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HERITAGE INCENTIVE PROGRAMS: THE KEY TO ACHIEVING THE
POTENTIAL OF HERITAGE CONSERVATION IN ONTARIO

By

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A Major Research Paper
Presented to Ryerson University

In partial fulfillment of the requirements for the degree of

Master in Planning
In
Urban Development

Toronto, Ontario Canada, 2011

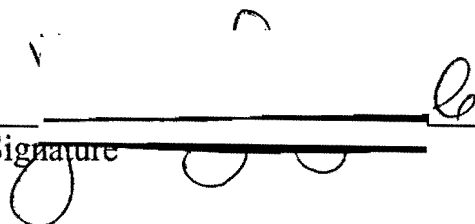
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This paper explores heritage conservation and its implementation in Ontario and argues that changes to the Ontario Heritage Act in 2005 raised concerns about the infringement of private property rights for the conservation of a public good. The author argues that greater honesty, foresight and more robust incentive programs are critical to the effective conservation on Ontario's cultural heritage resources and in balancing public and private interests. A survey of heritage incentive programs identified that Ontario's 10 largest municipalities offer at least one incentive program for designated property owners. The survey also identified numerous small municipalities with a rich complement of incentive programs. Recommendations are provided for more flexibility both in the framework and approach to heritage conservation in Ontario including expanded heritage incentive programs, greater flexibility in alterations to heritage buildings and less onerous requirements for heritage incentive program applications.

Key Words: heritage conservation; property rights; heritage incentives; cultural heritage resources; heritage grants.

Acknowledgements

I would like to take this opportunity to thank my fiancé Vince for his support, kindness and patience throughout the past 2 years.

I would also like to thank my friends and family for putting up with my hectic schedule and always encouraging me as well as Brin for keeping me company while I worked away into the night.

I would like to extend my sincere thanks to the following for their prompt assistance and input, without which this would not have materialized:

- Sally Drummond, Town of Caledon
- Jim Peters – Trent Hills
- Stephen Ashton – Town of Cobourg
- Kate Hagerman – Region of Waterloo
- Jasmina Konopek – Ministry of Tourism and Culture
- Joanne Lung – Town of Richmond Hill
- Peter Carello – City of North Bay
- Joe Cain – City of Sault Ste. Marie
- Mai Al Nabhan – Town of Aurora
- Marybeth McTeague – City of Toronto
- Margaret Kish – City of Oshawa
- Leah Wallace – Niagara-on-the-Lake
- Regan Hutcheson – Town of Markham
- Stuart Lazear – City of Oshawa
- John Calhoun – City of Windsor
- Ryan Leary – County of Prince Edward
- Sandra Parks – City of Owen Sound
- Michelle Wade – City of Kitchener
- Marcus Létourneau – City of Kingston

I would like to thank Mariana Iglesias, my mentor, for her never-ending guidance, kindness and willingness to help (and for the occasional pep talk too!).

I would also like to thank my professor and supervisor, Mr. David Amborski for pushing me to combine my passions for planning and heritage and for supporting and guiding me throughout the MRP process and in my career at Ryerson University.

Finally, I would like to thank Mr. Bruce Krushelnicki, Director of Planning and Building at the City of Burlington for the incredible opportunity he has given me to gain experience in the field I love. Thank you for encouraging and supporting me in my academic and career endeavors and always taking time out of your day to check in.

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Introduction

William Morris expressed the role of built heritage and our relationship with it in 1889: “...These old buildings do not belong to us only; they belong to our forefathers and they will belong to our descendants unless we play them false. They are not in any sense our property to do as we like with them. We are only the trustees for those that come after us” (Clark, 2008). More than 120 years later, the rationale for heritage conservation planning in Ontario remains similar in theory.

Many of Ontario’s communities are blessed with a rich collection of built heritage that contributes to making them great places to live and visit. This is especially evident in communities such as Niagara-on-the-Lake, Toronto, Markham, Oakville and Goderich, all of which are home to large numbers of heritage buildings that attract visitors and residents. Heritage homes and neighbourhoods provide stark contrast to the predominantly sprawling and monotonous modern development we see in many Ontario municipalities.

Much of the impetus for heritage conservation in Ontario comes from a significant loss in heritage resources or properties to demolition. “Over the past 30 years, Canada has lost 23% of its early buildings in urban areas and 21% of building stock in rural areas. This rate of destruction is disturbing both in terms of lost heritage and increased environmental waste” (Heritage Canada Foundation, n.d.). The Heritage Resources Centre at the University of Waterloo conducted a study in 2002 to determine how many

historically significant Ontario buildings had been lost over a 16-year period. Shipley et. al determined that 433 buildings had been lost in 22 communities (Shipley & Reyburn, 2002). The study also found that larger municipalities were losing historic buildings at a more rapid rate than smaller ones, partly due to increased development pressures (Shipley & Reyburn, 2002). The limitations of the study further highlight the loss of our cultural heritage resources as the study looked strictly at the loss to designated buildings, excluding a large number of other significant buildings. Non-designated heritage buildings are afforded much less protection and the rate of loss of these buildings is unknown. Further, the study excluded all unrecognized heritage buildings that were not included in the study.

The rate of loss of heritage buildings is alarming both from a cultural and environmental perspective. The loss of heritage properties results in a loss in our sense of history and identity and it also fills our landfills with lost energy and needless waste. The identification and protection of our heritage resources is an ever-growing challenge and continues to contribute to the loss of our built heritage.

In recent months, the loss of heritage buildings has generated significant media attention as numerous heritage buildings have met their demise. In January 2011, the City of Toronto lost the former Empress Hotel to arson, leaving a scar on the streetscape in Toronto's heart, just steps from Yonge Dundas Square. In 2010, Hamilton lost the Century Theatre in what has been described as demolition by neglect through the City's failure to enforce its own property standards By-law (Heritage Canada Foundation, n.d.).

The year 2010 also saw the devastating loss of the 35 – 151 Colborne Street, Brantford, known shamefully as the “clear cutting of Main Street” and one of the most misguided urban renewal projects in recent decades. Brantford’s loss constituted 41 mid-19th century commercial buildings, many pre-dating Confederation (Heritage Canada Foundation, n.d.).

