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Building Materials Evaluation Commission business plan 2020–2023

Learn about activities and plans for effectively evaluating and authorizing innovative building materials, products, and designs for use in Ontario.

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Mandate

The Building Materials Evaluation Commission (the “Commission”) is a 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, any innovative construction materials, systems or building designs for use in construction in Ontario. In doing so, the Commission has the power to conduct, or cause to be conducted, research, analysis and evaluation of

such innovative materials, systems and building designs. The Commission is not a testing body, but may require that testing be carried out by an applicant as part of its evaluation.

The Commission also has the authority to make recommendations to the Minister respecting changes to the *Building Code Act, 1992*, or the Building Code.

In exercising its mandate, the Commission receives all of its staffing and financial resources from the Building and Development Branch of the Ministry of Municipal Affairs and Housing (the “(Ministry)”).

Guiding Principles

As an agency authorized under the *Building Code Act, 1992*, the Commission exercises powers and performs duties in accordance with its mandate under that statute. The agency’s regulatory activities and decisions must be made, and be seen by the public to be made, independently and impartially. The Commission makes decisions independently from the Ministry and the Government of Ontario.

The Commission has signed a Memorandum of Understanding with the Minister of Municipal Affairs and Housing (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 (the “Ministry”) with respect to the Commission and the service 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 Code, 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.

Strategic direction

The Commission endeavours to provide a timely, cost-effective and non-adversarial process for evaluating

and authorizing new and innovative materials, systems and building designs for use in Ontario. In doing so, the Commission has earned a reputation as an effective, useful and quality service provider within the construction industry. The Commission does, however, face certain challenges. To address these challenges and to improve its ongoing operations and client service delivery, the Commission plans to continue with the following initiatives in the coming years.

Review of existing authorizations

In 2008 the Commission launched an initiative to manage and keep current all existing authorizations including the adoption of an “Expiration Policy”, which would see an authorization expire five years after its date of approval.

The first exercise involved an attempt to contact each holder of an authorization, dating back to 1976, to determine whether the authorization holder’s contact information on file with the Commission is up-to-date. Also, as part of this exercise, authorization holders were asked whether they still manufactured the innovative product, system, or building design detailed in the authorization, and whether the Commission’s information relative to this product was current.

The second initiative related to the review of existing authorizations for redundancy with other approvals for innovative products, systems or building designs, such as Rulings of the Minister, as they relate to Evaluation Reports from the Canadian Construction Material Centre.

A third review was performed to update the existing authorizations to current Commission’s policies as well as to determine whether the existing authorizations require updating to current codes and standards, as they are set out in the 2012 Building Code.

A final stage of review is being performed to update the remaining original authorizations to current Commission policies, including adding an expiration date.

Further, with the release of each new Building Code, the Commission will need to review existing authorizations in an effort to identify authorizations that may no longer be innovative. The Commission believes that this is a necessary exercise to ensure the credibility and accuracy of the inventory of authorizations as reflected on the web-page. The Commission believes that the public needs to feel confident that the information in authorizations is current and accurate.

Recommendations to the Minister

The Commission continually reviews existing authorizations to determine whether there is a need to make

recommendations to the Minister regarding changes to the Building Code and/or whether there is additional need for revocation of authorizations based on the current edition of the Building Code.

Time to decisions/authorizations

Following receipt of an application, the Commission aims to make a decision or issue an authorization within 120 days of the initial consideration by the Commission. This time frame is an accurate reflection of the average time frame the Commission requires to evaluate applications.

The Commission strives to be transparent in their process with respect to the evaluation of an application and to improve documentation of the evaluation process.

The Commission continues to monitor and review its processes for making decisions to determine if there are efficiencies that can be achieved.

Succession planning

As part of succession planning, the Commission believes it is necessary to have a longer period of overlap between sitting members and newly appointed members than has been afforded in the past. Ideally an overlap of nine months would allow for knowledge transfer from existing members to newly appointed members and permit new members to be mentored.

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. fire safety, plumbing, mechanical, 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.

Annual survey

The Commission intends to continue its independent survey which assists the Commission in determining satisfaction with levels of service delivery.

