



MEMORANDUM

TO: Heritage Markham Committee

FROM: Regan Hutcheson, Manager-Heritage Planning

DATE: November 8, 2023

SUBJECT: Proposed Amendment to the Ontario Heritage Act and Regulation
Alterations to Buildings Used for Religious Practices

Issue: **Bill 139, Less Red Tape, More Common Sense Act, 2023**
Proposed Amendment to the *Ontario Heritage Act* and Ontario Regulation
("O.Reg.") 385/21

Background:

- The Provincial Government is proposing a further amendment to the *Ontario Heritage Act* ("OHA" or the "Act") as part of **Bill 139, Less Red Tape, More Common Sense Act, 2023** (Minister of Red Tape Reduction) as well as an amendment to O. Reg. 385/21 General.
- Section 33 of the OHA requires property owners to seek municipal consent when making alterations to individually designated heritage properties if the alteration is likely to affect the property's heritage attributes. Council can then consent, consent with terms or conditions, or refuse the application. Appeal of a council decision is to the Ontario Land Tribunal.

To provide more certainty to religious organizations and Indigenous communities and Indigenous organizations who need to make modifications to buildings for purposes of their religious practices, the Provincial Government is proposing to amend Section 33 of the OHA to ensure alterations to a property designated under Part IV of the OHA are consented to without terms and conditions when the following requirements are met:

- The building, or part thereof, to be altered is primarily used for religious practices;
- The heritage attributes to be altered are connected to religious practices;
- The alteration of the heritage attributes is required for religious practices;
- Any additional conditions prescribed by regulation (this would be a new regulation making authority); and,

- The applicant provides council with an affidavit or sworn declaration that the application meets the conditions in the Act or prescribed in regulation.
- Schedule 14 of Bill 139 addresses alterations to buildings that are used for religious practices (see Attachment A).
- Council would be **required to consent** to alterations if the applicant indicates the alterations are “for religious practices” and provides an affidavit to that effect.
- The proposed amendment would also include a new regulation making authority that would allow for the definition of certain terms. The term “building” is proposed to be defined in the Regulation (See Attachment B).
- According to the Province, “the objective of the proposed changes is to provide certainty and shorter timelines for religious organizations, Indigenous communities and Indigenous organizations to move forward with proposed alterations required for religious practices”.
- The Province is proposing that upon receiving a complete application for alterations that conform to the new provisions, municipalities will have **30 days to issue a notice of consent**. Consent would be deemed to be provided where the timeline is not met by the municipality. Where the application is incomplete, municipalities would have 30 days to issue a notice of incomplete application.
- Municipalities would not have the ability to require any additional information, and no consultation would be required with the municipal heritage committee (i.e. Heritage Markham).
- The Province is proposing that the following additional conditions be prescribed by regulation:
 - The alteration is not permitted to be an addition to the building.
 - The alteration must be for the benefit of an Indigenous community, an Indigenous organization or a religious organization that is not an Indigenous organization **where the religious organization is a registered charity under the laws of Ontario or Canada (applies to owners or tenants)**

According to the Province, “these additional conditions are being proposed to help reasonably scope the provision while allowing religious organizations and Indigenous communities or Indigenous organizations to continue their religious practices or Indigenous religious or spiritual practices without interruption. By requiring that a religious organization is a registered charity, additional supporting information can be required to be provided beyond the completion of an affidavit or sworn declaration. Prohibiting alterations that are an addition to a building would help to limit the potential to impact heritage attributes beyond those related to religious practices”.

- The period to provide comment ends on: **December 3, 2023.**
- **Anticipated Date of implementation:** If the statutory amendments are passed and the regulatory amendments are made, the government intends on bringing the amendments into force on January 1, 2024.

Status/ Staff Comment

- The term “religious practices” is not proposed to be defined. This opens the process to potential abuse.
- Staff is concerned about the implications of this proposed amendment as it could affect a municipality’s ability to protect exterior (or interior, if identified) heritage attributes or the entire building itself. This could involve the removal of heritage attributes if the applicant indicates they need to be removed for religious practices. We assume this could include features such as stained glass windows, a church spire or decorative features that perhaps no longer apply to the religious institution now occupying the building. This could also involve the introduction of or placement of inappropriate signage that affects the heritage attributes (“the alteration of the heritage attribute is required for religious practices”- i.e. signage promoting the religious practice occurring inside the building)
- Council cannot challenge the applicant as to how the proposed alteration(s) to the building or heritage attributes are associated with religious practices. According to the legislation: the council **shall rely exclusively on the affidavit or sworn declaration provide by the applicant to demonstrate that the application meets the conditions** under paragraphs 1 to 4 of subsection (18).
- As the legislation only affects Section 33 of the Act, buildings used for religious practices in heritage conservation districts would not be affected by this proposed amendment.
- Staff concur that an addition to the building should be not considered an alteration and subject to this new legislation
- Summary of concerns:
 - the legislation is vague and open to abuse. It could be used by an owner (or applicant) who wishes to avoid maintenance and retention of certain features.
 - the term ‘religious practices’ is not defined;
 - the 30 day timeframe to bring the matter before Council is insufficient;
 - there is no requirement for the applicant to demonstrate that they considered alternative approaches to address the impact on existing heritage attributes;
 - the proposed legislation removes decision-making concerning the protection of community heritage resources from local elected officials; and
 - the legislation is contrary to the overall objective of heritage conservation which is to conserve heritage attributes that embody the cultural heritage value of the building (not withstanding the building’s use).

Suggested Recommendation for Heritage Markham

That Heritage Markham does not support the proposed amendment to the *Ontario Heritage Act* and Regulation 385/21 included in Bill 139, Less Red Tape, More Common Sense Act, 2023 as it could result in detrimental impacts to significant character defining heritage attributes on individually designated buildings used for religious practices.

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Attachment A

Proposed Legislation- Schedule 14 of Bill 139

Section 33

Alteration of building used for religious practices

(18) The council shall consent to an application to alter or permit the alteration of a building, or part thereof, on property under subsection (1), without terms or conditions, where the following conditions are met:

1. The building, or part thereof, to be altered is primarily used for religious practices.
2. The heritage attributes are connected to religious practices.
3. The alteration of the heritage attributes is required for religious practices.
4. Any prescribed conditions.
5. The applicant provides the council with an affidavit or sworn declaration that the application meets the conditions set out in paragraphs 1 to 4.
6. The applicant provides the council with any information and material prescribed under subsection (2).

Indigenous religious or spiritual practices

(19) For the purposes of subsection (18), religious practices include Indigenous religious or spiritual practices.

Notice re incomplete application

(20) The council shall, in accordance with the prescribed time period, notify the applicant if the affidavit or sworn declaration required under paragraph 5 of subsection (18) is not complete or if any information and material required under paragraph 6 of subsection (18) is not provided.

Same

(21) For greater certainty, the council shall provide additional notice in accordance with subsection (20) if the applicant resubmits an affidavit or sworn declaration that remains incomplete or if any information and material required is still not provided.

Notice re consent

(22) Upon receiving the complete affidavit or sworn declaration required under paragraph 5 of subsection (18) and all information and material required under paragraph 6 of subsection (18), the council shall, in accordance with the prescribed time period, serve notice of its consent to the application under subsection (18) on the applicant and the Trust.

Deemed consent, incomplete application

(23) If the council receives an affidavit or sworn declaration required under paragraph 5 of subsection (18) that is incomplete or if any information and material required under paragraph 6 of subsection (18) is not provided by the applicant, and the council fails to provide the applicant with notice of an incomplete application in accordance with subsection (20) or (21), as the case may be, the council shall be deemed to have consented to the application.

Deemed consent, complete application

(24) If the council receives the complete affidavit or sworn declaration required under paragraph 5 of subsection (18) and all of the information and material required under paragraph 6 of subsection (18) but does not provide notice of consent to the applicant in accordance with the time period prescribed under subsection (22), the council shall be deemed to have consented to the application.

Reliance on affidavit or sworn declaration

(25) For greater certainty, the council shall rely exclusively on the affidavit or sworn declaration under paragraph 5 of subsection (18) to demonstrate that the application meets the conditions under paragraphs 1 to 4 of subsection (18).

Non-application, subss. (3) to (14)

(26) Subsections (3) to (14) do not apply to an application to alter under subsection (18).

2 Subsection 70 (1) of the Act is amended by adding the following clause:

(j.1) defining terms for the purposes of subsections 33 (18) and (19);

3 Section 71 of the Act is amended by adding the following clauses:

(e) facilitate the implementation of amendments to this Act made by Schedule 14 to the *Less Red Tape, More Common Sense Act, 2023*;

(f) deal with any problems or issues arising as a result of the enactment of a provision of this Act by Schedule 14 to the *Less Red Tape, More Common Sense Act, 2023*.

Commencement

4 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

Attachment B

Proposed Definition

The Provincial Government is proposing to include a definition of the word "building" as it would be used in the provision to provide further scope and clarity.

What follows is the proposed substance of the definition:

For purposes of the provision it is proposed that "building" would be defined to mean one of the following:

- (i) With respect to an application for the benefit of an Indigenous community or organization, a building that the Indigenous community or organization has identified as a place used for Indigenous religious or spiritual practices; or
- (ii) With respect to an application for the benefit of a religious organization that is not an Indigenous organization, a building that the religious organization has identified as a church, mosque, synagogue, temple, chapel, or other place of worship.