



Legislative Summary

BILL C-23: AN ACT RESPECTING PLACES, PERSONS AND EVENTS OF NATIONAL HISTORIC SIGNIFICANCE OR NATIONAL INTEREST, ARCHAEOLOGICAL RESOURCES AND CULTURAL AND NATURAL HERITAGE

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Legislative Summary of Bill C-23
(Legislative Summary)

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1 BACKGROUND

Bill C-23, An Act respecting places, persons and events of national historic significance or national interest, archaeological resources and cultural and natural heritage (short title: Historic Places of Canada Act), was introduced in the House of Commons by the Honourable Steven Guilbeault, Minister of Environment and Climate Change, and read for the first time on 7 June 2022.¹

1.1 PURPOSE OF THE BILL

Many of Canada's historic places are disappearing or under threat.² Bill C-23 strengthens and expands the protection and designation of federally owned historic sites in Canada. Bill C-23 enacts the Historic Places of Canada Act (HPCA), which replaces the *Historic Sites and Monuments Act* (HSMA) – the Act currently providing for the protection of historic sites.³ The HPCA is under the authority of Parks Canada, and the minister responsible for that agency is the Minister of Environment and Climate Change. A significant portion of Bill C-23 is dedicated to codifying conventional protections and programs. Bill C-23 also provides enforcement mechanisms and penalties. Fines under the HPCA are collected in a fund dedicated to heritage conservation. Bill C-23 also aims to support further reconciliation with Indigenous peoples in Canada by implementing the Truth and Reconciliation Commission of Canada's Call to Action 79(i).⁴

1.2 CURRENT STATE OF HISTORIC PLACES

According to Canada's Historic Places, an organization administered by Parks Canada,

[a] historic place is a structure, building, group of buildings, district, landscape, archaeological site or other place in Canada that has been formally recognized for its heritage value by an appropriate authority within a jurisdiction.⁵

About 13,000 of Canada's historic places have received an official heritage designation from various public authorities. These historic places are owned by non-governmental organizations, private owners or federal, provincial, Indigenous or municipal governments.⁶ The Government of Canada administers over 300 historic places through various departments, agencies and corporations. Some of the provisions in Bill C-23 apply only to federally administered historic places.

In 2017, the House of Commons Standing Committee on Environment and Sustainable Development tabled a report entitled *Preserving Canada's Heritage: The Foundation for Tomorrow*.⁷ This report indicated that many of Canada's historic places are disappearing or under threat. In 2018, the federal government issued a response to the 2017 report, agreeing on the need for comprehensive heritage conservation legislation and greater inclusion of Indigenous communities' perspectives in the conservation of historic places.⁸ Bill C-23 incorporates some of the recommendations made by the standing committee in its report – in particular, recommendations 1 to 6, 9 and 17.

1.3 CURRENT LEGAL REGIME AND PROTECTIONS FOR HISTORIC PLACES

There is currently no comprehensive set of laws to ensure the protection and conservation of historic places at the federal or provincial/territorial level. Legislation such as the *Heritage Railway Stations Protection Act*⁹ and the *Heritage Lighthouse Protection Act*¹⁰ does protect narrow classes of heritage sites. There are also broader conventional protections that apply to historic places, notably the Canadian Register of Historic Places¹¹ and the Standards and Guidelines for the Conservation of Historic Places in Canada.¹² A significant portion of Bill C-23 is dedicated to codifying these conventional protections and programs.

The Canadian Register of Historic Places is a collaboration between the federal government and provincial/territorial and governments. It provides a single source of information about all historic places recognized for their heritage value at the local, provincial/territorial and national levels. The register is a vehicle for Canada's historic places to be recognized and protected. Many historic places listed in the Canadian Register of Historic Places are publicly accessible; however, most are privately owned. The register has existed since 2001. Clause 28(1) of the bill codifies a similar public register.

The Standards and Guidelines for the Conservation of Historic Places in Canada is the pan-Canadian benchmark for heritage conservation practice across the country. Initially published in 2003, with a second edition issued in 2011, this publication sets out conservation principles and guidelines for conserving Canada's historic places.¹³ These standards and guidelines are codified under clause 31(1) of the bill.

2 DESCRIPTION AND ANALYSIS

Bill C-23 contains 93 clauses. Key clauses are discussed in the following sections of this Legislative Summary.

2.1 ESTABLISHING THE HISTORIC PLACES OF CANADA ACT

Bill C-23 enacts the HPCA, section 92 of which repeals the HSMA, the Act currently providing for the protection of historic sites in Canada.

