

The Heritage Trust of Nova Scotia is **pleased** with the **improvements** contained in these amendments to the Heritage Property Act. The improvements include that the one-year delay period is increased to 3 years, the limit on fines is increased, and protection can be extended to cultural landscapes and to the interiors of provincially and municipally owned buildings.

The Heritage Trust has one **concern**. We also have a simple **solution** to this concern. Our concern is about one word in the proposed definition of "**substantial alteration**". Our concern can be eliminated by changing **one word** in this definition. At first the proposed definition appeared to be an improvement, but, on further reflection, we realized the definition could weaken the protection for some buildings.

The Act in force today regulates attempts to "**substantially alter** the exterior appearance of or demolish" a registered heritage property. If an owner wants to "substantially alter the exterior appearance of" a building, the owner needs to apply, and the application is referred to the Heritage Advisory Committee or Provincial Advisory Council, as appropriate. At present a heritage advisory committee can review a proposed substantial alteration of any part of the exterior appearance or overall character of a building.

The amendment tabled in the House would define "substantial alteration" in a way that would narrow it. The new definition could limit the committee to reviewing alteration of certain features. The proposed definition would be "**Substantial alteration means** any action that affects or alters the **character-defining elements** of a property." The risk is that heritage advisory committees would only review proposed alterations to these character-defining elements, and owners could alter any other parts of the exterior of a building without a permit.

The problem is that many buildings have been registered with little detail written down or listed about the "character-defining elements". Many municipalities did not have the expertise to describe character-defining elements. There was no reason to list the "character-defining elements" at the time of registration. The present Act does not mention character-defining elements, and protects "the exterior appearance" or overall character of buildings.

The amendments presented to the Legislature would define "substantial alteration" in terms of the affect on "character-defining elements". For a building with few or no character-defining elements listed, very little of the "exterior appearance" could be protected. If the amendment passes as it is, an unsympathetic owner could be justified to look at the description at the time of registration and alter anything not listed in that description, without even applying for a permit.

For a fancy Victorian mansion, it may be easy to identify "character-defining elements" - turrets, bay windows, elaborate shingle patterns or brickwork, or decorative woodwork. For a humble cottage, the "character-defining elements" are less likely to be written down. Our very oldest buildings are often simple, with no elements that stand out. The character may consist of subtle facts, like the placement of a chimney or the spacing of the shingles. But it is just as important to protect the humble cottage as the great mansion. We need our heritage to tell the stories of all Nova Scotians, who more often lived in cottages than mansions.

So the present Act protects "**the exterior appearance**" or overall character of buildings. With the proposed amendment, the Act could just protect certain "**character-defining elements**" as identified in the property's heritage file or notice of recommendation. The risk is that, for many buildings, the proposed amendment would protect less of the buildings than the present Act.

The Heritage Trust has the following **simple suggestion**, which would easily alleviate the problem, and achieve the intent of strengthening the protection of heritage buildings:

In clause 2(k) on page 2 of the amendments, replace the word "**means**" in the second line, by the word "**includes**".

This would have the effect that "substantial alteration" would not be limited to "any action that affects or alters the character-defining elements of a property". "Substantial alteration" could also **include** the plain meaning of the words "substantial alteration". This change would mean that the Act would continue to protect the "exterior appearance" or overall character of a property, and not just the elements of the property that happened to be mentioned in writing when the building was registered.

The new definition would then read:

"(k) "substantial alteration" **includes** any action that affects or alters the character-defining elements of a property."

An example of a place in the Act where this definition would apply is Section 17(1): "Municipal heritage property shall not be **substantially altered** in exterior appearance or demolished without the approval of the municipality".

For a building where the character-defining elements were carefully spelled out at the time of registration, mentioning character-defining elements in the definition would provide better protection for them. For buildings where the elements were not carefully spelled out at the time of registration, under our suggestion, the "exterior appearance" or overall character in general would continue to be protected by the Act.

The word "**includes**" is commonly used in definitions in Section 3 of the Act. For example, three other definitions use the word "includes" instead of the word "means".

So the Trust is proposing a very small change, from the word "**means**" to the word "**includes**". The word "**means**" is limiting, it would tie the hands of heritage advisory committees. It could lead to legal challenges. It could retroactively affect buildings that were registered and described under the old rules, and leave them vulnerable under the new rules. The word "**includes**" is inclusive. It allows for continued protection of buildings registered in the past, and it also allows and even encourages municipalities to provide more precise descriptions of heritage buildings registered in the future. Our wording would continue to protect the overall character of heritage properties.

The Trust hopes you will agree that this change would be beneficial to the purpose of the Act to protect heritage properties. The Trust asks the Law Amendments Committee to recommend this change.