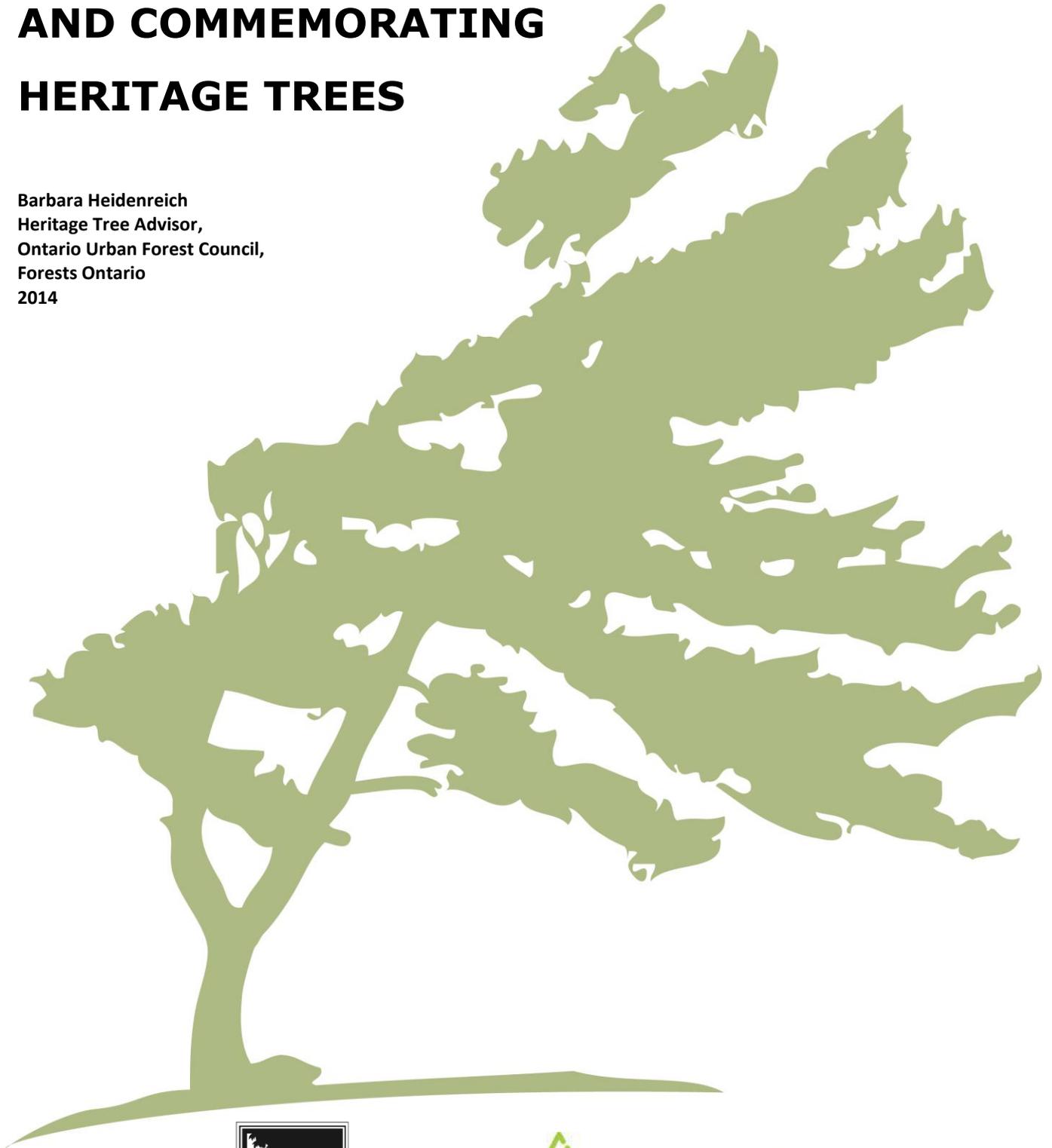


A *SYNOPSIS* ON PROTECTING AND COMMEMORATING HERITAGE TREES

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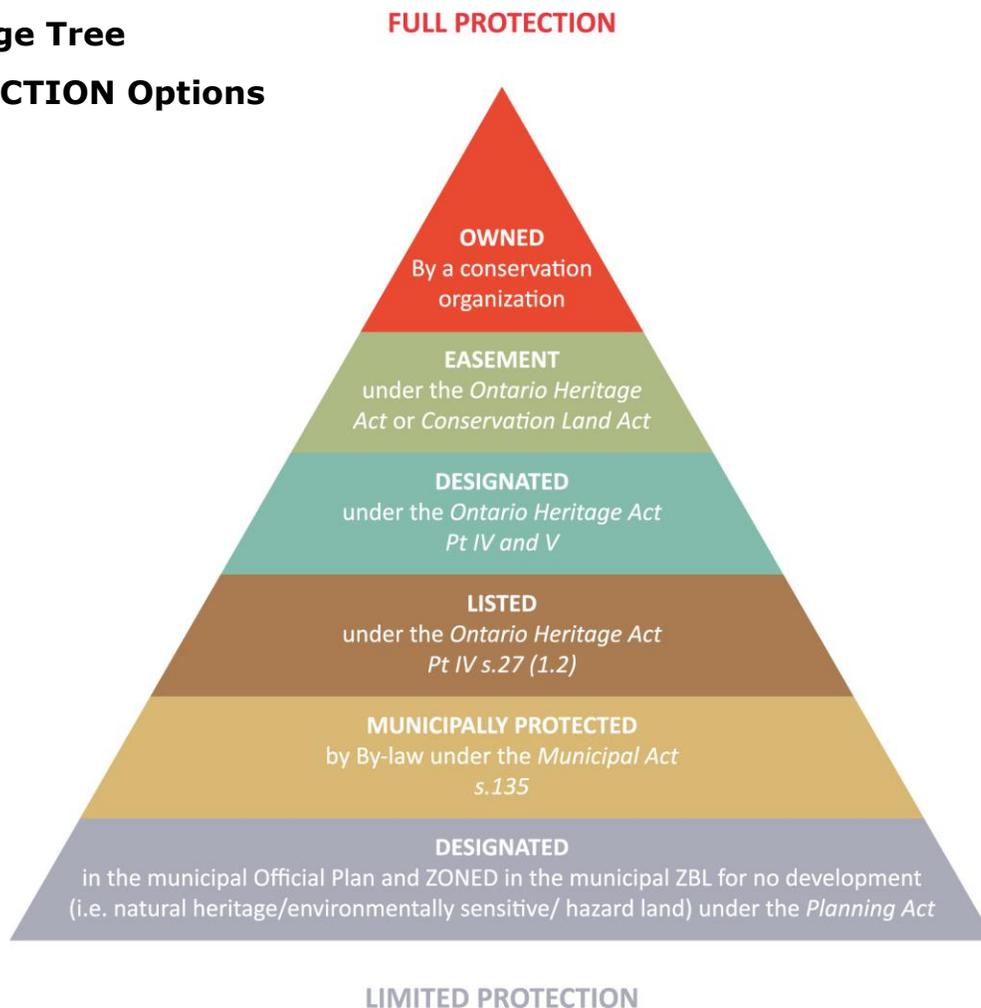


PROTECTING and COMMEMORATING HERITAGE TREES: A SYNOPSIS

This is a synopsis of "legal" protection options for heritage trees (and in some cases natural heritage areas) that moves from a permit to cut process under by-law provisions to full protection in perpetuity by fee simple ownership of the land on which the tree(s) is situated by a natural heritage conservation organisation.

Heritage Tree

PROTECTION Options



Trees and natural heritage areas may be protected under the *Planning Act*, the *Municipal Act*, the *Ontario Heritage Act (OHA)*, and the *Conservation Land Act (CLA)* in a number of ways. Starting with the **highest level** of protection...

A) OWNERSHIP by a not-for-profit conservation land trust:

Ownership in fee simple by the Ontario Heritage Trust (a conservation agency mandated under the *Ontario Heritage Act* (OHA), or by a qualified not-for-profit charitable conservation organisation such as the Nature Conservancy, or member of the Ontario Land Trust Alliance mandated to preserve "conservation land" in perpetuity under the *Conservation Land Act* (CLA), R.S.O. 1990 offers the highest level of protection. This option is usually the result of a donation of the land by the landowner or by bequest, or by purchase or by "split receipt" (which involves a part sale - part donation) of the land on which the tree(s) are situated.

