

NO WAY TO COMPLY

An Investigation into the Enforcement Practices of
Municipal Licensing and Standards

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1.0 Executive Summary

1. Ms A complained to the Office of the Ombudsman that the Municipal Licensing and Standards Division (MLS) acted unfairly in enforcing a Property Standards Order. She said they failed to explain the order and were dismissive of her queries and concerns.
2. The investigation looked at the MLS actions, the conduct of the Municipal Standards Officer (MSO) and the process MLS followed in responding to Ms A's complaints.
3. During the investigation, the Ombudsman learned that the MLS executive director directed his staff to report the details of their interviews with the investigator. Since the content of interviews is, by mandate, confidential, this action was added to the investigation.
4. In 2007, Ms A bought a bungalow in Etobicoke for her elderly mother, who did not adjust well to the new home. As a result, Ms A rented the property until the end of May 2009, when she began renovations to the home. In June, the former tenant called MLS to report a property standards complaint. The City issued an Order that a deck having no guards or handrails needed to come into compliance with the Toronto Municipal Code. It had to be done by July 13 and she had until June 30 to appeal the order. Schedule 'A' attached to the Order, intended to provide Ms A details on the state of non-compliance, was prepared by the MSO with out-dated and incorrect information.
5. On June 23, during the municipal labour disruption that lasted until July 27, Ms A received the Order by registered mail. She found it confusing and wanted to talk with the MSO for an explanation. Two weeks after the conclusion of the labour disruption, Ms A reached the MSO, but he refused to engage in a discussion, saying Schedule 'A' contained all the information and she should get a professional. There followed many phone calls and attempts to get clear instructions on the non-compliance. Rather than clarify the order, the MSO completed 4 additional inspections of the property, at a cost to the complainant of \$60.00 per inspection.
6. In the end, Ms A was charged and prosecuted for failing to comply. Throughout the process, Ms A complained about the MSO's attitude and an overall lack of communications. The matter was eventually escalated to the Executive Director, but at no point did Ms A receive an adequate response to her concerns.
7. The investigation found:
 - Communications were unacceptable at all levels. MLS failed to explain the order or respond to Ms A's queries in a reasonable way.

- The process was flawed. Schedule 'A' was difficult to understand and contained errors.
 - By taking no steps to communicate in a responsible way with Ms A, the MSO showed unreasonable conduct. Providing inaccurate and vague information was unprofessional and contrary to the approach expected by senior management.
 - Training and support were lacking. Manuals and directives were out of date and there was a lack of understanding of the supervisor's role in reviewing prosecution files.
 - MLS had poor record keeping. The files related to this complaint had no discernable order. Actions, such as conversations between MLS staff and the Complainant were either not recorded at all, or recorded insufficiently.
 - MLS failed to respond appropriately to Ms A's complaint about the MSO's conduct. At every level, including senior management, MLS failed to adhere to its complaints handling policy.
 - The Executive Director acted inappropriately in telling his staff to report to him the contents of their interactions with the Ombudsman investigator. His staff were either insubordinate by not following his directive or breached the Ombudsman's confidentiality provisions.
8. The Ombudsman made recommendations to improve the system, including:
- Provisions for up-to-date training for staff
 - Keeping manuals up to date
 - Developing a service standard for timely notice to residents
 - Developing a service standard to ensure files and enforcement options are thoroughly reviewed prior to a charge being laid
 - Keeping accurate and sufficient records
 - Communicating in a timely and professional manner
 - Measuring job performance by City standards
 - Counselling employees involved in this matter
9. At an individual level, the Ombudsman recommended Ms A be provided with a written apology and a refund of the re-inspection fees.
10. The City Manager, in his response to the Ombudsman's recommendations, accepted them.

2.0 The Complaint

11. Ms A (the Complainant) complained to my Office that the Municipal Licensing and Standards Division (MLS) acted unfairly in enforcing a Property Standards Order. She complained about the conduct of MLS staff and contends that the division failed to explain the Order, and was dismissive of her queries and concerns.

3.0 The Investigation

12. Extensive preliminary enquiries were made.
13. On January 28, 2011, I sent the City Manager formal notice of intent to investigate this matter.
14. My investigator interviewed MLS employees along with the Complainant. He reviewed documents, applicable legislation, policies and processes.
15. At the outset of every investigative interview, each witness is informed that the investigation is conducted in private, and told that the content of that interview is confidential and should remain so throughout the investigation. Interviews are taped to ensure accuracy and integrity of the evidence.

4.0 The Issues

16. The investigation addressed the following matters:
 - (i) The inspection and enforcement actions taken by MLS;
 - (ii) The conduct of the Municipal Standards Officer (MSO); and,
 - (iii) The process followed by MLS in responding to Ms A's complaints.
17. During the course of the investigation, I learned of a directive from the then Executive Director of MLS to staff who participated in my investigation. He directed his staff to report to him the details of their interviews (questions and answers) with my investigator. Once I became aware of these instructions, this matter was investigated.

5.0 The Facts

5.1 Background

18. In the fall of 2007, the Complainant purchased a 700 square foot bungalow in Etobicoke for her elderly mother, who has dementia. The property was close to the Complainant's primary residence so that she could care for her mother more easily.

19. Her mother did not adjust well to the new home so she put the property up for sale in the spring of 2008.
20. The Complainant rented the property from the summer of 2008 to May 2009.
21. From May to the fall of 2009 it remained empty while she completed renovations.

5.2 Inspection #1

22. On June 1, 2009, the Complainant's former tenant called MLS to report a property standards complaint. The description of the complaint is listed as "improper repair in the back room, door knob missing."
23. According to MLS, once a complaint is received, an MSO conducts an inspection of the property. Although the complaint may not be substantiated, other deficiencies may be observed and Notices or Orders could be issued.
24. A Notice is issued for by-law violations observed on a property. In the event that the property owner fails to comply with the Notice, residents are informed that MLS can take steps to rectify the situation and transfer the costs incurred to their municipal tax bill.
25. Orders are issued to residents for contraventions of the *Building Code Act*.
26. On June 10, 2009, an MSO inspected the Complainant's property.
27. His notes indicate that he knocked on the door and when no one answered, he left a business card and conducted an exterior inspection of the premises.
28. The MSO did not find evidence of a missing doorknob in the backroom but he found other deficiencies.
29. He issued a Notice of Violation dated June 11, 2009 for long grass and/or weeds in excess of 20 centimetres and for failure to clear refuse. He took pictures of the violations; one of long grass and weeds, and a second one of what appeared to be two pieces of stacked drywall along the side of the house.
30. The MSO also noted during his inspection that there was a raised deck three feet high with steps two feet wide that was missing guards and handrails. He informed my investigator that the deck posed a safety risk.
31. Although the Notice for the long grass and weeds required corrective action to be taken by June 17, 2009, the Complainant did not receive it until June 23, 2009.

