

CT-91/2

THE COMPETITION TRIBUNAL

IN THE MATTER OF an Application by the Director of Investigation and Research under s. 79 of the Competition Act R.S.C. 1985 c. C-34 as amended.

AND IN THE MATTER of certain practices by Laidlaw Waste Systems Ltd. in the communities of Cowichan Valley Regional District, Nanaimo Regional District and the District of Campbell River, British Columbia.

BETWEEN:

The Director of Investigation and Research

AND:

Laidlaw Waste Systems Ltd.

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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Director v
et Laidlaw
Applicant R-61
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J. J. Janey
Respondent

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
SEP 30 1991
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OTTAWA, ONT. #50
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A F F I D A V I T

I, PAUL LEVELTON, of 500 - 777 Dunsmuir Street, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am a Manager with Peat Marwick Stevenson & Kellogg.
2. THAT I have been asked by Laidlaw Waste Systems Ltd. to provide a rebuttal to the report of James J. McRae filed with the Competition Tribunal Registry on September 13, 1991.



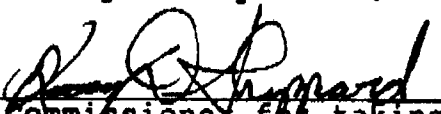
3. THAT Michael Ross and Larry Smith have assisted me in the preparation of my rebuttal to the report of James J. McRae.

4. THAT Michael Ross is a Partner and the Senior Economist with Peat Marwick Stevenson & Kellogg.

5. THAT Larry Smith is a Manager with Peat Marwick Stevenson & Kellogg.

6. THAT attached hereto as Exhibit "A" is my rebuttal to the report of James J. McRae.

SWORN BEFORE ME at the City)
of Vancouver, in the Province)
of British Columbia, this)
30th day of September, 1991.)


A Commissioner for taking)
Affidavits for British)
Columbia.)

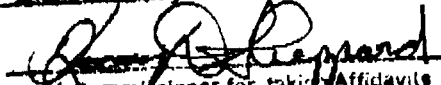


PAUL LEVELTON



REBUTTAL TO EVIDENCE
FILED BY MR. JAMES J. MCRAE
WITH THE COMPETITION TRIBUNAL
REGARDING LAIDLAW WASTE SYSTEMS LTD.

This is Exhibit "A" referred to in the
affidavit of PAUL LEVELTON
sworn before me at VANCOUVER, BC
this 30th day of SEPTEMBER, 1991


A Commissioner for taking Affidavits
for British Columbia



Laidlaw Waste Systems

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I

Introduction

On 22 March, 1991, the Director of Investigation and Research (the "Director"), appointed under The Competition Act, filed a Notice of Application against Laidlaw Waste Systems Ltd. ("Laidlaw") pursuant to Section 79 of the Competition Act. In the Application, the Director alleges that Laidlaw has a dominant position in the provision of containerized solid waste haulage and disposal services to commercial customers in the geographic markets of Cowichan Valley Regional District, the Nanaimo Regional District, and the District of Campbell River on Vancouver Island. He further alleges that Laidlaw has used and is using its market power and the practice of anti-competitive acts to maintain such dominance. The Director further requests that the Competition Tribunal order Laidlaw to discontinue those practices that it deems anti-competitive in those communities.

In June, 1991, Peat Marwick Stevenson & Kellogg ("PMS&K") was retained by Laidlaw to assist in defining the product and geographic markets in which Laidlaw provides service, and to provide other advice on the economics and market characteristics of the waste haulage industry on Vancouver Island. The report summarizing our findings in this regard was filed with the Competition Tribunal on September 13, 1991.

The Director also filed evidence on September 13, 1991, prepared by Mr. James J. McRae. This evidence pertained to the economic and industrial organization aspects of issues raised in the Notice of Application.

Both parties were subsequently provided the opportunity to file a rebuttal to the evidence previously submitted. This document represents our response to the initial evidence filed by Mr. James J. McRae, and contains our comments and conclusions with respect to the following:

- ▶ Definition of the relevant geographic markets.
- ▶ Estimates of market share.
- ▶ Ease of entry.

