

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20171122**

**Docket: A-127-17**

**Citation: 2017 FCA 231**

**CORAM: PELLETIER J.A.  
TRUDEL J.A.  
NEAR J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**THE MASHA KRUPP TRANSLATION  
GROUP LTD. and CLS LEXI-TECH LTD.**

**Respondents**

Heard at Ottawa, Ontario, on November 22, 2017.  
Judgment delivered from the Bench at Ottawa, Ontario, on November 22, 2017.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NEAR J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on November 22, 2017).**

**NEAR J.A.**

[1] The Applicant, the Attorney General of Canada, applies for judicial review of a decision of the Canadian International Trade Tribunal (CITT) dated March 15, 2017 (CITT Decision PR-2016-041). The CITT determined that the complaint of the respondent, the Masha Krupp Translation Group (MKTG), was valid in part. A Request for Proposal issued by the Canada

Revenue Agency (CRA) underlies this application. The contract was ultimately awarded to the other respondent in this case, CLS Lexi-tech Ltd. (CLS).

[2] MKTG subsequently filed a complaint with the CITT, which it accepted. MKTG submitted three grounds of complaint, including that the process to evaluate the bid was subjective.

[3] In response to MKTG's complaint, the CRA filed a Government Institution Report (GIR) that contained the evaluation grids for both its own proposal and that of CLS. The GIR disclosed that different evaluators conducted reference checks, that someone not named as a reference in any proposal was consulted, and that half-points were sometimes, but not always, offered to the references.

[4] MKTG filed a reply to the GIR outlining these deficiencies. All parties subsequently filed written submissions regarding whether the allegations raised by MKTG in its reply to the GIR were outside the scope of its initial complaint. In a letter dated December 29, 2016, CITT informed the parties that it would not accept further submissions. It confirmed that it would only consider issues that were raised in the original complaint.

[5] The CITT found that the complaint that the process to evaluate the bid was subjective was valid.

[6] The applicant argues that the CITT erred when it found that the allegations raised by MKTG in its reply to the GIR were within the scope of the original complaint by MKTG that the process to evaluate the bid was subjective. The applicant argues that the CITT improperly interpreted subsection 30.14 of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47, which provides that the CITT shall limit its considerations to the “subject matter” of the complaint. In our view, the CITT was engaged in interpreting its home statute and, applying its interpretation to the facts and circumstances of this case, this Court should treat its decision with deference. The CITT provided extensive reasons supporting its finding that the allegations regarding the subjectivity of the process of evaluation were within the scope of the original complaint. We see no reason to intervene on that basis.

[7] The applicant and CLS argue that the CITT breached its obligation of procedural fairness by not allowing the CRA to make submissions with respect to the allegations raised in MKTG’s reply to the GIR. The applicant argues that it would have submitted additional evidence that MKTG would not have been awarded the contract despite its subjective evaluation process.

[8] In our view, this argument misses the point of this analysis. The CITT found that MKTG’s complaint was valid because of deep flaws with the procurement process regardless of the result (see paragraphs 65–69 of the Tribunal’s decision). The additional submissions that the Attorney General and CLS say they would have made would not have made any difference to this finding. In our view, the CITT made no error in declining to hear additional submissions from the parties.

[9] Finally, the applicant argues that the CITT's recommended remedy was unreasonable.

[10] In our view, the applicant's argument on this matter reveals the same flaw as its argument regarding procedural fairness—the CITT was not concerned with the result but rather the process and, further, explicitly found that the procurement process was exceptionally compromised. As it outlined in its reasons, “due to the uncertainty introduced into the scoring process by the CRA's approach to the reference checks, the Tribunal cannot determine whether MKTG would have been awarded the contract” (CITT Decision at para. 80). The CITT explained its decision regarding remedies in great detail and its decision is justified, transparent, and intelligible and “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190). We see no reason for this Court to intervene.

[11] The application for judicial review is dismissed with costs assessed at the mid-point of column 3. This is not a case that justifies the award of costs on a solicitor-client basis.

"David G. Near"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF DETERMINATION OF THE CANADIAN INTERNATIONAL TRIBUNAL, DATED MARCH 15, 2017, FILE NO. PR-2016-041.**

**DOCKET:** A-127-17

**STYLE OF CAUSE:** ATTORNEY GENERAL OF CANADA v. THE MASHA KRUPP TRANSLATION GROUP LTD. and CLS LEXI-TECH LTD.

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** NOVEMBER 22, 2017

**REASONS FOR JUDGMENT OF THE COURT BY:** PELLETIER J.A.  
TRUDEL J.A.  
NEAR J.A.

**DELIVERED FROM THE BENCH BY:** NEAR J.A.

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