

Preserving built heritage in Canada: Best practices in preventing demolition by neglect

Sara Megan Albinger

School of Urban Planning
McGill University, Montreal
Supervisor: Professor Madhav Badami

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Abstract

The gradual deterioration of a building to the point of structural failure, known as demolition by neglect, affects a small, yet visible portion of Canada's built heritage. Properties considered to be a threat to public safety may be demolished regardless of heritage status, resulting in the permanent loss of the architectural, historical, and cultural values associated with the building. Amendments to the *Ontario Heritage Act* in 2005 allowed municipalities to adopt property standards by-laws regulating the maintenance of designated heritage properties and thirteen are currently in effect across the province. This study evaluates the use and implementation of these by-laws and identifies additional approaches municipalities are using to prevent demolition by neglect by reviewing relevant case law and media reports, and by conducting a survey of municipalities. The impact of various approaches on actual situations of neglect is determined by profiling three case studies (two in Hamilton and one in Toronto). The results show that while municipalities are using property standards by-laws on occasion, vacant heritage properties are monitored infrequently. The study finds that property standards are most effective when properly enforced in a timely fashion and when used in conjunction with other instruments, including financial incentives and proactive communication. If more municipalities adopt meaningful property standards by-laws into their conservation strategy and provide the resources necessary to enforce them, greater loss of our built heritage could be prevented.

Résumé

La détérioration progressive d'un bâtiment au point de défaillance matérielle, connue sous le nom «démolition par voie de négligence», affecte une proportion limitée (mais bien visible) du patrimoine bâti du Canada. Les bâtiments qui sont considérés comme une menace à la sécurité publique peuvent être démolis indépendamment de leur statut patrimonial, causant ainsi la perte permanente de la valeur architecturale, historique et culturelle associée à l'édifice. Depuis 2005, la Loi sur le patrimoine de l'Ontario permet aux municipalités d'adopter des règlements municipaux sur les normes d'entretien pour les bâtiments patrimoniaux désignés, et treize villes dans la province l'ont fait. Cette étude évalue l'utilisation et la mise en œuvre de ces règlements et identifie des approches additionnelles pour empêcher la démolition par voie de négligence par l'examen de la jurisprudence et d'articles parus dans les médias, et en menant une enquête auprès des municipalités ontariennes. L'effet de différentes approches sur des situations de négligence réelles est illustré dans trois études de cas (deux à Hamilton et une à Toronto). Les résultats montrent que, même si les municipalités utilisent les règlements municipaux sur les normes d'entretien, les bâtiments inoccupés sont peu surveillés. L'étude conclut que les normes d'entretien sont plus efficaces lorsqu'elles sont appliquées avec diligence et lorsqu'elles sont utilisées conjointement avec d'autres approches, comme les primes financières et le dialogue préventif. Si plusieurs municipalités intégraient cet outil important dans leur stratégie de conservation et fournissaient les ressources nécessaires à son application, une plus grande proportion de notre patrimoine bâti pourrait être sauvé.

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1. Introduction

It is an all too frequent sight: a building that was once grand, stately, and a point of pride slowly falling into disrepair. For some, their state of decay will advance unchecked until they are demolished either through collapse or the intervention of local authorities in the name of public safety. Known as demolition by neglect, this problem has been challenging heritage advocates for over a century. In his seminal publication *The Seven Lamps of Architecture*, the English theorist John Ruskin dedicated a whole chapter – the Lamp of Memory – to encouraging the celebration and preservation of existing buildings. His advice rings true today: to “guard [your building] as best you may, and at any cost from every influence of dilapidation” (1907: 186).

During the late 1980s and early 1990s, demolition by neglect was at the forefront of the attention of heritage advocates, particularly in England and the United States. The myriad of reasons why buildings fall victim to this fate – ranging from a lack of financial resources to intentional neglect in order to justify redevelopment – highlight the challenge facing governments and explain the necessity to adopt a variety of strategies to address the problem. In England, officials have responded by developing lists of buildings at risk to ensure monitoring and follow-up, while in the United States the reaction was to strengthen municipal preservation ordinances by adding provisions stipulating a minimum level of maintenance. Heritage advocates in Canada could not take similar actions for many years and were forced to wait until legislators made it possible to do so. For residents of Ontario, the year 2005 was a turning point in the ability of local communities to protect their built heritage from situations of neglect. The provincial government amended the *Ontario Heritage Act* (OHA), enabling municipalities to prevent demolition of designated heritage properties and to pass property standards by-laws

regulating their maintenance and upkeep. Since then, several municipalities have enacted by-laws to this effect in an effort to protect local heritage.

Built heritage is particularly challenging from a conservation standpoint: unlike intangible forms of heritage that are under the collective ownership of society (such as traditional songs or dances), the majority of built heritage is privately owned. Private property rights are deeply ingrained in the North American psyche, and limitations on what individuals can (and cannot) do with their property are not easily accepted. Without policy in place to reinforce the value of these buildings and to convince property owners of why conservation efforts are important, many would not put in the resources required to maintain the integrity of the heritage attributes of their property.

Despite legal protection, many heritage buildings in the country remain at risk and this paper explores the options available to municipal and provincial governments seeking to prevent demolition by neglect within the Canadian legal framework. The work has been guided by the following research questions: what regulatory methods are municipalities using to prevent demolition by neglect, and how effective are they? Can modifications to environmental policies and/or waste regulations help to encourage the conservation of built heritage? What non-regulatory methods could be (and are being) applied with a chance of success? What are the advantages and disadvantages of each option? And finally, what critical factors must be addressed for their successful implementation?

This report is divided into six major parts. In Chapter 2, I review the literature discussing heritage conservation in broad terms, as well as the specific issue of demolition by neglect. Chapter 3 outlines the methodology for the policy review and case study research, building upon

some of the literature identified in the preceding chapter. Chapter 4 provides an overview of the legislation and policies relating to heritage conservation in Canada at the federal, provincial, and local levels. The chapter pays particular attention to the current regulatory environment in Ontario. It is followed by Chapter 5, which examines the current conservation strategies used by Ontario municipalities. Chapter 6 explores the application and evolution of these policies through the lens of three case studies, all of which involve buildings that were neglected for a period of many years. Lastly, Chapter 7 elaborates on the lessons highlighted by the case studies and offers recommendations for policy makers.

2. Literature Review

This chapter presents an overview of the debates central to the concept of heritage conservation and the issue of demolition by neglect. It looks at definitions of heritage – and who has the ability to apply those definitions – in theory and practice. Empirical and theoretical arguments regarding the socioeconomic and environmental impacts of conservation are then briefly discussed. This is followed by a more in-depth examination of the definition of demolition by neglect, the notion of obsolescence, the reasons why demolition by neglect occurs, and the types and quantities of buildings affected, in order to gain a thorough understanding of the problem.

2.1. What is Heritage?

The central premise of this paper is that existing buildings are worth protecting from unwarranted demolition for reasons to do with heritage, the environment, and the economy. This view is not held universally and many would disagree with it. Before presenting the arguments on either side of the debate in more detail, it is prudent to identify how the term “heritage” is defined and used by various participants in the conservation process. A typical definition reads: “heritage is what ever each one of us individually or collectively wish to preserve and pass on to the next generation” (LeBlanc, 1993: 2). A more recent attempt by the City of Montreal to define the concept states:

Heritage means any asset or group of assets, natural or cultural, tangible or intangible, that a community recognizes for its value as a witness to history and memory, while emphasizing the need to safeguard, to protect, to adopt, to promote and to disseminate such heritage (Ville de Montreal, 2005: 31).

The most present form of cultural heritage is arguably the built environment: the buildings and cultural landscapes that inform our interactions and daily routines in both urban and rural settings. However, over the last decade, the meaning of cultural heritage as applied by practitioners of conservation planning has broadened due to increasing recognition given to other forms of heritage, as reflected in the more nuanced definition utilised by Montreal. Other recent trends have indicated a shift away from conceptualizing heritage as an object or place requiring protection towards perceiving it as an inclusive process that implies constant evolution (Fairclough, 2013). ‘Heritage’ thus becomes an action of society rather than an exclusive term that is applied to some things and not others (Fairclough, 2013)

Although the definitions of heritage are broad and inclusive, the challenge lies in applying them in practice by determining which buildings and sites should fall under legislative protection, and which ones should not. Should designation be based on age, or on some other criteria? Furthermore, culture is continually evolving; values and tastes change. The result is a constant debate over what is and should be considered heritage, and at what point a building becomes heritage. While some monuments and sites engender less debate over their significance (for example, Stonehenge in the UK), it is often harder to convince people of the importance of conserving the more mundane or banal architectural types, especially when it would seem that there is so much of it around. In order for people to support heritage conservation efforts, they ought to feel a connection to the buildings that are designated by authorities. Presently, designations are made on the recommendation of professionals and experts in the heritage field. However, the buildings recognized and protected by these often self-appointed authorities – who prioritize architectural and historical worth – may not reflect what the community feels is important, particularly when intangible heritage is involved (Allison & Allison, 2008). What

was important at one time to one community may not resonate with the current residents of a neighbourhood, especially in areas that have acted as gateways for recent immigrants. If people become disassociated from the value of a building, they may feel less compelled to care for it or they may forgo stewardship altogether. Disputes over what constitutes the heritage value of a building often manifest themselves in city council meetings and in court when a property owner submits a demolition application, or challenges a decision about one.

As an activity, heritage conservation has different meanings to different people. For some, it is an act of practicality: making use of what already exists. For others, it is an act of remembrance, the manifestation of a “pervasive longing for the visible and invisible cities of the past” (Boym, 2001:75). Contemporary practice of heritage conservation involves a wide array of actors, from architects, planners, and developers to archivists and historians. Academics and professionals working in the heritage field increasingly see that involving local community members in a multidisciplinary approach to heritage issues and policy is key to future advancements, and gradually the traditional divide between experts and the public is changing.

Positive evidence that demonstrates the existence of these two concurrent movements includes the increasing use of public consultation for heritage issues in Canada and internationally. For example, English Heritage conducts consultations when discussing whether to designate or list buildings, and Montreal established the Conseil du Patrimoine in 2003 to help facilitate public involvement and discussion on matters of heritage. In Ontario, the 2005 amendments to the *Ontario Heritage Act* (OHA) made it a requirement to consult the public during the development of a Heritage Conservation District plan. Despite this move, which appears to have the intention of encouraging public engagement, other amendments to the OHA enabled municipalities to designate individual buildings without requiring either a consultation

process or the consent of the owner. Municipalities are also not required to notify property owners in the event that a building is listed on the municipal registry.

2.2. Economic Impacts of Heritage Conservation

The economic criticisms of heritage conservation occur at multiple levels. On a broad scale, the issue is often framed as a choice between ‘progress’ and ‘preservation’. Many critics would argue that protecting and preserving buildings and sites is preventing the natural progression of human society by prohibiting development, though heritage advocates would counter that this is a false dichotomy. Designating a property or a neighbourhood does not mean that there can be no change to the building or area whatsoever and it is not meant to stop development entirely. Rather, it gives municipalities an opportunity to “direct it in constructive and rational ways” (Loulanski, 2006: 59) by allowing additional control over alterations to the property or neighbourhood.

As a result of this increased oversight, heritage designation is often criticized as being an unfair liability to property owners, simultaneously increasing financial burdens while restricting their ability to modify their private property. Although zoning regulations function in a similar way by placing limits and controls on property development, heritage conservation efforts are far more controversial. In a market-based economy, attention inevitably turns towards the monetary worth of heritage buildings and whether protecting them through legislation is an unjust constraint upon their owners, if the land occupied by the building(s) has potential to be redeveloped to provide greater utility or profit. In many cases, placing permanent restrictions on how the property may be altered will reduce the desirability to other purchasers, resulting in a lower sale price.

Consequently, a wealth of literature exists that aims to identify the quantitative value of a heritage asset (Edson, 2004; Greffe, 2004; Throsby, 2012; Yung, Yu, & Chan, 2013). The central premise of heritage economics is that there is more than just the market value of the asset – part of its worth can be attributed to the fact that it simply exists (aptly named the existence value). The market value of built heritage is readily quantified by determining the real estate value or sale price of the property, either according to present condition or the theoretical value at its “highest and best use”¹ (Sanz Salla, 2009: 77). In contrast, there are no standard economic processes to evaluate a building’s existence value, and determining a reliable method of doing so has yet to be found. Yung et al. (2013) analyzed a variety of options commonly used in environmental economics, including the Revealed Preference Method, the Stated Preference Method (or Willingness to Pay) and the Analytical Hierarchy Process (a decision-making tool accounting for multiple criteria) but found that the hypothetical amounts determined through the use of such methods are always drastically different from those arrived at when the building or resource is threatened with imminent demolition – the same criticisms cited when a natural resource is jeopardized. This is highly problematic because when decisions are made solely from an economic perspective, renovating an existing building is usually not the most profitable option.

The difficulties in formulating existence value stem from the myriad of positive externalities afforded by heritage buildings that the market valuation overlooks, including architectural excellence, aesthetics, relationships to important historical or societal events, and contribution to collective memory. The heritage value of the building is increased by all of these qualities, but

¹ The IRS in the United States uses the latter value (the highest and best use of the property) when determining the amount of tax deduction a property owner is entitled to upon signing a heritage easement agreement.

they are very rarely reflected in the sale price of the property, which prioritizes utility and redevelopment potential. This means that if the building is demolished there is no mechanism of obtaining compensation for the loss of value to the public. Even in cases of neglect where the building itself is not demolished, the heritage attributes of the building may suffer to the extent that the intangible benefits derived from the property are lost. Meanwhile, the market value will be less severely impacted since a large portion of it depends on the land the building sits on and not on its condition. Thus, it is no surprise that critics argue that if these buildings are considered important public assets, then the financial responsibility to maintain or restore them should not rest entirely on property owners.

Encouraging the continued use of existing buildings can also make economic sense for cities as a whole, by reducing sprawl and by lessening the need to build new infrastructure, thereby helping to control the costs associated with operating and maintaining a city. Existing buildings, regardless of heritage status, are already connected to municipal services (such as the sewer system) and they are located on roads that are already served by waste collection, snow clearing, and street cleaning. Where heritage conservation can play a role is in limiting the level of densification often associated with urban redevelopment. While densification is desirable to limit sprawl, too much new development can exceed the capacity of existing infrastructure leading to costly upgrades and increased congestion. Unfortunately, as these services are borne by the general public and are not priced at cost, they typically do not factor in to discussions regarding individual properties.

Heritage and the attractiveness of place

As identified in the discourse surrounding heritage economics, both positive and negative repercussions can arise from the treatment of heritage as a product (Edson, 2004; Sanz Salla, 2009). From this perspective, the value of heritage is derived from its commodification, allowing it to be marketed to potential tourists or property owners. Historic districts and established neighbourhoods are typically high-quality urban environments that can help a municipality attract potential residents, commercial investors, and visitors (Allen, 2012; Florida, 2002; Graham, Ashworth & Tunbridge, 2000; Greffe, 2004; Licciardi, & Amirtahmasebi, 2012). Despite the appealing nature of these areas, overcoming the fear that a property's value will be limited as a result of designation is a significant challenge for municipalities and heritage advocates particularly because of the task of accurately accounting for the existence value. However, numerous studies have in fact shown this fear to be unfounded and inaccurate (Ambrosius *et al.*, 2010; Gilderbloom *et al.*, 2009; Shipley, 2000). Shipley's work in particular is one of the most comprehensive studies done to date on this issue. His research, which involved nearly 3,000 single-family residential properties in Ontario, found that the clear majority of heritage properties at time of resale were valued at or above the average worth for their neighbourhood. Interestingly, Shipley attributes the increased value to the higher standard of maintenance that these properties are kept at relative to non-heritage houses.

The Architectural Conservancy of Ontario (2009) and Galvin (2012) used a similar methodology to determine the effect of Heritage Conservation District designation on property values. The research demonstrates that in Ontario at least, heritage districts of a manageable size (400 properties or fewer) perform very well in terms of real estate value and resident satisfaction

(ACO 2009; Galvin 2012). They were also noted for their ability to promote high levels of maintenance, a key factor in preventing demolition by neglect (ACO 2009).

Job creation

In contrast to general perception, academic studies have repeatedly demonstrated that public investment in heritage conservation (through legislation, grants, and tax incentives) has a net positive impact on the economy and can actually result in greater job creation numbers than investment in new construction (Gilderbloom *et al.* 2009; Rypkema, 1997). Many of the jobs resulting from heritage legislation will be in the tourism sector, but significant employment opportunities will also be observed in construction and the skilled trades (Gilderbloom *et al.*, 2009). Additional opportunities will be created in the professional services industry, with jobs in architectural design and consulting firms. The labour-intensive nature of restoration work, due to the reliance on traditional materials rather than the use of mass-produced products that are designed for quick fabrication, also provides many tradespeople the chance of steady employment (Allen, 2012). Thus, by adopting heritage legislation and policies, municipalities create a new market for companies specializing in conservation and restoration. The new client base that is created will attract entrepreneurs, allowing property owners to connect directly to those with the appropriate knowledge. Competition and easier access to materials and labour can help reduce costs to levels that are more affordable, increasing the likelihood that property owners will consider undertaking a restoration project. Cumulatively, these actions can reinforce and help to improve the results of the heritage efforts of a municipality.

2.3. Socioeconomic Critiques Against Heritage Conservation

One of the long-standing critiques of the heritage conservation movement is that it is culturally biased towards the interests of the upper and middle classes, and is a reflection of the political power this income group holds in western society (Goldwyn, 1995; Hobson, 2004; Mossberger and Stoker, 2001; Stone, 1989; Yakub, 1992). One widely used argument is that the conservation of heritage buildings causes gentrification, because neighbourhoods in which the properties are both full of character and well-maintained often become very desirable places to live or conduct business. However, gentrification is often well underway before maintenance and repairs are conducted at a wide neighbourhood scale. Blaming gentrification – a complex urban phenomenon – on preservation is a failure to recognize other facets of the problem, such as a general lack of affordable housing options (Cofresi and Radtke, 2003).

