

## Defining the Home Inspection Industry Standard

The building blocks of Canada's home inspection work for inspection of conditions for residential properties are National Occupational Standards (NOS). National Occupational Standards are updated approximately every 5 years to ensure they continue to reflect emerging areas in an ever-changing work environment.

**National Occupational Standards** identify the competencies that home inspection practitioners need to perform successfully in a particular occupation. They consist of a set of statements describing the required skills, knowledge and abilities for different areas of practice. NOS serve as the benchmarks against which practitioners can measure their level of performance. Unfortunately there is a big disconnect as the National Occupation Standards provide a more extensive listing of the required skills and knowledge that in fact supersede the established Standards Of Practice (SOP).

Most professional organizations endorse standards of practice which contain general performance guidelines only. The recently approved 2014 version of the NHICC NOS were developed through extensive input from a much larger and diverse base of professionals in the field over the past year.

Currently in Canada there are currently at least four different Standards of Practice – such as the ASHI Standards of Practice, CAHPI National Standards, InterNACHI Standards of Practice and derivatives of the main three. Historically the ASHI Standards is noted as the longest and most referenced “standard” from which others have evolved. Credit is due to the ASHI Standards. It is reviewed and maintained on a regular basis. The ASHI Standard latest edition was officially endorsed in 2013.

**Standard of Practice** – A “standard” is defined as the minimum acceptable level of performance against which actual performance is compared. The SOP provides a general list of what the inspector will perform and also identifies what the inspector will not do. The essence of the ASHI Standard is section 2.2 – it requires the inspector to identify “significant” defects, safety hazards, things that are old and requires that the inspector tell the client what to do about them.

(From the ASHI Standards) The *inspector shall*:

**A.** *inspect readily accessible, visually observable, installed systems and components* listed in this Standard.

**B.** provide the client with a written report, using a format and medium selected by the *inspector*, that states:

1. those *systems and components* inspected that, in the professional judgment of the *inspector*, are not functioning properly, significantly deficient, *unsafe*, or are near the end of their service lives,
2. recommendations to correct, or monitor for future correction, the deficiencies reported in 2.2.B.1, or items needing *further evaluation* (Per Exclusion 13.2.A.5 the *inspector* is NOT required to determine methods, materials, or costs of corrections.),
3. reasoning or explanation as to the nature of the deficiencies reported in 2.2.B.1, that are not self-evident,

4. those *systems* and *components* designated for inspection in this Standard that were present at the time of the *home inspection* but were not inspected and the reason(s) they were not inspected.

C. adhere to the ASHI® Code of Ethics for the Home Inspection Profession.

In other words the SOP defines the minimum standard to which a home inspector must provide for their client. The Standard of Practice can provide a minimum standard of protection to consumers.

**Standard of care** refers to the degree of attentiveness, caution and prudence that a reasonable person in the circumstances would exercise. Standards for professionals are established by practice of similar professionals in their community.

Another issue that commonly occurs is failure of the inspector and/or association to keep up with current relevancy in the occupation. Let's face it changes take place in the industry. One example includes use and reference to an outdated SOP from 2000. Although there's some value in adherence to a formerly acceptable SOP, it can also become a weakness if an inspector is legally challenged. As an example the ASHI SOP was update in 2006 and again in 2013. Changes in government regulations, home construction technology, and home inspection practices require updating the SOP so it will stay relevant and useful. The independent U.S. based Examining Board of Professional Home Inspectors (EBPHI) periodically conducts a Roll Delineation Study which asks home inspectors throughout the county about how they perform their inspections. This study confirms that updating the SOP is necessary. The Committee examined every SOP section, received public feedback on a preliminary draft, and agreed to the proposed improvements and recently published ASHI SOP.

One more recent Canadian national standard notes specifically that its' SOP is intended "**to ensure better public protection**". This in itself provides a false sense of confidence based on the fact that the SOP falls short in maintaining even the outdated 2000 or even 2006 ASHI version of the SOP. After comparison and close examination there are a number of deficiencies, which fail to meet a minimum standard of care that is less than the competencies defined in the National Occupational Standards for Home Inspectors. So in reality how does it really **ensure** better public protection?

The obvious solution is to revert to the time tested current ASHI SOP wording or to completely revise their SOP to ensure compliance. The standard of care is only what other normally competent home inspectors actually did in the same or similar circumstances. So what are the risks in inspecting to a lower standard?

As one point of comparison, in one part of the SOP, it requires attached garages to be inspected while it specifies that "detached" garages are excluded. One needs to question – why? What is the rationale to support the exclusion? One inspector inspects to the CAHPI SOP, while the other inspects to the ASHI SOP that includes detached garages and carports. I would suspect that most consumers would consider the reduction in service as generally an oversight. But more so shouldn't they expect that the inspection conditions such as inspection of the detached garage and/or carport is part of a normal real estate property transaction?

The new ASHI SOP includes installed ovens, ranges, surface cooking appliances, microwave ovens, dishwashing machines, and food waste grinders to be inspected by using normal operating controls to activate the primary function. Now a days kitchen appliances are commonly included as part of a real estate transaction. Once again indicating the minimum benchmark has moved higher.

**The courts in Canada have commented** to the following inspection agreement – *“Inspector will conduct a visual inspection of the Property only. The inspection is performed in accordance with the Standards of Practice of the Canadian Association of Home and Property Inspectors as licensed from the American Society of Home Inspectors (ASHI) and in accordance with any applicable State or Provincial specific standards.”* - Court File No. SC-09-129-00

The formulation of the scope and standard of care owed in the case of a home inspection performed in accordance with the Standards of Practice, enunciated by Justice Gillese in Biggs v. Harris, was adopted in the more recent case of Gesner v. Ernst 2007 NSSC 146, a decision of D.K. Smith A.C.J.S.C. Justice Smith stated it, at para. 129, as follows:

*“An inspector must meet the standard of care that would be expected of an ordinary, reasonable and prudent home inspector in the same circumstances. When considering the standard of care owed by [an inspector] the court can take into account the standards of any relevant professional association relating to home inspectors. In addition, the court should consider the cost of the inspection and the known level of expertise of the inspector.”* - COURT FILE NO.: C-456-09

In a large settlement court case against a home inspector in British Columbia Canada a judge stated: *“The purpose of obtaining an inspection is to provide a lay purchaser with expert advice about any substantial deficiencies or, as is set out in the Standards, any [significantly deficient] problem relating to systems or components that can be discerned upon a visual inspection [deficiencies of the type or magnitude that reasonably can be expected to have some bearing upon the decision-making process of a purchaser regarding whether they will purchase the property or upon which they will renegotiate the price. An inspector invites reliance by the very nature of the advice that is given.”* - Salgado v. Toth, 2009 BCSC 1515

**Regarding negligence** – *“To avoid liability in negligence, a professional must exercise the standard of care that would be expected of a reasonable and prudent professional in the same circumstances. This general standard, a question of law, will not vary between cases and there is no need for it to be established through the use of expert evidence.”* - Krawchuk, supra

**From a personal point of view** the courts consider that a home inspector must report patent conditions that are material to the client’s decisions or welfare, which they recognize or ought to recognize regardless if it is in the SOP when inspecting a home. So it is often found that the courts set a higher “standard”, thus a weaker standard would generally fail compliance with the Standards of Practice and may not prove to be a practical defense. The real issue is what the average competent inspector does when applying the Standards of Practice. Perhaps if all home inspectors can agree to working to the same set of Standards that would be better for both consumers and for home inspectors.

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