



BILL NO. 118

Government Bill

*2nd Session, 62nd General Assembly
Nova Scotia
64 Elizabeth II, 2015*

An Act to Amend Chapter 199 of the Revised Statutes, 1989, the Heritage Property Act

CHAPTER 39
ACTS OF 2015

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 18, 2015**

The Honourable Tony Ince
Minister of Communities, Culture and Heritage

*Halifax, Nova Scotia
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**An Act to Amend Chapter 199
of the Revised Statutes, 1989,
the Heritage Property Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 3 of Chapter 199 of the Revised Statutes, 1989, the *Heritage Property Act*, as amended by Chapter 10 of the Acts of 1991 and Chapter 54 of the Acts of 2010, is further amended by

- (a) striking out the period at the end of the first clause (k) and substituting a semicolon; and**
- (b) relettering the second clause (k) as clause (l).**

2 Chapter 199 is amended by adding immediately after Section 8 the following Section:

8A (1) On the application by an owner of a provincial heritage property, the Advisory Council may recommend to the Minister that the scope of the designation of the property as a provincial heritage property be amended.

(2) A recommendation pursuant to subsection (1) may be made if

- (a) the heritage value of the property is maintained; and
- (b) the owner has submitted supporting documentation and a survey plan prepared in accordance with the Standards of Practice of the Association of Land Surveyors of Nova Scotia describing the proposed amendment to the designation and bearing a surveyor's certificate.

(3) Where the Minister receives a recommendation from the Advisory Council to amend the scope of the designation or where the Minister considers that the proposed amendment of the scope of the designation is reasonable, the Minister may amend the designation as recommended or proposed.

(4) Where the Minister amends the scope of the designation of a provincial heritage property, the Minister shall cause notice of the amendment to be sent to the registered owner of the property and a copy of it to be deposited in the registry of deeds for the registration district in which the property is situate.

3 (1) Subsection 9(2) of Chapter 199, as amended by Chapter 54 of the Acts of 2010, is further amended by

- (a) striking out “or” at the end of clause (a);**
 - (b) striking out the period at the end of clause (b) and substituting “; or”;**
- and**
- (c) adding immediately after clause (b) the following clause:**
 - (c) the Advisory Council determines that the property meets prescribed criteria to justify deregistration.

(2) Subsection 9(3) of Chapter 199 is repealed and the following subsection substituted:

(3) Where the Minister receives a recommendation from the Advisory Council for deregistration of a provincial heritage property or where it appears to the Minister in accordance with the criteria considered by the Advisory Council that the continued registration of the property is inappropriate, the Minister may deregister the property not fewer than thirty days after a notice giving particulars of the proposed deregistration is served on the registered owner of the property and published in a newspaper circulating in the area where the property is situate.

4 (1) Subsection 11(1) of Chapter 199, as amended by Chapter 54 of the Acts of 2010, is further amended by striking out “Governor in Council” in the last line and substituting “Minister”.

(2) Subsection 11(5) of Chapter 199 is repealed.

(3) Subsection 11(6) of Chapter 199 is amended by striking out “Governor in Council” in the first line and substituting “Minister”.

(4) Subsection 11(7) of Chapter 199 is amended by striking out “made by the Governor in Council” in the last line.

5 Section 12 of Chapter 199 is repealed and the following Section substituted:

12 (1) Subject to subsections (4) to (6), a municipality may adopt a heritage by-law to establish a heritage property program.

(2) A heritage by-law must

(a) provide for the establishment of a heritage advisory committee;

(b) provide the terms of office for members of the heritage advisory committee; and

(c) establish a municipal registry of heritage property.

(3) The heritage advisory committee must consist of

(a) at least two members of the council;

(b) at least two members of the general public; and

(c) such other persons appointed by the council as the heritage by-law provides.

(4) A heritage by-law must be submitted to the Minister of Municipal Affairs for approval.