Hobson (2004) goes so far as to suggest that restoration work has become a status symbol and a way to display one's wealth. This helps to explain why concern with inequity is also raised in relation to the administration of grant programs for conservation work; many remain unconvinced that the property owners who receive grants demonstrate the greatest need for financial assistance, since they at least have the means to own property (Holman, 1996; Yakub, 1992). Furthermore, since grant programs generally award a maximum of 50% of the cost of restoration work, this in itself can limit property owners of lesser means from accessing these programs (Hobson, 2004; Yakub, 1992). While it may be true that some property owners of heritage buildings are wealthier than a significant portion of the population, this does not negate the fact that broader societal benefits are gained by maintaining these buildings in a good state of repair.

2.4. Environmental Impacts of Heritage Conservation

In Canada, and North America more generally, there is a prevailing attitude of presuming all buildings are expendable unless compelling reasons are given to the contrary (Denhez, 1997), and our development practices have favoured the demolition of existing buildings to make way for new projects, which is an extremely wasteful habit. A recent estimate is that 27% of the municipal solid waste disposed in Canadian landfills comes from the construction industry (Yeheyis, Hewage, Alam, Eskicioglu, & Sadiq, 2013). It has also been shown that the largest portion – close to 50% – of construction and demolition waste in the United States is from demolition, while renovation (which would include adaptive reuse and selective demolition) accounts for a slightly smaller, yet still high, proportion of waste at around 44% (US EPA, 2009). Along with the impact that these materials are having on the capacity of landfills, there is also an environmental impact associated with their transportation to a location where they can be properly disposed of. Through these ‘development’ activities, we are leaving behind a legacy of replacement buildings that are often designed with the expectation that they too will be replaced, to fit the current ‘disposable’ building culture.

Waste reduction benefits are one reason heritage advocates often quote the phrase “the greenest building is the one that already exists” but there are few studies that actually quantify this statement on a large scale. A major life-cycle assessment (LCA) study by the Preservation Green Lab (PGL), an initiative of the National Trust for Historic Preservation in the United States, found that when comparing buildings of similar size and function across four categories including resource depletion (the others being climate change, human health and ecosystem quality), retrofitting existing buildings overwhelmingly was the more environmental choice (2011). Significantly, the study found that the quantity and types of materials used in the

rehabilitation of buildings has the largest bearing on whether there is an overall net positive impact on the environment. The environmental benefits remained true even when compared with a theoretical replacement constructed to “green” standards.

Critics like to argue that old buildings are a drain on energy, with their leaky windows and lack of insulation, but in fact many existing buildings perform well in terms of operating energy, depending on their era of construction (Power, 2008; PGL, 2011). Buildings designed before energy was inexpensive – including the large majority of designated heritage buildings – feature many passive heating and ventilation design strategies. However, it has been noted that building maintenance plays a key role in energy performance, and poorly kept buildings of any age are often quite inefficient (PGL, 2011).

2.5. Defining Demolition and Demolition By Neglect

There is some disagreement among scholars and heritage professionals over what constitutes demolition, and which scenarios can be considered demolition by neglect. At the heart of the problem is the unfortunate predicament of a building in extreme disrepair such that if no action is taken it will eventually collapse. However, demolition will often be ordered before it reaches this state to ensure public safety. The word ‘demolition’ can vary in meaning depending on the source. In the majority of cases, there is no clarification of the term, so one assumes that the complete demolition of the building is implied. However, some authors (Shipley & Reyburn, 2002; Yakub, 1992) also explicitly include the partial loss or the substantial relocation of a building to be equivalent to total demolition.

When it comes to the concept of demolition by neglect, definitions typically fall within one of three general categories. The narrowest, least-inclusive definition of demolition by neglect

considers only those cases where the neglect was intentional and malicious, with the sole purpose of obtaining a demolition order from the authorities. Some authors (Goldwyn, 1995; Mayes, 2003; Newman, 2010) argue that owners in these cases feel restricted by the heritage legislation protecting the property and seek to remove the perceived barrier to redevelopment by deliberately choosing to let the building fall into ruin. A second group of authors (Thompson, 2011; Yakub, 1992) expands the definition to include property owners who knowingly let their building fall into disrepair, but without the explicit intent to redevelop the property. This allows for a broader categorisation of owners including not only those with malicious intent, but also those who perhaps lack the will or financial means to address the problem. The third group of authors utilizes the most inclusive definition of demolition by neglect, considering cases not only where action is knowingly avoided but also where the neglect is unintentional or unknowingly committed. Heritage organizations, including Heritage Canada the National Trust (HCNT) and English Heritage (EH), and several authors (Martin, 2007; Richardson, 2008; Thompson, 2004; Weiss, 2012) use this definition of demolition by neglect. The use of the broad definition makes sense in these cases since these organizations are concerned not only with buildings but with landscapes and monuments as well, which are often uninhabited or in locations that do not readily enable regular monitoring.

Legislation (and particularly preservation ordinances in the United States) take yet another approach, using demolition by neglect to refer only to the *process* of slow decay, rather than the end result itself. Any sign of material failure or deterioration may be considered a case of demolition by neglect, even before the main structure has been compromised in any way. For example, the ordinance of the City of New Orleans would consider the poor condition of a decorative feature on a façade to be demolition by neglect if it is in danger of falling off the

building, even if the rest of the building is well kept (City of New Orleans, 1980). In Canada, while the phrase ‘demolition by neglect’ is not generally used in heritage legislation, a couple of provincial heritage acts, including those of Saskatchewan (Government of Saskatchewan, 2010) and Nova Scotia (Government of Nova Scotia, 2010), do address the loss of integrity of a heritage structure due to neglect.

Similarly, each author will identify different causes of demolition by neglect depending on which definition they use. The poor attitude or ignorance of the property owner, and a lack of finances (whether exaggerated or not) comprise the main reasons that building maintenance is not pursued. Other common causes, as noted by Weiss (2012), include elderly and/or ill property owners, properties that are part of a disputed inheritance, and foreclosure. Lazarus (2007) notes that, often areas in need of maintenance are very difficult – and in some cases dangerous – to access, which can help explain why some problems go unnoticed for so long, even by property owners who are generally diligent about maintaining their building. Obsolescence is yet another reason that buildings can come to be disregarded, though obsolescence in and of itself does not necessarily result in disrepair. It can, however, provide some indication of which buildings are more likely to be at a higher risk of neglect.

2.6. Risk Factors

Very little has been published regarding the types of buildings that fall victim to neglect. This may be partially attributed to the fact that neglect can be very difficult to identify as the cause of demolition because while it may have directly contributed to the loss of a building, other reasons (such as fire) may be ultimately responsible for the building’s demise, making it difficult to rely on records even if a cause is listed. Another challenge is that there is a significant temporal

aspect to the building types prone to neglect, dependant on the local and regional economic environment as well as current tastes and attitudes. The trend of converting large industrial buildings and former warehouses to new uses in recent years illustrates this temporality rather well. In Montreal, the conversion of old industrial buildings along the Lachine Canal and in the Mile End neighbourhood has attracted a mix of professional services and other creative businesses (Bliek & Gauthier, 2007; Rantisi & Leslie, 2010), while in Toronto these buildings often become loft-style apartments or live-work spaces, such as in the Liberty Village neighbourhood. This is very positive for cities because as each conversion occurs the underutilized space is returned to productive use, encouraging additional investment in the area. The lasting success of these adaptive reuse projects will depend on continued demand for the condo lifestyle and the minimalist brick-and-beam aesthetic, and on the renewed desire to live and work downtown rather than in the suburbs – a major shift from earlier decades.

Contextual factors including governmental policies and general approaches to urban planning (such as the promotion of adaptive reuse), can also have an effect on the continued use of existing buildings. Places that actively encourage the reuse of buildings through incentives or education programs may be less likely to experience demolition by neglect, but no research has been done in this specific area. Shipley and McKernan (2011) explored some educational initiatives targeted at elementary school children from the UK, the US, and Canada, though there was no attempt to correlate these programs with increased rates of conservation. Therefore, while estimates can be made regarding the quantity and types of buildings at risk, it is important to recognize that such generalizations may not apply everywhere.

Obsolescence

Both when and where buildings become neglected is also related to the concept of obsolescence, which can be defined as the decrease in either monetary or utility value due to any factor other than the physical deterioration of the building (Westhagen, 1945 as cited in Yakub, 1992). As noted in the 19th century by French architect Eugène Emmanuel Viollet-le-Duc, “the best of all ways of preserving a building is to find a use for it, and then to satisfy so well the needs dictated by that use that there will never be any further need to make any further changes in the building” (1990: 222). While obsolescence itself does not mean that a building will be neglected, it can be one factor that explains why this happens. Yakub (1992) presents a good summary of the literature on the concept. To present the topic, she highlights three key studies (Westhagen, 1945; Lichfield, 1988; and Nutt et al., 1976), and pointedly emphasizes that the root causes will change over time according to the present economic climate. Other authors (Cofresi & Radtke, 2003; Newman, 2010; Shipley & McKernan, 2011) touch on elements relating to the concept of obsolescence, but do not fully explore the topic. There are several recurring themes running through the literature that can help us understand why buildings lose their utility value, including location-related factors, function-related factors, and environmental factors.

Causes of obsolescence can be explained using classic economic and planning theory. The economic structure of a city is largely dependent on its resource base and on its place within regional networks of transportation and trade. In general, this means that cities will follow along a certain trajectory of growth, limited or propelled by their place within these networks. However, certain events may upset this path dependency, thus affecting the location or occurrence of economic activity within an urban centre. For example, the depletion of a resource may cause a town sustained by its related industries to decline, leading to a loss of income or

population if nothing new replaces the original economic engine. Occupancy rates may decrease and result in vacancy, or the loss of income may mean that routine maintenance is deferred. Confronting a shrinking manufacturing sector is another possible scenario for many Ontario municipalities. As industrial uses are gradually displaced by residential expansion, buildings that are not easily converted into residential uses may be abandoned or demolished. However, finding an appropriate use for a structure purpose-built for a specific function or process can be particularly challenging. The rehabilitation of buildings depends not only on finding a suitable use, but also on the ability of the renovations to conform to contemporary safety standards. If buildings cannot be upgraded to meet modern building codes, they may find themselves obsolete and unable to retain occupants. Adaptive reuse is also made easier when regular maintenance has been performed throughout the building's life (Power, 2008), while maintenance is more likely to be carried out as long as the building retains its utility.

Another way that location can affect the utility of a building is through the gradual shift of economic activity at an intra-city level. Use and activity patterns will change over time, with different neighbourhoods increasing and decreasing in popularity and wealth. Newman argues that one of the main reasons for obsolescence (though he does not use this term) is the exodus of “vitality (people) and viability (function)” to peripheral areas of our urban centres (2010: 3). As residents relocate outside the city centre, which is often where heritage buildings are located, businesses follow, both to seek customers and employees. Newman was able to demonstrate that in the cases presented in his 2010 study, adopting protective measures for the agricultural land on the periphery of an urban centre was beneficial to retaining the utility of older buildings in the heart of the city. While this is a much larger issue in the United States than in Canada, it is certainly of some concern north of the border as similar development patterns were followed

here. In Ontario, two recent provincial policies (the Growth Management Plan *Places to Grow* and the *Greenbelt Act*) have been trying to do exactly as Newman suggests: protect agricultural land and direct growth into existing urban centres by encouraging intensification of use and increased density.

Building types most at risk

There are two broad categories of studies that can be referenced to determine which buildings are most susceptible to demolition by neglect, the first of which looks at heritage that has already been lost to demolition regardless of the reason. The data required to conduct such studies is not easily obtained, as few municipalities maintain readily accessible records of demolished buildings (heritage or otherwise), and even those that make the information available do not always list the reasons.² Researchers are left with comparing old inventories of heritage properties with the buildings that are left standing (as Carter (1999) did), or searching through archives to find demolition permits (as was done by Shipley & Reyburn (2002)).

One study conducted by the Heritage Resources Centre at the University of Waterloo found that two-thirds of the heritage properties that were lost between 1985 and 2002 were residential (Shipley & Reyburn, 2002: 32). The next two closest categories, commercial and industrial properties, had similar proportions of loss at 14.5% and 11% respectively. The authors noted that cases of abandonment and neglect only occurred in a minority of cases. The study also revealed that the size of the city is correlated to the type of properties that are lost: larger cities lose a higher proportion of their commercial heritage properties, whereas smaller cities lose a

² Edmonton, AB maintains a good database available online that includes reasons for demolition in some cases. Toronto, ON also has some of their records of demolished heritage properties accessible through their online heritage inventory.

higher proportion of residential properties.³ A similar conclusion was reached by Yakub (1992) who was looking at examples of neglect in small English towns and found very few commercial properties to examine; all 24 cases she followed had originally been built for residential use.

Although information is limited on the relationship between building type and the reason it was demolished, there are some general patterns with respect to when and where buildings are more likely to fall victim to neglect. As several authors have noted (HCF, 2001; Shipley & Reyburn, 2002) the economic climate appears to have some effect on how property owners value and care for their buildings, for a variety of reasons. When labour is expensive, repairs and maintenance are more likely to be put aside longer, or avoided entirely. When materials are more costly and labour is cheap, there is greater incentive to restore rather than rebuild. Attitudes of the municipality also play a role, as some administrations will want to pursue a pro-development agenda regardless of the costs – environmental, social, or cultural.

General trends occurring within urban centres can also help identify where neglect is more likely to occur. Cyclical patterns of neighbourhood decline and prosperity generally correlate to increased frequency of neglect (Cofresi & Radtke, 2003). Buildings in areas that are in decline are more likely to be neglected than buildings in neighbourhoods that are more stable. Urban centres or neighbourhoods experiencing higher growth rates appear to suffer from a correspondingly greater rate of loss of heritage properties, primarily as a result of elevated development pressure (Shipley & Reyburn, 2002). From this perspective, two categories of buildings stand out at higher risk of neglect and abandonment: commercial buildings with a lower than average intensity of use for their location (Douthat, 1988 as cited in Goldwyn, 1995),

³ The authors did not define what population would be representative of large or small cities.

and buildings in rural areas (HCF, 2001). Several recent cases in Ontario (including the case studies profiled in Chapter 6) are examples that fall into the former category. One reason why commercial properties may be at higher risk of suffering from deferred maintenance is the higher costs associated with renovating commercial buildings relative to residential properties (Langdale, 2011). In large cities where it is common for foreign investors to own property, it can also be attributed to absentee landlords, as observed in Toronto, where many commercial properties are being rented out cheaply while the owners conduct no maintenance (Kidd, 2013). These owners prefer to collect easy money rather than undertake a major rehabilitation project full of risk and uncertainty, even though restored heritage buildings can command profitable rents and provide a satisfactory return on investment.

In terms of buildings located in rural areas, Heritage Canada Foundation (2001) notes that the level of risk is elevated not only because few heritage programs are available in those regions, but also because designation is less frequent. Furthermore, owners of buildings on land zoned for agricultural use do not always need permits to proceed with the demolition of structures on their property, which makes it far more challenging to try and trace which structures are still standing. When structures in rural environments are threatened, it can be much more difficult to rally community support (Thompson, 2011). Population densities are much lower, and the level of individual connection that people feel to a particular building will likely be minimal, especially if they have never interacted with it, even at a superficial level. In contrast, buildings in urban centres are more likely to be present in the memories of many people, even if it is just from walking by on the street.

Quantifying the threat of demolition by neglect

The second category of literature attempts to estimate the quantity of buildings suffering from neglect and deferred maintenance. Given the amount of attention directed at the issue, one could expect that figures would be readily obtainable, which is not the case. One problem with the studies that do provide estimates is that the methodology behind the figures is not explained. Knowing that the determination of which buildings are ‘at risk’ is quite subjective and will inevitably vary between each case (thus reducing the validity of direct comparisons between various figures), we nevertheless present these studies here to provide context.

There are few available estimates of the number of buildings that are at risk of demolition in Canada. The first study, conducted in 1999 by Margaret Carter, found that of the buildings listed on the Canadian Inventory of Heritage Buildings (CIHB), 3.4% were at risk due to neglect (as cited in HCF, 2001). In comparison, 10.9% were at risk due to development pressures. A comparable ratio of the elevated risk to heritage buildings from development pressures relative to the threat of demolition by neglect was found by Shipley & Reyburn (2002). An earlier study of demolition by neglect in England also found a similar proportion of risk as Carter’s study, estimating that between 2 and 6% of listed buildings in that country were at risk of neglect (Yakub, 1992).

Local estimates are also difficult to come by, but due to the aforementioned variability in economic and political environment from place to place they can be more useful for understanding the effect of policy implementation. A staff report conducted in 2007 by the City of Hamilton that examined the local threat of demolition by neglect found that 1.67% of designated heritage buildings were vacant, with 7 of those properties (1.17% of heritage

buildings) at either a moderate or high risk of demolition by neglect (City of Hamilton, 2007b).⁴ Likewise, in New York City, the proportion of buildings at risk was estimated to be below 1% of designated buildings, which in real numbers would equal approximately 60 buildings at any given time (Weiss, 2012). This number seems surprisingly low for a city of that size, considering that a recent news article in the *Ottawa East EMC* estimated there were approximately 50 vacant heritage buildings in the City of Ottawa (Ottawa East EMC, 2013). The seemingly minor difference in the figures between the two (very different) cities highlights the impact that local factors can have. For example, the figures could indicate significant differences in policy or by-law enforcement (political environment), differences in the demand for real estate between the two cities (economic environment), or it could be attributed to differences in determining what is at risk. It could also be a result of differences in rates of designation between the two jurisdictions, and therefore the official totals may not be representative of the whole picture.

⁴ Since this report was written, two of the properties listed have been restored, one was demolished, one is part of a redevelopment proposal and three are still vacant.

