

October 27, 2023

The Honorable Paul Calandra
Minister of Municipal Affairs and Housing
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We, the undersigned 52 organizations dedicated to wildlife conservation, environmental protection and sustainable architecture, are seeking your support to protect Ontario's environment from imminent harms caused by outdated building construction practices. We urge you to pass the Bill introduced by MPP Chris Glover from Spadina Fort-York on October 30th, 2023 and update the Ontario Building Code to incorporate the [CSA A460:19 Bird Friendly Building Design standard](#).

Over the past few years, FLAP Canada and environmental organizations have repeatedly attempted to engage with the Government of Ontario about bird-window collisions and the need to implement bird safe building design. In April, 2022 our community sent [a letter to the Ministry of Environment, Conservation and Parks](#) with signatures of 29 of Members of Provincial Parliament. In August, 2022 we delivered an [unanswered petition](#) with over 20,000 signatures to the Ministry of Municipal Affairs and Housing. In May, 2023 [we received support](#) for updating the Ontario Building Code from leaders of Ontario's New Democrat, Liberal and Green Parties. In July 2023 we met and consulted with staff from the National Research Council overseeing the National Building Code of Canada about implementing the CSA A460:19 standard. It is clear that this issue is not going away, and our supporters will not rest until the government takes action.

Ontario's bird populations are plummeting due to unmitigated human threats

Each year millions of wild birds die in Ontario by colliding with windows on buildings, representing a leading cause of bird deaths. Populations of many bird species that migrate through Ontario annually are now in steep decline, and continued losses will have a significant negative economic impact in terms of [the value of ecosystem services](#) those birds would otherwise provide over their uninterrupted lifespans. From spreading seeds over landscapes ravaged by wildfires, to limiting populations of pest insects, to supporting extensive ecotourism and bird feeding industries, birds benefit humans throughout their international home ranges. Unless the Government of Ontario takes meaningful actions to address leading conservation threats, an increasing number of irreplaceable bird [Species at Risk](#) could disappear from Ontario in the future. FLAP has documented window collisions in Ontario involving 176 bird species, including 24 Species at Risk.

Building construction is accelerating across Ontario, yet in most municipalities developers continue to use materials that are lethal to birds. There are simple, affordable methods to help mitigate bird-window collisions at new and existing buildings. Most collisions occur during the day when birds mistake reflections on glass for vegetation and try to fly towards it. To help birds see and avoid colliding with glass, bird safe materials (e.g., fritted glass, window films) can be incorporated into the facade design of new construction. These materials represent minimal additional cost to the construction of new buildings and can be easily incorporated in retrofits of existing buildings (e.g., window replacements). Bird safe design does not delay or impede building construction in any way. It is not "red tape" and it does not negatively impact property value. The Ontario Association of Architects (OAA), as the regulatory body responsible for registering and licensing all practicing architects in Ontario, [supports incorporating bird-safe design into Ontario's Building Code](#).

Ontario's Building Code is necessary for regulating construction safety standards

In general, the purpose of the Ontario Building Code is to set minimum standards for construction to minimize risks to the health and safety of building occupants. Objectives of the Code also include “*to limit the probability that, as a result of the design, construction or operation of a building, the natural environment will be exposed to an unacceptable risk of degradation.*” ([Section 2.2.1.1 \(1\) 6.](#)) Construction regulations have yet to be updated in response to worsening effects of climate change on people and the environment, to reflect current understanding of how to design healthier, safer buildings. In 2019, the Government of Ontario sponsored the development of the Bird Friendly Building Design ([CSA A460:19](#)) by the Canadian Standards Association. Today, site plan control by-laws in a growing number of Ontario municipalities require new building construction to comply with A460:19. However, slowly implementing bird safety at the level of individual municipalities provides limited protection, while immediate actions are needed to conserve migratory birds province-wide. Bird safe design can only be applied in construction of residences through the Building Code, which is important because single family dwellings are the most numerous type of building and thus, combined, kill the most birds. From a planning and technical standpoint, building design requirements should be consistent across municipal jurisdictions to make approvals easier and limit risk of errors. New buildings will not be properly inspected for compliance with a standard post-construction unless the standard is in the Building Code.

