



FIRE PREVENTION ACT DISCUSSION PAPER

REVIEW OF THE FIRE PREVENTION ACT AND
CONSIDERATION OF BUILDING STANDARDS
FRAMEWORK

DOCUMENT DE DISCUSSION *LOI SUR LA PRÉVENTION DES INCENDIES*

RÉVISION DE LA *LOI SUR LA PRÉVENTION DES
INCENDIES* ET CONSIDÉRATION D'UN CADRE POUR
LES NORMES DE CONSTRUCTION



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Executive Summary

The *Fire Prevention Act (FPA or the Act)* has not been comprehensively reviewed since it was enacted in 1988. The *FPA* is the backbone of the legislative framework for structural¹ fire prevention in the Northwest Territories (NWT).

The *FPA* establishes the system by which the Government of the Northwest Territories (GNWT) seeks to prevent and address fire and the threat of fire to persons and property through the creation and description of functions and *Regulations* that support these goals. One of these functions includes the regulatory requirements related to the development² of structures in the NWT.

In addition to the *FPA*, structures and their development are also regulated in part by the *Boiler and Pressure Vessels Act*, the *Electrical Safety Act (including Elevator Standards)* and the *Gas Protection Act*. For the purposes of this paper, these are collectively described as ‘authorities having jurisdiction’(AHJ).

The NWT is currently the only Canadian jurisdiction that has not adopted a building standards framework to coordinate the activities of authorities having jurisdiction in support of the National Building Code (NBC) and the National Fire Code (NFC) and is unique in Canada in enforcing both codes through a single piece of legislation, the *FPA*.

While there are municipalities, including Yellowknife and Hay River, that have adopted the NBC through bylaw, there is no process other than Plan Review under the Office of the Fire Marshal to review plans in the territory to ensure construction, alteration or repair of structures complies with the codes and standards adopted under the *FPA’s Fire Prevention Regulations*.

¹ The *FPA* defines "structure" as any building, plant, machinery, equipment, storage tank, storage place or fixture of any kind erected or placed on, in, over or under any area of land or water.

² Development includes ‘construction, alteration or repair’.



The purpose of this paper is to:

1. Identify considerations for specific amendments to the *FPA* and its *Regulations*.
 - a. Plan Review Function;
 - i. Create an authoritative process for the review of plans and specifications at the Plan Review stage, before construction on a project can begin;
 - ii. Appeals Process;
 - b. Existing Buildings
2. Describe the current GNWT regulatory structure for authorities having jurisdiction to guide discussions on what system of building compliance is best suited for the NWT.
 - a. Future consideration of adopting Building Standards Framework



Sommaire

La *Loi sur la prévention des incendies* (LPI ou Loi) n'a pas fait l'objet d'un examen exhaustif depuis son adoption en 1988. La LPI est le pilier du cadre législatif entourant la prévention des incendies de structure³ aux Territoires du Nord-Ouest (TNO).

La LPI établit le système selon lequel le gouvernement des Territoires du Nord-Ouest (GTNO) cherche à prévenir les incendies et à contrer la menace qu'ils représentent pour les personnes et les biens en créant et en décrivant les attributions et le Règlement qui soutiennent ces objectifs. L'une de ces attributions comporte les exigences réglementaires qui s'appliquent au développement⁴ de structures aux TNO.

En plus de la LPI, les structures et leur développement sont également réglementés en partie par la *Loi sur les chaudières et appareils à pression*, la *Loi sur la protection contre les dangers de l'électricité* (y compris les normes relatives aux ascenseurs) et la *Loi sur la sécurité en matière de gaz*. Dans le présent document, ces lois sont appelées collectivement les « autorités compétentes ».

Les TNO sont actuellement le seul territoire parmi les provinces et territoires canadiens à ne pas avoir adopté un cadre pour les normes de construction afin de coordonner les activités des autorités compétentes, à l'appui du Code national du bâtiment (CNB) et du Code national de prévention des incendies (CNPI), et à appliquer les deux codes à l'aide d'une seule loi, la LPI.

Bien que certaines municipalités, dont Yellowknife et Hay River, aient adopté le CNB par l'entremise de règlements municipaux, aux TNO, il n'existe aucun autre processus que l'examen des plans par le Commissariat aux incendies pour veiller à ce que la construction, la transformation ou la réparation de structures se conforme aux codes et aux normes adoptés en vertu du *Règlement sur la prévention des incendies* de la LPI.

³ Aux termes de la LPI, « structure » s'entend de bâtiment, installations, machines, équipement, tout réservoir de stockage, entrepôt ou accessoires fixes de toutes sortes érigés ou placés sur ou sous l'eau ou la terre, ou au-dessus de celles-ci.

⁴ Le développement comprend la construction, la transformation et la réparation.



