Docket: 2002-2821(IT)G

BETWEEN:

QUALI-T-TUBE ULC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 14, 2004, at Montréal, Quebec.

Before: The Honourable Justice B. Paris

Appearances:

Counsel for the Appellant: Louis Tassé

Counsel for the Respondent: Marie Bélanger

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is allowed on the basis that the Appellant's cost of labour should be reduced by an amount equal to its *pro rata* share of $191,081 (that is, one-half of the salary paid to Ms. Bazelais in 1999) and on the basis of the Respondent's concessions, which are set out in the appendix to these Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of August 2005.

"B. Paris"

Paris J.

Translation certified true
on this 27nd day of February, 2006.
Garth McLeod, Translator

Docket: 2002-2824(IT)G

BETWEEN:

QUALI-T-TUBE INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 14, 2004, at Montréal, Quebec.

Before: The Honourable Justice B. Paris

Appearances:

Counsel for the Appellant: Louis Tassé

Counsel for the Respondent: Marie Bélanger

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is allowed on the basis that the Appellant's cost of labour should be reduced by an amount equal to its *pro rata* share of $191,081 (that is, one-half of the salary paid to Ms. Bazelais in 1999) and on the basis of the Respondent's concessions, which are set out in the appendix to these Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of August 2005.

"B. Paris"

Paris J.

Translation certified true
on this 27nd day of February, 2006.
Garth McLeod, Translator

Docket: 2002-2826(IT)G

BETWEEN:

QUALI-T-FAB ULC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 14, 2004, at Montréal, Quebec.

Before: The Honourable Justice B. Paris

Appearances:

Counsel for the Appellant: Louis Tassé

Counsel for the Respondent: Marie Bélanger

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is allowed on the basis that the Appellant's cost of labour should be reduced by an amount equal to its *pro rata* share of $191,081 (that is, one-half of the salary paid to Ms. Bazelais in 1999) and on the basis of the Respondent's concessions, which are set out in the appendix to these Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of August 2005.

"B. Paris"

Paris J.

Translation certified true
on this 27nd day of February, 2006.
Garth McLeod, Translator

Docket: 2002-2827(IT)G

BETWEEN:

QUALI-T-FAB INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 14, 2004, at Montréal, Quebec.

Before: The Honourable Justice B. Paris

Appearances:

Counsel for the Appellant: Louis Tassé

Counsel for the Respondent: Marie Bélanger

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is allowed on the basis that the Appellant's cost of labour should be reduced by an amount equal to its *pro rata* share of $191,081 (that is, one-half of the salary paid to Ms. Bazelais in 1999) and on the basis of the Respondent's concessions, which are set out in the appendix to these Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of August 2005.

"B. Paris"

Paris J.

Translation certified true
on this 27nd day of February, 2006.
Garth McLeod, Translator

Citation: 2005TCC373
Date: 20050804
Docket: 2002-2821(IT)G

BETWEEN:

QUALI-T-TUBE ULC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND

2002-2824(IT)G

QUALI-T-TUBE INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND

2002-2826(IT)G

QUALI-T-FAB ULC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND

2002-2827(IT)G

QUALI-T-FAB INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Paris J.

[1] Subsection 125.1(2) of the *Income Tax Act*, R.S.C., c. 1, 5th Suppl. ("the *Act*") provides that a taxpayer may deduct from its tax payable an amount equal to 7 percent of its manufacturing and processing profits. A taxpayer's manufacturing and processing profits are computed using the formula set out in the *Income Tax Regulations*, C.R.C. 1978, c. 945 ("the *Regulations*").

[2] The Minister of National Revenue made adjustments involving various amounts used in computing the four appellants' manufacturing and processing profits for the years to which these appeals pertain,[1] and reassessed them to reduce their manufacturing and processing deductions. The appellants have appealed from those reassessments.

[3] At the hearing, the parties' counsel noted that certain issues had already been the subject of an agreement (as stated in the Appendix to these reasons) and that the only adjustments still in issue pertained to the computation of the appellants' labour costs, which represent one of the variables in the formula used to calculate manufacturing and processing profits.