5.3 Property Standards Order

32. On June 11, 2009, the City issued an Order by registered mail to the Complainant, pursuant to section 15.2(2) of the *Building Code Act*. The Order noted that the inspection of the deck “revealed that in some respects the property does not conform with the standards prescribed by the Toronto Municipal Code, Chapter 629, Property Standards.”¹
33. Schedule ‘A’ was attached to the Order and is intended to provide details on the state of non-compliance:

The items listed herein are in violation of the Toronto Municipal Code, Chapter 629, Property Standards.

1. The required handrail(s) are not installed/maintained to comply with the Toronto Municipal Code, Chapter 629, Property Standards, namely; the required handrail on the exterior stairs that have more than 3 risers and serve not more than one dwelling unit, is not provided. Section 19C.
 2. The required guard(s) are not installed/maintained to comply with the Toronto Municipal Code, Chapter 629, Property Standards (the Code), namely; the open side of the interior/exterior stairs is not protected by the required guard (the minimum height of the guard shall be 800 mm, 31 inches).
34. A review of the Code by my investigator revealed that Schedule ‘A’ contained two inaccuracies. The applicable handrail section of the Code is 19E not 19C. The guard height requirement in the Order was also incorrect. Section 19C(2)(c) indicates that

exterior guards serving not more than one dwelling unit shall be not less than 900 millimetres high where the walking surface served by the guard is not more than 1,800 millimetres [5.9 feet] above the finished ground level.
 35. The MSO informed my investigator that the 800 mm figure noted in Schedule ‘A’ as the minimum height requirement for guards was a typographical error.
 36. The Complainant found the Order unclear. She states that Schedule ‘A’ referred to section 19C in its entirety, four pages of inaccessible language.

¹ In Appendix A, Items 1 through 6 provide the relevant legislation governing a property standards inspection of this nature.

37. Ms A said she was surprised to receive notice of the violation from the MSO prior to being contacted to rectify the problem. My investigator received conflicting reports from MLS staff regarding the appropriate protocol for dealing with residents who are the subject of an Order or Notice.
38. The MSO, his supervisor, his manager and the Director of Investigation Services, confirmed that it is acceptable to issue an Order/Notice prior to making direct contact with a resident.
39. The Executive Director said that significant steps should be taken to make direct contact with residents first.
40. This approach to enforcement is posted on the MLS website. In describing its by-law compliance program, the website explains that alternative dispute resolution and educational approaches are to be used to "initiate proactive prevention." Legal proceedings should be used "if necessary."
41. The Operational Procedures for Property Maintenance (Wastes), and Long Grass and Weeds, instruct MSOs to issue a Notice where evidence exists of a violation. Neither makes any reference to contacting the homeowner prior to issuing the Notice.
42. MLS does not have a directive, in accordance with the Code, to provide MSOs with guidance on how to inspect and enforce Building Code violations related to stairs, guards or handrails.
43. The Order required that the guards and handrails be installed by July 13, 2009 and noted that the Complainant could appeal the Order up to June 30, 2009.
44. Ms A expressed concerns about the information and had questions about the technical language and the processing of the Order.
45. She did not appeal the Order. Ms A wanted to discuss the matter with the MSO first. She said she could not have known on what basis to file an appeal prior to receiving clarification from the MSO. She was also reluctant to spend the \$200 fee to appeal the Order when she believed the matter could be resolved.

5.4 Municipal Code and Complainant's Efforts to Contact MLS

46. The Complainant received the Order by registered mail on June 23, 2009, during the municipal labour disruption that lasted until July 27.
47. She attempted to contact the MSO immediately but was informed that no property standards issues were being handled during the labour disruption.
48. When it was over, Ms A states that she again tried to reach the MSO, but his voicemail box was full. She reached him approximately two weeks later.

49. Ms A states that she told the MSO the deck could not have posed a significant safety risk since no one was living in the house. She noted that the long grass and weeds were evidence that the house was vacant, and the drywall showed she was in the process of renovating the home.
50. The Complainant states that during several conversations with the MSO between August and October 2009, she questioned him about the Order and the relevant sections of the Code. She said that she raised the following issues/concerns with the MSO:
- she could not find anything in section 19C of the Code that referred to handrail requirements;
 - she could not find any reference in the Code which corresponded to the minimum height requirement for the guard set out in Schedule 'A'
 - she asked about the requirements for the openings in guards.
51. Section 629-19C(4)(a) states,
- ...openings through any guard that is required by Subsection C(1) shall be of a size that will prevent the passage of a spherical object having a diameter of 100 millimetres unless it can be shown that the location and size of openings that exceed this limit do not represent a hazard.
52. Ms A states that the MSO could not explain how one would exceed the prescribed limit without presenting a hazard. She said she suggested a few scenarios. The Complainant told him that neighbours had used flower pots as guards, and enquired about the adequacy of such an approach.
53. The MSO told my investigator that he was not aware of any provisions in the Code that would allow for exemptions to the guard requirement.
54. Ms A states that the MSO was “dismissive” and “belligerent.” She submits the following as examples of what she was told over the course of their conversations: “what do you want? I don’t have time for this; you don’t know what you’re doing; get a professional.” She attributes his behaviour to the fact that she was questioning his understanding of the Code.
55. The Complainant states that she also asked the MSO to provide her with time to comply. She said that she asked him if she could install the guards and handrails after completing her renovations to the property. Ms A claims that the MSO agreed, giving her until early November to address the deficiencies.

56. The MSO said he could not recall speaking with her in 2009. There are no records of any conversations with Ms A on file covering this period. He also denies granting her an extension. He states that he has the authority to grant an extension, but it would require a letter from the Complainant confirming that such an arrangement had been made. There is no such letter on file.
57. MLS posts information about Orders on its website for residents to track the progress of complaints. The information includes a re-inspection date. The Complainant saw that the re-inspection was scheduled for November 12, 2009. She provided my investigator with a copy of the posting from the MLS website confirming the November re-inspection date.
58. Ms A contends that November 12 was selected by the MSO as a result of their agreement.
59. When asked about the re-inspection date posted online, the MSO stated he did not know how the date was generated.
60. He told my investigator that once an Order expires, the record keeping system automatically alerts him to the need for re-inspection, which usually occurs within one to two weeks. He could not explain why the re-inspection had not taken place earlier, but said the delay may have been because of the labour disruption.
61. The Executive Director and Director informed my investigator that the re-inspection date is entered by MSOs into the record keeping system.

5.5 Inspection #2

62. The MSO completed his re-inspection of the property on October 25, 2009, two weeks earlier than the date posted on the MLS website. The MSO noted that the long grass and weeds were cut and the refuse had been removed, clearing two of the violations.
63. The MSO found that compliance with the Order, however, had not been achieved. No attempt was made to communicate that to the Complainant.
64. Ms A states that she installed a railing on her deck in early November 2009. She submits that she called the MSO to inform him that she had completed the work. At the time, she was unaware that the MSO had already re-inspected her property.