Le présent document a pour but :

1. d'identifier les considérations relatives aux modifications précises à apporter à la LPI et à son Règlement.

a. Attributions relatives à l'examen des plans

i. Créer un processus qui fait autorité sur l'examen des plans et des spécifications, avant que la construction puisse commencer;

ii. Processus d'appel.

b. Bâtiments existants

2. de décrire la structure réglementaire actuelle du GTNO s'appliquant aux autorités compétentes afin d'orienter les discussions pour déterminer quel système de conformité des bâtiments serait le plus approprié aux TNO.

a. Réflexion future sur l'adoption d'un cadre pour les normes de construction



Background

A review of the *FPA* has been identified as a priority of the 19th Legislative Assembly. Apart from technical amendments made over the years, the Act has not been comprehensively reviewed since it was first passed in 1955 and the legislation requires modernization. In its current form, the *FPA* dates from 1988.

The *FPA* is the backbone of the legislative framework for structural fire prevention in the NWT. This framework establishes the system by which the GNWT seeks to prevent and address fire and the threat of fire to persons and property.

Broadly, the *FPA*

1. Establishes the appointed positions of Fire Marshal, Deputy Fire Marshal, Assistant Fire Marshal and Local Assistant (collectively known as the Office of the Fire Marshal or OFM). It includes the duties and the jurisdiction of these positions and the OFM's powers of post-fire investigation and inquiries.
2. Outlines the OFM's authorities to inspect properties, issue orders in alignment with adopted codes and standards for fire prevention purposes, investigate fire occurrences and hold inquiries.
3. Outlines appeals processes, and other processes such as cost-recovery procedures relating to the enforcement of certain orders and building material sale procedures.
4. Establishes requirements for the exiting of public buildings, such as theatres, rinks, schools, and churches.
5. Establishes the requirements for any person who plans to construct, alter or repair a structure required to be reviewed to submit plans and specifications to the Fire Marshal for review. This review is limited to "fire and the spread of fire".
6. Establishes authority to create *Regulations*.

Beyond the fire safety requirements identified through the OFM's Plan Review function, a comprehensive, coordinated review of building code compliance across GNWT authorities having jurisdiction does not exist in the NWT, which has led to the following:

- gaps in the enforcement of buildings codes and standards resulting in the potential for increased risk and liability for the GNWT related to the public's safety;



- increased costs when authorities having jurisdiction and builders, design professionals or developers disagree; and
- Having regulatory authorities housed in different GNWT departments, which creates a more complex regulatory environment for communities, builders, developers and design professionals.

This discussion paper is intended to identify matters for consideration to inform legislative changes within the FPA. For each matter, a description of the issue is presented, followed by excerpts of relevant jurisdictional research, and closes with questions for consideration.



FPA Legislative Considerations

1. Plan Review Function

Any construction, alteration, or repair of a structure in the NWT must follow the codes and standards that relate to fire and the spread of fire as adopted under the *Fire Prevention Regulations*. The phrase “fire and the spread of fire” are not defined within the *FPA*. The adopted codes and standards for fire prevention purposes include the National Building Code of Canada (NBC) and the National Fire Code of Canada (NFC). The Fire Marshal is responsible for reviewing plans and specifications for conformity to these codes. All codes and standards adopted have the force of law in the NWT.

Two sections of the *FPA* discuss the Plan Review function (*FPA* ss. 3(d) and 5.1). They set out the basic roles and responsibilities of both the Fire Marshal and those submitting plans:

- The Fire Marshal must review plans and specifications for the construction, alteration, or repair of structures to determine that proper precautions are taken against fire and the spread of fire (*FPA* s. 3(d)).⁵
- Unless exempt under the *Fire Prevention Regulations* ⁶, any person who proposes to construct, alter or repair a structure in the NWT must submit a description of the proposed work to the Fire Marshal (*FPA* s. 5.1(1)).
- Any person who has submitted a description of proposed work to the Fire Marshal must also, if directed by the Fire Marshal, submit copies of all plans and specifications in respect of the proposed work to the Fire Marshal (*FPA* s. 5.1(2)).
- Any person who has submitted a description of proposed work to the Fire Marshal must not begin work on the construction, alteration, or repair of a structure until either:
 - The Fire Marshal has notified that person that the plans and specifications for the proposed work are not required to be reviewed, or
 - The Fire Marshal has reviewed the plans and specifications and reported in writing to the person on the review (*FPA* s. 5.1(3)).

⁵ Section 1 of the *FPA* defines a “structure” as being any building, plant, machinery, equipment, storage tank, storage place or fixture of any kind erected or placed on, in, over or under any area of land or water.

⁶ Subsection 3.1(2) of the *Fire Prevention Regulations* exempts classes of single family dwellings, ancillary structures, and storage structures from the requirement to submit a description of proposed work in subsection 5.1(1) of the *FPA*.



