

Early History of Lawn Bowling in Victoria's Beacon Hill Park

The following is based on:

Unbuilt Victoria by Dorothy Mindenhall

Beacon Hill Park History 1842-2009 (<http://www.beaconhillparkhistory.org/>)

Beacon Hill Park History by Janis Ringuette

Beacon Hill Park was created in 1859 and, for some time, was managed jointly by the City of Victoria and the colonial legislature. At the time the park was transferred to the city, the purpose of the park, including the terms and conditions of use, was not clearly understood, although it was to "be maintained and preserved by the Corporation and their successors for the use, recreation and enjoyment of the public".

Once the city obtained control of the park, twenty acres were immediately transferred to the B.C. Agricultural Society for the construction of a hall for agricultural fairs. This action was met with a great deal of controversy and led to a court challenge to clarify the purpose and use of the park.

In 1884, Chief Justice Sir Matthew Baillie Begbie (also known as "the hanging judge") ruled that the agricultural Building "was not an acceptable use because it did not constitute public recreational use and enjoyment...". In his opinion, unacceptable uses included "a university, sanatorium, soldiers' barracks, a lunatic asylum, and a cemetery". Begbie ruled that the park was not to be used "for general purposes of profit, or utility, however great the prospect of these may be".

In 1902, the Park Committee granted a permit to the Victoria Cricket Club "to use that portion of the Park heretofore...used by the Fifth Regiment Cricket Club, upon the condition the club take proper care of the ground..."

In May, a letter to the editor of the *Colonist* signed "Q," protested "encroachments upon Beacon Hill Park". Of particular interest is his mention of the cricket pavilion:

"A pavilion is also being erected at the Cricket club. Surely, this new atrocity might, like the former pavilion, have been placed outside the limits.

"It would be interesting to learn how far the authorities are at liberty to enclose and dispose of portions of the Park, as the next step will probably be the sale or lease of it for building lots. It seems that some association should be formed for the purpose of protecting the people's property from its proper protectors. "(*Colonist*, May 4, 1902, p. 4)

The May 4 letter from "Q" mentions an early cricket club building referred to by "Q" as a "pavilion," saying a new pavilion was "being erected at the cricket club" to replace a "former pavilion," both of which he thought should "have been placed outside [Park] boundaries. An editorial in the *Colonist*, a booster of sports facilities in the Park, minimizes the cricket building by calling it a "shed" and stating it is "moveable."

The controversy over the Victoria Cricket Club foreshadowed an even more controversial proposal: the creation of a bowling green in Beacon Hill Park. On October 19, 1908, the Park Board passed the following resolution:

"That permission be granted...to create a bowling green on Beacon Hill Park on the northern portion between Heywood Avenue and Cook Street, on the understanding that such use of that portion of the park, used by the Albion Cricket Club and known as the "Albion Cricket Club grounds" and on further understanding that such permission shall confer no exclusive privilege and that it is granted subject to the pleasure of the public parks board, all work in connection with the making of the bowling green to be carried out under the supervision of the public parks board."(*Times*, Feb. 1, 1909, p. 7)

In November, the *Colonist* headlined: "Finest Bowling Green in Whole Dominion; New Club to Have Ideal Quarters at Beacon Hill Park." The Beacon Hill Park Bowling Club, the newest sports organization in Victoria, was expected to spend \$1,000 on the 125 foot square green, being laid out next to the Albion cricket grounds under the direction of the Superintendent of Parks, D. D. England, who was also a charter member of the bowling club. Hedges were planned around the green to "serve as a protection against straying cattle and dogs. A temporary building of a design in keeping with the park will probably be erected." (*Colonist*, November 5, 1908, p. 7)

Objections were raised against allotting a private club a piece of Beacon Hill Park by Dr. J. S. Helmcken. At least fourteen Helmcken letters on the topic were printed in the *Times* alone in 1909. Willard Ireland, Provincial Archivist, in a 1942 paper on the legal history of Beacon Hill Park, concluded that the main "...objection raised was on the grounds that the City lacked the 'power to appropriate any particular part of the Park premises to the use of any particular person or class of persons to the exclusion of others of the public.'" (Ireland, "Memorandum," p. 9)

One man waged a landmark battle on the issue of appropriate Park use in 1909. Dr. John Sebastian Helmcken campaigned passionately against the establishment of a private lawn bowling club in the public Park from January through December. Though his arguments were eloquent as well as legally correct, public opinion never rallied to the cause. City officials listened politely to elder statesman Helmcken but continued building the bowling greens and clubhouse.

