

New by-law regarding building safety:

Imposes onerous obligations on owners



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In December 2012, the Régie du bâtiment and the Québec Government adopted a regulation called *Règlement visant à améliorer la sécurité dans le bâtiment*, that has become chapter VIII entitled “Building”, of the Safety Code adopted pursuant to the Building Act. The new Regulation contains rules on fire safety and on maintenance of building facades and multi-level concrete parking structures. The fire safety rules will come into force progressively between now and 2018, most likely to allow owners to plan any code compliance work and associated costs. The new provisions regarding facades and parking structures came into force on March 18, 2013. Those are the provisions that are discussed in this article.

Tragic accidents

The provisions pertaining to facades and parking structures are the result of a review process undertaken several years ago by the Régie du bâtiment, the Québec Government and other industry participants. There is no doubt that in their review, they took into consideration the occurrence of certain tragic events. On November 26, 2008, part of the cement slab of the underground parking of an apartment building situated in the St-Laurent borough collapsed on top of several cars parked below, leading to the death of one person. Less than a year later, on July 16, 2009, another person lost her life when a concrete block weighing several hundred kilograms came off the facade of a downtown hotel on Peel Street and crashed through the solarium of a restaurant at street level 18 stories below.

In both cases, the coroner charged with the enquiry concluded that construction defects and lack of maintenance were determining factors in the collapse. In the case of the Peel Street accident,

the coroner’s enquiry revealed that the concrete panel had not been installed in accordance with the specifications of the manufacturer since it was fixed to the structure of the building with two anchors instead of four. In addition, the facade of the building constructed forty years earlier had never been inspected.

The coroners’ assessment following those events was harsh:

- The Province of Québec is behind in terms of safety in public buildings;
- Maintenance and inspection practices in high-rise buildings are inadequate; and
- Regulations are too vague and left to the interpretation of each owner.

The adoption of specific measures pertaining to inspections and assessments, maintenance programs and applicable penalties was recommended.

The new regime for inspection and maintenance of facades

The new safety norms apply to all facades of five stories or more above ground. The facades of a building must be maintained so as to ensure safety and avoid the development of dangerous conditions. A dangerous condition exists when the element of one of the facades of a building can, imminently, detach itself from the building or collapse and cause bodily injuries.

Every five years, the owner of a public building of five stories or more must obtain, from an engineer or an architect, an assessment report indicating that the facades of the building do not present any dangerous conditions and that, if applicable, recommendations intended to correct defects that may contribute to the creation of dangerous conditions have been made.

When a dangerous condition is detected,

whether it be during an inspection or otherwise, the owner must respect certain obligations. He must, without delay, put in place emergency measures to ensure the safety of the occupants and of the public and he must advise the Régie du bâtiment; he must also provide to the Régie, within thirty days, a description prepared by an engineer or an architect, of the corrective measures that must be implemented and a work schedule that must be approved by the Régie; afterwards, he must ensure that the work is performed in accordance with the documents provided to the Régie and he must obtain, when the work is completed, an assessment report confirming that the facades of the building are safe. At the end of this process, the owner must provide to the Régie a letter signed by the engineer or the architect confirming that all of the corrective measures were completed to his/her satisfaction and that there no longer exists a dangerous condition.

The Government has in a way delegated to the professionals, engineers and architects, a supervisory role with respect to the application of some of the measures provided in the Regulation. For example, the Regulation specifies that the

choice of inspection methods for the report that must be provided every five years belongs to the professional who must recommend any tests, examinations or trials deemed necessary. The engineer or the architect must, in his report, identify the defects and their causes that may contribute to the development of dangerous conditions including, for example, infiltrations, rust stains, signs of efflorescence, scaling, etc. He must also describe the corrective measures to be undertaken and the work schedule, and confirm that the facades are exempt from any dangerous condition. If applicable, he must also confirm that recommendations were addressed to the owner in order to correct the defects observed that may contribute to the development of dangerous conditions.

This report must be produced every five years and the necessary inspections to issue such a report must be performed within the six months preceding the production of the report. The first inspection report of the facades must be produced by the owner no later than on the day of the tenth anniversary of the construction of the building. However, if on March 18, 2013, the building has

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69 ►► more than ten years, the first report must be produced on the date determined by the Regulation on the basis of the age of the building. In such a case, the timetable is as follows: if the building is more than 45 years old, before March 18, 2015; between 25 and 45 years old, before March 18, 2016; between 15 and 25 years old, before March 18, 2017; and between 10 and 15 years old, before March 18, 2018.

The new regime for the inspection of parking structures

The Regulation also provides new obligations for owners of underground or aboveground parking structures with a cement slab and a rolling surface that does not rest on the ground. In the case of parking structures, the five-year report may only be prepared by an engineer and the first report must be produced between 12 and 18 months following the end of the construction of the building. However, if the parking is aged between 1 and 5 years, the report must be produced before March 18, 2014 and if it is more than 5 years old, before March 18, 2016.

If an incident occurs that may have an impact on the soundness of the parking structure, the owner must have an engineer conduct an in-depth inspection. An owner will want to establish a protocol identifying the types of incidents that require such an in-depth assessment. A structural engineer should be able to assist the owner in establishing such a protocol.

A parking structure must also be inspected annually and the first annual inspection must take place before March 18, 2014 for all parking structures subject to the Regulation. The Regulation provides a detailed inspection checklist that must be completed by the owner during the annual inspection. The contents of the checklist suggest that the owner may rely on a visual inspection.

Maintaining a registry

All the reports that we have referred to, both for facades and parking structures, must be kept by the owner on site in a registry with other information required by the Regulation, including copies of plan, photographs, a description of repair, modification and maintenance work, and a

description of repeated repairs pertaining to a recurring problem.

Severe penalties

The Regulation provides that a violation of one of its provisions constitutes an offence. The Building Act provides the penalties for such offences. The fines imposed for violations to provisions intended to promote public safety, are severe.

Further developments in 2013

There is room in the Regulation for the addition of a new section regarding the maintenance of water cooling towers. These provisions may come into force in the coming months, most likely during the summer of 2013. •



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