

Despite Rulings, Government Still Disrespects First Nations

By Stephen Hume
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Thursday, with the ink barely dry on the Supreme Court of Canada's historic aboriginal rights judgment in the Haida logging case, the province was already congratulating itself on the opportunity for opening a new era in relations with first nations.

The enthusiasm followed the ruling that the "honour of the Crown" requires government to consult meaningfully and, where necessary, accommodate the interests of aboriginal people when dealing with issues involving aboriginal rights and title. This, the court said, is essential to the process of reconciliation.

One would have thought the simple notion that government should deal plainly, honourably and respectfully with aboriginal people -- or any other citizens, for that matter -- would have been clear from earlier rulings by the Supreme Court.

Apparently, however, our politicians required yet another reminder that principles of decency and common sense should both inform and govern relations between people.

Not only is there a duty to consult and accommodate, the court said, but the idea that the Crown's honour is at stake in dealing with aboriginal peoples now "infuses" the process and thus requires the Crown to act from a position of integrity, "avoiding even the appearance of sharp dealing."

Setting aside the irony that the same provincial government which now hails the virtues of this ruling had previously argued to the bitter end against it -- an argument that I note the court rather dourly observed would have led directly to the dishonour of the Crown -- we're now all cheerfully back to the Golden Rule of "do unto others."

Or are we?

Even as the provincial government was patting itself on the back for having been dragged by the scruff of the neck to an affirmation of requirements laid out by courts a decade earlier, it was simultaneously dismissing first nations' objections to the discharge of industrial sewage into an aboriginal cemetery that's one of the most important archeological sites in the Gulf Islands.

I've written before about the appeal against plans to discharge fish farm effluents into the tombolo known as Walker Hook on the north side of Saltspring Island.

The tombolo -- which geologists define as a gravel bar thrown up by tidal and wave action to create a link between islands -- is known as Syuhe'mun by the Penelakut people of the Coast Salish, who live on Kuper Island just next door.

Elders there say Syuhe'mun is the site once occupied by a permanent Hul'qumi'num village that was depopulated in historic times, probably late in the cycle of epidemics which began with the arrival of Spanish and British explorers in the late 18th century.

Scourged by smallpox in 1793 and 1801, by an unknown plague called only "the mortality" in 1824 and 1825, by malaria in 1830, by smallpox again in 1836, by what became known as "the immigrants' diseases" in the 1840s (measles, whooping cough, typhoid fever etc.) and by a final, epochal outbreak of smallpox in 1862, Coast Salish numbers had crashed from an estimated 20,000 to less than 7,000 by the beginning of the 20th century when reserves were established.

In the post-colonial era, settlers occupied territories conveniently cleared for them by diseases that often claimed 20 or 30 per cent of the population at a pass.

Yet there's no doubt among the Penelakut that their people lived at Syuhe'mun, harvesting crabs from the rich eelgrass beds that flank the tombolo, gathering shellfish from its beaches, beach-seining for salmon and re-interring the bones of their dead generations according to ancient custom and rite. Indeed, people who live in the Penelakut village say they still occasionally use the site for harvesting marine food from the inter-tidal zone and for spiritual purposes.

The site possibly had been occupied for 4,500 years or more until pestilence swept the landscape clean and the survivors were herded onto postage stamp reserves. Considering that some archeological projections estimate more than 1,000 burials in the tombolo, it's easy to understand why a plan to irrigate the place with industrial sewage might have a profoundly troubling resonance among present-day Penelakut.

When digging began on the tombolo after approval to locate an effluent discharge system for waste water had been obtained, the excavating crew quickly uncovered human remains. Back in March the Hul'qumi'num wrote to the province expressing concern. They said they had found bones already excavated and removed from a sewer trench and that they had located additional human remains in a sorted backfill pile.

Given the cultural significance of the site, it was hardly surprising when the Coast Salish bands associated with the Penelakut then raised objections with the province, which has jurisdiction over both registered archeological sites and waste management. They said it was disrespectful to discharge sewage among the bones of their ancestors.

The affidavit of one elder, August Sylvester, likened it to a desecration.

"The use of the ancestral burial ground as a sewage treatment site is very hurtful to our people. It is counter to all our beliefs," he said. "They are pumping waste into the ground where the bones of our ancestors lie."

The province takes a different view.

Wednesday, the Environmental Appeal Board did acknowledge that the Penelakut elders and other Coast Salish may sincerely believe that Syuhe'mun is a sacred burial ground and that the mere act of discharging sewage into the sub-surface of the site is disrespectful and offensive, even if the discharge won't physically affect other human remains buried at the site.

"However," it went on to say, "in this case it is not sufficient to show that the act of discharging effluent at the site offends aboriginal spiritual values and beliefs."

Administrative considerations outweighed spiritual and cultural concerns. So the board rejected the request that it overturn approval for alteration of the registered archeological site and withdraw the waste management permit for the sewage discharge into the Walker Hook tombolo.

I don't have space here to go into the complex jurisdictional minutiae of how waste management officials aren't responsible for archeological considerations and why, despite thousands of years of undisputed occupation, aboriginal people still have to prove that they occupied sites a few kilometres from where they now reside -- often having been moved there by government.

In any event, the board ruled that the elders' had not complained until after the initial approvals and that their evidence failed to establish that aboriginal people have "maintained an ongoing connection" to Syuhe'mun that is integral to the distinctive culture of the Penelakut or other Coast Salish people.

Furthermore, it said that there was no evidence that the ability of aboriginal people to conduct their traditional spiritual and religious practices requires that the "effluent discharge" into the burial site must cease.

So there we have it. While the politicians natter on about new relationships, government decisions continue to reflect attitudes which, to paraphrase Oscar Wilde, appear to know the practical price of everything and the spiritual value of nothing.

Whatever the technical and legal reasoning in this particular case, whatever the merits of the fish farm's business plan, surely the central issue here for the province and for industry will be the symbolic message that such a decision sends to aboriginal peoples.

Using a known first nations burial site for waste disposal may make practical sense and have legal authority. But as a metaphor for the colliding values of two cultures seeking reconciliation, it doesn't seem likely to encourage aboriginal activists to believe new relationships are in the immediate offing.

shume@islandnet.com