

SOME ISSUES CONCERNING HERITAGE PRESERVATION

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TABLE OF CONTENTS

5	Executive Summary
6	Introduction
7	The Literature on Heritage Conservation
7	<i>The Economics of Heritage Conservation</i>
7	<i>Econometric Studies</i>
12	Heritage Conservation and Property Rights
14	Overlapping Jurisdictions
14	<i>Federal Legislation</i>
15	<i>Federal Programs</i>
15	<i>Provincial Information</i>
18	Summary and Conclusions
19	Endnotes
21	Bibliography

EXECUTIVE SUMMARY

It is widely believed that historical preservation results in a positive outcome for the economy. However, there are issues involved in historical preservation that require further analysis. This paper identifies three basic issues that should be addressed when considering historical preservation in Canada. First, it is extremely difficult to actually put a dollar value on the effects on the value of a property that has been designated as historical. This is important due to regulatory takings, which occur when government regulation limits the uses of private property, effectively depriving property owners of economically reasonable use or value of their property. Theoretically, an individual should be no worse off when historical preservation may have lowered the value of their property. However, this leads to the second issue of the lack of constitutionally entrenched property rights in Canada. This is a potential problem in the sense that if an individual is subject to regulatory takings, compensation may have to be decided by the courts.

Unfortunately, in order to enshrine property rights in the Constitution, the federal government would have to convene another round of constitutional negotiations, which would be subject to the usual contentious amending formula. It is possible that another manner may have to be found in which to guarantee individuals proper compensation in the situation of regulatory takings.

The final issue, which is typical of Canadian politics, is intergovernmental and interdepartmental politics. It is not clear whether there is a way to implement a rational solution to this problem.

INTRODUCTION

Every province and territory in Canada has heritage property conservation laws. These laws are designed to protect historical and cultural sites for the enjoyment of future generations by limiting how these sites may be altered. Much has been written about the assumed positive effects of heritage conservation laws, with the pervasive belief that heritage designation will automatically increase the value of a property. This is an odd assertion, since heritage designation imposes restrictions on use, which, a priori, would be assumed to lower the value of property. In Canada, we need to reconsider how we implement heritage preservation. There are at least three areas of concern that warrant serious study.

First, there are serious questions concerning how we value heritage properties. In analyzing the effects of heritage designation, most researchers tend to use appraised values. This does not reflect the normal supply-demand market mechanism for determining the value of a property. The demand for heritage preservation comes from legislation on the part of governments, presumably reflecting the desires of society. However, this restricts alternative use of the property and distorts the normal market decision-making process.

Second, and probably most importantly, the basic problem that has been largely ignored in analyzing the effects of heritage preservation is that there is a trade-off between the perceived needs of society in terms of heritage preservation and individual property rights. This is a particularly important problem in Canada, as property rights are not well defined.¹ Unlike the Constitution of the United States, the Constitution Act of 1867, formally known as the British North America Act, made no specific provisions for the protection of property. There have been numerous attempts by various governments in Canada to entrench property rights in the Constitution, but these attempts have failed.

Third is the problem of overlapping jurisdictions within federal departmental and intergovernmental politics. The federal government is responsible for the overall direction of heritage organizations in Canada. The minister of Canadian Heritage is responsible for overseeing heritage sites in Canada. The minister's key directive is to support Canadian media, arts, heritage, and sport. These responsibilities overlap somewhat with those of the minister of the Environment, who is also responsible for the maintenance of heritage sites. Aside from the key responsibilities that federal ministers play, the actual implementation of heritage policy is placed on the provinces and municipalities.

We appear to be moving into an era where governments are showing an increasing interest in heritage preservation. We do not currently have a good understanding of the effects that heritage designation has on property values. These issues, coupled with the fact that property rights are not guaranteed under the Constitution, leaves individuals vulnerable to potential decreases in property value without compensation from the government.

THE LITERATURE ON HERITAGE CONSERVATION

The Economics of Heritage Conservation

There is remarkably little in the academic literature in the way of economic modelling of the market for heritage conservation. One notable exception is a paper by G. J. Ashworth. In this paper, Ashworth develops a game theory model that he calls a “neighbour’s dilemma model,” which details the profit and loss resulting from different combinations of decisions for property owners and the public system. Ashworth argues that public intervention is needed since the deregulation of the property market fails to generate profits or secure investment for all parties involved. The community (property owners) as a whole benefits through improvements in the area, and even if it has not invested in maintaining their property they are said to be “free riding” and gaining benefits of surrounding individual investment.²

Ashworth’s economic model demonstrates that the market for heritage properties is inherently more complicated than a traditional economic market. The demand for heritage preservation comes from legislation on the part of governments, presumably reflecting the desires of society. This gives rise to the tendency of economists to label heritage properties as “merit goods.” Merit goods are goods that the government feels people will under-consume. If heritage properties are merit goods, demand cannot be measured by direct consumption. The exception to this may be the demand for tourism that results from a heritage preservation project.

Heritage buildings must be renovated under strict architectural specifications, and this raises issues on the supply side. In a normal market, capital and labour would be used to erect structures, and a rate of return on the project could be calculated. It is not exactly clear how to calculate

the rate of return on investment in a heritage property, leading to a great deal of uncertainty in the investment decision. This gives rise to a whole set of government tax and subsidy incentives to invest in heritage projects.

