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WHITER HERITAGE CONSERVATION IN ONTARIO? A COMMENTARY

by David J. Cuming

Ten years ago it would have been difficult to find an abundance of published material on why or what we should protect in our built environment, let alone how to go about the exercise. Even discussing the topic of heritage conservation would invite quizzical looks, puzzled frowns or knowing smiles that immediately slotted the offender into the category of "lunatic fringe". Happily this has changed, to an extent. Certainly there is more literature on the nature and quality of our built heritage: residences, churches, civic buildings, train stations, mills and bridges. A variety of guides, manuals and texts have proliferated since 1975, satisfying both academic and popular tastes. "Heritage Conservation" and even such esoteric topics as "Industrial Archaeology" now warrant respectable and substantial entries in the recently published Canadian Encyclopedia.¹

Despite these generally encouraging developments the heritage conservation movement in Ontario has grown, and continues to develop, fitfully. Spasms of enlightenment have punctuated an otherwise languid decade. Ambivalence, contradictions and inconsistencies appear to characterise many aspects of heritage conservation. Ideally, principles, practices, legislation, government action and funding should be complementary. This coherent structure has escaped Ontario. Reasons for this are diverse and beyond the scope of this brief discussion. It is worth highlighting, however, several of the key issues inherent in successful conservation initiatives. These may be useful in pursuing future objectives.

Since 1975 there has been little Canadian material published about the principles and acceptable practice of heritage conservation. As a result many heritage interest groups, local architectural conservation advisory committees (LACACs), architects, engineers, planners and municipalities have done their own "heritage thing". Often there have been successful results. The adaptive re-use of the Delta Baptist Church in Cambridge, the rehabilitation of the Pakenham stone arch bridge and the restoration work on the Lincoln County Courthouse in Niagara-on-the-Lake are good examples. Bad examples also exist: sandblasting, sloppy repainting, excessive destruction of historical fabric in adaptive re-use of buildings and unsympathetic additions are all common occurrences. This is disappointing considering that a vast body of knowledge about conservation does exist.

Largely ignored, for all practical purposes in Ontario, has been the twenty-one year old "Venice Charter"², an international statement of

the principles guiding the preservation and restoration of cultural property. The simplicity and comprehensive nature of these principles have stood the test of time. Briefly they seek a number of objectives:

- promoting regular maintenance of heritage property;
- encouraging use and re-use of buildings;
- preserving the traditional settings of buildings where they exist;
- discouraging removal of buildings;
- preserving original fittings *in situ*, wherever possible;
- carrying out archaeological and historical study as an integral part of restoration;
- implementing restoration based on original materials and documentation;
- discouraging conjectural work;
- using contemporary conservation techniques which have been proven effective through experience and scientific testing;
- recognising that all periods in a building's construction history must be respected;
- replacing missing parts in a building in ways that distinguish them from the original;
- allowing additions only where they do not impinge on the building, its setting and its relationship with its surroundings.

These axioms have found their way into a variety of "subcharters" such as the Burra Charter (Australia) and the Appleton Charter (Canada) and into many miscellaneous planning documents and guidelines on heritage conservation in Ontario.³

Less well known, but equally important, are two other UNESCO statements respecting particularly important topics: "Recommendation Concerning the Safeguarding and Contemporary Role of Historic Areas"; and "Recommendations Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites". Similar in format to the Venice Charter, both statements describe general principles, and suggest policies and safeguarding or protective measures.⁴

In many countries these myriad principles have formed the basis for effective conservation and planning legislation. National systems for listing, grading, identifying and registering sites, areas and landscapes of heritage value proliferate in the western world. These systems are

often characterised by controls over changes to heritage property, typically complemented by financial assistance in various forms. Usually all levels of government are involved, with senior government agencies identifying, evaluating and formally recognizing heritage property. Local authorities are consequently entrusted, within the framework of legislation, to protect these properties through planning controls or other review mechanisms.

Ontario has chosen a different path. Under the Ontario Heritage Act only local municipalities are entrusted with the power to designate property of architectural or historical significance. Provincial protective measures extend only to the designation of archaeological sites. Commentators have noted that no other country in the industrialised western world has adopted such an unusual approach.⁵

Indeed, over the past ten years the Ontario Heritage Act has been subject to repeated criticism. Notable reports have been produced by the Association of Municipal of Ontario and the Ontario Historical Society. A number of administrative and policy matters continually reappear as pressing issues that require resolution. Excessive notification procedures, inadequate definitions, a lack of designation amendment procedures and obligatory Ontario Municipal Board hearings for district designations are just a few of the problems that make the Act a frustrating piece of legislation with which communities have to work. And beyond these administrative and procedural matters there loom broader questions of policy.

