

Discussion Paper

Review of Obligations under Letters of Undertaking

Request for Public Comment

The Nova Scotia Building Advisory Committee, Department of Labour and Advanced Education is looking for input from Nova Scotians on the recommendations made under the **Review of Obligations under Letters of Undertaking (*Building Code Act, Professional Engineers, Architects Act*) Final Report**.

There are 24 recommendations addressing three major areas:

- Improving the Letters of Undertaking process
- Improving compliance with the Letters of Undertaking process
- Improving building quality (a shared responsibility)

Please comment on the recommendations in the report as they relate to these three areas.

Background

The building industry in Nova Scotia is a major contributor to the Province's economy. Residential (including multi-occupancy), industrial, commercial and institutional construction constitutes a \$1.3 billion industry that employs more than 25,000 tradespeople. It supports a substantial industry in professional services (architects, engineers, interior designers, and others). It generally maintains a record of high quality that justifies public confidence. However, the relatively small number of buildings that do exhibit poor construction standards and require significant remediation remain a cause for concern.

The Nova Scotia Building Advisory Committee is established by the *Building Code Act* and reports to the Minister of Labour and Advanced Education. Its duties include "provide the Minister with such advice and assistance concerning [the] Act and the regulations..."

The *Building Code Act* established the authority for the use of Letters of Undertaking by architects and engineers in Nova Scotia in 1996 under the *Nova Scotia Building Code Regulations*. The Act and Regulations are administered and enforced by municipal building officials. The objective of the Letters of Undertaking is to assist municipal building officials in determining that a design conforms to the minimum standards of the Building Code and that the construction conforms to the design and as certified by the architect and engineers of record.

Unlike small buildings and single family dwellings for which there are seven mandatory inspections conducted by municipal building officials, in large buildings inspections are mandated to be carried out by the professional designers of record [engineers and architects] in conjunction with the building official according to a agreed upon schedule. This is a result of the complexity and longer duration of

construction schedule inherent in large building construction. The vehicle that creates this authority and responsibility is the Letter of Undertaking.

In 2008 the Province commissioned the *Homeowner Protection Report* to examine what protective measures are in place to ensure that a quality product is built and purchased by new homeowners. The Report noted that these measures are by and large satisfactory for single family dwellings. It is in the condominium sector and, more specifically, larger, more complex building projects that a number of more serious problems arise. The same report noted that there were some concerns with the effectiveness of the field review processes undertaken by engineers and/or architects in fulfilling their obligations under the Letters of Undertaking.

Other instances of concern with Letters of Undertaking have been raised by building officials, and relate to non-compliance (and potentially abuse of the system) by professionals and difficulties with the complaint, disciplinary and remediation processes.

The Report

The **Review of Obligations under Letters of Undertaking (*Building Code Act, Professional Engineers, Architects Act*) Final Report** was submitted to the Advisory Committee in October, 2011.

In the preparation of the Report, the review team was asked, in consultation with key government and other stakeholders:

- To review the use of Letters of Undertaking in the design and construction of buildings in Nova Scotia;
- To determine if they meet the goals of the intended mandate;
- To identify regulatory or other improvements which could be made to ensure compliance of design and construction in the Province and thereby assure consumers that their investment is protected;
- To ensure there is a robust and transparent process to identify and prosecute offenders under the *Building Code Act* and/or to take reasonable disciplinary action under their respective professional bodies' legislative mandates.

A broad range of stakeholders were interviewed, and considering both this and the complexity of the subject matter, it is not surprising that there was a wide variation in observations and findings. There were, however, more comments in common than there were differences of opinion.

One of the most significant general observations of this report is that there is no universal problem with Letters of Undertaking. On the whole the system works quite well. Owners, developers, construction firms, professionals, and building officials generally work to complement one another in their respective roles, share accountability, and normally deliver a quality product.

The challenge of course is that this does not always happen. These interactions and shared responsibilities rely in part on the knowledge and integrity of the participants. The nature and complexity of building methods and the construction industry leaves opportunities for uninformed or unscrupulous participants and is the major cause of the problems that were noted.

How to Participate

If you are interested in providing comments, ideas and/or suggestions please provide responses to the Report by contacting the Nova Scotia Building Advisory Committee:

Email to: Rosstg@gov.ns.ca

Written Submission to:

C/O NS Building Advisory Committee

Labour and Advanced Education

Attn: Executive Secretary

P.O. Box 697

Halifax, NS, B3J 2T8

Fax: (902) 428-3239

In order for us to fully consider your comments, please contact us by December 20, 2012.

This discussion paper is also available on our website at: <http://www.gov.ns.ca/lae/>

Please note that our summary of the feedback we receive may list the names of individuals and groups who make comments or submissions. Unless comments are marked confidential, we will assume that those who have responded agree to allow the Department to quote from or refer to their comments.

Note to those who choose to respond to this invitation for feedback: You should be aware that the Nova Scotia *Freedom of Information and Protection of Privacy Act* may require us to release information contained in your response. Therefore, you should not include the names of others (such as adult learners, service providers, or instructors) or any other information from which anyone else could be identified, unless you have their permission. Further, if you, as an individual, want to provide comments and you do not want your name and personal information to be made public, your comments should not include your name or other information, such as an address, by which you could be identified.