Overview of key activities

Staff supporting the Commission is responsible for application management and customer service to persons wishing to apply to the Commission for an authorization. Upon receipt of an application, the Commission’s Secretary ensures that the prescribed information and documentation has been submitted. The Secretary asks the Canadian Construction Materials Centre (the “CCMC”) whether they have examined, or expressed an interest in examining, a product. If the CCMC has examined, or expressed an interest in examining a product, the Commission may lack the jurisdiction to carry out an evaluation, pursuant to subsection 29(8) of the *Building Code Act, 1992*.

The Coordinator of Building Innovation is the senior Ministry staff person assigned to support the Commission and is responsible for overall administration and policy development as directed by the Commission. This involves working with the Minister’s Office regarding the appointments process, issues management, business planning, performance measurement, monitoring of expenditures, and ensuring compliance with agency sector requirements and Treasury Board/Management Board of Cabinet directives.

The Commission, as a whole, is required to make decisions on applications, but subcommittees are usually established to carry out detailed evaluations. These subcommittees consist of Commission members who are familiar with, and/or expert in, the field of technology associated with the application. The Commission may request comments from Ministry technical staff.

The number of evaluations conducted, and subsequent authorizations issued, are determined based on the volume of applications received. Typically, the Commission holds one general meeting each month, with approximately three to five subcommittee meetings in the same period. The issuance of decisions by the Commission usually takes three to four months, depending on the complexity of the application and the additional information required of the applicants and the timeliness of their response.

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

Table 1				
Fiscal Year	Applications Received	Authorizations Issued	Authorizations Amended/Revised	Authorizations Revoked

2015-2016	4	2	1	4
2016-2017	3	3	10	11
2017-2018	6	3	10	9
2018-2019	8	3	1	5
2019-2020 ^[*]	3	5	3	2

The rate of applications to the Commission has had some fluctuations during the past five fiscal years. The Commission notes that the increase in the number of applications received for the 2018-2019 fiscal year may be the result of the expiration policy (authorizations now expire every five years).

In addition to new applications, the Commission also considers requests for amendments to existing authorizations and also reviews its existing 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 work load of the Commission and its staff.

The Commission notes that when applicants choose not to make a presentation to the Commission it results in lengthier reviews; the work required to communicate between the Commission and applicants for authorizations increases. 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 new and innovative products.

Achievements

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 Commission identifies the following achievements:

- Continued to provide a cost-effective and expeditious mechanism for evaluation of new and innovative materials, systems and building designs.
- Continued its practice of surveying clients after the close of the fiscal year (i.e., after March 31, 2019 for this business plan).
- Survey results of clients that used Commission services in the 2018-2019 fiscal year indicated that:
 - 100% felt that the processes and procedures were clear and understandable.
 - 100% felt that members demonstrated an appropriate level of expertise regarding the matter under consideration.
 - 100% felt that they were treated with courtesy throughout the application process and 100% felt they were treated with courtesy during the evaluation process.
 - 100% were satisfied with the overall level of service provided by the Commission.
- The Commission continued to maintain compliance with the Management Board of Cabinet’s Agencies and Appointments Directive:
 - Its three-year Business Plan was prepared, finalized and submitted within the specified time frame;
 - Its Annual Report for 2018-2019 fiscal year was completed and submitted within the specified time frame; and

Affirmed the Memorandum of Understanding between the Minister of Municipal Affairs and Housing and the Chair of the Commission.

Resources

Human resources

The Commission presently has a total of 12 part-time members, including the Chair and Vice Chair. All members are appointed by Order-in-Council. Management Board of Cabinet’s Agencies and Appointments Directive permits individuals appointed to the Commission to serve a combined term of appointment of up to 10 years.

The following divisions of the Ministry support the Commission in fulfilling the Agencies and Appointments Directive:

- the Municipal Services Division’s Building and Development Branch;
- the Business Management Division’s Corporate Services Branch;
- the Business Management Division’s Controllership 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. Up until October 1, 2019, the Commission was also supported by a 0.4 FTE Coordinator, Building Innovation, and a 0.4 FTE Administrative Assistant.

With the Commission support staff decreased by 50%, it is anticipated the Commission’s performance will be impacted. As the workload of the Commission has not decreased, the remaining 0.8 FTE has taken on additional work. The Commission will monitor the impacts of the reduction in support staff.

