

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260402

Docket: A-209-24

Citation: 2026 FCA 69

**CORAM: ROUSSEL J.A.
HECKMAN J.A.
PAMEL J.A.**

BETWEEN:

**HEILTSUK HORIZON MARITIME SERVICES LTD.
and HORIZON MARITIME SERVICES LTD.**

Applicants

and

**ATLANTIC TOWING LIMITED
and THE ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Halifax, Nova Scotia, on March 25, 2026.

Judgment delivered at Ottawa, Ontario, on April 2, 2026.

**REASONS FOR JUDGMENT BY:
CONCURRED IN BY:**

**PAMEL J.A.
ROUSSEL J.A.
HECKMAN J.A.**

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REASONS FOR JUDGMENT

PAMEL J.A.

[1] The applicants, Heiltsuk Horizon Maritime Services Ltd. and Horizon Maritime Services Ltd. (Heiltsuk/Horizon), apply for judicial review of the determination and reasons dated May 22, 2024 of the Canadian International Trade Tribunal (the Tribunal) (File No. PR-2020-068 –

the Remedies Decision) pursuant to sections 18.1 and 28 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[2] In August 2018, as the successful bidder under a request for proposal (RFP) released earlier that year by Public Works and Government Services Canada (Public Works), the respondent, Atlantic Towing Limited (Atlantic Towing), was awarded the contract for the supply of two emergency towing vessels in support of Canadian Coast Guard (CCG) operations on the west coast of Canada. Heiltsuk/Horizon ranked last out of the seven compliant bidders.

[3] Several weeks following the awarding of the contract and as provided for by section 7.46 of the RFP (the substitution clause), Public Works permitted Atlantic Towing to substitute all four masters originally proposed in its winning bid with new masters. Upon becoming aware of the substitution and suspecting a bait-and-switch on the part of Atlantic Towing, Heiltsuk/Horizon filed a complaint with the Tribunal, asserting that the substitute masters did not meet the technical requirements of the RFP under the substitution clause, and challenging the decision by Public Works to allow the substitution on the basis that by failing to enforce key terms of the solicitation, Public Works effectively conducted a *de facto* sole-source procurement, i.e., a modified solicitation for which Atlantic Towing was the only bidder. Before the Tribunal, Heiltsuk/Horizon argued that Public Works should have submitted documentation showing how the substitute masters were evaluated and scored in comparison to the original masters. I should mention that no issue was taken by Heiltsuk/Horizon with respect to the applicability of the substitution clause in the circumstances.

[4] In May 2021, the Tribunal determined that Public Works did not proceed with modifying the contract in a manner that contravened the RFP, as alleged by Heiltsuk/Horizon (*Heiltsuk Horizon Maritime Services Ltd. / Horizon Maritime Services Ltd. v. Department of Public Works and Government Services* (3 May 2021), PR-2020-068 - the Merits Decision). The Tribunal did find, at paragraph 60, that Public Works and CCG “ought to have better documented their evaluation of the substitute masters” and in particular “should have documented efforts to ensure that the substitute masters would meet the mandatory requirements and that they would receive equivalent scores to the original masters under the rated requirements”. However, notwithstanding the lack of “contemporaneous documentation” before Public Works at the time the decision to allow the substitutions was made, the Tribunal found at paragraphs 57 and 61, based upon the documents submitted during the course of the litigation, that it was nonetheless reasonable for Public Works to have determined that all four of the substitute masters fulfilled the technical requirements of the RFP and that they would have earned the same top score under the proposed bid scoring system as did the masters originally proposed by Atlantic Towing; the Tribunal proceeded to find Heiltsuk/Horizon’s complaint not to be valid.

