



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2013-046

StenoTran Services Inc. and
Atchison & Denman Court
Reporting Services Ltd.

v.

Courts Administration Service

*Order and reasons issued
Thursday, December 18, 2014*

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IN THE MATTER OF a complaint filed by StenoTran Services Inc. and Atchison & Denman Court Reporting Services 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 the Canadian International Trade Tribunal's preliminary indication of the level of complexity for the complaint case and its preliminary indication of the amount of the cost award.

BETWEEN

**STENOTRAN SERVICES INC. AND ATCHISON & DENMAN
COURT REPORTING SERVICES LTD.**

Complainants

AND

THE COURTS ADMINISTRATION SERVICE

**Government
Institution**

ORDER

In its determination of July 24, 2014, the Canadian International Trade Tribunal, pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, awarded StenoTran Services Inc. and Atchison & Denman Court Reporting Services Ltd. their reasonable costs incurred in preparing and proceeding with the complaint. The Canadian International Trade Tribunal's preliminary indication of the level of complexity for the complaint case was Level 2, and its preliminary indication of the amount of the cost award was \$2,750. Having considered the submissions of the parties concerning the preliminary indication of the level of complexity for the complaint case and the preliminary indication of the amount of the cost award, the Canadian International Trade Tribunal hereby confirms its preliminary indications by awarding StenoTran Services Inc. and Atchison & Denman Court Reporting Services Ltd. their costs in the amount of \$2,750 and directs the Courts Administration Service to take appropriate action to ensure prompt payment.

Ann Penner

Ann Penner

Presiding Member

STATEMENT OF REASONS

INTRODUCTION

1. In a determination issued on July 24, 2014, the Canadian International Trade Tribunal (the Tribunal), under section 30.16 of the *Canadian International Trade Tribunal Act*,¹ awarded StenoTran Services Inc. and Atchison & Denman Court Reporting Services Ltd. (StenoTran) their reasonable costs incurred in preparing and proceeding with the complaint. In its determination, the Tribunal's preliminary indication of the level of complexity for the complaint case was Level 2, and its preliminary indication of the cost award was \$2,750, in accordance with its *Procurement Costs Guideline*.

2. On August 25, 2014, the Courts Administration Service (CAS) wrote to inform the Tribunal that both StenoTran and ASAP Reporting Services Inc. (ASAP) had filed applications for judicial review with the Federal Court of Appeal in respect of the Tribunal's determination. CAS therefore requested that the issue of costs be held in abeyance pending the resolution of the judicial review applications.

3. On August 27, 2014, StenoTran wrote to object to the request for abeyance and to provide the Tribunal with its submissions with respect to the costs determination.

4. On September 2, 2014, CAS provided its reply submissions with respect to the costs determination.

5. On September 4, 2014, the Tribunal wrote to inform the parties that the issue of costs would be held in abeyance pending the resolution of the judicial review applications.

6. On December 4, 2014, StenoTran wrote to inform the Tribunal that both StenoTran and ASAP had filed notices of discontinuance with respect to their applications for judicial review. StenoTran therefore asked that the Tribunal move forward with the costs determination and accept StenoTran's submissions of August 27, 2014.

7. On December 5, 2014, CAS wrote to inform the Tribunal that it had nothing to add to its costs submissions filed on September 2, 2014.

POSITIONS OF PARTIES

StenoTran

8. StenoTran argued that the Tribunal's preliminary indications of the level of complexity for the complaint case and of the amount of the cost award did not adequately reflect the costs incurred in preparing and proceeding with the complaint. StenoTran requested that the Tribunal award StenoTran its actual legal costs incurred on a partial indemnity basis, in an amount to be agreed upon between the parties. In the alternative, StenoTran asked that the Tribunal re-classify the level of complexity for the complaint case to Level 3.

9. In support of this request, StenoTran maintained that CAS demonstrated a lack of cooperation throughout the proceedings, as evidenced by the lack of production of documents and by the subsequent production order issued by the Tribunal. StenoTran stated that this lack of production of documents by CAS resulted in an unwarranted increase to the costs incurred by StenoTran. Similarly, StenoTran asserted that its

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].

costs were unnecessarily increased as a consequence of CAS improperly filing a reply to StenoTran's comments on the Government Institution Report (GIR).

