

**SUBMISSION OF LESPERANCE MENDES
ON HOMEOWNER PROTECTION OFFICE
DISCUSSION PAPER**

“RAISING THE BAR”

by

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Submission of Lesperance Mendes on Homeowner Protection Office Discussion Paper “Raising the Bar”

I. Executive Summary

We are writing in response to your request for submissions on the Homeowner Protection Office’s August 2005 Discussion Paper *Raising the Bar* (the “Discussion Paper”).¹

We are in agreement that Option 2 in the Discussion Paper would significantly increase professionalism and consumer confidence in the residential construction sector. We submit the following initiatives would further promote these objectives:

- A. The code of conduct for general contractor licensees should require that:
 - 1. every general contractor employ a qualified site representative to oversee construction and perform daily site inspections of its residential construction projects;
 - 2. a copy of each daily site inspection report be maintained by the general contractor for a period of 12 years.

- B. Building envelope renovators should be included within “Option 2”, and subjected to licencing standards equivalent to those imposed on general contractors.

Lesperance Mendes is a Vancouver law firm that has been advising strata corporations and other owners of defective properties since its formation in 1997. The submissions below arise from our experience with the *Homeowner Protection Act* (the “Act”) and its regulations.

¹ The writer is indebted to Warren Knowles, P. Eng. of RDH Building Engineering Ltd. for his helpful input into this Submission. Any errors or omissions in the final product remain the writer’s responsibility.

II. Submissions

A. Generally

We agree that Option 2 is likely to enhance professionalism and confidence in the residential construction sector. While voluntary measures are an essential ingredient of professionalism they are not sufficient. This is evidenced by the Homeowner Protection Office itself, whose genesis was in large part due to the failure of the previous voluntary regime, administered by the New Home Warranty Program.

We submit that the objectives of the proposed reforms would also be furthered by enhancing the information base available to homeowners through the Homeowner Protection Office registry. Information is key to consumer protection. The information currently available offers limited insight into a builder's qualifications and experience, and little assistance to owners considering their remediation options.

We further submit that the following initiatives would promote professionalism within the industry.

B. Site Representative

Page 16 of the Discussion Paper proposes "measurable standards of licencing" intended to ensure that general contractors undertaking the construction of new homes are properly qualified. Page 18 of the Discussion Paper proposes that the "director nominee" of general contractor licensees would be evaluated under these standards.

The objectives of the Discussion Paper will not be fully realized if licencing standards are limited to director nominees. There is no guarantee that director nominees will have sufficient contact with a project to ensure appropriate quality control. Indeed, there is no requirement that a director nominee have any involvement with any particular project at all.

We submit the licencing standards applicable to general contractors should apply to both director nominees and a general contractor's site representative. Standards applicable to site representatives should focus on skills relevant to on-site supervision and not include financial and senior managerial requirements imposed on the general contractor or its director nominee.

The Act should leave general contractors free to determine the extent to which site representatives will be present on site. Full-time supervision is not required at every stage in a project, and general contractors should be given latitude in allocating their human resources.

It is reasonable, however, to require site representatives to conduct daily site inspections. Such inspections would implement the Act's standards in a pro-active manner, and identify problems at a stage when they may be more readily addressed.

Section 6(k) and (l) of the *Homeowner Protection Regulation* already allow warranty providers to require third party verification, certification and inspection of construction. Requiring daily site inspections by qualified licensee representatives is consistent with the regulation, and recognizes the crucial role of such inspections in quality control.

We further submit the daily inspections will be more effective if they are recorded in standardized reports that require site representatives to record information that may be of interest if enforcement or other legal action is required at a later date. These reports should be maintained by the general contractor for a specified period of time. We submit that a period of 12 years after completion is appropriate, as this would ensure records are available for a reasonable period following the expiry of 10 year structural defect coverage.

C. Building Envelope Renovations

Page 21 of the Discussion Paper asks whether there are other categories of licensees that should be recognized under Option 2. It is unclear whether building envelope renovators are included in the proposed reforms. If they are not, we recommend that Option 2 be expanded to include this class of licensee.

It is not possible to fully achieve the objectives of the Discussion Paper without extending its enhanced licencing requirements to building envelope renovators. Indeed, a stronger case may be made for enhanced professionalism among

renovators, who are engaged when the industry has failed the consumer. We submit that failed renovations present the greatest threat to public confidence in the current regulatory regime.

Building envelope renovators should be subjected to licensing standards that are equally rigorous to those applicable to general contractors. Both classes of licensees play a “hands-on” role critical to quality control. Building envelope renovation is a specialty industry that should not be open to those without the necessary capabilities.

We submit that daily site inspections by a building envelope renovator’s site representative would assist in fulfilling the objectives of the legislation. Such inspections would be consistent with the objectives of the *Building Envelope Renovation Regulation*, which already allows warranty providers to require renovations to be supervised by a building envelope consultant and inspected: sections 9(i) and (m).

We propose that site inspections be recorded in standardized site reports. Such reports should be maintained by the renovator for six years after substantial completion, to allow access following the expiry of the five-year water penetration warranty.

We commend the Homeowner Protection Office for considering the beneficial initiatives outlined in the Discussion Paper, and hope the foregoing comments will be of some assistance.

LESPERANCE MENDES

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