

**ACO COMMENTS ON THE PROPOSED CHANGES  
TO THE ONTARIO HERITAGE ACT AND O.REG. 385/21 GENERAL  
WITH RESPECT TO CERTAIN ALTERATION REQUESTS  
November 30, 2023**

Architectural Conservancy Ontario (ACO) is the largest heritage advocacy organization in Ontario with 17 branches across the province. Our objective is to promote the identification, conservation and reuse of buildings, structures, districts and landscapes of cultural heritage significance. Under our Keep, Fix and Reuse slogan, we advocate for socially and environmentally sustainable solutions for Ontario's older building stock.

ACO welcomes the opportunity to comment on the Province's proposed amendments to the Ontario Heritage Act (OHA) and O.Reg. 385/21 with respect to certain alteration requests, which are intended to allow religious organizations and Indigenous communities or organizations to move forward with their proposed alterations.

We have several concerns:

1. The MCM ERO posted proposal does not justify why these amendments are necessary. Separate provisions for religious buildings, which weaken the OHA, are not required. Simply stating that the proposal would reduce application requirements and shorten decision making timelines is not adequate and will likely be ineffective, as explained below. Whatever issues the proposal is attempting to respond to would be better addressed in appropriate guidance material, using the existing Places of Worship guide.
2. The proposal posted on the Environmental Registry of Ontario does not contain the draft wording for the proposed amendments to the OHA nor the O. Reg. 385/21, so ACO requests that MCM provide sufficient time for municipalities and organizations such as ACO, Community Heritage Ontario, Ontario Professional Planners Institute, and the Ontario Association of Heritage Professionals to comment on such draft wording.
3. Many religious organizations do not have the financial resources to build their own religious buildings and, as a result, they use spaces such as community halls or gymnasiums for a place of worship. Would this type of facility, with heritage attributes designated under Part IV of the OHA, qualify as a religious building? Clarification is needed.
4. The proposed amendments are applicable: "*Where the building is primarily used for religious practices, the heritage attributes to be altered are connected to religious practices, [and] the alterations are required for religious practices....*" How is "*primarily*" defined? Is it based on: (i) the hours in the week when the building is used for worship versus other uses; (ii) the percentage of the financial contribution of the religious organization towards the operation of the building versus the contribution(s) by non-religious organizations, such as daycares; (iii) the number of congregation members versus the number of people who otherwise use the building; or (iv) some other metric? "*Primarily*" needs to be clarified.
5. What are "*religious practices*"? Is it only worship activities? Does it extend to outreach programs, which are essential to the beliefs of the religious organization, such as providing free lunches for homeless people? What about helping people with drug problems (i.e. having a drug injection site at the building)? What about meetings in the building to strategize about dealing with controversial community issues? What about private office meetings between a rabbi or minister with congregation members? None of this is clear in the proposal.

6. According to the proposal from the MCM, a municipality is required to rely on the affidavit (which should be a written statement sworn or affirmed before a person who has authority in Ontario to administer an oath) or sworn declaration of the applicant, plus additional information and materials. What is a legitimate “*applicant*” and who has authority to sign on behalf of the “*applicant*”? The applicant will be a religious organization, an Indigenous community or an Indigenous organization, but an organization cannot sign an affidavit or a sworn declaration, so who is authorized to sign on behalf of the organization or the community? Can the authorized person be someone with higher authority beyond the congregation or community (e.g. the bishop of the diocese)? Members of congregations often have differing opinions about religious practices. How does the congregation resolve differences so that some person is authorized to sign an affidavit on behalf of the entire religious organization, Indigenous community or Indigenous organization? How is a municipality supposed to deal with an organization's internal disputes (and authorize alterations) without ending up in a court action?
7. It is not clear whether the proposed amendments for the purpose of continuing religious practices only apply to alterations needed by religious organizations already occupying religious buildings and not to alterations needed by other religious organizations moving into religious buildings. As congregations decline resulting in religious buildings being underused, it is common for other expanding congregations to begin using such underused religious buildings for worship. Are the proposed amendments intended to apply to new occupants? Clarification is needed in guidance materials provided by MCM in a timely way to address this and other interpretation and application questions. A number of years ago, the Ministry of Tourism, Culture and Sport, in consultation with faith groups and others, prepared a Places of Worship Guide to augment the Ontario Heritage Tool Kit. What is the current status of this Guide, which is the logical place to add new guidance regarding the current proposed MCM amendments?
8. Many religious buildings are key historic structures in communities so there are very good reasons why these properties have received heritage designation. As we all know, there are fewer members of many congregations than in the past while at the same time there are a few congregations that are expanding. ACO is hopeful that these proposed amendments to the OHA and O.Reg. 385/21 may well be a step forward towards continued use and conservation of religious buildings. At the same time, we ask why isn't there a more robust MCM program to retain, and perhaps alter, these critically important religious buildings either for religious purposes or for adaptive re-use?
9. The proposal is unclear whether the alterations (affecting heritage attributes designated under Part IV of the OHA) apply to an entire religious building or only to those interior portions of a building used for worship. The proposal only applies to properties designated under Part IV of the OHA and not to properties solely designated under Part V of the OHA, which may imply that the amendments are only meant for interior portions of religious buildings, presumably only those portions used for worship. The building exterior, including stained glass windows visible from both inside and outside, would thus be excluded. Clarification is needed.
10. These latest proposed amendments further weaken Ontario's heritage legislation and the ability of municipalities to manage resources in their communities. In this proposal, municipalities are required to consent, without terms and conditions. A municipality must consent to the alterations without a legislative provision requiring a discussion with the applicant about, or requiring (if feasible), retention of any heritage attributes, perhaps moving such attributes to another building such as a local museum. A municipality must consent to the alterations without a legislative provision requiring a discussion with the applicant about, or requiring (if feasible), alterations that are reversible (i.e. might be reversed in the future).
11. If the applicant is a tenant, do the tenant's lease provisions permit tenant alterations to the building