65. The MSO placed the following note in the system:

Nov 2/09 received a recorded message from property owner stating that handrails and guards will be installed. H/owner did not leave #.
66. The MSO told my investigator that he did not call the Complainant back because she did not leave her number. There was a number on the MLS file, however, it was incorrect.
67. He said that in cases when he does not have a resident's coordinates, he usually performs a search using 411. He did not in this case.
68. Ms A is listed in the Canada 411 directory.
69. On January 11, 2010, the Complainant was charged a re-inspection fee of \$60.00.² This was her first indication that an inspection occurred on October 25, 2009.

5.6 Inspection #3

70. Municipal Standards Officers have the authority to lay charges for failing to comply with an Order. Once a charge has been laid, a municipal prosecutor is assigned to the case.
71. On February 26, 2010, the MSO conducted a third inspection. He found the handrail installed but noted that the guards were missing. He decided that a charge was warranted.
72. He did not contact the Complainant to inform her of the charge.
73. The Complainant submits that when she contacted the MSO in November 2009, to inform him that she had completed the requisite work, she expected him to contact her if the work was deficient.
74. The MSO told my investigator that he issued the charge in part because of the time that had elapsed from the date of the Order, and because continued re-inspection of the Complainant's property, would result in additional re-inspection fees until she came into compliance.
75. The MSO said that if a charge is not laid within one year, an Order can no longer be enforced. He noted that while an Order could be withdrawn and re-issued, he would be questioned by his superiors for not taking action within the year. He

² Schedule 'A' to the Order contains the following information regarding re-inspection fees, "...if compliance to this Order is not achieved at the time of re-inspection, additional inspections will result in fees being charged at a rate of \$60.00 per hour (with a minimum charge of \$60.00)".

reasoned that the Complainant had already been provided with enough time to comply.

76. Several MLS personnel informed my investigator that their primary focus is to have residents comply with Orders prior to the need for legal consequences. My investigator was advised that charges are laid only in extreme situations, or when it is clear that the resident is not cooperating.
77. A Supervisor in the Etobicoke/York District office told my investigator that everything should be done to prevent the laying of charges because they are more expensive and time consuming to process.
78. The Complainant states that she was unaware the MSO had re-inspected her property on February 26, and was not told that the work she completed was deficient. She states that when she originally discussed the possibility of an exemption for the guard requirement, the MSO said very little, leading her to believe that an exemption would be granted.
79. Ms A contends that if the MSO had explained the problem instead of dismissing her, she would have understood the requirements. She submits that her ongoing attempts to communicate demonstrated a desire to cooperate.

5.7 Preparing for Prosecution

80. The MSO prepared a Crown brief and package of evidence to be reviewed by his supervisor, and then transferred it to the MLS prosecution department.
81. My review confirmed that the MSO's supervisor, signed off on the prosecution file. However, she does not recall doing so, nor can she remember the details of the file.
82. The Supervisor explained that in the event a re-inspection showed a property owner was in partial compliance, she would expect the MSO to contact the individual. During that interaction, s/he should explain what additional steps need to be taken to come into full compliance. The Supervisor suggested that in these circumstances, an extension of two weeks to address the deficiencies would be appropriate. However, this was not a factor in her review of Ms A's file.
83. The Supervisor said that she only reviews files to determine whether they are complete and ready for prosecution. She ensures that the evidence is included and that the Crown Brief has been properly filled out and any other information that the prosecution requires is in the package. She stated that she does not consider whether she agrees with laying the charge since MSOs are professionals, and it is their decision.
84. The Director disputes the Supervisor's interpretation of the review process. He said supervisors should assess the entire file to determine whether a reasonable

process was followed and whether charging the property owner is the correct approach in the circumstances. He acknowledges that an MSO has discretion to lay a charge, however, he states supervisors can instruct the MSO to make additional efforts before taking this step.

85. The MSO informed my investigator his superiors sign off with no review.
86. The review did not identify the technical errors in Schedule 'A' and by March 1, a charge had been laid against the Complainant for failing to comply with the Order.
87. The MSO did not inform Ms A of the charge.

5.8 Notice of Prosecution

88. On June 11, 2010, a re-inspection fee was generated for the February 26 inspection.
89. The Complainant called the number on the invoice for an explanation of the fee. She said that she was transferred to the Manager of the Etobicoke York district.
90. The Manager states he had a number of conversations with Ms A in June 2010. He said no records were entered in the system because he did not have time to do so. He explained that the district handles 12, 000 files a year, and he personally receives between 25 and 75 complaints a month.
91. The Manager informed Ms A that her violation remained outstanding and that her file had been sent to the prosecution unit. He acknowledged that the Complainant first heard about the decision to prosecute the matter from him. He confirmed that she complained about the MSO, but after reviewing the case details, he decided not to intervene. The Manager told my investigator,

“I’m not going to wave a magic wand and do away with non-compliance. She’s nowhere near compliance.”
92. The Complainant said she was “shocked” by the Manager’s response, but nonetheless followed his direction and contacted the MSO on June 14, 2010.
93. The MSO’s entry in the system notes,

June 14, 2010 received a call from property owner ...questioning (sic.) the re inspection fees. I advised her that compliance was not achieved over six months after the Order was issued and the matter is before the court. She stated that she will install the proper guards/handrails and will call back ones

(sic.) the work is completed. I reminded her that the work shall be carried out in a manner accepted as good workmanship.

94. The MSO states that it was a “very long” conversation, but his entry in the electronic information system is short, including only what he believed to be the most important facts. He says that many residents become angry and make accusations, but he does not record those types of comments. He denies being rude to Ms A.
95. The Complainant contends that during the June 14 phone call, the MSO’s “bad attitude” continued. She states that he remained evasive and refused to provide her with anything in writing. She said she was trying to cooperate despite telling him his behaviour was unacceptable.
96. When my investigator questioned the MSO about the extent to which he explained the requirements for compliance, he stated that Ms A said she would install the guard and handrail and call him back when it was done. He said she therefore knew what she was doing.
97. The MSO said he could not design the deck, and that his job is to inform a resident about the compliance requirements set out in the Code. He explained that he would not suggest to a resident how repairs should be done, although he may have told Ms A she could go to Home Depot to look at examples of guards and handrails.
98. The MSO's position was supported by the Manager. In response to questions about the level of detail an MSO can provide regarding deficiencies, he said that under no circumstances could an MSO “design” anything for a resident.
99. This view is in contrast to that of the Director and the Executive Director who said they expected MSOs to use lay terms, explain deficiencies and tell residents in clear language what they must do to come into compliance.
100. Ms A contends that during her conversation with the MSO, she tried to take notes of the work that needed to be done based on his limited instructions. On June 21, when she believed the deck was in compliance, she sent an e-mail to the MSO.

5.9 Inspection #4

101. On June 22, the MSO inspected the property for the fourth time. He took photographs showing an extension on one of the handrails leading up the steps to match the other handrail. The photographs also showed that the Complainant had added two vertical pieces of wood in the middle of the handrail on either side of the elevated portion of the deck.

102. On June 24, 2010, the MSO e-mailed Ms A to inform her that the work did not meet the required standards. He wrote:

Repairs shall be carried out in a manner accepted as good workmanship in the trades concerned and with material suitable and sufficient for the purpose.

