

The “X” Permit: Minimize Risk by Reforming Building Regulations

The construction and design industry is inundated with consultations this fall:

- Ontario’s Ministry of the Environment and Climate Change is drafting a regulatory amendment to exempt radiation (reflected light) emitted from buildings from requiring an environmental compliance approval. This will clarify that approvals are not required for reflected light from buildings.
- The CSA Group is holding a public consultation on changes to a number of its standards, notably: CSA A23.3 “Design of Concrete Structures,” CSA O86 (to include cross-laminated timber – this will be closed by the time you read this) and CSA S406. Two new standards that could eventually end up in Ontario’s Building code are: CSA A500 “Building Guards” and CSA B805 “Rainwater Harvesting Systems.”
- Ontario’s Ministry of Municipal Affairs and Housing (MMAH) has announced a Nov. 30, 2015 cut-off date for all new amendment proposals for the next edition of the OBC but has not indicated when the next edition of the code will be published.

I am going to respond to this request by submitting a proposal to allow for the issuance of what I call “**X**” **Permits**. This class of permit would: reduce the liability of municipalities and stimulate job growth by allowing the use of new materials and innovative technologies that support the government’s focus on environmental sustainability and energy conservation in Ontario. For example: a 12-storey building using cross-laminated timber construction would use an “X” Permit in Ontario.

Why do we need “X” Permits? There are many reasons but they all flow from the observation that governments, in general, are averse to the risks associated with innovation in design and construction, notwithstanding their stated policies to the opposite. This has resulted in a building regulatory system that contains impediments discouraging an efficient design and construction process supporting innovation in Ontario.

Existing Legislation Supports “X” Permits

“X” Permits would be issued by municipal chief building officials, only based on a plans review certificate issued by a registered code agency, which would also be responsible for site review during construction. Municipalities would still ensure that a project met municipal zoning by-laws and site plan requirements. The registered code agency would be responsible for ensuring that the design and all **alternative solutions** met the objective-based Ontario Building Code. Ontario courts have already noted that municipalities are not liable for the plans and field review of registered code agencies.

Municipal building officials tend to be very conservative since they understand the liability associated with making a wrong decision. Although Ontario’s Building Code is written in an objective-based format, many people, including building officials, still use only the prescriptive

requirements of Division B, which contains the **acceptable solutions** (reduced risk for liability). Very few people use alternative solutions, which have had equal standing to acceptable solutions in Ontario's objective based Building Code since 2006 (increased liability risk). This results in many issues, especially alternative solutions, ending up at the Building Code Commission which can relieve the municipality from the liability for making a decision.

The provincial government also avoids the use of its existing statutory powers to promote innovation in construction and design:

- **Section 28.1 of Ontario's Building Code Act** has allowed the Minister of MMAH to issue a written interpretation of any provision of the Ontario Building Code, since 2002. The Minister's interpretation is binding on any person exercising a power or performing a duty under the Building Code Act and on any person who is subject to the Act. This power (Subsection 2.4.3. of Division C of the Ontario Building Code has been revised specifically to facilitate its use), if used effectively, would assist designers, builders and building officials. Even though the legislation enables binding interpretations of the Building Code, nothing has been done to actually issue interpretations to promote uniform interpretation of the Building Code throughout the province.
- **Subsection 29.(1)(c) of Ontario's Building Code Act** also allows the Minister of MMAH to issue rulings approving the use of alternative materials, systems and building designs which, in the opinion of the Minister, will achieve the level of performance required by the Ontario Building Code. Unfortunately, ministers have never used this power to assist designers, builders and building officials, even though Subsection 2.4.2. of Division C of the Ontario Building Code has been revised specifically to anticipate that this power will be used. There appears to be a great reluctance, on the part of the government, to approve alternative building systems and designs that have been approved in other provinces.

Ministers generally delegate the powers to issue interpretations and approve alternative building designs to the director of the building and development branch, who is the chief building official for Ontario. I can recall only one instance of an application made to the director. The application was abandoned after about a year when the applicant found out that no procedures were in place either to make an application or to issue anything!

Avoiding risk by refusing to exercise powers under the Building Code Act to promote binding uniform code interpretations throughout the province is counterproductive. Refusing to publish procedures for the approval of innovative designs that have been approved in other provinces does not assist our designers, builders and building officials. Other Canadian provinces have been much more innovative in managing risk while assisting their construction and design sectors and promoting jobs and innovation.

One way Ontario can catch up is to implement "X" Permits.

About the Author: Alek Antoniuk is best known for co-ordinating and managing the technical development of the 2006 and the 2012 editions of the Ontario Building Code. He also played a lead role in managing the code advisory services of the Ontario Ministry of Municipal Affairs and Housing since 1989. He is a building code consultant, a policy advisor, and the publisher of a web site for information about construction codes at: www.codenews.ca .