



**Canadian Environmental Law Association**  
**L'Association canadienne du droit de l'environnement**

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Ann Borooah  
Director  
Housing Development and Buildings Branch  
Ministry of Municipal Affairs and Housing  
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VIA FAX 585-7531

Dear Ms Borooah,

**RE: "BACK TO BASICS", Consultation Paper on the Focus of the Ontario Building Code**

The Canadian Environmental Law Association (CELA), founded in 1970, is a non-profit, public interest organization specializing in environmental law and policy. CELA's casework and law reform activities in land use planning and resource conservation matters extends back more than fifteen years in Ontario.

We have reviewed the "Back to Basics" consultation paper and have a number of comments. The overall impression given by this document is similar to the changes to the land use planning system currently proposed by the Ministry of Municipal Affairs and Housing. In both cases, the Ministry of Municipal Affairs and Housing is providing for brief public review a set of perspectives and proposals for change that serve the exclusive interests of the development industry often to the exclusion of other points of view. The "Back to Basics" paper attempts to mask this one-sided perspective by framing the discussion as a matter of where to "focus" the Ontario Building Code.

We are particularly concerned about the suggestions to reduce or eliminate provisions for energy conservation and this area is the focus of our submission. However, we also do not support loosening or eliminating provisions for accomodating the needs of the physically handicapped or security provisions that help to prevent forced entry through windows. Weakening of the Building Code in these three areas would be regressive and have an inordinate impact upon lower income people as well as inordinately compromise the safety of women and children.

In calling for submissions on your paper, you ask for proposals for changes to "make the Building Code more cost-effective, particularly where these changes would not affect health and safety goals" (p. 9). You also ask for a detailed rationale for each of any proposals submitted including assessment of the associated costs and benefits (p. 10).

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CANADIAN ENVIRONMENTAL LAW  
ASSOCIATION.  
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Basics", Consultation p...RN18076

We do not have the time or resources to provide such a rationale for our submissions. We however strongly support the notion of justifying the cost effectiveness of any changes to the existing Building Code and would want to see the detailed rationale for any changes the Ministry decides upon. In developing and/or evaluating such analyses however we urge you to employ the principle of "full-cost accounting" so that, for example, the long term operating costs to owners of buildings constructed under a revised Building Code are fully addressed. We raise this concern because the "Back to Basics" paper frequently alludes to up-front costs to developers and home buyers and is quite dismissive of the longer term costs of, for example, heating a home in which energy conservation requirements are no longer in place.

In making our comments, we also rely upon the detailed rationale that formed the basis for changes to the Building Code in recent years. Your paper requests a detailed rationale for any proposals. As well, your paper provides some history of the Building Code changes that have occurred in recent years. But, this history is quite selective. This historical account neglects to show that successive changes to the Building Code relied upon all manner of "detailed rationales" including assessments of the costs and benefits.

In particular, the expansion of the Building Code to include various energy conservation measures was analyzed in extensive detail and changes were supported by the Ontario Ministries of Environment and Energy, Ontario Hydro, the Consumers Association of Canada and many other stakeholders. In fact, a review of the 1992 Hansard debates of the Standing Committee on Social Development that reviewed the Bill 112 amendments to the Building Code Act reveals that considerable support was expressed by various stakeholders associated with the development industry. The one lone voice in opposition to energy conservation in the 1992 debate appears to have been the Ontario Home Builders Association. This self-serving opposition is a minority opinion that now seems to have an inordinate influence on both the manner in which the Building Code review is being presented and the proposals themselves.

For example, the discussion in "Back to Basics" regarding "Government Directions" implies a number of assumptions with which we take issue. First, the "commitment to return Ontario to prosperity" will not be met by tossing out all manner of environmental regulations. There is strong public support for environmental regulation as evidenced by two recent opinion polls (Canada-wide and in the Greater Toronto Area) which revealed extremely high levels of support for strong enforcement of environmental regulation even during times of economic difficulty as well as support for greater spending on environmental services.

The public faith in effective environmental regulation seems well placed. A survey done by KPMG Consultants, entitled "Canadian Environmental Management Survey" canvassed Canadian companies, hospitals, municipalities, universities and school boards. When those who had environmental management policies in place were asked what had motivated them to establish the policies, 95% said the number one motivator was compliance with regulation; 69% were motivated by potential director liability; and only 16% were motivated by voluntary government programs. Therefore, your statements that the role of government is to set standards that "minimize the regulatory burden on business" and "use alternatives to regulation

where practical" is not supported by public opinion, nor is it likely to result in socially or environmentally desirable outcomes.

