

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20091021

**Dockets: A-343-07
A-166-09**

Citation: 2009 FCA 304

**CORAM: BLAIS C.J.
SHARLOW J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

Docket: A-343-07

ATTORNEY GENERAL OF CANADA

Applicant

and

LES SYSTÈMES EQUINOX INC.

Respondent

and

LGS GROUP INC.

Intervener

BETWEEN:

Docket: A-166-09

ATTORNEY GENERAL OF CANADA

Applicant

and

LES SYSTÈMES EQUINOX INC.

Respondent

Heard at Ottawa, Ontario, on October 21, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on October 21, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

BLAIS C.J.

Date: 20091021

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on October 21, 2009)

BLAIS C.J.

[1] The Crown has applied for judicial review of two decisions of the Canadian International Trade Tribunal. In the first application (A-343-07), the Crown submits that the decision of the Tribunal dated June 20, 2007 is unreasonable insofar as it concludes that the bid of LGS Group Inc. was not compliant and that LGS Group Inc. was permitted to repair its bid. In the second application (A-166-09), the Crown submits that the Tribunal erred in law in concluding, in its decision dated March 12, 2009, that there was a reasonable apprehension of bias in the evaluation of the bids.

[2] The Crown's submissions on all of these issues are based on arguments challenging the Tribunal's understanding of the bidding process as disclosed in the documents in the record, and the probative value of those documents. The Crown's explanations of the documents that were presented in this Court were before the Tribunal, but those explanations were rejected, substantially on factual grounds. In our view, all of the conclusions challenged by the Crown were findings of fact that were reasonably open to the Tribunal, given the evidence before it.

[3] We note that the Tribunal was influenced substantially by the apparent inability of the Crown to produce evidence explaining certain aspects of the evaluation process, and in a number of instances drew inferences adverse to the Crown on the basis of the absence of evidence. In our view, the Tribunal's concern about the lack of documentation was reasonable, and the adverse inferences were justified.

[4] We are not persuaded that the Tribunal made any error of law or any other error that warrants the intervention of this Court. These applications will be dismissed with costs.

[5] A copy of these reasons will be placed in each of the files, A-343-07 and A-166-09.

“Pierre Blais”
Chief Justice

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-343-07 & A-166-09

STYLE OF CAUSE: AGC and Les Systèmes
Equinox Inc. and LGS Group
Inc. (A-343-07)

AGC and Les Systèmes
Equinox Inc. (A-166-09)

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 21, 2009

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J.
SHARLOW J.A.
LAYDEN-STEVENSON
J.A.

DELIVERED FROM THE BENCH BY: BLAIS C.J.

APPEARANCES:

David M. Attwater FOR THE APPLICANT

Gordon LaFortune FOR THE RESPONDENT

Not present FOR THE INTERVENER

SOLICITORS OF RECORD:

David M. Attwater FOR THE APPLICANT
Barrister and Solicitor
Ottawa, Ontario

Gordon LaFortune FOR THE RESPONDENT
Barrister and Solicitor
Ottawa, Ontario

Gowlings Lafleur Henderson LLP FOR THE INTERVENER
Ottawa, Ontario