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Eliza Richardson*

Lost: Heritage Stock. The *Heritage Property Act* and Heritage Conservation in Downtown Halifax, Nova Scotia

This article considers heritage conservation in Halifax, examining the Heritage Property Act and its implementation. As one of the oldest cities in Canada, Halifax, Nova Scotia was graced with an abundance of built heritage. However, historic properties have been disappearing at an alarming rate, with 41 per cent of potential heritage buildings in downtown Halifax, Nova Scotia having been demolished since 2009. This article argues that the current approach to heritage conservation in Halifax is nominally successful but consistently falls short of the spirit in which it was enacted. The Act performs well in specific situations, namely where the owners wish to receive heritage designation. Where owners refuse to register their properties, there is little the municipality can (or is willing) to do to protect heritage properties. The result is a death by attrition for much of the built heritage of the city.

Cet article traite de la conservation du patrimoine à Halifax, en examinant la Heritage Property Act et sa mise en œuvre. En tant que l'une des plus anciennes villes du Canada, Halifax (Nouvelle-Écosse) a été gratifiée d'un abondant patrimoine bâti. Cependant, les propriétés historiques disparaissent à un rythme alarmant, 41 % des bâtiments patrimoniaux potentiels du centre-ville d'Halifax ayant été démolis depuis 2009. Cet article soutient que l'approche actuelle de la conservation du patrimoine à Halifax est en principe efficace, mais qu'elle ne correspond pas toujours à l'esprit dans lequel elle a été adoptée. La Loi donne de bons résultats dans des situations spécifiques, à savoir lorsque les propriétaires souhaitent obtenir une désignation patrimoniale. Lorsque les propriétaires refusent d'enregistrer leurs biens, la municipalité ne peut (ou ne veut) pas faire grand-chose pour protéger les biens patrimoniaux. Le résultat est une mort par attrition pour une grande partie du patrimoine bâti de la ville.

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Introduction

In 2019, a governmental report confirmed what activists had long been prophesizing: Halifax was losing its built heritage—at an alarming rate.¹ Founded almost three hundred years ago, Halifax is one of the oldest cities in the country. Much of Halifax’s early settlement is evident in its architecture. The downtown continues to exist along the original gridlines laid down by the early British military and buildings from the Georgian, Victorian, and Edwardian eras are prominently featured.² Despite the

1. Heritage Advisory Committee and Community Planning and Economic Development Standing Committee, *Case H00437: Strategy for the Protection of Potential Heritage Resources Downtown Halifax*, Item No 9.3 (31 January 2019), online (pdf): <cdn.halifax.ca/sites/default/files/documents/city-hall/boards-committees-commissions/190131hac93.pdf> [perma.cc/5MSV-X8QV] [2019 HAC report].

2. Halifax Regional Municipality, *Regional Centre Secondary Municipal Planning Strategy* (9 November 2022) at 15, online (pdf): <cdn.halifax.ca/sites/default/files/documents/business/planning-development/applications/regionalcentresmps-eff-22nov09-case23820.pdf> [perma.cc/DR5B-5W2A] [Centre Plan]; 2019 HAC report, *supra* note 1 at 4.

abundance of heritage stock, development has eaten away at the built heritage of the city for over 80 years. The 2019 report confirmed that this process was reaching its culmination: in a little under a decade, 30 per cent of the potential heritage stock downtown had disappeared.³ At the rate heritage properties were being demolished, the 2019 report estimated “the entire stock of potential heritage buildings, outside existing or potential [Heritage Conservation Districts], will be lost before 2040.”⁴

The Heritage Advisory Committee (“HAC”) is responsible for advising the Halifax Regional Council (“Regional Council”) on matters relating to heritage properties. HAC had long been concerned about development trends and had been pushing Regional Council to take action.⁵ In 2016, the Regional Council requested HAC and Community Planning and Economic Development Standing Committee (“CPED”) conceive a strategy for protecting potential heritage properties in the downtown core. Three years later, they produced the *Strategy for the Protection of Potential Heritage Resources in Downtown Halifax* (“2019 HAC report”).⁶

The 2019 HAC report proposed the *Heritage Property Act* (the “Act”) could be used to protect heritage resources.⁷ The Act provides for the identification, preservation, and protection of heritage property in Nova Scotia.⁸

Broadly speaking, the Act protects heritage properties in two ways: by registering them in the Registry of Municipal Heritage Property (“the Registry”) and by creating Heritage Conservation Districts (“Heritage Districts”).⁹ The 2019 HAC report suggested these tools could form a two-pronged approach to heritage protection:

The registration of municipal heritage properties offers an interim protection period that is not available during the planning phase to adopt an HCD [Heritage District]. An HCD and municipal heritage registration may be considered together as two phases of a single strategy to protect heritage resources in downtown Halifax and should be accompanied by financial and land use incentives programs.¹⁰

The report’s strategy is somewhat surprising. The *Heritage Property Act* has existed since 1980 and has changed little over the decades,

3. 2019 HAC report, *supra* note 1 at 4.

4. *Ibid* at 6.

5. *Ibid* at 2.

6. 2019 HAC report, *supra* note 1.

7. *Ibid*, at 6.

8. *Heritage Property Act*, RSNS 1989, c 199, s 2 [*Heritage Property Act*].

9. *Ibid*, ss 12, 13.

10. *Supra* note 1 at 2.

remaining largely identical in substance to its earliest composition.¹¹ Registration and Heritage Districts have long been available resources in heritage conservation. Why were these tools only now being suggested as a solution? Had they not been used before? Was the *Act* the only mechanism through which heritage was being conserved?

This article considers heritage conservation in Halifax Regional Municipality (“HRM”), focusing loosely on Halifax’s downtown core. The conservation of heritage is an important component of federal, provincial, and municipal policy. However, it is at the municipal level that most heritage conservation occurs.¹² The following does not endeavour to wade deeply into the “preserve versus modernize” debate. That is a subject better left to urban designers and city planners. However, the *Act*, municipal by-laws, and successive city plans have all repeatedly affirmed the importance of heritage. It is therefore worthwhile to consider how heritage is being conserved and why built heritage continues to disappear despite efforts to save it.

The *Heritage Property Act* is an interesting piece of legislation: it functions as it was intended to function, yet consistently falls short of the spirit in which it was enacted. The *Act* only performs well in *specific* situations. In essence, it provides for the implementation of a “conservation through designation” scheme.

The use of the word “conservation” rather than “preservation” was a deliberate choice. Preservation is the term used in the *Act*; however, conservation is the term used more broadly. To those in the field, preservation and conservation, although similar in meaning, are not synonyms. Early heritage movements relied on an approach of *preservation*; heritage properties were essentially frozen “as-is.” The preservation movement had a limited definition of “heritage” and focused predominantly on built heritage of national importance. *Conservation*, on the other hand, “provides the basis for a broader and more inclusive planning framework, and is characterized by the wise use and caring for of [sic] heritage resources and anticipating and preventing threats to these assets.”¹³ Conservation is the approach predominantly used today and recommended by the federal government.

11. The *Act* was amended three times: in 1991, 1998, and 2010: *supra* note 6, as amended by SNS 1991, c 10; SNS 1998, c 18, s 561; 2010, c 54.

12. Robert Shipley, “Heritage Designation and Property Values: Is There an Effect?” (2000) 6:1 Intl J Heritage Studies 83 at 84, DOI: <10.1080/135272500363760>.

13. Marcie R Synder, *The Role of Heritage Conservation Districts in Achieving Community Improvement* (MA Thesis, University of Waterloo, 2008) [unpublished] at 11, online (pdf): <uwspace.uwaterloo.ca/handle/10012/3801?show=full> [perma.cc/KLK4-9KZF].

Properties that are designated as heritage properties receive certain protections from the municipality and financial and zoning incentives for their owners. However, the current scheme favours private ownership. It relies predominately on property owners wanting and seeking out heritage status. Where owners refrain from doing so, there is little the municipality can do (or, often, is willing to do) to force them to register. The partiality of the current approach to the wishes of private owners has resulted in the erosion of built heritage in the downtown core.¹⁴ In short, despite claiming to be committed to conservation, neither the province nor the municipality has been willing to pay what it costs to keep our built heritage. Without significant change to the current system, it seems likely the HAC's prophesy of a complete disappearance of non-registered heritage properties by 2040 is a likely outcome.

This article is divided into four sections. The first half considers heritage conservation broadly, Part I briefly outlining heritage conservation in Canada and Part II breaking down the *Act* itself. The second half of the article focuses on how the *Act* works in practice. Part III considers why the *Act* is, in many ways, a successful piece of legislation. Finally, Part IV questions why the current approach has failed to prevent the erosion of heritage stock in Halifax.