Dr. Helmcken was a towering figure in Victoria and British Columbia history. He first came to Fort Victoria in 1850 as the Hudson's Bay Company doctor and married a daughter of James Douglas. Helmcken began a fifteen year political career in 1856, serving as Speaker in the First Legislative Assembly. In 1870, he was part of a three man team negotiating British Columbia's entry into Canada. His residence, "Helmcken House," was opened to the public as an historical museum in 1941 and the Royal B.C. Museum was built next to it in 1964. His "Reminiscences" were edited by Dorothy Blakey Smith and published in 1975. In 1909, at the time of the bowling green controversy, he was 85 years old, but not yet fully retired. Helmcken was still the physician for the provincial jail, a job he held continuously for sixty years, from the day the jail opened in 1851 until his retirement in 1910.

Opposing Helmcken in the 1909 Park use controversy were City Council members keen on lawn bowling. In fact, key city officials were organizers, directors and members of the Beacon Hill Bowling Green Association. Mayor Hall was a director of the club and a member of City Council and the Park Committee. Alderman Turner was a director of the lawn bowling club. Alderman Henderson was a member. Park Superintendent D. D. England, the city official in

charge of supervising construction of the greens, was a charter member of the Beacon Hill Bowling Green Association. (*Times*, September 9, 1909, p. 10) There were clear conflicts of interest, but no Council member excused himself from discussions or votes on the topic.

In January, the Beacon Hill Bowling Club chose a contractor to construct their clubhouse in Beacon Hill Park at a cost of about \$1,000. (*Colonist*, Jan. 22, 1909, p. 9) A letter written that day by Dr. Helmcken to Mayor and Council strongly protested the construction of the bowling greens and the clubhouse in the Park. The letter--read at the January 25 City Council meeting--charged that Council was acting contrary to their duties as trustees in allowing a private club to use part of the Park. (*Times*, January 25, 1909, p. 3) The *Times* printed a one paragraph summary of Helmcken's points on January 26, but at Helmcken's request, they printed the full text of the letter on February 3.

After noting it was an "astounding" idea that a private club was about to erect a clubhouse "inside Beacon Hill park and on a piece of land apparently surrendered for their private purpose and use, and not for the use of the public," Helmcken's full letter also pointed out that he

"...strenuously protests against the alienation of this or any other portion of the aforesaid park, for the purposes of a private company for private purposes.

It cannot be asserted by any one that any private bowling green in the park is for the benefit of the public in general. All the public will get will be a permit to see the bowling...but during the interregnum, what uses may be made of their building?

Other private companies of a like nature exist, who have ground of their own and there is no reason why this bowling green company should not purchase land for their purpose in a similar manner instead of trespassing on the public Victoria park. If once this cadging is agreed to it will form a frightful precedent for others to do or attempt to do the same thing, and the park become dotted over by chartered private companies, under the fictitious and deceptive plea of their being public benefactors.

As to the club house it can just as well be erected outside the park, as a public street is in very close proximity and there is plenty of land for the bowling green, but the site would have to be purchased. Well, let this private company do as others have done before them.

Your petitioner therefore very earnestly asks that your honorable body will immediately take steps to prevent the building of the private club house on the public park, and further will cancel any agreement which may have unfortunately been made in respect of the bowling green and further will preserve intact Beacon Hill Park, and as trustees hand it down intact to future generations for whom it will be invaluable. "(*Times*, Feb. 3, 1909, p. 4)

The City Council responded with three justifications for the lawn bowling development. The same three points were repeated throughout the year:

1. Council denied there was any special privilege extended to the club.
2. They characterized the portion of Park land to be used as "waste," "marshy," "unused," "wet" and "low-lying".
3. Council argued that the lawn bowling club was creating "delightful lawns" at no cost to the

City of Victoria and that because the club was “paying for the work,” the public benefitted. (*Times*, January 26, 1909, p. 4)

Helmcken convinced the Pioneers’ Association, of which he was a member, to support him in April. The Association passed a resolution charging “breach of trust against the City... in granting permission for the erection of a club house and the use of a corner of Beacon Hill park by a bowling club.” The Association charged that the deed of Trust under which the City received the Park was violated by giving any portion of the Park for other than public use. (*Times*, April 21, 1909, p. 5) The group’s letter to City Council was written by H. Dallas Helmcken, Secretary of the Association, and relative of Dr. Helmcken.