In addition to the above, there is also the problem of externalities. In a sense, heritage preservation can be looked on as a public good. That is, the benefits of heritage preservation accrue to more than just individuals who invest or consume. This is inherently difficult to measure. For instance, there may be neighbourhood effects that occur when heritage preservation affects the value of the surrounding properties.

With some exceptions, the above issues have mainly been ignored in the literature. It appears to be accepted as a truism that heritage preservation leads to an increase in not only the value of the specific property, but also in the value of surrounding properties. This is an odd assertion, in the sense that heritage designation imposes restrictions on use, which would, a priori, appear to lower the value of property.³ This will be discussed further in a review of the empirical literature below.

Econometric Studies

Robert Shipley used the services of volunteers to gather information for a study based on Local Architectural Conservation Advisory Committees and branches of the Architectural Conservancy of Ontario. Information from real estate boards was also used to produce figures for year-end totals of units sold and total sales values for each year and period studied. The results were that in the city of London, Ontario, 64.4% of designated properties performed better than average in the city’s real estate market, 33.3% were consistent with performance, and 2.2% were below average. In Kitchener, 60% of properties performed above average

and 40% were average, with no designated properties performing below average.⁴

Shiplely finds that appraised values for historical properties in Ontario communities vary. In 21% of cases properties fell in value, 32% performed the same as the average, and 47% did better than average. Individual designated properties tend to resist downturns in the market. The findings suggest that this is more likely due to investment in maintenance and upgrading.

The rate of sales among designated properties did not appear to be affected by the number of designated properties in a given community. The study found that in 10 of the 11 communities where data was collected, the ratio of sales was between 5% and 13.3%.⁵

The report concludes that designated properties are either at or above average in all but one of the communities studied. This exception is Prince Edward County, where 29% performed above average and 71% fell below average. Overall, the study discovered that properties fall on either side of the spectrum with reasonable distribution. The overall increase in value is most likely due to private investment in rehabilitation rather than designation, as the protection of character falls to those who maintain and renovate heritage properties.⁶

In a paper by Robert Shiplely, Steve Utz and Michael Parsons, the authors assumed that the rate of return on investment from rehabilitation of heritage properties is a driving factor in heritage development. Their paper suggested having an industry standard rate of return on investment of as much as 20%–30%, while others propose that 10%–15% is anticipated.⁷

The researchers found that it cost \$7.9 million to convert an industrial building in Kitchener compared to \$4 million for a new building of the same size. The large cost difference was justified as investors see industrial buildings as providing a higher rate of return on investment compared

to conventional units. The authors conclude that “adaptive reuse” is rewarded with higher rents and returns on investment, as there is increasingly more interest in heritage development. The majority of their research indicates that developers see value in medium or large residential projects, and also in medium commercial and small institutional. Large residential projects in Toronto had higher rates of return, but those are most likely due to a larger investment.⁸

Philippe Cryenne and Robert Fenton’s paper uses a hedonic model in their study of heritage properties,⁹ which allowed their research to overcome a major problem involving building values as a way to ensure that all economically relevant building characteristics are included. The study also included non-historical building characteristics designated in the same area isolating the potential to isolate effects on designation on assessed values. This study was conducted in Winnipeg, Manitoba, where approximately 10% Grade I, 30% Grade II, and 60% Grade III buildings were covered in the sample data.¹⁰

The economic depreciation rate for buildings in the sample studied was estimated to be approximately 1% of the mean value of the buildings. The findings also suggested that each additional square foot increases the value by approximately \$21 per square foot, and each additional metre that a building is located away from a historical structure increases the value by \$3,300. These results strongly suggest that surrounding properties have higher assessed values due to the proximity of the heritage properties and that this may have ramifications on neighbouring properties. As it turns out, the highest assessed values belonged to the Grade II class.¹¹

Increased values of heritage property and large expenditures are well known in early stages of rehabilitation. Cryenne and Fenton suggest that compared to the largely positive increase in assessed value of the home, each \$1 expenditure leads to an approximate 33-cent increase in assessed value. This is largely due to strict compliance regimes for building code, fire, or mechanical requirements.

In many cases this limits the design capability of the building and does not allow the property owner to capitalize on the highest possible rent.¹²

Out of the sample size collected in Cryenne and Fenton's paper, 37 out of 71 buildings that had been rehabilitated in the three-year period prior to 1994 had higher assessed values (\$1.23 million versus \$490,000), were larger in size (56,000 sq ft versus 36,000 sq ft), and had larger floor plans (8,300 sq ft versus 6,000 sq ft) when compared to the entire sample of historical buildings in the region.¹³

However, these results are inconclusive, as it is not known whether market value assessments on historical properties are efficient. More information will need to be collected to determine whether the selling prices of historical properties are an accurate representation of current market value and rehabilitation assessment. Overall, the "neighbourhood effect" states that the further a building is from the nearest historical building and the presence of parking, the greater the positive effect on the assessed value.

Martin D. Heintzelman and Jason A. Altieri use a repeat sales fixed-effects hedonic analysis¹⁴ to regress the observed transaction prices on a set of explanatory variables including property characteristics such as size, number of rooms, locational variables, and distance to amenities. In this study, sales prices were normalized using House Price Index from the Federal Housing Finance Agency. The Boston-Cambridge-Quincy metropolitan statistical area was studied, and the findings suggested that on average the establishment of local districts decreased the value of home prices.¹⁵

The study found that being in a district will increase the price of a property by 20.6%, while being within 0.25 miles increases price between 7.25% and 7.9%. The Community Preservation Act, a Massachusetts state law, is described to have a positive effect on the value of properties by roughly 6.2%. But in order to correct for endogeneity bias, the study used property-level effects, and the findings

suggested that prices for homes found in a district in the Boston-Cambridge-Quincy MSA average will reduce the value of the property by approximately 11.6% and 15.5% in that district. This creates implications for property owners, as undesirable restrictions may outweigh the benefits associated with owning historical property.¹⁶

Although the study found negative internal impacts of historical designation, homes within districts sell at almost 60% above homes that are not included in historical districts.¹⁷

There is strong evidence of positive internal impacts on values of historical designation, and the study finds that this positive effect becomes negative with recurring sales data. This is often an undesirable effect that directly impacts property owners, as the costs to maintain the minimum standards set by municipalities and unregulated increases in value may over value homes within districts.¹⁸

Eric Thompson, David Rosenbaum and Benjamin Schmitz use a difference-in-difference hedonic price model to explore the impact of historical designation on sales prices of single-family houses. The information gathered in this study included sales prices, housing characteristics, and neighbourhood characteristics from properties that received historical designations in Lincoln, Nebraska. Their findings show that historical designation produces on average a \$5,000 increase in value of single-family homes.¹⁹

The coefficient used in their study indicates that both pre- or post-designation, prices in neighbourhoods were more likely to be about \$8,000 higher than prices in controlled neighbourhoods. The effect of designation on sale prices is said to decline by approximately \$351 for each one-year increase in the age of the home. The authors state that the average age of post-designation properties is around 82.7 years, and designation increases prices by roughly \$4,100. On average, the authors find that a designated neighbourhood sale increases prices by approximately \$8,500 per year.²⁰

Several factors are detailed in this study that are said to contribute to increases in heritage property value. These factors include the relationship between old and new properties, square footage, and lot size. It is noted, however, that lot size had little effect on sales price, while the condition of the property is a key element in determining its value.²¹

In general, age is an important factor when determining the effects on sales price, as the study finds that younger properties have a larger effect on sales price but that each one-year increase in age resulted in a decline in sales price on average. Overall, the evidence suggests that the value of homes in designated neighbourhoods increased on average.²²

Andrew J. Narwold uses a hedonic price model to measure the proximity effect of Mills Act houses on non-Mills Act single-family home values in San Diego, California. The median housing price is specified to be US\$799,500 with an average age of 65 years. The results from this study suggest that the value of the house increased by 3.76% for each additional Mills Act house within 250 ft and by 1.63% for houses within 250–500 ft. This is said to increase the value of the property by approximately \$30,000 when the house is within 250 ft and by \$13,000 for houses within 250–500 ft.²³

The total increase in taxable revenue is evident, as Narwold asserts that the value of the surrounding neighbourhood increased by \$1.8 million. This is conveyed as being equivalent to an additional \$18,000 in property tax income per Mills Act house and is also comparable to net benefit of \$14,000 per house per year.²⁴

Compensation in the form of grants, subsidies, and tax credits are often provided to owners of historical properties, but the loss in property tax revenue is more than compensated for by the increase in property values of the surrounding neighbourhood, which varies according to proximity to historical properties.

Douglas S. Noonan and Douglas J. Krupka use a hedonic

price function for their study in Chicago, Illinois, where, unlike previous research that assumed that landmark designations are exogenous, this study used an estimator that corrected for regulators to “pick winners” and distinguished between two property attributes for historical sites: historical quality and the status of an official designated landmark.²⁵

The results of the study found that there were large price premiums (approximately 25%) for homes in preserved districts where unconditional mean prices were 73% higher and homes tended to have nicer attributes. The location of historical landmarks may have an effect on individual property values, as premiums for properties within landmark districts fell by 4%. The study found that a 10% increase in the neighbouring area closely to that district is related with a 2.6% rise in property values. Properties included in districts are said to receive a 5% premium, and this could indicate that it may be more beneficial to own property near a district rather than within it. The article highlights a strong possibility of endogeneity bias in the estimation of the effects of designation policy on the value of properties, which may cause difficulties in the measurement of external effects on neighbouring properties.²⁶

The negative external effects in this study were found after the authors controlled the characteristic of neighbourhood quality. The findings suggested that homes near districts were more inclined to be in nicer block groups in the first place. Noonan and Krupka demonstrated in the repeat-sales data that housing units in landmark buildings are more likely to be sold multiple times compared to other units.²⁷

Faroek Lazrak, Peter Nijkamp, Piet Rietveld, and Jan Rouwendal use a spatial autoregressive economic hedonic model²⁸ to investigate the impact of cultural heritage and real estate values. Detailed historical micro-data is used from the municipality of the Dutch urban area of Zaanstad to measure the effect of a listed building and the market price. The findings suggested that to purchase a listed building, buyers were willing to pay an additional 26.9%, while surrounding houses were identified as being worth

an extra 0.28% within a 50-m radius. The study found that houses sold within a conservation area gain a premium of 27.9%, which is consistent with what the author calls a “positive spillover effect” to properties surrounding historical buildings. The external effect has suggested that each additional heritage building increased the value of a property within a 50-m radius by 0.24%. This indicates what the author calls a strong “historic ensemble effect” — that listed heritage is valued more highly when associated with a historical district. The neighbourhood quality is indicated as also being an important factor in determining an externality effect on values of surrounding properties. In general, a positive externality on heritage and real estate values is confirmed in this study.²⁹

