

Ontario Bar Association's Institute

Adapting to the New Era of Municipal and Planning
Law: The Only Constant is Change

Ontario Heritage Act Update

Dennis H. Wood
February 7, 2020

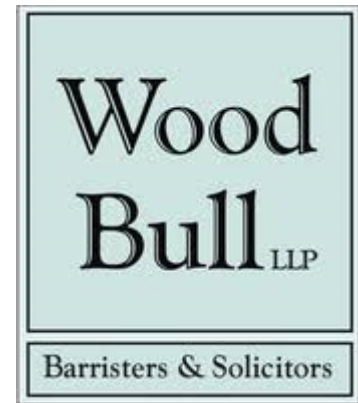
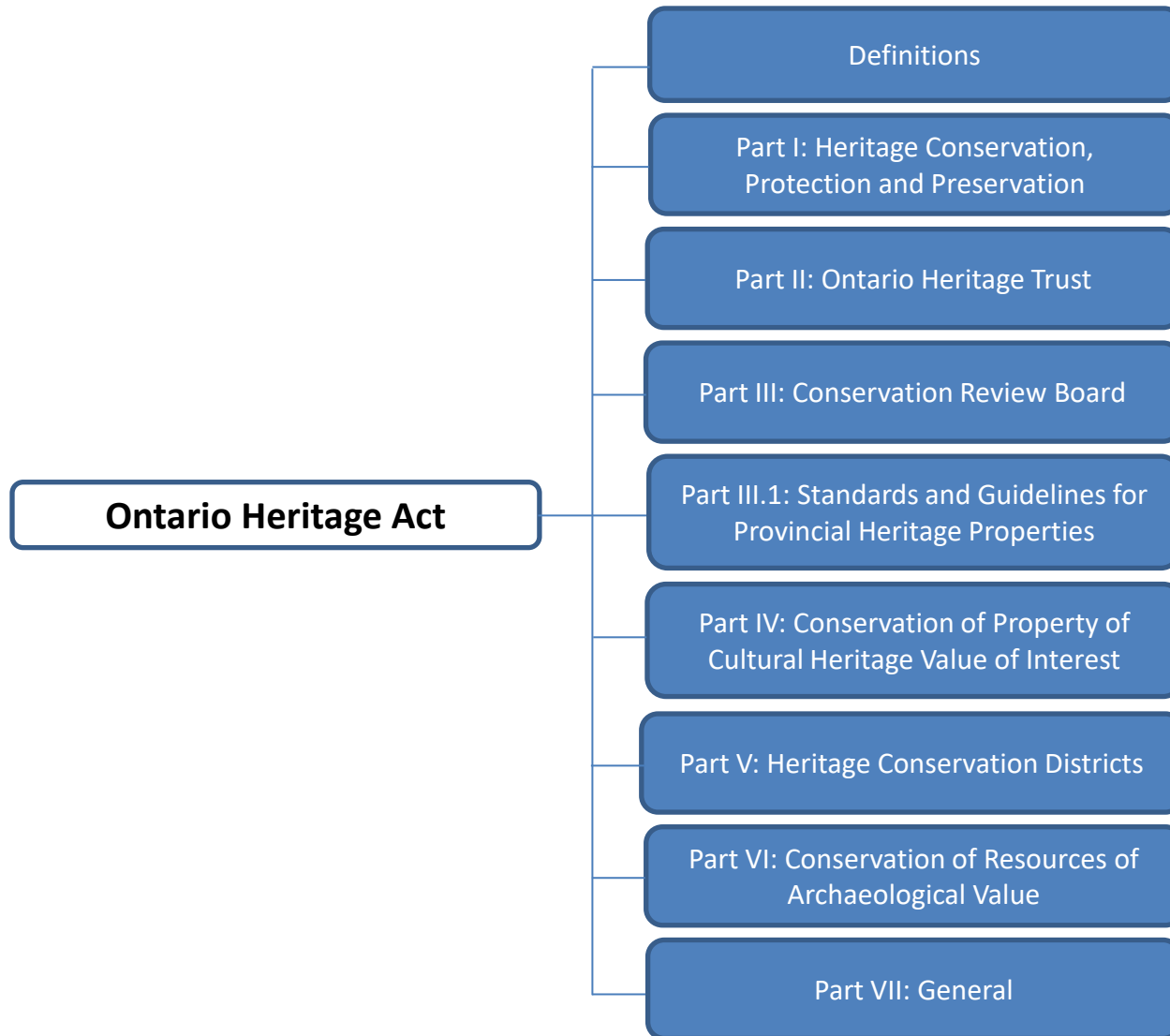
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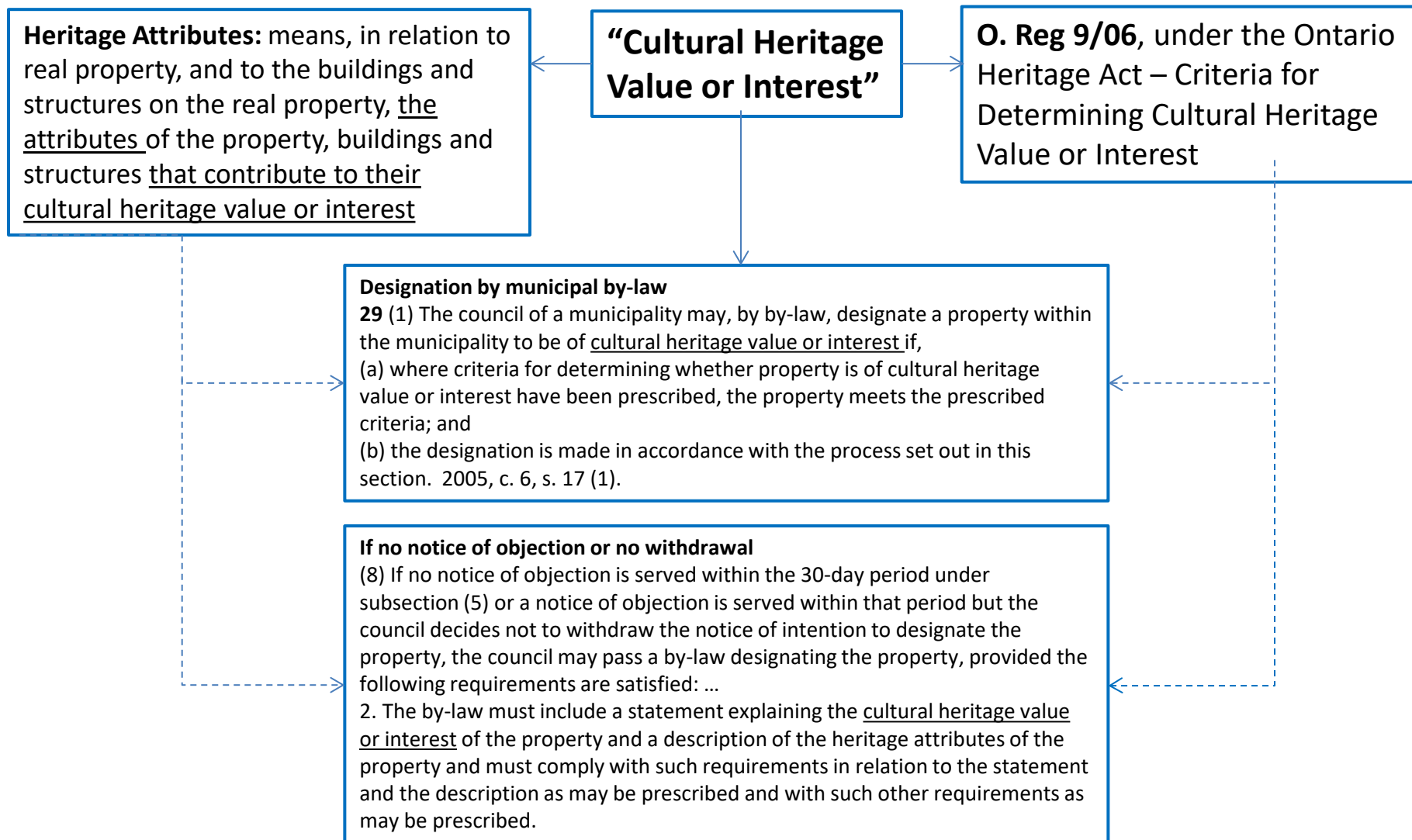
Ontario Heritage Act Overview

(After Bill 108)

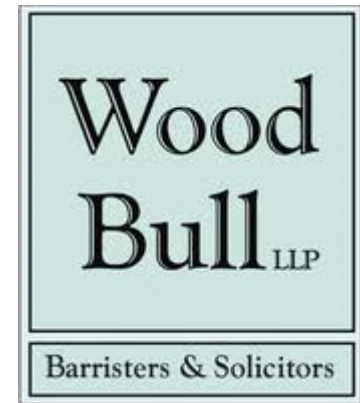
Ontario Heritage Act Organization Chart



Part IV – Conservation of Property of Cultural Heritage Value or Interest



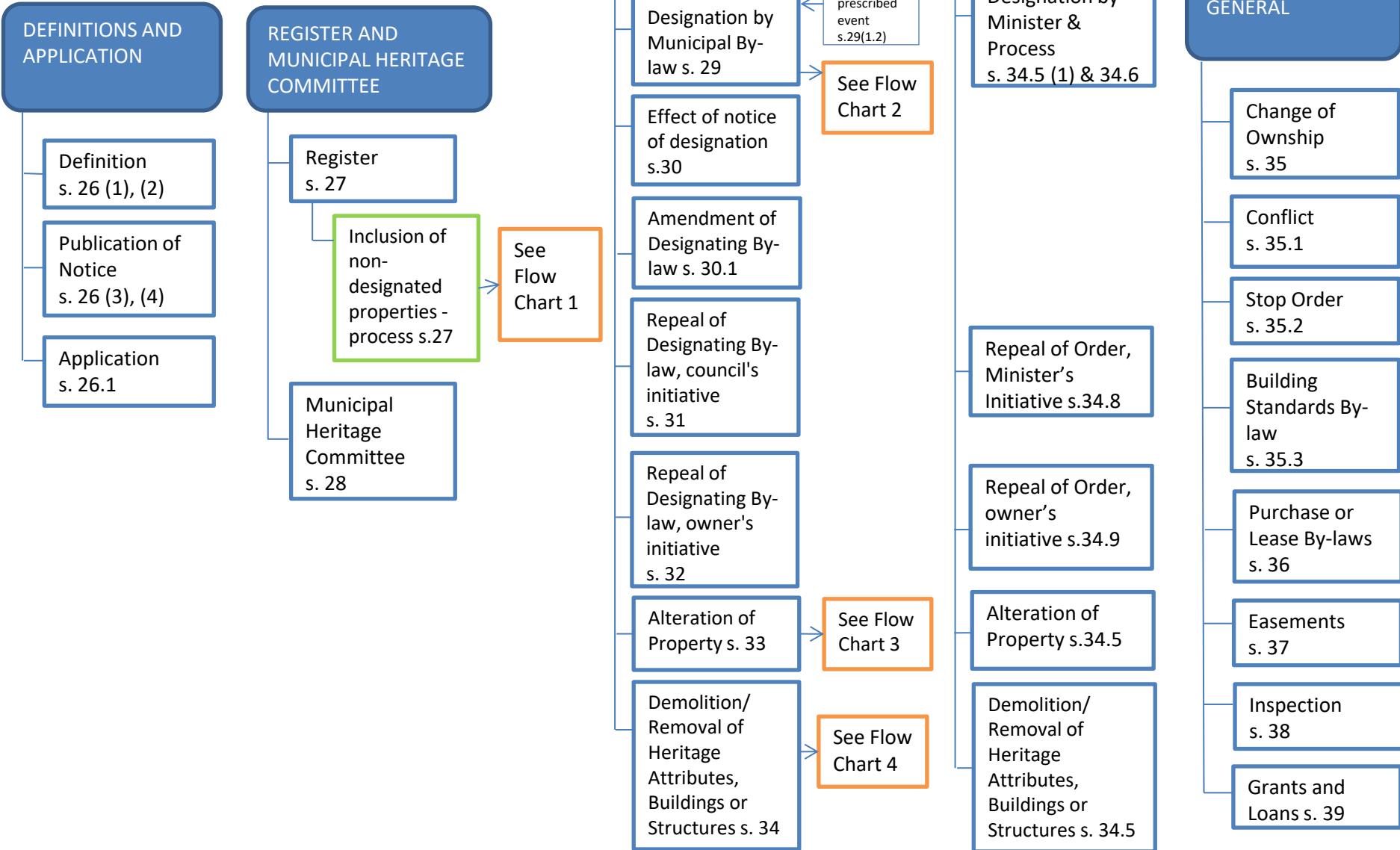
O. Reg 9/06 - Criteria for Determining Cultural Heritage Value or Interest



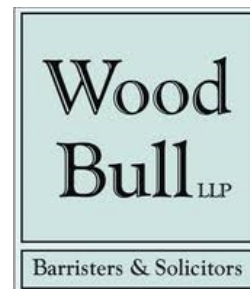
Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).
- (2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:
 1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
 2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
 3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

OHA: Part IV (after Bill 108)



Bill 108 Changes to Appellate Body



Subject Matter	Appellate/Review Body Prior to Bill 108	Appellate Body After Bill 108
Designating by-law	Conservation Review Board (s.29(7))	LPAT (s.29(11))
Amendments to designating by-law	Conservation Review Board (30.1(8)/s.29(7))	LPAT s. 30.1(1)/29(11)
Technical amendments of designating by-law	No right of review/appeal (s.30.1(2))	No right of appeal (s.30.1(2))
Repeal of designating by-law – Council’s initiative	Conservation Review Board (s.31(6)/s.29(7))	LPAT (s.31(9))
Repeal of designating by-law – Owner’s initiative	Conservation Review Board (s.32(5))	LPAT (s. 32(7))
Alteration of heritage attributes of property	Conservation Review Board (s.33(7))	LPAT s.33(9)
Demolition or Removal of heritage attributes, buildings or structures	LPAT (s. 34.1(1))	LPAT (s. 34.1(1))

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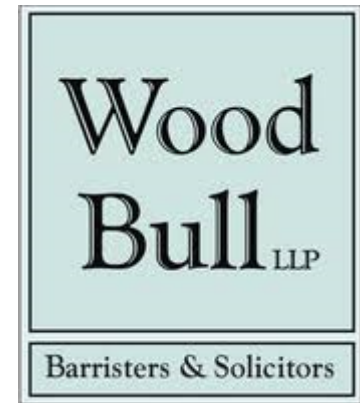
Background for Panel Discussion

Panelists:

Tamara Anson-Cartwright, City of Toronto

Michael McClelland, ERA Architects

Dennis Wood, Wood Bull LLP



Principles (Added by Bill 108)

Part IV – Property of Cultural Heritage Value or Interest

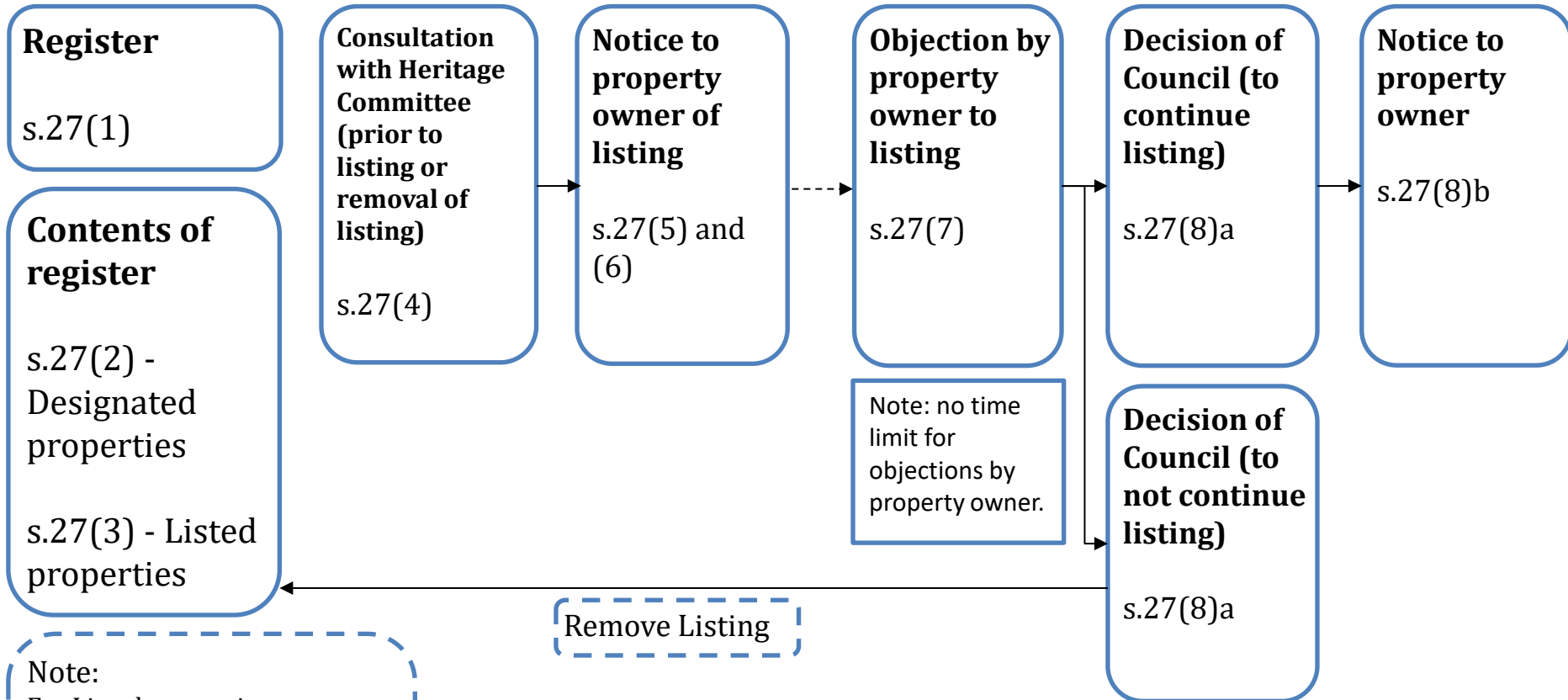
- **26.0.1** A council of a municipality shall consider the prescribed principles, if any, when the council exercises a decision-making authority under a prescribed provision of this Part. 2019, c. 9, Sched. 11, s. 3.

Part V – Heritage Conservation Districts

- **39.1.2** A council of a municipality shall consider the prescribed principles, if any, when the council exercises a decision-making authority under a prescribed provision of this Part. 2019, c. 9, Sched. 11, s. 17.

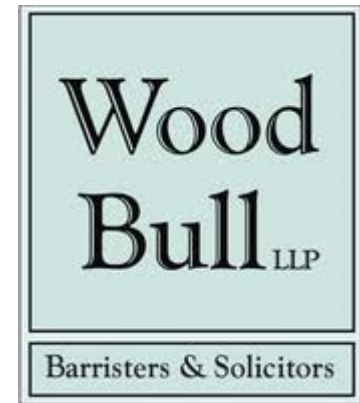
Listing Non-Designated Properties (After Bill 108)

MUNICIPAL COUNCIL DECISION PROCESS (applying prescribed Principles, where applicable)



Note:
For Listed properties, property owner shall not demolish or remove a building or structure unless they give council at least 60 days notice in writing of intentions. s.27(9)

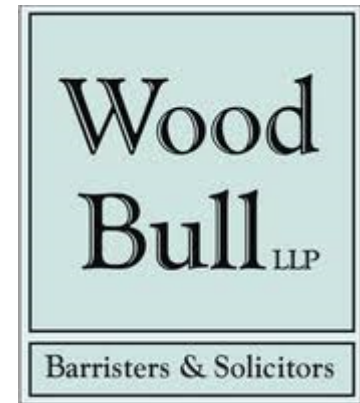
Restrictions on Council Power to Designate (Added by Bill 108)



- **29 (1.2)** If a prescribed event has occurred in respect of a property in a municipality, the council of the municipality may not give a notice of intention to designate the property under subsection (1) after 90 days have elapsed from the event, subject to such exceptions as may be prescribed.
- Regulation prescribing events and possible exceptions not released yet.

Alteration vs. Demolition

(After Bill 108)



- **Alter** (Pre-Bill 108): means to change in any manner and includes to restore, renovate, repair or disturb and “alteration” has a corresponding meaning;
- **Alter** (Amended by Bill 108): Definition of “alter” in certain provisions
 - (2) Despite subsection (1), for the purposes of sections 33, 34.5, 69 and such other provisions as may be prescribed, the definition of “alter” in subsection (1) does not include to demolish or to remove and “alteration” does not include demolition or removal. 2019, c. 9, Sched. 11, s. 1 (2).

Requirement for Approval to Alter:

- **33(1)** No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be, unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the alteration.

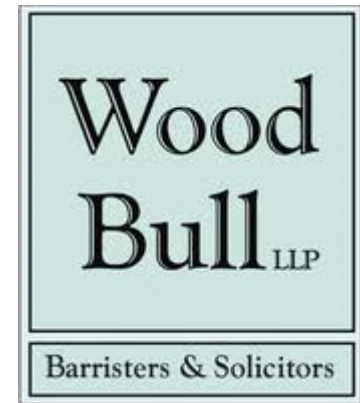
Complete Application:

- **33(2)** An application under subsection (1) shall be accompanied by the prescribed information and material.
- **33(3)** A council may require that an applicant provide any other information or material that the council considers it may need.

See background materials for approvals process.

Demolition or Removal

(After Bill 108)



- **34(1)** No owner of property designated under section 29 shall do either of the following, unless the owner applies to the council of the municipality in which the property is situated and receives consent in writing to the demolition or removal:
 - 1. Demolish or remove, or permit the demolition or removal of, any of the property’s heritage attributes, as set out in the description of the property’s heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be.
 - 2. Demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property, whether or not the demolition or removal would affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes in the by-law that was required to be registered under clause 29 (12) (b) or subsection 29 (19), as the case may be.
- **34(2)** An application under subsection (1) shall be accompanied by the prescribed information and material.
- **34(3)** A council may require that an applicant provide any other information or material that the council considers it may need.

See background materials for approvals process.

Cultural Heritage Landscapes

Ontario Heritage Act - O.Reg 9/06

Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
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 - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

Provincial Policy Statement, 2014/Growth Plan, 2019

Cultural heritage landscape: means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include,...

