



November 25, 2019

Building Services Transformation Branch
777 Bay Street, 16th Floor
Toronto, ON
M5G 2E5
Canada

RE: Transforming and modernizing the delivery of Ontario’s Building Code services, ERO 019-0422

Thank you for the opportunity to comment on the government’s consultation document that will inform changes to Ontario’s Building Code services. We are pleased to provide our perspective and recommendations on this very important issue which impacts the residential building industry.

The Residential Construction Council of Ontario (RESCON) represents more than 200 residential builders of high-rise, mid-rise and low-rise buildings in the province. The focus of RESCON’s work is on technical standards; labour relations; industry research and innovation; health and safety; regulatory reform and streamlining; as well as training and apprenticeship.

Regarding the proposed administrative authority, RESCON believes that this entity will not have a significant positive impact on the delivery of Building Code services. Our position on this proposed administrative authority is further compounded by lack of details on several important elements such as financial transparency, comprehensive costings, governance structure and the need for a comprehensive jurisdictional scan and comparison.

We have also provided comprehensive commentary on other elements of the proposal including the use of Coordinating Registered Professionals (CRP) and Certified Professionals (CP) and our support of this regime.

RESCON would like to thank the Building Services Transformation Branch at the Ministry of Municipal Affairs and Housing for the stakeholder outreach as part of the work on this review.

We would also like to commend the government for working to streamline the building process in Ontario. RESCON appreciates the opportunity to provide you with our comments and we look forward to our continued engagement with the Ministry and government.

Regards,

Richard Lyall
President



A NEW PATH FORWARD FOR BUILDING CODE SERVICES

The Discussion Paper indicates that “Historically, the Ministry of Municipal Affairs and Housing (the Ministry) has provided a suite of Building Code services. However, over time, the delivery of these services has not kept pace with the needs of the sector, making this model unsustainable.”

One of the main components of the proposed Discussion Paper is the creation of an administrative authority, whose goal would be to deliver Building Code services rather than the Ministry of Municipal Affairs and Housing (MMAH).

The Discussion Paper assumes that the administrative authority, as it relates to Building Code services, is a *fait accompli*. The Discussion Paper asks many questions about specific Building Code services, but it does not ask whether an administrative authority should be established to deliver these services versus other approaches.

Given the fact that the delivery of Building Code services once provided by the Ministry has steadily been on the decline and has not kept pace with needs of the sector, Building Code professionals and the larger building industry have continued operating successfully. The industry and other stakeholders have adjusted to these reduced service levels by the Ministry and have relied upon other alternative resources, both private sector and municipal building departments, to fill the void left by the Building and Development Branch. Therefore, when considering a new administrative authority as a potential solution, the need may not be warranted as industry has already adapted and developed alternative resources to cope with the reduced service changes over the years.

Generally, RESCON is of the opinion that an administrative authority would not have a significant positive impact regarding Building Code service delivery. We believe that in the Discussion Paper there is a lack of rigorous explanation as to why only an administrative authority or an administrative authority of the nature and scope proposed, could address current service delivery deficiencies of the Ministry. Our position on the administrative authority is further compounded by the lack of details in the Discussion Paper regarding the authority, including the following principles:

- ***Lack of Details on Costing***

The Discussion Paper states a funding amount for the administrative authority at 0.016% of the total construction cost estimates noted in building permit applications. This amount, that is in addition to building permit fees, would be remitted to the administrative authority by municipalities collecting building permit fees. The Discussion Paper notes that the total annual value of building construction in Ontario is \$38 billion. Therefore, the total building permit surcharge fees collected by the proposed administrative authority would be a little over \$6M per year. This revenue



would be in addition to revenues already collected by annual fees for Building Code professionals. While it was not identified in the Discussion Paper, it was indicated at a stakeholder meeting, the total revenues to be collected, including building permit surcharge fees noted above and other existing revenues, would be about \$10M per year.

- ***The Need for More Transparency***

The Discussion Paper does not discuss how the 0.016% of permit construction costs is arrived at to cover the cost of providing improved Building Code services (relative to current service levels).

Information included in a financial statement covering total costs would include details on matters such as: the number of additional staff; staff salaries; and other expenditures (consultants, services etc.) required to meet the new service levels and to account for the proposed annual budget.

