Ontario Association of Architects

The Honourable Steve Clark, MPP
Minister of Municipal Affairs and Housing
College Park 17th Floor, 777 Bay St
Toronto, ON M7A 2J3

November 25, 2019

[submitted via email]

Dear Minister,

The Ontario Association of Architects (OAA) has reviewed the consultation on "Transforming and Modernizing the Delivery of Ontario's Building Code Services" material and, by this letter, is responding to the proposal and to details subsequently revealed during stakeholder meetings held October 16 and November 12.

As an overarching conclusion, the OAA opposes the Ministry of Municipal Affairs and Housing proposal.

The Ministry has identified a problem of un(der)qualified individuals submitting incomplete applications as a major impetus behind the proposed changes, but has failed to provide documentation to support this assertion. In the OAA's own review of complaints and insurance claims over roughly the last decade, no such evidence could be found. In fact, claims against architects are in decline and complaints against members is flat-lined or even slightly declining. This suggests that if such a problem is occurring, architects do not appear to be the culprits. This begs the question as to why significant amounts of red tape would be heaped onto the profession, forcing architects into an entirely new way of practising architecture that may in fact slow down the process.

Assuming this problem is as widespread as the Ministry seems to believe, the Ministry has failed to undertake a holistic review of why this problem exists. Failing to appreciate the multitude of factors contributing to the problem, the Ministry has paradoxically proposed significant levels of additional red tape and bureaucracy as the solution. Further, key members of the building industry entrusted by the Province to protect public safety have objected to the current proposal, yet the Ministry has chosen to advance the interests of the residential development industry over these licensed and regulated professionals.

While there are rightfully many voices at the table, it should give the Ministry significant pause when the parties entrusted by the Province to protect public safety oppose a proposal that is otherwise viewed by lobbyists as a way to gain faster building approvals. Profit motivations should never supplant public safety.

The OAA remains concerned that the lessons learned from the Ontario Superior Court of Justice have been forgotten. In 2006, the Court ruled that the Ministry did not have the legislated authority to establish a duplicate registration or qualification scheme for engineers and architects as they are already regulated by their respective regulatory bodies, and under their respective provincial acts. Indeed, the Justices asked: "to what extent, if any, the protection of the public may be advanced by duplicating the professional regulatory Acts?"

For more than 125 years, the Province has entrusted the OAA with the role of regulating the profession of architecture. Changes to the regulatory framework that governs architecture should be initiated and implemented by the OAA. At the very least, they should not be advanced without the involvement of the OAA. The *Architects Act*—as a statute—is also administered by the Attorney General, not the Minister of Municipal Affairs and Housing. The OAA questions why such considerations are not coming from our parent Ministry.

Finally, we flag concerns with the way this consultation has been undertaken, with the original discussion guide revealing little about the Ministry's actual intent. The OAA had originally noted Section 1.4 with very high level remarks around coordinating professionals. While we disagree over the exact terminology, the OAA has always supported the principle of a prime / coordinating consultant. We have been actively working with the Professional Engineers Ontario (PEO) to develop a final recommendation to the Ministry to make the appointment of a Coordinating Professional mandatory. As we fully support and intend to comply with this recommendation of the Elliot Lake Commission, we did not foresee the proposal at this time to be as problematic as was subsequently revealed.

At each successive stakeholder meeting (October 16, then November 12), this appears to have progressed quickly from an open consultation to a fully contemplated proposal from the Ministry to implement British Columbia's certified professional model in Ontario. If this was always the Ministry's intent, it should have been communicated more clearly to all stakeholders in the discussion paper originally circulated, as opposed to as recently as the November 12 consultation, and if not, the consultation process should be extended. This gave the OAA and other stakeholders very little time to review and respond to these revelations.

With the time we had available, we have responded directly to the area of this consultation that appears to pose the highest level of concern. Where possible, we have also provided feedback on other sections in the attached *APPENDIX A: Secondary Recommendations*.

The OAA encourages the Ministry to hit the reset button, engage with regulated stakeholders the Province has entrusted to protect the public, and find reasonable ways to address any concerns that exist. We would also be happy to discuss any such concerns with our parent Ministry, the Ministry of the Attorney General.

SUBSECTION 1.4 USING COORDINATING PROFESSIONALS

THE BACKGROUND

The OAA is opposed to the Ministry proposal to adopt the B.C. certified professional model into the Ontario jurisdiction. Feedback we have received from B.C. suggests that this system can delay processing and approvals, and add cost to the extent that some architectural firms have resorted to hiring "permit expediters". It has also done nothing to prevent other building-related failures such as the "leaky condo crisis" that plagued—and continue to plague—parts of British Columbia. It is a solution in search of a problem.

Rather than focusing on improving submissions and approvals under the *Planning Act*, the proposal appears more focused on trying to get a faster building permit, and on implicating more individuals from a liability and blame perspective in the event that things go wrong.

Even if the Ministry's objective was streamlining, the Ministry was advised by participants during regional information sessions that "[b]etter submissions may be the real key to speeding up approval timelines, rather than a Certified Professional model" that deals primarily with the building permit submission and construction phases. The OAA is inclined to agree.

It has long been suggested that Bill 124 came about as a result of the government of the day wanting to respond to complaints from the development industry that project costs were being increased because of delays in the approvals process. Most of the delays were attributed to approvals under the *Planning Act*, and many were attributed to the Ontario Municipal Board. Rather than deal with these front end delays, which can be far more complicated, Bill 124 focused on the much simpler building permit approvals at the back end and sought to speed up building permit issuance.

Much was done through Bill 124 to address back end issues. Some reforms were successful, others were not. But the current proposal appears to replicate the shortcomings of Bill 124 by focusing on the back end while ignoring the largest cause of problems: approvals under the *Planning Act*. This continues to be where lengthy delays are still common; these, in turn, cause developers to put pressure on designers to make up lost time and apply for building permits with minimally complete submissions.

A quick review of recent history reminds us that in July 2017, a residential builder's lobby organization (RESCON) and Ryerson University's Centre for Urban Research & Land Development released a report entitled *Modernizing Building Approvals in Ontario: Catching Up with Advanced Jurisdictions*. One proposal explored was to adopt the B.C. certified professional model now presented by the Ministry. The report recommended the establishment of a multi-stakeholder working group, which was subsequently convened by RESCON in late 2017. The working group was chaired by the esteemed Bryan Tuckey, then president and CEO of the Building Industry and Land Development Association (BILD) and a former Assistant Deputy Minister of MMAH.

While RESCON staff was initially enthusiastic about the B.C. certified professional model, closer study resulted in there being no support at the working group for the proposal. On consensus, it was dismissed by the Chair and was not advanced as a recommendation. During the working group discussions, it was notable that one of RESCON's own senior staff members agreed that the proposal was not something that should be pursued.

The OAA struggles to understand why RESCON has continued to ignore its own expert working group, and why the Ministry would subsequently pursue something that the expert working group had already long since dismissed.

GETTING IT RIGHT THE FIRST TIME

As a regulator entrusted to serve and protect the public interest, the OAA is committed to ensuring that qualified professionals who submit for a building permit get it right the first time. Instead of adding red tape through multiple layers of review and letters of assurance, the government must focus on ways to improve the quality of submissions the first time they are submitted.

It is critical to note that it is not just architects (or engineers) who make building permit submissions, but also BCIN holders and even homeowners. While architects and engineers would be subjected to this red tape, it would not capture unregulated parties in the design and construction industry—particularly with regard to residential construction. As they are, by their very nature, unregulated and not subjected to anywhere near the same levels of training, professional obligations, or scrutiny (whether in the current or proposed model), it makes little sense to specifically target measures toward the only regulated and highly trained professionals operating in the design and construction industry.

PURPORTED CAUSE: "RECENT BUILDING FAILURES"

Materials from the Ministry commented repeatedly on "recent building failures," citing Elliot Lake and Grenfell. The latter is neither in our jurisdiction nor subject to the same regulatory environment, so it has no applicability here. That focuses us on one major building failure in a decade or more which was not just an issue of faulty design, but of decades of poor building maintenance and a lack of coordination.

This is in no way intended to be dismissive of what happened in Elliot Lake, as even one tragedy is too many, but perspective is important. Ontario has processed through nearly $295 billion in building permits between January 2011 (the earliest year available on Statistics Canada Table 34-10-0066-01) and September 2019. There have also been many improvements in applicable building codes since the Algo Centre Mall was opened in 1980, and our knowledge of how to build in a cold climate has significantly advanced.

SOLUTION #1: COORDINATING PROFESSIONAL

Elliot Lake found that all parties involved shared some of the blame. On behalf of the architectural profession, the OAA responded to the Elliot Lake Commission very seriously.

The OAA has been working with the PEO to define and implement coordinating professionals, a recommendation of the Elliot Lake Commission. We also worked with Ministry officials on regulations related to parking structures in 2017 which the Ministry has not enacted. This tragedy could have been averted, but there is little to suggest the B.C. certified Professional model would have been effective at doing so.

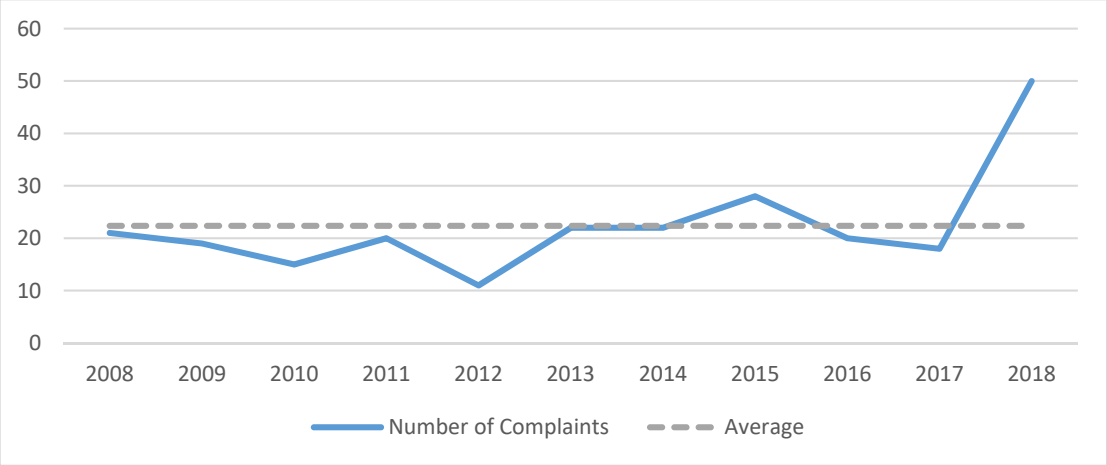
We are aware that the Ministry intends for interior designers to also be able to fulfil the role of coordinating professional. The OAA has been working with ARIDO to regulate interior design under the *Architects Act*. This would mean that qualified and licensed Interior Designers will also be directly accountable to the public and to the government through the *Architects Act*.

If the current proposal from MMAH were to move forward, it should not proceed without the government first moving interior designers under the OAA umbrella so that critical elements of public safety associated with a fully regulated model are in place. Failure to do so would mean that unregulated professionals could perform the critical role of coordinating professional, which would not satisfy the intent of the Elliot Lake Commission Recommendation 1.27 that "a professional engineer or an architect should be designated by the owner or the owner's agent as the prime consultant." It would also result in non-professionals, who have no duty of care to the public, exercising a degree of control over regulated professionals who are legislatively required to serve and protect the public interest.

