1974

c 74 The Building Code Act, 1974

Ontario

© Queen's Printer for Ontario, 1974
Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes

Bibliographic Citation
The Building Code Act, 1974, SO 1974, c 74
Repository Citation
Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1974/iss1/76

This Statutes is brought to you for free and open access by the Statutes at Osgoode Digital Commons. It has been accepted for inclusion in Ontario: Annual Statutes by an authorized administrator of Osgoode Digital Commons.
CHAPTER 74

An Act to provide for
an Ontario Building Code

Assented to December 2nd, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

(a) "architect" means a member or licensee of the Ontario Association of Architects under The Architects Act;

(b) "building" means a structure occupying an area greater than 100 square feet consisting of a wall, roof and floor, or any one or more of them, or a structural system serving the function thereof, including all the works, fixtures and service systems appurtenant thereto, and includes such other structures as are designated in the regulations, but does not include a structure used directly in the extraction of ore from a mine;

(c) "building code" means the regulations made under section 18;

(d) "chief official" means the chief building official appointed or constituted under section 3 or 4 and having jurisdiction for the enforcement of this Act;

(e) "construct" means to do anything in the erection, installation or 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;

(f) "demolition" means the doing of anything in the removal of a building or any part thereof;
(g) "Director" means the person appointed as Director under section 2;

(h) "inspector" means an inspector appointed under section 3 or 4 and having jurisdiction for the enforcement of this Act;

(i) "Minister" means the Minister of Consumer and Commercial Relations;

(j) "municipality" means a city, town, village, township or improvement district or any other municipality having the power to make by-laws under section 38 of The Planning Act;

(k) "professional engineer" means a member or licensee of the Association of Professional Engineers of the Province of Ontario under The Professional Engineers Act;

(l) "regulations" means the regulations made under this Act;

(m) "unsafe", when used in respect of a building, means structurally inadequate or faulty for the purposes for which it is or is likely to be used or otherwise unsafe.

2. (1) The Minister is responsible for the administration of this Act.

(2) There shall be a Director of the Building Code Branch who shall be appointed by the Lieutenant Governor in Council.

3. (1) The council of each municipality is responsible for the enforcement of this Act in the municipality.

(2) The council of each municipality shall appoint a chief building official and such inspectors as are necessary for the purposes of the enforcement of this Act in the areas in which the municipality has jurisdiction.

(3) The councils of two or more municipalities may enter into an agreement,

(a) providing for the joint enforcement of this Act within their respective municipalities;

(b) providing for the sharing of costs incurred in the enforcement of this Act within their respective municipalities; and
(c) providing for the appointment of a chief building official and inspectors,

and, while the agreement is in effect, the municipalities have joint jurisdiction in the area comprising the municipalities.

(4) The council of a county and one or more local municipalities in the county may enter into an agreement for the enforcement by the county of this Act in such local municipalities and for charging such municipalities the whole or part of the cost thereof, and while the agreement is in effect the county may appoint a chief building official and such inspectors as are considered necessary and has jurisdiction for the enforcement of this Act in the municipalities that are parties to the agreement.

(5) The clerk of the municipality or county shall issue a certificate of appointment bearing his signature or a facsimile thereof to the chief official and each inspector appointed by the municipality or county who shall produce the certificate upon request in the performance of his duties.

(6) The council of a municipality and the Crown in right of Ontario represented by the Minister may enter into an agreement providing for the enforcement of this Act in the municipality by Ontario subject to such payment in respect of the cost thereof as is provided for in the agreement, and, while the agreement is in effect, Ontario has jurisdiction for the enforcement of this Act in the municipality.

4.—(1) Ontario is responsible for the enforcement of this Act in territory without municipal organization.

(2) Such inspectors as are considered necessary for the enforcement of this Act in the parts of Ontario in which Ontario has jurisdiction therefor shall be appointed under The Public Service Act.

(3) The Director shall be deemed to be the chief building official for the parts of Ontario in which Ontario has jurisdiction for the enforcement of this Act.