B) CONSERVATION EASEMENT AGREEMENT:

- (1) may be held by the Ontario Heritage Trust or municipality under the OHA
- (2) may be held by a Conservation Authority, municipality or local land trust under the CLA

A conservation easement agreement is a legal instrument agreed to by landowner and a qualified conservation organization. Every easement contains a series of restrictions ("covenants") which bind present *and* future landowners and restrict what they may do on the property. An easement can specify there will be no destruction of any tree or no destruction of qualifying heritage trees. It could also specify positive obligations upon the owner to apply good heritage tree stewardship principles in its care.

Protection by a heritage Conservation Easement Agreement is an "*in perpetuity*" protection of cultural/natural property that is registered on title and runs with the land. This protection cannot be revoked except by mutual consent of both parties and requires extraordinarily good reasons simply to open discussions. Monitoring and enforcement rests with the organization that holds the Conservation Easement Agreement and the "easement" article

within the Agreement gives the organization access to the land to enable monitoring.

Under the authority of the *Conservation Land Act*, a conservation organization, such as a Conservation Authority or a local land trust, may hold a Conservation Easement Agreement over land that could include covenants protecting trees. The Ontario Heritage Trust has the power under the *Ontario Heritage Act*, Part II, Section 10(1) (c) and Section 22 to enter into a voluntary Conservation Easement Agreement with a willing landowner to protect heritage attributes on a property. A Municipality has the same powers under Section 37 of the OHA for the conservation of property of cultural heritage value or interest. The Trust currently does not hold an easement specifically to protect a single heritage tree, but it would be possible if the tree met the significant cultural heritage values criteria in Ontario Regulations 10/06 made under the *Ontario Heritage Act* including the definition of "provincial significance".

C) DESIGNATION under the *Ontario Heritage Act* Part IV s. 29 and V:

The term "designation" has a legal meaning in Ontario in that only Municipal Council and/or the Minister may designate cultural/natural heritage property.

C.1) DESIGNATION by a Municipality under the *Ontario Heritage Act*:

Under the *Ontario Heritage Act (OHA)* Part IV, Sections 29 to 34.4, a municipal Council may pass a by-law designating the private property on which a "heritage tree" is located. The municipal designation of trees may be initiated in two ways: (a) by request of the owner or (b) by request of a ratepayer to the Municipal Heritage Committee (MHC). The MHC may (but does not always) make a designation recommendation to Council. Under the *Ontario Heritage Act*, permission of the landowner is not required to move forward with designation. The land owner may object and, if the municipality

passes the designation by-law, the land owner may appeal to the Conservation Review Board operating under the *Ontario Heritage Act*. After designation, the tree cannot be destroyed or altered (*OHA*, Section 30) without the written approval of the municipality. It is important that the tree(s) be explicitly referenced in the reasons for designation where the tree is contextual to a heritage building being designated. Otherwise it may be possible for the owner to succeed in an "alteration request" that impacts the tree. However, while designation is a form of protection that involves recognition and a degree of security, Council may repeal designation by-laws.

C.2) DESIGNATION by the Minister under the *Ontario Heritage Act*:

Under the *Ontario Heritage Act*, Part IV, Sections 34.5 to 34.9, the Minister of Culture may designate "*properties*" (again, permission of the landowner is not required). After designation, the tree cannot be destroyed or altered unless the Minister consents (*OHA*, Section 34.5 (2)). This is rarely used... but anyone may petition the Minister. An owner may apply to the Minister to alter or demolish the designated property and the Minister must discuss the request with the Ontario Heritage Trust before making a decision.

C.3) DESIGNATION of a Heritage Conservation District (a geographic area) that includes specifically mentioned trees:

The *Ontario Heritage Act* allows for the designation by by-law (*OHA*, Part V, Section 40.1) of Heritage Conservation Districts (HCD). Trees are generally identified as significant heritage attributes within the scope of almost every existing Heritage Conservation District. While there may not yet be a HCD that focuses only on trees, that is a possible scenario. HCDs start with a study (*OHA*, Part V, Section 40). This is a Council initiated study, but if there is a Municipal Heritage Committee, Council has to consult with the MHC (*OHA*, Part V, Section 40(3)). All HCDs are reviewed and approved by the Ministry of Tourism and Culture and Sport, Culture Services Unit. Within the

HCD there can be no alteration or destruction of the designated heritage features, i.e. the trees.