Each year, the Heritage Canada Foundation publishes a listing of the year’s worst losses of built heritage. Of the five buildings listed for 2010, three are located within in Ontario (Heritage Canada Foundation, n.d.). One of the most deplorable heritage buildings losses is Alma College, formerly located in St. Thomas, Ontario. Alma College is seen as yet another example of the needless loss of a significant heritage building to fire, following an OMB decision which permitted the demolition of much of the existing building. The Executive Director of the Heritage Canada Foundation was openly critical of the loss of the building: “The tragic loss of Alma College is a microcosm of all that is wrong with the heritage conservation system in Canada...Fundamentally, it shows a lack of commitment to reusing our existing building stock—something countries like the U.S. actively encourage through financial incentives for rehabilitation” (Heritage Canada Foundation, n.d.).

Changes to the *Ontario Heritage Act* (OHA) in 2005 increased municipalities’ authority to conserve cultural heritage resources of their respective communities. Additional powers granted to municipalities have been met with varying levels of support and opposition. The changes often resulted in local governments placing restrictions and

controls on identified cultural heritage resources or properties. Many concerns have been raised, resulting from increased ability of municipalities to conserve heritage properties, specifically, including the claim that the increased authority comes at the expense of the rights of some property owners. Changes to the *Ontario Heritage Act* have also been supported by changes in the field of heritage conservation planning. The definitions of cultural heritage resources and cultural heritage value have been significantly broadened, but remain open to interpretation.

The principles behind heritage conservation are well-intentioned. Heritage conservation is perceived by many as a public benefit and the preservation of these buildings is done to allow future generations to reap the benefits of their existence. The reality remains that the conservation of our built heritage resources is often viewed as a burden on, or restriction to property owners, and an impediment to the redevelopment of a property.

Some of the most critical discussions surrounding heritage conservation involve the paradoxical nature of preserving individual private properties for public benefit. Opponents of heritage conservation contest the municipal interference into their property rights as the decision to designate a building can have significant financial and legal implications for property owners. Concerns arise due perceived restrictions and rigidity of conservation policies and also include the additional cost of maintaining heritage buildings on a property owner and the need for governments to better enable and encourage heritage homeowners to properly maintain their pieces of our heritage.

The changes made the *Ontario Heritage Act* in 2005 have exacerbated many issues around heritage conservation in Ontario. Changes to the OHA have reactionary and top-down responses to heritage conservation that often exclude the property owner from the decision making process.

This paper explores the layers of regulation for heritage conservation in Ontario and examines the framework under which it is implemented. The implications of the changes to *Ontario Heritage Act* and its impacts on private property owners will be discussed. This paper also identifies heritage incentive programs offered from all levels of government with a focus on municipal level programs. Finally, this paper will conclude with recommendations for more flexibility both in the framework and approach to heritage conservation in Ontario.

The framework for heritage conservation planning in Ontario must be revised to become more transparent and flexible, and most importantly, incentives must be offered for heritage property owners to help offset some of the costs associated with conserving local heritage. If individual property owners are to be stewards of our communities' cultural heritage resources, the public must ensure that they are compensated accordingly. Honesty, foresight and incentive programs are critical to the effective conservation of Ontario's cultural heritage resources and in balancing the public and private interests.

Framework for Heritage Conservation Planning

Our current heritage conservation framework has created many challenges and conflicts between municipal governments and private property owners. Changes to the *Ontario Heritage Act* have resulted in an increased role for municipalities in heritage conservation planning that is having both positive and negative impacts at the local level. Individuals and organizations implementing heritage conservation policies in Ontario now have a more effective suite of tools at their disposal. In addition to greater legislative powers, heritage planners also have broadened tools to identify heritage worthy of conservation.

Cultural Heritage Resources

A critical step in heritage conservation is the identification of cultural heritage resources. The identification of one's property as heritage is perceived to have serious implications for heritage property owners. The definition of heritage is expansive and causes concern for some property owners. The Ontario Heritage Trust defines heritage as "everything we have inherited that we value and wish to preserve for future generations. It is a living legacy that helps us understand our past, provides context for the present and influences our future"(The Ontario Heritage Trust, 2011). The scope of how we define heritage has evolved and significantly broadened. It no longer refers to architectural grandeur or 'period-piece' type buildings alone, but has expanded to include all physical, natural and associative elements of our environment that have value.

Under the current framework of heritage conservation, cultural heritage resources can include:

Monuments, buildings, landscape, artifacts and objects, as well as cultural traditions, music, theatre and dialect; it can be aesthetically pleasing and it can be ugly, unsafe and unprepossessing; it can be tangible – as many of these things are – or intangible. It can also be old and it can be new. It is something valued by society, by specific groups within society, and by individuals. All these expressions and perceptions are valid, and all recognize the significance of heritage and the contribution it makes to quality of life, through its contribution to sustainable consumption and production...(Schofield, 2008).

This broadened scope of what constitutes a cultural heritage resource also changes how we in turn value them. Cultural heritage resources are valued not simply for their representation of previous times and ways of life, but for the relief they offer from monotony of modern existence. “The persistence of [valued] places... is also reflective of a deep-seated need to find refuge from the complexities and insecurities of contemporary life in places that set humans in context, that provide constancy in the midst of profound and rapid change” (Schofield, 2008). For some property owners, there is concern that their property could fall under the broad umbrella of heritage which many feel places increased restrictions on the ability to alter their properties.

Along with our perception of what can be identified as ‘heritage’ the concept of heritage conservation has evolved in kind. Where previously heritage conservation was concerned with protecting the physical or built environment (buildings, structures, landscapes, artifacts etc.), more recently, the term has also come to be associated with safeguarding the non-physical associations between people and a place (associations linked to use, meanings and cultural or spiritual values) (Parks Canada, 2011). This is achieved through the designation of cultural heritage landscapes, including viewsheds, farmscapes and

other culturally and historically significant natural features. This expanded view of a cultural heritage resource can have implications on the development of an entire property, not just a historic building.

A cultural heritage resource is defined broadly to account for the diversity in cultures and our environments. However, not all interests can agree on what is valuable to them. The definition of cultural heritage resources and the criteria for determining cultural heritage value can be highly subjective and can result in a variety of interpretations. What one interest group may find valuable may hold minimal meaning to another. The criteria set out by the *Ontario Heritage Act* it defines are both subjective and open to interpretation and can cause contention with heritage property owners if disagreements about the worthiness or value of the resource arise.

