

BETWEEN:

UNITED HEALTH SERVICES CORPORATION,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard virtually on July 3, 2026 at Ottawa, Ontario

Before: The Honourable Justice J. Scott Bodie

Appearances:

Counsel for the Appellant: Jeff Pniowsky

Counsel for the Respondent: Allanah Smith

ORDER

The Respondent's motion is dismissed with fixed costs in the amount of \$5,000, payable on or before September 1, 2026. The Respondent shall have sixty days from the date of this Order to file the Respondent's Reply.

Signed this 30th day of July 2026.

"J. Scott Bodie"

Bodie J.

Citation: 2026 TCC 143

Date: 20260730

Docket: 2026-347(IT)G

BETWEEN:

UNITED HEALTH SERVICES CORPORATION,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Bodie J.

I. INTRODUCTION

[1] The Respondent brings an application for an order striking certain portions of the Notice of Appeal filed by the Appellant (“UHSC”) on January 15, 2026 (the “Notice of Appeal”). This application is brought under subsection 53(1) of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”). Under the Notice of Appeal, UHSC appeals the reassessment of tax for the taxation years ending December 31, 2020, and December 31, 2021, on the basis that it is a non-profit organization pursuant to paragraph 149(1)(l) of the *Income Tax Act* (the “Act”). The Respondent has not yet filed a reply. Unless otherwise stated all statutory references are to the Rules.

[2] It is the Respondent’s position that the Notice of Appeal is deficient in many respects. The specific deficiencies claimed by the Respondent can be grouped into three broad categories:

1. Certain portions of the Notice of Appeal which appear under the heading, “Facts to be Relied Upon” contain:
 - a. facts which are immaterial and irrelevant to the correctness of the assessments at issue; or

- b. legal conclusions and legal arguments;
- 2. Certain portions of the Notice of Appeal are scandalous, frivolous or vexatious; and
- 3. Certain portions of the Notice Appeal which appear under the headings, “Statutory Provisions Relied On” and “Reasons upon which [UHSC] intends to Rely” are improper for reasons I describe below.

[3] The specific wording from the Notice of Appeal which is challenged by the Respondent is grouped according to these categories and is set out in Appendix A.

[4] Subsection 53(1) sets out four specific grounds for which all or part of a pleading may be struck. A pleading may be struck if it:

- 1. may prejudice or delay the fair hearing of the appeal;
- 2. is scandalous, frivolous, or vexatious;
- 3. is an abuse of the process of the Court; or
- 4. discloses no reasonable grounds for appeal.

[5] I will now examine the provisions of the Notice of Appeal challenged by the Respondent, by category, to determine whether they should be struck on one or more of these grounds.

II. ANALYSIS

1. Deficiencies in Reciting the Facts to be Relied On

a. Facts which are immaterial and irrelevant to the correctness of the assessments at issue

[6] Section 48 provides that a notice of appeal filed in a General Procedure matter must be in Form 21(1)(a). Form 21(1)(a) requires an appellant to include in a notice of appeal certain identifying information both with respect to the appellant and the assessment at issue. It then requires an appellant to:

1. relate the material facts relied on;
2. specify the issues to be decided;
3. refer to the statutory provisions relied on;
4. set forth the reasons the appellant intends to rely on;
5. indicate the relief sought; and
6. date the notice of appeal.

[7] It is the Respondent's position that by function of section 48 and Form 21(1)(a) of the Rules, the Appellant must plead the material facts relied on. The notice of appeal, filed by the Appellant in this matter, does not, in the view of the Respondent, comply with this requirement because it contains facts that are immaterial and irrelevant to the correctness of the assessment at issue. The portions of the Notice of Appeal that set out such immaterial and irrelevant facts should therefore be struck.

(i) Should portions of the Notice of Appeal be Struck for being Immaterial and Irrelevant because they relate to Periods Prior to or After the Assessment Years?

[8] At paragraph 1 of the Notice of Appeal, USHC indicates that it is appealing notices of assessment in respect of its 2020 and 2021 taxation years. Therefore, the Respondent asks that any facts which relate to a period prior to, or after the years of the assessments at issue, be struck. Specifically, the Respondent challenges the wording from the Notice of Appeal set out in Appendix A under the heading, Immaterial or Irrelevant – Periods Prior to or After the Assessment Years:

1. Paragraph 4 – it is the Respondent's position that the sentence of this paragraph which is set out in Appendix A and describes the origins of UHSC in 1938 should be struck because the paragraph does not describe events occurring, or services offered by UHSC, in the taxation years at issue.
2. Paragraph 31 – it is the Respondent's position that the sentence of this paragraph that is set out in Appendix A should be struck because it refers to

what UHSC calls “unpredictability” continuing after the end of the Covid-19 pandemic. According to the Respondent, matters that arise following the end of the pandemic would not be relevant to the appeal because they would have necessarily arisen after the 2020 and 2021 taxation years at issue.

3. Paragraph 32 – in the Respondent’s view, this paragraph which introduces facts about forecasted losses and actual losses incurred by UHSC in its 2022 and 2023 taxation years, should be struck because the facts are not relevant to determining the correctness of the 2020 and 2021 taxation years.
4. Paragraph 44 – it is the Respondent’s position that this paragraph contains irrelevant facts because the paragraph speaks to UHSC’s audit history both prior to and after the 2020 and 2021 taxation years at issue.

[9] The legal principles to be applied on a motion to strike under subsection 53(1) are long standing and widely accepted, having been considered and relied upon in numerous decisions by courts of various levels. To strike out a pleading, or a part of a pleading, it must be plain and obvious that the provision is immaterial or meets at least one of the grounds set out in subsection 53(1) for striking a pleading. A material fact in a notice of appeal is an assertion that, if established at trial, would tend to support the tax return as filed.

[10] In making a determination under subsection 53(1), a court must assume that the pleading is true. The test is a stringent one, which requires that the court exercise its power to strike with great care. In doing so the court must take a generous approach and err on the side of permitting a novel but arguable claim to proceed to trial: *Gramiak v. The Queen*, 2013 TCC 383 at paragraph 30; *R v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at paragraphs 17 to 21; *Metrobec Inc. v. The Queen*, 2018 TCC 115 at paragraphs 50 to 55; *Jensen v. Samsung Electronics Co. Ltd.*, 2023 FCA 89 at paragraph 16.

[11] Further, a motions judge should not attempt to supplant the role of the trial judge in making determinations with respect to the relevancy of certain facts. Such determinations must be left to the judge who hears all the evidence: *Mudge v. The Queen*, 2020 TCC 77 at paragraph 15; *Sentinel Hill Productions v. The Queen*, 2007 TCC 742 at paragraph 4.

[12] According to Section D of the Notice of Appeal, the sole issue in the appeal is whether UHSC qualifies as a non-profit organization pursuant to paragraph 149(1)(l) of the Act. This was confirmed by UHSC's counsel during oral submissions. Paragraph 149(1)(l) provides that no tax is payable for a period by a person when that person is not a charity under the Act, and was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purpose except profit.

[13] Counsel for UHSC explained that UHSC's appeal is based on its position that it is an entity described in paragraph 149(1)(l) of the Act because it was created by the Manitoba legislature for the betterment of Manitobans. Further, throughout its history it has not operated for profit. The 2020 and 2021 years were an anomaly because in those years revenues were constant while costs/services declined because of the global Covid-19 pandemic.

[14] Accordingly, it is the position of UHSC that the facts set out in the paragraphs under challenge are both material and relevant to its appeal. In its view, the purpose for which it was formed by the Manitoba legislature, its audit history to the time of the pandemic, the effect the pandemic had on its historical operations and the manner in which it has operated following the pandemic are necessary facts, which if proven true, support the tax returns it filed in the taxation years at issue.

[15] There is no legal principle that was cited to me, nor that I could find, that necessarily limits the facts pled in a notice of appeal to occurrences in the taxation years at issue.

[16] It is the Respondent's position that the facts related in the paragraphs outlined above and in Appendix A are irrelevant to the appeal because they relate to events and circumstances which occurred both before and after the taxation years of the challenged assessments.

[17] In keeping with the case law described above, as the motions judge, I make no findings on the materiality or relevancy of the facts outlined in the paragraphs under challenge with respect to the ultimate determination of the appeal. That will be the role of the trial judge. However, I will say that, in my view, it is not plain and obvious to me that the origins of UHSC as a creation of the Manitoba legislature, the history of its manner of operations both before and after the pandemic, and the manner of those operations in the aftermath of the pandemic, are immaterial or

irrelevant to establishing whether UHSC was organized and operated for a qualifying purpose as required by paragraph 149(1)(l) of the Act. For on their face, the facts related in the paragraphs under challenge, if proven true, may indeed support USHC's tax filings.

[18] Therefore, at this stage of the litigation process, they must be allowed to stand.

(ii) Should portions of the Notice of Appeal which relate to USHC's relationship with the Government of Manitoba be struck because they are Immaterial and Irrelevant?

[19] The Respondent challenges portions of the Notice of Appeal contained in paragraphs 8, 10, 11 and 38 on the basis that the purported relationship between USHC and the Government of Manitoba is immaterial and irrelevant to the issue of whether USHC meets the requirements of paragraph 149(1)(l) of the Act. The paragraphs or parts thereof under challenge are set out in Appendix A, attached. The specific wording to which the Respondent objects is highlighted in bold.