II

Definition Of The Geographic Market

A. Introduction

The evidence filed by Mr. James J. McRae contains a conclusion (Paragraph 32) which reads, in part:

"...I have concluded that the relevant geographic market for the commercial containerized solid waste market on Central Vancouver Island is 50 km or less from any of Laidlaw's three operational hubs. For purposes of identification, the three relevant market areas will be referenced as the District of Campbell River (Campbell River), the Nanaimo Regional District (Nanaimo) and the Cowichan Valley Regional District (Cowichan Valley)."

We disagree with the conclusions reached by Mr. McRae for the reasons discussed below. Instead, we restate our previous conclusions, as follows:

"In our opinion, the most reasonable geographic markets for the product, which encompass the three geographic areas advanced by the Director, are as follows:

- ▶ A single geographic market encompassing the entire Nanaimo Regional District (NRD), and the Cowichan Valley Regional District (CVRD), excluding the Municipalities of Duncan and Lake Cowichan.
- ▶ The eastern portion of the Comox-Strathcona Regional District, including:
 - the Municipalities of Courtenay, Comox, Cumberland, and the surrounding unincorporated areas of Subdivision C,
 - the Village of Sayward, the District of Campbell River, and the surrounding unincorporated areas of Subdivision B, and
 - Quadra Island."

B. Economic considerations

Mr. McRae has reached a conclusion similar to our own with respect to the distance that a waste disposal company will move a truck to service a geographic segment of a market. That distance is approximately 50 kilometres. Mr. McRae's conclusion in this respect was apparently based on observation only, while our conclusion was based on both observation and a quantitative assessment of incremental costs.

Our conclusion in this matter differs from that of Mr. McRae in one respect. Our analysis indicates that any routes driven by an LOB vehicle that start within a 50 kilometre radius of a base of operations can be served without the need to increase prices by more than 5 per cent, while maintaining the same return on investment. Thus, a waste disposal company could serve LOB customers beyond the 50 kilometre radius if they are part of a route that originates within the 50 kilometre limit.

This concept is illustrated in Exhibit II-1. While Routes A and B are entirely within the 50 kilometre radius, Route C is not. For Route C, however, the extra distance driven (one-way) from the indicated operating base amounts to less than 50 kilometres compared to a situation where the vehicle is based at an operating base at any point on that route. The only extra miles driven relate to arriving at one point on the route. The distance involved thereafter, driving between the pick-up points as well as to and from the landfill, is essentially the same, no matter where the base of operations for the truck is located.

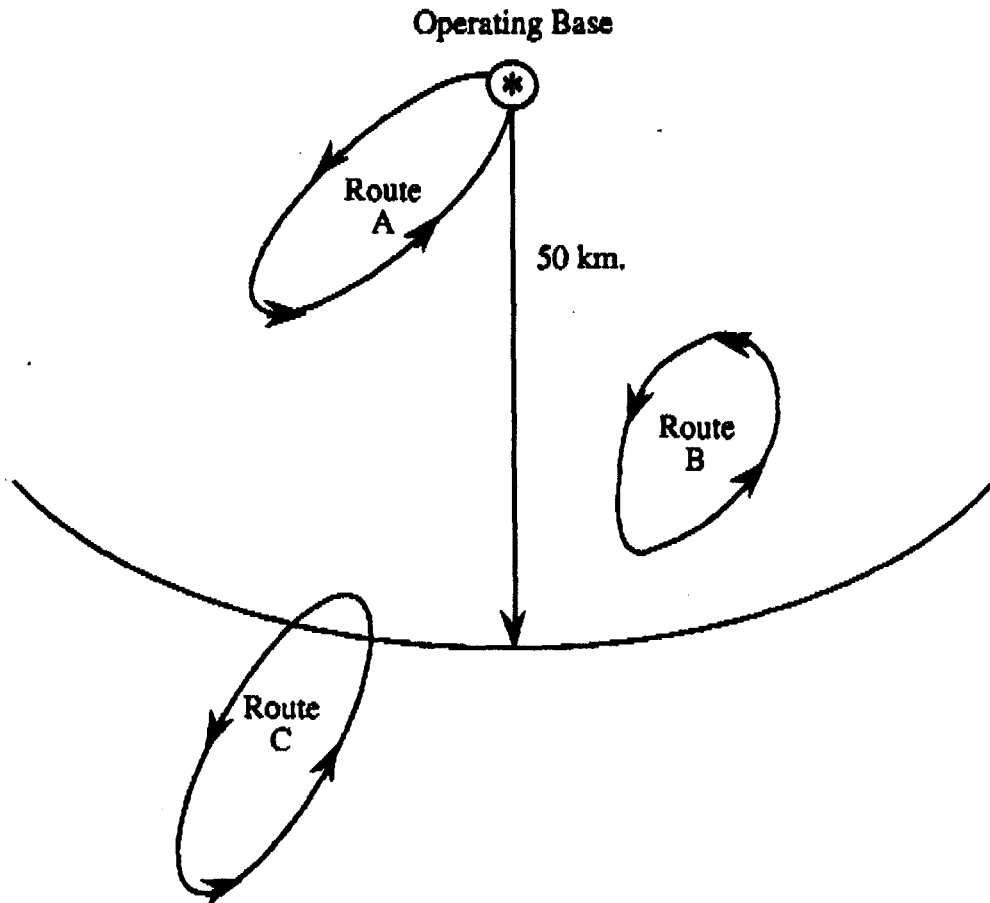
This analysis shows that a provider of LOB service would be unable to successfully implement a non-transitory price increase of 5 per cent or more if a competitor has the ability to service the same routes from a point within 50 kilometres of any part of those routes.

