

## \$3.9M Fine and Criminal Conviction for SR&ED Claim

The Court of Quebec in Montréal has fined a company and two individuals associated with it a total of \$3.9M in connection with an SR&ED claim the company filed in 2010. The claim sought \$1.3M of ITCs on \$5.4M of expenditures. The fine is calculated based on 50% of the ITC for each of two counts (effectively amounting to 100% of the ITC). Given that the Act provides for fines of up to 200% of ITC, this fine was at the low end of the scale.

The company is Les éléments chauffants Tempora inc. of Montréal (also found as Tempora Heating Elements by internet search); the individuals were its administrators Maged Elhami and Shady Elhami.

Tempora's SR&ED claim included over \$4.5M in expenditures said to have been paid to another company – Pyro Genesis – for R&D services. When Tempora's claim was audited by the CRA, these invoices could not be substantiated.

This was a criminal proceeding, charges (two counts each party) were laid under para's (a) and (c) of s.s. 239 (1.1) of the Income Tax Act. Filing the claim in the first place gave rise to count #1 under para (a). Count #2 under para (c) arose from attempting to support that claim with a false record (the Pyro Genesis invoices).

It is not clear whether any additional fines might be imposed by Quebec in respect of provincial R&D credits; e.g. in Ontario the company might have faced fines at similar percentages under s.s. 121(2) of the Taxation Act, 2007 (Ontario).

The trial judge referenced another somewhat similar Alberta case from 2010 Global Enviro Inc. and Ian George McIntyre in which both the corporation and the individual were each fined \$250K (77% of the ITC).

### Learn More

- Court of Quebec in Montréal decision on Les éléments chauffants Tempora inc.  
[http://www.scitax.com/pdf/Dckt\\_QCCQ-2684-500-73-004048-134\\_27-Mar-2017\(Google\\_translation\\_of\\_French\\_Original\).pdf](http://www.scitax.com/pdf/Dckt_QCCQ-2684-500-73-004048-134_27-Mar-2017(Google_translation_of_French_Original).pdf)
- Alberta Court of Queen's Bench and Provincial Court Alberta decisions in Global Enviro Inc. and Ian George McIntyre  
[http://www.scitax.com/pdf/Dckt\\_ACQB-060808508-S2-PCA-060808508P10101-0102\\_Mar-2009.pdf](http://www.scitax.com/pdf/Dckt_ACQB-060808508-S2-PCA-060808508P10101-0102_Mar-2009.pdf)

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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 Tax - 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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