3. Methodology

This paper seeks to identify effective strategies that municipalities and provinces in Canada can adopt to prevent demolition by neglect. A literature review, an examination of the responsibility of different levels of government, and several case studies are used to identify and analyze various approaches that are possible within the Canadian legal framework. As described in the introduction and the literature review, the topic of demolition by neglect is not new. Several papers written on this topic – albeit from an American perspective – helped to inform the focus and structure of the report. From a methodological perspective, the work of Goldwyn (1995) was the most influential. Through the examination of four legal case studies in the United States, she identified several tactics that can be effective in preventing demolition by neglect. Additional case studies allowed her to analyze the use of minimum maintenance provisions in various American municipalities. This paper adopts a similar methodology by presenting the state of current regulations and incentives in Ontario municipalities followed by three case studies to test the application of these approaches.

Although selecting a sampling of cases from across Canada could potentially illuminate how the variations in heritage legislation between provinces factor into the successful conservation of buildings, time constraints limited the feasibility of studying enough projects to enable an adequate comparison. Therefore, the selection of cases located in Ontario allows for an exploration of how the same piece of provincial legislation is applied in different municipalities and demonstrates the role of regulation (and enforcement) at the local level. This is similar to the approach used by Yakub (1992) who examined multiple case studies from the same jurisdiction in order to gain a more conclusive understanding of the effect of local policy and

enforcement practice. Unlike the cases in Goldwyn's study (1995), the cases here were not selected on the basis of having passed through the court system. Legal challenges are very time-consuming, and for buildings that are already in danger of demolition, it is more immediately relevant to focus on cases that were not subjected to the risk of a long court battle.

The policy review at the municipal level features a comparison between a number of cities and towns across Ontario. The towns included in the list were selected for several reasons. The initial list included Ontario's ten most populous cities, on the assumption that these large urban centres would have a greater number of heritage buildings, and therefore more resources dedicated towards heritage conservation, including a combination of regulatory and incentive-based approaches. Smaller cities that are known to have long established histories and concentrations of heritage buildings (such as Kingston and Guelph) were also added to the list. Finally, additional municipalities that had been identified by other authors (including Langdale, 2011 and Thompson, 2011) as having implemented some type of program that could help prevent demolition by neglect were also included. The final list consists of 31 municipalities covering a large geographical spread across Ontario, the majority of which are located in Southern Ontario along the Greater Toronto Area – Windsor corridor. In conjunction with the work of Langdale (2011), this paper contributes to fulfilling (to some extent) the recommendation of de Bled (2007) in creating a comprehensive list of the various regulations, building code requirements, and funding programs available to developers and property owners.

While the paper builds on the work of Langdale (2011) by analysing the relative merits of each type of incentive offered (particularly from the perspective of encouraging maintenance), the primary contribution of this work is the analysis of heritage property standards by-laws in Ontario. The grant of power to adopt enhanced property standards by-laws for heritage buildings

is a relatively recent development in the province, meaning there has been very little evaluation of the effectiveness of the by-laws in preventing demolition by neglect. A significant portion of this research paper is therefore dedicated to developing a preliminary assessment of the by-laws and examining the experience that various cities have had with their implementation. The study of existing policies to prevent demolition by neglect follows the criteria developed by Holman (1996), who analyzed conservation planning tools in British Columbia. Holman's criteria centred on the usefulness of the tool (which she defined as "ease of administration, implementation, flexibility and 'expeditiousness'" (1996: 52)), the degree of use, and to a lesser extent the motives behind the use of a particular tool. Identifying the state of public opinion to determine potential resistance to the enforcement of the by-law and identifying whether the by-law was adapted to suit local conditions were also felt to be important, and were added to the evaluation criteria. Accordingly, each municipality that has adopted an enhanced property standards by-law was contacted to determine:

- what prompted the adoption of the by-law (motive);
- how the public reacted to the adoption of the by-law, and who (if anyone) was opposed to it (public opinion);
- why the municipality chose a particular approach (consideration of local conditions);
- how heritage properties are currently being monitored (degree of use), and;
- how the municipality has enforced the by-law, and what the outcomes of enforcement action were (usefulness).

As mentioned, three case studies were explored in greater detail to help examine the application of regulations and policies and to identify the factors that make the greatest difference in determining the eventual outcome of buildings suffering from neglect. The cases that were selected:

- highlight projects that were either rehabilitated or demolished within the past 5 years to reflect current policies and enforcement practices;
- represent building types that are most prone to demolition by neglect (as identified through the literature review) so that lessons learned from these projects may have a wider impact on future cases;
- feature processes that could be replicated on other projects; and
- are located in the province of Ontario.

For each case, it was necessary to retrace the history of the building, particularly focusing on the events and discussions in the years preceding the demolition or rehabilitation. To obtain a complete picture of the processes involved, written material representing a variety of viewpoints was consulted and analyzed, including municipal staff reports, by-laws, council decisions, articles in local newspapers, and community newsletters. This allows for a more critical examination of how the local policies that were in place at the time affected the fate of the building in question. In addition to these sources, interviews were conducted with public- and private-sector players involved in the unfolding of the cases in question. Approval from the Research Ethics Board was obtained, and those contacted for an interview included planners, architects, contractors, and other public officials. However, many of those contacted did not respond to the request or were not able to make time available within the project timeline, thus limiting the overall number of participants. Furthermore, as some interviewees chose to remain anonymous, it was decided that the identity of all participants would be withheld from this report so as not to compromise those that preferred not to be identified.

The final component of the project is a synthesis of the findings of the literature review and of the primary research of policy implementation and case studies in order to develop recommendations tailored to the Canadian context, particularly in the Province of Ontario.

4. Legislation and Policy

In order to understand the possibilities and limitations of the existing tools available to protect built heritage it is necessary to map out the framework of heritage legislation in Canada. The responsibility of protecting our built heritage is shared between the three levels of government, and each has a distinct role to play depending on where the building is located and who owns the property.

4.1. Federal Legislation and Policy

Responsibilities at the federal level include the designation and conservation of any properties owned by the Government of Canada or Crown corporations through Parks Canada. However, designation of a national historic site under the authority of the *Historic Sites and Monuments Act* is merely a symbolic gesture, as this act affords no legal protection and federal agencies may choose to demolish these properties for any reason at any time. The Canadian Register of Historic Places (CRHP) is another program administered by Parks Canada, and neither legal protection nor funding eligibility is granted to the properties listed on it, either. The Heritage Canada Foundation⁵ notes that Canada is the only G-8 country that has no legal mechanism for protecting federally owned buildings from alteration or demolition (HCF, 2013). In 1982, the *Treasury Board Heritage Buildings Policy* (amended in 2006 and renamed the *Treasury Board Policy on Management of Real Property*) was created to encourage the conservation of heritage buildings owned by the federal government as well as to demonstrate its commitment to heritage (Parks Canada 2012), but it is non-binding and unenforced and as a consequence, over 50 federally owned buildings have been demolished since the policy was first adopted (HCF, 2013).

⁵ In 2013, the Heritage Canada Foundation (HCF) changed their name to Heritage Canada the National Trust (HCNT), though to remain consistent throughout this paper they are only referred to by their former name (HCF)

While its jurisdiction over heritage policy is limited, Parks Canada was influential in the development of the Standards and Guidelines for the Conservation of Historic Places in Canada in 2003 (revised 2010). This “pan-Canadian set of principles and guidelines for the conservation of buildings, archaeological sites, landscapes and engineering works” (Parks Canada, 2010: vi) was the result of collaboration between Parks Canada and heritage professionals working across the country in both the private and public sectors. The document has been widely adopted and signifies a unified approach to conservation practice from coast to coast.

4.2. Provincial Legislation and Policy

Provincial and territorial governments are responsible for determining the overarching regulations that municipalities must work within. Provincial heritage acts outline the process for designation and appeals, demolition applications, and penalties for non-compliance. Today, every province and territory has passed legislation protecting significant cultural heritage,⁶ but achieving widespread heritage protection across the country is a relatively recent achievement. Public attitudes towards heritage began to shift in the 1960s and 1970s, after many historic buildings were demolished to accommodate large-scale redevelopment projects. By the end of the 1970s, the first provincial heritage acts were being adopted (Ontario’s was adopted in 1975). These early provincial acts were more symbolic than effective; de Bled notes, “while they provided some degree of protection, they offered little in the way of financial assistance or incentive to repair and maintain old buildings” (2007: 11). In Ontario, the Ministry of Tourism, Culture and Sport is in charge of administering heritage programs and identifying buildings of

⁶ Note that in the case of the Northwest Territories and Nunavut, the current legislation is largely silent on built heritage, focusing instead on archaeological heritage and artifacts, and other cultural objects.

importance at the provincial level, although the task of applying the *Ontario Heritage Act* (OHA) has been given primarily to municipalities.

Addressing demolition by neglect through property standards by-laws

One of the primary ways to address the issue of maintenance of heritage properties is the use of property standards by-laws. The power of municipalities to pass such by-laws is granted through provincial legislation, and in this respect, Ontario can be considered fairly progressive, considering that this option is not available in all provinces. In addition to Ontario, Manitoba, British Columbia, and Yukon Territory also allow municipalities to adopt by-laws containing maintenance provisions for heritage buildings.⁷ The law in Saskatchewan states that municipal by-laws “may establish any guidelines and controls that the council considers necessary to preserve and develop the heritage characteristics of designated property” (s.11(4)). Based on this language, one could reasonably assume that this could include a property standards by-law, though the act does not explicitly state so. There is also a section targeted directly at preventing demolition by neglect in which municipal councils (or the Provincial Minister, if the property is designated at the provincial level) are authorized to force a property owner to conduct repairs.⁸ Alberta’s *Historical Resources Act* allows for the possibility of requiring maintenance to be carried out, but only under the order of the minister responsible for heritage; municipalities are not permitted to create by-laws to regulate maintenance.

⁷ Manitoba Heritage Resources Act s.34(1), British Columbia Local Government Act s. 970, and Yukon Historic Resources Act, s48(1)(d) respectively

⁸ Municipalities in Ontario may also conduct repairs and charge the owner, though an explicit reference to demolition by neglect is left out of the OHA. In contrast, Saskatchewan H.P.A. s.31(1) states “Where, through neglect or lack of maintenance, the integrity or existence of designated property is placed in jeopardy, the council of the municipality in which the property is situated may, by order, require the registered owner of that property to undertake any specific repairs or other measures that the council considers necessary to preserve the property.” H.P.A. s.51(1) relates to properties designated at the provincial level.

The legislation of other provinces is vague on the issue. Quebec's *Cultural Heritage Act* states in the explanatory notes preceding the body of the legislation that "both the Minister and local municipalities may make orders to protect a property that may have a heritage value by reducing the effects of or eliminating any threat to it" but does not clarify further whether this could include property standards by-laws. Similarly, the *Heritage Conservation Act* of New Brunswick allows municipalities to pass by-laws pertaining to "conservation standards" but does not explain how this should be interpreted.⁹ The *Historic Resources Act* of Newfoundland permits property owners to receive grants for the purpose of maintenance, but there is no provision for municipalities to require a minimum level of maintenance.¹⁰ In neither Prince Edward Island nor Nova Scotia is there a clause to permit municipalities to prescribe additional maintenance standards for heritage buildings.

The Conservation Review Board and the Ontario Municipal Board

There are two additional independent and quasi-judicial bodies at the provincial level that play a significant role in the implementation of heritage policy in Ontario: the Conservation Review Board (CRB) and the Ontario Municipal Board (OMB). While both operate at a provincial scale, the provincial government has no influence over their decisions beyond currently established policy.

Where a designation is opposed or an application to alter a heritage property is refused, an appeal can be made to the Conservation Review Board. The CRB will conduct a formal hearing of the case and recommend to the relevant municipal council whether or not the property should

⁹ New Brunswick H.C.A. s.55(5) states "A municipal heritage conservation area by-law may include provisions: (a) establishing or adopting standards and guidelines for design, conservation and development, including technical and planning standards and guidelines;"

¹⁰ See Newfoundland H.R.A. s.21(c)

be designated or the alteration approved. Since it is the council that will ultimately make the final decision, the authority of the CRB is limited; matters of designation and alteration cannot be appealed a second time. The same process is followed for cases where an owner wishes to repeal the designation of their property, or when a member of the public disagrees with a council decision to repeal a designation by-law.

Unlike the Conservation Review Board, the Ontario Municipal Board is a general provincial appeals body that adjudicates a myriad of planning-related conflicts including issues of zoning, official plans, development charges, some heritage matters, and more. This legal structure is unique in North America and is fairly controversial due to the level of control the OMB has over municipal council decisions. While there are frequent calls for it to be abolished, it remains a very present factor in the current judicial landscape of Ontario.

The OMB has the ultimate authority on matters relating to the demolition of all heritage properties in the province with the exception of those under the ownership of the Crown. If a property owner makes a request to demolish a designated building and the council denies the application, the property owner has the right to appeal to the OMB. Whereas other heritage matters are referred to the CRB for a recommendation only, the OMB will hear a case and render a decision that all parties, including the city council, must adhere to. In the event that the building is a provincially designated structure, the same process follows, with the OMB determining whether the demolition may proceed or not. The OMB can also be called on to review the decisions to designate Heritage Conservation Districts (HCDs), or to alter or demolish properties within established HCDs.

Based on a review of recent OMB decisions, the majority of demolition applications subject to the *Ontario Heritage Act* concern properties located in Heritage Conservation Districts. There is a strong precedent that demolition applications for buildings determined to be Class C heritage (A is the strongest and indicates a culturally significant building, B indicates some significance, and C indicates little to no significance) receive approval by the Board, even when a municipal council has refused the application.¹¹ To make its decision, the Board refers to the designating by-laws that identify the heritage attributes of the property. Where a municipality seeks to deny an application by citing heritage significance that is not recorded in the by-law, it nearly always loses. The only exception to considering arguments outside of what is listed in the by-law is when the by-law was written a long time ago and there is clear public interest in the property.¹²

Based on the same review, it appears that the deteriorated condition of a property has not been used as the primary argument for allowing a demolition, although it is mentioned in a few cases. In *Gordon v. Town of Markham*, the uninhabitable condition of the home was included in the reasons for allowing demolition, though the central justification was that as a Class C building, the existing house did not exhibit any heritage value. In *Four Three One Schwarzberg Holdings Inc v. Town of Richmond Hill*, the poor condition of the structure did not have any bearing on the decision of the OMB; the Board member hearing the case felt that the demolition application was made prematurely since there was no redevelopment proposal and dismissed the appeal. Had a proposal been presented at the hearing, it would have been interesting to see whether the

¹¹ For example, *Cumming v. City of Toronto* (22 March 2013) MM110034 (OMB), *Gordon v. Town of Markham* (10 October 2008) PL071258 and PL071080 (OMB), and *Richcraft Properties Inc v. City of Ottawa* (4 November 2009) MM070018 (OMB)

¹² Such as in *Alma Heritage Estates Corporation v. City of St. Thomas* (15 January 2008) PL060861 (OMB)

condition of the property would have affected the decision, but there are no indications to suggest how or if it would have become a factor.

Other provincial regulations

Outside the Heritage Act, there are few laws that can influence the maintenance or preservation of a building. Currently, there are no environmental laws or tariffs that act as a major deterrent to the demolition of buildings, although Ontario is the only province in Canada that stipulates construction and demolition projects must adhere to waste management programs (Yeheyis et al., 2013). There are two relevant provincial regulations: a regulation requiring waste audits and waste-reduction work plans (O. Reg. 102/94) and a source separation regulation (O. Reg. 103/94). Both apply to any demolition of a building or group of buildings greater than 2,000m² in floor area. The entity responsible for demolition must prepare a report detailing the waste that will be generated by the demolition and they must ensure all materials, including brick and concrete products, steel, and wood are sorted into different piles. The separated waste streams must then be delivered to an approved waste facility. While “reasonable efforts” must be made towards reuse or recycling of the materials, there are no limits or deterrents on the amount of waste that is generated by the demolition (OMoE, n.d.). In some cases, municipalities have passed by-laws banning certain materials from landfills but practices are not consistent across the country (Yeheyis et al, 2013).

4.3. Municipal Legislation and Policy

Notwithstanding the occasional involvement of the OMB and CRB, heritage issues are considered to be a matter of municipal management because the province prefers to defer to local knowledge and administrative practices. The administration of heritage issues in any given

municipality depends on the combination of policies, regulations and programs in place, and the ability of city staff to implement them. The first level of planning policy in a municipality is the Official Plan. However, because this is a policy document, it has limited impact on the reality of heritage buildings. An Official Plan may use language that promotes the conservation of heritage resources, or that encourages the adaptive reuse of existing buildings, but there is often no clear process or mechanism for implementing (or measuring the results of) the strategies used to achieve these objectives. Therefore, to understand how demolition by neglect can be prevented it is necessary to turn to the provisions of the *Ontario Heritage Act* and the way they are applied by municipalities.

In Ontario, municipalities designate buildings by passing a by-law. Designation means that the demolition and alteration of a property are no longer ‘as of right’, even where the proposed changes comply with the zoning by-law. Any permit application submitted by the owner will be subject to additional oversight, often by a department or employee with expertise in heritage conservation, before a permit is granted. Alterations to the property will be permitted wherever the city council determines that the heritage value of the property is not adversely affected. According to OHA s.29(4), a designation by-law must explicitly state the heritage value of the property and the heritage attributes that support or reinforce it. Including these elements is extremely important, because the list of heritage attributes is what courts revisit in cases related to maintenance or alteration of the property. In the majority of cases, the by-law will refer to architectural elements exclusively on the exterior of the building (and often limited to the façade); interior features are rarely included. Property owners are not compensated upon designation in Ontario, although designation does allow property owners to apply for financial incentive programs where they exist. Along with the delegated authority to choose which

properties to designate under the act, municipalities consequently have the additional duty to enforce the legislation, although fines and penalties are set in the provincial act.