More financial transparency would allow for a fulsome comparison with existing Branch budget so that the proposed increment in service can be compared to the incremental cost of providing the improved service, considering service improvement delays arising from the transition to the proposed administrative authority.

To justify the anticipated fee, the Ministry would need to account for current staff allocations in the Building and Development Branch and the services they provide in comparison to how a new administrative authority with its anticipated staff could better provide Building Code services. Only with full transparency can the public and stakeholders adequately undertake a proper cost benefit assessment of the proposed administrative authority.

The Discussion Paper outlines current service issues and deficits in many service delivery areas but does not quantify the cost of fixing these problems including any additional staff requirements, consulting costs or operational costs necessary to address these service delivery problems. The service delivery areas including specifically: problems with current Building Code exams (clarity and length of time); problems with current pre-qualification training; problems with the current internship program for building officials; and improving building sector supports.

- ***Governance Structure***

The lack of information on any governance structure for the administrative authority is problematic when determining the benefit of such an entity. Additional information is necessary regarding governance, including: the nature and scope of government oversight; role of the administrative authority in regulation making; transparency and reporting requirements. These elements are essential for industry to know as they



would provide a clear picture on why the administrative authority would be able to provide services in a more nimble and streamlined fashion than a government department and how it would better serve industry and the public.

- ***Jurisdictional Scan and Comparison***

We believe it is necessary for the Ministry to conduct an Ontario jurisdictional scan on how the proposed administrative authority compares with other existing Ontario administrative authorities involved in building regulation including: the Technical Standards and Safety Authority (TSSA) and the Electrical Safety Authority (ESA).

Further to that, we believe it would have been beneficial to include a broader interprovincial and international jurisdictional scan that looks at other administrative arrangements for delivering Building Code services including but not limited to:

- The **Alberta Safety Codes Council** which provides further value-added services for industry clients etc., by combining under one agency, authority related to the regulation of: building design and construction; electrical; plumbing; gas; fire; and elevators.
- The **Victorian Building Authority (VBA)** in Australia regulates Victoria's building industry and sets out the framework for regulating building construction, building standards and maintenance of specific building features. The VBA also registers certain building practitioners including inspectors and homebuilders. The VBA therefore covers some activities currently addressed in Ontario by TSSA and MMAH's building branch.
- The **Regie du Batiment du Quebec (RBQ)**, was created in 1992 and has field offices across Quebec with a head office in Montreal. It's a self funded body responsible for various areas of regulation including: building; pressure vessels; electrical codes; plumbing gas installations; and petroleum equipment. The RBQ also regulates certain practitioners including general and specialty contractors and it enforces building regulations for larger buildings.
- The **Department of Community Affairs (DCA)** in New Jersey, is a State agency providing among other things, administrative guidance and technical assistance to local governments and businesses. The DCA's Division of Codes and Standards is responsible for various regulations including those for building, electrical, energy, fuel gas, and elevators. Another Division within the DCA, the Division of Fire Safety, is responsible for development and enforcement of the State Uniform Fire Code. In Ontario building, fire codes are administered by separate Ministries and elevator standards comes under TSSA. DCA also handles planning services.



- ***Coordination and integration with other building regulatory agencies.***

The proposed administrative authority would need to work with and coordinate with other building regulatory bodies in Ontario including the Fire Marshall's Office in another Ministry, the TSSA and the ESA. While in other jurisdictions, these functions are within one Ministry or agency, in Ontario they would continue to reside in different siloed agencies but now Building Code services would be under a new administrative authority linked presumably to the Ministry of Municipal Affairs and Housing. It is not clear to us how linkages and coordination would occur or improve between all relevant regulatory agencies and the new administrative authority.

RESCON believes that to properly evaluate the Ministry's proposal to create a new administrative authority, it is important to look at the comparable administrative structures elsewhere.

In many jurisdictions, as noted above, various inter-connected and interrelated aspects of building regulation (building, fire safety in existing buildings, elevators etc.) have been consolidated under one administrative structure (Ministry or agency). This "one-window" approach helps to speed up and streamline the development and evaluation of new regulations and administrative practices that may impact on other affiliated areas of regulation.

If Ontario is to undertake a major transformation of its administrative system for the regulation of Building Code services, then it should consider a more consolidated one-window structure that can provide economies of scale, better integration and improved overall efficiency.

EXAMINATION DEVELOPMENT AND DELIVERY

The Discussion Paper notes that stakeholders have raised concerns about the clarity of questions and the lack of time (three hours) provided to complete examinations.