[4] The only issue in this case is whether the management fees that the four Appellant corporations paid to a related corporation should be considered part of the four corporations' cost of labour when calculating that cost for the purpose of determining their manufacturing and processing profits.

[5] The appeals were heard on common evidence.

Background

[6] The appellants were part of a group of companies that were all directly or indirectly held by Frank Talarico.

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[1] The 1997, 1998 and 1999 taxation years of Quali-T-Tube Inc., the 1998 and 1999 taxation years of Quali-T-Fab Inc., and the 1999 taxation year of Quali-T-Tube ULC and Quali-T-Fab ULC.

[7] Mr. Talarico owned all the shares of Quali-T-Groupe Inc. ("Groupe") and Talfrank Inc.

[8] Groupe, in turn, owned all the shares of two of the appellants, Quali-T-Tube Inc. ("Tube Inc.") and Quali-T-Fab Inc. ("Fab Inc."). It also owned all the shares of Quali-T-Galv Inc. ("Galv Inc.") and Quali-T-Groupe International USA Inc. ("Groupe USA").

[9] Talfrank Inc. owned all the shares of the other two appellants, namely Quali-T-Tube ULC ("Tube ULC") and Quali-T-Fab ULC ("Fab ULC").

[10] Fab Inc., a subsidiary of Groupe, owned all the shares of Quali-T-Fab U.S.A. Inc. ("Fab USA").

[11] The corporations were primarily engaged in the production and sale of metal products. In particular, until the middle of 1999, Tube Inc. and Fab Inc., both of which are appellants, operated a business that produced steel tubes. In the middle of 1999, their commercial activities were transferred to the other two appellants, namely Tube ULC and Fab ULC, respectively, as part of a corporate restructuring.

[12] Groupe provided management services to most of the corporations in question, including the appellants. Talfrank Inc. also provided management and consulting services to several Talarico corporations. In 1997, 1998 and 1999, Groupe's entire income was derived from the management fees that the appellants and Galv Inc. paid it.

[13] The management fees that each of the appellants and Galv Inc. paid during the years under appeal are specified below:

	1997	1998	1999
Tube Inc.	$962,500	$897,250	$388,050
Fab Inc.	0	$269,000	$219,420
Tube ULC	0	0	$174,810

Fab ULC	0	0	$64,060
Galv Inc.	0	$23,948	$80,240
Total	$962,500	$1,190,198	$926,580

Reassessments

[14] The Respondent called Claude Charpentier, the Canada Revenue Agency auditor who prepared the reassessments in issue, to testify.

[15] In reassessing the appellants, he assumed that all the expenses that Groupe had incurred during the years in issue were incurred as an intermediary for the benefit of the appellants and Galv Inc., and that each Appellant was required to pay management fees to Groupe in order to bear its share of these expenses.

[16] The following is his calculation of each Appellant's annual share of Groupe's expenses based on the percentage of the total management fees that each appellant paid to Groupe:

	1997	1998	1999
Tube Inc.	100.00%	75.38%	41.88%
Fab Inc.	0	22.60%	23.68%
Tube ULC	0	0	18.87%
Fab ULC	0	0	6.91%
Galv Inc.	0	2.02%	8.66%
Total	100.00%	100.00%	100.00%

The auditor then calculated the total expenses which Groupe incurred on behalf of the appellants and Galv Inc. and which qualified as costs of labour under section 5202 of the *Regulations*. This amount includes wages, fringe benefits and management fees paid each year by Groupe, as shown in the following table:

	1997	1998	1999
Wages	$122,777	$444,888	$493,770
Fringe benefits	$53,089	$23,239	$35,014
Management fees	$464,007	$547,720	$333,909
Total	$785,114	$1,015,847	$862,693

The management fees were paid to Talfrank Inc. on account of management services rendered to the appellants and to Galv Inc.

[17] The auditor allocated the costs of labour between the appellants and Galv Inc. using the same percentage that each corporation's payment of management fees is of the total management fees paid to Groupe each year.