I. *A part of our heritage*

In the midst of the COVID-19 crisis, HRM released an ambitious amendment to its municipal planning strategy for the Regional Centre.¹⁵ The Regional Centre covers peninsular Halifax and Dartmouth within the Circumferential Highway and is the “political, cultural, and economic heart of the Municipality.”¹⁶ The 222-paged *Regional Centre Secondary Municipal Planning Strategy* (“Centre Plan”) was the second amendment to the *Regional Municipal Planning Strategy* (adopted in 2006). Since 2006, heritage conservation has played a prominent role in city planning.¹⁷

14. Part IV of this article addresses how the preferences of the owners are given preference when determining whether a property should receive a heritage designation.

15. The first Regional Plan was released in 2006. It provided a plan for growth over the next 25 years with reviews planned every 25 years. The first review was adopted in 2014. Centre Plan is the second review. See Nova Scotia, Community Planning and Economic Development Standing Committee, *Case 22257: Regional Plan Review—Themes and Directions Report*, Item No 2 (20 May 2021) at 1, online (pdf): <cdn.halifax.ca/sites/default/files/documents/city-hall/standing-committees/210520cpedinfo2red.pdf> [perma.cc/UF5S-8XS5].

16. Halifax Regional Municipality, *Regional Centre Urban Design Manual—Appendix 2* (27 April 2021) at 4, online (pdf): *Halifax.ca* <cdn.halifax.ca/sites/default/files/documents/about-the-city/regional-community-planning/RegionalCentre-Appendix2-UrbanDesignManual-21Nov27.pdf> [perma.cc/Z3LB-G4FD]; Centre Plan, *supra* note 2 at 3.

17. Halifax Regional Municipality, *Regional Municipal Planning Strategy* (27 June 2006), online (pdf): *Halifax.ca* <legacycontent.halifax.ca/taxreform/documents/RMPS_June06-regionalplan.pdf>

This section examines why heritage conservation is so important within the province and throughout Canada—and, conversely, so problematic.

The conservation of heritage in Canada is a shared endeavour. The federal, provincial, and municipal levels of government all have authority to engage in heritage conservation and are committed to ensuring built heritage does not disappear. The Canadian government has long been invested in heritage conservation. It was a founding member of the United Nations Educational, Scientific, and Cultural Organization (“UNESCO”). As such, it committed to preserving world heritage sites found within its borders. The federal government also preserves federally owned buildings through the *Historic Sites and Monuments Act*.¹⁸ According to Parks Canada, the body predominately responsible for heritage conservation at the national level, the purpose of heritage conservation is to:

recall the lives and history of the men and women who built this country.... Built heritage raises our awareness about how Canadian society has developed, helps us better understand the present and prepare for the future. It fosters a sense of belonging and helps our communities to flourish.¹⁹

Heritage properties not owned by the federal government fall under the jurisdiction of the provinces and territories.²⁰ As only the provinces and territories have authority to pass legislation over private property, the arguments in favour of heritage conservation at this level are similar to, but broader than, those at the federal level.²¹ The provinces, like the federal government, view heritage conservation as a means of engaging with a shared past.²² Even Nova Scotian MLA Jeremy Akerman, one of the vocal opponents to the *Act* when it was passed, conceded to the Legislature:

I suppose there are very few people in the province today who do not, to some extent, subscribe to the view that was expressed by Joseph Howe that it was a wise nation that preserved its muniments and to the view that unless we are prepared to discover and preserve our past, we will never be able to profit from both successes and the mistakes of the past.²³

[perma.cc/8SCT-PGER] at 13, 37.

18. *Historic Sites and Monuments Act*, RSC 1985, c H-4.

19. *Ibid*; Parks Canada, “Introduction” (last modified 1 December 2022), online: Government of Canada <parcs.canada.ca/culture/beefp-fhbro/introduction> [perma.cc/QC7Y-926G].

20. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 92, reprinted in RSC 1985 Appendix II, No 5.

21. Parks Canada, “National program of historical commemoration” (last modified 19 November 2022), online: *Government of Canada* <parcs.canada.ca/culture/~/_link.aspx?_id=184C610257474AF78DFCB611DFA91C37&_z=z> [perma.cc/C4EE-7APS].

22. Halifax Regional Municipality, “Heritage Property Program” (last modified 20 July 2022), online: *Halifax.ca* <halifax.ca/home-property/heritage-properties/heritage-property-program> [perma.cc/QA6R-GUL2].

23. “Bill 34, Act re Heritage Property,” 2nd reading, *Debates of the Nova Scotia House of Assembly*,

On a municipal level, built heritage contributes to a flourishing city. First, it encourages tourism. Large historic sites, like the Halifax Citadel, are a draw to tourists, with the Halifax Citadel attracting almost 500,000 visitors a year.²⁴ But the smaller sites are also a draw for tourists. In a recent heritage meeting of the Regional Council, Councillor Lorelei Nicholl commented: “you can’t have a military tour of the places we say are our heritage in the military and not have the streetscape it takes to get to those.”²⁵ Second, built heritage helps to create “livable, sustainable and human-scale communities in HRM.”²⁶ The Heritage Property Program’s website indicates that “heritage buildings provide a link to our past, while providing interesting and unique streetscapes and neighbourhoods through their varied architecture and the stories they tell about the evolution of our communities.”²⁷ In summary, built heritage has a role in creating a city people want to visit and move to.

A further argument is a philosophical one. Is it *right* to destroy a piece of the past that cannot be replaced? Before the rise of conservationism, demolition of heritage buildings and construction in the contemporary style often proceeded without consideration of heritage value. When the *Act* was being debated in 1980, MLA Walter Fitzgerald spoke to this point:

Once [a heritage building] is gone it cannot be restored or cannot be refurbished. It is completely obliterated for all time...if they are gone then you cannot ever replace them, and if they stay you still have an opportunity to see what happens at a later date.... There are tremendous numbers of buildings that, if they are allowed to disappear without much thought, without much effort, then it is lost to all Nova Scotians and all Canadians.²⁸

Although there are many arguments supporting heritage conservation, heritage—and thus its conservation—is not unproblematic. The act of conserving is steeped in value. Whose heritage gets conserved? Should controversial figures be excluded? How should we conserve heritage that was destroyed, such as the houses and church once found in Africville?²⁹

80-35, vol 3 (25 April 1980) at 1524 (Hon Jeremy Akerman) [Bill 34 Debates].

24. Parks Canada, *Parks Canada Attendance: 2011–12 to 2015–16* (17 June 2016) at 3, online (pdf): *Government of Canada* <publications.gc.ca/collections/collection_2017/pc/R61-107-2016-eng.pdf> [perma.cc/AV9B-HZYD].

25. Halifax Regional Municipality, “Regional Council Meeting,” (10 March 2020) at 04h:45m:40s (Lorelei Nicholl), online (video): *Halifax.ca* <archive.is/global.ca/vod/halifax/archive_2020-03-10.mp4.html> [perma.cc/R3QS-5SJY] [March Regional Council Meeting].

26. “Heritage Property Program,” *supra* note 22.

27. *Ibid.*

28. Bill 34 Debates, *supra* note 21 at 1521 (Walter Fitzgerald).

29. Jon Tattrie (updated by Celine Cooper & Clayton Ma), “Africville” (27 January 2014), online:

In 2019, 1262 Bedford Highway was added to the Registry despite protests that past prominent owners had included a supporter of the American Confederate army. One individual speaking to the Regional Council, argued:

Designating this property as a heritage property would send the message that the city wishes to memorialize a property which these two rich and powerful men, who supported slavery, were associated with, and that it is worthy and important to memorialize the property in that way.³⁰

In response, Counsellor Patty Cuttell commented: “It’s not the house’s fault, who lived in it over time.” She went on to remark conservation is “not just about who lived in it. It’s about the people who built it. It’s about the place where it was built. It’s about how it fits into its neighbourhood.”³¹ While the issue of *whether* a property’s heritage is worthy of conservation is largely outside the scope of this article, it is still worth noting that heritage is complicated and the act of conserving it even more so.

II. Heritage Property Act

The *Heritage Property Act* was a response to disappearing heritage buildings in Nova Scotia. Following the Second World War, a building boom swept the country.³² Historic properties were replaced with new, high-density buildings. In Nova Scotia, grassroots groups like the Heritage Trust of Nova Scotia formed and began advocating against the destruction of heritage buildings. Politicians also responded to concerns about disappearing heritage. In the late 1970s, there was talk in Halifax about amending the City Charter to allow for the protection of heritage properties.³³ Finally, in the April of 1980, Minister of Municipal Affairs, Jack MacIsaac, introduced *Bill 34—Identification, Preservation and Protection of Heritage Property* (“Bill 34”), saying:

The *Act* provides a mechanism for the protection of heritage properties, including streetscapes and areas, at both provincial and the municipal levels.... As we all know, Nova Scotia is a province that is indeed steeped

The Canadian Encyclopedia <thecanadianencyclopedia.ca/en/article/africville> [perma.cc/LBY6-RPLR].