Current operating behaviour that supports our conclusion, includes the following:

- ▶ Laidlaw currently serves Qualicum Beach from Nanaimo, a distance of 47 kilometres.
- ▶ Laidlaw currently serves Sayward from Campbell River, a distance of 73 kilometres.
- ▶ Laidlaw currently serves Chemainus from Nanaimo, a distance of 35 kilometres.
- ▶ Laidlaw currently uses the Cedar Road landfill in Nanaimo for some waste generated in the Cowichan Valley.

While Laidlaw can and does serve customers up to and over 50 kilometres away from their bases of operations, so do their competitors. Both BFI and West Coast Waste currently serve part of the Cowichan Valley from bases of operations in Nanaimo.



**Exhibit II-1
Illustration of the impact of a 50 kilometre distance**



We believe Lacey's Disposal or Valley Disposal could serve Campbell River, 45 kilometres distant, from their bases of operations in the Courtenay/Comox area, if Laidlaw were to implement a 5% price increase.

Mr. McRae's conclusion, as stated in Paragraph 32 of his evidence, contains a contradiction. He first concludes that the relevant geographic market for commercial containerized solid waste disposal is 50 km around any of Laidlaw's operational hubs. In the next sentence he further concludes that the geographic markets are as defined by the Director, ignoring the following:

- ▶ Much of the CVRD is within 50 km of Nanaimo.
- ▶ Courtenay/Comox is within 50 km of Campbell River.
- ▶ According to his assumptions, a company could economically serve:
 - Nanaimo from Duncan.

- 
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- Duncan from Nanaimo.
 - Campbell River from Courtenay/Comox.
 - Courtenay/Comox from Campbell River.

- ▶ Laidlaw, BFI and West Coast Waste currently move trucks back and forth between the CVRD and NRD.

Mr. McRae's definition of the relevant geographic markets is thus not consistent with either economics or current practice. Our definitions of the relevant geographic markets reflect both the economics and current practice.

C. Operational considerations

Mr. McRae has apparently concluded (Paragraphs 29 and 30) that Laidlaw's "parking" of an LOB vehicle in Duncan represents the establishment of a separate geographic market in the Cowichan Valley. This, however, is not sufficient evidence to indicate the existence of a separate geographic market. Operating the truck from Duncan results in some cost savings, but also represents a convenience factor in that the driver lives in Duncan.

Laidlaw's operations in the CVRD and NRD are essentially integrated, as evidenced by the following:

- ▶ The Duncan trucks, one front-load and one rear-load, are both serviced in Nanaimo.
- ▶ One of the front-load trucks stationed in Nanaimo services Ladysmith and Chemainus, which are within the CVRD and are closer to Duncan than to Nanaimo.
- ▶ For purposes of sales, customer service, maintenance, billing and accounting, the Cowichan Valley is considered part of the Nanaimo Division of Laidlaw.

