



Proposed Federal Legislation for Heritage Places in Canada:
Considerations and Recommendations
November 2020

“The federal government must set an example by adopting legislation to provide better statutory protection for federal heritage buildings and national historic sites under its stewardship.”
Standing Committee on Environment and Climate Change, Report Release –
Preserving Canada’s Heritage: The Foundation for Tomorrow (2017)

“We concluded that... the life of some federal properties was at risk—properties that are for the enjoyment of present and future generations of Canadians.”
Report of the Auditor General of Canada – *Conserving Federal Heritage Properties* (2018)

On December 13, 2019, the federal Minister of Environment and Climate Change Mandate Letter included a top priority that is of keen interest to Canada’s heritage sector: “Work with the Minister of Canadian Heritage to provide clearer direction on how national heritage places should be designated and preserved, and to develop comprehensive legislation on federally owned heritage places.”

The following discussion paper and recommendations for this proposed federal heritage legislation are drawn from the National Trust for Canada’s experience with federal heritage matters, and from input received in consultation with member organizations of the National Trust’s National Council, which is comprised of leaders of provincial and territorial heritage organizations.

By introducing statutory protection and designation practices for federally owned and regulated heritage places, the Government of Canada has the opportunity to lead by example, and simultaneously advance climate emergency and diversity and inclusion goals. Through its actions as the largest owner of real estate in the country, including hundreds of recognized heritage properties, the Government of Canada influences the management of the built environment by others, and therefore should seek to achieve a balance between social and environmental purposes that benefit the public and financial gains.

In 1992, the Government of Canada showed leadership in protecting the **natural** environment from inappropriate federal actions by introducing the *Canadian Environmental Assessment Act*. Comparable legislation to prevent the degradation of the historic built environment as a result of federal action is long overdue. Federal departments and crown corporations need to be accountable for the treatment

of heritage buildings and places in the custody and control of the Government of Canada. Canada is the only G-7 country without laws to protect heritage places owned by its national government.

Over 50 years ago, the United States Congress recognized that the Federal Government must provide leadership for preservation in its own actions. The National Historic Preservation Act (NHPA, 1966) was established with the goal of transforming the US Federal Government from an agent of indifference, frequently responsible for needless loss of historic resources, to a facilitator, an agent of thoughtful change, and a responsible steward for future generations. The NHPA grants legal status to historic preservation in federal planning, decision-making, and project execution, and provides for third-party scrutiny. In 1976, the US went a step further, enacting the *Public Buildings Cooperative Use Act*, requiring that the government's real property agency give preference to the use of historic buildings to fill federal space needs. The idea was to lead by example and stimulate economic development and revitalization via the government's rehabilitation and use of historic buildings. Subsequently, a growing number of state governments have enacted similar legislation.

In recent years, there have been attempts to enact comprehensive legislation for federal heritage places like those entrenched in the United States. Christina Cameron, former Director General of National Historic Sites at Parks Canada, writes that, "Between 1997 and 2004, a pan-Canadian effort known as the *Historic Places Initiative* developed proposals for Canadian federal legislation to protect and conserve Canada's national historic sites, in collaboration with the provinces and territories. These efforts failed to produce new federal legislation, because of the slow pace of government policy development and frequent departmental reorganizations." A 2002 Parks Canada document, [Towards a New Act Protecting Canada's Historic Places](#), outlined an ambitious legislative agenda, in addition to other measures.

Accordingly, the National Trust calls on the Government of Canada to introduce legislation for federal heritage places, that includes:

- statutory standards for the management of federally owned and regulated heritage places;
- systematic monitoring and reporting on compliance, conducted by an independent (non-custodian) entity; and
- measures to demonstrate federal leadership for historic places not owned or regulated by the federal government.

In addition to these recommendations, it is important to understand why existing measures are not effective, and to build in mechanisms that will ensure compliance and successful conservation outcomes.