On April 22, Mayor Hall told the *Times* that people misunderstood the situation regarding “a hitherto unused portion of Beacon Hill Park.” Hall repeated that Council was not “giving the club any rights or privileges...,” saying,

"The use of the park for sports and games has been recognized as proper from its earliest days. Bowling is a game in which many citizens engage, but it requires a properly prepared green, carefully looked after, and is not a game which can be engaged in on any level space, as can baseball or football...From a practical point of view...we are getting reclaimed a low-lying, wet corner of the park, which has never been used and which we have not had the means to put into shape ourselves, and that without creating any right to the green on the part of the club which is paying for the work... "(*Times*, April 22, p. 7)

City Council discussed the matter further on April 26 after a reading of the resolution by the Pioneers’ Association condemning the action of the Parks Board. Ald. Henderson argued again that anyone could play on the green and the club house would be open to all. “The only thing under lock and key will be their bowls and any private property,” he said. And “no one can deny that the work the club has done has been a great improvement to that part of the park.” The *Times* reported that Ald. Turner and Mayor Hall both agreed “the green beautified a portion of the park which had hitherto been more of less unsightly.” Ald Turner said, “I am prepared to allow anyone to go in and spend their money to beautify the park, when they get no exclusive privileges.” (*Times*, April 27, 1909, p. 2)

The *Times* published a long letter to the editor by Helmcken dated June 4, in which he carefully reviewed the legal history of Beacon Hill Park, including the circumstances of the Trust and the important decision by Supreme Court Chief Justice Begbie in the case of the Agricultural Hall built in the Park. Helmcken pointed out the similarities between the twenty acres alienated for that purpose, declared illegal by Begbie in 1884, and the 1909 lawn bowling building. Helmcken concluded:

"The Chief Justice opined that all buildings erected in the park should be built by the corporation for the use of the public at the public cost or expense, in fact that everything in the park should be for the enjoyment of the public and paid for by them...it is quite plain that the bowling green and clubhouse belong to the public and therefore that the claimants, the Bowling Green Company, should at once be ousted and the public resume possession of their property. The Bowling Green Company have no lawful right to be there at all..." (*Times*, June 9, 1909, p. 11)

This was a powerful legal argument. According to the wording of the Park Trust, private uses of Park land are indeed illegal. Nevertheless, City Council decided to ignore the law. Since 1909, every other City Council has done the same.

Helmcken did not stop his crusade when the bowling greens and clubhouse construction was completed. His August letter to the Council described the impact of the area surrounded by isolating fences, a ditch and brush,

"...giving the appearance of ...a private domain into which only those invited (members) should enter, and thus assuming pseudo-proprietor-ship or possessory rights.

There is a very great and immediate danger that the company will be cunning attempt to acquire...a perpetual lease of the portion of the park occupied by the bowling green and house..."(*Times*, August 24, 1909, p. 11)

He was correct in predicting the club would acquire "a perpetual lease," or as he phrased it in September, "a right to continuous undisturbed occupancy." Though an official lease was never issued, the greens and clubhouse have indeed succeeded in maintaining a "continuous undisturbed occupancy." More than 100 years later, the private bowling greens and clubhouse remain in Beacon Hill Park, improved through the years with municipal money as well as club funds. Now surrounded by an even higher fence, the area remains very much a private domain. Because of "undisturbed occupancy" since 1909, the area has now apparently achieved heritage protection status.

In September, Helmcken referred back to Ald. Turner's April statement welcoming "anyone to go in and spend their money to beautify the park..." Helmcken demolished Council's claim there is public benefit when private groups improve the park, saying:

"The whole agreement...is still unlawful. If by improving a piece of the park any one or association of a few individuals can obtain an occupancy therein, in this case the whole park is in danger of being occupied. A florist would willingly lay out flower beds for an advertisement; some zoologist have a piece to take care of the white mice and guinea pigs, and, the remainder thrown in for golf! Bah!" (*Times*, September 9, 1909, p. 10)

On September 10, he advocated removal of the fences around the lawn bowling area, citing a precedent with earlier cricket fences:

"...fences of the Victoria Cricket Club, about the year 1884...were ordered by the corporation to be pulled down...The trustees of the park can now lawfully and justly mete out the same treatment to the Bowling Green Company. There is a precedent for the Mayor. Follow it."(*Times*, Sept. 10, 1909, p. 4)

In December, Helmcken lamented:

"The public are so very apathetic that soon they will find the whole park occupied by athletic or other associations...The work now going on should be stopped at once. The fences around the bowling green and the club house still stand defiant and insultingly erect!"(*Colonist*, December 11, 1909, p. 13)

In 1910, Helmcken continued efforts to oust the club from the Park and in 1914, he teamed up with sister-in-law Mrs. Dennis Harris, a daughter of Gov. James Douglas, to ask the provincial government to oust the club from the Park.