[20] For the reasons explained above, based on the issue under appeal, the requirements set out under paragraph 149(1)(l) of the Act, and the basis of UHSC's appeal, as related by UHSC's counsel, it is not plain and obvious to me that facts related to UHSC's relationship with the Government of Manitoba are immaterial or irrelevant to the issue of whether UHSC was organized and operated for social welfare, civic improvement, pleasure, or for any other purpose except profit. If proven true, the facts in the paragraphs under challenge may tend to support UHSC's tax filings.

[21] Therefore, at this stage of the litigation process, the provisions of the Notice of Appeal described above and set out in Appendix A must be allowed to stand.

b. Legal Conclusions and Legal Arguments

[22] The Respondent asserts that certain portions of the Notice of Appeal which appear under the heading, "Facts to be Relied Upon" should be struck because they contain statements of legal conclusions or legal arguments. The specific statements challenged by the Respondents are set out in Appendix A, attached. Where the Respondent has raised concerns with respect to a particular word or phrase within a

larger statement, I have highlighted the word or phrase in bold. I consider the Respondent's submissions in this regard below.

(i) Should portions of the Notice of Appeal which describe UHSC as a non-profit organization be struck?

[23] It is the Respondent's position that paragraph 2 of the Notice of Appeal and the words, "[UHSC] operates as a non-profit organization" found in paragraph 10 of the Notice of Appeal should be struck because it is inappropriate to plead the legal conclusion that UHSC is a non-profit organization in the facts section of the Notice of Appeal. The question of whether UHSC is an entity described in paragraph 149(1)(l) is the sole issue in the appeal. The Respondent also objects to similar references in paragraphs 3 and 6 for the same reason. The specific wording to which the Respondent objects is set out and highlighted in bold in Appendix A.

[24] In support of its position the Respondent cites the decision of the Federal Court of Appeal in *Adboss Ltd v. The King*, 2023 FCA 201 at paragraph 17, where Justice Goyette said that legal statements or conclusions of law have no place in the Minister of National Revenue's factual assumptions and that factual elements in statements of mixed fact and law should be extricated from the Minister of National Revenue's factual assumptions. The Respondent said this same principle should also apply to material facts set out by an appellant in a notice of appeal. However, in my view, it is not proper to conclude that this proposition applies equally to the Minister of National Revenue and taxpayers.

[25] As Justice Goyette points out, in disputes under the Act, there is a fundamental difference between the facts as set out in a notice of appeal and the assumptions set out by the Minister of National Revenue in a Reply. The assumptions set out in a Reply are presumed to be true unless the taxpayer can demolish them. Therefore, fairness dictates that the taxpayer understands exactly what factual assumptions it needs to demolish to succeed. There is no such burden attached to statements of material facts as recited by an appellant in a notice of appeal.

[26] In any event, Justice Goyette noted that the Federal Court of Appeal wrote in *Canada v. Preston*, 2023 FCA 178 at paragraph 31, that not every conclusion of mixed fact and law must necessarily be struck. At paragraph 18 she wrote that deficient pleadings may be allowed to stand for example,

1. when assumptions of mixed fact and law are tangential to the legal issues in dispute;
2. when assumptions will not cause prejudice to the opposing party;
3. when the facts are simple; or
4. when letting the deficient pleadings stand better serves the trial process.

[27] It may have been more accurate, for example, for UHSC to plead in paragraph 2 that for income tax purposes, UHSC files as a non-profit organization under paragraph 149(1)(l) of the Act, rather than saying that it is a non-profit organization. However, given that both parties agree that the main, if not, the sole issue in this appeal will be whether UHSC qualifies for the exemption from tax under paragraph 149(1)(l) of the Act, it is not plain and obvious to me that the references in the Notice of Appeal to UHSC being a non-profit organization will cause prejudice to the Respondent or delay the fair hearing of the appeal or that they should be struck on any other ground set out in subsection 53(1). The main issue in this appeal is evidently apparent to both parties. That main issue does not become unclear or clouded simply because UHSC could be seen to be answering the question in its pleadings under the heading, “Facts to be Relied Upon”.

[28] Therefore, the challenged references in paragraphs 2, 10, 3 and 6 should be allowed to stand.

(ii) Should portions of the Notice of Appeal be struck because they contain legal interpretations?

[29] It is the Respondent’s position that paragraphs 9, 10 and 21 of the Notice of Appeal contain interpretations of certain provisions of UHSC’s constating legislation, *The United Health Services Incorporation Act*. The challenged paragraphs are set out in Appendix A. It is the Respondent’s position that the provisions of this legislation should speak for themselves and that it is inappropriate for legal interpretations to appear as a material fact in a Notice of Appeal. However, as described above, the Court’s power to strike pleadings should be exercised with great care. Further, the power should be exercised only if, after assuming that the statements are true, it is plain and obvious that the pleading may prejudice or delay the fair hearing of the appeal; is scandalous, frivolous or vexatious; is an abuse of the process of the Court or discloses no grounds for appeal.

[30] As described above it is not necessary that every statement of mixed law and fact be expunged from the material facts section of a notice of appeal on that basis alone. The same applies to a legal interpretation in a facts section. To be struck, any statement must meet one or more of the requirements set out in subsection 53(1). It is not enough to say that in the view of one party a statement in the pleading of another party is inappropriate. The Respondent has not raised any concerns that make it plain and obvious to me that paragraphs 9, 10 and 21 meet any of these requirements. If the impugned statements are assumed to be true, it is not plain and obvious that such statements could be labelled as scandalous, vexatious, frivolous or an abuse of the Court's process. If the statements are assumed to be true, it is not plain and obvious to me that such statements could not support UHSC's grounds for appeal.

[31] Further, if the Respondent has questions about such statements and interpretations, the Respondent is entitled to ask questions regarding such statements in examinations for discovery or to ask for particulars under section 52. These are parts of the normal processes in this Court, and the clarity that may come through these processes could be used to ameliorate any concerns about certain statements potentially causing a delay in the proceeding. Therefore, in the absence of any arguments to the contrary, it is not plain and obvious to me that such statements will prejudice or delay the fair hearing of the appeal.

[32] Accordingly, these paragraphs of the Notice of Appeal should be allowed to stand.

(iii) Should portions of the Notice of Appeal be struck because they contain Legal Argument?

[33] Similarly, it is the Respondent's position that portions of paragraphs 48, 49, 50 and 52 of the Notice of Appeal under the heading, "Facts to be Relied Upon" should be struck as they represent an attempt to slip legal argument into the facts section of the notice of appeal. Specifically, the Respondent objects to statements that the Minister of National Revenue's conclusions and reassessments were made "erroneously" or "in error".

[34] As stated above, the role of the motions judge in an application under subsection 53(1) is to determine whether it is plain and obvious that the challenged

pleadings raise one of the grounds set out in subsection 53(1) on which such pleadings may be struck.

[35] In my view, the use of the word, “erroneous” may be colourful. However, that alone is not a reason to strike a pleading. Further, it is not plain and obvious to me that the use of such word in these paragraphs, even if they could be said to denote a legal argument, may prejudice or delay the fair hearing of the appeal; is scandalous, frivolous or vexatious; is an abuse of the process of the Court; or discloses no reasonable grounds for the appeal.

[36] UHSC is challenging the assessments. The correctness of such assessments will be the subject of the trial, regardless of whether the issuance of such assessments is described in the pleadings as erroneous. Further the trial judge is unlikely to be unfairly swayed by the presence of such colour in the pleadings. Therefore, the insertion of the word “erroneous” in these paragraphs is, in my view, unlikely to prejudice or delay the fair hearing of the appeal.

[37] Further, pleadings should be struck for being scandalous, frivolous or vexatious only in the most obvious of cases where the challenged provisions are strikingly or startingly objectionable: *Mudge v The Queen*, 2020 TCC 77 at paragraphs 20 and 30. It is not plain and obvious to me that the use of the word “erroneous” in relation to the Minister’s basis for the assessments at issue meet this high standard of being strikingly or startingly objectionable.

[38] Finally, in my view, by virtue of using the words “erroneously” or “in error” in relation to the issuance of the challenged assessments, UHSC did not intend to bring the conduct of the Minister of National Revenue into issue. It is widely accepted that the jurisdiction of this Court is limited to determining the correctness of an assessment and does not include the ability to review the conduct of the Minister. However, as discussed above, UHSC is clear in the Notice of Appeal that the sole issue is whether it qualifies as a non-profit organization under the Act. The use of these words in the challenged provisions cannot reasonably be seen, in and of themselves, as expanding the issues in this appeal beyond those that are within the Court’s jurisdiction.

[39] The purpose of an application under subsection 53(1) is not to edit wording with which opposing counsel disagrees. Disagreement over wording between counsel involved in the litigation process is to be expected in our adversarial system.

Our courts would become overwhelmed if they were to intervene in cases other than those which most obviously engage the stated criteria for striking pleadings. Accordingly, courts should exercise restraint in these applications.

[40] In my view, use of the word “erroneous” or “erroneously” in the challenged paragraphs is unlikely to delay the proceedings, is not sufficiently inflammatory, and is not sufficiently offensive to the process or the administration of justice, so as to require that they be struck.

[41] Accordingly, such use of these words in these paragraphs should be allowed to stand.

2. Scandalous, Frivolous or Vexatious

[42] It is the Respondent’s position that paragraphs 44 and 55 to 58 of the Notice of Appeal are “replete with scandalous remarks” and therefore should be struck under paragraph 53(1)(b). Those paragraphs are set out in Appendix A. The terminology to which the Respondent objects is highlighted in bold.

[43] It is the Respondent’s view that such terminology is unnecessarily inflammatory, inserted only for colour and focuses on alleged Ministerial misconduct, rather than the correctness of the assessments at issue.

[44] Scandalous pleadings are pleadings which are offensive and do not relate to the issues. They are abusive or prejudicial. Often, they are inserted solely to be inflammatory or to colour the opposing party. Frivolous pleadings contain claims that do not touch on the issues. Vexatious pleadings are generally malicious and have no cause. As described above, in *Mudge*, this Court held that pleadings should be struck in an application under paragraph 53(1)(b) only where the language at issue is strikingly or startingly objectionable.

[45] I agree that the language to which the Respondent objects is colourful. Counsel for UHSC admitted as much in his argument. However, I am of the view that such language is not strikingly or startingly objectionable such that it is sufficiently offensive that it needs to be struck.

[46] The points made by UHSC in the impugned paragraphs could have been stated more dispassionately and in a less accusatory manner. For example, paragraph 56

could have made the same point by stating something along the lines of the following: UHSC has for decades practiced prudent fiscal stewardship over its operations. Throughout the unique Pandemic period its intent to not generate a profit did not change.

[47] However, an application under subsection 53(1) should not devolve into an editing exercise. The Court's power to intervene should be reserved only to the most obvious of cases. The present matter is not such a case.

[48] Paragraphs 44 and 55 to 58 should be allowed to stand.

3. Statutory Provisions Relied On and Reasons Upon Which the Appellant Intends to Rely

(i) Should portions of the Notice of Appeal under the heading, "Statutory Provisions Relied On" be struck where the material facts in the Notice of Appeal do not relate to the statutory provisions listed?

[49] Under the heading, "Statutory Provisions Relied On" in the Notice of Appeal, UHSC, in addition to paragraph 149(1)(l) of the Act, lists paragraphs 149(1)(c) and (d), subsections 149(1.3), 149(5) and 152(4) of the Act as well as the *Constitution Act, 1867*.

[50] It is the Respondent's position that references to these sections should be struck because they have no relevance to the what the Appellant has stated to be the sole issue in the appeal: whether UHSC qualifies as a non-profit organization under paragraph 149(1)(l) of the Act. UHSC does not make any arguments, advance any positions or plead any facts in the Notice of Appeal which relate to these other statutory provisions.

[51] In his argument, UHSC's counsel confirmed that the sole issue in the appeal is the applicability of paragraph 149(1)(l) of the Act. He stated that the listing of the other provisions of the Act was not meant to mislead. Counsel said that those provisions were listed because they appeared in the notices of assessment issued by the Minister of National Revenue that UHSC is now challenging. He admitted that it is not obvious to him why these provisions appeared in such assessments but said that depending on what he discovers to be the Minister's reasoning in issuing the assessments through the litigation process, he may need to rely on them at trial.

[52] The cases that I have reviewed which deal with the listing of statutory provisions relied on in pleadings, deal with the issue of one party attempting to raise an argument at trial that had not been raised previously. I have not seen a case where one party has requested that a statutory reference be struck because it appears superfluous to the core issues set out in the pleadings. I will observe that I have seen many pleadings filed by counsel for both taxpayers and the Crown which list statutory provisions which are not ultimately mentioned at trial.

[53] With respect to the specific relief requested by the Respondent, it remains the responsibility of the moving party to show that it is plain and obvious that the impugned statutory references must be struck on the ground that such references may prejudice or delay the hearing of the appeal; are scandalous, frivolous or vexatious, are an abuse of the process of the Court or disclose no reasonable grounds for appeal: *Martineau v. The King*, 2023 TCC 25 at paragraphs 20-23.

[54] I am unconvinced that this high standard is met in this case. The impugned provisions of the Act were apparently raised by the Minister of National Revenue in the challenged assessments. Accordingly, at this point in the litigation, it is not obvious that UHSC will not be required to rely on these provisions at some point in the litigation.

