

TO: UBCM Members
FROM: UBCM Executive
DATE: September 19, 1994
RE: **FOUNDATIONS FOR BUILDING
REGULATION: EXECUTIVE
SUMMARY¹**

ITEM #3(a)
September 21, 1994
B.C. COMMUNITIES AGENDA

The format of this Response follows the six key themes in the Minister of Municipal Affairs' Discussion Paper, "Building Regulatory System: Options for Renewal."

PART 1: THE FOUNDATIONS

The basic question that is not addressed in the Discussion Paper and must be is:
What is the goal of the building regulatory system?

UBCM RESPONSE

- Reaffirm that the primary objective of the building regulatory system is to ensure an overall high level of compliance with community standards for building design and construction, so that the public benefits from buildings which are generally safe and reflect community priorities.
- Recognize that there are other public policy objectives that can be pursued through the building regulatory system, but that these must not comprise the primary goal.
- Renounce the view that a goal of the building regulatory system is to provide the framework in which to ensure compensation for all losses due to building failures. The building regulatory system should not be seen as a warranty system.
- If there is a public policy objective to ensure that homeowners (and any others) are protected from all physical and economic losses due to poor building design or construction, then a properly considered, designed and financed compensation system should be put in place.

PART 2: THE STRUCTURE

1. ROLES AND RESPONSIBILITIES

UBCM RESPONSE:

- If the province accepts the need, in terms of broad public policy, for a building regulatory system (and as part of that a Building Code, etc.) then it must assume responsibility for defining certain basic roles and responsibilities in regulation.
- The role of local government should be defined as an "auditor".

¹ The full paper will be distributed to all members after the Convention.

2. LIABILITY OF LOCAL GOVERNMENT

- All participants in the construction process should be responsible for their own activities and in order to reduce losses and pay for losses which do occur, all participants should carry sufficient liability coverage to insure the risks they undertake.
- All participants in the construction process are responsible for their activities and to reduce losses, all should be properly trained and certified in the Building Code.
- A mandatory 10-year new-house warranty program should be subject to detailed feasibility study.
- The “Options for Renewal” is directed to the future of building regulation in British Columbia and does not address liability found against local government today for defects in construction years ago. The Law Reform Commission recommended a ten-year limitation period. UBCM and MIA have supported this previously with respect to building construction. A limitation period would not be needed if all local governments had the provisions of the Vancouver Charter, applied retroactively.
- Municipalities should not be liable for the enforcement of the provincial Building Code or similar enactments when certified building officials review plans or inspect structures. This is currently the law in the City of Vancouver and it should properly be the law for all other B.C. local governments.

UBCM SUMMARY RESPONSE:

1. **Property owners should be compensated in well-defined circumstances.**
 - Insurance should be mandatory for all participants in the building system.
 - The proposal for a mandatory new-home warranty program should be subject to further, detailed examination as an alternative method of compensation.
2. **Action needs to be taken to ensure that the role of local government (auditor not guarantor) is reflected in legislation. This involves action to:**
 - offset the effects of joint and several liability compensation claims on local government by compelling Architects, Engineers and Builders to carry sufficient insurance to warranty their work that is not covered by a Home Warranty Program.
 - expand the section 755.2 defence, which exempts local government from liability for failure to enforce by civil proceeding or prosecution, to include other enforcement options, such as filing a notice in the Land Title Office.
 - expand the defence in section 755.4, which holds that local government is not liable in relation to its approval of plans if it is relying on the certification of professional engineers or architects, to include relying on plans submitted by certified builders. The protection afforded by section 755.4 would also be extended to certification that the building, rather than just the plans, meets the applicable building bylaw.
 - provide legislation similar to that contained in the *Vancouver Charter*, which provides that the city has no legal duty on which a cause of action can be based, and that the city is not liable for damages of any nature as a result of failure to discover a contravention of a bylaw or to enforce a bylaw.

3. **Provide local government with more tools to prevent claims. Enable local government to:**
 - adopt “certified professionals” programs.
 - adopt “certified builders” programs.
 - withhold permits from “problem builders”.

PART 3: THE DETAILED COMPONENTS

3. USE OF THE BC BUILDING CODE

i) Code Application

- If it is a provincial public policy objective to ensure all BC residents have the same level of protection and if it is clarified that owners who construct buildings have the ultimate responsibility, then there is little reason not to extend that obligation province-wide.

ii) Uniformity of the Code

- local governments should continue to be able to supplement the Building Code.

iii) Enforcement of the Code

- In keeping with its audit/monitoring function, local government should continue to have the discretion to devote the resources its taxpayers can afford to its responsibilities.

iv) Code Change Process

- The Code change process should be expanded to include comments from the industry most affected by the proposed changes.
- The code amendment process is now adding many items that are not related to the primary life-safety issues. If the province wishes to add these to the Code, then they should ensure local government have the means to recover costs for their “inspection”.

4. TRAINING, EDUCATION AND CERTIFICATION

- Minimum standards of competency should be established for all persons working in the building regulatory system. Appropriate courses enabling individuals to obtain and maintain this standard should be sponsored through the appropriate provincial ministry or professional or industrial association.

5. APPROVAL OF BUILDING AND PLUMBING PRODUCTS

- All building materials which are critical to life safety or building performance should be subject to appropriate testing, certification, and ongoing monitoring and labeling. A comprehensive testing/certification process should be established which ensures the suitability of all building products.

6. REVIEW OF BUILDING LEGISLATION AND REGULATIONS

- The Building Code should be restructured to make it easier to use and more responsive to changes which are needed.
- Part IX of the Building Code, which covers single-family houses and small buildings, should be rewritten as a stand-alone “mini-code.”
- The rest of the Code should be restructured.
- A Building Act should be considered because the present focus on the *Municipal Act* reinforces the wrong impressions about municipal roles and responsibilities.

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