PURPORTED CAUSE: LACK OF KNOWLEDGE

The Ministry materials seem to infer that the quality of submissions, as well as the knowledge of designers, has been decreasing. The OAA would therefore expect to see a correlation in the number of complaints against its members. The average number of complaints over the past decade has remained steady, with most years falling below the average of 22.3 per year. There is one spike in 2018, but this related to an atypical complaint unrelated to building permits that was simultaneously laid against a multitude of members as a result of an administrative matter.

FIGURE 1: Complaints Submitted Against Members*

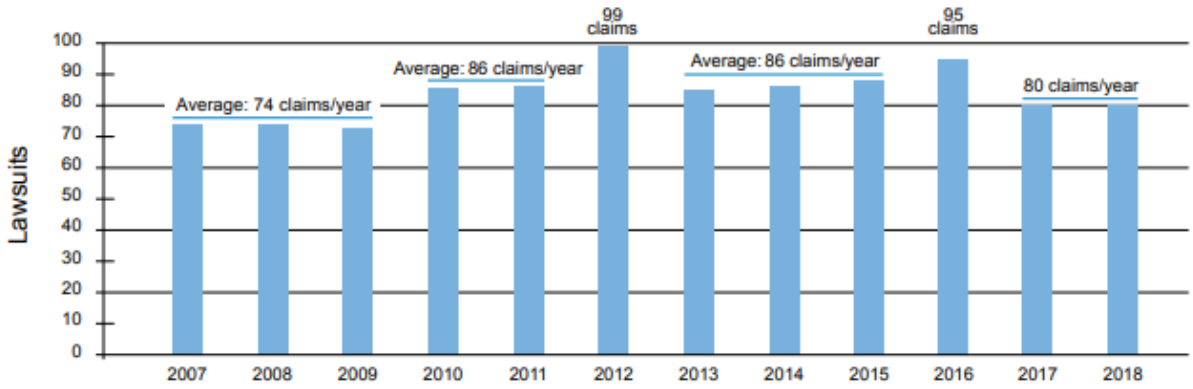


* excluding continuing education complaints

To do further due diligence, we reached out to the mandatory insurer for the architectural profession, Pro-Demnity Insurance Company, to try to determine if this would tell a different story. Pro-Demnity similarly concluded that any such portrayal that things are getting worse, or have risen to some kind of crisis level mandating an entire change to how architecture is practised in the Province of Ontario, simply cannot be substantiated with evidence.

According to Pro-Demnity, “the number of lawsuits against architects has been relatively constant since 2010.” Of the last decade, the highest number of lawsuits occurred in 2012 before reducing from 2013–2015. Lawsuits again rose in 2016, only to fall in 2017 and 2018. The greatest source of claims against architects is the work of mechanical subconsultants. Payments for damages and expenses (which includes the costs to defend, even in instances where an architect was found to not be at fault) declined from 2017, and “damages actually paid have remained relatively static.”

FIGURE 2: "Number Of Lawsuits"



(Source: Pro-Demnity, "Plan Update", March 18, 2019)

While the evidence from both the OAA Registrar as well as from Pro-Demnity Insurance Company suggest the problem is static, it has in fact been declining year over year since the volume of work has been significantly increasing (based on building permit values) and the number of people performing the work has also increased (both based on the members, and the number of firms).

FIGURE 3.1: Weighted Trends Relative to Total Value of Building Permits x $1,000 (Ontario)

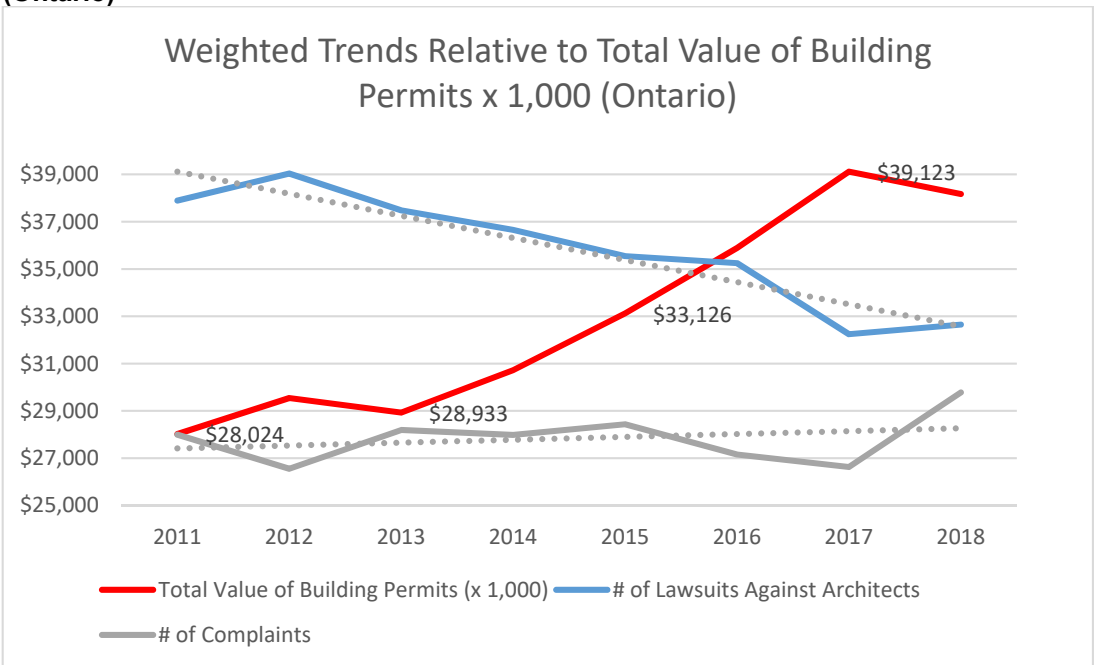


FIGURE 3.2: Weighted Trends Relative to Number of OAA Members

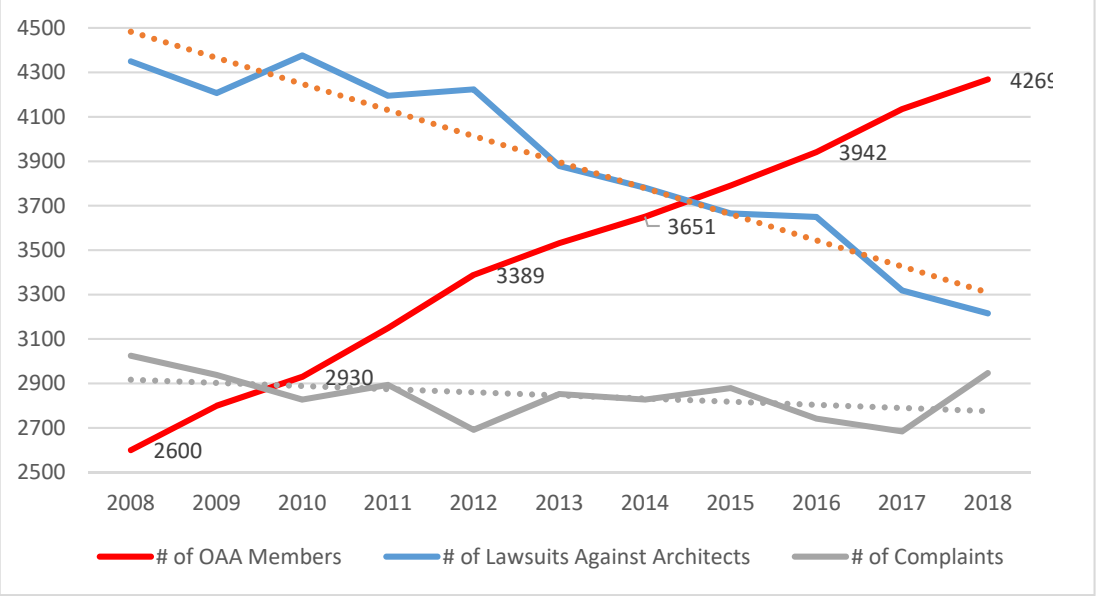
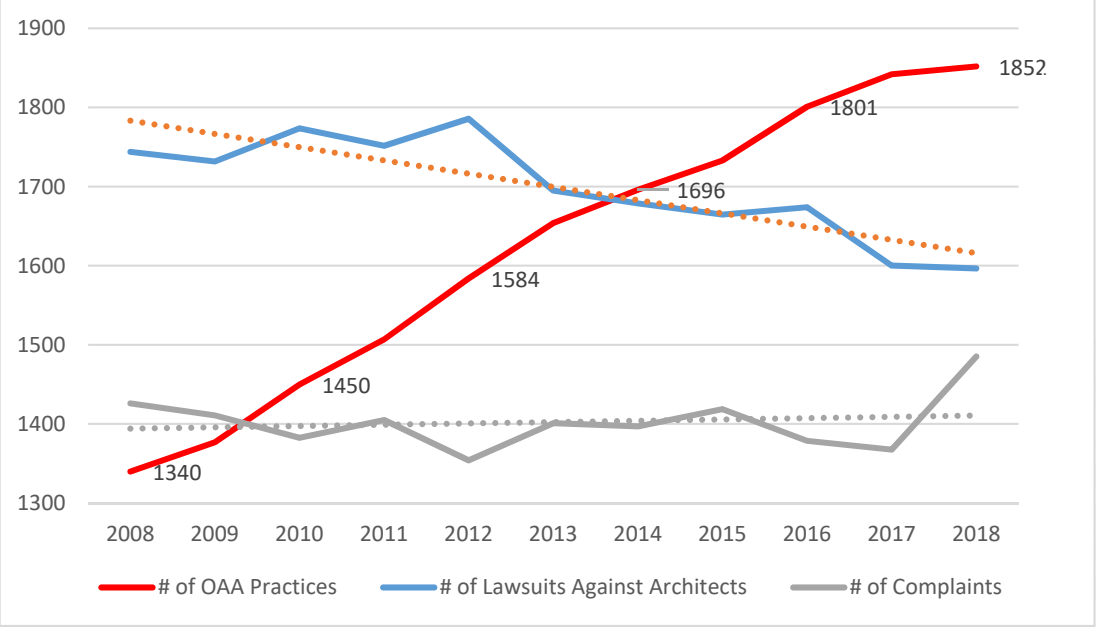


FIGURE 3.3: Weighted Trend Relative To Number Of OAA Practices



Put simply, we can find no supporting evidence over the past decade that would either justify the assertions being made, or the scope of the changes being proposed. We are concerned as to what evidence is being used to justify this scale of an overhaul. And if architects are not the offenders, then the Ministry should focus regulatory changes on the parties within the design and construction chain who are deficient.

SOLUTION #2: UTILIZING THE EXISTING PROCESS (REPORTING INFRACTIONS)

While the OAA can find no evidence of a deteriorating situation, we do want to stress that a tried and tested solution already exists: to utilize the existing regulatory process.

If Building Officials or any member of the general public remain concerned about the quality of submissions, the first step in correcting this problem would be to report infractions or suspected failures to the regulator tasked to "regulate the practice of architecture … in order that the public interest may be served and protected." The regulator will then review, discipline or, where necessary, suspend or revoke the licenses of offending practitioners.

At multiple meetings with Building Officials, the OAA has repeatedly stressed the need to report any infractions even if done anonymously. Yet after years of advocating for increased reporting, there appears to have been no increase in the number of complaints from Building Officials. If such infractions are indeed occurring and they are not being reported, this needs to change. We encourage the Ministry to identify ways to promote or even mandate this reporting so that the OAA can in turn do its job as the regulator.

THE RED HERRING

While our analysis suggests the situation is actually improving, this does not appear to align with the perception of the Ministry. On numerous occasions, the consultation documents appear to suggest that poor quality or incomplete submissions are a result of a lack of knowledge within the design community. We cannot speak for other designers, but we can speak on behalf of the architecture profession.