[55] Since they were originally raised by the Minister of National Revenue in the challenged assessments, whether the referenced provisions of the Act are applicable to the assessments will become more apparent after the Reply is filed and the parties move through examinations for discovery. One of the purposes of the discovery process is to narrow the issues that each party must meet at trial. In addition to the discovery process, counsel have other tools available to them for clarifying or narrowing issues such as a demand for particulars under section 52. In the ordinary course, the narrowing of issues should not be the purpose of an application under subsection 53(1). Unless it is plain and obvious that an issue set out in a notice of appeal meets one of the stringent requirements for striking a pleading it would be premature to strike a statutory reference from a notice of appeal at the preliminary stages of an appeal.

[56] With respect to the reference to the *Constitution Act, 1867*, counsel for USHC did not identify a specific constitutional violation or challenge in oral or written argument in this motion. However, he did suggest that the *Constitution Act, 1867*

may be applicable because USHC, a creature of Provincial legislation, is disputing an assessment from an arm of the Federal Government.

[57] For the reasons set out above, it is my view that it would be premature at this point in the litigation to strike the reference. I accept that it is not plain and obvious, given a dispute involving the Federal Government and an entity created by the Manitoba legislature, that the reference to the *Constitution Act, 1867* may prejudice or delay the fair hearing of the appeal; is scandalous, frivolous or vexatious; is an abuse of the Court's process or discloses no reasonable grounds for appeal.

[58] Further, it is not inappropriate that counsel for USHC have the opportunity to hone its arguments as evidence is uncovered through the document exchange and discovery processes. Those are amongst the purposes of such processes. Those arguments once assessed and, if put forward at trial, will ultimately be weighed and determined by the trial judge after hearing all the evidence.

[59] Counsel for the Respondent will have the opportunity to better understand USHC's positions as a result of these processes. If such processes fail to produce sufficient clarity, there are other avenues available to the Respondent to ensure the Respondent's ability to properly prepare for issues to be raised at trial. In addition to having the option of seeking further particulars under section 52, the Respondent will be entitled to receive notice of any constitutional issue prior to the trial under section 19.2 of the *Tax Court of Canada Act*.

[60] The reference to the *Constitution Act, 1867* need not be struck at this point in the litigation.

(ii) *Should Portions of the Notice of Appeal under the heading, "Reasons Upon Which [UFSC] Intends to Rely" be struck?*

[61] The Respondent's position is that paragraphs 55 to 57 of the Notice of Appeal, the text of which is in Appendix A attached, should be struck because they do not sufficiently explain the reasons upon which USHC intends to rely. In the Respondent's view, UFSC's statements in these paragraphs do not explain how USFC meets the requirements of paragraph 149(1)(l), are unclear and set out positions which are unintelligible. The Respondent therefore requests that these paragraphs be struck with leave to amend.

[62] In my view, the proper forum for the Respondent to express its views on the sufficiency of UFSC's reasons for challenging the assessments at issue is the trial and not an application under subsection 53(1). The trial judge, after hearing all the evidence and the arguments of both parties in full, is then in the best position to determine whether such reasons are intelligible and clear.

[63] My review of the paragraphs of under the heading, "Reasons Upon Which [UFSC] Intends to Rely" indicates to me that UFSC has given reasons for challenging the assessments at issue, thereby complying with the requirements of section 48. I express no views on such reasons, other than it is not plain and obvious to me (and the Respondent has not raised any arguments to the contrary) that such paragraphs raise any of the grounds for striking them as set out in subsection 53(1).

[64] The paragraphs in the Notice of Appeal under the heading, "Reasons Upon Which [UHSC] Intends to Rely" should be allowed to stand.

III. CONCLUSION

[65] The Respondent's motion is dismissed with fixed costs in the amount of \$5,000, payable on or before September 1, 2026. The Respondent shall have sixty days from the date of the within Order to file the Respondent's Reply.

Signed this 30th day of July 2026.

"J. Scott Bodie"

Bodie J.

Appendix A

1. Immaterial or Irrelevant – Periods Prior to or After the Assessment Years

Paragraph Number	Challenged Text
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4, 31, 32, 44	
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	4. UHSC began in 1938 as a hospital-sponsored organization that offered prepaid coverage of hospital services. At this time, government-funded healthcare did not exist. UHSC continued to offer supplementary healthcare benefits when some forms of healthcare began to be funded by governments.
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31. The unpredictability created by the Pandemic continued following the Pandemic with increased costs and inflation.

32. For example, UHSC budgeted for an underwriting loss (revenue less operating loss) of \$1,500,000.00 in 2022 but realized an actual loss of approximately \$1,900,000.00. In 2023, UHSC budgeted for an underwriting loss (revenue less operating loss) of \$1,500,000.00 and, due to continually increasing costs, realized an actual underwriting loss of approximately \$5,200,000.00. UHSC's reserves ensure that the organization can survive unpredictable and unprecedented impacts on its financial situation.