Our second problem with your discussion of the role of government is with respect to the notion of achieving public goals in a cost effective manner. This goal is laudable but not if cost effectiveness is narrowly measured in terms of short term economic gains for the development industry to the exclusion of longer term considerations of ongoing costs to consumers. Similarly, the less quantifiable but no less serious environmental impacts of these decisions are equally valid and not "secondary" as envisioned by the *simplistic* approach proposed in the paper for "a more simplified approach to documentation of costs and benefits of code proposals" (p. 8).

It has long been recognized that government must play a key role in evaluating the impacts of who benefits and who pays when policy and regulatory decisions are made by government on behalf of the public. Your consultation paper envisions a far too limited role for government by focusing on the short term economic gains to be made by developers and neglecting the long term impacts of these decisions on the public.

In the paper's discussion of "Stakeholder's Concerns" a similarly narrow perspective is provided. The paper does not provide the perspective of stakeholders who will be impacted over the longer term by narrowing the focus of the Building Code. Again, the last fifteen years worth of detailed analyses and rationale for including energy conservation provisions in the Building Code are not referenced. That work supported the expansion of the Building Code to include these provisions because it showed that the higher up front costs of energy conservation measures during construction were more than offset by the longer term financial savings and environmental benefits. It is quite inappropriate to re-open the Building Code by applying your proposal for a simplified analysis that dismisses the detailed work of earlier years. It may be convenient for the development industry to rely upon such a simplistic analysis; it is quite inappropriate for the Provincial government to do so. It is the government's job to consider matters that go beyond the immediate economic interests of the development industry.

On the basis of the above concerns we do not support the first principle set out in your paper. We do support the continuation, in the Building Code, of the three matters of public interest noted in your paper. We also strongly object to the manner in which the discussion is framed. The three areas of energy conservation, disabled access and security provisions are just as *basic* as the health and safety matters embodied in the earlier versions of the Building Code. We disagree with the premise that these three areas should be replaced with other mechanisms such as consumer labelling programs. Basic minimum standards are necessary in each of these areas so that all members of Ontario society, regardless of their income, can expect the same level of quality in the built environment. Labelling programs have a place to enable wealthier members of society to purchase products to achieve greater personal benefits; they are not a replacement for regulation in these areas of broad public interest.

With respect to your second and third principles, again, we submit that the detailed analyses and rationale, including analyses of cost-effectiveness, that contributed to the existing Building Code provisions, must form part of this current analysis. Your paper states that "provisions which could have a significant impact on construction costs be the subject of rigorous scrutiny to determine whether a proposed Building Code change is essential, as well as whether it is cost-effective". This narrow focus on the interests of the development industry is inappropriate. "Justification based on cost-effectiveness" must not be narrowly limited to the short term economic interests of the development industry or even the purchase price to consumers of housing without also considering the longer term economic and environmental impacts. These costs are not secondary to this justification exercise. Energy consumers were hit just as hard by the recent recession as was Ontario's construction industry. Decisions about changes to the Building Code must give equal treatment to the short and long term impacts on the people and environment of Ontario as are being accorded to the development industry in this consultation paper.

We have no comments on your fourth principle.

As noted above, we have serious concerns about the implications of the "simplified approach" to documentation of costs and benefits outlined in the paper. As with the rest of the paper, the objective appears to be to cater to the vested interests of the development industry to the exclusion of careful analysis of the longer term costs to the public and the environment. We make this submission because of concerns about the analysis itself as well as the extent to which it will be used.

The paper is unclear about when this evaluation procedure would be used. On the one hand, the paper seems to state that only minor Building Code amendment proposals would be evaluated using this approach. However, the paper provides no assurance that a more comprehensive analysis would occur for "major" amendments (including possible deletions of existing Building Code provisions) nor does the paper provide any indication of what would constitute "minor" or "major" amendments. Indeed, the paper appears to suggest that this simplified approach would be the only evaluation procedure used.

In summary, we have serious concerns with both the approach taken in this discussion paper and the proposals for change. We strongly disagree with opening up the Building Code Act to provide for the short term economic gains of one sector of Ontario society to the exclusion of the views of other stakeholders and the interests of the public at large. Please keep us informed on the next steps of your consultation process.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

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