Heritage Conservation Planning

The way in which cultural heritage resources are maintained and managed is referred to as heritage management abroad and heritage conservation planning in Canada. According to Parks Canada, “heritage conservation involves identifying, protecting and promoting the elements that our society values” (Parks Canada, 2011). Parks Canada is the national agency responsible for heritage conservation in Canada. In Ontario, heritage conservation is administered by the Ministry of Culture and Tourism. Heritage conservation is implemented at the municipal level using the *Ontario Heritage Act*. The OHA provides for the establishment of a set of criteria for the identification of cultural heritage value. The criteria are contained within Ontario Regulation 9/06 that included

three broad categories - historical/associative, design/aesthetic and contextual value. The OHA provides the legislative framework to protect identified cultural heritage resources.

Why Should We Conserve Our Cultural Heritage Resources?

There are environmental, societal and cultural as well as economic benefits associated with heritage conservation. Environmentally, heritage conservation preserves the ‘embodied energy’ in existing building, prevents the waste of additional energy on new construction and prevents construction garbage from ending up in the landfill. It also works towards achieving sustainable development agendas. Embodied energy can be described as the “total expenditure of energy involved in the creation of the building and its constituent materials” (Rypkema, 2005). Demonstrating the value of embodied energy in the existing building stock, Australia estimates that the amount of embodied energy in their existing building stock is equivalent to 10 years of the total energy consumption of the country (Rypkema, 2005). From a sustainable development and energy conservation perspective, Rypkema describes the loss of historic buildings to demolition a “triple hit on scarce resources: First, we are throwing away thousands of dollars of embodied energy. Second, we are replacing it with materials vastly more consumptive of energy [including plastic, steel, vinyl and aluminum]. Third, recurring embodied energy savings increase dramatically as a building life stretches over 50 years” (Rypkema, 2005). This is one of the key reasons for heritage conservation according to the World Bank: “...that a vast body of valuable assets, for which sunk costs have already been paid by prior generations, is available. It is a waste to overlook such assets” (Rypkema, 2005).

Heritage conservation provides benefits to the society at large as it assists in creating a sense of place in a community and adds character. Culturally, heritage conservation helps to define a community's identity and provides acknowledgement of the past and direction of the future (Parks Canada, 2011).

Economically, heritage conservation is good for a community from a tourism perspective as historic buildings often attract tourists from outside the community, as in the case of Niagara-on-the-Lake, Ontario. When examined, these tourists stay longer, spend more money per day and have a significantly greater per trip economic impact (than visitors not interested in heritage sites) (Rypkema, 2005). Conserving built heritage also contributes to an improved quality of life. According to the Inter American Development Bank, "As the international experience has demonstrated, the protection of cultural heritage is important, especially in the context of globalization phenomena, as an instrument to promote the sustainable development strongly based on local traditions and community resources" (Rypkema, 2005).

Heritage conservation is not unique to Canada. In fact, it stems from international conservation efforts and movements as a shared responsibility and benefit. Canada is a signatory nation to multiple heritage conservation charters including the Venice Charter and UNESCO's World Heritage Convention, 1972 (United Nations, 2011). Significant loss of our cultural heritage resources nation-wide not only ignores our international obligation to conserve heritage resources, but also will deny future Canadians proof of

the history of their ancestors. For a nation with a practice of physical documentation of our history, this is a crippling loss. It is important that Canada continues to maintain and expand its legacy for future generations.

The Ontario Heritage Act

The powers granted to local municipalities under the *Ontario Heritage Act* originate from the province's declaration of heritage conservation as a matter of provincial interest in the *Planning Act*, Section 2(d). This is further enforced by the Provincial Policy Statement (PPS) that states "significant built heritage resources and significant cultural heritage landscapes shall be conserved" (Ontario, 2005). Both the *Planning Act* and the PPS establish the foundation for heritage protection and identify the need for municipalities to alter their policies accordingly.

While the *Planning Act* and the PPS lay the groundwork for heritage conservation in Ontario, the most powerful tool used for heritage conservation is the *Ontario Heritage Act*. The Ontario Heritage Act was first enacted in 1975 with the intention of empowering municipalities to protect their cultural heritage resources. The *Ontario Heritage Act* permits municipalities to designate properties that Council determines to be of importance or significance to the community. The key distinguishing factor is the term enabling. The Ontario Heritage Act enables, but does not require municipalities to conserve significant cultural heritage resources. The OHA requires that municipalities maintain a register of cultural heritage properties containing all designated properties.

This required that municipalities place all existing designated properties onto Municipal Registers, but did not require them to further designate properties.

Protection of a heritage property through designation under the *Ontario Heritage Act* results in the registering of a municipal By-law on title on the subject property. This designation runs on the entire property and remains on title and remains enforceable in the event of the sale of the property. There are two types of heritage designations capable under the *Ontario Heritage Act*. The first is the designation of individual property under Part IV of the OHA and the second is the designation of all properties within a specified area, or heritage conservation district under Part V. Heritage designations protect a property's specified cultural heritage attributes and are intended to encourage historic stewardship. From a property owner's perspective, designation assures them that their efforts to conserve and maintain their heritage properties cannot be undone by others. Designation under the *Ontario Heritage Act* also permits access to grants, loans and heritage tax rebate programs.

Bill 60 and Changes to the *Ontario Heritage Act*

The current powers granted to municipalities resulted from a significant strengthening of the *Ontario Heritage Act* in 2005. Some supporters of heritage conservation and those implementing the OHA have been critical of the powers given to municipalities under the OHA. Others felt that the powers were limited and that they ultimately did not prevent the loss of built heritage, only delayed it. Bill 60 was introduced to amend the *Ontario Heritage Act* to strengthen and improve heritage protection. Prior to the amendments,

the *Ontario Heritage Act* granted a six month “cooling period” when a property owner wished to demolish a designated building. These six months were intended to provide sufficient time for an agreement to be achieved between the property owner and the municipality to ensure the preservation of the building. The outcome typically resulted in many property owners or developers simply waiting out the six month period and then demolishing the property. The *Ontario Heritage Act* was amended in 2006 to provide enhanced controls restricting the demolition of designated buildings, subject only to an appeal to the Ontario Municipal Board when a demolition permit is denied. Amendments also allowed for expanded protection and maintenance of individual properties, buildings, marine sites and archaeological resources, through increased property maintenance and property standards By-laws.

