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## TCC Again Takes Issue With Evidence of CRA Employees on SR&ED

### Court seeks impartiality of CRA staff who act as expert witnesses

In January 2015 the Tax Court of Canada in Ottawa began to hear an appeal by HLP Solutions Inc. concerning CRA's denial of SR&ED ITCs on two software development projects.

The crown introduced a CRA employee (Dr. Rosu who holds a Ph.D. computer science) as an expert witness. The taxpayer objected that as a CRA employee she was not sufficiently "impartial" to advise the court on the issue of eligibility. The judge agreed and at items [41] to [44] of her February 18 2015 ruling she cited the Tax Court of Canada's October 2014 ruling in the "Abeilles" case, wherein a CRA employee was similarly found to be not sufficiently impartial on an SR&ED matter.

This action is ongoing; the court ordered that CRA be given additional time to deploy some alternative expert testimony. It will be interesting to see how this unfolds and what alternative CRA mounts.

In order to function as a truly impartial expert at court, any CRA employee may be put in the potentially awkward position of having to abandon the CRA policy documents by which he or she functions on a daily basis to assess taxpayer SR&ED claims. Instead the employee will need to give an opinion based on "first principles" of their profession, which might not be perfectly aligned with existing CRA administrative policy on SR&ED.

For example, in discussing the SR&ED eligibility of constructing a "prototype" the CRA employee may have to adopt the ordinary language definition of prototype versus the more narrow SR&ED-specific definition that CRA assigns that term in its policy documents. This exact situation is described at items [18] to [20] of the Highland Foundry ruling in 1994 (see link below).

## Learn More

Tax Court Canada February 2015 order re expert testimony in HLP Solutions Inc. for tax year 2009: the French language original and verbatim translation to English by Google Translate:

[http://www.scitax.com/pdf/Dckt\\_2012-671-IT-G\\_12-Jan-2015.pdf](http://www.scitax.com/pdf/Dckt_2012-671-IT-G_12-Jan-2015.pdf)

Tax Court Canada judgment for Abeilles service de conditionnement inc. October 2014 for tax year 2009: the French language original and verbatim translation to English by Google Translate:

[http://www.scitax.com/pdf/Dckt\\_2011-2054-IT-G\\_23-Oct-2014\\_Google\\_Translated.pdf](http://www.scitax.com/pdf/Dckt_2011-2054-IT-G_23-Oct-2014_Google_Translated.pdf)

Tax Court Canada judgment for Highland Foundry Ltd. August 1994 for tax years 1985, 1986 & 1987

[http://www.scitax.com/pdf/Dckt\\_92-264\\_15-Aug-1994.pdf](http://www.scitax.com/pdf/Dckt_92-264_15-Aug-1994.pdf)

## About Scitax

Scitax Advisory Partners LP is a Canadian professional services firm with specialist expertise in all aspects of planning, preparing and defending Scientific Research and Experimental Development (SR&ED) tax credit claims.

We offer a multi-discipline team of engineers, chartered accountants and tax lawyers to ensure that your SR&ED issues are covered from every angle.

While we normally work in concert with our client's existing accountants, our affiliated tax-dedicated chartered accounting firm – Cadesky and Associates LLP – is an expert resource for advice on any taxation matter such as may arise either during the planning and preparation of your claim or while dealing with CRA afterwards.

In addition to planning and preparing new claims, we also engage on claims that have been challenged by CRA auditors or that have received negative assessments for either scientific or expenditure eligibility. If a satisfactory settlement cannot be achieved with CRA at the local office level, we will appeal your assessment through either Notice of Objection or Tax Court of Canada procedures with the assistance of our affiliated firm of tax lawyers.



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