Recommendation 1: Statutory standards for the management of federally owned and regulated historic places.	
	Considerations
Overarching needs:	
Clearly articulate federal commitment to heritage protection and stewardship.	<ul style="list-style-type: none"> • Ensure that a high-level vision for federally designated and regulated resources articulated: for example “Federal heritage resources/places must be conserved.”
Recognition that heritage contributes to larger federal goals.	<ul style="list-style-type: none"> • It is vital that a consistent, transparent legislative framework be put in place that, for example, sets a standard for sustainable practices, playing leadership role in creating local skilled jobs, etc.
Patchwork of legislation needs harmonization to eliminate protection gaps and conflicting requirements, and to clarify government roles.	<ul style="list-style-type: none"> • New legislation should harmonize the current patchwork of federal legislation and policies aimed at federal heritage, which include: <i>Historic Sites and Monuments Board Act</i>, <i>Parks Canada Agency Act</i>, <i>Treasury Board Policy on Management of Real Property</i>, <i>Heritage Railway Stations Protection Act</i>, and <i>Heritage Lighthouse Protection Act</i>. • Existing roles and levels of federal heritage protection are difficult to understand, both inside and outside of government. This will help to clarify roles and responsibilities. The Canadian public frequently doesn’t know which level of government is responsible for what.
Assessment Standards:	
The mandate of the Federal Heritage Buildings Review Office (FHBRO) should be strengthened so that it can play the required leadership role for federal departments. The importance of its role should be recognized by providing it with adequate, sustained funding.	<ul style="list-style-type: none"> • FHBRO does not have the capacity or mandate to assess past interventions, to conduct ongoing evaluation of the effectiveness of federal policy (investments made, value to government etc), nor to produce an annual report on the status of the federal heritage inventory.
Require all federal departments and agencies to inventory and identify heritage assets in their portfolios and to actively monitor their condition.	<ul style="list-style-type: none"> • Auditor General Report reported that depts did not know how many heritage buildings they had or did not know what condition the buildings were in. Also, the heritage property information the organizations provided to Parliament and the public was inaccurate or incomplete. • It will be important to retain an appropriate level of flexibility for these heritage activities, one which recognizes the difference between the Parliament Buildings and more modest heritage assets and scales efforts accordingly.
HSMBC, FHBRO and federal other regulations/processes need to better reflect Canada’s diverse histories and	<ul style="list-style-type: none"> • Having representation by marginalized and under-represented peoples in the decision making and designation process will be critical for future success

Recommendation 1: Statutory standards for the management of federally owned and regulated historic places.	
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be inclusive of the cultures and perspectives of Indigenous Peoples when it formally recognizes and manages places, persons or events.	<ul style="list-style-type: none"> Process will need to be as flexible and nimble as possible to respond to shifting heritage and societal values.
Regularly review FHBRO designations, or buildings that did not merit designation, to ensure current value is understood and protected.	<ul style="list-style-type: none"> Federal heritage designations (or buildings that have missed designation) should be periodically reviewed to account for any change in heritage value. Buildings that go through the FHBRO process and are not ultimately identified as Recognized or Classified heritage properties, may have increased in heritage value over time. Without FHBRO designation, the risk is that changes can be made with less scrutiny and sensitivity, and properties can be disposed of with less oversight.
Ensure public input into FHBRO process and other heritage protection mechanisms. Need consistent and meaningful opportunities for public input in FHBRO	<ul style="list-style-type: none"> Currently there is no citizen input into the FHBRO process. All decisions on the heritage qualities of a federal property are made within the government. This contradicts the widespread and effective practice of public consultation on the protection of heritage property within provincial and municipal jurisdictions. It is also at odds with public consultation processes already in place in the application of the Heritage Railway and Lighthouse Acts.
Certain classes of federal properties fall outside FHBRO oversight and/or any heritage protection (federal, provincial-territorial, or municipal)	<ul style="list-style-type: none"> Address the fact that Crown agencies, ports, airports, many departments, and federal infrastructure such as bridges, are not bound by FHBRO process. The absence of oversight has resulted in the demolition of historic post offices by Canada Post and historic hangars by Parc Downsview Park. Moreover, non-railway station buildings (e.g. grain elevators, roundhouses) on federally regulated railway lands, or airports (due to the nature of lease agreements with Airport Authorities) cannot be designated/protected by any order of government, including federal.

Protection Standards:	
Tighten existing heritage Railway Station and Lighthouse legislation to eliminate protection loopholes.	<ul style="list-style-type: none"> Lighthouses are not entirely protected from demolition despite the Heritage Lighthouse Protection Act. An unexpected clause on “surplus lighthouses” in the legislation shifted it from being a preservation tool to a divestment mechanism for DFO. Railway Stations are not protected from demolition despite federal Heritage Railway Stations Protection Act.
Ensure National Historic Sites have adequate protection by provincial-territorial and municipal governments prior to federal designation.	<ul style="list-style-type: none"> Some National Historic Sites have seen major changes, including the demolition of contributing structures. There is a need to require consultation with federal representatives when decisions

	<p>affecting National Historic Sites are made at the municipal and provincial-territorial levels.</p>
<p>Ensure there is a federal role in reviewing interventions to non-federal National Historic Sites.</p>	<ul style="list-style-type: none"> • Require Management Plans as a requirement. Require federal oversight to any development changes and ensure effectiveness and input by contributing federal funding to projects.
<p>Require that an annual or bi-annual “report card” on the state of federal heritage places (including National Historic Sites) be issued.</p>	<ul style="list-style-type: none"> • Report cards can pro-actively monitor the impact of legislation in real time, and communicate the value, challenges, and best practices of heritage stewardship to Canadians.
<p>Require that the value federal heritage places be communicated to the public.</p>	<ul style="list-style-type: none"> • Recognition & Public Profile - Federal custodians of heritage (outside of Parks Canada) need to tell the story of buildings in their care. Currently the only information available for many properties is the baseline information included in the FHBRO register or the Directory of Federal Real Property (DFRP). • Creative ways like annual federal awards could be established.
<p>Require that professionals and craftspeople with heritage expertise is mandatory for work on federal heritage buildings.</p>	<ul style="list-style-type: none"> • The federal government can play a leadership role in creating a consistent demand across the country for these rare skill sets that are at risk of being lost.
<p>Ensure there is transparency and a mechanism for public input into project review for major changes to significant heritage buildings.</p>	<ul style="list-style-type: none"> • Inclusivity in heritage project reviews should also be ensured.
<p>Maintenance Standards:</p>	
<p>Some federal buildings are experiencing deferred maintenance, which leads to more costly repairs later, to greater loss of heritage features, and in the most severe cases, to demolition by neglect. Federal custodians should be obliged to adhere to industry-standards for investment in real property.</p>	<ul style="list-style-type: none"> • Apply industry standards for investment in building maintenance and capital repair. • Ensure that these standards are applied throughout the life cycle of buildings, including during the disposal process. • Set targets for energy efficiency of federal heritage properties that accounts for impact of building reuse (embodied energy and carbon reduction leadership).
<p>Leasing Standards:</p>	
<p>Revise government leasing standards to promote the retention and adaptive re-use of federal heritage buildings.</p>	<ul style="list-style-type: none"> • Heritage First provisions – where government gives preference to heritage buildings when leasing short or long-term space (eg. offices, conferences or accommodation) – to promote the re-use of existing buildings in federal ownership should be integrated into government leasing policies • Federal accommodation standards often place unrealistic requirements on heritage buildings, effectively promoting their disposal rather than their re-use. Increased flexibility and creativity should be encouraged.
<p>Disposal Standards:</p>	

<p>Revise disposal standards to strengthen the protection of heritage buildings and to give sufficient priority to new uses that have a social/public purpose.</p>	<p>The following should be considered as part of the disposal standard:</p> <ul style="list-style-type: none"> • revisions to the definition of “strategic disposal” and the role that the Canada Lands Corporation plays, so that the potential social/public benefit of a continued public use of federal properties is considered appropriately (not just the financial considerations), and that an allocation of funds to support the transition of the property to a new use is provided; • increase the transparency of the disposal process to include mandatory consultation with the affected communities (including underrepresented groups); • assurance that environmental abatements are undertaken prior to disposal; and • before considering any demolitions, a full lifecycle assessment must be conducted to understand the embodied energy and environmental implications of the demolition.
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Recommendation 2: Systematic monitoring and reporting on compliance, conducted by an independent (non-custodian) entity	
	Considerations
Overarching needs:	
<p>Require federal departments and regulated corporations to regularly monitor and report on their legislative compliance in a publicly transparent manner.</p>	<ul style="list-style-type: none"> • Reporting obligations should include at a minimum, overall condition, investment levels in maintenance, project review results, disposal strategies.
<p>Consider assigning the responsibility to establish and manage this compliance framework to a federal entity that is not a custodian department - and ensure that is specifically funded to fulfill this mandate.</p>	<ul style="list-style-type: none"> • A transparent regulatory framework should be monitored by an entity that is not subject to its requirements.

