

Ottawa, Monday, September 10, 2001

File No. PR-2000-059

IN THE MATTER OF a complaint filed by P&L Communications Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND IN THE MATTER OF a decision made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* to award P&L Communications Inc. its reasonable costs incurred in filing and proceeding with the complaint but, subject to the costs that might be incurred in finalizing the award, limiting those costs up to and including consideration by P&L Communications Inc. of the letter of the Department of Public Works and Government Services dated March 14, 2001, and filed with the Canadian International Trade Tribunal in lieu of the Government Institution Report.

ORDER

In a determination made on May 30, 2001, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ awarded P&L Communications Inc. (P&L) its reasonable costs incurred in filing and proceeding with the complaint but, subject to the costs that might be incurred in finalizing the award, limiting those costs up to and including consideration by P&L of the letter of the Department of Public Works and Government Services (PWGSC) dated March 14, 2001, and filed with the Tribunal in lieu of the Government Institution Report.

On July 6, 2001, P&L submitted to the Tribunal its claim for costs in the amount of \$8,427.27 for filing and proceeding with the complaint.

On August 1, 2001, PWGSC submitted comments on P&L's claim. PWGSC's position was that P&L should not be entitled to claim fees for having an officer or representative acting as counsel for the period from February 7 to June 28, 2001, during which time legal counsel also acted on P&L's behalf. PWGSC also submitted that the time spent in preparation of the bill of costs was excessive.

P&L responded to PWGSC's comments, stating that legal counsel was not retained as counsel of record until March 13, 2001, and that, prior to that time, the principal of P&L acted as representative. P&L submitted that the costs attributed to the law firm for the period prior to March 13, 2001, relate to legal advice for which P&L incurred costs. Moreover, the costs attributed to the principal of P&L on March 15 and 16, 2001, do not relate to him acting in his usual capacity as employee. P&L submitted that the costs relating to preparing the bill of costs are not excessive and are fully documented. In addition, the principal of P&L spent time on June 28, 2001, preparing the portion of the bill of costs relating to his time as representative. P&L supplemented its cost claim by \$254.15 to allow for the time to prepare its response to PWGSC's comments.

1. R.S.C. 1985 (4th Supp.), c. 47.

The Tribunal has reviewed the claim and taken into consideration the parties' submissions. With respect to the claim for legal fees, the Tribunal allows all the hours claimed (26.5) at their respective rates. However, since the provincial sales tax (PST) is not applicable to legal services in Ontario, the Tribunal reduces the total claimed by the amount of PST added. Therefore, the Tribunal allows \$2,740.81 for legal services. With respect to the claim for the principal of P&L acting as "representative", the Tribunal allows the time claimed up to March 13, 2001, when P&L retained a law firm to act as counsel of record. This represents 4.25 days at the in-house representative rate of \$400.00 per day, as stipulated in Appendix B to the *Procurement Cost Guidelines* (the Guidelines). Since neither the Goods and Services Tax nor the PST is applicable to these in-house costs, none should have been claimed. Therefore, the Tribunal allows \$1,700.00 for the time when the principal of P&L was acting as "representative". With respect to the consultant on contract with P&L, the Guidelines stipulate that "costs awarded shall not exceed those necessarily and reasonably incurred by the claimant". Therefore, the Tribunal allows costs of \$1,250.03, which were the costs that P&L was invoiced by the consultant. Finally, with respect to the disbursement of \$156.55 claimed by P&L, the Tribunal notes that no receipts or other evidence of the disbursement has been filed. Therefore, the Tribunal disallows this portion of the claim.

In consideration of the above, the Tribunal hereby awards P&L costs in the amount of \$5,690.84 for filing and proceeding with the complaint and directs PWGSC to take appropriate action to arrange payment.

Patricia M. Close
Patricia M. Close
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary