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2018–2019: Building Materials Evaluation Commission annual report

Learn about authorization of innovative material and building design, including the commission’s performance measures and results achieved.

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Letter to the Minister

Building Materials Evaluation Ontario
12th Floor, 777 Bay Street
Toronto, Ontario
M5G 2E5

[Tel: 416-585-4234](tel:416-585-4234)

Web: ontario.ca/buildingcode

June 12, 2019

The Honourable Steve Clark
Minister of Municipal Affairs and Housing
17th Floor, 777 Bay Street
Toronto, Ontario
M5G 2E5

Dear Minister Clark:

**Re: Building Materials Evaluation Commission
Annual Report – Fiscal Year 2018 - 2019**

It is my pleasure, as Chair of the Building Materials Evaluation Commission, to present to you the Building Materials Evaluation Commission's Annual Report for the fiscal year ending March 31, 2019.

The enclosed Annual Report highlights the Building Materials Evaluation Commission's accomplishments over the 2018-2019 fiscal year and outlines challenges that have been identified for the future. I am pleased to report that the Building Materials Evaluation Commission met its target for making decisions within 120 days of receiving an application in the majority of cases. In total, the Building Materials Evaluation Commission received eight new applications, issued three new authorizations, and continued with its review of existing authorizations.

I would like to thank my fellow Commission members whose knowledge and dedication have earned the Building Materials Evaluation Commission an excellent reputation as a valuable service provider in the building and construction industry. On behalf of all members of the Building Materials Evaluation Commission, I would like to express our thanks to the staff of the Ministry of Municipal Affairs and Housing for their support to the Building Materials Evaluation Commission. Without their excellent administrative, technical, operational and legal assistance the Building Materials Evaluation Commission simply could not function.

Sincerely,

Leo Grellette
Chair, Building Materials Evaluation Commission

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A. Mandate

The Building Materials Evaluation Commission (the "Commission") is an independent regulatory agency

whose legislative authority is set out in section 28 of the *Building Code Act, 1992*.

The Commission has a mandate to evaluate and authorize, subject to conditions, innovative materials, systems or building designs for use in Ontario. In addition, the mandate of the Commission includes: conducting research on and/or examining construction materials, systems and building designs or causing such research to be conducted and examinations to be undertaken; and making recommendations to the Minister of Municipal Affairs and Housing (the “Minister”) respecting changes to the *Building Code Act, 1992* or the Building Code.

Commitment to Service and Guiding Principles

The inaugural meeting of the Commission was held on February 18, 1976, shortly after the first building code act, came into effect in 1974. Since then, the Commission has endeavoured to provide a timely, expert, and transparent process for authorizing the use of innovative materials, systems and building designs. In doing so, the Commission has earned a reputation of being an effective, useful and quality service provider within the construction industry.

The Commission has signed a Memorandum of Understanding with the Minister relating to the exercise of its mandate. The Memorandum of Understanding sets out the relationship between the Commission Chair and the Minister and the Ministry of Municipal Affairs and Housing with respect to the Commission and the services it provides. The purpose of the Memorandum of Understanding is to establish the responsibilities of these parties and to ensure that accountability is a fundamental principle observed in the management, administration and operations of the Commission.

As an agency of government, the Commission conducts itself according to the management principles of the government of Ontario. The Commission’s proceedings are governed by the *Building Code Act, 1992*; the Building Materials Evaluation Commission’s Guidelines, Policies and Procedures Handbook; and Treasury Board/Management Board of Cabinet directives. These principles and governance elements include ethical behaviour, accountability, excellence in management, wise use of public funds, and high-quality service to the public, through contributing to the health, safety, accessibility and energy efficiency of buildings in Ontario and by playing a positive role within Ontario’s construction sector.

B. About the Building Materials Evaluation Commission

Building Materials Evaluation Commission Process and Procedure

Applications for authorization are submitted to the Commission by manufacturers of materials, systems or building designs.

The Commission makes decisions on applications, but subcommittees are usually established to carry out detailed evaluations and report to the Commission. The subcommittees typically consist of Commission members who are familiar with, and/or have expertise in, the field of technology associated with the application. The Commission may request comments from Ministry of Municipal Affairs and Housing's technical staff or other research or standards issuing bodies.