Recommendation 3: Measures to demonstrate federal leadership for historic places not owned or regulated by the federal government	
	Considerations
Overarching needs:	
<p>Strengthen protection of National Historic Sites (NHS) not owned by the federal government.</p>	<p>Consideration should be given to means that will improve the protection of NHS not owned by the federal government, including:</p> <ul style="list-style-type: none"> • Require adequate protection by provincial-territorial and municipal governments prior to NHS designation

Recommendation 3: Measures to demonstrate federal leadership for historic places not owned or regulated by the federal government	
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	<ul style="list-style-type: none"> • Require that appropriate management plans are in place prior to designation, and that these management plans are updated and submitted to the federal government for review on a regular basis • Predictable and adequate funding for the <i>National Cost-Sharing Program for Heritage Places</i> • Establish a collaborative relationship with provincial and municipal governments to ensure that federal commemorative interests are respected, and the appropriate Standards are applied during projects on non-federal NHS properties.
Pave the way for future financial incentives for heritage places outside federal ownership by enshrining the requisite tools in legislation: Standards and Guidelines, Canadian Register of Historic Places, certification process for federally funded work on heritage places	<ul style="list-style-type: none"> • Ensure ongoing relevance of <i>Standards and Guidelines for the Conservation of Historic Places in Canada</i> by updating the document on a regular basis, and partnering with external organizations to develop training and interpretation resources
Include “Do no harm” provisions, to ensure that federal actions and funding do not have a negative impact on cultural heritage	<ul style="list-style-type: none"> • Consideration should be given to strengthening the previous requirements included under Canadian Environmental Assessment Act, to ensure proper review of federal actions.
Encourage re-use of historic buildings by revising government leasing policies to include a ‘Heritage First’ consideration when leasing space.	<ul style="list-style-type: none"> • This would strengthen the marketplace for heritage building, and would benefit from additional support from the federal government (e.g. tax-based incentives like income tax credits for heritage rehabilitation work).

Background:

Existing Policy and Legislation

While provinces and municipalities have had heritage legislation for some thirty years, the federal government only has a policy whose heritage obligations have remained virtually unchanged since its adoption in 1982. The *Treasury Board Policy on Management of Real Property* is not binding, and the adherence to its obligations is not monitored or reported on. The Federal Heritage Buildings Review Office (FHBRO) was established within Parks Canada with the responsibility to evaluate heritage value and make recommendations regarding proposed alteration, demolition or disposal of federal buildings. The onus is on custodian departments to establish their own processes and standards for compliance. FHBRO does not monitor compliance or follow up to determine if its recommendations are followed,

and it is therefore impossible to measure its effectiveness. An underlying issue is that federal departments are expected to absorb the cost of complying with the policy and protecting the buildings in their care, without supplementary funding to do so.

Federal legislation exists to protect two types of heritage property - railway stations owned by railways subject to the *Railways Act*. Spearheaded by the National Trust for Canada, *An Act to protect Heritage Railway Stations* came into effect in 1990. Since that date, 164 heritage railway stations have been legally protected under this Act. The Historic Sites and Monuments Board of Canada acts as a heritage advisory committee to the Minister responsible.

Bill S-215, *An Act to protect heritage lighthouses* was passed by Parliament in May 2008. There are federal lighthouses in every province except Alberta and Saskatchewan. Since criteria for heritage lighthouses have been established, communities are now able to petition the Minister of the Environment for heritage designation and propose community uses for any building surplus to operational requirements

Federal Heritage Places – By the Numbers

The Government of Canada owns or regulates the following heritage places:

- 1,219 buildings already heritage designated (recognized or classified) under the *Treasury Board Policy on Management of Real Property*;
- 228 federally-owned National Historic Sites (a further 740 National Historic Sites are privately owned and federal recognition is only commemorative, providing no regulatory control);
- An unknown backlog of federally owned buildings 40 years old or older, but not yet submitted for review (to date, about 6,500 buildings have been evaluated, out of a total of 37,245);
- An unknown number of potential heritage buildings held by agencies and crown corporations that are exempt from the *Treasury Board Policy on Management of Real Property*, such as post offices;
- An unknown number of engineering works such as bridges and port structures - some of which are National Historic Sites - that are exempt from the *Treasury Board Policy on Management of Real Property*;
- An unknown volume of archaeological resources on federal lands;
- 164 designated heritage railway stations owned by federally regulated railway companies (subject to the *Heritage Railway Stations Protection Act*); and
- 102 designated heritage lighthouses (subject to the *Heritage Lighthouse Protection Act*)

For more information please see:

- [Directory of Federal Real Property](#)
- [Federal Heritage Buildings Review Office \(FHBRO\)](#)
- [Heritage Lighthouses of Canada](#)
- [Heritage Railway Stations Protection Act](#)