[18] For example, in 1997, 100% of the management fees paid to Groupe were paid by Tube Inc. The auditor therefore allocated the entirety of Groupe's labour costs to Tube Inc. for 1997. Likewise, in 1998, 75.38% of the total management fees paid to Groupe were paid by Tube Inc., so the auditor allocated 75.38% of Groupe’s cost of labour to Tube Inc. for that year.

[19] Lastly, the auditor added each Appellant's share of Groupe's cost of labour to each Appellant's respective cost of labour.

[20] When the auditor allocated Groupe's cost of labour among the appellants, he assumed that Groupe's total cost of labour had been incurred in the same proportions as those stated with regard to the management services rendered to the appellants and to Galv Inc.

[21] Consequently, he included, in each Appellant's cost of labour, their share of management fees paid on account of Groupe's cost of labour. The amounts were included as money paid for their management and administration.

The appellants' evidence

[22] Elaine Bazelais, the president of Groupe, testified for the appellants. During the years under appeal, she was also the president of Tube Inc., Fab Inc. and Galv Inc., and a vice-president of Fab USA Inc. and of Groupe USA.

[23] Ms. Bazelais also managed the Appellant corporations, Galv Inc. and even Groupe, and she had certain management duties with Fab USA and Groupe USA. Her entire salary was paid by Groupe. She received $164,150 in 1997, $185,418 in 1998 and $382,161 in 1999.

[24] Ms. Bazelais stated that her duties with regard to Groupe USA were minimal, but that she had devoted some of her time to Fab USA's affairs during the years under appeal.

[25] In 1999, Groupe sold the shares of Galv Inc. to an unrelated third party. Ms. Bazelais said that she participated very actively in the sale of Galv Inc. and that her work in this regard pertained to due diligence, environmental studies, human-resource issues and the production of all necessary documents. She was also involved in the corporate restructuring of 1999. She said that she devoted one-half of her overall time to issues unrelated to the management of the Appellant corporations. She also estimated that she devoted 15% of her time to issues not involving the appellants' activities in 1997, and 25% of her time to such issues in 1998.

Applicable statutory provisions

[26] The manufacturing and processing profit tax credit is set out in subsection 125.1(1) of the *Act*, which provides:

> 125.1. (1) There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year an amount equal to 7% of the lesser of
>
> (*a*) the amount, if any, by which the corporation's Canadian manufacturing and processing profits for the year exceed, where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to 125(1)(c) in respect of the corporation for the year, and
>
> (*b*) the amount, if any, by which the corporation's taxable income for the year exceeds the total of
>
> (i) where the corporation was a Canadian-controlled private corporation throughout the year, the least of the amounts determined under paragraphs 125(1)(a) to 125(1)(c) in respect of the corporation for the year,
>
> (ii) 10/4 of the total of the amounts that would be deductible under subsection 126(2) from the tax for the year otherwise payable under this Part by the corporation if those amounts were determined without reference to section 123.4, and

> (iii) where the corporation was a Canadian-controlled private corporation throughout the year, its aggregate investment income for the year (within the meaning assigned by subsection 129(4)).

[27] The formula for computing the "Canadian manufacturing and processing profits" of a taxpayer is found at section 5200 of the *Regulations*:

> **5200.** Subject to section 5201, for the purposes of paragraph 125.1(3)(*a*) of the Act, "Canadian manufacturing and processing profits" of a corporation for a taxation year are hereby prescribed to be that proportion of the corporation's adjusted business income for the year that
>
> (*a*) the aggregate of its cost of manufacturing and processing capital for the year and its cost of manufacturing and processing labour for the year,
>
> is of
>
> (*b*) the aggregate of its cost of capital for the year and its cost of labour for the year.

[28] This formula can be expressed more simply as

$$CMMP = ABI \times (MPC + MPL)/(C + L)$$

where

CMMP = Canadian manufacturing and processing profits
ABI = Adjusted business income
MPC = Cost of manufacturing and processing capital
C = Capital cost
MPL = Cost of manufacturing and processing labour for the year
L = Cost of labour

Thus, since the "cost of labour" variable is part of the denominator in this formula, an increase in the taxpayer's cost of labour will result in a decrease in its manufacturing and processing profits, which, in turn, will result in a decrease in its manufacturing and processing profit tax credit.

