

**KNOWLEDGE
ACCOUNTABILITY
STREAMLINING:**

**Cornerstones for a
New Building Regulatory
System in Ontario**

**A Report to the Minister of
Municipal Affairs and Housing
from the Chair and Vice-Chairs of the
Building Regulatory Reform Advisory Group**

July 2000

August 1, 2000

The Honourable Tony Clement
Minister of Municipal Affairs and Housing
777 Bay Street
17th Floor
Toronto, Ontario
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Dear Mr. Clement :

It is my pleasure, on behalf of the Vice-Chairs of BRRAG, Mr. Rocky Cerminara and Mr. Richard Lyall, to forward to you our report entitled “Knowledge, Accountability and Streamlining: Cornerstones of a New Building Regulatory System in Ontario”.

As you know, the mandate of BRRAG was to examine Ontario’s building regulatory system with the objective of improving public safety, streamlining building-related inspection and review services, improving the construction liability regime and streamlining code administration and appeal mechanisms. The Vice-Chairs and I believe that the recommendations in this report represent reforms which will be viewed as the most significant improvements to the building regulatory system since the Building Code was introduced in 1976.

There was strong support for the vast majority of our recommendations. As indicated in the report, our recommendations are grouped under three main themes: improving building code knowledge of key practitioners; improving accountability of key practitioners and streamlining the building regulatory system. It is our view that the reforms in this report should be considered as a coherent package since many of the recommendations are inter-dependent.

The Honourable Tony Clement

I trust you will find the report meets the government's terms of reference for BRRAG. If you have any questions either I or my Vice-Chairs would be pleased to meet with you.

Thank you for the opportunity to lead this initiative.

Yours sincerely,

Brian Coburn
Parliamentary Assistant

Attachment

c.c: Rocky Cerminara
Richard Lyall

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INTRODUCTION

This is a report based on the work of the Building Regulatory Reform Advisory Group (BRRAG), appointed by the Honourable Tony Clement, Minister of Municipal Affairs and Housing, on March 21, 2000. To guide and support BRRAG in its deliberations, the Minister appointed Parliamentary Assistant Brian Coburn as Chair. Rocky Cerminara, Director of Building Controls for the City of London, and Richard Lyall, General Manager for the Metropolitan Toronto Apartment Builders Association, were appointed as Vice-Chairs.

BRRAG's Mandate

BRRAG was given a mandate by the Minister and the government to prepare a report and make recommendations to address longstanding concerns with the way in which new construction is reviewed, approved and inspected in Ontario. BRRAG was also asked to examine the accountability that exists among key practitioners in the design, construction and approvals process and the overall framework for Building Code enforcement and administration. Specifically, the government's terms of reference for BRRAG were that it examine these issues with the objectives of:

- improving public safety;
- streamlining delivery of building-related inspection and review services;
- improving the construction liability regime; and
- streamlining code administration, appeal and dispute resolution mechanisms.

The Chair and Vice-Chairs were given a mandate not to justify the need for change, but to develop a plan for implementing change. They were mandated to deliver the report, complete with recommendations, to the Minister of Municipal Affairs and Housing by July 31, 2000.

BRRAG's Foundations

When it began its work, BRRAG had the benefit of reviewing the numerous assessments, evaluations, proposals and ideas which had been considered previously as ways to improve Ontario's construction approvals system. Most recently, the Province's Red Tape Commission had, in 1998, brought together key stakeholders to consider ways of moving toward a one window building regulatory system, in order to increase the efficiency of the system and support economic development. Before that, the Ministry of Municipal Affairs and Housing's Administrative Issues Working Group set out proposals to address various concerns about the regulatory system. Such exercises go back all the way to 1969 with the recommendations of the Committee on Uniform Building Standards for Ontario.

BRRAG also had the benefit of reviewing building regulatory reforms in other jurisdictions, including Victoria Australia, New Jersey, Alberta and British Columbia. These other jurisdictions provided meaningful proven examples of reforms which make up some of the recommendations contained in this report.

In part, much of the frustration which stakeholders express about the current regulatory model reflects the fact that so many studies and examinations of the problems and potential solutions have come before, with little in the way of significant changes being made. To be sure, some positive steps have occurred, starting with the introduction in 1976 of a Province-wide Building Code, the incremental consolidation of certain construction-related requirements into the Building Code, considerable training and education programs for key building practitioners, etc.

These earlier exercises helped pave the way for BRRAG to focus almost immediately on meaningful issues, key reforms and opportunities for linking these reforms in a way that makes sense today for Ontario. In many respects, BRRAG's recommendations draw upon earlier exercises and meld them with the thoughtful input of the many voices which BRRAG's Chair and Vice-Chairs heard during the past three months of deliberations.

BRRAG's Approach

The membership of BRRAG was drawn from a wide cross section of interests who each have a direct stake in how Ontario's construction approval system functions. These stakeholders include builders, consumers and building owners, insurers and warranty providers, building officials, design professionals, municipalities and other regulatory agencies. The membership of BRRAG is included in Appendix 1.

BRRAG also had the benefit of relying upon three different working groups comprised of individuals and organizations who deal every day with the current regulatory system. These three working groups were tasked with examining closely related issues and with developing proposals for consideration by BRRAG. The composition of these working groups is included in Appendix 2.

From the outset, BRRAG's Chair and Vice-Chairs identified the need to seek out the input of a broad spectrum of interests, beyond even the diverse group of stakeholders participating on BRRAG and its working groups. To this end, seven regional stakeholder sessions were held across the Province in June, 2000. These sessions attracted 194 participants from a wide variety of disciplines and backgrounds. The Chair and Vice-Chairs were impressed by the degree of knowledge, commitment and innovative perspectives brought by these people. Even more impressive was the level of support expressed for many of the key reforms which are contained in this report. Appendix 3 provides an overview of the record of these regional sessions.

Mapping Out the Current Context

An important step in BRRAG's development of forward-looking solutions to improve Ontario's building regulatory system was first to understand the current context for how decisions are made and what actions are taken in the design, review, approval and construction of new buildings.

In the first instance, understanding the legislative and regulatory powers of different regulators, the kinds of services they provide and

how they are affected by administrative policies, Court decisions and even processes and rules beyond their control provides a better understanding of what different or improved powers they need to ensure public safety.

It was also important for BRRAG to know how builders, designers, owners and other clients of the regulatory system interact with local and provincial construction standards enforcement agencies, what their expectations are and how their technical competence influences the efficiency of the system and the safety of new construction.

Appendix 4 of this report provides an overview of the present regulatory system and the roles and responsibilities of key players within that system.

Identification of Concerns

In carrying out its mandate BRRAG was tasked with identifying solutions which would, to the extent possible, reflect the consensus of different stakeholders. In large measure, there was considerable consensus on many of the major issues related to:

- improved technical competency of key building practitioners;
- the need to reduce unnecessary delays and red tape in the approvals process; and
- the need to make sure that different players are accountable for the roles they perform and the work they do in the system.

A discussion of the various concerns which were raised about Ontario's current building regulatory framework is included in Appendix 5 of this report. At the same time, there were issues on which sometimes strongly divergent views were expressed and these have been highlighted in this report for the Minister's consideration.

Measuring Success

This report is intended to recommend practical reforms upon which this Government can take action. The Chair and Vice-Chairs of BRRAG believe that the proposals contained in this report are feasible

and necessary if we are to improve Ontario's construction approvals framework in a meaningful way.

However, the Chair and Vice-Chairs also believe that the ultimate measure of whether BRRAG will be considered a success rests on whether its recommendations:

- increase the potential for builders and owners to get their permits faster, at reduced cost and with greater certainty;
- ensure that the public will get safer, higher quality buildings;
- lead to the key players in the design, approval and construction system becoming more technically proficient; and
- provide a fair and effective means of allocating responsibility among building practitioners for the work they do and the services they provide.

The main body of this report is based on the themes of knowledge, accountability and streamlining. These themes are foundations upon which to re-design Ontario's building regulatory framework. These themes represent both the means and ends for measuring BRRAG's success and for framing the specific recommendations contained in the report.

It is important to point out that the recommendations contained in this report should be considered as a package. The Chair and Vice-Chairs of BRRAG believe that this report's proposals are inter-related and support each other in fundamental ways.

Ensuring that building practitioners have the necessary knowledge to interpret and use the Building Code is vital to ensuring that they are accountable. Accountability, in terms of roles and responsibilities, is based on the financial accountability that comes with having appropriate insurance or warranty coverage for the work undertaken. Ensuring that people are technically competent and accountable provides the necessary impetus for improving efficiency and streamlining regulatory processes. The themes of knowledge, accountability and streamlining, and the directions contained thereunder, fulfill the objectives which the government set for BRRAG and should be looked at as a whole.

The “Key Proposals” section of this report describes in greater detail the proposed directions which were developed based on the input of BRRAG, the three working groups and the feedback received from the regional sessions.

CURRENT CONTEXT

Included in Appendix 4 is a more in-depth overview of the current context. The following are highlights of the current system.

Code-enforcement System

Building Code-enforcement is characterized by:

- Municipal responsibility for enforcement of the Province-wide Building Code;
- Provincial appeals on technical matters and approval of innovations; appeals only to the Courts on other matters;
- Professionals and other practitioners also generally responsible for Code compliance.

Some specific building components are regulated by provincial administrative authorities [e.g., Technical Standards and Safety Authority (TSSA), Electrical Safety Authority (ESA), etc.].

There are variable and often discretionary requirements for knowledge of the Building Code technical standards for inspectors and practitioners.

Training

- There are no Provincially-mandated qualifications for building officials.
- Practitioners may take training voluntarily through the Ministry of Municipal Affairs and Housing or through their own industry or professional associations.

Liability

- The joint and several liability framework applies.
- There are limited mandatory insurance for professionals and the mandatory warranty for homebuilders is on a time-limited basis;
- There is a potentially endless period of liability exposure due to a lack of ultimate limitations period under the *Limitations Act*.

CONCERNS WITH THE PRESENT MODEL

Appendix 5 provides a more in-depth discussion of the concerns that are listed below.

- # Existing uncertainties around expected roles and responsibilities have resulted in duplication of tasks in some cases and gaps in functions in others. Such redundancies increase the time and cost of the development process. The potential for omissions due to uncertainties could jeopardize health and safety. The lack of clarity complicates the liability regime and increases the costs to consumers.
- # Variations in the levels of service delivery between municipalities have resulted in unpredictable processing times, which can create uncertainties for applicants.
- # Duplicate plans may be subject to separate Code review in multiple municipalities due to independent municipal inspection and liability. This can cause delays for projects that have already been checked against the Code, slowing the development process.
- # Municipal inspectors with insufficient Code knowledge can sometimes refer generally uncomplicated matters to senior municipal staff or to the Province. Insufficient knowledge can also lead to a reluctance to approve new and innovative materials, designs, etc. These referrals can slow the approval

process for the applicant.

- # Duplications of licensing requirements between industry associations, the Province and municipalities have resulted from the lack of coordination in the regulatory system. Some of these various requirements add little, if any, value while restricting activity and adding costs to the practitioner.
- # The uncoordinated system of approvals can make the system inaccessible to some, particularly to those members of the public who have few interactions with the permit approvals system. For others who are in the industry, the disorganization can lead to duplications, delays and uncertainties.
- # Unpredictable and sometimes unnecessary delays in permit approvals can result from variations in the numbers and ability of municipal inspectors. The lack of stated minimum qualifications and minimum service level standards can leave municipal building departments under-funded and, in some cases, employing under-qualified inspectors.
- # There are variations in the quality of plans submitted due to the lack of technical knowledge of some practitioners. This can lead to inefficient use of inspectors' time, can make case load management difficult for municipalities and can create delays for other permit applicants.
- # Shortages can occur in the availability of qualified tradespersons and building practitioners, which is partly due to a perceived lack of professionalism in the building business. This lack of recognition fails to attract young people to the industry. This can stall construction and lead to increased costs.
- # There are few incentives to improve quality due to the lack of tools in the regulatory regime to distinguish and reward good practitioners. This can lead to sub-standard workmanship, jeopardizing health and safety. It can also result in lost opportunities for innovations.

- # Some parties are disadvantaged by the unequal liability for joint errors. The liability imbalance results from the variable insurance requirements in a joint and several liability regime with a potentially endless period of liability. As a result, responsible parties that are well-insured and have longevity (e.g., municipalities and some designers) typically cover the liability, regardless of their extent of fault.

- # Inaccessible consumer protection. Where warranties are not in place, recourse is typically through the Courts. In addition, parties responsible may not have sufficient resources or may no longer be in existence to provide the consumer with compensation.

KEY PROPOSALS

A) Creating Knowledgeable Practitioners

One of the most common messages which emerged throughout BRRAG's consideration of regulatory reform was the notion that key building practitioners – the individuals who provide design work for new buildings, the regulators who inspect and approve new construction and those parties who actually do the construction – need to be more competent when it comes to understanding and using the Ontario Building Code.

Increasing knowledge about the Building Code was recognized by BRRAG and others as providing strategic support for other building regulatory reform elements. In a 1995 submission to the Provincial Government dealing with regulatory reform, the Large Municipalities Chief Building Officials Group observed that “in Ontario, there is no guarantee that there are always competent persons delivering services. Therefore, there can be no uniform level of service for the ultimate consumers” (p. 15, LMCBO submission). From the industry's perspective came the following comment at the June 22, 2000 regional BRRAG stakeholder session in London, “there should be mandatory qualification and corresponding accreditation for both builders and inspectors in order to participate in the building industry.

This will increase public protection while raising standards in the building industry” (p.1, Submission to BRRAG from the London Home Builders’ Association).

The New Imperative for Professionalism and Skills

Within Canada and even North America, Ontario is among the leaders in the development and implementation of training and education programs designed to make building inspectors, designers and design professionals, contractors and builders more proficient in understanding the different elements of the Building Code. Whether through the Ministry of Municipal Affairs and Housing’s Code courses for Part 3, Part 9, plumbing or septics, through trade association programs like the Ontario General Contractors Association Gold Seal program for site supervisors, through professional association programs like the Ontario Building Officials Association’s voluntary Code certification for inspectors or through community college curriculum, the infrastructure exists to deliver high quality and highly relevant technical knowledge.

The Chair and Vice-Chairs believe, based on the input of a wide variety of interests and the success of other jurisdictions which have implemented similar programs, that it is time for Ontario to move toward a system which formally recognizes the professionalism and technical expertise required of the key practitioners who do work under the Ontario Building Code.

This concept is supported by the direction which came out of the Ontario Jobs and Investment Board which released its *Road Map to Prosperity: An Economic Plan for Jobs in the 21st Century* in 1999. In that report, the Board stated that achieving the Province’s economic and social potential through an investment in learning and education “means ensuring that the credential, skills and experience people have earned in institutions or on-the-job...are recognized and valued. A formal system to recognize learning and experience must be as widely accepted as possible in Ontario, Canada and globally” (p. 21, *Road Map to Prosperity*).

A. 1. Certifying Inspectors and Licensing Builders

Recommendation A.1.i:

The Chair and Vice-Chairs recommend that persons undertaking plans review, inspection and other Code-enforcement services be qualified to minimum, provincially-established standards for Building Code competency. The Province should develop regulations in the Ontario Building Code which would establish the rules for a certification process for inspectors.

Recommendation A.1.ii:

The Chair and Vice-Chairs recommend that the Building Code Act be amended to require that all persons in the business of doing design work for buildings covered by the OBC be qualified to a minimum, provincially-established, standard for Building Code competency. Regulations under the OBC should be developed to establish the rules for a certification process for designers. This requirement would apply to the person identified as being responsible for design (e.g., the person who stamps the plans/drawings).

Recommendation A.1.iii:

The Chair and Vice-Chairs recommend that the Building Code Act be amended to require that residential and ICI builders/general contractors and renovators employ qualified site supervisors (who would be required to demonstrate this qualification through certification). This would require that the Province develop regulations under the OBC to establish the rules for a licensing and certification process for residential and ICI builders and renovators (who do work that requires a building permit and has a construction value in excess of \$10,000).

Recommendation A.1.iv:

The Chair and Vice-Chairs recommend that the design of these

programs be linked to building types (e.g., Part 3, Part 9, complex buildings) and technical disciplines (e.g., building, fire protection, plumbing, mechanical, etc.). Further, these programs must include requirements for regular maintenance of the Code-competency requirements by practitioners in order that they remain current with changing standards. In addition, there must be provision for grand fathering during some transition period based on reasonable previous experiential criteria and/or qualifications (ultimately though, all practitioners should be required to demonstrate base competency with the Building Code).

Owner-Builders

The Chair and Vice-Chairs believe that the design of a certification/licensing scheme tied to Building Code knowledge must also recognize the unique issues associated with owner-builders. There should always be an ability for the legitimate individual to build their own home, for example, without the need to meet the certification standards that persons in the business must meet. However, it is too often the case that individuals get around these types of standards by walking a fine line around their real activities. A certification/licensing scheme developed by the Province should take steps to ensure proper accountability by owner-builders. While the approach in Australia where the State prohibits individuals from building and selling more than one home every five years without the need for coverage has merit, there may be other mechanisms for achieving the above objectives.

Multi-Skilling

The Chair and Vice-Chairs support the notion that there are some real efficiencies which can be gained whereby inspectors can assume different plan review and inspection functions associated with different Building Code technical areas. The certification scheme proposed above should facilitate multi-skilling by minimizing barriers for individuals who have the capacity and skills to take on more than one discipline.

Benefits

Safety, Quality and Efficiency

There is nothing more fundamental to the safety and quality of new construction than ensuring that key building practitioners are knowledgeable about how to interpret and incorporate the standards of public safety into building design, review and construction. Similarly, there are few things more important to speeding up the system and reducing unnecessary costs than ensuring practitioners have a clear understanding of these standards.

Solving Technical Problems

By making all practitioners more Code knowledgeable, there is an increased likelihood that technical problems can and will be identified and addressed early in the design or construction process. This means safer buildings and a better product for building owners. It also supports a more efficient and effective approvals process by equipping key players with a common understanding of technical issues and a means of solving problems.

Streamlined Code Enforcement

Improved code competency among building and design practitioners will streamline Code enforcement since there is an increased likelihood that code compliance will increase, allowing inspectors to focus on more complex and demanding issues. The more technically competent are design professionals and others submitting technical plans or drawings, the better will be the designs, with fewer corrections and revisions. This should lead to reduced delays and bottlenecks in the approvals process.

