



Ottawa, Tuesday, October 22, 2002

File No. PR-2001-066

IN THE MATTER OF a complaint filed by Papp Plastics & Distributing Limited 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* to award Papp Plastics & Distributing Limited its reasonable costs incurred in preparing and proceeding with the complaint.

ORDER

In a determination made on July 12, 2002, the Canadian International Trade Tribunal (the Tribunal) awarded Papp Plastics & Distributing Limited (Papp) its reasonable costs incurred in relation to preparing and proceeding with the complaint.

On August 12, 2002, Papp submitted to the Tribunal its claim for costs in the amount of \$10,345.93. The Department of Public Works and Government Services (PWGSC) filed comments on Papp's claim on September 3, 2002. Papp responded to those comments on September 16, 2002.

Papp claimed a total of \$5,492.31 (including GST) in legal fees for 48.8 hours. That amount represents 27.0 hours at \$125.00/hour for the senior counsel, 4.1 hours at \$85.00/hour for the second counsel, 15.7 hours at \$85.00/hour for the third counsel, 0.5 hour at \$60.00/hour for an articling student, and 1.5 hours at \$30.00/hour for a legal assistant. Papp also claimed \$429.67 (including PST and GST) in disbursements for legal services. Papp claimed \$4,281.25¹ for in-house costs incurred in relation to preparing and proceeding with the complaint. That amount includes representative's fees incurred for the work of one of Papp's employees for 34.25 hours at \$125.00/hour. Finally, Papp claimed \$142.70 (including PST and GST) in disbursements.

PWGSC submitted that Papp's claim for costs, representing complaint costs alone, is excessive, having regard to the hourly rates claimed and the duplication of tasks among service providers, and is inconsistent with the Tribunal's determinations in comparable cases.²

PWGSC submitted that Papp's legal counsel was named counsel of record on April 16, 2002, subsequent to the filing of the complaint and the Government Institution Report (GIR). PWGSC noted that further submissions to the Tribunal were made by counsel, upon being named counsel of record, and not by an employee of Papp. Consequently, PWGSC submitted that the claim for representative's fees applicable to the period after April 16, 2002, ought not to be allowed.

1. Papp's claim for costs contained a multiplication error on Form II, "Summary of Representative's Fees", under "Preparation of Response to GIR". The correct total for the service should have been \$750.00 and not \$500.00.
2. PWGSC referred to File No. PR-98-047, *Order* (11 January 2001) (CITT), and File No. PR-96-035, *Order* (25 September 1997) (CITT).

PWGSC further submitted that the nature of this complaint does not warrant the excessive claim for time spent for legal or representative's services. PWGSC argued that there were no preliminary jurisdictional issues, no preliminary motions, no submission of proposals and no evaluation of proposals involved in the Tribunal's inquiry; consequently, the claim for time spent is not reasonable. It submitted that the total time claimed for legal and representative's services is excessive, having regard to the single issue involved in the complaint, namely, whether the procurement through limited tendering was permissible based on existing proprietary rights. It further submitted that the claim for a total of 83 hours is excessive and unreasonable in the circumstances of this case.

With respect to the time claimed for representative's services, PWGSC submitted that the time claimed in respect of "Research CITT web site 39 page – read for procedure – determine proper filing process"³ of 6 hours is excessive and should be disallowed. It further submitted that Papp's representative has previously filed complaints with the Tribunal and is fully aware of the filing process for complaints.

PWGSC submitted that the time claimed of 14 hours for preparing the complaint is excessive. It argued that the complaint was not lengthy and involved no proposals and no evaluations of proposals or tender documents, and, further, that the total time claimed of 29.8 hours for preparing a response to the GIR by both legal counsel and Papp's representative is excessive, reflects a duplication of effort and is not reasonable in the circumstances of this case. It submitted that all the time claimed by Papp's representative for the period after April 16, 2002, the date upon which counsel of record was named to represent Papp, should be disallowed, since further submissions to the Tribunal were made by counsel, upon being named counsel of record, and not by an employee of Papp.

Regarding the claim for legal fees, PWGSC submitted that the claim of \$85.00/hour for the second and third counsel is excessive. It submitted that the second counsel has completed only one year of legal practice and that the third counsel has completed only one month of legal practice and that, therefore, the allowable rate for time spent by these legal counsel should be \$60.00/hour in accordance with the *Procurement Cost Guidelines* (the Guidelines). In addition, it submitted that the total combined hours of 17.5 for these counsel for preparing a bill of costs is excessive and should be disallowed. It submitted that this claim is additional to the claim of 4 hours for preparing a bill of costs made in respect of Papp's representative. By way of comparison, it noted that the time claimed for legal advisory and counsel services in relation to the matter at issue in the complaint totals 29 hours. It submitted that the costs incurred in relation to preparing and proceeding with the complaint do not encompass preparing the bill of costs and that, in any event, a claim of 21.5 hours for preparing a bill of costs is entirely unreasonable.

With respect to representative's fees, PWGSC submitted that, in accordance with the table of allowable rates set out in Appendix B to the Guidelines, the rate applicable to Papp's representative is \$85.00/hour since he has 0-5 completed years.

PWGSC submitted that legal counsel's claim for the bill of costs, in-house photocopies and facsimile transmission of 28 pages at \$0.30/copy is in excess of the allowable rate of \$0.10/copy under the Guidelines and should be disallowed. It further submitted that the amount claimed for automatic fax transmissions at \$2.00/page is excessive and should be disallowed. Finally, it submitted that a fee of \$75.00 for file opening is an administrative fee that should properly form part of the law firm's overhead expenses, is not properly claimable as a disbursement of the law firm and, therefore, should be disallowed.

3. Papp's claim for costs, affidavit of legal counsel, exhibit "C", entry for February 22, 2002.

In its comments filed on September 16, 2002, Papp submitted that the hours worked and fees incurred as outlined in the claim for costs are reasonable, properly documented and entirely appropriate, given the nature and circumstances of the proceeding. Furthermore, it submitted that all the time claimed in respect of legal fees incurred has been clearly documented in the "Summary of Legal Fees" filed by counsel for Papp.

Papp submitted that, regarding the recovery of costs for the second and third legal counsel's participation in the procurement proceeding, an hourly rate of \$85.00 is not excessive in the circumstances. As the hourly rate at which Papp accrued costs in respect of counsel's participation in the complaint exceeds \$200.00, Papp submitted that the hourly rate of \$85.00 claimed is fair and in accordance with the Guidelines. In addition, Papp submitted that the preparation of a bill of costs is a time-intensive process, involving, on counsel's behalf, the preparation of a variety of documents, the drafting of submissions in relation thereto, the requisition of the required information from Papp's computer records, the requisition of the required information from Papp, the transformation of this information into the required format, the co-ordination of the efforts of employees of the law firm and of Papp and the verification of the accuracy of the information submitted to the Tribunal. Papp further submitted that, in order to submit an accurate account of the time accrued by Papp's representative, the latter was required to undertake the painstaking and time-intensive process of referring to Papp's records in order to determine accurately the amount of time spent in respect of the complaint.

Papp submitted that, with respect to the rate at which the costs associated with the efforts of Papp's representative ought to be assessed, the individual is a major shareholder and the President of Papp and has acted in this capacity since the company's inception in 1991. Accordingly, Papp submitted that the costs associated with the efforts of this individual on its behalf should be calculated according to the Guidelines at \$125.00/hour. In addition, Papp submitted that the fact that a complainant has previously filed complaints with the Tribunal does not preclude a complainant from recovering those costs that it reasonably and necessarily incurred during the preparation of the complaint.

Papp submitted that its representative continued to act in the capacity of representative subsequent to April 16, 2002, and was not performing his usual duties as an officer and employee of Papp. It further submitted that the efforts of legal counsel and of Papp's representative were not duplicative or redundant with respect to the preparation of the response to the GIR. Papp further submitted that the time and efforts of both legal counsel and Papp's representative were reasonable and necessarily focussed on the careful preparation of the response to the GIR and that a co-ordination of their efforts was undertaken throughout the process and is accurately and precisely reflected in the claim for costs as submitted.

Regarding disbursements, Papp submitted that the disbursements of legal counsel are properly documented and accurately represent the costs that it incurred in relation to preparing and proceeding with the complaint. Finally, Papp further requested that the Tribunal award Papp its reasonable costs incurred in preparing and submitting its response to PWGSC's comments on the claim for costs.

The Tribunal is of the view that the total number of hours claimed for legal services, namely, 48.8 hours, is not unreasonable. The hourly rates claimed by legal counsel are within the rates set out in Appendix B to the Guidelines, and the claim is allowed in the full amount of \$5,492.31.

With respect to representative's fees, the Tribunal is of the opinion that an hourly rate of \$85.00 is appropriate for Papp's representative. The Tribunal notes that Papp retained legal counsel as counsel of record on April 16, 2002. The Tribunal, therefore, allows only the time claimed for Papp's representative for

the period prior to April 16, 2002. This represents 20.5 hours at the rate of \$85.00/hour for a total of \$1,742.50.

Regarding the disbursements claimed by Papp's legal counsel, the Tribunal finds that the file opening charge of \$75.00 (excluding GST) is an internal overhead cost and is, therefore, not allowed. All other costs are reasonable and consistent with the Guidelines and, therefore, the Tribunal allows the amount of \$349.42. With respect to the disbursements for office expenses claimed by Papp, the Tribunal finds that these costs are reasonable and consistent with the Guidelines and that they are supported by invoices where available; therefore, it allows the full amount of \$142.70.

The Tribunal will not permit any additional costs to be claimed beyond those already submitted. Therefore, it denies the request made by legal counsel on behalf of Papp to claim costs incurred in relation to the preparation and submission of Papp's response to the comments made by PWGSC on the claim for costs.

In consideration of the above, the Tribunal hereby awards Papp costs in the amount of \$7,726.93 for preparing and proceeding with the complaint and directs PWGSC to take appropriate action to ensure prompt payment.

Ellen Fry
Ellen Fry
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary