis of principle and justice.
- (e) No *Member* shall disclose to others or use to further any personal interest, confidential information acquired in the course of stated official duties.
- (f) *Members* shall strive to maintain the integrity of the profession and should participate in its activities.
- (g) *Members* shall observe the Code of Ethics set out herein in both spirit as well as in letter.



#### 8.4.1.2 Incompetence and Negligence

##### 8.4.1.2.1 Incompetence shall be defined as:

- a) displaying in one's professional responsibilities as a building official, a lack of knowledge, skill or judgment, or disregard for the welfare of the public of a nature or to an extent that demonstrates the person is unfit to practice as a building official, or
- b) suffering from a physical or mental condition or disorder of a nature and extent that it is in the public interest and the interest of the person that the persons practice as a building official be restricted, or as required, prohibited.

##### 8.4.1.2.2 Negligence shall be defined as:

- a) an act or omission in the execution of one's duties as a building official that constitutes a failure to maintain standards that would be expected in the execution of duties by a reasonable and prudent building official.

#### 8.4.1.3 Rules of Professional Conduct

The following shall constitute the Rules of Professional Conduct of the OBOA:

- a) members shall adhere to the OBOA Code of Ethics
- b) members shall not engage in vexatious comment or conduct in their professional lives that would be reasonably known to be unwelcome and/or inappropriate
- c) members shall not practice in disciplines where they do not hold the required certification
- d) members shall not act in a manner portraying themselves as building officials in an area, location or jurisdiction where they are not appointed to do so
- e) members shall abide by any and all conditions and obligations imposed on them by the certifications they possess
- f) members shall comply (OR is it better to say cooperate) fully with any Association investigation process, including but not limited to, a Registrars Investigation, Complaints and Disciplinary Hearings, Appeals Committee Hearings and Complaints Auditor reviews
- g) members shall comply with Resolution Orders to which they are voluntarily a party to
- h) members shall comply with decisions and conditions imposed upon them by the Discipline Committee

#### 8.4.1.4 Basis for Complaints

A complaint may be made on the basis that a Member has demonstrated Incompetence as set out in section 10.1.2.1, Negligence as set out in section 10.1.2.2, or that he or she is guilty of Professional Misconduct as a result of a contravention of the Rules of Professional Conduct as set out in section 10.1.3.

#### 8.4.2 Process Overview

The Complaints, Dispute Resolution and Discipline process program is structured to regulate the practice of Professional Building Officials and to govern the holders of certifications granted by the OBOA in accordance with legislation, regulation and the Association's bylaws. Such governance shall ensure the protection of public safety and the advancement of the public interest.

The three core principles established in this proposal are: protection of the public; ethical and competent performance of the duties of Professional Building Officials; and a transparent regulation of practice. In complaint matters that are outside of or beyond the above-noted core principles, the OBOA seeks to encourage positive dispute resolution, improved co-operation with other professions and industry partners and, where possible, a movement towards remedial solutions to disputes as opposed to the imposition of punitive sanctions.

The framework that provides for the administration of the aforementioned process is based on the foundations of administrative law, including the principles of natural justice, that have been developed in both statute and the common law. While the delegated authority model of OBOA self management differs from the models of independent, self-regulating bodies such as the PEO and the OAA, the manner in which complaints, dispute resolution and discipline processes can be undertaken, is virtually identical. All are based on administrative law principles, most notably the principle of natural justice.

#### 8.4.3 Process Structure

To ensure fundamental transparency in these processes, a person may not serve concurrently on more than one of the complaints, dispute resolution, discipline or appeals committees or as the Complaints Auditor. Further, it is anticipated that the Minister of MMAH will appoint members of the public in the appointments made to the OBOA Board of Directors, and such individuals would participate on these committees.

The Registrar will be an employee of the Association and will have responsibility for membership and practice regulation as set out in the Association's bylaws.

The Complaints Auditor shall be appointed by the Board of Directors, but will not be a member of the Board or any practice related committee. The Auditor's duties will

be focused on practice regulation. Several routes of appeal from decisions made within the practice regime lead to this position, and all appeals from the decisions of the Complaints Auditor will be to the Appeals Committee. The Complaints Auditor generally deals with appeals related to the dismissal of complaints by various committees in the practice regulation structure, as well as an appeal from a member regarding the decision of the Complaints committee to dismiss a complaint against another member. The primary responsibility of this position is to ensure that principles of administrative law have been observed, that the procedures set out by the Association have been followed, and that impartiality was maintained throughout the process. The review by the Complaints Auditor will be based on the evidence produced and no new evidence will be considered during this review.

A Complaints Committee Chair and at least two other committee members shall be appointed by the Board of Directors. At least one committee member shall be a board member appointed by the Minister of MMAH.

The Dispute Resolution Committee shall be appointed by the Board of Directors and shall consist of not less than five members, two of which will be representatives of the PEO and the OAA. The committee shall choose a chair from amongst its members.

Similar to other self regulating bodies, the Discipline Committee shall be comprised of not less than five persons, of which at least one is appointed from each of the following: elected members of the Board of Directors, members of the Board of Directors appointed by the Minister of MMAH and members of the Association. The Discipline Committee shall appoint a chair from amongst the committee members.

The Appeals Committee will be appointed by the Board of Directors, will be comprised of not less than 3 and not more than 5 persons and will contain at least: one OBOA Board Executive member, one OBOA board member appointed by the Minister of MMAH and one person who is not a building official nor an OBOA board member. The Appeals Committee shall appoint a chair from amongst the committee members. The Appeals Committee will exercise the final internal appeal function of the Complaints/Dispute Resolution/ Discipline process and appeals from the decisions of this committee will be to the Divisional Court.

#### 8.4.4 Process Procedure

Complaints will be submitted in the prescribed form to the Registrar of the OBOA. The Registrar may forward the complaint to the Complaints Committee, or where circumstances dictate, he or she may undertake a Registrars Investigation. If the latter, the Registrar may examine the basis of the complaint, the extent and quality of the evidence, the seriousness of the alleged activity, the requests of the complainant and the response of the member in question. At the completion of the investigation, the Registrar may recommend dismissal of the complaint, may forward the complaint to the complaints committee, or may recommend to the

complainant and the member in question that the public would be best served by a referral of the complaint to the Dispute Resolution Committee. In the event that the Registrar dismisses the complaint, the complainant may appeal to the Complaints Auditor. Appearance before the Dispute Resolution Committee is optional, and where there is no agreement between the parties to participate, or where any type of accommodation is seen to be unlikely, the Registrar shall forward the complaint to the Complaints Committee.

The Dispute Resolution Committee shall hear matters predominately related to technical and administrative processes under the BCA and the OBC, and more particularly, as they pertain to practice regulation. (This committee will also receive applications external to the complaints process as part of a new working relationship with Industry professionals. Does this need to be described?). The Dispute Resolution process will result in either a dismissal of the application (again appeal able to the Complaints Auditor) or the issuance of a Resolution Order, which will describe the actions and measures that the member must comply with. Upon the agreement of the complainant, the member in question and the Chair of the Discipline Committee, the Order will be signed by the chair of the Dispute Resolution Committee, the complainant and the member in question. This order will be binding. (It should be noted that the Rules of Professional Conduct will refer to the violation of a Resolution Order as “professional misconduct”)

Where the Dispute Resolution Committee Chair deems that an application before it is of a nature that exceeds the mandate of dispute resolution in that it would more appropriately be deal with as an allegation of professional misconduct, the committee hearing will be terminated immediately and the matter forwarded to the Complaints Committee. It must be noted that attendance before the Dispute Resolution Committee, and consenting to a resolution order, is completely voluntary.

The Complaints Committee shall hear matters put before it by the Registrar (either directly or through the Registrars Investigation) or by the Dispute Resolution Committee. The decision of this committee will result in either dismissal of the complaint or the referral of the complaint to the Discipline Committee. The decision of the Complaints Committee will be appeal able to the Complaints Auditor – but only on the basis of a review of the process undertaken by the Complaints Committee and not the substance of the complaint.

The Discipline Committee will hear matters put before it by the Complaints Committee or the Complaints Auditor. This committee will be quasi-judicial in nature and will be constituted under bylaw and operational policy to conduct itself as such. The general procedures, rules of evidence and standard of proof shall be based on the rules of civil procedure, and more particularly on the basis of the *Statutory Powers Procedures Act*.

It should be noted that in OBOA disciplinary hearings, the employer of the member in question would be entitled to “intervenor status” in the disciplinary hearing. Once granted intervenor status, the employer may choose to fully participate in the hearing by leading evidence and cross-examining witnesses, including the member and the complainant.

Similar to disciplinary policies of other self-regulating and self-managing bodies, mitigating and extenuating circumstances may be led into evidence and considered by the Discipline Committee during the disciplinary hearing. Where the member in question is accused of an act of professional misconduct, and it appears that his or her conduct may be related to certain factors within his employment (e.g. available resources, operational policies, education and development), the employer – or the member – can lead such evidence. The intent of this process is to allow the employer to have input into the determination of appropriate resolutions to the disciplinary matters actions for the benefit of all interests involved, and most particularly, for the protection of the public. Decisions of the Discipline Committee can be appealed to the Appeals Committee.

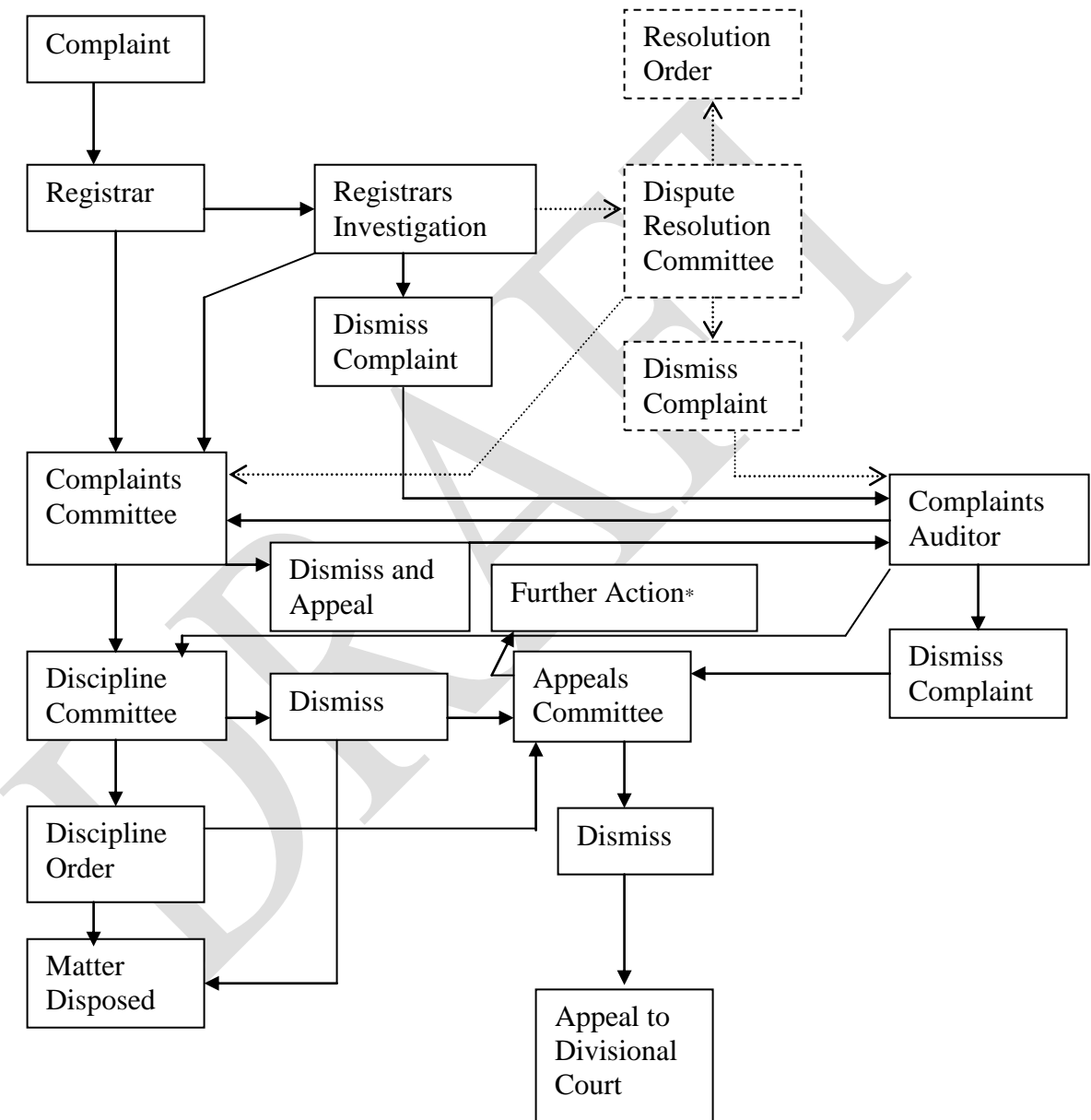
The Discipline Committee will have a wide range of options available to it when determining the appropriate disposition of a matter before it. These options will, in the interest of fairness and justice, include:

- cancellation of membership
- revocation of certification (with the ability to apply for re-instatement to the Discipline Committee after 24 months)
- suspension of certification for a period less than 24 months
- placement of restrictions on a members certification
- accept an undertaking on behalf of the respondent for remedial and corrective actions
- suspend the sentence to assess respondent actions or actions in the matter by other bodies having jurisdiction
- impose such conditions on the respondent as required with regard to training, experience or other professional development initiatives

The Appeals Committee will hear appeals from the decisions of the Discipline Committee and the Complaints Auditor. In addition to ensuring that the bodies in question have adhered to the requirements set out in legislation, regulation and the Association’s bylaws/operational policies, the Appeals Committee will make use of independent legal counsel when required to assist the committee in ensuring compliance with the principles of administrative law. (Should there not be legal counsel for the Discipline Committee as well?) The Appeals Committee may either dismiss the appeal, refer the matter back to any committee or body for review, modify the decision of the Discipline Committee or the Ombudsman or quash the decision of the Discipline Committee or the Complaints Auditor.

Following is a flow chart of the Complaints, Informal Dispute Resolution and Discipline processes.

OBOA Complaints, Dispute Resolution and Discipline Process Chart  
 JAN/08



Notes:

1. Dashed arrows and borders constitute Informal Dispute Resolution, a voluntary component of the Complaints and Discipline process. Must be consented to by both the complainant and the respondent.
2. The category "further action" resulting from the Appeals Committee refers to outcomes such as returning the matter to the Discipline Committee or modifying an order or conditions made by the Discipline Committee.

#### 8.4.5 Municipal/Principal Authority Interests

It is anticipated that while the procedures outlined above are a rigorous framework for addressing matters of malpractice and misconduct, it must be recognized that there is a sufficient level of internal controls and review in the workplace that ensures the public interest is at the forefront of activities undertaken, and decisions made, by building officials.

Integral to the application of the proposed practice regulation framework is an understanding of what forms the basis of professional misconduct. Pursuant to requirements of the BCA, Sec 7.1, principal authorities are required to establish Codes of Conduct for persons exercising powers under the Act. Municipalities addressed this requirement in different ways. Some added provisions dealing with enforcement behavior, abuse of power and ethical conduct (with regard to duties under the BCA) to existing codes of conduct for all municipal staff. Other municipalities meanwhile, created a simple, core code function document that was layered over existing municipal employee codes of conduct. While the requirement in Section 7.1 of the BCA should be removed, principal authorities should be able to enact codes of conduct or maintain the ones they have to address specific internal needs.

While OBOA recognizes the need to protect and secure the employer/employee relationship – and not undermine it - when developing a proposed Code of Conduct to be applied provincially, it must be recognized that a small degree of overlap may occur when considering certain allegations of activities which are alleged to violate codes of conduct. It is anticipated that in matters of ethical conduct concerning the discharge of duties under the Building Code, there may also be violations of administrative ethics normally regulated by the employer. The key is to determine in which jurisdiction the majority of the issues reside. That is one of the primary reasons for including employers in the discipline process. Once a complaint has been referred to the Discipline Committee – following the various steps outlined above - it can work to determine where the predominate violations of conduct have occurred. For example, an act of theft unrelated to the discharge of BCA duties may constitute a violation of the employer Code of Conduct, as well as the OBOA's. Not only could the disciplinary panel consider the fact that the violation is not predominantly practice related, but they might also look to the employer Code of Conduct to ascertain if the matter could be more suitably resolved under employer-based administrative provisions and sanctions. The proposal for establishing intervenor status for employers of Building Officials would provide further opportunity for the employer, the member in question and the OBOA to discuss what action is in the public interest as well as the best interests of the parties involved. This could result in OBOA decisions that reflect the predominant interest of the employer in the matter and the acceptance by the Discipline Committee that

employer actions to be taken, or already taken, sufficiently serve the public interest. As opposed to causing conflict, employer and OBOA Codes of Conduct might well work together to provide a greater and more seamless protection of the public interest

## 8.5 REPORTING

The OBOA, as the administrative authority, must meet reporting requirements to the Minister as set out in the SCSAA and new legislation establishing the OBOA as an administrative authority.

Discussion:

### 8.5.1 Annual Report to the Minister

As per the SCSAA, the OBOA would provide reports to the Minister on an annual basis on its activities and its financial affairs.

The specific legislation that requires these reports is as follows:

#### Reports

##### **SCSAA:**

*13. (1) The board of a designated administrative authority shall report to the Minister within one year of the effective date of its designation under this Act, and each year after that, on its activities and financial affairs in respect of this Act, the designated legislation for which administration is delegated to the administrative authority and the regulations made under this Act and the designated legislation. 1996, c. 19, s. 13 (1).*

##### **Form and contents**

*(2) The report shall be in a form acceptable to the Minister and shall provide the particulars that the Minister requires. 1996, c. 19, s. 13 (2).*

### 8.5.2 Role of the Minister to Review Activities of the Council/Board, Advise Board on Implementation of the Act

The OBOA proposes that, as per the SCSSA, legislation establishing the OBOA as an administrative authority shall set out the role of the Minister in reviewing the activities of the administrative authority.



## Discussion:

The SCSAA provides for the role the Minister plays in reviewing the activities of the Board and empowers the Minister to provide advice in respect of the implementation of the Act. Section 8(5) provides:

### ***Duties***

- (5) The board of a designated administrative authority shall,*
- (a) suggest to the Minister amendments to Acts and regulations made under Acts that it considers would contribute to the purpose of this Act or designated legislation;*
  - (b) inform and advise the Minister with respect to matters that are of an urgent or critical nature and that are likely to require action by the administrative authority or Minister to ensure that the administration of designated legislation delegated to the administrative authority is carried out properly; and*
  - (c) advise or report to the Minister on any matter that the Minister may refer to the board relating to this Act or to the administration of designated legislation delegated to the administrative authority. 1996, c. 19, s. 8 (5).*

In addition, the administrative agreement between the OBOA and the Minister should provide for a conduct performance, governance, accountability or financial reviews of the board/administrative authority upon the terms negotiated in the agreement.

## 8.6 TRANSITION

The OBOA proposes that the legislation establishing the OBOA as the delegated administrative authority shall set out certain transition provisions relating to the status of current members; the necessary repeal of current legislation; and the date the new legislation shall be in force.

The OBOA submits that the following principles ought to be established for the purposes of transition from the current statutory regime to the delegated administrative authority model:

1. A person who is currently a qualified member of the Ontario Building Officials Association on the day this Act comes into force is deemed to be continue to be a member of the Association and subject to any OBOA certification and qualification requirements may continue to practice as a professional building official.

2. The Ontario Building Officials Act, 1992, Bill Pr40, will be repealed upon the new OBOA legislation coming into force.

3. The new legislation will be in force upon the date of proclamation by the Lieutenant Governor in Council. However, the proclamation date will not be any earlier than a period of three years following the date the legislation received Royal Assent. The OBOA submits that the applicable regulations and administrative agreement referred to throughout this report should also be completed at the time of Royal Assent.

4. Division C, Sections 3 be amended with regard to the qualifications of Chief Building Officials, Supervisors/Managers, Inspectors and RCA's with the following wording pertaining to persons appointed pursuant to the BCA, and where those persons perform the work of a professional building official;

*“where the Lieutenant Governor in Council, by regulation, has designated one or more administrative authorities for the purpose of administering the BCA and the OBC, the person shall remain a member in good standing with the designated administrative authority.”*

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## 9.0 CONCLUSIONS

The OBOA and its members appreciate this opportunity to outline their position on the implementation of the self-management model of regulation for the building official profession. The Association regards it as a unique opportunity to work collaboratively with the MMAH to establish a modern regulatory scheme which: recognizes the maturity of the OBOA; enhances the opportunities for increased professionalism among building officials; responds to the challenges of an increasingly complex and changing building environment; respects the interests, mandate and responsibilities of municipalities; and places the public interest at the forefront of decisions and interpretation of the Building Code Act, the Building Code and other relevant legislative authority.

The Association believes that the movement towards self-management represents a natural evolution from a professional body operating under with right-to-title legislation to a regulatory body enjoying right-to-practice rights and authority. At this moment in its 51-year history, the Association is ready, willing and able to fill the void recognized by the Divisional Court in its decision in *Association of Professional Engineers et al. v. Her Majesty the Queen in Right of Ontario et al.* when it held that "... the Building Code is a professional regulatory act in search of a profession." In that regard, the MOU has presented the OBOA, the MMAH, the Hon. Jim Watson, Minister of Municipal Affairs and Housing, and stakeholders with an opportunity to work cooperatively to close the regulatory gap identified by the Court.

The Association's model for self-management is based on several core principles which has guided it throughout the MOU process. They are:

1. the need for standardization, that is, the need to establish, implement and maintain a uniform set of practice standards for the performance of its members' professional duties
2. the establishment of competence as the basis for obtaining and maintaining certification as a building official
3. a mandatory experience requirement as a component in the development of competent and knowledgeable building officials
4. a rigorous program to assess complaints from the public and other stakeholders relating to the activities of all OBOA members
5. an informal dispute resolution process to hear matters that are primarily practice-based in nature
6. a dispute resolution process involving professional engineers, architects and building officials to resolve jurisdictional issues
7. a governance structure that promotes efficient and effective management of the property, business and affairs of the Association and that is responsive to the needs of the building official profession and the public it serves

8. a recognition of the municipal context in which the building official profession operates, and more particularly, the authority of municipal employers – large and small, rural and urban - to manage their workplaces; a recognition of the interests of municipal employers in the Association’s complaints and discipline process and the interaction and interplay between the Association’s code of ethics and municipal codes of conduct, and
9. the establishment and maintenance of the building official profession based on specialized intellectual abilities and knowledge; a relationship based on trust and confidentiality; a code of ethics to ensure appropriate conduct/competence as the basis for certification and maintenance of membership; and service in the interest of the public.

Lastly, in presenting this report, the OBOA wishes to acknowledge the guidance, patience, assistance and thoughtful and critical analysis of our proposal provided by MMAH staff, OBOA members and stakeholders. We look forward to continued cooperation and dialogue in the interests of pursuing the objectives outlined in this report pursuant to the direction established by the MOU.

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## APPENDIX A – Self-Management MOU

### MEMORANDUM OF UNDERSTANDING

Dated this 18 day of July, 2007

Between

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE  
MINISTER OF MUNICIPAL AFFAIRS AND HOUSING  
("the Minister")**

and

**ONTARIO BUILDING OFFICIALS ASSOCIATION  
("the OBOA")**

#### Whereas:

- The Ministry of Municipal Affairs and Housing (MAH) is responsible for administering the *Building Code Act, 1992* ("the Act") and the Building Code ("the Code");
- The Act assigns responsibility for enforcement of this Act and Code to the council of each municipality, except where otherwise provided in this Act;
- The MAH recognizes the OBOA as a responsible and accountable professional Association;
- The OBOA is a voluntary organization representing building officials in Ontario;
- The OBOA has developed a certification program for building officials who meet OBOA requirements including educational background, experience and the completion of courses, and the OBOA has exclusive right to the title "Certified Building Code Official" and "CBCO" under the "*Ontario Building Officials Act, 1992*";
- MAH and the OBOA share a commitment to the goals of public safety, improved consistency of code enforcement, and professionalism among those persons who are appointed under the Act as chief building officials and inspectors; and
- The OBOA is seeking legislation to establish the OBOA as the sole designated administrative authority which would establish the OBOA as a self-managing professional body, and which would specify that only accredited members of the OBOA would have the right to practice as building officials in Ontario:

Therefore, MAH and the OBOA agree to 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.