Since the responsibility of granting legal protection rests largely with municipalities, rates of designation in Ontario vary widely between different cities and towns (de Bled, 2007; Shipley & Reyburn, 2002). Under the OHA, municipalities must maintain a register of historic places that have been designated under the act (OHA s.27). They are also permitted to include buildings of interest on the same list without formally giving them legal protection. The OHA, like the majority of provincial heritage acts, also permits municipalities to establish Heritage Conservation Districts, which allow increased planning oversight to be applied to all properties within an area ranging in scale from a single block to an entire neighbourhood.

4.4. International Frameworks

Canada's system of dividing the responsibility of managing heritage assets is similar to the structure used in the United States. The federal government controls the overarching policies and taxation laws, the individual states regulate the powers and responsibilities of the municipalities, and the majority of the implementation and enforcement of heritage policies is done at the municipal level (Cofresi & Radtke, 2003; Goldwyn, 1995). However, there are some significant differences between the approaches of the two countries. In 1976, the United States Federal Government established nation-wide tax incentives for designated properties, allowing property owners to claim a tax credit for rehabilitation work, while Canada has no similar program despite the repeated demands of heritage advocates. The government of the United States also maintains the National Register for Historic Places (NRHP), which functions both as a planning tool for authorities, and as a tool to facilitate the administration of funding

opportunities for the properties listed on it through grant programs, loan programs and potential tax reductions (Lyon and Brook, 2003). Property owners must consent to inclusion on the list, which is not necessarily the case in every Canadian province (Sanz Salla, 2009). As described above, the Canadian equivalent (Parks Canada's CRHP), does not offer any real advantages; funding opportunities arise only for those properties designated by the province or municipality.

The preservation ordinance is the predominant municipal response to heritage issues (including demolition by neglect) in the United States, since the first one was enacted in Charleston, South Carolina in 1931 (Roddewig, 1983). Preservation ordinances regulate a variety of heritage matters, many of which are addressed in Canada at the provincial level. Maintenance requirements can be incorporated into the ordinance provided they are accompanied by provisions allowing for the claim of economic hardship (Cofresi & Radtke, 2003; Goldwyn, 1995; Mayes, 2003), a significant difference from the Canadian regulations. In the United States, the right to claim economic hardship as a legitimate defense dates back to 1975, when it was first tested in court. Directly related to the concept of obsolescence discussed in Chapter 2, economic hardship is not based on the property owner's financial situation, but rather on the ability of the property itself to continue to provide a reasonable rate of return to its owner regardless of the heritage status applied to it (Mayes, 2003). To avoid a claim of economic hardship against itself, a city may have to consent to a zoning variance allowing a change of use or agree to some other compromise regarding the property.

Another common approach in the United States, is allowing the transfer of development rights (TDRs), a concept that was developed specifically for heritage resources. TDR programs have remained popular in the U.S.A. since the 1960s, but due to differences in the legal systems between the two countries, very few Canadian jurisdictions incorporate the idea into their own

policy (City of Hamilton, 2004a; Greenaway & Good, 2008). The few TDR programs that do exist help protect environmentally significant landscapes.

In Europe there is a much different approach, as it is not uncommon to have one national body oversee all heritage matters in the country (Sanz Salla, 2009; Yakub, 1992). Although the geographical scope is much smaller for each of these countries than for either the United States or Canada, there is still a significant quantity of heritage resources to monitor. The European Union (EU) allows individual member states to shape their own legislation regarding heritage conservation, but all countries must adhere to some basic policies and laws at an international level. For example, the EU requires the completion of Environmental Impact Statements that outline the effect of a project on nearby environmental and heritage resources as a way to bring to light the potential synergies between sustainability and heritage goals (Sanz Salla, 2009).

A preliminary study by Lazarus (2007) identified the strategies of several other countries regarding the regulation of building maintenance. In Australia, the obligations of the property owner and the potential penalties are much the same as Ontario, while in the UK, there is no explicit requirement to conduct routine maintenance on a designated property. Among the approaches examined by Lazarus, the Monumentenwacht concept, which originated in the Netherlands, is exceptional. The program is predominantly funded by the government, but to help offset some of the costs, the building owners pay a registration fee and an inspection fee. A team of specialists conducts regular visits to each building, offering advice and recommendations to the property owner on any non-urgent repairs that the building needs, while simultaneously executing emergency repairs as necessary (Lazarus, 2007). The program is viewed as highly successful, and the concept has apparently spread to other countries in Europe including Denmark and Germany.

In the United Kingdom, much of the management of conservation planning and policy is conducted at the national level, but the implementation of most heritage policy and regulation is still carried out at the local level (Hobson, 2004; Sanz Salla 2009; Yakub, 1992). Through the office of the Secretary of State for Culture, state responsibilities include the compilation and listing of all significant properties in the country and the duty to oversee designation of monuments (structures not in use, i.e. prehistoric stone structures and burial mounds) and conservation areas. While buildings are listed on the recommendation of local authorities, the national heritage organization, English Heritage, publishes a selection guide with standardized criteria to be used in all cases (Sanz Salla, 2009). Similarly to the United States and Canada, listing carries with it the obligation to obtain consent to alter or demolish the property. Unlike in North America however, the proportion of properties affected is quite high; Hobson (2004) observes that approximately one-third of all planning applications in the UK involve some concerns related to heritage. Property owners must also carry out any repairs as ordered by authorities, and failure to comply with a repairs notice could result in the compulsory purchase of the property by the authorities. Furthermore, in cases where a poor state of repair is found to be deliberate, the property owner may be forced to provide compensation – in addition to having their property expropriated (Sanz Salla, 2009). Yakub (1992) found, however, that local authorities in England are quite reluctant to use the full extent of their enforcement powers. As in North America, a wide array of incentive programs is available to owners of listed properties, including grants, loans, and tax programs (Lockwood, 1994). The UK specifically encourages the creation of tax-exempt Maintenance Funds, trust funds that are established with the express purpose of providing for the repair and maintenance of a heritage property (Sanz Salla, 2009).

5. Municipal Tools to Address Demolition by Neglect

The *Ontario Heritage Act* does not explicitly address the issue of demolition by neglect, allowing municipalities to decide which of the optional approaches are necessary to confront the problem. Based on its own circumstances, each individual municipality will assess the level of threat to their heritage building stock and their capacity to respond before selecting their approach. In Ontario, there are two primary tools that are available to municipalities: property standards by-laws and financial incentive programs. Many municipalities in Ontario use one or both of these methods to some degree, though there are wide variations in how they are implemented.

5.1. Property Standards By-Laws

The ultimate goal of heritage legislation is to protect and retain the original attributes of a building, which is achieved most readily (and most cost-effectively) through routine care (Lazarus, 2007). Given that demolition by neglect arises as a result of inadequate maintenance, an initial reflex is to regulate it in a manner that is legally enforceable. To this end, property standards by-laws have become one of the primary tools used by municipalities to limit occurrences of demolition by neglect since 2005, when they were first permitted by the *Ontario Heritage Act*. Section 35.3 of the OHA establishes the authority of municipalities via the *Building Code Act* as follows:

35.3 (1) If a by-law passed under Section 15.1 of the Building Code Act, 1992 setting out standards for the maintenance of property in the municipality is in effect in a municipality, the Council of the municipality may, by by-law,

(a) Prescribe minimum standards for the maintenance of the heritage attributes of property in the municipality that has been designated by the municipality under Section 29 or by the Minister under Section 34.5; and

(b) Require property that has been designated under Section 29 or 34.5 and that does not comply with the standards to be repaired and maintained to conform to the standards. 2005, c. 6, s. 27.

(2) Sections 15.2, 15.3, 15.4, 15.5 and 15.8 of the Building Code Act, 1992 apply with necessary modifications to the enforcement of a By-law made under Subsection (1). 2005, c. 6, s. 27.

The first step towards establishing enhanced property standards for heritage building is thus the adoption of a general by-law that applies to all structures within a municipality. Valverde describes property standards as one of two “key instruments of municipal sovereignty over private property”, the other of which is the compendium of planning rules, including zoning (2012: 44). Higher courts have routinely validated the authority of municipal governments to determine what is appropriate in terms of the appearance and condition of the properties within their boundaries. While a large number of these regulations concern issues related to health and safety (such as ensuring building foundations and walls are in an adequate state of repair, or requiring removal of garbage to avoid attracting pests), others concern issues of aesthetics (even as far as regulating the maximum height of grass on a lawn).¹³ A municipality that has adopted additional standards for heritage buildings will often include provisions requiring the maintenance of any non-structural elements that contribute to the heritage value of the building, which would not otherwise be protected by the general by-law. The intent is to discourage owners from letting their properties fall into disrepair by using the penalties of non-compliance as a deterrent. The primary motivation behind the enhanced by-laws is the retention of architectural features and elements considered to hold heritage value, although to a minor extent

¹³ For example, Toronto Municipal Code Chapter 629-11 B states “Where grass forms part of the ground cover, it shall be maintained in a living condition and at a height of not more than 20 centimetres.”

there are also implications for public safety, as severely deteriorated materials on the façade of a building do have the potential to fall to the ground and injure people.

Reaction to enhanced property standards by-laws

The additional conditions imposed on the owners of heritage buildings have been contested in some municipalities that have sought to adopt enhanced property standards by-laws, primarily by property owners who are concerned about potential economic implications of the new requirements. Municipal staff in Brantford, Ontario conducted a semi-public consultation on the subject and recommended that the proposed by-law amendments *not* be passed, as there was too much opposition among the heritage property owners who submitted comments (City of Brantford, 2012). A key issue in Brantford was the lack of incentive programs available to offset the financial burden of a higher standard of maintenance. Brantford does not currently offer grants, loans, or tax relief to owners of heritage properties. The City of London noted limited opposition to draft versions of their by-law released for public comment prior to its adoption (City of London, 2014, personal communication), while Brampton and Kitchener chose to narrow the application of their standards to vacant heritage properties only, in a compromise with property owners who objected to full implementation of a property standards by-law (City of Kitchener, 2014, personal communication).

Content of by-laws in force in Ontario

The majority of Ontario's largest municipalities have adopted a property standards by-law for heritage buildings (see Table 1). Markham, which stands out from the list, has not yet adopted a by-law but has been considering one for several years (City of Markham, 2014, personal communication). Municipalities appear to have taken a cautious approach to adopting a by-law,

with only one or two opting to do so per year since 2007, even though the amendments to the OHA made the option available in 2005. In several cases (including Toronto, London, Kitchener and St. Thomas) the adoption of the by-law was a reaction to a particular situation of demolition by neglect that had occurred or was occurring within the municipality (2014, personal communication).

The majority of the by-laws enacted since 2007 are very similar in content and wording. With the exception of Brampton and Kitchener where requirements are limited to vacant properties only, the by-laws apply to all heritage properties regardless of occupancy status. The majority provide specific instructions on how to secure vacant heritage properties, and require the continued provision of heat and ventilation to the interior. This is an important clause that is distinctly different from what would apply to a non-designated building (which would require all utilities to be disconnected). Without heating and ventilation, buildings that are vacant for long periods of time are susceptible to mold and structural damage caused by condensation from the fluctuation in temperatures throughout the year. Condensation can lead to irreparable damage to the interior of the building and give cause for the building to be demolished, which is precisely what the by-laws are trying to avoid.

Table 1: Overview of Enhanced Property Standards By-laws in Ontario

| Municipality | By-Law Number | Year adopted/last amended | Applies to elements that support or protect heritage attributes | Heating and ventilation for vacant buildings | Additional Notes |
|---------------------|-------------------------------|--|--|---|---|
| Toronto | 1027-2007 | 2007 | Y | Y | |
| Ottawa | n/a | 2013 | Y | N | Where heat is not to be maintained, water must be drained and adequate ventilation provided |
| Mississauga | 211-08 | 2008 | Y | N | |
| Brampton | 154-2012 | 2012 | Y | See note | Interior doors must remain ajar for ventilation but heating not required |
| Hamilton | 08-238 | 2008 | Y | Y | |
| London | CP-16 | amended 2010 | Not explicitly | Y | |
| Markham | | | | | |
| Vaughan | 231-2011 | 2011, amendments proposed 2013 ¹⁴ | New in 2013 proposal | Y | Proposed amendments include an additional provision to safely store any signs on property if removed (if deemed to have cultural significance even if not designated in by-law) |
| Kitchener | Kitchener Municipal Code C665 | 2008 | N | Y | Allows Council to define heritage attributes where nothing is listed in the designating by-law |
| Windsor | 213-2011 | 2011 | Y | Y | |
| Burlington | 28-2009 | 2009 | Y | Y | |
| Kingston | 2010-146 | 2010 | N | Y | Requires documentation of material to be removed |
| Guelph | | | | | Encouraging maintenance is in Official Plan only |
| Waterloo | 2011-122 | 2012 | N | Y | |
| St. Thomas | | | | | By-law declared <i>ultra vires</i> in 2007 |
| Collingwood | 2010-092 | 2010 | Y | Y | |

¹⁴ The proposed amendments to Vaughan's by-law had not yet been passed at the time this paper was written

Interestingly, the City of St. Thomas (population approx. 38,000 [Statistics Canada, 2012]) was the second municipality in the province to adopt a heritage property standards by-law, in 2006, following Mississauga. In both by-laws (St. Thomas modeled theirs after Mississauga), the city listed the architectural elements to be adequately maintained. St. Thomas was eager to use this new tool because a landmark property in their city, Alma College, had been vacant and neglected for 13 years at the time. Unfortunately, the by-law did not have the hoped-for effect: it was challenged in court and declared to be *ultra vires*, or outside the city's authority. In paragraph 36 of the decision, the judge provides an example to illustrate why this is so:

Suppose that a property was designated because it had unique stained glass windows, and that feature was the only heritage attribute specified in the designating by-law. By-law 142-2006 would permit the City to require the owner to repair or maintain the brickwork, the roof and virtually the entire exterior of the building to the higher standards required under the by-law, even though those parts of the building were not considered to be heritage attributes when the property was designated. (*Alma Heritage Estates Corporation v. St. Thomas (City)*, 2007 ONSC 4307 par.36)

The Property Order that the City of St. Thomas issued also contained elements that were not included in the designation by-law, and the Order, like the by-law, was consequently determined to be *ultra vires* by the presiding judge. This is in contrast to preservation ordinances in the United States, where lists of features are commonly included. Goldwyn (1995) notes that the reliance on lists of this sort can be a weakness, as there is far less flexibility in their application; when a city tries to enforce the ordinance, it is restricted by the language and features listed in the document. In Ontario, the decision of the judge to consider only what is included in the designation by-law ensures that all the heritage attributes, including those that may be unique to that building, are included in the maintenance requirements – provided that they were recognized as important when the building was first designated. “Negative” lists – lists of elements to which

the enhanced property standards do *not* apply – are not used, presumably for the same reasons positive lists are rejected; given that every building is unique, creating a list of features that are perceived not to have value reduces flexibility. Furthermore, as general property standards would continue to apply to the building as a whole, it might cause confusion if certain elements are singled out as not being subject to the enhanced property standards.

Unfortunately for both the people of Ontario and of the City of St. Thomas, the building (which was still vacant and unrepaired) was lost to arson less than a year after the court ruling, becoming one of the most infamous cases of demolition by neglect in Ontario. Despite this tragic outcome, this case includes the first (and only) challenge against a heritage property standards by-law in Ontario and therefore contains important lessons for other municipalities. St. Thomas reconsidered passing a new heritage by-law in 2010, but ultimately decided to rely on a revised property standards by-law for all buildings (City of St. Thomas, 2014, personal communication). Mississauga, which had a by-law very similar to the one contested in St. Thomas, was very careful not to enforce the by-law until the outcome of the case was determined. The city amended its by-law promptly following the decision, feeling it was still an important initiative, and has since applied the revised by-law on several occasions (City of Mississauga, 2014, personal communication).

Penalties

In Ontario, failure to comply with a Property Standards Order can include court action initiated by the municipality, or the work can be ordered with all charges being applied to the owner's property tax assessment. Financial penalties can also be levied against property owners who fail to comply with the by-law or with work orders associated with it as authorized by the

Building Code Act S.O. 1992, c.23. Section 36 identifies the relevant penalties, including fines up to \$50,000 for a first offence and up to \$100,000 for a subsequent offence. In addition, for every day beyond the specified deadline that an Order has not been remedied, the *Building Code Act* allows municipalities to charge daily fines of up to \$10,000 (s.36(6)). However, as the next section demonstrates, authorities prefer not to exert the full extent of their power and levying such a strong penalty would only be done in a rare case, and probably as a last resort.

Enforcement of property standards by-laws

The level of protection afforded to designated heritage buildings in practice is essentially at the discretion of the municipality. Passing an enhanced property standards by-law (or any by-law for that matter) will be highly ineffective if it is not enforced. In most cases, property standards by-laws are already familiar to municipalities, having been in use prior to the changes of the *Ontario Heritage Act*. Therefore, in most cases the extension of these standards by adding provisions specific to heritage buildings is a minor alteration to existing responsibilities of by-law enforcement officers. In most cities, property standards are enforced on the basis of complaints. A typical division of responsibility can be illustrated by looking at the example of the City of Toronto. Local residents and/or the Heritage Preservation Services Division will alert the Municipal Licensing and Standards Department (ML&S) if a heritage property appears to be at risk. ML&S is responsible for following up with the property owner, and if there is a safety concern, the Building Services Division will also get involved. Other municipalities where heritage staff take an active role include Mississauga, Burlington, Hamilton, and Kitchener. In other cases (such as London), municipal heritage planners have more limited involvement in the enforcement of the by-law, with any complaints forwarded directly to enforcement officers.

