

January 31, 2023

Subject: Recommended Amendments to Bill C-23 on behalf of undersigned organizations and individuals (*aussi disponible en français*)

This submission provides feedback from the heritage sector on Bill C-23: *An Act respecting places, persons and events of national historic significance or national interest, archaeological resources, and cultural and natural heritage*. <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-23/first-reading>: “This enactment enacts the *Historic Places of Canada Act*, which provides for the designation of places, persons and events that are of national historic significance or national interest and fosters the protection and conservation of the heritage value of the designated places.”

Preamble

The undersigned organizations and individuals welcome this effort by the Government of Canada to address the longstanding criticism that Canada is the only G7 nation without federal laws to protect its national heritage. We highlight a number of areas where Bill C-23 should be strengthened to better protect Canada’s treasured historic places in a sustainable way for the benefit of generations to come.

Why Statutory Protection is Needed

In 2003, the Auditor General of Canada concluded that built heritage under federal control “will be lost to future generations unless action to protect it is taken soon” and called for “strengthening the legal framework.” An audit 15 years later in 2018 shows that little has changed.

In 2017, the Standing Committee on Environment and Climate Change released *Report 10: Preserving Canada’s Heritage: The Foundation for Tomorrow*, which, among its 17 recommendations, states, “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.”

Positive Aspects of Bill C-23

The undersigned recognize positive aspects of Bill C-23 as drafted that improve upon the status quo. Bill C-23 harmonizes the current patchwork of legislation affecting federal heritage properties and the designation of places of national significance. It discusses conflicting requirements and clarifies the Government of Canada’s role. It creates a Public Register that gives the public access to information on “designations”, “condition” and “planned action” for federal historic places.

Bill C-23 responds to the TRC Calls to Action 79(i) and (ii) by adding Indigenous representation on the Historic Sites and Monuments Board of Canada; by requiring the Board to consider the best available information including Indigenous and community knowledge in its recommendations to the Minister; and by providing an Indigenous-led process for including places in the Public Register.

It enshrines in legislation the *Standards and Guidelines for the Conservation of Historic Places in Canada* and the *World Heritage Convention*.

Recommendations to Ensure Statutory Protection of Federal Historic Places via Bill C-23

These priority recommendations are illustrated with examples that substantiate the need to amend the Bill.

1. Recommendation: Amend Bill C-23 to make it applicable to all places of national historic significance or national interest under federal control, including crown corporations, and to include archaeology on federal lands under water.

There is a lack of clarity concerning which federal historic places will be protected by Bill C-23.

A. These places are understood to be included in Bill C-23:

- All National Historic Sites of Canada under the administration of Parks Canada, other federal departments, and Crown corporations named on Schedule 1 – currently only the National Capital Commission;
- All Classified buildings under the administration of Parks Canada, other federal departments, and Crown corporations named on Schedule 1 – currently only the National Capital Commission.
- All archaeological resources on federal lands under the administration of Parks Canada, other federal departments, and Crown corporations named on Schedule 1 – currently only the National Capital Commission.

B. It is our understanding that the Government of Canada owns or regulates the following heritage places with known or potential national historic significance or national interest:

- 1,219 buildings already designated as heritage (Recognized or Classified) under the *Treasury Board Policy on Management of Real Property*;
- 231 National Historic Sites of Canada;
- An unknown backlog of federally owned buildings 50 years old or older, but not yet submitted for heritage review (to date, we understand that about 6,500 buildings have been evaluated, out of a total of approximately 39,000);
- An unknown number of potential heritage buildings held by federally regulated industries, agencies and Crown Corporations that have been exempt from the *Treasury Board Policy on Management of Real Property*, such as post offices, national cultural institutions and airports; engineering works such as bridges and port structures (some of which are National Historic Sites of Canada);
- An unknown quantity of archaeological resources on federal lands and lands under water;
- 164 designated heritage railway stations owned by federally regulated railway companies (subject to the *Heritage Railway Stations Protection Act*); plus an unknown number of non-

railway-station structures on federally-regulated railway lands exempt from the Act – such as the Roundhouse in Biggar, SK, demolished in 2015.