[29] The phrase "cost of labour" is defined in section 5202 of the *Regulations*. The relevant part of this definition is drafted as follows:

> "cost of labour" of a corporation for a taxation year means an amount equal to the aggregate of
>
> (*a*) the salaries and wages paid or payable during the year to all employees of the corporation for services performed during the year, and
>
> (*b*) all other amounts each of which is an amount paid or payable during the year for the performance during the year, by any person other than an employee of the corporation, of functions relating to
>
> (i) the management or administration of the corporation
>
> . . .

The appellants' argument

[30] The appellants object to the inclusion, in their cost of labour under section 5202 of the *Regulations*, of any amount that they paid Groupe as management fees for services provided to them by Groupe and Talfrank Inc.

[31] The appellants argue that the scope of paragraph (*b*) of the definition of the term "cost of labour" is not broad enough to encompass payments made to a corporation because the amounts must be paid for

> the performance . . . by any person . . . of functions relating to
>
> (i) the management or administration of the corporation
>
> . . .
>
> [Emphasis added.]

[32] Thus, this is a question of statutory interpretation that involves the meaning to be given to the term "person" in the applicable provision.

[33] According to counsel for the appellants, the word "person" in this context cannot be interpreted so as to include a corporation because a corporation cannot perform management or administrative functions. Only individuals can do so. If Parliament had wanted to include amounts paid to a corporation for services rendered by its employees, it would have specified this, as it did in subsection 402(7) of the *Regulations*, which reads as follows:

> (7) Where a corporation pays a fee to another person under an agreement pursuant to which *that other person or employees of that other person* perform services for the corporation that would normally be performed by employees of the corporation, the fee so paid shall be deemed to be salary paid in the year by the corporation and that part of the fee that may reasonably be regarded as payment in respect of services rendered at a particular permanent establishment of the corporation shall be deemed to be salary paid to an employee of that permanent establishment. (Emphasis added.)

[34] Counsel also referred to the definitions of "labour expenditure" and "Canadian labour expenditure" in subsections 125.4(1) and 125.5(1) of the *Act*, which read, in part:

> "labour expenditure" of a corporation for a taxation year in respect of a property of the corporation that is a Canadian film or video production . . .
>
> . . .
>
> (*b*) *that portion of the remuneration* (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) *that is directly attributable to the production of property*, that relates to services rendered after 1994 and in the year, or that preceding year, to the corporation for the stages of production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to
>
> (i) *an individual* who . . .
>
> (ii) *another taxable Canadian corporation*, to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's employees for personally rendering services for the production of the property, ,

> "Canadian labour expenditure" of a corporation for a taxation year in respect of an accredited production means . . .
>
> . . .
>
> (*b*) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production, that relates to services rendered in Canada after October 1997 and in the year, or that preceding year, to the corporation for the stages of production of the production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year *to a person or a partnership, that carries on a business in Canada through a permanent establishment (as defined by regulation), and that is*
>
> (i) *an individual . . .*
>
> (ii) *another corporation that is a taxable Canadian corporation*, to the extent that the amount paid is attributable to and does not exceed the salary or wages paid to the other corporation's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,
>
> . . .
>
> [Emphasis added.]

[35] Counsel for the appellants submits that these are two examples of situations in which Parliament chose to refer expressly to amounts paid to a corporation for services rendered by its employees. In his view, if Parliament had intended for section 5202 to include, in the payor's cost of labour, payments made to a corporation for services rendered by its employees, it would have used terms analogous to those used in these provisions.