Few academic studies have been published regarding practices of municipal by-law enforcement. Fortunately, Valverde published the results of a multi-year research project examining the day-to-day city governance of Toronto in 2012, and while the focus of this study was on how cultural and racial diversity is accounted for with regard to by-law enforcement, one aspect of the study looks at how complaints regarding property standards are handled by the municipal by-law enforcement department. While Valverde refers specifically to noise and nuisance issues, the appearance of a property is similarly qualitative in nature, and therefore many of the findings can be applied to the enforcement of heritage property standards in any medium to large city in Ontario. The research team found that for ‘qualitative’ complaints, by-law enforcement officers rarely follow up unless at least one or two other people have reported the same issue. Furthermore, the complaints must be received over a period of time, indicating that the problem is persistent rather than a one-time event. Therefore, since municipal staff cannot possibly monitor all heritage properties and it is unlikely that a property owner would notify the city about the state of their own building, it is necessary that at least two neighbours, tenants, or passers-by file a series of complaints in order for the city to open an investigation. The study also found that for residential properties, tenants’ complaints are not taken as seriously as the complaints of property owners because they are perceived as being “frivolous” (Valverde, 2012: 63); it is not inconceivable to think that similar prejudices would apply to commercial properties, though this was not specifically addressed by the author. While unfortunate, this reflects the limited resources cities have to enforce their by-laws, as the complaints deemed to be the most serious will be prioritized. However, this could have unintended consequences for neglected heritage buildings because as Weiss (2012) notes, the interior will often be in worse

condition than the exterior and a building could potentially be in very poor shape before anyone at the city even takes notice.

A few specific examples can serve to illustrate the challenge facing municipal enforcement officers. In 2004, the City of Hamilton analyzed the statistics relating to the sixteen months after first adopting a harmonized property standards by-law. (N.b. this predates the amendments to the OHA and therefore the by-law at the time did not contain special provisions for heritage buildings.) They determined that on average around 1,500 complaints were registered and attended to each month. Of these, only 11% resulted in the issuance of an Order or other enforcement action, and less than 1% resulted in charges being laid against the owner (City of Hamilton, 2004b). A more recent picture is available from Toronto, which maintains a database of current property standards investigations available through their website. The sheer quantity of infraction types – comprising everything from improperly placed sidewalk signs and broken air conditioners to collapsing walls – highlights the difficulty of the job of a property standards enforcement officer. Enforcement officers not only have to respond to citizen complaints, but they must also balance these complaints with pressure from city hall; Valverde's research found that nearly half the complaints that enforcement officers attended to originated from a city councillor or the mayor, illustrating the importance of political power – and interest on the part of politicians – to the administration of municipal law (2012).

Property standards issues in Ontario are administered under the *Building Code Act*, and are therefore adjudicated under the judicial court system. Using CanLii, an online database of Canadian case law, only four relevant cases were found that concern maintenance and property standards issues of heritage buildings, all of which were heard in Ontario. Two feature plaintiffs seeking compensation for the municipally ordered demolition of their property, while the

remaining two are related to the attempted enforcement of a property standards by-law. The two that concerned the demolition of unsafe structures were related to incidents that predated the adoption of enhanced property standards by-laws. In *Foley v. Shamess*, the court ruled that the City of Parry Sound was partially negligent for the damages (demolition) suffered by the complainant, the owner of a semi-detached house, whose neighbour allowed their unit to fall into extreme disrepair. The reasoning was that by failing to enforce its own property standards, the structural integrity of the entire building was jeopardized, necessitating the demolition of the two connected properties. The other case (*Ottawa (City) v. TKS Holdings Inc.*) is not wholly applicable because the demolition was ordered after a partial collapse attributed to illegal underpinning work, not to the years of neglect the building suffered.

In both cases where the enforcement of the property standards by-law was contested, the municipality lost. The first case, involving the City of St. Thomas and Alma Heritage Estates, has already been discussed. The more recent case concerns the City of Kingston, and contains many important lessons. Since the mid-1990s, the former Grand Trunk Railway Station (owned by the Canadian National Railway Company (CN)) in Kingston has been deteriorating after its roof was removed subsequent to a fire in which the building sustained damage. In 2010, the City of Kingston issued a Property Standards Order to try to force the railway company to repair the building. CN responded by arguing they were not allowed to undertake any repairs without the approval of the federal government, as they were governed by the *Heritage Railway Stations Protection Act* (HRSPA), which prohibits alteration of heritage features. However, the Justice of the Peace presiding over the case ruled that the *Building Code Act* was paramount, and that the Property Standards Order issued by the City of Kingston was constitutionally allowed. CN

appealed to the Ontario Superior Court of Justice, where the Judge upheld the decision of the Justice of the Peace regarding the constitutionality of the by-law enforcement action.¹⁵

A separate proceeding heard the non-compliance issue in May 2013 (CN had not acted on the Property Standards Order during the litigation), and on this matter, the court ruled in favour of CN. The issue here was not the by-law itself (like in St. Thomas), but the way in which the City of Kingston chose to enforce it against this particular property. A council motion had been passed, calling for the enforcement of the by-law, after which the Property Standards Order was issued. City policy dictated that such an order should have been made years before, once the issue became apparent, but city staff had done nothing prior to the council motion. The Justice of the Peace ruled that the issuance of the Order was politically motivated and, therefore, that CN did not have to comply (Hendra, 2013).

These cases offer several insights into how a municipality should enforce a property standards by-law, and demonstrate that enforcement is an administrative and not a political matter. Firstly, rather than being directed by council, the decision and responsibility to act must come from the appropriate department of city administration in order to be valid. Secondly, both *Foley v. Shamess* and the Kingston example demonstrate that cities should not wait several years before acting on a case; not only does this allow further deterioration of the building, but it also weakens the position of the municipality should the situation end up in court.

The limited number of cases to date suggests that the majority are either settled out of court, are uncontested (meaning any Property Standards Orders issued are complied with), or that enforcement actions of any sort are very rare. A survey of municipalities that have adopted

¹⁵ *The Queen v. CN*, 2012 ONSC 6620

heritage property standards by-laws revealed that relatively few enforcement actions have been taken. Three municipalities (Kitchener, Burlington and London) have each issued two Property Standards Orders under the by-law. A third Order was nearly issued in Burlington, but the matter was resolved before it became necessary. Of the six Orders issued, both cases in London and one case in Burlington were resolved without requiring legal action, while property owners in the other three cases appealed to the municipal property standards committee. In Kitchener, both appeals were rejected and in Burlington the heritage designation of the property was repealed (2014, personal communication). Mississauga has also enforced their by-law a number of times by making phone calls and site visits, and by initiating court proceedings (City of Mississauga, 2014, personal communication). Hamilton did not include quantitative data regarding enforcement actions either, though it was noted that they have applied the boarding provisions of their by-law on at least one occasion; the request for the vacant property in question to be re-boarded with plywood painted matte black as per the by-law was heeded promptly and although the building is still vacant, it looks more cared for as a result (City of Hamilton, 2014, personal communication). Both Valverde (2012) and Weiss (2012) noted enforcement officers' preference for issuing warnings or having informal discussions over formal enforcement action. Enforcement officers interviewed by Valverde preferred the informal methods because they are highly effective, often resolving the matter relatively quickly. Similarly, in New York City, Weiss (2012) found that most cases can be resolved before reaching the courts – a preferable option, since the money is better spent on the building than on lawyers.

Respondents were also asked to indicate the level of oversight exercised over vacant heritage properties. Rates of monitoring were found to vary, but in general they were quite low. For

example, Kitchener conducts inspections of vacant properties once every two years, while others (Mississauga, London, and Burlington) have no formal monitoring process and follow up only on the basis of complaints received (from either members of the public or municipal staff). In both Burlington and Kitchener, heritage planning staff are responsible for notifying by-law compliance staff about potentially vacant properties in need of attention.

Properties owned by public entities

Enforcing property standards against private property is generally straightforward, but when some level of government or public entity (such as a Crown corporation) owns the property, things get more complicated. As described in Chapter 4, federally owned heritage sites have virtually no legal protection from demolition, and rely on the Federal Heritage Buildings Review Office to encourage conservation. In rare cases, a municipality may wish to enforce a property standards by-law against a building owned by the Canadian government, but unfortunately there is nothing that the municipality can do.¹⁶ Pickering, Ontario, has been struggling with this reality since the early 1970s, when the federal government expropriated a large amount of property (and many peoples' homes) for the construction of an airport that has never been built. The buildings on the land, including dozens of heritage farmhouses, are steadily deteriorating and the municipality is powerless to prevent this from happening (Thompson, 2011).

Municipalities also risk appearing highly hypocritical if a property that is under the City's ownership is deteriorating and not well cared for. Private property owners may resent enforcement measures taken against them when the municipality itself does not follow its own by-laws. For example, returning to the case in Kingston, it was revealed that during the whole

¹⁶ Section 91(1A) of the *Constitution Act* gives the federal government exclusive legislative authority over all property they own.

time the City was fighting in the courts, a former industrial building owned by the City had been sitting vacant and boarded up on the waterfront for over ten years. Even the mayor of Kingston noted the irony of allowing this building to slowly deteriorate while the City was trying to enforce their property standards by-law against CN (Hutchins, 2013). Although this situation did not appear to be raised during the court proceedings of the CN case, it does send mixed messages about the value of heritage to private owners of designated buildings.

5.2. Vacant Building Registries

In addition to a property standards by-law, Hamilton has adopted a unique approach that is both aggressive and pre-emptive. For all vacant buildings, property owners are required to register with the city and pay an annual fee of \$600 for the time that the property remains unoccupied (dwellings of up to three units are exempt, as are agricultural properties). Properties on the registry are subject to regular inspections, the cost of which is funded in part by the registration fee. Owners who fail to register within 30 days of their property becoming vacant are subject to fines of at least \$10,000.

Since the by-law was passed, the City feels the registry has enabled them to take a much more proactive role in monitoring vacant properties (the by-law applies to both designated and non-designated buildings), which are now inspected “several times a year” (City of Hamilton, 2014, personal communication). Another benefit is that staff are now much more aware of the number of vacant properties within municipal boundaries; a report circulated just prior to the adoption of the by-law estimated that there were around 160 vacant properties in the city (City of Hamilton, 2010). However, by the end of 2010, approximately 200 properties had been registered on the

list and presently (at the beginning of 2014) there are now close to 400 buildings on the list (City of Hamilton, 2014).

There are two areas of concern with the Vacant Building Registry By-law with respect to demolition by neglect. Firstly, the by-law does not apply to buildings owned by the City of Hamilton. This is mostly a concern because of the potential for city-owned buildings to avoid going through the formal monitoring process in which the building condition is documented and recorded. City-owned buildings should be held to the same standard as all other buildings, though there is no oversight to ensure this occurs. Secondly, the by-law does not apply to buildings on land used for agricultural purposes. While this is a concern because of the high risk of demolition by neglect that these structures face, the exemption is understandable. Not only would the level of resources necessary to enforce the by-law be significant (due to additional travel time), but the primary motive behind enforcing the by-law – public safety – is of less concern in a rural environment. Instead, the City could consider requiring registration (at a considerably reduced fee) of designated heritage buildings, rather than all vacant buildings, that are unused and on agricultural property. The frequency of inspection could then be reduced to once per year or every other year.

Vacant building registries in other jurisdictions

Fee-based vacant building registration programs can be found in some municipalities in British Columbia, including Penticton and Port Alberni, but to date, no other municipality in Ontario has adopted the same approach as Hamilton, although the City of London has been considering the option (City of London, 2014, personal communication). The City of Welland, Ontario, administers a registry of vacant buildings, but does not charge property owners a fee for

enrolling on the registry. Property owners must make arrangements to have a municipal inspector visit the property every six months to ensure the property is secured in compliance with the by-law, and in the case of a designated heritage building, in compliance with “all other laws or by-laws respecting the property”¹⁷ (City of Welland, 2011). Inspection fees in Welland are determined on a case-by-case basis by the inspector.

Additional Vacant Building Registry (VBR) programs can be found in several cities in the United States, including Chicago, Minneapolis, and Milwaukee, but generally with more aggressive fee structures. The VBR programs of Minneapolis and Milwaukee both feature escalating fee structures, whereby the cost of registration increases every time the permit needs to be renewed (therefore, every six months), which is a strong disincentive towards allowing the property to sit unused (City of Minneapolis, 2013).

Similarly, the City of Winnipeg, Manitoba, uses an escalating fee structure for its vacant building board-up permit program. A previous version of the program applied to both residential and commercial properties, but as of 2010 the escalating fees apply to commercial properties only (City of Winnipeg, 2010). In Winnipeg, permits are required to board up a building, and the city charges a fee for the permit to do so, somewhat like a building permit. This type of fee structure would not be legal in Ontario, however, because the *Municipal Act 2001* does not allow permit fees to become sources of revenue. The City of Hamilton considered modelling their program after Winnipeg, but ultimately rejected the idea. If the permit fees were set at cost – the legally permitted limit – there would not be a major deterrent against leaving a building unoccupied for a long period of time (City of Hamilton, 2008). Under the current program,

¹⁷ Welland has not adopted enhanced property standards for heritage buildings.

Winnipeg inspects the buildings once annually, and charges according to whether any repairs notices are issued – another deterrent against allowing the property to fall into disrepair while it is sitting vacant (City of Winnipeg, 2010).

Enforcement of vacant building registry by-law

The City of Hamilton is confident that the registry is working well overall, but there were a few challenges associated with the by-law that the City had to confront shortly after its adoption. The number of buildings on the registry rose very quickly beyond what was anticipated, requiring the hiring of additional inspectors (City of Hamilton, 2011). Within the first 14 months the by-law was in effect, several citations were issued for failing to register a vacant property, though this was made difficult in several cases because the owners did not provide correct contact information. City staff also noticed many other property owners were trying to circumvent registration requirements by applying for a demolition permit, whether or not demolition was the actual intention (City of Hamilton, 2011).

Aside from these difficulties, the response has been positive from a heritage perspective. Communication between Hamilton's Municipal Law Enforcement (MLE) office and Heritage Planning staff is strong, and MLE provides regular updates on the inspection results of designated heritage properties. Currently, Heritage Planning staff are not kept informed of the inspection results related to listed heritage properties, but should there be a desire for this information to be shared in the future, the program is structured in a way that it would be possible (City of Hamilton, 2014, personal communication).

5.3. Incentive Programs

In addition to property standards by-laws, municipalities use incentive programs to encourage maintenance of heritage properties. A recent survey conducted in Burlington asked participants for their opinion on heritage issues, and a majority indicated that if property owners are required to conform to additional conservation standards, they deserve to receive compensation from the city (Foundation Research Group, 2012), a sentiment echoing the opposition to Brantford's proposed by-law. Incentives are permitted under the *Ontario Heritage Act* but the choice to offer them is at the discretion of each municipality. Langdale (2011) inventoried the municipal incentive programs in Ontario and observed three primary types of program: grants, property tax programs, and low-interest loans. Updated versions of Langdale's incentive program inventories can be found in the Appendix. All share a common goal of easing the financial cost of owning and maintaining heritage properties, but each type of program acts in a different way. While many municipalities have committed to offering a grant program and/or a tax rebate program, only three municipalities (Hamilton, Markham, and Windsor) offer all three program types.

Incentive programs are important because they demonstrate public support for the efforts of private property owners. However, several aspects of incentive programs can deter or prevent property owners from taking advantage of the available funds. Firstly, only properties that are designated under the *Ontario Heritage Act* are eligible for funding. This means that owners of properties listed on a municipal registry as having heritage value, but not designated, are unable to access the funds even if the costs associated with maintenance are the same, which is unfortunate considering many owners still want to retain their buildings' heritage value and keep them in a state of good repair. Although the potential to obtain funds has been demonstrated to be an effective method of encouraging property owners to apply for designation (City of

Peterborough, 2010), various prejudices and practicalities (as outlined in Chapter 2) prevent owners from seeking heritage status. Furthermore, failure to designate a building may actually be the result of municipal heritage staff having more pressing priorities or the belief that there is not a strong enough case for designation. Secondly, with the exception of the loan programs, the funds are only repaid upon submission of the final cost of the project. Heritage property owners must ensure their project qualifies for funding and complete the work before they receive a refund for the expense. Lastly, there is also the question of application forms and deadlines, for in order to receive the benefits, an application must be properly completed and submitted on time. Nevertheless, incentive programs remain an effective method of encouraging the care of heritage properties.

Grant programs

In Ontario, grants are the most widely offered incentive. Typically, the maximum amount falls between \$2,000 and \$5,000, although some municipalities offer higher amounts, particularly in cases where programs are directed at commercial properties. In all cases, funds are determined by matching a certain percentage of the cost of the project. Given the limited money available per applicant, grant programs are most beneficial for smaller projects, and are therefore targeted towards homeowners rather than commercial property owners in most cases.

Project eligibility for a heritage grant is subject to strict conditions. In nearly every case, routine maintenance and short-term repairs such as painting, replacing broken windows or making spot repairs of roofing and siding are not eligible for grants. Instead, grants are awarded for work to restore heritage attributes that have deteriorated beyond a state where a simple repair will address the issue. Municipalities are able to oversee the eligibility of work by requiring

owners to submit detailed receipts prior to forwarding the funds. Prioritizing larger restoration projects is the unfortunate reality of not having enough funding for everyone, and the impact of grant programs will vary depending on demand and the total resources available. Effectiveness will also vary based on other factors such as tenancy; Yakub's research in England determined that grant programs were more effective for owner-occupied properties than for tenant-occupied properties (1992).

Property tax rebate programs

Property tax rebate programs are relatively new in Ontario, being permitted by Ontario's *Municipal Act* only since 2006. The program is an initiative of the province, and the Ontario Government provides a portion of the rebate. The premise is that by refunding heritage property owners a portion of their property tax, they can use the money to offset the costs of maintenance, creating a situation that is revenue-neutral for the property owner. Most municipalities participating in this program offer the maximum allowed rebate of 40% (a limit set by provincial legislation). The dollar amount of the rebate will thus vary by property and municipality, but it is not insignificant; the City of Peterborough tracked the rebates paid to every participating property in their municipality and found that the majority received between \$1,000 and \$2,000 every year (City of Peterborough, 2011). For commercial properties in larger cities, the amounts can be much higher.