The required guard shall comply with the Toronto Municipal Code, Chapter 629, Property Standards, guards shall not be less than 1,070 millimetres high and openings through any guard shall be of a size that will prevent the passage of a spherical object having a diameter of 100 millimetres.

The required handrail shall be installed and maintained in accordance with the Code, handrail shall be provided on two sides of stairs 1,100 millimetres in width or greater.

103. The MSO said he measured the height of Ms A's handrail as 900mm, and found it was too short. No notation was made in the file but the MSO told my investigator that he recalled the height.
104. The information contained in the June 24 e-mail to Ms A is incorrect. The requirement for her guard is 900, not 1070 mm. Further, the Code only requires one handrail on exterior stairs that serve a single dwelling unit.
105. When asked about the apparent discrepancy between the Code and his e-mail, the MSO told my investigator that his e-mail was accurate.
106. Ms A states that when she spoke with the MSO after receiving his e-mail, he raised a new compliance issue that she had not used the right type of wood to build the handrail. She submits that he provided no further explanation. "Frustrated" and "confused," Ms A wrote to the Manager on June 28.

5.10 Escalation of the Complaint

107. On June 30, the Manager responded. He wrote:

Municipal Licensing and Standards does not instruct as to how repairs are to be carried out; however Section 19 of Chapter 629 sets out the requirements for guards and handrails. I have asked the officer to provide you with the applicable sections to assist you and your contractor to bring the guards and handrails in compliance.

108. The Manager also wrote that he does not interfere with a file before the courts and asked the Complainant to speak directly with the MSO to resolve the outstanding requirements. He concluded:
- It would be my position you have had significant time to bring the property into compliance and that the officer has acted properly in the handling of the investigation.
109. On July 9, Ms A answered, questioning why the Manager did not provide her with specifics, instead of referring her back to the MSO. She said she sought a written explanation that would indicate the exact basis for the finding of non-compliance. Ms A told my investigator she felt powerless to question the MSO's interpretation of the Code without an understanding of the contravention.
110. The Complainant wrote that it should have been quite obvious to the Manager that she wanted to rectify any non-compliance and that she had been acting diligently. She wrote:
- ...although you are now attempting to defend your actions or inactions and those of your staff, I believe that I was and still am being unfairly treated... The service I received from MLS was not transparent, was not honest, and was not efficient or professional.
111. On July 15, the Manager replied. Regarding her concerns about the MSO, he wrote:
- Attempts are made to contact and inform property owners by business cards or telephone calls when possible. Contact with individuals is not always obtained and the formal process for notification for Court action is the issuing of a Summons.
112. The Manager said he was attaching a copy of Section 19 with the pertinent sections highlighted. He drew the Complainant's attention to Section 7 of the Code, which refers to the good workmanlike and suitable materials requirement. He concluded,
- when reading Sections 629-7 and 629-19 and comparing the requirements set out in these sections you will better understand the requirements set out in the regulations and what remains to be completed.
113. The Manager told my investigator that he had concerns about the materials the Complainant used. In particular, he questioned the use of 2X4s to construct the

handrails. He also had concerns that the guard and handrails were attached to the deck with numerous nails. None of these concerns were set out in his letter to Ms A or noted in the file.

114. On July 15, Ms A spoke to the Director, expressing her frustration with the process and setting out a formal complaint in writing.
115. The MLS complaint compliance protocol covers the investigation of resident complaints. The complaint is escalated through a series of three stages if a resident is not satisfied with the response provided at each phase. First, it goes to the supervisor/manager, then the program area head, and finally the Executive Director. A review is expected at each stage and investigations are to be completed in 10 days.
116. On August 15, the Director responded to Ms A's July 15 letter and apologized for the delay. He informed the Complainant that he had reviewed the pictures of her deck and said modifications were needed to clear the outstanding Order.
117. The Director wrote,

With respect to the way the file was handled and your concern that more could have been done to inform and assist you in this regard, I agree...I gather from the information in your letter to me that you had no indication that there were outstanding deficiencies and that non-compliance could lead to a prosecution. In that regard I am prepared to work with you to resolve the remaining issues if you demonstrate your willingness comply [sic] voluntarily.
118. He concluded by asking her to contact him.
119. The Complainant's first court date was August 20. She states that she made a number of calls to the Director before then but received no reply.
120. On August 19, Ms A sent him a fax. She reminded the Director that her court date was the following day and asked that he contact her. She did not hear back.
121. She also e-mailed the Executive Director on August 13 when the Director failed to respond to her July 15 letter of complaint within ten days as set out in the MLS complaints protocol.
122. Ms A never received a response to her August 13 e-mail to the Executive Director.

123. When questioned, the Executive Director said he believed that his Director had replied on his behalf. He added that he would only become involved if Ms A's concerns were not resolved.
124. The Director said he was not aware of Ms A's August 13 correspondence to the Executive Director.

5.11 Prosecution

125. On August 20, the Complainant attended her first court date. She was given the option of a pre-trial meeting with the Prosecutor, which she accepted. She made additional changes to her property prior to her first court date, attaching lattice to the handrail to function as a guard.
126. The Prosecutor informed my investigator that she was satisfied a violation of the Order existed on February 26, but needed to determine whether compliance had been subsequently reached. She said compliance has an impact on the penalty, but it does not negate the offence for which the charge was laid.
127. On September 1, the Prosecutor's office requested an update from MLS.

5.12 Inspection #5

128. On September 3, the MSO inspected the Complainant's property for the fifth time in order to provide the Prosecutor with a status report.
129. On September 7, he wrote to the Prosecutor: "there have (sic) been some improvement in the above subject property, however compliance has not been achieved as of September 3 / 10, safety issue involved."
130. On the same day, the Prosecutor requested more detail. She asked, "what specifically was done, what remains, what safety issues, etc."
131. On September 8, the MSO sent her pictures of the deck and said, "the handrail is not extended to the last step and no support provided, without extension there will be no support in event of a fall or trip."
132. The Prosecutor asked the MSO whether the deficiency had been communicated to the property owner.
133. The MSO replied, "we sent her a copy of the section of the bylaw and also verbally told her what to do in order to bring the property into compliance. Steps needs (sic) to take to extend the handrail to both sides of last steps."
134. Ms A states that neither the MSO, nor the Manager or Director mentioned the length of the handrail despite numerous opportunities to do so.

135. The MSO admits he did not tell Ms A about the handrail length. As she had complained to his manager, he said the matter was out of his hands.
136. On October 4, the Prosecutor offered Ms A a plea of guilty. In exchange, she would recommend that the court impose a nominal fine.
137. The Complainant states that she accepted the plea because she was “exhausted” and “stressed out” from the process. She states that she did not want to plead guilty because she found the process so unfair, but she wanted the “nightmare” over.