It remains a puzzle why Dr. Helmcken did not include the cricket club in his protests. The cricket club was also a private sports group with a building and grounds in the public Park. The older cricket pavilion was in a similar legal position to the new lawn bowling clubhouse. According to Trust restrictions and Justice Begbie's ruling of 1884, both buildings were and are illegally in the Park and both clubs had and still maintain quasi-private grounds in the Park, yet Helmcken attacked only the bowling club during his many years of protest.

On June 7, 1910, the *Colonist* reported: "Once again the question of the city's right to give any person or organization permission to erect pavilions or structures in Beacon Hill Park, as in the case of the bowling and cricket clubs, has cropped up." (*Colonist*, June 7, 1910, p. 3)

The controversy began in October, 1908, when City Council decided to grant the Beacon Hill Lawn Bowling Association a section of the Park "about the size of three ordinary town lots," according to opponent Dr. J. S. Helmcken. After a flurry of protest lasting through 1909, Council managed an interlude of silence on the topic by referring the matter to the Parks Committee.

H. Dallas Helmcken, Secretary of the Pioneers' Society, reopened the debate in 1910. His letter to City Council pointed out that five months had passed since a new Council was elected and though he had sent two previous letters concerning "letting portions of the public park to sporting aggregations, no reply had been forthcoming." Mr. H. D. Helmcken said this lack of action indicated Council "had not the slightest idea of paying the least attention to the request of the society, which has been treated with distinct lack of respect."

Mayor Morley replied that he recently obtained another legal opinion about the Bowling Green Club. City Solicitor W. J. Taylor agreed that the city could not legally give any exclusive right or privilege in the public park. The solicitor suggested the problem could be resolved by securing an agreement in writing from clubs in the Park that their property could be removed by the City at any time and that they understood they had no special right, power or privilege in the public Park. (*Colonist*, June 7, 1910, p. 3)

In July, 1910, this agreement--called a "deed"--was prepared by the City to be signed by directors of the Beacon Hill Park Bowling Green Club. In an August letter to the *Times*, Dr. J. S. Helmcken called the agreement "a subtle and cunning attempt to evade the law" and "a poisonous snake." Helmcken said the deed "retains the club in a position of supremacy" in the public Park and warned that other associations would demand similar privileges. He reminded readers that the legal opinion of W. J. Taylor, the city's barrister, was that the occupation of a portion of the park by a private club was, "unlawful and contrary to the intent and meaning of the deed of trust." Helmcken advocated the City take over and operate the lawn bowling area, thus restoring it to the public. The Club could use the area just as any other citizens in Victoria, but the City would retain control. Helmcken's letter expressed the firm conclusion that "[The club's] dominion over a portion of the park must cease, and the same may be said of others who unlawfully occupy other portions of the people's property. Let there be no more 'permissions,' 'privileges,' 'private understandings,' etc. (*Times*, August 25, 1910, p. 13)

In 1914, Dr. J. S. Helmcken got help from his sister-in-law, Mrs. Dennis Harris, a daughter of Sir James Douglas, in his fight against the presence of a private lawn bowling club in Beacon Hill Park. Mrs. Harris said the women's council had written City Council asking the club be prohibited from operating the bowling greens in the Park, but was told by Mayor Stewart and city officials that it was not fair to disturb the club.

She pointed out "Mayor Stewart was a member of the club and was partially responsible for getting the deal through council when he was an alderman." Mrs. Harris said:

"The bowling club is an incorporated body composed of a number of wealthy men, any one of whom could have afforded enough money to buy a plot of similar size, as the tennis club and other clubs have done. But no, they go to the city and ask for a piece of public property, and they have been using it for four years without paying a cent of rent...

"I shall have to do something myself to preserve the gift which my late father was instrumental in making the people of this city and I shall ask the government to compel the city to keep its trust.

"According to the deed by which the crown land was diverted to park purposes, the city is merely groundskeeper, and as the late Chief Justice Begbie decided, must keep the property absolutely clear of buildings except such buildings as a public gymnasium or other public recreation building...

"What I should like to see is that the city take over the green and the clubhouse, and the groundskeeper prepare a schedule of hours letting the Victoria Lawn Bowling club and such other clubs as desire to play there use the grounds for definite periods of say an hour or two hours. All persons bowling there are entitled to keep their bowls in the clubhouse or the clubhouse has no right to be there." (*Times*, April 28, 1914, p. 9)

Dr. Helmcken and Mrs. Harris planned to appeal to the provincial government to force the City to remove the private lawn bowling club from Beacon Hill Park.