[5] In May 2023, this Court allowed Heiltsuk/Horizon’s application for judicial review of the Merits Decision (*Heiltsuk Horizon Maritime Services Ltd. v. Atlantic Towing Limited*, 2023 FCA 88 (*Heiltsuk 1*)). The Court determined at paragraph 21 that it was not open to the Tribunal to disregard the flawed basis for Public Works’ decision and to substitute its own rationalization for the decision to allow the substitution of masters by Atlantic Towing. As there was no contemporaneous evidence to support the conclusion that the substitute masters complied with the technical requirements of the RFP and merited full points under the bid scoring system as did

the masters originally proposed by Atlantic Towing, this Court determined that “there was no bridge” between the evidence and the Tribunal’s conclusion on those issues; this Court also disagreed with the assertion of Public Works that “equivalency of experience could be inferred from the type of vessels on which the substitute masters had served, as described in their resumes” (*Heiltsuk 1* at para. 12). Having found that only one result was open to the Tribunal on account of the “limitations in the evidence” before it and that therefore “no purpose would be served in remitting the matter to” the Tribunal (*Heiltsuk 1* at para. 24), this Court set aside the Merits Decision and declared Heiltsuk/Horizon’s complaint to be valid.

[6] On the strength of Heiltsuk/Horizon’s complaint having been declared valid by this Court, the parties returned before the Tribunal to deal with the issue of remedies. In its Remedies Decision, the Tribunal noted at paragraphs 21 and 31 that the crux of what made Heiltsuk/Horizon’s complaint valid was the finding by this Court in *Heiltsuk 1* that the information provided by Atlantic Towing was insufficient for Public Works to conclude that the substitute ship masters had qualifications and experience that met or exceeded those of the ship masters submitted in its initial bid as required by the substitution clause. Accordingly, at paragraph 32, the Tribunal characterized the nature of the breach by Public Works as relating to its “lack of rigour...in validating the experience of the proposed substitute ship masters” which constituted “a deficiency in the procurement process.”

[7] After considering the circumstances listed in subsection 30.15(3) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4th Supp.) (the *Act*) as well as the remedies that may be available to it, including those listed in subsection 30.15(2) of the *Act*, the

Tribunal recommended, *inter alia*, that Public Works pay Heiltsuk/Horizon \$5,000 as a remedy for its breach. The Tribunal also recommended that Public Works verify and document that the ship masters to be employed or proposed at the time of the next potential extension of the current contract have the qualifications and the experience that either meet or exceed the score obtained by the ship masters originally submitted by Atlantic Towing, and awarded Heiltsuk/Horizon its reasonable costs incurred in preparing and proceeding with its complaint.

[8] As stated, it is this Remedies Decision which forms the subject matter of the present application for judicial review; other than on issues of procedural fairness, the Tribunal's determinations, including the exercise of its remedial discretion to award compensation and determine the amount thereof, are assessed by this Court on a standard of reasonableness (*Heiltsuk 1* at para 10; *Systèmes Equinox inc. v. Canada (Public Works and Government Services)*, 2012 FCA 51 at para. 4; *Canada (Attorney General) v. Envoy Relocation Services*, 2007 FCA 176 at paras. 15–18). The issue, therefore, is to determine whether the Tribunal's Remedy Decision was reasonable.

[9] In addition to repeating its modified solicitation assertion as regards Public Works, Heiltsuk/Horizon argues that the Tribunal mischaracterized the nature of the "breach" by Public Works that was identified by this Court in *Heiltsuk 1*, and in doing so, rendered an unreasonable decision as regards appropriate remedies. According to Heiltsuk/Horizon, the breach of Public Works is to have conducted a *de facto* sole-source procurement, i.e., a modified solicitation for which Atlantic Towing was the only bidder. Accordingly, Heiltsuk/Horizon urges the Court to find that the unlawful substitution permitted by Public Works was serious, that Public Works

directly undermined the integrity of the procurement process and breached its obligations under the *Act*, and that it, Heiltsuk/Horizon, was denied the opportunity to profit from the contract. Heiltsuk/Horizon also asks that this Court now restore the integrity of the procurement system by cancelling the contract awarded to Atlantic Towing and award Heiltsuk/Horizon compensation for lost opportunity and to denounce Public Works for its failure to preserve the integrity of the procurement process.

[10] I cannot agree with Heiltsuk/Horizon, as its arguments are based upon the premise that the substitute masters did not, as a matter of fact, meet the relevant technical requirements of the RFP and that they would not have achieved full points under the relevant scoring system as did the masters originally proposed by Atlantic Towing. Neither Public Works nor the Tribunal ever made such a finding, and I do not agree with Heiltsuk that paragraph 12 of *Heiltsuk 1* can be interpreted to suggest otherwise.