Generally, the Commission holds one meeting each month, with approximately two to four subcommittee meetings in that same period. The issuance of decisions by the Commission usually takes between 90 and 120 days, depending on the complexity of the application and the additional information required of the applicants, as well as the timeliness of their response(s).

Members and Staff

As of March 31, 2019, the Commission had 10 part-time members, which includes the Chair and the Vice Chair. All members are appointed by Order in Council. Current Management Board of Cabinet Directives permit individuals appointed to the Commission to serve a combined term of appointment of up to 10 years. Commission members attend monthly meetings and subcommittee meetings and make decisions on applications for authorizations. The Chair and Vice-Chair are also responsible for making administrative decisions regarding operations and relations with the Ministry.

The following divisions of the Ministry support the Commission:

- the Municipal Services Division's Building Services Transformation Branch and Building and Development Branch;
- the Business Management Division's Corporate Services Branch, and Controllershship and Financial Planning Branch;
- Legal Services Branch; and
- Community Services I&IT Cluster.

The direct support staff assigned by the Ministry to the Commission consist of a 0.8 Full Time Equivalent (FTE) Commission Secretary, a 0.4 FTE Coordinator, Building Innovation, and a 0.4 FTE administrative assistant.

In late 2018, five members were reappointed to the Commission.. The Commission was able to advertise for two new members and the Ministry anticipates the appointments being made in mid-2019. The Commission is working towards staggering the terms of appointment for the Commission so that Orders in Council expire in smaller groups. This will allow for newly appointed members to be mentored by experienced members, and supports knowledge maintenance within the Commission.

In addition to ensuring an adequate number of members, the Commission must also work at maintaining

the knowledge base of its membership so it is important for the Commission to continue to solicit new members with expertise that reflects the full spectrum of technical disciplines (e.g. plumbing, mechanical systems, on-site sewage systems, etc.). As described in the Memorandum of Understanding, the role of the Chair includes keeping the Minister informed of upcoming appointment vacancies and providing recommendations for appointments and/or reappointments to the Commission.

Caseload

The chart below provides a summary of the Commission’s caseload over the last five years:

Fiscal Year	Applications Received	Authorizations Issued	Authorizations Amended or Revised	Authorizations Revoked
2014-2015	6	5	2	21
2015-2016	5	3	1	4
2016-2017	3	3	6	11
2017-2018	6	3	10	9
2018-2019	8	3	1	5

The rate of applications to the Commission has remained relatively static during the past five fiscal years. The Commission heard that staff regularly communicate with potential applicants, by way of telephone and email, regarding the Commission’s application process, timing of decisions, and fees; however, these enquires do not lead to applications. The Commission notes that the increased application fee may have an impact on an applicant’s decision to apply to the Commission.

In addition to the new applications noted above, the Commission also considers requests for amendments to existing authorizations and reviews its authorizations for possible revocation. Applications for amendment are processed in much the same manner as a new application. The Commission reviews and evaluates the details of the proposed amendment as innovative products, systems and designs are modified and updated. The process for review and revocation adds to the workload of the Commission and its staff.

The Commission notes that the technical and procedural complexity of the applications has increased, which result in lengthier reviews. The work required to communicate between the Commission and applicants for authorizations has increased, in that the correspondence prepared to provide the reasoning behind the denial of an authorization, or the denial of part of an authorization, has become much more detailed. Further, the number of occasions where the Commission has had to undertake a significant jurisdictional review of an application has increased. All of these factors have an impact on the number of subcommittee meetings required to fully evaluate applications for new and innovative products.

In its effort to maintain, manage and keep its authorizations current, the Commission developed a strategic plan for the review of all of its existing authorizations. The Commission continues to communicate with authorization holders to ensure that the contact information is current, and to determine whether the innovative material, system or building design detailed in the authorization is still being manufactured.

With the release of the 2012 Building Code, having an effective date of January 2014, the Commission began the second phase of its review for duplications. The Commission is about to complete this final review.

However, with the release of each new Building Code, the Commission will need to review its existing authorizations to eliminate authorizations that may no longer be required.

The Commission believes that this is a necessary exercise in order to ensure the credibility and accuracy of the information on its webpage. The Commission believes that the public needs to feel confident that the information in the authorizations is current and accurate.

C. Analysis of Building Materials Evaluation Commission performance

Performance Measures and Targets

The Commission has adopted the recommendations for performance measurement established in 2000 by the Agency Reform (Guzzo) Commission. These are: fairness, accessibility, timeliness, quality and consistency, transparency, expertise, optimum cost, and courtesy. While not all of the goals were rated as “high” by the Commission, there are processes in place to ensure that all goals are integrated into the Commission’s operation and are, therefore, adequately addressed. The chart below indicates how the Commission ranked the goals.

Goals	Ranking
Fairness	High

Accessibility*	Low
Timeliness	High
Quality and Consistency	High
Transparency	Low
Expertise	High
Optimum Cost	Low
Courtesy	Medium

* It should be noted that the term “Accessibility” for the purposes of the performance measurement recommendations of the Agency Reform Commission was related to providing seamless and simple access so that the public can receive quality and timely services regardless of their familiarity with the system.

Several steps have been taken to enhance the Commission’s performance and accountability over the past several years, including continued monitoring of Commission-specific performance measures. The following is a sample of how the Building Materials Evaluation Commission fared on some of its targets for its goals in 2018-2019:

Fairness

- The stated target of not more than 10% of decisions should result in judicial review on an annual basis was again met in the 2018-2019 fiscal year. No judicial reviews were received.
- Survey results for the 2018-2019 fiscal year indicate that 100% of clients surveyed agreed that they were treated fairly.

Timeliness

- The Commission aims to make a decision within an average of 120 days of the initial consideration of an application. Records from the 2018-2019 fiscal year indicate that the Commission met this

target and made decisions within 120 days.

Quality and Consistency

- Survey results of the parties that utilized Commission services in the 2018-2019 fiscal year indicated that 100% of respondents felt that the processes and procedures had a high degree of quality and consistency.

Transparency

- Survey results of the parties that utilized the Commission's services in the 2018-2019 fiscal year indicated that 100% of respondents felt that the processes and procedures were clear and understandable.

Expertise

- Survey results of the parties that utilized the Commission's services in the 2018-2019 fiscal year indicated that 100% of respondents felt that members demonstrated an appropriate level of expertise regarding the technical matters under consideration.

Courtesy

- Survey results of the parties that utilized the Commission's services in the 2018-2019 fiscal year indicated that 100% felt that they were treated with courtesy by Commission staff throughout the application process and 100% felt that the Commission members treated them with courtesy.

The results for the performance measures surveyed can be found in Appendix 1.

Operational Performance

The Commission believes that in order to provide quality service to the public and the construction sector in particular, the Commission, as an agency, must operate as effectively and efficiently as possible. This means more than having performance measures in place to strive for service excellence on a day-to-day basis. It also means pursuing excellence from an operational and administrative standpoint over the long term. In order to achieve this, the Commission also assesses itself on its operational performance. The following are some of the operational achievements from 2018-2019:

- The Commission continued to provide a cost effective and expeditious mechanism for evaluation of innovative materials, systems and building designs.
- The Commission continued its practice of surveying clients, and received an overall satisfaction rating of 100% from clients who had used the services of the Commission between April 1, 2018 and March 31, 2019.

- The Commission continued to maintain its compliance with the Agencies and Appointments Directive:
 - Prepared, finalized and submitted a three year Business Plan;
 - Its Annual Report for 2017-2018 fiscal year was completed and approved within the specified time frame.
 - Publicly posted the Commission’s Memorandum of Understanding, Business Plan and Annual Report as required by the Agencies & Appointments Directive.
 - Publicly posted the Commission Member’s expense information as required by the Travel, Meal and Hospitality Expenses Directive.
- The Commission continued to implement a strategic plan for the review of existing authorizations that may no longer be considered innovative as the product may now be regulated under the requirements of the 2012 Building Code and therefore the authorization may no longer be required.
- The Commission Chair and staff worked with the Public Appointments Secretariat and the Minister’s Office on the reappointment of five members.
- The Commission Chair and staff worked with the Public Apopintments Secretariat and Minister’s Office on the development and posting of a job advertisement and interview process seeking new members.
- The Commission Chair and staff continue to work with the Public Appointments Secretariat and the Minster’s Office to improve its membership in terms of regional representation and technical expertise.

