



CHO - PCO
Community Heritage Ontario
Patrimoine communautaire de l'Ontario

COMMENTS ON BILL 108

Community Heritage Ontario / Patrimoine Communautaire de l'Ontario (CHO/PCO) is the association of Municipal Heritage Committees (MHCs) of Ontario. These are our comments on the Ontario Heritage Act component of Ontario's Bill 108.

MHCs have been established by municipal councils to advise them on heritage conservation issues, including matters under the *Ontario Heritage Act (OHA)*. Membership of such committees consists of volunteers and municipal councillors. MHCs, like the municipalities they advise, have a wide range of capabilities and available resources to conduct their work. Such resources range from a dedicated group of municipal staff to do heritage research and prepare reports for the MHCs and councils, through to municipalities such as Oil Springs (population 648) with no heritage staff or budget. In that latter instance, MHC members do their own research and prepare reports including drafting schedules for designation by-laws and monitoring the conservation of heritage resources within their community. Municipalities with MHCs account for 90% of Ontario's population.

CHO/PCO supports many of the proposed amendments to the *OHA* in Bill 108 including:

- consistency in the body to which appeals under the *OHA* are made;
- the need for time frames within which municipalities and appeal bodies must render decisions; and
- the need for property owners to be notified of matters pending and decisions made under the *OHA* as it may affect their property.

Despite CHO/PCO's support for many of the proposed amendments to the *OHA*, there are some proposed changes to the legislation with which we have concern.

GUIDING PRINCIPLES TO OUR COMMENTS

Our comments are made with the following guiding principles in mind:

1. Municipalities and their MHCs are respected partners in the conservation of Ontario's heritage resources.

2. Changes to the OHA should not place an undue burden on municipalities with limited capabilities and resources such that it inhibits them from the conservation of heritage resources in their municipalities.
3. Municipalities on the advice of their MHCs are the bodies that are best capable of recognizing the local heritage resources that should be protected.
4. Owners should be notified by the municipality of matters pending under the *OHA* that affect their property and they should have the opportunity to object or appeal

BILL 108 - SCHEDULE 11- ONTARIO HERITAGE ACT – PRESCRIBED TERMS

There are a number of terms to be defined or detailed later in proposed regulations to the OHA. These are:

- Section 26.0.1 – ‘prescribed principles’
- Section 29 (1.2) Limitation – ‘prescribed event’
- Section 29 (8) 1. – ‘prescribed circumstance’
- Section 30.1 (1) - section 29 applies with ‘prescribed modifications’
- Sections 33 (2) & 34 (2) – ‘prescribed information and material’
- Section 34.3 (1) & (2) – ‘prescribed required steps and actions’

We recognize that such terms will be defined or detailed in regulation. Nevertheless whatever definitions or details are proposed should not place an undue burden on municipalities attempting to conserve their local heritage resources. When the regulations are drafted, we request that there be a transparent and robust public consultation process on the proposed regulations so that municipalities have at least 90 days to comment on the proposals.

BILL 108 - SCHEDULE 11- LISTING

Section 27 (5, 6, 7 & 8) Notice to property owner regarding inclusion in the Register.

We support the need to notify property owners about inclusion of their property in the municipal heritage register. However, we disagree with the proposed timing of the notification; leaving it until after Council has made a decision is too late. Many municipalities already notify a property owner of Council’s intent to include their property in the Register. Further the proposed legislation places no time limit on the property owner to object to the inclusion of the property in the Register.

Rather we believe that a property owner should be notified when any committee of Council (including the MHC) and Council itself is considering the inclusion of the property in the Register.

In such circumstance, the property owner may make representation for or against inclusion in the Register up to and including the time when Council makes its decision on inclusion. The notice to the property owner should include a statement of the effect on the property owner if the property is included in the Register in addition to the description of the property and any report on the property being considered by the committee or Council.

Once Council has made its decision, Council should be required to send a notice out to property owners, regardless of whether they have objected, that their property has been included in the Register. Such a notice should not include any further opportunity to object to the listing in the Register as the property owner will have had ample opportunity to put his/her opinion to Council and Council's relevant committees.

We request that proposed Clauses 27 (5), (6) (7) & (8) should be amended accordingly requiring municipalities to notify property owners whenever a municipality and its committees are considering including their property in the Register and that any opportunity for an owner to object ends when Council makes its decision.

If the government does not support the change we have requested above, we request that proposed clause 27 (6) 3 be amended by adding to the end of the clause that the objection period for listing is limited to 30 days after Council has issued its notice that the property has been listed in the Register. This is the same objection period as that permitted when a property is designated

BILL 108 - SCHEDULE 11- PART IV DESIGNATIONS – TIME LIMIT

Section 29 (1.2) Limitation – 90 day time limit

The proposed legislation states that a municipality may not express its intent to designate a property after 90 days has expired from a prescribed event. For a municipality and MHC with limited resources, it may not be possible to meet this time limit. Most municipalities have not researched and listed all heritage properties within their jurisdiction. As a result, under some circumstances, when a Planning Act application is submitted on a property with a heritage resource that a municipality has never identified in the past, a municipality and its MHC may have to research the property, prepare reasons for designation that meet the requirements of the OHA, write a report, notify the property owner, get the report to the MHC for a recommendation and then get a second report following the meeting of the MHC to Council so that Council may be in a position to express its intent to designate. Under such circumstances, 90 days is an insufficient amount of time.

We request that the 90 day time limit proposed in Clause 29 (1.2) be changed to 120 days.

BILL 108 - SCHEDULE 11-- PART IV DESIGNATIONS – POWERS OF TRIBUNAL ON APPEALS

The proposed amendments to the OHA state that the following may be appealed to the Local Planning Appeals Tribunal (LPAT) which, after a hearing makes the final and binding approval:

- Section 29 (15), (16), (17) & (18) – Appeals to Council’s intent to Designate under Part IV, page 54 of Bill 108;
- Section 30.1, proposed subsection (13) – Appeals to Council’s intent to Amend a Part IV Designation By-law, page 56 of Bill 108;
- Section 31, proposed subsection (12) – Appeals to Councils intent, on Council’s initiative, to Repeal a Part IV Designation By-law, page 57 of Bill 108;
- Section 32, proposed subsection (12) – Appeals to Councils intent, at the owner’s request, to Repeal a Part IV Designation By-law, page 59 of Bill 108; and
- Section 33, proposed subsection (11) – Appeals to Council’s decision regarding alterations to a property designated under Part IV, page 61 OF Bill 108.

Currently the Conservation Review Board (CRB) hears an appeal under these sections of the OHA and then issues “a report to the council setting out its finds of fact, its recommendations as to whether or not the property should be designated” or By-law amended or repealed, or the property be altered as the case may be. The CRB report goes to the municipal council with the council making the final decision in light of the CRB’s report. The proposed legislation is for LPAT to make the final and binding approval. While we have no objection to making LPAT the provincial body hearing such appeals, **WE DISAGREE STRONGLY WITH MAKING THE LPAT THE FINAL APPROVAL AUTHORITY ON DESIGNATION, AMENDMENTS TO A DESIGNATION BY-LAW, REPEAL OF A DESIGNATION BY-LAW AND ALTERATIONS TO A DESIGNATED PROPERTY.**

The proposed legislation is contrary to one of our guiding principles – that a local municipality is the best authority on the values of local cultural heritage resources. It is also contrary to more than four decades of heritage conservation work in the Province of Ontario. Municipal councils have been respectful of the recommendations of the CRB when dealing with appeals to the CRB and in many instances, but not all, have complied with the CRB recommendations. In the future, we would expect to see municipal councils to continue to be respectful of LPAT decisions in these matters should LPAT’s decisions be advisory and not final.

We request that proposed Section 29 (15), (16), (17) & (18), together with the related subsections of Sections 30, 30.1, 32 and 33 that refer back to Section 29 be deleted in their entirety and replaced with the following:

“15) After holding the hearing, the Tribunal shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated under this Part and any information or knowledge used by it in reaching its recommendations.”

The following clauses in the existing OHA – Section 29 (13), (14), (14.1) (15) (15.1) should be retained with appropriate modifications to the numbers, changing ‘Review Board’ to ‘Tribunal’ and adding a requirement that Council act within 60 days of receiving the Tribunal report.

BILL 108 - SCHEDULE 11- PART IV DESIGNATIONS – REPRESENTATIONS ON DISMISSAL OF APPEALS TO LPAT

The following sections of the proposed amendments to the OHA permit representations by the appellant, but not the municipality, to LPAT should LPAT dismiss an appeal:

- Section 29 (17) (b) dismissal of appeal on Council’s intention to designate under Part IV;
- Section 30.1, proposed subsection (13) – dismissal of appeal to Council’s intent to Amend a Part IV Designation By-law, page 56 of Bill 108;
- Section 31, proposed subsection (12) – dismissal of appeals to Councils intent, on Council’s initiative, to Repeal a Part IV Designation By-law, page 57 of Bill 108;
- Section 32, proposed subsection (14) (b) – dismissal of appeal to Councils intent, at the owner’s request, to Repeal a Part IV Designation By-law, page 59 of Bill 108;
- Section 33, proposed subsection (13) (b) – dismissal of appeal to Council’s decision regarding alterations to a property designated under Part IV, page 61 OF Bill 108;
- Section 34.1, proposed subsection (7) (b) – dismissal of appeal to Council’s decision regarding demolition or removal to a property designated under Part IV, page 63 OF Bill 108; and
- Section 41, existing subsection (9) (b) – dismissal of appeal to Council’s decision regarding demolition or removal to a property designated under Part V, page 64 OF Bill 108

In the event that the government continues with the amendments to the OHA that make LPAT the final decision maker on the above appeals under Part IV and Part V of the OHA, we request that, in addition to the appellant, the municipality should, in fairness, be given the opportunity to respond to representations by the appellant to the Tribunal when LPAT dismisses an appeal.

We request that the appropriate Sections be amended by adding the words ‘and the municipality’ immediately following ‘the appellant’.

BILL 108 - SCHEDULE 11-- PART IV DESIGNATIONS – KNOWLEDGE OF TRIBUNAL ON APPEALS

Whether LPAT will have advisory or final approval authority on OHA appeals, it is essential that members of the Tribunal hearing such appeals have a thorough grounding in heritage conservation principles and practice. This could be achieved by a Tribunal member's prior work experience in heritage conservation gained before being appointed to the Tribunal or through training programs provided by to Tribunal members by the Ministry or non-government organization with such experience.

We request that members of the Tribunal hearing appeals involving OHA matters have, or acquire, experience in the principles and practice of heritage conservation in Ontario prior to hearing such appeals.