

B.C.'s plans to update heritage protections could majorly affect property owners

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British Columbia is planning major changes to its heritage protection laws that critics say may have drastic consequences for property owners in the province.

The overhaul of the Heritage Conservation Act follows the upheaval caused by a B.C. Supreme Court ruling last year that affirmed Indigenous title for the Cowichan Tribes over [three square kilometres of land](#) in Richmond, B.C. The ruling triggered financing issues for landowners and set a legal precedent that could have wider implications for private property rights. Also, in December, the B.C. Court of Appeal ruled that the province's adoption of the Declaration on the Rights of Indigenous Peoples Act (DRIPA) is legally enforceable, including matters concerning resource development.

The lesser-known change under way, which will apply to every property owner in the province, is the province's rewriting of the Heritage Conservation Act (HCA), which it intends to align with DRIPA. The proposed changes have received considerable blowback from local governments, real estate developers and others. The province has extended the consultation phase and will use the feedback to introduce revised legislation likely this year, according to spokesperson Andy Watson, who's with the Ministry of Forests, which oversees the HCA.

The HCA has long protected culturally significant Indigenous sites affected by redevelopment. But the amendments aim to broaden the definition of sites to include those that have spiritual or ceremonial value, or other intangibles. Critics worry that owners won't know their property has been flagged as culturally important until they apply for a permit. Such a designation could make property owners vulnerable to additional expense and delay.

"If you read what they're proposing, it's going to make things a lot worse," says Port Coquitlam Mayor Brad West. "Right now, the necessity of having a heritage permit is fairly narrow. ... It connects to maps that identify where there could be a higher probability of an archeological find. In Port Coquitlam, our entire community is mapped.

"What the province is proposing, as I understand it, basically opens up just about every square inch of the province to necessitating a heritage permit, basically, if you're breaking ground," Mr. West says.

Unlike the Cowichan court decision, these changes are coming from the province, added Mr. West. He believes such broad-sweeping measures would have a severe economic impact.

“It seems to me it would not only slow development, but it would also make people very reluctant to invest in the province. Especially taken together with other decisions that have been made in this area,” Mr. West says.

“It’s important to understand this is not just about housing development. This is all construction: a new road, a utilities upgrade, pump stations, playgrounds, a new rec centre.

“If the province moves forward with their changes, it is conceivable that every project would require a heritage permit.”

Lawyer Tom Isaac has also spoken out against the changes to the HCA. Mr. Isaac is an expert in Indigenous law who represents Indigenous and non-Indigenous businesses and governments. He is a co-author of Canada and the UN Declaration on the Rights of Indigenous Peoples, published last year.

He said the HCA needs to be modernized, but these changes make it worse, not better. The proposed amendments have the potential to affect every property owner who might own property near or on a heritage site, whether they know it or not.

“In order to attract capital, in order to have people want to buy property, we need some degree of certainty, stability, and predictability,” said Mr. Isaac.

“I’ve been yapping a lot about Cowichan in the media and what that has done to those three principles, and the UNDRIP decision recently doesn’t help. ... But then you get to the Heritage Conservation Act. Prior to the amendments, if you found a midden site or a site where there was a campground, or bones, or artifacts, they’re physical. The proposed amendment apparently is to include intangibles, like stories, and spiritual connectedness to the land for Indigenous peoples.

“How can you possibly ask private landowners to protect stories and other spiritual connections to land on their private property? And this is just one example,” he said, referring to the adoption of the UN declaration.

“That’s not fair, particularly to private landowners.

“Again, my comment isn’t to say that First Nations don’t have a right to have stories and spiritual connections. But where do we draw the line from a regulatory and statutory provision of what is reasonable? And you are entirely dependent on nonverifiable

assertions by First Nations. ...Why would the government create a statutory regime like that? Why would you do that to yourself?”

Mr. Watson, with the Ministry of Forests, said that the HCA already applies to all British Columbians, and the amended version would mean better clarity and fewer surprises when starting new projects.

“The changes are aimed at improving compliance,” he said in an e-mail.

He called it a “multiyear collaborative effort” designed to “better protect cultural and heritage sites, increase transparency and speed up permitting processes.” He said the government aims to help communities with many Indigenous heritage sites such as Lytton, where a wildfire in 2021 destroyed much of the town, to rebuild faster. The changes will also reduce the risk of accidental damage to sacred or other significant sites and advance the role of First Nations in decisions about their heritage.

“The modernized HCA ensures alignment of B.C.’s heritage laws with the UN Declaration per our commitments under the Declaration Act,” he said.

Developer Kevin Layden, president and chief executive officer of Wesbild, is skeptical that the amended act will result in reduced timelines. He said that obtaining provincial approvals already adds many months to his company’s production schedules.

“Everybody’s for protecting heritage sites. I don’t think anyone disagrees with that,” said Mr. Layden. “And I think people agree that there should be a better process for both the First Nations, developers and municipalities. But what they’ve proposed is going to add complexity to the process and it’s not going to solve one of the core issues, which is that the province takes forever to respond. This is all about delays and added costs to a system that’s already absolutely burned out by delays.”