5.13 Post Prosecution

138. For almost five months MLS made no efforts to pursue the issue.
139. On January 25, 2011, Ms A received a notice of re-inspection fee for the September 3, 2010 inspection.
140. On January 31, she sent a letter to the MLS Etobicoke/York office to dispute the fee. Given the lack of communication, she believed that the fee was unfair.
141. On February 11, the Manager responded. He said that since full compliance was not reached, a fee was charged for the inspection.
142. On February 28, the Complainant received a voicemail from the Director indicating that he had a solution but wanted to talk to her.
143. On March 1, Ms A wrote to the Director and asked that he put his decision in writing. She advised my investigator that she was reluctant to speak with him because she had spent over a year trying to work with MLS.
144. She alleged that the MLS change of attitude was a result of my investigation.
145. The Director replied the same day, saying he would write once they had talked.
146. On March 18, the Complainant wrote back saying she wanted to rely on the Ombudsman process. She asked him to put the fees in abeyance pending the outcome of the investigation.
147. The Director responded to the March e-mail in an April 4, 2011 letter. On the issue of the outstanding violation related to the handrails and guards, he included a set of drawings from Toronto Building, which “are standardized to meet the requirement of the existing building codes.” He believed that the plans would be of assistance to Ms A and offered to arrange for someone to provide her with clarification or an interpretation of the details.

148. Regarding the inspection fees, the Director explained that MLS records showed that it reversed two of the four re-inspection charges applied to the Complainant's property since 2009. He suggested that he was prepared to reverse the remaining two charges since, "I am persuaded that if you were able to access the attached drawings, you could have corrected the violation earlier in the process."
149. Ms A states she was "livid" upon receiving the letter. She contends that the MLS continued enforcement action was in response to her complaint to the Ombudsman. She also denies that two of her fees were reversed.
150. When informed of the renewed enforcement activity, the Prosecutor expressed surprise. She noted that MLS is primarily complaint driven, and that normally it would not pursue a particular property without a complaint.
151. Various staff confirmed that MLS responds to complaints primarily but my investigator was informed that in some visible cases, such as graffiti, it may be more proactive.
152. Ms A sold the property in the spring of 2011, effectively suspending any further action against her with respect to this property.

5.14 MLS Operating Procedures

153. The MSO was asked if there were operational procedures he could have reviewed for technical guidance. He told my investigator that no operational policy or procedure exists, but he would refer to the Municipal Code for guidance.
154. The Municipal Code section on property standards was significantly amended in April 2008 with further amendments that year and again in 2009. The copy of the Code used by the MSO to support his enforcement activities predated those changes.³ The amendments to the Code in 2008 and 2009 set out different requirements and cover them comprehensively.
155. The MSO told my investigator that his reliance on the outdated Municipal Code explained the technical errors that appeared in Schedule 'A'.
156. MLS management indicated that meetings with staff take place to review relevant case law and legislative changes.

³ Item 7 of Appendix A contains the version of the Code relied on by the MSO when he prepared Schedule 'A' of the Complainant's Property Standards Order.

6.0 Policies and Procedures

6.1 Training

157. There is an operational procedure for communication and training of staff when new protocols, policies or by-laws are enacted, or when by-laws are amended. A staff member is assigned as a project lead to review the implementation of legislative changes. The individual reports to the Directors, who decide whether to hold centralized training or refer the matter to managers for local training.
158. All MSOs are required to take Ontario Association of Property Standards Officers' training prior to or at the beginning of their employment. The training is administered by MLS.
159. MLS also conducts in-house training. Its training manual contains a module on guards and handrails. It is dated May 2005, and contains the same information used by the MSO in preparing Schedule 'A'. The section on general property standards inspections is dated September 2005.
160. The module on note-taking is dated May 2009. Its focus is on ensuring that sufficient notes are taken to support successful prosecution. It cautions MSOs to only record the facts that are critical to prosecution.
161. There are new modules on client relations and conflict management that post-date the events of this case, both of which are dated April 2011.

7.0 Directive Regarding Ombudsman Investigation

162. On January 31, 2011, one working day after I notified the City Manager of my intent to investigate, the Executive Director of MLS sent an e-mail to the Etobicoke York District Manager, who forwarded it to the MSO and District Supervisors:

Let staff know that for any questions that are asked by the Ombudsman's staff, in any form (email, telephone etc.) I would like to know the question asked and the answer provided.

Please keep me in the loop every step of the way throughout this investigation.

163. When the e-mail was discovered, my staff re-interviewed the MSO, the Manager, the Supervisor, and the Executive Director. The first three acknowledged receipt of the directive and all initially denied responding to it. They also recalled being told about the confidentiality of the investigation and the caution against divulging the details of the interview with anyone. At first, the MSO and the Supervisor

both said that since they were only copied on the e-mail, they did not believe that the directive applied to them.

164. The Manager told my investigator that he forwarded the e-mail to the appropriate staff but did not follow up. He believed it was their responsibility to respond directly to the Executive Director.
165. The MSO informed my investigator that he took notes for his own purposes and kept them locked in his desk.
166. When the Executive Director was re-interviewed, he said that only the Supervisor responded to his directive. She sent him an e-mail setting out the questions asked and answers provided during the interview.
167. The Executive Director acknowledged the importance of confidentiality during the investigation process. He said he was interested in learning about the broader concerns raised by the complaint. The Executive Director explained, "I want to know specifically what the issues are, and what the answers are to those issues." He also acknowledged that the wording of the directive was inappropriate, and stated that it did not reflect his true intention.
168. In a further interview, the Supervisor corrected her initial evidence and told my investigator that she had provided the Executive Director with a summary of the interview.
169. The Supervisor states that she felt like she was between "a rock and a hard place." She understood my investigator's instructions to keep the contents of the interview confidential, but felt she had no other choice than to comply with the directive. She felt under "duress" given the circumstances.

8.0 Ombudsman Findings

8.1 Duty of Fairness

170. The job of an MSO is indisputably challenging. They are called upon to inspect private residences, and in doing so, often play a policing function in seeking compliance with the Municipal Code.
171. When MLS is unable to get voluntary compliance, it has the power to lay charges that ultimately may result in a court hearing.
172. With this function, comes an imperative for public accountability and trust. Both the process and decision-making must be transparent and fair.
173. A fair and effective mechanism for responding to property standard violations is crucial both to the integrity of MLS and to maintaining public confidence. It benefits residents, City employees and the public interest at large.

