



Ontario Catholic School
Trustees' Association

Brief to the
Standing Committee on Justice Policy

re:

**The Ontario Heritage
Amendment Act, 2004 (Bill 60)**

December 1, 2004

Introduction

The Ontario Catholic School Trustees' Association (OCSTA) has dedicated itself for the past 70 years to the promotion and development of the Catholic school system in Ontario. OCSTA's membership comprises 29 Catholic district school boards and 5 Catholic school authorities that collectively educate approximately 600,000 students and represent millions of supporters of the Catholic school system in Ontario.

A major activity of OCSTA is to represent the point of view, aspirations and needs of Catholic school boards and school authorities to the provincial government. It is for this reason that OCSTA is compelled to offer the government its views on Bill 60. A number of OCSTA's school boards and school authorities own buildings of considerable age that might well be considered to be heritage sites.

In general terms, OCSTA and its member school boards and school authorities support the policy of ensuring that a careful process be followed to consider whether a heritage site should be designated. We share the Province's desire to ensure that every possible avenue be explored for the maintenance of heritage sites.

OCSTA supports parts of Bill 60, including the changes to the Ontario Heritage Foundation, that are helpful. The new Trust will hopefully provide resources to enable owners of heritage properties to maintain and improve those properties where they are still useful. We particularly support the enactment of regulations to prescribe criteria for determining whether a property is of cultural heritage value or interest, subject, needless to say, to further review of proposed regulations.

There will be times, however, when our member school boards and school authorities cannot continue to own and maintain certain schools. As the Honourable Gerard Kennedy, the Minister of Education, knows and has stated, there are a number of problems with the school capital funding model. The benchmarks for construction in the jurisdictions of some school boards are too low and consequently there is a considerable shortfall between the school board's expenditures on new capital facilities and the revenue that it obtains from provincial grants. Many school boards have been looking to dispose of surplus schools at fair market value in order to make up that shortfall. Designation would have the effect of removing development potential from a property, thereby reducing or eliminating its market value. If surplus schools are designated under the *Ontario Heritage Act*, and Bill 60 is passed in its current state, school boards and school authorities will be unable to dispose of surplus schools at fair market value and will find themselves in grave financial difficulty.

There is no doubt that Bill 60 would inequitably burden certain organizations far more than others. Our member school boards and school authorities have indicated to OCSTA that they own a significant number of buildings in Ontario

that are likely to be designated under the Act. This is not surprising since schools are often old and prominent buildings in communities across Ontario.

We were especially disturbed to learn that while heritage groups and municipalities were extensively consulted in the development of Bill 60, property owners who might be affected by changes in the legislation such as school boards were not.

The consultative process did not seek the input of OCSTA or, to the best of our knowledge, the Ontario Public School Board's Association even though school boards are owners of significant heritage properties across the Province.

As a result, the Bill gives heavy-handed power to municipalities and leaves property owners with little in the way of protection. OCSTA believes that a more balanced approach to the needs of property owners and the needs of heritage preservation can be achieved, but only after an open consultation process involving all of the interested stakeholders and an open-minded exploration of other approaches to heritage preservation.

School boards and school authorities are public bodies that are dependent upon the provincial government for funding of their capital expenditures. The current school capital funding model is unable to adequately address the cost of maintaining heritage buildings. School boards and school authorities are simply not able to afford the considerable expense that this "heritage tax" would impose on them.

It is important to recognize that payment of this additional expense will only come at the cost of the other important services that school boards and school authorities provide for their students and communities, and might affect the financial ability of school boards and school authorities to maintain their other buildings.

It is also worth noting that other incentives such as tax credits offered under s. 365.2 of the *Municipal Act* are of no assistance to school boards or other public bodies.

The Accountability of Municipalities

People are often very attached to school buildings, even to buildings that have no obvious historical or architectural significance. School boards are aware that municipal councils are often highly susceptible to neighbourhood influences. This we know from our experiences in attempting to locate portables on school sites, which municipalities often resist at the behest of local community groups.

Our member boards fear that they will become embroiled in lengthy legal processes around buildings that are of dubious historical significance, only because it is politically easier for a municipality to designate a site or refuse to issue a demolition permit and refer the matter to the Conservation Review Board and the Ontario Municipal Board, than it is to simply refuse the request of a local community group.

OMB Appeal Insufficient

OCSTA is concerned because Bill 60 does not provide the OMB with any criteria to guide its decision making.

The authority given to the OMB by s. 34.1 provides:

- (6) After holding a hearing, the Board may order,
 - (a) that the appeal be dismissed; or
 - (b) that the municipality consent to the demolition or removal of a building or structure without terms and conditions or with such terms and conditions as the Board may specify in the order.

The experience of school boards is that the prospect of an appeal to the OMB does impose some discipline on municipalities that might otherwise be tempted to exceed their powers under, for example, the *Planning Act*. The prospect of legitimate appeals forces municipalities to negotiate with land owners. Similar pressure needs to be inserted into Bill 60 to make the process fair to property owners.

It is recommended that the following subsection be added to s. 34.1:

- (6.1) Without limiting the generality of subsection 6(6)(b), where it appears to the Board that,**
 - (a) the owner would suffer financial hardship as a result of a refusal to issue a demolition permit; or**
 - (b) the owner agrees to dedicate some or all of the proceeds of sale at market value of the property to the preservation of another property of cultural heritage value or interest in the municipality,**
the Board may specify as a term or condition that,
 - (c) the designating authority acquire the property for market value, or**
 - (d) the municipality facilitate the transfer of density for value from the property to another property in the municipality that need not be owned by the owner.**

Bias and the Conservation Review Board

Other bodies making submissions to this Standing Committee have argued that the presence of a member of the Conservation Review Board on a panel of the Ontario Municipal Board reviewing an appeal would create the perception of bias. We agree that this perception would be created by Section 25.1 and join in the recommendation that it be withdrawn.

It is recommended that s.25.1 be withdrawn from Bill 60.

If it is to remain in the Bill, then we recommend that the Bill be clarified to ensure that a member of the Conservation Review Board is only one of the members of the Ontario Municipal Board hearing an appeal.

We therefore recommend that the following amendment be made to s. 25.1 of the Act:

25.1 Despite s. 5 of the *Ontario Municipal Board Act*, the Board may appoint a member of the Review Board to sit as an additional member on a panel of the Board conducting an appeal under this Act for the duration of the appeal.

Transitional Matters

Under s. 34(7) of Bill 60, unless the building is in the course of demolition at the time that it receives Royal Assent, the new Act will apply. Section 34(7) of Bill 60 provides:

- (7) Despite subsections (5) and (6), if, on the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, a situation described in subsection (6) existed and the owner of the property had not only prepared the property for the demolition or removal of a building or structure but was in the course of demolishing or removing the building or structure, then,
 - (a) subsections (5) and (7), as they read immediately before the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, continue to apply to the refusal of the application;
 - (b) the owner may continue the demolition or removal of the building or structure; and
 - (c) sections 34.1, 34.2 and 34.3, as they read immediately before the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, continue to apply to the application.

OCSTA believes that retroactive legislation is unfair.

OCSTA believes that if a property owner has in good faith complied with steps required by the *Ontario Heritage Act* in its current form, the process under the current Act should be permitted to carry through to its final conclusion, so long as the demolition permit application was received before the Bill receives Royal Assent.

It is recommended that s. 34(7) of the Bill be amended:

- 34(7) Despite subsections (5) and (6), if, on the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, a situation described in subsection (6) existed and the owner of the property had received consent to demolish or remove a building or structure on the property,**
 - (a) subsections (5) and (7), as they read immediately before the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, continue to apply to the refusal of the application;**
 - (b) the owner may continue the demolition or removal of the building or structure; and**

- (c) sections 34.1, 34.2 and 34.3, as they read immediately before the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, continue to apply to the application.

Concluding Comments

School board members of the OCSTA are engaged daily in the preservation of heritage sites that are continuing to operate as schools throughout the Province of Ontario. The commitment of school boards to heritage preservation is demonstrable.

At the same time, however, it must be possible for school boards to sell surplus school sites on the open market in order to be able to reinvest the proceeds of sale in preserving other school properties and in building new schools to serve their communities.

A more balanced approach to heritage preservation would be of assistance to school boards in Ontario. While we believe that Bill 60 should be withdrawn and re-thought, we believe that our proposed amendments to the Bill would provide some assistance in reaching a fair balance between the interests of property owners and the interests of heritage preservation.

The Ontario Catholic School Trustees' Association regrets that Bill 60 was developed without a full and proper consultation process. Unfortunately, the haste with which groups affected by this proposed legislation were required to respond to it has severely limited the kind of creative thinking that can make a real contribution to public policy. We believe that there are solutions that can make a positive contribution to heritage preservation.

We are grateful for the opportunity to address the Standing Committee on Justice Policy on the *Ontario Heritage Amendment Act, 2004*.

Table of Recommendations

Recommendation 1

It is recommended that Bill 60 be withdrawn from the Legislative Agenda and be re-circulated for further development in consultation with all of the stakeholders that will be affected by it, including municipalities, heritage groups, property owners, land developers and professional bodies with expertise, such as the Ontario Professional Planners Institute.

Recommendation 2

It is recommended that the following subsection be added to s. 34.1:

- (6.1) Without limiting the generality of subsection 6(6)(b), where it appears to the Board that,
 - (a) the owner would suffer financial hardship as a result of a refusal to issue a demolition permit; or
 - (b) the owner agrees to dedicate some or all of the proceeds of sale at market value of the property to the preservation of another property of cultural heritage value or interest in the municipality,
the Board may specify as a term or condition that,
 - (c) the designating authority acquire the property for market value, or
 - (d) the municipality facilitate the transfer of density for value from the property to another property in the municipality that need not be owned by the owner.

Recommendation 3

It is recommended that s.25.1 be withdrawn from Bill 60.

In the alternative, it is recommended that the following amendment be made to s. 25.1:

- 25.1 Despite s. 5 of the *Ontario Municipal Board Act*, the Board may appoint a member of the Review Board to sit as an additional member on a panel of the Board conducting an appeal under this Act for the duration of the appeal.

Recommendation 4

It is recommended that s. 34(7) of the Bill be amended in the following way:

- 34(7) Despite subsections (5) and (6), if, on the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, a situation described in subsection (6) existed and the owner of the property had received consent to demolish or remove a building or structure on the property,
- (a) subsections (5) and (7), as they read immediately before the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, continue to apply to the refusal of the application;
 - (b) the owner may continue the demolition or removal of the building or structure; and
 - (c) sections 34.1, 34.2 and 34.3, as they read immediately before the day the *Ontario Heritage Amendment Act, 2004* received Royal Assent, continue to apply to the application.

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