Architects undergo a minimum of six years of post-secondary education, then formally register with the OAA as an Intern Architect. They must have an architect personally supervising and directing their work, as well as a professional mentor not affiliated with their employer. Before they are eligible to write a final licensing exam, they must:

- Complete a minimum of 940 hours of experience on projects located in Ontario, covering specified areas of competence;
- Complete the OAA Admission Course with various modules related to regulatory matters, legal issues and information specific to the practice of architecture in Ontario; and
- Pass the Examination for Architects in Canada (ExAC), which tests the minimum standards of competency acquired by an Intern Architect during the internship period "to ensure both public safety and the professional and skilled delivery of architectural services."

Since 1999, the OAA has required its members to fulfil its mandatory continuing professional development (CPD) program. To maintain a license in good standing, architects must undertake 70 hours of continuing education activities in a 24-month cycle, including 25 hours of structured learning. Failure to comply with these requirements results in an automatic fine followed by an investigation under the OAA's complaints and discipline process, which can result in the suspension of the member's license.

The OAA continually reviews its continuing education program to ensure that members are receiving adequate and appropriate professional development. Recent examples of courses

developed by the OAA to fulfil evolving needs within the profession include the OAA+2030 Professional Education Series and the Starting and Architectural Practice course. More information can be found in *APPENDIX B: Continuing Professional Development for Members of the Ontario Association of Architects*.

With all of this in place, the idea that an architect would enter an incomplete submission due to a lack of knowledge is a red herring. If this is indeed occurring, it is far more likely to be on account of other factors that need to be the Ministry's focus if it is genuinely committed to solving the problem.

THE REAL ISSUES

ISSUE: Time Delays in the Planning Approval Process

As was the case prior to Bill 124, the planning approval process have always been the biggest delay to a building being approved. Both the *Planning Act* and *Building Code Act* (via the Building Code) have tried to standardize how long it takes to get planning and building approvals. Section 41(12) of the *Planning Act* currently requires a municipality to issue a decision on a site plan application within 30 days.

Independent research commissioned by the OAA shows that many municipalities routinely and openly disregard this legislated requirement. Further, the 30-day requirement is not enforced in any way by the Ministry. With nobody watching, municipalities are breaking the law.

At the back end of the process, the Building Code dictates mandatory timelines in which a permit must be issued or refused. While municipalities appear to give more regard to these prescribed deadlines, they are still routinely set aside as one revision or difference of opinion before the regulated timeline is enough to derail the process.

When a municipality sidesteps or outright disregards these legislated approval requirements, a chain reaction inevitably occurs.

As an example, consider a project where a developer has scheduled (and budgeted) for a building to open its doors in three years. While there are other elements in the approval process, some are less burdensome so we will focus on site plan approval and on obtaining a building permit. The law requires site plan approval to be granted in no more than 30 days, while a building permit should be granted within 10 to 30 days, depending on the complexity of the building. This leaves a significant amount of time to design the project, undertake construction, and complete the project within the intended timeframe.

The reality is far more different. In the majority of cases, it takes an architect more than six months to obtain site plan approval. In more than a third of the time, it takes our members more than nine months. We have heard instances of site plan approval taking a year or longer to obtain. While not as lengthy, significant delays can also occur when trying to obtain a building permit. The reasons for these delays are too varied to list, but many are discussed in a 2013 report prepared by Bousfields Inc. and Altus Group.

The end result is that the architect (or any designer) becomes extremely constrained on time, having to make continued rounds of changes and resubmissions. As less and less time becomes available for construction, client groups pressure their designers to design cheaper and faster, which can lead to incomplete submissions and poor-quality buildings.

SOLUTION: Fixing The Real Problem: SPA

Since as far back as 2012, the OAA has been pushing for the Ministry to reform site plan approval. We have remained focused on site plan approval because it is single largest cause of delays to building approvals. According to the World Bank Group's annual report *Doing Business 2019*, obtaining a building permit accounts for six per cent of the total time taken to obtain occupancy. By contrast, site plan approval accounts for 73 per cent of the time.

FIGURE X: DEALING WITH CONSTRUCTION PERMITS IN CANADA (WORLD BANK GROUP)

No.	Procedures	Time to Complete
1	Undergo preliminary project review with the Municipal Authority	30
2	Apply and obtain a zoning certificate (simultaneous)	(30)
3	Obtain site plan approval from the Municipal Authority	180
4	Obtain building permit	15
5	Request and receive foundation work inspection	1
6	Request and receive frame inspection	1
7	Request and receive drainage inspection	1
8	Request and receive sanitary inspection	1
9	Request and receive plumbing inspection	1
10	Obtain water and sewer service connections	14
11	Request and receive fire department inspection	3
12	Receive final inspection and occupancy permit	1

In an updated report, Altus Group found that delays in site plan approval are costing the province up to $900 million annually—a number the OAA believes is likely in excess of $1 billion due to the conservative nature of their economic model. We have provided the Province with a detailed proposal to fix this problem in March 2019 and encourage the Ministry to focus its attention on the real problem at hand.

ISSUE: Design Quicker and Cheaper

Both enforcing legislative requirements for approvals or fixing site plan approval will help the problem, but the endemic desire to design quicker and cheaper would likely remain a significant concern.

SOLUTION: Legislating Quality-Based Selection

A necessary way for the public sector to improve the quality and completeness of submissions is to adopt a best practice from the United States. Since 1972, the United States *Brooks Act* (also known as the Selection of Architects and Engineers statue) has required the federal government to select engineering and architecture firms based on their competency, qualifications and experience rather than by price. While this is a national statute, “mini-Brooks” laws have since been enacted in 46 states, with agencies in three others (Iowa, Vermont, and Wisconsin) following a Quality-Based Selection (QBS) process.

