

## **BUILDING SAFETY ADVISORY COMMITTEE DRAFT RECOMMENDATIONS**

June 4, 2007

### **General**

1. The Minister of Public Safety (DPS) is responsible for the administration of the proposed New Brunswick Building Code Act (NB *BCA*) and regulations and may designate persons to act on his/her behalf under this Act and the regulations.
2. That a funding model be developed with appropriate stakeholder consultation so that the NB *BCA* and its regulations operate under on a cost recovery basis as a unit within the Technical Inspection Services branch, Department of Public Safety.
3. The NB *BCA* will incorporate and/or replace or be referenced by all other provincial legislation as it relates to the design construction and occupancy of new buildings and structures, and the alteration, reconstruction, demolition, removal, relocation and, occupancy of existing buildings and structures, and change of use or occupancy except as otherwise provided for in the NB *BCA*. This includes building by-law making authority and regulatory making authority under the Community Planning Act s.59, s.77 as they relate to building.
4. That a permanent voluntary Building and Fire Safety Advisory Committee be established through DPS policy. This is consistent with other Safety Advisory Committees within the Technical Inspection Services branch of DPS (i.e. plumbing, electrical, gas). The mandate of this committee is to provide advice to the Minister on standards, administration, enforcement and interpretation on issues as they relate to the Fire Prevention Act and the proposed Building Code Act and respective regulations. The advisory committee will also liaise with the National Research Council on National Building Code and National Fire Code issues through the Chief Building Inspector and Chief Fire Inspector.

### **Provincial Minimum Standard**

5. That the New Brunswick *Building Code Act* (NB *BCA*) and regulations become a provincial minimum standard.
6. The Crown or an agent thereof be bound by the NB *BCA*. Notwithstanding any other provincial legislation, this Act and its regulations apply to all buildings owned or operated by the Crown in right of the Province.
7. Upon proclamation of the NB *BCA* and its regulations, municipalities and rural communities will have a twelve month period to ensure their by-laws are consistent with the NB *BCA* and its regulations.
8. Conflict of acts and by-laws  
- municipal and rural community's by-laws are superseded

- the provisions of the NB *BCA* will prevail if any conflict occurs unless they are matters not regulated in the National Building Code.

9. No person shall undergo to construct, or occupy new buildings and structures as regulated by the National Building Code, or shall undergo an alteration, reconstruction, demolition, removal, relocation or change the occupancy of existing buildings and structures except in accordance with the NB *BCA* and its regulations and unless a building permit has been issued by an authority having jurisdiction and the permit is in force.
10. Municipalities and rural communities have the choice of:
  - a. offering the service themselves;
  - b. sharing with other municipalities or rural communities;
  - c. contracting with a district planning commission, another municipality(s) or rural community(s) or private qualified inspector or inspection agency.

This, in effect, makes building inspection an essential service that must be supplied directly or by contractual agreement.

#### **Offences**

**(to come into effect parallel with Inspectors being required to be qualified)**

11. That “senior” Building Inspectors, designated by a jurisdiction within NB to enforce the NB *BCA* and regulations including municipalities and planning commissions, be authorized under the conditions of the *Provincial Offences Procedures Act* and be given the authority to issue tickets under the *Provincial Offences Procedures Act* for the following prescribed offences. (Intention is that that a jurisdiction would designate which of its’ inspector(s) would be given the authority to issue tickets subject to the inspector having the qualifications to inspect the type of building)

#### **Ticketable Offences (Prescribed under POPA)**

##### **Failure to Obtain a Permit**

12. Every person who fails to obtain a permit in accordance with the NB *BCA* and its regulations commits a prescribed offence punishable under the *Provincial Offences Procedures Act*. (Recommended Category?)

##### **Obstruction of Inspector**

13. Every person who hinders or obstructs a building inspector in the execution of his/her duties under the NB *BCA* and regulations commits a prescribed offence punishable under the *Provincial Offences Procedures Act*. (Recommended Category?)

#### **Offences**

14. Every person commits an offence who;
  - a. knowingly furnishes false information in any application made pursuant

- to the NB *BCA* or its regulations or in any statement or return required to be furnished pursuant to this the NB *BCA* and/or regulations;
- b. fails to comply with any order, direction or other requirement made pursuant to the NB *BCA* and/or its regulations;

### **National Building Code (NBC) of Canada Adoption**

15. New Brunswick must expedite a method for adopting the National Building Code of Canada and its subsequent errata and revisions. Proper notification to stakeholders of the adoption date is required or as specified by the Minister of Public Safety. Suggested method in the New Brunswick Building Code Act is for Ministerial adoption by reference.

### **No Amendments to Technical Requirements of the Code**

16. That an authority having jurisdiction in New Brunswick does not have the ability to amend any of the prescribed technical requirements of the National Building Code of Canada. There is a Provincial mechanism for amendment requests to the National Building Code.

