



October 29, 2010

Provincial Policy Statement Review
Ministry of Municipal Affairs and Housing
Provincial Planning Policy Branch
777 Bay St., 14th Floor
Toronto, ON M5G 2E5

VIA ELECTRONIC MAIL AND FACSIMILE

Dear Sirs/Mesdames:

Re: Ontario Bar Association Submission on Provincial Policy Statement Review

Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to make a submission on the Province’s current five-year review of the Provincial Policy Statement, 2005 (the “PPS”).

Background

The OBA consists of over 17,000 members from a broad range of legal sectors, including lawyers working in private practice, government, non-governmental organizations and in-house counsel. Our members have, over the years, analyzed and provided comments to the Ontario government on numerous legislative and policy initiatives. More than 1,000 of these lawyers belong to our very active Municipal, Environmental and Public Law Sections. Our members have considerable expertise and experience in how land use planning policies are interpreted and applied, and represent many different points of view. The views expressed herein are the views of the OBA and its sections as a whole, and are not necessarily the views of each individual member or other organizations with which they may be involved.

Comments

Because our members represent a wide variety of stakeholders and interests, we do not believe it would be appropriate for us to comment on the merits or wisdom of any particular provincial policy. However, the PPS does have a significant impact on the advice we provide to our clients because all land use planning decisions must be consistent with the PPS. The OBA, therefore, has an interest in ensuring that the PPS contains clear, rational, consistent and coherent policies. As a result, we would appreciate the opportunity to review a draft of any proposed changes to the PPS arising out of this review.

Land use planning decisions often involve a balancing of competing interests and policy directives. As such, it is critically important that the PPS provide sufficient guidance as to how

its policies should be interpreted and applied when various provincial interests are engaged. Although Section 4.3 directs that the PPS is to be read in its entirety, with all relevant policies applied to each situation, many land use planning matters necessarily involve two or more competing policies where strict adherence to one policy may produce results which are at odds with another policy. If, as we believe, the intent of the PPS is for complex matters to be decided on a case-by-case basis using the best evidence available on all relevant policies, even where the outcome is more consistent with some policies than others, this intent could be more clearly articulated in the Implementation and Interpretation Section of the PPS.

We would also like to draw your attention to the perceived lack of clarity of certain policies within Section 2.0 on the Wise Use and Management of Resources. It has been our experience that some of the policies contained in this Section are being inconsistently interpreted and applied by the various stakeholders, commenting agencies and decision-makers in the land use planning process. In many cases, this has significantly contributed to the length and cost of processing land use planning applications and appeals.

As an example, we would like to offer some brief comments on the cultural heritage policies in Section 2.6, since these policies seem to present the greatest opportunity for competing interpretations as to the level of protection that should be afforded to cultural heritage resources. This confusion occurs because Policy 2.6.1 speaks to two different categories of potential cultural heritage resources – built heritage resources and cultural heritage landscapes – but does not take a consistent approach to defining these resources. Specifically, the same requirement to conserve is applied to those heritage resources which have been identified pursuant to the appropriate statutory regime (ie. the *Ontario Heritage Act*) and to those which may not have been identified through an equivalent statutory process.

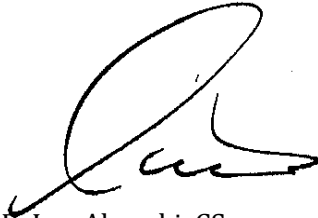
Additionally, cultural heritage landscapes are still an emerging concept within the provincial heritage policy regime, and the applicable definitions in the PPS do not provide sufficient guidance in identifying where such landscapes exist and where they cross the threshold of significance so as to trigger the requirement that they be conserved. In practice, this has led to much confusion as to the extent of development or site alteration that is permitted within an alleged cultural heritage landscape, especially where the property in question is not designated under the *Ontario Heritage Act* and therefore no heritage permit is required. Policy 2.6.1 makes sense insofar as it applies to buildings and structures because the definition of “built heritage resource” provides for mechanisms by which the resources in question can be clearly identified by the various jurisdictions. In contrast, the definition of “cultural heritage landscape” is very broad and does not require that the resource be identified by any particular means or that its status be legally entrenched.

The lack of clarity and inconsistent interpretation of the cultural heritage resource policies (as well as other resource protection policies in Section 2.0) can lead to a tremendous amount of time and money being spent by the various stakeholders, commenting agencies and decision-makers in determining the appropriate level of protection and the level of development to be

permitted. Therefore, in our respectful submission, it would be prudent for the Province to engage in a thoughtful and comprehensive review of all of the resource protection policies in Section 2.0 before any changes to the PPS are proposed or approved.

We thank you for considering our input and we look forward to reviewing a draft of any proposed changes to the PPS and making further comments at that time.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Lee Akazaki'. The signature is fluid and cursive, with a large initial 'R' and a long, sweeping underline.

R. Lee Akazaki, CS
President, Ontario Bar Association