If the Ministry is sincere about fixing the quality of submissions, it should lead by example and implement parallel legislation to ensure that the public sector selects architects based on competency, qualifications, and experience rather than the current selection process of lowest price. While this may seem self-serving coming from the design industry, it is important to note that this approach does not preclude the consideration of price in the process. Rather, it encourages consideration of price after the top-ranked firm has been identified and the scope of work has been jointly established.

Research jointly performed by the federal government and the Federation of Canadian Municipalities (FCM) shares critical insights on Quality-Based Selection. Depending on the nature of the project, they estimated that design typically represents one to two per cent of the overall lifecycle cost of a project. Construction accounts for approximately six to 18 per cent, while the remaining 80 to 93 per cent is the lifetime asset cost, including operations and maintenance. Internally, the OAA suggests that this figure design relative to lifecycle costs is perhaps overstated by a factor of 10, being far closer to 0.1 to 0.2% per cent. The difference between an unreasonably low fee and an appropriate fee therefore could be as little as a fraction of a fraction of a per cent.

The research found that even small investments in design spending could return “savings in the ratio of 11:1.” The federal government and FCM argue that “[a] requirement to bid fees in the proposal call does not achieve the expected outcomes,” instead forcing the consultant to focus on “how to minimize fees to win the assignment,” reducing or even eliminating value-added services such as “quality control and assurances, value analysis of design alternatives to minimize construction costs and optimize sustainability, and lifecycle cost analysis to evaluate operating and maintenance implications.” The research notes that these important value-added services “will yield savings far greater than any achieved through minimizing design fees.”

The federal government and FCM concluded that consulting services cannot effectively be procured by hiring based on the lowest price, and that selecting a professional consultant based on qualifications is the best practice.

The OAA has seen interest in Quality-Based Selection growing over the past number of years. A pilot project is currently underway with the federal government, and we have seen an increase in municipal interest based on additional pilot projects and programs that may be coming online.

The Ministry should focus on ensuring that architects are being hired through a procurement process that allows them to deliver their best services at appropriate cost. The federal

government and FCM quote John Ruskin (1819–1900): *"It is unwise to pay too much, but it is worse to pay too little. When you pay too little, you sometimes lose everything because the thing you bought was incapable of doing the thing you bought it to do."*

THE COST OF MOVING FORWARD WITH THE CURRENT PROPOSAL

While the OAA has made a series of recommendations, the OAA has also considered what may happen if the Ministry instead focuses on implementing the B.C. certified professional model. The proposal does not appear aligned with key governmental objectives such as making housing more affordable, or cutting red tape to make Ontario open for business and open for jobs.

The development industry may have pitched this to government as a cheap and simple way to get building approvals faster. It is important to note that streamlining or expediting building permits was never an objective behind British Columbia's regulatory changes. However, even in the unlikely event this occurs, it would not be due to the costs being eliminated. Instead, they would just become externalized onto other parties.

Implementing the B.C. certified professional model would increase the burden of training on architects. The level of oversight for the regulator would increase, requiring the OAA to hire more staff to administer and enforce the new program. As risk is transferred from municipalities to individual practitioners, the profession's liability would increase, and higher insurance costs would directly translate into higher building costs.

On the residential side, housing affordability—already at crisis levels—would be negatively impacted. On the industrial/commercial/institutional (ICI) side, higher building costs would reduce Ontario's economic competiveness. While the state of the former is well-known and covered extensively by media, the latter is somewhat less discussed.

Ontario's economic competitiveness already suffers significantly due to its building approval process. The World Bank Group's annual report *Doing Business 2019* used Ontario data to rank Canada 63rd in the world for *Dealing With Construction Permits*—a rank that continues to get worse each year. By contrast, our partners under the CUSMA free trade agreement are far more competitive: the United States is ranked 26th while Mexico is ranked 54th. Versus the list of OECD High Income Countries, we rank 33 out of 34 in terms of the number of days required to obtain planning and building approvals. Sorting by a minimum building quality of 13, Canada ranks 39 out of 42. Whichever way the data is sorted, Canada is not competitive relative to its peers. Implementing the B.C. certified professional model does nothing to improve this situation, but risks significantly worsening it.

THE NEXT STEPS ARE CRITICAL

The OAA has advanced a number of recommendations that are critical to actually solving some of the problems faced relative to building approvals. In direct response to the Elliot Lake Commission, the government should work with the OAA and the PEO to establish a coordinating professional regime.

If the quality of submissions is a concern, there is already an extensive regulatory model designed to serve and protect the public interest if architects have made those submissions.

If improving or speeding up building approvals is a Ministry goal, then it should either focus efforts on ensuring that planning and building departments are complying with legislated requirements (and are adequately staffed), or it should focus on making significant reforms to the site plan approval process.

Finally, the Ministry should work with government to enact procurement reforms that achieve best value so that government can lead by example. The OAA believes that all, or even any combination of, these reforms will enhance public protection and have a significant impact on not only the quality of submissions, but ultimately on the quality of what is getting built in the province.

The OAA remains a committed partner in ensuring architects live up to their professional obligations, and to the trust the public and government has placed in them. We always strive to ensure our members are performing at the highest level and have advanced constructive ways that will help to ensure these expectations are continually being met. While we oppose the proposal currently tabled, we do look forward to further discussing the alternate solutions we have identified with the Ministry. As always, we remain a committed partner in protecting the public interest.

Regards,

Kathleen Kurtin
OAA, FRAIC
President

cc. The Honourable Douglas Downey
The Building Services Transformation Branch

111 Moatfield Drive, Toronto, Ontario, Canada M3B 3L6 Telephone 416.449.6898 Fax 416.449.5756 www.oaa.on.ca

APPENDIX A: SECONDARY RECOMMENDATIONS

Section 1. Getting People Working in the Building Sector

Page 5 of the discussion paper details examination pass rates that are often below the 50 per cent mark. Despite these low pass rates, informal feedback we have received from OAA members who did complete BCIN exams suggested the exam was not sufficiently challenging. One member suggested that the exams test your ability to use the index and table of contents far more than your comprehension of the content of the code. While the Ministry's intent is unclear, the OAA cautions that instead of lowering the bar and expectations to increase the pass rate, these examinations may in fact need to be more stringent if problems at (or behind) building counters are as prominent and concerning as the Ministry has implied throughout these consultation materials.

