Docket: 2025-768(IT)G

BETWEEN:

941624 ALBERTA LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

2026 TCC 202 (CanLII)

Written Submissions on Costs

The Honourable Gabrielle St-Hilaire, Chief Justice

Counsel for the Appellant:	Jeff D. Pniowsky
Counsel for the Respondent:	Allanah Smith

ORDER ON COSTS

In accordance with the attached Reasons for Order, the Respondent is awarded costs of $5,000.

Signed this 16th day of November 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J.

Citation: 2026 TCC 202
Date: 20261116
Docket: 2025-768(IT)G

BETWEEN:

941624 ALBERTA LTD.,

Appellant,

and

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Respondent.

2026 TCC 202 (CanLII)

REASONS FOR ORDER

St-Hilaire C.J.

I. Introduction

[1] The Appellant, 941624 Alberta Ltd. (941), appealed reassessments made under the *Income Tax Act*, RSC 1985, c.1 (5th Supp) (ITA) for its taxation years ending December 31, 2019, 2020, 2021 and 2022. The Minister of National Revenue reassessed 941 for unreported income and disallowed expenses.

[2] The Respondent filed a motion for an Order quashing the appeals with respect to the 2020, 2021 and 2022 taxation years, on the grounds that 941 did not comply with the requirements of subsection 165(1.11) of the ITA applicable to large corporations such that there were no valid issues before the Court pursuant to subsection 169(2.1).

[3] The Respondent was successful in their motion such that 941 could not appeal to this Court for three of the four taxation years under dispute on the basis that it had failed to comply with the large corporation rules. The motion was granted with costs against the Appellant. I note that 941 appealed the Judgment on the motion to the Federal Court of Appeal but later filed a discontinuance (see File numbered A-165-26).

[4] At the time of my Judgment on the motion, I provided the parties with time to reach an agreement on costs. Having failed to reach such an agreement, the parties have now filed their submissions on costs.

[5] The Respondent seeks solicitor and client costs for the motion, in the amount of $13,482.98, that being full indemnity for the costs incurred in respect of the motion on the basis that the Appellant's conduct was "highly inappropriate". In the alternative, the Respondent submits that elevated costs are warranted but does not provide a specific amount. For comparative purposes, the Respondent stated that an award under Tariff B in Schedule II of the *Tax Court of Canada Rules (General Procedure)* (Rules) would equal $2,800 plus disbursements of $84.80 for a total amount of $2,884.80 in costs.

[6] The Appellant submits that no costs should be awarded but if any were to be awarded, they should be limited to the Tariff amount.

II. Applicable Legal Principles

[7] It is settled law that section 147 of the Rules (reproduced in Appendix A to these Reasons) provides the Court with broad discretionary power to determine the costs of all parties involved in any proceeding before it. That said, in awarding costs, the Court's broad discretionary power must nonetheless be exercised on a principled basis (*R v Bowker*, 2023 FCA 133 at para 32; *Guibord v R*, 2011 FCA 346 at paras 9-10; *Lau v R*, 2004 FCA 10 at para 5; *Hillcore Financial Corporation v R*, 2023 TCC 144 at para 10 [*Hillcore*]).

[8] Subsection 147(3) of the Rules provides a list of factors that the Court may consider in exercising its discretion to award costs pursuant to subsection 147(1). Although these factors are not determinative, nor is it mandatory that the Court consider them, they provide a helpful framework and key considerations in determining costs on a principled basis (see *Fuhr v R*, 2025 TCC 27 at para 8; *Hillcore*, *supra* at para 11; *Velcro Canada Inc. v R*, 2012 TCC 273 at paras 9 and 12 [*Velcro*]). In addition, subsection 147(4) of the Rules specifically provides that the Court may fix costs "with or without reference to Schedule II, Tariff B." The Tariff has been referred to as a "default absent a determination made under section 147 of the Rules" (*Univar Holdco Canada ULC v R*, 2020 TCC 15 at para 49 [*Univar*]; *Duffy v R*, 2020 TCC 135 at para 20) or "a reference point only should the Court wish to rely upon it" (*Velcro, supra* at para 8 cited in *Hillcore*, *supra* at para 11).

