

Judgments of the Tax Court of Canada

Robotx Solutions Inc. v. The Queen

Database - Court (s) : Judgments of the Tax Court of Canada

Dated : 2017-05-03

Neutral reference : 2017 CCI 73

File number : 2016-736 (IT) I

Judges and Taxing Officers : Gaston Jorré

Topics : Income Tax Act

Dossier: 2016-736 (IT) I

ENTER :

ROBOTX SOLUTIONS INC.,

appellant

and

HER MAJESTY THE QUEEN,

Respondent e.

Appeal heard on 31 October and 14 December 2016,
In Montreal, Quebec.

In front of : The Honorable Justice Gaston Jorré

Appearances :

Representative of the Yves Hamelin
appellant:

Counsel for the Respondent: Mr. Alain Gareau

JUDGMENT

According to the attached Reasons for Judgment, an appeal from the assessment made under the *Income Tax Act* for the taxation year ending November 30, 2012 is dismissed without charge.

Signed at Ottawa (Ontario), this 3rd day D e may 2017.

«Gaston Jorré»

Judge Jorré

Reference: 2017 CCI 73

Date: 20170503

Dossier: 2016-736 (IT) I

ENTER :

ROBOTX SOLUTIONS INC.,

appellant

and

HER MAJESTY THE QUEEN,

respondent.

REASONS FOR JUDGMENT

Judge Jorré

Introduction

[1] The issue is whether the appellant did any scientific research or experimental development during the performance of four contracts with clients.

[2] Robotx Solutions Inc. ("Robotx") is a privately held company founded in 2002. According to Robotx President Mathieu Billette, the appellant is a company that improves equipment to customer demand by increasing their lifespan, By improving their security mechanisms in order to bring them into line with standards or to standardize them in order to produce economies of scale.

[3] In the tax year ending November 30, 2012, the appellant, in filing its T2 income tax return, claimed scientific research and experimental development ("SR & ED") expenses in respect of certain work Made under four contracts [1] :

1. a contract for Diageo Canada ("DICA" project) to improve the safety of employees using palletizers and depalletisers of bottles of liquor;
2. a contract for MDA Corporation ("MDCO" project) to optimize the performance and safety of a CNC milling machine;
3. a contract for the municipality of Saint-Zotique (project "VSZO") to

improve and integrate the control system of a drinking water filtration plant and 13 pumping stations;

4. a contract for Metra Aluminum (project "MEAL") aimed at minimizing production costs by adding a particular system to the production line.

[4] In July 2014, the Minister of National Revenue assessed the appellant for the 2012 taxation year and denied an amount of \$ 182,483 for claimed SR & ED expenditures in respect of the four contracts (" Refused SR & ED expenditures ").

[5] As a result, the Minister refused investment tax credits of \$ 48,043. No questions of quantum were raised [2] .

[6] The appellant elected to use the informal procedure and waived the excess of the denied credits in excess of \$ 25,000.

[7] Essentially, with respect to the SR & ED work claimed by the appellant, the Minister submits that there was no technological uncertainty in the work and that it was not carried out by means of an investigation Or systematic research.

[8] On the contrary, he argues that in the course of this work there were only technical problems which could be solved by current practices which form part of existing scientific or technological knowledge. He also submits that the appellant was not able to demonstrate the establishment of any technological advancement.

[9] For these reasons, the Minister contends that he was correct in refusing the appellant's claim.

[10] The appellant, on the other hand, disputes the Minister's decision and submits that her activities were eligible for the credit claimed.

[11] In light of the foregoing, this Court must determine, in respect of each contract, whether the Minister was correct in concluding that the work that generated the denied expenses did not constitute SR & ED within the meaning of the *Income Tax Act*. *Income tax* (" Act ").

[12] During the hearing, in the notice of appeal and in the response to the Notice of Appeal, everyone referred to:

1. Project for Diageo Canada (DICA),
2. Project for MDA Corporation (MDCO),
3. project for the municipality of Saint-Zotique (VSZO),
4. Project for Metra Aluminum Company (MEAL) [3] .

[13] I will do the same, but it is important to keep in mind that when we talk about these projects, we are talking about the activities for which the appellant is claiming SR & ED expenditures and not all of the expenditures for each of the projects Four contracts.

