

Draft Federal Legislation to protect Historic Places

By **Leslie Maitland**

If you want to astonish your fellow Canadians, just tell them that Canada is the only G-7 country that lacks legislation to protect its designated heritage places. That's right. There is no legal protection for the Parliament Buildings.

Finally, draft legislation (Bill C-23) is before us, to be called the *Historic Places of Canada Act* (HPCA). Thank you, to everyone at Parks Canada Agency (PCA) and others who had a hand in bringing this along so far. (Bill C-23: Historic Places of Canada Act - National Historic Sites (pc.gc.ca)

Most aspects of the draft legislation only pertain to federally designated heritage properties owned by federal departments. Some sites are national historic sites, which are designated by the Minister for Environment and Climate Change upon the recommendation of the Historic Sites



Photo: Naveen Kumar Unsplash

Parliament of Canada, library

and Monuments Board of Canada. Others are those designated as Classified heritage properties by the Federal Heritage Buildings Review Office. There is a Treasury Board real property guideline which requires a

prescribed list of federal entities to submit their properties of a certain age (now fifty years) for evaluation for heritage significance by the Federal Heritage Buildings Review Office.¹

For Ottawa, this legislation is of critical importance: the highest concentration of federally-owned heritage properties are right here in the Nation's Capital. It is not just that there are a lot of them: they are the nation's most significant. Ottawa is where Canadians come to connect to their country as a nation: the Parliament Buildings, the Supreme Court, the War Memorial, are only a few of the federally-owned heritage properties which are of paramount importance to Canadians. These are the national treasures that we here in Ottawa are proud to protect.

So let's do it.



Photo: Tom Carnegie Unsplash

Supreme Court of Canada

Welcome Developments

Many aspects of the proposed legislation are excellent and long overdue. There is a change to the Historic Sites and Monuments Board of Canada to include representatives of Indigenous, Inuit and Métis communities in response to recommendations of the Truth and Reconciliation Commission. The HPCA would also establish a register of federal heritage places and require that the *Standards and Guidelines for the Conservation of Historic Places in Canada* (S&Gs) be followed by all departments which own federally designated heritage properties. Owner-departments would have a duty to consult with Parks Canada before any interventions are undertaken. The draft act empowers Parks Canada to draft its own regulations with respect to the historic canals (Rideau, Trent-Severn and others), which are currently still governed by legislation that dates to the era when the canals were managed by Transport Canada. All good.

But there are some worrisome omissions from the draft Act.

Missing in Action

Excluded from the Act are any measures to protect the nearly 1,000 national historic sites owned and managed by others. This is in part because laws and regulations pertaining to private property, or properties owned by other levels of government, are provincial/territorial responsibilities, and the federal government cannot insert itself here, at least not through legislative tools. Other mechanisms outside the legislative, such as financial incentives or tax breaks for conservation projects, will have to be used to encourage owners of National Historic Sites to conserve them.



Photo: Jan Soetermans

National Gallery of Canada

Even within the portfolio of federally owned heritage properties there are alarming exclusions, such as crown corporations and agencies. (Think the national museums). Excluded also are federally regulated entities such as the transportation industries (railways and airports), even though they are subject to other legislation that pertains to property management, such as the *Accessibility Act*. And Global Affairs Canada (GAC) has successfully resisted heritage designations of its many properties abroad. (Think Canada House on Trafalgar Square). Also missing is any

commitment to federal underwater archaeology.

Toothless Legislation?

Most worrisome of all is that the Act has no teeth. Heritage Ottawa will advocate for changes that would give the Act some leverage. There needs to be some mechanism for reporting to Parliament on the status of federally owned heritage properties, either through the proposed Register, or an Annual Report, or tabled conservation plans. Such documents would give Parliament the power to

hold owner departments to account, and would also give the Auditor General some benchmarks with which to judge performance.