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[9] In determining the award of costs in this matter, I will turn my mind to these principles with a focus on the factors listed in subsection 147(3) of the Rules which were referred to in the parties' submissions.

III. Analysis

[10] Assuming I have understood the Respondent's written submissions on costs, they are seeking an award of solicitor and client costs on the basis that the Appellant's counsel has repeatedly suggested that counsel for the Respondent engaged in improper conduct by improperly obtaining an extension of time to file its Replies in this appeal and two related appeals (appeals numbered 2025-818(IT)G and 2025-821(IT)G wherein the Appellants are the shareholders of 941). In the alternative, the Respondent seeks elevated costs on the basis of the Appellant's allegations of misconduct and the two following additional factors:

a) the Respondent made a settlement offer which was more favourable than the outcome of the motion to quash; and

b) the Appellant caused the Respondent to incur costs by taking unnecessary litigation steps, in particular, with respect to the cross-examination of Canada Revenue Agency (CRA) officers.

[11] Before examining the parties' submissions, it is useful to set out some of the procedural steps taken in this matter leading up to the motion to quash.

[12] On June 2, 2025, counsel for the Respondent sought an extension of time for the filing of Replies in this appeal and the two related appeals. Three days later, counsel for the Appellant consented to an extension of time for filing and serving the Replies, with a new deadline of August 22, 2025.

[13] On August 8, 2025, the Respondent made a comprehensive settlement offer for this appeal and the two related appeals.

[14] On August 11, 2025, counsel for the Respondent advised the Appellant that they intended to file a motion to quash the appeal in 941 if the three appeals were not settled by August 17, 2025.

[15] On August 22, 2025, the Respondent filed its Replies in this appeal and the two related appeals. On the same day, the Respondent filed its motion to quash in 941's appeal.

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A. *The Appellant's Alleged Misconduct*

[16] The Respondent submits that the Appellant made repeated bald allegations that the Respondent engaged in improper conduct and provided the following examples (see the Respondent's written submissions on costs at paragraph 23):

> a) Counsel for the Appellant asserted that the Respondent had obtained an extension of time to file their Replies by representations now known to be false and failed to give them the courtesy of any reason for the repudiation of the representations which prompted the consent extensions;
>
> b) Counsel for the Appellant asserted that the Respondent kept its plan to file a motion to quash hidden until the eleventh hour;
>
> c) Counsel for the Appellant suggested that the Respondent utilized the Appellant's good faith to sidestep compliance with the Rules.

[17] The Respondent asserts that the Appellant provided no evidence in support of those allegations.

[18] In its written submissions, the Appellant reiterated its view that the Respondent had refrained from giving them the courtesy of any explanation regarding the timing of its extension request and subsequent motion. The Appellant submits that, unlike hundreds, if not thousands, of consent extensions on Replies they have provided in the past, this one cried out for an explanation, and none was ever forthcoming.

[19] The Respondent submits that the Appellant's narrative disregards a more plausible explanation, that is, that the Respondent discovered the grounds for a motion to quash after they requested an extension of time to file their Replies. In addition, the Respondent expressed the view that the proper method of obtaining relief was to file a motion to set aside the consent to extend time to file the Replies.

[20] The Appellant did not file such a motion. Rather, the Appellant suggests that this will remain a live issue in this appeal for the 2019 taxation year and the two related appeals which are making their way through the remaining litigation steps. The Respondent submits that there is no basis for the Court to set aside the Appellants' consent to extend the time to file the Replies in the three related appeals. Clearly, this is not an issue that the Court can decide within this decision on costs.

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[21] The Respondent submits that the Appellant's "baseless accusations … are sufficiently reprehensible to warrant an award of solicitor-client costs" (Respondent's written submissions on costs at paragraph 20). It might be said that the Appellant's frustration with the timing of the motion in relation to the request for an extension of time to file the Replies which it granted was palpable in the language of the subsequent correspondence addressed to the Respondent. However, in my respectful view, the conduct reflected in the content of the impugned letters does not rise to the level of what can be characterized as reprehensible, scandalous or outrageous in a manner that would warrant being sanctioned by an award of solicitor and client costs (see for example *Hillcore, supra* at para 9).