- 102 designated heritage lighthouses (subject to the *Heritage Lighthouse Protection Act*)
- An unknown number of federally-owned lighthouses that meet the designation criteria under the *Heritage Lighthouse Protection Act* but are not protected because they have been declared surplus to federal operational requirements and denied protection pending a written commitment from the community and accepted by Fisheries and Oceans Canada to buy or otherwise acquire them.

C. The 2017 report by the House of Commons Committee on Environment and Sustainable development, Report 10: *Preserving Canada's Heritage: A Foundation for Tomorrow*, called for legislation to oblige Crown corporations to meet the same requirements imposed on federal departments and agencies in order to protect buildings owned by these Crown corporations and prevent their demolition by neglect (recommendation 3) and for legislation to establish a process to protect, conserve, document, and exhibit archeological resources on federal land and under waters of federal responsibility (Recommendation 4).

Accordingly, the following additional heritage places warrant statutory protection under Bill C-23 and should be expressly included and protected under Bill C-23:

- **Potential places of national historic significance or national interest owned by Crown Corporations including but not limited to the Canadian Broadcast Corporation, Canada Post, Canada Lands Company, the national museums, the Bank of Canada, CMHC and others.**
- **Lighthouses that meet designation criteria under the *Heritage Lighthouse Protection Act* but currently are denied protection because they were declared surplus to federal needs should be identified and protected while in federal ownership.**
- **Archaeological resources on federal lands under water.**

2. Recommendation: Amend Bill C-23 to include provisions for effective accountability, monitoring and reporting, with the objective to confirm adequate ongoing stewardship, and prevent demolition by neglect. This should be in the form of an annual report to Parliament from the Minister on the state of federally-owned and federally-regulated historic places, in line with the Auditor General’s standards.

This amendment is needed because there are numerous examples of federally owned and regulated historic places that have deteriorated or been demolished by neglect, despite their heritage status:

The Auditor General’s 2018 Fall Report to Parliament, Report #2 (*Conserving Federal Heritage Properties*) called attention to condition issues at York Redoubt National Historic Site of Canada (NHSC), Halifax; Joseph Papineau House NHSC, Montreal; Hangar 13 (FHBRO-designated), CFB Borden; and the Superintendent’s Residence (FHBRO-designated), Carillon.

Among other examples, the York Street Train Station, Fredericton, was allowed to deteriorate despite its designation under the *Heritage Railway Stations Protection Act*. The Canadian Pacific Railway Station in Masson-Angers, also designated under the *Act*, was demolished in 2021 after a collapse resulting from long neglect. 24 Sussex Drive, Ottawa, is a Classified federal heritage building in serious condition from decades of deferred maintenance.

3. Recommendation: Amend Bill C-23 to identify a non-custodian third party to provide oversight, strengthen conservation outcomes and reduce potential conflict of interest.

Bill C-23 in its current form states that custodians should take the *Standards and Guidelines* “into account” (clause 31) and “consult Parks Canada” (Clause 32). However the Auditor General of Canada has previously criticized the current federal heritage protection system for the underlying notion that Parks Canada could provide conservation advice but could not compel departments and agencies to protect designated buildings. With regard to Parks Canada properties, Bill C-23 would make the Minister both judge and jury in matters of protection, raising the potential for conflict of interest.

To be effective, Bill C-23 must address these issues. In addition to requiring consultation with Parks Canada regarding proposed actions that may result in physical change or affect heritage value at subject properties, there is a need for oversight of the review process by a knowledgeable non-custodian third party. An excellent model is the US Advisory Council on Historic Preservation – an independent federal entity that ensures federal agencies implement their work in harmony with US heritage legislation. For the purposes of Bill C-23, this role could be assigned to the Historic Sites and Monuments Board of Canada, which could seek expert advice as needed.