The *Fire Prevention Regulations* also specify that the Fire Marshal has authority related to all codes and standards that are adopted under the *Regulations* (*FPA* s. 2(2)).

Aside from reviewing plans, the Office of the Fire Marshal does not have any authority to approve plans or “stop work”. The Plan Review process ends with an assessment of code compliance. Those who are constructing, altering, or repairing the structure are responsible to ensure all the requirements included in the Plan Review assessment are completed.

In 2015, MACA examined the *FPA* Plan Review function to look into ways to improve guidance around construction in the NWT. MACA’s examination identified gaps in the legislation that could be creating uncertainty about the Plan Review process, including the lack of information on what details and format need to be used in plans and specifications submitted in either the *FPA* or *Regulations*. To clarify established practices that are not detailed in the *FPA* or *Regulations*, MACA developed the [Plan Review Guidelines](#) in consultation with stakeholders in 2016.

There are a number of considerations regarding the process set out in section 5.1:

a) Create an authoritative process for the review of plans and specifications at the Plan Review stage, before construction on a project can begin

While the *FPA* requires plans and specifications to be submitted to the Fire Marshal, the “authority having jurisdiction” (AHJ) under the *FPA*, for review and the receipt of a written report from the Fire Marshal before construction can begin, the *FPA* and *Regulations* do not require the plans and specifications to be *approved* by the Fire Marshal. The lack of this requirement means that, functionally, Plan Review reports written by the Office of the Fire Marshal are not authoritative or binding on the party who receives them. Essentially, a Plan Review report issued under section 5.1(3)(c) currently acts as a notice to a builder or developer that the OFM, being the AHJ, does not believe the plans submitted to it meet its interpretation of the adopted code and standards.

It is important to note that building professionals are compelled through insurance and license requirements to follow the AHJ’s interpretation of the adopted codes and standards for fire prevention purposes, therefore an implied authority exists for plans required to be submitted by building professionals. However, not all buildings require professional

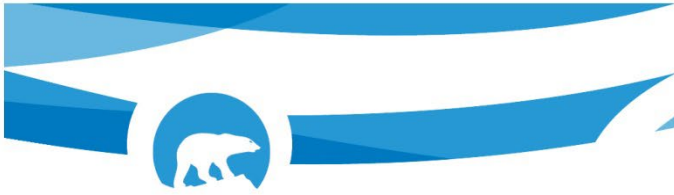


stamps. Typically, structures that fall under Part 9 of the NBC, “Housing and Small Buildings”, do not require professional stamps. For these buildings, Plan Review is the only process for reviewing plans and specifications for conformity to the adopted codes and standards for fire prevention purposes.

However, the Fire Marshal’s legislative authority only begins once the construction on the project has begun. Under section 11 of the *FPA*, “The Fire Marshal, Deputy Fire Marshal, Assistant Fire Marshal or local assistant may ... inspect any structures or premises within his or her jurisdiction”. If at this stage the Fire Marshal identifies a departure from the adopted codes and standards for fire prevention purposes, they have the authority under section 12 or 13 of the *FPA*, to issue an order to correct the identified deficiencies.

This process creates situations that may result in the closure of buildings because those buildings are not built to the Fire Marshal’s interpretation of the adopted codes and standards for fire prevention purposes under section 2(1) of the *FPA* Regulations. As stated above, section 2(1) adopts, among other codes, the NBC and NFC.

Giving the OFM the regulatory power to approve plans submitted under section 5.1 of the *FPA* would move the OFM’s authority about whether a building meets the criteria of the adopted codes and standards for fire prevention purposes to the Plan Review stage of the process, before any construction has begun. Jurisdictional research completed has shown that there are other jurisdictions that give the Fire Marshal or his or her delegate the authority to approve plans in the Plan Review stage, as identified in the excerpts included below.



New Brunswick Fire Prevention Act

Conversion of building

18 (1) No person shall construct any place of assembly or sleeping accommodations, or convert any building or part thereof into a place of assembly or sleeping accommodations, or make structural alterations to any building or part thereof, to be used as a place of assembly or sleeping accommodations, unless he has filed with the fire marshal before the commencement of the construction, conversion or alteration a plan in accordance with subsection (2).

18 (3) Where the fire marshal has reviewed plans or specifications and has directed changes therein, such changes shall be effected, and no other changes shall be made in the plans or specifications without the prior consent of the fire marshal.

Newfoundland Fire Protection Services Act

Duties and responsibilities of the fire commissioner

4. (3) The fire commissioner shall

(b) review plans and specifications for construction, alteration or repair of structures to determine if appropriate fire protection requirements and fire and life safety features are in place;

(7) The fire commissioner may order alteration of plans and specifications submitted to him or her under subsection (2) to ensure appropriate fire protection and life safety requirements are in place.

Nunavut Fire Safety Act

Review of plans and specifications

5.1 (2) The Fire Marshal shall

(a) review the plans and specifications submitted;

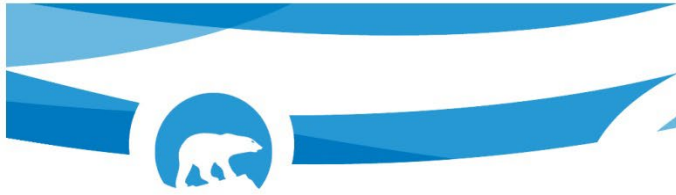
(b) make any comment or recommend any revision that the Fire Marshal considers necessary or advisable;

(c) provide, in a timely manner, a written response containing the comment or recommendation to the person who submitted the plans and specifications; and

(d) provide a copy of the written response to the municipal council of the municipality in which the proposed work is to be performed.

Prohibition

5.1 (3) Where plans and specifications are required to be submitted, no person shall begin work on the construction, alteration or repair of the structure or premises until the Fire Marshal completes the review of the plans and specifications and provides the written response to the person who submitted the plans and specifications.



It is important to note that jurisdictional research also has shown that giving the Fire Marshal this authority in Plan Review is not standard across the country. Rather, that authority is given to a statutory “building code official” under that jurisdictions’ Building Standards Legislation. In the absence of Building Standards Legislation in the NWT⁷, the Plan Review function is the only legislated review of code compliance for the adopted codes and standards for fire prevention purposes in the NWT.

In the *Nunavut Fire Safety Act*, section 5.1 has the same effect as the current Plan Review provision in the NWT’s *FPA*; plans must be submitted to the Fire Marshal and construction cannot begin before the Fire Marshal has reviewed and provided a written response, containing comments or recommendation on the submitted plans. However, notably, approval of those plans is not required.

In summary, under the NWT’s *FPA*, the Fire Marshal is the “authority having jurisdiction” for both the NFC and NBC for the purpose of fire prevention as adopted in the *FPA*, however, the Fire Marshal does not have the ability to reject or order the alteration of plans that he or she does not feel meet the adopted codes or standards. Instead, the Fire Marshal notes where the plans submitted to the office depart from the adopted codes and standards for fire prevention purposes and issues a report under section 5.1 that has no binding authority. Only once a building has been built, is the Fire Marshal able to order changes be made through a fire protection investigation. This may result in situations, where a building may have to close because the OFM and the party building the structure are at disagreements over interpretation of the adopted codes and standards for fire prevention purposes under the Act.

CONSIDERATIONS

Should the FPA require that reviews of plans and specifications at the Plan Review stage be authoritative, explicitly making the Plan Review report a binding decision under the Act?

⁷ The NWT is the only jurisdiction in Canada without Building Standards Legislation.



b) Appeals Process

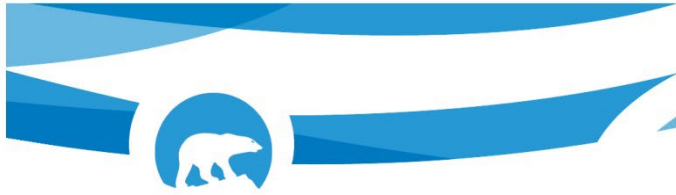
As discussed above, the *FPA* does not establish Plan Review reports issued under section 5.1(3)(b) as authoritative decisions under the Act. Therefore, these reports cannot be formally challenged or disputed by the recipient.

The *FPA* does, however, establish an appeals procedure for decisions or orders made under the Act. Under sections 14 and 15 of the *FPA*, all decisions or orders under the *FPA* and *Regulations* can be formally appealed. The process to appeal is as follows:

- Under section 14, orders or decisions of the Deputy Fire Marshal, Assistant Fire Marshal, Local Assistants (or municipal corporations in limited circumstances) may be appealed to the Fire Marshal within 10 days of receiving the order or decision;
- Under section 15, if the response of the Fire Marshal is not satisfactory, the recipient can appeal the decision to the NWT Supreme Court within 5 days of receiving the decision;
- Under section 14(3), an affected party can challenge an order directly issued by the Fire Marshal where that order is issued under section 12(1) of the *FPA*; and
- Section 6 of the *FPA Regulations* says that any "decision" of the Fire Marshall made "under these *Regulations*" may be appealed by a party affected by the decision in the manner provided by section 15 of the *FPA*.

Because a written report issued under section 5.1(3)(b) is not a decision, it cannot be appealed through any of the above sections. Therefore, if the recipient of a Plan Review report does not agree with the Plan Reviewers' interpretation of the adopted codes and standards for fire prevention purposes, it does not have an avenue to formally appeal such a decision under the current legislation. Instead, the OFM and the affected party may hold informal discussions on those disagreements. The formal appeal process detailed above in sections 14 and 15 becomes usable only after the OFM inspects the structure and issues a formal order.

Notably, this means that if section 5.1 of the *FPA* is amended to require the approval of submitted plans and specifications, then a formal avenue to appeal a Plan Review written report would be created.



An additional consideration related to appeals is whether it is appropriate to create an additional level of appeal between the Fire Marshal and the Court System. This level of appeal would allow a recipient to appeal a Plan Review decision without having to go the NWT Supreme Court, which can be a lengthy, expensive and public process.

Jurisdictional research has found that other jurisdictions have created this additional level, (to be referred to in this paper as an “Appeal Board”) allowing the recipient of a decision of a Fire Marshal (or building code official in the case of Building Standards Legislation) to appeal that decision to the Appeal Board.

The Appeal Board would allow for an avenue of independent experts to decide whether the Fire Marshal correctly decided whether the plans submitted to them meet the adopted codes and standards for fire prevention purposes under the Act.

Alberta Safety Codes Act

Appeal of orders

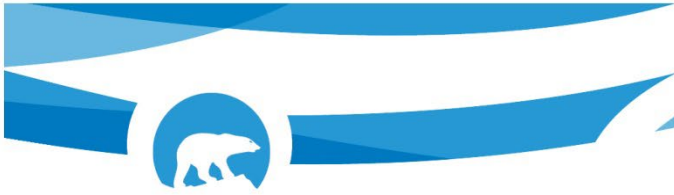
50(1) A person to whom an order is issued may, if the person objects to the contents of the order, appeal the order to the Council in accordance with the Council’s bylaws within 35 days after the date the order was served on the person.

Council considers appeal

52(2) The Council may by order

(c) confirm a deregistration of a design, confirm a refusal to register a design or direct that a design be submitted for review or be registered and that changes be made to the design before it is submitted for review or is registered.*

**Design is defined in the Safety Codes Act as “plans, diagrams, drawings and specifications depicting the arrangement and operation of any thing, process or activity to which this Act applies”*



One important consideration about the Appeals Board, is who would make up the members of the Appeals Board. Approaches to this question of membership varies across jurisdictions. Research has found multiple jurisdictions where the provision creating the Appeals Board also specifies who is eligible to be a member, how members are appointed and how long members can be appointed for.

Alberta Safety Codes Act

Council

16(1) There is hereby established a corporation to be known as the "Safety Codes Council".

(3) Subject to subsection (2), the Council consists of the persons appointed to the Council by the Minister and the persons appointed to the Council by the Board of Directors in accordance with this section.

(4) The persons appointed to the Council by the Board of Directors must include persons who are experts in fire protection, buildings, barrier-free building design, electrical systems, elevating devices, gas systems, plumbing systems, private sewage disposal systems or pressure equipment.

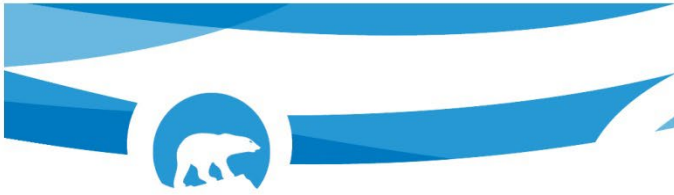
(7) A person appointed under subsection (3)

- (a) holds office for a term not exceeding 3 years, as set out in the appointment, and*
- (b) continues to hold office after the expiry of the term of office until the person is reappointed or a successor is appointed.*

(9) Subject to subsection (7)(b) and (11), a member of the Council may not hold office for a period exceeding 9 consecutive years.

(10) Breaks in service of less than 2 years shall be disregarded in determining the number of consecutive years for the purposes of subsection (9).

(11) The Minister may make an order providing that subsection (9) does not apply in respect of a specified appointment to the Council if in the opinion of the Minister that order is necessary to ensure the effective operation of the Council.



PEI Building Code Act

Members of Appeal Board

25. (2) The Appeal Board is constituted as follows:

(a) from the Council,

(i) the representative of the Association of Professional Engineers of the Province of Prince Edward Island,

(ii) the representative of the Construction Association of Prince Edward Island,

(iii) the representative of the Architects Association of Prince Edward Island; and

(b) one person appointed by the Minister.

Another important fact to consider for an Appeals Board is whether a decision of that board should be appealable to a court or if it should be final and binding. Once again, approaches to this consideration varied across jurisdictions.

PEI Building Code Act

Decision final

25. (7) The decision of the Appeal Board under subsection (5) is final and binding and shall not be appealed.

Nunavut Code Act

Appeal to Court

19. (1) A ruling of the Advisory Committee may be appealed to the Nunavut Court of Justice.

An important fact to note is that creating an Appeal Board within the *Fire Prevention Act* would be a unique approach in Canada because all examples of Appeal Boards mentioned above are created and governed under Building Standards legislation that deals with the NBC, except for Alberta. Under Alberta's Safety Code Act, both of Alberta's version of the NFC⁸ and the NBC⁹ are adopted.

Unless a building standards legislation is created in the NWT, the Appeal Board would become the body hearing appeals of disputes involving interpretation of both the NBC and NFC. Therefore, the composition of the Board would have to reflect experts in the areas of

⁸ Alberta Fire Code Regulation ([Reg 32/2015](#))

⁹ Alberta Building Code Regulation ([Reg 31/2015](#))



both codes. If a separate building standards legislation is adopted in the future, it may make sense to allow disputes under that legislation to be heard under the Appeals Board (due to it having experts in both codes) or if a separate Appeals Board is created, to modify the FPA's Appeal Board to reflect the cases it will hear.

CONSIDERATIONS

Should an Appeals Board be created to hear appeals of Plan Review decisions?

Who should be eligible to be a member of the Appeals Board and who should have the authority to appoint them to that position?

Is there another option for creating a level of appeal between the Fire Marshal and the NWT Supreme Court that MACA should consider adopting into the Fire Prevention Act?



FPA Regulatory Considerations

1. Existing Buildings

Although an acceptable practice, the *FPA* does not clearly enable the "grandfathering" of components of existing structures. There are instances where someone wants to modify part of an existing building or a building for which OFM has no record of whether it met code at the time of its construction. In those cases, one wants to be able to change one part of such a structure to be code compliant while the rest of the building is "grandfathered" - i.e. does not have to be brought up to code. This is not legally permitted in the *FPA*, so there is a lack of clarity on whether this is permissible.

The 2015 version of the NBC, currently adopted under section 2(1) of the *FPA Regulations*, does not have any explicit provisions dealing with this issue. The NBC and NFC (where the NBC is referenced) do not define the term "existing building". The term is also not defined in the *FPA* nor its *Regulations*.

Ontario Building Code

1.1.2.6. Application of Part 11

(1) Except as provided in Sentence (2), Part 11 of Division B applies to the design and construction of existing buildings, or parts of existing buildings, that have been in existence for at least five years.

(2) If a building has been in existence for at least five years but includes an addition that has been in existence for less than five years, Part 11 of Division B applies to the entire building.

In both the *Ontario Building Code* and the *Québec Construction Code*, the building must have been in existence for five years to be considered an "existing building".

The issue of "grandfathering" components of existing buildings can be broken down into two broad arguments. On one hand, codes and standards are updated regularly to ensure safe and sustainable building practices. Updates to the NBC over time may have led to some older buildings lagging



behind more recently constructed buildings in important features. Some areas where the NBC has been modified include energy efficiency and water-use efficiency requirements.¹⁰

On the other hand, there are important cost considerations to mandating all existing buildings be brought up to existing code, particularly in the context of the North where construction costs are high. According to the NRC's *2020 Joint CCBFC/PTPACC Report on Alterations to Existing Buildings*, "requiring all existing buildings to meet the current code is not a realistic goal as it would be far too expensive in terms of material, labour and compliance costs and could stifle the improvement of existing buildings rather than encourage it."¹¹

There are jurisdictions that deal explicitly with existing building under certain conditions, for example [Part 11 of Ontario's Building Code](#) and [part 10 of Quebec's Construction Code](#) and the [City of Vancouver's Bylaw 1098](#).

CONSIDERATIONS

Should the definition of an existing building be added to the FPA Regulations? If so, what definition should be used?

Should language be added to the FPA Regulations allowing for the "Grandfathering" of components of existing buildings that qualify under the legislation under certain parts of the adopted codes and standards for fire prevention purposes?

¹⁰ 2020 Joint CCBFC/PTPACC Report on Alterations to Existing Buildings <<https://nrc.canada.ca/en/certifications-evaluations-standards/codes-canada/codes-canada-publications/final-report-alterations-existing-buildings>>

¹¹ 2020 Joint CCBFC/PTPACC Report on Alterations to Existing Buildings <<https://nrc.canada.ca/en/certifications-evaluations-standards/codes-canada/codes-canada-publications/final-report-alterations-existing-buildings>>



Building Standards Framework

2. Discussion on a future consideration of building standards framework for the NWT

National Fire Code and National Building Code

The purpose of building inspection services is to protect the health and safety of the public by enforcing minimum building standards for all building construction. Minimum building standards are established through Building Codes adopted by provinces and territories for the construction industry in Canada. They seek to ensure that all design and construction is structurally sound and safe from hazards.