Reduced Technical Disputes

Increased Building Code knowledge may reduce the number of technical issues which need to be appealed since inspectors can better deal with sufficiency of compliance, equivalent and innovative

designs and systems, interpretations, etc. This reduces the number of disputes which may need resolution either locally by more senior staff or through the Building Code Commission or even the Courts. More Code-competent practitioners should result in the identification of systemic technical concerns which can be used as the basis for a more effective and responsive code development and review system.

Linkages with Other BRRAG Reforms

Reduces Risk

While not all construction defects are a function of uninformed practitioners, many could be avoided by more competent people who better understand the Building Code. Increasing the technical competence of practitioners is one important way to reduce the risks of construction problems and supports the move toward a regulatory regime which emphasizes accountability for key individuals. During BRRAG's consideration of insurance and liability reforms, strong emphasis was placed on the need to formalize the training and education of inspectors, designers and builders. It was felt that by mandating a higher level of Building Code knowledge, there would be significant benefits in terms of reduced exposure to liability because of a decreased likelihood of technical problems and reduced insurance premiums for those requiring insurance or warranty coverage.

Facilitates Outsourcing

BRRAG's consideration of options to allow municipalities to use outside assistance in carrying out their Code-enforcement responsibilities (discussed below) was premised on the view that there would need to be standards put in place to ensure that these other agencies would be technically knowledgeable to do the work. Without such standards, the credibility and integrity of an alternative way of providing building review, inspection and approval services would be questioned, and rightly so.

Costs

Administering the Program

The costs associated with developing and implementing training and certification programs need to be considered, both in terms of developing the technical content and course curriculum, and in the administration of these types of programs. BRRAG heard from many people in the industry, though, who said this investment is necessary and desirable as buildings become more complex, the investment in construction increases and the skills necessary to deal with these realities rise. There was a strong sentiment that investing in knowledge was a true cost of doing business and needs to be accounted for like all other business decisions.

BRRAG heard from some industry members who were concerned about the bar being raised to a level that might preclude builders and contractors from either staying in business or from entering the industry. The balance between being competent and setting unreasonable standards is an issue which will need to be given serious attention as training and education programs are rolled out. The Chair and Vice-Chairs believe that consideration should be given to making the best use of resources already devoted to the development and delivery of training. Care should be taken to ensure delivery of these services in the least bureaucratic and most efficient way possible, while involving the many associations and organizations which already have a role in training and life-long learning.

Implementation

Extend Existing Approaches

A mandatory certification program for building officials is a logical extension of the voluntary certification program of the Ontario Building Officials Association which results in the CBCO and BCQ designations, as well as those schemes in place for plumbing inspectors (through the Ontario Plumbing Inspectors Association) and property standards by-law officers (through the Ontario Association of Property Standards Officers).

Province Sets Standards But Delivery Decentralized

The Province should perform the role of setting and enforcing the certification standard (e.g., developing course curriculum in consultation with an advisory group, establishing the examination which would measure the inspectors' Code competency, proctoring examinations, etc.). In order to ensure the integrity of the regulatory model, responsibility for setting the certification standards should rest with the Province, although administration should occur through the accreditation body described in Recommendation B.9.i.

Wherever possible, and to ensure that these recommendations should not create an additional layer of bureaucracy, the Chair and Vice-Chairs favour the notion that the certification/licensing process should dovetail with and not duplicate the structures for ensuring competencies or setting standards which already exist (in some cases through regulatory/legislated requirements). The roles and responsibilities of professional associations needs to be carefully considered and opportunities for efficiency in implementation needs to be utilized.

The Chair and Vice-Chairs support a de-centralized model for the delivery of training related to the certification program, including course delivery, co-ordination of facilitators, course material distribution, marketing, etc. These functions could be the responsibility of professional organizations with an interest in these functions and would build upon the existing infrastructure which exists within these groups. As well, greater emphasis should be placed on using the infrastructure of community colleges and universities as a delivery mechanism for training and education.

Certification for Designers

A certification program for designers and design professionals should be structured along the same lines as the certification program for inspectors, whereby individuals who will be doing work under the Building Code will be required to demonstrate Code competency. Such a certification or designation should not override current criteria established under the professional acts, and only those individuals who "certify" or stamp work under the Building Code should be

required to meet the new regulatory requirements. Further, the program is not intended to train or re-test a designer's competency in his/her specific discipline, but instead would focus on understanding and applying the Building Code in the context of work in the construction field, with particular attention on Part 3.

Contractor Licensing

In much the same way as currently exists for septic installers, the regulations would require that a building/general contracting/renovating firm be licensed and that a key criterion for the firm obtaining a license be that the firm employs qualified (certified) persons, namely site supervisors, who have passed a provincially-administered examination for Building Code competency.

The builder's, general contractor's or renovator's site supervisor was identified as the individual on a construction project with whom key responsibility rests when it comes to ensuring compliance and understanding of the Building Code. In many cases, especially for smaller companies, the owner or operator of the business is one in the same person as the site supervisor. As such, in many cases it will be relatively straightforward to identify the person who will need to pass a test related to Code competency. For larger builders, especially in the industrial, commercial and institutional (ICI) sector of the industry, consideration will need to be given to identifying the right person, but the framework remains essentially the same - license the company, certify the site supervisor who oversees actual on-site construction.

Certification and ONHWP

The relationship between a provincial licensing program for home builders and the mandate of the Ontario New Home Warranty Program (ONHWP) was examined by BRRAG. The ONHWP has a relationship with all home builders by virtue of its statutorily-imposed powers and responsibilities, which take into account financial, technical competency and business acumen and customer service factors. Because the ONHWP has this relationship, it could provide an effective mechanism for administration of a residential builder

licensing framework which has, as its primary focus, Building Code competency. The relationship between this function and its warranty obligations for new home buyers would need to be reconciled.

Stakeholder Reaction

Inspector Certification

There is broad support among building officials, municipalities, builders, consumers and other clients of the local construction review and inspection process for mandatory certification of building inspectors. Such a direction enhances the credibility of these practitioners and gives them better tools to add value to the construction process. In his submission at the June 22, 2000 regional BRRAG session in London, Ed Link, the Chief Building Official for the City of Windsor summed up the views of many when he stated that “the public needs to visualize building officials as professionals and respect them for their impartial review of construction. This can only be done through licensing and/or certification, with a mandatory requirement for continuing education” (p. 3, Presentation to BRRAG by E.J. Link).

Builders felt that by establishing Province-wide standards, certification would lead to greater consistency and uniformity in Building Code interpretation, give inspectors more support to consider innovative technical approaches and increase their efficiency in issuing approvals. Some design professionals questioned the need for building officials to be certified and suggested that placing greater emphasis on the role of design professionals could alleviate the pressures on municipal staff.

The benefits to the public in terms of ensuring safe buildings are discussed above.

Agencies like the Technical Standards and Safety Authority and the Electrical Safety Authority felt it was important to draw a clear distinction between the training and certification required pursuant to ensuring Building Code knowledge and the other specific regulatory requirements/technical standards under the jurisdiction of these authorities, e.g., design and approval of mechanical systems. These

agencies set technical qualifications for inspectors that derive from their statutory responsibilities, and steps should be taken to delineate the Code knowledge which is meant to be imparted to inspectors.

Code Competency for Designers

Mandating Code competency for designers and design professionals was viewed by building officials as an important and necessary means of improving the quality and consistency of plans and drawings which are submitted for review and approval. BRRAG heard over and over that it is not uncommon for some design professionals and others with little or no experience working with the Building Code to submit technical drawings which require substantial corrections. In a study of municipal building departments' service level standards for the Ministry of Municipal Affairs and Housing carried out by TROW Consultants, many municipalities reported that for more than 50 percent of projects being reviewed, their staff was making significant corrections to the designs submitted by professionals.

Builders supported the idea of certifying designers for Building Code knowledge as a means of getting better service from the individuals who they rely upon to provide them with technical expertise.

Design professionals themselves were more circumspect in their support of the notion that all designers should be required to pass a Ministry-administered examination as a condition of doing work under the Building Code, although they did support the concept as a condition of being able to carry out Code-enforcement work on behalf of municipalities under various alternative service delivery models (see the discussion under Streamlining). While some architects, including the chair of the Ottawa Regional Society of Architects, strongly favoured the certification of design professionals, others questioned the necessity for requiring all designers, inspectors and builders to be certified. A minority view held that financial accountability mechanisms such as insurance were better ways of achieving higher quality construction. This view is not shared by the Chair and Vice-Chairs, who believe there are broader benefits of formalized training and mandatory certification.

While the Chair and Vice-Chairs understand that the Building Code

requires that certain types of buildings be designed by architects and engineers, there was a view that all persons who are in the business of doing design work should be more Code knowledgeable. The Chair and Vice-Chairs also understand the roles of professional associations in providing mechanisms for imposing sanctions related to the professional conduct of design professionals. This role is an important one which is not intended to be superceded by the imposition of Code competency standards.

Architectural technologists, engineering technicians and interior designers who have long wanted to carry out more design work under the Building Code viewed the idea of a certification program as a means of enhancing their stature with building officials and prospective industry clients and property owners.

Contractor Licensing

Building officials, consumers and most builders support the proposal to impose mandatory Building Code competency criteria on builders by way of a licensing/certification scheme. Raising the professionalism and standards of the industry were most often cited as the reasons for this support. In the ICI sector, while there is broad support for registering builders and contractors for the purpose of addressing concerns about underground or black market construction activity, support for mandatory provincial licensing was less clear. Some builders viewed it as additional red tape, despite their support for increased training and education on the Building Code.

In the end, it is the view of the Chair and Vice-Chairs that a mandatory program is the most effective means of keeping builders knowledgeable about the Building Code, differentiating between good and bad builders and enhancing the profile of the industry as a means of attracting young people into the business.

The idea of licensing renovators and linking that licensing to technical competency vis-a-vis the Building Code was broadly supported by BRRAG, those who participated on the working groups and those at the regional sessions. While there was some support expressed for a voluntary certification program for renovators, as a first step, given the unique issues posed by this sector and the value of activity

undertaken (it surpasses the value of new home construction), mandating requirements related to Code knowledge was felt to be a key way of increasing accountability and protecting consumers. Concerns about black market activity and a desire to improve consumer protection provide compelling arguments in favour of the proposed approach.

A. 2. Municipal Licensing

Recommendation A.2.i:

The Chair and Vice-Chairs recommend that the Province amend the Municipal Act to prohibit municipalities from licensing builders, general contractors and renovators which are subject to new OBC-related technical competency criteria and new run-off insurance requirements (see below).

Recommendation A.2.ii:

The Chair and the Vice-Chairs recommend that the Province review legislative, regulatory or administrative changes necessary to dovetail municipal licensing requirements with existing provincial requirements (e.g., apprenticeship programs) and consider ways to reduce duplication and overlap in the registration/certification schemes which apply to various contractors under different statutes and authorities. This review should reflect the principle that if the Province sets technical competency standards, municipalities should be prohibited from imposing duplicate requirements.

While peripherally related to the concept of creating a more knowledgeable group of building practitioners, the actions of municipalities when it comes to imposing business licences on construction firms were identified as needing consideration. Such municipal licensing practices vary considerably and often do not include a component which seeks to determine the technical proficiency of the person or firm seeking the licence. There was some

support for the notion of completely eliminating the authority of municipalities to licence any construction firm, in favour of recreating this authority at the provincial level.

However, the Chair and Vice-Chairs believe that the appropriate scope of BRRAG's proposals should be limited to achieving the licensing/ certification requirements proposed in this report to address Building Code competency. Where these requirements will apply, duplicated municipal authority for those same practitioners should be precluded.

At the same time, it is the view of the Chair and Vice-Chairs that further consideration should be given to identifying opportunities for regulatory and administrative consolidation and the elimination of duplication in licensing requirements at the provincial and municipal levels for trades covered by other statutes and authorities, e.g., TSSA, ESA, and tradespersons covered by the *Trades Qualifications and Apprenticeship Act*. This analysis should be considered by these other agencies at the appropriate time. The principle should be that the Province set the standards for construction firms.

Stakeholder Reaction

Municipal representatives on BRRAG were some of the strongest supporters for removing the authority for municipalities to licence contractors and construction firms. Local enforcement of such programs is difficult, there are inadequate resources and prosecution of local by-law infractions is time-consuming. At the same time, municipal licensing generates revenue for municipalities, especially when there are no "value added" components to imposing the license in the first place. The loss of revenue, even on the scope of the recommendation included above, may raise issues with some municipalities.

Builders will support these proposals insofar as they result in no duplicated and/or conflicting licensing criteria. Contractors who participated on BRRAG and the working group which considered this issue may feel that the recommendation does not go far enough in terms of taking the power to licence out of municipal hands.

B) Streamlining

Most people who participated on BRRAG and its working groups, and those who made submissions during the regional stakeholder sessions did so with the motivation of wanting to streamline the regulatory process for new construction. Cutting red tape and reducing the costs of regulation are fundamental to what BRRAG was set up to accomplish. At the same time, everyone agreed that these objectives could and should not have the effect of reducing the public's confidence in the ability of the construction approvals process to ensure safe and high quality buildings. The Chair and Vice-Chairs fully agree with this perspective.

The Chair and Vice-Chairs were impressed with the scope of ideas for reform and the creative and innovative proposals which were made to increase the efficiency of the current regulatory model. Over and over again, BRRAG heard about the delays, added costs and unnecessary complexities which are associated with the current regulatory model. These views are strong and pre-date BRRAG's work. For example, in its 1998 submission to the Province on Developing a Framework for a One Window Reform of Building Regulations, the Joint Construction Council stated that, "there is a notable lack of uniformity regarding timing of the permit review process and the fees charged. There are instances where for no justifiable reason, permits are delayed on building projects involving experienced builders and pre-reviewed designs" (p.11, May 1998 JCC Submission to MMAH and the Red Tape Commission).

Rationalizing Current Requirements

From the perspective of municipal building officials, there is an acknowledgement that the process can be slow and complex. However, many of them, together with builders, said that the earlier points in the approvals process for planning and development control require equal attention in terms of streamlining reforms. The Chair and Vice-Chairs were made fully aware that the act of reviewing a set of drawings or plans for the purpose of determining Building Code compliance can happen for smaller buildings and houses within days of submission. While many delays can be traced to the sheer volume

of building activity, some of the more significant delays occur because of the length of time it takes to finalize site plan agreements, verify compliance with zoning by-laws, obtain approvals from external agencies like the Ministry of the Environment, the Ministry of Transportation, conservation authorities, etc.

While the Chair and Vice-Chairs are cognizant of the many previous exercises which have tried to streamline these other processes, there is a need to look closely at the way in which these approvals are granted, the time it takes and the costs they add to development. At the same time, there is a need to examine the way in which multiple and discrete approvals are handled within municipal building departments, under the jurisdiction of the *Building Code Act*. The objective should be to consolidate multiple permits, say for plumbing, building and heating requirements, into a single permit issued at the local level.

B. 1. Consolidating and Rationalizing Regulations

Recommendation B.1.i:

The Chair and Vice-Chairs recommend that the Ministry of Municipal Affairs and Housing work with the Building Advisory Council (see Recommendation C.4.i) and other appropriate ministries/stakeholders to assess and take action to streamline and consolidate non-BCA related legislation and regulations that affect the time it takes to get construction approved. Based on this evaluation, the Province should amend relevant legislation, regulations or administrative practices to direct which approvals and/or technical requirements could be consolidated into the OBC. Opportunities for such review and action include, but are not limited to:

- # storm water management, air emissions and ground discharge approvals related to the function of a building (e.g., kitchen exhausts) that are currently done by the Ministry of the Environment;*
- # notifications to the Ministry of Labour of permit applications which involve construction projects as required by the*

- Occupational Health and Safety Act (OHSA);*
- # *building and sign permits that currently require approval by the Ministry of Transportation (except for those relating to highway access or other planning matters);*
 - # *approvals by the Fire Marshal's Office for provincially-funded construction projects (e.g., schools, hospitals, etc.);*
 - # *notification and verification of builders' registration and fulfilment of warranty requirements for homes; and*
 - # *components of the approvals system that do not lend themselves to consolidation in the OBC but require improved accountability or coordination, such as the interface between building permit issuance and the planning approvals system for zoning and site plan control.*

Opportunities Still Remain

The Chair and Vice-Chairs believe that some important steps have been taken to consolidate construction-related regulations into the *Building Code Act* and the Building Code. These include septic regulations, property standards by-law requirements, regulations covering construction-related aspects of food premises and standards for plumbing and pools. More of this type of consolidation and rationalization can and should be undertaken.

In its submission to MMAH and the Red Tape Commission concerning One Window Reform of Building Regulations, the Joint Construction Council stated that "while it is recognized that the policy areas behind a few of these required approvals may logically remain the responsibility of specific ministries not primarily involved in building regulations, the review and approval function with respect to specific building projects should be very significantly consolidated at the municipal building department level" (p. 12, JCC Submission, May 1998). The Ministry of Municipal Affairs and Housing's current work to identify legislation, regulations, standards, guidelines, etc., which affect construction in Ontario would provide a useful database of potential opportunities. The principle should be that, where possible,

permit applicants should be able to go to a “single counter” for their construction-related approvals and inspections.

Building Code Service Delivery Improvements

At the same time, there are a number of reforms directly related to Building Code enforcement that were discussed and merit inclusion as legitimate streamlining reform recommendations. These include:

- setting clear performance benchmarks or level of service standards that Code-enforcement authorities would be expected to provide for permit applicants;
- allowing accredited and insured private sector agents and other administrative authorities to be relied upon by municipalities to perform plans review, inspection and other Code-related services as a means of improving approval efficiencies;
- standardizing application forms, fee calculation methods and field review processes to ensure more clarity, uniformity and consistency for applicants moving through the approvals process;
- providing broader authority for building officials to approve innovative building designs to encourage less costly and more flexible approaches to building design and construction;
- clarifying the key points in the permit issuance process for when decisions should be made to increase certainty about timing and reduce bottlenecks;
- making clear that building permit fees should be used to cover only the costs of Code-enforcement services;
- allowing for the Ministry to issue binding Province-wide Code interpretations to assist in clarifying technical requirements;
- providing the opportunity for municipalities to consolidate certain inspection functions (e.g., electrical inspections for houses) not presently under their jurisdiction in order to provide “one-window” service delivery at the local level;

- eliminating duplication in the review and approval of identical building plans and drawings which are used in different municipalities to reduce costs and delays; and
- establishing appeal processes which are locally-based, more accessible, less bureaucratic and reduce the types of issue which require the Courts to intervene.

