

Court File No.: A-132-23**FEDERAL COURT OF APPEAL**

BETWEEN:

**BELL TELEPHONE COMPANY OF CANADA**  
**OR BELL CANADA**

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F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
12-MAY-2023		
Vanessa George		
Toronto, ONT	- 1 -	

Appellant

and

**HIS MAJESTY THE KING**

Respondent

**NOTICE OF APPEAL**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: 12-MAY-2023

Issued by: Vanessa George  
(Registry Officer)

Address of Local office:

Federal Court of Appeal  
180 Queen Street West  
Suite 200  
Toronto, ON  
M5V 3L6

**TO: Deputy Attorney General of Canada**

**Jack Warren / Dominik Longchamps**  
Department of Justice Canada  
Tax Law Services Section  
99 Bank Street, Suite 1100  
Ottawa, ON  
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## **APPEAL**

**THE APPELLANT APPEALS** from the Judgment of the Honourable Justice Steven K. D'Arcy of the Tax Court of Canada dated April 12, 2023 (Tax Court File No. 2018-3444(GST)G) dismissing with costs the Appellant's appeal from the reassessments under the *Excise Tax Act*, RSC 1985, c. E-15 for the Appellant's July 2010 to December 2012 reporting periods. The issue in that appeal was whether the Appellant was required to recapture a portion of input tax credits that the Appellant claimed on delivery services and regulatory services, in addition to electricity.

### **THE APPELLANT ASKS** that:

1. this appeal be allowed with costs in this Court and in the Tax Court; and
2. the assessments be referred to the Minister of National Revenue for reassessment on the basis that the Appellant was not required to recapture the portion of its input tax credits at issue in the Trial Decision.

### **THE GROUNDS OF APPEAL** are as follows:

3. the Judge made several errors in law and made palpable and overriding errors of fact, in concluding that: (i) the recapture rule in subsection 236.01(2) (the "**Recapture Rule**") applied not only to the electricity (specified property) component, but also to the delivery services and regulatory services components of what the Appellant was supplied; and (ii) the local distribution companies provided a single supply of electricity to the Appellant, such that the input tax credits on delivery services and regulatory services were subject to recapture.
4. in particular, without limiting the generality of the foregoing, the Judge erred by, among other things:

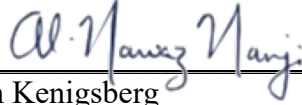
- (a) embarking on an analysis under *O.A. Brown Ltd. v. Canada*, [1995] G.S.T.C. 40 (TCC) without first considering the clear legislative intent that the Recapture Rule only applies to electricity. This error in law was contrary to the recent holding of this Court in *Canada v. Dr. Kevin L. Davis Dentistry Professional Corporation*, 2023 FCA 76, a decision released after the decision in this matter.
  - (b) considering evidence about the supplies in issue from the perspective of the supplier rather than the recipient, contrary to the longstanding jurisprudence of this Court as recently affirmed in *Canadian Imperial Bank of Commerce v. Canada*, 2021 FCA 96. This error in law led the Trial Judge to discount relevant evidence and draw adverse inferences from the absence of irrelevant evidence.
  - (c) making palpable and overriding errors of fact, including contradictory and irreconcilable factual findings, in the course of determining what was supplied to the Appellant.
5. such further grounds as counsel may advise and this Honourable Court may allow.

**THE APPELLANT RELIES**, *inter alia*, on:

1. *Federal Courts Act*, RSC 1985, c. F-7: paragraph 27(1.1)(a); and
2. *Excise Tax Act*, RSC 1985, c. E-15: subsection 123(1) (in particular, the definition of “continuous transmission commodity”, “supply”), paragraph 23(8)(c), paragraph 68.01(a)(i.1), paragraph 162(2)(d), subsection 168(4), section 236.01; Part V of Schedule VI; and
3. *New Harmonized Value-added Tax System Regulations, No. 2*, Part VI.

Dated at the City of Toronto, in the Province of Ontario this 12<sup>th</sup> day of May, 2023.

**OSLER, HOSKIN & HARCOURT LLP**



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