

HRM SUBMISSION
RE: BILL 125
AMENDMENTS TO THE HERITAGE PROPERTY ACT
DECEMBER 10, 2010

The Halifax Regional Municipality is pleased to be here in support of Bill 125 and its proposed amendments to the *Heritage Property Act*. In 2008, Halifax Regional Council endorsed two requests in relation to the *Heritage Property Act*: an extended period for consideration of demolition requests, and a means of protecting existing heritage registrations. Our comments on the three year delay are drafting issues only.

I. Sections 17 and 18

The current sections 17 and 18 of the Heritage Property Act are interrelated. HRM recommends that the proposed amendments to section 18 of the Act be redrafted to more accurately reflect that relationship.

Under the Heritage Property Act, section 17 requires municipal approval for the substantial alteration of the exterior appearance, or demolition of, a municipal heritage property. Section 17 sets out the requirement for an application and the process for the application to follow. The current section 18 provides that notwithstanding that process, where an application is refused, the owner may proceed with the work following a one year delay.

HRM notes that the existing section 17(2) already provides for an owner to make an application to substantially alter or demolish a heritage property. By repeating this concept, the proposed section 18(1) creates confusion by stating that notwithstanding the requirement for an application to be made to the municipality to “substantially alter” or demolish under the existing section 17, the owner may apply to “alter” (not “substantially alter” as set out in section 17) or demolish the property. This raises the question of whether this means that a non-substantial alteration also requires an application.

The power for the municipality in sections 18(2) and 18(3) to take up to three years to consider the application, as well as the ability to require public notice and information meetings, is presumably applicable to any application to substantially alter or demolish the property. That application process is

already set out in section 17. The proposed sections 18(2) and 18(3) would be more appropriately located with section 17(3).

With respect to the proposed section 18(4), one drafting option would be for section 18(4) to become section 18(1) and read: "Notwithstanding section 17, where the municipality does not approve the application, the property owner may make the alteration or carry out the demolition at any time after three years from the date of the application but not more than four years after the date of the application."

The proposed section 18(5) seems to only allow the municipality to deregister a property after an alteration or demolition under section 18 has been carried out. From an administrative efficiency perspective it would be useful to be able to consider both issues at the same time.

II. Requested amendments re: challenging registration

In April, 2008, Halifax Regional Council passed a motion requesting amendments to the Heritage Property Act that would:

- a) provide that no registration could be overturned because of a matter of form or procedural irregularity;
- b) provide that an application to quash a registration be made within three months of the registration; and
- c) provide that all heritage properties listed on the Provincial Registry of Heritage Property or on a municipal registry of heritage properties as of the date of the amendments are, and are deemed to be, registered heritage properties.

This request was made in response to the decision of the Nova Scotia Supreme Court in *Armour Group Ltd. v. Halifax (Regional Municipality)*, which found that technical deficiencies in a registration, or the records thereof, could invalidate a longstanding registration. These procedural safeguards are important for allowing municipalities, and the Province, to maintain the registration of those properties that they believe are already being protected as registered heritage properties, and HRM would ask that consideration be given to including these important amendments in Bill 125.

HRM has three additional comments in respect of the proposed definitions to be included in the Act.

I. Definition of “cultural landscape”

The addition of cultural landscapes to the list of heritage properties that may be protected is welcomed. However, HRM has some concerns with the implementation of this section in light of the broad definition proposed in section 2(b) of the Bill.

II. Use of the definitions of “character-defining elements” and “heritage value”

The addition of definitions for “character-defining elements” and “heritage value” in sections 2(a) and 2(c) of the Bill are welcomed. With respect to municipal heritage properties, the term “heritage value” is only used in relation to the deregistration of properties, found in the proposed amendments to sections 16 and 18 of the Act.

HRM recommends that consideration be given to including the terms “character-defining elements” and “heritage value” in the provisions relating to the registration of municipal heritage properties, in sections 14(1) and 14(3) of the Act.

III. Definition of “substantial alteration”

The addition of a definition for “substantial alteration” in section 2(k) of the Bill is welcomed. HRM does have some concern with how that definition will be applied in relation to existing municipal heritage properties, where the character-defining elements of a property may not be as well defined.

HRM also notes that “public building interior” and “cultural landscape” have not been added to section 7(5), respecting filing of notice for provincial heritage properties.