

# 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



# Ontario Heritage Act Overview (After Bill 108)

## Ontario Heritage Act Organization Chart



Definitions

Part I: Heritage Conservation,
Protection and Preservation

Part II: Ontario Heritage Trust

Part III: Conservation Review Board

**Ontario Heritage Act** 

Part III.1: Standards and Guidelines for Provincial Heritage Properties

Part IV: Conservation of Property of Cultural Heritage Value of Interest

Part V: Heritage Conservation Districts

Part VI: Conservation of Resources of Archaeological Value

Part VII: General

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



Heritage Attributes: means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest

"Cultural Heritage Value or Interest"

O. Reg 9/06, under the Ontario
Heritage Act – Criteria for
Determining Cultural Heritage
Value or Interest

#### Designation by municipal by-law

- **29** (1) The council of a municipality may, by by-law, designate a property within the municipality to be of <u>cultural heritage value or interest</u> if,
- (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed, the property meets the prescribed criteria; and
- (b) the designation is made in accordance with the process set out in this section. 2005, c. 6, s. 17 (1).

#### If no notice of objection or no withdrawal

- (8) If no notice of objection is served within the 30-day period under subsection (5) or a notice of objection is served within that period but the council decides not to withdraw the notice of intention to designate the property, the council may pass a by-law designating the property, provided the following requirements are satisfied: ...
- 2. The by-law must include a statement explaining the <u>cultural heritage value</u> <u>or interest</u> of the property and a description of the heritage attributes of the property and must comply with such requirements in relation to the statement and the description as may be prescribed and with such other requirements as may be prescribed.

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

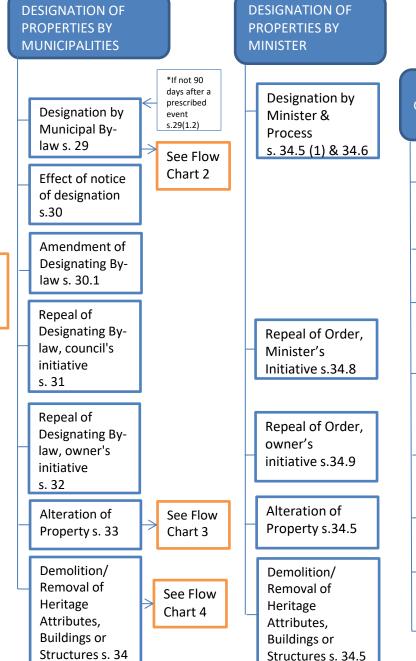


#### Criteria

- 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)

**DEFINITIONS AND REGISTER AND APPLICATION** MUNICIPAL HERITAGE COMMITTEE Register Definition s. 27 s. 26 (1), (2) Inclusion of Publication of See non-Notice Flow designated s. 26 (3), (4) Chart 1 properties process s.27 **Application** s. 26.1 Municipal Heritage Committee s. 28





GENERAL

Change of Ownship s. 35

Conflict s. 35.1

Stop Order s. 35.2

Building Standards Bylaw s. 35.3

Purchase or Lease By-laws s. 36

Easements s. 37

Inspection s. 38

Grants and Loans s. 39

# **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))

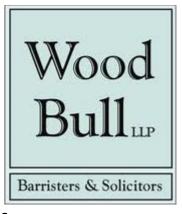


# Background for Panel Discussion

#### **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.

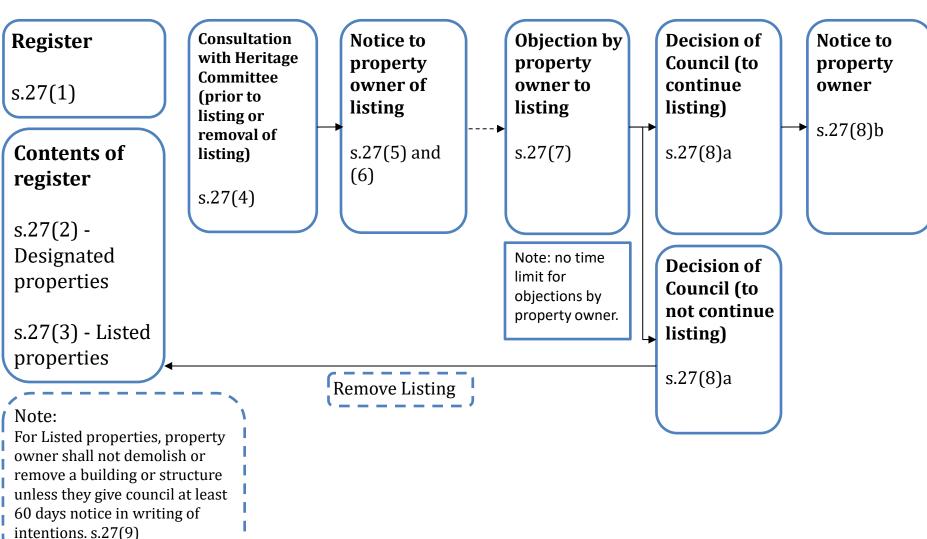
### **Part V – Heritage Conservation Districts**

• **39.1.2** A council of a municipality <u>shall consider</u> the <u>prescribed principles</u>, if any, when the council exercises a <u>decision-making authority</u> 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)



# 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)

- Wood
  Bull
  LIP
  Barristers & Solicitors
- 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:**

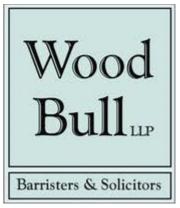
• **33(1)** No owner of property designated under section 29 shall alter the property or permit the alteration of the property if the alteration is likely to affect the property's heritage attributes, as set out in the description of the property's heritage attributes in the by-law that was required 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 situate 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,
    - 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).

#### Provincial Policy Statement, 2014/Growth Plan, 2019

**Cultural heritage landscape:** means <u>a defined geographical area</u> that may have been modified by human activity and is identified as having <u>cultural heritage value or interest</u> 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,...