Who Benefits From Streamlining?

There is little doubt that the cost of inefficiency, delays, redundancy and excessive complexity associated with building regulations has a negative impact on economic development, job creation and missed opportunities for innovation and investment. Throughout the BRRAG exercise the Chair and Vice-Chairs heard from large and small builders, building owners and others who have significant investments which can be seriously affected by delays in getting construction approved and underway. Not surprisingly, many of the recommendations which are set out below are intended to address their concerns.

At the same time, the Chair and Vice-Chairs are also mindful that it is not only the large builder with dozens of staff, many of them technical experts, or the sophisticated chemical producer looking to build a new multi-million dollar plant, who rely most extensively on building officials and the services they provide. Homeowners who may only do one project in their lifetime also need a building regulatory system which caters to their needs; one that is simple and transparent and one that recognizes that they need the help of building officials to guide them through the process. As Liz Hilfrich, Chief Building Official for the City of Gloucester pointed out at the June 8, 2000 regional session in Ottawa, “we need to remember the little guy with the deck or the basement renovation. They are looking to us for a service and don’t come equipped the same way as a big corporation. Whatever we do to streamline must have benefits for these people as well.”

B. 2. Service Level Standards

Recommendation B.2.i:

The Chair and Vice-Chairs recommend that the Province amend the BCA (and, where necessary, the OBC) to establish minimum level of service standards for Building Code-enforcement agencies (public and private), including:

- *time frames for issuing permits and making determinations of compliance with the BCA/OBC;*
- *minimum numbers/types of inspections; and*
- *use of qualified inspectors/plans reviewers.*

Further the BCA/OBC should be amended to provide authority for the creation of standards which provide direction for building permit applicants related to submission of applications, field review requirements and minimum elements to be included in plans/drawings.

Recommendation B.2.ii:

The Chair and Vice-Chairs recommend that the Province amend the BCA to require that, where applicable law has been met, OBC enforcement agents be required to make a decision on whether to issue a permit within the following time frames:

- *5 business days – stock plans for Part 9 Houses;*
- *10 business days – Part 9 Houses;*
- *15 business days – Other Part 9 Buildings;*
- *20 business days – Part 3 Buildings; and*
- *30 business days – Complex Buildings.*

Recommendation B.2.iii:

The Chair and Vice-Chairs recommend that the Province amend the BCA to clarify the circumstances under which site plan or development permit control constitutes applicable law. The principle would be that once the location of the building, servicing and built form have been established and securities have been posted, a building permit must be issued.

Benefits

Clarifying Expectations

Many jurisdictions which have implemented regulatory reforms in recent years (New Jersey, Alberta, Victoria Australia) have focussed on establishing standards or benchmarks for regulators as a way of measuring performance and clarifying expectations of both service providers and clients. Time frames for issuing permits or checking Building Code compliance were mentioned most often by BRRAG members and others as a critical element for achieving greater efficiencies in the construction approvals process.

Time Frames Mean Discipline

A key benefit of such a standard is the introduction of a tension in the system which influences the actions of building officials to meet certain bottom-line expectations. Such time frames also provide greater certainty for permit applicants who can use them to structure their business decisions. Builders and designers like the consistency and standardization which come from uniform time frames. On the other hand, time frames also demand discipline from building permit applicants and designers who should be expected to provide factually correct and high-quality information and/or plans necessary for the building official to make a determination. Service level standards are a two-way street and impose requirements on both the applicant and the regulator.

The recommendation for time frames assumes that there is a complete application and that the number of days refers to business

days. Stock plans would need to be defined and would mean drawings/plans which have already been approved within the municipality.

Making Determinations vs. Issuing Permits

There was considerable discussion about how time frames should be tied to service delivery. While attention often focusses on the time required to obtain the permit, the necessity for applicable law to be met as a prerequisite to permit issuance suggested a need to distinguish between the decision points of assessing applications for Code compliance and issuing the permit. This is especially important in light of the often-made statement that applicable laws are frequently beyond the control of building departments. The Chair and Vice-Chairs did, however, favour a model which takes account of the decision point which is most meaningful for permit applicants, namely permit issuance.

This approach would maintain the current obligation on building officials to issue a permit once applicable law has been met and compliance with the Building Code has been determined, while ensuring accountability for timely service. Where Code compliance and applicable law have been satisfied, the established time frames contained in the BCA/OBC would govern permit issuance to ensure there were no delays in decision making.

Site Plan Control and Applicable Law

Related to the issue of time frames for making determinations and issuing permits was the relationship between the building approval process and certain planning functions, most notably site plan approval. BRRAG heard from numerous stakeholders about the confusion which exists around whether site plan control agreements constitute applicable law, and therefore, have to be in place before building permits can be issued. Significant benefits could be realized if this uncertainty was eliminated or reduced, including reduced delays, less interference with legitimate Building Code compliance issues and reduced opportunity for abuses of the *Planning Act's* site

plan control provisions.

Ensuring Accountability

Level of service standards are fundamentally important for ensuring that municipalities are accountable for the services they provide. They should assist in informing municipal risk management frameworks and would likely be beneficial in terms of providing comfort to insurers that municipalities work under mandated standards for their service delivery. At the June 22, 2000 regional BRRAG session in Barrie, officials from the Town of Penetanguishene supported this notion by stating that the current legislative model “has made it difficult to implement standards of service for building departments to minimize liability.” The Town argued that service level standards would allow municipal councils to “control the level of legal liability they are prepared to expose themselves to in the performance of building and structure plans review, approval and inspection services” (Town of Penetanguishene resolution submitted to MMAH on June 20, 2000).

These standards are also essential in the context of setting expectations for accredited Code-enforcement agents who may be used by municipalities to provide Code-enforcement services. In the absence of minimum level of service standards and minimum competency standards for inspectors, some municipalities are uncertain about what is an appropriate service level, or do not feel compelled to provide adequate resources to meet an appropriate service level.

Costs

Balancing Certainty and Local Autonomy

While there are many positive aspects associated with service level standards like turn-around time frames, minimum numbers and types of inspections, plan review requirements, etc., there are implications associated with such an approach. Most notable was the idea that minimum service levels standards can become the lowest common denominator in terms of service delivery. Undoubtedly, there are many communities for whom provincially-established and codified

standards will not be adequate to meet community expectations for design review and approval. Striving for excellence in service delivery should always be the goal of any public service provider. But at the same time, there needs to be certainty provided for clients. The keys are to strike a balance between certainty and flexibility, to set a framework for how such standards are to be met and to recognize that Code-enforcement services should not vary so widely across the Province given the intent of the provincial government to have uniform construction standards for achieving public safety.

B. 3. Process Standardization

Recommendation B.3.i:

The Chair and Vice-Chairs recommend that the Province amend the BCA/OBC to give the Province authority to issue standards (which would be mandatory to follow) covering administrative aspects of the BCA/OBC. These standards should include:

- *a checklist, for use by designers, which sets out minimum elements (e.g., foundation, building envelope, structural, mechanical, fire protection) to be included in plans submitted for different types of buildings (and linked to the concept of a standard/complete application);*
- *a checklist, for use by designers, covering broad field review/inspection elements (e.g., excavation, foundation, superstructure, fire protection, etc.) to verify Code compliance for key building elements;*
- *a checklist, for use by builders, covering broad field review elements to verify Code compliance;*
- *a common building permit application form that relates to information required in order to make a determination about OBC compliance;*
- *a list of applicable law; and*
- *a methodology to be used by enforcement agencies in calculating permit application fees.*

In addition to service level standards for municipalities and other Code-enforcement agencies, BRRAG discussed a number of suggestions for ways to increase certainty and consistency in how different steps in the design, review, inspection and construction process are carried out. Standardization was a key idea supported by BRRAG, its working groups and participants in the regional sessions. This concept was discussed in the context of application forms, fee calculation methodologies (using the models in New Jersey and Victoria Australia), field review and inspection checklists for designers and builders, the identification of what constitutes applicable law and the assessment of innovative building designs.

Key Contacts in the Process

BRRAG and its working groups discussed the merits of identifying key players in the process; persons with whom Code-enforcement agents would liaise either in the field or during the plans review phases of the approvals process. There was support for the idea of a single individual being responsible for coordinating the design disciplines for Building Code compliance on larger (i.e., Part 3) buildings. The benefits of this approach would be the potential to identify technical design problems earlier in the process and the ability to address overlap in design criteria introduced by different professionals (e.g. mechanical, structural, fire protection).

There could also be benefits in identifying an individual responsible for coordinating construction on the site. This could result in the improved coordination among disparate disciplines, particularly where there are conflicts between two or more disciplines. Identification of one key individual is intended to ease the development process by facilitating coordination and communication between the various parties. The Chair and Vice-Chairs also see merit in this approach and believe that the design of application forms, completion of the above checklists or the establishment of roles and responsibilities should incorporate the notion of identifying an appropriate “co-ordinating professional” and “person in charge of work.”

Using Standardized Tools Requires Knowledge

Such standardized tools are most effectively used by people who have the technical understanding and knowledge required to interpret and apply the Building Code. As such, their relationship to the proposals in this report for practitioner certification are significant.

Costs

Balancing Flexibility and Certainty

There are potential costs associated with an increased reliance on standardized tools like checklists, forms, fees, etc. That cost is the inability of such standardized tools to deal with each and every unique situation that arises and the potential loss of autonomy enshrined within them. The Chair and Vice-Chairs believe that the creation of such standardized tools have the potential to streamline processes and reduce delays in obtaining approvals, but only if they are designed with broad objectives in mind. Where possible, these tools should not be re-invented, but rather be given more formal recognition through provincial codification. The field review checklists which have been developed by architects, professional engineers and building officials as good practice could act as models.

In some cases, to ensure necessary flexibility, guidelines should also be issued which are not mandatory and instead constitute recommended practice. An example could be the issuance of a guideline for applicants and enforcement agents to use in developing and assessing proposals for Building Code equivalencies (see Recommendation B.5.i). The intent of these standards and guidelines is to standardize existing approaches, clarify expectations and address issues in a general way, not to impose detailed, overly prescriptive requirements that eliminate flexibility.

Consolidate and Reduce Duplication

In light of BRRAG's mandate to minimize duplication and cut red tape, these standards should replace existing field review requirements (e.g., ONHWP's Bulletin 19, the Ontario Association of Architects' and

Professional Engineers of Ontario's field review letters, the *Condominium Act* regulations for performance audits) which duplicate the intent of ensuring OBC compliance.

Stakeholder Reaction

Builders and Designers

Significant support was expressed by builders and designers for measures which would ensure consistency and uniformity in service delivery, increase standardization in approaches among municipalities and reduce delays and backlogs. Service level standards were one of the most widely supported reform aspects discussed during BRRAG's deliberations. Some apprehension was expressed about the perception that setting out standards for inspection, application requirements, fee calculation methods, etc., could suggest additional checks and balances which go beyond the streamlining mandate of BRRAG. While these concerns are valid, the Chair and Vice-Chairs were satisfied that these tools could be crafted in such a way so as to ensure that they increased, rather than decreased regulatory efficiency. One way to ensure that this occurs is to involve affected stakeholders in the development of these standards.

Building Officials

Building officials supported service level standards as a means of clarifying what is expected of them, both by clients and municipal councils. Likewise, building officials strongly supported the clarification of what constitutes applicable law because of the uncertainty which currently exists. This uncertainty is one of the key reasons that building officials are often viewed as the "gatekeeper" in the approvals process, a distinction which comes quite frequently with negative connotations.

Some building officials did, however, raise concerns about using a standardized application form which would take away their ability to request information beyond that required for determining Code compliance.

The Chair and Vice-Chairs support standardization of the portion of the permit application form which pertains to Code-specific information that is required by all municipalities to assess compliance with the Building Code. This information should be universal and not vary from one municipality to another because the Code does not vary and because the other reforms being proposed will set more uniform service level standards. Municipalities could then request additional information that pertains to applicable law and other matters which is specific or unique to their jurisdiction. This approach provides some consistency for permit applicants while enabling municipalities to tailor the application to local needs.

B. 4. Permit Fees Based on Service Delivery

Recommendation B.4.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act to require that the use of building permit fees be linked to the delivery of Building Code-enforcement services (including amounts for administration, legal, overhead and support for education and training).

Further, the Chair and Vice-Chairs recommend that a small dedicated portion of building permit fee revenue for permits with a construction value in excess of \$10,000 be allocated to cover administrative costs associated with recommendations flowing from this report, such as dispute resolution mechanisms.

BRRAG heard many concerns from both permit applicants and building officials about the common practice whereby the revenue collected by municipal building permits exceeds, especially in larger centres, the cost of providing plan reviews, building inspections and other Code-related services. This excess revenue is used for other municipal purposes, including covering the costs associated with planning approvals functions, enforcement activities and other less related community-based services. This practice has two significant implications.

Current Approach May Reduce Resources for Service Delivery

First, it has the potential to take resources away from meeting the needs of permit applicants. If revenues were retained in building departments, they would have the ability to increase staff levels and invest in and retain the expertise necessary to meet clients' expectations and needs, especially in periods of high building activity.

The study of municipal building department service level standards carried out for the Ministry of Municipal Affairs and Housing by TROW Consultants found that it was not uncommon among the 20 municipalities surveyed for revenues to exceed expenditures by 100 to 200 percent, and in some cases by as much as 500 percent.

Relationship to Court Decisions

Second, this practice would appear to contradict Court decisions which have clearly established the principle that user fees are not taxes and as such should be reasonably based on the cost of providing the service.

Benefits**# Certainty**

The Chair and Vice-Chairs find great merit in the precedent established by the *Planning Act* which requires that fees prescribed for processing planning applications shall be designed to meet only the anticipated costs for the processing of these different applications. This principle is one that should apply equally to building permit fees. The approach that is being used in Oakville for determining the costs of providing service, called the "enterprise" model, provides its system users with an accurate and transparent window on how much it costs to deliver Code-enforcement services and should be considered by the Province in setting up the regulatory model.

Meeting Expectations

Taking this approach would have the benefit of devoting an appropriate level of resources to maintaining service level standards and would allow for an investment in the expertise required to do the job. With adequate resources for enforcement, municipalities will be in a better position to provide a higher level of service and reduce their liability exposure.

Permit Fees for Training and Certification

BRRAG also examined the question of whether a portion of building permit fees should be earmarked to fund the training and certification program and other administrative functions which would support the recommendations in this report.

Stakeholder Views

Builders expressed support for the idea as long as there were demonstrable improvements in the quality of the inspection services they received and the mechanisms which they could rely to get speedier and less-costly approvals.

Other views expressed in support of a dedicated fee saw this as a means of ensuring that as a mandatory certification program is rolled out, there would be dedicated funding for its development (training course curriculum, administration of the program) and for covering the costs of inspectors to be enrolled. Smaller municipalities could also benefit from such a model because of the lower department budgets and the fact that, in many cases, their building departments operate at a loss. It was suggested that implementing such a scheme could reduce a potential barrier to new people becoming inspectors. The view was also expressed that without an ability to have a dedicated source of revenue for an expanded appeal's body, the cost of these services to users would be prohibitive.

The contrary view held that training and certification should be the financial responsibility of the municipality or accredited Code-enforcement agency as employer. Their view was that the cost of

developing training programs should be recouped through course fees. The establishment of building department budgets should include funding for such programs, and this decision should be made at the local level without the need for provincial regulation. There was a view that not every aspect of BRRAG's mandate needed to be regulated. It was also not felt appropriate for larger municipalities to subsidize smaller ones.

The Chair and Vice-Chairs believe that the certification and licensing scheme proposed above should be based on a self-funding (user pay or pay as you go) model, and not be funded from a portion of permit fees. However, other administrative costs associated with this report's reforms, including an expanded appeal's body, the current Building Materials Evaluation Commission, the development of technical information required to improve knowledge about building science and public safety, etc., could benefit considerably from a small portion of permit fees being earmarked for these purposes.

Other jurisdictions which have implemented building regulatory reform have used this approach successfully (including Alberta, New Jersey and Victoria Australia). The Chair and Vice-Chairs find great merit in their view that such revenues represent an investment in improving the quality of their systems.

Stakeholder Reaction

The high level of support for limiting permit fee revenues to the reasonable costs of providing Code-enforcement services can best be summed up by the positions expressed at the regional BRRAG sessions held in Sudbury and Toronto. Guido Mazza, Chief Building Official for the City of Sudbury, stated that "user fees should reflect the benefit to the user. They should be based on the cost of the service delivery. User fees should not be fixed to create profit." In his presentation in Toronto on June 7, 2000, Jim Murphy of the Greater Toronto Home Builders' Association recommended that "legislation should include provisions to ensure that building departments are not profit centres, but rather are self-financing. Costs should cover the operations of the building department" (p.2, GTHBA Submission to BRRAG). These views reflect the cross section of positions which

were expressed by BRRAG members and those of the working group members.

On the issue of dedicating a small portion of permit fees revenues toward Building Code administration and implementation of this report's reforms, there may be concerns that such a move represents a provincial effort to access a local revenue stream. However, given the appropriate parameters to be placed around this measure (what it can be used for and by whom), the Chair and Vice-Chairs are satisfied that affected stakeholders will see positive impacts from its introduction.

The Chair and Vice-Chairs are aware of the views at the municipal level which exist beyond local building departments. In certain cases, the loss in municipal revenue associated with implementing the recommendation to link fees to service delivery could be significant. Municipal officials may react negatively to having such a revenue stream taken away. However, it is the understanding of the Chair and the Vice-Chairs that this approach reflects the state of legal interpretation at the present time.

Other Streamlining Measures

Three additional and significant ideas for streamlining were considered by BRRAG and its working groups.

B. 5. Certified Plans and Drawings

Recommendation B.5.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act to provide authority for the review of plans or drawings in order to "certify" them for code compliance across a number of municipalities. This authority would require that there be approval reciprocity among municipalities such that once a set of drawings or a plan is "certified" and the same plan/drawing is submitted elsewhere, it would not require review again.

Builders, especially larger builders of tract subdivision homes, pointed to an innovative pilot project in Halton Region where local municipalities are implementing a protocol to accept plans approved in other municipalities within the region. The idea behind the concept is to have one municipality or agency review plans or drawings in order to “certify” or “stamp” them for Code compliance. Once this occurs, there would be no subsequent reviews in other municipalities as long as the plans did not change, and as such, builders would only pay once for the plans review function (with inspections paid for separately). Issues which are unique to each municipality and each construction project such as site planning and certain other applicable law issues (road access, zoning, etc.) would still have to be addressed within each municipality.