8.2 Failure to Communicate

174. Communications were unacceptable. MLS failed to convey critical information that could have helped the Complainant comply with the Order. This failure began with the MSO and went up the chain of command to the senior executive of MLS. Residents are entitled to a high standard of public service from their government along with respectful customer service
175. While the Director of Investigations eventually recognized the validity of the Complainant's allegations, this was only communicated to her ten months after she first raised the issue with MLS. The Director acknowledged that had Ms A received the requested information in a timely fashion, she could have corrected the violation much earlier.
176. For reasons which escape me, the MSO and the District Manager chose to provide her with the most rudimentary information and simply refused to be helpful. This is unacceptable and well short of the customer service standard the public is entitled to receive and the City expects its employees to deliver.
177. The MSO's reliance on the re-inspection fee to inform the Complainant of her non-compliance was inappropriate. If the MSO had concerns about the deck, he should have communicated this to her in a timely manner. His excuse that he did not have her contact information contradicts his earlier statement. When asked, he advised that he would use 411 if a resident's telephone number was not on file. In this instance, he inexplicably failed to follow his usual practice.
178. The continued insistence by MLS that it cannot "design" alterations or show a resident how to come into compliance misses the point. There is a significant difference between instructing on how repairs are to be carried out, and informing a resident in clear language as to how the structure in question is deficient. MLS failed on this count.
179. Repeatedly directing the Complainant to the Code in response to her questions was inappropriate. She was asking for clarification as to how she could come into compliance because her reading of the legislation differed from that of the MSO.
180. Instead of responding to her request in terms that could be more easily understood, MLS continued to insist that the solution she sought was set out in the Code, a 59 page document. The divide between requester and the respondent in this case, constitutes a complete communication breakdown. It is an example of bad public service.

8.3 Unreasonable Conduct

181. By taking no steps to communicate in a responsive or responsible way with the resident, the MSO failed to adequately meet her needs.

182. The MSO provided inaccurate and vague information to the Complainant. At times, he relied on outdated information and obsolete legislation.
183. The MSO's insistence that only the provisions of the Code could be used to communicate the extent of the Complainant's non-compliance was contrary to the approach articulated by senior management. MSOs are expected to use lay terms, explain deficiencies and tell residents in clear language what they must do to come into compliance. Providing the Complainant with relevant sections of the Code may in theory appear to be responsive but by any objective standard, this approach cannot be considered reasonable customer service.
184. Although I cannot conclude definitively whether the Complainant and the MSO spoke in 2009, I find her credible in the consistency with which she described the events from the outset.
185. Even if I were to accept the MSO's position that he did not speak to the Complainant until June 2010, his failure to communicate with her during this period is unprofessional and his conduct unacceptable.
186. While the MSO has the discretion to lay a charge, his decision to do so in this case is questionable, given that the Complainant was attempting to come into compliance and was actively seeking additional information that would allow her to do so.
187. The MSO should have been aware of that. He should have recognized that his approach was not working and adapted accordingly.
188. There was no reasonable justification for the clarity of the MSO's explanation of non-compliance to the Prosecutor and a complete absence of one to the Complainant.

8.4 Flawed Process: Content of Order

189. Schedule 'A' is difficult to understand and incorrect in places.
190. While Schedule 'A' may make sense to a licensed tradesperson, the intent is to inform the resident in language that is easily understood, as well as to provide a rationale for the City's decision to issue an Order. The Order, as written, failed on both counts. Further, the version of the Code used to reference the alleged contraventions was outdated. The citations used to illustrate non-compliance were wrong.
191. MLS has undertaken a review of its practices related to information provided in orders and notices. This came about as a result of an investigation I conducted in 2010, in which the City undertook to do a review and make necessary changes. It should be noted that this review began after the Order was issued to the Complainant in this investigation.

8.5 Lack of Training and Support

192. The training and ongoing professional development for the MSO was lacking.
193. MLS manuals and directives are out of date.
194. The MSO relied on an outdated Municipal Code and included incorrect information to prepare the Order. He was apparently unaware the Code had been amended more than once since April 2008. However, the fault is not his alone. Both his supervisor and the manager failed to catch the errors as well.
195. According to MLS, staff are supposed to be kept apprised of relevant case law and legislative changes through regular management meetings. In addition, the MLS operational procedure describes a process where a "project lead" is to review the implementation of legislative changes. The Directors then decide how the information will be disseminated to staff whether by local training through managers, or through centralized training.
196. Regardless of the process used by MLS, it must be consistent and rigorous in ensuring that its employees are kept up to date on developments within the law which could impact job performance.
197. There is a lack of understanding about the supervisor's role in reviewing prosecution files. The Supervisor in this case believed that her responsibility was administrative in nature, while the Director stated that the review was more comprehensive, and should include an examination of the entire file to determine whether a reasonable process was followed and whether laying a charge is appropriate under the circumstances.

8.6 Poor Record Keeping

198. In my most recent annual report, I recommended that the Toronto Public Service set standards for record keeping:

The Toronto Public Service set standards for record keeping-keeping in every area of its operation by 2011, and that these standards include guidelines...
199. The recommendation was based on our experience of investigating City complaints at the City. While poor record keeping spanned many areas of the Toronto Public Service, this is the second investigation of MLS where it appears as a significant deficiency.
200. My investigation revealed that MLS had a number of files related to this complaint, with no discernable order to them. Some had missing documents while others contained multiple copies of the same material.

201. Certain actions, such as conversations between MLS staff and the Complainant were not recorded anywhere. In those cases where a record existed, the information that was captured lacked sufficient detail.
202. When questioned on this issue, the District Manager suggested that given the workload of his office, not all contacts/conversations are recorded.
203. Best practice suggests that all contacts including telephone calls should be recorded contemporaneously, or as soon as possible thereafter. This becomes even more important when a complaint has been filed about poor service.
204. Deficient record keeping creates a variety of problems down the road. Memories fade over time. The lack of information makes it very difficult to determine what happened in subsequent reviews of an issue or event. Public service has an obligation to ensure high standards of service and good record keeping is no exception to that standard.

8.7 Management of the Complaint

205. MLS failed to respond appropriately to the complaint about the MSO's conduct.
206. The actions of the Manager were inadequate and contrary to MLS policy. He never investigated the resident's complaint and was dismissive in his attitude towards her.
207. No where in law or policy can the Manager's claim be supported that a prosecution would prevent him from reviewing a complaint about staff.
208. The Director acknowledged more could have been done, but failed to live up to his pledge to resolve the matter. The Director did not meet the service standards referenced in the MLS complaint protocol.
209. The Executive Director's response to the resident's complaint was also inadequate and contrary to MLS policy.

9.0 Actions of the Executive Director

210. The Executive Director stated that his intent was to understand the broader issues raised by the complaint. However it is the impact of his action that is at issue.
211. The directive issued to staff to report back to him on the contents of their interactions with my Office undermined the confidentiality provisions of my governing legislation and the integrity of my investigation.

212. He obtained the questions asked and responses given to my investigator from at least one of his employees. This despite the fact that he himself is a witness in my investigation, and was subsequently interviewed.
213. The Executive Director placed his employees in a very difficult position. They were either to be potentially insubordinate by not following his directive or to breach the Ombudsman's confidentiality provisions legislated by the *City of Toronto Act*.
214. The City Manager issued a memorandum on Ombudsman investigations, dated August 4, 2011, to Deputy City Managers and Division Heads. Among other requirements regarding the Ombudsman investigation process, the City Manager stated that:
 1. When employees are interviewed, they should not speak to others and should hold the information they divulge in confidence. This is important in keeping with the provisions of COTA.
 2. While managers should be very clear about the Ombudsman process and at liberty to enquire about that, we should not be asking our employees anything about the content of an investigation and what they may have said to Ombudsman staff.

