

Positive Contractor / Building Official Relations

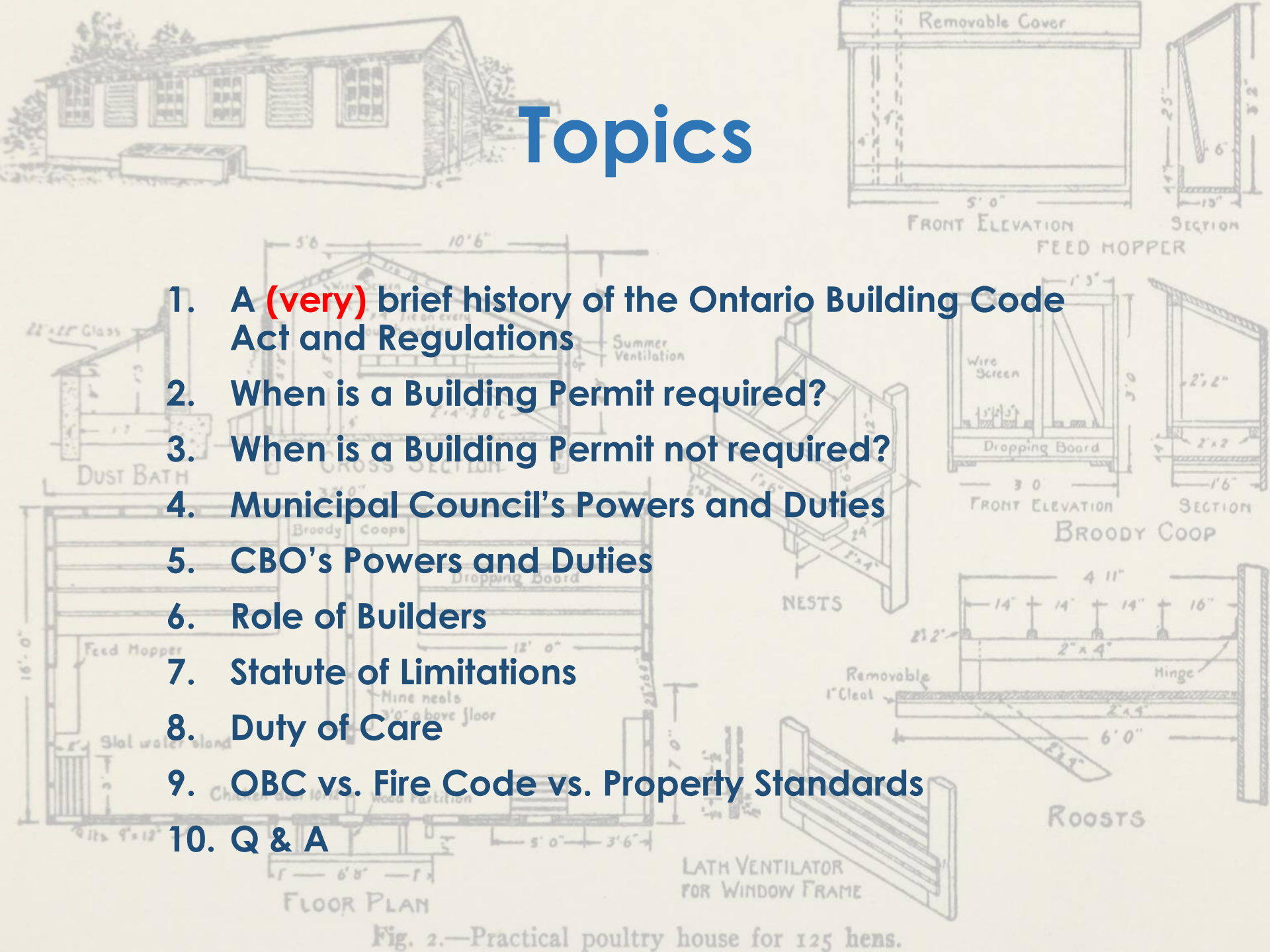
Presented by: John W. Lane

April 28, 2023



Topics

1. A (**very**) brief history of the Ontario Building Code Act and Regulations
2. When is a Building Permit required?
3. When is a Building Permit not required?
4. Municipal Council's Powers and Duties
5. CBO's Powers and Duties
6. Role of Builders
7. Statute of Limitations
8. Duty of Care
9. OBC vs. Fire Code vs. Property Standards
10. Q & A