Contrary to internationally accepted principles of heritage conservation the Act does not prevent demolition of a designated heritage property; it merely postpones demolition for up to a maximum of 270 days. Under Part IV of the Act (individual property designation) the municipality always makes final decisions with respect to the approval or refusal of alterations; but under Part V (district designation), the Ontario Municipal Board is the final arbiter in decisions about alterations to property. There is no clear mandate for local municipalities to protect areas or sites of archaeological interest, let alone scenic landscapes, despite growing awareness of these facets of our man-made heritage.

A key policy issue is the absence from the Ontario Heritage Act of a clearly stated provincial interest in heritage property. Aside from Part VI of the Act which establishes a provincial interest in archaeological sites (implemented through designation and stop-work orders) there are no provisions or definitions for the identification and protection of such a provincial interest in built heritage. (What do exist are informal ministry policy agreements that have resulted in the establishment of specific programs to address certain types of heritage property, such as, for example the Ontario Heritage Properties Program and the Ontario Heritage Bridge Program).

There are effective and fair precedents elsewhere for expressing a broader interest in protecting built heritage than exists at a local level. Britain has a system of national statutory listing of heritage buildings. Application to alter or demolish a listed building must be made to the local municipality. A refusal may be appealed by the applicant. Proposed municipal approvals, however, must be referred to the Secretary of State for the Environment for final approval.⁶ In the United States a National Register of Historic Places has been established that includes places of both national and local significance.⁷ Also the 1966 National Historic Preservation Act included significant provisions that came to be known as "Section 106 review". Such review required all federal agencies that planned to undertake, license or finance a project affecting a property on (or eligible for nomination to) the National Register of Historic Places to refer the project to the Advisory Council on Historic Preservation. The review process usually culminates in a Memorandum of Agreement, between the Council and the project agency, specifying how the undertaking will be carried out and describing mitigation measures to be adopted where a registered property is adversely affected.

Ontario has yet to declare its provincial interest in heritage property in such a manner, notwithstanding a general statement contained in Section 2(b) of the revised Planning Act of 1983.

In the absence of a clearly defined provincial role, municipalities and LACACs have been entrusted with the protection of Ontario's rich built heritage. The pace of conservation, its effectiveness and quality, has varied from community to community. The past decade has witnessed the creation of almost 160 LACACs in a province of approximately 900 municipalities. Perhaps 1900 properties have been designated under Part IV and 14 districts under Part V. Just over 50 per cent of designated properties are residential, 23 per cent are institutional, 10 per cent are commercial, 9 per cent are religious buildings and approximately 4 per cent are miscellaneous structures including property such as bridges. Major centres of designation activity include Ottawa, Kingston and Toronto.⁸

Between 1975 and 1982 just over 1000 properties were designated under Part IV; since 1982 there have been an additional 900 designa-

tions. This is spectacular progress. Reasons for such a spurt include increasing familiarity with the legislation and a growing awareness of the value of our built heritage. Pivotal in the growth of designations was undoubtedly the Building Rehabilitation and Improvement Campaign (BRIC) announced in 1981 by the Ontario Ministry of Citizenship and Culture. The five-year program comprised four funding components: Designated Property Grants (DPG), for which all owners (public and private) were eligible to apply; Corporate Sector Grants (CSG), aimed at private commercial and industrial owners of heritage property; Heritage Conservation District Funds (HCDF), enabling municipalities to set up a fund for eligible conservation work in designated districts; and lastly Community Heritage Funds (CHF), enabling municipalities to establish a fund for grants, loans and loan guarantees to designated properties and additionally enabling non-profit corporations to set up a revolving fund for conservation projects. To date the DPG and CSG programs have proven most popular.⁹

Another recently announced Ministry program, the Community Facilities Improvement Program (CFIP), also makes funds available to municipalities and non-profit corporations undertaking heritage conservation projects. All these financial incentives have been used with some success to promote sound heritage practice as well as balance regulatory powers, but their persuasiveness is limited to their level of appropriation. Only the stalwart Ontario Heritage Foundation (OHF), a grant-awarding agency of the Ministry of Citizenship and Culture, has been a permanent source of funding over the past ten years. Close to 350 architectural projects, amounting to approximately \$8.5 million, have benefited since 1975.

All these funding programs usually require as a prerequisite for consideration or as a condition of funding that property be designated under the Ontario Heritage Act. Since the ministry has not formally expressed interest in heritage property under the Act it must rely on municipal action in order to provide the bulk of grant aid for conservation in the province.

This form of direct granting has been the most popular source of funds in Ontario and indeed in Canada as well. Yet there exists a variety of other aids and incentives that have proven at least as useful in other jurisdictions. Tax incentives¹⁰ have proven popular in the United States while rate reductions and property tax moratoriums have been used to good effect elsewhere. These provisions have not found favour in Ontario. Threats of erosion to the municipal tax base loom too large. And despite the Heritage Canada Foundation's spirited attempts to convince the Federal Government of the benefits of tax incentives Ottawa has yet to adopt the practice.