These problems were likely noticed shortly after the reforms introduced around 2006, implemented through Bill 124. This problem has come to light over the last decade but has yet to be substantively addressed by the Ministry.

The Discussion Paper does not explain why this problem has not been addressed and why an administrative authority would be necessary to remedy the problem. Arguably establishing an administrative authority would take time and further delay measures to fix the exam clarity and timing issue.



With respect to the time limit on completing exams, it has not been explained why establishing an administrative authority would be necessary to allow for more time to complete the exam or to reduce the number of questions.

PRE-QUALIFICATION TRAINING

The Ministry has entered into an agreement with a training provider – George Brown College. In addition, other bodies such as the Ontario Building Officials Association (OBOA) also deliver training. It is not clear how an administrative authority may be necessary to implement any training improvements that may be warranted or how it would substantially solve the training issues.

It is recognized that there is a need to train more building officials to replace the aging workforce which currently comprises the bulk of building officials. The OBOA is aware of the need to bring more building officials into the profession and has been administering an internship program. The OBOA, which is closest to this issue, should continue and bolster its efforts aimed at attracting more people to the building official profession.

Additional initiatives to consider would include the approach in Austria where the state government has supported the funding and establishment of what could be called a “floating pool of building officials” ready to be engaged by municipal building departments as needed. Other initiatives such as increasing the use of coordinating professionals and private sector certifiers could alleviate the recruitment burden for municipal building officials. This would enable building officials to then transition into an expert auditing role, thereby alleviating the aging workforce issue with building officials.

Moreover, joint service delivery arrangements, perhaps mandatory, among municipal building departments can help pool resources and reduce the burden for new building officials.

RECRUITING EXPERIENCED PROFESSIONALS

There is a need to train more building officials to counter the aging workforce and the need for a more effective internship program. There seems to be limited marketing and advertising regarding the whole building official profession and these efforts need to be expanded into high schools, colleges and university programs to effectively recruit. The duties and career path of a building official are not well understood by newcomers to the building industry and this needs to be improved upon.

It is not clear what role an administrative authority would play in internship programs or how this would help solve this issue.



The implementation of a provisional license framework would be useful to allow practitioners to gain on-the-job training as well as experience before becoming fully qualified. This is already commonplace in other similar professions such as how Professional Engineers Ontario (PEO) has an Engineering Intern (EIT) designation prior to becoming a Professional Engineer (P.Eng.).

USING COORDINATING PROFESSIONALS

The Discussion Paper presents the idea of greater use of private sector professionals, which has existed in British Columbia since 1992. However, although not outlined with more granularity in the Discussion Paper, this model in British Columbia involves three distinct designations, being the Registered Professional (RP) who is a licensed engineer or architect as well as the Coordinating Registered Professional (CRP) and the Certified Professional (CP). In Vancouver, British Columbia, where the CP and CRP programs are well-established, it is important to note that these are distinct programs that may or may not be used together.

The use of Coordinating Registered Professionals and Certified Professionals as in British Columbia, provides real and significant opportunities for: speeding up building permit issuance; reducing uncertainty for project owners; increasing industry innovation and the use of alternative solutions; and improving code compliance. This is achieved by reducing reliance on municipal building departments in the technical review of complex building designs and shifting the municipal function to more of an audit role.

In Ontario, the use of coordinating professionals has been advocated for by PEO, OBOA and Building Code professionals for many years. RESCON believes that enhancing the role of the professional design team in code compliance supports innovation and faster permit issuance. The use of CRPs and CPs is not just about streamlining, it is also about ensuring code compliance. Furthermore, the model National Building Code requires that for alternative solutions there be one coordinating design professional to oversee the design or other design professionals to avoid problems in innovative designs.

It is unclear in the Discussion Paper if the proposal would be for Ontario to adopt the current British Columbia system as-is, with the separate professional designations (CRP and CP) or if Ontario would pursue some type of variation with only Coordinating and/or Certified Professionals. Ontario may wish to adopt a different approach to that of British Columbia, but such a decision should be made after understanding how other jurisdictions with more experience have addressed the issue. In the case of the coordinating registered professional and certified professionals, these are programs that arose from reforms starting in Vancouver, BC.



