

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** April 19, 2022

**CASE NO(S):** OLT-21-001563  
(Formerly CRB2110)

**PROCEEDING COMMENCED UNDER** subsection 31(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O. 18, as amended

**Owner:** Township of South Stormont  
**Objectors:** Jessie Chisholm, Peter McKenty, Jordan Munn, Anna Newton, Eric Sauvageau, Devyn Thomson, Architectural Conservancy of Ontario  
**Subject:** Objections to a Notice of Intention to Repeal Designating Bylaw No. 3418  
**Property Address:** 17283 County Road 18 (Raisin River Heritage Centre)  
**Legal Description:** Part Lot 13, Concession 5, geographic Township of Cornwall, being Part 1 on Reference Plan 52R-1586, T/W S138796, with Right-of-Way over Part 2 on Reference Plan 52R-1586  
**Municipality:** Township of South Stormont  
**OLT Case No.:** OLT-21-001563  
**Legacy Case No.:** CRB2110  
**OLT Case Name:** Chisholm v. South Stormont (Township)

**Heard:** February 16 and 17, 2022 by Video Hearing

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Township of South Stormont

Tony Fleming\*  
Spencer Putnam\*

Architectural Conservancy of  
Ontario

Kae Elgie

Jordan Munn Self-represented

Devyn Thomson Kae Elgie

## **REPORT OF THE TRIBUNAL DELIVERED BY DANIEL NELSON**

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### **OVERVIEW**

[1] The Township of South Stormont (“Township”) seeks to repeal the by-law designating 17283 County Road 18, in the Village of St. Andrews, Ontario (the “property”). The property, also known as the Raisin River Heritage Centre, is owned by the Township.

[2] Various members of the community objected to the Township’s desire to repeal the designation and the matter was referred to the Ontario Land Tribunal (“Tribunal”), which held a hearing to consider the objections.

[3] The Parties to the hearing are:

- The Township of South Stormont
- The Architectural Conservancy of Ontario
- Jordan Munn
- Anna Newton
- Eric Sauvageau
- Jessie Chisholm
- Devyn Thomson

Anna Newton and Eric Sauvageau did not attend the hearing.

[4] The Parties’ Joint Book of Documents was entered into evidence and relied on by all the Parties.

[5] It is important to note that this matter is governed by the *Ontario Heritage Act* (“OHA”) as it read on June 30, 2021, pursuant to O. Reg 385/21 (“former OHA”). The Tribunal, therefore, only has the jurisdiction of the former Conservation Review Board (“CRB”), which was amalgamated into the Tribunal by operation of the *Ontario Land Tribunal Act*.<sup>1</sup> For clarity, references to the Tribunal throughout this Report mean the Tribunal in its capacity as the former CRB and with only the jurisdiction of the CRB as it was then constituted under the former OHA.

## **Background**

[6] The property was built in 1908, replacing an early building constructed in 1849 that was destroyed by fire. It operated as a convent and school first by the Sisters of Notre Dame in Montreal and, after 1918, by the Sisters of St. Joseph in Peterborough, Ontario.

[7] The school building was closed in 1976. The Township of Cornwall (a predecessor to the current Township) decided to designate the property. The school board objected to such a designation but, after a hearing, it was determined that it should be protected and, as a result, the Township passed By-law No. 3418 to protect the property in 1978 (“Bylaw”).

[8] The Bylaw predates the current structure expected of designating bylaws and therefore, has only an imprecise statement of cultural heritage value or interest (“CHVI”) nor does it list the heritage attributes. Instead, it notes that the property has “considerable significance in the social, education, religious, and cultural fabric of the area of the convent, which has been the source of education for numerous students of the area as the western ancre<sup>2</sup> of the tri-part of the historical buildings and the cemetery.”

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<sup>1</sup> S.O. 2021, c. 4, Sched. 6, s. 2.

<sup>2</sup> This is the French term for “anchor”.