N. Edward Coulson and Robin N. Leichenko use a hedonic price model in a study done in Abilene, Texas, to measure the conditional price difference between designated and undesignated properties. The results showed that historical designation adds 17.6% to the value of a unit. In their report, the authors stated that a \$40,000 house increases in value by approximately \$7,040 from historical designation. Historical designation is stated as having “an aggregate impact on surrounding property values of between \$4 million and \$7 million.” The estimated increase in property tax collections due to internal and external effects of historical designation are evident. It is stated that for each \$23,000 per year in tax reductions on historical single-family properties and a 1% property tax rate, the aggregate increase in property tax collections for the area is approximately \$40,000.³⁰

Properties surrounding homes with landmark status and historical designation were found to have positive increases in value. Surrounding property owners did not incur costs or have restrictions associated with historical designation; however, they benefitted from what the authors call a “catalyst effect,” in which momentum is created by upgrading and rehabilitation in areas surrounding historical properties.³¹

Ke Chen collected property tax records and found that

in 1992, four years before an area known as the Tree Street Neighbourhood in Johnson, Tennessee, became designated, the average appraised value was around \$37,900 in contrast to non-historical houses, which were appraised at approximately \$49,900. The study found that average growth rates after designations were much higher than in non-historical neighbourhoods. Good stewardship relies on the willingness and determination of owners to implement rehabilitation activities as a means to both aesthetically and fiscally improve the condition of deteriorating infrastructure so that the property’s value is not reduced for future generations.³²

Approximately 50 residential houses were analyzed before and after designation, and the study found that the average values of the residential houses in the non-historical neighbourhood increased. This is an example of what the author calls “new urbanism,” which is described as a way to alleviate crime and degradation from physical attributes, thus creating incentives to promote a need for and commitment to the protection of heritage.³³

The interesting result to emerge from the above empirical studies is that although there may possibly be a premium on owning a historically designated building, there is strong evidence of the positive externality of surrounding neighbourhoods. However, these results must be viewed with caution, as the results may be specific to the particular data sets used. In addition, as is typical in econometrics, the results may be extremely sensitive to the estimation techniques used.

Notwithstanding the above results, there are externalities involved here that go beyond the measurement of neighbourhood effects. There would appear to be no manner in which to measure how much society may or may not be better off with properties designated as heritage sites.

HERITAGE CONSERVATION AND PROPERTY RIGHTS

The goal of government involvement in heritage preservation is to preserve national heritage, which presumably gives rise to a strong sense of permanence and identity. However, in conflict with this is the presumed right of individuals in a democracy to act in a manner that increases their well-being. That is, there is a trade-off between the perceived needs of society and individual property rights.

However, analyzing this trade-off is not particularly straightforward, as the question of property rights is not well defined in Canada.³⁴ Unlike the Constitution of the United States, the Constitution Act of 1867 has no specific provisions for the protection of property. Donna R. Christie argues that, although there were no specific provisions for property rights, these rights were meant to be protected by the Senate. Christie states:

It is hardly surprising then that the BNA Act [Constitution Act] contained no U.S.-style bill of rights or specific provisions for protection of property. The Fathers of the Confederation were, however, quite aware of the tensions between property and democracy and, it is argued, strongly supported liberal conceptions assuring the primacy of property. The Confederation Debates also reflect the concerns for protection of property from majority rule. But rather than memorializing individual rights in the BNA Act, the Canadian Fathers chose to protect property by establishing a Senate whose members were appointed from the propertied class. The Senate's veto power over legislation passed by the House of Commons was intended to guarantee that property rights would not be subjected to majoritarian rule.³⁵

In 1960, the Canadian Bill of Rights was enacted. Section 1(a) of the Canadian Bill of Rights provides, "the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived

thereof except by due process of law." However, this was simply a statute and applied only to the federal government and not the provinces.

The Trudeau government enacted the Charter of Rights and Freedoms as Part 1 of the Constitution Act, 1982. This charter is applicable to both the federal government and the provinces. Section 7 states, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

According to Christie, the serious omission here is that, in contrast to Section 1(a) of the Bill of Rights, there is no reference to property.³⁶ This omission in the Constitution is often attributed to the choices made when Pierre Trudeau was prime minister; however, it goes beyond this.³⁷

One of the major reasons that property rights have never formally been entrenched in the Constitution is intervention on the part of the provinces. It appears that the provinces view any entrenchment of property rights as encroaching on their jurisdictions, with the fear that provincial legislation regulating foreign land ownership and land use could be nullified by a constitutional guarantee of property rights.