Financial resources

The Commission has no financial budget of its own. The Commission is supported by Ministry staff. The operating expenses for this Commission are funded through the Ministry of Municipal Affairs and Housing budget.

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

Table 2					
Expense Type	2018-2019	2019-2020 Year-to-Date	2020-2021	2021-2022 Estimates	2022-2023
	[	[2]			

	Actuals 1	Actuals	Estimates		Estimates
Members' Per Diems	\$69,303	\$43,063	\$112,000	\$112,000	\$112,000
Members’ Travel/ Hearing Expenses	\$12,270	\$16,032	\$58,350	\$60,100	\$61,900
Other Adminiſtration	\$4,879	\$2,121	\$9,550	\$9,800	\$10,100
Subtotal	86,452 3	\$61,216 4	\$179,900 5	\$181,900 5	\$184,000 5
Full Time Equivalents	1.6	0.8/1.6 6	0.8	0.8	0.8
Full Time Equivalents (salary + benefits)	\$129,273	\$79,535	\$80,000	\$82,400	\$84,900
Total	\$215,725	\$140,751	\$259,900	\$264,300	\$268,900

Revenue

Revenues in the form of application fees are recorded as part of the Ministry of Municipal Affairs and Housing’s non-tax revenues.

Starting on January 1, 2015, the application fee increased from \$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
- \$11,000 per application, effective January 1, 2018

The table below provides details of the revenues associated with applications to the Commission:

Table 3

Revenues	2018-2019 Actuals	2019-2020 Year-to-Date Actuals [7]	2020-2021 Estimates	2021-2022 Estimates	2022-2023 Estimates
Application Fees	\$93,022	\$62,556	\$66,000	\$66,000	\$66,000
Total Revenues	\$93,022	\$62,556	\$66,000	\$66,000	\$66,000

Communication plan

The agency communicates with applicants and potential applicants through appropriate publications, forms and instructions, either posted on the public website or distributed on request.

Telephone and email inquiries are responded to by the Secretary of the Commission or the Coordinator of Building Innovation.

Environmental scan

(Conditions with Impacts on the Business Plan)

Changes in demand

The complexity of applications received by the Commission and the move to green technologies, many of which may be considered innovative, influences the need for appropriately skilled Commission members and the degree of administrative support required by the Commission. Skilled members and adequate staffing are required to maintain service levels.

When the 2012 edition of the Building Code came into force on January 1, 2014, the Commission began reviewing its existing authorizations against the new Building Code requirements to determine whether the Code has established requirements for materials, systems or building designs that were previously specified by individual authorizations.

A similar exercise will need to be undertaken when a new edition of the Building Code comes into force, these reviews may have an impact on the workload of the Commission.

In addition, the Commission instituted a five-year expiry date on its authorizations. If current authorization holders wish to continue to hold an authorization they would need to apply to the Commission every five years. This may have an impact on the workload of the Commission.

The increase in application fees may affect the number of applications received which would also have an impact on the workload of the Commission.

New commission members

The Commission will need to work at maintaining its membership both in terms of sufficient numbers of members and sufficient expertise to reflect the full spectrum of technical disciplines (e.g. fire safety,

plumbing, mechanical, on-site sewage systems, etc.).

In previous Business Plans the Commission has indicated that it would be appropriate for new members to be appointed to the Commission before the existing members appointments had ended. This would allow existing members to mentor the newer appointees. Ideally an overlap of at least nine months would allow for knowledge transfer from existing members to newly appointed members and permit mentoring of new members.

In November 2018, Ministry of Municipal Affairs and Housing (MMAH) posted an advertisement on the Public Appointment Secretariat’s website to fill two (2) positions as Member of the Building Materials Evaluation Commission. Two new members were appointed to the Commission in June 2019. The new member’s knowledge and skills helped maintain the Commission’s knowledge base.

On December 12, 2019, one Vice-Chair and two members were reappointed for a term of 6 months. Five members’ OIC are set to expire in May 2020. The Chair is working with MMAH staff to have members reappointed with the aim of maintaining the Commission’s knowledge base.

