



Ottawa, Monday, March 31, 2003

File No. PR-2001-040R

IN THE MATTER OF a complaint filed by Hewlett-Packard (Canada) Ltd. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision of the Federal Court of Appeal, which referred back to the Canadian International Trade Tribunal its determination in File Nos. PR-2001-030 and PR-2001-040 made on February 21, 2002, on the basis that the first ground of complaint in File No. PR-2001-030 should be dismissed as being time-barred, and which further quashed the Canadian International Trade Tribunal's recommendation that the contract awarded to IBM Canada Ltd. on September 12, 2001, be terminated and a new solicitation be issued;

AND FURTHER TO a determination made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* to award Hewlett-Packard (Canada) Ltd. its reasonable costs incurred in preparing and proceeding with complaint in File No. PR-2001-040.

ORDER

In a determination made on October 31, 2002, pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ the Canadian International Trade Tribunal (the Tribunal) awarded Hewlett-Packard (Canada) Ltd. (Hewlett-Packard) its reasonable costs incurred in relation to preparing and proceeding with its complaint in File No. PR-2001-040.

On December 16, 2002, Hewlett-Packard submitted to the Tribunal its claim for costs in the amount of \$30,388.74.² The Department of Public Works and Government Services (PWGSC) filed comments on Hewlett-Packard's claim on January 21, 2003. Hewlett-Packard responded to those comments on February 5, 2003.

Hewlett-Packard claimed a total of \$28,717.60³ (including GST) in legal fees, representing 130.9 hours. That amount represents 16.0 hours at \$240/hour, 77.9 hours at \$300/hour and 19.6 hours at \$130/hour for counsel, and 17.4 hours at \$110/hour for a paralegal. The time claimed includes 8.4 hours at \$300/hour and 17.4 hours at \$110/hour for the preparation of the claim for costs. Hewlett-Packard also claimed \$1,671.14 in disbursements relating to legal services.

1. R.S.C. 1985 (4th Supp.), c. 47.
2. These figures correspond to the amounts attributed to "Actual Fees Incurred" in the original claim dated December 16, 2002. A 10 percent deduction on the fees for the more senior counsel was added in error. The figures shown have been corrected.
3. *Ibid.*

PWGSC commented that the fees claimed for legal services were excessive, both in rate and number of hours claimed. PWGSC also submitted that there was considerable overlap between File No. PR-2001-030 and File No. PR-2001-040. It also submitted that there was no reason to deviate from the hourly rates set in the Tribunal's *Procurement Cost Guidelines* (the Guidelines).

In its comments filed on February 5, 2003, Hewlett-Packard submitted that its claim related exclusively to preparing and proceeding with its complaint in File No. PR-2001-040. It also submitted that there was no duplication of work and that the hours worked were reasonable, given the particular circumstances of this case.

The Tribunal is of the view that the total number of hours claimed for legal services in relation to File No. PR-2001-040, not including the preparation of the claim for costs, namely, 97.3 hours, is excessive, given the particular circumstances of the case. This issue was not complex, arguments were brief, and the proceeding with respect to this complaint was straightforward. The Tribunal is also of the view that there is no reason to deviate from the hourly rates established in the Guidelines. Therefore, the Tribunal will allow an hourly rate of \$125 for the more senior counsel and an hourly rate of \$85 for the second counsel. The Tribunal will not allow costs for the preparation of the claim for costs, as it considers that these costs relate to actions other than those incurred in preparing and proceeding with the complaint. Accordingly, the Tribunal will allow legal fees for 38.8 hours of work at \$125/hour for the more senior counsel and 9.8 hours at \$85/hour for the second counsel, plus GST, for a total of \$6,080.81.

Regarding the disbursements relating to legal services, the Tribunal finds that these costs are also excessive and will allow only 50 percent of the amount claimed. The claim is allowed in the amount of \$835.57.

Accordingly, the Tribunal hereby awards Hewlett-Packard costs in the amount of \$6,916.38 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

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary