



Designation under the Ontario Heritage Act

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Sarnia, Ontario

by

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What is Designation?

Provincially legislated, but mostly municipally administered, protection of properties with cultural heritage value or interest in accordance with the provisions of the *Ontario Heritage Act* and Regulations.

This statute works in conjunction with the *Planning Act* and the Provincial Policy Statement.

The *Ontario Heritage Act* could have been included within the *Planning Act* because it is part of the land use planning process, but this has not been done.

Some of the language in the *Planning Act* and the Provincial Policy Statement 2014 includes:

Planning Act Excerpts



1.1 The purposes of this Act are,

- (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
- (b) to provide for a land use planning system led by provincial policy;
- (c) to integrate matters of provincial interest in provincial and municipal planning decisions; ...
- (f) to recognize the decision-making authority and accountability of municipal councils in planning.

2. The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

- (a) the protection of ecological systems, including natural areas, features and functions; ...
- (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest; ...
- (h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies; ...
- (s) the mitigation of greenhouse gas emissions and adaptation to a changing climate.

3. (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter,

- (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
- (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Provincial Policy Statement 2014 Excerpts

*2.6.1 Significant built heritage resources and significant cultural heritage landscapes **shall be conserved.***

2.6.2 Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.

2.6.3 Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

2.6.4 Planning authorities should consider and promote ... cultural plans in conserving cultural heritage



Demolition & Alteration

The idea is to protect the heritage attributes of properties from demolition or alteration (sections 33, 34 & 42 of the *Ontario Heritage Act*), while allowing appeal rights by affected parties.

Particularly in heritage conservation districts, the controls are intended to ensure that new construction, such as infill developments, are appropriate and do not detract from protected heritage properties.

While generally effective, there are flaws including a lack of enforcement, particularly when property owners are unable or unwilling to properly maintain their heritage properties (often referred to as demolition by neglect).

Alma College, St. Thomas, Ontario
Designated under Part IV of the *Ontario Heritage Act*
(subject to demolition by neglect)





Exterior / Interior

In most cases (particularly in the case of heritage conservation districts [technically designation under Part V of the *Ontario Heritage Act*]), the protection does not extend to the interior of buildings (s. 42.(1)1. of the *Ontario Heritage Act*).

However, in the case of the designation of an individual property (i.e. technically a designation using Part IV of the *Ontario Heritage Act*), interior heritage attributes of a building may also be protected, but this is not typical.



Municipal Bylaw

Designation is effected through a bylaw passed by the local municipal council after consultation with the local municipal heritage committee, if there is one (s. 29 & s. 41.(1) of the *Ontario Heritage Act*).

The process required prior to the passage of a municipal bylaw is set out in the *Ontario Heritage Act*.

For a heritage conservation district, the process is much more involved and time-consuming.

Prior to designation, a municipal heritage committee and/or heritage staff often with the assistance of heritage consultants do substantial preparation work.



Provincial Designation

The provincial Minister of Tourism, Culture & Sport, after consultation with the Ontario Heritage Trust, can also designate properties of cultural heritage value or interest of provincial significance, but this power has never been used (s. 34.5 (1) of the *Ontario Heritage Act*).

Why Designate?



Designation:

- Recognizes the importance of a property to the local community and possibility of importance to the province, the country and the world.
- Protects the property's cultural heritage value or interest from demolition, alteration and adjacent adverse effects.
- Encourages good citizenship with stewardship resulting in conservation of heritage attributes.
- Promotes knowledge and understanding about the property. Physically being present at a site (i.e. seeing is believing) is far more effective than reading or seeing a documentary about a property.
- Respects heritage structures and thus promotes environmental stewardship. There is a saying that the greenest building is an existing building. We tend to throw away buildings rather than properly maintaining and restoring them. There is more concern about plastic bags, straws and bottles than buildings.
- Assists in changing beliefs and perceptions. Our land use planning process encourages sprawling development and unending growth. In our consumer society there is a pervasive mistaken believe that old = out of date and new = improved.
- Draws attention to dramatic incremental changes in our use of resources over time. Not long ago, people managed to live without air conditioning, municipal water and sewer systems, the internet, central heating, electricity, automobiles, etc.
- Respects the accomplishments of those associated with heritage properties, such as contractors, builders, architects and owners.

Misconceptions



The owner cannot do anything with a designated heritage property. In addition to renovations and upgrades of designated properties, many heritage properties are renovated for adaptive reuse.



Misconceptions



Designation interferes with Property Sales & Property Values. There is no evidence that this is the case. For example, the designated property below sold quickly at the listed price. It sold precisely because of its stunning heritage attributes and in spite of the need for additional renovations.



Misconceptions



Canada is a young country and we have nothing of value compared with Europe.

Knox College, 1 Spadina Crescent, Toronto

vs.

Oxford University building, Oxford, England

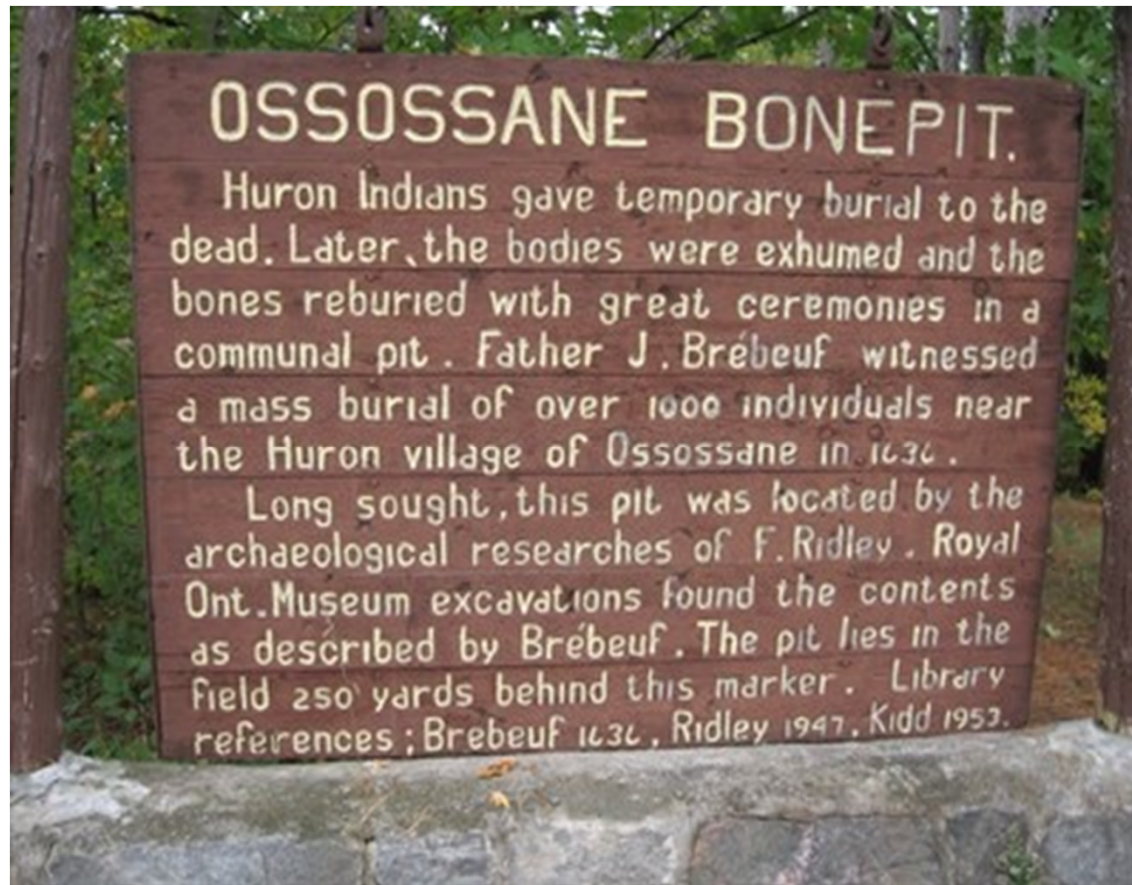


Misconceptions



Designation is only meant for built heritage.

We need to respect Indigenous Heritage sites, which are unique to North American.



Misconceptions



Only old properties are worthy of designation.

The temple below is not designated but is worthy of designation due to its unique design. The TD Centre is designated under Part IV of the *Ontario Heritage Act*.

Buddhist Temple, Markham, Ontario & TD Centre, Toronto, Ontario



Misconceptions



Designation is only intended for architecturally-noteworthy buildings

(i.e. properties displaying a high degree of craftsmanship or artistic merit).

Hindu Temple, near Hwy 427, Toronto, Ontario



Regulation 09/6,(1.2)1.i.



The property has design value or physical value because it is a rare, unique, representative or early example of a style, type, expression, material or construction method.

Toll-keeper's Cottage (c. 1835), corner of Davenport Rd. & Bathurst St., Toronto, Ontario



Regulation 09/6, (1.2)1.iii.



The property demonstrates a high degree of technical or scientific achievement.

David Dunlap Observatory (c. 1935), Richmond Hill, Ontario



Regulation 09/6, (1.2)2.ii



The property has historical value or associative value because it yields, or has the potential to yield, information that contributes to an understanding of a community or culture.

Stratford, Ontario War Memorial
Designed by Walter Allward
(Walter Allward designed and built the Vimy Memorial
at Vimy Ridge in Northern France.)



Sarnia War Memorial



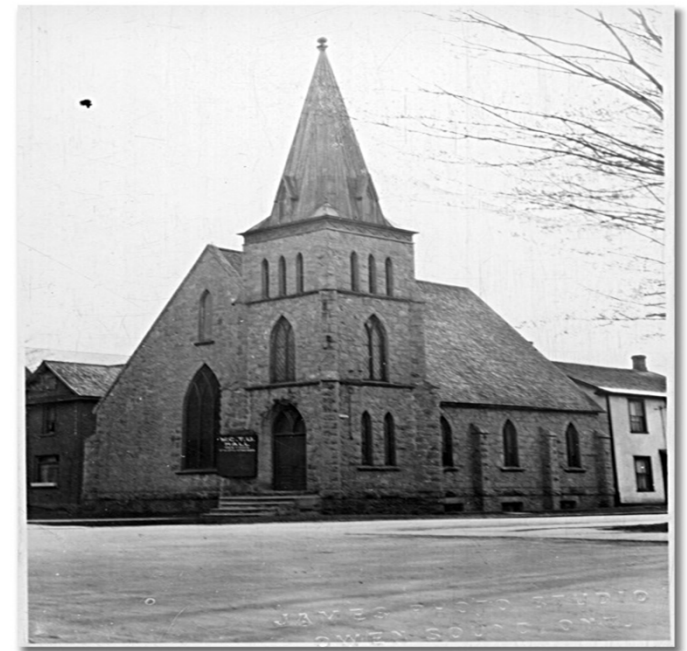
Regulation 09/6, (1.2)2.i.



The property has historical value or associative value because it, has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community.

Windmill near Prescott, Ontario where the 1838 Battle of the Windmill was fought

Women's Christian Temperance Union Hall (c. 1878), Owen Sound, Ontario
The first temperance organization in Canada, the "**Prohibition Women's League**",
was formed in Owen Sound, Ontario May 24, 1874



Regulation 09/6, (1.2)2.iii.