It is important to recognize that the terms Coordinating Registered Professional or Certified Professional have very specific meanings in Vancouver and British Columbia, and therefore it is important to be careful how these terms may be used in Ontario. Ontario may want to take a different approach but in doing so should use different terminology to avoid confusion.

Furthermore, something that has been omitted from the Discussion Paper is Ontario's current program of private Registered Code Agencies (RCA). This program has been unsuccessful because the RCA, which under this program, steps into the role of a municipality, must often take on a design coordination role which by default in Ontario's system falls to the municipal building department as well as a certification role. These very broad responsibilities combined with Ontario's joint and several liability regimes, where a party that is 1% liable can pay 100% of the damages and then try to recover from other parties, makes the RCA proposition very unattractive. The Discussion Paper could have benefited from a more comprehensive explanation on how the proposed program that is being contemplated under the "using coordinating professionals" concept may or may not differ from the RCA concept as well as that of British Columbia's CRP and CP model. **(Please see Appendix 1)**

However, RESCON believes that the use of a well-crafted Coordinating Registered Professional and Certified Professional model, analogous to what is done in British Columbia, would support a more streamlined building permit application and could better leverage the use of private sector registered professionals (licensed architects and engineers).

PUBLIC REGISTRY AND REGISTRATION PROCESS

As a member of the public, the information that should be readily accessible on a public registry for qualified Building Code professionals should at minimum provide license type, license status, area of practise, date of licensure, academic education and qualifications as well as any past professional conduct disciplinary actions.

A transition to an administrative authority should be based on a stronger argument than addressing problems with examinations and the registry of Building Code professionals.

REGISTRATION COMPLIANCE AND ENFORCEMENT

The original intent of the practitioner qualification and registration regime was to establish a minimum mandatory level of technical competence for building officials and other designers not regulated by existing professional associations, i.e. PEO and OAA. Under the original regime, only certain practitioners such as Part 9 design firms and registered



code agencies (RCAs) could be de-registered or in effect lose their license for “past conduct”. However, the Ministry did not establish the capacity to undertake the proper review of these practitioners to determine if the past conduct provision should be used to terminate registration.

It appears that the Ministry wants to expand the de-facto licensing regime that was originally limited to only Part 9 design firms and RCAs to a broader range of building practitioners or Building Code professionals under the BCIN regime such as building officials and Chief Building Officials (CBOs).

An expansion of disciplinary authority could lead to, for example, a situation where a CBO is being pressured by municipal council to deviate from the Building Code Act or Ontario Building Code and necessitate disciplinary action. This could result in the Ministry or proposed administrative authority having to reprimand or remove the license of a CBO. This begs the question - would the Ministry or the administrative authority be prepared to take such actions.

The Discussion Paper would have benefited from a review of other options to help address this problem which in part arises from the concerns related to Elliot Lake and similar situations. Other potential options that could alternatively be considered include:

- Right to practice provisions for OBOA so they could remove licenses of CBOs and other building officials who do not meet code of conduct standards; and
- Accreditation of municipal building departments as implemented in Alberta.

SUPPORTING LOCAL BUILDING SERVICE DELIVERY

The Discussion Paper proposes that smaller and/or northern municipalities have the option to enter into an agreement with the proposed administrative authority so that the administrative authority would deliver full or partial building services (code enforcement) on their behalf.

In Quebec, the Regie du Batiment is responsible for code enforcement for larger buildings. In Alberta, the Safety Code Council can step in if a municipality is not accredited for Building Code enforcement.

The Discussion Paper should have included other options and explain why the Quebec and Alberta models may or may not be sufficient for Ontario. Other possible options include:

- Limiting provincial level enforcement to only larger buildings as in Quebec;



- The Province funding a pool of qualified building officials (e.g. for non-part 9 buildings, etc.) to be engaged by various municipalities as necessary, like the approach in Austria;
- Where and when required, mandate rural and northern municipalities to engage in joint service delivery arrangements with other municipalities if they do not have sufficient building officials qualified in all needed areas;
- Mandating a twinning program whereby larger municipalities with surplus capacity among their building officials, specifically regarding large buildings (code categories other than Part 9), twin with smaller rural and northern municipalities to provide code services on their behalf at an appropriate fee. This is the approach being explored in Finland. This could be tied into a municipal building department accreditation program like that in Alberta which would force unaccredited municipalities to engage other resources (i.e., surplus building official capacity in some larger municipalities);
- Enable owners to engage and rely on design coordinators or prime consultants and certified professionals to reduce reliance on building officials in ill-equipped small municipalities.