The absence of enshrined property rights in the Constitution may be particularly worrisome considering the problem of regulatory taking. According to J. Bruce Melville,

In some cases, particularly in recent years, many regulations have been adopted which severely restrict or eliminate all reasonable uses to which a parcel of land can be put. Often, these regulations have been imposed to achieve environmental or heritage protection objectives. Unfortunately, where the restrictions are so severe as to eliminate all reasonable uses, it usually has dramatic consequences for the

land owner. The imposition of land use regulations that go this far can quite accurately be described as a "regulatory taking."³⁸

Therefore, in situations where heritage designation has reduced the value of the property in question, which constitutes a regulatory taking, the owner of the property has no constitutional guarantee of compensation and may be at the mercy of the courts.

OVERLAPPING JURISDICTIONS

The current political landscape with respect to Canadian heritage is somewhat confusing. There are several federal acts and departments involved in heritage preservation, yet the actual administration of heritage preservation is carried out through various provincial heritage acts.

Federal Legislation

The federal government is responsible for the overall direction of heritage organizations in Canada. However, there is a great deal of overlapping responsibility. First, there is the Historic Sites and Monuments Board of Canada. A key goal for the board is to bring public attention to historical sites and to the provincial and municipal authorities that have the legal power to preserve these sites. The Historic Sites and Monuments Act facilitates the designation and protection of nationally significant historical sites and grants the minister the right to carry out his powers under this act to purchase lands or structures of heritage value. In 2006, a federal program led to a Historic Places Initiative, which is considered the most important federal heritage conservation strategy in Canadian history.

Second, overseeing heritage sites for Canada is the responsibility of the minister of Canadian Heritage. Through the Department of Canadian Heritage Act, the Department of Canadian Heritage was created for the Government of Canada. The minister of Canadian Heritage is appointed to amend and repeal certain other acts that conflict with Canadian heritage conservation. Section 15 (1) of the Historic Sites and Monuments Act states:

Wherever under any Act of Parliament, any instrument made under an Act of Parliament or any order, contract, lease, licence or other document, any power, duty or function is vested in or exercisable by any of the persons referred to in subsection (2) in relation to any matter to which the powers, duties and functions of the Minister of Canadian Heritage extend by virtue

of this Act, that power, duty or function is vested in or exercisable by the Minister of Canadian Heritage, the Deputy Minister of Canadian Heritage or the appropriate officer of the Department of Canadian Heritage, as the case may be, unless the Governor in Council by order designates another Minister, Deputy Minister or officer of the public service of Canada to exercise that power, duty or function.

(2) For the purposes of subsection (1), the persons are (a) the Minister of the Environment, the Minister of National Health and Welfare, the Minister of State (Multiculturalism and Citizenship), the Minister of Multiculturalism and Citizenship, the Secretary of State of Canada and the Minister of Communications; (b) the Deputy Minister of the Environment, the Deputy Minister of National Health and Welfare, the Deputy Minister of Multiculturalism and Citizenship, the Under-Secretary of State and the Deputy Minister of Communications; and (c) any officer of the Department of the Environment, the Department of National Health and Welfare, the Department of Multiculturalism and Citizenship, the Department of the Secretary of State of Canada and the Department of Communications.

The National Capital Act details the objectives and purposes of the National Capital Commission (consisting of 15 members), which include preparing plans to assist in the development, conservation, and improvement of the National Capital Region. A few highlights of this act are below:

- Section 14 (1) under Expropriation states “Where in the opinion of the Commission the acquisition of any land or interest therein by the Commission without the consent of the owner is required for the purposes of this Act, the Commission shall so advise the appropriate Minister in relation to Part I of the Expropriation Act.”

- Section 16 (1) states “The Commission may pay grants to a local municipality not exceeding the taxes that might be levied by the municipality in respect of any real property of the Commission if the Commission were not an agent of Her Majesty.”
- Section 19 under By-Laws and Regulations states “The Commission may make by-laws for the conduct and management of its activities and for carrying out the purposes and provisions of this Act.”

The key directive of the minister of Canadian Heritage is to support Canadian media, arts, heritage, and sport. These responsibilities overlap somewhat with those of the minister of the Environment, who is also responsible for the maintenance of heritage sites.

These two ministries are solely responsible for the designation of sites as being culturally or historically sensitive. Following such a designation, the government gives power to the province in the form of acts designed to empower the provinces to make these decisions. The provinces in turn give their municipalities powers.

Other examples of legislation relating to federal heritage conservation include the Heritage Railway Stations Protection Act, Canada Shipping Act, Territorial Lands Act, and the Heritage Lighthouses of Canada program.

The Federal Heritage Buildings Review Office (FHBRO) can recommend designation of federal heritage buildings under the authority of the Treasury Board Policy on Management of Real Property. The policy was introduced by a Cabinet recommendation to protect the federal government’s heritage inventory. While the minister of Environment is responsible for approving the heritage designation of federal buildings, individual deputy heads under the Treasury Board policy are responsible for all decisions affecting their heritage character.

Heritage properties may be categorized as either “Classified” (the highest level) or “Recognized,” but these designations are not legally binding on federal departments. Historical buildings owned by Crown corporations (e.g., Canada Post, Bank of Canada, national museums, etc.) are exempt from the Treasury Board Policy and any review under FHBRO.