B. *The Settlement Offer and Paragraph 147(3)(d) of the Rules*

[22] Paragraph 147(3)(d) of the Rules lists "any offer of settlement made in writing" as a factor that may be considered in determining an award of costs. Subsections 147(3.1) and (3.2) of the Rules provide that a successful party who obtains a judgment as favourable or more favourable than the terms of the offer of settlement may be entitled to "substantial indemnity costs" as of a certain date, defined as 80% of solicitor and client costs in subsection 147(3.5) of the Rules. The Respondent acknowledged that these Rules are not engaged as the settlement offer expired on August 17, 2025, hence earlier than 30 days before the hearing. Nonetheless, the Respondent submits that the settlement offer remains a relevant factor under paragraph 147(3)(d) of the Rules.

[23] The Respondent submits that the settlement offer made to the Appellant justifies elevated costs because it was more favourable to the Appellant than the outcome of the motion.

[24] In its letter to the Appellant's counsel dated August 8, 2025, the Respondent wrote as follows: "[p]lease note the respondent's offer in respect of each separate appeal is conditional on the acceptance of the offers of each of the other appeals. In other words, the respondent is not prepared to settle the appeals of any particular person without a global settlement of all the appeals set out above" (Exhibit G to the Affidavit of Camille Ewanchyshyn).

[25] In their written submissions, the Appellant wrote as follows: "[w]e intend to be wholly successful with respect to the remaining (much larger) amounts at issue, in which case the offer will have been justifiably rejected. The Crown is effectively asking the court to presume we will lose the remaining matters".

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[26] There are two problems that plague the determination of whether the offer was better than the result of the motion. The motion was granted such that the Appellant cannot appeal its reassessments for the 2020, 2021 and 2022 taxation years. But it can continue its appeal for the 2019 taxation year in respect of which the settlement offer appears to be silent on the disallowed management fees in the amount of $761,250. In addition, the results of the motion have no bearing on the related appeals which, according to the relevant Replies involve significant amounts in issue.

[27] Because a comprehensive settlement offer was made with a clear condition that only a global settlement would be acceptable, it is impossible to disentangle the settlement offer in 941's appeal from the offer with respect to the shareholders' appeals and further, the result of 941's appeal for its 2019 taxation year remains unknown. In these circumstances, I am not prepared to conclude that this factor favours enhanced costs.

C. *Unnecessary Litigation Steps and Paragraph 147(3)(i) of the Rules*

[28] The Respondent states that on November 26, 2025, the Appellant indicated their intention to cross-examine the two CRA officers that had sworn affidavits in support of the Crown's motion. On December 22, 2025, the cross-examination of the officers was scheduled for February 18, 2026. On February 17, 2026, the Appellant advised that they no longer wished to cross-examine one of the officers. The cross-examination of Ms. Barbara Wamburu was conducted as scheduled and the transcript was filed at the hearing of the motion.

[29] The Respondent appears to take issue with the late decision not to cross-examine one of the CRA officers. In addition, the Respondent submits that the cross-examination of Ms. Wamburu "yielded no evidentiary value and served no purpose" and was therefore completely unnecessary (Respondent's written submissions on costs at paragraph 33).

[30] The Respondent asserts that this element should be considered under paragraph 147(3)(i) of the Rules which provides that the Court may consider the following factor:

> (i) whether any stage in the proceedings was,
>
> (i) improper, vexatious, or unnecessary, or

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(ii) taken through negligence, mistake or excessive caution.

[31] In response, the Appellant argued that "[c]ross examination is a critical right in all litigation and was efficiently engaged here because the suggestion in para. 14 of the affidavit appeared to contradict the contents of the t2020" (Appellant's written submissions on costs).

