



News Release

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Islands Trust Wins Salt Spring Island Marina Court Case Appeal

VICTORIA — The Court of Appeal for British Columbia has upheld a decision made by the Supreme Court of BC in 2007 in favour of the Islands Trust. The decision confirms the ability of communities in BC to regulate shoreline development with their zoning bylaws.

The Court of Appeal's unanimous decision confirms that the Salt Spring Island Local Trust Committee's Land Use Bylaw applies to the floating structure used as an office by B & B Ganges Marina, that the building's location in the harbour contravenes the bylaw and that it must be removed immediately.

In his Reasons for Judgement released December 29, 2008, the Honourable Mr. Justice Chiasson also concluded that the Supreme Court's order to remove the floating structure was appropriate despite the federal government's jurisdiction over navigation and shipping.

The case dates from May 2006, when Islands Trust bylaw enforcement staff requested the marina to remove a floating structure (known locally on Salt Spring Island as the "float camp"), as it did not comply with Salt Spring's zoning bylaws and was in contravention of a Temporary Use Permit. The marina refused to remove the float camp and the matter went to the BC Supreme Court, which ruled in the Local Trust Committee's favour in June 2007. The marina appealed that decision and the Court of Appeal heard their case in April 2008.

The court order now states: "The Respondent owners and operators of the Ganges Marina must remove the Floating Structure from the Ganges Marina." The courts awarded legal costs to the Island Trust.

"This decision confirms local government's land use jurisdiction over the water and the right of communities to plan and regulate their shoreline areas," said Sheila Malcolmson, Chair of the Islands Trust Council. "It is a significant victory for the entire Islands Trust Area and for other local governments in BC and across Canada. I want to acknowledge our staff, our legal counsel, the Union of British Columbia Municipalities, and the provincial Attorney General's office, which supported the Islands Trust's case. Through their efforts we were able to successfully defend Salt Spring Island's bylaws, which were developed with and supported by the community."

"Naturally, I'm delighted with the outcome," said George Ehring, local trustee for Salt Spring Island. "I know that islanders will be very happy to see the building finally leave our harbour. Our jurisdiction over shoreline areas was clearly confirmed by the Supreme Court of British Columbia and I am really pleased that the Court of Appeal has unanimously dismissed the appeal."

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“I am really heartened that the integrity and enforceability of our Land Use Bylaw has been confirmed by the Court of Appeal,” said Salt Spring Island local trustee Christine Torgrimson. “These are crucial aspects of a civil and functional local community, and this decision confirms that our Land Use Bylaw is not just a paper tiger, but has real teeth.”

The order to remove the floating structure is effective immediately. If the marina fails to remove the structure, the Islands Trust will seek a court order that the marina is in contempt of court. Ultimately, the floating structure could also be removed by the Islands Trust at the marina’s expense.

The Islands Trust is a federation of independent local governments that represents some 25,000 people living within the Islands Trust Area. The Islands Trust is responsible for preserving and protecting the unique environment of the Islands Trust Area through planning and regulating land use, development management, education, cooperation with other agencies, and land conservation. The area covers the islands and waters between the British Columbia mainland and southern Vancouver Island, including Howe Sound and as far north as Comox (excluding Texada Island). The area is approximately 5200 square kilometres in size and includes 13 major islands and over 450 smaller islands.

Editors please note: Summary / timeline attached and “Reasons for Judgment” are available on the Islands Trust website at: <http://islandstrust.bc.ca/news/releases.cfm>

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Summary of the B & B Ganges Marina “Float Camp” Issue.

- December 17, 2001 The floating building was placed in the water lot at the B & B Ganges Marina.
- December 20, 2001 Three days later, the Salt Spring Island Local Trust Committee directed staff to consider whether or not the local Land Use Bylaw allowed the float camp in the shoreline zone.
- January 24, 2002 The LTC received a report from the Trust’s bylaw enforcement officer stating that the float camp was not permitted under the Land Use Bylaw. At that meeting, the LTC received a letter from the marina owners promising to remove the float camp as soon as repairs to it were complete, and that in no case would it remain in place beyond May 12, 2002. The LTC moved that bylaw enforcement procedures to remove the float camp be taken.
- May, 2002 Despite these assurances, the building remained in place, and the marina applied for a Temporary Use Permit (TUP) to allow the float camp to remain in the harbour.
- October 3, 2002 The LTC denied the TUP application for general or partial marina use, but indicated that it was willing to consider its temporary use strictly during the time that the marina was undergoing redevelopment, if a rezoning application was approved.
- June 26, 2003 The Local Trust Committee passed a resolution to issue a Temporary Use Permit (TUP) to the marina.

The TUP allowed two uses. One was the “use of the float camp for a construction and project management office associated with the redevelopment of the B & B Ganges marina.” This use was conditional “on there being a rezoning application for redevelopment of the marina under consideration by the Salt Spring Island Local Trust Committee.” The permit said that “If the current rezoning application is refused, withdrawn or abandoned, the use of the float camp for an accessory construction and project management office is not authorized and the owner shall immediately remove all uses from the float camp, prepare the float camp building for removal and within three months remove the float camp building from the Salt Spring Island Local Trust Area.

The other permitted use was “for washrooms, shower facilities, laundry room, storage, marina retail, marina administration and one dwelling unit accessory to the marina operation.” This use was conditional “on there being an approved development permit, building permit, and active construction respecting the redevelopment of the marina. If a development permit and building permit are not issued or are issued and lapse or are revoked for any reason, or the construction ceases, the use of the float camp for washrooms, shower facilities, laundry room, storage, marina administration and accessory dwelling unit is not authorized and the owner shall immediately remove all uses from the float camp, prepare the float camp building for removal and within three months remove the float camp building from the Salt Spring Island Local Trust Area.”

The permit was valid for two years from the date of the LTC’s authorizing resolution, and could be renewed once. The owners posted an irrevocable \$16,506.87 letter of credit as security, should they fail to comply with the terms of the permit.

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- August 25, 2005 The Local Trust Committee authorized the renewal of the permit for a two-year period. The application to rezone the property to allow construction of a hotel was under active consideration.
- October 12, 2005 The Local Trust Committee resolved to “proceed no further” with the marina’s rezoning application for re-development of the property. This effectively terminated the plans to build the proposed hotel on the shoreline.
- April 25, 2006 The Local Trust Committee decided that since the previous LTC had turned down the rezoning application, and since no development or building permits had ever been issued, the conditions in the Temporary Use Permit were clearly no longer being met. According to the terms of the permit, the LTC gave the owners three months to remove the float camp from the harbour. The trustees also said that if the marina operator requested, the Trust would try to find a way to allow the use of the float camp for the remainder of the boating season. Nothing was heard from the marina about that offer.
- July 25, 2006 The three-month period for removal of the float camp from the harbour expired, but the marina owners had not removed the building. At this point, the Trust was in a legal position to remove the barge from the marina. In August, the Islands Trust Executive Committee authorized the commencement of legal action for the marina to remove the float camp. The case eventually went to the Supreme Court of British Columbia, where the Province, through the Ministry of the Attorney General, supported the Trust’s arguments.
- June 20, 2007 The BC Supreme Court ruled that the local Land Use Bylaw applied to the float camp, and that the building contravened the bylaw. Mr. Justice Tysoe dismissed the marina’s arguments that the building was a “vessel,” and ordered the marina to remove the building from the harbour or bring it into compliance with the bylaw by July 20, 2007.
- July 18, 2007 Two days prior to the date ordered by the court, having refused to remove the float camp, the B & B Ganges Marina filed notice of appeal with the BC Court of Appeal.
- April 21, 2008 The BC Court of Appeal heard the case.
- December 29, 2008 The BC Court of Appeal released its decision rejecting the Marina’s appeal and upholding the Islands Trusts right to regulate structures and property uses in the Salt Spring Island harbours.