30. Zane Woodford, “Bedford property gets heritage designation despite history of problematic owners,” *Halifax Examiner* (14 December 2021), online: <halifaxexaminer.ca/government/city-hall/bedford-property-gets-heritage-designation-despite-history-of-problematic-owners/> [perma.cc/J8FK-GN2H].

31. *Ibid.*

32. Jill L Grant & Chloe Gillis, “The Twisted Sisters: Disputing Iconic Urban Design” (2012) 37 *Carolina Planning J* 27 at 28, online: <cdr.lib.unc.edu/concern/articles/5x21th03f> [perma.cc/ZR9P-CCH].

33. Bill 34 Debates, *supra* note 23 at 1519 (Hon Jack MacIsaac).

in heritage and history and when the bill was originally introduced, somebody did mention as to why the province was introducing such legislation and I felt that would be appropriate in that Nova Scotia probably has more history than any other province in Canada.³⁴

Although relatively brief in length, the *Act* is expansive in nature. It protects buildings (as well as public building interiors, structures, streetscapes, cultural landscapes, and areas and districts) of historic, architectural, or cultural value by providing for their identification, designation, preservation, conservation, protection, and rehabilitation.³⁵ As noted by Mr. MacIsaac, the *Act* has two streams: the provincial and the municipal. In practice, there is little difference in the ways in which the provincial and municipal elements of the *Act* work. As this article is concerned with heritage protection at the municipal level, it will focus on the latter stream. Simply put, the *Act* identifies, conserves, and protects. It is through these three overlapping categories that the *Act* achieves its purpose.

The *Act* authorizes the municipality to create the Heritage Advisory Committee (“HAC”) and Registry of Heritage Property, which was subsequently done through by-law No H-200: *Heritage Property By-Law*.³⁶ The HAC oversees the Heritage Property Program. It advises the municipality on matters relating to the *Act*.³⁷ The HAC has, as its name suggests, an advisory role. It has no authority to protect heritage buildings on its own initiative.

1. *Identification*

The identification of properties with heritage value is arguably one of the most important steps in heritage conservation. Without discovery and detection, there can be no conservation.³⁸ The *Act* casts a large net when it comes to defining “heritage value,” including properties having:

aesthetic, historic, scientific, cultural, social or spiritual importance or significance for past, present or future generations and embodied in character-defining materials, forms, locations, spatial configurations, uses and cultural associations or meanings.³⁹

34. *Ibid.*

35. *Heritage Property Act*, *supra* note 8, s 2.

36. *Ibid.*, s 12; Halifax Regional Municipality, by-law No H-200, *Heritage Property By-Law* (22 November 2014), ss 3(1), 7(1).

37. *Heritage Property Act*, *supra* note 8, s 13.

38. Bill 34 Debates, *supra* note 23 at 1526 (Hon Jeremy Akerman).

39. *Heritage Property Act*, *supra* note 8, s 3(eb).

Identification occurs in two ways: individuals can apply for heritage registration themselves, or third parties can make applications.⁴⁰

Once a building with potential heritage value has been identified, a heritage research report is prepared and forwarded to the HAC for review. The HAC uses a standard form, *HRM Evaluation Criteria for Registration of Heritage Buildings*, to determine the heritage value of a particular building.⁴¹ The subject property is examined and given a score for each category (see *Figure 1* for the categories).⁴² Properties must receive over 50 of 100 possible points on the HAC evaluation in order to be recommended for registration.⁴³ Once a building has been identified and passed the evaluation stage, the HAC sends a notice to Regional Council, recommending registration.⁴⁴

Criterion	Highest Possible Score
1. Age	25
2. Historical or Architectural Importance	20
3. Significance of Architect / Builder	10
4. Architectural Merit: Construction Type and Style	20
5. Architectural Integrity	15
6. Relationship to Surrounding Area	10
Total	100

*Figure 1—HRM Evaluation Criteria for Registration of Heritage Buildings.*⁴⁵

2. Protection

The *Act* is a “conservation through designation” scheme. This scheme functions by restricting the property rights of owners as a means to conserve heritage buildings. Buildings that are registered or in the process of being registered are protected from substantial alterations or demolition. Once the HAC has recommended a building to the Regional Council, a 120-day moratorium on demolishing goes into effect.⁴⁶ Theoretically, the Regional Council should hear and vote on the matter during this time.⁴⁷

40. “Heritage Property Program,” *supra* note 22; March Regional Council Meeting, *supra* note 23 at 03h:39m:38s (Waye Mason).

41. 2019 HAC report, *supra* note 1 at 3.

42. *Ibid.*

43. *Ibid* at 6.

44. *Ibid* at 6.

45. *Ibid* at 3.

46. *Ibid* at 7; *Heritage Property Act*, *supra* note 8, s 13(b).

47. If the 120 days passes without a decision from the Regional Council, the owner can demolish as a right. This is what happened with the houses on 1538 and 1540 Carlton Street, which were demolished before the matter could be heard: Nova Scotia, Halifax Regional Council, *Case H00486: Request to Include 5943 Spring Garden Road, Halifax, 1538 and 1540 Carlton Street, Halifax in the Registry of*

Once a building is granted heritage status and entered into the Registry, it has the most protection offered by the municipality. Owners of registered heritage properties must apply to demolish, substantially alter, or deregister the building in question.⁴⁸ Once an application for the above has been made, the Regional Council has up to three years to consider it.⁴⁹ At the heritage hearing, owners have an opportunity to be heard. Unsurprisingly, owners are not always happy to receive notice that their property is being considered for heritage status. For example, 5943 Spring Garden Road, Halifax was granted heritage status over the strenuous objections of the owner.⁵⁰ The final stage of protection is punitive. Individuals who contravene the *Act* could be charged with a summary offence, resulting in a penalty of up to 10,000 dollars. The penalties for corporations are more severe, with possible fines of 250,000 dollars.⁵¹

3. *Conservation*

The third element of the *Act* is conservation. The first way to conserve—restrictions on the owner’s ability to demolish or substantially alter the exterior of the house—was identified above. The second way to conserve is with financial incentives. Heritage conservation is a community project. The owner holds title, but the community has a form of beneficial interest in the property. Heritage conservation is accompanied by increased costs, limitations on renovations and materials used, and contractors who can be hired.⁵² It would not be fair to require the owner to bear the whole burden of conservation on behalf of the community. The need for financial incentives was discussed by the legislature in 1980, with MLA Walter Fitzgerald speaking directly to this point:

Heritage Property for the Halifax Regional Municipality, Item No 11.7.1 (29 June 2021) at 1, online (pdf): <cdn.halifax.ca/sites/default/files/documents/city-hall/regional-council/210629rc1171.pdf> [perma.cc/P48G-USUD].

48. *Heritage Property Act*, *supra* note 8, ss 16-18. A substantial alteration is any change that affects the character-defining elements of the building. Character-defining elements include “the materials, forms, location, spatial configurations, uses and cultural associations or meanings that contribute to heritage value and that must be sustained in order to preserve heritage value” (*ibid*, ss 3(caa, k[1])). The restrictions on substantial alterations only apply to the exterior of the building: “Heritage Property Program,” *supra* note 20.

49. *Heritage Property Act*, *supra* note 8, s 18(1).

50. Halifax Regional Municipality, “Regional Council Meeting,” (7 December 2021) at 03h:26m:18s, online (video): Halifax.ca <archive.isiglobal.ca/vod/halifax/archive_2021-12-07.mp4.html> [perma.cc/Y8SA-2H8B] [December Regional Council Meeting].

51. *Heritage Property Act*, *supra* note 8, ss 25(1), 25(2).

52. Nova Scotia, “Heritage Properties” (last modified February 2023), online: *Nova Scotia.ca* <cch.novascotia.ca/exploring-our-past/heritage-property/conserv-or-alter-registered-heritage-property> [perma.cc/5CM8-7VZQ].

