

**Notes for John Kenward's Presentation to the Executive Committee
of the Canadian Commission on Building and Fire Codes**

May 14, 2007

1. We appreciate the opportunity to speak to the proposal to expand the National Building Code and the National Plumbing Code to include a new objective, namely water-use efficiency.
2. We understand that provincial governments have expressed their interest in this matter and have asked the Canadian Commission on Building and Fire Codes (CCBFC) to give it consideration.
3. In response, the CCBFC has decided to establish a Task Group to examine the proposal and make recommendations to the Commission.
4. We understand that the Task Group may engage in broad consultations as part of their work, although this has not been decided.
5. CHBA regards this enterprise as extremely significant as it centres on the policy underpinnings of the Commission's mandate.
6. It has implications for the scope of the NBC, and for its content.
7. That being the case, it presents an important opportunity for the Commission to explore carefully how it approaches matters of policy concerning the role, purpose and scope of the NBC.
8. There is a lack of clarity in this area at the moment.
9. When a policy matter comes before the Commission, it is now the practice to refer it to the Provincial/Territorial Policy Advisory Committee on Codes (PTPACC) for consideration and response back to the Commission. The response, we understand, is expected to reflect the views of provincial governments.
10. What appears to be absent is any decision-making criteria or analytical framework which sets out how a policy matter is to be considered.
11. This, we understand, is also the case with respect to the proposed Task Group.
12. The potential result is that policy decisions could be taken by the Commission without a well-defined approach. This would be unfortunate.
13. The CHBA believes that a principle-based approach must be followed and the Commission should set it out in formal fashion.

14. Such an approach receives explicit articulation and direction by the federal government through its work on Smart Regulation. This approach is also endorsed by provincial governments.
15. CHBA strongly recommends that the Commission adopt the principles and analytical framework of Smart Regulation as its approach to addressing policy matters with respect to Canada's model codes.
16. CHBA strongly recommends that the Commission articulate these principles clearly for all those who wish to propose changes to the scope of the NBC, and any and all other changes that involve matters of policy.
17. CHBA also strongly recommends that the CCBFC develop its capacity, with support of IRC, to investigate non-regulatory approaches. Considering non-regulatory approaches is an integral element of Smart Regulation.
18. CHBA also recommends that the Commission define clearly what is meant by policy with respect to code development and the NBC's regulatory domain.
19. While water-use efficiency is the matter before the Commission at this point in time, the Commission can expect an increasing array of challenges on the policy front.
20. For example, the Canada Green Building Council has gone on record that in the field of fire safety:

“Code requirements prevent, or fail to consider, green building practices that could significantly improve environmental performance without compromising fire and safety objectives.”

21. On building codes in general, the Canada Green Building Council says that:

“There is still considerable work to be done before building codes begin to address health issues related to thermal comfort, indoor air quality, or environmental impacts of materials.”

22. As well, the Council says that:

“A considerable number of green building / community practices are prohibited or discouraged by building, plumbing and energy codes.”

Further, the Council says that:

“Governments should persuade the Canadian Commission on Building and Fire Codes to review the fire, building and plumbing codes from the perspective of creating buildings with a long life cycle.”

Elsewhere in its documentation, the Canada Green Building Council recommends a variety of techniques a municipality can use to put in place green building requirements.

These techniques are designed to get around limits to municipal legislative authority and include:

- Development approval requirements
 - Development or design guidelines/checklists
- Building Permit requirements
 - Carefully phrased non-mandatory guidelines
- Rezoning
 - Restrictive covenants

In the case of cities with their own charters:

- Building performance bylaws

23. The bottom-line for the Canada Green Building Council appears to be that:

- The model codes are an obstruction to green building
- The Canadian Commission on Building and Fire Codes is insensitive to this situation
- But there are ways to get around this

24. These views are getting implicit endorsement from governments through support of the LEED label which is owned/administered by the Canada Green Building Council.

25. They are also being endorsed by such organizations as the Royal Architectural Institute of Canada.

26. This represents regulation via the back door, circumvents the discipline of Canada's codes and standards system and will result in regulatory fragmentation across the country.

27. Pressures are emanating from elsewhere, such as:

University of Western Ontario:

- “Three Little Pigs” Facility
- Construction of Fortified Homes
- To address extreme events due to climate change:
 - Ice Storms
 - Tornadoes
 - Fires
 - Winter Blizzards

Universal Design

Emerging Issue of Psychological Well-being with respect to such matters as lighting.