

## COMMON CENTS

### Leaning on the scales

#### ***Departmental self-interest threatens balanced procurement***

by Gord McIntosh

Sympathy for Public Works and Government Services Canada (PWGSC) may not be on most people's minds after the federal department had its wrists slapped by the Canadian International Trade Tribunal recently. But PWGSC was the fall guy in landmark procurement cases involving Corel Corp. and Novell Canada.

There is no point recapping the findings of the tribunal on how Corel and Novell were treated except to say there is a common thread running through the rulings.

In all cases, the tribunal found that PWGSC was under pressure from client departments to give preferential treatment to some bidders over others. Indeed, there was a suggestion in the Corel case that Revenue Canada was just as reluctant to share bidding information with PWGSC as it was with Corel.

The tribunal went as far as to accuse Revenue Canada of malice in trying to "prejudice the procurement system."

In the Novell cases – one involving the Department of National Defence, the other Human Resources Development Canada – there are similar findings of the client departments taking a rules-be-damned attitude while PWGSC was on the hook to run a tender according to the rules. These recent rulings may undermine confidence in the procurement system. But they also demonstrate what's wrong with the system.

The current procurement system as we know it was formed because a Royal Commission found that federal suppliers needed protection from political interference and rigged bidding. PWGSC was given the job of getting the best value for the taxpayers and ensuring that suppliers were treated fairly and evenly. In other words, they were supposed to be the traffic cop between government's needs and the suppliers' rights.

However, one thing appears to have been left out. Nobody thought about a mechanism to ensure that those two different sets of interests did not fall out of balance – and out of balance they are.

As the tribunal has documented so conclusively, the system is being run in the interests of government departments.

Had it not been for the 1994 North American Free Trade Agreement obligating Canada to have a procurement review process other than the courts, government suppliers would still be without real recourse. Because government suppliers were forced to like it or lump it for so long, it is easy to see how the system fell out of kilter.

What is not so easy to explain is the apparent indifference Canadians and their MPs have about their procurement system and how it has been misused.

In the Corel case, the government was forced to pay a supplier \$9.9 million after Revenue Canada was dealt a stinging rebuke by the tribunal. Yet no one in the bureaucracy has lost his or her job. It was as though the case involved a minor clerical error. Where was the opposition in this case?

Every year, the Auditor General's office has been serving up cases of questionable expenditures and violations of the rules. Yet in the past 15 years a Commons committee has issued only one report on the state of the procurement system.

In a shocking case in 1995, the federal Competition Bureau found that National Defence and four moving companies were in collusion to rig things so that only these corporations and their subsidiaries could meet bidding requirements. National Defence was forced to sign a court order promising to stop doing its own tendering and hand things over to PWGSC for competitive bidding.

This case was prompted by Ontario Liberal MP Andrew Telegdi, who went to the competition cops after receiving a complaint from a small moving company in his Southwestern Ontario riding. Because the case didn't get much attention outside the MP's riding, the opposition never pursued it in Question Period. The Corel and Novell cases, no doubt, will make government suppliers more prone to demand their rights. Over time government departments will become more prone to be accountable for their conduct. But during that slow process, departments will come up with creative ways to get around the rules, and only suppliers with the most resources will dare take on the federal government.

In the meantime, government suppliers will have to find a way to catch the attention of the public in much the way the Canadian Federation of Independent Business has been able to make small business a popular cause.

The Corel and Novell cases happened because we as Canadians allowed them to happen.

### **On another note**

For several years, the Department of Foreign Affairs and International Trade has been lamenting the fact that a handful of large companies have been responsible for the lion's share of Canada's exports. Smaller companies in this country shy away from international markets. So here is a suggestion for DFAIT. Canadian suppliers account for only a tiny portion of the procurement done by international agencies. For example, about one per cent of the procurement of the Asian Development Bank is of Canadian origin. Why not play matchmaker between government suppliers and international agencies?

[Gord McIntosh](#) is a freelance journalist based in Ottawa, Ontario. He worked for over 20 years with The Canadian Press specializing in trade and finance and has been published in *The Economist* and *Canadian Business*, among others.