The property has historical value or associative value because it demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

King's Landing Residential Condo, Queens Quay, Toronto

Designed by Arthur Erikson, pre-eminent Canadian architect



Murney Tower, Kingston, Ontario

built by Alexander Mackenzie, stone mason and second Prime Minister of Canada



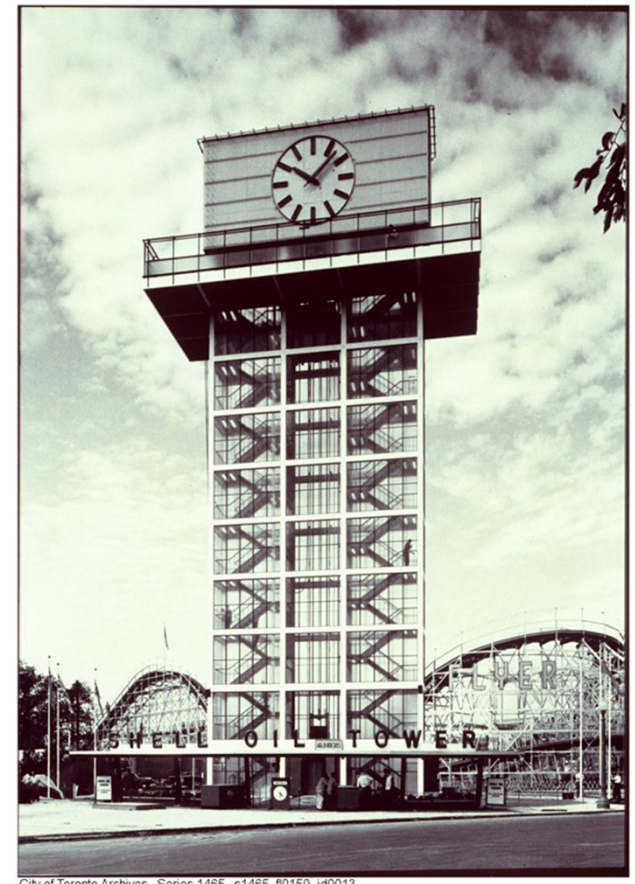
Regulation 09/6, (1.2)3.ii & iii.

The property has contextual value because it is physically, functionally, visually or historically linked to its surroundings, or is a landmark.

Martello Towers and other military installations, Kingston, Ontario



Bulova Clock Tower, CNE grounds, Toronto



City of Toronto Archives, Series 1465, s1465_#0150_id0013

Regulation 09/6, (1.2)3.i.



The property has contextual value because it is important in defining, maintaining or supporting the character of an area.

Centre of Goderich, Ontario (a heritage conservation district)



Misconceptions



People talk about designated buildings. In fact, it is the real estate, the property, (not just building or heritage attributes) that is designated. So, for example, if the heritage attributes are destroyed or moved to another property, the original designation is no longer effective.

Markham, Ontario Heritage Subdivision (a heritage conservation district)
All these heritage homes have been moved here to avoid demolition.



Misconceptions



The property owner must agree with designation.

A court decision from Lakeshore, Ontario confirmed that the provisions of the *Ontario Heritage Act* do not require consent of the property owner prior to designation. The Andrews Jeweller property was designated in spite of an uncooperative owner.

St. Joachim Church, Lakeshore, Ontario



Andrews Jeweller building, St. Marys, Ontario



Misconceptions



Don't designate my property! It's mine! I have the right to do whatever I want and my property rights should be enshrined in the constitution. In fact the Crown owns most properties in Canada and grants “fee simple” property ownership subject to governmental intervention in order to provide peace, order and good government (e.g. property taxation, zoning bylaws, expropriation). Designation is one more form of governmental intervention for the benefit of communities.



Misconceptions



Municipal Heritage Committees have a lot of power. The main role is advisory providing advice to the local municipal councils, that have the power to make decisions.

Municipal Heritage Committees are mandatory. The Ontario Heritage Act is only enabling legislation. There are over 400 municipalities in Ontario but only about 140 municipal heritage advisory committees.



Misconceptions



National Historic Sites and sites listed on the Canadian Register of Historic Places are protected by federal designation. The only federal designation providing any protection is with respect to some lighthouses and some heritage railway stations. For 24 Sussex Drive, Ottawa (the Prime Minister's residence), for example, there is no heritage protection whatsoever.



Reference Material



Ontario Heritage Tool Kit

(which is available online at the Ministry of Tourism, Culture and Sport website)

THE END (of the LINE)

Ingersoll railway station “protected” under the federal *Heritage Railway Stations Protection Act*??

