

Court Case Could Send Important Message

By Carrie Humchitt

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Imagine if you will, someone desecrating your family's final resting place and ploughing through their bones in the name of development.

Ask yourself how would you feel.

In 2003 the Hul'qumi'num Treaty Group filed a complaint against Poets Cove Resort and Spa after the destruction of a major archaeological site on South Pender Island.

"(This) is one of the worst desecrations of an Aboriginal burial ground by development in the recent history of Canada," said Robert Morales, chief negotiator Hul'qumi'num Treaty Group.

The HTG pressed Crown counsel to lay charges under the Heritage Conservation Act. The reasoning being unless the laws under the act were enforced all First Nations sites would be vulnerable to desecration by developers.

This is the first time such charges have been laid under provincial heritage laws. Prior to this, desecration of sacred First Nations burial grounds had been ongoing in B.C. with little in the way of legal remedies for their protection.

As the case goes to provincial court in Victoria, it will be interesting to see how the court dances around this subject as developers in numerous parts of B.C. continue to stampede toward getting their projects going post-haste so that the "balance of convenience" (a legal term) favours their business interests while it can.

If the court finds against Poets Cove Resort and Spa, what would the result be and how would this impact the continuing development of resorts in B.C.? In the worst-case scenario for Poets Cove, it would be fined \$1 million and maybe — this is a big stretch — one scapegoat amongst the powers-that-be may have to spend a symbolic time in jail — likely a minimal stay at a minimum-security institution.

My prediction is even if there is a conviction, no one will have to spend any time in jail. Why would they? The government's non-enforcement of the Heritage Conservation Act has led many developers in B.C. to believe it is business as usual. Don't worry about those sacred First Nations burial grounds because nothing is going to happen to you other than a fine, which can be seen as part of the price of business.

The only way justice will ever be realized in this area is if there is real force given to the Heritage Conservation Act by beefing up legal sanctions for offences against sacred burial sites, including enforced injunctions.

Furthermore, the understaffed and resourced Archaeological Branch of B.C. needs the resources so developers can have access to information regarding potential sacred sites and plan their developments accordingly.

The government has continually sought to bypass its legal duty to consult and accommodate First Nations, an enforceable duty as a result of cases like Haida and Taku River. By making Crown land private land they think there is no enforceable duty and wash their hands clean.

However, the continuing desecration of First Nations burial grounds is a dirty business, which will not be washed away so easily.

Taking a developer to court is long overdue. Hopefully the result will bring justice to ancient peoples whose rest should never have been disturbed in the first place.

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