

LEGAL PROTECTION NEEDED FOR HISTORIC PLACES UNDER FEDERAL JURISDICTION

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*The Auditor General of Canada,
Protection of Cultural Heritage in the Federal Government,
November 2003*

HCF Position Statement

The Federal government must lead by example in protecting the historic built environment through the introduction of statutory protection for federally owned and regulated historic places.

In 1992, the Government of Canada showed leadership in protecting the *natural* environment from inappropriate federal actions by introducing the *Canadian Environmental Assessment Act*. Comparable legislation to prevent the degradation of the historic built environment as a result of federal action is long overdue. Federal departments and crown corporations must be accountable for the treatment of historic buildings and sites in the custody and control of the Government of Canada. Canada is the only G-8 country without laws to protect historic places owned by its national government.

Accordingly, we call on the government to proceed in introducing the anticipated Historic Places Act, including:

- statutory protection and maintenance standards for federally owned and regulated historic places;
- ‘heritage first’ provisions to promote the re-use of existing heritage buildings; and
- Assessment measures to ensure that federal actions will not jeopardize historic places outside federal jurisdiction.

Why is legislation needed?

In November 2003, the Auditor General of Canada assessed heritage protection practices within several departments and agencies with a cultural mandate and reported that built heritage under federal control “will be lost to future generations unless action to protect it is taken soon.” The audit revealed lack of accountability for heritage protection. The Auditor General’s report called for strengthening the federal legal framework to protect heritage property.

Lack of accountability for heritage protection is expected to be an even greater concern in departments that do not have a cultural mandate, like PWGSC, National Defence and Fisheries and Oceans. Deferred maintenance, outsourcing and divestiture are placing some historic places at risk.

How many historic places are we talking about?

The Government of Canada owns or regulates the following historic places:

- 1357 buildings already designated under the *Federal Heritage Building Policy*;
- An unknown backlog of federally owned buildings 40 years old or older, but not yet submitted for review (to date, about 6300 buildings have been evaluated, out of a total of about 50,000);
- An unknown number of potential heritage buildings held by agencies and crown corporations that are exempt from the *Federal Heritage Building Policy*, such as post offices;
- An unknown number of engineering works such as bridges and port structures - some of which are National Historic Sites - that are exempt from the *Federal Heritage Building Policy*;
- An unknown volume of archaeological resources on federal lands; and
- 164 designated heritage railway stations owned by federally regulated railway companies (subject to the *Heritage Railway Stations Protection Act*).

Learning from other G-8 nations

Forty years ago, the US Congress recognized that the Federal Government must provide leadership for preservation in its own actions. The National Historic Preservation Act (NHPA, 1966) was established with the goal of transforming the US Federal Government from an agent of indifference, frequently responsible for needless loss of historic resources, to a facilitator, an agent of thoughtful change, and a responsible steward for future generations. The NHPA grants legal status to historic preservation in federal planning, decision-making, and project execution, and provides for third-party scrutiny.

In 1976, the US went a step further, enacting the *Public Buildings Cooperative Use Act*, requiring that the government's real property agency give preference to the use of historic buildings to fill federal space needs. The idea was to lead by example, and leverage downtown economic development and revitalization via the rehabilitation and use of historic buildings.

What are the issues?

Projects affecting historic places must be considered in a careful and precautionary manner to ensure such projects do not cause adverse affects.

The existing *Federal Heritage Building Policy* of 1982 is not binding on federal employees and departments, and is not enforced. As a result, no fewer than 54 designated federal heritage buildings have been demolished since the policy came into effect. Because there is no accountable agency monitoring whether the policy is applied or followed, it is impossible to measure its effectiveness. An underlying issue is that departments are expected to absorb the cost of complying with the policy and protecting the buildings in their care, without supplementary funding to do so.

Further, many significant places are excluded from any scrutiny at all: Federal Crown Corporations such as Canada Post are not obligated to follow this policy. That means Canadians have no assurance that the heritage value of historic post offices, or port buildings and engineering works, for example, is being managed and protected.

Projects carried out by or with the approval or assistance of the Government of Canada must be assessed to ensure they do not cause adverse effects outside federal jurisdiction.