Financial pressures

As part-time appointees, Commission members receive remuneration in the form of a per diem as established by Treasury Board/Management Board of Cabinet. This per diem ranges 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. Costs and expenses associated with Commission activities, including operating costs and member per diems, form part of the overall budget for the Ministry of Municipal Affairs and Housing.

Changes to the Commission’s application rate and/or complexity of issues directly impact the Ministry’s budget in support of Commission activities.

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” priorities for the Commission, there are processes in place to ensure that all goals are integrated into the Commission’s operation and are, therefore, adequately addressed. Table 4 below indicates how the

Commission rated the goals. Performance measures were developed for goals that were rated “high” and “medium” in Table 4 and the results of the Commission’s performance can be found in Table 5.

Table 4

Goals	Ranking
Fairness	High
Accessibility ^[**]	Low
Timeliness	High
Quality and Consistency	High
Transparency	Medium
Expertise	High
Optimum Cost	Low
Courtesy	Medium

Table 5

Outcomes	Measures	Targets	2018–2019 Status	2020–2023 Commitments
Fairness (processes and procedures that are fair and are seen to be fair)	Applicants are satisfied that the process was balanced, appropriate and fair	No more than 10% of Commission decisions should result in judicial review on an annual basis	Target met. No complaints or judicial reviews in the 2018-2019 fiscal year	Not more than 10% of Commission decisions should result in judicial review on an annual basis
Timeliness (quick and careful evaluation of innovative construction materials, systems and designs)	a) Average number of months from receipt of application to decision	a) Decisions made within an average of four months after the first Commission consideration of an application	a) Target met. Decisions made within an average of four months after the first Commission consideration of an application	a) Decisions made within an average of four months after the first Commission consideration of an application
Timeliness (quick and careful	b) Timely posting of authorizations on	b) 85% of authorizations will be posted on the	b) Target not met. 0% of the final authorizations	b) The Commission has resolved to remove this

evaluation of innovative construction materials, systems and designs)	Commission internet site	Commission internet site within 10 working days after French translation has been received	posted on the Commission internet site within 10 working days after French translation was received due to the transition to Ontario.ca nothing was able to be posted.	measure as neither the Commission nor Commission staff are in control of this process
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 Commission clients felt that the process had a high degree of quality and consistency	85% of applicants feel that the process had a high degree of quality and consistency
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 Commission clients felt that the process and procedures were clear and understandable	85% of applicants feel that the process and procedures were clear and understandable
Expertise	a) Applicants	a) 85% of	a) Target met.	a) 85% of

(Careful and sound Commission decisions made due to technical competence of members)	are satisfied that the Commission members demonstrated an appropriate level of knowledge and technical competency	applicants feel that Commission authorizations reflected a high degree of technical knowledge and expertise appropriate to the proposal	2018-2019 survey results indicate that 100% of Commission clients feel that Commission authorizations reflected a high degree of technical knowledge and expertise appropriate to the proposal	applicants feel that Commission authorizations reflected a high degree of technical knowledge and expertise appropriate to the proposal
Expertise (Careful and sound Commission decisions made due to technical competence of members)	b) Timely notice to the Minister's Office regarding upcoming Commission member terms of appointment expiration	b) Six months' notice is provided to the Minister's Office in advance of member's appointments expiring	b) Target met. The Minister's Office was provided with six months' notice in advance of member appointments expiring in the fiscal year 2018-2019	b) Six months' notice will be provided to the Minister's Office in advance of member's appointments expiring
Courtesy (polite and courteous treatment of all parties)	Parties are satisfied that they were treated with courtesy throughout the application	80% of parties surveyed feel that they were treated with courtesy throughout the application and evaluation	Target met. 2018-2019 survey results indicate that 100% of clients felt that they were treated with courtesy by	85% of applicants feel that they are treated with courtesy throughout the application and evaluation

and
evaluation
process

process

Commission staff
throughout the
application
process and
100% felt that
they were treated
with courtesy by
the Commission
members.

process

Based on the Commission’s strategic directions and objectives, the following risk to performance has been identified. Mitigation strategies (including contingency plans, mitigation controls, and monitoring where required as part of prudent risk management protocols) are identified.