(4) The Deputy Minister of Consumer and Commercial Relations shall issue a certificate of appointment bearing his signature or a facsimile thereof to the Director and each inspector appointed under subsection 2 who shall produce the certificate upon request in the performance of his duties.
Agreements for enforcement by municipality

The council of a municipality adjacent to territory without municipal organization and the Crown in right of Ontario represented by the Minister may enter into an agreement providing for the enforcement of this Act by the municipality in such part of the territory without municipal organization and subject to such payment in respect of the cost thereof as is provided in the agreement and, while the agreement is in effect, the municipality has jurisdiction for the enforcement of this Act in the area designated in the agreement.

Building permits

Issue of permits

5.—(1) No person shall construct or demolish a building in a municipality unless a permit therefor has been issued by the chief official.

(2) The council of a municipality may pass by-laws and the Lieutenant Governor in Council may make regulations applicable in the area in which the municipality or Ontario, respectively, has jurisdiction for the enforcement of this Act,

(a) prescribing classes of permits for the purposes of subsection 1, including permits in respect of any stage of construction or demolition;

(b) providing for applications for permits and requiring the applications to be accompanied by such plans, specifications, documents and other information as is prescribed;

(c) requiring the payment of fees on applications for and issuance of permits and prescribing the amounts thereof;

(d) providing for the refunding of fees under such circumstances as are prescribed;

(e) prescribing the time within which notices required by the regulations must be given to the chief official or an inspector;

(f) prescribing forms respecting permits and applications for permits and providing for their use.

6.—(1) The chief official shall issue a permit except where,

(a) the proposed building or the proposed construction or demolition will not comply with this Act or the building code or will contravene any other applicable law; or

(b) the application therefor is incomplete or any fees due are unpaid.
(2) Drawings, plans and specifications accompanying applications for permits shall be made available to the Association of Professional Engineers of the Province of Ontario and the Ontario Association of Architects upon request for the purpose of determining whether The Professional Engineers Act or The Architects Act is being contravened.

(3) An applicant for a permit shall inform the chief official of any change in any information contained in the application.

(4) Subject to section 14, the chief official may revoke a permit,

(a) where it was issued on mistaken or false information;
(b) where, after six months after its issuance, the construction or demolition in respect of which it was issued has not, in the opinion of the chief official, been seriously commenced; or
(c) where the construction or demolition of the building is, in the opinion of the chief official, substantially suspended or discontinued for a period of more than one year.

7. Subject to the regulations, no person shall occupy or use or permit to be occupied or used any building newly erected or installed until notice of the date of its completion is given to the chief official and,

(a) an inspection is made pursuant to such notice; or
(b) ten days have elapsed after service of the notice or after the date of completion whichever occurs last,

and subject to compliance first being made with any order made by the inspector under section 8.

8. (1) Subject to section 10, an inspector may, for the purpose of inspecting a building or site in respect of which a permit is issued or an application for a permit is made, enter in or upon any land or premises at any time without a warrant.

(2) Where an inspector finds that any provision of this Act or the building code is being contravened, he may give to the person whom he believes to be the contravener an order in writing directing compliance with such provision and may require the order to be carried out forthwith or within such time as he specifies.
(3) Where an inspector gives an order under this section, the order shall contain sufficient information to specify the nature of the contravention and its location.

(4) Where an inspector gives an order under this section, he may affix a copy thereof to the site of the construction or demolition, and no person, except an inspector or the chief official, shall remove such copy unless authorized by the inspector or the chief official.

(5) Where an order of an inspector made under this section is not complied with within the time specified therein, or where no time is specified, within a reasonable time in the circumstances, the chief official may order that all or any part of the construction or demolition respecting the building cease and such order shall be served on such persons affected thereby as the chief official specifies and a copy thereof shall be posted on the site of the construction or demolition and no person except an inspector or the chief official shall remove such copy unless authorized by an inspector or the chief official.

(6) Where an order to cease construction or demolition is made under subsection 5, no person shall perform any act in the construction or demolition of the building in respect of which the order is made other than such work as is necessary to carry out the order of the inspector made under subsection 2.

9.—(1) Subject to section 10, an inspector may enter in or upon any land or premises at any time without a warrant for the purpose of inspecting any building to determine whether such building is unsafe.

(2) Where an inspector finds that a building is unsafe, he may serve upon the assessed owner and each person apparently in possession of the building an order in writing setting out the reasons why the building is unsafe and the remedial steps that the inspector requires to be taken to render the building safe and may require the order to be carried out within such time as the inspector specifies in the order.

