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Judicial Review of Procurement

Apart from a law suit for breach of Contract A, what legal attacks can an aggrieved bidder launch against a public sector owner? Avoiding Contract A is no guarantee that an owner will avoid legal troubles of all sorts. Alternative attacks are possible, like misrepresentation and negligence. Crucially, public-sector owners may be subject to judicial review for reasonableness.

In a recent Federal Court decision called *Rapiscan*, a judge decided to review a CATSA buying decision, despite the fact that no Contract A was created. In fact, the court decided to intervene, in part, because no Contract A was created, and decided that CATSA's process was unfair, in part, because no Contract A was created.

Learning Objectives

- Review recent judicial reviews, with a focus on *Rapiscan*
- Identify other alternative attacks, like misrepresentation and negligence
- Discuss how the risk of judicial review may impact an owner's decision to avoid Contract A

Helping organizations in Canada obtain maximum value from procurement and contracting