



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## ORDER AND REASONS

File No. PR-2014-041

MD Charlton Co. Ltd.

v.

The Royal Canadian Mounted  
Police

*Order and reasons issued  
Friday, January 30, 2015*

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

AND FURTHER TO a decision of the Canadian International Trade Tribunal to inquire into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO a motion filed by the Royal Canadian Mounted Police on January 6, 2015, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*, requesting an order that the Canadian international Trade Tribunal cease to conduct the inquiry.

**BETWEEN**

**MD CHARLTON CO. LTD.**

**Complainant**

**AND**

**THE ROYAL CANADIAN MOUNTED POLICE**

**Government  
Institution**

**ORDER**

Pursuant to paragraph 10(a) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, the Canadian International Trade Tribunal hereby ceases its inquiry into the complaint and terminates all proceedings related thereto.

Ann Penner  
Ann Penner  
Presiding Member

## STATEMENT OF REASONS

### BACKGROUND

1. On November 19, 2014, MD Charlton Co. Ltd. (MD Charlton) filed a complaint with the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*,<sup>1</sup> concerning a procurement (Solicitation No. M0077-14-H602A) by the Royal Canadian Mounted Police (RCMP) for the provision of extendable baton holders.
2. MD Charlton alleged that the pull-off test required by the Request for Proposal (RFP) for extendable baton holders was unduly restrictive.
3. MD Charlton requested three remedies. First, MD Charlton requested that the RFP be re-issued and the pull-off test amended. Second, MD Charlton requested that it be awarded the resulting contract. Third, MD Charlton asked for reimbursement of the costs incurred for the pull-off test performed on its bid sample.
4. On November 20, 2014, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act*, and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.<sup>2</sup>
5. On December 18, 2014, the RCMP wrote to inform the Tribunal that the solicitation had been cancelled, and to request that the Tribunal cease its inquiry. The Tribunal directed the RCMP to proceed by way of a notice of motion to this effect. In response, the RCMP filed such a motion on January 6, 2015, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*.
6. On January 12, 2015, MD Charlton filed its response to the motion, in which it argued that the Tribunal should continue its inquiry, notwithstanding the RCMP's arguments to the contrary.

### ANALYSIS

7. In its motion of January 6, 2015, the RCMP alleged that, given that the RFP had been cancelled and another would be re-issued, the first remedy sought by MD Charlton was effectively provided. Moreover, the RCMP confirmed that specific provisions relating to the pull-off test that were the subject of MD Charlton's complaint would be revised in the new solicitation. As such, the RCMP argued that the Tribunal should dismiss the complaint pursuant to section 10(a) and (b) of the *Regulations*, as there was no valid basis for the complaint.
8. In the alternative, the RCMP submitted that the Tribunal should cease the inquiry pursuant to subsection 30.13(5) of the *CITT Act*, on the grounds that the complaint was trivial. Specifically, the RCMP argued that the cancellation of the RFP gave MD Charlton the essence of the remedy it would have been awarded had its complaint been found valid by the Tribunal.<sup>3</sup> Thus, the RCMP maintained that the complaint had become moot.

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1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
2. SOR/93-602. [*Regulations*].
3. Exhibit PR-2014-041-011 at 4.

9. In contrast, MD Charlton opposed the motion on the grounds that the RCMP did not address its two allegations about the pull-off test: (1) the test was unduly restrictive; and (2) the RCMP's own sample could not even satisfy the requirements of the test. Moreover, MD Charlton suggested that it incurred unnecessary costs in having to subject its sample to the pull-off test in issue. MD Charlton therefore requested that it be compensated for the costs incurred.

10. After considering the arguments of both parties, the Tribunal finds that the complaint has no valid basis because the solicitation was cancelled and another will be retendered. As such, the basis of MD Charlton's complaint (i.e., that the pull-off test was unduly restrictive) is moot. The cancellation of the solicitation and the issuance of a new one will provide the opportunity to revise the pull-off test requirements, which ultimately is the primary remedy that MD Charlton sought. In addition, the Tribunal finds that the cost disbursed by MD Charlton in submitting its product to the pull-off test was incurred in the normal course of deciding to participate in the solicitation; the fact that the cost also allowed for the discovery of MD Charlton's ground of complaint is therefore tangential to the initial reason that led to the decision to incur the cost in the first place.

11. Finally, if MD Charlton disagrees with any aspect of the procurement process regarding the new solicitation, it will be able to file another objection with the government institution and/or a new complaint with the Tribunal.

#### **ORDER OF THE TRIBUNAL**

12. Pursuant to paragraph 10(a) of the *Regulations*, the Tribunal hereby ceases its inquiry into the complaint and terminates all proceedings relating thereto.

Ann Penner

Ann Penner

Presiding Member