(3) Where an order of an inspector under subsection 2 is not complied with within the time specified therein, or where no time is specified, within a reasonable time in the circumstances, the chief official may by order prohibit the use or occupancy of the building and such order shall be served on the assessed owner and each person apparently in possession and such other persons affected thereby as
the chief official specifies and a copy thereof shall be posted on the building, and no person except an inspector or the chief official shall remove such copy unless authorized by an inspector or the chief official.

(4) Where the chief official has made an order under subsection 2 and considers it necessary for the safety of the public, he may cause the building to be renovated, repaired or demolished for the purpose of removing the unsafe condition and, where the building is in a municipality, the cost of the renovation, repair or demolition may be added by the clerk to the collector's roll and collected in like manner as municipal taxes.

10. (1) For the purposes of an inspection under section 8 of the inspector or 9, the inspector may,

(a) require the production of the drawings and specifications of a building or any part thereof, including any drawings prescribed by the regulations, for his inspection and may require information from any person concerning any matter related to a building or part thereof;

(b) be accompanied by any person who has special or expert knowledge of any matter in relation to a building or part thereof;

(c) alone or in conjunction with such other person or persons possessing special or expert knowledge, make such examinations, tests, inquiries, or, subject to subsections 2 and 3, take such samples or photographs as are necessary for the purposes of the inspection;

(d) order any person responsible for the construction to take and supply at his own expense such tests and samples as are specified in the order.

(2) Where an inspector takes a sample under clause (c) of subsection 1, the inspector shall divide the sample into two parts and deliver one part to the person from whom the sample is taken, if the person so requests at the time the sample is taken and provides the necessary facilities.

(3) Where an inspector takes a sample under clause (c) of subsection 1 and has not divided the sample into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken.
620 Chap. 74 BUILDING CODE 1974

(4) An inspector shall not enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 16 of The Summary Convictions Act.

11.—(1) The chief official may review and amend or rescind an order made by an inspector under this Act.

(2) A chief official may exercise any of the powers or perform any of the duties of an inspector under this Act.

12.—(1) The Building Code Commission is established, composed of such number of members as is determined by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall appoint the members to the Commission, none of whom shall be persons in the public service of Ontario or of a municipality, and may designate one of the members as chairman and one or more of the members as vice-chairmen.

(3) The members of the Commission shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

(4) Three members of the Commission constitute a quorum.

13.—(1) Where a dispute arises between any person and the chief official or an inspector in respect of the interpretation of the technical requirements of the building code or the sufficiency of compliance with such technical requirements, any party to the dispute may apply to the Building Code Commission for a hearing and determination of the question.

(2) Where an application is made to the Building Code Commission under subsection 1, the Commission shall appoint a time and place for the hearing and notice thereof shall be served upon the other parties to the dispute and the Commission shall hold the hearing and may, by order, determine the dispute and for such purposes may substitute its opinion for that of the inspector or chief official.

(3) The decision of the Building Code Commission under this section is final.

(4) Members of the Building Code Commission holding a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or in-
directly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal or technical advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions.

(5) The findings of fact of the Commission pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of The Statutory Powers Procedure Act, 1971.

(6) Members of the Commission shall not participate in a decision of the Commission pursuant to a hearing unless they were present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Commission shall be given unless all members so present participate in the decision.

(7) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the Commission within a reasonable time after the matter in issue has been finally determined.

14.—(1) Any person who considers himself aggrieved by an order given or decision made by an inspector or chief official under this Act or the regulations may, within twenty days after the order or decision is made, apply to the judge of the county or district court for a hearing and appeal.

(2) Where an application is made under this section in respect of a matter in which a question is pending before the Building Code Commission, the proceeding before the Commission is terminated.

(3) Where an application is made to a judge for a hearing under subsection 1, the judge shall appoint a time for and hold the hearing and may rescind or affirm the order or decision of the inspector or chief official or take such action as the judge considers the inspector or chief official ought to take in accordance with this Act and the regulations, and for such purposes the judge may substitute his opinion for that of the inspector or chief official.

(4) A judge may refer a question respecting the interpretation of the technical requirements of the building code or the sufficiency of compliance with such technical requirements to the Building Code Commission for a hearing and
report to the judge and the procedure on the reference shall be the same as on an application under section 13.

