



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2011-037

Ball Harrison Hansell Employee  
Benefits Insurance Agency Ltd.

*Decision made  
Tuesday, October 18, 2011*

*Decision issued  
Wednesday, October 19, 2011*

*Reasons issued  
Wednesday, October 26, 2011*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47

**BY**

**BALL HARRISON HANSELL EMPLOYEE BENEFITS INSURANCE AGENCY LTD.**

**AGAINST**

**THE CANADA LANDS COMPANY LTD.**

**DECISION**

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Jason W. Downey  
Jason W. Downey  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

The statement of reasons will be issued at a later date.

## STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> a potential supplier may file a complaint with the Canadian International Trade Tribunal (the Tribunal) concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.
2. The complaint relates to a solicitation by Canada Lands Company Ltd. (CLCL) for the provision of services by an employee benefits consultant.
3. Ball Harrison Hansell Employee Benefits Insurance Agency Ltd. (BHH) alleged that CLCL was negligent by disregarding the Request for Proposal process when it refused to provide a debriefing to BHH.
4. Subsection 30.11(1) of the *CITT Act* allows a potential supplier to “. . . file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a designated contract . . . .”
5. In addition, subsection 7(1) of the *Regulations* sets out three conditions which must be met for the Tribunal to decide to conduct an inquiry in respect of a complaint. One of the conditions is that the complaint be in respect of a designated contract.
6. Section 30.1 of the *CITT Act* defines “designated contract” as “. . . a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations”. It also defines “government institution” as “. . . any department or ministry of state of the Government of Canada, or any other body or office, that is designated by the regulations”.
7. In this respect, subsection 3(2) of the *Regulations* designates, as government institutions, the federal government entities or government enterprises set out in the following parts of potentially applicable trade agreements: the Schedule of Canada in Annex 1001.1a-1 and Annex 1001.1a-2 of the *North American Free Trade Agreement*,<sup>3</sup> under the heading “CANADA” in Annex 502.1A of the *Agreement on Internal Trade*,<sup>4</sup> under the heading “CANADA” in Annex 1 and Annex 3 of the *Agreement on Government Procurement*,<sup>5</sup> the Schedule of Canada in Annex *Kbis*-01.1-1 and Annex *Kbis*-01.1-2 of Chapter *Kbis* of the *Canada-Chile Free Trade Agreement*,<sup>6</sup> the Schedule of Canada in Annex 1401.1-1 and Annex 1401.1-2 of Chapter

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1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

2. S.O.R./93-602 [*Regulations*].

3. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994).

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)> [*AIT*].

5. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)>.

6. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997). Chapter *Kbis*, entitled “Government Procurement”, came into effect on September 5, 2008.

Fourteen of the *Canada-Peru Free Trade Agreement*,<sup>7</sup> and the Schedule of Canada in Annex 1401-1 and Annex 1401-2 of Chapter Fourteen of the *Canada-Colombia Free Trade Agreement*.<sup>8</sup>

8. The Tribunal notes that the solicitation at issue concerns a contract for the procurement of services by CLCL. The Tribunal further notes that CLCL is not listed in any of the relevant schedules or annexes of any of the trade agreements. In addition, CLCL is expressly excluded from the coverage of Chapter Five of the *AIT* pursuant to Annex 502.2A. The Tribunal therefore finds that CLCL is not a covered federal government entity or government enterprise as described in the agreements and, as such, is not a “government institution” within the meaning of section 30.1 of the *CITT Act*.

9. For this reason, the Tribunal finds that the contract to which this procurement process relates is not a designated contract.

10. Given that the procurement at issue does not relate to a designated contract, the Tribunal does not have jurisdiction to inquire into the complaint and considers the matter closed.

## DECISION

11. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Jason W. Downey

Jason W. Downey  
Presiding Member

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7. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/chapter-chapitre-14.aspx>> (entered into force 1 August 2009).

8. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/anc-colombia-toc-tdm-can-colombie.aspx>> (entered into force 15 August 2011).