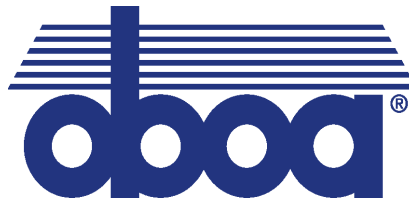


## Stakeholder Sessions



**Ontario Building Officials Association**

# **Proposal for Self-Management**

Consultation Document

## Report to the Minister of Municipal Affairs and Housing

March 17, 2009

**Submitted to:**

The Building and Development Branch  
Ministry of Municipal Affairs and Housing  
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## **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**

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### 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



- composition of the board of directors
- financial terms for the delegation, including license fees
- provisions ensuring the administrative authority has adequate resources to carry out its assigned administration in compliance with the Act
- the right, if any, of the administrative authority to purchase, use or otherwise have access to government assets, including information, records or intellectual property
- a requirement that the authority support and maintain a fair, safe and informed marketplace
- specifics on the liability arising from the administration delegated to the authority
- a requirement that the administrative authority maintain adequate insurance against this liability

In the context of the existing MOU with the Ministry, other provisions relevant to the administrative agreement include:

- the role of the parties to the agreement
- submission of a business plan and annual report to the Minister
- submission to the Minister of copies of the administrative authority's by-laws, respecting qualifications, terms and conditions of registration or membership, and the conduct of individuals to be registered under the legislation
- composition of the board: Selection criteria and processes, and the term of office for board members other than Ministerial appointees, are to be established at the discretion of the board, either through a by-law (with membership approval) or by resolution of the board alone
- the administrative authority must provide the by-law or resolution the Minister for review and approval prior to submitting them to the board or membership, as the case may be
- provisions for the termination of the authority's administration when it either occurs or is required
- indemnities and releases that must be given by the administrative authority
- provisions requiring the authority to maintain appropriate insurance against liability arising out of the authority's administration
- dispute-resolution procedures to resolve disputes arising in connection with the administrative agreement
- the designation of contact personnel by each of the parties to the agreement
- other provisions as required

The Minister may, upon giving notice to the administrative authority, amend or insert a term in the administrative agreement or delete a term from the agreement if he or she considers doing so reasonable and in the public interest.

Other relevant provisions of the SCSAA that are applicable to the OBOA as an administrative authority relate to:

- Duties:

**Section 7: A designated authority shall carry out the administration of designated legislation – or a portion of the administration of delegated legislation as it is delegated to it – and it must do so in accordance with the law, the SCSAA, the designated legislation and the administrative agreement, having regard to the intent and purpose of the SCSAA and the designated legislation.**

- Members:

**Section 8(6): If the administration of designated legislation is delegated to a designated to a designated administrative authority, the administrative authority may, by by-law, require that all persons who, in order to carry out an activity governed by the legislation, are required to register or obtain a license, permit, certificate, etc. and become members of the administrative authority on the terms that it specifies.**

## **6.0 THE OBOA AS A DELEGATED ADMINISTRATIVE AUTHORITY**

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The provisions of the SCSAA would apply to the Ontario Building Officials Association as outlined below.

### **The OBOA mandate**

Under the SCSAA, the Association's mandate would be to:

- administer the regulatory requirements of the Building Code and other applicable legislation enacted by the Government of Ontario as they pertain to Building Officials within the scope of the proposal
- protect the public and OBOA members through rigorous entry standards, continued professional development, and regulatory control over members' conduct

### **Self-Management Legislation**

Similar to that adopted by RECO, self-management legislation for the OBOA includes provisions that typically govern professional bodies. The legislation provides for:

- a board of directors
- prohibition against practice unless registered as a member of the OBOA
- mandated member registration
- procedures for complaints, discipline and enforcement
- monitoring of conduct and handling of offences
- regulations governing building officials and protecting the public

The Minister of Municipal Affairs and Housing may set regulations for:

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

The Minister may also, through an administrative agreement subject to his or her approval, delegate the above regulatory powers to the OBOA.

### **Administering Legislation: Mandatory Membership**

Through its Board of Directors, the OBOA will administer legislation on behalf of the MMAH. The Association will adopt by-laws that respond to the needs of municipalities and other stakeholders, and that provide for effective governance of the profession. Membership in the OBOA by all building officials will be mandatory, and all must abide by membership terms and conditions.

## **7.0 OBOA GOVERNANCE PRINCIPLES**

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In order to underscore the OBOA's commitment to regulating the building official profession in the public interest, it will be guided by certain principles. The governance principles proposed for the OBOA as a self-managed body underscore its primary objective of serving the public and promoting public safety. It is the desire to better regulate the profession — not only building officials but also interns and students—that is the key driver behind the Association's advocacy of self-management and delegated administrative authority. The OBOA emphasizes that, as an administrative authority, it will ensure that the process of certifying individuals and regulating conduct remains focused on public and stakeholder protection under relevant provincial and municipal legislation. Certification and regulation must never be undertaken in the private interests of any person or organization. The principles and standards contained in this document support that view, and reflect the OBOA's continued commitment to professionalism and public safety.

### **7.1 GOVERNANCE OBJECTIVES OF A DELEGATED ADMINISTRATIVE AUTHORITY**

The governance of all delegated administrative authorities should contribute to and ensure:

- the protection of all those using the services provided by the delegated authority, and the integrity of the processes provided for under municipal and provincial legislation
- that while the OBOA's proposed regulatory model is different from other models in Canada, it is fundamentally consistent in principle with all other prevailing and emerging Canadian and international standards and practices
- confidence in the qualifications and currency of knowledge and experience of all building officials
- that the delegated authority fulfill its statutory mandate of regulating building officials in the public interest
- that the delegated authority act in a manner that will bear the closest possible scrutiny, an obligation that extends beyond simply acting within the law
- due process in the administration of regulatory requirements governing certification and regulation of building officials, while recognizing the substantive and particular concerns of municipalities/principal authorities employing building officials.

The OBOA submits that as an administrative authority it must have:

- public representation on its governing board or council and on its statutory and other regulatory committees
- transparent regulatory processes
- arrangements for clear and easy access to information about the authority's purpose and programs
- a published mission statement setting out the purpose and strategic direction of the authority

an annual report explaining the authority's main priorities and objectives for the current year and coming year

## 7.2 GOVERNANCE RELATED TO MEMBER CERTIFICATION, CONDUCT AND COMPLAINTS

To maintain good governance around the licensing and conduct of building officials, the OBOA as a designated administrative authority must:

- require that members have attained post-secondary education or an equivalent prior to or at the point of certification as a building official
- maintain an education program relevant to and necessary for attaining knowledge and competency in the work of a building official
- maintain an examination(s) that tests theoretical knowledge of prescribed subject matter as well as the ability to apply that knowledge in practice
- require practical experience
- have rules and practices ensuring members of the delegated authority maintain an appropriate level of competence
- maintain a complaints process that:
  - will assess complaints from the public and other stakeholders relating to the activities of all OBOA members
  - is fair and reasonable and includes adequate provision for appeals
- have a code of ethics, rules and practices that relate to the investigation and discipline of members, and that include adequate provision for appeals
- require that its members adhere to accepted standards and principles relevant to the work of building officials
- have requirements in place for continuous professional development
- maintain a registry of all members who hold a professional building official designation in Ontario

- have processes for monitoring the standard and rigor of OBOA approved examinations and the adequacy of the practical training and experience obtained by members
- have processes that will ensure compliance with these above-noted requirements, and will provide for effective monitoring of that compliance

The OBOA also submits that as a delegated authority it must have in place a committee whose mandate is to:

- consider applications for building-official certification and recommend to the governing board or council those members who have met the standards and criteria for certification
- make recommendations to the governing board or council regarding policies and programs implemented to ensure members meet OBOA standards
- maintain a certification application process that includes:
  - a written application
  - a competency-assessment record
  - a process to verify information in the application
- ensure a process for renewal of certification upon application by current members
- maintain criteria for reviewing certification applications from individuals from other jurisdictions
- maintain an appropriate certification-appeals process

Further details on these governance principles can be found in the remaining sections and appendices of the report.

### 7.3 FINAL CONSIDERATIONS

Reference has been made to submissions made by the Large Municipalities Chief Building Officials Group to the Government of Ontario in 1995. LMCBO is a Group that was formed in 1990 and which is comprised of the Chief Building Officials from large municipalities in Ontario with a population of 50,000 or greater.

In 1995, in submission to the provincial government, the LMCBO made the following observations:

At the present time there are no provincial standards as to who can enforce the Ontario Building Code. The qualifications required for building officials are left to each municipality and as such vary greatly across the Province. This lack of uniform qualifications leads to uneven enforcement of the Building Code. In addition, contractors are not required to demonstrate any competency with the Building Code in order to undertake construction. It is common in other jurisdictions either province-wide or statewide to certify Building Officials and certify or license contractors.

LMCBO therefore recommends that:

1. The Province require that any person enforcing building regulations be certified in order to provide consistent enforcement of such standard;
2. The certification of persons enforcing building regulations be done by way of self-regulation, similar to current practice for architects and engineers;
3. Contractors providing construction services to the public or owner-builders be licensed by the Province in order to ensure competency, adequate insurance coverage and warranties or securities are in place to protect the public.

We commend the foresight that the LMCBO demonstrated in calling for proper certification of building officials; consistent enforcement of the Building Code; and for self-regulation of building officials as a means of better protecting the public and enhancing public safety. In this report, the objective of the OBOA is to outline a regulatory proposal based on the delegated administrative authority model that will achieve the regulatory regime that the LMCBO stated was in the public interest.

Twelve years later, the above noted Divisional Court has also recognized that there is a deficiency in the application of the Building Code: the lack of a proper regulatory administrator, to the extent that the court saw the BCA as an act in search of a profession, a regulatory administrator would certainly be a part of a solution to the identified issue. Once again, the OBOA submits that the Minister need not look any further than the OBOA's proposed self-management model as the means to rectify the deficiency identified by the LMCBO and validated by the Divisional Court.

## **8.0 KEY ELEMENTS OF THE PROPOSED SELF-MANAGEMENT FRAMEWORK AS SET OUT IN THE MOU**

### 8.1 SCOPE

#### 8.1.1 Persons and Activities to be Regulated by Legislation

Persons and activities to be regulated pursuant to the proposed legislation are those individuals appointed pursuant to the *Building Code Act* to perform the work of professional building officials, including:

- Section 3(2): Chief Building Officials and such inspectors that are necessary for the for the enforcement of the BCA in the areas in which the municipality has jurisdiction
- Section 1.1(7): Inspectors who exercise powers and perform duties under the BCA and the Building Code in connection with reviewing plans, inspecting construction and issuing orders in accordance with the BCA and the Code
- Section 3.1(1): board of health, planning board and conservation authority sewage inspectors who are appointed for the enforcement of the BCA in areas in which the board of health, planning board or conservation authority has jurisdiction under the BCA
- Section 4.1(1): a person performing the work and requiring the qualifications of a Registered Code Agency pursuant to the BCA and the Building Code.
- Members of the OBOA not appointed pursuant to the BCA, such as student members, associate members and retired members shall not be subject to this section nor the certification requirements as established by the designated administrative authority.

#### 8.1.2 Work Functions to be Regulated

The OBOA submits that the following provisions be used as the basis for the scope of practice for a Building Official:

(1) A person performs the work of a Building Official when the person is appointed pursuant to the BCA and performs some or all of the following duties in respect of the enforcement and administration of the *Building Code Act*, the Building Code and other legislation:



- (a) administers provincial laws and municipal by-laws related to the design and construction of all types of buildings and structures and ensure that the objectives of structural safety, fire safety, health, accessibility and the protection of buildings are addressed prior to occupancy;
  - (b) assesses, consults and reports on the design, construction and occupancy of all types of buildings and structures in accordance with applicable legislation and includes, but is not limited to, the review and inspection of plans, specifications and construction, renovations, alterations and additions, changes in use, interior improvements, and demolition;
  - (c) conducts Building Code and BCA sec 7 authorized by-law compliance reviews to confirm compliance and initiate corrective action related to unsafe conditions in new and existing construction;
  - (d) administers, when appointed pursuant to the BCA, reference documents that may include the applicable fire code and other minimum property and maintenance standards or by-laws related to buildings, heating, ventilation and air conditioning, plumbing, electrical and gas systems.
- (2) For the purposes of this proposal, the practice of a professional building official includes the duties and obligations of a Chief Building Official and Inspector as provided for in the BCA, and individuals performing the duties of Registered Code Agencies as provided for in Section 3.4.3.2 (1) (c) Div C of the Building Code.

### 8.1.3 Duties, Conduct, Standards and Services to be Regulated

In terms of regulating functions, the BCA and the Building Code assign specific responsibilities to MMAH (i.e. the Director, the BCC, the BMEC etc), municipalities and other principal authorities (i.e. appoint a CBO, appoint such inspectors as required, enact a bylaw, set fees, establish codes of conduct etc) and CBO's (issue permits, disposition of regulatory orders, decisions on objective based codes applications etc). As opposed to duplicating existing authorities in these areas, OBOA intends only to augment the established protocols for building officials, and to regulate in those areas that current authorities do not regulate or where there exists inconsistent province-wide application of regulatory functions. For example, there are no current requirements for measured and verified experience as a component of practice qualification. Nor are there any references to mandatory education outside of current Building Code examination requirements. Required codes of conduct are inconsistent and in some cases non-existent across Ontario and, as with practice without qualification matters, little to no enforcement of these

legislative requirements exists today. In this void, OBOA proposes to regulate an expanded internship-type program to introduce mandatory experience and education as an element of practice certification in addition to ensuring those who practice are qualified.

As with other professionals employed by municipalities, building officials are subject to codes of conduct established by their employers. While the BCA specifically states that principal authorities (including municipalities) establish specific codes of conduct for building officials, OBOA seeks to augment those established codes of conduct with a province-wide minimum code of conduct that will not only improve consistency in the application of standards across Ontario, but which at the same time will recognize the specific interest that municipalities and other principal authorities have in such codes and how they are applied to their employees. While the OBOA proposes to establish and maintain a Code of Conduct for building officials in Ontario, it also recognizes the need for direct input of municipalities and other principal authorities into matters associated with building official conduct, as outlined in our complaints, dispute resolution and discipline process.

In terms of consistency of BCA and Building Code application in Ontario, the OBOA proposes to promote services such as practice guidelines, practice bulletins, opinions and specialized education to provide building officials access to current information on trends in construction, technical developments, legal precedents and other such material. We are convinced that this will enhance a better understanding of current industry issues and better inform peer decisions in those matters. These processes will not constitute mandatory requirements.

The issue of Practice Standards, a term associated with mandatory actions required of professionals, the OBOA allows for their inclusion in this proposal. We know that authorities requiring certain conduct by building officials already exist. It is also clear from the proposal that the OBOA intends to focus on the regulation of building official qualification (i.e. experience and education in addition to examination) and conduct (a province-wide standard recognizing the specific interests of municipalities and other provincial authorities). As a result of these two realities, the extent of the Practice Standards concept at this time is limited. It is OBOA's intention to identify subjects in this category on a provincial basis in consultation with all building officials and the affected industry partners. The relationship between architects, engineers and building officials is a potential subject for a discussion about standards. The current Building Code structure, the recent decision in the Divisional Court in Association of Professional Engineers et al. v. Her Majesty the Queen in Right of Ontario et al and the positions taken by all three groups of professionals appears to indicate that a relationship between these bodies either exists or should be further developed on a more formal basis in order to address pending industry issues (see Appendix D (PEO communication on Objective Based Codes) and AppendixE (PEO/OAA joint communication on design)).

We believe that of the establishment of dispute resolution processes between these professions, in which practice standards are an essential component, could result in the resolution of jurisdictional issues on the basis of mutual consents by the parties to disputes. These resolutions, if addressed by a practice standard, could be binding on the consenting parties much the same as resolution orders would be binding in the internal OBOA dispute resolution process. As we have noted, where existing authorities are silent, or where significant inconsistency in approach exists, the development of mandatory practice standards could be a useful tool. The governing principle supporting this concept, and without which practice standards and dispute resolution processes cannot be established, is, of course, consensus among stakeholders and LGIC regulation.

#### 8.1.4 Scope of complaints to be regulated

Based on the proposed scope of practice and the limits of OBOA regulatory functions as outlined above, only matters arising from the qualification of building officials, their conduct, their observance of orders arising from dispute resolution/disciplinary procedures, their adherence to practice standards and general matters of demonstrated incompetence/negligence will constitute a basis for complaints.

#### 8.1.5 Assignment of Administrative Responsibilities to the OBOA

The OBOA proposes that the delegation of administrative authority to the administrative authority shall be delegated by the Minister to the authority as per the *Safety and Consumer Statutes Administration Act, 1996*.

Discussion:

The *Safety and Consumer Statutes Administration Act, 1996* (SCSAA) provides that the administration of all provisions in delegated legislation may be delegated by the Minister to an administrative authority. Section 3 of the SCSAA provides as follows:

##### ***Designations***

***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).*

##### ***Same, administrative authority***

***(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).*

##### ***Delegation of administration***

***(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).*

The administrative agreement between the administrative authority and the Minister will also particularize the responsibilities delegated to the authority.

#### 8.1.6 Prohibitions Regarding Regulated Persons who are not Members of the OBOA

The OBOA proposes that in order to protect the public, only those persons qualified and competent to perform the work of a building official are permitted to practice the building official profession, it is necessary to provide that only members of the Association may:

1. engage in the practice of a building official,
2. hold themselves out as a building official,
3. use the CBCO designation or an other designation that the OBOA may establish, or
4. imply or hold out that they are members of the Association.

A breach of this provision would subject the offender to a prosecution under the *Provincial Offences Act*.

The statutory language the Association suggests is:

*(1) No person shall engage in the practice of a building official, or hold themselves out as a building official, unless the person is a member of the Association and has been issued a certificate that recognizes him or her as having satisfied the qualifications of membership.*

*(2) No person shall*

*(a) take or use the designation "Certified Building Code Official" or the initials "CBCO" or any other designations that the OBOA may establish, either alone or in combination with any other word, name, title, initial or description, or*

*(b) implies or holds out that he or she is a member of the Association*

*unless the person is a member of the Association.*

We suggest that every person who contravenes these provisions is guilty of an offence and on conviction is liable,

- (a) to a fine of not more than \$25,000 for a first offence;

(b) to a fine of not more than \$50,000 for a subsequent offence.

### 8.1.7 Exemptions

OBOA Position:

Persons and others to be exempted from the proposed legislation include:

1. Property Standards Officers
2. It is also suggested that the legislation contain provisions as follows:

*No effect on professional engineers or architects*

*Nothing in this section [i.e. scope of practice] affects or purports to affect the rights and obligations of professional engineers under the Professional Engineers Act or of architects under the Architects Act where such individuals are practicing as engineers or architects.*

If, however, an engineer and/or architect is appointed pursuant to the BCA as a building official or RCA, he/she must register as a member of the administrative authority.

## 8.2 GOVERNANCE

### 8.2.1 Process for Development of Regulations

The OBOA submits that the powers to be obtained by the delegated administrative authority, i.e. the OBOA, should, and will, occur pursuant to the provisions of the *Safety and Consumer Statutes Administrative Act, 1996 (SCSAA)*

Discussion:

Particulars: Safety and Consumer Statutes Administration Act, 1996 (SCSAA)

Delegation:

Pursuant to the SCSAA, the Lieutenant Governor in Council may delegate to the OBOA – as a designated administrative authority – certain powers and duties in relation to the administration of a statute. In this case, The OBOA wishes the Minister to introduce a new OBOA governing statute in the legislation as a designated Act and to confer powers and duties on it to administer that Act.

Pursuant to the SCSAA, if the OBOA is designated as an administrative authority for the purpose of administering designated legislation, all provisions in the legislation relating to its administration are delegated to the Association – unless the designation or the legislation specifically exempts it. One of the exemptions in the SCSAA is found in subsection 3(4) which provides that the powers that the provincial Cabinet or the Minister responsible for the designated legislation (in this case the Minister of Municipal Affairs and Housing) are not delegated to the OBOA.

### 8.2.2 How are Regulations developed?

The OBOA submits that the Minister may make regulations respecting matters relevant to the authority of the administrative authority. However, the Minister may also delegate the regulation-making power to the administrative authority in order for it to govern its affairs. Below are the statutory provisions in support of the OBOA position.

Discussion:

The Minister may make regulations respecting a number of matters. For example, under the *Real Estate and Business Brokers Act, 2002 (REBBA)*, the Minister may make regulations establishing code of ethics; governing the jurisdiction and procedures of committees established under that Act; and a host of other matters.

The Minister may also – despite the provisions of subsection 3(4) of the SCSAA – delegate in writing to the administrative authority the power to make some or all of the regulations set out in the delegated authority’s statute, subject to the Minister’s approval.

The Minister may approve or not approve regulations; however, there will be no approval unless they are made in accordance with the provisions of the administrative agreement between the administrative authority and the Minister. The Minister may also revoke the delegation to the administrative authority to make regulations.

While the OBOA – as the delegated administrative authority – would expect to develop regulations governing the operations of the OBOA, but subject to the approval of the Minister, the legislation should provide for the areas in which the Lieutenant Governor in Council may make regulations delegating authority. In our respectful submission, these areas should include regulations:

- (a) respecting eligibility for membership, registration and reinstatement of membership or registration, issuance of certificates, standards relating to the work or practice of building officials, including evaluation, examination, education and work experience requirements for members, and the discipline of members, including what constitutes professional misconduct;*
- (b) prescribing such things as this Act requires or permits to be prescribed or to be done by regulation;*
- (c) fixing the number of members to be elected to the board and defining chapters or constituencies, and prescribing the number of representatives;*
- (d) respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the board, and disputed elections;*
- (e) prescribing the conditions disqualifying elected members from sitting on the board governing the filling of vacancies on the board;*
- (f) prescribing positions of officers of the Association and providing for their election or appointment;*
- (g) prescribing classes of membership and certificates and imposing terms, conditions and limitations on any class;*
- (h) respecting the composition of committees, appointment of members to committees, quorum requirements and practice and procedure before committees, and respecting all matters relating to appeals of decisions by committees;*

*(i) prescribing information to be included in the public register maintained by the Registrar;*

*(j) requiring the making of returns of information by members in respect of names, addresses and telephone numbers and requiring the use of forms established or approved by the Association for such returns;*

*(k) providing for a program of continuing education of members of the Association;*

*(l) classifying and exempting any class of members from any provision of the regulations under such special circumstances in the public interest as the board considers advisable;*

*(m) respecting any transitional matters necessary for the effective implementation of this Act and the regulations;*

*(n) prescribing any matter that is necessary for furthering the Association's objects and that is in the public interest.*

There can also be a delegation to the Minister to develop regulations in certain areas that otherwise could only be exercised by the Lieutenant Governor in Council. For example, pursuant to Ont. Reg568/05 (REBBA), the subject matter in which the Minister may make regulations could also be included in OBOA legislation.

### 8.2.3 Authority of the OBOA to Administer Examinations and Training

The OBOA submits that the Lieutenant Governor in Council may make regulations governing education, examinations and training. However, such regulations may permit the administrative authority's Registrar to designate the educational courses, examinations and training required for certification. The OBOA suggests that this model be followed.