So, where does this leave the heritage community in 1985? While there have been undoubted successes in the face of considerable opposition there remain inconsistencies and dilemmas:

- nearly 2000 properties have been designated in Ontario yet over 90,000 Ontario buildings have been included in the Canadian Inventory of Historic Building;
- only a handful of districts have been designated under Part V of the Ontario Heritage Act, but nearly every community in Ontario has distinctive areas of architectural, historical and scenic merit which warrant protection and enhancement;
- the provincial government has yet to formally establish a list, register or program which expresses a coherent interest in these important heritage features of Ontario's built environment, yet it still remains the predominant source of grant aid for local initiatives;
- all local municipalities have been entrusted with responsibilities for protecting a rich built heritage but most will only designate property at the request of the owner.

There are many avenues for change in the future. Those which are crucial for a cohesive and coherent framework for conservation include:

- broader educational initiatives on the principles and practice of protecting our built heritage;
- legislation based on tried and tested international precedents; and
- enhanced levels of funding or systems of tax incentives.

Many of the observations and comments in this screed have skimmed over the surface of issues having considerable depth. Several, if not all, require sensitive sounding before a new course is charted. Marc Denhez once quipped about conservation in Ontario that either the rest of the world has got it wrong and Ontario's got it right, or ...¹¹

Let us trust that we can get it right in the next decade. □

Notes

1. Marsh, J. (ed.), **The Canadian Encyclopedia** (Edmonton: Hurtig Publishers Ltd., 1985.)
2. Second International Congress of Architects and Technicians of

- Historic Monuments, **International Charter for The Conservation and Restoration of Monuments and Sites (Venice Charter)**, 1964.
3. See for example: B. McPhail; **BRIC Conservation Guidelines**; J. Weiler, **Guidelines on the Man-Made Heritage Component of Environmental Assessments**; D.J. Cuming, *Advisory Notes of Heritage Conservation and Municipal Planning*, all published by the Ontario Ministry of Citizenship and Culture.
 4. R. Keune, **The Historic Preservation Yearbook 1984-85**, National Trust for Historic Preservation.
 5. M. Carswell and J. Swaigen, (ed., revised edition) **Environment on Trial: A handbook of Ontario Environmental Law** (Canadian Environmental Law Research Foundation, 1978) (see page 386).
 6. A. Dobby, **Conservation and Planning** (London: Hutchinson and Co., 1978).
 7. United States Department of the Interior, National Park Service, **The National Register of Historic Places** (Washington: U.S. Government Printing Office, 1983).
 8. Heritage Branch, Ontario Ministry of Citizenship and Culture, 1985.
 9. Detailed program guidelines are available from the Ministry.
 10. U.S. Department of the Interior, National Park Service, **Preservation Tax Incentives for Historic Buildings**, (n.d.).
 11. Ottawa LACAC Conference, 1983.

Editor's Note:

The author wishes to assure readers that the article's opinions are his own, and not necessarily those of the Ministry of Citizenship and Culture.

OF HERITAGE LAWS, TAXES AND CULTURALLY SIGNIFICANT HOLIDAY INNS

A PERSONAL VIEW

by Marc Denhez

Last week I received a call from a stockbroker: there was an excellent deal to get in on a multi-million dollar renovation project. In fact the project was so desirable that for every dollar invested, the Government of Ontario would make a grant to the taxpayer of thirty cents, tax-free! The proponent was an SBDC (a "Small Business Development Corporation", favoured by a complex government program). What, I asked, were the meritorious buildings which were so entitled to the taxpayer's largesse? The answer: four Holiday Inns

For the record, I have nothing against Holiday Inns. Someday, there may even be a Holiday Inns Conservancy (HIC), just as there might be a Group for Appreciation of Service Stations (GASS) or a National Union to Revive Disco (NURD). My question is this: why aren't comparable measures available for the rehabilitation of Ontario's **real** heritage?

The issue has become all the more urgent, over the past few months, as the **Ontario Heritage Act** has resurfaced as a topic for discussion. There are signs that the Province might finally bite the bullet and amend this statute after years of withering criticism directed against the Act from all sides. However, the process will not be easy: and the adversarial relationship of conservationists and developers will be exacerbated by the developers' accusation that the Province's heritage policy is "all sticks, no carrots".

Feeling can run suprisingly high. At a luncheon hosted by the Canadian Bar Association, I heard one prominent real estate lawyer once summarize: "There is no better sign of Canada's descent into Socialism, than to see a supposedly Free Enterprise government like Bill Davis's pass this heritage stuff!" On the other hand, the "inadequacies" of the Act were the cause of equal complaint. They were blasted by the Ontario Historical Society in 1977, and the criticism has never let up. Ontario is the only province in Canada which has no **provincial** protection of heritage buildings, no **permanent** protection of such buildings (whether provincially or municipally), and yet which has as much red tape for the modest measures which do exist. No other jurisdiction in North America, for example, has introduced such a complicated procedure for designating heritage districts.

Yet criticisms, even of a purely technical nature, have not been well received. For over a decade, there was no visible interest on the part of the government in amending the thrust of the legislation, such as it was. This is unusual by any standards: even the most commonplace statutes come up for periodic review, but the **Ontario Heritage Act** seemed oddly immune. Whether this was out of complacency, or out of a state-of-siege mentality, is unclear; but the stand-pat position extended even beyond government circles. At one conference, where I had been in-

vited to speak on the legal aspects of the Act, I was warned by the chairman (a pillar of the Ontario heritage establishment): "One more criticism of the Act and I'll cut you off."

Perhaps the saddest part of this state of affairs is that it is so unnecessary. It is indeed possible to create systems where developers and conservationists work together for the public interest, and where progressive heritage legislation can develop with a minimum of trauma and acrimony. To do so, one need merely observe the successes and failures of other jurisdictions in two key areas: (a) incentives, and (b) regulations.

Incentives are an essential component of a heritage strategy, because they render much of the "regulatory" side superfluous: rather than **compel** the private sector, one **co-opts** it. The most notable example is the U.S.A. Thanks to its system of tax measures (at the federal, state and municipal levels), developers are now placing full-page ads in publications, seeking designated heritage buildings to buy and rehabilitate. One ad says that desired projects can be in the twenty-million-dollar range. This has put a new complexion on the appeal procedures which accompany designations: the overwhelming majority of appeals are not by owners who object to being designated, but by owners whose designation has been declined! Canadians have often assumed that such a state of affairs could be introduced here only if the Federal Government changed the Income Tax Act; they forget that provinces can take action on their own. Alberta, for example, announced in December 1984 that it was exploring the possibility of its **own** income tax initiatives; there is no reason why Ontario could not follow suit. Furthermore, **municipal** tax measures are also conceivable, and have proved remarkably successful in the U.S.A. and several locations in Canada. Why is the small town of Perth the only municipality in Ontario to have made a fuss about them?

The wild card, in forecasting the future of tax measures affecting heritage, is this: if the Legislature does not introduce a new package, the courts will. At this very moment, cases are pending before courts in other provinces; those cases threaten to drastically reduce the **municipal assessment** of designated heritage property. This would affect the municipality's tax base, and could frighten many municipalities away from their heritage program. The solution is simple: governments **must pre-empt** this possibility by introducing their own carefully thought-out tax packages, rather than have a more awkward package shoved down their throats.

We now turn to the "regulatory" side of heritage legislation: designations, protection, etc. Ontario can also learn from other jurisdictions when it comes to drafting new legislation. In fact, there is no reason for hocus-pocus in looking at such legislation; one province produced a progressive draft heritage bill in as little as sixteen days.

Precedents abound. Every other province has empowered its **provincial** authorities to grant **permanent** protection to heritage buildings. Seven other provinces have empowered **municipalities** to grant **permanent** protection also: those provinces are Nova Scotia, New Brunswick, Quebec, Manitoba, Saskatchewan, Alberta and British Columbia; in the two remaining provinces (Newfoundland and P.E.I.), similar powers are granted to their capital cities. That leaves Ontario alone in Canada in confining municipal powers to **temporary** protection. Finally, if one looks to precedents in the U.S.A., Australia or the U.K., one witnesses an even more mind-boggling array of legal mechanisms, which all have one thing in common: they all give more solid protection to heritage than Ontario does.

But the protection of heritage against "Philistine" developers is hardly the only preoccupation of an advanced heritage statute. A comprehensive heritage package addresses not only the **symptoms** of the problems of our built environment, but also delves deeper. For example, legislation in New Brunswick, Quebec and Winnipeg makes heritage conservation an **obligatory** component of each municipal official plan. Tax legislation, mentioned earlier and common throughout the U.S.A., attacks the economic causes which threaten many heritage sites in the first place. Furthermore, legislators across North America are now tackling the onerous task of dismantling the invisible web of outdated rules which **discourage** rehabilitation (tax disincentives, limits on mortgages, inflexible building rules) and replacing them with discrete new measures which militate in the opposite direction.

It is possible to draft such legislation not only to make it more difficult to destroy heritage, but also to make it more economical to rehabilitate it. For example, several American jurisdictions have given heritage buildings first crack at governmental office space, thereby assuring a reliable market for the developer. Provinces in western Canada have been developing techniques to expedite building code approval and mortgage financing for heritage projects. The Province of Quebec and the City of Winnipeg have been pioneering new ways for officials to cooperate in heritage planning. The lessons to be drawn are at Ontario's disposal.