4. Recommendation: Amend Bill C-23 to allow for participation by interested and affected parties.

Bill C-23 in its current form provides for a public register that would include information about any planned action that may result in a physical change or impact on heritage value. However federal heritage places are held in trust for the public, and consultation should be active, not passive, offering means for the public, other levels of government including Indigenous governments, and heritage organizations to offer their input. The absence of a pro-active process risks negative public opposition and delays, and negative impacts to heritage values that could have been avoided with early engagement of stakeholders. The legislation of the Impact Assessment Agency of Canada already provides for this type of consultation.

5. Recommendation: Amend Bill C-23 to add definitions for clarity, and confirm the continuation of the National Historic Site of Canada label for existing and future designations.

Bill C-23 assigns to the Minister the responsibility to designate “places, persons and events of national historic significance or national interest” (clause 5.1.a). It is not clear what the differences are among these designations. In order that the distinctions among these designations are clear, there is a need to define the following: National Historic Site of Canada, historic place of national interest, person of national historic significance, person of national interest, event of national historic significance and event of national interest.

Other terms that require definition are: heritage value, commemorative integrity, archaeological site and archaeological resource.

Among other concerns, Bill C-23 sometimes replaces the word historic “site” with historic “place”. This inconsistency has raised concerns about the National Historic Site of Canada brand many years in the making, which affects sites under the administration of Parks Canada Agency as well as National Historic Sites of Canada owned by others. Recognition of the National Historic Site of Canada label has been cultivated by the Government of Canada for over 100 years. It has been an important tool for raising awareness of Canada’s history and for involving Canadians in promoting the protection of their heritage. National Historic Site of Canada designation is highly treasured and can take years to achieve (not all applications are successful). To many communities, the National Historic Site of Canada designation is key to identity, pride and reconciliation. In addition, it often serves as the focal point for the local economy. Bill C-23 requires amendment to remove this uncertainty regarding both existing and future designations.

6. Recommendation: Amend Bill C-23 to ensure the settings and landscapes that are part of historic places are included in the scope of protection.

Bill C-23 in its current form does not explicitly include the surrounding settings and landscapes of all subject properties. This leaves historic places vulnerable to subdivision or development without consideration of heritage value – as was seen at the Central Experimental Farm National Historic Site of Canada in Ottawa, when despite its heritage status, a controversial decision was made to alienate 50 acres of the National Historic Site for use by the Ottawa Hospital.

Accordingly, Bill C-23 requires amendment to include settings and landscapes associated with designated places.

7. Recommendation: Amend Bill C-23 to include measures to ensure protection of historic places that leave federal ownership – enshrining existing protocols and practices in the legislation.

Bill-23 is silent on the protection of heritage properties when they leave the federal inventory. Possible measures could include a conservation easement registered on title, or an agreement for heritage protection by another jurisdiction at the time of transfer. There are already precedents in federal practice, notably in some Canada Lands Company disposals, and in the transfer of heritage railway stations leaving the protection of the *Heritage Railway Stations Protection Act*. An example is the conservation easement on Toronto Union Station that was a condition of its sale under the *Act*. Bill C-23 should be amended to include measures to protect federal historic places when they leave the federal inventory.

8. Recommendation: Amend Bill C-23 to include measures to ensure federal actions do not adversely affect places owned by other entities and jurisdictions.

Bill C-23's preamble recognizes the Government of Canada's leadership role in protecting and conserving the heritage value of historic places in Canada. Yet the conservation and protection measures included in the Bill are limited to places under federal jurisdiction. The 2017 report from the House of Commons Committee on Environment and Sustainable Development, *Report 10: Preserving Canada's Heritage: A Foundation for Tomorrow* included a recommendation to introduce legislation to ensure that federal actions do not adversely impact heritage sites and buildings owned by other entities and jurisdictions. As a point of reference, Canada's close trading partners have adopted statutes and policies to ensure that government investments respect historic places and lead by example, including

Section 106 of the National Historic Preservation Act and Executive Order 13006 of the United States of America.

