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BARRISTER · SOLICITOR · NOTARY PUBLIC

November 30, 2015

VIA FACSIMILE: 902-424-0547

Law Amendments Committee
Province of Nova Scotia
Suite 802
1809 Barrington Street
Halifax, NS B3J 2X1

To Whom It May Concern:

RE: Bill 118
Proposed Amendments to the *Heritage Properties Act*
Hearing Date: Monday, November 30, 2015 at 1:00 p.m.

I write as a citizen concerned about the built heritage of our province and as a member of the Board of Directors of Heritage Trust of Nova Scotia.

I am aware that The Honourable Member Tony Ince presented Bill 118 to the Legislature and that this Bill has passed second reading. I understand that the Bill is now before the Law Amendments Committee for review, discussion and recommendations before being returned to the Legislature for third reading.

Bill 118 proposes five amendments to the *Heritage Property Act* ("the *Act*"). It is the proposal to remove subsection 19B (1)(b) from the *Act* that concerns me. Though I am unable to attend the hearing scheduled for this afternoon, I request that the Committee consider my comments below.

Currently, unless they are within a heritage conservation district, heritage properties in Nova Scotia are protected from alteration and demolition for a period of up to three years through Section 18 of the *Act*, which states:

Consideration by municipality of application to alter or demolish

18 (1) The municipality may take up to three years to consider an application under Section 17.

(2) In its consideration of the application, the municipality may require public notice of the application and information meetings respecting the application to be held.

(3) Where the municipality does not approve the application, the property owner may, notwithstanding Section 17, make the alteration or carry out the demolition at any time

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after three years from the date of the application but not more than four years after the date of the application.

(4) Where the property owner has made the alteration or carried out the demolition in accordance with this Section, the municipality may deregister the property if the municipality determines that the property has lost its heritage value. *2010, c. 54, s. 14.*

The provision to establish a municipal heritage district is set out in subsection 19A (1) of the *Act*. Subsection 19A (7) contains specific provisions concerning provincially designated heritage properties contained within the proposed heritage district. Subsection 19A (8) charges the Minister with determining whether a provincial heritage property will be subject to the municipal conservation plan established for the municipal heritage district.

The *Act*, in its current form, provides protection to buildings within municipal heritage districts against demolition or alteration, even if they are not designated as heritage properties, though not to the same extent. Section 19B (1) states:

Consequences of establishing district

19B (1) Where a heritage conservation district is established,

(a) no further building, streetscape or area in the district shall be registered as a municipal heritage property;

(b) **Section 18 does not apply to any municipal heritage property within the district;**
[my emphasis]

(c) the conservation plan and conservation by-law shall include

(i) policies respecting demolition or removal of municipal heritage properties within the district, and

(ii) a requirement that a certificate be issued for demolition or removal of any municipal heritage property within the district; and

(d) notwithstanding clause (c) and for greater certainty, Section 17 continues to apply to a municipal heritage property within the district.

(2) Subject to subsection (1), a municipal heritage property located in a heritage conservation district continues to be a municipal heritage property. *1991, c. 10, s. 4.*

Under subsection 19B (1)(a), other buildings within a heritage conservation district will not be designated as heritage properties. However, those that are heritage buildings continue to have some protection against Section 18 development under the provisions of subsection 19B (1)(b) by virtue of being located within the heritage conservation district.

If subsection 19B (1)(b) is removed from the *Act*, a heritage property located within a

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municipality's heritage conservation district could 'fall between the cracks' and have no protection against the development permitted under Section 18.

Removing subsection 19B (1)(b) from the *Act* will create a substantial loop-hole through which developers and others can demolish or substantially alter historic properties even though they are located within a municipal heritage district. Such properties would have no protection because they are neither designated heritage properties nor protected because they are situated within a heritage district. I believe this change is contrary to the intent of the existing *Act*.

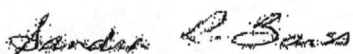
It has been suggested that wording similar to subsection 19B (1)(b) will be placed in the Regulations to this *Act*. With respect, regulations simply do not hold the same import as the legislation to which they apply and are sometimes overlooked completely. It also is more likely that, in the case of a legal challenge where a regulation rather than a statute presents the primary impediment, the applicant will be successful and receive permission to demolish or substantially alter a heritage property.

As well, whereas a statute may be changed only after notice to the Legislature, legislative debate and consultation with the public, a regulation may easily be changed with neither public nor legislative scrutiny. The protection that subsection 19B (1)(b) provides to our built heritage is simply too important to be left to a regulation that can be changed or removed by the stroke of a pen without notice and which could then leave our heritage properties with no protection whatsoever.

I respectfully request that the Law Amendments Committee advise the Minister and the Legislature to reject the request to remove subsection 19B (1)(b) from the *Heritage Property Act*. I request that subsection 19B (1)(b) be retained in the *Heritage Property Act*.

I thank you for your consideration of my submissions. Should you have any questions, please feel free to contact me at: sandra@slblaw.ca, or by telephone: 902-492-2879.

Yours very truly,



SANDRA L. BARSS

cc Nova Scotia Heritage Trust