[14] There were two witnesses, including Mathieu Billette, the appellant's president. Through this testimony, the appellant filed certain documentary evidence and photographs in order to enable the Court to better understand the scope of the work carried out. Jonathan Assouline, a Research and Technology Advisor with the Canada Revenue Agency (CRA), also testified. Mr. Assouline is the person who ruled on the eligibility of the appellant's plans at the assessment stage. No expert witness was called by any of the parties.

Applicable right

[15] The definition of scientific research and experimental development for income tax purposes reads as follows in subsection 248 (1) of the *Act*: [4]

Scientific research and experimental development activities Investigation or systematic research of a scientific or technological nature, carried out by means of experimentation or analysis, that is to say:

(A) pure research, namely the work undertaken for the advancement of science without any practical application in view;

(B) applied research, namely work undertaken for the advancement of science with practical application in view;

(C) experimental development, namely work undertaken in the interests of technological progress with a view to the creation of new materials, devices, products or processes or even the slight improvement of existing ones.

For the purposes of this definition to a taxpayer, the following are included in scientific research and experimental development:

(D) work undertaken by or on behalf of the taxpayer in respect of technical work, design, operational research, mathematical analysis, computer programming, data collection, testing and psychological research , Where the work is proportional to the needs of the work referred to in paragraph (a), (b) or (c) undertaken in Canada by or on behalf of the taxpayer and is used to support the work directly.

Scientific research and experimental development activities do not include work relating to the following activities:

(E) market research and sales promotion;

(F) quality control or testing of materials, devices, products or processes;

(G) research in the social or human sciences;

(H) prospecting, exploration and drilling for the discovery of minerals, oil or natural gas and their production;

(I) the commercial production of a new or improved material, device or product and the commercial use of a new or improved process;

J) style changes;

(K) normal data collection.

[16] There is no question of pure research or applied research. The question is: Is there experimental development within the meaning of the *Act*? In this appeal the relevant portions of the definition of "scientific research and experimental development" are:

Investigation or systematic research of a technological nature, carried out by means of experimentation or analysis, that is to say:

[...]

(C) experimental development, namely work undertaken in the interests of technological progress with a view to the creation of new materials, devices, products or processes or even the slight improvement of existing ones.

[...] are included among the activities [...] of experimental development:

(D) work undertaken by the taxpayer [...] in respect of technical work, design, operational research, mathematical analysis, computer programming, data collection, testing and ... Such work shall be proportionate to the needs of the work contemplated in subparagraph (c) which is undertaken in Canada by ... and is used to support them directly.

The following activities shall not constitute activities [...] of experimental development:

[...]

(F) quality control or testing of materials, devices, products or processes;

[...]

(I) the commercial production of a new or improved material, device or product and the commercial use of a new or improved process;

[...]

[17] In determining whether the work undertaken by the appellant met the definition of the *Act*, the courts adopted certain criteria developed in

1998 by Bowman J. (as it then was) in *Northwest Hydraulic Consultants Ltd. c. Canada* [5] . This approach has been confirmed several times, particularly in *RIS - Christie Ltd. decisions. c. Canada* [6] and *CW Agencies Inc. v. Canada* [7] of the Federal Court of Appeal. See also the very recent decision of D'Auray J. in *Formadrain Inc. v. The Queen* [8] . These criteria, as expressed by the Federal Court of Appeal in *CW Agencies* at paragraph 17, are as follows [9] :

1. Was there a technological risk or uncertainty that could not be eliminated by standard procedures or routine technical studies ?
2. Has the person claiming SR & ED made any specific assumptions to reduce or eliminate this technological uncertainty?
3. Was the procedure fully consistent with the discipline of the scientific method, including formulation, verification and modification of assumptions?
4. Has the process led to technological progress?
5. Has a detailed account of the assumptions verified and the results been made as the work progresses?

[I underline.]

[18] These criteria are intended to assist us in determining whether a taxpayer has "experimental development" within the meaning of the *Act* , as explained in *Les Abeilles packaging service Inc. v. The Queen* [10] :

142 It should be borne in mind that these are considerations to help determine whether or not there has been technological advancement. The first consideration, technological uncertainty, is one way of approaching the criterion of technological progress; It is difficult to talk about technological advancement if we already know how to obtain the result; The second and third considerations are, inter alia, a way of ensuring that the work has been undertaken in the interests of technological progress and that it is not, for example, Work undertaken in the interests of technological progress.

143 The five criteria are not absolute. For example, it is not mandatory that work has led to technological progress; If the work fails, but moreover it is work undertaken in the interest of technological progress, the work can nonetheless be qualified.