Ontario's government is repeating misinformation

The Ontario Ministry of Municipal Affairs and Housing [has claimed](#) that bird friendly design must be implemented by the Canadian federal government, rather than first in Ontario, because there is a pending update to Canada's National Building Code that is expected to harmonize the Provincial and Territorial Building Codes. In meeting with the National Research Council that oversees the harmonization process, they confirmed *the Ontario government's claim is not true*: Provinces and Territories can and indeed still do continue to update their own respective Codes, and there is no reason why harmonization would inhibit changes to Ontario's Code. Through the Canadian Board for Harmonized Construction Codes, representatives of Provinces and Territories play key decision-making roles. [It is ultimately up to Provinces and Territories](#) to regulate construction and implement any changes that are made to the National Building Code, which serves only as a model. After the National Building Code harmonization is complete, Provinces and Territories must then choose to adopt and implement portions or all of the National Building Code in new regulations.

Operators of buildings killing birds could face litigation

In 2022 the Government of Canada [updated the Migratory Bird Regulations](#) to clarify prohibitions on incidental take (killing of migratory birds). It is illegal for building owners and operators to kill migratory birds through collisions with windows, intentionally or accidentally. If subject to a complaint, operators may face litigation unless they can show due diligence to mitigate the problem. Retrofitting an existing building that is killing birds, or else facing litigation, would be significantly more expensive versus simply designing the building to be safe for birds in the first place.

It is important to note that building window reflections that kill birds have been interpreted by the courts as a form of environmental pollution emitted by buildings that is prohibited under Ontario Provincial law. Subsection 14(1) of the [Environmental Protection Act, R.S.O. 1990, c. E.19](#) states that it is illegal to discharge a contaminant into the natural environment if the discharge causes or may cause an adverse effect. In [Podolsky v. Cadillac Fairview \(2013\)](#) the Ontario Superior Court of Justice ruled that buildings reflecting light (radiation) from glass that result in the deaths of birds, constitutes an offense under the Act. Indeed, reflective glazing on buildings affects not only birds, but also other wildlife and vegetation in the surrounding environment as well as human health and safety. For instance, bright sunlight can be concentrated in reflections off Low-E glass windows resulting in extreme heat being applied to adjacent surfaces, with potential to cause fires, property damage and injury. This [well-documented](#) form of environmental degradation caused by building windows has been addressed by construction codes in other regions, but not in Ontario.

Migratory birds are ecologically, culturally and economically essential throughout their ranges, extending beyond Ontario's borders. We cannot afford to continue growing the threats that endanger migratory birds in our province. We look forward to cooperation from the Ministry of Municipal Affairs and Housing in helping to conserve birds and sustain a healthy environment for future generations.

We, the undersigned, urge the Ministry of Municipal Affairs and Housing to incorporate the CSA 2019 A460:19 Bird Friendly Building Design standard into the Ontario Building Code immediately, to effectively require bird safe construction materials to be used in all new single-family residential and commercial building windows.

FLAP Canada	Ontario Field Ornithologists
Nature Canada	Ontario Wildlife Rescue Centers
Environmental Defence Canada	Ontariogreen Conservation Association
The David Suzuki Foundation	Open Sky Raptor Foundation
Animal Alliance of Canada	Owen Sound Field Naturalists
Animal Protection Party of Canada	Parry Sound Nature Club
Avian Rehabilitation Centre	Pelee Island Bird Observatory
Bert Miller Nature Club	Prince Edward County Field Naturalists
Biodiversity and Climate Action Collective Niagara	ProtectNatureTO
Bird Friendly Toronto	rare Charitable Research Reserve
Bird Friendly Hamilton Burlington	Rideau Valley Wildlife Sanctuary
Bird Friendly London	Safe Wings Ottawa
Bruce Peninsula Bird Observatory	Sault Ste. Marie Naturalists of Ontario and Michigan
Destined to Fly	Shades of Hope Wildlife Refuge
Friends of Carlington Woods	Six Nations Wildlife and Stewardship Office
Friends of Hampton Park	Skunk Haven of Dragon's Lair Wildlife Centre
Friends of Salmon River	Society of Canadian Ornithologists - Société des Ornithologistes du Canada
Fur-Ever Wild Rehabilitation	Stratford Field Naturalists
High Park Nature	Toronto Field Naturalists
Hobbitstee Wildlife Refuge	Toronto Wildlife Centre
Lennox & Addington Stewardship Council	Wayward Paws Wildlife Rescue
London Environmental Network	Wilderness Committee Ontario Office
Midland-Penetanguishene Field Naturalists	Wingsong Wildlife Preservation Alliance
My Wildlife Rescue	Woodlands Wildlife Sanctuary
Never Collide	York Region Environmental Alliance
Niagara Falls Nature Club	York Simcoe Naturalists