D. Financial report

Budget

The Commission has no financial budget of its own, separate from that of the Ministry of Municipal Affairs and Housing. All costs, including Commission per diem remuneration, staff support, and operational costs, and administrative support, are borne by the Ministry.

The chart below provides details on the costs associated with supporting the Commission:

Expense Type	2019-2020 Estimates	2018-2019 Estimate	2018-2019 Actuals	2017-2018 Actuals
Per diems	\$112,000	\$112,000	\$69,303	\$86,024

Members’ travel and meeting expenses	\$56,650	\$55,000	\$12,270	\$11,296
Other administration	\$9,270	\$9,000	\$4,879	\$9,196
Subtotal	**\$177,920	**\$176,000	*\$86,452	*\$106,516
Full Time Equivalents - numbers	1.6	1.6	1.6	1.6
Full Time Equivalents - costs (salary + benefits)	\$156,560	\$152,000	\$129,273	\$118,904
Total Expenses	\$334,480	\$328,000	\$215,725	\$225,420

*The operating expenses cover costs associated with monthly Commission meetings and subcommittee meetings; per diems for Commission members; and reimbursement for out-of-pocket travel expenses related to meetings, including hotel accommodations, meal allowances (to the Ministry maximum), parking and public transit.

**The number of subcommittee meetings is determined by the application rate. Member per diem compensation rates are established by the Management Board of Cabinet Agencies & Appointments Directive regarding part-time OIC appointed members. The expenditure estimates are based on typical application rates (using historical data and projecting forward) and member per diem compensation rates and other operating expenses noted above.

Revenues

Revenues in the form of application fees are received, deposited and accounted for as part of the Ministry of Municipal Affairs and Housing’s non-tax revenues.

The application fee for the Commission was increased, from the 2014 fee of \$950, as seen in the following fee schedule:

- \$ 5,000 per application, effective January 1, 2015;
- \$ 7,000 per application, effective January 1, 2016;
- \$ 9,000 per application, effective January 1, 2017; and
- \$11,000 per application, effective January 1, 2018.

Revenues	2019-2020 Estimates	2018-2019 Estimates	2018-2019 Actuals	2017-2018 Actuals
Application Fees	\$66,000	\$66,000	\$93,021.50	\$57,510
Total Revenues	\$66,000	\$66,000	\$93,022	\$57,510

Remuneration of Members

As part-time appointees, Commission members receive remuneration in the form of a per diem as established by Treasury Board/Management Board of Cabinet. Effective January 1, 2018, this per diem ranged from \$472 for members to \$583 for the Vice-Chair and \$744 for the Chair. Commission members are also reimbursed for out-of-pocket expenses associated with attending Commission meetings in Toronto and elsewhere in the province, in accordance with Management Board of Cabinet’s Travel, Meal and Hospitality Expenses Directive. Costs associated with Commission activities, including operating costs and member per diems, form part of the overall budget of the Ministry of Municipal Affairs and Housing.

The Building Materials Evaluation Commission’s application rate and/or complexity of issues directly impact the budget requirement in support of Commission activities.

Appendix 1 – Performance Measures table

Building Materials Evaluation Commission: Performance Measures

Outcomes	Measures	Targets	2018-2019 Status	2019 - 2020 Commitments
Fairness (processes and procedures)	Applicants are satisfied that the process was	No more than 10% of Building Materials	Target met. Not more than 10% of decisions	Not more than 10% of Building Materials Evaluation Commission

that are fair and are seen to be fair)	balanced, appropriate and fair.	Evaluation Commission decisions should result in judicial review on an annual basis.	resulted in a judicial review in the 2018-2019 fiscal year.	decisions should result in judicial review on an annual basis.
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Timeliness (quick and careful evaluation of innovative construction materials, systems and designs)	a) Average number of months from receipt of application to decision/issuance of authorization. b) Timely posting of final authorizations on Building Materials Evaluation Commission Internet site.	a) Decisions made or authorization issued within an average of four months after the first Building Materials Evaluation Commission meeting following receipt of a complete application. b) Post 85% of final authorizations on the Building Materials Evaluation Commission internet site within 10 working days of receipt of French language translated document.	a) Target met. Decisions made or authorizations issued within an average of four months after the first Commission meeting upon receipt of complete application. b) Target met. 85% of the final authorizations posted on the Commission internet site within 10 working days of receipt of French translated document.	a) Decisions made or authorization issued within an average of four months after the first Building Materials Evaluation Commission meeting following receipt of complete application. b) Post 85% of final authorizations on the Building Materials Evaluation Commission internet site within 10 working days of receipt of French translated document.
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Quality and Consistency (process and procedures that have integrity and uniformity)	Applicants are satisfied that the Commission process was conducted with a high degree of quality and consistency .	85% of applicants feel that the process had a high degree of quality and consistency.	Target met. 2018-2019 survey results indicate 100% of applicants felt that the process had a high degree of quality and consistency.	85% of applicants feel that the process and procedures were clear and understandable.
Transparency (clear and understandable process and procedures)	Applicants are satisfied that the Commission process and procedures were clearly understood.	85% of applicants feel that the process and procedures were clear and understandable.	Target met. 2018-2019 survey results indicate that 100% of applicants felt that the process and procedures were clear and understandable.	85% of applicants feel that the process and procedures were clear and understandable.
Expertise (Thoughtful and sound Building Materials Evaluation Commission decisions made due to technical competence of members)	a) Applicants are satisfied that the Building Materials Evaluation Commission members demonstrated an appropriate level of knowledge and technical competency. b) Timely notice to the Ministry regarding upcoming Building Materials	a) 85% of applicants feel that Commission authorizations reflected a high degree of technical knowledge and expertise appropriate to the proposal. b) Provide six months' notice to the Ministry in advance of	a) Target met. 2018-2019 survey results indicate that 100% of applicants were satisfied that members were subject matter experts. b) Target met. The Ministry was provided with six months' notice in advance of	a) 85% of applicants feel that Commission authorizations reflected a high degree of technical knowledge and expertise appropriate to the proposal. b) Six months' notice will be provided to the Ministry in advance of member's appointments expiring.

Evaluation Commission member terms of appointment expiration.	member's appointments expiring.	member appointments expiring in the fiscal year 2018-2019.
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Courtesy (polite and courteous treatment of all parties)	Applicants are satisfied that they were treated with courtesy throughout the application and evaluation process.	85% of applicants surveyed feel that they were treated with courtesy throughout the application and evaluation process.	Target met. 2018-2019 survey results indicate that 100% of applicants felt that they were treated with courtesy by Commission staff throughout the application process and 100% felt that they were treated with courtesy by the Commission members.	85% of applicants feel that they are treated with courtesy throughout the application and evaluation process.
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Appendix 2 - Appointees list

Building Materials Evaluation Commission Appointees List

as of March 31, 2019				
Commission Members	Original Appointment Date	Expiry Date of Current Appointment	Location	
Leo Grellette, Chair	February 15, 2017	March 31, 2021	Severn	

Andrew Hellebusť, Vice Chair	February 8, 2018	February 7, 2020	Toronto
Andras Szonyi	February 8, 2018	February 7, 2020	Oshawa
Craig Cunningham	November 16, 2016	May 15, 2020	Huntsville
Saleha Hussain	November 16, 2016	May 15, 2020	Markham
Ben Pucci	November 16, 2016	May 15, 2020	Woodbridge
Gerry Egberts	November 30, 2016	May 27, 2020	Willowdale
Dale Kerr	November 30, 2016	May 27, 2020	Sutton West
Michaela Tataru	February 8, 2018	February 7, 2020	Richmond Hill
Rui Sousa	February 8, 2018	February 7, 2020	Thornhill

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