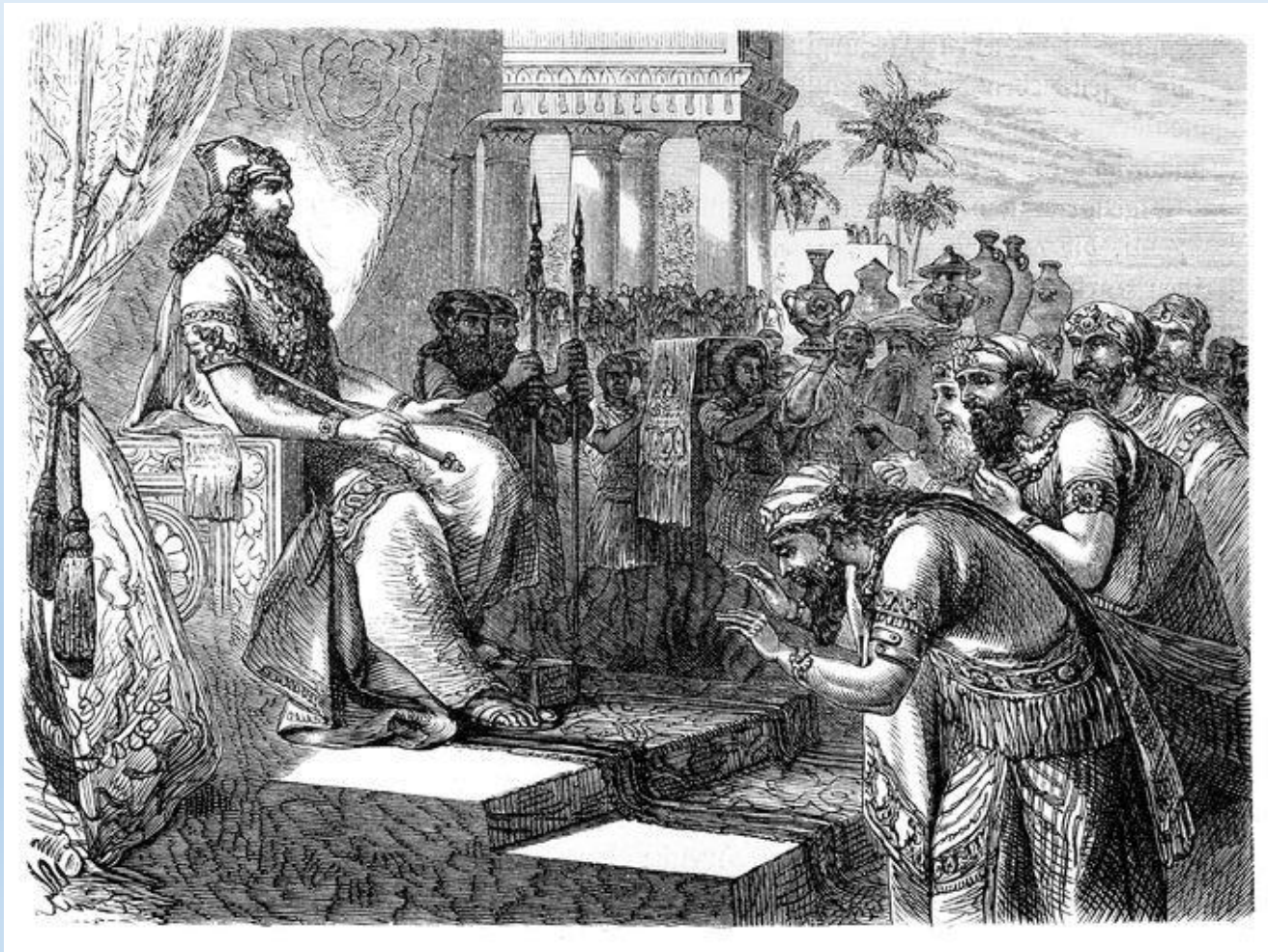


1. A **(brief)** history of Building Codes

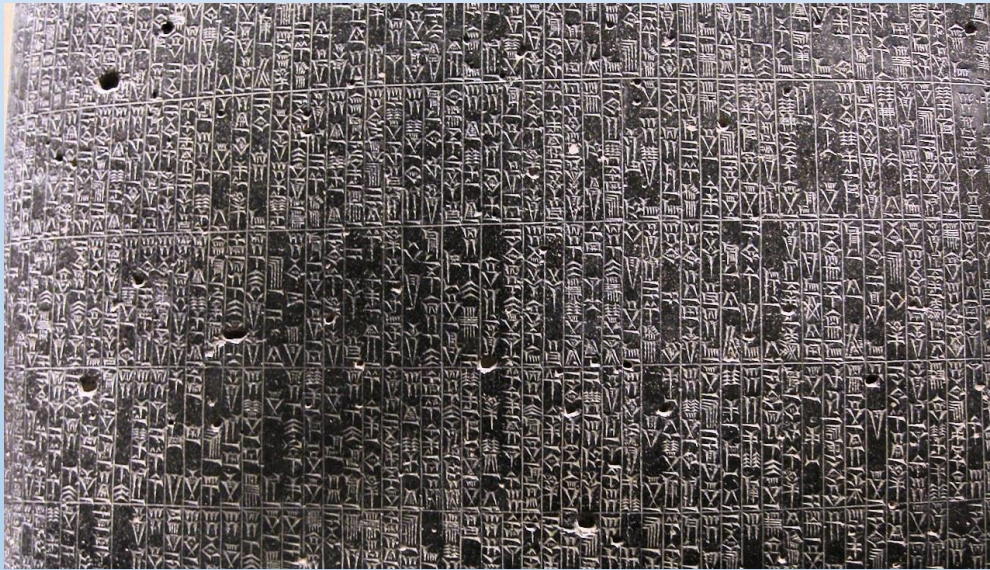


Building Codes are not a product of modern society, but rather have evolved from the distant past. Over 4,000 years ago, the Code of Hammurabi (the ruler of Babylonia) was decreed.

(Ancient Mesopotamia – 1754 BC)



One of the articles in the Code of Hammurabi stipulated that in the event of the collapse of a house, in which the householder was killed, then “the builder shall be slain”.



Code of Hammurabi

229 If a builder builds a house for someone, and does not construct it properly, and the house which he built falls in and kills its owner, then that builder shall be put to death.

230 If it kills the son of the owner, the son of that builder shall be put to death.

231 If it kills a slave of the owner, then he shall pay, slave for slave, to the owner of the house.

232 If it ruins goods, he shall make compensation for all that has been ruined, and inasmuch as he did not construct properly this house which he built and it fell, he shall re-erect the house from his own means.

233 If a builder builds a house for someone, even though he has not yet completed it; if then the walls seem toppling, the builder must make the walls solid from his own means.

The Great Fire of London

An example of further code development was in England, during the reign of King Charles II in the 17th century, as a result of The Great Fire of London, which engulfed most of the city and caused considerable loss of life and the destruction of most of the houses in the city.