2.2 DESIGNATION OF MINISTER (CLAUSES 2 AND 4)

Pursuant to the definition under clause 2 of the bill, the minister referred to in the HPCA is, by default, the Minister of Environment and Climate Change. Under clause 4, the Governor in Council may, by order, designate any federal minister to be the minister referred to in this Act.

2.3 POWERS, DUTIES AND FUNCTIONS OF THE MINISTER (CLAUSES 5 TO 7)

Clause 5(1) of the bill gives the minister the responsibility to designate places, persons and events of historical significance or national interest and to protect and conserve the heritage value of federal historic places.

Clause 5(2) outlines the minister's powers under the HPCA. The minister has the discretionary power to recognize a place, person or event of national historic significance by any means. The minister may implement programs and policies to protect and conserve the heritage value of historic places and to conduct studies related to historic places and archaeological resources on federal lands under federal authority.

2.3.1 World Heritage Convention

The United Nations Educational, Scientific and Cultural Organisation's *Convention Concerning the Protection of the World Cultural and Natural Heritage* (World Heritage Convention) was adopted in November 1972 and accepted by Canada in July 1976.¹⁴ The World Heritage Convention sets out the duties of party states in identifying and preserving cultural and natural heritage sites. Clause 6 of the bill gives the responsibility for ensuring that Canada meets its obligations under the World Heritage Convention to the minister.

2.3.2 Commemoration of Prime Ministers Program

Clause 7 of the bill requires the minister to establish a program for the commemoration of deceased prime ministers of Canada at their grave sites or other appropriate places in Canada. Such a program, entitled the National Program for the Grave Sites of Canadian Prime Ministers, has existed since 1999 and is administered by Parks Canada.¹⁵ The bill therefore codifies the existing program.

2.4 HISTORIC SITES AND MONUMENTS BOARD OF CANADA (CLAUSES 8 TO 17)

Clause 8(1) of the bill continues the Historic Sites and Monuments Board of Canada (HSMBC), which was established in 1919 and given a statutory basis in 1953 under the HSMA.¹⁶ The mandate of the HSMBC is to advise the Government of Canada, through the Minister of Environment and Climate Change, on the commemoration of nationally significant aspects of Canada's history. Following an evaluation process and recommendation by the HSMBC, the minister has the authority to designate a site, event or person of national historic significance.

2.4.1 Truth and Reconciliation Commission Call to Action 79(i)

Clauses 8 to 15 of the bill outline changes to the HSMBC's composition, powers, duties and functions. Most notably, it implements the Truth and Reconciliation Commission's Call to Action 79(i). As a part of the ongoing efforts at reconciliation between Canada and Indigenous peoples in Canada, Call to Action 79 calls upon the federal government to develop a reconciliation framework for Canadian heritage and commemoration, which includes, under Call to Action 79(i), "[a]mending the Historic Sites and Monuments Act to include First Nations, Inuit, and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat."¹⁷

Under clause 8 of the bill, the composition of the HSMBC increases from 16 to 20 members. These new board positions include one member representing each of the following peoples: First Nations, Inuit and Métis. Under the new regime, the HSMBC also includes one representative from each province and territory, a chair and three federal civil servants.

The bill also alters the powers of the HSMBC. Under the old regime, the HSMBC made recommendations for marking historic places, establishing historic museums and advising the minister on the exercise of ministerial power. Under the HPCA, the HSMBC is responsible for making recommendations for the designation of places, persons and events; making recommendations regarding the means of recognizing places of national historic significance or national interest; and advising the minister regarding the use of ministerial powers and performing the duties

and functions set out in the Act. Generally, the bill expands the HSMBC's responsibilities and powers. The HSMBC becomes central to the designation of places, persons and events, and designation affords greater protections than before due to the new offences and enforcement mechanisms created by the HPCA.

2.5 DESIGNATION OF PLACES, PERSONS AND EVENTS (CLAUSES 18 TO 27)

Clause 18 of the bill sets the condition for designation. Under the HPCA, a place, person or event may be designated as a historic place of Canada, person of historic significance or historic event if the place, person or event is of national historic significance or national interest. Clause 22 requires the minister to establish criteria for the designation of a historic place, person or event.

Under the HPCA, the designation process begins by request. Clause 19 of the bill allows any person to submit a request to the minister asking for the designation of a place, person or event. Clause 20 requires federal authorities to submit a request to the minister to designate each building that belongs to the federal Crown and is at least 50 years old. Every request submitted to the minister under clauses 19 and 20 is reviewed by the HSMBC, which then makes a recommendation regarding designation guided by the criteria set by the minister.

