



Lorena Staples, Q.C.

August 30, 2012

Chief Len Garis, President  
Fire Chiefs' Association of British Columbia

Dear Chief Garis,

**Re: Inspection of Public Buildings**

**1. Owner-Responsible Inspection - Legislative Interpretation**

Statutory inspection requirement

Under section 26 of the *Fire Services Act* (FSA), a municipal council must "provide for" a regular system of inspection of certain public buildings. It does not say that the council must inspect those buildings with its own forces or contractors or at the expense of the municipal taxpayers.

Municipality's statutory powers

The powers in s. 8 of the *Community Charter* (CC) empower a municipality to involve the owners and occupiers of their buildings in an inspection scheme. For example, section 8(3) empowers council to "regulate, prohibit and impose requirements in relation to the following:

- (a) municipal services);
- (g) the health, safety or protection of persons or property in the matters referred to in s. 63 [*protection of persons and property*]".

S.63 (a), (b) and (c) are relevant to fire safety and (c), in particular, is "any matter within the scope of the *Fire Services Act*". This would include s. 26 of that Act. Therefore, a council could exercise its powers under s. 8(c) to regulate matters under the *Fire Services Act*, including section 26, by bylaw.

Content of municipal bylaw

The bylaw could provide for a system of inspection that "requires persons to do things with their property, do things at their expense and provide security for fulfilling a requirement" under s. 8(3)(g), i.e. require them to self-inspect their buildings and report the results to the municipality.

In the bylaw, the municipality should retain the power to inspect the s. 26 buildings so that it could respond to complaints and conduct random inspections as an audit of the owner/occupier self-inspection scheme. The municipality should design a workable system for the self-inspection scheme and the random auditing process and incorporate it into the bylaw.

#### Effect of changes to FSA

It is important to ensure that any changes to the FSA will not adversely impact or diminish the powers achieved by the linking of the two Acts, so we can not only proceed with the desired implementation of the owner/occupant based inspection/audit program but also not find it to be unlawful under a revised FSA. However, if section 26 is repealed entirely, a municipality could still adopt this kind of system by bylaw under the *Community Charter*, which permits a municipality to establish any service it considers will benefit the community.

It would be an improvement if the Legislature revised s. 26 to allow a municipality the choice of providing, in respect of buildings in which services are provided to the public, (a) for an owner-responsible inspection and reporting system, perhaps subject to random auditing by the municipality or (b) a municipally conducted inspection system, using any or all of its powers under the *Community Charter*. That would be a more direct approach than finding the two Acts are linked by interpretation.

#### Examples of an owner's statutory responsibilities

Saskatchewan's *The Fire Prevention Act* places the following responsibilities on the owners of buildings:

##### **Owner responsibilities**

28. Every owner of a building, structure or premises shall ensure that the building, structure or premises is designed, constructed, erected, placed, altered, repaired, renovated, demolished, relocated, removed, used or occupied in accordance with this Act and the regulations.

I would add the verb "maintained" to the list of obligations in the above section as a recommendation for BC's updated FSA. You might also want to recommend the following from Saskatchewan's Act:

##### **Effect of municipal bylaws**

33. Where a municipality has passed a bylaw in accordance with The Municipalities Act, The Cities Act or The Northern Municipalities Act, 2010 respecting the prevention and suppression of fires and the provisions of the bylaw are more exacting than the provisions of this Act or the regulations, that bylaw governs and applies to all properties within the boundaries of that municipality.



## **2. Owner–Responsible Inspection and Municipal Auditing System**

Having interpreted the existing legislation as permitting an owner–responsible inspection and municipal auditing system, the next step is to design a workable system within the framework of the legislation.

### Current inspection statistics

Currently, fire safety inspections of hotels and other public buildings in a municipality are generally conducted on a periodic basis by the fire department. The fire chiefs in most municipalities have noted that 80% of building owners are compliant with the regulations. They want to be able to concentrate their resources on the 20% who are not. In other words, it is a waste of time and resources to inspect buildings whose owners are reliably compliant.

### FCABC's proposal

Because municipal resources are too stretched to perform annual inspections, FCABC wants to implement a system where the building's owners are primarily responsible for compliance with the Fire Code and other fire safety regulations, such as those in the Building Code and municipal bylaws.

The owners would have to report periodically, e.g. annually, to the municipality or a designated municipal official, such as the fire inspector, on the fire and life safety condition of their buildings and the maintenance and testing of fire safety and suppression equipment in the buildings (sprinklers, alarms, exit doors and so on). This might necessitate the owner retaining specialists to do this work.

The municipality would have the authority to conduct inspections but would not be required to inspect every building or do so at set time intervals. Fire inspectors would likely perform random inspections. If fire detection and suppression equipment come with manufacturer's instructions on how to maintain and test them, the owner should provide proof annually or at other time intervals that these instructions have been followed.

### Similar BC system

A similar owner–responsible system has been implemented by BC for onsite sewage disposal systems (septic tanks) under B.C. Reg. 326/2004 of the Public Health Act. The owner must hire an "authorized person", i.e. a registered professional, to install their system. A filing must be made to the health authority before the system is installed, then a certification provided after installation and after that, maintenance must be ongoing and recorded. (Sections 8, 9 and 10 of the Reg.)

### Alberta's QMP system

The Alberta Fire Quality Management Plans (QMPs) contain a Verification of Compliance section for those circumstances where the fire service is not required by law to perform inspections. Instead, the owner must have the building's fire safety equipment and systems tested and maintained. The owner must verify to the municipality that testing and inspection has been done.

### Verification of Compliance

Under the heading of Compliance Monitoring, the QMPs mention, as one method of compliance monitoring, "verification of compliance (when applicable)" = "reasonable assurance provided from a third party that a building, structure, place, equipment or installation work complies". The other methods are permit issuance, plans examination, regular site inspection and follow up inspections.

The Fire QMPs (all of them are the same, obviously an Alberta province-wide model) do not constitute a comprehensive system of owner / occupier responsibility for compliance. That is only one of the methods of monitoring compliance set out in the QMP, which seems to be a fairly comprehensive system of monitoring compliance with municipal fire safety regulatory regimes in a strictly administrative manner. It does not include prosecution and civil action against a non-compliant person.

### Alberta's legislative authority

Alberta's legislative authority for using verification of compliance is not cited in the QMP. Alberta's Safety Codes Act governs fire protection and contains this section and is similar to the Saskatchewan legislation excerpted above:

#### **"Owners, care and control**

**5** The owner of any thing, process or activity to which this Act applies shall ensure that it meets the requirements of this Act, that the thing is maintained as required by the regulations and that when the process or activity is undertaken it is done in a safe manner."

#### **Liability exemption**

**12(1)** No action lies against the Crown, the Council, members of the Council, safety codes officers, accredited municipalities or their employees or officers, accredited regional services commissions or their employees or officers, accredited agencies or their employees or officers or Administrators for anything done or not done by any of them in good faith while exercising their powers and performing their duties under this Act.



(2) The Crown, an accredited municipality, an accredited regional services commission and an accredited agency acting in good faith under this Act are not liable for any damage caused by a decision related to the system of inspections, examinations, evaluations and investigations, including but not limited to a decision relating to their frequency and the manner in which they are carried out.

(3) The Crown and an accredited municipality and an accredited regional services commission that engage the services of an accredited agency are not liable for any negligence or nuisance of the accredited agency that causes an injury, loss or damage to any person or property.

(4) Subject to this section, nothing done pursuant to this Act affects the liability of any person for injury, loss or damage caused by any thing, process or activity to which this Act applies.

#### Evidentiary usefulness

Some of the processes listed would assist in evidence gathering for court procedures. It is important for any administrative process to prepare enforcement officers to gather evidence and testify in court for the small percentage of cases that have to be prosecuted. If this is not done in every non-compliant circumstance, it will not be done in the circumstances that proceed to court where it is urgently needed.

#### Encouraging compliance

The existence of the verification category may encourage insurers to rate buildings for risk accordingly. That may discourage owners / occupiers from falling off the wagon and leaving it to the municipality to administer the system through its own inspections, i.e. being delinquent and thereby squandering the municipality's resources.

#### When verification accepted

The QMP dated March 9, 2005 states that the Fire SCO (Safety Codes Officer) has the discretion to accept a verification of compliance as either

- (a) a follow-up to deficiencies or unsafe conditions noted on a site inspection or
- (b) in lieu of a site inspection **when permitted in the QMP**. (my emphasis)

The opening words of Section 8: Compliance Monitoring refers to the methods as "being outlined in the appendices". There is one Appendix A in my copy. It limits the verification of compliance for acceptance as proof of correction to a noted deficiency; no mention of "in lieu of a site inspection", which is what we are looking for as at least partial satisfaction of s. 26 of

the BC Fire Services Act. However, we can do that using a municipality's powers under section 8(3)(g) of the Community Charter.

#### Frequency matrix

Appendix A establishes a formula for determining the frequency of inspections of all but residential properties that do not cater to the general public. The frequency is every year, 2, 3 or 4 years. There is no category in the formula or the frequency for verification of compliance in the case of no inspection / owner's responsibility: inspections are required and the frequency depends on a building's score on the questionnaire.

In other words, we will have to devise our own formula or criteria for verification of compliance. I would suggest starting with the criterion of having passed a local fire inspection without any noted deficiencies for 5 consecutive years. Added to that could be a 20 + score (or higher if you choose) on the matrix used in the QMP for the same time frame. These are objective criteria. Any building not meeting the criteria would be inspected on a frequency matching the building's score in the matrix.

Fire inspectors will likely think of other criteria. Buildings can go in and out of the verification of compliance category as they age, as owners / occupiers and their reliability change and so on. When that happens, consider whether it would be prudent to put the building back to square one or at least to a greater frequency of reporting or inspection.

"Incidents shown to have resulted in occurrence or severity as due wholly or partly to lack of maintenance of one or more required safety measures" could be a further criterion for restarting regular inspections by the municipality or increasing the frequency of owner reporting. There should be a fee for the inspections that covers the municipality's costs.

The above touches on some of the key elements of an owner-responsible inspection system. More work by front line officials should result in a workable system.

Respectfully submitted,



Lorena Staples , Q.C.