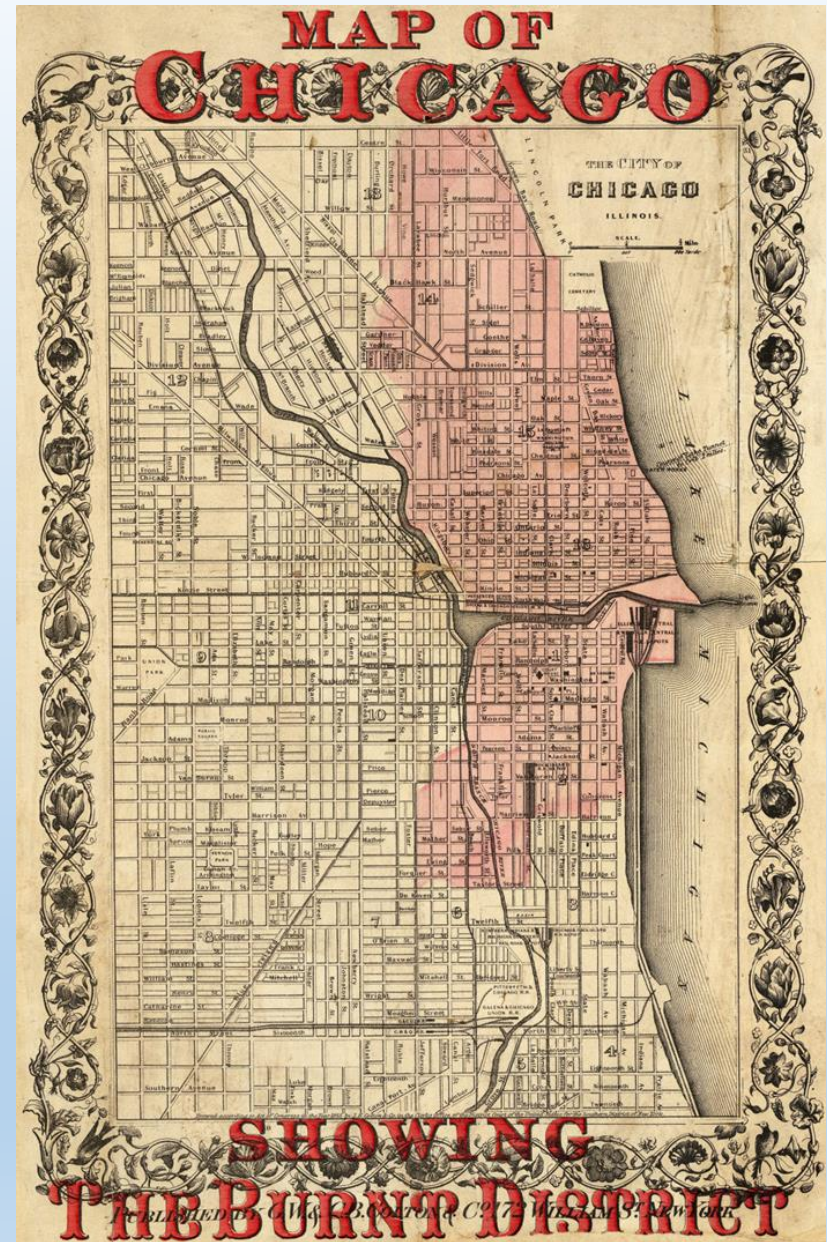


The Great Fire of London September 1666

13,200 houses destroyed

The Great Chicago Fire

In North America, the first building regulations were developed in the latter part of the 19th century as a result of fires in buildings which caused many fatalities.



The Great Chicago Fire

October 8 to 10, 1871

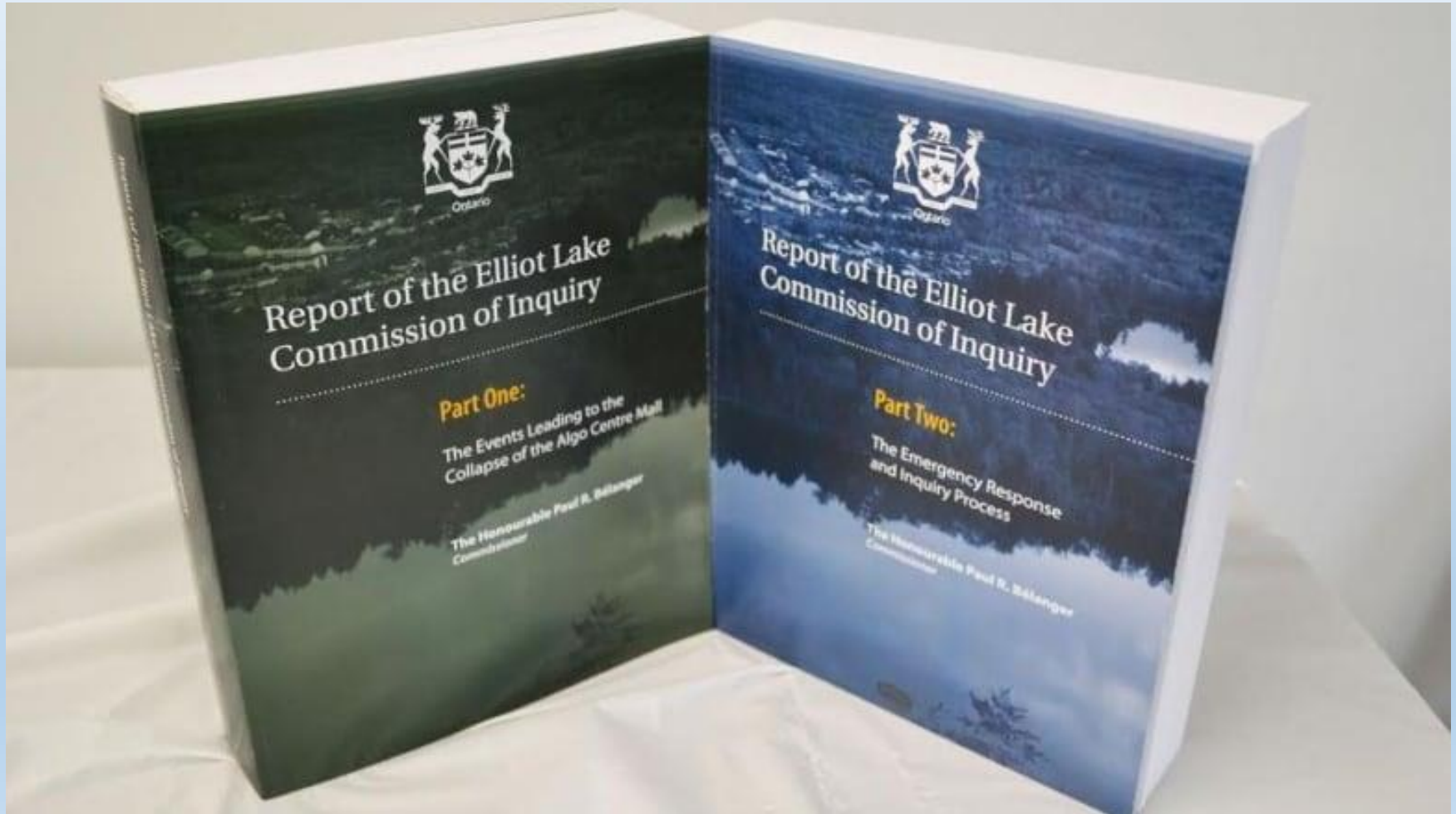
**2000 acres of buildings
destroyed**

Elliot Lake – The Algo Mall

At approximately 2:20 pm on Saturday, June 23, 2012, part of a 12m x 24m (39'-by-79') segment of the parking deck/roof collapsed at the Algo Centre Mall, sending metal and concrete debris crashing down through two floors of the shopping center **resulting in the deaths of two people and injuring more than 20 people.**



Elliot Lake Commission



Report of the Elliot Lake
Commission of Inquiry

Part One:

The Events Leading to the
Collapse of the Algo Centre Mall

The Honourable Paul E. Bélanger
Commissioner

Report of the Elliot Lake
Commission of Inquiry

Part Two:

The Emergency Response
and Inquiry Process

The Honourable Paul E. Bélanger
Commissioner

Elliot Lake Commission

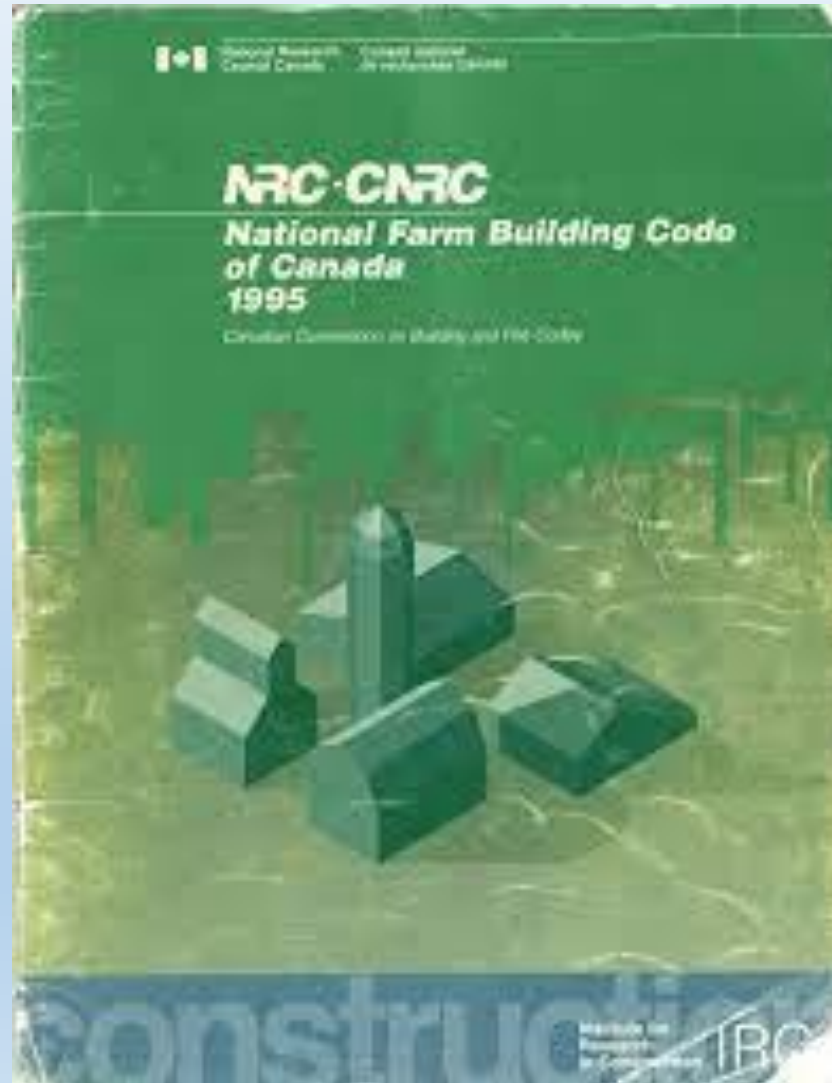
Summary of conclusions

Although it was rust that defeated the structure of the Algo Mall, the real story behind the collapse is one of human, not material, failure. Many of those whose calling or occupation touched the Mall displayed failings – its designers and builders, its owners, some architects and engineers, as well as the municipal and provincial officials charged with the duty of protecting the public. Some of these failings were minor; some were not. They ranged from apathy, neglect, and indifference through mediocrity, ineptitude, and incompetence to outright greed, obfuscation, and duplicity. Occasional voices of alarm blew by deaf and callous ears. Warning signs went unseen by eyes likely averted for fear of jeopardizing the continuing existence of the Mall – the social and economic hub in Elliot Lake.

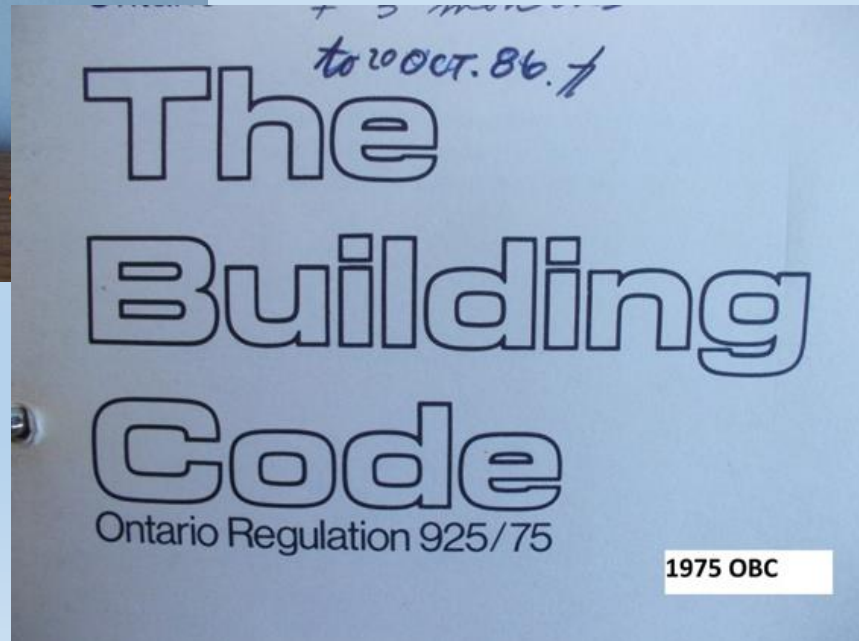
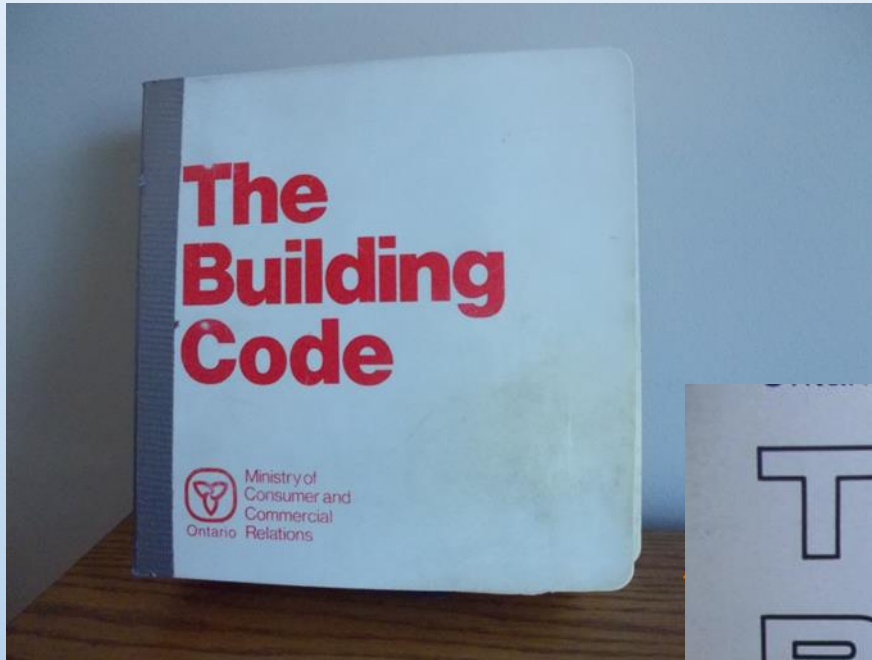
Canada's National Codes



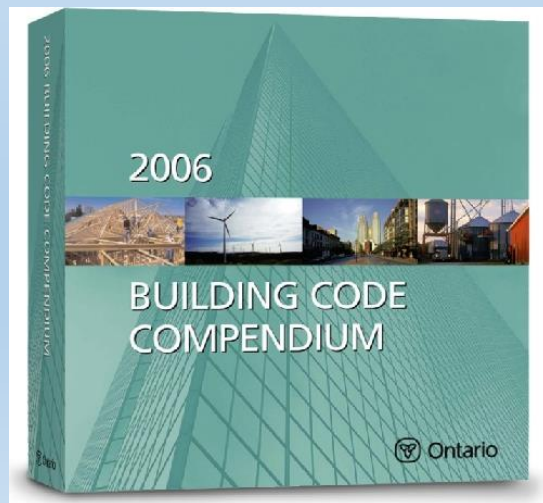
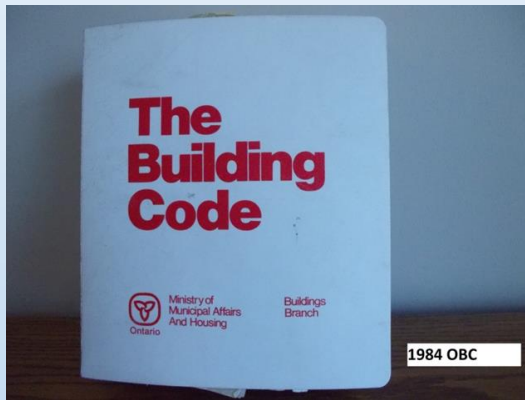
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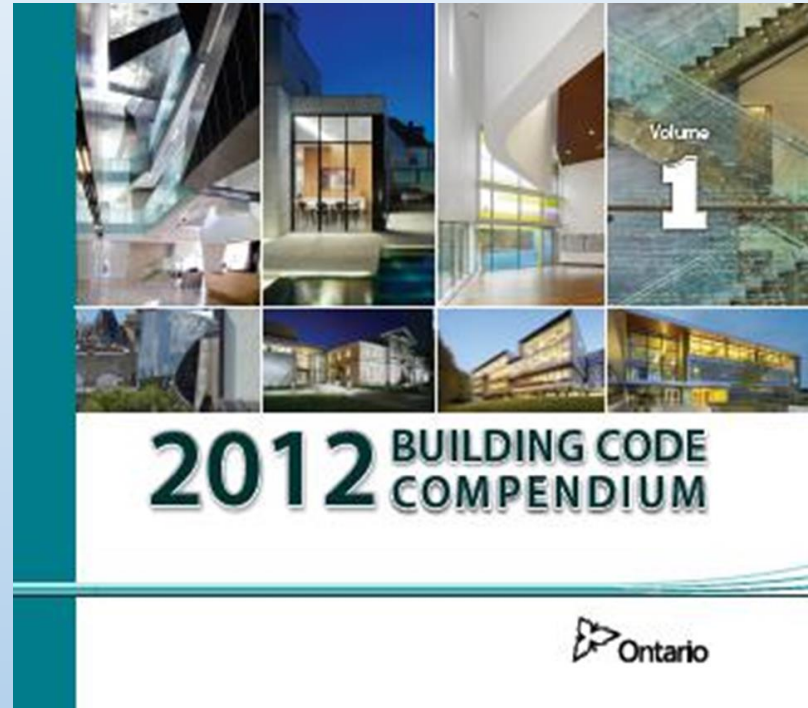
Ontario's First Building Code - 1975



Evolution of Building Codes in Ontario



Evolution of Building Codes in Ontario



Note: Building codes are a set of rules that set the **minimum standard** to which a new home or building can be constructed.

Provincial Responsibility

The Ministry of Municipal Affairs and Housing is responsible for the development of, and the amendments to, the Building Code Act and the Code.



Ontario

MINISTRY OF

MUNICIPAL AFFAIRS
AND HOUSING

Provincial Responsibility

The Ontario Building Code (O. Reg. 332/12: BUILDING CODE) is the legislative framework governing the **construction, renovation, change-of-use and demolition** of a building. The Building Code is a regulation under the Building Code Act, 1992, S.O. 1992, c. 23 that establishes detailed technical and administrative requirements as well as minimum standards for building construction. The purposes of the Ontario Building Code include:

- public health and safety,
- fire protection,
- resource conservation,
- environmental integrity and
- accessibility

although its primary purpose is the promotion of public safety through the application of appropriate **uniform building standards**.