Additional changes to the OHA also required municipalities to keep a register of heritage properties. Municipalities were required to list all designated properties on a Municipal Heritage Register. In addition, municipalities were permitted to list other properties of interest. Listing of non-designated properties on the Municipal Register requires that property owners provide notice to the municipal Council of their intention to demolish the property 60 days in advance. This period provided an opportunity for staff and Council to consider designation and further protection of the property, or permit demolition. In the absence of such provisions, a demolition permit must be granted within 10 days, this does not allow adequate time to review the property and present a report to Council.

Further restrictions are also placed on designated property owners to ensure that the identified cultural heritage attributes are not compromised or impacted as a result of any alteration or modifications to the property. Such alterations require Council approval on designated properties.

Another potentially contentious issue arising from the changes to the OHA is the notice requirements for both designated and non-designated properties. The *Ontario Heritage Act* requires that notice be served on the property owner and in the local paper when it is Council's intention to designate a property. However the OHA does not require that the property owner be consulted or agree to the designation. Further, there are no notification requirements for non-designated properties identified by the municipality and placed on the Register.

The implications of these changes are still being explored, however there is undoubtedly an impact on property owners if the OHA is implemented to its fullest extent. Both the expanded notion of what constitutes heritage and the ability of municipalities to place non-designated properties of interest on Municipal Registers means that the OHA can have a large impact on an individual's property. Further, the demolition controls for designated buildings can effectively restrict a property owner's rights to do as they wish with their own property, save for the right of appeal to the Ontario Municipal Board (OMB) following Council's rejection of a demolition application.

While the powers are enabling and required, this allows municipalities to strike a balance between conserving cultural heritage in the public interest with private property rights. Unfortunately, this also leads to varying degrees of support for heritage conservation and different implementations across municipalities.

Impacts of the *Ontario Heritage Act*

Heritage Conservation and Private Property Rights

One of the greatest concerns with the implementation of the *Ontario Heritage Act* is its impact on private property rights. While the conservation and protection of cultural heritage resources is regarded as benefit to the public at large, many of these resources are classified as private property and the retention of these public goods is done at the expense of individual property owners. Despite the private ownership of many heritage structures, the *Ontario Heritage Act* does not require that property owners consent to being included on the Municipal Register or to designation under the OHA. The National Post recently criticized heritage conservation for its impact on private property rights:

... municipalities and provinces can run roughshod over property rights without fear of reprisal. They can impose heritage building designations, which prevent the redevelopment of buildings even when they are in a state of disrepair. They can declare land to be part of a greenbelt, and decimate both its potential use and its value overnight. They can deny citizens building permits to modify their homes, even if they are disabled on the grounds of cultural preservation. (The National Post, 2011)

The National Post criticizes the infringements on property rights for heritage conservation and summarizes the sentiment of many heritage property owners. This sentiment however, is at odds with both the legislation and the way it is interpreted in Ontario.

The Ontario courts have established a body of jurisprudence on property rights and heritage conservation. In the case of *Toronto College Street Centre Ltd. v. Toronto (City)*, 1986, the Court of Appeal ruled that,

The aim of the *Ontario Heritage Act* is to conserve, protect and preserve the heritage of Ontario. These aims are to be achieved by the Minister of Culture [and Recreation], acting either through the Ontario Heritage Foundation [now the Ontario Heritage Trust] or the advisory committees of municipalities. To achieve its aims, the OHA must interfere with private property rights. To counterbalance such interference numerous procedural safeguards are enacted for the benefit of the property owner.

The infringement on property rights for heritage conservation was re-affirmed in a 2003 case involving *Tremblay v. Lakeshore (Town)*. The Divisional Court ruled that:

Requiring the consent of the owner is not consistent with an overall reading of this Act or its purpose. Indeed, the OHA contemplates notice to the owner, possible objections, and a hearing process. The object of the OHA is the conservation and protection of the heritage of Ontario. This may interfere with individual property rights.

There is no denying that heritage designations do impact an owner's ability to alter their property. Designation, one of the highest levels of protection, places the following restrictions on private property owners:

- Restriction on demolition (not permitted)
- Responsibility to maintain identified attributes of the property
- Council approval for alterations/renovations

A listing on the Municipal Register places fewer restrictions on a property and requires that an owner provide notice of intention to demolish a property 60 days in advance.

This requirement applies only to non-designated heritage properties and represents additional restrictions for heritage property owners. The implications of heritage designations are that they can lead to increased costs, restrictions and controls which some argue reduces the perceived value of the property as the development potential appears diminished. The additional costs associated with renovating or restoring a heritage building as well as the perceived municipal control over the property reduces property values are other concerns often raised in opposite to heritage conservation regulations.

The right of an owner to control their property is also compromised through the notification requirements and powers permitted to municipalities. The *Ontario Heritage Act* requires that notice be served to the property owner and posted in a newspaper with community-wide circulation of Council's intention to designate a property. Given that the designation of a building can be initiated by a property owner or by Council, often at the recommendation of staff, it is important to note that property owners need not be included in the designation process, but must merely be notified. For listing of non-designated properties on the Municipal Register, there are no notification requirements under the OHA, which has the possibility of alienating homeowners.

Some groups opposed to heritage conservation in Ontario feel that Ontario Regulation 9/06 contains highly subjective criteria. Ontario Regulation 9/06 contains three broad categories including design or physical value, historical or associative value and contextual value. Each of the three categories contains three sub-criteria that are

necessarily broad and open to interpretation to be applicable province-wide. While broadly applicable criteria are important for implementation, some argue that they become subjective when implemented. It is the subjective nature of identifying cultural heritage resources that some oppose. What constitutes a 'landmark' or a significant historical figure to one individual or organization may have no significance to the rest of the community. Imposing restrictions on the rights of a property owner based on a subjective concept of heritage can lead to increased costs and frustrations to property owners, without their permission or consent.

Heritage conservation is not the only area where regulations have been imposed on private properties in the public interest. Ontario Building Code requirements, official plan and Zoning By-law designations, regulatory floodplain areas, conservation authority regulations and noise and nuisance By-laws are just some examples of where restrictions of property rights are done in the public interest. Additional policies such as design guidelines can have major implications on the rights of a property owner to freely design their property. The difference between other infringements on private property rights and those for heritage property owners is that conservation and flood plain restrictions, Zoning By-law and Official Plan policies as well as building code and noise and nuisance requirements are implemented to avoid unnecessary negative impacts to private property and to protect individuals from harm and danger. The conservation of our built heritage resources is also done in the public interest; however, neglecting to preserve such buildings does not result in physical harm to properties or individuals.

