



May 20, 2011

Mr. Chris Fillingham, Chair
Canadian Commission on Building and Fire Codes
Canadian Codes Centre
Institute for Research in Construction
National Research Council Canada
Building M-23A
1200 Montreal Road
Ottawa, ON K1A 0R6

WITHOUT PREJUDICE

Dear Chris;

Re: April 11/2011 CCBFC Meeting – Agenda Item 25.8.4 - Code Change Request for NBC 9.8.8.6: Climability of Stairs

I am writing on behalf of SARA and the construction industry stakeholders who supported the Code Change Request noted above (the “CCR”). These stakeholders include both members of SARA and the companies, organizations and individuals who signed the petitions to support this CCR attached as Appendix A.

The purpose of this letter is three-fold:

- (1) to express our shock at the decision of the CCBFC to vote against this CCR after it had been approved by the task groups, both standing committees and PTPACC, and after it had received overwhelming support during the public review;
- (2) to express our deep disappointment with the process followed by the CCBFC at its April 11/11 meeting w.r.t the CCR; and
- (3) to request that the Executive overturn the April 11/11 decision of the CCBFC and approve the CCR.

As you know Article 2.2.1 provides that:

The Executive Committee directs CCBFC business, subject to CCBFC ratification, by: ...

b) addressing problems that may arise between CCBFC meetings; ...

f) resolving Code development issues described in Part C; ...

i) responding to requests for review of standing committee, task group, working group, and advisory group procedural actions by:

i) determining what information and additional resources they require to assess the request;

ii) determining whether prescribed procedures have been followed;

iii) directing implementation of appropriate remedial actions;

iv) identifying appropriate actions that the CCBFC could take to prevent recurrence of infractions or improprieties; and

v) reporting the results to the CCBFC, the relevant committees, and the person or group who requested the review.

Our view is that several provisions of CCBFC's Policies & Procedures 2009 were ignored or breached at the April 11/11 meeting at which our CCR was considered, as follows:

(a) Technical Comments were Made by Members After Public Review

Article 17.10.2 of CCBFC's Policies & Procedures 2009 provides that:

... Comments on technical adequacy of proposed changes from CCBFC members are submitted during public review.

However, several members of the CCBFC introduced comments on technical adequacy at the April 11/11 meeting, long after the public review process had been completed. One CCBFC member expressed a concern that the guard rail designs that would be available should the CCR pass would potentially hurt children "if they got their fingers caught" in such designs. A member of the public was permitted to raise several points related to technical adequacy, which prompted even more comments by CCBFC members related to technical adequacy. This was a clear breach of Article 17.10.2.

(b) Submissions were Allowed After the Deadline

Prior to the April 11/11 meeting we had been specifically informed that no submissions would be accepted from industry or anyone else on April 11/11 unless new information or evidence was to be presented. We were also advised that no one had registered to speak. However, as noted above, a member of the public was permitted to speak at the meeting to express opposition to the CCR, although he had not registered to do so, did not introduce new information and did not offer new evidence. Then a representative of the CPHA was given an opportunity to speak - also at the last minute and without registering in advance.

This was a clear breach of principles of administrative fairness as well as a breach of Article 11.3.2 of your Policies & Procedures 2009, which provides:

11.3.2 In addition to complying with Articles 11.3.1, meeting chairs:

a) encourage full presentation and discussion of all information and points of view; ...

(c) Failing to Meet Conditions of Serving on a Committee

Section 11.3.1 of your Policies & Procedures 2009 provides that:

As conditions of serving on a committee, all members:

a) adhere to these Policies and Procedures; ...

e) contribute to the committee discussions; ...

g) follow the practice of consensus-based decision-making; ...

l) act with respect for all participants in the National Model Construction Code Documents development system.

From our observations on April 11/11 several of these conditions were not adequately met during the discussion of our CCR: Policies and Procedures 2009 were not followed, as described herein; several members of the CCBFC said nothing at the meeting; there was no attempt at consensus as a vote was called immediately after the presentations; and by not giving us notice that technical debate would be entertained we were not treated with respect required of this Article.

(d) Lack of Order at Meeting

Article 11.3.2 provides that one of the obligations of the Chair is to maintain order. However, after Mr. Pauls' comments the meeting was in disarray, several people were speaking at once and the microphone was left open to anyone. This does not, in our respectful opinion, constitute "maintaining order".

(e) Late Submissions to the Agenda

On Friday, April 8 we were notified by the NRC that a submission had been received from the Canadian Public Health Association which would be added to the Agenda. At the meeting itself a representative of the CPHA made a presentation.

Article 12.2.9 provides:

12.2.9 People wishing to make a presentation to a meeting on a particular subject must notify the committee chair or secretary in writing at least four (4) weeks before the meeting, describing the nature and scope of the subject to be addressed, stating the desired length of time needed to make the presentation, and providing a written copy of material to be presented.

The CPHA submission was received after the cut-off date for submissions and should not have been presented or considered by members of the CCBFC. To compound matters, industry was not invited to make a submission in response. We did not have time to review the CPHA submission in depth or prepare a comprehensive reply. We struggled to submit a short brief on Sunday, April 10 but even this was not circulated to the CCBFC until mid-morning on April 11/11, when the meeting was fully underway.

The submission from the CPHA had two days in which to be circulated and reviewed by the Commission members; the short brief from industry had no chance for review by the Commission members.

Again, this is unfair and a breach of your own process. One party was given a clear advantage in communicating its position. The CCBFC should not have accepted the CHPA's submission after the cut-off date; once it had accepted it, CCBFC should have provided us with adequate time to respond and provide CCBFC's members the time needed to review our submission.

This was also a breach of Article 11.3.2 which provides:

11.3.2 In addition to complying with Articles 11.3.1, meeting chairs:

a) encourage full presentation and discussion of all information and points of view.

We are also of the view that the manner in which our Code Change Request was handled on April 11/11 did not live up to the CCBFC's own values as expressed in your "Vision" statement, as follows:

Robust process. Contrary to this stated "Value" the vote on April 11/11 was not a "consensus-based code development process", nor did that decision improve the level of trust felt by the stakeholders we represent. In fact, it eroded that trust.

Engagement. You may have solid linkages with some stakeholders (governments, regulators, departments, etc.) as required by this "Value" but the April 11/11 vote has weakened rather than strengthened your linkages with the segment of the construction industry we represent.

Awareness. Instead of increasing awareness, the April 11/11 vote has cause our industry to be more confused than ever about the code development system and the roles of various players.

Communication. Sharing information with some stakeholders may be an ongoing, customary practice in CCBFC's activities but we do not feel that crucial information was shared with us. Compounding this lack of communication has been CCBFC's unwillingness or inability to provide us with copies of the minutes of the April 11/11 meeting, now more than a month after the decision.

We respectfully request that

(1) the Executive immediately reverse the April 11/11 decision of the CCBFC and approve our Code Change Request;

(2) if the Executive is unwilling or unable to immediately reverse this decision, to raise the matter at your June meeting and permit us to appear at that meeting; and

(3) if the Executive is unwilling or unable to accede to the above, to convey your reasons in writing and provide a copy of the minutes of the April 11/11 meeting so that we may forward our appeal, your response and the minutes to the new Minister Responsible for the NRC, and to other industry stakeholders and interested parties.

Yours sincerely,



Rob Cabral
President
SARA – Stair & Railing Association of Canada

cc: Board of Directors SARA

Vince Vigliatore, Vision Outdoor Products; Angus Hartery, Ideal Railings; Adler Israel, Euro Forgings; Marcel Lentze, Ideal Railings; James Hein, Norwood Stairs and Railings

cc: Margaret Bezdán, President, Geo. Bezdán Sales Ltd.