Clause 24(1) sets out the minister's power to designate. Under this clause, the minister has the discretion, upon recommendation from the HSMBC, to designate a place, person or event as historically significant if the minister is of the opinion that the subject meets the established criteria. Clause 26 places a limit on the minister's ability to revoke a designation. The minister may revoke a designation only if the HSMBC has recommended to do so and the minister is of the opinion that the subject is no longer of national historic significance or national interest.

2.6 PUBLIC REGISTER (CLAUSES 28 TO 30)

Under clause 28 of the bill, the minister must establish and maintain a public register of historic places, persons of historic significance and historic events designated under clause 24(1). The register must contain descriptions of the designated subjects and the reasons for their designation. For historic places, the register must contain information about their condition and any planned action that may result in a physical change affecting heritage value. Under clause 29, the information to populate the register is provided to the minister by the federal authority responsible for the designated subject.

2.7 PROTECTION AND CONSERVATION OF THE HERITAGE VALUE
OF FEDERAL HISTORIC PLACES
(CLAUSES 31 AND 32)

Clause 31(1) of the bill enshrines the Standards and Guidelines for the Conservation of Historic Places in Canada in the HPCA. Clause 31(1) requires that these standards and guidelines be taken into account before carrying out an action causing physical change that may affect the heritage value of a federal historic place. Clauses 31(2) and 32(1) require that a federal authority consult with Parks Canada before carrying out an action that could alter the heritage value of a federal historic place or disposing of a federal historic place.

2.8 NAVIGATION IN HISTORIC CANALS
(CLAUSE 33)

Under clause 33 of the bill, the minister may restrict or prohibit the navigation, anchoring or mooring of vessels in historic canals, including for the purposes of “(a) managing water levels; (b) keeping navigation channels open; and (c) conducting repair and maintenance work.”

2.9 REGULATIONS
(CLAUSE 34)

Clause 34(1) of the bill grants the Governor in Council the power to make regulations respecting federal historic places administered by Parks Canada, with a few listed exceptions. These include regulations related to the following:

- (a) the administration of [federal historic] places;
- (b) the protection of cultural, historical and archaeological resources, flora, soil, waters, fossils, natural features and air quality;
- (c) the protection of fauna, the taking of specimens of fauna for scientific or propagation purposes and the destruction or removal of dangerous or superabundant fauna;
- (d) fishing, including its management;
- (e) the prevention and remedying of any obstruction or pollution of waterways in those places;
- (f) the restriction or prohibition of activities and the control of the use of the resources and facilities in those places;
- (g) the establishment, operation, maintenance, administration and use of cemeteries, including the designation, granting and maintenance of plots in cemeteries;

- (h) the treatment of cremated human remains;
- (i) the establishment, maintenance, administration, dredging, filling and use of roads, streets, highways, parking areas, sidewalks, streetworks, trails, wharves docks, bridges, waterways and other improvements, and the circumstances under which they must be open or may be closed to the public;
- (j) the control of traffic on roads, streets, highways and waterways and elsewhere in those places, including the regulation of the speed and operation of vehicles and vessels, draught, wintering and mooring of vessels and parking of vehicles;
- (k) the control of the location, standards, design, materials, construction, maintenance, improvement, removal and demolition of buildings, facilities, signs and other structures and the establishment of zones governing uses of land and buildings;
- (l) the control of businesses, trades, occupations, amusements, sports and other activities or undertakings and the locations where those activities and undertakings may be carried on;
- (m) the preservation of public health and the prevention of disease;
- (n) public safety, including the control of firearms;
- (o) the control of domestic animals, including the impounding or destruction of those animals found at large;
- (p) the acquisition or disposition of prehistoric and historic objects and reproductions of them and the sale of souvenirs, consumer articles and publications related to those objects and reproductions;
- (q) the control of access to those places by air; and
- (r) the summary removal from one of those places, by park wardens or enforcement officers, of persons found contravening specified provisions of the regulations or the *Criminal Code*, and the exclusion from that place for prescribed periods of those persons or persons convicted of offences under those provisions.

Clause 34(3) allows regulations to grant the superintendent of a federal historic place discretionary powers in matters dealt with by the regulations.

Clause 34(4) allows for regulations to be made for the search, seizure and disposition of a vessel in a historic canal in the event of unpaid fines or the contravention of regulations.