[36] In addition, he says that the scope of the word "person" in the definition of "cost of manufacturing and processing labour" (another variable in the formula that is used to determine manufacturing and processing profits) in section 5202 of the Regulations has previously been restricted to designating an "individual" in *Louben Sportswear Inc. v. The Minister of National Revenue*, 79 DTC 531. The definition reads as follows:

> "cost of manufacturing and processing labour" of a corporation for a taxation year means 100/75 of that portion of the cost of labour of the corporation for that year that reflects the extent to which
>
> (*a*) the salaries and wages included in the calculation thereof were paid or payable to persons for the portion of their time that they were directly engaged in qualified activities of the corporation during the year, and
>
> (*b*) the other amounts included in the calculation thereof were paid or payable to persons for the performance of functions that would be directly related to qualified activities of the corporation during the year if those persons were employees of the corporation,
>
> but the amount so calculated shall not exceed the cost of labour of the corporation for the year;

[37] In *Louben*, D.E. Taylor of the Tax Review Board, while acknowledging the broad scope of the definition of "person" in subsection 248(1) of the *Act*, had no choice but to find that this word, as used in the definition of "cost of manufacturing and processing labour", could not include corporations because "employment" can only be held by an "individual" (a term defined in subsection 248(1) as a person other than a corporation). Although the case at bar does not involve the same variable in the above-mentioned formula, counsel for the Appellant submits that this Court should not draw a distinction between these two variables in the same formula. In his view, an imbalance would be created if one did otherwise.

[38] The appellants also raise the fact that a double counting problem may arise in computing the "cost of labour" of each member of a group of related corporations where each member is seeking a manufacturing and processing profit tax credit. Paragraph 18 of Interpretation Bulletin IT-145R discusses this problem and the administrative mitigation that the Canada Revenue Agency will grant in such situations:

> 18. A problem will occur in a group of associated corporations where one corporation acts as a "paymaster" for the others. To mitigate the double counting effect that will occur when two associated corporations include the same wages in their cost of labour, the CCRA will allow the company paying the salaries and wages to treat these amounts as net of amounts received or receivable from associated corporations in respect of these expenses, provided that this is done for both qualified and non-qualified activities carried on by the employees.

[39] The double counting problem referred to in Interpretation Bulletin IT-145R would arise where an employee of one of the related corporations renders services to another related corporation. The salary paid by the first corporation to that employee would be added to its cost of labour in accordance with paragraph (*a*) of the definition of the phrase "cost of labour" in section 5202 of the *Regulations*. The payments or reimbursements that the second corporation makes to the first corporation for these services would also be added to the second corporation's cost of labour under paragraph (*b*) of this definition.

[40] While Groupe cannot claim a manufacturing and processing profit tax credit in the case at bar — it does not engage in activities in those fields — counsel for the Appellant submits that if Groupe were an operating company entitled to the credit, both Groupe and its subsidiaries would be required to include, in their cost of labour, the wage and labour costs related to the management services rendered to the appellants. He submits that Parliament could not have intended this, and that if the word "person" were interpreted so as to apply only to individuals, this double counting problem would be eliminated.

[41] In sum, counsel for the appellants submits that by accepting his interpretation, this Court would enable the appellants to claim a larger credit, and that this is in keeping with the underlying intent of section 125.1 of the *Act*, which is to give Canadian manufacturers and processors an advantage over foreign competitors (*Canada v. Hawboldt Hydraulics (Canada) Inc. (Trustee of)*, [1995] 1 F.C. 830, at pages 846-47; 94 DTC 6541, at page 6548 (C.A.)).[2]

[42] In the alternative, the appellants submit that if management fees paid to a corporation are included in the definition of the phrase "cost of labour", the portion of the management fees paid to Groupe which should be added to their cost of labour is smaller than what the Minister assumes. According to the appellants, the Minister erred in assuming that all of Groupe's wage and fringe benefit costs were attributable to the management and administration of the appellants and Galv Inc. The evidence adduced discloses that Elaine Bazelais spent 15% of her time in 1997, 25% of her time in 1998 and 50% of her time in 1999 performing duties unrelated to the management of the appellants. Consequently, counsel submits that Groupe bore

[2] In addition, see Jacques Bernier, "Bénéfices de fabrication et de transformation : Le crédit d'impôt au titre bénéfices de fabrication et de transformation en vertu de l'article 125.1 de la L.I.R. : mise à jour jurisprudentielle", Association de planification fiscale et financière, 1999 Conference, vol. 1, 4:1-15, at pages 4:3-4.

only a part of her salary for the benefit of the appellants, and that this is the only part that can be attributed to the appellants' cost of labour.