Reducing Duplicated Functions

While this scheme could be adopted by any sector, including both residential and the ICI sectors, it is worth noting the considerable efficiencies for residential builders who want to build and market identical house plans in different municipalities if such a scheme were to exist. As the Greater Toronto Home Builders’ Association pointed out in its submission at the Toronto regional stakeholders session, “a primary concern is that each municipality has different rules and approaches. In a world which is getting smaller economically, a house approved in Oakville should also be good enough for approval in Markham, Richmond Hill and Ajax” (p.2, GTHBA Submission). This direction would reduce the duplicated effort required to have the same plans reviewed and approved multiple times.

At the same time, it was recognized that the use of “identical” plans may not occur that frequently and that the marketing efforts of builders can often result in modifications to what is actually built. Nevertheless, the potential benefits of such a scheme appear reasonable.

There was discussion at BRRAG about whether this recommendation should be mandatorily imposed on all municipalities or whether the authority should be permissive (and subject to use by participating municipalities). It is the view of the Chair and Vice-Chairs that without

some imperative, there is some question about whether municipalities would make use of this power. The adoption of minimum standards for service delivery, certification standards for Code competency, clearer rules about roles and responsibilities, etc., should provide comfort that the quality of review of plans and drawings will be more consistent. Where errors are identified after initial plan “certification”, there should be an obligation to take action to correct deficiencies.

B. 6. Equivalent Designs

Recommendation B.6.i:

The Chair and Vice-Chairs recommend that the Province amend the OBC to give enforcement agents authority to approve equivalents for building designs. Refusals of equivalent designs would be subject to the available dispute resolution mechanisms.

BRRAG identified the need to provide municipalities and other inspection agencies with broader powers to approve equivalents and variances in building design, in addition to the existing powers to authorize building systems and materials. Part of the imperative for this proposal is based on the impending move toward an objective-based Building Code. Indeed, such authority is inherent under the move to such a new Code format. The National Building Code already makes provision for the acceptance of methods of design not specifically described in the Code where it can be shown that such alternatives can be shown to be suitable based on past performance, tests or evaluations.

Any new power to approve innovative building designs is closely tied to increasing practitioners’ understanding of building performance, which can be facilitated through this Report’s earlier recommendations for certification and licensing. Builders, designers and building officials pointed to the opportunities to reduce disputes and approval delays by granting Code-enforcement authorities these powers. At the same time, and in order to facilitate the use of such authority, liability reform and adequate technical competency are necessary prerequisites for such a proposal.

While objective-based Codes will increase the need for municipalities to consider innovative building technologies and methods, they will also provide more guidance to proponents and municipalities as to the intent of the Building Code. In addition to expanded training on the application of objective-based Codes, a guideline for municipalities/inspection agencies could be developed to assist them in evaluating applications in a rigorous and consistent manner (see Recommendation B.3.i).

B. 7. Province-Wide Code Interpretations

Recommendation B.7.i:

The Chair and Vice-Chairs recommend that the Province amend the BCA to give the Ministry the authority to issue Province-wide binding interpretations and opinions related to the OBC.

The Ministry's Housing Development and Buildings Branch opinions serve an important function in Ontario's building regulatory regime, as they are often very useful in providing guidance and ensuring uniform Code interpretation. Opinions are also useful in situations where the Code is unclear or ambivalent with respect to a particular issue and clarification is required. At present Branch opinions are not binding.

The Chair and Vice-Chairs heard from numerous stakeholders that said the Province should have the power to issue, where appropriate, binding branch opinions and Code interpretations, which are broad in their application. To some extent the recent change to the *Building Code Act* to allow for Minister's Rulings that apply Building Code Commission decisions across the Province is a good starting point in terms of streamlining. This approach requires, however, that a formal dispute occur.

The Chair and Vice-Chairs believe that what is needed is for some of these binding opinions to be proactive in that they anticipate emerging issues. This would permit efficient Province-wide responses to emerging issues relating to building safety or the interpretation of the Building Code's provisions. This authority should be balanced against

the need to ensure government accountability for regulatory amendments.

The Chair and Vice-Chairs also believe that the Ministry of Municipal Affairs and Housing should provide a complementary service for practitioners, enhancing the existing service which provides for individuals to call technical advisors and obtain consistent Building Code interpretations when questions arise that may not require more formal dispute resolution mechanisms. If the service were provided through a "1-800" or "1-900" telephone number, this would provide a quick and effective remedy when dealing with Code interpretations. It would not be a legally binding decision but could result, if similar issues consistently arise, in the issuance of a binding opinion as is described in Recommendation B.7.i.

Building Code Enforcement by Agents Other Than Municipalities

One of the most significant policy-related questions addressed by BRRAG related to whether there are other practitioners besides municipalities that should be allowed to carry out plans review, inspections and other Code-enforcement functions. It was an issue where a full range of perspectives were presented, discussed and debated.

At one end of the spectrum was the view that there should be full competition in the marketplace for the delivery of inspection and Code-enforcement services. Much like the situation in Victoria Australia, private sector firms and other agencies would be able to offer Code-enforcement services as a distinct alternative to municipal delivery. They would have virtually all of the powers and responsibilities of municipalities. Under this model, such alternative service providers would still be required to meet certain levels of service standards, acquire appropriate accreditation, employ certified inspectors, carry adequate insurance and be financially accountable for their work. The benefits of this model were presented primarily in terms of encouraging competition as a means of increasing efficiency, getting the best value for money and recognizing the specialized services which alternative service providers can deliver.

Few stakeholders were prepared to embrace all aspects of this

regulatory approach. The Chair and Vice-Chairs believe that the significant improvements which are being introduced to the regulatory system through tools such as mandated minimum service level standards, permit processing times, better tools to ensure consistency in field reviews and applications and standardized forms and fees does not create as great an imperative or pressure to adopt a pure competitive model. Such a competitive model might also create the potential for service delivery to suffer because of an emphasis on cost competitiveness, without significant government oversight. The potential lack of coverage in smaller centres which have lower levels of building activity is also a concern.

The current regulatory framework in Ontario places an onus on municipalities to provide Building Code-enforcement services. What has been identified as the primary concern for permit applicants is that in some instances, because of inadequate resources, high building activity levels, a lack of capacity or other unique constraints, permit applicants cannot get the service they desire fast enough or at a high quality. A regulatory approach was identified to deal with these concerns.

B. 8. Accredited Code-enforcement Agencies

Recommendation B.8.i:

The Chair and Vice-Chairs recommend that, in order to ensure that mandated service level standards are met, the Province amend the Building Code Act to allow municipalities to utilize (by outsourcing) accredited Code-enforcement agencies which would provide Building Code-enforcement services (including the private sector, other municipalities, ESA, TSSA or a new administrative authority).

Further, the amendments to the Building Code Act should provide that the powers of accredited Code-enforcement agencies would include authority for plans review, field inspections and certain other statutory functions (e.g., issuing orders), but would not include ensuring compliance with applicable law, permit issuance and undertaking prosecutions (these functions would remain with the municipality).

Much of BRRAG's discussion focussed on creating the capacity for municipalities to utilize the services of qualified agents outside of their staff to carry out certain Code-enforcement functions. The primary impetus for this move is to ensure that service level standards can be met. Under the model proposed, municipalities which choose not to provide Code-enforcement services (whether for one or more parts of the OBC), would be obligated to have one or more accredited agencies available to provide the services. Because municipalities would always have a residual role in the process and given the model being proposed, permits fees would, unless otherwise specified, flow to municipalities so any administrative functions they perform would be funded. The costs associated with those functions carried out by accredited Code-enforcement agents would be subject to a contractual relationship between the agent(s) and the municipality.

Benefits and Costs

Maintaining the "gatekeeper" role of municipalities in the construction approvals process, primarily through the issuance of permits and ensuring compliance with applicable law, ensures that some accountability always resides with the municipality. At the same time, the model proposed meets the expectations of stakeholders by linking the use of accredited Code-enforcement agents to the establishment and achievement of level of service standards.

By allowing for the use of these agents, public safety is ensured by the delivery of a high quality service in all parts of the Province. This is especially important in rural and smaller communities where Code-enforcement service levels are quite variable.

It is difficult to predict what actual costs would be associated with service delivery by agents other than municipalities, but the presumption that costs would be related to the delivery of the service would establish a benchmark for such agents. Requiring municipalities to maintain some residual role does, however, have the downside of potentially fragmenting service delivery.

Linkages with Other BRRAG Reforms

The use of accredited Code-enforcement agents would rely upon and be tied to the use of certified inspectors, the imposition of requirements for run-off insurance and the establishment of clear roles and responsibilities for key practitioners. Level of service standards would apply to these agents as they would for municipalities.

B. 9. Accreditation

Recommendation B.9.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act (and, if necessary, the Building Code) to set up a self-funded provincial accreditation/certification body for Building Code-enforcement agencies and individuals (inspectors, designers and builders) overseen by a board of affected stakeholders. Key requirements for agency accreditation should include:

- *accreditation linked to the scope of services provided and types of buildings covered;*
- *use of certified inspectors;*
- *appropriate liability insurance coverage; and*
- *meeting established legislated level of service standards.*

The powers of the accreditation/certification body would include the ability to issue, renew, revoke or suspend agency accreditation and inspector, designer and builder certification, and monitor/audit the operation of accredited Code-enforcement agencies and certified individuals. The Chair and Vice-Chairs support the need for such a certification body to rely on the guidance and advice of stakeholders who represent the different sectors who would be affected by the operation of this new accreditation/certification body. This would ensure that its operations are linked to the roles and responsibilities of different professional, trade and sector organizations.

Several other issues were identified which would require consideration

in the development of legislation to allow for this type of a model to exist. For example, it is clear that the system should prevent conflicts of interest by prohibiting, on a project-by-project basis, the same firm which designs a building from inspecting and approving the same building as an accredited Code-enforcement agent. Criteria need to be developed that would clearly establish when firms have a conflict of interest in carrying out an inspection, with attention to cases such as when the same firm is working on different aspects of the same project and where the inspection and design firms are separate but under the same parent company.

Benefits and Costs

Agents which want the authority to take on Code-enforcement functions would need to demonstrate that they are qualified to do so. Having the Province set and enforce these standards would ensure accountability and provide the assurances to the public that safety is not being compromised. The requirements for adequate insurance have the benefit of making these agents liable for the work they do, an important element in minimizing risks associated with lack service delivery.

An accreditation/certification framework requires the creation of an entity which will establish and implement the provincial standards. In order for the body to have credibility, its enforcement, auditing and sanctioning functions will require adequate resources. The funding source for such functions, as discussed above, would be through user fees.

Linkages with Other BRRAG Reforms

An accreditation/certification body is as relevant for setting standards for Code-enforcement agents as it is for the certification of the individuals which will be covered by Recommendations A.1. It is this body which would administer the licensing and certification scheme for designers, inspectors and builders/general contractors and renovators and would have the power to issue, renew, revoke or suspend certification and hear complaints about individuals.

B. 10. Appeals

Recommendation B.10.i:

The Chair and Vice-Chairs recommend that the Province amend the BCA to expand the mandate of the current Building Code Commission or create a new Appeal's Board (comprised of appropriate stakeholder interests) which would have the authority to address, on a case by case basis and within specified, responsive and efficient time frames:

- *compliance with level of service standards;*
- *appeals about matters related to the removal of accreditation for Code-enforcement agencies;*
- *appeals related to the removal of certification for inspectors, designers and builders; and*
- *disputes currently within the mandate of the Building Code Commission.*

The principle behind creating this body would be to reduce the types of BCA/OBC enforcement matters which are currently addressed by the Courts. This body would have the authority to order that permits be issued by enforcement agents (subject to applicable law being met) and have the capacity to hear and resolve disputes locally.

Benefits and Costs

The concept of a new mechanism for dealing with disputes over Code administration and enforcement matters was seen as benefiting all building practitioners, permit applicants, consumers and the public. By streaming disputes away from the Courts, there would opportunities to deal with administrative matters in a less bureaucratic and legalistic fashion. Such a mechanism would be more accessible and allow for individuals with appropriate Code-related backgrounds to hear and resolve disputes. This would streamline the process and potentially reduce delays and costs.

By expanding the mandate of the Building Code Commission, there would be opportunities to take advantage of an existing infrastructure. At the same time, the new responsibilities would require additional resources, members (with different expertise) and the capacity for decentralized operation.

B. 11. Joint Municipal Delivery of Code-enforcement Services

Recommendation B.11.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act to explicitly provide for the joint delivery of Code-enforcement services by municipalities, and that in doing so it clarify liability and the roles and responsibilities of participating municipalities.

The Chair and Vice-Chairs heard compelling arguments in favour of allowing a cluster of municipalities to have the ability to be jointly accredited and to deliver inspection services through local offices, when an individual municipality does not want to or cannot provide mandated levels of service. Municipalities are already able to jointly deliver Code enforcement, but joint service delivery may become more common if the Province sets minimum level of service standards and accountability for the process is clearly established.

B. 12. Alternatives to ESA/TSSA Inspection Services

In addition to examining how municipalities deliver their services, BRRAG also discussed how agents other than ESA and TSSA could assume some of the construction-related inspection functions carried out by these administrative authorities.

Recommendation B.12.i:

The Chair and Vice-Chairs recommend that the Province amend the legislation and regulations covering the Electrical Safety Authority

(ESA) and Technical Standards and Safety Authority (TSSA) as required to allow municipalities to be designated to provide construction-related inspection services under the jurisdiction of ESA and TSSA, subject to the presentation of a business case to the satisfaction of the Boards of ESA and TSSA and the Minister of Consumer and Commercial Relations and the municipality meeting applicable accreditation and service delivery criteria.

There was substantial, but not total support, for delegation of inspection authority to municipalities (so long as they meet the level of accreditation required and comply with the service level standards used by ESA and TSSA), but this would be subject to the agreement of ESA or TSSA and the Minister of Consumer and Commercial Relations (in light of the current legislative framework).

The ESA/TSSA inspection functions taken on by municipalities would follow the approach discussed above in relation to the scope of authority for accredited Code-enforcement agents employed by municipalities. Of specific interest to BRRAG was the concept that the dispute resolution mechanisms of these authorities would apply to municipalities.

Decisions to contract services with municipalities would need to be based on a business case analysis which would look at the level of activity, sophistication of the municipality seeking to deliver the service, etc. Strong support was expressed by contractors, and to a lesser extent by builders, for the authority to delegate electrical inspections to the private sector, in addition to municipalities. There was a view that rather than limiting the authority for delegation to municipalities, a more open model should be subject to review by ESA, TSSA, MCCR and industry representatives to determine its feasibility and desirability.

Benefits and Costs

The principal benefit of allowing municipalities to deliver certain administrative authority inspections is related to the opportunities for consolidation of construction-related approvals at the local level. This

was seen by some BRRAG members to be a more transparent and accessible process which could increase efficiency. On the other hand, it was suggested that contractors and other clients of the administrative authorities support the current framework and that allowing for the service delivery to become fragmented and decentralized would reduce efficiency and certain economies of scale.

Some of the functions carried out by TSSA and ESA are of a specialized nature, and public perceptions about the level of public safety associated with which entities perform these functions is an important consideration, e.g., inspection and enforcement of standards for elevator installations. There was some concern about devolving some of the more specialized functions, such as elevators. However, not all inspections performed by TSSA and ESA are highly specialized and, as such, these authorities should be willing to consider proposals for service delivery alternatives at the municipal level.

Stakeholder Reaction

Builders and designers support the concept of allowing agents other than municipalities to deliver Code-enforcement services. According to the Joint Construction Council in its 1998 submission to the government on One Window Reform of Building Regulations, such an approach “should have a very high priority as it can significantly contribute to increased efficiencies in reviewing and approving project submissions, thereby reducing costs to consumers” (p.9, JCC Submission to MMAH and the Red Tape Commission).

Some builders and designers may feel that the recommendations do not go far enough in terms of allowing for alternative service delivery. Concerns were expressed that a meaningful opportunity is being missed to push even further toward a system where the private sector or other agencies could compete directly with municipalities for the business of permit applicants. The Chair and Vice-Chairs are, however, satisfied that these proposals strike an appropriate balance in meeting the objectives that the government set for BRRAG. At some point in the future, once more experience is gained with the proposed model, further change could be pursued. Such an

examination should be one of the tasks set for the Building Advisory Council discussed below.

Municipalities and building officials support the proposal in that it provides for choice in how they deliver services and assists them in meeting client service delivery expectations and provincial level of service standards. For municipalities which face constraints in resources, the ability to rely upon accredited Code-enforcement agents would allow them to satisfy their residents and clients and meet public safety imperatives.

C) Improving Accountability in the System

Accountability encourages quality performance. In the business of building, high-quality workmanship is key in all areas – ranging from design to inspections to construction – to reduce defects that can jeopardize health and safety. The building regulatory system should provide the means to encourage accountability.

In order to achieve accountability, parties must be aware of their obligations and answerable for their performance. Deficiencies in both of these areas were identified during the BRRAG process and are addressed in the recommendations of the Chair and Vice-Chairs that follow.

C. 1. Increasing Awareness of Expected Roles and Responsibilities

Recommendation C.1.i:

The Chair and Vice-Chairs recommend that the BCA be amended to clearly specify the roles and responsibilities for building practitioners; including:

- *municipalities and municipal building departments;*
- *accredited Code-enforcement/inspection agencies;*
- *owners;*
- *designers;*
- *builders/contractors; and*
- *manufacturers/retailers.*

It is also recommended that these clarifications be done in such a way to require that the actions, process, etc., of different individuals and entities be done in a way that protects safety and complies with the Act and regulations.

The Chair and Vice-Chairs heard from the BRRAG members that there is lack of clarity around the expected roles and responsibilities among the various parties in the building industry. As outlined, the *Building Code Act* details specific aspects of performance practices only for municipalities. Other acts and other requirements refer to the roles and responsibilities of some of the other parties, though these definitions are not consolidated and generally do not make reference to Code-related expectations. The result can be a lack of ownership for tasks and consequential defects.

By clearly outlining the procedures that relate to the Building Code and to public safety more broadly, each practitioner will have a heightened and clearer sense of accountability in carrying out their responsibilities. Including such statements in the BCA will help to dispel the perception that the Building Code is the responsibility of building code officials alone. With clear direction on roles and responsibilities and the expected procedure for actions and processes, practitioners will be more likely to reflect public safety obligations. As discussed under Recommendation B.3.i, the identification of a “co-ordinating professional” or “person in charge of work” should be reflected in setting out the above roles and responsibilities.

