

Saving Ontario's Heritage: The Municipal Application of Part IV of the Ontario Heritage Act

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Introduction

The *Ontario Heritage Act*, "an Act to provide for the Conservation, Protection and Preservation of the Heritage of Ontario", (the "Act") has been with us, in principle, since March 5, 1975. The principal statutory mechanism for achieving the purposes of the Act has been the power conferred upon municipalities to identify and designate properties of cultural heritage value or interest in the municipality, either individually under Part IV, or as included within a heritage conservation district under Part V of the Act.

The Scheme of the Ontario Heritage Act

Under Part IV of the Act, a municipal council may designate an individual property as having cultural heritage value or interest, with "heritage attributes", defined to mean, in relation to real property, and to the buildings and structures on that property, "the attributes that contribute to their cultural heritage value or interest".

Similarly, Part V of the Act requires that, for a collection of properties to be designated, a plan be prepared for the council, including a statement explaining the cultural heritage value or interest of the district and a description of the heritage attributes of the district as a whole, and of each of the properties within the district.

The initiative leading to the research and inclusion of a property on a heritage register or inventory, or heritage designation by a municipality, may occur in a variety of ways. In some cases, the owner may request such designation; in other situations, a building may be threatened with demolition and the municipality wishes to preserve it. In some cases, expert assistance is sought from architectural historians, architects, historians, and other knowledgeable members of the public.

Under the Act, it is necessary, before any property is placed on the inventory or considered for designation, that a statement be prepared explaining the cultural heritage value or interest of the property and containing a description of "the attributes of the property, buildings and structures that contribute to [its] cultural heritage value or interest".

In determining whether property or a district is of cultural heritage value or interest, the municipal council is required to consult Ontario Regulation 9/06, "Criteria For Determining Cultural Heritage Value Or Interest", prescribed under section 29(1)(a) of the Act. A property may be designated if it meets one or more of the criteria.

The criteria encompass three general areas of cultural heritage value:

(1) The property has design value or physical value based on such factors as architecture, construction method, artistic merit or technical or scientific achievement.

Although this criterion, usually summarized as the “architectural value” of the building, is probably the most objective of the three criteria contained in the Regulation, professional judgment may be brought to bear with respect to the degree of craftsmanship or artistic merit involved in the choosing and execution of the style or design of the building, and the quality of work and integrity demonstrated by the building as a whole.

Heritage Buildings in Ontario

English and European settlements were established in Ontario before the 19th century. While a few buildings remain from the 1700’s, the great majority of those buildings designated by Ontario municipalities were built in the 1800’s and the first third of the 1900’s.

In general terms, the following are some of the architectural styles of buildings erected in Ontario, more or less in the periods described:[\[1\]](#)

Georgian:	1800-1875
Gothic Revival and High Victorian Gothic:	1845-1890
Italianate:	1845-1885
Victorian Bay-n-Gable:	1875-1890
Second Empire:	1866-1890
Romanesque:	1870-1910
Queen Anne:	1880-1915
Art Deco, Art Moderne:	1925-1955

Evaluation of the building’s architectural value may also depend on the current condition of the building in question. A number of significant alterations and extensions may have been made to the building. In some cases, a structure may reflect two or more architectural styles. For instance, it is not uncommon to come across a Georgian building, erected in the 1850’s, surmounted by a mansard roof representing the Second Empire period of the later 1870’s. While this does not in itself necessarily detract from the significance of the building’s physical value, it may be a consideration in its preservation. Similarly, the present-day condition of the building, and the fact that it may be about to fall down, may not only increase its historical significance, but may be a principal reason for designation, in order to try to save it.

(2) The property has either historical or associative value because of its direct association with a significant person or event, contributes to an understanding of a community or culture, or demonstrates the work or ideas of a significant architect or other artisan significant to the community.

This criterion may usually be met through historical research, biographical or journalistic commentary, or community records.

In most cases, if the building in question is the work of a recognized architect, such as Edmund Burke, Fred Cumberland, John Ewart, E.J. Lennox, John Lyle or William Thomas, this fact in itself often supports the designation of a property under section 29 of the Act and sections 1(2)i and iii of Ontario Regulation 9/06. Otherwise, the criteria under this section are self-explanatory, each one requiring to some extent subjective judgment in decision-making, but based on understandable and specific criteria.

The other “historical” criteria may include reference to specific historical events, or a connection with a particular person or organization. Such factors may be linked to the potential informative or educative understanding of a community or culture that the property provides to the municipality. This may involve not only a socially-based assessment of the contribution of groups of community members, but also an historical survey of the municipality, from its earliest beginnings up to the present day. In this respect, “heritage” is not simply limited to “old and historic” buildings, but may well reflect significant recent contributions by a community or culture to the municipality as a whole.

(3) The property has contextual value, in defining, maintaining or supporting the character of an area, and vitally linked to its surroundings, or as a landmark.

This criterion requires the greatest subjective evaluation in assessing and determining the importance of the building to its surroundings or maintaining or supporting the character of an area. This value or interest, while not necessarily directly tied in with the quality or attractiveness of the building itself, owes its importance to its contextual relationship to its surrounding area, or its significance as a local landmark.

“Contextual value” will normally be used to evaluate a case where the building has neither significant architectural merit in itself nor any specific historical association. Determining its contextual value is significant in recognizing the importance of a building to the character and history of its area, and the building’s contribution to a community recognized for its own history and its role in epitomizing the integrity and character of an older part of the municipality.

The criterion of “landmark”, which may well apply with respect to all of the criteria, is the means by which a municipality may directly embody community recognition of a locally-important building, involving evaluative judgment and assessment.

“Half a Loaf”

In some cases, a municipality may tolerate an owner’s significant alterations to the site of a heritage building by agreeing to accept the preservation of a whole or partial facade of the building, even though the building as a whole has lost its use, integrity and overall form. This may be likened to preserving a grandfather’s skull on the mantelpiece.

In other cases, a compromise may be reached between the public interest and that of the property owner, by allowing the owner to move the intact building to another site. The degree of success of such a last resort depends on the extent to which the building fits within its new context and the care taken in its move and restoration.

Conclusion

“Heritage” is to be celebrated as the embodiment of both the physical and social history of a given community. By identifying and protecting the best examples of buildings produced throughout our history, we preserve the significant historical and aesthetic enjoyment these buildings, structures and districts provide. Through the application of Parts IV and V of the *Ontario Heritage Act*, we can help to ensure that some part of our collective history is preserved for the enjoyment of generations to come.

**Issues relating to the designation of heritage conservation districts will be addressed in a future article in this publication.*

[\[1\]](#) Patricia McHugh, *Toronto Architecture A City Guide*, 2nd ed. (Toronto: McClelland & Stewart, 1989), at pp. 14-20.



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