If I have a building over there and I have to carry it for the rest of the community that is wrong. You know you have to be fair in this. I think that if that is going to be save and it should be saved, then we should save it. But if we are going to save it at the expense of some small individual who has purchased that and perhaps wants to sell it and cannot because of the proclamation, then I think that is wrong...You know, it is going to take money. You know it can be done and a lot of other things as well, but I do not think that if I want to enjoy that building there and I want a nice city of which it is a part and historical waterfront, that the individual should suffer substantially because of this type of law and sometimes people get caught in the squeeze.⁵³

The Heritage Property Program has long included grants and funding for heritage properties.⁵⁴ The Heritage Incentives Program “provides matching grants of up to 15,000 dollars for residential properties” for renovations on the exterior.⁵⁵ Owners can also apply for provincial and federal grants.⁵⁶ Further, there are certain non-financial incentives available, such as density bonuses and development agreements. With density bonuses, the municipality barter the right to build higher than a building’s zone might allow in exchange for the conservation of the heritage character of the building.⁵⁷ Development agreements allow owners to come to arrangements with HAC regarding redevelopment.⁵⁸

4. *Heritage Conservation Districts*

The majority of buildings in the Registry were entered as sole properties. However, the *Act* also provides for the creation of Heritage Districts.⁵⁹ Heritage Districts are areas that are deemed to have a collective heritage value.⁶⁰ Once established by by-law, all properties within the boundaries of the Heritage District, registered and unregistered, are protected by the by-law.⁶¹ Currently, there are three existing in the downtown core: Schmidtville, Old South Suburb, and Barrington Street. The registration

53. Bill 34 Debates, *supra* note 21 at 1523 (Walter Fitzgerald).

54. Halifax Regional Municipality, “Grants and funding for heritage properties” (last modified 23 November 2022), online: Halifax.ca <halifax.ca/home-property/heritage-properties/grants-funding-heritage-properties> [perma.cc/CA68-NABF].

55. *Ibid.*

56. *Ibid.*

57. Halifax Regional Municipality, “Regional Plan Review Issue Paper: Density Bonusing” (May 2021) at 2-3, online (pdf): <shapeyourcityhalifax.ca/12651/widgets/91889/documents/74278> [perma.cc/SD25-7VJM].

58. Centre Plan, *supra* note 2 at 79, 81

59. *Heritage Property Act*, *supra* note 6, s 19A.

60. Halifax Regional Municipality, “Heritage Conservation Districts” (last modified 8 July 2021), online: Halifax.ca <halifax.ca/home-property/heritage-properties/heritage-conservation-districts> [perma.cc/2DN6-9S7U].

61. *Ibid.*

of Heritage Districts is slightly different from single properties. First, Heritage Districts generally take longer to create, sometimes over three years.⁶² This is because all the heritage buildings in the boundaries of the proposed Heritage Districts need to be evaluated by HAC. Second, Heritage Districts grant broader protection. The creating by-laws can add conditions on the owners' right to alter properties within the Heritage Districts.⁶³ For example, such by-laws can restrict owners from installing a fence on their property which obscures the heritage property from the street.⁶⁴ Overall, Heritage Districts, though harder to register, offer greater and longer-term protection than individual registration.

By enacting the *Act* in 1980, the province initiated the process for the official conservation of heritage in HRM by creating a "conservation through designation" scheme. The relevant protections are generally only available once a building, streetscape, or Heritage District has been (or is about to be) registered. The next two sections canvass whether HRM's approach to conservation has been effective in practice.

III. *Halifax preserved*

Broadly speaking, the "conservation through designation" scheme is working. Heritage conservation remains a central consideration in the current Centre Plan. Buildings continue to be registered and, in recent years, the municipality has picked up the pace of its conservation activity. HAC was directed by Regional Council to more proactively seek out potential heritage buildings, both as individual properties and as part of proposed Heritage Districts.⁶⁵ All of this may suggest there is little need to amend a system that is functioning smoothly. However, the application of the *Act* is failing to live up to the spirit in which the legislation was passed. This section explores the ways in which the *Act* has succeeded in achieving its purpose while the following examines the ways in which it is failing.

The main reason the HRM's present approach to heritage conservation both succeeds and fails simultaneously is predominantly a function of the *Act's* scope. It permits the identification, conservation, and protection of heritage properties but does not require registration. Consequently, the objects of the *Act* are simple to achieve without broadly engaging in conservation.

62. 2019 HAC report, *supra* note 1 at 7.

63. *Ibid.* See also Halifax Regional Municipality, by-law No H-700, *Heritage Conservation District Schmidville By-law* (2018) [*Schmidville By-law*].

64. *Schmidville*, *supra* note 63, s 11(g).

65. March Regional Council Meeting, *supra* note 25 at 03h:40m:00s (Waye Mason).

1. Identification

Identification has been a particularly successful element of the scheme. The formal identification of heritage properties in the municipality started shortly after the *Act* was enacted. In 1985, the Nova Scotia Heritage Inventory Programme was launched. In the first 28 months, over 12,000 potential heritage properties were identified across Nova Scotia.⁶⁶ More recently, the 2009 *Downtown Halifax Secondary Municipal Planning Strategy* identified 104 buildings of potential heritage stock in the Halifax Downtown.⁶⁷ Seven years later, the Regional Council commissioned another report to look into the state of these heritage buildings. It requested that HAC evaluate 71 historic buildings downtown for possible inclusion into the Registry.⁶⁸

According to the Registry available online (current to December 2018), there are 359 properties in Halifax that are designated heritage properties.⁶⁹ The bulk of registered properties were entered into the Registry during the pre-amalgamation period of Halifax, Dartmouth, Bedford, and Halifax County, but properties continue to be added to the Registry.⁷⁰ HAC meets on the third Thursday of every month. Properties are frequently recommended for inclusion into the Registry at these monthly meetings. For example, over the past year, the HAC advised that nine houses be included in the Registry.⁷¹

HAC is not only focused on individual properties. The 2019 HAC report recommended a two-pronged approach where the HAC evaluates potential heritage buildings for individual registration and then also conduct further research into the possibility of expanding the boundaries of potential Heritage Districts. However, the 2019 HAC report concluded the

66. Daniel E Norris, "The Nova Scotia Heritage Inventory Programme" (1990) 22:1/2 *APT Bull: J Preservation Technology* at 9, DOI: <10.2307/1504266>.

67. 2019 HAC report, *supra* note 1 at 2.

68. *Ibid.*

69. Halifax Regional Municipality, "Registered Heritage Properties" (2018), online (pdf): *Halifax.ca* <cdn.halifax.ca/sites/default/files/documents/business/planning-development/Website%20Update%20Dec%202018.pdf> [perma.cc/C6GD-U5MP].

70. 2019 HAC report, *supra* note 1 at 6-7.

71. The 12 months examined were from March 2021 to March 2022. The HAC meets appropriately once a month. The properties recommended for registration were: *Case H00510 (5663 Cornwallis St, Halifax)* (2021); *Case H00511 (5492 Inglis Street, Halifax)* (2021); *Case H00509 (173 Creighton Avenue, Dartmouth)* (2021); *Case H00507 (1600 Summer St, Halifax)* (2021); *Case H00508 (5500 Inglis St, Halifax)* (2021); *Case H00486 (5943 Spring Garden Road, Halifax; 1538 and 1540 Carlton Street, Halifax)* (2021); *Case H00495 (2381 Moran Street, Halifax)* (2021); *Case H00496 (2224 Maitland Street, Halifax)* (2021). All cases can be found on the following webpage: Halifax Regional Municipality, "Agendas, meetings & reports" (last modified 3 January 2023), online: *Halifax.ca* <halifax.ca/city-hall/agendas-meetings-reports?category=156#block-views-block-meetings-listings-block-1> [perma.cc/VYN6-EJ5F].

long-term goal should be the creation of more Heritage Districts.⁷² HAC is currently researching the possibility of eight new Heritage Districts in Halifax. It is clear the present scheme is actively identifying heritage stock.

2. *Conservation and protection*

The deterrence and punitive clauses in the *Act* (a \$10,000 fine for individuals and a \$250,000 for corporations) are not necessarily a substantial deterrent to demolition, particularly to developers. Yet, there is little evidence individuals are ignoring the law when it comes to registered heritage properties. Properties can be deregistered on an application by their owner or on the Regional Council's own motion. Deregistration is permitted where the property has suffered damage or destruction, or where there is a loss of property value such that its continued registration would be inappropriate.⁷³ There have been only eight properties deregistered in HRM in the last 15 years.⁷⁴ When deregistration does occur, often it only impacts a portion of the lot, leaving the heritage building standing.⁷⁵

There have been even fewer demolitions than de-registrations. From its conception, the *Act* contemplated the possibility individuals may try to skirt the law, although the relevant punitive clause (section 25 of the *Act*) has never been invoked in HRM.⁷⁶ Owners of registered buildings are simply not demolishing them without permission.

72. 2019 HAC report, *supra* note 1 at 8.

73. *Heritage Property Act*, *supra* note 8, s 16(1).