We believe that this further supports our conclusion that the relevant geographic market is a combination of the CVRD and NRD.

D. Municipal tenders

We disagree with the conclusion reached by Mr. McRae in Paragraph 79 of his evidence that areas served through municipal contracts should not be considered as part of the relevant geographic markets. The rationale used in reaching his conclusion is that the outcome of municipal tenders for the provision of LOB service are binary in nature.

Any tendering or contract negotiation process has an outcome of a binary nature, so this by itself should not preclude the inclusion of LOB service, so generated, from the definition of the market. The business of each customer generally only goes to one provider of that service.

Municipal contracts are only one part of the spectrum of contracts that Laidlaw and other waste haulers can compete for, including:

- ▶ Establishments contracting for only one bin.
- ▶ Establishments contracting for several bins at one location.
- ▶ Firms contracting for LOB service at multiple locations (e.g., gas station chain).
- ▶ Government agencies (school boards, ministries, Crown corporations, etc....) contracting for LOB service at multiple locations.
- ▶ Municipalities or regional districts contracting for LOB service at multiple locations on behalf of commercial establishments within a given area (e.g., Ladysmith).

By and large, the terms of the contracts are generally very similar, though the degree of negotiation involved may vary. Our discussions with regional district officials and Laidlaw staff indicate that municipal contracts are viewed as being very attractive. They generally provide the potential contractor with a desirable density of pick-ups and a means of entering or maintaining a presence in a market. Municipal contracts provide a base for a waste disposal hauler to compete for other customers within economic operating distance.

The service provided under a municipal contract is no different than that provided to any other customer. The waste hauler typically uses the same vehicles that are used for other customers and the routes driven by each vehicle can include both municipally contracted and other customers.

Thus, municipal contracts should not be considered in a different fashion than any other contract for the provision of LOB service. In particular, providers of "contract" LOB service can use this base to compete for "free market" business in nearby areas.

III

Estimate of Market Share

A. Introduction

The evidence filed by Mr. James J. McRae contains a conclusion (Paragraph 55) which reads, in part:

"... one of the two indicia of market power — a high market share in an appropriately defined market — is present in all three market areas."

We disagree with the conclusions reached by Mr. McRae in several respects. Our comments on these matters are presented below.



B. Market share—Comox-Strathcona Regional District

The evidence filed by Mr. McRae contains a statement (Paragraph 54), which reads:

"The relevant dumpsite used by the District of Campbell River does not keep records on the volume of solid waste dumped, hence it is not possible to generate an independent check on the accuracy of the Director's estimate that Laidlaw has an 88% market share."

We disagree with Mr. McRae on two points with respect to this statement.

- ▶ First, as described in Chapter II of this document, and our evidence filed on September 13, 1991, we believe that the relevant geographic market is the eastern portion of the Comox-Strathcona Regional District (CSRD), including:
 - the municipalities of Courtenay, Comox, Cumberland and the surrounding unincorporated areas of Subdivision C,
 - the Village of Sayward, the District of Campbell River, and the surrounding unincorporated areas of Subdivision B, and
 - Quadra Island.

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- ▶ Second, there is a basis for determining market share. Our survey of waste disposal companies and our field survey of LOB containers in the District of Campbell River provided us with an estimate of the number of containers in the marketplace for each company. On this basis, we determined that Laidlaw's relevant market share is 46 percent in the eastern portion of the CSRD.

C. Market share—Cowichan Valley Regional District and Regional District of Nanaimo

1. Cowichan Valley Regional District

The evidence filed by Mr. McRae contains a statement (Paragraph 53), which reads:

"From this market share analysis, I conclude that the Director's estimate of a 99% market share for Laidlaw in the Cowichan Valley market is slightly high, but extremely close to the mark."

We disagree with Mr. McRae on a number of points with respect to this statement and his analysis that leads to it.

