



1

Background

- Local governments are empowered, but not required, to regulate building construction
- Power to regulate building construction stems from either the *Local Government Act* or the *Community Charter*
- Once a local government decides to regulate, it must do so in accordance with the British Columbia *Building Code* and the *Building Act*



2

What is a Building Bylaw?

Establishes a scheme of building construction regulation within the local government.

Sets out rights, powers, and obligations of a building inspector.

Passed by a local government's council or board.



Building a Building Bylaw

- **Poorly drafted building bylaws can result in** the local government assuming responsibilities and obligations that it did not intend to assume or is not capable of meeting or fulfilling.
- If a local government chooses for ***bona fide* policy reasons** to limit the number of inspections it undertakes, it will not be liable for construction deficiencies outside the scope of its inspections.
- If an inspector **decides not to carry out one of the usual inspections** in a particular case, that would likely be an **operational decision, giving rise to a duty of care.**



Why are Companion Policies Required?

Courts often interpret *powers* within a Building Bylaw as *duties*.

When a Building Bylaw is adopted, it is recommended that a Local Government also adopt companion policies.

A well-drafted Building Bylaw and written companion policies can help defend against negligence claims.



Implementing a Building Bylaw

- Consider the monetary and human resources available to the local government
- Must ensure that the Building Bylaw does not place undue and unrealistic expectations on the building department
- A Building Bylaw must only assign responsibilities to the building department that it is capable of meeting on a consistent basis - the policy decisions made must be attainable



Record Keeping

- It is **crucial** to keep good records. Written records should show:
 - what work was done;
 - by whom;
 - when the work was done;
 - any of the inspector's notes; and
 - include any photos taken.
- Records demonstrate that the Building Bylaw and the companion policies were followed
- **Records are more reliable than memories.**



7

Record Keeping



Standard Checklists



Records of Policy Decision

Reasons for Departures from
Standard Practice

8

Retention of Records

- Claims typically arise **many years** after the inspection took place.
- Local governments must retain records so as to properly defend itself against such claims.
- **Ultimate limitation period** for claims discovered after June 1, 2013 is 15 years.
 - For projects before June 1, 2013, records should be kept until June 1, 2028.
 - For projects after June 1, 2013, records should be kept for 17 to 20 years.



Retention of Records



Building Applications and
Inspection Reports



Policies and Procedures



Evidence of Reliance on
Certification



Diary System

- Have a **reliable diary system to send letters** to applicants and property owners if a permit has been approved but no inspections have been called for, or if there are delays in calling for inspections.
- If construction is progressing in contravention of the Building Bylaw, the building inspection department must consider its options. **Reasons supporting the decision should be recorded.**
- If the building department discovers that construction has been completed without the required inspections, **consideration should be given to placing a notice on title to the property.**



Inspector Recruitment and Training

Strive to have a unified and consistent approach.

Create and implement training plans and succession planning.

Utilize reciprocal aid agreements with neighbouring local governments where necessary.



Model Building Bylaw

Five years later – how does the Model Building Bylaw apply given recent changes to the BC Building Code, new case law, and changes to legislation?



13

Topics for Discussion:

- What the Model Building Bylaw is
- What the Model Building Bylaw is *not*
- Underdeveloped sections
- Developments / Changes
- Monitoring the process



14

What the Model Building Bylaw is:



An adoptable set of core provisions



A framework and outline for a complete bylaw



A suggested approach



Based on experience, past court decisions, and collaborative input from your peers



What the Model Building Bylaw is *not*:



The only way or the “right” way



One size fits all



A living document



A building regulation policy



Underdeveloped Sections:

- Certified Professional Program
- Energy Efficiency, GHG Emissions
- Permit Application Requirements
- Retaining walls and grades
- District energy system



Developments / Changes:

- Step Code
- Langford decision (*Architects Act*)
- *Marchi v Nelson* decision (Policy)
- Pandemic
- *Building Act*



Monitoring the Process:

- Approach for “complex” (Part 3) buildings
- To inspect or not inspect?
- Reliance on professionals
- Prescriptive provisions of Part 9 do not strictly apply



Claims Handling

Final Release
 Negotiation
 Liability
 Investigation
 Mediation
 Documents
 Settlement
 Quantum



Topics for Discussion:

- What is a claim? When do I report it?
- Initial claims process
- Cooperation
- Principled approach
- Mediation



What is a Claim? When to Report?

- What is a Claim? When do I report it?
- Who is your primary claims contact?



Initial Claims Process



Review of coverage



Initial fact gathering – understanding the claim



Gathering the documents



Identifying all relevant parties



Educating the claimant



Cooperation

- Why do we need to gather so much evidence for an obviously frivolous claim?
- We are on your side
- We won't throw you under the bus



Principled Approach

- We do not pay nuisance value to get rid of a claim
- If there is liability, we aim to settle quickly and fairly
- Liability is most often uncertain – we take a risk-based approach to settlement
- Precedent matters



Mediation

- How does mediation work?
- Who attends a mediation?
- Settlement authority
- Without prejudice & confidential
- Will we be briefed on the outcome?



Litigated Actions – What to Expect?



27

Duty of Care Owed by Building Officials

“Municipalities owe a duty of care to all who it is reasonable to conclude might be injured by the negligent exercise of their inspection powers.”



28

Duty of Care Owed by Building Officials

The most common types of plaintiffs are:

- owners/builders
- subsequent owners
- visitors to premises
- neighbouring property owners; and
- other potentially affected parties from the negligent exercise of inspection powers



29

Standard of Care Owed by Building Officials

- Once a duty of care is established, the next question is the applicable standard of care. In other words, **what level of diligence and attention is required of the building official in a given case?**
- The answer, in short, is that the standard of is one of reasonableness.
- What is “**reasonable**” will depend on the specific facts of each case.



30

What is Reasonable?

The standard of care expected of a local government building official is that of **reasonableness, not perfection.**

“[A] municipality ... is **not bound to discover every latent defect** in a given project, nor every derogation from applicable standards. **This would be to hold a municipality to an impossible standard.**”



Pleadings

Notice of Civil Claim: Sets out the detail of the Claimant's claim.

Response to Civil Claim: Sets out the Local Government's denial of facts and defences.

Third Party Notice: Issued by Local Government in cases where other parties are also liable to the Claimant.



Joint and Several Liability

A Claimant can recover the **entirety of damages** sustained from just **one** liable defendant, even through there are more than one.

This means that in some cases, your local government will have to shoulder a disproportionate percentage of the defence.



Document Disclosure Process



All parties to the action must disclose documents that are **relevant** to the claim.



Documents include copies of the building bylaw, companion policies, inspection records, photographs, orders, and permits.



Important to work with your lawyer to determine documents to be disclosed.



Examination for Discovery

- A formal meeting of the parties to “examine”, or **ask each other questions**, in relation to the issues and facts of the claim.
- A party giving evidence must take an oath or affirm to tell the truth.
- This usually takes place in a boardroom where a court reporter would **transcribe** the questions and answers.
- For building claims, the building department’s manager often acts as the representative for the local government.



Resolution

A litigated claim is ultimately resolved through:

- **Negotiated Settlement:** Parties negotiate settlement terms and payments amongst themselves, without anyone intervening.
- **Mediation:** An unbiased mediator assists the parties in reaching a resolution by offering a fresh, impartial, and balanced view to the claim.
- **Trial:** Parties present evidence collected through the litigation process to a judge who ultimately makes a ruling to resolve the claim.