### **Additional Standards**

17. To allow for the municipality, rural community or province to have the ability to prescribe additional standards to the National Building Code of Canada within their boundaries only when those standards are matters not prescribed by the NBCC (i.e. heritage by-laws).

### **Administration in New Brunswick**

18. That the council of any municipality , rural community, planning commission or the Province of New Brunswick be responsible for the administration and enforcement of the NB *BCA* and its regulations within its jurisdictional boundaries.

19. The council of any municipality or rural community must pass by-laws not inconsistent with the NBBCA in respect to;

- the appointment of a municipal Chief Building Inspector (if they chose to have one) and Building Inspectors and the prescribing of their duties (see Municipalities Act s.74(3).
- permits and classes of permits
- applications for permits and the required accompanying documentation
- payment of fees on applications for permits and the issuance of the permits

Incorporate CPA s.77(1)(g) and s.77(1)(g.01) respecting fees.

- providing for the refunding of fees under prescribed circumstances
- providing for the inspection of construction or demolition

## 20. **Public Repository of New Brunswick Building Code Information be Established**

A public database be established and maintained by the Provincial Chief Building Inspector containing the NB *BCA* and regulations, contacts, links to other authorities having jurisdiction within the province, appeal forms and procedures, contact information as well as past decisions from the following sources;

- a. Provincial Chief Building Inspector decisions
- b. Municipal Chief Building Inspector decisions
- c. NB Building Code Appeal Board decisions

## **Provincial Chief Building Inspector**

21. That New Brunswick establish a Provincial Chief Building Inspector who is appointed by the Minister. This is in keeping with all Chief Inspectors located in the Technical Inspection Services Branch, Department of Public Safety.

### **Duties**

The Duties and powers of the Provincial Chief Building Inspector are as follows;

- responsible for the ensuring compliance of the New Brunswick *Building Code Act* and regulations,
- acts as “resource” for consistency of application of the National Building Code of Canada,
- act as a resource on technical issues,
- responsible for standards development,
- responsible for maintaining the repository of decisions
- takes advice from the permanent “Building and Fire Safety Advisory Committee” (Note: Municipal Chief Building Inspectors on committee also)
- Advocate or champion for revised process of code adoptions and its application,
- first line of informal dispute resolution in jurisdictions that do not have a designated Chief Building Inspector,
- education: explaining the rules for the public and technical education for the stakeholders,
- must be qualified to perform all levels of inspection under the National Building Code of Canada,
- serves as a representative on national code committees and sub-committees to ensure:
  - Consistency on national basis
  - Information sharing with New Brunswick’s stakeholders and representing their interests and priorities

Note: not intended to displace an individual’s membership on committees and sub-committees where membership is selected in part on geographic basis

## **Building Inspectors**

### **General**

22. Inspectors shall be appointed by council or employed by or contracted for by each area having jurisdiction to administer and enforce the NB *BCA* and its regulations.
23. Building inspectors in New Brunswick must be qualified as per the minimum criteria prescribed in regulation. (To come into effect after designated training time and parallel with ticketing ability).
24. A building inspector can only inspect buildings to a level for which they are qualified.
25. On the request of the owner or person in charge of a building or premises the building inspector shall, before entering the building or premises, present to that person a certificate or other means of identification issued.

### **Powers**

26. The powers of building inspectors provide them with the ability to;
  - require an application to be accompanied by documents or things, such as drawings and specs.
  - issue permits under the NB *BCA* and regulations
  - revoke permits under the NB *BCA* and regulations
  - issue orders to cease construction or demolition (CPA)
  - issue orders to comply or uncover
  - request for entry
  - issue, deny or revoke occupancy permits
  - other duties as prescribed by regulation

(Intention: Same powers issued under CPA and MA to building inspectors)

### **Power of Entry**

27. A Building inspector shall have the authority to;
  - enter, at all reasonable times upon any property within their jurisdiction for the purpose of making any inspection that is necessary for the administration or enforcement of the NB *BCA* and regulations
  - take with him or her any person or thing that they consider would be of assistance in the performance of their duties under the *Act* and regulations
  - take samples and photographs.

### **Entry with Warrant**

28. Where a building inspector is refused entry to a property within their jurisdiction they may apply for an entry warrant under the *Entry Warrants Act*.
  - Where an entry warrant has been obtained under the *Entry Warrants Act*, a person who is leasing a dwelling or dwelling unit to another person shall not

refuse entry to or obstruct or interfere with a building inspector who is entering or attempting to enter the dwelling, dwelling unit or structure to ensure compliance with the NB *BCA* and/or its regulations.

- A person who violates or fails to comply with a warrant issued under the *Entry Warrants Act* commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category F offence.
- the building inspector may request the assistance of a member of a police force or a member of the Royal Canadian Mounted Police for the purposes of executing a warrant obtained under the *Entry Warrants Act*.

### **Entry With Out Warrant**

29. A building inspector may enter a building or structure without a warrant if the inspector perceives an imminent danger to the safety of the public.

