I) 2024-25 SR&ED TAX CASES

	I) 2024-25 SR&ED TAX CASES	ISSUES	PRESENTERS
i)	Vortex Energy Services Ltd.	Mobile direct-contact water heaters (fracking) - LOSS	Justin Frape
ii)	Manning Canning Kitchens Inc.	Shelf-stable cold-pressed juice ('Chrisoda') - WIN	Ohad Una
iii)	Dazzm Inc.	CRM/communications platform (software) - WIN	Dave Sabina
iv)	Paveit Construction Inc.	Roller-Compacted Concrete field process - LOSS	Shaun Button
v)	Blackberry Canada Inc.	Whether foreign R&D income FAPI -WIN	Dave Sabina

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I) Vortex Energy Services Ltd. – SR&ED Appeal (2025 TCC 63) Case Overview

- Appellant: Vortex Energy Services Ltd. [para 1]
- Years under appeal: 2014 & 2019 [para 1]
- Project: Mobile direct-fired water heaters for hydraulic fracturing [paras 8–9]
- Appeals dismissed with costs [final para]

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Project Context

- Objective: Build high-BTU mobile water heaters (10–35M BTU) [para 8]
- Unit #1 suffered catastrophic failure during testing [para 9]
- Follow-up prototypes (#2 and #3) also failed to achieve stable design [paras 10–12]
- Claimed SR&ED expenditures: 2014 – $1.45M, 2015 – $508K [header facts]

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Prototype Development Timeline (Units #1–#3)

- 2014 – Unit #1 Built → Catastrophic failure during testing [para 9]
- 2014 – Unit #2 Built → Reactive mechanical redesign; unresolved issues [para 10]
- 2015 – Unit #3 Built → Further modifications; still could not achieve stable design [paras 11–12]
- Court: Pattern demonstrates iterative tinkering, not systematic SR&ED [paras 34–35]

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Minister's Assumptions

- CRA assumed no technological uncertainty existed [para 22]
- Assumed challenges resolvable by routine engineering [para 22]
- Assumed no systematic investigation or hypotheses [para 23]
- Assumed inadequate documentation [para 24]

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Witness Overview – Vortex SR&ED Appeal

- Appellant Witness: Mr. Bodner – Founder of Vortex [para 13]
- Respondent Witness: CRA Reviewing Officer [para 14]
- No expert witnesses called by either side [para 14]

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Appellant Witness – Mr. Bodner (Founder, Vortex)

- Founder with oilfield operational experience; no engineering credentials [para 13]
- Only substantive technical witness for Appellant [para 13]
- Described failures and redesign attempts for Units #1–#3 [paras 9–12]

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CRA Witness – Reviewing Officer

- Reviewed SR&ED claim processing history [para 14]
- Not permitted to give engineering opinions [para 14]
- Testified regarding documentation gaps & claim deficiencies [para 14]

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Technological Uncertainty (Criterion 1)

- Court: No objective technological uncertainty [para 28]
- Issues were routine mechanical/combustion engineering [para 29]
- Failure of prototypes ≠ technological uncertainty without evidence [para 31]

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Hypotheses (Criterion 2)

- Vortex's hypothesis was vague: 'Engineering guidelines + software controls would work' [para 33]
- Restated project goal, not a testable hypothesis [para 33]
- No evidence of evolving hypotheses [para 34]

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Scientific Method (Criterion 3)

- Evidence showed trial-and-error, not methodical testing [para 34]
- No structured variables or controlled tests [para 35]
- No repeatable methodology or rationale recorded [para 35]

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Technological Advancement (Criterion 4)

- No expert testimony to show heater represented a genuine advancement [para 38]
- Catastrophic failure of Unit #1 insufficient without supporting records [para 31]
- No demonstrated contribution to engineering knowledge [para 39]

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Documentation (Criterion 5)

- Project notes incomplete, scattered, inconsistent [para 41]
- No contemporaneous logs of failures, variables, results [para 41]
- Lack of documentation fatal under NW Hydraulic [para 41]

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Appellant Witness – Key Admissions

- Development relied on trial-and-error [para 34]
- No defined hypotheses, structured variables, or controlled tests [paras 34–35]
- Project notes incomplete and not contemporaneous [para 41]
- Admissions supported Minister's assumptions [paras 22–24]

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Court’s Conclusion - Loss

- Failed to rebut Minister’s assumptions [para 42]
- Failed all five NW Hydraulic criteria [paras 28–41]
- Appeals for 2014 & 2019 dismissed with costs [final para]

