

Ontario Association of Heritage Professionals (OAHP) Response to Bill 108 and Proposed Amendments to the Ontario Heritage Act (OHA)

Introduction

The Ontario Association of Heritage Professionals (OAHP) is the Ontario chapter of the Canadian Association of Heritage Professionals (CAHP). OAHP represents over 500 professional members in the fields of land use planning, architecture, conservation, trades, landscape architecture, history, engineering and archaeology. OAHP members work in the private, public and not-for-profit sectors. OAHP's private sector professionals work for municipalities, provincial ministries and agencies, developers and private property owners. Many of our members also work as trainers and educators at post-secondary institutions. On a daily basis, OAHP members work on the identification and conservation of properties of local, provincial and national significance.

CAHP has defined a Heritage Professional as, "a person who has specialized knowledge in the conservation and stewardship of cultural heritage and is supported by formal training and/or work experience. The Professional conforms to accepted technical and ethical standards and works in accordance with the regulations and guidelines of their specialty heritage fields and jurisdictions of practice." CAHP members follow a code of conduct and ethics established by the Association to ensure the interests of our clients and the public are served during the course of our work.

The following comments regarding the proposed amendments to the Ontario Heritage Act are based on direct feedback from our membership. In general, our members expressed concern about the consultation process and the rationale for these extensive changes. As the proposed amendments substantially alter the course of heritage conservation in Ontario and in the absence of supporting documents such as regulations and guidelines, OAHP requests that:

- the commenting period be extended to allow for consultation with a wider span of stakeholders and with the intent of seeking consensus on the desired outcomes of the proposed amendments.

In addition, OAHP requests to be a stakeholder and consulted on all forthcoming guidelines and regulations.

Proposed Amendments to the Ontario Heritage Act

1. Provincial Direction

- Require the council of a municipality to consider any principles that may be prescribed by regulation when exercising decision making under prescribed provisions of Parts IV or V of the OHA.

OAHP Comment & Recommendation

The Ontario Heritage Act enables municipalities to identify and conserve properties of cultural heritage value or interest to their community. It is unclear how or why provincial direction or policy is required to facilitate this process, and further, how provincial direction would support the identification cultural heritage values and attributes for places that matter to local communities. The MTCS anticipated outcome for this proposed change is to “facilitate a more consistent approach to municipal decision making under the OHA.” OAHP members routinely support municipalities in the research, evaluation and identification of individual properties of heritage value or interest as well as heritage conservation districts. This process is based on a combination of thorough research, site investigation and our professional experience with similar properties/districts. It is informed by national and international charters and conventions for heritage conservation. This process is not informed by, nor should it be informed by provincial policy. As a result, OAHP recommends:

- removing the forthcoming regulation and replacing it with a guidance document based on best practice including Parks Canada, *Standards & Guidelines for the Conservation of Historic Places in Canada* and the Burra Charter.

2. "Listing" on the Register

- Require a municipality to provide notice to a property owner within 30 days after their property has been "listed" on the register.
- Provide a right of objection to the municipality by the property owner.
- Provide improved guidance to municipalities on “listing” best practices to support implementation.

OAHP Comment & Recommendation

In many municipalities, notifying property owners of the listing of non-designated properties under Section 27 of the Ontario Heritage Act is already employed. The proposed amendments offer an open-ended objection period that could result in multiple objections over time by successive owners. As a result, OAHP recommends:

- introducing a time limit on the property owner’s ability to object to the listing of a non-designated property on a municipal Register to thirty (30) days following notification.
- the listing and objection processes be set out through guidance documents, not through regulation.

3. Designation by-laws

- Require designation by-laws to comply with requirements prescribed by regulation, including requirements related to describing the cultural heritage value or interest of the property and its heritage attributes.

OAHP Comment & Recommendation

An objective for designation by-laws should be to identify the heritage values and attributes of a property in sufficient detail so that future conservation decisions can be made. This is best achieved when the attributes are explicitly connected to their respective values. As a result, OAHP recommends:

- Basing the forthcoming regulation on best practice in Canada including:
 - Canadian Register of Historic Places - Writing Statements of Significance
https://www.historicplaces.ca/media/21054/sos_guide_final_e_new_design.pdf
 - A Guide to Working with the Federal Heritage Buildings Review Office
https://www.historicplaces.ca/media/7313/fhbro_manual_parks%20canada.pdf

4. Timelines for Designation under Part IV

- New 90-day time limit for a municipality to issue a notice of intention (NOI) to designate, where certain events have occurred on the property (by regulation, these are anticipated to include certain applications under the Planning Act), subject to limited exceptions as prescribed by regulation.
- New 120-day time limit for a municipality to pass a designation by-law after issuing a NOI, subject to limited exceptions as prescribed by regulation.