(5) A judge to whom application is made for a hearing under subsection 1 may extend the time for making the application either before or after expiration of the time fixed therein, where he is satisfied that there are prima facie grounds for granting relief to the applicant pursuant to a hearing and that there are reasonable grounds for applying for the extension and may give such directions as he considers proper consequent upon the extension.

(6) The judge may, upon application therefor which may be made ex parte, order that the order or decision appealed from be not stayed pending the outcome of the appeal but shall take effect immediately where, in his opinion, such action is necessary in the interest of public safety and would not destroy the subject-matter of the appeal.

15.—(1) Any party to the hearing before the county or district court judge under section 14 may appeal from the decision of the judge to the Supreme Court in accordance with the rules of court.

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

(3) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the judge or direct the inspector or chief official to do any act he is authorized to do under this Act or may refer the matter back to the judge for reconsideration by the judge as the court considers proper and the court may substitute its opinion for that of the inspector or chief official or the judge.

16. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given or his agent for service at his latest known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given or his agent for service establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date.

17. —(1) The Building Materials Evaluation Commission is established, composed of such number of members as is determined by the Lieutenant Governor in Council.
(2) The Lieutenant Governor in Council shall appoint the members to the Commission and may designate one of the members as chairman and one of the members as vice-chairman.

(3) The members of the Commission shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

(4) The Building Materials Evaluation Commission may,

(a) examine and research or cause examination and research into materials, techniques and building design for construction;

(b) upon application therefor, authorize the use of any innovative material, technique or building design in respect of any specified building or part thereof and the use of such material, technique or design within the authority given and the terms and conditions specified therein shall be deemed not to be in contravention of the building code; and

(c) make recommendations to the Minister respecting changes in this Act or the regulations.

18. — (1) The Lieutenant Governor in Council may make such regulations as are considered advisable or necessary for the purpose of establishing a building code for Ontario governing standards for the construction and demolition of buildings, including but without limiting the generality of the foregoing,

(a) governing the manner of construction and types and quality of materials used therein;

(b) governing the design of buildings and the use to which they may be put;

(c) adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;

(d) requiring any part of the design, construction or demolition of a building to be under the field review of an architect or professional engineer;

(e) designating structures for the purposes of clause b of section 1;
(f) designating organizations to test prefabricated building units to the standards prescribed by the building code and providing for the placing of the label of such organization on such units that conform to the standards;

(g) requiring the approval of an inspector in respect of any method, matter or thing;

(h) requiring the posting on buildings or sites of construction or demolition of such documents or information as is prescribed;

(i) requiring such documents, information, records, drawings or specifications as are prescribed to be kept on the site of construction or demolition;

(j) requiring notice to be given to the chief official or an inspector respecting any matter in the course of construction or demolition;

(k) requiring notice to be given to the chief official respecting the change in prescribed classes of use made of a building;

(l) requiring chief officials to transmit to the Director such returns and reports as are prescribed;

(m) prescribing conditions under which a building or any part of a building may be occupied;

(n) exempting any building or class thereof from compliance with this Act and the regulations or any provision thereof;

(o) requiring the payment of fees in respect of applications to the Building Materials Evaluation Commission and prescribing the amounts thereof;

(p) prescribing procedures of the Building Code Commission and the Building Materials Evaluation Commission;

(q) prescribing forms and providing for their use.

(2) Any regulation made under this section may be limited in its application territorially or to any class of building, construction or demolition.

Inquiries

10. — (1) Where it appears to the Minister that there is or may be a failure in construction or demolition standards
or in the enforcement of this Act or the building code, the Minister may designate a person to conduct an inquiry into such failure.

(2) For the purposes of an inquiry under subsection 1, the person conducting the inquiry has the powers of a commission under Part II of The Public Inquiries Act, 1971, which Part applies to such investigation as if it were an inquiry under that Act.

20.—(1) No action or other proceeding for damages lies or shall be instituted against the Director or any member of the Building Code Commission or Building Materials Evaluation Commission or anyone acting under the authority of the Director, Building Code Commission or Building Materials Evaluation Commission or any person conducting an inquiry under section 19 for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

(2) No action or other proceedings for damages lies or shall be instituted against an inspector or chief official for an act or omission by him in good faith in the execution or intended execution of any power or duty under this Act or the regulations.