PROMOTING A CONSISTENT APPLICATION OF CODE REQUIREMENTS

The Discussion Paper talks about the Ministry's desire to provide various supports such as: additional guidance material on a regular basis; increasing the use of technical bulletins and establishing formal processes for code interpretation requests; and enhancing code advisory services.

Guidelines

The Ministry has already facilitated the production of two guidelines in recent years, one on fire safety during construction and the other on mass timber buildings. Therefore, the Ministry is capable at providing necessary guidelines when needed by industry.

Interpretations and advice

Regarding Code interpretation and advisory requests, the Ministry has, over the past several years, substantially reduced its Code interpretation and advisory services to the building industry and Building Code officials.



The Ministry at times has indicated that it has withdrawn from providing advice, opinions and interpretations with respect to the ever more complicated Building Code, because of legal liability concerns based on advice from the Ministry's legal staff.

This is understandable as only the courts can provide a definitive interpretation of a regulation through proper legal proceedings. However, certain Building Code provisions can be interpreted differently by even the Ministry's own legal staff, so there are certain challenges with clarity of Building Code requirements. In the past, the Ministry has provided explanations and interpretations on problematic code provisions. These explanations and interpretations could still be provided subject to the necessary limitations emphasizing that such advice and interpretations are opinions only. Ultimately, the municipal CBO and municipalities are responsible for enforcement, with the Building Code Commission able to rule on disputes, but the final judgement rests solely with the courts which can interpret regulations. Even with all these caveats, the Ministry's non-binding interpretations would still be useful for industry. In addition, the Building Code Act provides the Ministry with the authority to issue binding interpretations, but none have been issued by the Ministry to date.

Build Right Ontario

To fill the vacuum on non-binding interpretations, the OBOA has established Build Right Ontario. This program has the potential when fully operational, to provide code advisory and interpretation services with the appropriate caveats to building officials and industry. It may be beneficial for the Ministry to endorse and support this initiative so that it can operate in a more official capacity across the province.

Finland

Similarly, Finland is embarking on an approach similar to that by the OBOA through establishing committees based on Building Code divisions (e.g. fire, structural, etc.) composed of qualified building officials from around the country, to provide explanations and interpretations on various problematic code provisions.

Moving forward with the Ontario Building Code

In the longer term, the composition and makeup of the Building Code itself can be improved upon to simplify the presentation of requirements for code users. The current Building Code is a labyrinth of notwithstanding clauses (or their equivalent) and double and triple negatives referring to a matrix of potentially related provisions.



This format of the Building Code could be greatly clarified with more reliance on the narrative supplementary standards and associated diagrams etc. Most of building construction is a 3D enterprise translated into linear 2D legalese.

DIGITAL SERVICE TRANSFORMATION

RESCON strongly supports the Province's digital first strategy which was first announced through Bill 154, *Cutting Unnecessary Red Tape Act, 2017* calling for all provincial agencies to allow for digital applications.

RESCON has been advocating for the adoption of a comprehensive e-permitting system that would link together municipal building departments, with municipal planning, engineering and various applicable law agencies. The intent is to create a common and electronic building permit application process across Ontario. Ideally an advanced e-permitting system would link to digitized Building Codes as outlined in Discussion Paper. A digitized Code could then enable automated Code checking software to be integrated into an electronic permitting system. The Ministry should create an environment that facilitates the development and uptake of a streamlined e-permitting system in Ontario.



Appendix 1

Additional Discussion on Leveraging Registered Professionals

Brief overview of approach in Vancouver, British Columbia

In Vancouver, the Coordinating Registered Professional, is the person who coordinates the design and field review work of the registered professional designers involved in the project (architects and engineers). The second program is the optional Certified Professional who undertakes Code coordination and performs inspections. The Certified Professionals do not replace Coordinating Registered Professionals normally involved in a construction project. A CP can provide an additional level of Code review traditionally carried out by municipal building department staff. To be recognized as a CP, a person must pass a CP course offered by the BC Association of Professional Engineers and Geoscientists or the Architectural Institute of BC.