[9] The Township began a public consultation process on February 20, 2019, regarding the future of the property. As a result of that process, the Township determined on January 13, 2021, to demolish the property and begin the process to repeal the designation. The above-referenced objectors objected, and the matter was brought before the Tribunal in accordance with the OHA.

[10] Case management conferences were held on June 28, 2021, October 8, 2021, and February 9, 2022, and a hearing was held on February 17, 2022.

### **Issues**

[11] There is only one issue before the Tribunal: should the Bylaw, which designates the property as a property of CHVI under s. 29 of the OHA be repealed in accordance with s. 31 of the OHA.

### **Relevant Legislation and Regulations**

[12] The relevant legislation for this matter, and the criteria for the designation of a property under O.Reg 9/06, are set out in Appendix 1 hereto.

### **Case for the Owner**

[13] The Township's position is that the designating bylaw should be repealed.

[14] Kevin Amelotte, who is the Township's Director of Parks and Recreation, gave general testimony about the background of the property and noted that the Township had concerns about the fabric of the building. An inability to sell the property and a lack of alternate proposals led to his recommendation that the property be demolished. In cross-examination, the Objectors' challenged his claims around public consultation regarding the property.

[15] The expert witness for the Township, Rick Taylor, is an architect with some experience with heritage properties. He testified that the property has heritage value, architecturally, as a handsome brick building with fine brickwork as well as religious significance, culturally, to the community. Contextually, it is important as part of a campus of buildings including the nearby church and cemetery. While it cannot be considered by the Tribunal in this matter, he also noted that it would be very expensive to bring the building up to modern standards.

[16] Mr. Taylor testified as to the challenges of adaptive reuse of the building although this testimony cannot be heard by the Tribunal in this matter.

### **Case for the Objectors**

[17] The Objectors, lead by the Architectural Conservancy of Ontario (“ACO”), believe that the property continues to have CHVI and the designating bylaw should not be repealed.

[18] Julie Harris, a Heritage Consultant retained by ACO, gave testimony on how the property continues to have CHVI. She noted the importance of the property as the *de facto* seat of Scottish Catholics in the province. It was an important settlement region for the group.

[19] The building and its placement as a school and convent are also important in her view. She spoke of its central physical placement on a lot big enough to grow food, which was necessary at the time. She spoke of the architectural features such as the niches, oriel bays, and neo-classical elements, and its interesting role as a semi-private space (not being entirely a public space).

[20] Ms. Harris then provided an analysis of the property as it relates to the criteria for determining CHVI as set out in O. Reg. 9/06 (see Appendix 1). In her view, the property has CHVI:

- under s. 1(i) as an increasingly rare example of an early Catholic convent and school in Ontario.
- under s. 2(i) as it has direct associations with a belief, organisation or institution that is significant to a community. There are direct links to the building as an important centre of Scottish Catholic worship and learning. It has been a site for such beliefs, and the church as an institution, since 1848.
- under s. 3(i) as it is important in defining, maintaining, or supporting the character of the area. It is part of a larger Catholic precinct and is stately presented in its context. Coming into the community, she was struck by the unique features of the village. It is seen immediately after the cemetery and in marked contrast to the current school. It is very picturesque in her view.
- under s. 3(ii) as it is physically, visually, and historically linked to its surroundings. It is clearly linked to the old St. Andrew's Church, along with the new St. Andrew's Church, the historic cemetery, and Quinn's Inn, which is nearby.

[21] She was unsure whether it was a landmark under criterion 3(ii). Certainly, in her view, it was a landmark within the context of the village. She could not tell how well known it was in the broader community.

## Analysis

[22] The case law on repeal of designation is well-established. As set out in *Trothen v. Sarnia*<sup>3</sup>: “the appropriate test for [the Tribunal] to apply when deciding whether all or part of a designation by-law should be repealed under s. 32, is whether the Property

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<sup>3</sup> *Trothen v. Sarnia (City)*, 2016 CanLII 29998 (ON CONRB) at para. 53 (hereafter “Trothen”).

retains cultural heritage value or interest, as described in the designating bylaw, and as prescribed by O. Reg. 9/06.”

