

**BUILDING CODE COMMISSION**

**IN THE MATTER OF** Subsection 24 (1) of the Building Code Act, 1992.

**AND IN THE MATTER OF** Sentence 3.3.1.17.(1) of Regulation 403, as amended by O. Reg. 22/98, 102/98, 122/98, 152/99, 278/99, 593/99, 597/99 and 205/00 (the "Ontario Building Code").

**AND IN THE MATTER OF** an application by Mr. Joe DiCosimo, owner, 876891 Ontario Limited, Niagara Falls, Ontario, for the resolution of a dispute with Mr. Mel Brown, Chief Building Official, City of Niagara Falls, Ontario, to determine whether the as-installed guard, surrounding a 3<sup>rd</sup> floor opening, and being 15 to 30 mm lower in height than the required 1,070 mm, provides sufficiency of compliance with Sentence 3.3.1.17.(1) of the Ontario Building Code at the Hilton Niagara, 6361 Buchanan Avenue, Niagara Falls, Ontario.

<b>APPLICANT</b>	Mr. Joe DiCosimo, owner 876891 Ontario Limited Niagara Falls, Ontario
<b>RESPONDENT</b>	Mr. Mel Brown Chief Building Official City of Niagara Falls
<b>PANEL</b>	Mr. Len King, Chair (Designate) Mr. John Guthrie Mr. Donald Pratt
<b>PLACE</b>	Toronto, Ontario
<b>DATE OF HEARING</b>	August 30, 2001
<b>DATE OF RULING</b>	August 30, 2001
<b>APPEARANCES</b>	Mr. Chris Hawkswell Niacon Ltd. Niagara Falls, Ontario <b>Agent for the Applicant</b>
	Mr. Robert Romanuk Building & Inspections Coordinator City of Niagara Falls <b>Designate for the Respondent</b>

## **RULING**

### **1. The Applicant**

Joe DiCosimo, owner, 876891 Ontario Ltd., Niagara Falls, Ontario, has received a building permit under the Building Code Act, 1992 and has undertaken renovations at the Hilton Niagara, 6361 Buchanan Avenue, Niagara Falls, Ontario.

### **2. Description of Construction**

The Hilton Niagara is a 33 storey hotel having a building area of 5,172 m<sup>2</sup>. The use is classified as a Group C major occupancy and the building is equipped with fire alarm, sprinkler and standpipe and hose systems.

The Applicant has recently undertaken renovations to the structure which includes the construction of an interconnected floor area. The construction in dispute involves the height of the guard that has been installed in this area. The guard has been installed on the third floor of the building and the distance between floor levels is 6.5 m. The third floor primarily houses meeting room facilities and there are no guest suites on this level.

The disputed guard that has been constructed is comprised of a handmade glass rail atop a tempered glass balustrade. The handrail is secured to the balustrade with an epoxy. The guard runs around the third floor mezzanine area and proceeds down a grand stair to the first floor lobby. The height of the subject guard ranges between 1,040 mm and 1,055 mm above the finished floor.

### **3. Dispute**

The issue at dispute between the Applicant and Respondent is whether the subject guard, constructed approximately 15 mm to 30 mm less than the required 1,070 mm height, provides sufficiency of compliance with Sentence 3.3.1.17.(1) of the Ontario Building Code.

The Code requirements in Sentence 3.3.1.17.(1) provide that, with the exception of certain circumstances not applicable here, a guard of not less than 1,070 mm will be provided at each raised floor, mezzanine balcony, etc., where the difference in floor level is more than 600 mm.

In this instance, the third floor opening requires that a guard be provided as the difference in floor levels is 6.5 m. The height of the guard is mandated by the Code at 1,070 mm. However, a guard ranging from 1,040 mm to 1,055 mm has been provided at this level.

### **4. Provisions of the Ontario Building Code**

#### **3.3.1.17. Guards**

- (1) Except for the front edges of *stages*, floor pits in repair garages and loading docks, a *guard* not less than 1 070 mm (3 ft 6 in) high shall be provided
  - (a) around each roof to which access is provided for other than maintenance,
  - (b) at openings into smoke shafts referred to in Subsection 3.2.6. that are

- less than 1 070 mm  
(3 ft 6 in) above the floor, and
- (c) at each raised floor, *mezzanine*, balcony, gallery, interior or exterior vehicular ramp, and at other locations where the difference in level is more than 600 mm (23 1/8 in).

## **5. Applicant's Position**

The Agent for the Applicant submitted that the handrail and associated glass balustrade are considered a major architectural feature of the mezzanine at the third level of the hotel. The architectural drawings submitted in connection with this application specified a guard that would have met the Building Code height requirement. Unfortunately, the guard was installed at a height less than what was intended. This discrepancy was not identified until the guard was almost completed.

The Agent advised that, because of the material used in the installation of the guard, it would be virtually impossible to remove the handrail from the glass guard. The rail itself is a handmade, blown glass feature that has been secured to the glass guard with a potent epoxy. The guard assembly was an expensive item to install and would be equally expensive to redo at this point. The Agent advised that he had considered options that would achieve compliance but, to change the handrail, or add height to it in some way, would take away from the "clean line" of the feature. Alternatives that had been explored were not aesthetically pleasing. The Agent suggested that the existing guard height represents only a slight variation from the Code requirement. He requested that the Commission consider making a ruling of sufficiency of compliance in this regard in light of this marginal difference.

The Agent and the Applicants architect were of the opinion that the discrepancy in guard height would pose no added danger to any person using the third floor area. They submitted that the height requirement in the Code was calculated to approximate the waist height of an average adult with the intent of this provision being to prevent a fall. The existing guard, varying only slightly from the requirement, meets the intent of the OBC in this regard. Safety, it was argued, would not be compromised with a shortfall of approximately one inch.

## **6. Respondent's Position**

The Respondent submitted that, upon inspection of the floor area, it was discovered that the height of the guard did not meet the Code requirement of 1,070 mm. He is not especially concerned by the difference in height but his hands are tied by the Code provisions. He recognized that it was the Applicant's intent to have a Code compliant guard and that an error occurred in the execution of the architectural drawings. He reiterated, however, that anything less than 1,070 mm did not comply with the strict wording of the Building Code and, therefore, could not be approved by the municipality.

**7. Commission Ruling**

It is the decision of the Building Code Commission that the as-installed guard, surrounding a 3<sup>rd</sup> floor opening, and being 15 to 30 mm lower in height than the required 1,070 mm, provides sufficiency of compliance with Sentence 3.3.1.17.(1) of the Ontario Building Code at the Hilton Niagara, 6361 Buchanan Avenue, Niagara Falls, Ontario.

**8. Reasons**

- i) The height of the existing railing is only slightly lower than the required guard height.
- ii) This is an as built condition that occurred as a result of an execution error by the installer.
- iii) It would be difficult to remedy the situation at this stage of construction. The guard is not easily disassembled and replaced.

Dated at Toronto this **30th** day in the month of **August** in the year **2001** for application number **2001-47**.

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Mr. Len King, Vice-Chair

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Mr. John Guthrie

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Mr. Donald Pratt