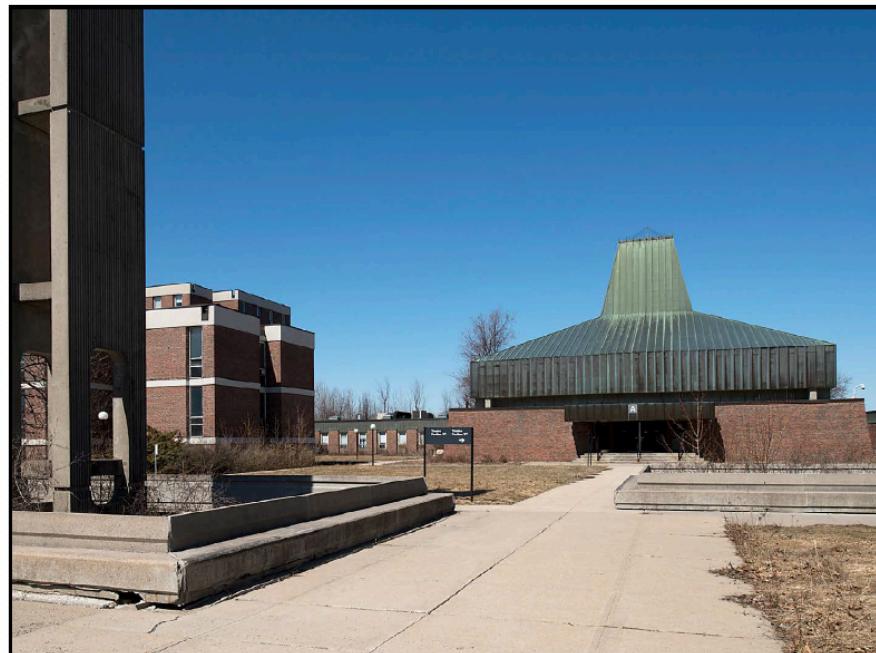
Owner departments will have a duty to consult Parks Canada on any proposed changes, but what does that really empower Parks Canada to do? Heritage Ottawa will be advocating for some kind of interdepartmental committee to reach consensus decisions on interventions, similar to the Federal Heritage Building Review process which already exists and has been proven to work.

Disposal

The Government of Canada removes properties from the federal inventory from time to time. Recent examples here in Ottawa are the former Federal Study Centre on Heron Road, and the Booth Street Complex, both sites having FHBRO-designated buildings. Any federally owned heritage property that leaves the federal portfolio should go to its new owner with some kind of protection mechanism, such as a conservation easement registered on title. Canada Lands Company does work towards conserving the heritage of federal lands when they are disposed of, but not in a codified way, and there is no mention of such a process in the draft legislation. This could be corrected.

No More National Historic Sites

The proposed legislation would eliminate the nomenclature National Historic Site of Canada in favour of simply “place of national historic significance or interest.” The idea is to streamline the layered designations of National Historic Site and Classified Federal Heritage Building. But for the very few sites to which this would pertain, the government is risking the credibility of a national



View of the Chapel – 1495 Heron Road

historic site designation, the value of which has been built for over 100 years. This is a designation with tremendous prestige, and an anchor for tourism promotion and economic development for many communities across the country. It's a loss of prestige equivalent to telling an Order of Canada recipient that from now on, they may only style themselves as an award winner. Many sites have layered designations, once you add on their provincial and often municipal designations, not to mention World Heritage designations. This is an unnecessary move and potentially highly offensive to communities who are proud of their national historic site designation, and who have been able to leverage the designation to support tourism and investment.

While Heritage Ottawa regards the creation of this legislation as a significant step forward, there is the worry that it would allow the federal government to say, yes, we have federal heritage legislation. But if it is missing many elements, and has no powers of enforcement or

accountability, it might be worse than useless.

It doesn't have to be that way. Heritage Ottawa plans to convey its concerns on the draft legislation to the Minister of Environment and Climate Change, the Honourable Steven Guilbeault, and to Parliament in the fall, when the bill goes for second reading in the House of Commons. We are prepared to work constructively with the federal government, and especially our elected representatives, to improve this draft legislation in ways that are practical and effective.

Stay tuned.

Leslie Maitland is a past president of Heritage Ottawa and is a volunteer on the Advocacy Committee.

¹ *There are two levels of designation in FHBRO. Classified FHBs have the higher evaluation, and Recognized FHBs the lesser. Classified FHBs would be subject to this legislation, while the Recognized would continue to be administered under the Treasury Board guidelines.*