[19] In light of these considerations, I must now determine whether the projects in question constituted experimental development activities.

[20] Before I look specifically at the projects, I will note that it was not always easy to follow the appellant's evidence and that often this evidence was relatively general and vague.

Facts and Analysis

[21] I will look at each project separately.

DICA Project

[22] Since there is no question of pure research or applied research, the only question is whether it is experimental development, that is to say, "work undertaken in the interest of the Technological progress towards the creation of new materials, devices, products or processes or even the slight improvement of existing ones " .

[23] It is also clear that in this project it is not an effort to create or improve materials or products.

[24] It is therefore necessary to analyze the following:

1. Has the work been undertaken in the interests of technological progress?
2. Have they been undertaken with a view to the creation of new devices or processes or even the slight improvement of existing ones?

[25] The DICA project was undertaken for Diageo Canada, a company that specializes in alcohol products. The plant in which the appellant operated is located in the municipality of Valleyfield.

[26] In financial terms, the SR & ED expenditures claimed for this project, approximately \$ 81,500, are by far the largest amount of the four projects. This is approximately two-thirds of the claimed SR & ED expenditures [11] .

[27] According to the appellant, the project consisted in creating new methods of securing the trays with the aim of improving palletizers and depalletisers of cases of bottles of alcohol [12] . To understand the project, it is worth mentioning that the plant where these facilities were located consisted of five bottling lines. On each of these lines was a depalletiser, which had to depalletize the empty bottle cases to place them on the production line, and then at the end of the production line there was a palletizer which had to re-palletize the same boxes that were now filled.

[28] Each palletizer or depalletizer has a lifting platform that is used to raise or lower the crates because the production line is above the level of the floor.

[29] The equipment on which the security work was carried out was connected with a network controller that controlled the entire production line. Robotx therefore had to make the equipment safe in order to allow operators to access the palletiser and depalletiser trays during production while reducing downtime on the production line.

[30] Specifically, the contract was for "[s] using the elevating platforms for depalletizers and palletizers" [13] .

[31] Concretely, the purpose of the contract was as follows [14] :

1- PROJECT ISSUE

- Eliminate the risk of falling off the pallet elevator deck and depalletisers during an operation that requires the presence of an operator / mechanic under the machine's tray.
- Making machines safe according to [current] standards [15] .

[32] According to Mr. Billette, the equipment used for the work was obsolete and no longer met the current safety standards. In addition, original manufacturers were no longer providing technical support for this equipment, which would have made data collection more complicated than originally planned.

[33] Because palletisers and depalletisers were not all unique, Robotx's initial idea was to design a universal approach that could be re-used for each equipment. Among other things, this idea was submitted to Diageo and allowed Robotx to obtain the service contract currently in dispute. The appellant did other work at Diageo, but only this project was subject to an SR & ED investment credit claim.

[34] According to Mr. Billette, the DICA project began with a preliminary analysis, that is to say the elaboration of a concept which enabled Robotx to validate the prices it proposed in the call for tenders. Since the appellant proposed flat-rate prices, which constituted a significant financial risk to her, it was essential for the appellant to have some certainty that she would be able to carry out the project.

[35] Regarding the technological aspects of this project, the appellant's witness argued that there were several: first, under the agreement between the parties, it was essential to ensure that the Obsolete equipment meets the safety standards currently in force, so that the tray loaded with crates can not fall on the operators who had to clean the equipment. These changes had to

be made while respecting the production flow.

[36] Moreover, the obsolescence of equipment and the loss of certain operators with knowledge of the use of such equipment would have raised important technological uncertainties which were discovered only after the work had begun.

[37] Finally, at the design level, there had to be a universal model that could be used on all equipment, all in restricted spaces imposed by the original manufacture of the equipment and their position in relation to the production line .

[38] In order to fill these uncertainties, Robotx has tried to use the maximum number of industry standard parts in its designs, all with a view to facilitating the maintenance of equipment following adjustments.

[39] As for the procedure adopted to carry out this project, Mr Billette maintains that, first, a hypothesis was adopted by a multidisciplinary team and then tested by validation. After a trial, whether by 3D simulation or directly on the production line, a new hypothesis was adopted and then tested, until the uncertainties were completely dissipated. According to him, this method is sufficiently supported by two Excel files submitted by the appellant demonstrating the tests undertaken during the validations [16] . He argues that in the course of this project, about 100 attempts were made, including 3D and factory simulation tests.

