
Changes to the *Ontario Heritage Act*

Discussion Guide

**Ministry of Culture
December 2002**

CHANGES TO THE ONTARIO HERITAGE ACT: INTRODUCTION

The *Ontario Heritage Act* gives municipalities and the Province powers to preserve and promote Ontario's heritage.

The Act is *enabling* legislation – it empowers, rather than obligates, municipalities to protect their local heritage. Municipal powers include establishing heritage committees (LACACs), designating individual properties and heritage conservation districts, responding to requests to alter or demolish heritage properties, and entering into easements or agreements with owners to maintain their heritage properties.

Under the Act, the Minister “may determine policies, priorities and programs for the conservation, protection and preservation of the heritage of Ontario.” The Act also gives the Province the power to license archaeologists and protect archaeological sites.

Since the Act took effect in 1975, a number of reviews of the Act have been undertaken. Some of these involved extensive consultations with municipalities, heritage organizations, the development industry, property owners, and other stakeholders interested in heritage legislation.

Over the years, amendments have been made to streamline and strengthen various provisions in the Act. This year, the Ministry of Culture put forward a number of important changes to the *Ontario Heritage Act* as part of the Government Efficiency Act – a general Act amending legislation across government to ensure consistency, streamline processes, improve clarity and update language.

The Government Efficiency Act changes to the *Ontario Heritage Act* focus on its archaeological and municipal heritage protection provisions. (See Appendix A). Key changes include:

- Clarifying that altering an archaeological site and removing artifacts from a site are not permitted without a licence
- Clarifying that archaeological sites include marine sites
- Allowing the Ministry to define by regulation key terms used in the Act to ensure transparency (e.g. “archaeological fieldwork”, “archaeological site”, “cultural heritage”)
- Allowing municipalities to broaden the mandate of their municipal heritage committees (LACACs)

- Making demolition controls consistent across Ontario; and increasing the maximum fine from \$250,000 to \$1 million for illegally demolishing designated properties
- Removing the requirement that the Ontario Municipal Board approve municipal by-laws establishing heritage conservation districts where there are no objections

The Ministry is now consulting on further changes to the Act to build on the Government Efficiency Act amendments and to obtain input on specific legislative proposals.

Based on earlier reviews of the Act and submissions from stakeholders, four key areas have been identified which require improvement:

1. Municipal powers to identify and protect built and archaeological heritage
2. Improvements to heritage conservation districts
3. Provincial powers to identify and protect heritage property of provincial interest
4. Specific protections for marine archaeological heritage

This Discussion Guide proposes a range of changes to address issues under each of these areas.

Using the results of the consultations, the Ministry intends to move quickly to develop detailed proposals for amendments to the Act for consideration by the government next year.

PART 1: MUNICIPAL POWERS TO IDENTIFY AND PROTECT BUILT AND ARCHAEOLOGICAL HERITAGE

Listing Heritage Property

Many municipalities have inventories or lists of heritage property, but the status of such lists is often unclear. The Act does not provide for the formal identification or listing of heritage resources by municipalities, other than through the designation process. Placing heritage property on a list or register allows “flagging” of property for consideration in land use planning decisions and for potential future protection (e.g. by designation). The up-front identification of heritage property also makes owners and potential owners aware that property is of heritage interest and may be subject to designation (and accompanying controls).

Proposal to address this issue:

- 1. Enable municipalities to list heritage property on a public list or register and prescribe the process for listing**

Municipal controls on demolition of designated heritage property

Under the current Act, municipalities can delay demolition of a heritage building for 180 days, but cannot prevent it. The 180-day period does not always give communities the time they need to find alternatives to demolition.

The Government Efficiency Act adds requirements that:

- the owner cannot demolish a building until the owner has obtained a building permit for a replacement building
- the replacement building must be built within two years

These new requirements are modelled on the provisions already in force in 14 Ontario municipalities.

Proposals to address this issue include:

- 2. Leave the Act as it is with the Government Efficiency Act changes**
- 3. Extend the period by which municipalities can delay demolition (e.g. from 6 months to 1 year)**
- 4. Give municipalities the power to prohibit rather than delay demolition. Provide property owners the right of appeal from such decisions**

PART 2: IMPROVEMENTS TO HERITAGE CONSERVATION DISTRICTS

In Ontario's 25-year experience with heritage conservation districts, a number of issues have arisen about provisions in the Act related to districts.

The Government Efficiency Act includes a few changes to district provisions:

- Approval of district designations by the Ontario Municipal Board will only be required where there are objections to the designation (currently all designations must have OMB approval)
- Individually designated properties will be permitted within districts

Heritage conservation district plans

In practice, most designated districts have heritage conservation district plans and accompanying guidelines for the application of district controls and managing changes in the district. However, the Act does not refer to plans or guidelines, or their relation to the municipality's Official Plan.

Proposals to address this issue include:

- 1. Require that heritage conservation districts have a plan and guidelines for the management of change in the district**
- 2. Require that heritage conservation district plans be part of the municipality's Official Plan, following the same process as for Official Plan amendments**

Scope and application of district controls

Alteration controls on individually designated properties can cover any heritage features of the property, as described in the designation by-law. Alteration controls in districts apply to changes to the exteriors of buildings or structures; they do not extend to landscape features and other elements that contribute to a district's interest and character. Also, controls apply to all (exterior) alterations, no matter how minor. Any such changes must be approved by municipal council and there is no explicit authority to delegate approval of changes to staff.

Proposals to address this issue include:

- 3. Extend district controls to cover property features and elements other than buildings/structures**
- 4. Where provided for in the district plan, enable the municipality in the by-law designating the district to:**
 - exempt certain kinds of minor changes, e.g. repainting, from approval requirements**
 - delegate approval of certain kinds of changes to municipal staff**

Interim protection of proposed districts

Properties proposed for individual designation enjoy interim protection pending the completion of the designation, i.e. the designation controls “kick in” once the municipality gives notice of intention to designate. There is no similar interim protection for districts.

Proposal to address this issue:

- 5. Enable the municipality to impose interim controls on areas proposed for district designation, pending the completion of the district plan and the approval of the designation**

PART 3: PROVINCIAL POWERS TO IDENTIFY AND PROTECT HERITAGE PROPERTY OF PROVINCIAL INTEREST

Under the *Ontario Heritage Act*, the Province has the power to designate archaeological sites, but does not have the same power to protect built heritage.

In addition, the Act does not give the Province specific power to identify archaeological sites or built heritage property of provincial interest.

Most other provinces have such legislative tools and the federal government, through its National Historic Sites program, is able to identify properties of national heritage importance.

Proposals to address this issue include:

- 1. Give the Province the power to identify archaeological sites, including marine sites, and built heritage properties of provincial interest by placing them on a provincial register (would not include controls on alteration or demolition)**
- 2. Give the Province the power to designate built heritage properties of provincial interest (would include controls on alteration and demolition similar to municipal designation)**
- 3. Limit powers in 1. and 2. above to provincially owned property**

PART 4: SPECIFIC PROTECTIONS FOR MARINE ARCHAEOLOGICAL HERITAGE

The Government Efficiency Act makes a number of important changes to archaeological protection provisions in the *Ontario Heritage Act*, including:

- Clarifying that altering an archaeological site and removing artifacts from a site are not permitted without a licence
- Clarifying that archaeological sites include marine archaeological sites
- Allowing the Ministry to define by regulation key terms used in the Act to ensure transparency (e.g. “archaeological fieldwork”, “archaeological site”)
- Stipulating that archaeology licences will only be issued if the proposed activities of the applicant are consistent with heritage conservation

Part 3 of the Discussion Guide includes a proposal to give the Province the power to identify archaeological sites, including marine sites, of provincial interest.

However, a small number (less than 10%) of fragile marine heritage sites (e.g. those containing human remains) may merit additional protection.

