

BETWEEN:

TRADUCTIONS SEMATOS INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on June 9, 10 and 11, 2026, at Quebec City, Quebec

Before: The Honourable Justice Michael U. Ezri

Appearances:

Counsel for the Appellant: Maxime Chouinard

Counsel for the Respondent: Katharine Hsu

JUDGMENT

1. The appellant's motion to amend its amended notice of appeal is allowed and the further amended notice of appeal provided to this Court at the hearing on June 10, 2026 with deletions struck through, is deemed to have been filed on June 10, 2026.
2. The respondent's amended reply to the further amended notice of appeal is deemed to have been filed on June 11, 2026;
3. The respondent's request for relief under rule 98(3) of the *Tax Court of Canada Rules (General Procedure)* is denied;
4. The appellant's appeal of the Minister's determinations in respect of its qualifying periods under section 125.7 of the *Income Tax Act* is dismissed with costs to the respondent; and

5. In the event that the parties cannot agree on costs, then the matter of costs shall be dealt with as follows:
- a. The respondent shall have 30 days from the date of this judgment to file and serve a costs submission. The submission will be no more than 6 pages long at 1.5 spacing. In addition, the submission may include a one or two page appendix with a breakdown of the costs and disbursements sought;
 - b. The appellant shall have 30 days from the day that the respondent serves its costs submissions to make a responding submission. The submission will be no more than 8 pages at 1.5 spacing. In addition, the submission may include a one or two page appendix, with a breakdown of its position on quantum of costs and disbursements; and
 - c. The respondent shall have 15 days from the day that the appellant files and serves its responding costs submissions to file an answer to the appellant's costs submissions not exceeding two pages at 1.5 spacing and may include a one or two page appendix, with a revised breakdown of the costs and disbursements sought in response to the appellant's costs submission.

Signed this 31st day of August 2026.

"Michael Ezri"

Ezri J.

Citation: 2026 TCC 162

Date: 20260831

Docket: 2024-2247(IT)G

BETWEEN:

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REASONS FOR JUDGMENT

Ezri J.

[1] As Maître Chouinard so eloquently put it for the appellant, everyone knew where they were on the most unlucky Friday the 13th of them all, March 13, 2020, when governments around the world, including in Canada and in Quebec, shut down large elements of civil society to try to slow the spread of COVID-19.

[2] The appellant was and still is a successful small business that provides translation services for a roster of clients including governments and large well known companies doing business in Quebec. Following the March 13 announcement, the appellant, like many other businesses, applied for government COVID relief on the basis that its revenues declined from their pre-COVID levels.

[3] For the reasons that follow, I find that the appellant miscalculated its revenue decline because it overstated the baseline revenues from which those comparative calculations flowed. As a result, the Minister's determination of entitlement to relief and his computations of the quantum of that entitlement are upheld.

Brief Outline of Facts

[4] The appellant is 95% owned by Manuel Fresnais. Mr. Fresnais is a certified translator who also holds an MBA. The appellant employs 25 or so translators

who provide text translation services along with some ancillary work like proofreading.

[5] The translation work consists of projects that can be very small or that can run into the tens of thousands of dollars per contract. Most contracts are completed within a period of one month or less, but larger ones may stretch out over several months.

[6] The appellant charges its clients by the word. Billing is generally done when a contract is complete. The appellant's employees are paid every two weeks based on their hours worked.

[7] The appellant uses two software systems in its business. Plunet software is used to manage the work. It allows clients access to a portal where they can place work requests. It allows the appellant to track the work as it progresses and when the work is complete, Plunet generates the invoice.

[8] The appellant's accounting system uses Quickbooks to track and generate financial information. There is some overlap between Plunet and Quickbooks in that billed revenue in Plunet should match Quickbooks revenue, but there can be discrepancies. For example, if the appellant provides a credit to a client, that adjustment is done in Quickbooks and not in Plunet.

The issue in dispute: Work in progress

[9] The reason for this appeal is that for January and February 2020, the appellant included in its revenues, unbilled work in progress (WIP). Mr. Fresnais testified that this decision simply gave effect to a long-standing policy of the company that WIP would be included in revenue and in particular, starting around July 2018, that WIP would be added to revenue only when the total amount of outstanding WIP exceeded \$20,000. This testimony was contentious, but before dealing with the details of the evidence, it is important to address some procedural issues and to lay out the legal framework under which COVID benefit eligibility was determined.

The Procedural Issues

[10] The appellant sought to amend its pleadings. The respondent opposed. The respondent also sought to constrain the appellant's ability to argue its case for

allegedly failing to discharge obligations under Rule 98 to correct discovery answers.

The pleadings Issue

[11] At paragraph 20 of its amended notice of appeal, the appellant alleged that the corporation regularly produced WIP reports, a copy of which was designated as document A-4. The appellant proposed to amend that paragraph to remove the reference to A-4 and to also add a new paragraph, 24.0 which would describe A-4 as a document prepared for the CRA to reconcile Plunet and Quickbooks revenue based on WIP.

