

# LIEN-ACTO-CELA submission to Building Code and Climate Change consultation



**Canadian  
Environmental Law  
Association**  
EQUITY. JUSTICE. HEALTH.

September 29, 2017

2017 Next Edition Building Code Consultation  
c/o Building and Development Branch  
Ministry of Municipal Affairs  
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Toronto, ON  
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## **Re: Consultation on proposed Changes to Ontario's Building Code**

We are writing to provide our comments on the proposed *Building Code* changes outlined on the Ministry's website and posted on the Environmental Registry. The listed proposals are designed to reduce greenhouse gas emissions and support the government's Climate Change Action Plan. We applaud the government for taking this important initiative.

### **WHO WE ARE**

The Low-Income Energy Network (LIEN) was formed in March 2004 to raise awareness of the impact of rising energy prices on low-income consumers and to work with policy-makers and the utility sectors on solutions to energy poverty. LIEN has over 60 members from a broad range of environmental, legal, tenant/housing, and social service organizations across Ontario that have endorsed its mandate.

The Advocacy Centre for Tenants Ontario (ACTO) and the Canadian Environmental Law Association (CELA) are among the founding members of LIEN and are represented on LIEN's steering committee.

ACTO is a community legal clinic funded by Legal Aid Ontario with a province-wide mandate to advance human rights and social justice in housing for low-income Ontarians through legal advice and representation, law reform, community organizing, and education and training. We also coordinate the Tenant Duty Counsel Program across Ontario which provides legal information and assistance to tenants appearing at the Landlord and Tenant Board.

CELA is a non-profit public interest organization and legal aid clinic established in 1970 for the purposes of using and improving existing laws to protect public health and the environment. Specializing in environmental law, CELA represents individuals and citizens' groups in the courts and before tribunals on a wide variety of environmental matters. CELA engages in diverse law reform initiatives and related public outreach and education. As a founding member of the LIEN, CELA places a high priority on advocacy to ensure progressive action on sustainable energy policy that does not disproportionately impact low-income and vulnerable communities.

## COMMENTS

CELA, ACTO and LIEN recognize that buildings represent a significant portion of Ontario's greenhouse gas emissions and wish to express our overall support for the province taking progressive action on climate change through revisions to the *Building Code* and in line with implementing Ontario's Climate Change Action Plan. We offer the following comments to ensure that these policy reforms do not have unanticipated or disproportionate impacts on low-income and vulnerable communities.

We recognize that the proposals in the consultation document are presented as a phased approach over the short (2019 to 2020) and longer terms (2022 and beyond). Our comments and concerns often have to do with broader policy framing that must be considered rather than the technical details of individual proposals.

We recognize, as stated on pages 6-7 in the consultation document, that the *Building Code* works in conjunction with other legislation, regulations and standards. However, not included among the examples noted on page 6 are the ***Residential Tenancies Act*** and local property standards bylaws (enabled by the *Building Code*). Given that existing buildings constitute about 99 percent of Ontario's building stock in any given year (as noted on page 17 of the consultation document) and the high percentage of Ontarians who are tenants in existing buildings – particularly in large urban centres – it is important to consider impacts of *Building Code* changes on residential tenancies, particularly in older buildings. Canadian statistical data confirm that there is a close correlation between age of housing and socio-economic status; as age of housing increases, income status decreases. Canada Mortgage and Housing Corporation (CMHC) notes that about 40 percent of Canadian housing is under 30 years old, but that for apartments, two thirds are at least 30 years old. These pan-Canadian data are reflective of the situation in Ontario. As well, the annual CMHC ***Canadian Housing Observer*** consistently reports that most urban households in core housing need are in the lowest income quintile. Since a large percentage of low-income Ontarians are likely tenants in older buildings, the stated reality of *Building Code* changes working in conjunction with other laws, regulations and standards, must account for impacts on low-income tenants.

## **Legislating a heat standard for apartment dwellers in the *Building Code***

Advancing the energy efficiency of Ontario's existing building stock is imperative to enabling Ontario to achieve its energy conservation and greenhouse gas reduction goals. In addition, increasing the energy efficiency of Ontario's building stock will also result in the following co-benefits:

- Reducing Ontarians' vulnerability to energy price increases over time
- Air pollution and public health improvements as a result of reduced fossil fuel use and reduced vulnerability to extreme heat
- Reductions in community vulnerability to energy disruptions and extreme weather events

Major renovations that include energy efficiency improvements reduce residents' vulnerability to extreme heat inside the buildings and thereby help prevent heat-related deaths.

The quality of our indoor environments can have a major impact on our health and well-being. The impacts of extreme heat are disproportionately borne by frail, elderly, infants/toddlers, and isolated people.

Deprivation, particularly in downtown urban areas, increases sensitivity to heat. Low-income households are at higher risk, likely due to poorer quality housing and limited access to air conditioning. Individuals on low incomes are also more likely to suffer from chronic diseases or other medical risk factors that put them at particular risk.

A possible solution could be the legislation of a maximum indoor heat temperature of 26 degrees Celsius for apartment dwellers in the *Ontario Building Code*. For apartment buildings without air-conditioning, landlords must provide, at a minimum, a cool location where building occupants (tenants) can go during hot weather. This option might minimize the energy and financial demands placed on older buildings, while providing a place where tenants can obtain relief from hot weather. Investments in preventative measures need to be made so to reduce the risk of extreme heat events resulting in health issues. Preventative actions may include an expansion of the tree cover, promoting green and cool roofs, and efforts to increase social networks among vulnerable populations. The implementation of these actions can have long-term benefits within a community. For instance, the expansion of tree cover can mitigate the effects of urban heat islands and the implementation of cool roofs can help reduce heat absorption by buildings and enhances thermal comfort for their occupants.

Our recommendations include:

- Shared cool rooms inside apartment buildings, to provide air conditioning to protect the health of the most vulnerable people who require active cooling
- Shared cool spaces outside apartment buildings, to provide shaded, treed spaces with seating as a refuge from overheated apartments
- Windows that open wide high up to allow ventilation while preventing falls
- Ceiling fans

## **Sub-metering of electricity, natural gas and water service in the multi-residential rental sector**

LIEN has continuously questioned whether smart meters and suite metering are the most effective, cost efficient or fair way to reduce energy use and GHG emissions in the multi-residential rental sector on an ongoing basis, particularly in view of the split incentive between landlords and tenants. The split incentive refers to the different interests of the owner/landlord and the resident: simply put, the landlord's purpose is to make a profit and minimize costs, while the tenant seeks a safe, comfortable and affordable home.

We have raised concerns about the potential erosion of housing affordability for low-income tenants who will be disproportionately affected by rising electricity costs and who have the least capacity to respond to price signals by shifting their energy use.

It is widely acknowledged, by all levels of government, that we have an affordable housing crisis in Ontario, with a significant percentage of tenant households paying more than 30% of their total household income on shelter costs, and one in five tenants paying 50% or more of their total household income on shelter costs – making them extremely vulnerable to homelessness. Shelter costs include utilities.

The Ontario government has made a long-term commitment to end homelessness, and a shorter-term goal to an end to chronic homelessness by 2025. In addition, the Ontario government is committed to reducing poverty in the province.

The majority of low-income households in Ontario are tenants who reside in multi-residential buildings and who currently pay for their utilities (electricity, natural gas and water) in their monthly rent. Having electricity service included in the rent is a valuable term in a lease agreement. It means that:

- Tenants have vital services protections under the law that prohibit the landlord from disconnecting electricity to their apartment
- Annual increases in your total housing costs are predictable and governed by rent rules in the ***Residential Tenancies Act***
- The impact of rising electricity costs on tenants is “smoothed out”

Bill 235 (***Energy Consumer Protection Act, 2010***) set up the legislative and regulatory framework for the provincial government to incrementally expand its smart meter initiative to the multi-residential rental sector and for landlords to proceed with the installation of sub-meters or meters in their existing buildings in order to transfer the responsibility for paying for in-suite electricity use to tenants directly and separately from rent.

Before proceeding with any more changes to the *Building Code* to further enable suite metering of electricity service – or expand suite metering to natural gas and water – LIEN requests that the Ontario government thoroughly review whether suite metering can meet the energy consumption reductions and GHG emission reduction goals expected from the multi-residential rental sector. At the same time, it should undertake neutral studies on how optimal energy use reductions in this sector can be best achieved without increasing financial burdens on tenants. Such actions are essential and prudent in order to avoid proceeding with what could prove to be a flawed energy conservation strategy.

## Radon and the *Building Code*

During the fall of 2016, the Ministry of Municipal Affairs sought public input on revising the *Building Code* to update radon protection provisions. CELA and the Ontario Lung Association strongly supported these long-overdue changes that will help prevent radon-induced lung cancer over the long term.<sup>1</sup> However, we are surprised and concerned that current proposals to update the *Building Code* in line with the Climate Change Action Plan do not make reference to these necessary radon updates given that evidence from multiple studies confirms that energy efficiency measures can increase indoor radon levels.<sup>2</sup>

In collating near and long term provisions to update the *Building Code* we strongly recommend that these radon provisions be considered an integral part of a package of *Building Code* amendments related to energy efficiency and the Provincial government's stated intention to adopt a government-wide strategy to address climate change.

## Food and Organic Waste and the Building Code

Ontario is currently developing a Food and Organic Waste Framework for the province to reduce food and organic waste. As part of that framework, the province is encouraging diversion of food and organics via municipal green bin programs. However, most multi-unit residential buildings do not have green-bin programs in place, nor do they have the infrastructure needed for residents of multi-unit residential buildings to sort their food and organics. To meet any future diversion targets, Ontario needs to ensure that green bin programs are in place for every multi-unit residential buildings and that all new buildings are built with proper infrastructure to ensure proper sorting of food and organics.

We strongly recommend that this requirement be added to the *Building Code* amendments to ensure that the Provincial government's intention to increase diversion of food and organics extends to multi-unit residential buildings.

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<sup>1</sup> Ontario Lung Association and Canadian Environmental Law Association (2016) Re: Potential Changes to Ontario's Building Code, December 16, 2016. Online at: <http://www.cela.ca/publications/re-potential-changes-ontarios-building-code>

<sup>2</sup> Jiranek, M., and V. Ka ma ikova. 2014. "Dealing with the Increased Radon Concentration in Thermally Retrofitted Buildings." *Radiation Protection Dosimetry* 160 (1–3): 43–47. doi:10.1093/rpd/ncu104; Pressyanov, Dobromir, Dimitar Dimitrov, and Ivelina Dimitrova. 2015. "Energy-Efficient Reconstructions and Indoor Radon: The Impact Assessed by CDs/DVDs." *Journal of Environmental Radioactivity* 143 (May): 76–79. doi:10.1016/j.jenvrad.2015.02.016; Milner, J., C. Shrubsole, P. Das, B. Jones, I. Ridley, Z. Chalabi, I. Hamilton, B. Armstrong, M. Davies, and P. Wilkinson. 2014. "Home Energy Efficiency and Radon Related Risk of Lung Cancer: Modelling Study." *BMJ* 348 (jan09 1): f7493–f7493. doi:10.1136/bmj.f7493; Fronka, A., and K. Jilek. 2014. "Radon Entry Rate Analyses Using in Situ Tracer Gas Method Application." *Radiation Protection Dosimetry* 160 (1–3): 143–48. doi:10.1093/rpd/ncu074.

Lastly, we recommend that any *Building Code* amendments also take into account the impact on rural and northern communities. Investments in rural and northern infrastructure will help grow local economies, build stronger, more inclusive communities, and help safeguard the environment and the health of Ontarians. Households in some parts of the province, such as rural and northern communities, including remote First Nation communities, will require additional assistance and incentives in order to be able to undertake major renovations.

Thank you for considering our recommendations.

Sincerely,  
On behalf of LIEN, ACTO and CELA,

***Original signed by***

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