

THE OPEN HOUSE

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October 3, 2014

Volume 9 • Number 10

Victoria property owner doesn't have to pay for archaeological work

A Victoria property owner isn't responsible for the costs of heritage inspections and investigations, including archeological work on her property required by the BC Archaeology Branch.

The BC government will not appeal a 2013 BC Supreme Court ruling that found the Archaeology Branch had no authority to force a Victoria property owner to pay for archaeological research on her property.

In 2006, the owner bought a home, planning to demolish it and build a new home. There were no notations on title of any restrictions on the property, or that the property was a heritage site as defined by the *Heritage Conservation Act*.

The Archaeology Branch told the owner that because the property was an undesignated heritage site, an archaeological investigation, report and site alteration permit were required.

The owner estimated losses of \$600,000 as a result of costs associated with obtaining the site alteration permit, construction delays and loss of property value, and sued the Archaeology Branch to recover losses.

In May 2013, the Supreme Court ruled in favor of the property owner, finding that the Archaeology Branch had no statutory authority to make the property owner pay for a site inspection and site investigation. However, Justice Gerow found that the Minister had the statutory authority.

"The Province initially filed a notice of intent to appeal, but a review found this would not be in the public interest, and both sides instead pursued a negotiated settlement," said Greig Bethel of the Ministry of Forests, Lands and Natural Resource Operations.

To read the Supreme Court decision, go to www.canlii.org, in the search box enter *Mackay v. British Columbia*, 2013 BCSC 945.



Property owners should be aware of the following:

1. The *Heritage Conservation Act* automatically protects archaeological sites meeting the Act's heritage protection criteria.
2. Approximately 40,000 known sites are protected.
3. These sites continue to be protected after the 2013 B.C. Supreme Court decision.
4. To alter a protected site, the property owner requires a site alteration permit.
5. Where there is sufficient existing information about the nature of the site and proposed impacts, the Archaeology Branch will consider site alteration permit applications.
6. If there is insufficient information in the site alteration permit application, the Archaeology Branch will be unable to process the application until information deficiencies are addressed.
7. The property owner must provide the branch with the information about the site. This may include the completion of an archaeological impact assessment. The Archaeology Branch is not requiring this work be done, but requires sufficient information before it can issue an alteration permit. The impact assessment is one way of obtaining it.
8. It is up to the property owner to undertake an archaeological impact assessment, but without the necessary information the branch cannot issue an alteration permit and property owners cannot alter the archaeological site on their property.
9. To find out if there is a protected archaeological site on their property, visit the Archaeology Branch's online website and see data request form www.archdatarequest.nrs.gov.bc.ca
10. Many property owners hire an archaeological consultant to research and prepare a site alteration permit application. Archaeological consultants can be contacted through the BC Association of Professional Archaeologists www.bcapa.ca/members/consulting-firms/.

Source: Ministry of Forests, Lands and Natural Resource Operations.