Court of Appeal File No. A-48-14
(consolidated with A-49-14)

FEDERAL COURT OF APPEAL

B E T W E E N:

McKESSON CANADA CORPORATION

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

AMENDED NOTICE OF APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of the Honourable Justice Boyle of the Tax Court of Canada (the "**Trial Judge**") dated December 13, 2013 in Docket 2008-2949(IT)G by which the Court dismissed the Appellant's appeal from the reassessments under Part I and Part XIII of the *Income Tax Act* (the "**Act**") of the Appellant for its 2003 taxation year.

THE APPELLANT ASKS that:

A. The appeal be allowed with costs to the Appellant in this Court and the Tax Court of Canada;

B. The matters under appeal by referred back to the Minister for reconsideration and reassessment:

(i) With respect to the reassessment made by the Minister of the taxes payable by the Appellant under part I of the Act for its 2003 taxation year, on the basis that the terms and conditions of the Receivables Sale Agreement ("**RSA**") entered into by the Appellant and its immediate parent company, McKesson International Holdings III S. à r. l. ("**MIH**"), effective as of December 16, 2002, did not differ

from the terms and conditions that would have been agreed between persons dealing at arm's length; and

(ii) With respect to the reassessment by the Minister of the taxes payable by the Appellant under Part XIII of the Act for its 2003 taxation year, on the basis that no amount paid or credited or deemed to have been paid or credited by the Appellant to MIH under the RSA was subject to tax under Part XIII of the Act, or alternatively, that even if any such amount was otherwise subject to such tax, the Minister was prohibited from assessing such tax by virtue of Article 9(3) of the *Canada-Luxembourg Income Tax Convention* (the "**Treaty**").

THE GROUNDS OF APPEAL are as follows:

1. The Trial Judge erred in finding that paragraphs 247(2)(a) and (c) of the Act applied to adjust the terms and conditions (including the discount rate) agreed to by the Appellant and MIH in the RSA when in fact such terms and conditions (including the discount rate) did not differ from the terms and conditions that would have been agreed to between persons dealing at arm's length.
2. The Trial Judge erred in finding that the discount rate that would have been agreed to in the RSA between persons dealing at arm's length would not have exceeded 1.0127%.
3. The Trial Judge erred in law by failing to properly apply the standard of arm's length dealing contemplated by paragraphs 247(2)(a) and (c) of the Act.
4. The Trial Judge erred in law by failing to review and weigh competing evidence introduced in the course of the hearing, instead appropriating to himself the role of subject-matter expert and reaching conclusions that were unsupported by, and inconsistent with the evidence.
5. The Trial Judge erred in finding that the implementation of the RSA in accordance with its terms resulted in the conferral of a benefit on MIH for purposes of subsections 15(1) and 214(3) of the Act.
6. The Trial Judge erred in finding that the 5-year limitation period in Article 9(3) of the Treaty did not apply to prohibit the assessment of Part XIII tax.

7. The Trial Judge erred in finding that the Appellant had failed to meet and onus to "demolish" the "assumption" that the discount rate that would have been agreed to by persons dealing at arm's length would not have exceeded 1.0127%, when in fact the discount rate that would have been agreed to between persons dealing at arm's length in not an assumption of fact which the taxpayer bears an onus to rebut.

8. The Trial Judge's Reasons for Recusal dated September 4, 2014 interfere with the fairness of the appellate process and compromise the appearance and reality fairness of both the trial and appeal.

9. Such further and other grounds as counsel may advise and this Honourable Court permits.

November 3, 2014

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario
M5L 1A9

Paul Schabas LSUC #26355A
Tel: 416-863-4274
paul.schabas@blakes.com

Ryder Gilliland LSUC #45662C
Tel: 416-863-5849
ryder.gilliland@blakes.com

Jeffrey Trossman LSUC #32491O
Tel: 416-863-4290
jeffrey.trossman@blakes.com

Kaley Pulfer LSUC #58413T
Tel: 416-863-2756
kaley.pulfer@blakes.com

OSLER, HOSKIN & HARCOURT
Box 50, First Canadian Place
Toronto, Ontario
M5X 1B8

Ai Meghji
Tel: 416-862-5677
ameghji@osler.com

Amanda Heale
Tel: 416-862-6780
aheale@osler.com

HENEIN HUTCHISON LLP
3rd Floor, 235 King Street East
Toronto, Ontario
M5A 1J9

Marie Henein
Tel: 416-368-5000
mhenein@hhllp.ca

Scott C. Hutchison
Tel: 416-368-5000
shutchison@hhllp.ca

Matthew Gourlay
Tel: 416-368-5000
mgourlay@hhllp.ca

Counsel for the Appellant