- ▶ First, as described in Chapter II of this document, and our evidence filed on September 13, 1991, we believe that the relevant geographic market encompasses the entire Regional District of Nanaimo and the Cowichan Valley Regional District, excluding the municipalities of Duncan and Lake Cowichan, but including Ladysmith.
- ▶ Second, using our definition of the geographic market, there is no need to account for the volume of CVRD waste being transported across the regional district boundary to be disposed of at the Cedar Road landfill in the NRD.
- ▶ Third, as described in Chapter II of this document and our evidence filed on September 13, 1991, we believe that municipal contracts are part of the relevant market and thus Ladysmith should be considered as part of the relevant market for LOB service.
- ▶ Fourth, we have reviewed the basis of the numbers provided to Mr. McRae by the Cowichan Valley Regional District, and shown in his evidence as Table 2. The figures presented for Laidlaw apparently represent both residential and LOB waste volumes, hence the estimate of Laidlaw's market share for LOB waste could be significantly over-stated. The Regional District has confirmed this and has promised to assist both ourselves and Mr. McRae in arriving at accurate volumes for Laidlaw's LOB waste.

Once, we receive and have a chance to review the new information from the CVRD we will be in a position to further comment on Laidlaw's share of LOB waste disposed of at TRP #2 and TRP #3.

2. Regional District of Nanaimo

Since the beginning of September 1991, the Regional District of Nanaimo has operated a transfer station at Parksville in place of the Qualicum landfill which was closed on August 31, 1991. All commercial waste disposal trucks are now weighed at this facility, as they must pay the same tipping fee as charged at the Cedar Road landfill.

The estimates of the proportion of LOB waste disposed of in the NRD by Laidlaw and its competitors previously derived by both Peat Marwick Stevenson & Kellogg and Mr. McRae, were based on more indirect evidence. Neither party had access to specific information respecting the Qualicum landfill. Subsequent to filing our initial evidence on September 13, 1991, we have received access to a new source of information, the weighbills for the Parksville transfer station for the period September 1 - 17, 1991.

We have reviewed the weighbills for both the Cedar Road landfill and the Parksville transfer station to develop a more accurate estimate of LOB waste volumes in the NRD. The results of this review are shown in Exhibit III-1.

Exhibit III-1 indicates that based on Cedar Road landfill volumes only, Laidlaw's proportion of LOB waste in the NRD ranged between 81.1% and 84.5% during the months of June, July and August of 1991. During the period September 1-17, 1991, when all LOB waste in the NRD was weighed, Laidlaw's estimated portion dropped to 77.0%.

The reasons for the apparent decrease in Laidlaw's portion of total LOB waste disposed of in the NRD, is the large increase in volume attributable to West Coast Waste. Extrapolating from the 17-day period, represented by the data in Exhibit III-1, West Coast Waste's LOB volume for the month of September would be about 193,000 lbs. This represents a 355% increase over their apparent volume in August at Cedar Road landfill. We do not know what part of this increase relates to growth as opposed to the volume of LOB waste that was formerly disposed of at the Qualicum Beach landfill.

Exhibit III-1
LOB waste volumes in the Regional District of Nanaimo (in pounds)

Month	Site	Laidlaw	BFI	West Coast Waste	Total	Laidlaw As % of Total
June	Cedar Road Parksville	1,825,780	365,260	60,840	2,251,880	
	Total	1,825,780	365,260	60,840	2,251,800	81.1
July	Cedar Road Parksville	2,153,480	358,180	37,900	2,549,460	
	Total	2,153,480	358,180	37,900	2,549,460	84.5
August	Cedar Road Parksville	1,916,900	336,360	42,380	2,295,640	
	Total	1,916,900	336,360	42,380	2,295,640	83.5
September 1-17	Cedar Road Parksville	1,115,900	229,740	109,260	1,454,900	
	Total	1,136,120	229,740	109,260	1,475,120	77.0

We thus conclude the following:

- ▶ **The best estimate of Laidlaw's proportion of LOB waste disposed of in the NRD is 77%.**
- ▶ **The assessment in our September 13, 1991 evidence, that the Cedar Road landfill volumes were not indicative of the whole NRD, is correct.**
- ▶ **Mr. McRae's assertion in Paragraph 40 of his evidence that there is no reason to expect that totals from the Qualicum landfill are any different than those from the Cedar Road landfill is incorrect. It is possible that West Coast Waste was the largest volume disposer of LOB waste at the Qualicum landfill prior to September 1, 1991.**

Based on this new information, we conclude that the proportion of LOB waste disposed of in the NRD by Laidlaw is 77% of the total.