[11] In the Merits Decision, the Tribunal concluded that Public Works had reasonably determined that all four of the substitute masters fulfilled the technical requirements of the RFP and that they would have earned the same top score under the applicable scoring system as did the masters originally proposed by Atlantic Towing. In its Remedies Decision, the Tribunal found that this Court in *Heiltsuk 1* allowed the application for judicial review because of the paucity of contemporaneous evidence not being able to support such a conclusion by the Tribunal rather than on any finding that the determination by Public Works was factually incorrect.

[12] I therefore find nothing unreasonable with the Tribunal's conclusion that the "breach" upon which this Court determined in *Heiltsuk 1* that Heiltsuk/Horizon's complaint was valid was the failure by Public Works to keep proper records of its determination regarding the propriety of the substitution rather than, as asserted by Heiltsuk/Horizon, the substitute masters not having met the technical requirements of the RFP. As such, there is no basis for Heiltsuk/Horizon's assertion that, in the Merits Decision, the Tribunal accepted its proposition that by permitting the substitution, Public Works was conducting a modified solicitation, nor that, in its Remedies Decision, the Tribunal disregarded this Court's determination in *Heiltsuk 1* that the complaint was valid.

[13] What the Tribunal did accept at paragraph 42 of that decision was that "[i]f the substitute masters were not required to earn the same points on rated requirements as [Atlantic Towing]'s original masters had earned, then [Public Works] would be effectively creating a new evaluation process where [Atlantic Towing]'s substitute masters would be permitted to satisfy lesser requirements than all masters originally proposed by other bidders" (my emphasis). However, at no point did the Tribunal find that the substitute masters were allowed to score less on rated requirements than did the masters initially proposed by Atlantic Towing. There is no basis for Heiltsuk/Horizon's assertion that, in framing the crux of what made its complaint valid as it did in the Remedies Decision, the Tribunal disregarded the Court's declaration that the complaint was valid.

[14] As regards the Tribunal decision which is the subject matter of the present application, the Tribunal recognized the principles set out by this Court in *Canada (Attorney General) v.*

Almon Equipment Limited, 2010 FCA 193, [2011] 4 F.C.R. 203 that underscore the purposes of subsections 30.15(2) and (3) of the *Act*, reviewed the factors listed in subsection 30.15(3) of the *Act*, and applied them to the specific circumstances of the case. As noted by the Tribunal, the breach by Public Works related to its lack of rigour in the validation of the substitute masters, which constituted a deficiency in the procurement process; the Tribunal stated at paragraph 32 that by “not properly verifying the experience of the ship masters, [Public Works] failed to apply transparent rules, which, to some extent, may contribute to decreasing bidders’ confidence in the procurement process.”

[15] That said, I can find no reviewable error in the way the Tribunal dealt with the issues raised by Heiltsuk/Horizon. The Tribunal considered the circumstances relevant to the procurement and those listed in subsection 30.15(3) of the *Act*. It then determined that cancellation of the contract was unjustified, in particular given the advanced stage of its execution and the concerns its interruption would have on the provision of an essential service, and that compensation for lost opportunity was inappropriate given that Heiltsuk/Horizon’s bid ranked last out of the seven compliant bidders. Considering the record before the Tribunal, I find nothing unreasonable with such findings. I am also not convinced that the Tribunal’s decision to recommend that \$5,000 in compensation be paid to Heiltsuk/Horizon as a remedy for Public Works’ shortcomings in protecting the integrity of the procurement process is unreasonable, considering the circumstances, the statutory framework and the relevant case law relating to this head of compensation.

[16] On the whole, the Tribunal’s decision under review bears the hallmarks of reasonableness—justification, transparency, and intelligibility—and is justified in relation to the relevant factual and legal constraints that bear on it (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 99). I would therefore dismiss the present application. Finally, given the nature of the complaint and the way the proceedings throughout have unfolded, I would also make no award as to costs.

“Peter G. Pamel”

J.A.

“I agree.

Sylvie E. Roussel J.A.”

“I agree.

Gerald Heckman J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-209-24

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MARITIME SERVICES LTD.
AND, HORIZON MARITIME
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TOWING LIMITED and, THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

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REASONS FOR JUDGMENT BY: PAMEL J.A.

CONCURRED IN BY: ROUSSEL J.A.
HECKMAN J.A.

DATED: APRIL 2, 2026

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