Section 2. Promoting Sustainability and Transparency in the Building Code Profession

The OAA has maintained a robust continuing education system for architects since 1999. Failure to comply results in finding of professional misconduct and the suspension of a member's license to practice. The OAA supports the implementation of mandatory continuing professional development (CPD) for all professions involved in the design and construction of buildings.

Subsection 2.2. Continuing Professional Development

The OAA has been a strong supporter and advocate for continuing professional development. While the Ministry has proposed "CPD requirements for all types of qualified building code professionals" it is important that this requirement is comprehensive. The Elliot Lake Commission Recommendation 1.24 directed the Professional Engineers Ontario (PEO) to "establish a system of mandatory continuing professional education for its members as soon as possible, and in any event no later than 18 months from the release of this Report." More than five years have passed, yet this requirement for a mandatory CPD program remains outstanding.

PEO recently commissioned a governance review, with a final report being delivered in April 2019. This governance review again flagged the lack of mandatory continuing professional development. Recommendation 10 encouraged PEO to revise its voluntary program and then to "make participation in this CPD program mandatory for licensed engineers."

The OAA advocates for mandatory CPD as a requirement for all professionals involved in the design and construction of buildings.

Subsection 2.3 Registration Compliance and Enforcement

The OAA is a strong supporter for registration compliance and enforcement. To serve and protect the public interest, the OAA ensures that unqualified persons do not practise architecture or use the title architect illegally. This is done through complaints and discipline for registered members, and through issuing Cease and Desist letters or pursuing action through the courts to deal with anyone holding themselves out. The courts may apply penalties against offenders including:

- A fine up to $10,000 and $25,000 for each subsequent offence for anyone using the title or derivatives of the title “architect” or “architecte;”
- A fine of up to $25,000 for a first offence and up to $50,000 for each subsequent offence for anyone illegally engaging in the practice of architecture;
- Fines of $10,0000 to $25,000 for any person holding their corporation or partnership out as an architectural practice after it ceases to have a valid Certificate of Practice;
- Fines up to $50,000 for any director or officer of a corporation who commits or allows the above offences to be committed; and
- Fines up to $50,000 for any member or employee of a partnership who commits or allows the above offences to be committed.

The OAA supports the proposed registration compliance and enforcement, which should include the adoption of administrative penalties and/or fines.

Subsection 3.1 Enhanced Municipal Enforcement

The OAA supports the creation of administrative penalties to address non-compliance and contraventions of the *Building Code Act*, 1992 (BCA) to promote public safety. To further strengthen public safety, the OAA again reiterates the need for:

- Enhanced or mandatory reporting by principal authorities to respective regulators in instances where a member of a regulated profession has failed to comply or has contravened the BCA; and
- Mandatory reporting by principal authorities to respective regulators for anyone holding themselves out as a licensed professional, or performing work restricted to licensed professionals in contravention of the BCA, the *Architects Act*, or the *Professional Engineers Act.*

As the Ministry was advised during regional information sessions, “[t]here should be greater oversight to ensure that there are not individuals practising as building code professionals without being qualified and to ensure that Building Code Identification Numbers (BCINs) are not being misused.” For more than a decade, the OAA has argued that Building Officials rightly should have a role in ensuring only qualified professionals are submitting building permit applications. On a technicality, the Superior Court stripped the design requirements for buildings from the Ontario Building Code in 2006 due to a lack of enabling authority in the BCA.

“Strengthening Building Safety” was an important item in the 2014 Provincial Budget. It flagged that the BCA did not require the involvement of engineers and architects in the design of certain types of buildings, creating “a risk that non-qualified people may attempt to design large and complex buildings, putting public safety at risk.” To eliminate this risk, the BCA was subsequently amended so that “only qualified designers and design professionals can design certain types of buildings in Ontario.”

The OAA believes this has restored the authority of Building Officials to refuse building permits if an architect or engineer has not been involved in the design (where required). We encourage Building Officials to take great precaution to ensure they do not approve any permit applications for projects that were designed by someone who was not qualified to do

so. It is important to note that municipalities may in fact be liable for enabling contraventions of the *Architects Act*. The OAA will be closely watching a B.C. Supreme Court case regarding the City of Langford approving a building permit in contravention of the *Architects Act*.

While there is no defense for failing to uphold the law, we do recognize that having to file through companion legislation such as the *Architects Act* and the *Professional Engineers Act* adds an extra layer of complexity to a Building Official's work. To help enhance clarity for Building Officials, the Ministry should restore the design requirements table to the Building Code.

Section 4. Improving Building Sector Supports

The OAA supports Ministry efforts to improve the research, examination, and authorization of innovative construction materials. The proposal is unclear as to whether the Ministry intends for this process to become faster or less expensive. If this is a Ministry goal, then the government should ensure these intended objectives motivating the transfer to the Administrative Authority continue to be met so that the government does not create another situation akin to the College of Trades.

The vast majority of the work done by designers with Large or Complex BCIN qualifications is being done by interior designers. When interior designers come under the auspices of the *Architects Act* and they gain a protected scope of work, then only building officials would require a Large or Complex BCIN qualification. This should result in a significant reduction in the administrative burden undertaken by the Administrative Authority. It makes sense for the changes to the *Architects Act* to accommodate interior designers to be enacted before the Administrative Authority is established.

In the past, it was possible to contact the Buildings Branch to ask questions about the intent of the code or to get an interpretation of the meaning of the code. Architects lament that this support is no longer available. One result is that rather than having the Building Code interpreted consistently across the province, we now have one building code which is interpreted differently by different municipalities and often differently by different offices within the same municipality. This unpredictable variation in interpretation and application of code provisions causes delays and increases costs for all building types.