[32] The purpose of cross-examining an affiant is to test the strength of their written evidence. While it appears that there may not have been much to cross-examine on in the affidavit of Ms. Wamburu, I note that in their written submissions filed at the hearing of the motion, the Respondent referred to Ms. Wamburu's affidavit more than a dozen times which suggests that the content of this affidavit was a critical document in support of the motion. It is not surprising that the Appellant wished to cross-examine Ms. Wamburu. I find that the Appellant's counsel was conducting his litigation in a manner he thought was in the best interests of his client and I will not dissect the cross-examination of the affiant in the hope of determining whether it was truly necessary, in hindsight, to boot. I find that for such a factor to be determinative, it would have to be clear that a party engaged in a litigation step he knew to be unnecessary (see for example *Henco Industries Limited v R*, 2014 TCC 278 wherein Justice Campbell J. Miller, as he then was, was addressing a similar argument regarding whether the conduct of a party tended to shorten or lengthen the duration of a proceeding). I am not persuaded that cross-examination of the affiant was truly unnecessary in a manner that would justify enhanced costs. Hence, I view this factor as neutral and without impact on the quantum of costs in this motion.

IV. General Comments and Conclusion

[33] For the reasons provided above, I am not persuaded by the Respondent's arguments that the Appellant's conduct justifies an award of solicitor and client costs, in the amount of $13,482.98. Nor am I persuaded that the issues raised regarding the settlement offer and the cross-examination of the affiant are factors that justify elevated costs.

[34] This still leaves the question of what would be an appropriate cost award in the circumstances. The Appellant's position that no costs should be awarded is a nonstarter. The Respondent was successful in their motion to quash the appeals for the 2020, 2021 and 2022 taxation years and, as the successful party, is entitled to costs. I note that the Appellant's alternative position is that costs should be awarded on the basis of the Tariff.

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[35] In a footnote in their written submissions on costs, the Respondent wrote: "[f]or comparative purposes, an award under Tariff B would equal $2,800 (including taxation for costs) plus disbursements of $84.80 for a total of $2,884.80" and referenced Exhibit T to the Affidavit of Camille Ewanchyshyn which contains the Respondent's Bill of Costs.

[36] As mentioned earlier, subsection 147(4) of the Rules provides that the Court may fix costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs. Case law coming out of this Court has been clear that a clear construction of subsection 147(4) of the Rules is such that the Court has discretion to depart from the Tariff. In fact, as mentioned by Justice Boyle, as he then was, in *Univar, supra* at paras 49-50, the Tariff is but a default absent a Rule 147 determination (Justice Boyle cited several decisions including the decision in *Velcro, supra*).

[37] The Respondent submitted that the costs of legal services provided, even on a full-indemnification basis are reasonable, adding that adjustments had been made to only include the time billed by legal counsel (total number of hours of 55.33 was reduced to 45.08 and billed at the published rate of $299 for an LP-02; see the Affidavit of Camille Ewanchyshyn and Exhibits R and S). Although, as already stated, I am not prepared to order solicitor and client costs in these circumstances, I am prepared to depart from the Tariff amounts which I find to be woefully inadequate. I share the view expressed by Justice Graham in *Madison Pacific Properties Inc. v R*, 2024 TCC 47 at para 19, where he acknowledged that "the Respondent's legal costs are calculated using rates […] markedly out of line with the rates that law firms charge for lawyers of comparable experience and skill."

[38] Based on all the foregoing and the broad discretion accorded to this Court in determining costs, I award costs in the amount of $5,000 in favour of the Respondent. This is not the solicitor and client costs the Respondent was seeking, nor is it the alternative enhanced costs award being sought but it is a fair and reasonable award reflecting their success on the motion and the work involved in this litigation.

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Signed this 16th day of November 2026.

"Gabrielle St-Hilaire"

St-Hilaire C.J.

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APPENDIX "A"

Tax Court of Canada Rules (General Procedure)

147 (1) The Court may determine the amount of the costs of all parties involved in any proceeding, the allocation of those costs and the persons required to pay them.

(2) Costs may be awarded to or against the Crown.

(3) In exercising its discretionary power pursuant to subsection (1) the Court may consider,

(a) the result of the proceeding,

(b) the amounts in issue,

(c) the importance of the issues,

(d) any offer of settlement made in writing,

(e) the volume of work,

(f) the complexity of the issues,

(g) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding,

(h) the denial or the neglect or refusal of any party to admit anything that should have been admitted,

(i) whether any stage in the proceedings was,

(i) improper, vexatious, or unnecessary, or

(ii) taken through negligence, mistake or excessive caution,

(i.1) whether the expense required to have an expert witness give evidence was justified given

(i) the nature of the proceeding, its public significance and any need to clarify the law,

(ii) the number, complexity or technical nature of the issues in dispute, or

(iii) the amount in dispute; and

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(j) any other matter relevant to the question of costs.