[23] *Trothen*, it should be noted, applied to an owner-initiated repeal of designation matter under s. 32 of the OHA. It was later determined that the *Trothen* test applies equally to s. 31 matters, where a municipality seeks to repeal designation on its own initiative: “While these are different sections of the *OHA*, and while the exact process steps may necessarily vary functionally, these two sections are the same and there is no reason why the test set out in *Trothen*, dealing with s. 32 would not equally apply to a repeal of designation under s. 31.”<sup>4</sup>

[24] The Objector’s expert has determined that the property continues to have CHVI. The Township’s expert agreed, when asked at the hearing, that it continues to have CHVI. Counsel for the Township conceded, at the hearing, that the property has CHVI. Thus, the Tribunal can only come to one conclusion: the property continues to have CHVI and, therefore, since it retains CHVI, the designating bylaw should not be repealed.

[25] The jurisdiction of the Tribunal, in this case, is limited to that of the former CRB before it was amalgamated into the Tribunal. It can only consider whether or not a property has CHVI. Its report and recommendations must be considered by a municipality, but it is not bound by it. Thus, a municipality is free to consider many more issues in relation to the designation or repeal of designation of a property than can be examined by the Tribunal. However, just because a municipality can repeal a heritage designation bylaw does not mean that it necessarily should.

[26] The law on heritage designation is clear: if a property has CHVI then it should be designated under the statute and its heritage attributes protected. Thus, before making a decision, a municipality should carefully consider its obligations under the

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<sup>4</sup> *Ferron v. Niagara Falls (City)*, 2021 CanLII 23950 (ON CONRB), at para 24 (hereafter “Ferron”).

OHA. In this regard, the Tribunal would quote its report from *Ferron, op cit*, on the subject in its entirety:

The courts have consistently held that the purpose of the OHA is to provide for the protection of heritage properties as an important public responsibility vested in municipalities.

The Supreme Court of Canada observed, in *St. Peter's Evangelical Lutheran Church (Trustees of) v. Ottawa (City)*:

The Ontario Heritage Act was enacted to provide for the conservation, protection, and preservation of the heritage of Ontario. There is no doubt that the Act provides for and the Legislature intended that municipalities, acting under the provisions of the Act, should have wide powers to interfere with individual property rights. It is equally evident, however, that the Legislature recognized that the preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, and certainly not in total disregard of the property owner's rights. **It provided a procedure to govern the exercise of the municipal powers**, but at the same time to protect the property owner within the scope of the Act and in accordance with its terms. [emphasis added]

The Ontario Superior Court observed that, "...**the preservation of historic buildings is a public good** and one of the key purposes that the legislature sought to further through the Ontario Heritage Act." [emphasis added]

The Divisional Court, in *Tremblay*, was even clearer and identified the way in which any municipality must act in carrying out its responsibilities imposed by the OHA:

The purpose of the Act is to provide for the conservation, protection and preservation of the heritage of Ontario. In order to protect the heritage of Ontario, municipalities have been given the power to designate the properties of their choice and thus to suspend certain private property rights. **Those provisions of the Act must be applied in such a way as to ensure the attainment of the legislature's objectives** [emphasis added].