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Key SR&ED Takeaways

- Expert evidence is critical to demonstrate technological uncertainty
- Hypotheses must be specific, testable, and revisited
- Systematic experimentation required — trial-and-error insufficient
- Documentation must be contemporaneous and detailed
- Taxpayer bears burden of proof

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II) Manning Canning Kitchens Inc. v. HMTK (2024 TCC 159)

- SR&ED Appeal – WIN
- Litigation-style summary with paragraph references

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Case Overview

- Toronto-based producer of preservative-free beverages [para 1]
- Tax year: 2020; Product: 'Chrisoda' – vinegar cold-pressed juice soda [paras 1,10]
- Issue: Did development constitute SR&ED? [para 2]
- Result: Appeal allowed; reassessment ordered [Judgment]

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Key Issue

- Did work involve technological uncertainty + scientific method? [paras 2–3]
- Minister argued routine engineering; Appellant argued novel food science challenge

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Witness Overview

- Appellant: Christine Manning – credible, reliable evidence [para 5]
- Respondent: Rehmat C. Nazarali (CRA RTA) – honest, experienced [para 6]
- No expert witnesses called

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Project Objective

- Create non-refrigerated, shelf-stable, cold-pressed juice vinegar soda [paras 10,12–13]
- Initial problem: exploding cans due to microbial activity [para 10]

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Minister's Alternative Objective

- Minister: only objective was increasing shelf life [paras 11–12]
- Heated or refrigerated solutions considered routine [para 14]

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Court Finding on Objective

- Court accepted objective was room-temperature shelf-stability [para 13]
- Confirmed as genuine technological uncertainty

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Cold-Pressed Juice Challenges

- Cold-pressed juice carries high microbial load; prone to instability [para 10]
- Exploding cans resulted from microbial oxygen release
- No benchmark product existed

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Preservative Experiments

- Tested sorbate, benzoate, and Chiber [paras 14–15]
- Sorbate/benzoate failed (milky appearance, taste issues) [para 15]
- Chiber previously only used in dairy applications [para 17]

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Chiber as the Solution

- Novel use of Chiber in non-dairy beverage [para 17]
- Solved microbial instability and prevented explosions [para 15]
- Exceeded routine engineering

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Hypotheses Formulated

- Hypothesis: preservatives could stabilize drink without pasteurization [para 18]
- Additional hypotheses re: Brix, pH, dilution, darkness inside can [paras 24–25]

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Scientific Method

- Systematic observation with food science advisor [para 21]
- Measurement of Brix, pH, carbonation, dilution [paras 22–23]
- Hypotheses tested and refined [paras 24–25]

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Technological Advancement

- Created first shelf-stable cold-pressed juice soda [para 28]
- Novel Chiber use expanded food science knowledge [para 28]

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Documentation

- Records provided: hypotheses, tests, results [paras 29–30]
- Documentation adequate for tracking experimentation

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Judges Conclusion

- All NW Hydraulic criteria satisfied [paras 28–31]
- Appeal allowed; reassessment ordered [Judgment]

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III) Dazzm Inc.Inc. v. the King - WIN (2024 TCC 129)

- Integrated Case Summary with Paragraph References
- Project 1 vs Subproject 1 (React Performance)

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Case Snapshot

- SaaS company – Octopus ITSM platform [para 16–18]
- Tax year: 2018 [para 3]
- Claimed: $278,927; CRA initially allowed $8,760 [para 4]
- Crown concession: +$61,314 (Subprojects 2–4) [para 5]
- Remaining dispute: $208,853 (React performance payroll) [para 6]

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Project 1 – Metadata Architecture

- Goal: fully flexible metadata-driven platform [para 18–19]
- Shift: Windows desktop → cloud web app [para 17]
- Four subprojects forming Version 5 [para 2, 18]
- **Performance,** metadata integration, scalability, UI overhaul

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Why Subproject 1 Emerged

- Metadata = dynamic fields → thousands of components [para 24]
- Tool-chain overhead exploded under metadata load [para 32]
- React + Redux + Styled Components + HOCs interaction created systemic slowdown [para 20, 24]
- Performance issue was not isolated but project-level [para 12(vi), 32]

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Project vs Subproject Comparison