2.10 SCHEDULES 1 AND 2
(CLAUSES 35 AND 36)

Clauses 35 and 36 of the bill allow the Governor in Council to amend Schedules 1 and 2 of the HPCA, respectively. Schedule 1 is a list of Crown corporations that are included in the definitions of “federal authority” and “federal institution” contained in clause 2 of the bill, for the purposes of the HPCA. As currently drafted, Schedule 1 only includes the National Capital Commission. Schedule 2 is a list of historic canals, which are included in the definition of “historic canal” in clause 2 of the bill, for the purposes of the HPCA.

2.11 ENFORCEMENT
(CLAUSES 37 TO 45)

Clauses 37 to 45 of the bill set out the enforcement mechanisms available under the HPCA. Clauses 37 and 38 allow the minister to designate park wardens and enforcement officers, respectively, for the purposes of enforcing the HPCA and its regulations and of preserving and maintaining public peace in federal historic places.

When exercising their functions, park wardens and enforcement officers are considered peace officers as defined in the *Criminal Code*. Under clause 39(1), the minister can designate persons to enforce the HPCA and its regulations with regard to contravention offences.

Clause 41 grants right of passage to park wardens and enforcement officers in the discharge of their duties. This allows them to enter and pass over private property without liability and without objection. Clause 42 grants immunity from personal liability to park wardens and enforcement officers during the good faith exercise of their duties.

Clause 43(1) of the bill grants park wardens and enforcement officers search and seizure powers in accordance with a warrant issued by a justice of the peace as described in clause 43(2). According to clause 43(3), the search and seizure powers can be exercised without a warrant in exigent circumstances where it would not be practical to obtain one. The Department of Justice has published a Charter Statement discussing rights-based implications of the enforcement provisions of the HPCA.¹⁸ The Charter Statement concludes that the HPCA’s search and seizure powers are similar to existing authorities that have been upheld under section 8 of the Charter.

2.12 OFFENCES AND PUNISHMENT
(CLAUSES 46 TO 51)

Clause 46 of the bill creates a new offence for contravening any provision of the regulations of the HPCA or any condition of a licence, permit or other authorization issued under the regulations. On conviction on indictment, such an offence is punishable by a fine of up to \$200,000 for an individual and up to \$1 million for a corporation. On summary conviction, this fine could be up to \$50,000 for an individual and up to \$500,000 for a corporation. Clause 47 of the bill creates a due diligence defence, whereby a person will not be found guilty of an offence under the HPCA if they can demonstrate that they exercised due diligence to prevent its commission.

Clauses 48 and 49 establish sentencing principles and considerations specific to historic place-related offences. Purposes to consider in sentencing include deterrence, denouncement of unlawful conduct that damages historic places and reparation of harm done to historic places. Aggravating factors to consider in sentencing include whether the offence caused damage to any unique, rare, particularly important or vulnerable resources of a historic place; whether the damage is extensive or irreparable; whether the offender had received a warning not to commit the offence; and whether the offender attempted to conceal the commission of the offence.

2.13 HISTORIC PLACES PROTECTION AND CONSERVATION FUND
(CLAUSE 52)

Clause 52 of the bill establishes the Historic Places Protection and Conservation Fund (HPPCF). All fines received in respect of the commission of an offence under the HPCA, except for fines collected through contraventions, are credited to the HPPCF. The HPPCF provides a source of funding for conserving historic places but is not intended to be the sole source of funding for these measures. Amounts may also be paid out of the Consolidated Revenue Fund (the Government of Canada's general account) for the purposes of protecting and conserving the heritage value of historic places.

2.14 RELATED AND CONSEQUENTIAL AMENDMENTS
(CLAUSES 58 TO 92)

Clause 92 of the bill repeals the *Historic Sites and Monuments Act*. Clauses 58 to 91 contain amendments to various Acts that primarily ensure that language is consistent with the changes in terminology used in the bill. For instance, clause 63(1) of the bill replaces the term “national historic site” with “national historic place” in the *Parks Canada Agency Act* since the term “place” is used throughout the bill. Thus, amendments to terminology contained in a number of Acts are made by the following clauses:

- clause 58 – *Payments in Lieu of Taxes Act*;

