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Feds' outside legal costs down

By Cristin Schmitz

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Private sector lawyers handed Ottawa a \$35-million tab for non-criminal work last year — including a bill of more than \$8-million to defend Canada in the high-stakes softwood lumber war with the United States.

The federal government's total bill from outside lawyers for civil litigation, legal services and advice in 2011 declined to \$35.2 million (including disbursements) from \$39.7 million in 2010 — a drop of more than 11 per cent.

However, Industry Canada, the Canada Revenue Agency, and the Department of Foreign Affairs doled out substantially more to law firms in 2011 than they did the year before, according to documents obtained under the federal Access to Information Act.

The top-billing law firm, at \$8.3-million including significant disbursements, was Hughes Hubbard & Reed of Washington, D.C. The top-tier U.S. firm scored a coup last year when it recruited Canadian Joanne Osendarp, a University of Ottawa law graduate who previously headed Weil Gotshal & Manges' international trade group.

Osendarp brought with her the lucrative and multipronged softwood lumber file that had been with 1,200-lawyer Weil since the early 1990s. Canada switched law firms because of Osendarp's depth of experience, which stretches back to her time as a federal government lawyer negotiating the 1996 U.S.-Canada softwood lumber agreement.

Osendarp told The Lawyers Weekly that in 2011 a 10-lawyer Hughes team focused on defending against two U.S. challenges under the 2006 Canada-U.S. softwood lumber agreement at the London International Court of Arbitration.

In the first challenge, the U.S. argued that eight Ontario and Quebec programs violated the agreement by giving subsidies to companies via loans, loan guarantees and tax credits.

"We got a fantastic award," Osendarp said. "Even though they found a small number that had violated the agreement, the damages award was just a fraction. The U.S. was asking for \$1.1-billion — we actually got it down to \$59.1-million ... the provinces' exporters had to pay."

In the second big case, which involved many experts and had not been decided at press time, the U.S. has claimed \$400-million (it initially was expected to be \$4-billion). The U.S. argues B.C. is illegally subsidizing its lumber industry by misgrading timber to sell it at a cheaper price. "It was probably the biggest arbitration I have ever been involved in," Osendarp said.

Hughes' bill also included \$506,660 to defend a \$54-million breach of contract suit brought by an American company in the U.S. The litigation was in connection with a never-implemented agreement to have three U.S. cruise ships dock in Vancouver to accommodate RCMP security staff during the 2010 Winter Olympics.

Last year's No. 2 billing firm was Toronto's Davies, which billed almost \$4-million — half to Industry Canada and half to the Department of Natural Resources.

In third spot was Vancouver's Lawson Lundell, which billed Health Canada close to \$3.8-million (down from about \$5-million in 2010) for representing the Crown in multibillion-dollar tobacco-related litigation, including class actions in B.C., Newfoundland and New Brunswick. The government scored a significant



Osendarp
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victory in 2011 when the Supreme Court of Canada struck out third-party notices brought against Canada by Imperial Tobacco that sought to put federal taxpayers on the hook for two huge damages suits against the company.

The fourth-place firm in 2011 was Macleod Dixon of Calgary (which has since become Norton Rose). It billed \$2.8-million to the Department of Indian and Northern Affairs. The firm has spent nearly two decades defending the Crown in a complex multibillion-dollar lawsuit in which three Alberta Indian bands allege the Crown mismanaged their oil and gas revenues.

"It's interesting and exhausting at times," Calgary senior partner Clarke Hunter said.

The first phase of the proceedings culminated in a 2005 decision (after a four-year trial) that the Crown had not mishandled the rates of return on the bands' royalty monies — a decision unsuccessfully appealed by the bands up to the Supreme Court.

Hunter said that, in 2011, the firm did pre-trial work on the bands' claims that the Crown failed to conduct itself properly in managing the bands' interests in their oil and gas entitlements. That part of the case is in discoveries and will probably continue for several more years.

"It's likely that there won't be another mega-trial like the previous one," Hunter said. The firm also worked on negotiating and transferring to the Ermineskin First Nation \$200-million from the Crown to an independent trust.

The other firms to bill more than \$1-million last year (the numbers include disbursements) were Gilbert Simard Tremblay (mostly to Health Canada), Spiteri Ursulak (Canada Revenue Agency for Canada Student Loan debt recovery), Lenczner Slaght (mostly to Industry Canada), and Bennett Jones (mostly to Industry Canada).

Government of Canada Private firm billings (2011)

Firm	Total
Hughes Hubbard and Reed (DC)	\$8,329,026
Davies (ON)	3,986,918
Lawson Lundell (BC)	3,768,506
Macleod Dixon (AB)	2,825,644
Gilbert Simard Tremblay (QC)	1,854,434
Spiteri & Ursulak (ON)	1,395,958
Lenczner Slaght (ON)	1,085,832
Bennett Jones (AB)	1,017,213
Warner Norcross & Judd (MI)	992,670
Torys (ON)	871,188
McMillan (ON)	635,900
Gowlings (ON)	619,441
Smith Valeriotte (ON)	606,335
Weil Gotshal & Manges (DC)	556,048
Blakes (ON)	549,208

Note: Billings are for non-criminal work performed by domestic and foreign legal agents on behalf of the Government of Canada., obtained by The Lawyers Weekly under the Access to Information Act.

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