Discussion:

Pursuant to the delegated administrative authority model, the Lieutenant Governor in Council may make regulations governing examinations and training. For example, subsection 51(1) of REBBA provides for regulations prescribing educational requirements for individuals wishing to register as real estate agents:

Pursuant to Ontario Regulation 579/05 made under REBBA, the educational requirements for registration are set out. For example, various provisions in Regulation 579/05 permit the Registrar of RECO to designate educational courses that are required for registration as a salesperson and for renewals of registration.



The OBOA would expect that similar statutory provisions would be developed for legislation governing its activities as a delegated administrative authority. The Registrar appointed by the delegated administrative authority and/or a committee established to deal with educational issues could be given the authority to set educational requirements for certification as a building official, as is provided in Ontario Regulation 579/05 made pursuant to REBBA, a copy of which has been attached hereto. (see Appendix F)

#### 8.2.4 Authority of OBOA to Set Practice Standards

The OBOA proposes that it, as the administrative authority, should be provided with the authority to establish Practice Guidelines and Practice Standards. As this issue is complex and requires multi-stakeholder review on each potential guideline and standard, it is proposed that the authority to do so be obtained by future LGIC regulation. It is envisioned that the process and participant structure reviewed by the Minister and approved by the LGIC would ensure ministerial and industry satisfaction with consensus potential.

##### Discussion:

Practice Guidelines and Practice Standards for the work of building officials will better protect the public interest as they will promote a consistent approach to the application of Building Code matters.

Practice Guidelines and Practice Standards would be issued by the delegated administrative authority pursuant to its authority under the delegation from the Minister to make regulations it considers necessary or desirable to carry out or facilitate any of the purposes of the Act and to require compliance with them. Such practice standards would constitute minimum standards for the practice of administration and enforcement of building code regulations by members. Practice guidelines would not be mandatory in nature but would be encouraged to promote consistency.

The development of Practice Standards that would form a mandatory measure of conduct or action for a building official shall be achieved by industry and ministerial consensus as well as detailed research to ensure that not only are these standards acceptable to the industry, but that they do not create conflicts with or contraventions of legislated, regulated or delegated duties of any party.

The OBOA, as the delegated administrative authority, would require that all members comply with and adhere to Practice Standards as a minimum required standard of care. Failure by a member to comply with such standards would constitute professional misconduct for which the complaints and discipline process would apply.

The SCBBA contains provisions which would provide the Association with the authority to establish, maintain and enforce practice standards. These provisions include:

***Duties***

***7. (1)*** *A designated administrative authority shall carry out the administration of designated legislation delegated to it and shall do so in accordance with law, this Act, the designated legislation and the administrative agreement, having regard to the intent and purpose of this Act and the designated legislation. 1996, c. 19, s. 7 (1).*

***Additional activities***

***(2)*** *Nothing in this Act restricts a designated administrative authority from carrying out other activities in accordance with its objects. 1996, c. 19, s. 7 (2).*

The Guidelines and Standards will be published on the OBOA website at [www.oboa.on.ca](http://www.oboa.on.ca) and would be made available to members of the public free of charge in electronic form or, on request and at cost, as a paper document to members of the public requesting the same.

**Why are Practice Guidelines and Practice Standards in the Public Interest?**

The issue of standardization in the interpretation and application of the Building Code and other provisions dealing with building issues was recently highlighted in a letter by Jeff Leal, MPP Peterborough, in a letter to the Hon. John Gerretsen, Minister of Municipal Affairs and Housing. He stated: For ease of reference, we have enclosed a copy of Mr. Leal's letter. (see Appendix G)

The standardization issue is particularly important given the objectives of the Building Code and the nature of the work of building officials which deal with significant public health, life and safety, structural adequacy and accessibility related issues.

With the authority to develop and issue Practice Guidelines and other support material, and to develop, issue and enforce Practice Standards, the Association would be in a position to promote consistency of application and interpretation of the Building Code throughout Ontario, an objective that is particularly needed as we enter into the era of objective based codes.

### 8.2.5 Authority of OBOA to Set Fees

The OBOA proposes that it, as the administrative authority, should be provided with the authority to set and collect fees, administrative penalties, costs and other relevant charges.

Discussion:

Normally, a professional regulator such as the OBOA has the authority to establish fees to ensure the proper administration of the organization. In the delegated administrative authority model, certain provisions found in the SCBAA would apply in this regard. These provisions may be found in Section 12 of the legislation.

The OBOA, as the delegated administrative authority, would establish the following dues and special levies:

- annual membership dues payable by members determined from time-to-time by the board of directors
- special levies payable by members in such amounts as the board will determine
- exemptions from payment of fees and levies, e.g. by life members
- fees for reinstatement of membership

### 8.2.6 Composition and Appointment of the Council/Board of Directors

The OBOA proposes that, pursuant to the SCSAA and the administrative agreement between the Minister and the administrative authority, the OBOA, as the administrative authority, be given the authority to establish:

1. the composition of the Board of Directors
2. the appointment of the directors
3. the duties of the directors
4. the election procedures for directors;
5. the appointment of the officers of the administrative authority, and 6. the composition and appointment of the members of the executive committee.

Discussion:

The SCSAA provides for the appointments of the delegated administrative authority's Council or Board of Directors. Furthermore, the administrative agreement between the Minister and the delegated authority will provide for the composition and appointment of members of the Council or Board of Directors.

Aside from the duties that would be granted to the OBOA's Board of Directors pursuant to subsection 8(5) of the SCSSA, the Association submits that it ought to be granted the powers and duties to manage the property, business and affairs of the Association. More particularly, the board should be granted the authority to pass by-laws which are necessary to conduct the business and carry out the objects of the Association. The OBOA submits that this should include the authority to pass by-laws:

(a) respecting the application of funds of the Association and the investment and reinvestment of any funds not immediately required, and the safekeeping of its securities;

(b) prescribing the remuneration of the members of the board and of committees and providing for the payment of their necessary expenses in the conduct of their business;

(c) governing the election and appointment of officers and directors, their terms of office and their responsibilities;

(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 student and government 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 Ontario Building Officials Association is a corporation without share capital and therefore has the ability to develop By-Laws of the Corporation from time-to-time. In

particular, the OBOA has the authority to establish a By-Law dealing with the appointment and composition of the Board of Directors. The Board shall manage the affairs of the Corporation and most, importantly, ensure that it meets its obligations under the administrative agreement.

Further, section 7 of the SCBBA provides for how the delegated administrative authority will carry out the administration of the designated legislation:

***Duties***

***7. (1)*** *A designated administrative authority shall carry out the administration of designated legislation delegated to it and shall do so in accordance with law, this Act, the designated legislation and the administrative agreement, having regard to the intent and purpose of this Act and the designated legislation. 1996, c. 19, s. 7 (1).*

***Additional activities***

***(2)*** *Nothing in this Act restricts a designated administrative authority from carrying out other activities in accordance with its objects. 1996, c. 19, s. 7 (2).*

As well, it is anticipated that the administrative agreement between the Minister and the administrative authority will provide for provisions such as the following:

***Appointment of the Board:***

*(1) The composition of the Board, the selection criteria and process and term of office of its members, other than Ministerial appointees shall, in the discretion of the Board, be established either by by-law, that is with the approval of the membership, or by resolution of the Board alone. The Administrative Authority shall provide such by-laws or resolution to the Minister for review and approval prior to submitting them to the Board or membership as the case may be.*

- (a) Restrictions to who can sit as a board member*
- (b) The Administrative Authority shall obtain the Minister's prior agreement to any change in the by-laws or resolutions respecting Board composition, the selection criteria and process and term of office of its members.*
- (c) Any motion from the floor that affects Board composition or selection criteria or process and terms of office of its members shall not be entertained or put to the vote of the membership unless a copy of the motion has been reviewed and approved by the Minister.*

As we have noted, the purpose of the Board is to: individually and collectively manage the property, business and affairs of the Association; and to further the aims and objectives of the Association and the interests of the members and the public. In that regard, it is our respectful submission that the Board be granted the authority to manage the following matters:

### **Composition of the Board:**

The OBOA suggests that the board of the delegated administrative authority be composed of:

- (a) not fewer than five and not more than twenty members of the Association, as the board may determine by by-law, of which at least 51% are elected by the members of the Association, together with directors appointed by the Minister;
- (b) three ex-officio directors, including the Immediate Past President and such other members as the board may direct and
- (c) up to four ex-officio directors representing related industry associations as determined by the President.

### **Election of the Board of Directors:**

The manner of electing the members of the board, the qualifications of electors, the notification to the electors of the time and place of holding elections, the taking and counting of votes, the giving of a casting vote in the case of an equality of votes, the tenure of office and removal of all members of the board, the regional representation of board membership, and other necessary provisions will be as set out in the by-laws.

### **Officers of the Board:**

The officers of the Association shall consist of a President, one or more Vice-Presidents, a Secretary, a Treasurer, a Registrar and a Chief Administrative Officer. The board may, at any time and from time to time, combine into one position the positions of Secretary, Treasurer and Registrar and may also, from time to time create and fill by election or appointment, such honorary or other offices, and shall prescribe such authority and duties to such offices, as it shall see fit.

### **Executive Committee:**

The board shall appoint an Executive Committee that shall be comprised of the President, one or more Vice-Presidents, the Secretary, the Treasurer and the Chief Administrative Officer.

The board may delegate to the Executive Committee the authority to exercise any power or perform any duty of the board other than to amend or revoke a by-law.

Other matters relating to the operation of the Board are set out in the OBOA By-Law approved on October 3, 2006, and attached hereto.

### 8.2.7 Meetings of the Council/Board of Directors

The OBOA proposes that the Board of the administrative authority shall determine the appropriate place and times of the meetings of the Board, as well as the Annual General Meeting.

#### Discussion:

It is respectfully submitted that meetings of the Board of Directors may be held at anytime and place as determined by the Board so long as appropriate notice of not less than 48 hours written notice is provided to board members – other than by mail. If notice is to be provided by mail, it must be sent at least seven days prior to the meeting date. A minimum of one board meeting per year must be held.

There shall also be an Annual General Meeting of the members of the Association. The place and date of such meeting will be determined each year by the Board of Directors.

### 8.2.8 Committees of the Council/Board of Directors

The OBOA proposes that the Board of Directors shall be empowered to establish and standing and other committees.

#### Discussion:

Pursuant to the Administrative Agreement with the Minister, it is respectfully submitted that the Board of Directors should be entitled from time to time to establish and disband Standing Committees of the Association. Such committees include:

- Certification and Maintenance
- Education
- Executive
- Finance
- Public Relations
- Complaints Committee
- Discipline Committee
- Committee on Dispute Resolution Process with the PEO and OAA

The Board is entitled from time-to-time to establish such other committees as may be appropriate for the governing of the affairs of the Association.

### 8.2.9 Powers of the Council/Board to pass by-laws and their relationship to the Act and Regulations

The OBOA proposes that the administrative authority should have the authority to carry out its administrative duties pursuant to the SCSAA and the administrative agreement. Included in that authority is the power to pass by-laws.

Discussion:

The Ontario Building Officials Association is a corporation without share capital and therefore has the ability to develop By-Laws of the Corporation from time-to-time. The Board shall manage the affairs of the Corporation and most, importantly, ensure that it meets its obligations under the administrative agreement. That agreement will provide for the by-law making authority of the Board.

