Cassels

Ontario Heritage Act Amendments Now in Force: What You Need to Know

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The long-awaited amendments to the *Ontario Heritage Act* (the OHA) together with implementation Regulation 385/21 (General) (the Regulation) came into force on July 1, 2021, finally bringing into play amendments made through Bill 108, the *More Homes, More Choice Act,* 2019 (Bill 108). Corresponding updates to the Ontario Heritage Toolkit are also underway.

Bill 108, which received Royal Assent on June 6, 2019, sought to make it easier to build different types of housing as part of the province's Housing Supply Action Plan, with the OHA amendments intended to improve processes and increase consistency in heritage designation, including providing for appeals to the Ontario Land Tribunal. Cassels had previously reported on the Bill here and here. Initially proposed to come into force January 1, 2021, implementation was subsequently delayed to allow for further consultation and to allow municipalities more time to respond to the amendments.

The OHA Amendments

The key additions to the OHA now in force include:

- Properties newly subject to a notice of intention to designate and applications to repeal a designation or alter a property made July 1, 2021 onwards now benefit from new appeals to and binding decisions from the Ontario Land Tribunal
- Owners whose properties are newly included in a heritage register will now get notice and may object, and where such objection is made, council must consider the objection in deciding whether to continue to list the property
- New applications for alteration or demolition are deemed approved should council not make a decision within specified time periods
- Municipalities have 90 days to issue a notice of intention to designate a property upon notice of a complete official plan amendment, zoning by-law amendment, or plan of subdivision application, subject to exceptions in the Regulation
- Designations must occur within 120 days of a notice of intention to designate, subject to exceptions in the Regulation

Note that not all OHA amendments were proclaimed on July 1, 2021. The proposed amendment to the

definition of “alter” and to Section 42, demolition of heritage attributes in a Heritage Conservation District (HCD), are not being proclaimed at this time.

The Regulation

The Regulation limits some of the broad enactments of Bill 108, but otherwise represents a step forward in streamlining Ontario’s heritage regulation process. The Regulation, which we previously reported on here and here includes the following:

- Mandatory standards for designation by-laws
    - Requirements for designation by-laws are: property identification information; one or more of a site plan, scale drawing, or written description of the property’s layout; the identification of which Ontario Regulation 9/06 (Criteria for Determining Cultural Heritage Value or Interest) criteria is met and how; and a description of how the heritage attributes contribute to the cultural heritage value or interest of the property
- Prescribed exceptions to the 90-day timeline for issuing a notice of intention to designate
    - These are when the owner and council agree, in the case of a declared emergency, or where the applicable *Planning Act* application has been finally disposed of under that Act
    - For those who had been following the legislative amendments closely, note that the exceptions to the timeline related to the failure to consult the heritage committee and receipt of “new and relevant information” no longer extend this timeline
- Prescribed exceptions to the 120-day timeline to pass a designation by-law after a notice of intention to designate has been issued
    - These are when the owner and council agree, in the case of a declared emergency, or where “new and relevant information” related to the property is received
- The process of amending or repealing a designation by-law following a consent for demolition has been amended to require notification to property owners if no changes are made to the designation by-law
- Minimum requirements for complete applications for alteration, demolition or removal, of heritage properties, which include photographs, reasons for the proposal and potential impacts, and all technical cultural heritage studies that are relevant to the proposal
- Transition provisions, which include:
    - As referenced above, July 1, 2021 is now the key date to determine whether a matter or proceeding will be dealt with under the OHA as it stood prior to July 1, 2021 or the OHA as amended and now in force
    - Proceeding under the OHA as amended and in force are:

(1) Notices of intention to designate, and notices to amend or repeal a designation by-law, where publication is made July 1, 2021 and going forward

(2) Notices of clarifying or correcting amending by-laws, where notice is received by the owner July 1, 2021 and going forward

(3) Designations of HCD study areas, designations of HCD, and adoption of a HCD plan, where such by-law is passed July 1, 2021 or subsequent

(4) Applications made under the OHA which were received July 1, 2021 or later

- Generally, notices published, by-laws passed, and applications made prior to July 1, 2021 proceed under the old OHA
- In the cases of an outstanding notice of intention to designate, municipalities have until June 30, 2022 to pass the by-law, after which the notice is deemed withdrawn and any designation will be subject to the OHA as amended (though this deadline may be extended by agreement)
- The prohibition on notices of intention to designate after 90 days of certain *Planning Act* applications does not apply if notice of the complete application was given prior to July 1, 2021

For those who followed the Regulation consultation process, note that the Regulation does not prescribe principles that council must consider in making certain decisions under the OHA. The Ministry of Heritage, Sport, Tourism and Culture Industrial has indicated that it will be monitoring implementation to determine if principles should be prescribed at a later time.

Ontario Heritage Toolkit

The province has released for consultation five draft guides which will form part of the updated Ontario Heritage Toolkit, which assists stakeholders in understanding the heritage conservation framework in Ontario. The five draft guides currently posted to the Environmental Registry, found here, are as follows:

1. Designating Heritage Properties
2. Heritage Conservation Districts
3. Heritage Property Evaluation
4. Your Community, Your Heritage, Your Committee
5. Heritage Places of Worship

A sixth guide on Cultural Heritage Resources in the Land Use Planning Process is expected to be released soon. The current consultation closes today, July 2, 2021.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.