Original paragraph	Proposed Amendments
[translation] [20] On the first of the month, the appellant normally produces a table of its WIPs ongoing projects, Document A-4 (the “Table”), indicating the percentage of completion of projects of its contracts spanning more than one month, and thus determines the proportion of income to be allocated to the previous month for each of these projects.	[translation] [20] On the first of the month, the appellant normally produces a table of its WIPs, Document A-4 (the “Table”), ongoing projects indicating the percentage of completion of projects <u>for its contracts</u> spanning more than one month, and thus determines the proportion of income to be allocated to the previous month for each of these projects.
...	[translation] <u>[24.0] As part of the audit and opposition, the appellant produced a table Document A-4 (the “Table”) to identify the months with a \$20,000 discrepancy between the billed revenue in Plunet and the revenue recorded in Quickbooks.</u>

Appellant's Problematic Approach to the Amendment

[12] The respondent opposed the amendment, and frankly I had some difficulty in understanding why this minor amendment was problematic but, on closer examination, I must tender some criticism of the proposed amendment as being somewhat misleading even if that is a result of inadvertence. Instead of being clear about the nature of the paragraph 20 amendment, the approach that was utilized left the impression that the appellant was making a minor correction. It was not doing that at all. Instead, the effect of the paragraph 20 amendment was to slip in unnoticed an entirely different document, A-8 produced at discovery without explicitly identifying that this was the purpose of the amendment or naming the document. Old A-4 was dealt with on a stand-alone basis in new paragraph 24.0. I would also add that the first version of the proposed amendment did not even include the struck-out text and I had to ask for a version with the old and new text to be prepared.

[13] There was no reason for the appellant not to be clear about what document was being referred to in the proposed amendment. The rules for pleading amendments are liberal and generous. In return, parties seeking to amend have an obligation to be clear about what they are doing and why. This process fell short of that requirement.

[14] That said, I find that the amendments should be allowed.

The Amendment Is Not a Withdrawal of an Admission

[15] The respondent treated the amendments as withdrawing a formal admission and as coming too late in the process to be permitted, i.e. on the eve of trial.

[16] With respect to the first issue, I don't agree that a formal admission has been withdrawn. The only formal admission with respect to A-4 was an admission as to authenticity which has not been withdrawn, albeit the description of what A-4 actually represents has changed completely.

[17] Formal admissions, or pleadings the withdrawal of which attract a high standard of scrutiny, are those that change the entire basis upon which a party has advanced its case, or which change a position on an important matter of fact.

[18] In *Merck*, the Federal Court of Appeal was faced with a suite of amendments which for the first time called into question the validity of a patent that had not

been contested earlier. The majority in rejecting the amendments wrote the following:

[33] ... There is, for example, as noted by Lord Griffiths in *Ketteman* (supra, para. 31), "a clear difference between allowing amendments to clarify the issues in dispute and those that permit a distinct defence to be raised for the first time". There is also a clear difference between allowing amendments at trial and allowing amendments before trial (citations omitted). There is also a clear difference, I suggest, between allowing amendments that amount to the withdrawal of an admission and amendments that do not, and a clear difference between allowing amendments that amount to withdrawal of a substantial admission, the result of which is to alter the cause of action and one that relates to a mere admission of fact.¹

[19] The amendments here do not change the basis upon which the appellant defends its case. They do not withdraw an admission of an adverse party's fact in the adverse party's pleading. They do not withdraw a request to admit under Rule 129 of the Rules.²

[20] The respondent invoked articles 2850 and 2852 of the *Civil Code of Quebec* (the Code) in support of their position which provisions provide as follows:

2850 L'aveu est la reconnaissance d'un fait de nature à produire des conséquences juridiques contre son auteur.	2850 An admission is the acknowledgment of a fact which may produce legal consequences against the person who makes it.
2852 L'aveu fait par une partie au litige, ou par un mandataire autorisé à cette fin, fait preuve contre elle, s'il est fait au cours de l'instance où il est invoqué. Il ne peut être révoqué, à moins qu'on ne prouve qu'il a été la suite d'une erreur de fait. La force probante de tout autre aveu est laissée à l'appréciation du tribunal.	2852 An admission made by a party to a dispute or by an authorized mandatary makes proof against the party if it is made in the proceeding in which it is invoked. It may not be revoked, unless it is proved to have been made through an error of fact. The probative force of any other admission is left to the appraisal of the court.

¹ *Merck & Co. Inc. v Apotex Inc.*, 2003 FCA 488, para 33.

² *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a as amended.

[21] Contrary to the respondent's argument, these provisions apply to litigation in the Quebec Courts and do not displace the authoritative nature of the Tax Court's Rules and the cases. That said, it is often appropriate and helpful to refer to provincial law to provide guidance on matters of civil procedure.

[22] In this case, I am not satisfied that the Code dictates a different result than the holding in *Merck*. The respondent did not allege or establish what legal consequence would be produced against the appellant from its erroneous pleading and I do find that the prior pleading contained a factual error which would permit recourse to Article 2852 of the Code.

[23] Since the amendments are in the nature of ordinary pleadings amendments, the general rules for amending pleadings apply. Per *Canderel*, pleadings amendments should be allowed at any stage of the proceedings for the purpose of determining the real questions in controversy, provided that doing so will not result in an injustice that cannot be compensated by costs, and that it would serve the interests of justice to allow the amendment.³

[24] The amendments here add an additional document, A-8, which was previously disclosed on discovery, and they correct a description of A-4, a pre-existing document. The respondent for its part is minimally prejudiced if at all. It explicitly denied old paragraph 20 and pled no knowledge with respect to A-4, so its position has not been compromised by the amendment.

[25] By contrast, I have difficulty in seeing how the interests of justice are served if leave to amend is denied. The old version of paragraph 20 was clearly in error, a proposition not disputed by the respondent. There is no value in refusing permission for the correction of an error in these circumstances.

[26] For these reasons, the appellant's proposed amendments are accepted, as is the respondent's amended reply thereto.

The Rule 98 Issue

[27] The respondent, asked that I apply Rule 98(3) to not accept explanations tendered in evidence with respect to the meaning of Ex. A-8 referenced above. The reason for the request is that A-8 actually consists of four separate reports and

³ *Minister of National Revenue v Canderel Ltd.*, [1994] 1 FC 3 (FCA).

the appellant did not explain this when providing the document in response to discovery question 14.

[28] I decline to limit the explanations regarding A-8. If the respondent did not know what was contained in document A-8 they could have asked a follow-up discovery question to get a more fulsome explanation. They did not do that.

The Legislative Scheme

[29] Section 125.7 of the ITA is a definition driven provision and it is remarkable in its complexity. In the interests of simplicity, I will introduce just three elements of the scheme to start off the analysis:

- a. At a high level, the provision is built on Qualifying Periods (“période d’admissibilité”). The first period starts March 15, 2020 and runs for a little less than one month. Subsequent periods also do not necessarily coincide with calendar months. To deal with the discrepancy between Qualifying Periods and calendar months, each Qualifying Period has a corresponding Current Reference Period (CRP) (“période de référence actuelle”) that is a calendar month. March 2020 corresponds to the first CRP, April 2020 corresponds to CRP 2, etc.
- b. The revenues for each CRP are compared against a baseline to ascertain if there has been a decline. The baseline period is called the Prior Reference Period (“PRP”) (“période de référence antérieure”). The appellant, as permitted under s. 125.7, elected as its PRP the average of its gross revenues for January and February 2020.
- c. In order to be eligible for the subsidies, the appellant’s revenues for CRP #1 had to decline by 15% as compared to its monthly average for January and February 2020. For CRP #2, the revenue decline had to be 30% as compared to the January/February average. Presumably, the 15% reduction reflects the fact that CRP #1 covers all of March 2020, but most businesses operated normally during the first half of March such that they are less likely to have experienced a 30% decline in revenues for the month.
- d. The January and February 2020 revenues have an ongoing impact on entitlement to benefits because they are used to measure revenue declines and establish compensation levels for subsequent qualifying periods.

[30] In computing its income for January and February 2020, the appellant added some \$70,000 in unbilled WIP to its revenues. The breakdown was \$20,000 in January, although \$2000 of that WIP was actually WIP from December 2019. The balance of about \$50,000 was WIP from February.

[31] The \$70,000 did not appear in Plunet in either January or February 2020 because the WIP was not invoiced in either month. Instead, a manual entry was made to Quickbooks to add the amounts to revenue.

[32] The work on those contracts was completed and billed before the end of March 2020. As a result, Plunet showed \$70,000 in billed revenues for March. That amount was not included in Quickbooks revenue in March 2020 since it had already been booked in January and February. If I understood the evidence correctly, a manual entry was needed to back the \$70,000 out of the Quickbooks revenue for March 2020.

[33] The appellant argues that it was allowed to include WIP in computing its PRP amounts by virtue of the following provisions which are set out below:

<i>revenu admissible</i> S'entend, relativement à une entité déterminée pour une période de référence antérieure ou pour une période de référence actuelle, <u>des rentrées de sommes d'argent et autres contreparties reçues ou à recevoir</u> dans le cours des activités normales de l'entité au Canada généralement au titre de la vente de biens, de la prestation de services et de l'utilisation par d'autres des ressources de l'entité dans la période donnée, sous réserve de ce qui suit : ...	<i>qualifying revenue</i>, of an eligible entity for a prior reference period or a current reference period, <u>means the inflow of cash, receivables or other consideration</u> arising in the course of the ordinary activities of the eligible entity — generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity — in Canada in the particular period, subject to the following: ...
(4) Pour l'application de la définition de <i>revenu admissible</i> au paragraphe (1), le revenu admissible d'une entité <u>déterminée est établi conformément à ses pratiques comptables habituelles</u>. Toutefois :	(4) For the purposes of the definition <i>qualifying revenue</i> in subsection (1), the qualifying revenue of an eligible entity <u>is to be determined in accordance with its normal accounting practices</u>, except that:

...	...
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The Issue raised by Cash, Receivables or Other Consideration

[34] The Qualifying Revenue definition is limited to the inflows of cash, receivables, or other consideration. That requirement was not addressed by the parties and so, I will not decide the case by reference to this requirement. However, I want to make it clear that these reasons are not to be taken as an endorsement that WIP can meet this definition. WIP is not cash. WIP that has not been billed or that is not billable under a contract is likely not to be a receivable. Finally, the reference to other consideration must, if we adopt the class closing rule or *ejusdem generis* maxim of statutory interpretation, be limited to inflows that are similar to cash or receivables. It is not at all obvious that unbilled WIP can meet that requirement.

The Legal and Factual Accounting Issue raised by subsection 125.7(4)

[35] The accounting issue is relevant to this case in two related ways:

- a. As a matter of fact, the reference to “normal accounting practices” puts into issue the question of what were the normal accounting practices of the appellant; and
- b. As a matter of law, the reference to “normal accounting practices” raises questions about what limits, if any, can be imposed on the appellant in computing revenues. Both the appellant and the respondent agreed that the method chosen by a taxpayer under section 125.7 cannot be totally unreasonable. However, there was disagreement as to what, if any, other limits apply.

[36] The factual and legal aspects of ‘normal accounting practice’ are related because the evidence about what constitutes acceptable accounting practices can either support or undermine the appellant’s claim that it was in the habit of adding WIP to its revenues. As I explain below, I find that the available accounting evidence tends to undermine the appellant’s assertion that it included WIP in its revenues. At the end of my reasons, I explain that the available evidence tends to point towards the appellant having adopted an unreasonable accounting method if it included WIP in revenue sometimes but not always.

[37] We turn then to the main issue in this case: what were the appellant's normal accounting practices?

Appellant's Normal Accounting practices do not include accounting for WIP as revenues

[38] The appellant claims that the inclusion of WIP in its revenue was part of its normal accounting practices and therefore its calculation of its PRP revenues conforms to the requirements of subsection 125.7(4) of the ITA.

[39] The appellant's treatment of its WIP can be broken down into 4 periods:

- a. Spring of 2016 to November 2017;
- b. December 2017 to November 2019, except for July 2018;
- c. July 2018; and
- d. December 2019 to March 2020.

2016 and 2017 WIP was tracked

[40] For 2016 and most of 2017 the appellant claimed to have tracked its WIP and that seems to be the case.

[41] Mr. Fresnais provided an email attaching monthly WIP spreadsheets that had been sent to the appellant's accountant. The appellant also provided annual financial statements. The annual financial statements show as a balance sheet asset, a WIP amount of almost \$14,000 at the end of 2016 but no balance at the end of 2017, just a dash mark for that line item.

[42] I was also provided with monthly financial information for October 2016 and November 2017 showing WIP as assets for those months.

2016 was not included in revenues

[43] There is no evidence that WIP was included in computing revenues for any month in 2016 or 2017, in addition to being treated as an asset. There is no

evidence that WIP formed part of the revenues of the appellant on its 2016 annual income statement.

[44] Just because an amount appears on a balance sheet, it does not follow that the amount was also included in computing revenue. I asked Mr. Fresnais whether he knew what the accountant did with the monthly WIP statements that he sent them in 2016 and 2017. He did not know how they had been treated.

[45] In his closing argument, counsel for the appellant asked me to infer that the WIP was included in computing revenue in the years in which it was tracked. I decline to do so because the available evidence and law points away from such a finding.

Accounting Reasons for not inferring that WIP was included in revenues

[46] The respondent assumed as a fact that the appellant's method of accounting for WIP for January and February 2020 was inadequate and contrary to the accounting rules for privately held corporations.

[47] The respondent called Vincent Laquerre, the CRA appeals officer to testify. Mr. Laquerre testified that the appellant's approach to adding WIP to revenues did not conform to the accounting rules for private corporations and indeed his report on objection cited to Chapter 3400 of the accounting rules for private corporations. Unfortunately, Chapter 3400 was not put to him as part of his examination in chief and was only tendered to the court as an authority in the respondent's book of authorities.

[48] I did not accept or review chapter 3400 as an authority. I am very respectfully of the view that while courts can take judicial notice that GAAP exists, they should be cautious about taking judicial notice of the contents of GAAP. The rules of accounting are not authorities in the same way as case law or statutes. They are complex guidance to accounting professionals who retain a broad discretion as to when and how the rules should be applied. GAAP principles, except perhaps the most obvious ones, should usually be adduced in evidence either by agreement, or through an appropriate witness. I so hold notwithstanding that from time-to-time, in non-tax contexts, other courts have taken judicial notice

of GAAP.⁴ In other cases,⁵ including tax cases⁶ courts have declined to take judicial notice of specific GAAP principles.

[49] Since Mr. Laquerre relied on those rules in forming an opinion he could have testified as to his use and understanding of those rules as a litigant expert as set out in *Kaul*.⁷ It is therefore unfortunate that Chapter 3400 of the accounting rules was not put to Mr. Laquerre in his evidence. I would have benefitted from his explanation of the rules.

[50] What I do have before me is Mr. Laquerre's testimony that the purported accounting methodology of the appellant is problematic because it lacks consistency: Sometimes WIP is included in revenues i.e., when the amount exceeds \$20,000 a month and sometimes it is not included in revenues. This makes me doubt that an accountant would normally include WIP in revenues in the way described by Mr. Fresnais. However, the \$20,000 policy was only introduced, if at all, in 2018, so I give Mr. Laquerre's evidence no weight for the spring of 2016 to November 2017 period.

Appellant's Lack of Evidence

[51] The appellant led no evidence to show that including WIP in revenues conforms to well-accepted business principles or that it was consistent with GAAP, so I am left with no reason to believe that such treatment is appropriate. I am also left with no basis upon which I might infer that the appellant's accountants added WIP to the appellant's revenues during the 2016-2017 period, or frankly at any other time.

[52] The appellant did not call his current accountant or any past accountant to testify as to how, if at all, they accounted for WIP, in computing revenues.

[53] The person at the appellant's old accounting firm who responded to the appellant's query for the WIP reports noted that it was a former member of that firm who had been the accountant for the appellant and who was best placed to respond to any questions.

⁴ *Sin v Kela Medical Inc.* 2024 ONSC 6767.

⁵ *Joanis v Bourque*, 2014 ONSC 6183, para 34.

⁶ *R v Wilchar Construction Limited*, 79 DTC 5086 (FC TD), para 15, Aff'd w/o reference to this point (1981), [1982] 2 FC 489 (CA).

⁷ *Kaul v R*, 2017 TCC 55, paras 28 to 32.

[54] On the second day of his testimony, Mr. Fresnais advised that he had spoken to his current accountant, Sonia Couture, the night before, regarding the accounting for 2020. I am quite concerned that the appellant saw fit to report on a conversation with Ms. Couture but not to call her as a witness. In any event, Mr. Fresnais' evidence did not include any confirmation that WIP was normally included in revenues prior to January and February 2020.

[55] The result is that the evidence does not show that WIP formed part of the appellant's revenues in 2016 or 2017 or that I can infer such treatment on the basis that this is how WIP is normally treated for accounting purposes.

Other Source of Information about treatment of WIP: the ITA and the case law

[56] The only other information available to me on the treatment of WIP for accounting purposes comes from the ITA and the decided case law. I am reluctant to draw a strong inference that the accounting treatment of WIP follows the tax treatment of WIP, but if it does, that treatment does not help the appellant.