74. Email from Seamus McGreal, Planner III with Planning & Development, City of Halifax (3 March 2022) [McGreal email].

75. Of the eight de-registrations, one was fixing a clerical error, two involved subdivided lots where the heritage property was situated on the adjoining lot, one was for a heritage building that had been vacant for over two decades. See respectively Heritage Advisory Committee, *Case H00409: De-registration of a Heritage Property—2267 Brunswick Street, Halifax*, Item No 14.1 (10 Mar 2015), online (pdf): [Halifax.ca <legacycontent.halifax.ca/council/agendasc/documents/150310ca141.pdf>](https://legacycontent.halifax.ca/council/agendasc/documents/150310ca141.pdf) [perma.cc/H2V5-9VV9]; Heritage Advisory Committee, *Case H00398: Application to De-register Lot BH-2, a Subdivision of 99 Ochterloney Street, Dartmouth*, Item No 11.4.1 (7 October 2014), online (pdf): [Halifax.ca <legacycontent.halifax.ca/council/agendasc/documents/141007ca1141.pdf>](https://legacycontent.halifax.ca/council/agendasc/documents/141007ca1141.pdf) [perma.cc/RE2H-JPKF]; Heritage Advisory Committee, *Case H00200: De-registration of 1991B Prince Arthur Street, Halifax*, Item No 11.3.2 (19 June 2007), online (pdf): [Halifax.ca <legacycontent.halifax.ca/council/agendasc/documents/070619ca1132.pdf>](https://legacycontent.halifax.ca/council/agendasc/documents/070619ca1132.pdf) [perma.cc/UHZ8-Q86R]; Heritage Advisory Committee, *Case H00198: De-registration of 1790 Granville Street, Halifax*, Item No 9.1 (8 May 2007), online (pdf): [Halifax.ca <legacycontent.halifax.ca/council/agendasc/documents/070508ca91.pdf>](https://legacycontent.halifax.ca/council/agendasc/documents/070508ca91.pdf) [perma.cc/X54W-RQ4U] [*Case H00198*].

76. McGreal email, *supra* note 74. Only one example of charges being laid pursuant to section 25 of the *Heritage Property Act* was found. A provincially-registered heritage building from the 1760s known as Reid House in Avonport, Nova Scotia was demolished in December 2020. Charges were laid against Bassam Nahas and Nanco Developments for demolishing a registered provincial heritage. See Carolyn Ray, "Charges laid after landmark heritage home demolished in Avonport," *CBC News* (3 August 2021), online: [cbc.ca/news/canada/nova-scotia/charges-laid-landmark-heritage-home-demolished-avonport-1.6128115](https://www.cbc.ca/news/canada/nova-scotia/charges-laid-landmark-heritage-home-demolished-avonport-1.6128115) [perma.cc/7PJ7-F3VU].

Protection also takes the form of Heritage Districts. Heritage Districts allow the municipal government to create targeted guidelines, demolition controls, as well as incentives like property tax credits.⁷⁷ There are numerous advantages to Heritage Districts. Not only are “modest” heritage buildings captured under the protection of the by-law, but the demolition decisions of the municipality are not overruled by the right of the property owner.⁷⁸ As noted above, there are currently three existing Heritage Districts with another possible eight on the way.

IV. *Halifax demolished*

The protections offered by the *Act* have long been decried as insufficient by citizens, councillors, and members of the HAC alike.⁷⁹ Yet, as the previous section illustrated, by the metrics set out in the *Act* and evidence on the ground, the “conservation through designation” scheme appears to be working. Properties are consistently being added to the Registry, few are deregistered, and almost none demolished. Nevertheless, heritage conservation in Halifax has fallen short of the spirit of the *Act* due to inherent flaws in the scheme.

To begin, it is useful to take a step back and look at what municipal mechanisms are actually involved in the implementation of heritage conservation. The *Act* itself is not the main vehicle through which built heritage is conserved. It enables heritage conservation in the province. It also authorizes the creation of advisory committees and outlines their roles. It provides the advisory committees with blueprints for the registration, deregistration, and demolition of registered properties. Finally, it attempts to deter the demolition of registered properties by making contravening the *Act* an offence. However, the *Act* leaves much of the actual implementation of conservation policies to the municipality. It is a municipal by-law that formally creates the HAC and outlines its authority. Similarly, it is through by-laws that Heritage Districts are created. Most importantly, it is

77. Heritage Conservation Districts, *supra* note 60.

78. 2019 HAC report, *supra* note 1 at 7.

79. See e.g. Kate Wood, “Tower Road heritage building may be up for demolition,” *The Signal* (16 January 2020), online: <signalhfx.ca/tower-road-heritage-building-may-be-up-for-demolition/> [perma.cc/8RC9-HYR7]; Alex MacLean, “‘These buildings deserve a voice’: rally held in downtown Halifax to save historic buildings,” *Global News* (24 September 2020), online: <globalnews.ca/news/7356599/these-buildings-deserve-a-voice-rally-held-in-downtown-halifax-to-save-historic-buildings/> [perma.cc/D89V-392P].

the Regional Council which votes on, and thus ultimately determines, if properties are registered.⁸⁰

Municipal planning policy also plays an important role in heritage conservation. Regional Council is authorized under the *HRM Charter* to “establish planning policy with respect to a broad range of activities including future development, land use, public lands, transportation, municipal services, coordination of public programs, and any other matters related to the physical, social, or economic development in the Municipality.”⁸¹ By-laws and city planning policies are then used to protect heritage by checking and circumscribing development. The most recent Centre Plan offers insight into how by-laws are used to restrict the type, size, and façade of new developments, particularly those “abutting” registered heritage properties.⁸² For example, the current plan divides downtown Halifax into eight precincts based on character, functional identity, and building form of the area.⁸³ The objective of the precincts “is to help focus and direct land use, define appropriate character for development, protect heritage, direct public investment, and guide future amendments to this Plan and the Land Use By-Law.”⁸⁴

Halifax, being as old as it is, has much historic stock, but we may be reaching a tipping point. This paper opened with the 2019 HAC report on the state of potential heritage resources in downtown Halifax. The report found 30 per cent of potential heritage buildings downtown were demolished between 2009 and 2019.⁸⁵ A little over a year later, a city planner informed Regional Council that the percentage of demolished buildings had since increased to 41 per cent.⁸⁶

Even properties that are up for consideration by HAC are not entirely safe. Once the 120-day moratorium on demolishing buildings up for registration expires, owners may demolish as a right. In the case of 1528 and 1540 Carlton Street, Halifax, HAC’s inability to find heritage researchers resulted in 120 days elapsing before Regional Council could vote.⁸⁷ The owner already had acquired demolition permits and demolished shortly

80. *Heritage Property Act*, *supra* note 8, s 15(1).

81. Centre Plan, *supra* note 2 at 3.

82. Halifax Regional Municipality, *Regional Centre Land Use By-Law* (27 November 2021) at 83, online (pdf): Halifax.ca <cdn.halifax.ca/sites/default/files/documents/about-the-city/regional-community-planning/RegionalCentreLUB-Eff-21Nov27_0.pdf> [perma.cc/CP73-E3UH].

83. Centre Plan, *supra* note 2 at 54-55 (the eight precincts are Southern Waterfront, Spring Garden Road, Lower Central Business, Upper Central Business, Historic Properties, Cogswell Lands, North End Gateway and Scotia Square Complex, and Purdy’s Wharf).

84. *Ibid* at 54.

85. 2019 HAC report, *supra* note 1 at 2.

86. March Regional Council Meeting, *supra* note 25 at 01h:57m:55s (Seamus McGreal).

87. 2019 HAC report, *supra* note 1 at 3.

thereafter. Currently, Killam Properties is proposing an 18-storey building on the site.⁸⁸

What has gone wrong with heritage conservation in HRM? Why is built heritage disappearing when the *Act* seems to be working? The heart of the matter is that the scheme favours private property interests over community benefit. The *Act* and those implementing it have always strived to balance the property owner's right to dispose of their property as they see fit with the community interest in maintaining a historic city. The harsher the heritage protection, the closer it gets to expropriation. For this reason, the balancing act tips towards the interests of property owners. Does the legislation work? Yes, but generally only when the property owner values designation. Since attrition favours modernity, built heritage will likely continue to disappear unless changes are made to the current scheme.

