



## CASE COMMENT

### ***Westcoast Landfill v. CVRD, 2009 BCSC 53 (CanLII)***

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On January 30, 2009, the BC Supreme Court (“BCSC”) released its reasons in *Westcoast Landfill v. CVRD* and in doing so reaffirmed a number of well-established legal principles, including those set out by the Supreme Court of Canada in *Pacific National Investments Ltd. v. Victoria (City)*, (2000) 2 SCR 919.

In 1999 and 2000, Westcoast Landfill Diversion Corp. (“Westcoast”) constructed a composting facility within the Cowichan Valley Regional District. The venture was unsuccessful both, financially and operationally. Westcoast eventually sold the operation and then sued the Cowichan Valley Regional District (“CVRD”) in an attempt to recover its costs and other damages, including loss of profits and punitive damages. Westcoast’s claims against the CVRD included breach of contract, negligent misrepresentation, vicarious liability, negligence, unlawful interference with economic relations and bad faith.

While the facts of the case are complicated and the decision is lengthy, the BCSC’s wholesale dismissal of Westcoast’s claims was unequivocal. In its 120 page decision, the BCSC made the following findings which are relevant to local governments:

- (1) Representations made by staff, councillors or directors cannot create an implied contract in the absence of a resolution or a bylaw authorizing such persons to enter into the contract. Any alleged contract, if concluded, would be *ultra vires* and of no effect due to an illegal fettering of the council or the board’s discretion. Because the contract itself would be unenforceable, any representation to enter into any such contract would also be unenforceable.
- (2) A member of a council or a board is not an agent of a municipal corporation or regional district in any legal sense. These members are not employed by and are not under the control of the local government while in office and do not have the authority to act for the local government, except in conjunction with other members constituting a quorum at a legally convened meeting. In other words, a councillor or director has no inherent authority to speak for or act for a council or a board, as the case may be. Where a council or a board has little or no effective control over its elected representatives and has not authorized those representatives to speak on the local government’s behalf, the local government will not be vicariously liable for torts committed by those elected representatives.

- (3) The creation of bylaws that benefit a particular person or business does not create a private right that would give that person or business a cause of action or the ability to enforce the underlying bylaws by private suit.
- (4) Finally, a local government cannot be found negligent for initiating a rezoning, provided the rezoning is initiated for a proper planning purpose. A local government is entitled to reconsider its zoning decisions and cannot be found liable in damages for doing so.

It is our understanding that Westcoast has launched an appeal of this decision. Stay tuned....