PRESIDENT'S MESSAGE

Recent *Building Code Act* amendments fail public interest test

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PRESIDENT

In March 2000, then Ontario Municipal Affairs and Housing Minister Tony Clement established the Building Regulatory Reform Advisory Group (BRRAG) to recommend ways to enhance the process of approving building plans and issuing building permits under the *Building Code Act*. Introduced as a "red tape reduction" measure, the initiative was intended to respond to complaints that the plan approval process was inconsistent from municipality to municipality and took too long.

The advisory group heard submissions from various stakeholders, including PEO, the Ontario Association of Architects (OAA), the Ontario Building Officials Association (OBOA) and the Association of Municipalities of Ontario (AMO). In its discussions with BRRAG, PEO took the position that engineers are already bound to "adhere to all applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by or under the responsibility of the practitioner" or face the possibility of discipline for professional misconduct, so that if inadequate submissions by engineers were a cause of permitting delays, PEO's discipline process could deal with the problem. In addition, we said, PEO could use its regulation-making powers under the *Professional Engineers Act* to address any clearly identified deficiencies in standards of knowledge and skill related to engineering practice in this area.

Nevertheless, in July 2000, BRRAG issued its report, *Knowledge, Accountability and Streamlining: Cornerstones for a New Building Regulatory System in Ontario*, which recommended legislative amendments to:

- enhance public safety by requiring that designers and building inspectors meet qualifications around knowledge of the Ontario Building Code (OBC) and by establishing new service level standards for municipalities and other local enforcement bodies;
- streamline the building approvals process and remove red tape;
- limit building permit fees to the reasonable cost of enforcement;
- allow municipalities to outsource plan review and construction inspection functions to Registered Code Agencies (RCAs);
- encourage innovation in design and construction; and
- enhance accountability among building practitioners through insurance requirements.

Bill 124–*The Building Code Statute Law Amendment Act*–was introduced in November 2001, and passed into law in June 2002. One of its key recommendations was that parties involved in preparing, approving or enforcing building plans demonstrate knowledge of the OBC by passing examinations set and administered by the ministry. Its attendant *Regulation 305/03* was filed on July 25, 2003. In its final form, the legislation exempted builders and developers from the qualification and liability insurance requirements of the act. Among other things, *Regulation 305/03* requires that:

- effective July 1, 2005, building plans submitted as part of building permit applications be stamped by a designer who has qualified by previously passing ministry-administered examinations on provisions of the OBC;
- entities submitting plans and designs as part of a building permit application be entered on a provincial registry and issued a Building Code Identification Number (BCIN);
- registered persons (the entities) carry at least $250,000 of liability insurance based on annual billings (no opt out); and
- building officials make building permit decisions in from five to 30 days, depending on dwelling type, and inspect work within two days of notifications of readiness for prescribed inspection.

Implementation of the regulation is proceeding. In fact, Municipal Affairs and Housing Minister John Gerretsen recently indicated to us in a letter on September 16 his intention to "retain the qualification requirements in their current form." This, despite professional engineers and architects continuing to maintain that their existing obligations under their respective acts do far more to protect the public than could be achieved by passing code-knowledge examinations, and requesting exemption from those examinations. Since the beginning of our dealings with this issue, PEO has stressed that many elements of the OBC pertaining to professional engineering require *interpretation* and call for *application of engineering principles*. This will become even more the case with the introduction of an objective-based building code.

I see the recent *Building Code Act* amendments as a solution in search of a problem. That doesn't mean there isn't a problem. No doubt improvements can and should be made to our process of submitting and approving building plans. However, there is no clear relationship between the solution mandated by Bill 124 and the original BRRAG objectives. The expectation that requiring designers to demonstrate code knowledge through examinations will improve code compliance and speed plan approval is simply unrealistic. It has never been established that failure by designers to comply with the building code is a significant problem in the plan approval process. And to suggest that there is a relationship between passing code-knowledge examinations and enhancing public safety requires a further stretch of the imagination. The real irony of these measures is that they add significant bureaucracy and cost to the system

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with little demonstrable benefit to the industry or the public.

I have communicated to the Minister of Municipal Affairs and Housing that the engineering profession does not support these legislative changes for the above reasons, and have asked that he suspend their implementation to allow us time to work with other key stakeholders to develop a workable approach that will address the real problems of building regulation.

At the same time, we must be prepared to demonstrate leadership in addressing those aspects of the process within our purview by reinforcing our own regulatory regime, as Ontario's architects have already done. We must be able to demonstrate that our members who submit plans have up-to-date knowledge of and remain compliant with all applicable standards and codes, as our Act requires. We should be prepared to implement an informal dispute resolution mechanism that can respond quickly to complaints from building officials, and hopefully resolve them without recourse to our full complaints and discipline process. And we should accept the need to mandate liability insurance for practitioners.

Designers and building officials should work together with the ministry to clarify lines of responsibility and accountability before they become even more complicated with the introduction of an objective-based building code. Finally, we should call on the government to make the necessary legal changes to support an appropriate liability insurance regime under which all participants in a building project share proportionally to their involvement in the project in the liability for defects beyond the warranty period, instead of just the designers as is the situation under the BCA.

I believe these initiatives will accomplish much more to address the real problems of building regulation than the measures introduced by Bill 124, and at less cost to society.