without the landlord's consent? If the landlord does not consent, the municipality should not approve the alterations. In other words, the legislative amendments should not override the lease provisions. On the flip side, if the building is leased, the landlord should not alter the building if the lease provisions restrict the landlord from doing so. In this situation, the legislative amendments should not override the lease provisions so the municipality should not approve the alterations. The proposed amendments to the OHA need to include provisions restricting such approvals.

12. Based on its observations and its members' experience, ACO does not consider 30 days sufficient time to process applications and determine whether they are complete.
13. In terms of regulations, in addition to the two items mentioned in the MCM proposal (i.e. the stipulations that: (i) *the alteration is not permitted to be an addition to the building* and (ii) *the alteration must be for the benefit of an Indigenous community, an Indigenous organization or a religious organization . . .*), the applicant should provide the following information either contained in the sworn affidavit/declaration or alternatively, if appropriate, referred to in the sworn affidavit/declaration and attached as an exhibit. This further information should be required as part of a complete application:
  - A description of the place of worship (e.g. whether it is in a church, synagogue, mosque, meeting house, open area, etc.) and where it is located on the affected property
  - A plan showing the proposed alterations, particularly those affecting designated heritage elements
  - Photographs of the place of worship, including the heritage elements, taken prior to the proposed alterations
  - An explanation as to why the proposed alterations are necessary for the applicant's religious practices
  - A statement that the space being altered is and will be primarily used as a place of worship (Note: The proposed amendments need a definition of “*primarily*”.)
  - A statement indicating whether the proposed alterations to the heritage elements are reversible and whether they will be retained and, if so, how and where they will be retained
  - Corporate documentation of the applicant with confirmation that the alterations have been officially approved by the applicant
  - Corporate documentation confirming who can sign the affidavit on behalf of the applicant.
  - A statement confirming whether the property is subject to any restrictions, including provisions in a heritage easement agreement, or a mortgage and, if so, whether the beneficiary of the restrictions or mortgage holder has consented to the alterations
  - Current parcel pages from the Land Titles Office plus a copy of the document (i.e. likely a transfer) showing the current owner of the property
  - If the property is subject to a lease, a copy of the lease
  - Signed consent from the landlord or tenant who is not the applicant, if the lease requires such consent
  - Approval of the alterations from the municipal building department, fire department or any other department or governmental agency, if the alterations require such approval

Failure to consult has previously resulted in OHA amendments which are shoddily-drafted, ill-considered, illogical, and ambiguous indicating a poor understand of the workings of heritage legislation. The flaws in past amendments and in this latest proposal will add to a backlog at the Ontario Land Tribunal and in the provincial courts. More fulsome consultation than simply having ERO postings would result in better outcomes.

ACO would welcome the opportunity to be consulted prior to these proposed OHA and regulation amendments being finalized. We do not see the urgency here, especially with respect to the regulation amendments.