- clause 59 – *Canadian Navigable Waters Act*;
- clauses 60 and 61 – *Department of Transport Act*;
- clause 62 – *Heritage Railway Stations Protection Act*;
- clauses 63 to 75 – *Parks Canada Agency Act*;
- clauses 76 and 77 – *Canada National Parks Act*;
- clause 78 – *Yukon Act*;
- clauses 79 and 80 – *Heritage Lighthouse Protection Act*;
- clause 81 – *National Cemetery of Canada Act*;
- clauses 82 to 87 – *Nunavut Planning and Project Assessment Act*;
- clause 88 – *Northwest Territories Act*;
- clauses 89 and 90 – *Rouge National Urban Park Act*; and
- clause 91 – *Recognition of Charlottetown as the Birthplace of Confederation Act*.¹⁹

NOTES

1. [Bill C-23: An Act respecting places, persons and events of national historic significance or national interest, archaeological resources and cultural and natural heritage](#), 44th Parliament, 1st Session.
2. House of Commons, Standing Committee on Environment and Sustainable Development, [Preserving Canada's Heritage: The Foundation for Tomorrow](#), Tenth report, December 2017.
3. [Historic Sites and Monuments Act](#), R.S.C. 1985, c. H-4.
4. Truth and Reconciliation Commission of Canada, [Truth and Reconciliation Commission of Canada: Calls to Action](#), 2015, p. 9.
5. Canada's Historic Places, [About Us](#).
6. House of Commons, Standing Committee on Environment and Sustainable Development, [Preserving Canada's Heritage: The Foundation for Tomorrow](#), Tenth report, December 2017.
7. Ibid.
8. Catherine McKenna, Minister of Environment and Climate Change, [Government response to the tenth report of the House of Commons Standing Committee on Environment and Sustainable Development, entitled Preserving Canada's Heritage: The Foundation for Tomorrow](#), tabled December 4, 2017, 23 March 2018.
9. [Heritage Railway Stations Protection Act](#), R.S.C. 1985, c. 52 (4th Supp.).
10. [Heritage Lighthouse Protection Act](#), S.C. 2008, c. 16.
11. Canada's Historic Places, [About Us](#).
12. Canada's Historic Places, [Standards and Guidelines for the Conservation of Historic Places in Canada: A Federal, Provincial and Territorial Collaboration](#), 2nd edition, 2010.
13. Government of Canada, [The Standards and Guidelines](#).
14. United Nations Educational, Scientific and Cultural Organisation, [Convention Concerning the Protection of the World Cultural and Natural Heritage](#), 16 November 1972.

15. Government of Canada, [*National Program for the Grave Sites of Canadian Prime Ministers*](#).
16. Government of Canada, [*Historic Sites and Monuments Board of Canada*](#).
17. Truth and Reconciliation Commission of Canada, [*Truth and Reconciliation Commission of Canada: Calls to Action*](#), 2015, p. 9.
18. Government of Canada, [*Bill C-23, An Act respecting places, persons and events of national historic significance or national interest, archaeological resources and cultural and natural heritage – Charter Statement*](#), 24 October 2022.
19. [*Payments in Lieu of Taxes Act*](#), R.S.C. 1985, c. M-13, s. 2(3)(c); [*Canadian Navigable Waters Act*](#), R.S.C. 1985, c. N-22, s. 23(2); [*Department of Transport Act*](#), R.S.C. 1985, c. T-18, ss. 2 and 18; [*Heritage Railway Stations Protection Act*](#), R.S.C. 1985, c. 52 (4th Supp.), s. 2(1); [*Parks Canada Agency Act*](#), S.C. 1998, c. 31, preamble, ss. 2(1), 2(2), 4(1)(a) and 4(1)(b), 5(1), 5(3), 6(1) to 6(3), 6.1(2), 6.1(3), 7(1), 21(3)(a) to 21(3)(d), 23, 26.1, 29, 31 and 32; [*Canada National Parks Act*](#), S.C. 2000, c. 32, ss. 2(1) and 42; [*Yukon Act*](#), S.C. 2002, c. 7, s. 49(1)(a)(ii); [*Heritage Lighthouse Protection Act*](#), S.C. 2008, c. 16, ss. 2, 10 and 11; [*National Cemetery of Canada Act*](#), S.C. 2009, c. 5, preamble; [*Nunavut Planning and Project Assessment Act*](#), S.C. 2013, c. 14, s. 2, ss. 2(1), 70(1), 163(b), 164(1), 171 and 172; [*Northwest Territories Act*](#), S.C. 2014, c. 2, s. 2, s. 55(1)(a)(ii); [*Rouge National Urban Park Act*](#), S.C. 2015, c. 10, ss. 2, 7 and 7(c); and [*Recognition of Charlottetown as the Birthplace of Confederation Act*](#), S.C. 2017, c. 30, preamble.