D. Market share in the NRD/CVRD

For reasons explained both in Chapter II of this report and our evidence filed on September 13, 1991, we have concluded that the Regional District of Nanaimo and the Cowichan Valley Regional District, excluding the Municipalities of Duncan and Lake Cowichan, should be considered as one market for the provision of LOB waste disposal service.

Laidlaw's market share is thus based on the sum of their LOB waste volumes disposed of at landfills/incinerators in both the NRD and CVRD. We have not revised our estimate at this time. We expect to do so when we receive new information from the CVRD. We expect to receive this information by October 4, 1991.

IV

Ease Of Entry

Mr. McRae states in Paragraph 56 of his evidence that "entry into the commercial containerized market, i.e., the creation of new production capacity, cannot be relied upon to discipline Laidlaw's economic conduct or performance."

This observation is based on a number of assumptions which are different from our own. We highlight the different assumptions below:

- ▶ Mr. McRae assumes that full utilization of one frontload vehicle requires access to 260 3-cubic yard containers per week. Our estimate is that one LOB truck is viable when it makes about 300 pickups a week (generally about 300 containers on the ground), and is optimally used at about 400 containers. (p. 58). Our analysis indicated that the one LOB truck operated by BFI is probably operating on a viable basis after one year. In the month of June 1991, this truck carried 382,760 lbs of LOB waste, 84% of the average carried by each of Laidlaw's four LOB trucks operating in the NRD at the same period. During this same period Laidlaw averaged 393 container pick-ups per week in the NRD/CVRD. Assuming the same average weight per pick-up, this would indicate that BFI managed about 330 container pick-ups per week, enough to make the truck economically viable in one year.
- ▶ Mr. McRae has made estimates of the relationship between "this minimum efficient scale", and the overall number of containers in each of the geographic markets as he defines them (see his paragraph 61). Our market definition differs from his, and the capacity of a single truck represents a smaller proportion of the total number of containers in each of the geographic markets as we define them. When viewed from this perspective, entry at the minimum efficient scale represents a relatively small proportion of the total number of containers in the markets, and may well be attainable.
- ▶ As noted earlier in this report, municipal tenders are viewed as an attractive entry strategy. In both market areas, as we define them, some LOB ("commercial") business is available through municipal tender, and provides a possible component of a successful entry strategy.
- ▶ Mr. McRae does not address the actual extent of entry in drawing his conclusions referred to the above. In our report (p. 61), we cite several instances of new entry in the markets which we have defined. Apparently, Mr. McRae believes that some entry has been successful, since he states that in his paragraph 39, "In June, 1991, after both Browning Ferris Inc. (BFI) and West Coast Waste had more time to establish themselves in the market, Laidlaw's share had fallen to 81.1%."

Mr. McRae's concludes in Paragraph 68 of his evidence that, "... entry by smaller firms is not sustainable." This apparently assumes that entry by smaller firms is necessary to provide discipline on the economic conduct and performance of the marketplace. We disagree with this conclusion and the apparent underlying assumption for the following reasons:

- West Coast Waste's apparent share of LOB waste disposed of in the NRD/CVRD is much larger than originally estimated by Mr. McRae. Our analysis indicates 7.4% as opposed to Mr. McRae's estimate of 2.7% (see Table III-1). There is also no indication that West Coast Waste is not going to stay in the market.
- While larger firms may be more likely to have the resources available to facilitate market entry, there is no reason to believe that such entry is less desirable or less effective than that of smaller firms.
- Our evidence indicates that the entry of BFI and West Coast Waste into the NRD/CVRD market, approximately one year ago, has resulted in a substantial decline in Laidlaw's market share. We believe that this indicates that entry can be relied upon to discipline Laidlaw's economic conduct or performance.

THE COMPETITION TRIBUNAL

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AND IN THE MATTER OF certain practices by Laidlaw Waste Systems Ltd. in the communities of Cowichan Valley Regional District, Nanaimo Regional District and the District of Campbell River, British Columbia.

BETWEEN:

The Director of Investigation and Research

Applicant

AND:

Laidlaw Waste Systems Ltd.

Respondent

A F F I D A V I T

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