In Vancouver, the obligations of the CRP, when part of a design team involves multiple professionals, is the same for a project that does not involve a Certified Professional. The CRP is responsible for coordinating the design and field review of the Registered Professionals (licensed architect or engineer) throughout the duration of the design and construction process while each individual registered professional is responsible for his or her own design and field review area of expertise. The CRP is responsible for coordinating the work of each Registered Professional and for the review and checking of all design documents prepared by the Registered Professional of record. The CRP is the contact point between the CP, the owner and each registered professional of record and is responsible for ensuring communication between all parties. It is the CRP's responsibility to ensure that all letters of assurance are completed properly. The CP on the other hand is the main point of contact for the municipal building department with respect to the coordination of the required permits.

According to Vancouver's CP practice and procedures manual, the CP provides an independent review of the design and field review process as a "check and balance" to the services provided by the registered professionals of record (architects and engineers on the project) and the CRP, which is intended to replace monitoring that is traditionally carried out by the municipal building department. The CP acts on behalf of the municipal building department with respect to plan review and construction field review services. The introduction of a CP into a project substantially reduces the monitoring and reviewing activities of the Authority Having Jurisdiction (AHJ).



British Columbia's Professional Structural Concept Review

Another important aspect of the BC system not referenced in the Discussion Paper, is the introduction of a requirement by the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC), for a professional structural concept review (similar in concept to peer review by another independent licensed engineer). This approach recognizes that many municipalities do not review structural designs for large complex buildings.

In April 1991, the APEGBC identified as one of 12 recommendations responding to the Closkey Commission Inquiry Report on the 1988 Station Square Roof Collapse, indicated that “the Engineer of Record maintain a complete design file, obtain a thorough review of designs and, in particular, a review of structural designs by a professional engineer not involved in the design, and that construction of an engineered project be reviewed by a professional engineer”

Out of this came the “Structural Concept Review” to enhance public safety. This structural concept review according to the APEGBC, “provides an independent overview of the primary structural system by reviewing structural design concepts and structural system integrity. Structural concept review is undertaken by an independent experience structural engineer to determine if the structural system is sound, the documents appear to be complete, the design parameters are relevant and the structural members are appropriately sized and detailed. Except for some smaller projects as outlined below, concept review applies to all structural designs including new buildings, alterations and additions to existing buildings, structural components and structures other than buildings. It is important to recognized that concept review is intended to supplement, but not replace, in-house design checks”.

Longstanding Support for Design Coordination in Ontario

There has been longstanding support among engineers, architects and building officials for design coordination. As reported in RESCON's 2018 report called “Streamlining the Development and Building Approvals Process in Ontario” several past submissions to the government have supported the idea of professional design coordinator for larger professionally designed buildings.

While the Ministry's Discussion Paper mentions the Elliot Lake Commission's recommendation that owners designate a professional engineer or architect as a prime consultant, there have been several similar recommendations prior to that:



- A 2009 letter from the Engineers, Architects and Building Officials (EABO) joint liaison group recommended that “the Building Code (be amended) to incorporate requirements for the appointment of a coordinating professional”.
- A recommendation in the 2012 Building Advisory Council (BAC) annual report recommended the use of a “coordinating professional to bridge the gaps in professional oversight of building design and construction and to improve compliance in complex areas such as energy efficiency design”.

Registered Code Agencies (RCA) in Ontario

While not mentioned in the Discussion Paper, it is worthwhile to review Ontario’s RCA (Registered Code Agencies) program which has been unsuccessful. The use of Registered Code Agencies, which were intended to undertake the role of the municipality where they had insufficient capacity to handle building permit applications and meet the review timelines, have been a failure in Ontario. Ontario reportedly has one RCA, which is far less than expected under the changes introduced through Bill 124.

RESCON undertook a review of the RCA program to find out why it failed. One of the main reasons was that the RCA had to be a full-service agency that had technical competency in all areas of regulation and therefore could not specialize. In addition, because it allowed a third party agency to undertake the building permit process on behalf of a municipality (which would have no liability), it took on the design coordination role, which by default often fell to the municipality in the traditional municipal building permit process. Under Ontario’s joint and several liability regime, the potential liability associated with these multiple roles and the potential exposure under joint and several liability, meant that the RCA function did not appeal to the private sector.

Since the Discussion Paper did not cover the details of how liability under the CRP and CP proposal would work in Ontario, the RCA experience would suggest that this must be properly developed to avoid the same outcome as the RCA, particularly under a joint and several liability regime.