Further, section 7 of the SCBBA provides for how the delegated administrative authority will carry out the administration of the designated legislation:

#### ***Duties***

***7. (1)*** *A designated administrative authority shall carry out the administration of designated legislation delegated to it and shall do so in accordance with law, this Act, the designated legislation and the administrative agreement, having regard to the intent and purpose of this Act and the designated legislation. 1996, c. 19, s. 7 (1).*

#### ***Additional activities***

***(2)*** *Nothing in this Act restricts a designated administrative authority from carrying out other activities in accordance with its objects. 1996, c. 19, s. 7 (2).*

The purpose of the Board is to individually and collectively manage the property, business and affairs of the Association and to further the aims and objectives of the Association and the interests of the members and the public. In that regard, the Board should have the authority to pass by-laws to ensure the proper administration of the designated legislation, through the SCSSA and the administrative agreement. In that regard, it is submitted that the Board should have the authority to enact by-laws:

*(a) respecting the application of funds of the Association and the investment and reinvestment of any funds not immediately required, and the safekeeping of its securities;*

*(b) prescribing the remuneration of the members of the board and of committees and providing for the payment of their necessary expenses in the conduct of their business;*

*(c) governing the election and appointment of officers and directors, their terms of office and their responsibilities;*



*(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.

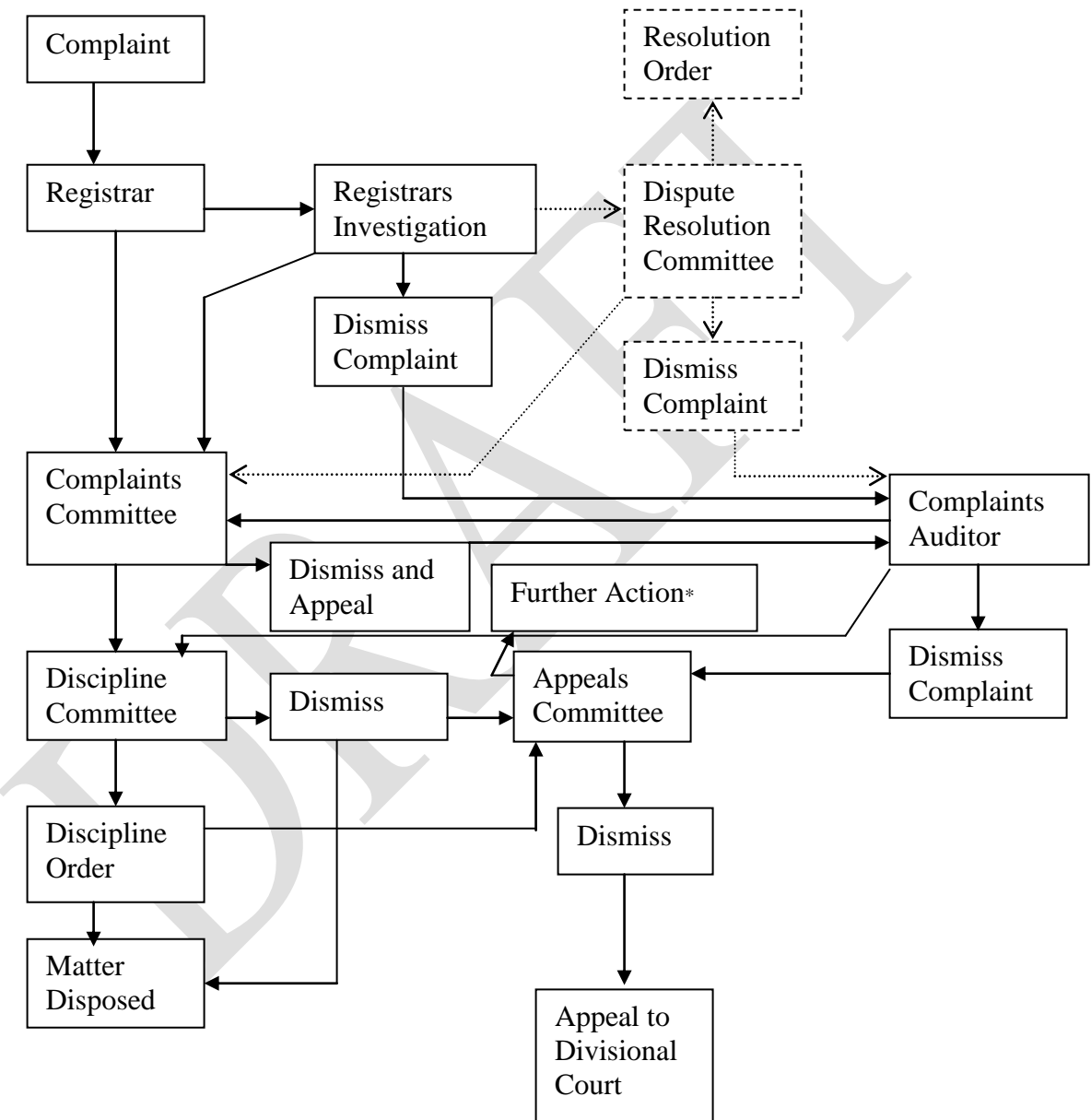
The Discipline Committee will have a wide range of options available to it when determining the appropriate disposition of a matter before it. These options will, in the interest of fairness and justice, include:

- 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 boarders 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:**

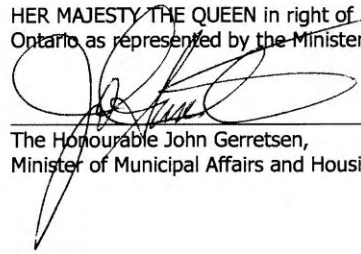
7.1 This MOU does not create any legal rights for the OBOA.

**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.

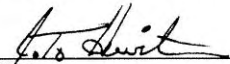
IN WITNESS WHEREOF to make best efforts to adhere to the terms established in this Memorandum, the parties have executed this Memorandum.

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

  
\_\_\_\_\_  
Date

ONTARIO BUILDING OFFICIALS ASSOCIATION

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

  
\_\_\_\_\_  
Date



**Schedule A**

**Potential Elements of a Legislative/Regulatory Framework For Review by the Project Team Include:**

- Persons and activities to be regulated by legislation
- Assignment of administrative responsibilities to the OBOA
- Prohibitions regarding regulated persons who are not OBOA members
- Exemptions
- Criteria for initial and ongoing OBOA members – education, training, examinations, payment of fees, conduct
- Authority of OBOA to administer examinations and training
- Authority of OBOA to and set standards of practice
- Authority of OBOA to set fees
- Composition of the Council/Board of Directors,
- Appointment of the Council/Board of Directors
- Meetings of the Council/Board of Directors
- Powers of the Council/Board of Directors
- Committees of the Council/Board of Directors including Complaints and Discipline Committees
- Role of the Registrar
- Powers and role of the Registrar to issue, suspend, terminate, revoke, reinstate membership
- Grounds for revoking membership
- Investigations and disciplinary proceedings
- Registrar's investigation and investigator's investigation
- Issuance of warrants for the purpose of an investigation
- Fines for obstructing investigator
- Powers of Discipline Committee
- Appeals of decisions
- Publishing of information relating to an order of the Discipline Committee
- Immunity of the OBOA for acts done in good faith
- Process for development of Regulations
- Powers of the Council/Board to pass by-laws and their relationship to the Act and Regulations
- Annual report to the Minister
- Role of Minister to review activities of the Council/Board, advise Board on implementation of Act
- Transition provisions
- Repeal of applicable Building Code qualification requirements

**Schedule B**

**Proposed Timeline:**

<b>Date</b>	<b>Milestone</b>
August 31, 2007	Completion of joint development of the system elements described in Article 1.1
October 31, 2007	Completion of joint consultations described in Article 1.3
October 31, 2007	Finalization by the OBOA of the Preliminary Financial Analysis described in Article 1.6
December 5, 2007	Finalization of the Report described in Article 1.7 and submission of the Report to the Minister

**Schedule C**

**Organizations to be Consulted:**

**Public Sector:**

Association of Municipal Clerks and Treasurers of Ontario  
Association of Local Public Health Agencies  
Association of Municipalities of Ontario  
City of Toronto  
Large Municipalities Chief Building Officials  
Minister of the Attorney General  
Ministry of Government Services  
Ministry of Health and Long Term Care  
Ministry of Natural Resources  
Ontario Plumbing Inspectors Association  
Ontario Municipal Administrators Association  
Ontario Municipal Fire Prevention Officers Association  
Ontario Association of Fire Chiefs  
Toronto Area Chief Building Officials

**Design sector:**

Association of Architectural Technologists of Ontario  
Association of Registered Interior Designers of Ontario  
Consulting Engineers Ontario  
Ontario Association of Architects  
Ontario Society of Professional Engineers  
Ontario Association Certified Engineering Technicians and Technologists  
Professional Engineers Ontario

**Building sector:**

Building Industry and Land Development Association  
Council of Ontario Construction Associations  
Ontario Home Builders' Association  
Ontario General Contractors Association  
Residential Construction Council of Central Ontario

## APPENDIX B – Internship MOU

### MEMORANDUM OF UNDERSTANDING

Between the

ONTARIO BUILDING OFFICIALS ASSOCIATION  
(hereinafter referred to as "OBOA")

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY  
THE  
MINISTER OF MUNICIPAL AFFAIRS AND HOUSING  
(hereinafter referred to as "MAH")

- WHEREAS MAH is responsible for administering the *Building Code Act, 1992* and the Building Code (Ontario Regulation 403/97, as amended);
- AND WHEREAS Article 2.16.4.2 of the Building Code authorizes the Minister of Municipal Affairs and Housing to approve a building inspector internship program;
- AND WHEREAS MAH recognizes OBOA as a responsible and accountable professional Association with respect to matters within their jurisdiction;
- AND WHEREAS OBOA wishes to establish a building inspector internship program;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

**1. Approval**

- 1.1 The Minister of Municipal Affairs and Housing approves the establishment of an internship program as proposed by OBOA subject to the terms of this Memorandum.

**2. Establishment and Administration**

- 2.1 OBOA will establish and administer an internship program as described in Schedule A and consistent with the MAH guideline "Application and Approval Criteria for Organizations Seeking to Establish an Inspector Internship Program" dated November 2005 included as Schedule B.
- 2.2 OBOA will be responsible for all costs associated with the development and maintenance of the internship program.
- 2.3 Despite subparagraph 2.1, this Memorandum does not establish OBOA as an exclusive provider of an internship program.

**3. Communication**

- 3.1 The parties shall cooperate in the development and distribution of information required for effective implementation of this Memorandum. Confidentiality of information will be respected, as described in Schedule C.
- 3.2 OBOA shall submit reports to MAH every six months, beginning no later than six months following execution of this Memorandum outlining:
- The number of interns entering within, and leaving the internship program;
  - Number of offshore-trained professionals progressing through the program; and
  - Summary of appeals for refused enrolment or terminated enrolment.
- 3.3 Notwithstanding subparagraph 3.2, OBOA shall, from time to time, at OBOA's expense, give to MAH such documents or information relating to

the registration of interns or to associated activities as MAH may reasonably require.

**4. Meetings**

4.1 In the interest of continuing open communication and the effective implementation of this Memorandum, meetings will be held between the parties.

4.2 Meetings will be held as jointly determined by the parties.

4.3 OBOA will, at MAH request, endeavor to participate in internship assessment panels established by MAH.

**5. Term**

5.1 This Memorandum takes effect on the date this Memorandum is executed by the parties and shall remain in effect from the date of execution.

5.2 Despite subparagraph 5.1, MAH may terminate this Memorandum at any time without cause.

5.3 Despite subparagraph 5.1, OBOA may terminate this Memorandum at any time without cause upon one hundred and eighty (180) days written notice.

**6. Review**

6.1 This Memorandum will be reviewed by the parties one year after adoption, or at any other time mutually agreed upon by the parties. Amendments to the Memorandum may be made with the agreement of both parties.

7. Entirety

7.1 All terms and conditions of Schedule A, B and C are incorporated into this Memorandum except where they are inconsistent with this Memorandum in which case the terms of the Memorandum shall take priority.

IN WITNESS WHEREOF to make the 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

Dated the 15<sup>th</sup> day of December, 2005.

ONTARIO BUILDING OFFICIALS  
ASSOCIATION



J.T. (Terry) Hewitson  
President  
I have the authority to bind the  
Association.

# Schedule A

to MMAH / OBOA

Memorandum of Understanding  
**Intern Building Code Official**

**2005**

Program to Assist the Municipal Building Industry in Meeting Qualification Requirements  
Related to the New Building Regulatory Process in Ontario Under the Building Code



OBOA Internship Proposal, Schedule A (REVISED)  
December 13, 2005



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#### Definitions

- IBCO* shall mean Intern Building Code Official, which is the level of OBOA Certification granted to a successful *Internship Program* applicant as determined by the *Review Committee* as per Article 2.16.4.2. of the Ontario Building Code
- Internship Certificate* shall mean a certificate issued by the *Review Committee* to a successful applicant to the *Internship Program*.
- Internship Program* shall mean an Internship Program as approved by the Minister of Municipal Affairs and Housing in accordance with Article 2.16.4.2. of the Ontario Building Code.
- Mentor* shall mean the qualified person who performs the supervision required for an *IBCO* and whose name is set out for that purpose on the Internship Application and who accepts those responsibilities as outlined in the OBOA Internship Agreement (Appendix "D").
- Review Committee* shall mean the Internship Review Committee of the OBOA and is chaired by a Board Director.
- Supervision* shall mean the function of a *mentor* in terms of guiding, assisting, advising and reviewing the tasks of an Intern Building Code Official (*IBCO*) as shall "supervise" and "supervised".
- Task documentation* means documentation that may be required such as records (in a prescribed form) work tasks, special duties, technical training and other experience oriented events and the time in hours spent on such tasks, duties, training and events. Said documentation to be maintained by the "IBCO" and the "Mentor" in the manner as required by OBOA.

## Section 1 – Administration

The proposed *Internship Program* will be administered by the OBOA based on a memorandum of understanding between the OBOA and the Government of Ontario represented by the Ministry of Municipal Affairs & Housing (MMAH). The administration of this program will provide for a reporting period of every six months on program operation and related information as required by MMAH. Provision will be made for specific operational review and audit process by MMAH.

OBOA will augment the current tracking system used to monitor CBCO certification candidates and maintenance requirements for certified officials to track intern status, mentor reporting, completion of examinations and compliance with conditions of the review committee. The Chief Administrative Officer will oversee this program.

Applicants transferring into the program from another approved internship program will have all equivalent requirements of the other programs carefully reviewed against enrolment criteria and documentation criteria for benefit by the Review Committee. Transfer in from another internship program will not normally extend the total internship program, however, additional requirements of the OBOA Internship program may apply.

Intern Building Code Officials leaving the OBOA program will receive a transcript of qualifications completed and a statement of recognized time spent under qualified supervision.

## Section 2 – Background

The OBOA is a self-governing, not-for-profit, professional organization and certified as an Educational Institution. A 10 member Board of Directors and a President that are elected by the membership for 2-year terms governs the OBOA. Committees of the Board are responsible for issues such as succession, oversight, policy, communication and education. The OBOA currently employs a Chief Administrative Officer and full time staff to address association operations, member services, training and education, member certification, industry advocacy and most importantly the Internship Program.

The Association is committed to maintaining a high degree of professionalism in the field of building inspection, code administration and building safety. Through the committee work and the training and education services offered by the Association, it promotes both uniform regulations and code interpretations across the Province. The Association is committed to maintaining a relationship with its current affiliations while actively pursuing other strong partnerships to the benefit of all members.

The OBOA currently maintains a membership in excess of 2000 Building Officials and associated professionals and has administered member certification programs for more than 20 years. The programs are recognized in legislation, Bill Pr40 *An Act respecting the Ontario Building Officials Association*, and have contained mandatory maintenance components that have been recognized as an Industry Standard and the basis of recruitment practices for employers, particularly Ontario municipalities, since their inception by the OBOA.

The OBOA remains the major delivery agent of MMAH training and continually augments that service to include the most current regulatory changes and Provincial government objectives.

Financial viability has grown with the association and will remain positive provided the OBOA can continue to provide it's membership with the required services, such as access to an approved Internship Program as set out in the Ontario Building Code.

### **Section 3 – Rationale**

Municipal Building Officials are required to discharge significant services in context of the Ontario Building Code (Ontario Regulation 403/97, as amended hereinafter called "the Regulation"). The OBOA has consistently embraced the Regulation and provided support during its development and implementation. This is a proactive approach working in collaboration with MMAH. In this regard, OBOA will commit to participation on panels established by MMAH for the purpose of Internship Program review.

The OBOA will be able to compare actual enrolment statistics to 1<sup>st</sup> year predicted enrolment. The numbers can be divided into two streams of the program. Firstly, existing Building Officials who must intern in one or more disciplines due to exam difficulties or upgrading of work duties. Secondly, newly hired officials who must attain the minimum qualifications to practice. OBOA anticipates approximately 75-100 existing officials to require internship in at least one discipline. 30-50 new officials could be expected based on the position advertising volume on the OBOA website. The figures are estimates only for the first 12 months of the program.

The OBOA looks to grow this Internship Program to serve a variety of potential partners. The Ontario Plumbing Inspectors Association and the Ontario Municipal Fire Prevention Officers Association have both expressed support for the OBOA Internship Proposal and stated interest in having access to the Program. OBOA has committed to providing these opportunities to its partner associations.

OBOA also plans to bring this Internship Program into an already strong relationship with Ontario's Colleges and Universities. The Education and Internship Committees are already planning this future project.

## **Section 4 – Internship Program**

This program is aimed at equipping Municipalities in achieving full compliance with the Regulation for the current as well as future building department employees. Under this proposed model, current employees will continue to perform their tasks in context of the Regulation under a *mentor* while new employees will be able to perform certain tasks while completing qualification requirements as set out by the *Review Committee*.

### **Internship Options**

The internship program will consist of two tiers.

Tier 1 will encompass those qualifications, in part or in whole, which relate to "The House" qualification as set out in Part 2 of the Ontario Building Code. Specifically: "House", "Plumbing - House" "HVAC - House" and "On-site Sewage Systems".

Tier 2 shall comprise all other qualification categories such as Small Buildings", "Large Buildings", "Complex Buildings", "Building Services", "Building Structural", "Plumbing – All Buildings" etc. The legal qualification will either be obtained prior to Intern application or as a component of either Tier 1 or 2.

### **Internship Period**

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.

In consideration of diverse municipal conditions, enrolment in both tiers concurrently will be accepted. Interns may only participate once in each Tier.

Extenuating circumstances will be evaluated on a case-by-case basis.

### **Enrolment Criteria**

Prior to enrolment in an Internship Program, an intern must have completed:

- a) One of the Ministry's Legal/Process examinations (General, CBO, RCA or Designer);
- b) Possess not less than five (5) years verified experience as a building official or building practitioner or
- c) An equivalent combination of post-secondary education and experience in the area of practice.

The program is for Building Officials who are members of the OBOA, and who currently do not meet all of the requirements for the Provincial Qualification. This includes a chief of the fire department of the Municipality that is appointed as a building inspector by the municipal council, and is assigned specific responsibility for the enforcement of any portion of the Code respecting fire safety matters.

Foreign educated and trained applicants will be required to obtain OBOA membership and demonstrate applicable and equivalent knowledge of Internship application requirements as set out by the *Review Committee*.

**The Internship Program will include a supervised practical internship in addition to the necessary training to achieve Provincial Qualification. A provincially qualified inspector or chief building official as required by Article 2.16.4.2. of the Ontario Building Code will provide the mentorship. The mentor must be an OBOA member and will also need to demonstrate compliance with the procedures of a supervising and reporting program to be established between the OBOA, the Mentor (and /or the municipality) and the Intern for the purposes of monitoring the progress and fulfillment of the Internship.**

Endorsement from the Chief Building Official or Municipal clerk is required on Municipal letterhead.

### ***Elements of the Internship Program***

The Internship Program will include:

- A application process and include transfers in and out of the program
- A application review method and assessment
- An appeal process
- Awarding of an *Intern Building Code Official (IBCO) Certificate*
- A designation of *Intern Building Code Official*
- Conditions of training
- Required examinations based on tier requirements
- A mentorship under a qualified mentor
- Enforcement of the Internship program will be in accordance with Bill Pr40 *An Act respecting the Ontario Building Officials Association.*

### ***Application Process:***

See Appendix "A" Internship process and Appendix "B" Internship Application

The *Review Committee* comprised of the Certification Committee will review the application and it will be independent of the current CBCO/BCQ committees. The application will be assessed based on the information provided and in accordance with guidelines.

The *Review Committee* will provide reasons, in writing:

- For the refusal
- For the conditions of approval
- For the designation level granted

### ***Internship Certificate:***

When an applicant does not meet all of the requirements for the Provincial Qualification as a Building Official, a *Internship Certificate* may be issued by the OBOA if:

The *Review Committee* believes:

- (1) The person's education, training and experience are adequate to function properly as a Building Official in a specific area, and
- (2) The person is diligently undertaking the process of completing MMAH training courses in order to qualify under the Provincial requirements.

#### **Intern Building Code Official:**

An *Internship Certificate* allows a person who has not achieved the required Provincial Qualification to carry out plans review and/or inspection functions within the context of Article 2.16.4.2. of the Ontario Building Code using a designation *Intern Building Code Official (IBCO)*

#### **Conditions of IBCO:**

Based on the application and the minimum enrolment criteria, the *Review Committee* will determine what additional requirements may be necessary in order for the applicant to obtain the designation of the *IBCO*. These conditions may include additional training and/or mentorship, and compliance with the *task documentation* requirements.

The *Internship Certificate* will have an expiry date based on the conditions set by the *Review Committee* and an applicant will be required to satisfy the conditions in a timely manner (not exceeding the internship period for the respective tier). Failure to comply with the condition will cause revocation and or expiration of the certificate.

Where appointed by a Principal Authority as an intern *inspector* under the *Building Code Act, 1992* the *IBCO* may carry out plans review and/or inspection functions within the context of Article 2.16.4.2. of the Ontario Building Code and in accordance within the terms and restrictions provided under the Internship approval.

#### **Appeals Process:**

An applicant has the right to appeal the decision of the *Review Committee*, if the applicant's application has been refused / revoked or if the applicant is not satisfied with the conditions imposed on the Internship approval. An applicant must provide notice of appeal within 30 days of receiving notification from the OBOA. The notice of appeal must be in writing and clearly state the reason for the appeal.

Appeals to the decision by the *Review Committee* will be conducted by a committee comprised of:

The Immediate Past President – OBOA or his designate (Chair)

And any combination of two provincially qualified, appointed representatives of the:

Ontario Architects Association  
Professional Engineers of Ontario  
Association of Architectural Technologists of Ontario

Ontario Association of Certified Engineering Technicians and Technologists  
Other Associations and public at-large



## **APPENDIX C – Court Judgment Analysis**

### **The Case Law**

Given the scope of the assignment and the needs of the client, this memo will merely briefly summarize the case law discovered on the issue of municipal liability due to the negligence of building officials and inspectors responsible for compliance with building code requirements and highlight the damages awarded. The cases follow in chronological descending order with the most recent case being summarized first.

#### ***Grey Condominium Corp. No. 27 v. Blue Mountain Resorts Ltd., [2007] O.J. No. 715 (S.C.J.)***

In this case, a condominium corporation discovered that there were serious building code deficiencies in an ongoing project with respect to fire safety and thus wanted to recover its remedial costs. The court found that the town was negligent in its review of the building plans and in the inspection of the plaintiff's buildings. The total damage awarded was \$267,500, plus interest, less \$50,000.

#### ***Reid Development Inc. v. Toronto (City), [2006] O.J. No. 1304 (Sm. Clms Crt.)***

In this case, contractors were hired to demolish a building and to build a new single family home. During construction of the new home, a disagreement arose with respect to whether the plans for the home provided for the requisite air barrier between interior and exterior walls. The inspector ordered bricklaying work to cease which resulted in the contractor having to dismantle scaffolding around the structure due to an expected overnight storm. After the dismantling occurred, the contractors were approved. The contractor sued the city for the cost of removal and reinstallation of the scaffolding. The city was held liable in the circumstances. The building inspector's decision constituted negligence. The damages amounted to nearly \$5,000.

#### ***Heinicke v. Cooper Rankin Ltd., [2006] M.J. No. 446 (Q.B.)***

In this case, a homeowner sued the city and architects for the costs of replacing untreated pine shakes on the roof of the plaintiff's residence with cedar shakes. The plaintiff claimed that the pine shakes were wholly unsuitable and that the installation of the shakes was the result of the failure of the city to inspect the roof. During the trial, the city admitted that it only conducted spot inspections of the property. The court agreed that the failure to inspect the roof constituted a *prima facie* breach of the city's duty of care, but that in this case there was no causation between the homeowner's claimed loss and the failure to carry out the inspection.

**Foley v. Shames, [2005] O.J. No. 6089 (S.C.J.)**

In this case, property owners sued the Town of Parry Sound for nuisance and negligence on account of their loss of a portion of their building. The owners contended that an adjacent building should either have been repaired or demolished years before it was eventually demolished, but that there was delay because the town had failed to enforce their property standards by-law. The first notice of violation to the adjacent owners had been delivered in November 1994, but a final order declaring the building unsafe was not made until November 1997, and demolition did not occur until 2001. The court concluded that the town's failure to enforce its by-law coupled with an ongoing deterioration of the building at issue, contributed to the damages sustained by the property owners. The town was held 40% responsibility for the damages sustained.

**Flynn v. Halifax (Regional Municipality), [2005] N.S.J. No. 175 (C.A.)**

In this case, homeowners sued a contractor and municipality for negligent inspection of their home. The homeowners had hired the contractor to build an environmentally safe home. However the walls of the house were not built in accordance with the height requirements of the National Building Code, and the roof was not built in accordance with the building plans. The municipality conducted five building inspections and issued an occupancy permit notwithstanding known outstanding deficiencies. At trial, the municipality and building inspector were held jointly and severally liable with the contractor for a defective wall. The contribution between the municipality and the contractor was 50% each. The total damage attributed to the municipality was in excess of \$13,000.

**Riverside Developments Bobcaygeon Ltd. v. Bobcaygeon (Village), [2004] O.J. No. 151 (S.C.), varied [2005] O.J. No. 3326 (C.A.)**

In this case, Riverside undertook a construction project for which plans that were not approved by an engineer were used. Riverside convinced the Village that the plans complied with the Building Code and thus the plans were approved. However the structure built required major remedial work because of certain flaws. Riverside sued on the grounds that the Village and its building official failed to exercise their responsibility correctly when approving the plans. The Village conceded that its building official was negligent, but disputed damages.

The court ruled in favour of Riverside. It found that the building official had not done his job properly and that it was reasonable for Riverside to conclude that it had good plans. It was also reasonably foreseeable that when the official negligently gave approval for a project to proceed and the project collapsed several years later, the losses would flow back to the approval. Losses included lost income for the project, lost equity in the property, excess cost and mortgage indebtedness. Guarantors under the mortgage were also awarded damages.

This judgment was varied on appeal with respect to the amount of damages awarded at trial and the right of the Village to set-off certain amounts.

**Wood v. Hungerford (Township), [2004] O.J. No. 4472 (S.C.J.), varied [2006] O.J. No. 2012 (C.A.)**

In this case, a new homeowner discovered shortly after moving in to the house that there were significant problems with the home. There was a marked slope in the kitchen and bedroom floors on the upstairs level and subsequent renovations revealed that the concrete block basement foundation walls were cracked and were being pushed inward by the soil on the exterior side. Ultimately the front foundation wall failed and the house was declared uninhabitable. The homeowner sued, among other defendants, the Township of Hungerford. Evidence revealed that the township had issued a building permit for the house, but that the building inspector involved had had little experience in house construction. He had had no training in the requirements of the Ontario Building Code. The court concluded that the township was liable in this case because it did not have in place a building inspection program that allowed for the proper oversight of the construction standards required by the Ontario Building Code and that no proper inspection of the house was ever carried out to ensure compliance with the required standards. The footings of the house were not constructed below the frost line and the footings were not supported on soil of adequate bearing. The court held the township jointly and severally liable with a real estate agent, and apportioned liability between them at 50% each. The total damage awarded was, after variation on appeal, slightly less than \$100,000. Included in this award was an amount for mental distress.

**Strata Plan NW 3341 v. Canlan Ice Sports Corp. [2001] B.C.J. No. 1723**

In this action, a strata corporation brought an action against a developer and contractor, a structural engineer, a building design company and a municipality for the negligent approval of a building permit, negligent inspection of construction, and negligent issue of the occupancy permit. The evidence revealed that building plans approved by the city were not drawn by an architect and that during the construction the municipality conducted inspections. However the city's building department did not undertake any process to ensure compliance with most of Part 5 of the Building Code, which prescribed design objectives related to wind, water and vapour protection for buildings. Within one year of completion, numerous owners complained about water ponding on the balconies of their units and water leakage. In the circumstances, the court concluded that the decision by the city's building department not to inspect in relation to Part 5 of the Building Code and not to require a certificate of compliance from an architect or professional engineer was unreasonable and was a causative factor in the damages to the strata corporation. The city was held jointly and severally for the damages amounting to in excess of \$3 million. The city's contribution was assessed at 20%.

**Cumiford v. Powell River (District), [2001] B.C.J. No. 1349 (S.C.)**

In this case, a homeowner sued, among other defendants, the city in relation to a house that had significant defects. The facts revealed that the house was originally built with a permit, but that during construction there had been no inspections by the inspector who issued the permit. A second inspector did inspect the house during a period when the original inspector was ill and raised significant concerns about poor workmanship and building code violations. The original inspector said he would deal with the problems, but he never did. A final inspection was carried out and an occupancy permit was issued. The builder of the home subsequently built an illegal rear addition, changed the roofline and added an upstairs suite, all without permits. The homeowner discovered numerous defects after moving in, including wavy floors on the main level caused by the absence of a concrete slab which ordinarily was required by the building code. Furthermore, the hallway floor was spongy and there were signs of moisture in the upstairs loft bedroom. The homeowner contended that the city was liable because it permitted the home to be built. The court ruled in favour of the homeowner and awarded damage in the amount of \$40,000.

**Ingles v. Tutaluk Constructions Ltd., [2000] 1 S.C.R. 298**

In this case, a homeowner hired a contractor to renovate his basement. The project required the installation of underpinnings under the existing foundation to prevent the walls from cracking and the home from collapsing. A building permit was required for the work, but it commenced without the permit being issued. When the permit was issued and an inspection was held, the underpinning work had already been completed and concealed. The inspector was unable to examine the underpinnings due to rainy conditions on the date of inspection and thus merely relied on the contractor's assurances that the underpinnings were properly constructed. None of the information provided to the inspector, other than information related to the concrete (an examination took place), was independently verified by him.

Shortly after completion of the work, the home experienced flooding. It was discovered that the underpinnings were inadequate and that they failed to meet the standard prescribed by the *Ontario Building Code Act*. In an action brought against the contractor and the city, the Supreme Court of Canada upheld the decision of the trial judge, who found that the contractor and city were jointly and severally liable for \$49,368.80 in damages to the homeowner. But since the city's apportionment of fault was only 14%, it was entitled to indemnification from the contract in an amount slightly more than \$42,000.

**Carson v. Gloucester (City), [2000] O.J. No. 3863 (S.C.)**

In this case, the homeowner built a home in the rural area of Gloucester. The city approved the plans and inspected the home. The home was elevated to avoid the chance of water run-off flooding the basement and a sump pump was also located in the basement. 10 years later, a thaw and heavy rain created a high level of water in the area. The homeowner called the city and a city operations supervisor visited the home. It was discovered that a ditch was clogged and that it needed to be cleaned. However the ditch was not cleaned out in a proper manner and the supervisor failed to return to inspect the work. The homeowner's basement

flooded and he sued the city. The court held the city 100% liable for the ensuing damages. It was found that city should have arranged for the proper inspection of the work. The agreed damages were \$19,000.

***Beeze v. Edmonton (City), [1996] A.J. No. 754 (Q.B.)***

In this case, a property owner sued the city for damages that allegedly occurred as a result of negligence in the planning process involving the development of neighbouring land. During the process the property owner had approved certain plans. However these plans were rejected. Revised plans were later approved which were unlike the plans prepared by the first architect. The property owner complained that city employees failed to take care, knowing that a person would be thereby affected. The plans became the basis for the building permit approvals and construction. During the construction the builder was required to trespass on the neighbouring lands. The trespasses caused significant damage to the suing property owner. The court found that negligence against the city was made out. A city employee had failed to follow the direction of the city's Development Appeal Board and set in motion a train of events that denied the property owner his rights.

***Dha v. Ozdoba, [1990] B.C.J. No. 768 (S.C.)***

In this case, homeowners commenced an action against various defendants, including the municipality, for defects in their home that rendered it almost worthless. The homeowners had hired a designer, who in turn hired an engineer to draw the foundation plans for the home. Drawings were submitted by the engineer for structural review only. The city's building inspector, a professional engineer, issued a building permit, but he did not examine the plans to determine whether they complied with the Building Code. Shortly after moving in, the homeowners noticed cracks in the walls and later in the masonry. The problems were caused from an inadequate foundation design. In the circumstances, the city was held 1/3 liable for the damages caused. It found that although the building inspector was negligent, he had been induced by the engineer's negligence in affixing his seal to the plans. The total amount of damage awarded in the case was over \$230,000.

***Rothfield v. Manolakos, [1989] 2 S.C.R. 1259***

In this case, the homeowners hired contractors to build a retaining wall in their backyard. An application was made for a building permit and the permit was issued notwithstanding that the plans had not been certified by an engineer. The wall was built and an inspection took place. However a standard inspection could not be performed because of the advanced stage of construction of the wall. A large crack eventually opened in the wall and the city advised that backfilling be halted until the wall could be monitored for movement. 20 days later the contractor completed the backfilling. A few months later the wall collapsed. In the circumstances, the city was held 70% responsible for the damages caused by the wall's collapse. The total damages amounted to slightly more than \$15,000.

**Faucher v. Friesen, [1985] B.C.J. No. 640 (S.C.)**

In this case, buyers of a house shortly after moving in discovered that there were serious defects in the structural, heating and plumbing systems. Evidence revealed that plans for the house had been approved by the city's building inspector, but that following approval the plans were changed to the knowledge and approval of the inspector. After completion, the inspector found deficiencies in the plumbing system and insulation and slope of the land and ordered that they be corrected. However the builder moved into the home without making the necessary corrections. The building inspector never returned for a final inspection. In the circumstances, the building inspector was found negligent in failing to carry out his duties of inspection and permitting occupation. The total damage awarded was slightly more than \$28,000.

**Kamloops (City) v. Nielsen, [1984] 2 S.C.R. 2**

In this case, a contractor submitted plans to build a house for his parents. The plans were approved and a building permit was issued, subject to the requirements that the footings were to be taken down to solid bearing. However the contractor did not comply with the condition. The footings were set into loose fill. An inspector noted that the foundations were not in accordance with the plans. Furthermore the inspector was unable to determine if the foundations would provide adequate support to the building because concrete had already been poured around them. A stop work order was issued, but then lifted after new engineering plans were submitted. The work did not proceed in accordance with the new plans. Another stop work order was made. Despite the stop work order the contractor was able to sell the house to his parents, who in turn sold it to a new homeowner. When the foundation subsided, the new homeowner commenced a lawsuit. In the circumstances, the city was held liable for its breach of duty. The damages in the case exceeded \$45,000 for which the city was responsible for 25%.

**Northrup, Graham and Graham Realty Ltd. v. Fredericton (City), [1979] N.B.J. No. 233 (Q.B.)**

In this case, shareholders of the plaintiff sued the city for negligent misrepresentation in relation to the cancellation of a building permit previously granted with respect to the construction of an apartment building. Construction on the apartment building had actually begun prior to the building permit being first issued. Construction continued for a month until it was brought to the attention of the city through complaints by neighbouring property owners that a portion of the lot on which construction was taking place was zoned in a manner that did not permit construction of an apartment building. An application to change the zoning was dismissed and thus the building could not be erected. The court found the city liable and awarded damages slightly in excess of \$27,000.

## APPENDIX D – PEO Communication on Objective Based Codes



February 14, 2007

Mr. Ronald M. Kolbe  
Chief Administrative Officer  
Ontario Building Officials Association  
200 Marycroft Avenue, Unit #8  
Woodbridge, Ontario L4L 5X4

Dear Mr. Kolbe:

**Re: Objective-Based Building Codes**

For the past few years, the Enforcement Committee of the Association of Professional Engineers of Ontario has been examining what effect the new objective-based building codes would have on the practice of the profession within the province. It has been concerned that the interpretation of objective-based codes by building officials could fall within the restricted practice of professional engineering. However, after speaking to officials from the Ministry of Municipal Affairs and Housing, it is anticipated that the review by building officials of most permit applications for code compliance will still be based on the existing prescriptive codes, and it is only in unusual circumstances that building officials will be called upon to review permit submissions that will involve the application of objective-based codes. The purpose of this letter is to provide advice to building officials so that those who are not licensed by PEO can fulfill their responsibilities without contravening the *Professional Engineers Act*.

Despite the fact that objective-based codes are designed to aid in the assessment of non-prescriptive solutions, it is worth noting that even small deviations from prescriptive codes can have consequences that can be out of all proportion to the magnitude of the change. For example, an increase of a beam length by 30% will increase the bending forces on the beam by 69%, and will increase the deflection of the beam by 185%.

PEO understands that building officials currently assess any submission sealed by a professional engineer for compliance with both the letter and the spirit of the *Building Code*. Although such instances are rare, we are aware of situations where professional engineers acting on behalf of permit applicants have made incomplete submissions in an attempt to obtain a permit or have given opinions that were not founded in proper quantitative analysis. We support the right of building departments to refuse to issue a permit when submissions are incomplete or there is reasonable cause to believe the structure as designed does not comply with the *Building Code*. We do not consider such a refusal to constitute the practice of professional engineering.

25 Sheppard Avenue West  
Suite 1000  
Toronto, Ontario  
M2N 6S9  
Tel: 416 224-1100  
Fax: 416 224-8168  
www.peo.on.ca

Enforcement Hotline:  
416 224-9528 Ext. 1444

.../2

Association of Professional  
Engineers of Ontario

- 2 -

In submissions for permit approval that involve alternative solutions where the application of engineering principles is involved, PEO advises that the suitability of any non-prescriptive solution should still be reviewed and approved by a professional engineer licensed in the province of Ontario, even if the submission appears to meet the objective of the code. Our advice is that this can be done either by an original design engineer hired by the person applying for a permit, an engineer on staff with the municipality, or an independent engineering consultant hired by the municipality. As most municipalities follow this practice at present when dealing with design solutions that do not conform to the prescriptive elements of the *Building Code*, we do not anticipate that an objective-based code will require any further procedural changes for most building departments.

PEO encourages building officials to contact the association with any problems you may have with any individual engineer or with persons holding themselves out as engineers. Instances of incompetent practice or professional misconduct by licensed practitioners should be reported to our Manager of Complaints and Discipline at [complaints@peo.on.ca](mailto:complaints@peo.on.ca), 416-840-1076 or 1-800-339-3716, Ext. 1076 for appropriate action. Suspicion of unlicensed practice, unauthorized practice, improper use of a seal or use of a forged seal should be reported to our enforcement unit at [enforcement@peo.on.ca](mailto:enforcement@peo.on.ca) or 1-800-339-3716, Ext. 1444 or locally at 416-840-1444. Please note that current license and Certificate of Authorization status can also be checked online at our web site [www.peo.on.ca](http://www.peo.on.ca).

PEO would appreciate it if you would share this information with your members. If you have any questions with respect to this letter and its contents, I can be reached at 1-800-339-3716, Ext. 1078, 416-840-1078 or [rbarker@peo.on.ca](mailto:rbarker@peo.on.ca).

Yours very truly,



Roger F. Barker, P.Eng.  
Deputy Registrar  
Regulatory Compliance

RFB/sdm



## APPENDIX E – OAA/PEO Joint Communication on Design



January 3, 2008

**Attention: Chief Building Officials, Province of Ontario**

As per Section 11 of the *Architects Act* and Section 12 of the *Professional Engineers Act*, certain building types are required to be designed by an architect, PEO licensee or both. The Ontario Association of Architects (OAA) and Professional Engineers Ontario (PEO) have issued a Joint Bulletin, entitled *Design and General Review Requirements for Buildings in the Province of Ontario*, which provides a synopsis of the requirements of these two acts with respect to building design and general review. A copy of the Joint Bulletin is attached for your reference and use.

As you are aware, the recent Ruling of the Superior Court of Ontario resulted in a decision that the information that had been contained in Table 2.3.1.1. of the 1997 *Ontario Building Code* was improperly placed within the OBC in that this is already delineated and legislated under the *Architects Act* and *Professional Engineers Act*. The decision of the three Justices was very clear that it is the responsibility of the OAA and PEO to establish and enforce standards of practice and scopes of practice for architects and professional engineers. In fulfilling our regulatory mandates, the OAA and PEO are issuing this Joint Bulletin, which encapsulates the scopes of practice contained in our respective acts.

Under the authority in Section 8(9.1) of the *Ontario Building Code Act*, we request that you forward all submitted permit application documents that do not conform to the attached chart to the OAA and/or PEO at the address below. Please note that the qualification regulations of the *Architects Act* and the *Professional Engineers Act* continue to be in force. Once the drawings are submitted to us, we will take the necessary steps to enforce the regulations.

The OAA and PEO have established a *Joint Liaison Committee* to deal with the matters that are forwarded to either of us in accordance with Section 8(9.1), as noted above.

In addition, the Joint Practice Board exists by virtue of our respective legislation to maintain a professional relationship between the OAA and PEO and to deal with any matters of conflict regarding the scopes of architectural and engineering practice.

Both OAA and PEO hope you will find the information in the Joint Bulletin useful in your responsibility for enforcing the Building Code as Chief Building Official.

Should you have questions about the information provided, please contact the Ontario Association of Architects at 416-449-6898 or Professional Engineers Ontario at 416-224-1100. Additional printed copies of the Joint Bulletin are available by contacting the OAA or PEO directly, or can be accessed in PDF format on the OAA ([www.oaa.on.ca](http://www.oaa.on.ca)) and PEO ([www.peo.on.ca](http://www.peo.on.ca)) web sites.

Sincerely,

David Craddock  
President  
Ontario Association of Architects

Walter Bilanski  
President  
Professional Engineers Ontario

OAA 111 Moatfield Drive, Toronto, Ontario, M3B 3L6 Tel 416-449-6898 Fax 416-449-5756 [www.oaa.on.ca](http://www.oaa.on.ca)  
PEO 25 Sheppard Ave. W., Suite 1000 Toronto, Ontario, M2N 6S9 Tel 416-224-1100 Fax 416-224-8168 [www.peo.on.ca](http://www.peo.on.ca)



As per Section 11 of the *Architects Act* and Section 12 of the *Professional Engineers Act*, certain building types in this Joint Bulletin are required to be designed by an architect, PEO licensee, or both. In this Joint Bulletin is a Table that provides a synopsis of the requirements of these two acts with respect to building design.

As per Section 8(9.1) of the *Ontario Building Code Act*, we request that you, in your capacity as Chief Building Official of a municipality, review all documents submitted for permit and refer to the Ontario Association of Architects (OAA) and/or Professional Engineers Ontario (PEO) any documents or information pertaining to permit submissions or general review that you have reason to believe will contravene the above acts.

It should be noted that the OAA and PEO have in place a Liaison Committee, which has been established to deal with those matters that have been forwarded to our respective organizations in accordance with section 9.1, as noted above. In addition to this, the Joint Practice Board also exists by virtue of our respective legislations and is given the mandate of maintaining a professional relationship between the OAA and PEO and ultimately to deal with any matters of conflict regarding the scope of architectural and engineering practice.

#### Definitions

Within this document a PEO licensee means a holder of a license, a temporary license or a limited license as defined in Regulation 941 under the *Professional Engineers Act*.  
Within this document an architect means the holder of a license, a certification of practice, or a temporary license as defined in Regulation 27 under the *Architects Act*.

#### Design by an Architect or PEO Licensee

- (1) Except as permitted in sections (2) and (3) noted below, the construction, including, for greater certainty, enlargement or alteration, of every building or part of or described in the Table in this Joint Bulletin shall be designed and reviewed by an architect, PEO licensee or both.
- (2) An architect may provide the services within the practice of engineering in any building described in the Table, when to do so does not contravene a substantial part of the services provided by the other profession related to the construction of the building and is necessary.

- (a) for the construction of the building and is in addition to the other services provided by the architect or PEO licensee, or
- (b) for coordination purposes.

- (3) The requirement for an architect does not apply to the preparation or provision of a design for interior space for a building, including finishes, fixed or loose furnishings, equipment, fixtures and partitioning of space, and related exterior elements, such as signs, finishes and glazed openings used for display purposes, that does not affect or is not likely to affect:
  - (a) the structural integrity;
  - (b) a fire safety system or fire separation;
  - (c) a main entrance or public corridor on a floor;
  - (d) an exit to a public thoroughfare or to the exterior;
  - (e) the construction or location of an exterior wall; or
  - (f) the usable floor space through the addition of a mezzanine, infill or other small element, of the building.

- (4) Where a building or part of it described in the Table is designed by an architect or a PEO licensee or a combination of both, all plans, drawings, drawings, graphic representations, specifications and other documents that are prepared by an architect, PEO licensee or both, and that form the basis for the issuance of a permit under section 8 of the *Building Code Act* or any changes to it authorized by the Chief Building Official shall bear the signature and seal of the architect, PEO licensee or both, as applicable.

- (5) As authorized under the *Architects Act*, a person designated as a Licensed Technologist (OAA) is permitted to design and perform General Review for:
  - (a) restaurants with a maximum occupant load of 100 persons;
  - (b) residential buildings of one unit or two attached units up to four storeys in height, including buildings with one dwelling unit above another;
  - (c) residential buildings that are not larger than 600 square metres in building area containing three or more attached dwelling units and which are up to four storeys in height, including buildings with one dwelling unit above another.

For clarification on any of the information in this Joint Bulletin, please contact Ontario Association of Architects at 416-442-0539, or Professional Engineers Ontario at 416-224-1100.

## Design and General Review

Building Classification by Major Occupancy	Building Description	Design and General Review By
Assembly occupancy only	Every building	Architect and PEO Licensee <sup>(1)</sup>
Assembly occupancy and any other major occupancy except industrial	Every building	Architect and PEO Licensee <sup>(2)</sup>
Care or detention occupancy only	Every building	Architect and PEO Licensee <sup>(2)</sup>
Care or detention occupancy and any other major occupancy except industrial	Every building	Architect and PEO Licensee <sup>(2)</sup>
Residential occupancy only	Every building that exceeds 3 storeys in building height Every building that exceeds 600 m <sup>2</sup> in gross area and that contains a residential occupancy other than a dwelling unit or dwelling units	Architect and PEO Licensee <sup>(2)</sup> Architect <sup>(2)</sup>
Residential occupancy only	Every building that exceeds 600 m <sup>2</sup> in gross area and contains a dwelling unit above another dwelling unit Every building that exceeds 600 m <sup>2</sup> in building area, contains 3 or more dwelling units and has no dwelling unit above another dwelling unit	Architect <sup>(2)</sup> Architect <sup>(2)</sup>
Residential occupancy and any other major occupancy except industrial, assembly or care or detention occupancy	Every building that exceeds 600 m <sup>2</sup> in gross area or 3 storeys in building height	Architect and PEO Licensee <sup>(2)</sup>
Business and personal services occupancy only	Every building that exceeds 600 m <sup>2</sup> in gross area or 3 storeys in building height	Architect and PEO Licensee <sup>(2)</sup>
Business and personal services occupancy and any other major occupancy except industrial, assembly or care or detention occupancy	Every building that exceeds 600 m <sup>2</sup> in gross area or 3 storeys in building height	Architect and PEO Licensee <sup>(2)</sup>
Mercantile occupancy only	Every building that exceeds 600 m <sup>2</sup> in gross area or 3 storeys in building height	Architect and PEO Licensee <sup>(2)</sup>
Mercantile occupancy and any other major occupancy except industrial, assembly or care or detention occupancy	Every building that exceeds 600 m <sup>2</sup> in gross area or 3 storeys in building height	Architect and PEO Licensee <sup>(2)</sup>
Industrial occupancy only and where there are no subsidiary occupancies	Every building that exceeds 600 m <sup>2</sup> in gross area or 3 storeys in building height	Architect or PEO Licensee <sup>(2)</sup>
Industrial occupancy and one or more other major occupancies where the portion of the area occupied by one of the other major or subsidiary occupancies exceeds 600 m <sup>2</sup>	The non-industrial portion of every building	Architect and PEO Licensee <sup>(2)</sup>
Industrial occupancy and one or more other major occupancies where no portion of the area occupied by one of the other major or subsidiary occupancies exceeds 600 m <sup>2</sup>	The industrial portion of every building	Architect or PEO Licensee <sup>(2)</sup>
Industrial occupancy and one or more other major occupancies where no portion of the area occupied by one of the other major or subsidiary occupancies exceeds 600 m <sup>2</sup>	Every building that exceeds 600 m <sup>2</sup> in gross area or 3 storeys in building height	Architect or PEO Licensee <sup>(2)</sup>

#### Notes to Table

- (1) An architect shall provide services within the practice of architecture and a PEO licensee shall provide the services within the practice of engineering.
- (2) An architect may engage an engineer to provide services within the practice of professional engineering.
- (3) Only a PEO licensee may provide services within the practice of professional engineering.
- (4) Requirements for design and general review by an architect or PEO licensee or a combination of both for the construction, enlargement or alteration of a building are set out in the *Building Code Act* and the *Professional Engineers Act*.

**Professional Engineers Ontario**  
25 Sheppard Avenue West  
Suite 100  
Toronto, Ontario  
M2N 6S9  
Tel: 416-224-1100 or 1-800-389-3716  
Fax: 416-224-8108 or 1-800-368-0496  
Emergency Hotline: 416-224-9328 Ext. 1444  
Website: www.peo.on.ca

**OAA** Ontario Association of Architects  
111 McEwen Drive  
Toronto, ON M3B 3L6  
Tel: (416) 442-0500  
Fax: (416) 442-5756  
Email: oaa@mail@oaa.on.ca  
Website: www.oaa.on.ca

## Design and General Review Requirements for Buildings in the Province of Ontario



## **APPENDIX F – Ontario Regulation 579/05 - REBBA**

### **Re: Authority of the OBOA to Administer Examinations and Training (see Part**

#### **Real Estate and Business Brokers Act, 2002**

#### **ONTARIO REGULATION 579/05**

#### **EDUCATIONAL REQUIREMENTS, INSURANCE, RECORDS AND OTHER MATTERS**

##### **EDUCATIONAL REQUIREMENTS FOR REGISTRATION**

##### **Initial educational requirements for salespersons**

**1. (1)** If an applicant for registration as a salesperson has not previously been registered as a salesperson, the applicant shall, before making the application, successfully complete all the educational courses that are designated by the registrar for applicants of that type. O. Reg. 579/05, s. 1 (1).

**(2)** Despite subsection (1), if an applicant for registration referred to in that subsection has complied with that subsection but does not make the application within 12 months after the last educational course was successfully completed, the applicant shall, before making the application, repeat and again successfully complete all the educational courses referred to in that subsection. O. Reg. 579/05, s. 1 (2).

**(3)** Subsection (2) applies, with necessary modifications, to an applicant for registration referred to in subsection (1) who, in accordance with subsection (2), repeats and again successfully completes all the educational courses referred to in subsection (1). O. Reg. 579/05, s. 1 (3).

##### **Articling requirements for salespersons**

**2. (1)** An applicant for renewal of registration as a salesperson shall, before making the application, successfully complete all the educational courses that are designated by the registrar for applicants of that type. O. Reg. 579/05, s. 2 (1).

**(2)** Subsection (1) also applies to an applicant for registration as a salesperson who has previously been registered as a salesperson. O. Reg. 579/05, s. 2 (2).

**(3)** Subsections (1) and (2) do not apply to the following applicants:

1. An applicant who successfully completed all the educational courses referred to in subsection (1) before making a previous application for registration or renewal of registration as a salesperson, if the previous application was approved.



2. An applicant for registration as a salesperson who has previously been registered as a salesperson but ceased to be registered before the registration expired and who makes the application before the date the applicant's previous registration as a salesperson would have expired.
3. An applicant to whom subsection 6 (1) applies. O. Reg. 579/05, s. 2 (3).

(4) Despite subsection 10 (1), if, pursuant to paragraph 2 of subsection (3), subsection (2) does not apply to an applicant for registration as a salesperson and the application is approved, the registration expires on the date that the applicant's previous registration would have expired if he or she had not ceased to be registered. O. Reg. 579/05, s. 2 (4).

### **Initial educational requirements for brokers**

3. If an applicant for registration as a broker has not previously been registered as a broker, the applicant shall, before making the application, successfully complete all the educational courses that are designated by the registrar for applicants of that type. O. Reg. 579/05, s. 3.

### **Continuing education for salespersons**

4. (1) If section 1 and subsections 2 (1) and (2) do not apply to an applicant for registration or renewal of registration as a salesperson, the applicant shall, before making the application, successfully complete the number of courses that the registrar specifies from among the educational courses that the registrar designates for salespersons. O. Reg. 579/05, s. 4 (1).

(2) Subsection (1) does not apply to an applicant described in paragraph 2 of subsection 2 (3). O. Reg. 579/05, s. 4 (2).

### **Continuing education for brokers**

5. If an applicant for registration or renewal of registration as a broker has previously been registered as a broker, the applicant shall, before making the application, successfully complete the number of courses that the registrar specifies from among the educational courses that the registrar designates for brokers. O. Reg. 579/05, s. 5.

### **24-month break in registration**

6. (1) If an applicant for registration as a salesperson has previously been registered as a salesperson but has not been registered as a salesperson at any time in the 24 months immediately preceding the date of the application,

- (a) section 4 does not apply; and
- (b) the applicant shall, before making the application, successfully complete the educational courses that the registrar designates for the applicant. O. Reg. 579/05, s. 6 (1).

(2) If an applicant for registration as a broker has previously been registered as a broker but has not been registered as a broker at any time in the 24 months immediately preceding the date of the application,

- (a) section 5 does not apply; and
- (b) the applicant shall, before making the application, successfully complete the educational courses that the registrar designates for the applicant. O. Reg. 579/05, s. 6 (2).

### **Applicants from other jurisdictions**

**7. (1)** If an applicant for registration as a salesperson was registered in another jurisdiction as a person with equivalent status to a real estate or business broker or salesperson in Ontario or had equivalent status in that jurisdiction to a real estate or business broker or salesperson in Ontario, the registrar may exempt the applicant from section 1 or subsection 2 (1) or (2) and require the applicant, before making the application, to successfully complete the educational courses that the registrar designates for the applicant. O. Reg. 579/05, s. 7 (1).

**(2)** If an applicant for registration as a broker was registered in another jurisdiction as a person with equivalent status to a real estate or business broker in Ontario or had equivalent status in that jurisdiction to a real estate or business broker in Ontario, the registrar may exempt the applicant from section 3 and require the applicant, before making the application, to successfully complete the educational courses that the registrar designates for the applicant. O. Reg. 579/05, s. 7 (2).

### **Designation of organization**

**8. (1)** The registrar shall designate one or more organizations that are authorized to provide the educational courses referred to in sections 1 to 7. O. Reg. 579/05, s. 8 (1).

**(2)** The registrar may cancel or amend a designation of an organization. O. Reg. 579/05, s. 8 (2).

### **Requirements to be made available**

**9.** The registrar shall make available to the public a description of the requirements established by sections 1 to 5, including the educational courses referred to in those sections and the organizations that are authorized to provide those courses. O. Reg. 579/05, s. 9.

## APPENDIX G – Communication from Jeff Leal, MPP Peterborough



Jeff Leal, M.P.P.  
Peterborough



25 July 2006

The Honourable John Gerretsen,  
Minister of Municipal Affairs and Housing  
777 Bay St., 17<sup>th</sup> Floor  
Queens, Park  
Toronto, Ontario  
M5G 2E5

Dear John:

I recently had a meeting with Mr. Dean Finlay, a building inspector with the City of Peterborough, Mr. Tom Patton, Manager, Sales and Technical Support Eastern Division-Arxx Walls and Foundation and Mr. Ken Trevelyon, an architect regarding the inconsistent interpretation of building codes standards across the Province of Ontario. Part of the problem exists because Ontario Building Officials are not a self regulating body, so there are no common standards, creating both barriers and unnecessary delays in Ontario's building industry.

Mr. Patton is employed by a company that developed a wall system for constructing homes. "Arxx High Performance Wallsystem" is a modular, interlocking, concrete form system in which each unit consists of two expanded polystyrene panels with polypropylene connectors molded into the polystyrene panels. These forms are then filled with concrete. The end product is an excellent foundation for a new home.

For individuals or builders wanting to use this product, Arxx has developed a standard, engineered approval manual for reference purposes. I might add that this product has been approved for use by the National Research Council of Canada. This product is available in other Canadian Provinces and in the United States.

It has come to light that some building inspectors in municipalities across the Province are not accepting the standardized version of the manual that must be followed when this product is to be utilized. Some municipal building inspectors are demanding that each section of the manual be engineer approved before it is used. This situation is adding to the costs of building new homes in Ontario. Some building inspection departments, the City of Peterborough being one of them, accept the standardized manual if builders or individuals want to use this product in construction.

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Jeff Leal, M.P.P.  
Peterborough

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I would suggest that serious consideration be given to Ontario Building Inspectors establishing themselves as a self-regulated body leading to a standardized interpretation of the Ontario Building Code. This would be helpful for everyone involved in Ontario's building industry. By establishing a self-regulatory body, individuals and builders would have a mechanism to review decisions made by building inspectors.

I want to thank you for reviewing this important matter.

Sincerely,



Jeff Leal

Cc Mr. Dean Finlay, Building Inspector, City of Peterborough, 500 George St. N.,  
Peterborough, Ontario. K9H 3R9  
Mr. Tom Patton, Manager, Sales and Technical Support, Eastern Division  
Arxx Walls & Foundations, 800 Division St., Cobourg, Ontario. K9A 5V2

Like Architects, Engineers and others, our members are dedicated and trained professionals ensuring public safety for the people who live and work in Ontario.



**(Who are we?)**