Property tax rebate programs have the explicit and direct impact of encouraging the maintenance of heritage properties. The provincial ministry mandates that municipalities must require property owners to enter into a Heritage Conservation Easement Agreement (HCEA) or similar contract in order to receive a rebate. The property owner commits to ensuring the

property is adequately maintained and, in return, the municipality will refund a portion of their annual property tax. Under an HCEA, municipalities are allowed to inspect a property to confirm it is being maintained and to take remedial actions if necessary to ensure its conservation.

Tax abatement and exemption programs

Two additional tax-based incentives for heritage property owners include tax abatement and tax exemption programs. Neither is designed to encourage routine care of the property, but they can help convince property owners to invest in a major rehabilitation project. Tax abatement programs allow property owners who have recently completed a significant renovation or restoration to receive a rebate on the increase in property taxes that resulted from the investment in the property. These programs are administered by a municipality and when offered, are usually not exclusive to designated heritage properties. Tax exemption programs do not exist in Ontario but they are used in other jurisdictions including Victoria, BC, which has been offering this type of program since 1998. Widely considered successful from both a heritage and economic perspective, the program facilitates the conversion of vacant or underutilized upper floors of commercial buildings into residential units in the downtown core by giving property owners a 10-year exemption on all municipal property taxes following the project (Barber, 2003).

Heritage loan programs

The third form of incentive program that municipalities use to encourage investment in heritage properties is providing access to funding in the form of a low-interest or interest-free loan. The maximum amount of the loan varies by municipality, ranging from \$15,000 to

\$50,000, and the term of the loan is generally set at five or ten years in length. Given the amount of funding awarded, loans are intended to assist property owners with larger restoration projects or structural work rather than general upkeep.

Other incentive programs

In addition to the three primary incentive programs, there are other ways that municipalities can help owners of heritage properties, but they are typically not designed to assist with routine maintenance. These programs can be very beneficial for heritage conservation overall, but in terms of preventing demolition by neglect, they are far less effective, since they are not targeted at the root causes of this particular heritage issue. For example, waiving development charges and permit fees for restoration projects can be a small (yet welcome) gesture, but it will have no effect on encouraging maintenance, as small repairs and general upkeep do not require a permit in the first place. Neglected buildings requiring major rehabilitation would benefit much more from this type of program. Similarly, reduced parking requirements for heritage buildings are another method used to discourage demolition, but they do not address the maintenance of the building.

Table 2: Summary of Approaches Used to Prevent Demolition By Neglect in Ontario

| Municipality (listed in order of population) | Property Standards By-law (occupied) | Property Standards By-law (vacant) | Vacant Building Registry | Grant Program | Tax Program | Loan Program |
|--|---|---|--------------------------------|------------------|----------------|-----------------|
| Toronto | ✓ | ✓ | | ✓ | ✓(R) | |
| Ottawa | ✓ | ✓ | | ✓ | | |
| Mississauga | ✓ | ✓ | | ✓ | | |
| Brampton | | ✓ | | ✓ | | |
| Hamilton | ✓ | ✓ | ✓ | ✓ | ✓(A) | ✓ |
| London | ✓ | ✓ | | | | |
| Markham | | | | ✓ | ✓(R) | ✓ |
| Vaughan | ✓ | ✓ | | | | |
| Kitchener | | ✓ | | ✓ | ✓(R) | |
| Windsor | ✓ | ✓ | | ✓ | ✓(R) | ✓ |
| Richmond Hill | | | | ✓ | | |
| Oakville | | | | | | |
| Burlington | ✓ | ✓ | | ✓ | | ✓ |
| St. Catharines | | | | ✓ | | |
| Cambridge | | | | ✓ | | ✓ |
| Kingston | ✓ | ✓ | | ✓ | ✓(R) | |
| Whitby | | | | | ✓(R) | |
| Guelph | | | | | ✓(R) | |
| Chatham-Kent | | | | | ✓(R) | |
| Waterloo | ✓ | ✓ | | ✓ | | |
| Brantford | | | | | | |
| Peterborough | | | | | ✓(R) | |
| Sault Ste. Marie | | | | ✓ | ✓(R) | |
| Caledon | | | | ✓ | | |
| Cornwall | | | | | ✓(R) | |
| St. Thomas | | | | | | |
| Stratford | | | | | ✓(A) | ✓ |
| Owen Sound | | | | ✓ | ✓(R) | |
| Collingwood | ✓ | ✓ | | | ✓(A) | |
| Coburg | | | | | ✓(A) | ✓ |
| Niagara-on-the-lake | | | | ✓ | | |

A = Tax abatement program, R = Tax rebate program

6. Case Studies

Three buildings have been selected for case studies to explore the real-world application of heritage policy in Ontario. All three cases involve commercial properties located in a large urban centre (two in Hamilton and one in Toronto), a property type that puts them at a higher risk of becoming victims of demolition by neglect in light of the prevailing economic environment of the past five years. The projects were also selected based on the availability of staff reports and news articles chronicling their history, allowing for a more thorough analysis of the sequence of actions taken by the various stakeholders involved. However, while there are some similarities between each of the case studies, the lessons that can be taken away from each situation are different. Each one of the examples explored in this section offers important insights into the critical factors that lead to positive (and negative) outcomes in cases of demolition by neglect, and can help to provide other municipalities with possible options to consider if they find themselves in similar circumstances.



Figure 1 - Century Theatre, Hamilton (Source: Kowalewicz, B. (n.d.))

6.1. Century (Lyric) Theatre, Hamilton, Ontario

The Century Theatre was demolished in 2010 after a long period of deterioration. Originally built in 1913 as the Lyric Theatre, this renaissance revival-style building hosted both stage performances and movies until the popularity of film eclipsed that of live performance in the 1940s. Extensive renovations were made at this time, including the installation of a screen and air conditioning to attract the new audience, and the Lyric (now renamed the Century Theatre) screened movies until it closed in 1989 (Henley, 1992). City Council designated the façade

under the *Ontario Heritage Act* in 2001, for being a fine example of 20th century theatre architecture. The building was one of a number of movie houses in downtown Hamilton, several of which had already been demolished at the time the Century Theatre received its designation. Though it was not the most outstanding in terms of architectural quality, the Century Theatre was the largest of the theatres and it had the most celebrated history, making its loss especially significant (Elliot, 2010).

In recent years, old theatre houses in particular seem to have faced increased threats of demolition, both in Hamilton and across the country. The Tivoli Theatre in Hamilton is one example; redevelopment plans that include some restoration work were recently announced for the property although much of the building has already been demolished, including a large portion of the interior, which collapsed in 2004. Other theatres have not been as lucky; both the Pantages Theatre in Vancouver and the Seville Theatre in Montreal were demolished in 2010 after long periods of neglect, and the Paramount Theatre in Chilliwack, BC was demolished in 2013 following similar circumstances. All of these examples point to the general difficulty of adapting a building type that has become largely obsolete and not readily converted to new uses.

The deterioration of the Century Theatre was very typical for a case of demolition by neglect. According to John Johnstone, one of the owners who bought the property the year after the theatre closed, the property was not well cared for and was already in a deteriorated condition (O'Reilly, 2010b). It remained vacant and unmaintained throughout the 10 years that it was owned by Johnstone and his partner once their initial redevelopment plan fell through due to high costs. In 2000, the building was sold to Zoran Cocov and the company Lyric Century Apartments Inc., who had the intention to redevelop the property into residential units. Shortly after the purchase, a section of the roof collapsed and water began to enter the building causing

damage to the interior. Contrary to a 2007 staff report, which stated that there had not been any property standards complaints since at least 2001, when the building was designated (City of Hamilton, 2007b), local residents argued that several complaints had been made against the building but nothing was done about them (O'Reilly, 2010a); however, once additional concerns were raised by an engineering report about the structural integrity of the façade, the City of Hamilton immediately ordered the building to be demolished and the former theatre was torn down in 2010 (O'Reilly, 2010b).

Lessons

The case highlights the challenges of assigning responsibility for deterioration when a property has changed ownership several times over the course of its life. In the case of the Century Theatre, the most recent owner (Cocov/Lyric Century Apartments) bought a property that was already in need of urgent, remedial work, though the intention even at that time was only to keep the façade (O'Reilly, 2010b). The failure to immediately stabilize the structure resulted in the partial collapse of the rear of the building and likely contributed to the eventual instability of the façade, which was declared unsafe by City officials in 2009 and subsequently demolished. Had the City known about the state of the building earlier, they would likely have ordered an immediate structural assessment, and it is also possible that they would have assumed control over the building. Municipal staff do try to follow transactions of heritage properties to the extent they can in order to reach out to new owners, but overall it is too difficult to monitor every resale (City of Hamilton, 2014, personal communication).

The case also has implications regarding the effectiveness of property standards by-laws. Hamilton was one of the early adopters of an enhanced property standards by-law, with city

council passing the legislation in 2008. While the by-law was under consideration, staff noted its potential to help avoid occurrences of demolition by neglect (City of Hamilton, 2007b). The report noted that the Century Theatre was one of ten vacant heritage properties at the time, though no explicit concern was expressed in its regard because it was included in a group of buildings that, while vacant, were “subject either to minimal maintenance, undergoing renovation or [were] subject to a variety of building permit, site plan control or other planning approvals, or [were] the subject of active fund raising efforts” (2007b: 6). City officials interviewed at the time of the demolition claimed to have had no knowledge of the earlier collapse of the roof, which would explain why no Property Standards Order was issued (O’Reilly, 2010b). However, it does point to the inadequacy of the complaints process and the ways in which vacant buildings were monitored at the time. City staff interviewed by the *Hamilton Spectator* admitted that the failure to execute any thorough property inspections might have contributed directly to the loss of the building. Inspections were done primarily from the outside, and would not have highlighted the deterioration occurring at the roof and rear of the building (O’Reilly, 2010b). It is not only the inspections that were inadequate; a staff report from 2008 notes that up to that year, “non-complied with Property Standard Orders in Hamilton have, for the most part, been left 'registered on title' and not fully enforced” except in the case of the sale of the property (City of Hamilton, 2008). Based on this information, it is quite probable that had any Orders been issued there would have been no follow-up, since the Century Theatre did not change ownership in the 10 years prior to its demolition. Another staff report from 2010 also acknowledges that with the exception of blatantly unsafe properties, the inspections primarily addressed issues related to securing the building from trespassers rather than building

condition (City of Hamilton, 2010). Adopting an enhanced property standards by-law is therefore no guarantee that buildings will not suffer demolition by neglect.

The City of Hamilton began to explore the possibility of creating a Vacant Building Registry in 2008. Officials realized that even if a vacant property is secured against entry, it does not guarantee public safety because the building can continue to deteriorate unbeknownst to inspectors viewing it from the exterior. Implementation of the vacant building protocol began in mid-2009 as a pilot project and was found to be effective against the continued deterioration of buildings. Unfortunately, as the case of the Century Theatre shows, there were problems with the inspections even at this time; otherwise the state of the Theatre would have become known to the city. The Vacant Building Registry By-law was adopted by City Council in October 2010, approximately 8 months after the Century Theatre was torn down. Had it been in place a few years earlier, the Century Theatre might have been saved.

Finally, the difficulty of the developer in obtaining financing is also one of the key issues in this case. It demonstrates that even where a developer may be interested in the rehabilitation of the building, a lack of initial capital can be a major roadblock, preventing the project from moving forward. The Lyric Century Apartment project had been approved for low-interest loans (worth over \$1 million) through a downtown residential renewal program offered by the City of Hamilton, but after years of inaction, the offer of funding was revoked. This demonstrates that incentive programs on their own are not necessarily sufficient for saving buildings from demolition by neglect.



Figure 2 - The Lister Block, Hamilton (Source: Kingsmill, A., 2012)

6.2. The Lister Block, Hamilton, Ontario

In many ways, the Lister Block could be considered the poster project for rehabilitation after neglect. Surviving decades of mistreatment and repeated calls for its demolition – from citizens and city council members – it was fully rehabilitated in 2012, putting an end to the controversy and arguments surrounding its continued existence. Many people disliked the building, as they felt it represented the worst of Hamilton’s urban decay, while some went even further and claimed the building was the cause of the decline of Hamilton’s downtown (Werner, 2006). In 2006, over 1,200 people signed a demolition petition that was presented to City Council. Others felt that the building deserved another chance at life, considering its architectural value and its key location in the downtown core.

Construction on the Lister Block began in 1923, soon after a previous building on the site was destroyed by fire; the new Lister Block opened for business the following year. The Lister Block, comprising three buildings, was named after its builder Joseph Edmond Lister, who was the son of the merchant who had constructed the original building on the site. The main building of the three, a six-storey structure constructed entirely of reinforced concrete, featured an exterior of brick and glazed terracotta. A shopping arcade lit from above by skylights was a feature on the first floor, and offices were located on the upper floors.



Figure 3 – Lister Block - Interior before restoration (Source: Steele, R., 2006)



Figure 4 – Lister Block - Ground floor arcade, present condition (Source: Davidson, J. F., 2014)

Sixty years after it reopened, serious concerns were raised about its condition after a portion of the building collapsed onto the sidewalk in 1984 (Reilly, 2011). However, the building managed to stay open for another five years until a Toronto-based development company purchased the property and the remaining tenants were evicted. The building was technically vacant from 1989 on, but many complaints were made over the years regarding vandalism and vagrancy. In 1995, Hamilton City Council designated the building under the *Ontario Heritage Act*, and over the next 10 years there were numerous development proposals that raised peoples' hopes, but which ultimately failed. Among them was a 2005 plan supported by the City of Hamilton, in which they would become a long-term tenant in a redevelopment scheme that required the demolition of the block. At the behest of a concerned and vocal group of citizens (a group which included a city councillor), staff members at the Ontario Ministry of Culture and the Ontario Heritage Trust monitored the situation and made their own investigations as to the potential designation of the building at the provincial level. Once Hamilton City Council moved

to vote on the demolition of the building, the province intervened and requested that approval of the demolition permit be deferred to allow time for more discussion, an action that ultimately gave the building a new life.

As with the Century Theatre, the failure of the city to enforce its own property standards was a key issue. In an interview with the *Hamilton Spectator*, the city's building and licensing director stated in 2006 that officials were concerned that had they tried to pressure the property owner to comply with property standards, the owner would have likely responded by tearing the buildings down. This concern was not wholly unjustifiable, as prior to the amendments of the OHA, enforcement orders would consist of a "repair or demolish" notice – even for heritage buildings – thereby providing the property owner with a legal excuse to tear down the building. Supporters of the building, who had been actively campaigning to save the building by distributing flyers and by hosting public presentations, achieved a significant victory in 2006 when the provincial Ministry of Culture and the Ontario Heritage Trust stepped forward and began to take part in the discussions regarding the building's future. The Ontario Heritage Trust determined the building held provincial significance, and the Ministry of Culture, in a rare move, offered financial support for the project to help with rehabilitation costs. The province also supplied a mediator to lead a multi-disciplinary committee with the aim of establishing more constructive dialogue between the different stakeholders. Together, this group created a redevelopment plan that not only ensured the building would be fully restored, but that also addressed the interests of each party. The whole block was still vacant in 2008 when several floors in one of the secondary buildings collapsed, causing a temporary evacuation of the area; shortly thereafter, the remainder of that building was torn down. Rehabilitation efforts on the

main building began in earnest not long after the incident, and since reopening in 2012, the Lister Block is now understood to be one of the key symbols of downtown Hamilton's revival.

Lessons

The rehabilitation of the Lister Block relied on several important and interconnected factors: strong grass-roots advocacy, a project steering committee comprising members of the community and the development team, and perhaps most critically, government support (both politically and financially). However, while the end result is a success, it must be kept in mind that it only came after the city failed by allowing a building to collapse, an event which caught officials rather off guard, as they had not realized the extent of the deterioration. The collapse highlighted the need for increased inspections to ensure the property standards by-law was being met (Burman, Macintyre & Nolan, 2008), and was a catalyst behind the City's development of the Vacant Building Protocol, which eventually became the Vacant Building Registry. However, less than two years later city officials were facing a similar situation when they received the report outlining the derelict condition of the Century Theatre, indicating that the collapse at the Lister Block was not enough to incite a complete overhaul of property inspection practices to that point.

The restoration of the Lister Block would not have been possible without the tireless advocacy of a group of community members, who were able to gain the support of the provincial Minister of Culture. The Minister of Culture then requested that the Ontario Heritage Trust (OHT) report on the heritage value of the building. The OHT uses eight criteria to determine if a building has provincial value, and the Lister Block was found to meet two: it demonstrates a theme or pattern in Ontario's history and an uncommon or rare aspect of Ontario's cultural

heritage (Ontario Heritage Trust, 2006). The recognition of the Lister Block as a building of provincial significance, along with a \$7 million dollar contribution conditional on the restoration of the building, ultimately tipped the balance in favour of rehabilitation instead of redevelopment. Supporters of the building were fortunate in several respects, not least is the fact that the building was recognized to have value beyond the local scale. Secondly, the ability of the province to designate the building is a new power under the 2005 revisions to the *Ontario Heritage Act*, and had this situation played out only a few years earlier, the outcome may have been very different – even with the amount of energy that supporters poured into the multitude of letter and poster campaigns, public presentations, and demonstrations. Unfortunately, the momentum that the group generated seems to have since faltered (Barnes, 2014), echoing an observation that broad community engagement on heritage issues is rarely a sustained effort (Cofresi & Radtke, 2003).

The formation of a project steering committee, an approach unique to the Lister Block project, was initiated once Hamilton City Council agreed to halt the approval of the demolition permit. Once the province became involved in the project by determining the building was of provincial significance, they assigned a mediator (officially titled a “provincial development facilitator”) to help the opposing sides come to an agreement at the suggestion of then-mayor Larry Di Ianni. The provincial facilitator chaired a multidisciplinary working group comprising stakeholders from both the public and private sectors including a historian, a local architect, a representative each from the HHF (Hamilton Heritage Foundation) and the ACO (Architectural Conservancy of Ontario), representatives from the owner (LIUNA) and developer (Hi-Rise Developments), the general manager of the downtown BIA, a local councillor, the mayor, and the city’s Director for Real Estate and Development (Wells, 2006). The working group also conducted site visits and

brought in experts in conservation architecture to advise the group. Meetings were held regularly between June and September 2006 and they became a forum for participants to discuss the issues and views of those involved, find common ground, and make the compromises that were necessary for the project to move forward. The output from the group was a rehabilitation plan that formed the foundation of all decisions made thereafter on the project.