While the City does have broad discretion, it is not unlimited. The court, in *Tremblay*, observed:

The decision to designate a property is clearly discretionary. However, there are limits on the exercise of discretion where fundamental, constitutional and societal interests are at stake. That discretion must be exercised 'with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter'.[7]



The City must also proceed cautiously, in exercising its discretion, because it is both the owner and the heritage regulator of the Property. As the Review Board noted in its decision on the City's motion (Ferron #1):

To further complicate such questions, the City, in this case, is both the owner of this heritage property and a regulator of it. Therefore, the City finds itself, in effect, requesting repeal of designation from itself. Self-dealing, while absolutely permitted in situations such as this by the OHA, should give rise to natural caution. As such, it may be useful for any municipality to reflect on prior Review Board cases where owners have requested a repeal of designation. Specifically, the Review Board, in Armstrong noted:

To permit an owner's wishes to automatically trump heritage considerations would run counter to the object of the OHA and render designation a purely voluntary approach by allowing what would effectively be automatic de-designation whenever an owner makes a request under s. 32. This would lead to the absurd consequence that a person faced with a proposed s. 29 designation would simply not object to the designation (which would have led to a hearing considering the O. Reg. 9/06 criteria) and then file a s. 32 request for de-designation and be automatically successful. This too would undermine the object of the OHA...

In making its final decision, the City must decide whether the repeal of the Bylaw ensures the attainment of the heritage preservation objectives of the OHA, which is a public good.<sup>5</sup>

[27] Therefore, having determined that the property has CHVI, and having conceded that there has been no loss to that CHVI since the bylaw was adopted, the Township must, in making its final decision ask itself: is demolition the best way to proceed or is adaptive reuse a better option given its statutory duty to protect heritage properties within its jurisdiction?

## **Recommendations**

[28] The Township has failed to demonstrate that the property has lost CHVI. Indeed, the Township concedes that it does have CHVI. Therefore, the Tribunal can only

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<sup>5</sup> *Ibid.*, at paras. 29-35. Citations removed.

recommend that the designating bylaw not be repealed. The only question before the Township is whether or not the property should be demolished in spite of it retaining CHVI, or whether new uses can be found for it.

[29] The Tribunal also recommends that the designating bylaw be updated to reflect the current requirements for such bylaws in accordance with s. 30.1(2) of the OHA.

*“Daniel Nelson”*

DANIEL NELSON  
MEMBER

**Ontario Land Tribunal**

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

## Appendix “1”

### Ontario Heritage Act, RSO 1990, c. O-18

#### Relevant sections of the Ontario Heritage Act:

26 (1) In this Part,

“property” means real property and includes all buildings and structures thereon.

(2) In sections 27 to 34.4,

“designated property” means property designated by a municipality under section 29.

...

31 (1) Subject to subsection (2), where the council of a municipality intends to repeal a by-law or part thereof designating property, it shall cause notice of intention to repeal the by-law or part thereof to be given by the clerk of the municipality in accordance with subsection (3).

(2) Where the council of a municipality has appointed a municipal heritage committee, the council shall, before repealing a by-law or part thereof designating property, consult with its municipal heritage committee.

(5) A person who objects to a proposed repealing by-law shall object to the repealing by-law in the manner set out in subsection 29 (5).

(6) Subsections 29 (6) to (15.1) as they apply to an intention to designate a property apply with necessary modifications to an intention to repeal a by-law or part thereof designating a property under this section.

29 (7) Where a notice of objection has been served under subsection (5), the council shall, upon expiration of the thirty-day period under subsection (4), refer the matter to the Review Board for a hearing and report.

(8) Pursuant to a reference by the council under subsection (7), the Review Board, as soon as is practicable, shall hold a hearing open to the public to determine whether the property in question should be designated, and the council, the owner, any person who has filed an objection under subsection (5) and such other persons as the Review Board may specify, are parties to the hearing.

(12) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated under this Part and any information or knowledge used by it in reaching its recommendations, and the Review Board shall send a copy of its report to the other parties to the hearing.

**Ontario Regulation 9/06**  
**Criteria for Determining Cultural Heritage Value or Interest**

**Criteria**

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
  - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
  - ii. displays a high degree of craftsmanship or artistic merit, or
  - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
  - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
  - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
  - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it,
  - i. is important in defining, maintaining or supporting the character of an area,
  - ii. is physically, functionally, visually or historically linked to its surroundings, or
  - iii. is a landmark. O. Reg. 9/06, s. 1 (2).