The Chair and Vice-Chairs wish to emphasize the need to coordinate the definitions of roles and responsibilities that will be introduced in the BCA with existing definitions in other areas, such as the professional acts. The definitions should be neither too prescriptive (so that they are a constraint), nor too broad (so that they are ineffective). Public safety and Code requirements should be the focus of these definitions.

With respect to clarifying expectations about the role of building officials to check or verify the work of design professionals when it comes to structural, electrical and mechanical systems, the Chair and Vice-Chairs believe that it should not be necessary to re-create the

level of specialized technical expertise within building departments that exists within firms that do this work. Accordingly, the development of regulations or legislation which will establish roles and responsibilities of key building practitioners should engender the principle that professional engineers who prepare such designs should have the responsibility and accountability for their accuracy and compliance with the Code.

Costs and Benefits

Improved Quality

The Chair and Vice-Chairs recognize that there may be costs associated with improved accountability. Accountability may force an improvement in the standard of workmanship for some parties, which may require additional time and increased expenses.

Shared Costs

Because the accountability will be distributed among several parties, the Chair and Vice-Chairs believe that the increased costs will not present a significant barrier to any single party. Where increased costs improve the quality and safety of construction, the long-term benefits were seen to outweigh the up-front costs.

In addition, the Chair and Vice-Chairs feel that identifying expectations will improve the distribution of liability. This may reduce costs for some parties, notably those that currently carry much of the liability burden as a result of the current uncertainties around roles and responsibilities. These parties may benefit from reduced insurance premiums. The Chair and Vice-Chairs believe that the potential for decreases in costs, for some, will counter the potential for increased costs, for others, and reduce any increase in costs overall.

Linkages with Other BRRAG Reforms

Streamlining Tasks

A common occurrence – and a complaint that was heard by the Chair and Vice-Chairs through BRRAG – is that the lack of clarity around expectations and obligations can lead to redundancies in the tasks performed. Clearly identifying who is responsible for what will help to streamline the regulatory system by reducing duplication.

Improving Knowledge

In addition, highlighting that each practitioner has a role to play in Code compliance and enforcement will draw attention to the need for improved knowledge in these areas. The definitions of expectations will direct practitioners to improve Code knowledge in their discipline-specific areas.

Clearly outlining roles and responsibilities touches on all aspects of the reforms recommended in this report. Identifying the Code requirements for each individual will encourage practitioners to improve their knowledge of the Code through training and certification. By clearly pronouncing obligations, practitioners will have a heightened sense of accountability for their actions.

Stakeholder Reaction

There was broad support among BRRAG members to clearly identify in the legislation the Code-specific roles and responsibilities of the key practitioners. In particular, there was support for identifying areas of duplication and other ways to improve efficiencies in the system. There was also concern expressed, which was supported by the Chair and Vice-Chairs, that the definitions should be carefully crafted to avoid conflict, duplications and undue restrictions on practice.

C. 2. More Equitable Insurance Coverage for Practitioners

Recommendation C.2.i:

The Chair and Vice-Chairs recommend that the Province mandate that designers, builder/general contractors/renovators and private inspection agencies carry insurance (or other equivalent coverage, including a warranty-type product) for a 10-year period following construction of a building.

It is recommended that the following minimum insurance requirements be prescribed:

- **Designers**

Designers would be required to have errors and omissions insurance with automatic run-off cover for 10 years. The required insurance would be similar to that currently carried by design professionals however the minimum level of coverage is increased and a minimum run-off period is required.

The required coverage would be:

S \$500,000 per claim and \$1M per year for design firms and practitioners with annual fee income of less than \$100,000; and

S \$1M per claim and \$2M per year for design firms and practitioners with annual fee income of over \$100,000 .

- **Accredited Code-enforcement agencies**

Code-enforcement agencies that enter into contracts with municipalities would be required to have errors and omissions insurance coverage with automatic run-off cover for 10 years. The coverage would be similar in scope to that carried by designers.

The required coverage would be :

S \$1M per claim and \$2M aggregate per year.

- **Residential builders and renovators**

New homes:

Extend warranty-type coverage for new homes for major structural defects from the current seven years to 10 years, while maintaining existing coverage in years one and two.

Renovations and conversions:

Renovation firms would be required to provide warranty coverage equivalent to that provided by new home builders as outlined above. The warranty coverage would be required for work that requires a building permit and is valued at over \$10,000.

- **ICI builders and renovators**

Non-residential builders (industrial, commercial and institutional) would be required to carry errors and omissions insurance covering major structural defects.

Renovators engaged in structural work who do work valued at over \$10,000 and which requires a building permit would also be required to carry structural defects insurance.

The required coverage would be:

S *Structural defects insurance of between \$1M and \$10M per claim and \$2M and \$20M in aggregate based on annual turnover or construction volume; and*

S *A performance bond or warranty for one year after construction to ensure that contractual obligations are met.*

Recommendation C.2.ii:

The Chair and Vice-Chairs recommend that the Province move toward a competitive-based new home warranty model in Ontario, following an assessment demonstrating the benefits of such a move.

Reducing Liability Avoidance

Those who are held accountable for their errors will be more likely to prevent them. Under Ontario's joint and several liability framework, those who are at least partly responsible for a defect are only held accountable if they are able to provide compensation, usually through insurance coverage. The amount of compensation that these insured parties provide typically bears little relationship with their proportion of fault.

Despite the complexity of the building industry, the several players involved and the potentially high costs of building defects, legislated insurance requirements are inconsistent. Some parties have mandated insurance requirements, while others who play equally significant roles have insurance left to their discretion. As a result, there are typically few parties that have the ability to pay for compensation, creating a significant imbalance in accountability among the various building practitioners.

This point was made clear numerous times during the past three months. In his submission to the June 22 regional stakeholder session in London, the Chief Building Official for the City of Windsor emphasized that "contractors are able to create companies for each project, and these shell corporations are routinely closed out at the end of each construction project. Many construction companies have been able to avoid liability by following this practice. Thus, there must be a guarantee that the contractor's insurance will be in effect to repair defective work for the time frame established...Design professionals must also be active participants...designers should not have the option of opting out as is currently the case for professional engineers" (p.2, Submission to BRRAG by Ed Link, June 22).

While reform of the joint and several liability framework is beyond the scope of BRRAG, the Chair and Vice-Chairs have identified reforms to the regulatory system that will improve the distribution of accountability within this liability framework. Today's liability imbalance has encouraged some parties – those who are well-insured and have longevity – to be more cautious while there are less incentives for others to pay much heed to the quality of Code-compliance and workmanship. By levelling the distribution of accountability and by mandating minimum insurance levels for key

practitioners over time, all parties can be held accountable for their performance, instead of having a handful shoulder the burden for everyone.

Forcing all parties to provide insurance over time will highlight accountability requirements throughout the design, inspection and construction phases, improving the quality of each party's performance. Other jurisdictions (e.g., France, Australia and New Jersey) have successfully implemented similar mandatory run-off insurance requirements.

Shifting Accountability More Equitably

The requirement for run-off insurance is key to this package of reform recommendations. The Chair and Vice-Chairs believe that run-off insurance will force accountability to be more evenly distributed among all players over time. Practitioners will not be able to escape accountability by going out of practice.

As noted above, a common practice under today's regulatory regime is for practitioners to dissolve their company or practice, in part to avoid being held accountable for potential defects. In these cases, the remaining parties cover the claims, simply because they are still in practice or still insured. This places a heavy burden on practitioners and firms with longevity and on municipalities, which cannot go out of business.

Currently, there are few significant disincentives in the regulatory system for companies to evade liability by being short-lived or carrying insufficient insurance coverage. With this recommended reform, which will require all parties to carry run-off insurance, practitioners who dissolve their practice will not escape being held accountable.

Liability for Private Inspection Agencies

The introduction of accredited Code-enforcement agencies requires mandated insurance coverage to continue protections of the public. Municipalities were clearly not supportive of carrying the liability for agencies performing inspections. Inspectors perform an important role

in determining the safety of buildings through assessing Code compliance. The recommended insurance requirement underlines the accountability and high-quality performance that are expected of agencies which could, in future, provide certain plans review and inspection functions for municipalities.

Improving Accountability Among Renovators

Mandating warranty-type coverage for renovators is a bold step toward improving public safety and consumer protection. The renovation sector is one of the biggest in Ontario – in both numbers and values – and yet little protection for the consumer is provided. Many renovations rival, and often, exceed the value of new home construction. The Chair and Vice-Chairs have also heard evidence of significant abuses that occur in this sector. Requiring renovators to provide a warranty to homeowners similar to that in place for new homes would be an important means of regulating the industry, protecting consumers and improving the quality of work in this sector. It is a reform that the Chair and Vice-Chairs, after receiving input throughout the BRRAG process, feel is long overdue. A warranty type of coverage provided through a competitive framework should proceed immediately.

Availability of Insurance Coverage

Some parties already carry the proposed levels of insurance on a voluntary basis. For these practitioners, mandating the requirements will not present an excessively onerous burden. Discussions with representatives from the insurance industry have suggested that practitioners will be able to obtain these minimum mandated amounts for a reasonable cost similar to current prices for similar levels of coverage.

A Competitive Insurance Environment

Based on industry recommendations and the experience of other jurisdictions with similar requirements, the Chair and Vice-Chairs

support allowing the insurance industry to respond to the mandated requirements without specifically prescribing the form of the insurance product required in each case. Different insurance and warranty providers are able to provide an array of products that will fulfil the insurance needs.

Coverage could be provided in the form of errors and omissions insurance coverage for individual practitioners, surety bonds provided on a project basis or warranties available on individual products or parts of projects. Other possible products include wrap-up insurance that applies to an entire project team or inherent defect insurance that provides up-front coverage for owners.

Allowing the competitive environment to respond to the mandated requirements will produce the best product at the lowest price to the practitioners. The nature of construction projects can vary significantly and some products will better suit some projects. By prescribing the amount of insurance without the product type, the goal of improved coverage can be achieved for the best available price.

A Competitive New Home Warranty Model

Following the above rationale, the Chair and Vice-Chairs favour a competitive environment for insurance overall, including the coverage which exists for the new home building sector. While there was considerable resistance voiced by some builders to changing the Ontario New Home Warranty Program business model, other BRRAG members and stakeholders favoured a re-evaluation of the current single warranty provider system.

The Chair and Vice-Chairs believe that the provision of new home warranty coverage in a more open and competitive framework should be given a proper review at the same time that other insurance reforms – which rely on the insurance industry developing new products to provide mandated coverage for practitioners besides home builders – will be introduced. While the specific data has not been prepared to support the contention that a competitive warranty model would result in lower premiums, the Chair and Vice-Chairs believe, based on the advice of insurers and builders, that lower

premiums are a likely result of the proposed approach. The above recommendation does, however, recognize that there needs to be further analysis to address questions which have been raised about the impacts of this move. The Chair and Vice-Chairs believe this analysis will support the proposed direction.

When combined with the notion that mandated coverage will spread risks among a broad pool of firms and individuals who will be covered, with resulting impacts on premiums, there is adequate reason to believe that a more competitive warranty model may also have benefits for consumers.

The present functions of the ONHWP - as both the registrar and the warranty provider for residential builders - should be separated. Such a move could support the creation of the licensing/certification of builders as discussed above. The Chair and Vice-Chairs are aware of the analysis and time which will be required to move toward a competitive new home warranty business model. As such, provision must be made for the transition from current regime to the next one. Of paramount concern, these transitional issues should ensure minimal disruption for consumers and business practices for builders.

The existing infrastructure that is currently in place for the automobile insurance sector may potentially be expanded for the conciliation of insurance dispute matters in other sectors, such as construction. The Financial Services Commission (FICOM) provides dispute resolution through mediation in the first instance, followed by arbitration if required. This dispute resolution mechanism is self-funding with most costs covered by the industry. If FICOM's structure is expanded to include the construction sector, consumers and building industry practitioners could reduce their reliance on the Courts to resolve insurance disputes. FICOM also has an ombudsman's office to deal with disputes.

Linkages with Other BRRAG Reforms

By equalizing accountability along with other reforms in the building regulatory regime, the Chair and Vice-Chairs believe that several benefits will be achieved. In addition to improved quality and safety of

buildings due to balanced accountability, insurance reforms will force practitioners to improve their Code knowledge. This will lead to faster development approvals and inspections since there will be fewer errors and omissions at every stage, including design, inspection and construction.

There will also be less reluctance to accept building innovations since any liability for defects would be shared among the parties responsible. In some cases, this may help for proposals of building innovations to be accepted by municipalities more quickly, without resorting to senior staff or the Province's Commissions in less complex cases.

The net result will be safer, better and more innovative construction in shorter time periods.

Stakeholder Reactions

There is broad support among the BRRAG participants to expand the mandatory insurance requirements to all key practitioners in the building industry. There is recognition that the current landscape of accountability is unfair. Many of the BRRAG participants voiced hope that the insurance requirements would help to reward best practices and high quality performance.

The stakeholders were less resolved about whether to maintain the monopoly warranty provider for new home builders through ONHWP or to introduce a competitive warranty system. The Ontario Home Builders' Association (OHBA) voiced support for maintaining the status quo, while other builders, for example the Greater Toronto Home Builders' Association (GTHBA), prefers introducing a competitive warranty system. Some builders argued that a competitive system would reward good builders with reduced pricing that has not been offered by the ONHWP.

Consumers representatives raised legitimate questions about the impact of moving toward a competitive new home warranty model. These concerns need to be addressed through the type of analysis proposed in the above recommendation.

Though differential, there was also some resistance from home builders to expanding the current seven-year warranty coverage for major structural defects to 10 years. Some builders argued that 10 years of coverage could be provided through a combination of the current seven-year warranty with separate insurance coverage in the latter three years. The ONHWP representative indicated that its board preferred to maintain the seven year coverage program but was not opposed to extending that coverage to 10 years.

C. 3. Levelling the Period of Liability Exposure

Recommendation C.3.i:

The Chair and Vice-Chairs recommend that an ultimate limitation period of 10 years be introduced for claims for damages other than bodily injury resulting from construction defects (economic loss). The 10-year ultimate limitation period should also apply to existing buildings from the date of enactment.

Recommendation C.3.ii:

The Chair and Vice-Chairs recommend that the BCA be amended to require that building officials issue occupancy permits and that the issuance of such a document be used as the starting point for the ultimate limitations period.

In addition to creating fairness in the extent of exposure to liability that each party carries by mandating minimum insurance requirements, the period of liability exposure was also identified as a factor in the current imbalance of accountability. The Chair and Vice-Chairs believe that an ultimate limitation period is the second means of levelling accountability in the current regulatory framework. By requiring that all parties are exposed over an equal time frame for which they are insured, every practitioner will ensure that measures are taken to reduce the defects due to construction. Fair accountability exposure will improve the quality of design, construction and inspection of every

building.

The Chair and Vice-Chairs support limiting the ultimate cap to 10 years. Evidence from a variety of sources was provided which estimated that 95% of all building defects due to negligence or poor workmanship materialize within the first 10 years of a building's lifespan. In the United States, in which every state (except New York) has an ultimate limitation period, 50% are set at 10 years (in other states, the ultimate limitations period is either high or lower than 10 years. In Canada, Alberta, Newfoundland and the Northwest Territories have adopted a 10-year ultimate limitation period. Many other jurisdictions with ultimate limitation periods, both within Canada and abroad, have identified 10 years as an appropriate limitation period for the building industry.

Occupancy Permits as the Trigger Date

There was significant discussion about the point at which the 10-year ultimate limitations period would begin. Different points were discussed, including reliance upon the *Construction Lien Act's* approach, the time at which occupancy occurs or the date of substantial completion.

The Chair and Vice-Chairs favour a starting point which is based on the issuance of an occupancy permit, similar to Victoria Australia's certificate of final inspection, which is tied to the provisions of the Building Code. This would provide certainty for all parties and place an onus on the building official to sign-off and be responsible for issuing a legal document which starts the clock on the 10-year limitations period. This also creates an incentive for builders to complete construction to obtain the occupancy permit in order to start the ultimate limitations period.

Linkages with Other BRRAG Reforms

Introduction of an ultimate limitation period is fundamentally linked to mandating run-off insurance. The Chair and Vice-Chairs heard that an ultimate limitation period would facilitate the introduction of the

mandatory 10-years of run-off insurance for the period of exposure. These reforms will better ensure the availability of fair and equitable compensation for consumers over time without over-exposing the practitioners.

The BRRAG reforms taken as a package will increase the competency and accountability of all practitioners. These reforms are expected to improve performance and Code compliance, providing better public safety and minimizing the extent of defects, including those which manifest themselves 10 years after construction has ended and occupancy has occurred.

Stakeholder Reaction

There was considerable support from the builders, design professionals, municipal governments and regulatory agencies for introducing an ultimate limitation period. There is support for improving the distribution of accountability across all participants, which an ultimate limitation will help to promote.

However, the consumers' representative strongly opposed the proposal in principle, arguing that consumer protection would be reduced for those who discover a defect after the ultimate limitation period expires. Notwithstanding this viewpoint, the Chair and Vice-Chairs believe that the BRRAG reforms will reduce the absolute number of defects overall, including those that materialize after 10 years. Specifically, the Chair and Vice-Chairs believe that the recommended reforms provide improvements for the vast majority of consumers.

- Clarity in the roles and responsibilities will improve each party's awareness of their expected professional and legal obligations.
- Improved knowledge of all practitioners will reduce the absolute number of defects.
- Mandatory run-off insurance will provide a heightened sense of accountability and encourage quality workmanship.
- Extended warranty coverage for home owners and run-off

insurance for every party ensures that appropriate compensation will be available in the event that defects do occur.

Overall, the Chair and Vice-Chairs are satisfied that the overall package of BRRAG reforms will benefit the majority of consumers.

Improved Coverage for New Homes and Renovations

The consumer association representative's clarified that the main concern lies with less sophisticated consumers, the majority of whom interact with the building industry only when purchasing their home or contracting out renovations. This concern is not so prevalent when dealing with similar activities in the ICI sector where parties are more knowledgeable about contractual rights, recourse options and the construction process. The recommended reforms offer significant improvements for consumers overall. The mandatory new home warranty coverage is recommended to be extended from its current seven years to the full ten years. Consumers now have an accessible recourse for latent defects that occur between years seven and 10, which is currently unavailable to them.

A warranty type of protection for the renovation sector will introduce consumer protection in a sector that is marred by fraud, shoddy workmanship and high costs. The lack of regulation in this sector means that consumers are provided with little direction in acquiring renovators and have little protection or recourse options should problems arise.