1. *Demolition*

The main source of disappearing heritage properties is demolition. The current legislation has a highly permissive approach to demolition without providing Regional Council with sufficiently flexible tools to combat it. To use a colloquialism, the *Act* effectively closes the barn door long after the horse has escaped. The penalties for demolishing registered heritage buildings are ineffective primarily because owners have very little reason to break the law. First, they can avoid the issue by not registering their property. Second, even once the property is registered, they merely have to make an application to demolish and then wait. Heritage properties can be demolished as a right regardless of the Regional Council's decision, "at any time after three years from the date of the application but no more than four years after the date of the application."⁸⁹ This section is a weird quirk of the *Act* that has survived multiple amendments. Prior to 2010, the demolition delay was only one year, which concerned certain MLAs when the Act was initially debated. MLA Jeremy Akerman commented:

Does that mean, once he said no to me, that after a year has elapsed, he says, no, that I cannot do it. Twelve months then elapse and then I can do it, but if I wait 24 months, I cannot do it... I do not understand. If the minister has told me, no, I cannot do it, then I cannot do it until he says, yes. That is the way it should be. Why should it matter, if it is okay for me to go ahead and do what he says I cannot do, why is it okay after one

88. Killam Apartment REIT, "Investor Presentation" (March 2017) at 28, online (pdf): Killamreit.com <killamreit.com/sites/default/files/Investor%20Presentation%20March%202017.pdf> [perma.cc/2W7X-GYSP].

89. *Heritage Property Act*, *supra* note 8, s 18(3). If council votes to reject the application to demolition, it triggers a "three-year demolition delay" which, once expired, permits the owner to demolish regardless of the Regional Council's vote. See e.g. *Case H00198*, *supra* note 75.

year and not okay after two years?⁹⁰

Despite Mr. Akerman's confusion, no one stepped forward during debates to explain the rationale for constructing the section this way. The practical result has created an irritating but not particularly effective delay on demolishing *if* a property has heritage status. If the building lacks status, there are even fewer restrictions.

The *Act* similarly lacks strong interim protection for potential heritage buildings. In 2016, Regional Council requested an HAC staff report on the possibility of demolition moratoriums for buildings in downtown Halifax identified as having heritage value. HAC concluded such a moratorium was not an option under the legislation.⁹¹ The only interim protection offered by the *Act* is the 120 days between notice being sent to the property owner and the Regional Council voting on registration. There is no similar protection for potential Heritage Districts. Regional Council has asked the province to amend the *Act* to include a moratorium, but to date, it has declined to do so.⁹²

Like the *Act*, existing municipal by-laws do little to actually prevent the demolition of existing unregistered heritage properties. City planning and by-laws attempt to protect heritage buildings by restricting the types of development that can occur in their vicinity. However, this protection is limited to *registered* heritage buildings. The city's current Centre Plan relies on the existence of identifiable neighbourhoods. As detailed above, by-laws are created to protect the types of development that can occur in neighbourhoods with identifiable heritage characteristics. However, as an increasing number of heritage properties get demolished, the character of the neighbourhood evolves, losing its overall heritage value. The fewer heritage properties existing in a neighbourhood, the less likely the HAC will access the neighbourhood as once requiring protections.

The Spring Garden Road/Carlton Street area in Halifax is a good example of this transformation. Carlton Street is short, spanning only two small blocks, but 20 of the properties on the street were registered as a heritage streetscape in 1985, giving the street a distinctly historic feel.⁹³ Yet, the identity of Carlton Street is fast evolving. Two houses on one end of the street were recently demolished to make way for a large

90. Bill 34 Debates, *supra* note 23 at 1532 (Hon Jeremy Akerman).

91. 2019 HAC report, *supra* note 1 at 2.

92. March Regional Council Meeting, *supra* note 25 at 03h:41m:00s (Waye Mason).

93. Canada's Historic Places, "Carlton Victorian Streetscape," online: *Canada's Historic Places* <<https://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=3584>> [<https://perma.cc/Y5EU-7TQE>].

apartment building.⁹⁴ The opposite end of the street also has a tenuous future. Two separate construction companies each want to build two towers on the block.⁹⁵ If these towers are built, ranging from a possible 16 to 30 storeys, the historic character of Carlton Street will quite literally be overshadowed.⁹⁶

2. Registration

The permissive approach to demolition is not the only flaw inherent to heritage conservation in Halifax. The *Act* delegates authority to Regional Council to register properties, but it does not require them to do so. Demolition may be responsible for the act of physically destroying properties, but the Regional Council is also partially responsible for the current trends. It has been reticent to avail itself of its full authority to register properties and thus protect them.

When Bill 34 was initially debated, MLA Jeremy Akerman was concerned the proposed legislation left too much discretion to the whims of politicians:

One thing that you do not need in the consideration of the preservation and protection of historic property.... *A political decision, to be influenced by the pressures of the day, to be influenced by the lobbying interested parties. It places the minister in an utterly invidious position, one in which I do not think any minister really wants to be if he has any sense and it is forcing a politician to make a decision which a politician is not competent to make.* It is a decision which should be made by persons who are fully trained and properly knowledgeable in the field (emphasis added).⁹⁷

Mr. Akerman's predictions have landed close to the mark. Regional Council has authority to register heritage property on merit, meaning properties that have been evaluated at over 50 by HAC. They have also explicitly committed themselves to conserving heritage in the current Centre Plan. Yet, Regional Council has been disinclined to vote in favour of registering buildings.

94. "Investor Presentation," *supra* note 88.

95. Zane Woodford, "Halifax council approves policy changes for four-tower development at Robie and Spring Garden," *Toronto Star* (16 July 2019), online: <thestar.com/halifax/2019/07/15/halifax-council-approves-policy-changes-for-four-tower-development-at-robie-and-spring-garden.html> [perma.cc/7PA3-MA7Y].

96. Heritage Advisory Committee, *Case H00461: Substantial Alterations to municipally registered heritage properties at 1478, 1480, 1484, and 1494 Carlton Street, Halifax*, Item No 9.2 (15 January 2019) at 3, online (pdf): [Halifax.ca <cdn.halifax.ca/sites/default/files/documents/city-hall/regional-council/190129rc92.pdf>](http://Halifax.ca/cdn.halifax.ca/sites/default/files/documents/city-hall/regional-council/190129rc92.pdf) [perma.cc/9DPV-X8B5].

97. Bill 34 Debates, *supra* note 23 at 1527 (Hon Jeremy Akerman).

The main concern for councillors is the same one that plagued the MLAs who initially passed the *Act*: how do you balance the interests of the property owner against the benefit to the community? The *Act* has never fully resolved that issue, leaving it predominately up to the municipalities. The municipalities, however, have not been able to resolve it in a meaningful way either. Providing incentives is one way to offset the loss of certain ownership rights, but often these do little to change property owners' opinions of registration. Regional Council currently approaches it on a case-by-case basis that feels both unfair to the property owner and ineffective with regard to its long-term heritage conservation goals.

An example of this approach occurred on March 10, 2020, when Regional Council considered registering three streetscapes on Birmingham, Grafton, and Queen Street in downtown Halifax, comprising 20 buildings in total.⁹⁸ Regional Council had the option to register all, none, or some of the buildings within the proposed streetscapes.⁹⁹ They voted against registering a single building.¹⁰⁰

It is useful to outline what happened in the hearing in detail, as it is illustrative of systemic issues with Regional Council's approach to heritage conservation. As noted, the hearing took place in March 2020. Heritage was very much in the mind of Regional Council at this time. The 2019 HAC report had recently been presented to them, identifying the uncertain future of built heritage in the downtown core. The revision to the Centre Plan was a few months away from being published. And in the month prior to the hearing, Regional Council had directed HAC to seek out and analyze potential heritage properties.

The heritage hearing began with a presentation from city planners regarding the history and heritage value of the three streetscapes.¹⁰¹ The city planner then reminded council that the number of heritage buildings

98. March Regional Council Meeting, *supra* note 25 at 01h:52m:00s (Mike Savage); Regional Municipality, "Regional Council Meeting Agenda" (March 10, 2020), online: Halifax.ca <www.halifax.ca/city-hall/regional-council/march-10-2020-halifax-regional-council>.

99. A streetscape is two or more adjacent properties whose collective appearance from the streets has heritage value. *Heritage Property Act*, s 3(k).

