



# THE ASBC PAGES

EDITORIAL

## The Message of the Poets Cove Sentence

The first sentence of the *Heritage Conservation Act (HCA)* has been given. After pleading guilty to one charge, the Bedwell Harbour Hotel Ltd. (BHHL), property owner of Poets Cove Resort, agreed to pay \$50,000 as a condition of the sentence. The parties associated with the four-star resort on South Pender Island had been charged with two violations of the *HCA*: (1) for disturbing a burial site of historic or archaeological value and (2) for damaging an archaeological site that pre-dates AD 1846. BHHL pleaded guilty to the latter charge, while the other two parties that were charged — Poets Cove at Bedwell Harbour Limited Partnership (the developer) and Bill James (the CEO of Poets Cove Resort) — received a stay of charges on both counts; the destruction to the site was described in previous issues of *The Midden* (36 [3/4], and 37 [2]).

Shortly after the charges were laid, the *Edmonton Journal* described the Poets Cove parties as facing charges under the “rarely used B.C. Heritage Conservation Act,” as if it were a quaint, old law that was ignored for a reason — they seemed to confuse that while it regards antiquities, the law itself is not antiquated.

Now, that the decision has been made, it has been described by the *Cowichan News Leader* (May 12, 2007) as the “biggest court-ordered payment to date under the B.C. Heritage Conservation Act.” That’s \$50,000 to be paid by a multimillion dollar resort.

As Peter Parmar, the president of the resort, noted in a letter to the *Times-Colonist* (April 12), “Poets Cove was not fined but was given a suspended sentence. The \$50,000 payment is a donation that Poets Cove agreed to make for the promotion of archeology in B.C., part of the agreed-upon disposition of the case.” Thus, the funds will be directed to the B.C. Archaeology Branch, which certainly is worth supporting.

While I must applaud this enforcement of the *HCA*, I’m somewhat astonished at the level of the sentence, especially when considered in light of the severity of the damage to the site — a destruction, of course, that cannot be undone. Robert Morales, chief negotiator for the Hul’qumi’num Treaty Group, had a point when he described the sentence to the *Cowichan News Leader* (May 12) as “pretty light,” stating that “How a mistake of that magnitude could be made is hard to understand. There seems to be a disconnect between the sentence and the values that underlie the whole issue.”

In the testimony regarding the settlement, much seemed

to weigh on the fact that the destruction was unintentional. Peter Parmar, in his letter, described the damage as “an oversight, not an intentional breaking of the rules.” This factored into the lightness of the sentence, reflecting a “minimum culpability.”

In the statement, the lawyer for the defendant, Mr. Milman, stated to the Judge (*Regina v. Poets Cove At Bedwell Harbour Limited Partnership*):

“There is a further complication in this case in that there was no harm actually caused to that heritage itself. It’s rather a technical breach of the permit, and the harm is mainly to the authority of the permitting process, because the permit itself wasn’t complied with, so that’s really the gravamen of the offence.”

Thus, the destruction of the site, and the burials within (including a minimum of 4,700 human bones and fragments), was not really the matter; instead, it was simply a mere violation of the terms of the permit.

Even so, Poets Cove did have to pay \$50,000 — but, as Crown Counsel John Blackman himself noted to the *Times-Colonist*, it is “not technically a fine.” If \$50,000 is the amount levied for destroying a shell-midden, the remains of a village, a graveyard, and for violating a site alteration permit — if it is 5% of the maximum fine for that — what kind of damage exactly would incur the maximum fine?

According to the proceedings, a problem in determining the resolution was the fact that there were no prior instances to follow. As Crown Counsel stated to the Judge, “I have no case law to provide Your Honour.” Unfortunately, the next time such site destruction occurs, Poets Cove will be a precedent to guide sentencing. Perhaps \$50,000 will be a deterrent to developers, but given the budgets of such projects, that appears unlikely.

It seems that a moment has passed when the *HCA* could have been given the backbone it deserves, a point at which other developers would recognize that heritage is something to be concerned about in the early stages of a project. Maybe, after all, Poets Cove wasn’t the case to stand as that example, but if that wasn’t, it’s difficult to imagine what would be.

At first glance, the \$50,000 figure seems like an attempt to guard the heritage of B.C., but — without the enforcement by the RCMP and Crown Counsel — ultimately the *HCA* will remain in the public eye a “rarely used” law.

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