



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

ARCHITECTURE CENTRE
SUITE 100 - 440 CAMBIE STREET
VANCOUVER BC CANADA
V6B 2N5

TEL: 604 683 8588 / TOLL FREE IN BC: 1 800 667 0753

FAX: 604 683 8568 / 1 800 661 2955

E-MAIL: AIBC@AIBC.CA

INTERNET: WWW.AIBC.CA

December 15, 2011

**Attn: Ms. Christine Webb
Senior Policy Advisor
Building and Safety Standards Branch
Ministry of Energy and Mines
Government of British Columbia**

Re: 2012 BC Building Code Public Review

Dear Christine:

Thank you for the opportunity to respond to the proposed changes to the *BC Building Code*. The Architectural Institute of British Columbia's response to those proposals is attached, complete with commentary and rationale. They benefit from architectural practitioners' input, experienced committee members' review, feedback from expert code consultants and practice advisors as well as legal advice.

You will find the AIBC generally supportive of those technical proposals, but on occasion the institute's support is partial and/or guarded. In one case (that dealing with small assembly occupancies) there is express concern that the proposal, if implemented, would place the public at unnecessarily increased risk because of:

- *the absence of professional design, field review and assurances currently required under the code; and*
- *fire separation from other occupancies reduced from that currently required under the code.*

In the view of the AIBC, the above-noted proposal warrants serious re-consideration.

Comment is also warranted with regard to a proposal that does not appear in your list, specifically that of introducing language which would (within the *BC Building Code*) draw attention to, and establish as a condition of obtaining a building permit, the need for buildings to comply with the provincial statutes governing the professions of architecture and engineering.

Such a proposal was brought directly to your attention by a number of individual architects. That proposal was elegantly simple and workable. The AIBC has discussed such a proposal often and at length with you and other branch staff, with initially positive reception. The institute's representative echoed such a proposal in person at public consultation sessions. However, those initiatives would appear to be to no avail at this time. This is disappointing but does not deter our belief that such a proposal best serves the public interest and should be pursued.

I am given to understand, having had healthy, respectful and informative conversation with branch staff, that reluctance to include this proposal stems chiefly from the following factors (with the AIBC's comments italicized in each instance):

... /over

(1) Advice from the government's in-house legislative counsel that cross-referencing other documents is not good 'drafting' practice.

Understood as sound, general legal advice, but the code is already replete with appropriate and useful references to other regulations and standards that apply to building projects; and such "professional statutes" cross-reference exists in other provinces' codes. The Architects Act is a statute of general application, no less than, say, the Legal Profession Act, with which all persons must generally comply.

(2) Risk management advice within municipal governments that authorities having jurisdiction should enforce only their own building bylaws.

The AIBC enforces the Architects Act; an authority does not "enforce" that statute but, rather, would ensure its own required compliance (with the Architects Act) by denying a permit to a non-compliant submission. Some authorities already do that as a matter of wise local choice. As a result, their communities are better served and protected; the owners are better informed of their public obligations and projects do not proceed only to be halted by the AIBC, at the cost of time, expense and embarrassment.

Building officials, many of whom support this notion and have asked the AIBC to put forward such a proposal in the interest of clarity, would be in a better position to serve the public interest; and authorities would not find themselves aiding and abetting illegal practice at their own risk.

(3) The matter is better resolved at a higher policy level, under the government's resurrected Modernization Strategy which seeks a better, coordinated regulatory model.

That may well be, especially if policy emerges which calls for each applicable statute/bylaw/regulation to be complied with on any project and if the authority has such a mandate. In the interim, however (and possibly without that overarching policy's materializing), the permitting process under the code needs to acknowledge that:

- (a) the laws of the province apply and cannot, legitimately, be selectively ignored; and*
- (b) a statute (e.g. those for the architectural and engineering professions) is of higher authority than a regulation ... or a bylaw, which is what puts the code into place at a local level.*

*The Architects Act is a professional regulatory scheme applying across the province, and where that scheme intersects with local government permitting processes, that local government must ensure that its processes do not amount to, permit or encourage its violation. (In these regards, you might refer to Manitoba Association of Architects vs City of Winnipeg (2005 MBQB 189), in which the judge's reasoning and ruling squarely addressed the issue of city officials' failure to comply with the Manitoba Architects Act, **reminding the city and its administrators that they are indeed bound to observe the laws of the province including the provisions of the act.**)*

Apropos the Modernization Strategy, the professional statutes apply right from a project's outset (i.e. during design and development stages), not only with respect to building permit submissions.

The AIBC supports government's continued efforts to align the *BC Building Code* as much as possible with the national model code, while introducing B.C. amendments necessary and/or worthy because of conditions and/or advanced public protection attitudes prevalent in the province.

I appreciate the genuine consultation process through which both technical changes and forward-thinking strategies are being proposed and reviewed. In the latter vein, the institute will be sending (under separate cover) comments to you regarding the early Modernization Strategy considerations which you also have offered for consultation.

Respectfully submitted;

A handwritten signature in black ink that reads "Michael A. Ernest". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Michael A. Ernest Architect MAIBC
Executive Director