

# FEDERAL PROCUREMENT COMPLAINTS: CITT PASSES MILESTONE IN 2020/2021

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Stephen Covey, the famous educator, author, businessperson, and keynote speaker, has been quoted as saying “[i]f you want to get something done, give it to someone busy.” That is certainly true for the Canadian International Trade Tribunal’s mandate overseeing federal government contracting.

The Tribunal (or CITT) is designated by various external trade agreements and the internal Canadian Free Trade Agreement (“**CFTA**”), as the bid challenge (complaint) authority for federal government procurement.

The CITT states in its [Procurement Inquiries – Guide](#) that “Parliament has enacted legislation designed to ensure that the procurements covered by the trade agreements are conducted in an open, fair and transparent manner and, wherever possible, in a way that maximizes competition.” Certainly, the Tribunal does not shy away from its responsibilities in those respects.

As a result, the Tribunal has been receiving an increasing number of procurement complaints in the three previous fiscal years per the CITT’s Annual Reports, as follows: 67 in 2017/2018, 69 in 2018/2019, and 72 in 2019/2020.

In fiscal 2020/2021, the Tribunal received, what is a recent high (if not an all-time record), over a 100 complaints (102 to be exact, by the author’s unofficial count!) for its consideration. This is workload in addition to the Tribunal’s other active mandates including trade remedies and customs appeals.

This volume of complaints indicates growing activity in federal procurement and may also indicate some other strains in federal procuring entities (such as time pressures etc.), leading to more willingness on the part of potential suppliers to dispute procurement decisions

Another reason for the Tribunal’s high level of activity is that its jurisdiction continues to cover contracts which are relatively low in value. For example under CFTA, the value threshold for review of procurement of goods by government departments and agencies is only CDN \$26,400 (thresholds for crown corporations and enterprises are higher).

As well, the Tribunal’s mandate covers procurement by most federal institutions and of most goods and

services. To illustrate, the varied mandate in 2020/2021, goods complained about in 2020/2021 ranged from maritime towing to computer software, and the departments involved included not only Public Works and Government Services (also known as Public Services and Procurement) but also National Defence and Natural Resources.

The federal government is heading toward another busy year on a wide variety of procurement, some related to COVID-19, some related to the usual business of government and likely some large, once-in-a-decade projects. Therefore, businesses bidding on federal government requests for proposals or other procurement vehicles, should keep the following in mind if considering a procurement challenge.

The Tribunal provides detailed public statements of reason on its [web site](#) for its decisions and has a well-developed body of reasons behind its decisions on a multitude of various procurement review issues. A good understanding of the Tribunal's publicly-available case law is very important to making a complaint and to an optimal outcome of a procurement challenge.

However, there is usually an aspect of confidentiality in any Tribunal procurement inquiry. In terms of information reviewed, in addition to the complaint and the Government Institution Report ("**GIR**"), which must have a public version, independent counsel to parties are granted access to confidential information which includes competitor information in the GIR, where relevant. This confidential information can be of crucial assistance in some disputes.

For upcoming additional information, along with any timely updates regarding key CITT procurement decisions, please look for upcoming articles in the Bulletin which will cover some practical procurement basics such as:

- #1 How (and when) to file a federal procurement complaint – especially explaining the very short 10-day deadline to file objections or complaints;
- #2 Common grounds for federal procurement complaints – what are typical valid grounds for complaint;
- #3 Remedies in federal procurement complaint – what can be gained if a complaint is successful.

For more information, or assistance with a federal procurement challenge at the CITT, please contact the author, Peter Jarosz<sup>[1]</sup>, at: 613.691.6145, [peter.jarosz@mcmillan.ca](mailto:peter.jarosz@mcmillan.ca).

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### **A Cautionary Note**



The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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