Federal Programs

The federal government provided and still provides forms of non-refundable and refundable income tax credits, although the Income Tax Act lacks a properly defined code for rehabilitation. This makes it difficult to determine if rehabilitation work on heritage properties is considered “repair and maintenance” or an expenditure that is capitalized and depreciated for tax purposes under the capital cost allowance system. The distinction is important, as the uncertainty may make it difficult to find financing for a project if it cannot be determined whether the cost is capitalized or not over future years.

The National Historic Sites of Canada Cost-Sharing Program was another federal program that provided grants for up to 50% of the eligible costs incurred in the conservation and preservation of a national historical site. As of 2011, the Cost-Sharing Program is inherently dormant. However, based on information gathered from the National Trust for Canada Cost-Sharing Program Incentives, applications received sought a total of \$53 million in federal funding, which would have resulted in an investment amount equivalent to \$280 million for construction costs associated with the program.

Provincial Information

In spite of the different departments and agencies that are involved in heritage preservation at the federal level, provinces are responsible for heritage preservation. All provinces have some form of heritage preservation acts. These acts allow for expropriation under various sets of conditions set by each individual province. The details of expropriation for each province are too complex for analysis

in this paper. What should be remembered is that Canadians have no constitutional guarantee of property rights, so any compensation for expropriation will be determined by each province and will likely be subject to litigation. What follows is a brief summary of how heritage preservation is administered in a selection of provinces.

British Columbia

In British Columbia, heritage conservation is enacted through the Heritage Conservation Act, 1996. Under Section 9 of this act:

The Lieutenant-Governor in Council may
 (a) designate land as a Provincial heritage site, or
 (b) designate an object as a Provincial heritage object

British Columbia is unique among provinces with its creation of the Heritage Legacy Fund (HLF), which was set up with a provincial endowment that is expected to self-sustain through donations. Information from the Heritage Legacy Fund states that the province provided an initial gift of \$5 million towards the project and appointed the Vancouver Foundation and Heritage BC as fund advisors.

The HLF is the only funding organization in British Columbia dedicated exclusively to heritage conservation. Projects supported range from one-room buildings to civic landmarks. Many funding applications are reported to have been for basic repair and maintenance work. Another example of a project that utilized funding was the famous Hollow Tree in Vancouver's Stanley Park.

Alberta

Alberta's historical resources are covered under the Historical Resources Act, Revised Statutes, 2000. The Alberta Historical Resources Foundation and Historic Sites Co-ordinating Committee were created to liaise with the minister overseeing the act. Registered Historic Resources require a 90-day moratorium period before demolition,

while Provincial Historic Resources cannot be destroyed or changed without approval from the minister.

Under the Historical Resources Act, municipalities may designate properties if it is in the public's interest and owners are given 60 days' notice. The Expropriation Act states that the municipality is obligated to pay compensation for any decrease in the property's economic value. If there is disagreement over the amount of compensation, a provincial body referred to as the Land Compensation Board is involved in the matter.

Saskatchewan

In Saskatchewan, heritage preservation is administered through the Heritage Property Act. This act empowers a city, town, village, or rural municipality to designate any locally or regionally significant property as a Municipal Heritage Property. Individuals can apply for grants through the Saskatchewan Heritage Foundation. The foundation was established as a Crown agency on February 18, 1991, through an act of the legislature, and is governed by a board of directors appointed by the Lieutenant-Governor in Council.

Manitoba

Manitoba offers several funding programs that communities and groups can apply to. Two of the major programs are the Heritage Grants program and the Thomas Still Foundation. Heritage preservation is administered through the Heritage Resources Act, which has been in effect since February 15, 2003. Under Section 2 of this act:

The Minister (defined as the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act) may, in accordance with this Part, designate any site as a heritage site for the purposes of this Act, where the minister is satisfied that the site represents, either in itself or by reason of heritage resources or human remains discovered or believed to be therein or thereunder, an important feature of:

(a) the historic or pre-historic development of the province or a specific locality within the province, or of the peoples of the province or locality and their respective cultures; or

*(b) the natural history of the province or a specific locality within the province;
as the case may be, and has by virtue thereof sufficient heritage significance to be so designated.*

It appears that the political reaction to heritage preservation has led to a typical Canadian solution. First, the federal government views itself as being the overseer of heritage preservation. In fulfilling this role, the federal government has created several bureaucracies with overlapping jurisdictions. Second, the provinces view heritage preservation on the part of the federal government as infringing on their jurisdictions. In response to this, the provincial governments have created their own sets of legislative requirements. Given the current state of intergovernmental relations in Canada, it is unclear whether this situation can ever be resolved.

SUMMARY AND CONCLUSIONS

This paper has identified three basic issues that should be addressed when considering historical preservation in Canada. The first two issues are hard to separate. First, it is extremely difficult to actually put a dollar value on the effects on the value of a property that a historical designation has. This is due to the problem of regulatory takings. Regulatory taking is a situation in which a government regulation limits the use of private property, effectively depriving the property owners of economically reasonable use or value of their property. This can occur when the government designates a property as a heritage site, thereby potentially reducing its value. The designation of buildings as historical may have positive social benefits, but these are notoriously hard to quantify. Theoretically, an individual should be no worse off when historical preservation may have lowered the value of their property. However, this leads to the second issue, which is the lack of constitutionally entrenched property rights in Canada. This leads to a potential problem in the sense that if an individual is subject to regulatory takings, compensation may have to be decided by the courts.