Risk assessment

The Reference Impact and Probability Matrix used in this assessment is below:

Table 6

Impact	Low Probability	Medium Probability	High Probability
High	Mitigation controls / contingency plans	Mitigation controls / contingency plans; monitor closely	Take urgent remedial action; monitor rigorously
Medium	Tolerate; monitor	Mitigation controls / contingency plans	Mitigation controls / contingency plans;

monitor closely

Low	Tolerate; no action	Tolerate; monitor	Mitigation controls / contingency plan
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Risk #1: Lack of knowledge transfer/succession planning impacting timeliness and quality

Issue:

Insufficient overlap between sitting members, whose terms are nearing expiration, and newly appointed members has historically resulted in slower processing of applications. Newly appointed members are unfamiliar with Commission processes; therefore, there are delays in processing applications. Familiarity with past applications and Commission processes is important, and quality and speed of work suffers when there is insufficient overlap of member tenure.

The Commission has expressed a continued interest in having more overlap between sitting members and newly appointed members than has been afforded in the past.

Probability: Medium

There is one member who reaches their 10-year maximum term during the three fiscal years covered by this plan. However, the terms of appointment of all of the current membership will have their terms expire during the period covered by this plan. If a significant number of members are either not interested in being reappointed or are not reappointed, then this risk of insufficient knowledge transfer and reduced authorization production will increase.

Impact: Low

Extensive simultaneous changes in Commission membership can result in a disproportionate workload on some members, and creates difficulty in determining the appropriate composition of a subcommittee. Newer members, while they may be technically experienced, would ideally require time to learn the processes of the Commission from more experienced members.

The Commission Chair and staff have had some success in implementing the succession plan as the

terms of appointment of the membership has been staggered. The Commission Chair and staff will continue to work with the government and the Public Appointments Secretariat to seek appointments of new members more often and in smaller groups, so that members terms of appointment expire in smaller groups.

This strategy will allow the Commission to improve succession planning, achieve appointment overlaps, allowing for knowledge transfer from existing members to newly appointed members, achieve an appropriate balance of geographical representation, promote mentoring of new members; and achieve and maintain membership having expertise in all technical disciplines (fire safety, plumbing, mechanical, on-site sewage systems, etc.).

With this risk being evaluated as MEDIUM probability and LOW impact, the Commission, together with Ministry staff and other government bodies will continue to develop strategies to distribute appointment expiry dates in a more staggered fashion.

Updated: November 19, 2021

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Footnotes

- [*] ^ The actuals for 2019-2020 do not reflect the entire fiscal period. The numbers are actuals that cover the period from April 1, 2019 to December 31, 2019.
- [1] ^ The Commission's fiscal year runs from April 1 to March 31. The actuals for 2018-2019 cover the period from April 1, 2018 to March 31, 2019.
- [2] ^ The actuals for 2019-2020 do not reflect the entire fiscal period, the numbers cover the period from April 1, 2019 to December 31, 2019.
- [3] ^ The operating expenses cover costs associated with meetings, per diems for Commission members and reimbursement for out-of-pocket travel expenses related to meetings, including hotel accommodations, meal allowances (to maximum allowed through the Travel, Meal and Hospitality Expenses Directive), parking and public transit.
- [4] ^ Some expense claims were not reflected, as the claims have not been processed.
- [5] ^ The number of meetings is determined by the application rate. Member per diem compensation rates are established by the Management Board of Cabinet's Agencies and Appointments Directive applying to part-time Order in Council (OIC) appointed members. The expenditure estimates for 2020-

2021 and ongoing are based on an estimated application rate (using historical data and projecting forward) and the current member per diem compensation rates.

- [6] [^] From April 1, 2019 to September 30, 2019, the Commission was supported by 1.6 FTEs. From October 1, 2019 onwards, it was supported by 0.8 FTE.
- [7] [^] The actuals for 2018–2019 do not reflect the entire fiscal period, the numbers cover the period from April 1, 2018 to December 31, 2018, rounded to nearest dollar.
- [**] [^] 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.

Ministry of Municipal Affairs and Housing

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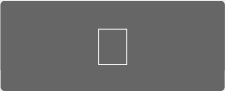
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