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Islands Trust Wins Riparian Rights Court of Appeal Case

Lək'wəḡən, METULIYE/Victoria, B.C. – On January 22, 2021, in a unanimous decision, the Court of Appeal for British Columbia [overturned](#) the B.C. Supreme Court's October 1, 2018, decision in *Fonseca v. Gabriola Island Local Trust Committee*. The previous B.C. Supreme Court decision had resulted in the Gabriola Island Local Trust Committee being unable to enforce its zoning bylaw in respect of a seawall that Mudge Island landowners had constructed to protect their shoreline property from erosion. The appeal considered the circumstances in which a common-law right to use or protect property is subject to regulation by local government land use zoning bylaws. The Court of Appeal for British Columbia upheld the Gabriola Island Local Trust Committee bylaws and confirmed they do apply to seawalls.

“We are very pleased to have won this important case,” said Peter Luckham, Islands Trust Council Chair. “The Islands Trust Area has 1,426 kilometres of shoreline. To properly implement our provincial mandate to preserve and protect the region it is critical that local trust committees and island municipalities, indeed all local governments, have the ability to regulate seawalls to ensure green methods of shoreline protection are in place.”

This decision will be of interest to local governments throughout British Columbia. The ability of local governments to prohibit seawalls and other shoreline armoring is critical to achieving environmental protection objectives, as well as to ensuring the beauty and scenic values of shoreline areas. Landowners who consider seawalls to address erosion should know there are many soft shore protection designs that reduce erosion and preserve the natural shoreline dynamics that coastal ecosystems need. More information is available in the Islands Trust's [Landowner's Guide to Protecting Shoreline Ecosystems](#).

In addition, the Court considered a counter-appeal by the landowner. The landowner asked the Court to declare that a previous Court decision that the Gabriola Island Land Use Bylaw did apply to a deck, fences, and a set of gates on their property was in error. The Court dismissed the counter-appeal.

The Islands Trust began bylaw enforcement action regarding the Mudge Island property in 2012 by demanding the removal of the non-conforming structures. In May 2015, the property owners applied to the Gabriola Island Local Trust Committee for a development variance permit seeking permission to keep the structures. The Gabriola Island Local Trust Committee granted permission for some structures, but denied for others, including the deck, seawall, and fences.

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The Islands Trust is a federation of special-purpose local government bodies representing 26,000 people living within the Islands Trust Area and another 10,000 non-resident property owners. The Islands Trust Area is located within Coast Salish territory and is the homeland to over 28,000 Coast Salish Peoples who have called this place home since time immemorial. The Islands Trust is responsible for preserving and protecting the Islands Trust Area's unique environment and amenities by 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 islands and more than 450 smaller islands covering 5,200 square kilometres.

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