(3) Subsections 1 and 2 do not relieve the Crown or a municipal corporation of liability in respect of a tort committed by an inspector or a chief official to which either would otherwise be subject and the Crown or municipal corporation is liable for any such tort as if subsections 1 and 2 were not enacted.

21. (1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with a chief official or inspector in the exercise of a power or the performance of a duty under this Act.

(2) Every person shall furnish all necessary means in his power to facilitate any entry, inspection, examination, testing or inquiry by an inspector or chief official in the exercise of his powers or duties under this Act.

(3) No person shall neglect or refuse to produce any drawings and specifications as required by an inspector under clauses a and c of subsection 1 of section 10.

(4) No person shall furnish an inspector or chief official with false information or neglect or refuse to furnish, etc.
information required by an inspector or chief official in the exercise of his duties under this Act.

22.—(1) A chief official, inspector, person who, at the request of an inspector, accompanies an inspector, or person who, at the request of an inspector, makes an examination, test, or inquiry or takes samples shall not publish, disclose or communicate to any person any information, material, statement or result of any test, acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations except for the purposes of carrying out his duties under this Act or the regulations.

(2) No report of a chief official, inspector, person who, at the request of an inspector, accompanies an inspector, or person who, at the request of an inspector, makes an examination, test or inquiry or takes samples shall be communicated, disclosed or published to any person except for the purposes of carrying out his duties under this Act or the regulations.

(3) No chief official, inspector, person who, at the request of an inspector, accompanies an inspector or person who makes an examination, test or inquiry or takes samples at the request of an inspector is a compellable witness in a civil suit or proceeding respecting any information, material, statement or test acquired, furnished, obtained, made or received under the powers conferred under this Act.

(4) The Director may communicate or allow to be communicated, disclosed or published information, material or statements or the result of a test acquired, furnished, obtained, made or received under the powers conferred by this Act and the regulations.

(5) No person to whom information is communicated under this section or section 10 or 19 shall divulge the name of the informant to any person except for the purposes of this Act.

23.—(1) Every person who,

(a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(b) fails to comply with any order, direction or other requirement made under this Act; or
(c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly
concerns in such furnishing, failure or contravention is guilty
of an offence and on summary conviction is liable to a fine
of not more than $2,000 or to imprisonment for a term of
not more than one year, or to both.

(2) Where a corporation is convicted of an offence under
subsection 1, the maximum penalty that may be imposed
upon the corporation is $10,000 and not as provided
therein.

(3) Every person who fails to comply with an order made
by a chief official under subsection 5 of section 8 or sub-
section 3 of section 9 is guilty of an offence and on summary
conviction, in addition to the penalties mentioned in sub-
sections 1 and 2, is liable to a fine of not more than $100
per day for every day upon which the offence continued
after such order was given.

24.—(1) In any prosecution for an offence under this Act, a copy of a direction or order purporting to have been
made under this Act or the regulations and purporting to
have been signed by the person authorized by this Act to
make the direction or order is prima facie proof of the
direction or order without proof of the signature or authority
of the person by whom it purports to be signed.

(2) A statement as to any matter of record in an office
of the chief official purporting to be certified by the
chief official is, without proof of the office or signature
of the chief official, receivable in evidence as prima facie
proof of the facts stated therein for all purposes in any
action, proceeding or prosecution.

25. (1) Where it appears to a chief official that any
person does not comply with any provision of this Act, the
regulations or an order made under this Act, notwithstanding
the imposition of any penalty in respect of such non-
compliance and in addition to any other rights he may have,
the chief official may apply to a judge of the High Court
for an order directing such person to comply with such
provision, and upon the application, the judge may make
such order or such other order as the judge thinks fit.

(2) An appeal lies to the Supreme Court from an order made under subsection 1.
26. Section 38 of The Planning Act is subject to this Act and the building code made under section 18 of this Act supersedes all municipal by-laws respecting the construction or demolition of buildings as defined in section 1.

27. Notwithstanding section 26, the by-laws made under the provisions referred to therein continue in force in lieu of the building code in respect of construction,

(a) for which a permit has been issued before this Act comes into force; or

(b) for which the working drawings, plans and specifications are substantially completed before this Act comes into force and for which an application for a permit under a by-law made under section 38 of The Planning Act is made within three months after that date,

on condition that the construction is commenced within six months after the permit is issued.

28. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

29. This Act may be cited as The Building Code Act, 1974.