44. The Minister did not audit the years prior to the Pandemic, nor is the Minister reviewing the recent years post-Pandemic. As such, the Minister has chosen to deny the decades long status of UHSC as a non-profit organization, based on factors unique to a once-in-a-century, societally altering event, coinciding with the audit period.

2. Immaterial or Irrelevant – Relationship with Government of Manitoba

Paragraph Number	Challenged Text
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8, 10, 11, 38

8. As a prepaid health services provider **enacted by the Government of Manitoba**, UHSC is not an insurance company. UHSC provides prepaid healthcare services and does not underwrite insurance contracts.

10. UHSC operates as a non-profit organization and carries on a healthcare function **delegated to it by the Government of Manitoba**. Pursuant to its constating legislation, UHSC is required to be a non-profit organization. As a result, the *UHSA Act* grants the government of Manitoba oversight over UHSC's operations, including, but not limited to:

- i. selecting at least one of the directors on UHSC's Board of Directors;
- ii. receiving UHSC's audited financial statements annually; and
- iii. allowing the Minister of Finance to regulate or prohibit any form of application or issuance of a contract of benefits which is identified by the Superintendent of Insurance as being unfair or not in the public interest.

11. **In addition, UHSC processes all Government of Manitoba claims on the government's behalf.**

38. UHSC also undertook many Pandemic-focused projects **in fulfillment of its government mandate**, including but not limited to:

- i. providing free grief counselling during the Pandemic when funeral services were not allowed;
- ii. providing access to iPads for nursing homes when visits were reduced or completely disallowed and isolation became a serious problem;
- iii. partnering with community organizations to do outbound calling for free, while retaining UHSC's own call-centre staff;

- iv. continuing and increasing support for community post-secondary scholarships that increase the amount of healthcare professionals in under-served areas of the Province of Manitoba;
- v. advancing several academic and research-based projects which further healthcare knowledge and studies in the Province of Manitoba; and
- vi. provide a mobile application, designed to combat memory and cognitive health issues, free of charge to all users and providing training on the mobile application to personal care homes.

3. Legal Conclusions

Paragraph Number	Challenged Text
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2, 10, 3, 6

2. UHSC is a **non-profit organization** incorporated in and by the Province of Manitoba.

10. UHSC **operates as a non-profit organization** and carries on a healthcare function delegated to it by the Government of Manitoba. Pursuant to its constating legislation, UHSC is required to be a non-profit organization. As a result, the *UHSA Act* grants the government of Manitoba oversight over UHSC's operations, including, but not limited to:

- i. selecting at least one of the directors on UHSC's Board of Directors;
- ii. receiving UHSC's audited financial statements annually; and
- iii. allowing the Minister of Finance to regulate or prohibit any form of application or issuance of a contract of benefits which is identified by the Superintendent of Insurance as being unfair or not in the public interest.

3. **As a non-profit organization**, UHSC is exempt from Part I Tax under paragraph 149(1)(l) of the *Income Tax Act* (the “*ITA*”).

6. UHSC’s existence as a **non-profit organization** was continued by the *United Health Services Incorporation Act* (the “*UHSC Act*”), which was enacted by the Government of Manitoba in 1990.

4. Legal Interpretations

Paragraph Number	Challenged Text
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9, 10, 21

9. UHSC’s operations and mandate are governed by the *UHSC Act*. As stipulated by the *UHSC Act*, UHSC’s mandate is to provide supplementary healthcare benefits at a reasonable cost to Manitobans, including those who may be elderly, in poor health, or unable to access similar benefits from private providers.

10. UHSC operates as a non-profit organization and carries on a healthcare function delegated to it by the Government of Manitoba. Pursuant to its constating legislation, UHSC is required to be a non-profit organization. As a result, the *UHSA Act* grants the government of Manitoba oversight over UHSC’s operations, including, but not limited to:

- i. selecting at least one of the directors on UHSC’s Board of Directors;
- ii. receiving UHSC’s audited financial statements annually; and
- iii. allowing the Minister of Finance to regulate or prohibit any form of application or issuance of a contract of benefits which is identified by the Superintendent of Insurance as being unfair or not in the public interest.

21. With no shareholders and no ability to raise capital, UHSC must ensure it takes a prudent and cautionary approach to its reserves to ensure it can continue to fulfill its mandate as set out in the *UHSC Act*. In addition, the *UHSC Act* limits the revenue-generating activities that UHSC can undertake, further increasing the need for a substantial buffer above required minimums.