[40] With respect to the operation of the safety system, it was integrated into existing equipment systems by positioning two tubes with two supports for chrome shafts. In doing so, the available space became void, which resulted in the appellant being forced to design a system that would limit the thickness of the materials used.

[42] As a result of these changes, several problems arose in cascade, forcing the appellant to make several tests and some modifications of the components used. On the way, the option of a universal system proved impossible to realize, which necessitated the creation of new working hypotheses. However, the appellant was able to design and use a control panel in almost all of the equipment, thereby ensuring communication between the sensors of the brake system and the rest of the safety system, Through an automaton.

[42] At the end of the project, five machines out of a total of 10 equipment were finally upgraded by the appellant. According to Mr. Billette,

the research and results obtained from this project could probably be re-used "to some extent" in similar mandates with similar equipment.

[43] At the financial level, Robotx was not able to achieve its objectives. In the course of the journey, significant cost overruns were noted, which led Diageo to abandon the improvement of two production lines, the latter having decided to completely modernize them by purchasing new equipment.

[44] Mr. Assouline, the respondent's witness, argues that the appellant was not able to demonstrate that any technological progress had been made, and that there was technological uncertainty with respect to this project. The respondent acknowledged that the appellant had to work with equipment that was old enough to bring it into line with current standards, but that it did not amount to SR & ED [17] .

[45] According to him, nothing in the appellant's submissions or in his documentation makes it possible to identify the difficulties or the nature of a problem that could not be overcome by the technological knowledge currently available.

[46] In addition, the appellant submits that the documentation submitted by the appellant identifying the various tests and assumptions presents work of a purely technical nature, that is, the identification of the problem and then the resolution of the problem by the " Practical application of generally available technological knowledge. None of the documents submitted indicated that there were any technological limits that were sought to be exceeded, either at the start of the project or during the course of the journey.

[47] Finally, on reading this documentation, he is of the opinion that it is impossible to confirm when this work was carried out, which is a problem considering that the work began in 2011 and not in 2012 [18] .

[48] Mr. Assouline also argues that the missing information that the appellant defines as technological uncertainty is in fact information that could reasonably have been obtained before undertaking the project since, in all likelihood, this information was held by the Company Diageo.

[49] The respondent therefore argues that the DICA project can be defined as normal development, which is not SR & ED.

[50] As we have seen, the goal of the project was to make palletizers or depalletizers conform to current safety standards by eliminating the risk of the elevator plate falling when an operator or mechanic was underneath.

[51] In the case of palletizers or depalletizers which have been modified, this has been done by putting a new braking device to lock the elevating platform in place and an interlocking system which ensured that everything was stopped as soon as it opened, A door giving access to the space below the lifting platform [19] . The intention was to do the same for the other palletizers and depalletizers, but this was abandoned for financial reasons with the agreement of the customer [20] .

[52] Is this experimental development within the meaning of the *Act* ? Have there been (i) work undertaken in the interest of technological progress (ii) for the creation of new or improved devices or processes?

[53] It is worth pointing out that when the *Act* says "for the purpose of creating new materials, devices, products or processes, or even the slight improvement of existing ones," these words can not be read without reference to The entire provision and, in particular, the requirement that the aim must be technological progress.

[54] Technological progress, novelty or improvement must relate to existing scientific and technological knowledge or existing materials, devices or processes. While novelty or improvement can be achieved by standard procedures, current technical studies or current knowledge (which is part of existing scientific and technological knowledge), it can not be technological progress [21] .

[55] It is therefore not sufficient to improve an existing device or process; There has to be an improvement over existing technology and we must be unable to make progress using current usual procedures, current technical studies or existing knowledge.

[57] Consequently the improvement of an old machine which does a particular job of increasing the level of safety can not represent technological progress if other machines doing the same work with the required level of safety already exist, Improvement can be made without technological progress as to how to improve [22] .

[57] Let us look at this issue of technological progress first in terms of creating or improving a "device".

[58] Here, there is nothing in the evidence to suggest that palletizers and depalletisers were not already available to meet the required safety standards or that there was an improvement over what already existed. Compared to security standards, we talked about upgrading.

[59] As a result, the appellant has not convinced me that there is work being done to create a new device or to improve existing devices.

[60] Second, let us consider this question in terms of creating or improving "processes".

[61] There is no doubt that there were some uncertainties at the outset and that various problems arose during the course of the work; I have no doubt that it was not always obvious when a problem was discovered, how to solve the problem precisely [23] .

[62] However, it is not the mere fact that there are uncertainties, that problems arise, and that it may take some effort to determine how to solve these problems, which means that the effort to solve these problems necessarily constitutes experimental development . These must be technological uncertainties. A lot of people who have undertaken renovations of old houses have experienced it: unknown situations as to what is hidden behind the wall, surprises when opening the wall, and so on. In itself, difficulties are not sufficient for the resolution of these problems to become experimental development [24] .

[63] If technological advances are to be made in a process [25] , I would expect that the novelty or improvement sought could be clearly and accurately described in relation to current processes. This is not the case here [26] .

[64] The appellant has not demonstrated that, in order to fulfill the contract, it has created or attempted to create new processes or techniques in relation to those that already exist. Nor has it demonstrated that it has improved or attempted to improve one or more processes or techniques in relation to those that already exist under current technology. [27]

[65] As a result, the appellant has not satisfied me that work under the Diageo contract has been undertaken for the creation of new processes or the improvement of existing ones.

[66] As regards the Diageo contract, there is therefore no need to amend the contribution.

[67] It is worth emphasizing this. If I had been of the opinion that there had been work undertaken to improve existing devices or processes, I would have had to examine the other criteria developed in *CW Agencies* .

[68] On the one hand, I would have had to consider the question below:

Was the procedure fully consistent with the discipline of the scientific method, including formulation, verification and modification of assumptions? [28]

[69] On the other hand, I would have had to consider the following question: Were uncertainties resolvable by usual procedures or current technical studies?

[70] In the circumstances it is not necessary for me to decide these questions, but I would note that, if it were necessary to examine them, generally the evidence presented does not seem to me to be sufficiently clear, precise and detailed to conclude that " It is technological progress.

[71] Although the provisions of the *Act* do not require contemporary documentation with a specific content to demonstrate experimental development work, it is very important to be able to make clear, detailed and accurate evidence; This may prove extremely difficult if not impossible in the absence of proper documentation during the course of the work [29] . As stated by Archambault J. in *116736 Canada Inc. v. Canada* [30] :

40 In my view, contemporary reports providing precise details of each experiment attempted by a researcher should constitute evidence of systematic investigation. Any taxpayer who attempts to convince the Minister that he is entitled to deduct R & D expenses without providing such evidence would be in a very precarious position. A taxpayer would be in a similar position if he appeared before this court to challenge the Minister's refusal to allow his R & D expenses to be deducted.

Project MEAL

[72] This project is the second in terms of spending claimed, a little over \$ 22,000.

[73] Metra Aluminum is an aluminum extrusion manufacturer. As part of the agreement signed with Metra Aluminum, Robotx had to design, manufacture and install a device that Metra and Robotx called a "correction roller" or "plate rectifier" [31] that was to be integrated into an existing production line .

[74] This device had to straighten out rectangular aluminum bars that came out of an extruder. Metra wanted to integrate the step of rectifying an aluminum plate directly on the production line in order to avoid displacements, all without operator and safely. This would allow Metra to change its processes to minimize costs associated with the operation of its production chain, including reducing the number of times he had to handle the aluminum plates.

[75] At the beginning of the project, the intention of the appellant was to create a fixed system, without pivot, all to ensure the flatness of the aluminum plate directly on the production line. However, after a few tries, Robotx realized that this option was not optimal considering the inherent characteristics of the machine, including the established structures that could not be changed.

[76] A system in two sections therefore had to be set up. M. Billette also argued that the customer has provided essential information during the project, which caused some changes that could have been avoided in the design stage. 3D simulation tests were also undertaken by the appellant, which has allowed it to develop several prototypes in order to start the implementation in the factory.

[77] Another challenge from the project was to combine existing processes based on old equipment with new processes and new generation equipment. No information was available on the possibility to simulate the behavior of the material on the production line, since not only the temperature of the material was very high, but the alloy was confidential information.

[78] According to the appellant, the main point of uncertainty of the project lay in the search for solutions to complex problems identified during testing while creating a secure system that meets the requirements and objectives set by the customer [32] .

[79] M. Assouline argued that the work presented by the appellant does not describe the issues of SR & ED, but the problems with physical barriers, dimensional and operational.

[80] It also supports the work identified by the appellant in its application are only of anticipated problems enumerations. He claims that these works are only details about the solution to deliver to the customer in order to meet the demand and not the work undertaken systematically in order to eliminate technological uncertainty.

[81] According to the information given in the appellant's request, M. Assouline claims that the appellant did not provide additional information for the Minister to identify technological uncertainty or technological advancement.

[82] The Minister's position is that the work claimed by the appellant is rather normal development of equipment or system to be incorporated to another to correct a technical problem of deformation of the aluminum. According to the respondent, "[t] he design work, design, testing and adjustments arising entirely from the common practice in product and equipment development context" [33] .

[83] I am sorry, from the evidence presented, I can not conclude that there experimental development as defined in the *Act* .

[84] I did not hear evidence that had been the goal of technological progress in order to create a new device or a new process.

[85] However, suppose I concluded that this is a new device or a new process.

[86] There is no clear and detailed evidence of each stage of the work that would conclude that specific individual work, some group work or all work was to resolve technological uncertainties that could not be resolved with methods and current knowledge.

[87] On the contrary, there are elements that suggest that the uncertainties are not technological. On the one hand, along the way the customer, learning some things himself, imposed new constraints. Such changes are not in themselves, for the appellant, technological uncertainty.

[88] On the other hand, some things in the evidence are not necessarily techniques other than the usual techniques. For example, the appellant said he made 3D simulation; in itself, at this level of generality, it does not help us to know if it is or not experimental development, as some simulations are quite usual techniques. In our case, he might simply act of using a software "AUTOCAD" (Automated Computer Aided Design) to see if he could well create the device with the various constraints such as available to other devices of the production line, available space, etc. [34] ; such use software does not demonstrate, in itself, it is an unusual technique. By cons, if there is another form of unusual simulation, there is no evidence of it.

[89] It is on the appellant to demonstrate technological uncertainty within

the meaning of the *Act* .

[90] Accordingly, I conclude that it is not experimental development and there is no change in the fee as MEAL project. It must be maintained.

VSZO project

[91] The appellant has claimed about 15 000 \$ in SR & ED related to this project.

[92] The appeal form of offers provided by the municipality of Saint-Zotique the appellant stated as the title of project "Upgrading water treatment plant control systems and pumping stations" [35] . The resolution of the municipality granting the contract to the appellant August 21, 2012 contains the following description in its title: "Implementation of the Ethernet telemetry in sewage pumping stations and new program for the filtration plant" [36] .

[93] The appellant's tender was a lump sum of \$ 436,249. Since the municipality has approved the contract on 21 August 2012 and the end of the calling of the fiscal year was November 30, 2012, the appellant could only start work in the disputed tax year. The appellant acknowledges that part of the work under the contract is not scientific research or experimental development.

[94] I have the same difficulty in this project for the two previous projects. These difficulties mean that the appellant has not convinced me that she made experimental development as defined in the *Act* .

[95] The evidence of the appellant demonstrated various difficulties that occurred during the project implementation and not only during the tax year 2012. The appellant has not shown that these difficulties could only be overcome by using methods other than the usual methods; there is no specific and clear evidence showing that certain work or certain work groups represented an effort that required the use of unusual methods.

[96] However, here there is an additional problem. Even if I believed that there were experimental development during the project period, the evidence presented is about the whole project. There is nothing in the evidence to support the conclusion that specific work during the year in dispute constitute experimental development work.

[97] Therefore, there is no need to change the contribution relative to

VSZO project.

MDCO project

[98] The latest project to be analyzed is the one with the MDA Corporation, the project MDCO. In financial terms, this is the project with the lowest amount of expenses claimed, a little less than \$ 4000.

[99] Under the contract, according to the summary of the project contained in the T-661 form for the appellant, Robotx was called upon to design, develop, and to develop new mechanisms and new components to optimize the performance and safety of a CNC milling machine [37] .

[100] The essence of the project was to create a mechanism with a protective piece to add to milling MDA had to improve the safety of employees [38] . More generally, Robotx wanted to create such a mechanism can be integrated to other devices with a rotating part, either a milling machine, drill or otherwise.

[101] M. Billette testified that there was no such mechanism on the market. What existed in the market for this type of device lacked strength and was not suitable for all types of machines.

[102] According to M. Billette, technological obstacles upon completion of the project were mostly related to the fact that Robotx was not able to get technical support from the manufacturer and stakeholders who had already used the machine.

[103] For his part, M. Assouline argues that the development of this system as it has been presented and described, does not meet the definition of SR & ED under the *Act* . According to him, it would simply be of normal development or normal improvements such equipment as currently known technological knowledge.

[104] In addition, despite requests from the CRA regarding the documentation supporting the claim of the appellant Robotx never provided the documents it claimed to have the support of this project. Yet it appears that according to the review file CRA gave a period of more than five months to the appellant to make sending documents, whereas the usual period is 30 days.

[105] Ideally, for the novelty of contemplated devices, there would be more evidence regarding the fact that there are no devices that meet the

requirements. However, I accept that what was contemplated was new.

[106] However, as with previous projects, the evidence does not support the conclusion that the uncertainties are technological uncertainties [39] .

[107] There is therefore no reason to change the assessment regarding the MDCO project.

Conclusion

[108] For these reasons the appeal is dismissed without costs.

Signed in Ottawa (Ontario), this 3th day of May, 2017.

"Gaston Jorré"

judge Jorré

REFERENCE:	2017 ICC 73
N ° THE COURT FILE:	2016-736 (IT) I
STYLE OF CAUSE:	ROBOTX SOLUTIONS INC. c. THE QUEEN
PLACE OF HEARING:	Montreal, Quebec)
HEARING DATES:	October 31 and December 14, 2016
DATES OF RECEIPT OF TRANSCRIPTS:	On 14 November 2016 and 3 January 2017 respectively
REASONS FOR JUDGMENT:	The Honorable Judge Gaston Jorré
DATE OF JUDGMENT:	On May 3, 2017
APPEARANCES:	
Representative of the appellant:	Yves Hamelin
Counsel for the Respondent:	M ^e Alain Gareau

SOLICITORS OF RECORD:

For the Appellant:

Cabinet:

For the Respondent e:

William
F.
Pentney
Deputy
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General
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Canada
Ottawa,
Ontario

[1] We know the amounts claimed, but the evidence does not determine what proportion of the total expenditure in the contracts was claimed as SR & ED.

For example, on page 98 of the transcript of 31 October 2016, M. Billette says that the amounts claimed are only part of the expenses related to the contract with the municipality of Saint-Zotique.

Another example - where the largest amount of spending has been claimed, the contract for Diageo Canada, we know that an amount of \$ 81,522 was claimed (see page 5 of the tab 10 of Exhibit A -1), but it seems that greater amounts incurred during the contract; when reading the discussion about cost overruns on pages 77 and 78 of the transcript of 31 October 2016, it appears that the total amount spent is more important that it is difficult to be sure because the contract took place in more than a year. Moreover, on page 37 of the transcript, M. Billette refers to two "projects" that the appellant had the same time to Diageo Canada, with a scientific research and experimental development and without scientific research and experimental development; one of the two "projects" is one of the four contracts in question here; another "project" is probably another contract.

[2] According to the response to the notice of appeal the amounts claimed by the appellant as SR & ED and refused by the Minister for the 2012 taxation year are:

employees	91 92
Contract-length	31 80
Replacement prescribed amount	<u>59 36</u>
Total SR & ED expenditures claimed	182 48
Provincial government assistance	-45 21
Total qualified SR & ED expenditures	
Tax credit for investment refused	\$ 48,043

I note that in the documents filed by the appellant, the figures are somewhat different. By cons, as no quantum issues were raised and saw my conclusion, it is not necessary that I reconcile these differences.

[3] This project formulation stems from the way taxpayers should make their tax credit claims.

[4] version applicable on 30 November 2012.

[5] , [1998] TCJ n°340 (QL).

[6] , [1998] FCJ n°1890 (QL).

[7] 2001 FCA 393.

[8] 2017 ICC 42.

[9] These criteria were also adopted by the CRA Information Circular 86-4R3 replaced by the *Policy on the eligibility of work for investment tax credits SR & ED* dated 19 December 2012, then, on April 24, 2015.

[10] 2014 ICC 313.

[11] See pages 5, 10, 15 and 20 to the tab 10 of Exhibit A-1. The amounts claimed for MDCO projects VSZO MEAL and are \$ 3987 to \$ 22,606 and \$ 15,007 respectively.

[12] Five types of palletizers 1, and four depalletizers type 2, 3, 4 and 5.

[13] See the order form on the last page of the tab 4 of Exhibit A-1 and invoices at tab 5 of Exhibit A-1, for example, the invoice of 11 July 2011 where it is writing in "Securing Trays elevators": "Request A quote - Securing lifting platforms for depalletizers and palletizers".

[14] See in the upper left corner of the second page to Tab 15 of Exhibit A-1.

[15] I added the word "current". Occasionally crates fall from lifting platforms and broken glass spread among other below the lifting platforms. When this happens, an employee must remove the glass below the elevator tray. The text of this document is much clearer than the description of the project to tab 10 of Exhibit A-1, form "T-661" with numbered pages 5 and 6.

The description to the numbered page 5 of the 10 tab says in the second paragraph that "[t] he project aims to improve business productivity and eliminate the risk of workplace accidents".

Two comments - first project concerns only lifting platforms; there was no discussion of other risks of accidents associated with the operation of the bottling lines.

Second, although we talk about productivity in the evidence, I have not seen or heard of in the concrete evidence that the project aimed to increase the productivity of bottling lines as such. Undoubtedly, it should not result in changes to reduce production and it may be that, incidentally, the best security for lifting platforms has the effect of reducing the downtime for the palletizer or depalletizer when had to clean underneath an elevator tray, but the evidence does not indicate that it was a goal.

[16] Part A-1, tabs 16 and 17; see Tab 15.

[17] M. Assouline not testifying as an expert witness. By cons, as advisor in research and technology CRA, it is in the same position as auditor and can testify on the basis of the contribution.

[18] I do not fully understand why the witness said that when the work has been done can not be established. For some things, there is documentation; see tab 17 in Exhibit A-1.

[19] See, for example, pages 35, 36, 51, 52, 63 and 64 of the transcription of October 31, 2016.

[20] Moreover, two production lines that the appellant is not used, the problem was resolved because the customer has invested and bought two new production lines.

[21] This is why the question raised by the first test developed in *CW Agencies*, above, is: "Was there a risk or technological uncertainty could be removed by standard procedures or routine engineering? "

[22] For example, if we reduce the power consumption of a machine simply by replacing the engine with a more economical engine power that already exists and that the integration of the engine can be done very simply with techniques well known, there can be no question of technological progress. By cons, if we manage to, or if you try to, upgrade an old machine with a new process that is much more efficient in terms of resources used, it may be it development experimental if we can do the work with the usual studies or procedures.

[23] Among the sources of difficulty were: a lack of information on the operation of palletizers and depalletizers, among others, because the original manufacturer did not give more technical support for these machines; certain information that the appellant had discovered during the works but were known, for example, one or more lifting platforms operated differently in automatic mode and manual mode, information that must necessarily be known by the operators but Diageo was not communicated to the appellant; the constraints of the space in which he had to work.

[24] It is not because we made a systematic effort to resolve the uncertainties and problems it automatically is an effort to overcome technological uncertainties and, therefore, experimental development. The renovation contractor will formulate a plan before starting work; when problems arise, it will have to revise the plan - "make" assumptions "in some sense - and try the new solution and, if necessary, revise the plan again.

[25] Or in connection with a device.

[26] The taxpayer said to have increased his knowledge but it does not establish that there was an effort to make technological progress.

[27] The degree of novelty or improvement is not compared to that knows the taxpayer; the measurement is compared to what is generally known.

[28] *CW Agencies*, 2001 FCA 393.

[29] See paragraph 94 and footnote 41 in *The Bees*, 2014 TCC 313. I would emphasize that in *Bees*, despite the claims of the minister during that trial, there was a good background made during the work in question, an electronic documentation; more in *Bees*, appellant prepared and filed in evidence a detailed explanatory

additional and accurate documentation created during and after the audit.

[30] [1998] TCJ n°478 (QL).

[31] See the tabs 8 and 9 to the part A-1. When we examine the bill January 16, 2012 it is not clear if this is in fact a contract for one or two,"correcting roller".

[32] See page 16 to Tab 10 of Exhibit A-1.

[33] Exhibit I-1, the examination report of the Scientific Research and Experimental Development, page 6.

[34] On the last page of the tab 9 of Exhibit A-1, we see that when the appellant and the customer have agreed to terminate the contract before the appellant had tried assembling the device it created, the appellant is committed to not only provide the customer with the parts of the device he had made but also plans in AUTOCAD electronic format.

[35] Part A-1, 1 tab, from the fifth to the eighth page.

[36] Part A-1, Tab 2, 2012-08-330 resolution.

[37] Exhibit A-1, Tab 10, T-661 form, summary MDCO project, numbered page 10.

[38] See, for example, purchase orders and billing tabs 6 and 7 of Exhibit A-1 where one speaks, for example, of"protecting mill".

[39] It has not been shown that it was necessary to use unusual techniques or procedures.