Unfortunately, in order to enshrine property rights in the Constitution, the federal government would have to convene another round of constitutional negotiations, which would be subject to the usual contentious amending formula. It is possible that another manner may have to be found in which to guarantee individuals proper compensation in the situation of regulatory takings.

The final issue, which is typical of Canadian politics, is that there are many vague overlapping jurisdictions both within the federal government and between the federal government and the provinces. It is unclear whether there is any way to implement a rational solution to this problem.

ENDNOTES

¹The fact that there is no constitutional guarantee of property rights in Canada means that the courts would have to rule in cases of what is often called "regulatory taking." Regulatory taking is a situation in which a government regulation limits the uses of private property, which effectively deprives the property owners of economically reasonable use or value of their property. This can occur when the government rules a property to be designated as heritage, thereby potentially reducing the value of the property.

²G. J. Ashworth. "Conservation Designation and the Revaluation of Property: the risk of heritage innovation," *International Journal of Heritage Studies* 8:1 (2002): 9–23, doi:10.1080/13527250220119901.

³Ibid.

⁴Robert Shipley, "Heritage Designation and Property Values: is there an effect?" *International Journal of Heritage Studies* 6:1 (2000): 83–100, doi:10.1080/135272500363760.

⁵Ibid.

⁶Ibid.

⁷Robert Shipley, Steve Utz & Michael Parsons. "Does Adaptive Reuse Pay? A Study of the Business of Building Renovation in Ontario, Canada," *International Journal of Heritage Studies* 12:6 (2006): 505–520, doi:10.1080/1352725060094018.

⁸Ibid.

⁹Hedonic analysis is a method for understanding a commodity and dissecting it into its constituent characteristics and estimating their implicit prices. It is a vital tool in the study of real estate markets. The hedonic pricing method is used to estimate the value of a good or service by breaking it down into a series of components. The value of each component is determined through regression analysis. In this case, a hedonic model uses all the characteristics of a building to determine the value of the building itself.

¹⁰Philippe Cryenne & Robert Fenton. "On the Incentive Effects of Municipal Tax Credits," *Public Finance Review* 28 (2000): 226–246, <http://mpr.ub.uni-muenchen.de/28949/>.

¹¹Ibid.

¹²Ibid.

¹³Ibid.

¹⁴This is a regression analysis that observes transaction prices on a set of variables, including property characteristics, as well as a set of variables that measure the presence of historical districts. Other variables included in the analysis are seasonal price trends and sales prices.

¹⁵Martin D. Heintzelman & Jason A. Altieri, "Historic Preservation: Preserving Value?" *J Real Estate Finance Econ* 46:3 (2011): 543–563, doi:10.1007/s11146-011-9338-8.

¹⁶Ibid.

¹⁷Ibid.

¹⁸Ibid.

¹⁹Eric Thompson, David Rosenbaum & Benjamin Schmitz, "Property values on the plains: the impact of historic preservation," *Ann Reg Sci* 47 (2010): 477–491, doi:10.1007/s00168-010-0373-9.

²⁰Ibid.

²¹Ibid.

²²Ibid.

²³Andrew J. Narwold, "Estimating the value of the historical designation externality," *International Journal of Housing Markets and Analysis* 1:3 (2008): 288–295, doi:10.1108/17538270810895123.

²⁴Ibid.

²⁵Douglas S. Noonan & Douglas J. Krupka, "Determinants of historic and cultural landmark designation: why we preserve what we preserve," *J Cult Econ* 34 (2009): 1–26, doi:10.1007/s10824-009-9110-6.

²⁶*Ibid.*

²⁷*Ibid.*

²⁸Spatial econometric models account for the limitations of traditional hedonic models that are limited in taking spatial effects into account. These models can be more accurate in making spatial predictions that influence the real estate market.

²⁹Faroek Lazrak, Peter Nijkamp, Piet Rietveld & Jan Rouwendal, "The market value of cultural heritage in urban areas: an application of spatial hedonic pricing," *J Geogr Syst* 16 (2013): 89–114, doi:10.1007/s10109-013-0188-1.

³⁰N. Edward Coulson & Robin N. Leichenko, "The Internal and External Impact of Historical Designation on Property Values," *Journal of Real Estate Finance and Economics* 23:1 (2001): 113–124. http://www.researchgate.net/profile/Robin_Leichenko/publication/5151630_The_Internal_and_External_Impact_of_Historical_Designation_on_Property_Values/links/0f317532f254d0c978000000.pdf.

³¹*Ibid.*

³²Ke Chen, "The Making of a Historic District and the Economic Impact upon Housing Value: An Empirical Analysis of the Tree Streets Neighborhood in Johnson City, Tennessee," *Modern Economy* 4:12 (2013): 832–838, doi:10.4236/me.2013.412090.

³³*Ibid.*

³⁴Two sources used in this section are: Donna R. Christie. "A Tale of Three Takings: Taking Analysis in Land Use Regulation in the United States, Australia and Canada," *Brook J Intl L* 32:2 (2007): 345, http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=882096; and David Johansen. "Property Rights and the Constitution," [*Ottawa*]: *Library of Parliament, Research Branch*. (1991), <http://publications.gc.ca/site/eng/302339/publication.html>.

³⁵Christie, "A Tale of Three Takings."

³⁶*Ibid.*

³⁷Dwight Newman & Lorelle Binnion. "The Exclusion of Property Rights from the *Charter*: Correcting the Historical Record," *Alberta Law Review* 52:3 (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2414637.

³⁸J. Bruce Melville, "Regulatory Takings in Canada" (2003), <http://www.expropriationlaw.ca/articles/art00300.asp>.

BIBLIOGRAPHY

Ashworth, G. J. "Conservation Designation and the Revaluation of Property: the risk of heritage innovation," *International Journal of Heritage Studies* 8:1 (2002): 9–23, doi:10.1080/13527250220119901.

Chen, Ke. "The Making of a Historic District and the Economic Impact upon Housing Value: An Empirical Analysis of the Tree Streets Neighborhood in Johnson City, Tennessee," *Modern Economy* 4:12 (2013): 832–838, doi:10.4236/me.2013.412090.

Christie, Donna R. "A Tale of Three Takings: Taking Analysis in Land Use Regulation in the United States, Australia and Canada," *Brook J Intl L* 32:2 (2007): 345. http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=882096.

Coulson, N. Edward, and Robin N. Leichenko. "The Internal and External Impact of Historical Designation on Property Values," *Journal of Real Estate Finance and Economics* 23:1 (2001): 113–124. http://www.researchgate.net/profile/Robin_Leichenko/publication/5151630_The_Internal_and_External_Impact_of_Historical_Designation_on_Property_Values/links/0f317532f254d0c978000000.pdf.

Cryenne, Philippe, and Robert Fenton. "On the Incentive Effects of Municipal Tax Credits," *Public Finance Review* 28 (2000): 226–246. <http://mpr.ub.uni-muenchen.de/28949/>.

Department of Canadian Heritage Act, Statutes of Canada, c 11. <http://laws-lois.justice.gc.ca/eng/acts/C-17.3/page-1.html>.

Heintzelman, Martin D., and Jason A. Altieri. "Historic Preservation: Preserving Value?" *J Real Estate Finance Econ* 46:3 (2011): 543–563, doi:10.1007/s11146-011-9338-8.

Heritage BC. "Heritage Legacy Fund Program Guidelines & Policies 2014." http://www.heritagebc.ca/pdfs/HLF_Program%20Guidelines2014.pdf.

Heritage Canada. "National Trust for Canada." <https://www.heritagecanada.org/en/issues-campaigns/financial-incentives/federal/disincentives>.

Heritage Conservation Act, Statutes of British Columbia, c 187. http://www.bclaws.ca/civix/document/id/complete/statreg/96187_01.

Heritage Property Act, Statutes of Saskatchewan, c H-2.2. <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/H2-2.pdf>.

Heritage Resources Act, Statutes of Manitoba, c H-39.1. <https://web2.gov.mb.ca/laws/statutes/ccsm/h039-1e.php>.

Historical Resources Act, Statutes of Alberta, c H-9. <http://www.qp.alberta.ca/documents/Acts/h09.pdf>.

Historic Sites and Monuments Act, Statutes of Canada, c H-4. <http://laws-lois.justice.gc.ca/eng/acts/H-4/page-1.html>.

Johansen, David. "Property Rights and the Constitution," *[Ottawa]: Library of Parliament, Research Branch* (1991). <http://publications.gc.ca/site/eng/302339/publication.html>.

Lazrak, Faroek, Peter Nijkamp, Piet Rietveld and Jan Rouwendal. "The market value of cultural heritage in urban areas: an application of spatial hedonic pricing," *J Geogr Syst* 16 (2013): 89–114, doi:10.1007/s10109-013-0188-1.

Melville, J. Bruce. "Regulatory Takings in Canada," (2003). <http://www.expropriationlaw.ca/articles/art00300.asp>.

Narwold, Andrew J. "Estimating the value of the historical designation externality," *International Journal of Housing Markets and Analysis* 1:3 (2008): 288–295, doi:10.1108/17538270810895123.

Newman, Dwight G., and Binnion, Lorelle, "The Exclusion of Property Rights from the Charter: Correcting the Historical Record" (March 25, 2014). *Alberta Law Review*, Forthcoming. <http://ssrn.com/abstract=2414637>.

Noonan, Douglas S., and Douglas J. Krupka. "Determinants of historic and cultural landmark designation: why we preserve what we preserve," *J Cult Econ* 34 (2009): 1–26, doi:10.1007/s10824-009-9110-6.

Parks Canada. "Parks Canada's National Historic Sites Cost-Sharing Program." <http://www.pc.gc.ca/progs/lhn-nhs/ppf-csp/index.aspx>.

Shiple, Robert. "Heritage Designation and Property Values: is there an effect?" *International Journal of Heritage Studies* 6:1 (2000): 83–100, doi:10.1080/135272500363760.

Shiple, Robert, Steve Utz and Michael Parsons. "Does Adaptive Reuse Pay? A Study of the Business of Building Renovation in Ontario, Canada," *International Journal of Heritage Studies* 12:6 (2006): 505–520, doi:10.1080/1352725060094018.

Thompson, Eric, David Rosenbaum and Benjamin Schmitz. "Property values on the plains: the impact of historic preservation," *Ann Reg Sci* 47 (2010): 477–491, doi:10.1007/s00168-010-0373-9.