5. Legal Arguments

Paragraph Number

48, 49, 50, 52

Challenged Text

48. As a result of the audit, the Minister **erroneously** concluded that UHSC was not exempt from Part I Tax under paragraph 149(1)(l) of the *ITA*.

49. On June 11, 2025, the Minister **erroneously** reassessed UHSC's 2020 taxation year on the above-mentioned basis and levied tax owing in the amount of \$6,672,368.00, which reassessment was also beyond the normal 3-year reassessment period.

50. On June 11, 2025, the Minister **erroneously** reassessed UHSC's 2021 taxation year on the above-mentioned basis and levied tax owing in the amount of \$8,013,064.00.

52. The Minister's reassessments are in error.

6. Scandalous, Frivolous or Vexatious

Paragraph Number

44, 55, 56, 57, 58

Challenged Text

44. The Minister did not audit the years prior to the Pandemic, nor is the Minister reviewing the recent years post-Pandemic. As such, the Minister has **chosen to deny** the decades long status of UHSC as a non-profit organization, based on factors unique to a

once-in-a-century, societally altering event, coinciding with the audit period.

55. The Minister **failed to properly consider, or consider at all**, the structural, constitutional, statutory and fiscal realities and constraints of UHSC. The Minister **ignored** those realities and constraints and recharacterized UHSC as if it was a for-profit corporation, contrary to the *ITA* and in gross violation of foundational principles of Canadian tax law. The Minister has no case to allege sham or to apply GAAR, and so did not apply either. Instead, the Minister **unshackled itself from the rigours of those two doctrines and overreached its authority** by assessing UHSC as if it had applied the sham doctrine and/or GAAR, thereby disregarding the constating structure of UHSC as legally created by the legislature of the Province of Manitoba.

56. The Minister further **ignored** UHSC's prudent fiscal stewardship of its non-profit operations in terms of great uncertainty, by wrongly characterizing such stewardship as pursuit of "profit". The Minister chose to audit the extremely unique Pandemic years yet correspondingly ignored that uniqueness by wrongly attributing the effects of the Pandemic on UHSC as an intent by UHSC to generate a profit.

57. With respect to the 2020 taxation year, the Minister's **recharacterization of UHSC apparently included a fictional determination** of shareholder control, finding that UHSC is a for-profit corporation, but not a Canadian Controlled Private Corporation, thereby purporting to grant itself the ability to assess beyond the 3-year normal reassessment period. In fact, there are no shareholders, there is no unanimous shareholder agreement, nor is there anyone approximately shareholders who would vote on control of the corporation, and ultimately, no one able to

receive the surplus of the corporation's purported "profits".

58. The Minister further **failed to properly calculate the income of UHSC** as a for-profit entity (which characterization is explicitly denied). The income in this for-profit scenario (adjusted for capital cost allowance deductions) is (\$5,240,891) for 2020 and \$17,641,927 for 2021.

7. Reasons

Paragraph Number 55, 56, 57

Challenged Text

55. The Minister failed to properly consider, or consider at all, the structural, constitutional, statutory and fiscal realities and constraints of UHSC. The Minister ignored those realities and constraints and recharacterized UHSC as if it was a for-profit corporation, contrary to the *ITA* and in gross violation of foundational principles of Canadian tax law. The Minister has no case to allege sham or to apply GAAR, and so did not apply either. Instead, the Minister unshackled itself from the rigours of those two doctrines and overreached its authority by assessing UHSC as if it had applied the sham doctrine and/or GAAR, thereby disregarding the constating structure of UHSC as legally created by the legislature of the Province of Manitoba.

56. The Minister further ignored UHSC's prudent fiscal stewardship of its non-profit operations in terms of great uncertainty, by wrongly characterizing such stewardship as pursuit of "profit". The Minister chose to audit the extremely unique Pandemic years yet correspondingly ignored that uniqueness by wrongly attributing the effects of the Pandemic on UHSC as an intent by UHSC to generate a profit.

57. With respect to the 2020 taxation year, the Minister's recharacterization of UHSC apparently included a fictional determination of shareholder control, finding that UHSC is a for-profit corporation, but not a Canadian Controlled Private Corporation, thereby purporting to grant itself the ability to assess beyond the 3-year normal reassessment period. In fact, there are no shareholders, there is no unanimous shareholder agreement, nor is there anyone approximately shareholders who would vote on control of the corporation, and ultimately, no one able to receive the surplus of the corporation's purported "profits".

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CORPORATION AND HIS MAJESTY
THE KING

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REASONS FOR ORDER BY: The Honourable Justice Scott Bodie

DATE OF ORDER: July 30, 2026

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