Heritage Conservation and Property Values

Another concern of private property owners is property values. Property values reflect the size, location and aesthetics of a property, but also its development potential. A property perceived to be ‘untouchable’ or frozen in time, lacks the freedom from controls and development opportunity often sought in redeveloping municipalities and causes home owner’s concern about the value they could get for their property.

The Heritage Resources Centre at the University of Waterloo published a study of the effect of heritage designations and property values in Ontario on more than 3,000 properties in 24 communities. The study found that heritage designations could not be linked to a negative impact on property values, but approximately 74% of properties studies performed at an average or better than average level and that there was robust niche market for designated buildings (Shipley, 2000). While the study does not assert that designations resulted in higher property values, it does acknowledge that the maintenance and improvement of the home is more likely to be a factor for increased property values (Shipley, 2000). “By far the most common conclusion is that properties within local historic districts appreciate at rates greater than the local market overall and faster than similar non-designated neighbourhoods. Of the several dozen of these analyses, the worst-case scenario is that housing in historic districts appreciates at a rate equivalent to the local market as a whole” (Rypkema, 2005).

Heritage Conservation and Insurance Premiums

An additional concern sometimes raised by owners of heritage properties is increased insurance premiums. Exorbitant or denied insurance are often cited as arguments against heritage conservation. While some insurance companies may have policies limiting the provision of insurance to buildings over a certain age or restricting the extension of insurance to homes higher risk features (i.e. old wiring, heating, etc.), a heritage designation should not increase insurance premiums (Insurance Bureau of Canada, 2006). Heritage designations do not require additional premiums nor do they place additional requirements on the replacement of specific features. According to the Insurance Bureau of Canada, “if a building on a heritage property is completely or partially destroyed, the designation By-law does not oblige the owner to replicate any lost heritage attributes” (Insurance Bureau of Canada, 2006). The intention of the OHA is to preserve the existing, tangible elements of the heritage resource. In the event of the loss of such features, it is against the very nature of the legislation to require re-construction of replica materials or the inclusion of new materials. Given that there are no additional requirements for heritage property owners or insurers, as set out under the OHA, insurance premiums should not increase nor should they be denied following the designation of a heritage building.

Heritage Incentive Programs

Heritage incentives are another tool that can be used by municipalities in their heritage conservation efforts. In the past, incentive programs have been offered at various levels of government to encourage property owners to conserve cultural heritage resources and to encourage heritage property owners to maintain their properties. “Opponents of heritage legislation sometimes argue that if, indeed, heritage belongs to the people, then the people should help the owners pay for its preservation or upkeep. The government, as the people’s representatives, should either pay the costs of restoration or repair, or it should pay compensation for the development opportunities that the owners of the listed building have had to forgo in order to preserve it” (Davidson, 2008). *The Ontario Heritage Act* empowers municipal governments to provide incentives to promote heritage conservation and to assist property owners in offsetting some of the costs associated with properly maintaining a heritage building. There are numerous avenues used by Ontario municipalities to do so: Community Improvement Plan (CIP) provisions; grant and loan programs; property tax rebate programs; and tax back grants for designated properties.

Heritage Incentives: Community Improvement Plan (CIP) areas

The *Planning Act* permits the establishment of Community Improvement Plans in specifically identified areas. “Ontario’s *Planning Act* allows municipalities to prepare a Community Improvement Plan to set out... what a municipality intends to do to address an unsatisfactory state of affairs in a certain defined area” (The City of Windsor, n.d.). Within a CIP area, changes to zoning or land-use designations may be permitted as well

as grants and loans offered to property owners as an incentive to improve the area in some way. Restoring or updating of heritage properties can be included in CIP areas.

Heritage Incentives: Tax Back Grants

Municipal Tax Back Grants are a variation of the granting power of a municipality. This allows the municipality to offset any municipal property tax increase for a specified period of time following alterations, repairs or renovations to the property which in turn result in a higher assessment for the property. Grants equal to the amount of increase in property taxes following the re-assessment are permitted providing the local municipality has the necessary By-law in place. This effectively freezes the current rate of taxation for a set period of time (Ministry of Culture and Tourism, n.d.). This is perceived to be of minimal risk to municipalities as there is no additional loss of revenue (based on the assumption that without the renovation or alteration, the tax rate would have remained the same) and it is thought to have a positive impact on the revitalization of less successful areas (Ministry of Culture and Tourism, n.d.). According to the Ministry of Culture and Tourism, additional community benefits associated with the use of this program include: increased economic activity and job opportunities in construction, community revitalization, stabilization of neighborhoods and property values, stimulating the rehabilitation and restoration of existing buildings. Finally it has the benefit of ensuring the protection and re-use of local heritage properties (Ministry of Culture and Tourism, n.d.).

Heritage Incentives: Property Tax Relief

Municipalities may also utilize their grant-making powers to establish property tax relief programs for designated property owners. The Ontario Government through the Ministry of Culture in partnership with the Ministry of Finance released guidelines for the administration of heritage property tax relief. Heritage property tax relief is a financial tool to help owners maintain and restore their properties for the benefit of the entire community (Ministry of Culture and Tourism, n.d.). The ability for municipalities to offer partial relief from property taxes for heritage property owners is optional to municipalities and is made possible under Section 365.2 of *the Municipal Act*, 2001. The Ministry of Culture permits a reduction between 10% and 40% of the municipal portion of a property's taxes. The province subsidizes the education portion. In order for a municipality to afford relief from property taxes, a municipal By-Law must be passed. The Ministry has also established mandatory eligibility criteria for property owners of all municipalities:

1. The property must be designated under Part IV or Part V of the Ontario Heritage
2. The property must be subject to a heritage conservation (easement) agreement for the property

In addition to the Ministry's mandatory conditions, additional eligibility criteria are established to give municipalities the flexibility to establish additional eligibility criteria or offer criteria for different property classes. Examples include targeting the rehabilitation of certain kinds of properties (agricultural, commercial, etc.), conservation of specific community districts (waterfronts, Heritage Conservation Districts) (Ministry of Culture and Tourism, n.d.). Municipalities are also permitted to target properties

already subject to heritage conservation (easement) agreements, limiting the number of years a property may be eligible and requiring the 'good condition' of a property, as determined by the municipality (Ministry of Culture and Tourism, n.d.). The strict condition under which this program applies is designed to ensure that only serious owners making long-term commitments to heritage conservation are eligible.