Municipal Responsibility

Every municipality in Ontario is given the responsibility for the enforcement of the Building Code Act and the Code. It requires them to appoint a **Chief Building Official** and **Inspectors** to issue permits and perform inspections. Municipalities may charge fees to defray the cost of Code enforcement and pass bylaws which include requirements for application, plan and document submission, classes of permits, inspection notification stages and various other associated requirements.



2. When is a Building Permit Required?



“Construct”

Building Code Act, 1992 - S.O. 1992, Chapter 23

Definitions

1. (1) In this Act,

“construct” means to do anything in the **erection, installation, extension or material alteration or repair** of a building and includes **the installation of a building unit fabricated or moved from elsewhere** and “construction” has a corresponding meaning



Permits

Building Code Act, 1992 - S.O. 1992, Chapter 23

Definitions

1. (1) In this Act,
“building” means,

(a) a structure occupying an area greater than **ten square metres** consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,



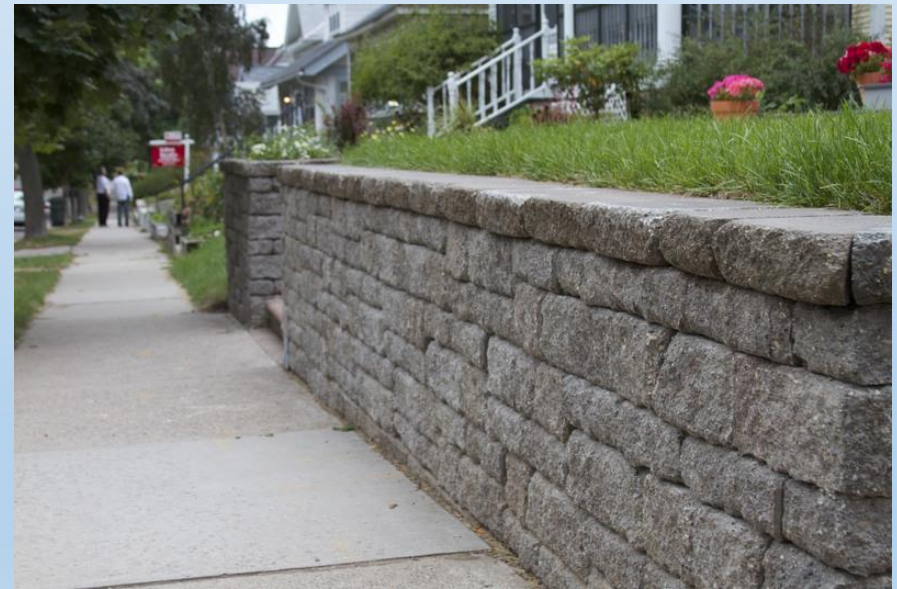
Permits

(b) a structure occupying an area of **ten square metres or less** that **contains plumbing**, including the plumbing appurtenant thereto,



Permits

- (c) plumbing not located in a structure,
- (c.1) a sewage system, or
- (d) structures designated in the building code



Note: On-site sewage (septic) systems are approved and inspected by the Niagara Region (Upper Tier).

“Designated Structures”

A retaining wall exceeding 1 000 mm in exposed height adjacent to,

- public property,*
- access to a building, or*
- private property to which the public is admitted:*



“Designated Structures”

A pedestrian bridge appurtenant to a building:



“Designated Structures”

A crane runway:



“Designated Structures”

An exterior storage tank and its supporting structure that is not regulated by the Technical Standards and Safety Act, 2000:



“Designated Structures”

Signs regulated by Section 3.15. of Division B that are not structurally supported by a building:



“Designated Structures”

A solar collector that is mounted on a building and has a face area equal to or greater than 5 m²:



“Designated Structures”

A structure that supports a wind turbine generator having a rated output of more than 3 kW:



“Designated Structures”

A dish antenna that is mounted on a building and has a face area equal to or greater than 5 m²:



“Designated Structures”

An outdoor public pool or outdoor public spa:



“Designated Structures”

A permanent solid nutrient storage facility with supporting walls exceeding 1 000 mm in exposed height:



3. When is a Building Permit not Required?

- Buildings/structures less than **10 m²** (not containing plumbing)
- Renovation work that is non-structural, with **no 'material changes'** to the building
- Plumbing fixtures replaced only (not relocated)
- “Same for Same” policy (for exterior finishes, roofing, domestic hot water heaters and furnaces)
- Always check with “A.H.J.”

However, Zoning regulations still apply!!!!

No Permit Required

Federal lands or Federally regulated endeavours are not subject to Provincial statutes or Municipal By-laws:

- Post Offices
- Department of National Defence
- Railways
- Port authority, (buildings related to the transportation of goods)
- Airports/Aerodromes
- RCMP detachments
- Penitentiaries
- Reserves
- Any federally regulated endeavour

No Permit Required

Buildings on Farms

A Demolition Permit is not required to raze ANY building on a farm, (current code – proposed amendment will include houses again).



No Permit Required

A tent or group of tents is exempt from the requirement to obtain a permit under section 8 of the Act and is exempt from compliance with the Code provided that the tent or group of tents are,

- (a) not more than 60 m² (645 Sq. ft.) in aggregate ground area,
- (b) not attached to a building, and
- (c) constructed more than 3 m from other structures.



4. Municipal Council's Powers and Duties

Building Code Act, 1992, S.O. 1992, c. 23

Enforcement by municipalities

3 (1) The council of each municipality is responsible for **the enforcement of this Act** in the municipality, except where otherwise provided by this Act. 2002, c. 9, s. 6 (1).

Chief building official, inspectors

(2) The council of each municipality **shall appoint a chief building official and such inspectors as are necessary** for the enforcement of this Act in the areas in which the municipality has jurisdiction. 1992, c. 23, s. 3 (2).

Also: **Pass a "Building By-law" in accordance with Section 7(1) of the Act.**

5. CBO's Powers and Duties

Building Code Act, 1992, S.O. 1992, c. 23

Role of chief building officials

- (6) It is the role of a chief building official,
- (a) to **establish operational policies for the enforcement of this** Act and the building code within the applicable jurisdiction;
 - (b) to co-ordinate and **oversee the enforcement of this Act and the building code** within the applicable jurisdiction;
 - (c) to **exercise powers and perform the other duties** assigned to him or her under this Act and the building code; and
 - (d) to exercise powers and perform duties in an **independent manner** and in accordance with the standards established by the applicable code of conduct. 2002, c. 9, s. 3; 2017, c. 34, Sched. 2, s. 2 (2).