That the working group was able to bring about a transition in the developer from their wanting to demolish the building to their being fully invested in its rehabilitation is significant. The owner (LIUNA) had previously been involved in some restoration projects, so it was a surprise to some that their initial intention was to demolish the building (Crawford, 2012). Their motivations behind the project were, understandably, to limit costs and make a good return on investment. The motivations of the City were broader: to create a space that could accommodate the City as a tenant of the building, to stimulate downtown revitalization, and in the words of the mayor, to “fix a long-standing eyesore in the core” (Di Ianni, 2012: 2). The heritage community wanted the building to be rehabilitated. The forum of the working group allowed everyone to discuss alternative solutions and ultimately come to a resolution that satisfied everyone. As a result of the comprehensive rehabilitation plan, any setbacks that arose during construction were generally related to non-heritage issues. The agreement between the parties and the creation of the rehabilitation plan marked a turning point in the way people involved in the project felt, which is evident in a comparison of news articles written before and after the work had begun. In 2004, a representative of the developer was quoted as saying “there’s no way of saving it” (McGuinness, 2004), but by 2011 the developer was wholeheartedly agreeing that the effort was worth it, saying, “it’s hard to put a price on [protecting your heritage and your past]” (Reilly, 2011).

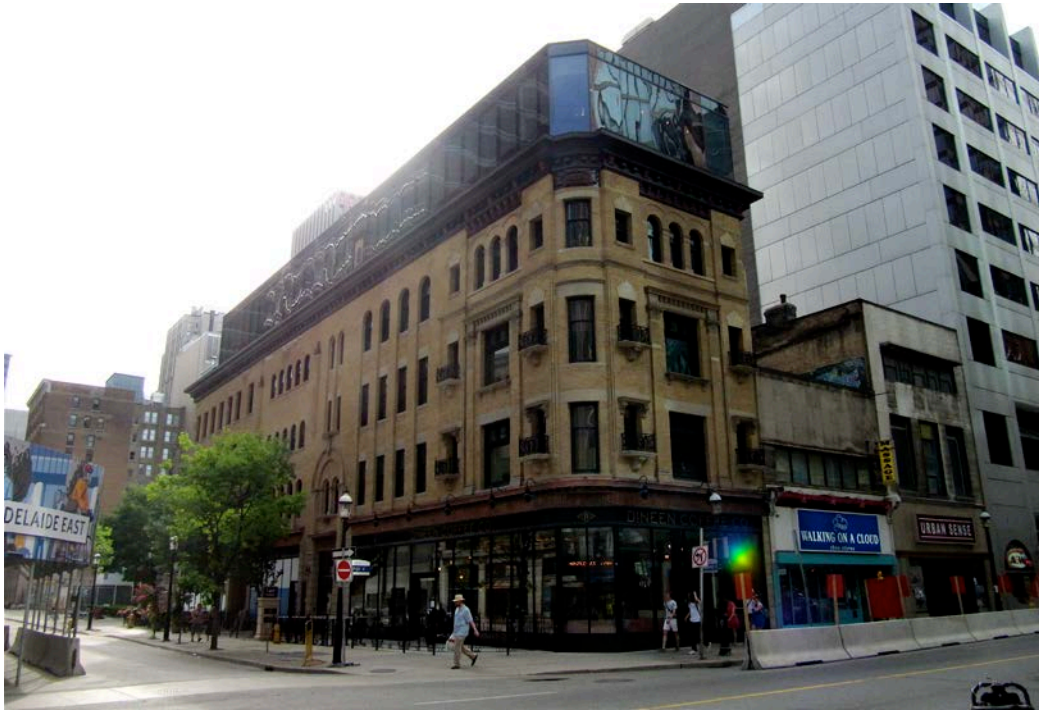


Figure 5 - Dineen Building, Toronto (Source: Albinger, S. M., 2014)

6.3. Dineen Building, Toronto, Ontario

The Dineen Building was built in 1897 on a prominent site on Yonge Street in downtown Toronto. The original tenants, the W. and F. Dineen Company, produced hats and furs in the renaissance revival-style building, which in addition to their workshop, also contained a retail showroom and offices. Over its lifetime, several renovations detracting from the heritage character of the building were done to the interior of the ground floor, but both the exterior and the upper floors of the four-storey structure retained the majority of their heritage attributes.

The building was listed on the City of Toronto's Inventory of Heritage Properties 1973, but designation was not considered by council until an application was made to demolish the building in 2007 (City of Toronto, 2007a) in a classic example of acting reactively, rather than proactively. The proposed designation by-law was passed by city council in 2009, preventing

the demolition from proceeding. Although the upper floors were in a particularly poor and unsanitary condition due to the complete lack of maintenance conducted by the property owners, the building continued to host a mix of commercial tenants on the ground floor until 2012, when restorations began (Kidd, 2012). Despite the overall degradation of the building, the location is so desirable that the property was able to fetch a selling price of \$7 million dollars in 2011 (Gheciu, 2012). The developer immediately assembled a project team and began cleaning the exterior masonry within months of purchasing the building, during which time commercial tenants were found to occupy it once renovations were complete. The rehabilitation was planned with the new tenants (a co-work company, a restaurant, and a coffee shop) in mind, accelerating the construction timeline, and the building reopened in early 2013, roughly one year after the work commenced.



Figure 6 - Dineen Building, prior to restoration (Source: Krawczyk, B., 2010)

The type of neglect suffered by the Dineen Building is common for commercial properties in larger cities where development pressures are quite high, and Toronto is currently experiencing a sustained period of major growth. If a property owner can continue to make money from a building even though it is in poor shape, (s)he may feel that any money spent on repairs would essentially be wasted – particularly in prime redevelopment locations where land parcels have the potential to be zoned for much greater density (Kidd, 2012). An article in the *Toronto Star* notes that several areas of Toronto are experiencing this type of neglect, including Queen Street West and Yonge Street south of Bloor (Kidd, 2012).¹⁸ Instead of hosting a single dilapidated building in an otherwise well-kept neighbourhood, these areas are experiencing a more collective state of disinterest, and the buildings in the worst condition are not as readily distinguished. For properties in these types of situations, restoration depends on a developer willing to shoulder the financial risk in the hopes of making a profit.

Toronto City Council adopted an enhanced property standards by-law in 2007 shortly after the collapse of Walnut Hall, Toronto's most infamous case of demolition by neglect. Similar to most other municipalities, property standards investigations in Toronto are only conducted on the basis of receiving a complaint (or two or three). As the discussion on property standards enforcement in Chapter 5 shows, the condition of the Dineen Building, while certainly neglected, was probably not serious enough to have warranted any major enforcement action.

¹⁸ A quick search through the City of Toronto's Investigation Activity database reveals that three buildings on this short section of Yonge Street have been issued property standards orders within the past two years, one of which was out of concern of structural collapse. The story along Queen Street is similar: of 53 Property Standards orders issued in the past two years, 4 cited concerns of excessive deterioration or potential collapse of the roof and/or walls. This is particularly concerning, as 2 of these cases of extreme disrepair are located within the Queen Street West Heritage Conservation District, and would therefore be subject to the enhanced property standards for heritage buildings.

Lessons

The restoration of the Dineen Building is notable because the developer, Clayton Smith of Commercial Realty Group, chose to keep more than just the façade of the building – unlike a large number of other projects in the city. Smith is known around Toronto as the owner of several heritage properties, but the Dineen Project was the first building on which he undertook a major rehabilitation. Being the owner of other heritage properties and having the ability to appreciate the qualities and craftsmanship of older buildings certainly played a major role in the outcome of the building. A property owner that is not at all sympathetic to heritage would neither understand the motivation nor be willing to spend the amount of money that it takes to do seemingly superfluous work. For example, on the Dineen Building, the developer was more than willing to reconstruct the upper cornice that had disappeared at some point in the building's history using old photographs. However, even a person like Clayton Smith who owns a number of heritage properties is not necessarily familiar with the policies and procedures that must be followed to obtain the proper approvals, which can be a major challenge to many property owners. As is typically the case, Smith relied on his team of consultants to successfully guide the project through the permitting process.

The location of the building is also noteworthy, as it is in the heart of Toronto's commercial core, surrounded by soaring office towers and condo developments. Its prime real estate site, the selling price, and the fact that numerous other development projects were happening in very close proximity to the building were all cited as reasons why the Dineen Building was noticed over many of the other buildings that are still waiting for their turn to be restored (Smith, Shoalts & Hoad, 2013).

The original scheme focused on renovating the interior, cleaning the exterior masonry, and reconstructing the cornice. Partway through the project, the developer was approached by a third party who had the idea of building an addition on the roof, and after conducting a quick financial analysis the project team decided that an additional floor was necessary to increase the profitability of the project. Obtaining approval of the alteration from heritage services was not a major hurdle for the development team. The staff report recommending the approval of the application indicated that the modifications to the building were a necessary compromise for the project to continue and emphasized that the change in overall massing and appearance would be minimal (City of Toronto, 2012a). There was some discussion between heritage preservation services staff and the design team regarding setbacks and material selection, but on the whole the project was expedited through the approvals process. The willingness of the developer to restore so many of the heritage features of the building (including the reconstructed cornice) appears to have increased support for the project among heritage staff; this is evident in the language used in the report, which expresses the sentiment that the project would “set a high standard for future conservation projects in the city” (City of Toronto, 2012a).

The project team was able to restore virtually every aspect of the building, with the exception of two features: the windows, and some areas of the exterior masonry (Smith, Shoalts & Hoad, 2013). Due to budgetary restraints, some of the repointing and replacement of the brick exterior was deferred for a few years. Conversely, the windows were replaced. New double-glazed windows were installed in place of the original wood sash windows and frames in an example of one of the very few ‘conflicts’ between heritage and sustainable design. While heritage and sustainability goals very often go hand in hand, many property owners view old windows as a major drain on energy and they are very often one of the first heritage features to be lost; the

Dineen Building is no exception (though as a consolation the new window frames are at least of wood rather than vinyl).

Another noteworthy factor is that while the building appeared to be in poor condition at the time of purchase, it had not yet reached a critical point of structural failure (like the Century Theatre). Intervention and restoration occurred before valuable heritage attributes were lost (with the exception of the cornice) and as a result, the restored building is full of unique features. Project team members indicated that the building's derelict appearance was largely due to the fact that the masonry was extremely dirty and discoloured, so one of the first steps the development team took was to properly clean the interior and exterior of the building to actually determine the necessary scope of work (Smith, Shoalts & Hoad, 2013). In interviews, the developer commented that he had been interested in the property for some time before making the offer to purchase it (Gheciu, 2012). Knowing the majority of investors would be deterred by both the condition and the heritage designation gave him more time to consider the financial feasibility of the project.

Finally, though perhaps most importantly, one of the primary sentiments expressed by the developer in a presentation at the 2013 Heritage Canada Foundation Conference was the value of time. The building was purchased in November of 2011, and less than two months later, tradespeople were already on site working on the exterior masonry, which is an extremely accelerated timeline. Staff in heritage preservation services were credited for their support throughout the approvals process and for not causing any delays (Smith, Shoalts & Hoad, 2013). Since rehabilitation projects of designated heritage properties are subject to extra scrutiny, the approvals process can take additional time, though it was decidedly not the case with this project. Finding ways to streamline the process for these projects can help to remove some of the risks

associated with conservation, particularly in municipalities like Toronto that receive a high volume of development applications. The lower the risk to develop, the greater chance that more will be willing to undertake a rehabilitation project. Rehabilitating a building before it reaches a state of excessive deterioration (or preventing it from occurring in the first place) and reducing the length of time it takes to complete the project are therefore two key ways that a municipality can lessen the risk to developers.

7. Analysis and Recommendations

The previous chapters of this paper identified a number of strategies that Ontario municipalities are using to prevent demolition by neglect and presented some preliminary evidence on how they are employed in different cities. The ideas and issues raised throughout the policy review and the case study research are synthesized here in a series of recommendations to policy makers and practitioners.

7.1. Disincentivize demolition

Demolishing and rebuilding has been the standard approach to redevelopment in North America for decades. Reversing the trend requires changing the way people think about their built environment and how cities are governed. Amending the *Ontario Heritage Act* to allow municipalities to prevent demolition is a significant step in this regard, but more could be done. For instance, provincial regulations could be revised to discourage developers from producing high volumes of waste or to charge higher fees for construction waste disposal. If the disincentives were strong enough, building reuse would become a more cost-competitive option for developers and property owners, indirectly benefiting the cause of heritage conservation. The less desirable it is to demolish a building, the more incentive there is to maintain the building in a good state of repair. However, compared to overall project costs, waste disposal fees would have to be increased significantly to have any major effect on reducing demolition rates. Furthermore, dramatically increasing the fees would likely result in a corresponding increase in negative effects such as illegal dumping, which in turn could lead to reduced rates of recycling used building materials, or more attempts to avoid obtaining a heritage permit.

In addition to changing regulations, reframing the goals and direction of provincial policy could also be useful. Since the decisions of the Ontario Municipal Board are informed in part by provincial policy, strengthening the provincial language on the issues of heritage conservation and demolition could decrease the likelihood that the OMB would approve demolition if a case were to be brought in front of it. Direct provincial intervention, although it can be necessary in cases where municipal governments do not act to protect their heritage resources (as was the case for the Lister Block), is not recommended as a general strategy. Repeatedly overstepping the authority of municipalities to determine matters of local interest is likely to build friction and lead to resentment from municipal councils.

As explained in Chapter 4, municipal councils most often determine the fate of heritage buildings. Therefore, if municipal governments take on a leadership role in discouraging demolition, the results would be immediately positive. The case of Hamilton illustrates this effect as it has had an infamous reputation in Ontario due to the demolition and near-demolition of several buildings, the Century Theatre and Lister Block among them. Recent actions taken by the City suggest that their attitude is changing. In December 2013, Hamilton City Council gave heritage designation to a row of buildings in the downtown core that was the subject of a demolition application – the first designations approved by Council since 2008 (McGreal, 2013). Other positive efforts include the listing of nearly 70 buildings on the municipal register, allowing greater oversight in case demolition applications are made, and the initiation of a heritage inventory of the downtown area (Erskine, 2013). Changes are also evident in other areas of city administration, for example through proactive inspections necessitated by the Vacant Building Registry. However, considering that heritage property standards by-laws and

incentive programs apply only to designated buildings, the slow pace of conferring heritage status upon at-risk properties remains a serious obstacle to more robust protection.

The apparent change in municipal attitude in Hamilton can be observed by conducting a media review of recent years. A simple search for the phrase ‘demolition by neglect’ in a database of Canadian Newspapers brings up articles from across the country, including several recent articles from British Columbia and Alberta. When the results are filtered to include only papers published in Ontario, articles from Guelph, Ottawa, and Toronto dominate the results for articles published since 2012. Looking further back, the results become more varied; articles from Hamilton, Kitchener and Windsor also appear in the mix. While this is not a scientific method of determining where demolition by neglect is happening, the results are telling and do seem to suggest the efforts Hamilton has been making have reduced incidences of demolition by neglect reported by the media. Municipalities that continue to have higher rates of media reports have either adopted a heritage property standards by-law very recently, as is the case in Ottawa, or, like Guelph, continue to do without. Toronto has had a property standards by-law since 2007, but continues to struggle with a handful of properties, perhaps indicating a deficiency in monitoring properties or in the enforcement of the by-law.

Another way that municipalities can discourage demolition is to place a limit on the length of time the site can remain vacant, or require a redevelopment proposal to be submitted along with the demolition application. This prevents older buildings from being torn down prematurely for reasons of speculation or to save on taxes, since vacant lands are generally taxed at a lower rate than commercial or residential properties. The longer a building can remain standing, the greater the chance that someone will recognize a potential opportunity and obtain the necessary financial support to undertake the project. Lastly, as de Bled (2007) notes, creating more flexible building

codes and parking requirements, as some jurisdictions have done (for example Toronto and Vancouver both ease parking requirements for designated heritage buildings), is a potentially effective way to retain older buildings, by way of removing reasons for property owners to demolish rather than rehabilitate.

7.2. Capitalize on the power of compromise

Being open to compromise and alternative ways of approaching restoration projects was a topic that emerged from the interviews and evaluation of the case studies in both Hamilton and Toronto. The introduction of the project steering committee in Hamilton is one example of how reframing the discussion helped establish common ground and develop consensus among stakeholders, while the Dineen project stands as an excellent example of compromise between achieving heritage objectives (restoration of the building) and profitability (rooftop addition).

Something else that emerged related to the theme of flexibility and compromise was the determination of whether to repair or replace a deteriorated architectural feature. According to most heritage property standards by-laws, it is prohibited to replace an architectural feature that is repairable. However, few of the by-laws explicitly identify who ultimately has the authority to make the decision. This vagueness allows municipalities to choose how closely they want to monitor each project case-by-case without setting unintended precedents, but the same general process is followed each time. The property owner and their consultant(s) will come to a decision based primarily on costs and municipal heritage staff will either approve the decision or reject it. In practice, this generally means that if something costs more to repair than to replace, then replacement will be the preferred course of action. Most of these decisions are made early and will be outlined in the scope of work of the heritage permit. Once a restoration project

receives heritage approval, there is often little further involvement of heritage staff. Recognizing when to compromise to reduce bureaucratic barriers, real or perceived, can foster more cooperative relationships with property owners and allow for more constructive dialogue to occur.

