

# No Legal Validity to Bylaw 449

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I am writing to express my opinion of the Islands Trust proposed Bylaw 449. I do so with the benefit of nearly 50 years of practice in the courts of our country before I retired to Salt Spring Island more than four years ago.

In my view, the fact that the bylaw fails to identify the location or locations of riparian areas on the island is fatal to its legal validity.

This is so because the bylaw fails to meet the express “purposes” of the governing Riparian Areas Regulation.

Unless the bylaw complies with the requirements of the regulation it cannot enjoy the force of law.

The purposes of the regulation are found in Section 2. It provides that these purposes are to “establish directives to protect riparian areas from development.”

The question is, how can this be done unless the areas in question are located and identified in the directive or directives?

This is evident from the reason given in the regulation for the directive — viz “so that the areas can provide natural features, functions and conditions that support fish life processes.” How is this objective to be achieved if “the areas” are not located and identified?

In the result, the Islands Trust simply does not have the authority to make a bylaw ( i.e. directive) that does not specify the location and identity of the riparian areas to be protected from development.

It is clear, on the face of it, that proposed Bylaw 449 completely fails to locate and identify the riparian areas to be protected from development and which would therefore require a permit.

To the contrary, 60 per cent of the island is sought to be subject to a permit requirement without any reasonable basis for claiming that this huge area is, in its entirety, one requiring “protection from development.”

The idea that the population of such an immense territory is to be subject to a permit requirement in the absence of a determination of the parts that actually require protection is analogous to a form of governance that was embraced by the Queen of Hearts in Alice in Wonderland. The Queen put it this way:

“No, no!” said the Queen. “Sentence first — verdict afterwards.”

“Stuff and nonsense!” said Alice loudly. “The idea of having the sentence first!”

“Off with her head!” the Queen shouted at the top of her voice.

Nobody moved.

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About Jack Giles <http://www.farris.com/law-news/post/Vancouver-Bench-and-Bar-Honours-Jack-Giles-Q.C.-on-His-Retirement-from-the-/>