

The Senator Pat Carney Legislation – Lighthouse Heritage

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Background to Bill S-215,
An Act to protect heritage lighthouses

Introduction:

Canada's built heritage is the most vivid physical representations of the country's cultural heritage. Lighthouses, like railway stations, have a special significance to Canadians. They are iconic structures. Many have significant architecture. But their importance stems more from their role in Canadian history. Often standing in relative isolation on islands or headlands, they are important artifacts of Canada's maritime history. Many lighthouses have been guiding fishermen and mariners to port since the age of sail, and they stand as a testament to the tragedies throughout history that have befallen thousands of Canadian fishermen and mariners who, due to harsh conditions of climate, coast, and sea, were unable to bring their vessels to port.

The new Act to Protect Heritage Lighthouses:

- * Provides a means for the selection and designation of federal heritage lighthouses;
- * Prevents the unauthorized alteration of federal heritage lighthouses;
- * Requires that designated federal heritage lighthouses be maintained in a manner consistent with accepted conservation standards;
- * Facilitates the sale or transfer of federal heritage lighthouses in order to ensure the lighthouses' public purpose.

Significant features of the legislation:

- * Increased protection of the heritage lighthouses under federal stewardship.
- * A clear process for the identification, maintenance and divestiture of federal heritage lighthouses.
- * New mechanisms for public involvement in the protection of federally owned lighthouses:
 - o Public nominations of lighthouses to be considered for heritage designation;
 - o Public consultation before alterations are made to heritage lighthouses;
 - o Public notice of lighthouses considered surplus to the federal government;
 - o Public notice of the transfer of a federal heritage lighthouse to a community group or municipality;
 - o Public meeting if a lighthouse is considered for sale to a private owner;
 - o Public notice and public meeting if a lighthouse is to be demolished.

What Happens Next:

Timetable for the implementation of the legislation

- * 2008 – Bill gets Royal Assent
- * 2010 – Coming into Force of legislation
- * 2010-2012
 - o Nominations of heritage lighthouses for designation to the Minister of the Environment must be received
 - o List of surplus lighthouses must be posted by the Department of Fisheries and Oceans
- * 2012-2015 – The Minister of the Environment must publish list of designated lighthouses and those denied designation

Next Steps

The legislation will come into force in two years in order to enable Parks Canada to develop the criteria for heritage designation, with the assistance of an advisory council, for approval of the Minister of the Environment.

Communities will have a further two years to petition the Minister for heritage designation and to propose community uses for any building surplus to DFO operational requirements.

Why an Act to protect Canada's heritage lighthouses is needed:

All provincial and territorial jurisdictions and, by delegated authority, all municipal governments in Canada have binding heritage statutes and related legal measures, such as covenants and easements, to protect and guide the management of heritage property. Within the federal jurisdiction, only railway stations and now lighthouses are subject to such binding legislation.

This type of federal legislation has proven to be a highly effective tool for preserving heritage buildings. Prior to the Heritage Railway Stations Protection Act, the Government of Canada recognized only six heritage railway stations in the entire country through the Historic Sites and Monuments Board of Canada, and even these had no legal protection. Today, 166 heritage railway stations have been designated by the federal government. An exact parallel exists with heritage lighthouses.

The decline of the Canadian lighthouse can be traced back to its automation, which began in the 1970s. At the time, the federal Department of Fisheries and Oceans deemed many older structures too expensive to maintain. Sadly, dozens of lighthouses, keepers' dwellings and ancillary buildings were torn down, burned, vandalized, or sold and moved off light station property.

Presently, surplus lighthouse properties are subject to the Real Properties Act, making it very difficult for communities to take over and maintain lighthouse structures and sites, and virtually guaranteeing their sale for private development.

During the months preceding the passing of the bill, Canadians from across the country took the time to make presentations to the federal Standing Committee on Fisheries and Oceans on the need for legislation to protect heritage lighthouses.

According to the Department of Fisheries and Oceans, there are roughly 750 structures that could be defined as lighthouses, but within that number, about 246 or 250 are lighthouses in the "postcard" sense of the word. The others are defined as "navigational aids" that do meet the broader definition of lighthouse.

In Canada, only 22 lighthouses have the highest level of federal heritage protection and even this does not provide complete protection. Yet, in the United States, almost 70 percent of lighthouses older than 50 years have protection under the National Register of Historic Places.

What were the weaknesses of previous federal policies on heritage lighthouses?

Provincial heritage legislation and municipal bylaws cannot apply to federal buildings. Fourteen lighthouses have been recognized as National Historic Sites by the Historic Sites and Monuments Board of Canada, but legally these buildings can still be demolished or disposed of by a federal custodial body.

The current federal heritage designation practice occurs under the Federal Heritage Buildings Review Office (FHBRO) that evaluates the heritage significance of federally-owned heritage buildings, but there is no public input in this process. Under FHBRO a heritage building can either be Classified or Recognized: 22 lighthouses are classified, and 104 are recognized. But FHBRO

is policy only, and does not afford the same binding protection as legislation. Once a lighthouse leaves the federal inventory, even FHBRO protection ends.

Prior to this new heritage lighthouse legislation, the Minister of Fisheries and Oceans had no explicit mandate to preserve and manage heritage resources. The federal government has designated the Minister of the Environment to serve that role. If a lighthouse is designated as a federal heritage building, DFO must consult with FHBRO – though this is not mandatory. Current disposal practice according to the Treasury Board Guide to the Management of Real Property requires the Government to make “best efforts” toward protection, but does not make a covenant or other form or statutory protection a condition of sale.

Prior to the enactment of this new legislation there was no requirement that heritage lighthouses be reasonably maintained. With the de-staffing of many lighthouses in recent years buildings were closed up and abandoned resulting in dampness-based mould and rot leaving them liable to vandalism.

History of Canadian Lighthouse legislation

Heritage lighthouse legislation has been almost ten years in the making. The Nova Scotia Lighthouse Preservation Society (NSLPS) established a Lighthouse Protection Act Committee in the year 2000. A Private Member’s bill that originated in the Senate to protect heritage lighthouses was first introduced in April of 2000 as Bill S-21, and subsequently as Bill S-43 (May 2002), Bill S-7 (October 2002), Bill S-5 (February 2004), Bill S-14 (October 2004), Bill S-220 (October 2006), and finally Bill S-215 (October 2007).

This legislation originated in 2000 with Senator Michael Forrestall of Nova Scotia. Senator Pat Carney of British Columbia worked with Senator Forestall to have this legislation enacted, until his death in June of 2006 and reintroduced the Bill as S-220 in October 2006. On May 7, 2008, Bill S-215 received 3rd reading in the Senate and passed on for Royal Assent.