7.3. Expand incentive programs

Currently, only one of the three types of incentive programs (property tax rebates) directly supports ongoing maintenance efforts for heritage buildings. In many instances, however, the implementation of these programs could be improved from the perspective of the property owner, for example by reducing the paperwork required to receive the rebate after the initial application has been approved. Some municipalities already offer multi-year applications, and those that do not should consider automatic renewals provided the property passes an annual inspection. The province should also consider giving municipalities the choice of offering the rebate, or even a partial rebate, to owners of properties listed on a municipal register. However, given the considerable amount of money that would be removed from a municipality's income stream, this is unlikely to happen in the near future, especially since some programs (including those of Toronto and Windsor) are currently under review and may cease to be offered.

More municipalities should also be encouraged to offer low-interest loan programs as some already do. Since financing can be difficult to obtain for restoration projects, assisting developers and property owners with surmounting the initial hurdle of undertaking such projects can make the difference between rehabilitation and the continued deterioration of the building. Given the amount of resources and additional administration that this type of program requires, few municipalities offer it. However, the number seems to be increasing: in the three years since

Langdale's original research, two more municipalities (Windsor and Cambridge) were found to offer a program in addition to the four municipalities (Hamilton, Markham, Burlington, and Coburg) that offered loan programs in 2011. The ease of accessing information about loan programs also appears to have improved in recent years. In her 2011 study, Langdale noted the difficulty in obtaining information pertaining to loan amounts, but when municipal websites were revisited to confirm the continued existence of each program at the time of writing, the information was readily available. Increased accessibility is a very positive development, as it will no doubt allow a greater number of property owners to access financial resources.

As rapid growth continues to change the landscape of our large urban centres, innovative approaches may be required to help owners of heritage properties under pressure from surrounding development. New development that is out of scale with the surrounding building stock can fuel dramatic increases in property values. While municipalities have an interest in seeing property values appreciate because of increased tax revenue, this can be a threat to heritage buildings because they are more limited in how they can adapt to generate more revenue. Tax credits and incentive programs for property owners experiencing these circumstances can help reduce the pressure on them to redevelop.

7.4. Give citizens more voice

Maintaining public support for heritage conservation requires professionals and municipal councils to include the opinions of concerned citizens in discussions and provide meaningful responses to comments received. Public consultations are currently only required prior to the designation of Heritage Conservation Districts, but in some cases consultation may also be warranted for major rehabilitation projects. Such a process could help find alternative solutions

and compromises for particularly contentious projects, like the working group was able to do with the Lister Block, and allow the public to feel empowered to make decisions that impact their communities.

A similar working group was formed in Toronto in response to another controversial heritage issue. The Ontario Capital Precinct Working Group (OCPWG), comprising primarily local architects and residents' associations, was created in 2011 in response to the OMB's approval of a condominium development that would diminish the integrity of the currently unobstructed view of the Ontario Legislative Assembly Building. While there was nothing that could reverse the approval of the project (remember that all OMB decisions are final) the working group was successful in meeting with the City of Toronto to bring about an Official Plan Amendment to strengthen policy regarding the views of the building (City of Toronto, 2012b).

Increasing the opportunities for the public to voice their opinion would help improve the quality of dialogue on heritage issues and could help to avoid situations of miscommunication or cases where the public chooses to bypass local authorities and appeal to higher levels of government. Residents of Ontario communities currently have little recourse if city councils vote against popular opinion. In Hamilton, community members appealed to the province and were fortunate to receive an unambiguously positive response. In St. Thomas, residents tried to convince the OMB that an agreement between council and the developer of Alma College was against the public interest but only achieved partial success. While the Board disagreed with the decision to allow the building's main tower to be demolished, the obvious importance it held to local residents was not enough to save the structure; the decision stopped at recommending its preservation rather than ordering it. If advocacy efforts are routinely met with indifference or are

not acknowledged, the current disconnect in Ontario between citizens, elected representatives, and built heritage will continue to widen (Hill, 2012).

7.5. Don't underestimate communication and education

One of the primary findings that came out of the research was the potential impact of communication of property standards issues. The majority of the issues identified by municipalities were resolved without issuing formal Orders or litigation. This research corroborates the findings previously noted by others (Valverde, 2012), and demonstrates that informal communication is a widespread phenomenon.

Another recurring theme is education. While it has been argued in the academic literature that increased education of property owners is essential for creating a climate beneficial to conservation efforts (de Bled, 2007, Shipley & McKernan, 2011), few specific examples of programs have been brought to attention, let alone evaluated for their effectiveness. Presently, the Ontario Government produces a series of brochures to help property owners navigate the legal framework surrounding heritage designation, but there continues to be a lack of materials summarizing established protocols and best practice guidelines for heritage maintenance and care. A recommendation from a heritage advocacy group (Maintain our Heritage) in the UK to establish a web-based repository of information on how to properly care for heritage buildings (as cited in Lazarus, 2007) could easily be established within the existing Ontario Heritage Tool Kits framework. In fact, Ontario could look to Heritage Montréal as an example, as the organization has already designed a website¹⁹ specifically aimed at teaching homeowners how to maintain and renovate their property in a manner that will retain the heritage value, as well as

¹⁹ Website accessible at <http://monguidedupatrimoine.com>

how to select a contractor that has the correct knowledge to perform the work. Advertisements for local companies that offer restoration products and services help to support the cost of running the website. Municipalities could refer property owners to this type of resource in addition to having the ad-hoc discussions with property owners that presently occur. Other opportunities include broadening access to educational workshops that teach property owners about appropriate ways of restoring heritage buildings, such as the “Old School” courses offered by the Vancouver Heritage Foundation.²⁰ When conducting their survey of property owners who had participated in their tax rebate program, municipal staff in Peterborough found that one homeowner had used the rebate to attend such a program (2011). The province and municipalities should consider offering a grant or enrolment fee rebate for heritage property owners who demonstrate interest. It could help dispel the common misperception that heritage designation “ties the hands” of property owners and could also address other contentious topics like window replacement. It was noted by interviewees that very often, property owners simply do not think about alternative approaches or even why certain aspects of their building are important. Interviewees noted that this is a challenge not only with private owners, but also with public entities that own property. Initiatives that promote the education of property owners on the proper care of heritage buildings will empower them to conduct regular maintenance and would benefit both public and private interests.

7.6. Recognize that heritage for the sake of heritage is sufficient

Municipal policy statements set a clear direction to be followed on a wide variety of issues and cities that are serious about preventing demolition by neglect should enshrine that will in

²⁰ See <http://www.vancouverheritagefoundation.org/learn-with-us/workshops-talks/old-school-workshops/> for more information

official policies. Although there is a push to broaden the appeal and relevance of heritage protection by focusing on its connections to the sustainability movement, environmental concerns do not appear to have been a factor either in discussions regarding restoration projects or in cases of demolition. Public arguments about the Lister Block focused far more on the heritage value than on any potential environmental benefits. Staff reports from numerous municipalities considering the adoption of property standards by-laws rarely note how adopting such a regulation could help achieve sustainability objectives, suggesting that councils were willing to pass the by-laws on their merit of protecting heritage alone. Interviewees in all case studies noted that while project team members certainly were aware of the benefits of reusing existing buildings, the motivations behind the projects were almost purely heritage-oriented in nature.

To date, environmental concerns have not been a determining factor in any demolition case before the OMB, and based on the single case where these issues were even raised, citing material waste as a reason to prevent the building from being torn down is unlikely to succeed as an argument. As decreed by the OMB in a 2008 decision, “under the *Planning Act*, landfill capacity cannot be an issue in these appeals. However, to the degree that the City practices recycling and reuse, that policy, if relevant to the proposed demolition, can be introduced and argument made as to reuse in the project” (OMB, 2008, PL080119). This decision leaves the door open for future cases to be determined through policies that are not created exclusively for heritage conservation.

8. Conclusion

Demolition by neglect remains a prevalent issue in Ontario, capturing much public attention in cities such as Hamilton and Toronto, where high-profile losses and near-losses of heritage buildings have been featured by local media. Built heritage is a non-renewable resource and although the number of buildings affected appears to be relatively small, every demolition erodes the cultural legacy that is left to future generations. Exact figures are difficult to determine for two primary reasons: differences in designation practices between municipalities and the qualitative nature of distinguishing between a building that needs repairs and a building that suffers from chronic deferred maintenance. Rectifying the predisposition to demolition in North America is a challenge, complicated by the natural growth and decline of neighbourhoods and the gradual obsolescence of certain building types due to changing cultural preferences.

In 2005, the Province of Ontario finally made it possible to address demolition by neglect in a meaningful way by allowing municipalities to prevent demolition of heritage properties and to adopt property standards by-laws regulating the maintenance and upkeep of designated heritage buildings. Shortly thereafter, Mississauga and St. Thomas became the first two municipalities to embrace the new instrument, and steadily, other municipal councils have been choosing to follow their lead. There have been a few setbacks to date: the by-law in St. Thomas was contested and declared *ultra vires*, and in Kingston an attempt to enforce the by-law was overturned after a Justice of the Peace determined it was politically motivated. Some municipalities have faced opposition from local property owners and have chosen to apply the property standards to vacant buildings only. However, the consistency that municipalities are demonstrating by turning to enhanced property standards by-laws is indicative that these legal

challenges are not a deterrent and furthermore, that local governments believe the by-laws are an effective tool to prevent demolition by neglect.

Several municipalities have enforced their property standards to varying effect; outcomes encompass everything from immediate compliance to litigation and the removal of heritage designation. It was clear from all research participants that even when the standards are not enforced to their maximum extent, they are a positive and necessary step towards ensuring the maintenance of buildings. Adding to their relative ease of administration is the fact that they can be implemented via a simple amendment to property standards already in place, and that the only primary requirement is an increase in funding for additional enforcement officers.

Several approaches outside the traditional realm of legislation were found to be highly effective complements to the regulatory framework, particularly where dialogue between city employees and local residents is expanded. Communication was demonstrated to be a successful method of obtaining compliance with property standards by-laws in multiple municipalities. Discussions between the developer of the Dineen Building and municipal heritage staff facilitated the approval of a rooftop addition that satisfied the interests of both parties and did not add any delays to the developer's tight schedule. Bringing together a multidisciplinary working group where different stakeholders could communicate their ideas and motivations was instrumental in the rehabilitation of the Lister Block, a model that could potentially be replicated on other projects. The strong emphasis on education and communication throughout the different case studies and municipal experiences suggests that it would be beneficial to conduct a study examining the approaches that different municipalities, jurisdictions, and heritage preservation groups take in this regard. If successful strategies are found, they could have wide reaching impacts on the protection of heritage in Canada.

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Images

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- Figure 5 - Photo taken by author
- Figure 6 - Krawczyk, B. (2010). Dineen Building. *TO Built* [Blog]. Accessed on July 1, 2014, at http://www.tobuilt.ca/php/tobuildings_more.php?search_fd3=2311

List of Ontario Municipalities that participated in this Research

City of Burlington

City of Hamilton

City of Kitchener

City of London

City of Markham

City of Mississauga

City of St. Thomas

City of Windsor

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10. Appendix

Table 3: Municipal Grant Programs

| Municipality | Grant Amount | Contribution Amount | Additional Details |
|----------------|-------------------|---------------------|---|
| Toronto | Up to \$10,000 | 50% | Can be received once every 5 years |
| Ottawa | \$1,000 - \$5,000 | 50% | Can be received once every 2 years |
| Mississauga | \$500 - \$10,000 | 50% | <ul style="list-style-type: none"> \$5,000 maximum for general restoration \$10,000 maximum for structural work |
| Brampton | Up to \$5,000 | 50% | Repairs required by a Property Standards Order are not eligible |
| Hamilton | Up to \$20,000 | 50% | |
| London | n/a | | |
| Markham | \$250 - \$5,000 | 50% | Designated Heritage Property Grant Program (commercial facades and properties in Markham Heritage Estates subdivision not eligible) |
| | \$250 - \$15,000 | 50% | Commercial Façade Improvement Grant Program |
| | \$1,000 | | Commercial Signage Replacement Grant |
| Vaughan | n/a | | |
| Kitchener | \$500 - \$3,000 | 50% | |
| Windsor | Up to \$3,000 | 50% | To assist with the costs of Architectural or Engineering studies; only awarded once physical work is 50% complete |
| Richmond Hill | Up to \$2,000 | | |
| Oakville | n/a | | |
| Burlington | Up to \$15,000 | 25% | |
| St. Catharines | Up to \$1,000 | 50% | |
| Cambridge | Up to \$5,000 | 50% | |
| Kingston | Up to \$2,000 | 50% | Can be received once every 2 years |
| Whitby | n/a | | |
| Guelph | n/a | | |
| Chatham-Kent | n/a | | |
| Waterloo | Not specified | 50% | Grants administered by Waterloo Regional Heritage Foundation using municipal funds |
| Brantford | n/a | | |
| Peterborough | n/a | | |

| | | | |
|---------------------|-------------------------------|-----|--|
| Sault Ste. Marie | Up to \$3,000 | 66% | Up to \$900 may be allocated towards professional fees |
| Caledon | Up to \$4,000 | 50% | Only offered to residential and institutional properties |
| Cornwall | n/a | | |
| St. Thomas | n/a | | |
| Stratford | n/a | | |
| Owen Sound | Up to \$5000 for one façade | 33% | <ul style="list-style-type: none"> • Façade and Structural Improvement Program: includes non-designated properties within the downtown Community Improvement Plan area; • Work must cost a minimum of \$3,000 • Building permit fees may also be waived |
| | Up to \$7,500 for two façades | 50% | |
| Collingwood | n/a | | • |
| Coburg | n/a | | \$1,000 grants available from ACO Coburg branch |
| Niagara-on-the-lake | \$5,000 - \$20,000 | 50% | <ul style="list-style-type: none"> • \$5,000 maximum for residential • \$10,000 maximum for commercial |

Adapted from Langdale (2011). Updated to reflect current programs, where applicable.

Table 4: Municipal Tax Programs

| Municipality | Rebate Amount | Additional Details |
|---------------------|--|--|
| Toronto | 40% | Requires HCEA |
| Ottawa | | |
| Mississauga | | |
| Brampton | | |
| Hamilton | | Incremental tax rebate for 5 year period following major restoration work or renovation to a residential or commercial property located within downtown. Not restricted to heritage properties. |
| London | | |
| Markham | 30% | Requires HCEA |
| Vaughan | | |
| Kitchener | 40% | Requires HCEA or PMA |
| Windsor | 40% | Pilot program to end in 2015. Limited to one neighbourhood. |
| Richmond Hill | | |
| Oakville | | |
| Burlington | | |
| St. Catharines | | |
| Cambridge | | |
| Kingston | 40% | <ul style="list-style-type: none"> • Requires HCEA • Maximum rebate of \$5,000 every three years |
| Whitby | 40% | Requires HCEA |
| Guelph | | |
| Chatham-Kent | <ul style="list-style-type: none"> • 25% Residential or Commercial • 15% Multi-residential | <ul style="list-style-type: none"> • Requires HCEA or PMA • Maximum rebate for residential property: \$22,000 • Maximum rebate for commercial or multi-residential property: \$65,000 |
| Waterloo | | |
| Brantford | | |
| Peterborough | <ul style="list-style-type: none"> • 40% Residential • 20% Commercial or Multi-residential | <ul style="list-style-type: none"> • Requires HCEA or PMA • For properties within specified area only |
| Sault Ste. Marie | 40% | Requires HCEA or PMA |
| Caledon | | No longer offered |
| Cornwall | 40% | Requires HCEA |
| St. Thomas | | |

| | | |
|---------------------|-----|--|
| Stratford | | Incremental tax rebate for 10 year period following major restoration work. |
| Owen Sound | 20% | <ul style="list-style-type: none"> • Requires HCMA (Heritage Conservation Maintenance Agreement) • Minimum rebate to qualify: \$250 • Incremental tax rebate for 5 or 10 year period for projects receiving funds under the grant program |
| Collingwood | | Rebate on increase in taxes resulting from major restoration work totaling at least \$200,000; applicable on municipal portion of taxes only for a 10 year period. |
| Coburg | | Rebate on increase in taxes resulting from restoration work; applicable on municipal portion of taxes only for a 10 year period. |
| Niagara-on-the-lake | | |

Adapted from Langdale (2011). Updated to reflect current programs, where applicable.

Table 5: Municipal Loan Programs

| Municipality | Loan Amount | Additional Details |
|---------------------|---|---|
| Toronto | | |
| Ottawa | | |
| Mississauga | | |
| Brampton | | |
| Hamilton | Up to \$50,000 | Interest-free; 10-year term |
| London | | |
| Markham | Up to \$15,000 | Maximum term of 5 years |
| Vaughan | | |
| Kitchener | | |
| Windsor | Up to \$50,000 | 15% forgiven as a grant; 5-year or 10-year loan term |
| Richmond Hill | | |
| Oakville | | |
| Burlington | Up to \$15,000 | Matching loan |
| St. Catharines | | |
| Cambridge | <ul style="list-style-type: none"> • Designated properties: up to \$25,000 • Non-designated properties: up to \$20,000 | <ul style="list-style-type: none"> • Interest free; matching loan can cover up to 50% of the project cost, with up to 35% forgivable as a grant. • Exterior improvements only • Additional frontages increase loan amount by \$5,000 |
| Kingston | | |
| Whitby | | |
| Guelph | | |
| Chatham-Kent | | |
| Waterloo | | |
| Brantford | | |
| Peterborough | | |
| Sault Ste. Marie | | |
| Caledon | | |
| Cornwall | | |
| St. Thomas | | |
| Stratford | <ul style="list-style-type: none"> • Up to \$50,000 for building code improvements • Up to \$25,000 for façade improvements | Matching loan with 10 year amortization period; No funds advanced until work is complete |

| | | |
|---------------------|----------------|---|
| Owen Sound | | |
| Collingwood | | |
| Coburg | Up to \$15,000 | For exterior restoration of residential or commercial properties only |
| Niagara-on-the-lake | | |

Adapted from Langdale (2011). Updated to reflect current programs, where applicable.