



Ottawa, Thursday, January 11, 2001

File No.: PR-98-047

IN THE MATTER OF a complaint filed by Novell Canada, Ltd. 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*, awarding Novell Canada, Ltd. its reasonable costs incurred in relation to filing and proceeding with its complaint.

### ORDER

In a determination made on June 17, 1999, the Canadian International Trade Tribunal (the Tribunal) awarded Novell Canada, Ltd. (Novell) its reasonable costs incurred in relation to filing and proceeding with its complaint.

On July 22, 1999, Novell submitted to the Tribunal its claim for complaint costs in the amount of \$38,135.08. The Department of Public Works and Government Services (the Department) submitted comments on Novell's claim on September 23, 1999. On October 5, 1999, the Tribunal decided to hold the claim for costs in abeyance until the completion of a challenge of the Tribunal's decision in the Federal Court of Canada. On November 29, 2000, after the reactivation of the claim for costs, Novell submitted its response to the Department's comments.

### COMPLAINT COSTS

With respect to the Department's argument that the cost award should be reduced because of claims made in File No. PR-99-001, the Tribunal is of the view that, while similar arguments may have been made with respect to File No. PR-99-001, the two cases are distinct, the client departments were different, and Novell incurred separate costs in filing and proceeding with each complaint.

Novell has claimed \$7,200.03 for legal fees, \$29,960.00 in representative's fees and \$975.05 for disbursements relating to its costs of filing and proceeding with the complaint. The Tribunal, having considered the complexity of the case and the degree of experience and skill of counsel for Novell, is of the view that the number of hours claimed for legal services, namely, 45.1 hours (31.5 hours for lead counsel and 13.6 hours for legal assistants), is reasonable in the circumstances. The Tribunal is not, however, persuaded that the lead counsel's experience warrants a higher hourly rate than that established in the *Procurement Cost Guidelines* (the Guidelines). The Guidelines set an hourly rate of \$125.00 to \$150.00 for counsel with 13 to 20 completed years as a practising lawyer. Counsel had completed 15 years at the time of this case. Given that counsel has specialized experience in government procurement, the Tribunal is prepared to award an hourly rate at the higher end of the tariff, namely, \$150.00. However, the Tribunal does not believe that counsel's experience merits awarding an hourly rate in excess of the tariff. Accordingly, the total amount allowed for legal fees is \$5,133.00, plus GST in the amount of \$359.31.

The disbursements relating to the claim in the amount of \$975.05, which includes GST, are allowed as claimed.

Novell has also claimed representative's fees (Form II – Summary of Representative's Fees) in the amount of \$28,000.00 (reduced from \$33,000.00 or 264 hours @ \$125/hour) and GST in the amount of \$1,960.00. Given the complexity of this case and the extensive research done by the representatives, the Tribunal will allow the total hours claimed. The consultants were not employees of Novell, but were acting as representatives. Both consultants indicated, in Form II, that their completed years acting as representatives were "10++++". However, that time was qualified by each of the representatives' employment history. The Guidelines set an hourly rate of \$85.00 for representatives with 0 to 5 completed years as a representative. A representative is defined in the Guidelines as a person who represents a party to a procurement proceeding, but who is not a legal counsel. Although the Tribunal believes that these representatives are very experienced individuals, the Tribunal does not believe that their experience as representatives merits awarding an hourly rate in excess of the tariff. Based on an hourly rate of \$85.00 per hour, the total amount allowed for representative's fees is \$22,400.00, plus GST in the amount of \$1,570.80.

## CONCLUSION

The Tribunal hereby awards Novell costs in the amount of \$30,438.16 in relation to filing and proceeding with its complaint and directs the Department to take appropriate action to ensure prompt payment.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary