

IE26.3 - TransformTO Net Zero Strategy: Action Plan (2026-2030)

Introduction

- My name is Jacqueline Wilson. I am a lawyer at the Canadian Environmental Law Association.

Climate Change

- As a legal aid clinic, we are concerned about climate change as an ecological crisis, but also as an equity, fairness, and health crisis.
- Low-income communities are not responsible for climate change, but they are disproportionately burdened by its impacts.
- With buildings making up such a large proportion of the city's greenhouse gas emissions, a mandatory building emissions performance standard ("BEPS") is critical and a by-law establishing BEPS should be passed with any further delay.

Legal Authority for Mandatory Building Emissions Performance Standards

The *City of Toronto Act* provides for broad powers for municipalities (s. 6(1)), and also states that any ambiguity about whether or not a municipality has legal authority under the Act to make by-laws is to be resolved in favour of the municipality (s.6(2)).

The City may pass by-laws respecting economic, social and environmental well-being, including respecting climate change, and with respect to the health, safety and well-being of persons (s. 8(2)(5) and (6) of the City of Toronto Act).

S.105.3(1) of the *City of Toronto Act* provides that the City may provide for or participate in long-term energy planning in the City, which may include consideration of energy conservation, climate change and green energy.

Building Code Act and Building Code

Construction and demolition of buildings are governed by the *Building Code Act* and the Building Code.

There is a conflict provision in section 35 of the *Building Code Act*, but it relates only to municipal by-laws respecting the construction or demolition of buildings:

35 (1) This Act and the building code supersede all municipal by-laws respecting the **construction or demolition** of buildings. [emphasis added]

(1.1) For greater certainty, sections 9, 10 and 11 of the *Municipal Act, 2001* and sections 7 and 8 of the *City of Toronto Act, 2006* do not authorize a municipality to pass by-laws respecting the construction or demolition of buildings.

(2) In the event that this Act or the building code and a municipal by-law treat the same subject-matter in different ways in respect to standards for the use of a building described in section 10 or standards for the maintenance or operation of a sewage system, this Act or the building code prevails and the by-law is inoperative to the extent that it differs from this Act or the building code.¹

Although the definition of “construct” is broad in the *Building Code Act*, it is not a new definition.

The conflict provision in section 35 of the *Building Code Act* must be read consistently with the broad municipal powers elsewhere in the *Building Code Act*, including relating to property standards, and in the *City of Toronto Act*.

The jurisprudence from all levels of Courts has favoured broad interpretations of municipal powers

- Relating to environmental health risks – *Spraytech* (Supreme Court of Canada)², *Croplife*³ and *Drain*⁴
- *Rexlington Heights* case found that property standards can apply to existing buildings as long as clear language is used.⁵
- *Tay Valley* – found that a municipal requirement for a 15 m setback from the water of a sewage disposal site, as opposed to a Building Code requirement of a 0 m setback, was to be resolved by following the higher standard set by the municipality.⁶
 - o **(for notes:** *Tay Valley (Township) Zoning By-law No. 02-121 (Re)*, [2004] OMBD No. 501 concerned a conflict with the setback from the water of a sewage disposal site, with the Township requiring a 15m setback, while the Building Code recommending a setback of 0m. To avoid conflict with the Ontario Building Code, the Ontario Municipal Board determined that the water setback should be the greater of the two options (15m). By

¹ *Building Code Act*, s 35

² *114957 Canada Ltd. (SPraytech, Societe d'arrosage) v Hudton (Town)*, [2001] 2 SCR 241

³ *Croplife Canada v Toronto (City)*, [2005] OJ No 1896 (CA)

⁴ *R v Drain*, 2006 ONCJ 186 at para 29

⁵ *Rexlington Heights Ltd v Ontario*, [2005] OJ 4223, at paras 12, 15, 36

⁶ *Tay Valley (Township) Zoning By-law No. 02-121 (Re)*, [2004] OMBD No. 501

considering the environmental implications in this case, the higher standards set out by the municipality were justified.⁷⁾

Above Guideline Rent Increases

The provincial *Residential Tenancies Act* does allow for some capital expenditures to be passed along to tenants in above guideline rent increases. We share your frustrations about a provincial regime which regressively imposes additional costs on tenants.

However, O. Reg 516/06, a regulation under the *Residential Tenancies Act*, requires a landlord to “subtract the amount of all grants, other forms of financial assistance, rebates and refunds received by the landlord” from any Above Guideline Rent Increase application.⁸

(S.22 and 24 of O. Reg 516/06)

We urge the City to ensure funding assistance is in place

For buildings with low-income tenants

To defray the costs to tenants for any building upgrades

Conclusion

Mandatory building emissions performance standards are good policy. Incentives without clear and predictable standards in place are not working to reduce our emissions.

We urge the City of Toronto to pass a by-law implementing a mandatory building emissions performance standards regime now, without any delay. Passing of the by-law will still include compliance periods, but creates the regulatory certainty required.

⁷ *Tay Valley (Township) Zoning By-law No. 02-121 (Re)*, [2004] OMBD No. 501.

⁸ O. Reg 516/06