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## CLIENT BULLETIN

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### **British Columbia Court of Appeal Clarifies Local Government's Disclosure Requirements in the Public Hearing Process**

On August 14, 2012, the British Columbia Court of Appeal allowed Fisher Road Holdings Ltd.'s appeal in *Fisher Road Holdings Ltd. v Cowichan Valley (Regional District)*, 2012 BCCA 338.

Fisher Road Holdings applied to the CVRD to amend its Solid Waste Management License to increase the permitted scope of its composting business. The CVRD responded by establishing a citizen's advisory committee and retaining EBA Engineering Consultants Ltd. to conduct an environmental review of Fisher Road's operations in response to community concerns about potential risk to the community aquifer. Shortly thereafter, the CVRD gave first reading and second reading to a Zoning Amendment Bylaw that if passed would eliminate as a permitted use both composting and recycling on Fisher Road's property and one other property in the same area. The EBA report and the committee's views later found in their report were discussed at a public meeting in respect of Fisher Road's Licence amendment. The reports were also posted on the CVRD's website. The reports were not included in the public hearing binder or made available to the public at the public hearing regarding the Bylaw. The Court of Appeal found the CVRD's failure to disclose the reports fatal to the public hearing, and clarified a local government's disclosure requirements:

1. In advance of a public hearing, the public must have an opportunity to examine reports and other documents material to the approval, amendment, or rejection of the bylaws by the local government. The purpose of the advance disclosure is to ensure that the public is able to prepare intelligent and reasoned responses to the subject matter of the documents at the public hearing.
2. The local government has a duty to advise the public of the materials to be relied upon by the local government in deciding whether to pass the bylaw. This necessitates disclosing those materials in advance of the hearing. The duty may extend to materials that are in the possession of the local government that are relevant to the bylaw whether the local government specifically turns their mind to the materials or not in passing the bylaw.
3. Whether the person affected by the bylaw knew of the content of the undisclosed material is no answer to the local government's failure to disclose the materials.
4. Whether a person affected by the bylaw has suffered prejudice is not determinative of whether the local government has fulfilled its duty of procedural fairness in the steps that led to the passage of the bylaw.

In this case, the two reports had been disclosed to Fisher Road and Fischer Road had made submissions about the relevant issues at the public hearing. The BCCA found, however, that the CVRD did not meet the requirements of procedural fairness in its consideration and passage of the Bylaw because the reports were material and relevant to the consideration of the Bylaw and they should have been disclosed to the public prior to the public hearing so that interested parties could make informed, thoughtful and rational presentations at the public hearing.

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