



News Release

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JUDGE DISMISSES HORNBY ISLAND CASE AGAINST ISLANDS TRUST

VICTORIA — The BC Supreme Court has dismissed Joan Costello's legal action against the Islands Trust regarding a number of claims and allegations related to her Hornby Island property. In her Reasons for Judgment released September 30, 2009, the Honourable Madam Justice Stromberg-Stein confirms the unique role the Islands Trust plays in preserving and protecting the Islands Trust Area through its land use regulations and states that Ms. Costello's claims are "without any legitimate foundation".

The lawsuit arose after Ms. Costello failed to obtain proper permits for a building and to ensure it was within the height limits in Hornby Island's zoning bylaw. In March 1999, she purchased a Department of National Defence building that was slated for immediate demolition and had it barged to her property on Hornby Island. Before barging the building to her property, Ms. Costello did not review the height restrictions outlined in Hornby Island's zoning bylaw or measure the actual height of her newly-acquired building. She did obtain a permit for the building shortly after its arrival on Hornby Island, but the permit was based on erroneous information that she provided to Islands Trust staff about the building's height.

Following unsuccessful attempts to obtain variance permits for the over-height building, Ms. Costello advanced a number of claims against the Hornby Island Local Trust Committee (HILTC), the Islands Trust, the Islands Trust Council and two trustees of the HILTC at the time, Penny Griggs and Tony Law. Her claims included abuse of public office, negligence, breach of trust and mental distress due to actions related to the over-height building and a variety of proposed uses of the Costello property. In a lengthy court case, Ms. Costello sought \$1.7 million from the Islands Trust for damages related to her claims.

Madame Justice Stromberg-Stein concludes that trustees and staff of the Islands Trust acted properly in their dealings with Ms. Costello, who was responsible for obtaining proper permits and complying with the Hornby Island bylaw. "The actions of all of the defendants, elected and non-elected, were performed to execute the required duties imposed by the *Act [Islands Trust Act]* and Hornby Island bylaws. In all instances, I find the defendants executed these duties properly and in good faith," stated Justice Stromberg-Stein. "The evidence does not support Ms. Costello's claim."

Madame Justice Stromberg-Stein goes on to state that the trustees "exhibited no bias, and they properly exercised their discretion taking care not to pre-judge the issues, keeping an open mind throughout and trying to find a means to accommodate Ms. Costello and the interests of the community...(Ms. Costello) is, plain and simple, the author of her own misfortune".

The Costello court case involved extended appearances in the New Westminster courthouse by Trustee Law, former Trustee Griggs, as well as several Hornby Islanders and Islands Trust staff. "This experience demonstrates that trustees take personal risks when they uphold community bylaws and the mandate of the Islands Trust. I hope the court's strong and supportive ruling encourages trustees to continue representing the interests of the human and natural communities on their islands," said Sheila Malcolmson, Chair of the Islands Trust Council.

Upon hearing the outcome of the case, Tony Law, Hornby Island Local Trustee, and one of the defendants said, "It is gratifying to have one's integrity as an elected official upheld by the Court. However, I am saddened by the stress upon a community and its local government when the courts are used to second-guess difficult political decisions. I look forward to healing in our community now."

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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. It includes 13 major and more than 450 smaller islands covering 5200 square kilometres. It is celebrating its 35th anniversary this year.

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Editors please note: Reasons for Judgment - <http://islandstrust.bc.ca/news/pdf/newsoc052009attachment.pdf>

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