CBO's con't

- Obtain qualifications prescribed by the Code
- Act in accordance with the Municipality's Code of Conduct
- Issue Building Permits (Section 8(2) – *“The chief building official shall issue a permit referred to in subsection (1) unless ...”*)
- Ensure legislated timelines for plans review and permit issuance are met
- Revoke Building Permit due to inactivity (inactive after 6 months and suspended after 12 months)
- Issue Occupancy Permits
- Represent the municipality at Building Code Commission hearings
- Report Architects and Professional Engineers to the OAA and the PEO
- Lots more ...

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CBO's con't

Issue various “Orders to Comply” such as:

- Orders to Comply for construction without a permit
- Issue Stop Work Orders *
- Issue Orders “not to cover”
- Issue Orders “to uncover” *
- Issue Unsafe Orders
- Issue Orders prohibiting use or occupancy of a building, if an unsafe order made by an inspector is not complied with *
- Issue Emergency Orders *
- Issue Orders to enforce the Regulations

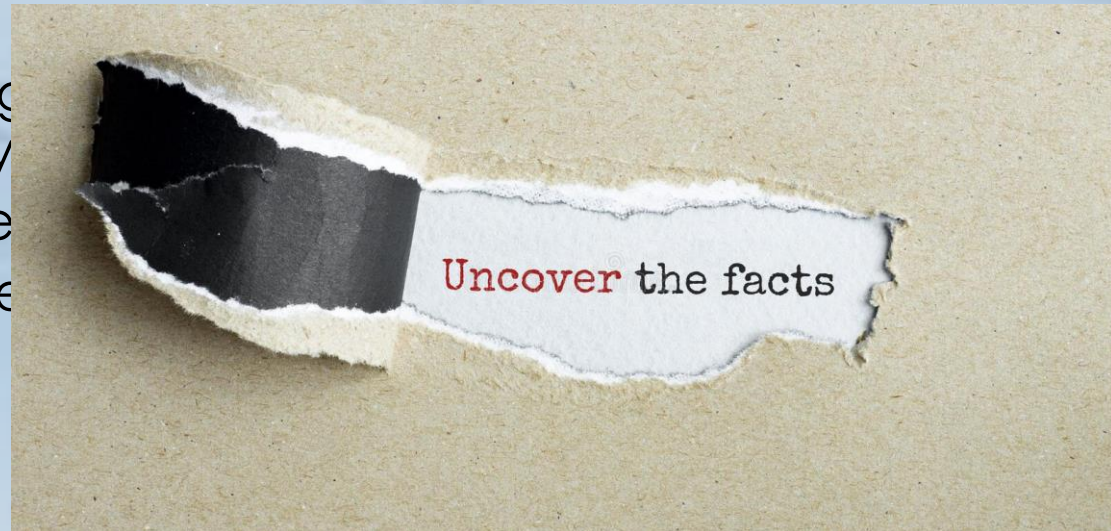
* Cannot be delegated

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6. Role of Builders

(3) It is the role of a builder,

- (a) to ensure that construction does not proceed unless any permit required under this Act has been issued by the chief building official;
- (b) to construct the building in accordance with the permit;
- (c) to use appropriate building techniques to achieve compliance with this Act and the building code; and
- (d) when site conditions affect compliance with the building code, to notify the designer and an inspector or the registered code agency, as appropriate.

7. Statute of Limitations

Limitation period

(8) No proceeding under this section shall be commenced more than one year after the facts on which the proceeding is based first came to the knowledge of,

(a) an officer, where the proceeding is in respect of the enforcement of by-laws passed under section 15.1; or

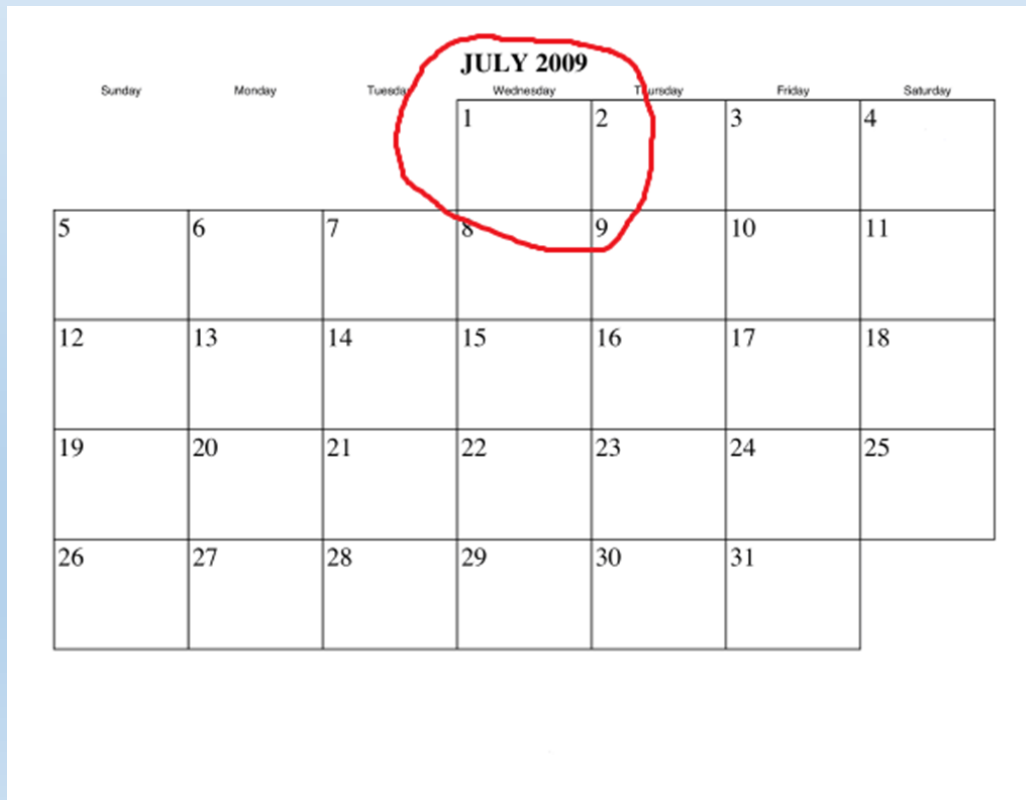
(b) the chief building official, in any other case. 2009, c. 33, Sched. 21, s. 2 (9).

Same

(8.1) Subsection (8), as it read immediately before the day subsection 2 (9) of Schedule 21 to the Good Government Act, 2009 comes into force, continues to apply where the subject-matter of the proceeding arose more than one year before that day. 2009, c. 33, Sched. 21, s. 2 (9).

Statute of Limitations

July 1, 2009 is the date the BCA statute of limitations section was revised from 'one year from when the offence occurred' to 'one year from when the Inspector/Officer learned the offence took place'.



The image shows a calendar grid for the month of July 2009. The days of the week are listed at the top: Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday. The dates are arranged in a grid starting from the 1st of the month. A red circle is drawn around the 1st and 2nd of the month, which are the days of the week Wednesday and Thursday respectively.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

8. Duty of Care

“It must be borne in mind that a municipality, once it has made the policy decision to inspect construction, is not bound to discover every latent defect in a given project, nor every derogation from applicable standards. That would be to hold the municipality to an impossible standard. Rather a municipality is only called upon to show reasonable care in the exercise of its powers of inspection. Accordingly, a municipality, whether the duty of care is owed to an owner builder or a third party, will only incur liability for such defects as it could reasonably be expected to have detected and to have ordered remedied.”

- rothfield v. manolakos

Breen v. Lake of Bays (Township)

On September 1, 2022, the Ontario Court of Appeal released its decision in ***Breen v. Lake of Bays (Township)*, 2022 ONCA 626**, upholding the trial judge's finding that once a building permit is granted, a municipality has an obligation to inspect the building **whether or not the building permit holder requests an inspection.**



Breen v. Lake of Bays (Township)

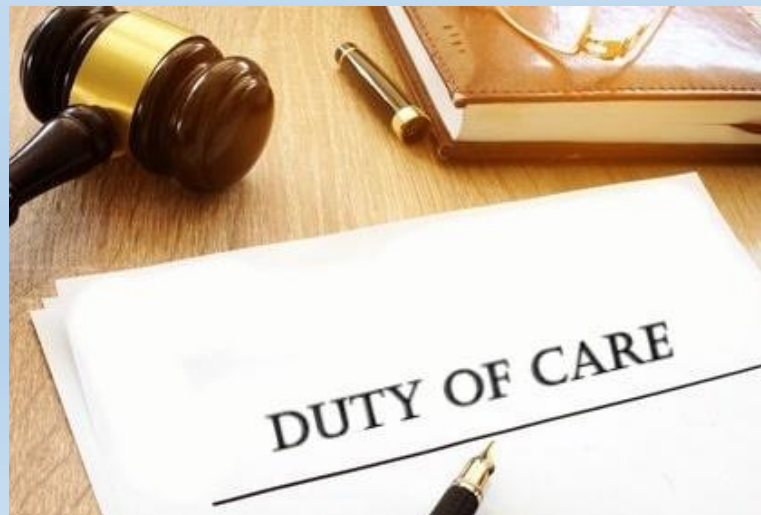
The trial judge determined that because the purpose of the building inspection scheme is to protect the health and safety of the public, and because the policy of the legislative scheme also applies to the township's powers to grant or reject a building permit application, the township owed a duty of care to the cottage owners.

The trial judge concluded that the township fell below the standard of care in its granting of a building permit. The township failed to take reasonable and prudent steps to review the application to enforce the Act, Code, and By-Laws. Sutherland J. highlighted the fact that the permit was granted the same day as it was submitted, which indicated that no review took place or was planned. [4]

Breen v. Lake of Bays (Township)

Furthermore, the trial judge pointed out that the township had only conducted three inspections during the initial construction phase of the property almost a decade before the plaintiffs bought the property and almost two decades before the plaintiffs began their renovations. Moreover, the municipal building inspectors failed to return to the property on future occasions during the course of construction. The township, therefore, failed to meet its duty of care in the inspection of the property as well.

[5]



9. OBC vs. Fire Code vs. Property Standards



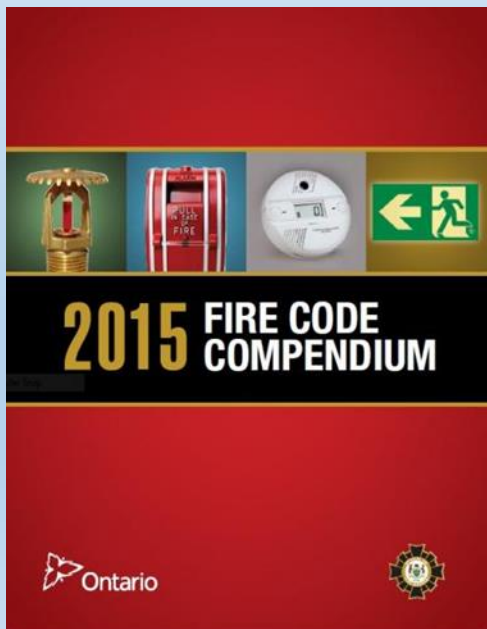
OBC - Not Retroactive

The Ontario Building Code regulations cannot be enforced retroactively. Once Building Permits are finalized by Municipal Building Departments, other regulatory codes, regulations and by-laws come into effect.



The Fire Code

The Fire Code is a regulation made under the Fire Protection and Prevention Act, 1997 consisting of a set of minimum requirements respecting fire safety within and around existing buildings and facilities. Building owners are responsible for complying with the Fire Code. Municipal fire departments, (Fire Prevention Bureaus), enforce The Fire Code.



The Fire Code

Generally, compliance with the Fire Code does not necessitate obtaining Building Permits. However, in some instances, permits must be obtained to perform the work required in the Fire Code.



The Fire Code

Requirements for closures adjacent to exterior fire escapes and stairs.



Property Standards By-law

Property Standards By-laws are Minimum Maintenance By-laws, passed under the authority of section 15 of the Ontario Building Code Act.

The Ontario Building Code Act defines Property as:

“property” means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property.”

Property Standards By-law

The preservation, renovation and rehabilitation of existing buildings are important factors related to the improvement of housing conditions, relief from fire and other building hazards and the general advancement of accommodation for the citizens of Ontario. Social workers, police, fire and health officials could testify to the consequences of people living in sub-standard and over-crowded conditions.



10. Q & A

