

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

**FEDERAL COURT OF APPEAL**

BETWEEN:

**McKESSON CANADA CORPORATION**

|  |             |
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| FEDERAL COURT OF APPEAL<br>COUR D'APPEL FÉDÉRALE |             |
| FILED  | NOV 03 2014 |
| ANDREW MURRAY                                    |             |
| TORONTO, ONT                                     | 32          |

Appellant

- and -

**HER MAJESTY THE QUEEN**

Respondent

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**NOTICE OF MOTION**

(Leave to File Amended Notice of Appeal & Supplementary Memorandum)  
in accordance with Rule 364 of the *Federal Court Rules*

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**TAKE NOTICE THAT** the Appellant, McKesson Canada Corporation, will make a motion to the Court in writing under Rule 369 of the *Federal Courts Rules*.

**THE MOTION IS FOR:**

1. Leave to file an Amended Notice of Appeal, replacing the Notice of Appeal dated January 10, 2014, under Rule 75 of the *Federal Courts Rules*; and
2. Leave to file a Supplementary Memorandum of Fact and Law.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Appellant, McKesson Canada Corporation, appealed a reassessment under the *Income Tax Act* to the Tax Court of Canada. The matter was heard before the Honourable Justice Patrick Boyle.
2. On December 13, 2013, Justice Boyle dismissed the appeal with costs. On the same day, he ordered that the parties make written submission on two outstanding issues: costs, and the re-consideration of a pre-trial confidential information order.
3. On January 10, 2014, the Appellant filed a Notice of Appeal to the Federal Court of Appeal.
4. In or about March and April, 2014, both parties made written submissions to Justice Boyle on the outstanding costs and confidentiality issues.
5. On June 11, 2014, the Appellant filed its Memorandum of Fact and Law in the Federal Court of Appeal.
6. On August 8, 2014, the Respondent filed its Memorandum of Fact and Law.
7. On September 4, 2014, Justice Boyle issued – of his own motion – a decision recusing himself from hearing the pending costs and confidentiality matters of which he remained seized. In his Reasons for Recusal, Justice Boyle explained that this decision was prompted by his review of the Appellant’s Factum filed on June 11, 2014, which had been sent to him “by several prominent Canadian tax lawyers as well as by a colleague on the Court.” Justice Boyle held that the Appellant’s Factum alleged that he was “untruthful and deceitful”, stated “clear untruths about me”, and made “allegations of impartiality [sic].” Justice Boyle proceeded to respond in detail to arguments the Appellant had advanced in its Factum. In the result, Justice Boyle

decided that a reasonable person, aware of this alleged “attack [on] the personal or professional integrity of the trial judge”, would not believe that he could remain impartial.

8. Justice Boyle’s Reasons for Recusal raise a further ground of appeal in addition to those already set out in the Appellant’s Notice of Appeal dated January 10, 2014. The Appellant proposes to file an Amended Notice of Appeal and Supplementary Memorandum of Fact and Law that set out the following additional ground of appeal:

*Do the trial judge’s Recusal Reasons compromise the appearance and reality of a fair process in this case such that a new trial is necessary?*

9. The Appellant also asserts such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. Notice of Motion;
2. Affidavit of Christine Hennings, sworn November 3, 2014;
3. Reasons for Recusal of Justice Boyle dated September 4, 2014;
4. Amended Notice of Appeal;
5. Appellant’s Written Submissions in Support of the Motion; and
6. Draft Supplementary Memorandum of Fact and Law.

November 3, 2014

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