The Chair and Vice-Chairs are confident that public safety is being increased and consumer protection is being addressed. In particular, competency standards for practitioners, mandatory insurance requirements, clearer expectations about service level standards, etc., will benefit the vast majority of consumers.

C. 4. Creating a Building Advisory Council

Recommendation C.4.i:

The Chair and Vice-Chairs recommend that the Province establish a Building Advisory Council, co-chaired by one representative from the construction industry and one representative of the municipal inspection sector, and comprised of a cross-section of stakeholders with an interest in construction regulation, which would in the short-term monitor the implementation of BRRAG's reforms and in the long-term provide advice to the government on policy, technical and administrative issues related to the Building Code Act, the Building Code and other building-related matters.

While not specifically addressed by BRRAG or any of its working groups, the Chair and Vice-Chairs believe it is important to identify a means by which to monitor the progress in fulfilling the specific recommendations contained in this report. In much the same way as the government relies on individuals and organizations in other sectors to help shape policy and program decisions, it is important for building regulation stakeholders to be able to have their views heard. In order for BRRAG to have credibility, it is important that there be a means of monitoring and evaluating how well the government's objectives for BRRAG are being met. Given the importance of the BRRAG reforms, for this aspect of its mandate, the Council should report semi-annually to the Minister.

In the longer term, the Chair and Vice-Chairs believe there is considerable merit in having a mechanism for stakeholders to use in giving advice on policy, technical and administrative issues that affect their interests, either as clients of the system, practitioners who are part of the system or regulators.

IMPLEMENTATION

The recommendations from the Chair and Vice-Chairs for reform of the building regulatory model are comprehensive and in some cases complicated. While several of the recommendations are discrete and can be introduced and implemented almost immediately, others are inter-dependent, requiring one reform to be introduced before the next. Because of the scope and sophistication of the recommended reforms, the Building Advisory Council (Recommendation C.4.i), as described above, should be established at the beginning of the process to oversee the implementation of all of the BRRAG reforms.

The Chair and Vice-Chairs believe that at least two years will be needed for the full implementation of all reforms.

Immediate Implementation

Several of the reforms, particularly those that will streamline the administration of the permit application process, can be enacted shortly after the new legislation is passed. These include:

- standardization of permit application forms (Recommendation B.3.i) ;
- a methodology for municipalities to use when setting permit fees (Recommendation B.3.i);
- the requirement that fees be tied to the cost of providing the inspection service (Recommendation B.4.1);
- provision of a list of applicable law (Recommendation B.3.i);
- clarification of what constitutes sufficient site plan approval to meet applicable law requirements (Recommendation B.2.iii); and
- requirement for designers and builders to comply with and submit checklists which provide direction for plans submission, review and inspection (Recommendation B.3.i).

Two of the reforms that will streamline the approvals process can also be implemented shortly following endorsement of the legislation, specifically:

- enabling the Ministry to issue Province-wide binding interpretations of the Code (Recommendation B.7.i);
- providing for the joint delivery of Code-enforcement services among municipalities (Recommendation B.11.I).

Other streamlining reforms identified in Recommendation B.1.i could also be introduced shortly after the legislation is adopted, which would consolidate some of the approvals process within municipal building departments. These reforms should be introduced following consultation between the Building Advisory Council and the affected ministries and stakeholders.

One of the key recommendations, which will provide clarity in the system overall and can be introduced almost immediately, is the inclusion of explicit definitions of the Code-related roles and responsibilities of all practitioners in the business of building (Recommendation C.1.i). Clearly outlining expected obligations will streamline the system by eliminating existing overlaps or duplications, improve accountability by highlighting expectations and direct practitioners to the areas of the Code that they are expected to know. Most of these reforms can be achieved at the time the legislation is passed.

Certification

The certification and accreditation process can start to be developed shortly after the legislation is adopted. Within the first six months, the structure of the certification/accreditation body (Recommendation B.9.i), along with the board of appeals (Recommendation B.10.i), can be established and begin to operate. Once the body is set up, inspectors, designers and builders will be able to be certified as Code-competent once they successfully fulfil the provincial competency standards. Inspectors, designers and builders who are in practice today should have an appropriate transition period during which they can continue to practice without certification (subject to meeting

certain criteria); however, they must pass the test and obtain certification within the designated time in order to stay in practice once the transition period is over.

Insurance Requirements

Implementation of the mandatory insurance levels (Recommendation C.2.i) can only be required once the insurance industry has been able to develop appropriate products to meet the needs of the various parties in the building industry. During the BRRAG process, insurance industry representatives reported that one year would be sufficient time to develop these products. However, insurance would likely not be provided until practitioners are certified. Therefore, a full scheme would not be realized until two years after the legislation is passed.

Municipal Licensing

Once both the certification process and mandatory insurance requirements are enforced, changes to the *Municipal Act* can come into force which will restrict municipalities from licensing builders, general contractors and renovators who will be certified under the new requirements (Recommendations A.2.i and ii.). This will create one Province-wide certification that supercedes municipal licensing, making it unnecessary.

Accreditation

The accreditation process (and the associated appeal board) will be established at the same time that the certification body is established. However, accreditation of Code-enforcement agencies (Recommendation B.8.i) is contingent upon two main criteria – that the company:

- employ certified inspectors, and
- carry the minimum insurance level.

As such, accreditation of Code-enforcement agencies will be possible

only once both certification and insurance reforms are in place. Accreditation must be in place before municipalities can contract out inspection services (Recommendation B.8.i).

Minimum Service Levels

Code-enforcement agencies will enable all municipalities across Ontario to meet the newly mandated minimum levels of service standards and time frames (Recommendations B.2.i and ii). Where municipalities are unable or unwilling to meet the new service level standards on their own, accredited Code-enforcement agencies must be available to provide the additional resources required. Not until this important tool is available can municipalities be expected to meet the new minimum service level standards. As such, the recommendations that will introduce minimum standards and time frames for inspections can only be implemented once accreditation of agencies is possible.

Other Streamlining Measures

Once certification, accreditation and insurance requirements are in place, Recommendation B.5.i can be enacted, which enables plans to be certified as Code-compliant across municipal boundaries, without requiring repeated inspections for the same sets of plans.

In addition, at this point municipalities will be able to carry out inspections that are currently under the jurisdictions of ESA and TSSA (Recommendation B.12.i).

Approval of equivalents is also contingent upon certification, accreditation and insurance being enforced. However, it is likely that this recommendation will not come into effect until the objective-based Building Code is in place, which is expected in 2003.

Limitations Reforms

Finally, capping liability to an ultimate limitations period of 10 years (Recommendation C.3.i) is supported by the reforms that come before

it which will reduce defects because of improved Code knowledge, improved accountability distribution and a streamlined process. As such, the cap on the ultimate limitations period should not be introduced until all of the other reforms have been implemented and established. The issuance of an occupancy permit (Recommendation C.3.ii) would need to be in place when the ultimate limitation period is enacted, to provide a clear date for the liability period to begin. The Chair and Vice-Chairs believe that postponing the implementation of the liability cap will provide adequate time for all other reforms to be fully adopted and rooted in the new building regulatory system.

TABLE OF RECOMMENDATIONS

A. Creating Knowledgeable Practitioners

A. 1. Certifying Inspectors and Licensing Builders

Recommendation A.1.i:

The Chair and Vice-Chairs recommend that persons undertaking plans review, inspection and other Code-enforcement services be qualified to minimum, provincially-established standards for Building Code competency. The Province should develop regulations in the Ontario Building Code which would establish the rules for a certification process for inspectors.

Recommendation A.1.ii:

The Chair and Vice-Chairs recommend that the Building Code Act be amended to require that all persons in the business of doing design work for buildings covered by the OBC be qualified to a minimum, provincially-established, standard for Building Code competency. Regulations under the OBC should be developed to establish the rules for a certification process for designers. This requirement would apply to the person identified as being responsible for design (e.g., the person who stamps the plans/drawings).

Recommendation A.1.iii:

The Chair and Vice-Chairs recommend that the Building Code Act be amended to require that residential and ICI builders/general contractors and renovators employ qualified site supervisors (who would be required to demonstrate this qualification through certification). This would require that the Province develop regulations under the OBC to establish the rules for a licensing and

certification process for residential and ICI builders and renovators (who do work that requires a building permit and has a construction value in excess of \$10,000).

Recommendation A.1.iv:

The Chair and Vice-Chairs recommend that the design of these programs be linked to building types (e.g., Part 3, Part 9, complex buildings) and technical disciplines (e.g., building, fire protection, plumbing, mechanical, etc.). Further, these programs must include requirements for regular maintenance of the Code-competency requirements by practitioners in order that they remain current with changing standards. In addition, there must be provision for grand fathering during some transition period based on reasonable previous experiential criteria and/or qualifications (ultimately though, all practitioners should be required to demonstrate base competency with the Building Code).

A. 2. Municipal Licensing

Recommendation A.2.i:

The Chair and Vice-Chairs recommend that the Province amend the Municipal Act to prohibit municipalities from licensing builders, general contractors and renovators which are subject to new OBC-related technical competency criteria and new run-off insurance requirements (see below).

Recommendation A.2.ii:

The Chair and the Vice-Chairs recommend that the Province review legislative, regulatory or administrative changes necessary to dovetail municipal licensing requirements with existing provincial requirements (e.g., apprenticeship programs) and consider ways to reduce duplication and overlap in the registration/certification schemes which apply to various contractors under different statutes and authorities. This review should reflect the principle that if the Province sets

technical competency standards, municipalities should be prohibited from imposing duplicate requirements.

B) Streamlining

B. 1. Consolidating and Rationalizing Regulations

Recommendation B.1.i:

The Chair and Vice-Chairs recommend that the Ministry of Municipal Affairs and Housing work with the Building Advisory Council (see Recommendation C.4.i) and other appropriate ministries/stakeholders to assess and take action to streamline and consolidate non-BCA related legislation and regulations that affect the time it takes to get construction approved. Based on this evaluation, the Province should amend relevant legislation, regulations or administrative practices to direct which approvals and/or technical requirements could be consolidated into the OBC. Opportunities for such review and action include, but are not limited to:

- # storm water management, air emissions and ground discharge approvals related to the function of a building (e.g., kitchen exhausts) that are currently done by the Ministry of the Environment;*
- # notifications to the Ministry of Labour of permit applications which involve construction projects as required by the Occupational Health and Safety Act (OHSA);*
- # building and sign permits that currently require approval by the Ministry of Transportation (except for those relating to highway access or other planning matters);*
- # approvals by the Fire Marshal's Office for provincially-funded construction projects (e.g., schools, hospitals, etc.);*
- # notification and verification of builders' registration and fulfilment of warranty requirements for homes; and*
- # components of the approvals system that do not lend themselves to consolidation in the OBC but require improved*

accountability or coordination, such as the interface between building permit issuance and the planning approvals system for zoning and site plan control.

B. 2. Service Level Standards

Recommendation B.2.i:

The Chair and Vice-Chairs recommend that the Province amend the BCA (and, where necessary, the OBC) to establish minimum level of service standards for Building Code-enforcement agencies (public and private), including:

- time frames for issuing permits and making determinations of compliance with the BCA/OBC;*
- minimum numbers/types of inspections; and*
- use of qualified inspectors/plans reviewers.*

Further the BCA/OBC should be amended to provide authority for the creation of standards which provide direction for building permit applicants related to submission of applications, field review requirements and minimum elements to be included in plans/drawings.

Recommendation B.2.ii:

The Chair and Vice-Chairs recommend that the Province amend the BCA to require that, where applicable law has been met, OBC enforcement agents be required to make a decision on whether to issue a permit within the following time frames:

- # 5 business days – stock plans for Part 9 Houses;*
- # 10 business days – Part 9 Houses;*
- # 15 business days – Other Part 9 Buildings;*
- # 20 business days – Part 3 Buildings; and*
- # 30 business days – Complex Buildings.*

Recommendation B.2.iii:

The Chair and Vice-Chairs recommend that the Province amend the BCA to clarify the circumstances under which site plan or development permit control constitutes applicable law. The principle would be that once the location of the building, servicing and built form have been established and securities have been posted, a building permit must be issued.

B. 3. Process Standardization*Recommendation B.3.i:*

The Chair and Vice-Chairs recommend that the Province amend the BCA/OBC to give the Province authority to issue standards (which would be mandatory to follow) covering administrative aspects of the BCA/OBC. These standards should include:

- *a checklist, for use by designers, which sets out minimum elements (e.g., foundation, building envelope, structural, mechanical, fire protection) to be included in plans submitted for different types of buildings (and linked to the concept of a standard/complete application);*
- *a checklist, for use by designers, covering broad field review/inspection elements (e.g., excavation, foundation, superstructure, fire protection, etc.) to verify Code compliance for key building elements;*
- *a checklist, for use by builders, covering broad field review elements to verify Code compliance;*
- *a common building permit application form that relates to information required in order to make a determination about OBC compliance;*
- *a list of applicable law; and*
- *a methodology to be used by enforcement agencies in calculating permit application fees.*

B. 4. Permit Fees Based on Service Delivery

Recommendation B.4.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act to require that the use of building permit fees be linked to the delivery of Building Code-enforcement services (including amounts for administration, legal, overhead and support for education and training).

Further, the Chair and Vice-Chairs recommend that a small dedicated portion of building permit fee revenue for permits with a construction value in excess of \$10,000 be allocated to cover administrative costs associated with recommendations flowing from this report, such as dispute resolution mechanisms.

B. 5. Certified Plans and Drawings

Recommendation B.5.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act to provide authority for the review of plans or drawings in order to “certify” them for code compliance across a number of municipalities. This authority would require that there be approval reciprocity among municipalities such that once a set of drawings or a plan is “certified” and the same plan/drawing is submitted elsewhere, it would not require review again.

B. 6. Equivalent Designs

Recommendation B.6.i:

The Chair and Vice-Chairs recommend that the Province amend the OBC to give enforcement agents authority to approve equivalents for building designs. Refusals of equivalent designs would be subject to the available dispute resolution mechanisms.

B. 7. Province-Wide Code Interpretations

Recommendation B.7.i:

The Chair and Vice-Chairs recommend that the Province amend the BCA to give the Ministry the authority to issue Province-wide binding interpretations and opinions related to the OBC.

B. 8. Accredited Code-enforcement Agencies

Recommendation B.8.i:

The Chair and Vice-Chairs recommend that, in order to ensure that mandated service level standards are met, the Province amend the Building Code Act to allow municipalities to utilize (by outsourcing) accredited Code-enforcement agencies which would provide Building Code-enforcement services (including the private sector, other municipalities, ESA, TSSA or a new administrative authority).

Further, the amendments to the Building Code Act should provide that the powers of accredited Code-enforcement agencies would include authority for plans review, field inspections and certain other statutory functions (e.g., issuing orders), but would not include ensuring compliance with applicable law, permit issuance and undertaking prosecutions (these functions would remain with the municipality).

B. 9. Accreditation

Recommendation B.9.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act (and, if necessary, the Building Code) to set up a self-funded provincial accreditation/certification body for Building Code-enforcement agencies and individuals (inspectors, designers and builders) overseen by a board of affected stakeholders. Key requirements for agency accreditation should include:

- *accreditation linked to the scope of services provided and*

- types of buildings covered;*
- *use of certified inspectors;*
- *appropriate liability insurance coverage; and*
- *meeting established legislated level of service standards.*

B. 10. Appeals

Recommendation B.10.i:

The Chair and Vice-Chairs recommend that the Province amend the BCA to expand the mandate of the current Building Code Commission or create a new Appeal's Board (comprised of appropriate stakeholder interests) which would have the authority to address, on a case by case basis and within specified, responsive and efficient time frames:

- *compliance with level of service standards;*
- *appeals about matters related to the removal of accreditation for Code-enforcement agencies;*
- *appeals related to the removal of certification for inspectors, designers and builders; and*
- *disputes currently within the mandate of the Building Code Commission.*

B. 11. Joint Municipal Delivery of Code-enforcement Services

Recommendation B.11.i:

The Chair and Vice-Chairs recommend that the Province amend the Building Code Act to explicitly provide for the joint delivery of Code-enforcement services by municipalities, and that in doing so it clarify liability and the roles and responsibilities of participating municipalities.

B. 12. Alternatives to ESA/TSSA Inspection Services

Recommendation B.12.i:

The Chair and Vice-Chairs recommend that the Province amend the legislation and regulations covering the Electrical Safety Authority (ESA) and Technical Standards and Safety Authority (TSSA) as required to allow municipalities to be designated to provide construction-related inspection services under the jurisdiction of ESA and TSSA, subject to the presentation of a business case to the satisfaction of the Boards of ESA and TSSA and the Minister of Consumer and Commercial Relations and the municipality meeting applicable accreditation and service delivery criteria.

C) Improving Accountability in the System

C. 1. Increasing Awareness of Expected Roles and Responsibilities

Recommendation C.1.i:

The Chair and Vice-Chairs recommend that the BCA be amended to clearly specify the roles and responsibilities for building practitioners; including:

- *municipalities and municipal building departments;*
- *accredited Code-enforcement/inspection agencies;*
- *owners;*
- *designers;*
- *builders/contractors; and*
- *manufacturers/retailers.*

It is also recommended that these clarifications be done in such a way to require that the actions, process, etc., of different individuals and entities be done in a way that protects safety and complies with the Act and regulations.

C. 2. More Equitable Insurance Coverage for Practitioners

Recommendation C.2.i:

The Chair and Vice-Chairs recommend that the Province mandate that designers, builder/general contractors/renovators and private inspection agencies carry insurance (or other equivalent coverage, including a warranty-type product) for a 10-year period following construction of a building.

It is recommended that the following minimum insurance requirements be prescribed:

- **Designers**

Designers would be required to have errors and omissions insurance with automatic run-off cover for 10 years. The required insurance would be similar to that currently carried by design professionals however the minimum level of coverage is increased and a minimum run-off period is required.

The required coverage would be:

S \$500,000 per claim and \$1M per year for design firms and practitioners with annual fee income of less than \$100,000; and

S \$1M per claim and \$2M per year for design firms and practitioners with annual fee income of over \$100,000 .

- **Accredited Code-enforcement agencies**

Code-enforcement agencies that enter into contracts with municipalities would be required to have errors and omissions insurance coverage with automatic run-off cover for 10 years. The coverage would be similar in scope to that carried by designers.

The required coverage would be :

S \$1M per claim and \$2M aggregate per year.