100. Regional Municipality, "Regional Council Meeting Minutes" (March 10, 2020), *supra* note 25.
101. Regional Municipality, "Heritage Advisory Committee Minutes" (27 November 2019) at 2, online (pdf): Halifax.ca <cdn.halifax.ca/sites/default/files/documents/city-hall/boards-committees-commissions/191127hacMins.pdf> [perma.cc/VG6N-LGQY]. All three streetscapes scored well above the required 90 of 180 for HAC to recommend them to Regional Council: Birmingham streetscape received a 141, Queen streetscape a 131, and Grafton streetscape a 115. Individual houses are evaluated on a score of 100 but streetscapes are evaluated on a score of 180, with certain additional considerations.

lost since 2009 had increased to 41 per cent, with a particularly significant loss in the Spring Garden Road Precinct.¹⁰²

Next, property owners were given the floor. Owners for 14 of the 20 proposed properties presented, all against registration. Their reasons generally came down to three points: finances, administration, and autonomy. Many were small business owners who had purchased the property as an investment. They were concerned the registration would bring down the property's market value since they saw registration as a deterrent to the likely highest bidder: the developer. They further argued that not only were the accompanying financial grants insufficient compared to the repairs required, but also that the administrative cost of requesting permission to make alterations would prohibit them from acting quickly to fix issues as they arose. Finally, they felt Regional Council had no right to tell them what to do with their property, viewing registration as nothing short of expropriation. In sum, the property owners were all adamantly against what one called "such a crippling designation."¹⁰³

Once the heritage hearing was closed, the three motions (one motion for each streetscape) were debated by Regional Council. The ensuing debate made it clear this was, as one city planner predicted, one of the most contentious heritage issues brought forward in a number of years.¹⁰⁴ Owner disapproval of registration is not itself determinative in the outcome of Regional Council's vote, but the majority of councillors were unwilling to vote against the wishes of property owners. Councillor Walker, in particular, strenuously argued against registering properties. He believed it was inappropriate to go above the owners' wishes, commenting: "We wanted to hear from them, but we don't want to hear from them."¹⁰⁵ The only properties he was willing to register were the three whose owners were not present. To do anything else, he reasoned, was cherry-picking and unfair. In an uncommon event, the Mayor, Mike Savage, also spoke to the floor:

As a city we are moving towards protecting heritage, and we should. But I have a real problem with imposing [registration] on people who've owned properties for a long time. I really do. I don't think we should be lecturing them on the fact that you don't know what your value is actually going to be...I just fundamentally think it's wrong to tell people... people who've owned these properties for generations...We all voted for this, 100 per cent...but as Councillor Walker said, we didn't necessarily

102. March Regional Council Meeting, *supra* note 25 at 01h:57m:55s (Seamus McGreal).

103. March Regional Council Meeting, *supra* note 25 at 02h:26m:14s (William Daniel Colpitts).

104. *Ibid* at 01h:53m:10s (Aaron Murnaghan).

105. *Ibid* at 03h:49m:04s (Russell Walker).

know so many would be opposed to it. And I don't want to tell them that they're better off. One thing government should never do is tell their population "you'll better off the way we see it than the way you see it"...I just don't like the idea of imposing upon people a heritage designation that they don't want...tonight I can't vote to impose a designation on citizens that they don't want.¹⁰⁶

Those in favour of registration generally felt, as Councillor Cleary colourfully put it, "[w]e've kind of friggid it up" by not registering the proposed streetscapes.¹⁰⁷ The "ayes" argued that Regional Council has the authority to register these properties, had voted to allow third-party registration, and, more to the point, had specifically directed staff to seek out potential heritage properties for registration. Yet, when given the opportunity to vote for registration, many balked. Councillor Wayne Mason was also disappointed with the outcome of the vote, saying:

I am concerned we are, as the kids say on the internet these days, virtue signalling.... We really care about heritage but, you know, we've been punting this down the road since 2009.... I want to remind council that heritage registration does not stop people from redeveloping or using their property. It does not...That's why we see all these heritage buildings being renovated in downtown Halifax right now that are registered...Our choices are: are we going to extend heritage protection, or are we not... It's really a binary decision.¹⁰⁸ (emphasis added)

The outcome of the March 2020 hearing underscores the point made by MLA Akerman in 1980: leaving registration in the hands of Regional Council puts councillors in an entirely unenviable position. Councillor Richard Zurawski echoed this point when he said:

We're sort of caught in this triumvirate of looking into the future. Where is our city going to go in the next 10, or 12 years, or 20 years? Where are we right now? And how do we preserve that which has got us here?¹⁰⁹

It is not unreasonable for an elected body to listen to the wishes of its constituents. Indeed, it is the mark of responsible governance. However, the Regional Council has the authority to bring forward third-party applications based on merit. To then reject motions for registration based primarily on the owner's opinion rather than on merit significantly limits the effectiveness of the current conservation scheme. It is no coincidence the vast majority of properties currently registered were initiated by the

106. *Ibid* at 04h:07m:40s (Mike Savage).

107. *Ibid* at 04h:22m:32s (Shawn Clearly).

108. *Ibid* at 04h:48m:50s (Wayne Mason).

109. *Ibid* at 04h:32m:32s (Richard Zurawski).

Regional Council in the 1980s.¹¹⁰ These are not easy choices to make, but on the estimates of the HAC 2019 report, we do not have much time left to make these decisions before we may lose much of the built heritage in the downtown core.

The current scheme functions smoothly where owners want registration. It begins to break down in the face of owner aversion or downright hostility. Regional Council lacks a concrete policy for dealing with such situations, resulting in what seems to be an ad hoc and arbitrary approach to registration. A little under a year after the March 2020 hearing, another property, 5943 Spring Garden Road, Halifax, came before the Regional Council. The property owner made similar arguments as the owners of the three streetscapes mentioned above, yet Regional Council *did* register the property over the express wishes of the owner.¹¹¹ Councillor Sam Austin voted in favour of registration, arguing that conservation is as much for the future citizens of Halifax as the present ones, saying: “[the property owner] won’t tear it down, but she won’t be the owner forever, none of us are the owners forever...Down the line...it could be the pile of rubble on that corner instead of the landmark that it is.”¹¹²

3. *Funding*

Heritage conservation has always been about balancing interests. The problem with Regional Council’s unwillingness to register over the wishes of the property owners is two-fold. First, it means fewer properties are registered. Second, Regional Council has been slow to address the root of registration hesitance. There are a variety of reasons property owners do not want to register, but one of the biggest issues is that the available funding is insufficient, both in dollars and in scope.

In 2021–2022, the entire Heritage Incentives Program had a budget of 350,000 dollars, with available matching grants of up to 15,000 dollars for residential properties and 25,000 dollars.¹¹³ Such grants could go a long way to helping some owners with renovations. However, for those who own larger, more ornate homes, like 5943 Spring Garden Road, it is pennies compared to the work needed. The owner of that house told Regional Council she had sought out estimates and renovating the front stoop would cost 20,000 dollars; the turret, 120,000 dollars; and the roof,

110. December Regional Council Meeting, *supra* note 50 at 04h:00m:10s (Aaron Murnaghan).

111. Council voted 12–4 in favour of registration. See December Regional Council Meeting, *supra* note 50.

112. *Ibid* at 04h:10m:31s (Sam Austin).

113. Heritage Advisory Committee, *Case H00532: 2022/2023 Heritage Incentives Program*, Attachment 1 (5 April 2022) at 2-3, online: <cdn.halifax.ca/sites/default/files/documents/city-hall/regional-council/220405rc1571.pdf> [perma.cc/7QK6-AS8D].

60,000 dollars.¹¹⁴ If a grant for such a renovation were provided, it would take up 83 per cent of the available annual budget for the entire Heritage Incentives Program. By registering the property, Regional Council was constraining the types of renovations that could be made to the property and possibly increasing the cost of renovation without providing the owner assurance they would cover a significant portion of these costs. Naturally, that seems unfair to the owner.

Further, funding is only granted for the exterior of buildings. As many of the property owners commented to Regional Council, heritage houses are expensive to own. Not only do they have the problems that come along with age, such as structural issues, but they might also be lacking features which are now required by municipal regulations, such as fire escapes. Since the funding offered for heritage buildings only applies to the exterior design, many owners feel a heritage designation ties their hands while not providing them with sufficient means to fix the more pressing issues.

It is important to note that some of these concerns do not reflect the actual process. For example, home owners may not be aware that they can contact city planners with concerns regarding additions to the exterior of the building. From there, city planners will work collaboratively with home owners to find a solution. Large additions to the property and material changes may need approval by Regional Council but such cases are rare, approximately five or six a year.¹¹⁵

That said, the total amount of grant funding available to heritage property owners remains a contentious issue. Regional Council has begun to take steps to resolve some of the issues with the grants, but forward momentum is slow, and benefits unevenly distributed. Most councillors are sympathetic to arguments regarding the current insufficiency of grants. Councillor Shawn Cleary pointed out that “heritage is a public good, just like our roads are, just like our bridges are. And we pay for those. So if we believe heritage is a public good and we all benefit from it, we need to pay more for it.”¹¹⁶ But are they doing just that?

Regional Council has attempted to improve the current incentive program, but it takes time. For example, the issue was much spoken about in the March 2020 heritage hearing. Insufficient funding was again raised in the December 2021 heritage hearing. In January 2022, Councillor Austin made a motion for CPED to review the current Heritage Incentives

114. December Regional Council Meeting, *supra* note 50 at 03h:40m:00s – 03h: 40m:39 s (Jackie Kinley).

115. December Regional Council Meeting, *supra* note 50 at 04h:05m:39s – 04h: 7m:39 s (Aaron Murnaghan).

116. *Ibid* at 04h:13m:54s (Shawn Cleary).