Proposals to address this issue include:

- 1. Leave the Act as it is with the Government Efficiency Act changes**
- 2. Give the Province powers to protect the most fragile marine heritage sites**

OTHER ISSUES

Are there other issues you think need to be addressed?

What specific changes to the *Ontario Heritage Act* would address these issues?

Are there non-legislative options for addressing these issues?

About you...

Please provide:

Name: _____

Address: _____

_____ **Postal Code:** _____

Phone: _____ **E-mail:** _____

Thank you for your comments.

**Please return your comments before January 30, 2003
by post to:**

**Ontario Heritage Act Review
c/o Mary Lou Evans, Policy Advisor
Ministry of Culture
Heritage and Libraries Branch
400 University Avenue, 4th Floor
Toronto, Ontario
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or email:

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Appendix A

Good News for Heritage Improvements to the Ontario Heritage Act

The Ministry of Culture has made changes to the *Ontario Heritage Act* as part of the *Government Efficiency Act*, which received Royal Assent on November 26, 2002.

The *Government Efficiency Act* amends legislation across government to clarify, update, streamline and improve provisions.

The amendments to the *Ontario Heritage Act* focus on archaeology and built heritage. The key changes are outlined below.

Archaeology Changes

- ▶ Clarify that a licence is required to alter or remove artifacts from an archaeological site (a licence is not required for normal agricultural work or routine maintenance of property)
- ▶ Clarify that archaeological sites include marine sites
- ▶ Simplify the Act by replacing the various terms used for archaeology with the single term “archaeological fieldwork”

- ▶ Allow Ministry to define in regulation key terms that are not currently defined in the Act (e.g. “archaeological site”)
- ▶ Give the Ministry the ability to put in regulation licence categories, eligibility criteria and requirements
- ▶ Clarify that the Ministry licenses individuals, not companies or institutions
- ▶ Specify that the activities proposed by licence applicants must be consistent with the conservation, protection and preservation of Ontario’s heritage
- ▶ Provide the Ministry with the option to issue lifetime licences in the future
- ▶ Take licensing forms out of regulation so they can be updated more easily

Built Heritage Changes

- ▶ Change Local Architectural Conservation Advisory Committee (LACAC) to “municipal heritage committee” to update name
- ▶ Allow municipal heritage committees to advise council on all cultural heritage matters, not just buildings and districts (e.g. archaeological sites, cultural landscapes)

Built Heritage Changes cont'd.

- ▶ Allow municipalities to designate property and acquire heritage easements on property of “cultural heritage value or interest” (replacing “historic or architectural value or interest”) to reflect the broader meaning of heritage
- ▶ Require that the “reason for designation” statement include a description of the specific “heritage attributes” of the property so it is clear what aspects need to be conserved
- ▶ Strengthen demolition controls across Ontario by:
 - allowing municipalities to prohibit demolition of designated properties until the owner has obtained a permit for a replacement building
 - providing that the replacement building must be built within two years (council can waive or extend this time limit)
 - increasing the maximum fine from \$250,000 to \$1 million for illegally demolishing designated properties

Fourteen municipalities have already adopted these provisions through special statutes

- ▶ Allow individually-designated properties to be included in heritage conservation district designations (individual designation controls continue to apply to these properties)
- ▶ Remove the requirement that the Ontario Municipal Board (OMB) approve by-laws designating heritage conservation districts where there are no objections (OMB continues to approve by-laws where objections exist)
- ▶ Allow municipalities to recover the costs of restoring illegally altered properties in heritage conservation districts (municipalities already have this power for individually designated properties)
- ▶ Require municipalities to include heritage conservation districts in their register of designated properties to provide a single source of information to property owners and the public
- ▶ Allow municipalities to set their own fees for extracts from the municipal register of designated properties by removing the requirement that these fees be regulated under the Act
- ▶ Remove the requirement for a municipality to obtain Minister’s consent to prosecute for an offence under the Act