Subsection 4.3 Building Sector Data and Research

Architects have a long history of collaborating with government on the development of the Building Code. In recent years, this has been viewed less as a collaborative activity and more as something within the exclusive purview of the Ministry. The OAA encourages the Ministry to ensure there is greater collaboration with the architectural profession on developing the Building Code. The OAA is in agreement it would be beneficial for more research to be conducted on behalf of the sector.

Section 5. Funding Better Service Delivery

The OAA remains concerned about any measures that unnecessarily add to the cost of housing and/or decrease economic competitiveness. Downloading costs from the provincial

government, and from municipal governments, onto the construction sector should be offset at a minimum by efficiencies that reduce costs at least at an equal rate. If the Ministry believes costs will increase instead of decrease, it should not proceed with this funding model.

The proposal tabled suggests a levy amount of 0.016 per cent of the construction cost estimate noted on a building permit application. The OAA noted another jurisdiction cited as an exemplar by the Ministry. In this instance, there was a cap to the amount that could be charged. The Ministry should consider implementing a cap if there is a risk that failing to do so would have a negative impact on housing affordability and/or economic competitiveness, etc.

The OAA does support the efforts being made to remove unnecessary differences between the National Building Code and the Ontario Building Codes. Having a more unified regulatory environment will reduce costs and speed up projects. While the ideal would be to have one building code across the country, Ontario should not give up or weaken important advances, such as the Section 3.8 Barrier Free Design provisions or the Part 11 Renovation requirements.

111 Moatfield Drive, Toronto, Ontario, Canada M3B 3L6 Telephone 416.449.6898 Fax 416.449.5756 www.oaa.on.ca

APPENDIX B: Continuing Professional Development for Members of the Ontario Association of Architects

The OAA has had Continuing Professional Development (CPD) requirements for its Members for over 20 years, having added the component to the existing legislation in 1999 by amendments to the Regulations under the *Architects Act*. Ontario Regulation 287/99 s.12 amended the Regulations by adding section 54, which states:

54. (1) The Council shall establish a program of continuing education for members. O. Reg. 287/99, s. 12.
(2) The program shall include continuing education activities that may be offered by the Council or by other persons, consisting of courses of study, seminars, workshops, self-directed learning and professional activities approved by the Council. O. Reg. 287/99, s. 12.
(3) In each two-year period determined by the Council for the purpose of this section, a member of the Association shall spend 70 hours in continuing education activities approved by the Council. O. Reg. 287/99, s. 12.

To that end, Council established a mandatory continuing education program.

The OAA Continuing Education (ConEd) Program reflects the OAA's dedication to promoting and increasing the knowledge, skill and proficiency of its members, and administering the *Architects Act* in order to serve and protect the public interest.

The ConEd Program is a mandatory requirement for Ontario Architects, Non-Practising Architects, Licensed Technologists OAA, and Technologists OAAAS. It is based on a two-year cycle, beginning July 1 of even-numbered years. The reporting period runs from July 1 to June 30 biennially. Members must take the professional development hours and record those hours within the two-year cycle.

Architects in the province of Ontario are required to undertake and record **70 hours of continuing education activities in a 24-month cycle** as defined above.

The requirements include 25 hours of structured learning and 45 hours of unstructured learning in each two-year cycle.

All learning The topic must be relevant to the practice or business of architecture and at least one hour in length.	
Structured learning • In-Person learning • Distance Education • Teaching	**Unstructured learning** • Committee Meetings • Mentoring • Professional Research and Writing • Tours • Distance Learning

When the Honourable Paul R. Bélanger, Commissioner, provided the Report of the Elliot Lake Commission of Inquiry on October 15, 2014, in response to the collapse of the Algo Centre Mall in Elliot Lake, a number of recommendations were provided in the hopes of creating a safer Ontario.

The Commissioner was careful to review both past and current practices and make recommendations in accordance with real time, actual possible, achievements.

Recommendations from the Report	**Impact on Architects licensed by the OAA**	**Implemented by OAA**	**Impact on Professional Engineers with the APEO**	**Implemented by APEO**
1.23 Only for the APEO - APEO should issue a clear direction to its members that reports should not be altered simply because the client requests that			Establishment of a standard	NO
1.24 Only for the APEO - APEO should establish a system of mandatory continuing professional development for its members within 18 months of the release of this report	The OAA was not included in this recommendation as we have had mandatory continuing professional development for members since 1999, **O. Reg. 287/99 s.12**	The OAA has had continuing professional development requirements for 20 years. Established in **1999.** O.Reg. 287/99 s.12	Keep current in their field	NO
1.25, 1.26 Were also only for APEO			Recommending transparency in discipline process and providing orders to the public.	

Recommendation of the Report	Impact on Architects licensed by the OAA	Implemented by OAA	Impact on Professional Engineers with the APEO	Implemented by APEO
1.27 For the construction of any buildings requiring the services of more than one professional consultant, either a professional engineer or an architects should be designated by the owner or the owner's agent as the prime consultant to perform the roles and responsibilities of that position as defined by one or the other or both of the Professional Engineers Ontario and the Ontario Association of Architects	Section. 11(4) 8 of the *Architects Act,*R.S.O. 1990, c. A. 26 says: 8. An architect or a professional engineer may act as prime consultant for the construction, enlargement or alteration of a building.	Both an architect and professional engineer can already be the prime consultant. These provisions have been in both Acts since 1984.	Section 12(6) 8 of the *Professional Engineers Act*, R.S.O. 1990, c. P.28 says: 8. A professional engineer or an architect may act as prime consultant for the construction, enlargement or alteration of a building.	Both an architect and professional engineer can already be the prime consultant. These provisions have been in both Acts since 1984.
	Prime Consultant v Coordinating Professional. Doesn't matter what the title is, matters that it is limited to architects and professional engineers.	Doesn't matter what the title is, matters that it is limited to architects and professional engineers.		