Administrative Order, which authorizes the maximum amounts of funding available.¹¹⁷ The resulting staff report was then to be sent to HAC (which it has yet to reach). Conservatively, then, it has been over two years since the issue with the funding package was identified, and the Heritage Incentives Administrative Order has yet to be amended. At the rate buildings are disappearing in the downtown core, the increase in funding is likely not going to come soon enough to make a substantive change in how the public conceives the benefits of registration.

Arguments could also be made that funding is disproportionately distributed. There are special incentive programs for properties within Heritage Districts. For example, a four-million-dollar incentive program was created for properties on Barrington Street which lasted between 2010 and 2019.¹¹⁸ Similarly, in 2020, Regional Council approved an incentive program for the Schmidville and Old South Suburb districts.¹¹⁹ Properties outside those regions only have access to the general incentive program and provincial programs.

4. *Amendments*

Not all the blame for the loss of heritage properties can or should be placed at the feet of Regional Council. The *Act* is “an inexact tool.”¹²⁰ Regional Council has the authority to register or deregister properties, but not much authority outside of that. For example, under the *Act*, the Regional Council can do little to prevent the demolition of unregistered properties. While they can try to register them, as was illustrated above, the Regional Council often feels it is unfair to suddenly inform property owners that their property is now considered a potential heritage property. In contrast, in the relevant legislation in Ontario, potential heritage properties are inventoried and publicly listed. If one comes up for demolition, the council can come in and vote to prevent the demolition.¹²¹ The current *Act* does not provide for similar options in Nova Scotia. Implementing new policy may achieve similar ends, but city planners argue it would be time-consuming.¹²²

117. Sam Austin, “Item No 13.1: Heritage Grant Program Review” (20 January 2022), online (pdf): *Halifax.ca* <cdn.halifax.ca/sites/default/files/documents/city-hall/standing-committees/220120cped131.pdf> [perma.cc/L3VU-2V9D].

118. December Regional Council Meeting, *supra* note 50 at 04h:24m:03s (Aaron Murnaghan).

119. Heritage Advisory Committee, *H00514: 2021-2022 Financial Incentives Program for Schmidville and Old South Suburb Heritage Conservation Districts*, Item No 9.1.2 (25 August 2021), online (pdf): *Halifax.ca* <cdn.halifax.ca/sites/default/files/documents/city-hall/boards-committees-commissions/210825hac912.pdf> [perma.cc/YX8A-4EFE].

120. March Regional Council Meeting, *supra* note 25 at 04h:42m:14s (Aaron Murnaghan).

121. December Regional Council Meeting, *supra* note 50 at 04h:19m:00s (Aaron Murnaghan).

122. *Ibid* at 04h:19m:49s (Aaron Murnaghan).

Regional Council has approached the province multiple times requesting amendments to the *Act*, but the province has been slow to act. In 2015, *Bill 118—An Act to Amend Chapter 199 of the Revised Statutes, 1989, the Heritage Property Act* (“Bill 118”) was introduced to make amendments to the *Heritage Property Act*. The bill received royal assent on December 18, 2015, but the Governor in Council has never ordered it into force, and so it continues to exist in a legislative limbo.¹²³ This might not be such a problem, in fact. Stakeholders had a number of concerns about Bill 118. The proposed amendments made it easier to deregister properties and actually removed some protections currently in place. For example, clause 9 repealed subsection 19B(1)(b) of the *Act* which permitted the municipality to prohibit the demolition of properties in Heritage Districts, demolition which is otherwise permitted by section 18(3) of the *Act*. The proposed bill would leave it up to regulations to prohibit demolitions. In their submissions to the legislature, Heritage Trust of Nova Scotia wrote this amendment would make Nova Scotia “the only province in Canada where municipalities do not have legislated, permanent protective power.”¹²⁴ Heritage Trust was not the only stakeholder concerned the proposed amendments would weaken rather than strengthen protections. Many wrote to the Law Amendments Committee, urging the legislature to reject the request to remove section 19B(1)(b).¹²⁵ Although some MLAs expressed concerns that Bill 118 may be a hindrance to conservation during the third reading, it was passed.¹²⁶

Since 2015, little further has happened at the provincial level. At the December 2021 Regional Council meeting, the chief city planner told Regional Council he had been in contact with the Department of Communities, Culture and Heritage and that heritage was on their radar. He also noted that there has been talk of the rescission of section 18(3) and other changes that would “allow us to be more a little bit more nimble in

123. Bill 118, *An Act to Amend Chapter 199 of the Revised Statutes, 1989, the Heritage Property Act*, 2nd Sess, 62nd Leg, Nova Scotia, 2015 (assented to 18 December 2015), c 15.

124. Submission from Phil Pacey on behalf of the Heritage Trust of Nova Scotia to the Law Amendments Committee regarding Bill 118 (30 November 2015) at 2. The letter can be found at the following webpage: Nova Scotia, “Law Amendments Committee Submissions,” online: *Nslegislature.ca* <[nslegislature.ca/legislative-business/committees/standing/law-amendments/submissions/assembly-62-session-2/118](https://www.nslegislature.ca/legislative-business/committees/standing/law-amendments/submissions/assembly-62-session-2/118)> [perma.cc/6HSD-MD4H].

125. *Ibid.* See e.g. the letters from William Breckenridge on behalf of Schmitdville Stakeholders Committee, Sandra L Barss, and Jill Grant on behalf of Dalhousie University.

126. See e.g. “An Act to Amend Chapter 199 of the Revised Statutes, 1989, the Heritage Property Act,” 3rd reading, Nova Scotia, *Debates and Proceedings*, 15-79, (8 December 2015) at 6810 (Lenore Zann).

how we treat heritage properties.”¹²⁷ The first session of the 64th Assembly adjourned on March 24, 2022, without introducing amendments to the *Act*.

Conclusion: The Haligonian Era

At the March 2020 Regional Council meeting, developer Louis Lawen challenged Regional Council to allow the next generation to put their mark on the city, to create the Haligonian Era, 2020–2040.¹²⁸ But what will the Haligonian Era look like? There is certainly room for compromise between development and conservation. Regional Council has been working to make it desirable for developers to preserve and incorporate heritage buildings into their developments with incentives like density bonusing and development agreements.¹²⁹

Further, there *needs* to be compromise. HRM is facing a housing crisis that has not abated for years. With less than one per cent rental vacancy and rents skyrocketing, more and cheaper housing is needed.¹³⁰ Perhaps not all heritage buildings should be saved. The Kelly building, for example, stood empty for many years, being identified as a fire hazard by the fire department in 1995 before eventually being demolished in the mid-2000s.¹³¹ And as Councillor Whitman commented: “Every dollar spent imposing unwanted heritage designations on a private property owner is a dollar not spent on a worthy and willing heritage property.”¹³²

Heritage conservation is a balancing act, one that reflects what we, as a community, value. At its root, the issue is not whether we should be conserving heritage properties. The *Act*, the province, the Regional Council, and the Centre Plan have all repeatedly affirmed their commitment to heritage conservation. Rather, the issue is whether the various mechanisms involved in heritage conservation are effective. They are not. These mechanisms are failing because society is not prepared to meet the cost of conserving heritage. That cost is largely, but not exclusively, financial. It extends to property owners seeking out heritage designation, to the province amending the legislation, and to the Regional Council

127. December Regional Council Meeting, *supra* note 50 at 04h:21m:45s (Aaron Murnaghan).

128. March Regional Council Meeting, *supra* note 25 at 03h:09m:13s (Louis Lawen).

129. See e.g. the redevelopment of The Dillon. It was the test case for allowing bonus heights for restoring unregistered heritage buildings: March Regional Council Meeting, *supra* note 5 at 03h:42m:10s (Waye Mason).

130. Alex Cooke, “Halifax rental vacancy rate drops to 1%, among lowest in the country,” *Global News* (19 February 2022), online: <globalnews.ca/news/8632877/halifax-vacancy-rate-2021-1-percent/> [perma.cc/2CV2-AZZA]; “Priced Out: Canada’s rental crisis” *CBC News* (8 March 2022), online: <cbc.ca/news/canada/priced-out-fifth-estate-rental-crisis-1.6376855> [perma.cc/8LXA-YKKU].

131. *Case H00108 – Application to demolish 1790 Granville Street, Halifax, NS* (2004), 2

132. March Regional Council Meeting, *supra* note 25 at 04h:27m:42s (Matt Whitman).

voting to register, even in the face of owner disapproval. Until society is prepared to pay for its built heritage, these mechanisms will continue to be ineffective. In the words of Councillor Nicoll: “You either support heritage or you don’t. I support heritage.”¹³³

133. *Ibid* at 04h:46m:24s (Lorelei Nicoll).