(3.1) Unless otherwise ordered by the Court, if an appellant makes an offer of settlement and obtains a judgment as favourable as or more favourable than the terms of the offer of settlement, the appellant is entitled to party and party costs to the date of service of the offer and substantial indemnity costs after that date, as determined by the Court, plus reasonable disbursements and applicable taxes.

(3.2) Unless otherwise ordered by the Court, if a respondent makes an offer of settlement and the appellant obtains a judgment as favourable as or less favourable than the terms of the offer of settlement or fails to obtain judgment, the respondent is entitled to party and party costs to the date of service of the offer and substantial indemnity costs after that date, as determined by the Court, plus reasonable disbursements and applicable taxes.

(3.3) Subsections (3.1) and (3.2) do not apply unless the offer of settlement

(a) is in writing;

(b) is served no earlier than 30 days after the close of pleadings and at least 90 days before the commencement of the hearing;

(c) is not withdrawn; and

(d) does not expire earlier than 30 days before the commencement of the hearing.

(3.4) A party who is relying on subsection (3.1) or (3.2) has the burden of proving that

(a) there is a relationship between the terms of the offer of settlement and the judgment; and

(b) the judgment is as favourable as or more favourable than the terms of the offer of settlement, or as favourable or less favourable, as the case may be.

(3.5) For the purposes of this section, substantial indemnity costs means 80% of solicitor and client costs.

(3.6) In ascertaining whether the judgment granted is as favourable as or more favourable than the offer of settlement for the purposes of applying subsection (3.1) or as favourable as or less favourable than the offer of settlement for the purposes of applying subsection (3.2), the Court shall not have regard to costs awarded in the

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judgment or that would otherwise be awarded, if an offer of settlement does not provide for the settlement of the issue of costs.

(3.7) For greater certainty, if an offer of settlement that does not provide for the settlement of the issue of costs is accepted, a party to the offer may apply to the Court for an order determining the amount of costs.

(3.8) No communication respecting an offer of settlement shall be made to the Court, other than to a judge in a litigation process conference who is not the judge at the hearing, until all of the issues, other than costs, have been determined.

(4) The Court may fix all or part of the costs with or without reference to Schedule II, Tariff B and, further, it may award a lump sum in lieu of or in addition to any taxed costs.

(5) Notwithstanding any other provision in these rules, the Court has the discretionary power,

> **(a)** to award or refuse costs in respect of a particular issue or part of a proceeding,
>
> **(b)** to award a percentage of taxed costs or award taxed costs up to and for a particular stage of a proceeding, or
>
> **(c)** to award all or part of the costs on a solicitor and client basis.

(6) The Court may give directions to the taxing officer and, without limiting the generality of the foregoing, the Court in any particular proceeding may give directions,

> **(a)** respecting increases over the amounts specified for the items in Schedule II, Tariff B,
>
> **(b)** respecting services rendered or disbursements incurred that are not included in Schedule II, Tariff B, and
>
> **(c)** to permit the taxing officer to consider factors other than those specified in section 154 when the costs are taxed.

(7) Any party may,

> **(a)** within thirty days after the party has knowledge of the judgment, or

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(b) after the Court has reached a conclusion as to the judgment to be pronounced, at the time of the return of the motion for judgment,

whether or not the judgment included any direction concerning costs, apply to the Court to request that directions be given to the taxing officer respecting any matter referred to in this section or in sections 148 to 152 or that the Court reconsider its award of costs.

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CITATION:	2026 TCC 202
COURT FILE NO.:	2025-768(IT)G
STYLE OF CAUSE:	941624 ALBERTA LTD. AND HIS MAJESTY THE KING
REASONS FOR COSTS BY:	The Honourable Gabrielle St-Hilaire, Chief Justice
DATE OF ORDER:	November 16, 2026

COUNSEL:

Counsel for the Appellant:	Jeff D. Pniowsky
Counsel for the Respondent:	Allanah Smith

COUNSEL OF RECORD:

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