

# New Teeth for Ontario Heritage Act

September 1, 2006

*Municipalities have new powers to protect heritage resources, but outdated designating by-laws could thwart protection efforts*

It was a long time coming, but the Ontario government recently passed the first set of comprehensive amendments to the *Ontario Heritage Act* since the Act was introduced in 1975.

The changes are significant. Municipalities can now prohibit, and not just delay, the demolition or removal of property designated under the Act, or apply terms and conditions for approval. These powers apply to properties currently designated as well as to future designations.

Of course, with these new protection powers come new responsibilities the primary one being to ensure that designating by-laws (including existing by-laws) clearly set out the cultural heritage value or interest of the building or resource in question. While updating existing by-laws isn't a requirement of the new legislation in every case, it's a step that could be an important element in any heritage protection dispute.

Here's why. Along with granting new municipal powers to protect heritage resources, the province has also introduced a right of appeal to the Ontario Municipal Board (OMB) for owners wishing to challenge a municipal decision regarding the demolition or removal of a heritage resource. Since the Act does not set out the criteria for determining when demolition or removal should be allowed, the OMB may look to designating by-laws for guidance as to what is significant and needs to be conserved.

The Act and new regulations set out the criteria for determining heritage significance. All new designations must meet the prescribed criteria. While existing designations are protected under a grandfathering provision, if the designating bylaws don't reflect the new prescribed criteria, they may be vulnerable to challenge at the appeal level.

The prescribed criteria relate to characteristics such as a property's historical association, design, physical attributes, and the context in which it's located. These criteria are a test against which properties can be judged. The stronger the heritage attributes of a property, the greater its heritage value.

Because many existing designating bylaws were drafted years ago and may lack the detail necessary to reflect all heritage attributes municipalities risk losing heritage resources if they don't take steps to bring their by-laws up to today's standards.

The good news is that the Act provides a streamlined process for updating an existing designating bylaw. For the update, municipalities need to provide a statement explaining the cultural heritage value or interest and a description of specific heritage attributes. To ensure heritage protection, municipalities should consider consulting a heritage architect, consultant or other heritage expert to help create these statements and descriptions.

The Ministry of Culture has produced the Ontario Heritage Tool Kit, which contains a series of guides to help heritage stakeholders

such as municipalities work through the heritage preservation process.

**WeirFoulds**<sup>LLP</sup>

[www.weirfoulds.com](http://www.weirfoulds.com)

**Toronto Office**

4100 – 66 Wellington Street West  
PO Box 35, TD Bank Tower  
Toronto, ON M5K 1B7

Tel: 416.365.1110  
Fax: 416.365.1876

**Oakville Office**

1320 Cornwall Rd., Suite 201  
Oakville, ON L6J 7W5

Tel: 416.365.1110  
Fax: 905.829.2035