(5) Within sixty days of the heritage by-law being submitted to the Minister for approval, the Minister shall

(a) approve all or part of the heritage by-law;

(b) approve the heritage by-law with amendments; or

(c) refuse to approve the heritage by-law, and return to the municipality two copies of the heritage by-law as approved, amended or refused with written reasons for the decision.

(6) Where no decision is made in accordance with subsection (5), the heritage by-law is deemed to be approved on the sixty-first day following its submission to the Minister.

(7) Upon approval pursuant to subsection (5) or deemed approval pursuant to subsection (6), the heritage by-law has, subject to clauses (a) and (b) of subsection (5), the force of law.

6 Section 13 of Chapter 199, as amended by Chapter 10 of the Acts of 1991 and Chapter 54 of the Acts of 2010, is further amended by adding immediately after clause (a) the following clause:

(aa) an application to deregister a municipal heritage property;

7 Chapter 199 is further amended by adding immediately after Section 15 the following Section:

15A (1) On the application of an owner of a municipal heritage property, the heritage advisory committee may recommend to the council that the scope of the designation of municipal heritage property be amended.

(2) A recommendation may be made pursuant to subsection (1) if

(a) the heritage value of the property is maintained; and

(b) the owner has submitted supporting documentation and a survey plan prepared in accordance with the Standards of Practice of the Association of Land Surveyors of Nova Scotia describing the proposed amendment to the designation and bearing a surveyor's certificate.

(3) Where the council receives a recommendation from the heritage advisory committee to amend the scope of the designation or where the council considers that the proposed amendment of the scope of designation is reasonable, and a public hearing has been held by the council to consider the proposed amendment not less than thirty days after a notice of the hearing is served on the registered owner of the property and published in a newspaper circulating in the area, the council may amend the designation as recommended or proposed.

(4) Where the council amends the scope of the designation of a municipal heritage property, the council shall cause notice of the amendment to be sent to the registered owner of the property and a copy of it to be deposited in the registry of deeds for the registration district in which the property is situate.

8 Subsection 16(1) of Chapter 199 is repealed and the following subsection substituted:

(1) On the application of an owner of a municipal heritage property or on its own motion, the heritage advisory committee may recommend to the council the deregistration of the property and the council may deregister the property if

- (a) the property has been destroyed or damaged by any cause;
- (b) the continued registration of the property appears to the committee to be inappropriate as a result of the loss of the property's heritage value, as identified in the property's heritage file or notice of recommendation, unless the loss of the heritage value was caused by neglect, abandonment or other action or inaction of the owner; or
- (c) the council determines that the property meets prescribed criteria to justify deregistration,

and a public hearing has been held by the council to consider the proposed deregistration.

9 Clause 19B(1)(c) of Chapter 199 is repealed and the following clause substituted:

(c) the conservation plan and conservation by-law must include the prescribed policies and prescribed requirements respecting demolition or removal of any municipal heritage property within the district.

10 Section 19C of Chapter 199 is repealed and the following Section substituted:

19C Design guidelines included in a conservation by-law must be as prescribed by the regulations.

11 Subsections 19E(2) to (6) of Chapter 199 are repealed and the following subsection substituted:

(2) A certificate referred to in subsection (1) is subject to the conditions prescribed by the regulations.

12 Subsections 19G(2) to (5) of Chapter 199 are repealed and the following subsection substituted:

(2) The responsibilities of the heritage officer under subsection (1) are as prescribed by the regulations.

13 Chapter 199 is further amended by adding immediately after Section 19J the following Sections:

19K (1) A municipality may establish a cultural landscape by concurrently adopting a cultural landscape plan and a cultural landscape by-law for a part of the municipality and there may be different cultural landscape plans and cultural landscape by-laws for different parts of the municipality.

(2) A cultural landscape by-law made pursuant to this Section shall provide for the establishment of a heritage advisory committee and subsections (2) and (3) of Section 12 apply *mutatis mutandis* unless a heritage advisory committee is established pursuant to Section 12.

(3) A cultural landscape plan and cultural landscape by-law shall be adopted by a majority vote of the whole council after a public hearing and consideration of any submissions received, but only those councillors present at the public

hearing may vote upon the adoption of the cultural landscape plan and cultural landscape by-law.

(4) The Minister shall forward a copy of the cultural landscape plan and cultural landscape by-law and the prescribed background studies and information to the minister responsible for the *Municipal Government Act* for that minister's recommendation.

(5) The Minister shall approve a cultural landscape plan and cultural landscape by-law unless

(a) the cultural landscape by-law does not carry out the intent of the cultural landscape plan;

(b) the cultural landscape plan is not implemented by the cultural landscape by-law;

(c) the prescribed background studies or information do not support the cultural landscape plan or cultural landscape by-law;

(d) the cultural landscape plan or cultural landscape by-law conflicts with an applicable provincial land-use policy or regulation adopted pursuant to the *Municipal Government Act*;

(e) the cultural landscape plan or conservation by-law conflicts with the applicable municipal planning strategy or land-use by-law;

(f) in the opinion of the Minister, there is a conflict with any other provincial interest,

and they take effect on and not before approval by the Minister.

(6) A cultural landscape plan and cultural landscape by-law approved by the Minister pursuant to subsection (5) may concurrently be amended, revised or repealed by the council and subsections (3) to (5) apply *mutatis mutandis*.

(7) Where a proposed cultural landscape includes a provincial heritage property, the Minister shall refer the proposed cultural landscape plan and cultural landscape by-law to the Advisory Council for its recommendation and, upon consideration of the recommendation, shall determine that the cultural landscape plan and cultural landscape by-law

(a) apply to the provincial heritage property and that Sections 7 to 11 do not apply to the provincial heritage property;

(b) apply to the provincial heritage property to the extent determined by the Minister and subject to such conditions as the Minister determines; or

(c) do not apply to the provincial heritage property.

(8) Where a building, streetscape or area in an established cultural landscape is to be designated as a provincial heritage property, the Minister may determine that the cultural landscape plan and cultural landscape by-law apply or do not apply to the provincial heritage property to the extent determined by the Minister and subject to such conditions as the Minister determines.

19L Where a cultural landscape is established, the landscape is subject to Section 17 and to the conditions prescribed by the regulations.

19M Design guidelines included in a cultural landscape by-law must be as prescribed by the regulations.

19N A restriction in a cultural landscape by-law that does not permit a building of any kind on a lot is *ultra vires*.

19O (1) Where a council has adopted a cultural landscape plan and cultural landscape by-law, a certificate is required to undertake the types of development for which a certificate is required by the cultural landscape by-law.

(2) A certificate referred to in subsection (1) is subject to the conditions prescribed by the regulations.

19P (1) Where the cultural landscape plan and cultural landscape by-law require that a certificate be issued for demolition or removal of a building or structure in a cultural landscape, the council shall hold a public hearing.

(2) Where the council considers an application for a certificate for demolition or removal of a building or structure, the council shall not approve the application unless

(a) there is irreversible structural damage or deterioration to the building or structure; or

(b) the applicable policies of the cultural landscape plan respecting demolition or removal of the building or structure are met.

19Q (1) A council that has adopted a cultural landscape plan and cultural landscape by-law shall designate a person employed by the municipality as the cultural landscape officer and the cultural landscape officer shall be responsible for the administration of the cultural landscape plan, cultural landscape by-law and the issuance of certifications.

(2) The responsibilities of the cultural landscape officer under subsection (1) are as prescribed by the regulations.

19R (1) The denial of a certificate or the imposition of conditions on a certificate granted pursuant to the cultural landscape by-law may be appealed to the Nova Scotia Utility and Review Board by the applicant for the certificate.