10. StenoTran submitted that it also incurred the costs of a consultant, which were "... incidental to the procurement proceeding ..."² StenoTran therefore requested that it be awarded the actual costs of the consultant incurred on a partial indemnity basis.

CAS

11. CAS submitted that there was no rationale to deviate from the Tribunal's preliminary indications of the level of complexity for the complaint case and of the amount of the cost award. CAS argued that the proceeding was not complex and that StenoTran itself added complexity to the complaint by raising grounds of complaint that were outside the Tribunal's jurisdiction or patently lacking in merit.³

12. With respect to the production of documents, CAS contended that the production request by StenoTran was nothing more than a "fishing expedition" and that the resulting production order issued by the Tribunal encompassed "... a fraction of the documentation that was sought ..." by StenoTran.⁴ Moreover, CAS stated that it issued its GIR and supporting documentation in a timely manner and that it fully complied with the Tribunal's production order.

13. CAS also denied that it improperly filed a reply to StenoTran's comments on the GIR. Rather, CAS maintained that the reply was filed as a result of confusion that arose from a Tribunal letter which requested further information from CAS. Furthermore, CAS argued that the reply did not raise any novel issues, but merely "corrected factual inaccuracies", and therefore did not require StenoTran to incur further costs.

14. Finally, CAS objected to StenoTran's position that further costs should be assessed to account for consultancy fees that StenoTran had incurred during the proceedings. CAS maintained that no consultant was recognized as an expert by the Tribunal during the hearing, nor were there any issues raised by, or spoken to, a consultant during the course of the proceedings.

TRIBUNAL'S ANALYSIS

15. In its determination of July 24, 2014, the Tribunal identified a number of factors which it considered when reaching its preliminary indications of both the complexity for the complaint case and the amount of costs to be awarded. In particular, the Tribunal noted that it was concerned by the lack of cooperation by CAS in producing relevant documentation. While this was a factor in the Tribunal's preliminary indications, the Tribunal also took note of the overly broad production request made by StenoTran, as well as the voluminous amount of materials filed by StenoTran on grounds of complaint that were without merit.

16. By their own conduct, both parties unnecessarily raised the level of complexity of the proceedings. As a result, and in light of the Tribunal's previous acknowledgment of these facts, the Tribunal finds no compelling reason to alter its preliminary indications on these grounds.

2. StenoTran's submission dated August 27, 2014, Vol. 3.

3. CAS's submission dated September 2, 2014, Vol. 3.

4. *Ibid.*

17. However, the Tribunal does wish to comment on certain submissions made by CAS in this respect. Specifically, CAS stated as follows:

... [that its] response to an extensive production motion was to the benefit of the Tribunal as it narrowed the number of documents that were produced and that had to be reviewed by the Tribunal.⁵

18. As stated in its determination of July 24, 2014, the Tribunal expects that parties will proactively produce all relevant documentation in a complaint proceeding. The production of relevant documents should in no way be limited by expediency or any alleged desire to “narrow” the number of documents that the Tribunal is required to review.

19. In regard to CAS’s filing of a reply to StenoTran’s comments on the GIR, the Tribunal notes that the reply was not accepted by the Tribunal and therefore did not form part of the record in this complaint. As such, StenoTran did not prepare any response submissions beyond a brief letter requesting that the Tribunal reject the filing of the reply. Since no further action was required by StenoTran, the Tribunal finds that additional costs on this ground are not warranted.

20. StenoTran also submitted that it incurred additional costs as the result of retaining the services of a consultant to assist in these proceedings. However, no information was provided with regard to the reason for which the consultant was retained, the manner in which the consultant assisted with StenoTran’s complaint or the actual costs of retaining the services. In the absence of any such information, additional costs on this ground are not warranted.

CONCLUSION

21. In its determination of July 24, 2014, the Tribunal, pursuant to section 30.16 of the *CITT Act*, awarded StenoTran its reasonable costs incurred in preparing and proceeding with the complaint. The Tribunal’s preliminary indication of the level of complexity for the complaint case was Level 2, and its preliminary indication of the amount of cost award was \$2,750. Having considered the submissions of the parties concerning the preliminary indication of the level of complexity for the complaint case and the preliminary indication of the amount of the cost award, the Tribunal confirms its preliminary indications by awarding StenoTran its costs in the amount of \$2,750 and directs CAS to take appropriate action to ensure prompt payment.

Ann Penner
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Presiding Member

5. *Ibid.*