Accordingly, the undersigned recommend measures to ensure that no funds or property from His Majesty in Right of Canada may be used to remove or demolish a site, or a part thereof, that is inscribed on the Canadian Register of Historic Places, or that is a national historic site, or that is designated as a historic site by any province, territory or municipality, unless a heritage impact assessment has been conducted and unless prior written authorization from the Minister of the Environment has been provided for the removal or demolition.

9. Recommendation: Review and revise the process, preamble and operative provisions of Bill C-23 to be consistent with UNDRIP.

The *United Nations Declaration on the Rights of Indigenous Peoples Act* requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure the laws of Canada are consistent with the Declaration. The Bill covers many areas that implicate Indigenous cultural heritage - for example concerning designation, management, transmission, protection and control or revocation of designations of Indigenous heritage. Bill C-23 must be reviewed for compliance in substance and procedure with UNDRIP. For example,

- UNDRIP requires governments to consult and cooperate in good faith to obtain free prior and informed consent of Indigenous peoples before adopting legislative or administrative measures that may affect them. The extent of engagement with Indigenous peoples and governments is unclear.
- UNDRIP recognizes the right of Indigenous peoples to use, develop and transmit their own names and languages in the designation of places. The Bill does not expressly consider or make a commitment to use Indigenous languages in designations or other actions affecting Indigenous heritage (e.g., monuments, place names) or reference preservation, revitalization, and strengthening of Indigenous languages.
- UNDRIP confirms the rights of Indigenous peoples to maintain, control, protect and develop their cultural heritages including objects, sites, traditional knowledges, and traditional cultural expressions in. Although some sections of Bill C-23 speak to consideration of Indigenous history, heritage values, and memory practices; the Act does not call on the Minister or other actors to work in collaboration with affected Indigenous communities or to develop consensus seeking processes to identify, respect, recognize and integrate Indigenous laws, norms, and practices concerning designation, management, transmission, protection, and control or revocation of designations of Indigenous heritage affected by the legislation.

As part of this process, Indigenous organizations and governments should be provided sufficient time and resources to review Bill C-23 for UNDRIP compliance.

Conclusion

With the amendments noted above, the undersigned organizations and individuals support this Bill regarding the designation of places, persons and events that are of national historic significance or national interest, and the protection and conservation of places in federal control.

We take this opportunity to note the next priorities for federal action to ensure that many more older and historic places in Canada – arguably the largest collection of tangible assets owned by Canadians, with a value estimated at 2.5 times annual GDP – can play their role in reflecting community identity, supporting climate action and contributing to a strong economy.

There is currently no overarching policy for these places, however a National Framework is largely envisaged in the 2017 report from the House of Commons Committee on Environment and Sustainable Development, *Report 10: Preserving Canada's Heritage: A Foundation for Tomorrow*. The following recommendations require urgent action from the Government of Canada:

- Increase support and remove systemic barriers to building re-use, in order to incentivize rather than discourage widespread private and public investment in building re-use and rehabilitation. This is essential for climate action, cultural vitality and community sustainability. Specific measures include:
 - a substantial federal tax credit for retrofit and rehabilitation;
 - a 'heritage first' policy requiring federal departments and agencies to give preference to existing/heritage buildings when considering leasing or purchasing space;
 - investment in the tools and support to help other levels of government play their role in conserving the nation's heritage resources.
- Enhance the capacity of Indigenous communities to maintain, control, protect and develop their cultural heritage and places, including traditional knowledges and traditional cultural expressions.
- Establish predictable funding for the National Cost Share Program for Heritage Places to a level commensurate with the number and significance of these properties, to ensure their conservation and support essential efforts toward reconciliation, inclusion and climate action at these places. There are currently 740 National Historic Sites of Canada that are owned by other governments, non-profit organizations, private entities or individuals.

The undersigned are committed to these recommendations. We welcome Bill C-23 as a first step and call on the Government of Canada to urgently advance the implementation of a National Framework for Heritage Places.

Respectfully submitted,

[see signatories below, pages 9-13]

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