

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20231026**

**Docket: A-87-23**

**Citation: 2023 FCA 214**

**CORAM: STRATAS J.A.  
WEBB J.A.  
RENNIE J.A.**

**BETWEEN:**

**TERRA REPRODUCTIONS INC.**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on October 26, 2023.

Judgment delivered from the Bench at Ottawa, Ontario, on October 26, 2023.

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

**STRATAS J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on October 26, 2023).**

**STRATAS J.A.**

[1] The applicant complained to the Canadian International Trade Tribunal about a procurement issued by the Department of Natural Resources. The Tribunal decided not to deal with the complaint. It was out of time. Section 6 of the *Canadian International Trade Tribunal*

*Procurement Inquiry Regulations*, SOR/93-602 provides that a potential supplier, such as the applicant, must raise an objection or file a complaint with the Tribunal no more than ten working days after the day on which the basis of the complaint became known or reasonably should have become known. The applicant objected three working days after the deadline had expired.

[2] There is nothing in the record suggesting that the applicant asked the Tribunal to apply subsections 6(3) and (4). These subsections, in narrow circumstances, permit a complaint to be made within thirty days.

[3] In this Court, the applicant applies for an order quashing the Tribunal's decision.

[4] We will dismiss the application. The Tribunal's decision is founded upon a literal and defensible application of s. 6 of the Regulations to the facts of this case. Thus, it is reasonable within the meaning of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

[5] In support of its application, the applicant filed an affidavit containing evidence that was not before the Tribunal. New evidence is not admissible before a reviewing court unless certain narrow exceptions apply: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 F.T.R. 297; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, 9 Admin. L.R. (6th) 296; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128; and many other authorities. None of the exceptions apply on the facts of this case.

[6] The applicant also seeks to raise in this Court a new issue: whether an extension of time should have been granted under s. 6(3)(b) of the Regulations. The applicant did not raise this before the Tribunal. New issues affecting the merits are not normally admissible in judicial reviews in reviewing courts: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654. As recently explained in *Klos v. Canada (Attorney General)*, 2023 FCA 205, *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 does not cast doubt on the authority of *Alberta Teachers*.

[7] These rules are no mere technicality. Rather, they are quite fundamental. Under this legislative regime—part of the laws of Canada that bind all, including reviewing courts such as this Court—it is for the Tribunal to receive evidence, hear all issues, and decide whether an objection or complaint is timely. In circumstances such as these, reviewing courts are restricted to reviewing the Tribunal's decision. Absent exceptional circumstances recognized in the authorities, reviewing courts cannot receive new evidence, entertain new issues or re-do the decision.

[8] Reviewing courts can impose their view of the merits of the matter over an administrator only in “limited scenarios”: *Vavilov* at para. 142. One is where the requirements for *mandamus* are met. Another is where reviewing courts, operating under the standard of review of reasonableness, not correctness (*i.e.*, not imposing their own view of the matter over that of the administrator), find that only one particular outcome is reasonable or “inevitable” based on the evidence filed before the administrator: *Vavilov* at para. 142; *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326 at 361; *Maple Lodge Farms Ltd. v. Canada (Food*

*Inspection Agency*), 2017 FCA 45, 411 D.L.R. (4th) 175 at para. 52; *Blue v. Canada (A.G.)*, 2021 FCA 211 at paras. 49-51. The recent case of *Mason* should not be taken to be saying anything different.

[9] In oral argument, the applicant submits that the Tribunal should have applied s. 6(3)(b) and s. 6(4) on its own, to give the applicant the benefit of the thirty-day period. We disagree. In these circumstances, it is not the obligation of the Tribunal to look after the substantive interests of any party before it or develop or run a party's case for it. As well, parties are advised in at least one guideline document, "Bid Challenge and Recourse Mechanisms", of the deadlines. Here, the onus was on the applicant, who was well aware of the timing of its objection or complaint, to refer the Tribunal to s. 6(3)(b) and offer evidence and arguments in support of that request.

[10] Therefore, we will dismiss the application with costs.

"David Stratas"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**APPLICATION FOR JUDICIAL REVIEW FROM A DECISION OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL DATED FEBRUARY 24, 2023, CITT FILE NO. PR-2022-069**

**DOCKET:** A-87-23

**STYLE OF CAUSE:** TERRA REPRODUCTIONS INC.  
v. THE ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** OCTOBER 26, 2023

**REASONS FOR JUDGMENT OF THE COURT BY:** STRATAS J.A.  
WEBB J.A.  
RENNIE J.A.

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

**APPEARANCES:**

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