



Ottawa, Friday, October 10, 2003

File No. PR-2001-059

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

AND FURTHER TO a determination made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* awarding MaxSys Professionals & Solutions Inc. its reasonable costs incurred in preparing and proceeding with the complaint.

ORDER

In a determination made on May 6, 2002, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ awarded MaxSys Professionals & Solutions Inc. (MaxSys) its reasonable costs incurred in preparing and proceeding with the complaint.

On June 6, 2002, MaxSys submitted to the Tribunal its claim for costs in the amount of \$31,324.10. The Tribunal held the claim for costs in abeyance until the completion of a challenge of the Tribunal's decision before the Federal Court of Appeal. On May 7, 2003, the Federal Court of Appeal, rendered its decision and dismissed the application for judicial review. On May 21, 2003, the Tribunal requested that the Department of Public Works and Government Services (PWGSC) file its comments on the previously submitted claim for costs. On June 5, 2003, PWGSC filed its comments with the Tribunal. MaxSys provided its response to the Tribunal on June 24, 2003.

MaxSys claimed a total of \$30,726.85 (GST and PST included) in legal fees. That amount represents 80.0 hours at \$285/hour for the senior counsel, 26.9 hours at \$110/hour for the second counsel, 14.5 hours at \$60/hour for an articling student and 1.5 hours at \$60/hour for a legal assistant. MaxSys increased the rates claimed by the service providers from what is currently allowed under the *Procurement Cost Guidelines* (the Guidelines) by taking into consideration the complexity and nature of the issues in preparing the complaint. MaxSys relied on section 5.4 of the Guidelines and on the cost guidelines of the Ontario Superior Court of Justice to support the request for an increase in the allocation of fees. MaxSys also claimed \$597.25 (GST included) in disbursements.

PWGSC submitted that the rates claimed by MaxSys are in excess of those set out in the Guidelines and that there is no reason to deviate from the hourly rates established in the Guidelines. It submitted that the Tribunal has ruled against claims for hourly rates in excess of those set out in the Guidelines and cited

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

several cases to support its position.² It also submitted that the rates set out in the Guidelines are higher than those set out in the *Federal Court Rules, 1998*.³ PWGSC argued that section 5.4 and, in particular, paragraph 5.4.2 of the Guidelines do not apply, as they pertain to “the time expended by a service provider” and not the hourly rates claimed by a service provider. Further, PWGSC submitted that there are no receipts or invoices to support the summaries of the legal fees allegedly incurred and no evidence that the considerable time claimed by counsel does not include a duplication of tasks. The claim for legal fees should be disallowed or, at a minimum, significantly reduced.

With respect to in-house photocopying costs, PWGSC submitted that the claim is based on a rate of \$0.25/copy and that the Guidelines provide for a rate of \$0.10/copy. It therefore submitted that the claim for \$0.25/copy should be dismissed.

In its reply filed with the Tribunal on June 24, 2003, MaxSys submitted that each case should be decided in light of its own particular circumstances and that the Guidelines are not binding on the Tribunal and do not fetter the Tribunal’s discretion to depart from them in an appropriate case. According to MaxSys, this is such a case, and a number of factors justify an award of costs at a higher level. MaxSys submitted that these factors include PWGSC’s continual raising of new arguments throughout the complaint proceeding and PWGSC’s pattern of withholding information from MaxSys. MaxSys also submitted that it incurred substantially increased costs by having to respond, on an ongoing basis, to new issues and arguments by PWGSC, which went far beyond the original complaint. MaxSys further argued that the hourly rates set out in the Guidelines no longer represent reasonable cost recovery by a successful complainant. It submitted that it is not uncommon for the Tribunal to consider the practices of other jurisdictions and adjudicative bodies.⁴ MaxSys also acknowledged that, in preparing the claim for costs, a clerical error was made in applying PST to legal fees and that it should not have been included. Finally, MaxSys submitted that the evidence provided to the Tribunal in relation to legal fees conforms to the requirements set out in the Guidelines.

Regarding the in-house photocopying costs, MaxSys submitted that the preparation of materials submitted to the Tribunal, including copying and binding, was conducted on the premises of its legal counsel. It submitted that these costs were necessarily incurred by MaxSys to satisfy the Tribunal’s requirements with respect to the number of copies of documents filed, as well as the necessity of filing both public and confidential versions. MaxSys also argued that the rate of \$0.25/copy is charged to all clients and was actually paid by MaxSys; therefore, this reasonably incurred expense should be compensable to MaxSys.

The Tribunal is of the view that the total number of hours claimed for legal services, namely 122.9 hours, is not unreasonable. However, it is also of the view that there is no reason in this case to deviate from the hourly rates established in the Guidelines. Therefore, the Tribunal will allow fees in the amount of \$16,265.60, including GST; this represents 80.0 hours at \$150/hour for the senior counsel, 26.9 hours at \$85/hour for the second counsel, 14.5 hours at \$60/hour for the articling student and 1.5 hours at \$30/hour for the legal assistant.

2. *Re Complaint Filed by Novell Canada, Ltd.* (11 January 2001), PR-99-001 (CITT); *Re Complaint Filed by Novell Canada, Ltd.* (11 January 2001), PR-98-047 (CITT); *Re Complaint Filed by Ace/ClearDefense Inc.* (17 April 2002), PR-99-051 (CITT); *Re Complaint Filed by DRS Technologies Inc.* (18 November 2002), PR-2001-051 (CITT).

3. S.O.R./98-106.

4. MaxSys cited *Re Complaint Filed by Mechtron Energy Ltd.* (26 October 1995), PR-95-001 (CITT).

Regarding the disbursements claimed, the Tribunal finds that, with the exception of the charges for in-house photocopying, all other costs are reasonable and consistent with the Guidelines. The claim of \$312.75 for in-house photocopying is reduced to \$125.08⁵ (representing \$0.10/copy), including GST. The claim for the other disbursements (binding, long distance/facsimile, courier and postage) in the total amount of \$262.60, including GST, is reasonable. Therefore, the total amount allowed for disbursements is \$387.68, GST included.

CONCLUSION

In light of the above, the Tribunal hereby allows MaxSys costs in the amount of \$16,653.28 for preparing and proceeding with the complaint and directs PWGSC to take appropriate action to ensure prompt payment.

Ellen Fry

Ellen Fry
Presiding Member

Pierre Gosselin

Pierre Gosselin
Member

Zdenek Kvarda

Zdenek Kvarda
Member

Michel P. Granger

Michel P. Granger
Secretary

5. The number of copies was not explicitly stated in the claim; therefore, the Tribunal calculated the number of copies and the associated cost as follows: $\$292.29 \div \$0.25 = 1169$; $1169 \times \$0.10$ (including GST) = \$125.08. The \$292.29 is the \$312.75 claimed less the GST.