D) LISTED under the *Ontario Heritage Act* Part IV s. 27 (1.2):

Under the *Ontario Heritage Act*, Section 27 (1.2), trees can be "listed" on the municipal Register with or without the landowner's consent if deemed of cultural heritage value, affording temporary protection of up to 60 days.

E) MUNICIPALLY PROTECTED under the *Municipal Act*, s. 135 by By-law:

Trees in a municipality may be "protected" on private and public property (this needs to be specified) by the passing by Council of a Municipal Tree By-law under Section 135 of the *Municipal Act*. Such a by-law generally requires a permit to be issued prior to cutting. The permit may be issued simply on receipt of a fee or a more rigorous process geared to an urban forest management plan may make the removal of a tree very difficult and subject to conditions (or fines if removed without a permit). A Municipal Tree By-law may include "heritage trees" (which would need to be defined specifically). Trees that qualify would be listed as protected on a Schedule appended to the by-law subject and be subject to penalties if violations occur.

OR

A municipality may also pass a stand-alone Heritage Tree Protection By-law under Section 135 of the *Municipal Act*. The By-law would define heritage trees, list those identified in a Schedule or Registry attached to the By-law, and specify that the tree cannot be damaged or destroyed and must be maintained using "good heritage tree stewardship practices". The By-law would set out penalties for contraventions. Generally, a motion by Council is required to remove a tree from the Schedule/Registry. Technically this could afford a very high level of protection if the by-law is rigorous and the penalties for violations are high.

F) MUNICIPALLY PROTECTED under the *Planning Act*:

Land use planning is all about stewarding our land and resources. Each community, through their Official Plan process, sets goals on how it will develop and works out ways of reaching those goals while looking after important social, economic and environmental concerns. The interests of individual property owners are balanced with the broader social interests and objectives of the whole community. To help you understand land use planning in Ontario, there are two excellent sources of information available from the internet:

The Municipal Councillor's Guide

(2007) (ISBN 978-0-7794-5489-1 PDF) from

<http://www.mah.gov.on.ca/Page5030.aspx>

The Ministry of Municipal Affairs and Housing's Citizens Guides to Land Use Planning <http://www.mah.gov.on.ca/Page338.aspx>

The *Planning Act* itself is available at:

<http://www.e->

[laws.gov.on.ca/html/statutes/english/elaws_statutes_90p13_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p13_e.htm)

The *Planning Act* has strong language compelling municipalities to look after their ecological systems with guiding policy tools contained in the *Provincial Policy Statements* (PPS) issued under Part I, Section 3 of the *Planning Act*.

Under Part III of the *Planning Act* municipal Councils are required to prepare an Official Plan. The Official Plan and its implementing Zoning By-law are the most important tools that shape what happens on the ground in your community. Official Plans give a "vision" of how your community will look in the future. If your "vision" has natural areas, forests and heritage trees,

make certain that your Official Plan identifies them and has statements or "policies" which direct Council and residents to act and make decisions in ways that protect these features. Ensure that the Maps/Schedules attached to your municipality's Official Plan *designate* (identify on the map) the location of the natural features. The trees and wooded areas and wetlands need to be recognized and assigned such designations as "environmentally sensitive", "natural heritage protection", "significant woodlands" in order to be protected. There are even protection tools for "trees, shrubs, hedges, plantings or other ground cover" available under the *Planning Act* which are discussed in detail in:

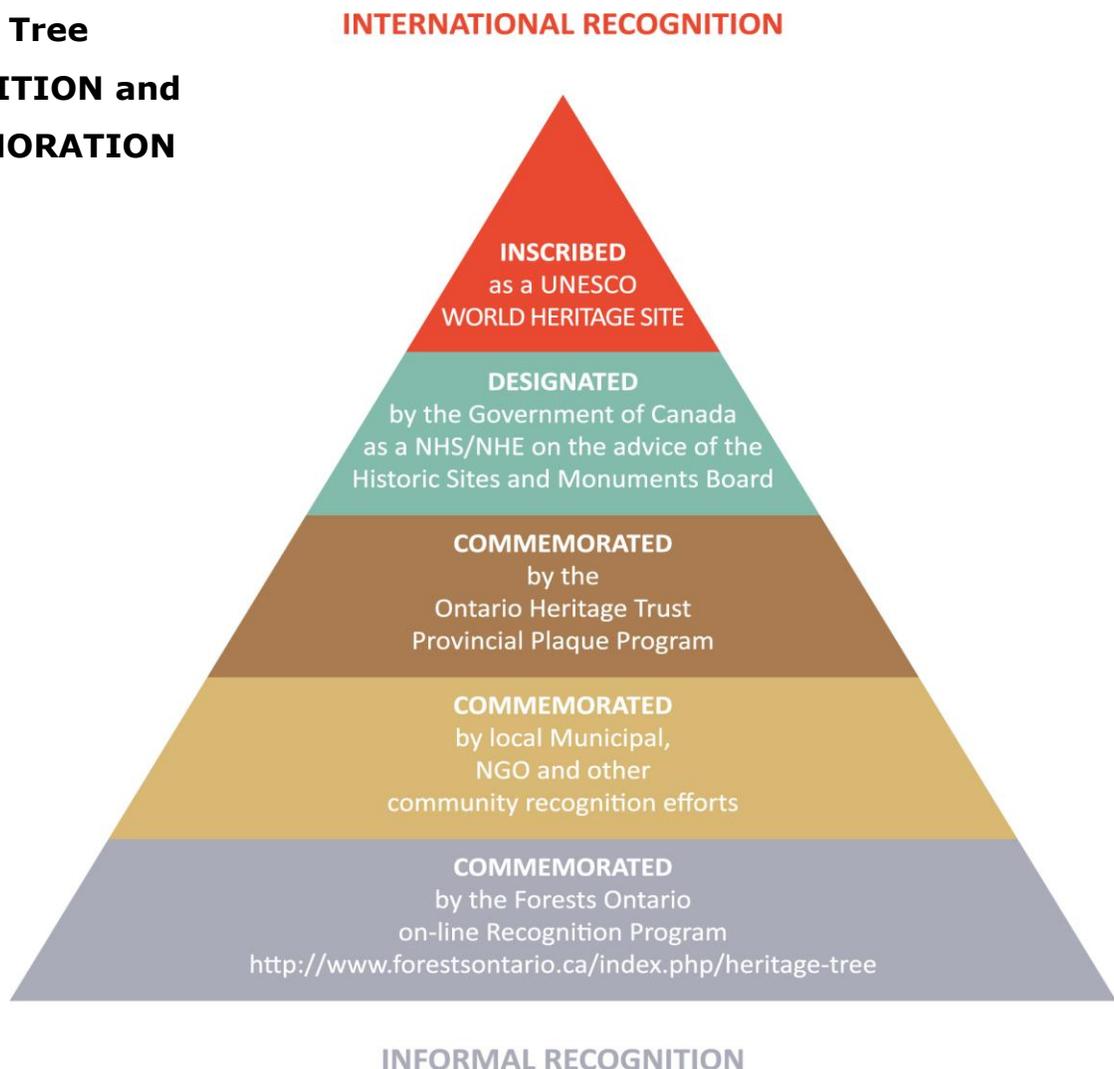
Ontario Heritage Tree Alliance/Ontario Urban Forest Council (OUFC).2011. *Securing the Future of Heritage Trees: A Protection Toolkit for Communities* (Section E. Legislative Tools for Heritage Trees Protection. pp. 129-198)



COMMEMORATING HERITAGE TREES: A SYNOPSIS

The programs below are ways of *celebrating* heritage trees from broad community based local recognition programs, through provincial and federal commemoration programs mandated by legislation. Ultimately being inscribed as a UNESCO World Heritage Site might be considered the apex. *None of these recognition and commemoration options provide protection.*

Heritage Tree RECOGNITION and COMMEMORATION Options



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