(2) The approval, imposition of conditions on or denial of a certificate pursuant to the cultural landscape by-law may be appealed to the Nova Scotia Utility and Review Board by

(a) the applicant for the certificate;

(b) an aggrieved person;

(c) the council of a municipality adjoining the cultural landscape to which the certificate relates;

(d) an official in the public service designated by the Minister.

(3) In subsection (1), “aggrieved person” includes

(a) an individual who *bona fide* believes that the proposed certificate will adversely affect

(i) the value of or the reasonable enjoyment of that person's property, or

(ii) the reasonable enjoyment of the property occupied by that person;

(b) an incorporated organization the objects of which include promoting or protecting

(i) the quality of life of persons resident in the neighbourhood affected by the council's decision, or

(ii) features, structures or sites of the community affected by the council's decision of significant historic, architectural or cultural value; and

(c) an incorporated or unincorporated organization of which the majority of its members are persons who are aggrieved persons pursuant to clause (a).

(4) The Board shall

(a) confirm the decision of the cultural landscape officer or the council, as the case may be;

(b) make any decision the cultural landscape officer or the council, as the case may be, could have made; or

(c) refer the matter back to the cultural landscape officer or council, as the case may be, for reconsideration.

(5) The Board shall not interfere with the decision of the cultural landscape officer or the council, as the case may be, unless the decision cannot reasonably be said to be consistent with the conservation by-law or clause (a) of subsection (2) of Section 19F.

19S The provisions of a cultural landscape by-law are severable and the illegality of any part does not affect the validity of the rest of the cultural landscape by-law.

19T Where there is a cultural landscape and a heritage conservation district established for the same property, the council shall recommend to the Minister whether the design guidelines of either the cultural landscape or heritage conservation district should apply.

14 Subsection 26(1) of Chapter 199, as amended by Chapter 10 of the Acts of 1991 and Chapter 54 of the Acts of 2010, is further amended by striking out clause (ae) and substituting the following clauses:

(ae) respecting the time within which the Minister must approve or refuse to approve a conservation plan or conservation by-law;

(af) prescribing the conditions that apply to heritage conservation districts;

(ag) prescribing the design guidelines to be included in a conservation by-law;

(ah) prescribing the conditions that apply to a certificate for development required by a conservation by-law;

(ai) prescribing the responsibilities of a municipality's heritage officer respecting the administration of its conservation plan and its conservation by-law and the issuance of certificates under the by-law;

(aj) prescribing criteria that justify deregistration of a provincial heritage property;

(ak) prescribing criteria that justify deregistration of a municipal heritage property;

(al) prescribing policies and requirements respecting demolition or removal of a municipal heritage property within a heritage conservation district;

(am) respecting cultural landscapes, cultural landscape plans and cultural landscape by-laws and, without restricting the generality of the foregoing, respecting

(i) the adoption and approval of a cultural landscape plan and cultural landscape by-law, including background studies and information, public participation programs and public hearings,

(ii) the purpose of a cultural landscape plan and cultural landscape by-law,

(iii) the content of a cultural landscape plan and cultural landscape by-law,

(iv) the certificates required to undertake development in a cultural landscape, including public hearings, the imposition of conditions to which the certificates are subject and the requirements for the issuance of certificates on or before the issuance of permits pursuant to the *Municipal Government Act* and the *Building Code Act*, and

(v) appeals;

(an) respecting the time within which the Minister must approve or refuse to approve a cultural landscape plan or cultural landscape by-law;

(ao) prescribing the conditions that apply to cultural landscapes;

(ap) prescribing the design guidelines to be included in a cultural landscape by-law;

(aq) prescribing the conditions that apply to a certificate for development required by a cultural landscape by-law;

(ar) prescribing the responsibilities of a municipality's heritage officer respecting the administration of its cultural landscape plan and its cultural landscape by-law and the issuance of certificates under the by-law;

15 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