[57] Subsection 10(5) of the ITA, states that in computing income, WIP is to be treated as inventory. This could explain why WIP shows up as an asset on a balance sheet, but it does not entail that the WIP was included in gross revenues for that time period.

[58] In the *CDSL*⁸ decision, the Federal Court of Appeal explains that inventory amounts are used in computing the cost of sales for income purposes. This again is not helpful to the appellant because the cost of sales is deducted from gross revenue in order to compute gross profit. The appellant needs to show that WIP, (if it is inventory) gets added to gross revenues and not subtracted from it.

[59] A much more detailed discussion of the accounting treatment of WIP is found in the *Bombardier* case. That case does have income inclusions based on WIP⁹, but I am reluctant to read too much into the case because it is clear that Bombardier was receiving payments as work progressed. The courts in that case also had the benefit of expert accounting evidence to guide their deliberations.

⁸ *CDSL Canada Limited* 2008 FCA 400, para 28.

⁹ *R v Bombardier Inc.* 2012 FCA 46, para 8 referring to agreed facts para 6, 7, 10 and 11, Aff'g, 2011 TCC 48.

[60] If the ITA or the case law had mandated the treatment of WIP as a revenue inclusion, even when no amount was billed or received, it would have given me some comfort that perhaps this is also the appropriate treatment for financial reporting purposes, but these sources point away from such a holding.

Conclusion on “normal accounting practices” April 2016 to November 2017

[61] I am satisfied that WIP was tracked between April 2016 and November 2017 because there is evidence to show that to be the case.

[62] However, I am not satisfied that WIP was included in revenues between April 2016 and November 2017 because the available evidence shows that WIP was treated only as an asset and not as revenue. I am not prepared to infer that WIP was treated as revenue because there is no evidence that WIP was or would normally be treated as a revenue item, and there is some statutory and judicial authority that points away from such treatment, albeit only in the context of tax accounting.

December 2017 to June 2018

[63] I have no data or WIP spreadsheets for the December 2017 to June 2018 periods and no reason to believe that WIP was being systematically tracked during that time.

[64] Mr. Fresnais attributed those evidentiary gaps to problems with the external accountants. He explained that the appellant switched accountants in 2018 to the Operio Firm (related to, or perhaps later acquired by, Raymond Chabot “RC”). The appellant had difficulty with the new firm and later switched again. The problems were significant enough that the appellant incurred additional accounting expenses to address the issues, some of which were apparently reimbursed by RC.

[65] I accept that there were issues with Operio, but I don’t accept that this explains the lack of WIP spreadsheets for December 2017 to June 2018. WIP was generated using Plunet and not Quickbooks. It is difficult to see how the accounting issues mentioned by the appellant relate to the lack of WIP tracking given that it was the appellant rather than the accounting firm who generated the WIP spreadsheets from Plunet.

[66] The emails between the appellant and RC focus on what are described as [translation] “false invoices” created to balance the deposits, as the major issue. On cross-examination, Mr. Fresnais explained that the additional work needed to fix the accounting problems related to the accounts receivable, which is not relevant to unbilled WIP. In short, there is no reference to WIP as being the source of the problems with RC.

[67] I refer again to my earlier concerns that no accountant, bookkeeper or person with actual knowledge testified with respect to these matters.

[68] I also remain troubled by the absence of a WIP balance in the 2017 annual financials of the appellant. It is of course possible that the WIP balance was zero on December 31, 2017, but I think that is unlikely. Per the WIP spreadsheets provided to me, there was a positive WIP balance for every available month from April 2016 to November 2017.¹⁰

[69] I find that the routine tracking of WIP ceased in December 2017 and was no longer part of the appellant’s annual financial statements. I also find that WIP, tracked or otherwise, was not included in the appellant’s revenues.

¹⁰ The spreadsheet for May 2016 has no amounts. I have no spreadsheet for March 2017.

July 2018

[70] Mr. Fresnais testified that even before July 2018, the appellant would generate not just the WIP reports that I have just described, but actually four separate reports. His evidence was that this practice dated back to 2013. However, around mid-2018 he stopped sending the WIP reports to the appellant's accountants, unless the amount of the WIP was \$20,000 or more.

[71] For July 2018, I was provided with all four reports. The first report was for billed work and was not considered as part of WIP. A second worksheet tracked projects approved for billing, but it was not material in July 2018. The third worksheet was for WIP and is like the ones for 2016 and 2017. The fourth worksheet tracked jobs that were completed and delivered but not billed. Mostly that work had been done in the prior month.

[72] The third worksheet with the WIP totalled just over \$18,000 but some of those amounts were in US dollars so the value in Canadian dollars was somewhat higher.

[73] If I understood the evidence correctly, it was the third report that the appellant stopped sending to the accountants, unless the total of that report was \$20,000.

[74] The total for delivered but unbilled work i.e. the fourth report was over \$25,000 but with a significant portion of that amount being in US dollars. This report is not relevant. If similar reports for delivered but unbilled work were prepared for earlier periods, they were not provided to me, so I can't compare the totals or draw any conclusions about how significant the \$25,000 total for delivered but unbilled work might have been in July 2018.

[75] Mr. Fresnais testified that the WIP for July 2018 was tracked because it exceeded \$20,000. The July 2018 WIP along with the other three reports were sent to Operio accountants but the WIP amounts were not added to the July 2018 revenues. Mr. Fresnais attributed that omission to the problems with Operio, that I have described but I do not give weight to his supposition because he does not explain how he knows that to be true and, as I already stated, I have no evidence that WIP is routinely something that gets added to the revenues of the appellant or of anyone else. As far as I can tell, the July 2018 WIP was not added to revenue because WIP is never added to revenue.

[76] From this point forward, I also give some weight to Mr. Laquerre's testimony regarding accounting principles. The intermittent inclusion of WIP as revenues in some months but not others would have raised questions about the consistency of the appellant's accounting. This militates against inferring that WIP was included in revenues in July 2018 or on a go-forward basis but only intermittently.

August 2018 to November 2019

[77] Mr. Fresnais testified that from August 2018 to November 2019 he would look at WIP at the end of every month and if WIP exceeded \$20,000 in any such month he would print a report. However, he provided no WIP report for any of these periods. He testified that this was because there were no months in which WIP exceeded \$20,000. I reject that testimony for two reasons:

- a. One can compare the 17-month period of August 2018 to November 2019 with the 17-month period of April 2016 to November 2017. For that earlier 2016 to 2017 period, we find one month where the total WIP exceeds, \$20,000,¹¹ and another four months¹² where the total WIP exceeds the \$18,000 amount, with a significant US currency component. Yet somehow in the 17 months from August 2018 to November 2019, there is apparently not a single month in which WIP approaches or exceeds \$20,000. I find this questionable and it leads to my second point;
- b. Mr. Fresnais did not testify that he actually recalled the WIP for the periods after July 2018. I think that he is actually relying on the absence of reports as proof that WIP was below \$20,000 and that therefore no report was required. I view that evidence as tautological in nature. I would have required actual reports to conclude that the WIP for all of those months was below the \$20,000 level, such that no accounting action was required.

[78] The appellant's case rests heavily on the assertion that it rarely had significant WIP after July 2018, hence there was no need to generate WIP reports, whereas January and February 2020 had abnormally high WIP balances. However, the best available data from 2016 to 2017 is inconsistent with that assertion. I place significant weight on both the relatively high number of months with

¹¹ June 2016

¹² June 2016, October 2016, November 2016, January 2017 and September 2017.

elevated WIP between 2016 and 2017 (5 out of 17 months) and on the lack of data post July 2018 to show that somehow this WIP pattern had changed.

December 2019 to March 2020

[79] For December 2019, there was approximately \$2,400 in WIP. No contemporaneous report was prepared for December 2019 and no WIP amount was included in the 2019 financial statements.

[80] For January 2020 Ex. A-4 shows that there was a WIP total of \$20,625 that was added to Quickbooks revenue. However, the actual January WIP was only \$18,124. The appellant added the \$2400 in December WIP to arrive to that \$20,625 total.

[81] For February 2020, the WIP added almost \$50,000 to revenues in Quickbooks per A-4. Apparently, this was a unique situation. At no time between 2016 and Feb 2020 had the WIP been close to this amount. The February 2020 WIP apparently resulted because the appellant had received two large contracts in December which were still unbilled at the end of February. I do however note that those contracts only make up about \$17,000 of the February WIP. The appellant's normal business seems to comprise more than 2/3 of the WIP including over \$16,000 from their major hardware store customer. I therefore hesitate to find that February 2020 was all that anomalous since so much of the WIP seemed to relate to routine work.

[82] The appellant's treatment of its WIP for the December 2019 to February 2020 periods lack consistency. The December WIP is added to the January WIP to arrive at \$20,000, but neither the December nor the January WIP is added to the February amount of \$50,000 to produce a total of \$70,000. So as far as I know January is the only month in which the appellant combines the WIP for that month with the WIP for a prior month.

[83] The appellant's explanation of why the December 2019 WIP was added to January 2020 was not persuasive. Mr. Fresnais noted that the December amount was not material enough to justify tracking it. That may be so, but if it was not material enough to consider in December 2019, it surely was also not material enough to add to January 2020.

[84] In March, the appellant did finally bill out all of the WIP from January and February. In its Quickbooks records for March 2020, the appellant deducted from

revenues, the \$70,000 in WIP that it had added to the January and February 2020 revenues.

[85] I understand why the appellant backed out \$70,000 from its March revenues. If it had not done so the result would be a double count i.e. the amounts would be counted as WIP revenues in January/February and also would be included as regular billed revenues in March. What I don't understand is why, for accounting purposes, it would ever be preferable to record the amounts as revenues when they are WIP but not when they are billed.

[86] In short, the appellant added \$70,000 in revenues to the January/February revenues and removed that \$70,000 from the March revenues.

[87] Using Ex. A-4 the following table illustrates the appellant's revenues with the WIP adjustments as compared to what they would have been without the WIP adjustments:

Month	Revenues with WIP included or removed per Quickbooks	Revenues without the WIP adjustments
Jan 2020	\$183,308	\$162,774
Feb 2020	\$213,612	\$163,548
March 2020	\$126,109	\$196,707

The Problem with the appellant's December 2019 to March 2020 accounting records

[88] Thus far I have described how the appellant dealt with its WIP between December 2019 and March 2020, but I have left out an important detail in that recitation.

[89] The appellant did not, at the end of December 2019, or January or February 2020, generate WIP reports comparable to July 2018, and having found that the WIP exceeded \$20,000, retain copies of those reports or send them to its accountant. This failure to review WIP and to generate WIP reports is contrary to

what Mr. Fresnais testified was supposed to have been the procedure of the appellant.

[90] The appellant did not review its WIP for the January to March period until April 2020, after the government had announced its COVID relief program. Only then did it suddenly decide that it needed to carefully review its WIP as part of its s. 125.7 application process.

[91] Mr. Fresnais explained that the delay in preparing records arose because the appellant did not have a bookkeeper available prior to April 2020. The appellant had decided at some earlier point to not have its accountant prepare GST returns and other accounting records. Instead, it retained Sonia Couture, a contractor, to do the job effective April 1, 2020. Mr. Fresnais then sent her records needed by her.

[92] Mr. Fresnais also explained that since WIP was derived from the Plunet system and since that system could not operate retrospectively, he could not in April 2020 go back in time and print actual WIP reports for December 2019 or January/February 2020 that were comparable to July 2018. The best that he could do was to generate Ex. A-11 which was a reconstruction of the WIP during those prior periods.

[93] These explanations make no sense to me for the following reasons:

- a. Ms. Couture really had no role to play in the generating of WIP, so it doesn't matter when she was hired; and
- b. February 2020 is a big problem for the appellant. If the appellant was really in the habit of reviewing WIP on a monthly basis and generating reports from Plunet, then February 2020 was the one month when a big WIP report should exist given the \$50,000 in WIP for that month. It is impossible for Mr. Fresnais to have reviewed the February WIP and then decided that nothing needed to be printed. I think that he simply never reviewed it at all.

[94] The inference is irresistible: The appellant retroactively decided to include WIP as a part of its revenue. It did so only after the government announced its COVID relief measures and it did so specifically to increase its baseline revenues for January and February 2020, while also decreasing revenues for March so that it could show that revenues declined in March as compared to January and February, when in fact revenues had not declined, but had actually gone up in March 2020.

Prior to April 2020, the appellant was not in the habit of tracking WIP nor was it in the habit of including WIP as a component of revenue. I make this finding even though the appellant states that it had good reasons for tracking WIP.

Appellant's Reasons for Tracking WIP

[95] Mr. Fresnais noted two issues that were addressed by tracking WIP.

[96] The first issue related to cash management. The appellant's clients were generally invoiced only when work was completed but the appellant's employees were paid every two weeks. A high WIP balance could be a problem since the workers were being paid before the work could be invoiced to the clients.

[97] I understand that there can be a gap between the time that work is done and the time that it is billed. I can even understand why one might want to track WIP in order to monitor that gap, especially if expenses related to that WIP, like salaries, are paid during that gap period. My problem is that I don't see how adding unbilled WIP to the monthly revenues would in any way address this issue. No such explanation was tendered. I therefore don't find this evidence establishes that WIP, even if it was tracked, was added to revenue by the appellant at any point before or during the time periods in issue.

[98] The other reason advanced by the appellant, which in the end seemed to be more important, was that monitoring WIP was a way to monitor the productivity of the employees. The appellant bills its clients by the word but pays its workers by the hour. An employee who takes too long to do the work can cut into the profits of, or even cause losses on, the contracts.

[99] It is not clear how monitoring WIP addresses the problem of worker productivity. No actual evidence was tendered to show that the appellant ever used WIP in its dealings with an actual employee. Further, it is not clear how the need to track worker productivity correlates with the \$20,000 threshold below which, WIP is not tracked. The \$20,000 threshold is based on the total WIP of all contracts and so is meaningless when considering time spent by one worker on one contract which is where productivity is measured. A worker can spend too much time on a contract regardless of whether the monthly WIP is more or less than \$20,000. Presumably, if worker productivity is an issue, then looking at the amount of time spent by a worker on a completed and billed contract is just as useful as looking at time spent on a contract that is in process. This is especially true given the appellant's testimony that the risk of losing money is most acute on

a smaller contract where the per word revenue may be swamped by the hours paid to an employee to do the translation.

[100] The appellant's evidence was that they received new work all the time and completed old work on a continuous basis. No evidence was adduced that the month-end was particularly important in either receiving or terminating projects. So, at the end of every month, it is inevitable that many contracts will still be, in-progress, and contributing to WIP. It is very difficult to see how the value of that, in-progress work has any relationship with the question of worker productivity during that month.

[101] On balance I find the following regarding the stated reasons for tracking WIP:

- a. The reasons are not compelling enough to corroborate or support the appellant's contention that it tracked WIP; and
- b. The reasons, even if they did support the allegation that the appellant tracked WIP, do not support the appellant's contention that the unbilled WIP was added to revenues.

[102] In finding against the appellant on these points, I don't suggest that the respondent or this Court can second-guess the appellant's choices when it comes to managing its business. I simply don't find that the explanations of why WIP was tracked prove that WIP was related to accounting for revenues.

[103] I do think however that the Minister's determination of entitlement did raise an issue about second-guessing the appellant's accounting practice and I want to conclude my reasons by returning to the accounting issue from a legal perspective and asking whether as a matter of law, the alleged accounting treatment of the appellant was so unreasonable as to fall outside the bounds of what would be acceptable under section 125.7 of the ITA.

Is the Appellant's accounting methodology unreasonable

[104] The respondent asserts that the method used by the appellant was inadequate and contrary to accounting principles applicable to private corporations.

[105] The appellant argues that section 125.7 only requires that the appellant's method of computing Qualifying Revenues be determined in accordance with its

normal accounting practices. They allege that this is what they did and that the Minister's decision amounts to second-guessing the taxpayer's use of a method that yields an accurate picture of its financial position. Per *Canderel*, the appellant is not bound to use GAAP. It is entitled to use, "whatever well-accepted business principles will be most useful in depicting profit".¹³

[106] *Canderel* goes on to state that if the Minister insists on some alternate computational method, then he bears the burden of showing that such method provides a more accurate picture of the income in issue. However, the appellant explains that this principle does not apply in the context of s. 125.7. If the method used is not unreasonable and conforms to the normal accounting practices of the appellant, the Minister cannot substitute another method, even if it provides a more accurate picture of revenues.

[107] I think that the appellant is right that *Canderel* has to be read in light of the specific statutory language of subsection 125.7(4) of the ITA. I would therefore summarize the way in which Qualifying Revenue works as follows:

- a. The Eligible Entity must establish as a fact what its normal accounting practices were in the computation of Qualifying Revenue;
- b. The general rules that have developed in the context of determining profit under section 9 of the ITA in cases like *Canderel* still apply. However, they must be modified to reflect the fact that s. 125.7 was drafted to respond to a crisis and is narrowly focused on the normal accounting practices of the Eligible Entity to determine, not annual net income, but gross monthly revenues in the lead up to the COVID pandemic. The key modification to *Canderel* that emerges is that the Minister cannot substitute a more accurate method of computing income than the normal accounting practices of the Eligible Entity, even if he could have done so under *Canderel*. That is because the text of section 125.7 explicitly adopts the method used by the Eligible Entity; and
- c. Those normal accounting practices of the Eligible Entity cannot be wholly unreasonable. I appreciate that there is nothing in the text of subsection 125.7(4) of the ITA that includes a reasonability standard, but I also believe

¹³ *Canderel Ltd. v R.*, [1988] 1 SCR 147, para 51.

that it would be absurd to read subsection 125.7(4) as permitting wholly unreasonable methods to be used in determining Qualifying Revenues.

[108] If I had found that the appellant's normal accounting practice was to include WIP in revenues only some of the time, I am respectfully of the view that, on the evidence that I heard from the respondent and based on *Canderel*, that practice is unreasonable.

[109] The 'sometimes' inclusion of WIP in revenues tends to contravene the basic purpose of non-tax accounting as explained in *Canderel*:

“Financial accounting is usually concerned with providing a comparative picture of profit from year to year, and therefore strives for methodological consistency for the benefit of the audience for whom the financial statements are prepared...¹⁴”

[110] That comparative picture can only be provided if the rules are the same month after month and year after year. That is not what the appellant does.

[111] Further, the provisions of section 125.7 are intended to provide subsidies to businesses whose revenues declined markedly when comparing their January/February 2020 periods to revenues in subsequent periods. That purpose is thwarted if businesses have adopted practices that include particular items in revenue, here WIP, only some of the time, and then only using an arbitrary financial threshold which is itself not tracked or applied consistently.

[112] The above problems are compounded where the revenue item is tracked for purposes that relate to worker productivity and have no obvious link to computing gross revenues.

[113] It may be that, on a better factual record, some of these questions could have been addressed in a satisfactory way, but no such record was put before the Court.

Conclusion

¹⁴ *Canderel*, *supra* note 13, para 36 [emphasis added].

[114] I do not accept the appellant's contention that its normal accounting practice was to track its monthly WIP. I find that it did not do so systematically after November 2017.

[115] I do not accept that WIP was normally included by the appellant in revenues. Mr. Fresnais could not confirm that WIP was ever treated as revenues. No current or prior accountant or bookkeeper was called to give such evidence. The best evidence available are the annual financial statements for 2016 and 2017 along with the monthly financials for October 2016 and November 2017. They all show WIP as an asset on the appellant's balance sheets. They are silent as to whether the unbilled WIP was included in revenue.

[116] I do not accept the appellant's contention that it had a \$20,000 threshold for tracking WIP after mid 2018. No evidence was adduced to support the contention and the appellant's failure to print a contemporaneous WIP report for February 2020 when it ostensibly had some \$50,000 in WIP contradicts this assertion.

[117] To the extent that the ITA or case law are relevant to the accounting for WIP, they do not show that unbilled WIP is an item of revenue or that an accountant or bookkeeper would treat it as such for tax accounting purposes. This raises doubts as to why it might be so treated for financial accounting purposes.

[118] The stated reasons for tracking WIP do not support a finding that the WIP needed to be tracked or that it was included in revenue. WIP does not appear to be related to the management problems ostensibly addressed by tracking WIP, still less by adding it to revenues.

[119] The inclusion of WIP in revenue for January and February 2020 was added after the Covid relief measures were announced and in response thereto.

[120] Even had I accepted the treatment of WIP alleged by the appellant, that treatment is unreasonable. The treatment of WIP did not need to accord with GAAP or even to be better than a method advanced by the Minister, but it could not be wholly unreasonable either. The alleged accounting treatment of WIP was unreasonable because it did not produce a consistent picture of revenue. Sometimes WIP is revenue and sometimes it is not.

[121] I therefore dismiss the appeals of the appellant from the determinations of the Minister reducing its benefits under subsection 125.7 of the ITA for the

qualifying periods from March 15, 2020, to October 23, 2021, except for Period 5, July 5, 2020, to August 1, 2020, which was not disputed before me.

Costs

[122] The respondent is entitled to costs.

[123] In the event that the parties cannot agree on costs submissions may be made as follows:

- a. The respondent shall have 30 days from the date of this judgment to file and serve a costs submission. The submission will be no more than 6 pages long at 1.5 spacing. In addition, the submission may include a one or two page appendix with a breakdown of the costs and disbursements sought;
- b. The appellant shall have 30 days from the day that the respondent serves its costs submissions to make a responding submission. The submission will be no more than 8 pages at 1.5 spacing. In addition, the submission may include a one or two page appendix, with a breakdown of its position on quantum of costs and disbursements; and
- c. The respondent shall have 15 days from the day that the appellant files and serves its responding costs submissions to file an answer to the appellant's costs submissions not exceeding two pages at 1.5 spacing and may include a one or two page appendix, with a revised breakdown of the costs and disbursements sought in response to the appellant's costs submission.

Signed this 31st day of August 2026.

“Michael Ezri”

Ezri J.

CITATION: 2026 TCC 162

COURT FILE NO.: 2024-2247(IT)G

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HIS MAJESTY THE KING

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