Currently, there is no scrutiny of federal actions that may threaten other historic places in Canadian communities, and no mechanism to ensure federal investments respect local historic places. For example, the historic Eaton's Department Store in Winnipeg was demolished in 2003 to make way for a sports facility supported by federal funding.

The Government should walk the talk on sustainable development through a 'heritage first' policy when leasing or acquiring space.

Government leasing standards do not encourage the sustainable re-use of historic buildings. Worse, they typically include requirements that are all but impossible for historic buildings to meet. As a result, the Government's need for space can result in new construction in towns where existing historic buildings could have been rehabilitated to meet the need.

There should be opportunities for timely and meaningful public participation.

Currently, there is no citizen input into the process. All decisions on the heritage qualities of a federal property are made within the government. This contradicts the widespread and effective practice of public consultation on the protection of heritage property within provincial and municipal jurisdictions. It is also in contrast with the public consultation already in place in the application of the federal *Heritage Railway Stations Protection Act*.

What should Canada's Historic Places Act look like?

The Heritage Canada Foundation calls for legislation that includes:

- Statutory protection with 'teeth' for the following:
 - Recognized and Classified federal heritage buildings
 - historic post offices, port structures and other places held by Crown corporations and Crown agencies
 - historic engineering works and archaeological sites and other federally-regulated property with heritage value
- Accountability and regular reporting to Parliament on the protection of federal historic places
- Public involvement in evaluation of heritage value and assessment of proposed interventions
- Minimum maintenance standards to prevent demolition by neglect
- A 'heritage first' policy – the obligation to consider existing heritage buildings before resorting to leasing or building new, to contribute to the 'market demand' for historic places
- Mechanisms to ensure ongoing protection of historic places that leave the federal inventory, such as protective covenants and equivalent designations under provincial or territorial jurisdiction
- Impact assessment of the cultural impact of any federal or federally-assisted undertaking on any district, site, building, structure or object that is included in, or eligible for inclusion in, the Canadian Register of Historic Places

Background

The Federal Heritage Building Policy

While provinces and municipalities have had heritage legislation for some thirty years, the federal government only has a policy – the *Federal Heritage Building Policy*, created in 1982 in response to the controversial ‘reconstruction’ of the Mint in Ottawa. The Federal Heritage Buildings Review Office (FHBRO) was established within Parks Canada with the responsibility to evaluate heritage value and make recommendations regarding proposed alteration, demolition or disposal of federal buildings. As noted above, the policy is non-binding, and is not monitored or reported on. The onus is on custodian departments to establish their own processes and standards for compliance. FHBRO does not monitor compliance or follow up to determine if its recommendations are followed.

Heritage Railway Stations Protection Act

Federal legislation exists to protect one type of heritage property - railway stations owned by railways subject to the *Railways Act*. Spearheaded by the Heritage Canada Foundation, *An Act to protect Heritage Railway Stations* came into effect in 1990. Since that date, 164 heritage railway stations have been legally protected under this Act. The Historic Sites and Monuments Board of Canada acts as a heritage advisory committee to the Minister responsible.

However, the Act does not protect stations from demolition by neglect because it does not require even minimal maintenance. Fredericton’s York Street Railway Station – named one of the most Endangered Places of 2006 – is a case in point.

An Act to Protect Historic Lighthouses

Bill S-215, *An Act to protect heritage lighthouses* was passed by Parliament in May 2008. There are federal lighthouses in every province except Alberta and Saskatchewan. After criteria for heritage lighthouses are established, communities will be able to petition the Minister of the Environment for heritage designation and propose community uses for any building surplus to operational requirements.

About the Heritage Canada Foundation

The Heritage Canada Foundation is a registered charity and voluntary organization created in 1973 to encourage the conservation and use of heritage buildings and historic places for the benefit of all Canadians.

We believe that historic places are an integral part of memory, community and identity, telling the stories of who we are and where we come from. Every citizen benefits from a dynamic environment that includes historic places, and shares the responsibility to help protect and sustain that environment. www.heritagecanada.org