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June 13, 2012

The Honourable Leonard Preyra
Minister of Communities, Culture & Heritage

Dear Minister Preyra:

I am writing in follow-up to a letter sent by your predecessor, Minister Wilson, on February 9, 2012 regarding a resolution UNSM submitted on heritage property registration. The resolution requests that heritage registrations be protected from procedural/clerical errors, by placing a sunset clause of 90 days on clerical errors made during the registration process, so that after that time period clerical errors will not impact on heritage registration status.

This resolution, put forward by Halifax Regional Municipality, was passed at the 2011 UNSM annual conference. It stems from the 2008 Waterside decision (Armour Group v. HRM, 2008 NSSC 81), wherein the Nova Scotia Supreme Court found that technical deficiencies in a registration or in its records, could invalidate a longstanding registration. Consequently, the Supreme Court overturned the heritage status of 1870 Upper Water Street because of a procedural irregularity in its heritage registration process some decades earlier. The building was demolished and sat vacant for three years until the very recent redevelopment of the RBC Waterside Centre.

There are likely a number of other properties with similar procedural irregularities in their registration throughout Nova Scotia. Inadvertent clerical errors should not be allowed to undermine the intent of heritage registration. Protecting against clerical or technical errors by placing a time limit on their relevance will strengthen heritage property protection throughout Nova Scotia. UNSM has consulted with HRM on specific amendment changes that would enable this request. Attached is proposed wording to section 24 A and B of the Heritage Property Act, which we submit for your consideration. Should you require any further information please do not hesitate to contact the UNSM office.

Sincerely,

Deputy Warden Jimmy MacAlpine
UNSM President

cc: UNSM Board of Directors
Mayor Peter Kelly, HRM

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HERITAGE PROPERTY ACT - PROPOSED AMENDMENTS

It is proposed to combine as one section legislation deeming registration valid due to irregularities with the procedure to quash the registrations. We have proposed 24A and 24B, which are modelled on sections 179 and 207 of the HRM Charter.

Existing Section- Manner of entry of notice in registry

24 A notice deposited in a registry of deeds pursuant to this Act shall be indexed as if it were a conveyance by or to, as the case may be, the registered owner of the building, streetscape or area.

Validity of Registration

24A (1) No

- a) error, informality or irregularity on the part of the Advisory Council, the Minister, a heritage advisory committee, a Council or any other officer; and
- b) no error or omission in giving a notice required pursuant to this Act, affects or prejudices the validity of a registration made pursuant to this Act.

(2) Any heritage property listed in the Provincial Registry of Heritage Property or a Municipal Registry of Heritage Property as of the date of the coming in force of this section is deemed to be a validly registered heritage property.

Procedure for Quashing Registration

24B (1) A person may, by notice of motion that is served at least seven days before the day on which the motion is to be made, apply to a judge of the Supreme Court of Nova Scotia to quash a registration, in whole or in part, for illegality.

(2) No registration may be quashed for a matter of form only or for a procedural irregularity.

(3) An application pursuant to this Section to quash a registration under section 8, in whole or in part, must be made within three months 90 (ninety) days of the earlier of:

- a) the notice of the registration being served upon each registered owner of the building, public-building interior, streetscape, cultural landscape or area; or
- b) a copy of the notice of the registration being deposited in the registry of deeds for the registration district in which the building, public-building interior, streetscape, cultural landscape or area is situate.

- (4) An application pursuant to this Section to quash a registration under section 15, in whole or in part, must be made within ninety (90) days of the earlier of:
- a) the registration of the building, public-building interior, streetscape, cultural landscape or area as a municipal heritage property in the municipal registry of heritage property;
 - b) the notice of the registration being sent to each registered owner of the building, public-building interior, streetscape, cultural landscape or area; or
 - c) a copy of the notice of the registration being deposited in the registry of deeds for the registration district in which the building, streetscape or area is situate.