Aspect	Project 1 (Overall Metadata Platform)	Subproject 1 (React Performance)
Scope	Full Version 5 rebuild – metadata engine + 4 subprojects [paras. 2, 17–19]	UI rendering layer using React+Redux+Styled+HOCs [para. 20]
Expenditures	$61,314 allowed [paras. 4–5]	$208,853 payroll – the core disputed amount [paras. 6–7]
Technological Uncertainty	Can a metadata-driven architecture deliver acceptable performance at scale? [paras. 19, 24, 33]	Can the specific tool combination sustain performance when supporting metadata-driven chaining of thousands of components? [paras. 20, 32]
Hypotheses Tested	Broader hypotheses across platform [paras. 25–35]	Granular hypotheses required to make the metadata architecture viable [paras. 29–30, 33, 35]
Advancement	Provided the architectural context 40 % faster client onboarding + commercially viable metadata-driven SaaS [paras. 21–23]	1,300 ms → 692 ms + novel HOC/Redux insights that made the metadata platform usable [paras. 31, 35]

Technical Challenge

- Initial render time: >1,300 ms [para 33]
- Target: <300 ms [para 33]
- Final: ~692 ms after optimizations [para 31, 33]
- Performance crisis prevented metadata architecture deployment [para 39]

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Experiments & Analysis

- Small optimizations (<10% improvement) [para 25]
- Analyzed component interactions [para 26]
- Consulted public domain & GitHub; no solutions found [para 26–28]
- React diagnostic tool failed due to node explosion [para 29]
- Built custom diagnostic tools [para 29]
- Modified source code (1,300ms→775ms) [para 31]
- Reduced HOCs (775→692ms) [para 33]
- Tested non-standard Redux strategy [para 35]

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Court’s Key Findings

- Systemic uncertainty due to tool-chain interaction [para 32]
- Must evaluate uncertainty at project level [para 12(vi)]
- Work exceeded debugging; involved scientific method [para 104, 112]
- Failure still generated advancement [para 114–116]
- Detailed logs + credible testimony met record-keeping [para 118–120]

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Project-Level Evaluation

- Court assessed Version 5 holistically [para 94]
- Performance uncertainty inseparable from metadata engine [para 32]
- Subproject 1 was not optional; required for project's feasibility [para 39]

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Why Dazzm Won

- Architectural context created uncertainty; not routine debugging [para 32]
- Public domain lacked solutions [para 37, 95]
- CRA expert lacked React/Redux/HOC experience [para 78–79]
- Dazzm provided metrics, diagnostics, and systematic tests [para 29–31]

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SR&ED Lessons from Dazzm

- Describe architecture → show how subproject uncertainty arises [para 32]
- Capture hypotheses, ms-values, node counts [para 29–35]
- Document public-domain search failures [para 26–28]
- Modern framework limits can create technological uncertainty [para 32]

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IV) Paveit Construction – 2025 TCC 129 Case Overview

- Paveit: 10-employee paving company in Slave Lake, Alberta [para 2]
- Project: Mobile Roller-Compacted Concrete (MRCC) process testing [para 3]
- Rock Solid developed the mobile mixer (its own SR&ED project) [para 3]
- Issue: Did Paveit's field activities constitute experimental development? [para 4]

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Project Objectives (As Evidenced)

- Improve RCC strength via faster placement to reduce crystal breakage [para 11]
- Evaluate reduced water content + shorter pulls for strength/appearance [paras 16,19–21]
- Optimize compaction and sealing timing [paras 14,17–18]
- Assess cement powder reduction feasibility [para 20]

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Claimed Technological Uncertainties

- Could a mobile mixer produce high-strength RCC comparable to stationary plants? [paras 15,19]
- Would low water, short pulls, fast compaction, immediate sealing yield consistent gains? [paras 16,19–21]
- Witness testimony linked improvements to reduced crystal disturbance [para 11]

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Court Findings on Uncertainty

- Variables tested are standard RCC parameters (hydration, density, timing) [paras 12,41]
- No uncertainty beyond routine engineering or known industry methods [paras 37–38,42]
- No expert evidence to establish system-level uncertainty [para 35]

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Activities Performed by Paveit

- Five commercial job-site pours (not controlled experiments) [para 15]
- Adjusted water levels, pull lengths, rollers, sealing methods [paras 16–18,26]
- Imported specialty paver to reduce evaporation and speed compaction [para 17]
- Experimented with sealers, mix compositions, wetness variations [para 18]
- Managed environmental factors: heat and wind [para 26]

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Nature of the Work (Court View)

- Work was operational field adjustment, not hypothesis-based testing [paras 37–39]
- Multiple variables uncontrolled; described as trial-and-error [paras 25,26,51]
- Feedback on mixer resulted in reinforcement by Rock Solid (routine testing) [para 18–19]