- ***Residential builders and renovators***

New homes:

Extend warranty-type coverage for new homes for major structural defects from the current seven years to 10 years, while maintaining existing coverage in years one and two.

Renovations and conversions:

Renovation firms would be required to provide warranty coverage equivalent to that provided by new home builders as outlined above. The warranty coverage would be required for work that requires a building permit and is valued at over \$10,000.

- ***ICI builders and renovators***

Non-residential builders (industrial, commercial and institutional) would be required to carry errors and omissions insurance covering major structural defects.

Renovators engaged in structural work who do work valued at over \$10,000 and which requires a building permit would also be required to carry structural defects insurance.

The required coverage would be:

S *Structural defects insurance of between \$1M and \$10M per claim and \$2M and \$20M in aggregate based on annual turnover or construction volume; and*

S *A performance bond or warranty for one year after construction to ensure that contractual obligations are met.*

Recommendation C.2.ii:

The Chair and Vice-Chairs recommend that the Province move toward a competitive-based new home warranty model in Ontario, following an assessment demonstrating the benefits of such a move.

C. 3. Levelling the Period of Liability Exposure*Recommendation C.3.i:*

The Chair and Vice-Chairs recommend that an ultimate limitation period of 10 years be introduced for claims for damages other than bodily injury resulting from construction defects (economic loss). The 10-year ultimate limitation period should also apply to existing buildings from the date of enactment.

Recommendation C.3.ii:

The Chair and Vice-Chairs recommend that the BCA be amended to require that building officials issue occupancy permits and that the issuance of such a document be used as the starting point for the ultimate limitations period.

C. 4. Creating a Building Advisory Council*Recommendation C.4.i:*

The Chair and Vice-Chairs recommend that the Province establish a Building Advisory Council, co-chaired by one representative from the construction industry and one representative of the municipal inspection sector, and comprised of a cross-section of stakeholders with an interest in construction regulation, which would in the short-term monitor the implementation of BRRAG's reforms and in the long-term provide advice to the government on policy, technical and administrative issues related to the Building Code Act, the Building Code and other building-related matters.

Appendix 1:

**MEMBERS OF THE BUILDING REGULATORY REFORM
ADVISORY GROUP (BRRAG)**

<u>Representative</u>	<u>Organization</u>
Mr. Brian Coburn, Chair	Parliamentary Assistant, Ministry of Municipal Affairs and Housing (MMAH)
Mr. Rocky Cerminara, Vice-Chair	Director of Building Controls, City of London
Mr. Richard Lyall, Vice-Chair	General Manager, Metropolitan Toronto Apartment Builders Association (MTABA)
Mr. John Bayko	Enbridge Consumers Gas
Ms. Brenda Campbell	Association of Municipalities of Ontario (AMO)
Ms. Gina Cody	Professional Engineers Ontario (PEO)
Ms. Catya Covassin	Building Owners and Managers Association (BOMA)
Ms. Terry Dalkowski	Large Municipalities Chief Building Officials (LMCBO)
Mr. Rob Dowler	Ministry of Consumer and Commercial Relations (MCCR)
Mr. John Godin	Frank Cowan Ltd.
Mr. Derek Holloway	The Encon Group
Mr. Ron Kolbe	Ontario Building Officials Association (OBOA)
Mr. Aubrey LeBlanc	Ontario New Home Warranty Program (ONHWP)
Mr. John Lee	Ministry of the Attorney General (MAG)
Mr. Mike Lio	Consumers' Association of Canada (CAC)
Mr. Peter Marcucci	Electrical Safety Authority (ESA)

Mr. Jim McColl	Council of Ontario Construction Associations (COCA)
Mr. Dan Mousseau	Toronto Area Chief Building Officials Committee (TACBOC)
Mr. Bob O'Donnell	Electrical Contractors Association of Toronto (ECAT)
Mr. Ted Phillips	Ottawa-Carleton Home Builders' Association (OCHBA)
Mr. Paul Rawlings	Ontario Home Builders' Association (OHBA)
Mr. Michael Steele	Joint Construction Council (JCC)
Mr. John Walter	Technical Standards and Safety Authority (TSSA)
Mr. Brian Watkinson	Ontario Association of Architects (OAA)
Mr. Rudi Wycliffe	Red Tape Commission (RTC)

Appendix 2:

MEMBERS OF THE BRRAG WORKING GROUPS**Working Group #1 - Liability, Limitation, Roles and Responsibilities**

<u>Representative</u>	<u>Organization</u>
Mr. Rocky Cerminara, Chair	Director of Building Controls, City of London
Mr. Bruce Ashton	City of Toronto
Mr. John Bobaljik	Ontario Association of Architects (OAA)
Ms. Catya Covassin	Building Owners and Managers Association (BOMA)
Ms. Paige Crewson	Consumers' Association of Canada (CAC)
Mr. Ken Dickson	Ontario Association of Certified Engineering Technicians and Technologists (OACETT)
Ms. Hanaa El-Alfy	Ministry of Economic Development and Trade (MEDT)
Mr. Sandy Ewen	Greater Toronto Home Builders' Association (GTHBA)/ London Guarantee
Mr. John Godin	Frank Cowan Ltd.
Mr. Derek Holloway	The Encon Group
Mr. Percy Hornblow	Association of Architectural Technologists of Ontario (AATO)
Ms. Marie Irvine	Ministry of the Attorney General (MAG)
Ms. Magda Ishak	Professional Engineers Ontario (PEO)
Mr. Murray Koebel	Ontario Home Builders' Association (OHBA)
Mr. Aubrey LeBlanc	Ontario New Home Warranty Program (ONHWP)

Mr. Andy Manahan	Council of Ontario Construction Associations (COCA)
Ms. Judith McTavish	Electrical Safety Authority (ESA)
Mr. Mike Minkowski	City of Mississauga
Mr. Douglas Morrish	Ontario Building Officials Association (OBOA)
Mr. Paul Mulé	Greater Toronto Home Builders' Association (GTHBA)
Ms. Cathy Taylor	Technical Standards and Safety Authority (TSSA)

Working Group #2 - Level of Service Standards, Alternative Service Delivery, Standardized Permit Process/Fees, and Code Review and Appeal Mechanisms

<u>Representative</u>	<u>Organization</u>
Mr. Richard Lyall, Chair	General Manager, Metropolitan Toronto Apartment Builders Association (MTABA)
Mr. Rocky Cerminara	City of London
Mr. Rob Dowler	Ministry of Consumer and Commercial Relations (MCCR)
Ms. Margaret Kelch	Technical Standards and Safety Authority (TSSA)
Mr. Aubrey LeBlanc	Ontario New Home Warranty Program (ONHWP)
Mr. Jim McColl	Council of Ontario Construction Associations (COCA)
Mr. Dan Mousseau	Toronto Area Chief Building Officials' Committee (TACBOC)
Mr. Paul Mulé	Greater Toronto Home Builders' Association (GTHBA)
Mr. Ted Phillips	Ottawa-Carleton Home Builders' Association (OCHBA)
Mr. Paul Rawlings	Ontario Home Builders' Association (OHBA)
Ms. Nancy Smith	Ontario Association of Architects (OAA)

Mr. Rob Swaffield	Red Tape Secretariat
Mr. Bernie Torchia	Greater Toronto Home Builders' Association (GTHBA)
Mr. Fernando Traficante	Ministry of Economic Development and Trade (MEDT)
Mr. Jim Witmer	Ontario Association of Certified Engineering Technicians and Technologists (OACETT)
Ms. Marilyn White	Association of Registered Interior Designers of Ontario (ARIDO)
Mr. John Wright	Large Municipalities Chief Building Officials (LMCBO)
Mr. Yaman Uzumeri	City of Toronto
Mr. George Zioteig	Association of Architectural Technologists of Ontario (AATO)

Working Group #3 - Inspector Training and Certification, Contractor Licensing

<u>Representative</u>	<u>Organization</u>
Mr. Brian Coburn, Chair	Parliamentary Assistant, Ministry of Municipal Affairs and Housing (MMAH)
Mr. Yancy Ambing	Ontario Association of Certified Engineering Technicians and Technologists (OACETT)
Ms. Lynn Balfour	Ontario Building Officials Association (OBOA)
Mr. Tony Bianchi	Association of Architectural Technologists of Ontario (AATO)
Ms. Brenda Campbell	Association of Municipalities of Ontario (AMO)
Mr. Mike Cote	Ontario New Home Warranty Program (ONHWP)
Ms. Terry Dalkowski	Large Municipalities Chief Building Officials (LMCBO)

Ms. Hanaa El-Alfy	Ministry of Economic Development and Trade (MEDT)
Mr. Scott James	Ministry of Consumer and Commercial Relations (MCCR)
Mr. Allan Larden	Ontario Association of Architects (OAA)
Mr. Michael Lio	Consumers' Association of Canada (CAC)
Mr. Peter Marcucci	Electrical Safety Authority (ESA)
Mr. Paul Mulé	Greater Toronto Home Builders' Association (GTHBA)
Mr. Bob O'Donnell	Electrical Contractors' Association of Ontario (ECAO)
Mr. Michael Philp	Technical Standards and Safety Authority (TSSA)
Mr. Agris Robezneiks	City of Mississauga
Mr. Ludwig Schindler	Association of Registered Interior Designers of Ontario (ARIDO)
Mr. David Surplis	Council of Ontario Construction Associations (COCA)

Appendix 3:

KEY ISSUES RAISED AT REGIONAL STAKEHOLDER SESSIONS

- # Seven meetings held: Toronto (June 7), Ottawa (June 8), Sudbury (June 13), Barrie, Thunder Bay and London (June 22) and Hamilton (June 27).
- # Excellent turn-out (attendance varied between 12 and 45 people per meeting) with a cross-section of interests, including builders, contractors (e.g., plumbers), architects, engineers, building officials, municipal solicitors, ONHWP staff, insurers, development consultants, product manufacturers, interior designers and CMHC staff.

Liability, Insurance and Roles and Responsibilities

- # General support was expressed for:
 - 10-year cap on limitations period (starting at point of substantial completion) to reduce uncertainty, encourage responsible behaviour, limit “deep pockets” concerns and create foundation for alternative service delivery;
 - legislated roles and responsibilities for builders, contractors, design professionals and building officials;
 - liability reform is essential if objective-based codes are going to be successful (otherwise liability chill will reduce opportunities for innovation). Also linked to the need for clearer expectations about what levels of code enforcement service are required of municipalities and others;
 - any reforms that allow for alternative service delivery must place liability on the new service providers and require that they be adequately insured;

- need to ensure that all practitioners carry their fair share of responsibility;
 - run-off insurance tied to limitations period (plus improved technical competency). This is key to convincing public that liability reforms don't lower consumer protection;
 - need to recognize role of ONHWP in warranty coverage for new homes.
- # No clear direction on how to treat existing buildings under 10-year cap given complexity and fairness issues. However, some support for treating existing buildings the same as new buildings since it would be hard to grandfather them.
- # Insurance should be linked to the individual (as opposed to the company) to maximize accountability.
- # Suggestions for when to start 10-year limitation period included: date of permit issuance plus one year or point of occupancy, whichever comes first; and date of new legislation's proclamation.
- # Liability issues and life safety issues vary with building type and use, e.g., agricultural buildings.
- # Some municipalities want the 10-year ultimate limitation period to cover personal injury as well as economic loss, since they argue that there is a lot of abuse with personal injury claims.
- # Public education and communication are going to be key to selling these reforms.
- # Need to come up with a common definition of "occupancy" since, at present, this term is not interpreted uniformly across municipalities. This concern stems from people who renovate new homes and then try to hold municipalities liable for the originally approved building which was altered by the renovations.

- # Some interest in having ONHWP focus more on a consumer advocate role.
- # Recognition of the need to distinguish between residential buildings and commercial buildings in terms of insurance/warranty since the nature of contracts under the latter addresses some of the problems we are trying to fix (e.g., inadequate coverage).
- # No clear advice on amount of coverage, although \$1 million for design professionals was mentioned several times. For other practitioners it was suggested that coverage be commensurate with the value of the construction.
- # The scope and cost of insurance needs to be carefully considered so as not to drive people out of business.
- # Notwithstanding that the “joint and several liability” principle is not on the table for discussion, several comments were made about the need to re-evaluate this concept for construction given recent Court decisions.
- # Ingles v. Tutkuluk decision has municipalities re-evaluating their policies for inspection, duty of care, and overall risk management approaches - BRRAG could help by clarifying level of service expectations for municipalities.
- # Builders were divided on the need to move away from a “monopoly” warranty program for new homes in favour of a more competitive model.
- # Some support for establishing a “prime consultant” to manage permit applications from start to finish.

Level of Service Standards, Alternative Service Delivery and Standardized Permit Process/Fees and Code Review and Appeal Mechanisms

- # General support was expressed for:
- individuals/firms/agencies outside of municipalities should be able to carry out Code enforcement functions, including plan review, inspections and permit issuance;
 - if alternative service providers are allowed, they need to be accredited (to a provincial standard), have adequate insurance and be accountable for their work;
 - the drivers for alternate service provision are high municipal workloads, inadequate staff resources, size and sophistication of municipality, lack of skills to deal with complex buildings and failure to meet expected service levels;
 - centralized means of reviewing model plans which, once approved, would be accepted across municipalities without further examination;
 - clarifying “applicable law” to reduce uncertainty of approvals (especially in relation to site plan control);
 - good service provided by Building Code Commission (“don’t fix what isn’t broken”);
 - Using “qualified” people to design buildings, should yield reduced permit fees and/or faster turn around times;
 - building permit fees should stay within building departments in order to fund/provide expected service and respond to demand (building departments need adequate resources to do the job and meet expectations); and
 - setting out what service levels are expected of enforcement agents (e.g., number and type of inspections, skills for staff, turn around times, etc.). This is especially important since Councils do not always

understand or appreciate the process and do not provide adequate resources.

- # Builders and designers want set minimum time frames for permit issuance. But, given the number of other approvals required (applicable law), such benchmarks may be hard to achieve. The real target for reform should be planning process, not the building permit process.
- # Differing views were expressed about who should be able to decide who will deliver the service - the builder or the municipality.
- # Some concern about moving away from a “one-window” model by introducing the private sector option for service delivery and the additional paperwork it could create.
- # Some concern that private sector service providers would not provide service in smaller municipalities, which choose not to get accredited, because these areas would not be profitable. Need to ensure that outlying areas do not experience reduced levels of service.
- # There is a need to ensure that professionals are accountable for the quality of their work, including permit application submissions.
- # Some interest in allowing prescribed levels of service to vary according to regional characteristics.
- # Not all standards need to be codified - standardized permit applications are a good idea, but they could also be set out as best practices or guidelines.
- # Need to separate design professional’s role as advocate for building owner from role as alternate Code enforcement service provider. Otherwise, too great a potential for conflict of interest.
- # Builders and their design professionals need to improve the

accuracy of their drawings and completeness of applications if they want better service.

- # Better use should be made of technology to submit applications and drawings, track status of permits, link other service providers, etc.
- # There is a presumption that establishing level of service standards will give Councils more control over service delivery.
- # Municipalities want some say in setting service level standards for their respective jurisdictions, particularly given the liability for municipal staff actions.
- # Building departments should operate in an enterprise system where all of their costs of doing business are recovered. Surpluses should not go into general municipal revenues.

Inspector Training and Certification and Contractor Licensing

- # General support was expressed for:
 - mandatory certification of building inspectors for technical competency;
 - regional delivery of Code training through existing infrastructure of professional organizations and industry associations;
 - requirement that architects, engineers, technicians and technologists who do work in construction sector be Code competent;
 - using certified design professionals by owners/builders to complete plans or drawings which should lead to time or permit cost savings;
 - getting over transition by “grandfathering” appropriate individuals, but ultimately everyone needs to pass technical competency tests;

- no clear benefits associated with municipal licensing; licensing should be at provincial level and tied to technical competency;
- focussing on improving builder/contractor site supervisor's Code knowledge;
- there is a need for provincial leadership in establishing certification and training;
- using a portion of building permit fees to cover the cost of certification program (but builders don't want to subsidize alternative service providers); and
- inspectors should be able to be trained in variety of disciplines as a way of streamlining the number of different agents which issue approvals.

Support for formalizing training courses for builders and contractors (including licensing, which is contingent on technical competency), but support was not universal.

Some inspectors concerned that multi-skilling will result in a loss of autonomy and specialization.

Support from home builders for all construction sites to have a certified site supervisor. Builders question how certification would vary based on the type of building under construction.

Concern was expressed about the ability of professional engineers to stamp drawings in disciplines outside their training.

Some concerns about the negative consequences and unique needs of owner-builders and how they fit into a licensing scheme.

Some architects felt that an emphasis on training and certification for building inspectors (and others) was misplaced, and could result in large bureaucracies. They felt that there were other ways to ensure quality of construction.

- # ICI contractors more resistant to licensing, but strongly support concept of “registration” in order to ascertain adequate insurance, WSIB coverage, remittance of taxes, etc.
- # Proposal to create “Built Environment Specialists Act” to cover all players from building officials to professional designers to contractors; would regulate conduct, roles and responsibilities of all building practitioners and set minimum competency standards.
- # No clear advice on whether sub-contractors or trades should be required to be Code competent, although strong support for investment in education systems and apprenticeship programs to help get more people in the business.
- # Renovators should be targeted for licensing and technical competency. This may be difficult to implement given volume and variety of players.

Appendix 4:

CURRENT CONTEXT

Building Code Enforcement System

Municipal Enforcement of the Building Code

The Ontario Building Code (OBC), which is enacted under the Building Code Act (BCA), establishes building standards that apply across the Province of Ontario. Municipalities are charged with the responsibility of enforcing the Code, using the tools provided by the BCA.

While municipalities have relative autonomy in their Code enforcement practices, all municipalities are bound by a legal duty of care to permit applicants, building owners and occupants to ensure that safety is maintained.

Only once an application has been deemed to be in compliance with the OBC and all other applicable laws can municipalities issue the building permit. This permit is typically the last stage in a municipality's development approval process and is required before a builder can start construction.

Neither the Code nor the BCA stipulate required minimum service delivery standards or administrative practices.

Other Service Delivery Options for Building Code Enforcement

Municipalities typically enforce the Code independently and in-house. However, other delivery options exist, including:

Joint Municipal Enforcement - The BCA allows municipalities to jointly provide code enforcement services across municipal boundaries, although few municipalities do so.