Heritage Incentives: Grant and Loan Programs

Finally, any municipality wishing to provide heritage grants or loans is permitted to do so, providing a By-law is passed creating such a program. Municipalities have flexibility regarding the terms of the programs and can opt to offer only a grant or loan component.

The Benefits of Heritage Incentives

The provision of incentives for heritage property owners is important to the healthy functioning of heritage conservation in Ontario. If our heritage buildings are to be retained and we are to encourage the stewardship of our built heritage, incentives must be made available. Given the public benefit of heritage conservation and the assertion of heritage conservation as a matter of provincial interest, assistance must be given to property owners to encourage private property owners to take action. The Ministry of Culture argues, "Well-maintained heritage properties enrich our quality of life and give communities their unique character and sense of place. Throughout Ontario, conserving heritage properties has helped revitalize historic town centres and attract residents, businesses and visitors to our communities" (Ministry of Culture and Tourism, n.d.). Given the community benefits that heritage buildings afford, the intent of heritage

property tax relief is to provide incentives to the owners of these properties to continue their conservation efforts as well as to continue with regular investments to the on-going maintenance of the property, often which is more costly given its historic nature. Secondly, if the Ministry ascertains that continuous and proactive maintenance can help to avoid major costs of projects later.

Inventory of Ontario Heritage Incentive Programs

Methods

Conserving heritage helps to establish a sense of place in a community and has been identified by the province as an important component of life in Ontario. Through its various policies and legislation the province has made a commitment to the conservation of significant cultural heritage resources. Part of the challenge is that many of the properties worthy of protection are owned by private property owners and the cost of acquiring them would be too costly for municipalities. The costs incurred to maintain these building in keeping with their original character and materials can cause greater than normal financial burdens to homeowners. Provisions in the *Municipal Act* and the *Ontario Heritage Act* permit municipalities to offer incentives to property owners to assist in offsetting some of the costs associated with their conservation efforts.

The purpose of this research was to conduct an inventory the Ontario municipal incentives for heritage property owners. This research sought to identify which incentive programs are currently available in Ontario municipalities. Municipalities are able to offer incentives to designated property owners, however, this is not required under the OHA. The flexibility given to municipalities by the province also means that there can be a lot of variation in the details of each municipal program.

This qualitative research project used primarily Internet searches to determine the availability of incentive programs across Ontario municipalities. A secondary method

used to confirm and enhance the data found online included email correspondence with Ontario heritage planners.

Statistics Canada Census data (2006) was used to determine a listing of Ontario municipalities by population. The initial scope of the research involved only Ontario municipalities with populations greater than 50,000 residents. The initial Internet focused research was based on the following assumptions:

- Municipalities with larger populations are more likely to be able to offer financial incentives
- Larger municipalities are likely to have a higher number of heritage buildings
- Larger municipalities are more likely to have municipal websites with information on heritage planning
- Larger municipalities are more likely to have a heritage planner or dedicate resources to heritage planning policy

Data was compiled using web-based searches including the following terms, in conjunction with the name of the municipality:

- Heritage property tax relief
- Heritage planning
- Heritage incentives
- Heritage grant
- Heritage loan
- Heritage tax rebate

Beyond the initial Internet search, e-mail correspondence was used to contact various municipalities with known heritage programs. This necessarily expanded the scope of the research from municipalities of greater than 50,000 people.

A content analysis of relevant Internet web pages and documents was completed using the software program, 'Evernote'. This software permitted the 'clipping' of relevant Internet web pages to be compiled into themed notebooks and made available offline. It was quickly discovered that not all municipalities had current heritage-related material posted on the Internet, nor did all municipalities indicate whether they offered any incentives. When possible, data were collected using Internet searches alone, but often municipalities were e-mailed and contacted by telephone with requests for further information.

Data was collected and organized using Excel. The following information was recorded:

- Name of municipality
- Population of municipality
- Presence of any incentive program
- Name(s) of incentive programs
- Type (grant, loan, tax rebate)
- Amount (maximum)
- Matching? (is an equal contribution by the property owner required?)
- Area restrictions? (Heritage Conservation District, Community Improvement Plan area, etc.)
- Special requirements (application fee, maximum number of applications/year, etc.)
- Budget or Scope of Program (where possible)
- Additional information

As received, data were input into the 'Excel' spreadsheet. Where municipalities had to be contacted for additional information, the information obtained online was verified by the municipality. E-mail correspondence with heritage planners was also used as a means to verify the information gathered.¹ Where such information was not available,

¹Ethics review was not sought for this portion of the research as it was primarily based on Internet searches and the examination of public documents and government programs.

municipal staff were contacted to provide additional information or direction to the correct documents. Identifying information was not collected, nor was any information that had the potential to endanger or compromise the identity, position or well-being of the respondents. Information collected was generally that which is in the public record or that which municipal heritage planners voluntarily provided.

Findings

The research identified numerous municipal programs in a variety of formats. The most commonly offered incentive program was a matching grant (Table 1). Almost all grant programs found were matching grants, indicating that the property owner was required to contribute equally (except in the case of Burlington, where the municipality only matched the property owner's expense by 25%). It was found that the majority of grant programs offered between \$1,000 and \$5,000 for eligible projects. Heritage grants were offered by 17 municipalities and were noted to be in the works for others.

The next most commonly offered incentive program was a property tax rebate for heritage properties (Table 3). While there is much more variation amongst the programs and the way in which they were implemented, it was found that grant programs were offered in 13 municipalities. Some municipalities answered that they would be creating such programs in the near future. The provincial guidelines permit municipalities to offer between 10% and 40% of a rebate. The vast majority of municipalities offering heritage property tax rebates offered the maximum 40%.

A number of area specific programs were identified throughout the research process (Table 4). These programs focused on a specific Community Improvement Plan area for a Heritage Conservation District (HCD). While not all programs were created specifically to achieve heritage conservation objectives within these areas, a great diversity of programs was offered and many appeared to be well subscribed.

The least offered program appeared to be the loan programs, with only four municipalities found to be offering them (Table 2). Data pertaining to loan amounts and requirements was the most difficult to come across.

An important finding was that while some municipalities offered a host of programs, not all municipalities offered any incentive programs. Both Markham and Hamilton offered multiple incentive programs and had programs designed to better meet the needs of different land uses. Notably, Markham provides 4 different incentive programs including a loan program and designated property grant program as well as two programs designed for commercial buildings including the Commercial Façade Grant Program and the Commercial Signage Replacement Program. Hamilton also provides commercial-specific programs including the Commercial Heritage Improvement and Restoration Program, offering matching grants of \$20,000 for eligible projects. Such programs recognize the increased costs of works on commercial heritage buildings and also that the same program may not meet the needs of residential, commercial and institutional uses, among others.

Another unexpected finding is that of incentive programs in smaller municipalities. One may expect that larger municipalities would be more likely to offered heritage incentive programs. In fact the largest municipalities in the Province provide programs. Toronto, Ottawa, Hamilton and Mississauga all provide well-advertised programs. Based on Statistics Canada's Census (2006), Toronto, Ottawa, Mississauga, Hamilton, Brampton, London, Markham, Vaughan, Windsor and Kitchener are Ontario's 10 largest municipalities; all offered at least one program. Notably, the towns of Cobourg and Owen Sound with populations of 18, 201 and 21,753 respectively have quite robust heritage incentive programs. Cobourg offers 5 different heritage incentive programs including the Heritage Loan Program, Permit Fee Program, Heritage Tax Incentive Program, Development Charges Credit on Existing Building Program and through the Cobourg chapter of the Architectural Conservancy of Ontario, the Cobourg Heritage Grant Program. The bulk of the incentives are available to properties within the Heritage Conservation District or the Commercial Core. The Cobourg Heritage Grant Program is available throughout the municipality and the Permit Fee rebate program offers a 50% rebate (as opposed to the full rebate offered within the Heritage Conservation District) to properties located outside of the HCD. Such a complement of programs shows the municipality's commitment to heritage conservation in the core of the City and shows considerable effort to maintain the heritage district. Other municipalities such as Cambridge, Hamilton, Vaughan and Windsor have targeted incentives to Heritage Conservation Districts.

A successful example of a Community Improvement Plan area policy used to assist with heritage conservation can be found in Owen Sound. Owen Sound currently has a By-law in place designating the entire municipality within the Community Improvement Plan. Owen Sound's Façade and Structural Improvement Program is applicable city-wide and covers up to one third of eligible costs up to a maximum of \$5,000 for works on the front façade or structural work. The program also covers up to one half of the eligible costs to a maximum of \$7,500 if both the front and rear facades are improved together. The program currently has a \$40,000 Annual Budget. To date, Owen Sound has dedicated \$265,000 on 45 projects. Owen Sound's Façade and Structural Improvement Program achieves the goals of the city-wide Community Improvement Plan and assists with and promotes the conservation of the town's cultural heritage resources.

Regardless of the number of programs, or the value of the incentive, an understandable, simple and well-advertised incentive program sends a powerful message to heritage property owners. Heritage incentive programs are critical in achieving the goals of heritage conservation and in recognizing the efforts of private property owners in maintaining the municipality's cultural heritage resources.

Table 1: Heritage Grant Programs

Municipality	Grant Amount	Grant Type	Additional Details
Toronto	\$10,000 maximum (Residential)	50% Matching	
Ottawa	\$5,000 maximum	50% Matching	
Mississauga	\$500-\$10,000	50% Matching	\$5000 maximum for work on heritage attributes; \$10,000 maximum for structural work
Hamilton	\$20,000 maximum	50% Matching	Commercial Heritage Improvement and Restoration Program
Brampton	\$5,000 maximum	50% Matching	
Markham	\$15,000 maximum	50% Matching	Commercial Façade Grant Program
	\$1,000/store		Commercial Signage Replacement Program
	\$5,000	50% Matching	Designated Heritage Property Grant Program
Kitchener	\$500 to \$3,000	50% Matching	
Burlington	\$15,000 maximum	25% Matching	
Richmond Hill	\$2,000/property/year		
St. Catharines	\$1,000 maximum	50% Matching	
Cambridge	\$5,000	50% Matching	
Kingston	\$2,000	50% Matching	
Waterloo	No Specific Amount		Offered through the Waterloo Regional Heritage Foundation
Sault Ste. Marie	\$3,000		
Caledon	\$4,000 maximum	Matching	Residential/Institutional
Cobourg	\$1,000		Offered by the ACO Cobourg Branch
Niagara on the Lake	\$5,000 to \$10,000 maximum	Matching	\$5,000 maximum for residential \$10,000 maximum for commercial (joint project with Niagara Region)

Table 2: Heritage Loan Programs

Municipality	Loan Amount	Source	Additional Details
Hamilton	\$50,000	Community Heritage Fund	For restoration projects
Markham		Heritage Loan Fund	
Burlington	\$15,000	Community Heritage Fund	Matching Loan
Cobourg		Cobourg Heritage Loan Program	

Table 3: Heritage Property Tax Rebate Programs

Municipality	Rebate Amount	Additional Details	Area Specific
Toronto			
Markham	30%		
Windsor	40%	9 eligible properties	Sandwich Neighbourhood
Kitchener	40%		
Kingston	40%	Maximum rebate \$5,000	
Whitby	40%		
Chatham-Kent	40%	50% of budget for residential properties	
Sault Ste. Marie	40%		
Peterborough	40% (residential) 20% (commercial)		Schedule J area
Newmarket	40%		
Caledon	40%	No longer offered (part of a 4-year pilot program)	
Cornwall	40%		
Owen Sound	20%	14 eligible properties (maximum \$15,000/year)	

Table 4 Area Specific Incentive Programs

Municipality	Program Details
Hamilton	Heritage Property Grant Program – for structural/stabilization work within the downtown BIA/CIP area.
Windsor	Sandwich CIP area – property tax rebate (9 properties eligible)
Cambridge	Building Revitalization Program – matching grant (up to 50% of eligible expenses) to a maximum of \$20,000 located within one of 3 downtown core areas (not just heritage related)
Peterborough	Schedule J area – Property Tax Rebate up to 40% for residential properties and 20% commercial
Owen Sound	Façade and Structural Improvement Program – applies to the City-wide CIP for 1/3 of eligible costs up to \$5,000 (front façade/structural) and ½ eligible costs to \$7,500 if front and rear facades improved together.
Cobourg	Cobourg Heritage Loan Program – Up to \$15,000 per property/project for eligible projects within the Heritage Conservation District.
	Heritage Permit Fee Rebate Program – provides rebate of the heritage permit fee for all permits applied for within the Heritage Conservation District (50% rebate for heritage properties outside of the district)
	Heritage Tax Incentive Program – provides a tax rebate on the amount of annual increase in assessment in town portion of the tax for up to 10 years within the commercial core.
	Development Charges Credit on Existing Buildings Programs – provides a credit on Development Charges for re-use of building – A change of use credit based on former area of the former use compared to the area of the new use.
Stratford	Heritage Conservation District – Building Code Upgrade/Loan Program – provides a matching loan to a maximum of \$50,000
	Heritage Conservation District Rehabilitation Grant Program – provides a tax rebate incrementally to properties over a 10 year period following the rehabilitation of a heritage property
	Heritage Conservation District – Façade Improvement Loan Program - provides a matching loan to a maximum of \$25,000 for façade improvements to commercial buildings

Recommendations

There are numerous opportunities to make some changes to the framework and implementation of heritage conservation in Ontario. The following are recommendations that could help to generate greater support for heritage conservation in Ontario:

- Engage communities in heritage conservation master plans to achieve a community vision (also determines what a community is willing to pay to conserve)
- Permit more flexibility and leniency in modifications to heritage structures
- Focus on the retention of the character of the place rather than on material elements
- Expand incentive programs to be available to properties listed on the Municipal Register, not just designated properties
- Reduce the onerous requirements associated with incentive applications
- Look for additional incentives to encourage heritage property owners to want to list their properties on the register
- Heritage as a prestigious title – make heritage designation something to be sought out

Community engagement is a critical step towards ensuring community endorsement of heritage conservation. Engaging communities in heritage conservation master plans can help to achieve a community vision and solidify the community's values. They can also help to determine what types of projects receive financial support and an appropriate annual budget for incentives.

Permitting greater flexibility in terms of alterations and moderations to heritage buildings and streamlining approval processes to reduce the burden to private property owners could help to make retaining heritage buildings more desirable and could reduce some of the restrictions felt by property owners. This could also be achieved through a shift from the retention of a specific material to a focus on the retention of the character of the place.

Improved heritage incentive programs are an excellent way to encourage and support the heritage conservation efforts of individual property owners. Potential modifications to the existing foundation of heritage incentive programs include a reduction in the onerous requirements associated with some heritage incentive applications. Eliminating yearly applications in lieu of every second or third year (for heritage property tax rebate programs) is a step that some municipalities have taken to reduce some of the requirements. Many municipalities commented on the under subscription of programs. This could be improved by expanding the availability of heritage incentives to Municipal Register properties (subject to the proposal's conformity with Parks Canada's Standards and Guidelines for the Conservation of Historic Places). This has the opportunity to encourage a larger group of individual property owners to maintain their properties but also encourage others to seek recognition as a heritage property. Ultimately, the goal is to conserve built heritage. Any program that can entice someone to list their property as heritage (even at the Municipal Register level) works towards achieving that goal. In addition, always being open to new incentive programs is a way to ensure that programs are relevant, achieving their purposes and attracting the appropriate property owners. Finally, making heritage a prestigious title or entity to be desired is an excellent way to create more acceptance of heritage conservation.

Conclusion

Historic buildings are a part of much of Ontario's built fabric and contribute to making Ontario a desirable place to live and visit. Ontario has lost some significant cultural heritage resources to demolition, neglect, fire and other tragic circumstances. While these losses represent permanent scars on the fabric of our city, to dwell on the losses is to fail to acknowledge the stewardship and effort that many heritage property owners undertake on a daily basis. It is critical that the work done to maintain our existing heritage building stock is not compromised for future generations. The recognition of our heritage resources is important not only in ensuring our communities look and feel good, but they are important anchors in our lives. They reinforce where we have come from and provide a vibrant juxtaposition to past and present. To continue to lose our heritage is to lose our sense of identity.

If we are to continue to place value on cultural heritage resources, how they are managed will require additional thought. We must abandon the view that heritage buildings should be frozen in time and work actively towards feasible and reasonable solutions to achieving their conservation. "A historic place is part of a living organism in the modern world. Its restoration has educational, cultural, and emotional value. But it cannot survive in conflict with the growth of the place in which it is to be found nor can its development ignore the basic drives behind our dynamic society. A return to the womb of time is neither physically possible nor psychologically healthy" (Fiess, 1956). If we are to recognize the importance of cultural heritage resources while acknowledging the

modern context, there is potential to infuse new life into heritage conservation planning in Ontario. There is perhaps some value in re-thinking our approach:

As the process of rehabilitation alters the perception and meaning of the resource, what may have been considered authentic about a structure prior to its modification will inevitably have to change based on synthesis of form, space, material, time and use that have newly defined the work through an intervention that expresses and sustains the philosophical authenticity of the essential architectural idea....In general, the materiality of a structure was of secondary importance to the underlying ideas such as abstraction, impermanence, or dynamism that conveyed meaning in the work (Fixler, 2008).

In Ontario's heritage conservation process, cultural heritage attributes are systematically recorded in a detailed way identifying the specific material and form of each feature that must be maintained in perpetuity, once again contributing to the rigid and inflexible nature of heritage conservation. The concept of spiritual authenticity demonstrates "commitment to change, and newness, which defer at least as much to idea and intent as to material, lead perhaps more to a postmodern understanding of authenticity that approaches Quinan's own call for 'a new paradigm [for preservation] that must be flexible, inclusive, and multivalent'" (Fixler, 2008, p. 12).

This paper has identified the many levels of policy, regulation and legislation that contribute to heritage conservation in Ontario. It has also identified some of the concerns resulting from our current practices for heritage conservation. Heritage designations are valuable tools, but have been seen as inflexible, burdensome and are feared or angrily opposed by the public in some cases. Further, the failure to identify buildings as historic leaves them vulnerable to loss and unsympathetic alterations. These buildings, while

providing reference to the past, must remain functional in today's world and we must be cognizant that there are often higher than average costs associated with maintaining a heritage building.

This research has recommended that both greater honesty and transparency are required to achieve increased support for heritage conservation. Further, the support for heritage conservation must evolve to be a mutually supportive system – municipalities must receive public support to effectively conserve a community's resources, but the public must receive support and acknowledgement from the municipality for their individual conservation efforts. The framework for heritage conservation planning in Ontario must be revised to become more flexible and incentives must continue to be offered to heritage property owners to help offset some of the costs associated with conserving local heritage for public consumption. If individual property owners are to be stewards of a community's cultural heritage resources, then the community must ensure that private property owners are supported in kind.

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