10.0 Ombudsman Conclusions

215. Toronto Municipal Code Chapter 3, section 3-36 provides that the Ombudsman, in undertaking an investigation, shall have regard to whether the decision, recommendation, act or omission in question may have been:
 - A. Contrary to law;
 - B. Unreasonable, unjust, oppressive or improperly discriminatory;
 - C. Based wholly or partly on a mistake of law or fact;
 - D. Based on the improper exercise of a discretionary power; or
 - E. Wrong.
216. There are generally accepted definitions of these terms in both case law and the ombudsman field. I have considered those definitions in reaching my conclusions.
217. The treatment of Ms A by MLS was wrong. Its actions and omissions breached principles of procedural fairness and were unreasonable, pursuant to section 3-36 of the Toronto Municipal Code Chapter 3.
218. The Order was difficult to understand and failed to provide clear direction on how the Complainant could come into compliance. MLS continuously failed to

communicate with and provide the Complainant with the requisite information in a way that was easily understood. This failure went right up the chain of command.

219. The MSO made a mistake of law by relying on outdated legislation.
220. The training and supervision provided by MLS in this instance were ineffective and cursory. There is a lack of clarity about the role and expectations of the supervisor regarding the review of enforcement files that are sent for prosecution.
221. The failure to investigate the complaint in accordance with the complaint compliance protocol was a breach of MLS standards. The Manager dismissed the complaint on more than one occasion. He sent her back to the very person she was complaining about, unacceptable conduct on the part of any public servant.
222. The Director took a month to respond to the complaint, and did not reply to her thereafter. The Executive Director never responded to the Complainant despite the requirements of the standard to do so.
223. The Executive Director's instruction to staff was oppressive, in that it could be construed as heavy handed and an imposition of unreasonable conditions. The effect of his actions also contravened the spirit of my governing legislation.

11.0 Ombudsman Recommendations

224. In my MLS investigation, "A Duty to Care," which was completed after the events that led to this Complainant's prosecution, I made a number of recommendations pertaining to policies and procedures that also apply to this matter. Because the City accepted my recommendations in that investigation, I am confirming that the following will be implemented and reported in writing to my Office no later than September 30, 2011:
 - i) That MLS ensure its notices, orders and schedules provides clear and sufficient information in order that the recipient can understand its actions.
 - ii) That MLS develop a service standard to ensure that a resident is provided with clear, prompt and complete answers.
 - iii) That MLS follow its Complaint Compliance Protocol and that all managers are trained on its provisions.
225. Recommendations 1 to 12 are made in the public interest to address the systemic issues arising from this complaint. They are intended to put in place the

necessary policies, standards and processes to prevent a repetition of a similar event occurring to other residents in the future.

I recommend:

- (1) That MLS ensure employees are kept up-to-date and well trained on new and existing legislation, policies and procedures.
- (2) That MLS ensure all manuals and divisional policies are up to date, and reviewed annually to ensure their accuracy and relevance; and that the updating where required be completed by December 31, 2011.
- (3) That MLS' training unit ensure that recommendations 1 and 2 are implemented.
- (4) That MLS develop a service standard to ensure non-compliance is communicated to residents within two days of inspection.
- (5) That MLS develop a service standard to ensure files are thoroughly reviewed prior to a charge being laid.
- (6) That MLS ensure accurate and complete record keeping by its staff.
- (7) That MLS, in keeping with the Toronto Public Service's commitment to good customer service, ensure its customer service standard is applied by all staff and that timely professional communications take place with all residents.
- (8) That management and employees alike be held to account for their job duties, and performance managed according to City standards.
- (9) That management and employees who fail to meet these standards be counselled in a timely way and that performance feedback is provided according to the escalation process of the City's performance management system.
- (10) That the City Manager holds management and employees accountable to the requirements set out in his August 4, 2011 memorandum on Ombudsman investigations.
- (11) That all management and employees be appropriately counselled regarding their actions or inactions in this matter.
- (12) That MLS report in writing to the Ombudsman on the completion of these recommendations by the end of 2011.

Recommendations 13 to 15 relate to the individual aspects of this complaint.

- (13) That by September 30, 2011, the Executive Director of MLS provides the Complainant with a written apology for the actions and omissions noted in these investigation findings.
- (14) That by September 23, 2011, MLS consults with my Office on the draft of the apology prior to its issuance.
- (15) That the City reverses the re-inspection fees in view of the circumstances and findings of this investigation.

12.0 The City's Response

- 226. In accordance with section 172(2) of the *City of Toronto Act*, I notified the City of my findings and recommendations to provide it with an opportunity to make representations.
- 227. The City did not dispute my findings. With the exception of adjusting some deadlines, the City concurred with my recommendations.
- 228. In some instances, the City went further than my recommendations. For instance, where I recommended that a service standard be developed to ensure files are thoroughly reviewed prior to a charge being laid, MLS stated that it will also include a review of other enforcement options.
- 229. Upon receiving an Ombudsman's notice of intent to investigate, the City Manager has undertaken to remind staff of the provisions contained in the *City of Toronto Act* regarding Ombudsman confidentiality.
- 230. With respect to my recommendation that the City reverse re-inspection fees, I note that MLS has already begun that process with Revenue Services.

(Original signed)

Fiona Crean
Ombudsman
September 19, 2011

Appendix A – Relevant Legislation

1. Section 15.1 (3) of the *Building Code Act*, 1992 S.O. 1992, c.23 states that the council of a municipality may pass a by-law to prescribe standards for the maintenance and occupancy of property within the municipality, and require property that does not conform with the standards to be repaired.
2. The City's property standards are set out in section 629 of the Toronto Municipal Code. Section 629-4A of the Code states that:

No person shall use, occupy, permit the use or occupancy of, rent, or offer to rent, any property that does not conform with the standards prescribed in this chapter.

3. Section 15.2 (1) of the *Building Code Act* provides that,

Where a by-law under section 15.1 is in effect, an officer may, upon producing proper identification, enter upon the property at any reasonable time without a warrant for the purpose of inspecting the property to determine,

- (a) whether the property conforms with the standards prescribed in the by-law; or
- (b) whether an Order made under subsection (2) has been complied with.

4. The Order to install the guards and handrails was made pursuant to subsection (2), which states that,

An officer who finds that a property does not conform with any of the standards prescribed in a by-law passed under section 15.1 may make an Order,

- (a) stating the municipal address or the legal description of the property;
- (b) giving reasonable particulars of the repairs to be made or stating that the site is to be cleared of all buildings, structures, debris or refuse and left in a graded and levelled condition;
- (c) indicating the time for complying with the terms and conditions of the Order and giving notice that, if the repair or clearance is not carried out within that time, the municipality may carry out the repair or clearance at the owner's expense, and

(d) indicating the final date for giving notice of appeal from the Order.

5. Section 629-7 of the Toronto Municipal Code:

§ 629-7. Manner of making repairs.