**Development of potential key elements of an OBOA self-management system:**

- 1.1 The OBOA and MAH staff will jointly develop the policy and operational elements of a potential legislative and regulatory framework that would establish the OBOA as a designated administrative authority. Schedule "A" sets out potential elements for consideration and review by the project team.
- 1.2 In this MOU, a designated administrative authority means:
  - (a) A corporation without share capital established under a public statute;
  - (b) A body that is delegated responsibility for the administration of powers set out in that statute and Lieutenant Governor In Council regulations authorized thereunder; and
  - (c) A body to which practitioners regulated by that statute must be members in good standing.
- 1.3 OBOA and MAH staff will continue to cooperatively consult with stakeholders on proposed system elements described in Article 1.1. Notwithstanding the foregoing, nothing will prevent the OBOA and MAH from consultations on other issues with stakeholders as part of their normal course of business.
- 1.4 The consultations described in Article 1.3 will seek the input of the organizations described in Schedule C, and any other organizations as jointly agreed to by MAH staff and the OBOA.
- 1.5 The OBOA and MAH agree to conduct the consultations described in this agreement in good faith.
- 1.6 The OBOA will develop a preliminary financial analysis related to the organization's potential designation as a designated administrative authority. This financial analysis will identify anticipated expenses, anticipated revenues and the impact on affected parties.
- 1.7 The OBOA and MAH staff will jointly submit a report to the Minister, including system elements described in Article 1.1, the results of the consultation described in Article 1.3 and the financial analysis described in Article 1.6.
- 1.8 The Minister agrees to consider the report described in Article 1.7 in determining whether a recommendation should be made to the Government with respect to the development of legislation that would establish the OBOA as a designated administrative authority.
- 1.9 The timeline for the work described above is set out in Schedule B.

**2. Termination, delays:**

- 2.1 The MOU terminates upon the earlier of: one year following execution, submission of the Report described in Article 1.7 to the Minister, or at the request of MAH or OBOA on an earlier date with one month's written notice to the other party.
- 2.2 Delays by OBOA or MAH in meeting dates set out in the time line (Schedule B) does not void the MOU.

**3. Prerogatives of Government and the Legislature:**

- 3.1 It is the prerogative of the Government to determine whether public legislation should be developed and introduced, and to determine the content of such legislation.
- 3.2 The OBOA acknowledges that the Government would be solely responsible for any future development of legislation or regulations, and for consultation on the same, and that such activities are not covered by this MOU.
- 3.3 It is the prerogative of the Legislature to determine whether legislation is passed.

**4. Project Team:**

- 4.1 A Project Team will be established with representatives from OBOA and MAH staff.
- 4.2 The Project Team will develop a protocol for a collaborative decision-making process.
- 4.3 The Project Team will select co-chairs to chair meetings.
- 4.4 Meetings will be held monthly, or more frequently as needed, alternately at the offices of MAH, 777 Bay Street, Toronto, and the OBOA, 200 Marycroft Avenue, Unit #8 Woodbridge, Ontario.

**5. Contacts:**

- 5.1 Key contacts are Terry Hewitson, President of OBOA and David Brezer, Director of the Building and Development Branch of MAH.

**6. Confidentiality:**

- 6.1 Materials related to the elements described in Article 1, other materials presented to the Project Team and Project Team discussions are confidential, and shall not be disclosed to persons outside of the Project Team, the OBOA Board of Directors, MAH and their respective legal counsel, except with the agreement of both parties.

**7. Legal Rights:**

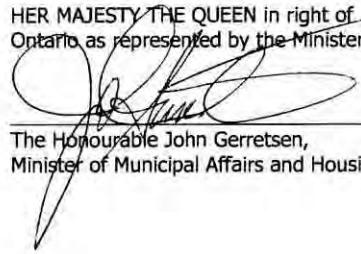
7.1 This MOU does not create any legal rights for the OBOA.

**8. Failure to Comply:**

8.1 Failure of the parties to comply with this Memorandum does not affect the validity of any action taken by the parties or give rise to any rights or remedies by the parties.

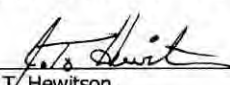
IN WITNESS WHEREOF to make best efforts to adhere to the terms established in this Memorandum, the parties have executed this Memorandum.

HER MAJESTY THE QUEEN in right of  
Ontario, as represented by the Minister of Municipal Affairs and Housing

  
The Honourable John Gerretsen,  
Minister of Municipal Affairs and Housing

July 18, 2007  
Date

ONTARIO BUILDING OFFICIALS ASSOCIATION

  
John T. Hewitson,  
President, Ontario Building  
Building Officials Association

July 18 2007  
Date