

Island Trustee Report

Alex Allen

"The road we travel is equal in importance to the destination we seek. There are no shortcuts. When it comes to truth and reconciliation, we are all forced to go the distance."

Justice Murray Sinclair, Truth and Reconciliation Commission of Canada

As many of you are aware, it has been a difficult time for K'ómoks First Nations and the Islands Trust, in particular, your local trust committee regarding the Hornby Island Resort development. At issue is the principle of "free, prior and informed consent."

The referral process is seriously flawed and Hornby Island, like Grace Islet off Salt Spring Island, has become a flashpoint for the lack of engagement between the province and First Nations when it comes to heritage conservation.

What began with the issuing of a permit by the archeological branch has become a legal matter, when three sets of bones — including those of an infant — were discovered during excavation in mid-March this year.

K'ómoks First Nation Hegus (Chief) Nicole Rempel, said the situation has exposed more than just the resting place of her people's ancestors. She has accused the province of failing

to properly consult or live up to its international obligations when it comes to the approval of permits for excavation and construction on archeologically sensitive lands.

According to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, which houses the archeological branch, staff investigated an alleged contravention of the Heritage Conservation Act at the site in 2019 when geotechnical testing was done within the bounds of a previously recorded archeological site.

Charges were not pursued and Jack Hornstein, owner of the Hornby Island Resort applied for permits to allow for archeological assessment of the proposed site of the Thatch expansion.

At the beginning of May, Hornstein received a demand to cease and desist excavation and construction in a letter threatening litigation from K'ómoks First Nation.

At the root of the conflict is the way the archeological branch issues permits for heritage inspection, investigation and alteration. Applications are referred to First Nations, who are given 30 days to comment.

The branch said permits for archeological assessment and alteration to the Hornby Island site were issued last spring "when no concerns were raised" by the K'ómoks First Nation.

Chief Rempel said she missed the deadline, noting it was the beginning of the COVID-19 pandemic and she had the health and welfare of the First Nation's 345 members to consider. She said the province and the Islands Trust, should never have allowed the project to proceed.

"They give you these short windows. And we're not experts by any means in a lot of these referrals that we get ... And so it takes a lot of time away from what we



should be doing as leaders to respond to these things."

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development, said there is no current contravention and that Hornstein was operating under the authority of his permits and in accordance with the accompanying conditions.

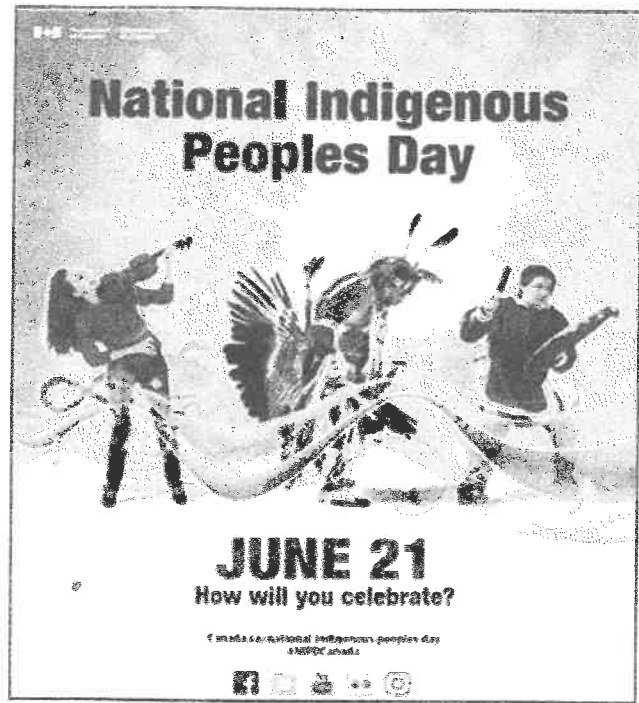
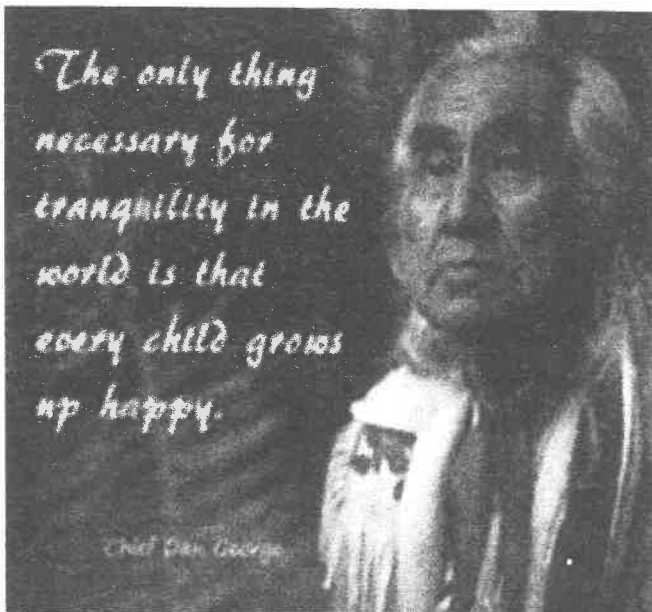
It's complicated. First Nations burial sites are not protected because they are not a cemetery under the Cremation, Interment and Funeral Services Act. You have to be an "owner" of a cemetery to have it included under the law.

But, it is not OK to bulldoze First Nation burial sites just because they are technically not considered "cemeteries" under provincial law. First Nation burial sites are owned by First Nations and they have duties under their own traditional laws to respect and protect their ancestors.

"It is a legal and moral imperative that provincial leaders move away from old prejudices that First Nation burial sites are less worthy of protection than settler cemeteries. It's time to put protection of burial sites back into the hands of the people whose ancestors have been laid to rest at these sacred sites."

The First Nations Working Group on Heritage Conservation, 2014

As our Islands Trust, First Nations consultant wrote in 2019, the "level of considering First Nations' authority far exceeds what is historically assumed when we send out



information to the list of "referral agencies," yet we continue to lump our local First Nations as just another referral agency. No other agency requires the high standard of "free, prior and informed consent."

Given all this, Grant and I passed a motion in January to better inform KFN directly about applications that may impact their rights and title and not just rely on other agencies.

And so, "when it comes to truth and reconciliation, we are all forced to go the distance." Let us reflect on those words, on June 21, summer solstice, National Indigenous Peoples Day.

(with files from the CBC, Times Colonist and the Tye)

Special Trustee Allen Statement Response

Thank you for all your kind words and support. Many did not notice my apparent indiscretion and many said, don't let this be a reason not to seek re-election. Never say never. When I said "time to explore new places," was not to mean I'm leaving our island, I meant going further out of my comfort zone and ticking off my bucket list. Driving a fifth wheel, circumnavigating Vancouver Island in a canoe, making creme brulee, writing a whatever manifesto, and getting the world to figure out that mental illness and drug abuse is not a choice, but a symptom of a fucked up childhood. We need to treat the source not the symptom.

Thank you, Alex.