A. All repairs shall be made in a good workmanlike manner with materials that are suitable and sufficient for the purpose and free from defects.

B. Without restricting the generality of Subsection A:

(1) The requirement that repairs be made in a “good workmanlike manner” includes:

(a) Ensuring that the component repaired can perform its intended function.

(b) Finishing the repair in a manner reasonably compatible in design and colour with adjoining decorative finishing materials.

(2) The requirement that repairs be made with “materials that are suitable and sufficient for the purpose” includes a requirement for materials reasonably compatible in design and colour with adjoining decorative finishing materials.

6. Section 629-19 of the *Toronto Municipal Code* sets out the requirements for guards and handrails. The relevant sections follow:

§ 629-19. Stairs, guards, handrails and other structures.

A. All stairs, verandas, porches, decks, loading docks, ramps, balconies, fire escapes and other similar structures and all treads, risers, guards, handrails, supporting structural members or other appurtenances attached to them shall be maintained free from defects and hazards, capable of supporting all loads to which they may be subjected, and in a safe, clean, sanitary condition and in good repair.

C. Guards, for all buildings of three or fewer storeys in building height, having a building area not exceeding 600 square metres and used for residential occupancies, business and personal services occupancies, mercantile occupancies or medium and low-industrial occupancies shall be installed and maintained to comply with the following:

[Amended 2008-04-29 by By-law No. 349-2008; 2008-09-25 by Bylaw No. 983-2008; 16 2009-10-01 by By-law No. 932-200917]

(1) Required guards.

- (a) Except as provided in Subsection C(1)(b) and (c), every surface to which access is provided for other than maintenance purposes, including but not limited to flights of steps and ramps, exterior landings, porches, balconies, mezzanines, galleries and raised walkways, shall be protected by a guard on each side that is not protected by a wall for the length where:
 - [1] There is a difference in elevation of more than 600 millimetres between the walking surface and the adjacent surface; or
 - [2] The adjacent surface within 1.2 metres from the walking surface has a slope of more than one vertical to two horizontal.
- (b) Guards are not required:
 - [1] At loading docks;
 - [2] At floor pits in repair garages; or
 - [3] Where access is provided for maintenance purposes only.

(2) Height of guards.

- (a) Except as provided in Subsection C(2)(b) to (d), all guards shall be not less than 1,070 millimetres high.
- (b) All guards within dwelling units shall be not less than 900 millimetres high.
- (c) Exterior guards serving not more than one dwelling unit shall be not less than 900 millimetres high where the walking surface served by the guard is not more than 1,800 millimetres above the finished ground level.
- (d) Guards for flights of steps, except in required exit stairs, shall be not less than 900 millimetres high.
- (e) The height of guards for flights of steps shall be measured vertically from a line drawn through the leading edge of the treads served by the guard.

(4) Openings in guards.

- (a) Except as provided in Subsection C(4)(b), openings through any guard that is required by Subsection C(1) shall be of a size that will prevent the passage of a spherical object having a diameter of 100 millimetres unless it can be shown that the location and size of openings that exceed this limit do not represent a hazard.
- (b) Openings through any guard that is required by Subsection C(4), and that is installed in a building of industrial occupancy, shall be of a size that will prevent the passage of a spherical object having a diameter of 200 millimetres unless it can be shown that the location and size of such openings that exceed this limit do not represent a hazard.
- (c) Unless it can be shown that the location and size of openings that do not comply with the following limits do not represent a hazard, openings through any guard that is not required by Subsection C(1), and that serves a building of other than industrial occupancy, shall be of a size that:
 - [1] Will prevent the passage of a spherical object having a diameter of 100 millimetres; or
 - [2] Will permit the passage of a spherical object having a diameter of 200 millimetres.

(5) Climbing prevention in guard design.

- (a) Guards required by Subsection C(1), except those in industrial occupancies and where it can be shown that the location and size of openings do not represent a hazard, shall be designed so that no member, attachment or opening will facilitate climbing.
- (b) Guards shall be deemed to comply with Subsection C(5)(a) where any elements protruding from the vertical and located within the area between 140 millimetres and 900 millimetres above the floor or walking surface protected by the guard:
 - [1] Are located more than 450 millimetres horizontally and vertically from each other;
 - [2] Provide not more than 15 millimetres horizontal offset;
 - [3] Do not provide a toe-space more than 45 millimetres horizontally and 20 millimetres vertically; or

[4] Present more than a slope of one vertical to two horizontal slope on the offset.

E. Handrails for all buildings of three or fewer storeys in building height, having a building area not exceeding 600 square metres and used for residential occupancies, business and personal services occupancies, mercantile occupancies or medium and low-industrial occupancies shall be installed and maintained in accordance with the following:

[Added 2008-04-29 by By-law No. 349-2008; amended 2009-10-01 by By-law No. 932-200920]

(1) Required handrails.

(a) Except as permitted in Subsection E(1)(b) and (c), a handrail shall be provided:

- [1] On at least one side of stairs or ramps less than 1,100 millimetres in width;
- [2] On two sides of curved stairs or ramps of any width, except curved stairs within dwelling units; and
- [3] On two sides of stairs or ramps 1,100 millimetres in width or greater.

(b) Handrails are not required for:

- [1] Interior stairs having not more than two risers and serving a single dwelling unit;
- [2] Exterior stairs having not more than three risers and serving a single dwelling unit;
- [3] Ramps with a slope of not less than a slope of one vertical to 12 horizontal; or
- [4] Ramps rising not more than 400 millimetres.

(c) Only one handrail is required on exterior stairs having more than three risers if the stairs serve a single dwelling unit.

(2) Continuity of handrails.

(a) Except as provided in Subsection E(2)(b), at least one required handrail shall be continuous throughout the length of the stair or ramp, including landings, except where interrupted by:

- [1] Doorways; or
- [2] Newel posts at changes in direction.

(b) For stairs or ramps serving a single dwelling unit, at least one handrail shall be continuous throughout the length of the stair or ramp, except where interrupted by:

- [1] Doorways;
- [2] Landings; or
- [3] Newel posts at changes in direction.

(3) Termination of handrails.

(a) Handrails shall be terminated in a manner that will not obstruct pedestrian travel or create a hazard.

(b) Except for stairs and ramps serving a single dwelling unit, at least one handrail at the sides of a stair or ramp shall extend horizontally not less than 300 millimetres beyond the top and bottom of each stair or ramp.

7. The following are the relevant sections from the version of the Municipal Code relied upon when the MSO prepared the Complainant's Order:

§ 629-19. Stairs, guards, handrails and other structures.

A. All stairs, verandas, porches, decks, loading docks, ramps, balconies, fire escapes and other similar structures and all treads, risers, guards, handrails, supporting structural members or other appurtenances attached to them shall be maintained free from defects and hazards, capable of supporting all loads to which they may be subjected, and in a safe, clean, sanitary condition and in good repair.

C. All required guards and handrails shall be installed in accordance with and maintained to comply with the Ontario Building Code.