Inspection Consultants - Some municipalities contract with consultants for select services, such as plans review and

inspection. The Chief Building Official, however, still performs key tasks of the BCA, such as checking applicable law, issuing permits, collecting permit fees and issuing orders. Liability for these contracts still rests with the municipality.

Appeals, Dispute Resolution and Rulings

Under the BCA, there are a limited number of avenues which take precedence over municipal autonomy in the application of the OBC.

- # **BCC** - The Building Code Commission (BCC) hears disputes between municipal building inspectors and permit applicants or holders over matters of Code interpretation or compliance.
- # **BMEC** - The Building Materials Evaluation Commission (BMEC) authorizes province-wide approval for the use of building innovations that are not specifically described in the code.
- # **Minister's Rulings** - The Ministry also has the power to issue Minister's rulings on evaluations by other bodies and to make site-specific rulings of the BCC apply province-wide.
- # **Appeal to Courts** - Any decision of a building official may be appealed by any aggrieved party to the courts.

Other Legislation, Requirements and Review Bodies

Some aspects of construction are regulated separately by other requirements and codes, which are enforced by different agencies in tandem with municipal reviews and inspections.

- # **Administrative Authorities** - Provincially-established agencies, such as the Electrical Safety Authority (ESA) and the Technical Standards and Safety Authority (TSSA) perform inspections, with review of design plans in some cases, to assess compliance with their respective codes.

These provincial agencies have codes that pertain to the design and installation of specific systems, such as electrical, elevators, fuel safety, pressure vessels and boilers.

Professional and Trade Requirements - Under the BCA and professional acts, certain buildings are required to be designed by architects or engineers. Professionals must prepare plans and perform field inspections for their discipline-specific areas of concern.

Specific trades are also governed by other legislation, such as the Trades Qualification and Apprenticeship Act (TQAA). Under the Act, for example, the majority of electrical installations must be performed by licensed electricians, with some limited exceptions, such as for HVAC installers.

ONHWP - Field review requirements may also apply to new home construction through the Ontario New Home Warranty Program (ONHWP). Builder Bulletin 19 (for high-rise condominium projects) and Builder Bulletin 38 (for low-rise condominiums) can require this additional field review as a condition of warranty.

Condominium Performance Audit - Changes to the Condominium Act, that are not yet in effect, would add an additional field review requirement for condominiums. The inspection, termed a "Performance Audit," is meant to serve as a protection for condominium owners and Boards of Directors.

Qualifications and Code Competency of Practitioners

The BCA does not stipulate the qualifications of building officials. However, many municipal building departments, usually in the larger jurisdictions, independently require their staff to have certain academic training in building performance (as technologists, technicians, engineers or architects). Most smaller and northern municipalities have no such minimum requirements.

Code-specific qualifications vary for the other parties in the building industry. Standard practices and formal requirements for training and licensing/certification/registration are as follows:

MMAH - The Ministry has developed technical courses focussing on specific aspects of the OBC, which are delivered through

professional or industry associations and community colleges.

OBOA - The Ontario Building Officials Association (OBOA) offers a voluntary certification program for its members which leads to designation as a Certified Building Code Official (CBCO) for municipal employees or Building Code Qualified (BCQ) for others.

Administrative Authorities - The Electrical Safety Authority (ESA) delivers training to electrical inspectors, over and above what is learned by individuals through their apprenticeship training. The Technical Standards and Safety Authority (TSSA) also co-ordinates training for its inspectors.

Designers - There are minimal Code-related requirements for licensing of designers, although continuing education programs that address building-related disciplines have been established and individuals can take courses from third-party providers such as universities.

Builders - Initial registration with ONHWP requires that home builders (or their staff) pass an exam of technical competency.

There is no provincial registration scheme, nor mandatory technical competency criteria, for non-residential builders or builders of rental buildings. However, builders have access to the Ministry-developed OBC training programs.

Residential Renovators - Despite its significant size and complexity, there are limited forms of registration, licensing or technical competency requirements for residential renovators. However, there is some municipal licensing and renovators may also voluntarily take the Code-related education programs available to other practitioners.

Trades and Associations - Tradespersons face a variety of requirements. Some associations, such as the Ontario Plumbing Inspectors Association (OPIA), have developed training programs and/or voluntary certification criteria for their members.

Some municipalities demand the completion of technical exams prior to issuance of a licence, while others impose no conditions (e.g. Master Plumber and Master Electrician Licenses).

At the same time, certain trades such as plumbers, electricians, steam fitters, sheet metal workers, hoisting engineers and refrigeration and air-conditioning mechanics must have a Certificate of Qualification to be employed in the construction sector.

Certain trades are subject to additional requirements of other acts. The Electrical Safety Authority (ESA) and the Technical Standards and Safety Authority (TSSA) impose conditions for inspectors and contractors.

Septic System Installers - Installers of septic systems must obtain a licence from MMAH. To be licensed, the applicant must have a qualified person (who has passed an MMAH-administered examination) to oversee the site work.

Liability, Limitations and Insurance

Joint and Several Liability

Ontario, like some other jurisdictions, relies on a joint and several liability framework. Designers, builders and inspectors may be held accountable for their own errors, as well as the errors of any of the other parties, if they are at least partly at fault.

Liability Period

Ontario's Limitations Act stipulates a limitation period of six years for negligence, beginning when the defect is discovered or ought to have been discovered. A claim may be made on a latent defect that manifests itself any number of years after a building's construction, creating a potentially endless period of liability. However, responsible parties must still be in existence and have financial resources to be accountable.

Some legislation supercedes the six-year statute, which results in variations on limitation periods. The Professional Engineers Act, for example, stipulates a one-year limitation period to begin a claim after the date on which an engineer provided service.

Current Insurance Practices and Products

There are variable insurance requirements among the different players in the building industry. Some practitioners are required by law to carry insurance, some by their associations and others may be required under contract.

Legislated insurance requirements:

Architects - Under the Architects Act, architects who hold certificates of practice must participate in the Ontario Association of Architects (OAA) Indemnity Plan. Each architect must carry a minimum of \$250,000 of professional liability insurance per claim per project per year with a maximum deductible of \$100,000.

Although not required, the OAA Indemnity Plan also provides run-off insurance that covers architects for the whole of their lives, plus an additional six years after their deaths. To be eligible, an architect must be in good standing and have participated in the Plan for two years.

Engineers - Under the Professional Engineers Act, engineers that offer services to the public must have a certificate of authorization and carry \$250,000 per claim and \$500,000 per year with a deductible of the greater of \$5,000 or 5% of the annual fees. Engineers obtain this insurance privately.

Engineers may be exempted from this insurance requirement with written agreement from the individual entering into the contract for the services. Other parties on the project are not required to be informed of such an exemption.

Builders - Only builders of new homes are required to have coverage which is provided through the ONHWP, which includes:

- One-year coverage for builders' work and materials,
- Two-year coverage for building envelope and mechanical systems, and
- Seven-year coverage for major structural defects.

ONHWP provides maximum coverage of \$100,000 for each new home. Common elements in condominiums are also covered for an additional \$50,000 per unit to a maximum of \$2.5 million per building. The program also provides deposit protection of up to \$20,000 per unit.

Insurance coverage required by associations:

- # **AATO** - The Association of Architectural Technologists of Ontario (AATO) requires accredited members who use a seal to carry a minimum professional liability coverage of \$250,000 per claim, to an annual aggregate of \$500,000, with a deductible of \$1,000. Other members are not required to carry any insurance.
- # **ARIDO** - The Association of Registered Interior Designers of Ontario (ARIDO) requires all members (with the exception of student members) to carry professional errors and omission insurance of \$250,000 per claim, to an annual aggregate limit of \$750,000, with a \$500 deductible.
- # **ONHWP Inspectors** - Builder Bulletin 19 requires ONHWP's field review consultants to carry between \$1-million and \$1.5-million of errors and omissions insurance over seven years. However, the requirement has not been applied, since these products have been proposed have been unaffordable.

No formal insurance requirements:

- # **OACETT** - Engineering technologists are not required by law nor by the Ontario Association of Certified Engineering Technologists and Technicians (OACETT) to carry insurance.
- # **Renovators** - No formal insurance requirements for renovators.
- # **Municipalities** - Municipalities typically carry \$10-million of errors and omission coverage for all municipal functions. Claims from the building department account for a significant component of the value of claims against municipalities.
- # **Contractors and Major Sub-Contractors** - Along with insurance

for the period of construction, general contractors are often required by owners to provide a performance bond, which usually incorporates a maintenance bond and covers 50-100% of the contract cost. The bond is to compensate the owner should the contractor fail to correct any defects in materials and workmanship within a year of construction, though it can be extended.

Other common practices or products:

- # **Contractual Obligations** - Contractual arrangements typically prescribe insurance coverage requirements for parties that are not legally bound to carry insurance (e.g. for general contractors) or require coverage above the legally required minimums (e.g. for architects and engineers).
- # **Owner Insurance** - Wrap-up insurance, or team coverage, is also currently available to owners and is provided on a project basis. It covers all practitioners on a design and construction team, as opposed to a series of individual practitioner coverage.

Appendix 5:

CONCERNS WITH THE PRESENT MODEL

Gaps and Redundancies in the Enforcement System

Uncertainties Around Expected Roles and Responsibilities

The municipality is the sole party which has Code-related roles and responsibilities stipulated in the Building Code Act. There is generally little or no clear indication in the BCA and other legislation of the expected obligations of the various other parties that must comply with and enforce the OBC.

Contracts are often used to prescribe these obligations. As a result of the reliance on various contractual mechanisms, obligations can vary from project to project. Although contracts can clarify roles and responsibilities for the parties within the contract, those who are not parties to the contract may not be aware of others' contractual obligations.

As a result, there can be uncertainty surrounding the obligations and expectations of each party in meeting code standards. This lack of clarity may result in omissions or duplications of tasks. Such redundancies can increase the time and cost of the development process. The potential for omissions due to the lack of clarity of party obligations could also jeopardize health and safety.

Variations in Municipal Service Delivery

The BCA allows municipalities relative autonomy in how they enforce the Building Code. While this provides flexibility for municipalities to tailor their practices to their jurisdictions' needs, it has resulted in unnecessary delays in some cases.

Variations have been identified in:

- the level of service delivery (availability and competency of

inspectors);

- the acceptance of Code equivalents (materials, techniques and designs); and
- permit administration (application forms and fees).

The variation in the level of service delivery across the Province means that processing times can be unpredictable from one municipality to the next. This can create uncertainties for the applicants, inhibiting their ability to effectively manage their projects.

Municipalities have independently developed building permit application forms. Much of the information required to process a building permit is consistent across municipal borders, but there are differences in how the information is collected. These minor variations in the permit applications and other administrative practices can result in the unnecessary duplication of efforts for permit applicants working in various municipalities. This can result in increased costs and unnecessary delays in the development process.

Permit fees, which are set by municipalities, are also highly variable and can be far in excess of the cost of providing inspection services. While the Supreme Court decisions require that the permit fees reflect the cost of providing the service, the BCA does not prescribe permit fee levels or practices. Artificially inflated building permit fees can create increased and unpredictable costs for applicants and may create an unfair burden on building permit applicants.

Duplicate Code Review for the Same Project's Plans

Builders and others in the building industry questioned the efficiency in having the same sets of plans reviewed multiple times when identical construction projects are proposed in two or more municipalities. The redundancy occurs most often with large builders of subdivision housing with similar developments in different jurisdictions. If the Building Code applies standards Province-wide, shouldn't a set of drawings deemed Code-compliant in one municipality also be inherently Code-compliant in all of the other jurisdictions in Ontario?

Each municipality is currently liable for the plans that they inspect and

review. There is some merit in having each municipality independently review and approve a set of drawings, instead of having one municipality provide the approval and carry the liability for all potential defects from those plans that manifest throughout Ontario. In addition, each municipality needs to be concerned with other approvals, including zoning and site plan.

Apart from the important questions of municipal liability and development approvals, the excessive redundancies that result could be minimized. Recognizing certification by other municipalities would help to reduce time and expense for the building industry.

Reliance on the Province

Some Building Code inspectors can be reluctant to approve innovations and sufficiency of compliance. This reluctance can be due to several factors, such as limited Code knowledge and municipalities' over-exposure to liability. These uncertainties can force municipalities to refer simple matters to senior staff or to the Province's Commissions, adding another layer to a project's application process. This additional stage can lead to extra costs and unexpected delays for the permit applicants.

In addition, unnecessary deference to the Province puts undue strain on the Commissions, which are intended to focus on more complex matters. A significant minority of appeals to the BCC can be attributed to insufficient Code knowledge of the building official. This can create backlogs and delays for several other projects across the Province.

Duplication of Licensing Qualification Requirements

Some groups in the construction industry are subject to several layers of licensing or certification. Most of these requirements attempt to ensure regulation and competency in the industry, however some have been identified as being redundant or providing almost no added value.

Some municipalities engage in licensing trade practitioners as simply a means of collecting revenues. This practice is unfair to the

practitioners and can limit the mobility and, by extension, the availability of some trades.

Other requirements may test for specific elements – such as business acumen – that is not included in other certification requirements. While these may add some value, there can be extensive duplication in the testing of core competencies and knowledge. Better coordination of the various licensing and certification schemes would eliminate this duplication without losing the important goals of the existing schemes.

Fragmented System of Approvals

Industry participants have long voiced complaints about the lack of coordination among the variable legislation and regulations that apply to construction approvals. While some improvements are in progress to streamline the approvals process, such as development permits, there continues to be disorganization around inspections, review and the issuance of the building permit.

As has been heard before, this lack of coordination can result in delays, redundancies and lost opportunities. In some cases, the approval system is so complex that only specialized professionals in the industry can navigate an application through the various stages. This can create barriers to the general public who does not interact with the construction approvals process on a daily basis.

Some of the delays are due to uncertainties among the approval agencies themselves. Some approvals are contingent on approvals by other bodies. The most common approval barrier that has been identified is the uncertainty around the site plan approval. There can be uncertainty when an application has reached a sufficient amount of acceptance in the site plan approval process to warrant approvals elsewhere, such as the building permit. Clear direction could reduce the delays due to uncertainties in the overall approval system.

Variable Knowledge Base

Delays in Permit Approvals

There are no explicit requirements to work as a building official. As a result, there is variation in the technical competency of inspectors across the Province. Some municipalities are better able to quickly process applications due to their more Code-competent staff, while others require more time to ensure Code compliance. Inspectors lacking in technical knowledge can delay processing and add unnecessary costs because of the extra time required for plans review and inspections for even simple matters. Code-knowledgeable inspectors are also better able to identify problems in the early stages of the development process, avoiding the more costly redresses later in the construction process and producing safer buildings overall. Delays due to poor Code knowledge, which can be unpredictable since the competency of inspectors varies from one municipality to the next, can complicate project management and reduce efficiency in the building industry.

Municipalities that are lacking in Code-competent inspectors may also be more reluctant to approve innovations. While this can clog the approval system, as noted above, it can also stifle innovation. Where applicants believe that municipalities may simply reject innovations, they may be reluctant to develop and submit such innovations.

Inspectors with limited Code knowledge may also reduce the effectiveness of the flexibility that will be provided by the anticipated objective-based code.

Variations in the Quality of Plans Submitted

There are also significant variations in the technical competency of practitioners who are submitting plans. This results in significant variations in the degree of Code-compliance of plans that are received by municipalities. Plans that are produced by those with strong knowledge of Code requirements are much quicker for municipal inspectors to process, while those submitted by practitioners with limited Code knowledge can require much longer review times. This can create backlogs in the municipal inspection system and lead

to delays for all permit applicants.

The wide array of Code knowledge among practitioners limits the municipality's ability to manage workloads and respond to applicants efficiently. Inspectors are less able to focus their attention on complex Code matters when they are required to attend to simple Code deficiencies in plans submitted.

The lack of Code-competent practitioners can also result in lost opportunities for innovation due to their reluctance to pursue alternative materials, techniques and designs.

Perceived Lack of Professionalism in the Building Business

Currently, the availability of some building industry practitioners and tradespersons can fluctuate, partly due to the perceived lack of professionalism in the construction industry.

These fluctuations can present barriers to the building industry, particularly when there is a shortage of the necessary resources or tradespersons. The inability to find the required practitioners can disrupt the construction process and increase the costs.

Practitioners feel that improving the attractiveness of the building industry could resolve some of the fluctuations by retaining qualified tradespersons. Providing formal recognition of knowledge is one important means of improving the industry's perceived professionalism and attractiveness.

Unequal Accountability

Lack of Incentives to Improve Quality

There are limited tools in today's building regulatory regime to reward good practitioners and to correct the problem behaviour of substandard practitioners.

Under joint and several liability, compensation does not need to reflect each party's share of responsibility. As a result, those who are at least

partly liable, with the ability to pay (insured parties), are typically required to cover the compensation costs. The share of compensation that is paid by the various parties tends to reflect the amount of insurance that they carry rather than the extent of their responsibility for the defect.

Unequal Responsibility for Errors

As outlined, insurance requirements vary significantly. The parties that typically carry insurance, and therefore commonly cover compensation costs, are ONHWP (where it applies), municipalities and some large professional firms.

The potentially endless liability period under the Limitations Act, combined with the joint and several liability framework, increases the risk for parties that have longevity. Often practitioners that are involved in a building's development, and may be partly liable for a defect, are no longer in practice when that building defect is discovered. In these cases, the remaining parties cover the claims, simply because they are still in practice or still insured. This places a heavy liability burden on practitioners and firms with longevity and on municipalities, which cannot go out of business.

There has been some response from the building industry to the lack of incentives for improving quality. ONHWP, for example, can hold individual builders accountable, even when they transfer from company to company. The industry has also responded financially to some degree by requiring companies to provide bonds on larger projects, which tend only to be available to well-capitalized firms, which are typically large and have some longevity.

Despite these limited responses, accountability continues to be unevenly distributed. At one end of the spectrum, this can result in sub-standard workmanship, which ultimately jeopardizes the quality of construction and the health and safety of the public. At the other end, those who are most exposed to liability can resort to unduly cautious practices which can limit innovation and create inefficiencies in the building business.

Inaccessible Consumer Protection

When defects do occur in today's building regulatory environment, consumers can have difficulty getting access to compensation. Where warranties are not in place, consumers are normally forced to resort to resolution by the courts, which they are generally prepared to pursue only in certain cases.

Compensation is only available when the parties at fault are still in existence and have the financial resources to provide compensation. Without significant mandatory insurance requirements across the board, and with errors and omissions insurance provided on a claims-made basis, it is common for consumers to have few, if any, parties to pursue.