

FEDERAL COURT OF APPEAL
TERRA REPRODUCTIONS INC.

FEDERAL COURT OF APPEAL	
COUR D'APPEL FÉDÉRALE	
FILED	March 24, 2023
	I Laviolette-Duval
OTTAWA, ON	1

Applicant

and

**THE ATTORNEY GENERAL OF CANADA (THE DEPARTMENT OF NATURAL
RESOURCES)**

Respondent

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) March 24, 2023

LavioletteDuval,
Isabelle

Digitally signed by LavioletteDuval,
Isabelle
DN: cn=LavioletteDuval, Isabelle,
c=CA, o=CC, ou=CAS-SATJ,
email=L.laviolette-duval@cas-satj.gc.ca
Date: 2023.03.24 13:21:36 -0400

Issued by: _____

Address of local office: 90 sparks, Ottawa

TO:

Attorney General of Canada
Civil Litigation Section
Department of Justice Canada
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8
Telephone: 613-670-6214
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Email: AGC_PGC_OTTAWA@JUSTICE.GC.CA

TO:

Canadian International Trade Tribunal
333 Laurier Street
Ottawa ON
K1A 0G7
613-993-359

Application

This is an application for judicial review in respect of:

Tribunal: The Canadian International Trade Tribunal

Date decision was issued: February 24 2023

CITT court file number: PR 2022-069

Date reasons were issued: March 8 2023

The applicant makes application for:

1. an Order reversing the February 24 2023 decision of the *Canadian International Trade Tribunal* and,
2. an Order that an inquiry into the complaint of the applicant take place before the Canadian International Trade Tribunal.

The grounds for the application are: (*State the grounds to be argued, including any statutory provision or rule relied on.*)

1. The Canadian International Trade Tribunal erred in law and/or land and fact in determining that Terra Reproductions Inc. was outside the time limit stipulated in Canadian International Trade Tribunal Procurement Inquiry Regulations SOR 93/602 s.6 and 7.
2. The Canadian International Trade Tribunal erred in law and/or law and fact in determining that Terra Reproductions Inc. was outside the time limit stipulated in Canadian International Trade Tribunal Procurement Inquiry Regulations SOR 93/602 s.6 and 7, by erroneously determining that the February 15 2023 complaint filing was not acceptable under the regulations.
3. The Canadian International Trade Tribunal erred in law and/or law and fact in determining that Terra Reproductions Inc. was outside the time limit stipulated in Canadian International Trade Tribunal Procurement Inquiry Regulations SOR 93/602 s.6 and 7, by failing to determine that Terra Reproductions Inc. has in fact filed within the required time.
4. The Canadian International Trade Tribunal erred in law in failing to carry out an inquiry.
5. The Canadian International Trade Tribunal erred in law in ignoring clear, cogent and compelling evidence that the tendering process was carried out in an arbitrary manner.
6. The Canadian International Trade Tribunal erred in law and/or law and fact, in ignoring,

minimizing or dismissing the fact that a critical diagnostic test, used by the Respondent, to choose among tender-applicants, namely the scanning resolution and geometric distortion test used by the Respondent, was misapplied by the Respondent, and the results of which test did not and could not demonstrate (scanning resolution and geometric distortion) superiority or adequacy of the awarded candidate or (scanning resolution and geometric distortion) inadequacy of the losing candidates.

7. The Canadian International Trade Tribunal erred in law and/or law and fact, in ignoring, minimizing or dismissing the fact that a critical diagnostic test, used by the Respondent to choose among tender-applicants, namely the scanning resolution and geometric distortion glass test tool, was a glass test tool applicable to microscopes and not applicable to scanners and therefore should not have been the tool used by the Respondent to determine whether the tender applicants had satisfactory scanning specificity.
8. The Canadian International Trade Tribunal erred in law and/or law and fact, in ignoring, minimizing or dismissing the fact that a critical diagnostic test, used by the Respondent to choose among tender-applicants, namely the scanning resolution and geometric distortion test called for a specific industry-accepted test device, applicable to scanners, which would have definitively and accurately differentiated the tender candidates and which would have shown the Applicant to be superior to the tender winners.
9. The Canadian International Trade Tribunal erred in law in failing to appreciate that the defects in the tender process scanning resolution test rendered the test process so defective as to be void and corruptive of the tender process.
10. The Canadian International Trade Tribunal erred in law and/or law and fact, in failing to appreciate that the tender award winners did not carry out the diagnostic test correctly and therefore the Department of Natural Resources further erred in assessing the results and the Tribunal erred in law in failing or refusing to take notice of a corrupted tender process.

Statutory provisions that the Appellant will rely upon include:

1. Canadian International Trade Tribunal Procurement Inquiry Regulations SOR 93/602 s.6 and 7.
2. Such other statutory provisions or policy manuals as counsel shall submit.

This application will be supported by the following material:

1. Affidavit of Trevor Jelly
2. Affidavit of Robert Vanderkuip

The appellant requests: the *Canadian International Trade Tribunal* to send a certified copy of the following material that is not in the possession of the appellant but is in the possession of the tribunal to the appellant and to the Registry:

1. Decision of the Canadian International Trade Tribunal (PR-2022-069) between *Terra Reproductions Inc.* against *The Department of Natural Resources*;
2. Statement of Reasons (PR-2022-069) of the Canadian International Trade Tribunal (PR-2022-069) between *Terra Reproductions Inc.* against *The Department of Natural Resources*;
3. Record of the evidence before the Canadian International Trade Tribunal (PR-2022-069) between *Terra Reproductions Inc.* against *The Department of Natural Resources*;

March 24 2023

edward conway

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Solicitor for the applicant

TERRA REPRODUCTIONS INC.

-and-

**THE ATTORNEY GENERAL OF CANADA (THE
DEPARTMENT OF NATURAL RESOURCES)**

Applicant

Respondent

Court File No.

FEDERAL COURT OF APPEAL

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