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Results Claimed by Paveit

- Some tests showed higher 28-day strength than Guide data [para 14]
- Believed low water + fast compaction was an industry first [para 22]
- Believed process improvements advanced concrete placement [para 19]

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Court Findings on Results

- No new technological knowledge produced [paras 22–23,54]
- No publications, patents, or industry standards resulted [para 23]
- Improvements aligned with known RCC science (hydration, density, timing) [paras 12,41]

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Documentation

- Only strength tables existed; no logs or test sheets [para 57]
- No contemporaneous records showing progression or reasoning [para 57]
- Documents never existed—not lost or destroyed [para 57]

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Final Court Conclusion

- MRCC activities = commercial field testing, not SR&ED [paras 37–39]
- No Northwest Hydraulic criteria satisfied
- Appeal dismissed; no eligible experimental development [para 58]

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Respondent Evidence – Paveit Construction (2025 TCC 129)

- No Respondent witnesses called [para 5]
- CRA relied on cross-examination, ministerial assumptions, and the RCC Guide
- Burden of proof remained with Paveit [para 33]

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CRA Counsel & Strategy

- CRA Counsel: Zakiyya Karbani (Respondent) [header]
- Used cross-examination to highlight trial-and-error admissions [paras 25–26,51]
- Highlighted lack of documentation [para 57]
- Challenged existence of technological uncertainty [paras 37–42]

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Ministerial Assumptions Relied On

- Industry knowledge sufficient for project execution [para 36 citing Reply 5(q)]
- Paveit did not formulate or test hypotheses [para 45 citing Reply 5(s)(i)]
- Assumptions stand unless taxpayer rebuts them (Paveit did not) [para 33]

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Use of RCC Guide as Evidence

- Both parties relied on the 2010 RCC Guide [para 8]
- Guide established hydration, density, timing as known parameters [paras 10–12]
- Supported CRA position that work was routine engineering [paras 37–42]

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Why CRA Needed No Witnesses

- Taxpayer bears burden of proof—not CRA [para 33]
- Cross-examination elicited key admissions (trial-and-error, no logs) [paras 25–26, 57]
- Evidence from Paveit insufficient to meet NW Hydraulic criteria
- Appeal dismissed [para 58]

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SR&ED Lessons from Paveit

- Field testing ≠ experimentation unless variables are controlled
- Need hypotheses + systematic testing
- Must establish a real technological gap (not operational challenge)
- Documentation is critical to demonstrating scientific method

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V) BlackBerry (2024 TCC 123) - WIN
What is FAPI & Why It Matters

- FAPI: Foreign Accrual Property Income; applies to Controlled Foreign Affiliates [paras 1–3]
- Certain service income deemed passive under ITA 95(2)(b) [paras 27–33]
- FAPI taxable in Canada even if not repatriated [paras 1–3]
- CRA assessed USD $17.1M as FAPI related to U.S.-based R&D services [para 29]

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Why Foreign R&D Can Trigger FAPI

- CRA: R&D services by U.S. affiliates fall under ITA 95(2)(b) → FAPI [paras 29–33]
- CRA: R&D not sufficiently tied to sale of goods or manufacturing [paras 31–33]
- CRA: No qualification for exclusions in 95(3)(b) or 95(3)(d) [paras 31–33]
- CRA: U.S. affiliates paid no tax attributable to R&D → FAT deduction nil [paras 34, 94–101]

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Why the Court Rejected CRA's Position

- Ambiguity in 95(2)(b) where reciprocal bundled services exist [paras 60–71]
- U.S. affiliates provided integrated services, not isolated R&D [paras 91–93]
- Services connected to sale of goods (carrier testing, device integration) [paras 84–85]
- Services also part of manufacturing/processing outside Canada [paras 86–89]
- Thus, not FAPI under 95(2)(b); excluded via 95(3)(b)/(d) [paras 77–90]

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FAT Deduction & Key Takeaways

- FAT deductible only if foreign tax actually paid & applicable to FAPI [paras 94–101]
- CRA: U.S. affiliates' tax reduced to nil → FAT = nil [paras 95–101]
- Court: Even if FAPI applied, CRA's FAT computation correct [para 104]
- Foreign R&D not FAPI when part of integrated manufacturing/sales chain [paras 75–93]
- Base erosion purpose central to FAPI; foreign R&D may not erode Canadian tax base [paras 72–76]

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