Analysis

[43] The first question is whether there is, as the appellants claim, any ambiguity in the wording of the definition of the term "cost of labour". If so, in interpreting the term, I will have to attempt to ascertain what Parliament intended when it enacted the definition. However, if the wording is clear and unambiguous, I will have to give effect to it as drafted, and it will be unnecessary for me to inquire into Parliament's intent.[3]

[44] In the case at bar, counsel for the appellants submits that it cannot be determined, from the wording of the definition of "cost of labour", whether the term "person" includes corporations.

[45] I do not agree. The term "person" is defined in section 248 of the *Act* and that definition includes corporations. That definition applies to the *Regulations*,[4] and applies to the case at bar, except if it leads to an absurd result. I am not convinced that any absurdity whatsoever would result from interpreting the word "person" in such a way that it encompasses corporations.

[46] As for the wording of the definitions "labour expenditure" and "Canadian labour expenditure" in subsections 125.4(1) and 125.5(1), and the wording of subsection 402(7) of the *Regulations*, I do not see anything that could assist the appellants. The two definitions are in no way analogous to section 5202 of the *Regulations*, and, although the wording of subsection 402(7) of the *Regulations* is somewhat similar, the objectives pursued by Parliament in each instance are not the same. When interpreting a particular word contained in a statute or in regulations as complex as the *Act* and the *Regulations*, it is not helpful to compare that word or phrase with another one that has been taken out of context from an unrelated provision.

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[3] *Canada v. Antosko*, [1994] S.C.R. 312, at pages 326-27; *Friesen v. Canada*, [1995] 3 S.C.R. 103, at pages 136-37.

[4] See section 16 of the *Interpretation Act*, R.S.C. 1985, c. I-21: "Where an enactment confers power to make regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power. "

[47] Moreover, the reference, in subsection 402(7) of the *Regulations*, to services performed by a corporation or by employees of that corporation, is redundant, because the services performed by a corporation include services performed by its employees. The functions performed by management or employees who are acting on behalf of a corporation are deemed to be acts of the corporation itself.

[48] In addition, I am not convinced that the decision of D.E. Taylor in *Louben*, *supra*, is of any help to the appellants. Indeed, Mr. Taylor was not commenting on the definition of the term "cost of labour"; rather, he was commenting on the definition of the term "cost of manufacturing and processing labour", which is different in at least two respects. I will reproduce the relevant portions of the two definitions to simplify the comparison:

"cost of labour"	"cost of manufacturing and processing labour"
. . .	. . .
(*b*) all other amounts each of which is an amount paid or payable during the year for the performance during the year, by any person other than an employee of the corporation, of functions relating to . . .	(*b*) the other amounts included in the calculation thereof were paid or payable to persons for the performance of functions that would be directly related to qualified activities of the corporation during the year if those persons were employees of the corporation,
(iii) a service or function that would normally be performed by an employee of the corporation,	

[49] Based on this comparison, it can be seen that the definition of "cost of labour" does not specify the party to whom the "other amounts" must be paid and does not contain the term "employees" which led Mr. Taylor to conclude that the word "persons" in the definition of "cost of manufacturing and processing labour" does not include corporations. One is tempted to think that the drafters of these definitions were aware of these two distinctions, and that they chose to define the two expressions differently.

[50] It is also my view that the appellants' argument regarding the double counting of amounts paid by one member of a group of corporations for services rendered to another member of the group cannot succeed.

[51] While the appellants' argument would eliminate double counting for the two corporations, it would also remove the amounts from the cost of labour of the taxpayer to which the management services were rendered and which actually bore the cost of these services. On the other hand, the corporation that provided the services to the related company, and was reimbursed for these services, would nonetheless be required to add the cost of wages to its cost of labour.

[52] This is the opposite of the result achieved by applying the administrative mitigation granted by the Minister under paragraph 18 of Interpretation Bulletin IT-145R. Based on the stated policy, the corporation that has clearly benefited from the management services and has borne the costs of those services must add this cost to its cost of labour. The administrative mitigation appears to be more finely tuned to the presumed objective of the provision than the idea of interpreting the word "person", as used in the expression "cost of labour", to mean what counsel for the appellants proposes that it means.

[53] In my opinion, the meaning of the term "person" in this definition is clear and unambiguous. A simple reading of the provision discloses nothing that suggests that the functions could not be performed by a corporation, which, in turn, relies on its employees. In the absence of ambiguity, it is unnecessary for me to consider the appellants' argument regarding the general objective of section 125.1. Suffice it to say that the general purpose of the provision cannot justify an interpretation that runs counter to the clear wording of a related provision.

[54] Consequently, I find that the Minister did not err in including the amounts paid to Groupe in the appellants' cost of labour. This reasoning would apply, by extension, to the amounts that Groupe paid to Talfrank Inc. for management services rendered to the appellants.

[55] In the alternative, the appellants submit that the Minister erred in attributing to the appellants' cost of labour the entire salary that Groupe paid Ms. Bazelais.

[56] Counsel for the Respondent did not contest the assertion that only that part of Ms. Bazelais' salary that pertains to the management and administration functions that she performed for the appellants should be added to the appellants'

cost of labour. However, she submitted that Ms. Bazelais' testimony alone is not sufficiently credible to establish which part of her time was devoted to issues related to the appellants. Ms. Bazelais did not record her hours of work during the years in issue, and she relied entirely on her own memory of the facts for this period.

[57] After hearing Ms. Bazelais' testimony, I am satisfied that her estimate that she spent roughly half her working hours in 1999 either on the sale of Galv Inc. shares or on the restructuring of the Talarico corporations, is accurate. Ms. Bazelais stated that it was relatively easy for her to make this estimate for 1999 because it was based on specific recollections of facts that were outside the scope of Groupe's normal management activities.

[58] In contrast, her estimates for 1997 and 1998 were less precise. She referred to her Groupe-related management activities and her supervision of Fab USA's sole employee, and to the fact that she had attended certain client meetings with that worker. However, she did not explain how she arrived at the estimate that she spent 15% of her time on these activities in 1997 and 25% of her time on them in 1998. She was content to say that she was basing herself on what she had done and on the hours that she had worked. No specifics were provided. In light of the evidence before me, I have doubts regarding the portion of Ms. Bazelais' time that was devoted to issues unrelated to the appellants' activities in 1997 and 1998. Although Ms. Bazelais made a positive impression on me, and I find that she was an entirely credible witness, she did not seem particularly certain of her estimates concerning her work in 1997 and 1998. In the absence of additional analysis and verification of her work during those years, I find that the appellants have not discharged their obligation to prove which part of Ms. Bazelais' work was not related to their activities.

[59] In summary, the appeals will be allowed on the basis that each of the appellants' *pro rata* shares of the amount of $191,081 (that is, one-half of the salary paid to Ms. Bazelais in 1999) should be subtracted from their cost of labour,

and on the basis of the concessions made by the Respondent and set out in the Appendix to these Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of August 2005.

"B. Paris"

Paris J.

Translation certified true
on this 22nd day of February, 2006.
Garth McLeod, Translator

Appendix

The parties have agreed that the percentage of the salaries paid by the appellants to the employees whose names are set out below, which should be added to their respective "cost of manufacturing and processing labour", is as follows:

Quali-T-Tube Inc. and Quali-T-Tube ULC:

Albert Couture 25%

Stéphane Ferland 45%

Johanne Vadnais 50%

Quali-T-Fab Inc. and Quali-T-Fab ULC:

Richard Hébert 70%

Gino Boucher 70%

CITATION:	2005TCC373
DOCKET NOS.:	2002-2821(IT)G; 2002-2824(IT)G; 2002-2826(IT)G; 2002-2827(IT)G
STYLES OF CAUSE:	Quali-T-Tube ULC Inc., Quali-T-Tube Inc., Quali-T-Fab ULC Inc., Quali-T-Fab Inc. and Her Majesty the Queen
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	October 14, 2004
REASONS FOR JUDGMENT BY:	The Honourable Justice B. Paris
DATE OF JUDGMENT:	August 4, 2005

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