OAHP Comment & Recommendation

Many municipalities prefer to designate a property through the planning and development process and requiring the designation of a property within 90-days of a “prescribed event” may limit a municipal council’s ability to protect a property of cultural heritage value or interest as it is considered through the planning and development process. However, the potential implications arising from this proposed amendment are unknown as the “prescribed events” have not been determined. As a result, OAHP recommends:

- heritage stakeholders including municipalities, public and private sector heritage planners and OAHP be consulted in the drafting of the regulation with the intent of reaching a consensus.

5. Streamlined Appeals

- New right of appeal to the local Planning Appeal Tribunal (LPAT) from final decisions related to designation by-laws passed by a municipality, as well as from final municipal decisions on applications for alteration under Part IV.
- For designation by-law related decisions - Conservation Review Board (CRB) preliminary objection process to be replaced with a 30 day period to object to the municipality before a final decision is made (e.g, 30 days after a NOI is issued).

OAHP Comment & Recommendations

Currently, the OHA allows any person to object to an intention to designate a property. A municipal council may refer to this matter to the Conservation Review Board (CRB) which makes a non-binding recommendation back to council. This proposed amendments permits appeals to the Local Planning Appeal Tribunal (LPAT) which can issue several types of binding

decisions to council. These are: dismiss the appeal; allow the appeal in whole or in part and; repeal the by-law; amend the by-law in such manner as the Tribunal may determine; direct the council of the municipality to repeal the by-law; or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order. The proposed amendments also applies to alterations and demolition of designated properties which would be appealable to LPAT.

This proposed amendment will only be reflected in the legislative framework and no further guidance or regulation will be forthcoming outlining the scope or powers of tribunal. This is troubling, especially if the tribunal will be making binding decisions about the heritage value of properties.

The CRB is comprised of members who have a combination of heritage expertise and adjudication skills. Transferring the majority of CRB duties to the LPAT threatens to dissolve the unique heritage expertise that the board possess as a body focused exclusively on heritage matters. It is also unclear what role the CRB would play with far less jurisdiction. For instance, would it still hear matters pertaining to archaeology?

Decisions about heritage value are based on research, site investigation and professional experience and expertise. As previously discussed, OAHP members routinely work with municipalities to identify properties/districts of heritage value or significance. Part of that work is to identify and evaluate how a property is significant to a community. The heritage value of a property/district should be determined locally and municipalities given the authority make the final decision about what is important to its community.

As a result, OAHP recommends:

- The CRB, in its current form, be maintained and that municipal council authority over Part IV designations and alterations be continued.
- If this is not feasible, it is important that LPAT limit its review of Part IV designations and alterations to matters of process and procedure rather than subject matter pertaining to heritage value.
- If this is not feasible, it is paramount that LPAT members hearing heritage appeals meet the CAHP definition of Heritage Professional. In no circumstance, should a non-heritage professional make a binding decision regarding the identification of heritage value or conservation of heritage properties.

6. Complete applications

- New 60 day timeline for a municipality to notify whether or not an application for alteration or demolition is complete.
- If deemed incomplete, the municipality may ask for additional information. If the municipality fails to provide any notice within 60 days, then the 90 day period to make a final decision begins immediately following the end of the 60 day period.

- By regulation, municipalities will be able to establish minimum information and material that must be included in an application. Where those requirements are not set out, prescribed minimum requirements set out by the province in regulation may apply.

OAHP Comment & Recommendations

None

7. Demolition

- Clarify that demolition or removal under section 34 (and certain other similar sections) of the Act includes demolition or removal of heritage attributes, as well as demolition or removal of a building or structure.
- Clarify that alter does not include demolition or removal for purposes of certain sections of the Act.
- Prescribe in regulations as to which sections in the Act this applies.

OAHP Comment & Recommendations

Appeals relating to alterations and demolitions of Part IV properties will now be appealable to the LPAT rather than the CRB. Please see comments under Section 5.0 for OAHP recommendations relating to the CRB ad LPAT.

8. Provide enhanced ministry guidance on cultural heritage landscapes

- Provide enhanced ministry guidance on Cultural Heritage Landscapes.

OAHP Comment & Recommendations

OAHP understands that this is a non-legislative change and technically not part of the EBR posting. However guidance around CHLs, particularly their conservation and protection is required and appreciated.