(Example of imminent danger: impending building collapse)

**Inspector's Orders** (intention is to duplicate CPA Section 93 and stop work orders and to integrate CPA s. 92.1, 92(2))

30. Where an inspector gives an order pursuant to the NB *BCA* and its regulations, the order shall contain sufficient information to specify the nature of the contravention, its location, and directing compliance and the timeframe required to conform.
31. Every tenant (define tenant as owner/occupier) of a building in respect of which an inspector's order is made shall at all reasonable times permit the owner of the building, by himself, his servants, agents, workmen and employees to enter and re-enter that part of the building and premises of which he is a tenant for the purpose of making alterations and repairs therein and doing such other things as the owner is required to do by the order. If an emergency is present then entry can occur at any time without notice. (is consistent with Residential Tenancies Act s.16 Entry by Landlord).
32. If a person refuses to allow an inspector entry to exercise a power or attempts to interfere or interferes with an inspector in the exercise of the duties described in the NB *BCA* and its regulations, the municipality, rural community or province of New Brunswick under whose authority the inspector is acting may apply to the Provincial Chief Building Inspector, Municipal Chief Building Inspector, Court of Queen's Bench or Provincial Court (depending on remedy sought) for an order to allow entry and an order restraining the person from further interference. Under Fire Prevention Act, when you go to court, judge has to fine and order compliance
33. Once an order to cease construction or demolition has been issued on an area specifically defined in the order, no person shall perform any act in respect to the construction or demolition in the specified area other than;

- such work required to carry out the order of the inspector
- such work that is required to make the site of construction or demolition safe.

### **Liability/Indemnification**

34. No action or other proceeding for damages shall be instituted against the municipality, rural community, district planning commission or province of New Brunswick, Provincial Chief Building Inspector or Building Inspector or person authorized to act on their behalf with respect to anything in good faith done or omitted to be done by the Provincial Chief Building Inspector or Building Inspector or person authorized to act on their behalf in the execution or intended execution of his or her duties under the Act or the regulations. Negligence?

### **Court Actions**

35. Where an enactment requires that any action taken in a court of law be taken in the name of the municipality, rural community, district planning commission or province of New Brunswick any actions required to be taken with respect to the enforcement of the NB *BCA* and its regulations shall be taken in the name of the area in which the property is located,

### **Building Code Appeal Board**

36. New Brunswick, through the NB *BCA* establish a Building Code Appeal Board and define appointment of board members, composition of board, qualifications, term of members, remuneration of members, transitional provision, and address the liability of Board members and of municipality if one of their rulings is overturned by the Board. Only owner/owner's agent/tenant, designer, contractor/sub-contractor, or local jurisdiction without a Municipal Chief Building Inspector may appeal to the Building Code Appeal Board. Hardship is not considered grounds for an appeal.

- Appointment by the Minister of DPS
- Membership
- Remuneration
- Chair... Vice Chair
- Quorum
- Functions
- Ruling on dispute
- Definition of agent
- Agreed procedure
- Experts
- Absence of member
- Interest of member
- Designation of tribunal
- Less than quorum designated
- Minimum number
- Decision as a decision of the Board
- Decision in writing

- Form of decision
- Appeal to County Court (Queen’s Bench)
- Hearing terminates on appeal
- Hearing by judge
- Reference to Board
- Extension on time
- Want to ensure the ability of the Building Code Appeal Board to enforce an order or “notice to comply”

Court Appeal of Building Code Appeal Board decisions-- question of law or jurisdiction only; just process issues not technical issues)—see OBC Section 24

**Regulations**

37. Regulation making authority LG in Council for now.

List out all the items that are to be in the Regulations;

- (a) notice of regulations
- (b) permits
- (c) fees (common determination of construction value for permit purposes)
- (d) cost recovery of service
- (e) minimum qualifications of Inspectors and Provincial Chief Building Inspector (see NS Building Code regulations)
- (f) Exemptions to be allowed for
- (g) What triggers a permit
- (h) How many inspections
- (i) Responsibilities and obligations of owners
- (j) Responsibilities and obligations of professional (stamping)
  - field construction certificate
  - drawing standards?
- (k) Responsibilities and obligations of constructor
- (l) Obligation of authority having jurisdiction
- (m) Occupancy
- (n) Annual report of Provincial Building Inspector. Municipalities, rural communities, and district planning commissions to provide statistical reporting to Provincial Chief Building Inspector quarterly to facilitate this

**Other:**

38. The Building Safety Advisory Committee be consulted throughout the legal drafting of the Act and regulations.

39. The stakeholders recognize the need to streamline the process for permits and approvals due to the unavailability of sufficient information and no uniformity surrounding the numerous requirements for a construction project.. An electronic service delivery system through a single portal would enable the integration of multi-departmental permits and approvals. It is recommended that government provide a solution that will meet the construction industry’s concerns by leveling

the playing field and reducing costs. The solution should incorporate where possible existing technologies i.e.: OpenCite, planet, where possible.

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