The NFC and NBC are issued by the National Research Council of Canada and, as model codes, have no legal status until they are adopted by a jurisdiction. Canadian jurisdictions typically have in place complementary regulatory frameworks (i.e. one for the NFC and one for NBC) to support the codes and use the codes as the basis of their regulatory frameworks. The two Codes are complementary:

The NFC:

- Sets out the technical provisions regulating activities related to the construction, use, or demolition of buildings and facilities, the condition of specific elements of buildings and facilities, and the design or construction of specific elements of facilities related to certain hazards as well as the protection measures for the current or intended use of buildings.
- The NFC is applied once a structure is occupied and where the NBC references it during construction.
- Fire services in the NWT enforce the NFC where the NBC references it during construction and is enforced by fire officials trained to national standards once the structure is occupied. This is similar to all jurisdictions in Canada.

The NBC:

- Sets out technical provisions for the design and construction of new buildings. It also applies to the alteration, change of use, and demolition of existing buildings
- Applies during the construction of new buildings



- Enables the OFM to conduct reviews of plans and specifications and reports back to proponents relating to compliance with the NBC.
- Fire officials typically do not have the authority to enforce NBC requirements during the construction phase of a building in any jurisdiction in Canada with the NWT being the exception.

The codes are objective-based, meaning that each of the Code's technical requirements is designed to meet stated objectives and functional statements. Objective-based codes can be met by complying with applicable acceptable solutions outlined in the code or through use of alternative solutions that will achieve at least the minimum level of performance required by the code.

Model Construction Codes

Canadian provinces and territories have jurisdiction over the construction and design of new housing and buildings and may voluntarily adopt and enforce the National Model Construction Codes. A province or territory may adopt the codes, with or without changes, or may publish its own code based on the National Code. The codes are a model or basis for building regimes and are intended to apply to all construction projects, whether new buildings, renovations, or alterations. Updated Codes are generally published every five (5) years. Since 1994, the Codes have been generally adopted across Canada. Most recently, Nunavut adopted NBC in full, effective September 1, 2018.

Provincial and Territorial Premiers and the Prime Minister signed the Agreement on Internal Trade on July 18, 1994. The object of the agreement was to reduce and eliminate barriers to the free movement of goods, services, persons, and investments within Canada. One article in the 1994 Agreement applied to standards and related measures. Each party to the agreement agreed to base its standards on existing relevant National Standards. Where National Standards were nonexistent or insufficient, each party agreed to cooperate to develop national standards and to use Canada's National Standards System for that purpose.



The Agreement on Internal Trade (1994) was substantially amended in April 2020, known as the Reconciliation Agreement on Internal Trade (2020). This Reconciliation Agreement seeks to reduce or eliminate differences and variations in the technical provision of construction codes and ensure timely adoption of these in each Canadian jurisdiction.

Current Enforcement of Building Codes in the NWT

The following is a description of the current regulatory responsibility related to building inspections in the NWT:

- *Fire Prevention Act and Regulations*
 - Section 3(d) of the *Act* specifies that a duty of the Fire Marshal is to review plans and specifications for the construction, alteration or repair of buildings with a view to determining that proper precautions are taken against fire and the spread of fire.
 - Section 2(a) of the *Fire Prevention Regulations* adopt the NBC, making compliance with the NBC a statutory requirement for precautions against fire and the spread of fire.
 - Plans and specifications for all construction except single family dwellings are reviewed by the Office of the Fire Marshal to ensure they meet the fire safety requirements of the *Fire Prevention Act* and *Fire Prevention Regulations*.

- *Boiler and Pressure Vessels Act*
 - Ensures minimum safety standards for the construction, installation, operation and maintenance of boilers and pressure vessels installed in the NWT.
 - Section 3 of the *Boiler and Pressure Vessels Regulations* sets out the codes and standards or sections of codes or standards except as otherwise provided in the *Act* of the *Regulations*, which govern the design, fabrication, installation, identification, testing and inspection of boilers, pressure vessels, pressure piping and fittings.
 - All plans and specifications for installations and boiler and pressure vessel equipment must be submitted to the authority having jurisdiction for review.
 - Tradespersons licensed to practice under the act are required to hold a permit issued by the legislated authority having jurisdiction.



- *Electrical Protection Act*
 - Ensures minimum safety standards for the installation of electrical and elevating devices in the NWT.
 - Section 5 (1) of the *Electrical Protection Regulations* sets out the codes and standards, as amended from time to time, which are adopted in the Northwest Territories.
 - All plans and specifications for electrical equipment must be submitted to an inspector for review by or on behalf of the owner.
 - Tradespersons licensed to practice under the act are required to hold a permit issued by the legislated authority having jurisdiction.

- *Gas Protection Act*
 - Ensures the minimum safety standards for the installation of propane and natural gas appliances and equipment installed and operated in the NWT.
 - Section 2 of the *Gas Protections Regulations* sets out standards governing gas fitting work, gas equipment and gas installations.
 - All plans and specifications for propane and natural gas installations and equipment must be submitted to an inspector for review by or on behalf of the owner.
 - Tradespersons licensed to practice under the act are required to hold a permit issued by the legislated authority having jurisdiction.

- *Municipal Statutes*
 - Communities governed by the *Cities, Towns and Villages Act*, *Hamlets Act*, *Charter Communities Act*, and the *Tłı̄chǫ Community Government Act*, have the authority to pass bylaws adopting the National Building Code (NBC) and to enforce it through inspection services.
 - Bands off reserves do not have authority to pass bylaws and therefore, cannot adopt the NBC. Activities for bands on reserves fall under the jurisdiction of the federal government.



- *Architects Act and Engineering and Geoscience Professions Acts*
 - Under the *Architects Act* and *Engineering and Geoscience Professions Act* of the NWT, the professional associations regulate the practice of architecture, engineering and professional geoscience and govern the professions in accordance with the *Act* and bylaws and establish and maintain standards of knowledge, skill, care and professional ethics among authorized practitioners, in order that the interests of the public may be served and protected.

- *GNWT Regulation of Small Buildings*
 - Housing NWT either prepares housing designs themselves or contracts with a consultant to prepare designs. The housing units are designed in accordance with the National Building Code of Canada, National Electric Code, National Plumbing Code as well as other applicable codes, *Regulations* and bylaws. Housing NWT requires, under their contracts, that the construction of these housing units must be in accordance with the plans and specifications that have been designed to codes.

In addition, the GNWT encourages all organizations and individuals, including municipalities to use the Guidelines for Good Building Practices in the NWT developed by the Department of Infrastructure.



Building Standards Considerations

1. Building Code Regulatory Authority

Feedback to date has recommended consideration of a building standards framework. At present, there is no regulatory authority in the NWT to verify a building is safe for public occupancy in relation to the NBC beyond OFM Plan Review. The NWT is currently the only Canadian jurisdiction that has not adopted a building standards framework to support the NBC and the NFC¹².

Except for a limited number of municipalities that have adopted the NBC through bylaw, there is no other NWT legislation that ensures construction, alteration or repair of structures complies with the codes and standards adopted under the *Fire Prevention Regulations*. Specifically, this means that within the current NWT legislative framework there is no Territorial regulatory authority to:

- Certify a building safe for public occupancy beyond the fire safety requirements that are enforced by the OFM under the *FPA*. Under the Act, the OFM is limited to the review of plans and specifications for the construction, alteration, or repair of structures and the issuance of a report outlining the findings of the review. It has no authority to approve plans or “stop work” if non-compliant work is undertaken. However, the OFM does have authority to inspect during or after construction has occurred and is responsible for enforcing Territorial requirements. These actions have resulted in operational, political and legal challenges.
- Require those who are constructing, altering, or repairing structures to certify that all the requirements included in the Plan Review assessment were completed.
- Ensure that private sector designs or construction contracts comply with the NBC outside municipal boundaries and in municipalities that have not passed a bylaw adopting the NBC. This means that the provisions of the NBC not covered by the OFM are unregulated.

¹² The Alberta *Safety Codes Act* enforces both the NBC and NFC through one piece of legislation, however “administrator” in the Act has the ability to approve or refuse designs.



- Coordinate GNWT Regulatory authorities having jurisdiction activities from the Plan Review to occupancy certification stages related to the development of structures in the NWT.

The creation of a separate building standards legislation would harmonize codes and regulatory authorities across the Territories and create an authoritative permitting/Plan Review process with that legislation. This process would have the ability to require the review and approval of plans required to be submitted to it. One important consideration is whether the NBC should be removed from the *FPA* if a building standards legislation is adopted. Approaches to this consideration varied across jurisdictions.

Jurisdiction	Codes adopted under fire safety legislation*
NWT	NFC, NBC
Nunavut	NFC
Yukon	NFC
British Columbia	NFC
Alberta	NFC, NBC
Saskatchewan	NFC
Manitoba	NFC
Ontario	NFC, NBC
Newfoundland	NFC, NBC
New Brunswick	NFC, NBC
Nova Scotia	NFC
PEI	NFC

* Jurisdictions may adopt their own version of a particular code, by modifying the NFC or NBC through *Regulations*.

CONSIDERATIONS

Should MACA consider a building standards legislation as a future legislative priority?

What other considerations should MACA include in its review of a building standards legislation?



Summary

A review of the *FPA* is required to address the identified gaps in the scope of statutory roles and responsibilities as well as issues with the Plan Review function. The current GNWT regulatory structure related to building standards must also be assessed to determine changes that will eliminate gaps in regulatory oversight. While these are presented separately, they are integrally linked to a broader system of safety and protection of the public against fire and the spread of fire.