

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** an Application for rescission of the Order Granting Leave to Barcode Systems Inc. pursuant to Section 103.1 of the *Competition Act*, RSC 1985 c. C-35, as amended, to commence an Application pursuant to Section 75 of the *Competition Act*.

**BETWEEN:**

**SYMBOL TECHNOLOGIES CANADA ULC**

**Applicant,**

**- and -**

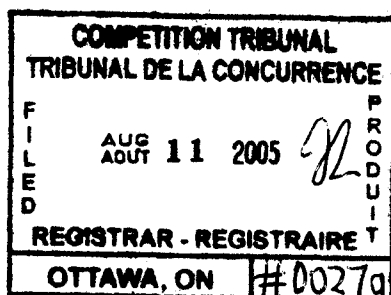
**BARCODE SYSTEMS INC. and PRICEWATERHOUSECOOPERS INC. as  
INTERIM RECEIVER of BARCODE SYSTEMS INC.**

**Respondents.**

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**MOTION OF SYMBOL TECHNOLOGIES CANADA ULC  
FOR SUMMARY DISPOSITION**

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File No. **04182**

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**BARCODE SYSTEMS INC. and PRICEWATERHOUSECOOPERS INC. as  
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**Respondents.**

**MOTION**

**TAKE NOTICE THAT:**

The Applicant, Symbol Technologies Canada ULC (hereinafter referred to as "Symbol") will make a motion to the Tribunal, at a date and time to be set by the Registrar of the Tribunal, at 660 – 90 Rue Sparks Street Ottawa K1P 5B4.

**THIS MOTION IS FOR:**

- (a) an Order that the rescission Application of Symbol filed February 24, 2005 be dealt with by way of summary disposition pursuant to Section 9(4) of the *Competition Tribunal Act*, R.S., 1985, c. 19 (2nd Supp.) as amended (the "*Competition Tribunal Act*");

- (b) an Order rescinding the Order granted by the Competition Tribunal on January 15, 2004 in CT 2003 008;
- (c) an Order granting Symbol its costs of this Motion, its Application for rescission and the initial Application for leave brought by BSI; and
- (d) such further and other relief as this Tribunal deems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) On January 15, 2004 the Competition Tribunal issued an Order granting leave to the respondent Barcode Systems Inc. (hereinafter referred to as "BSI") pursuant to Section 103.1 of the *Competition Act* R.S.C. 1985, c. C-34 to commence an Application pursuant to Section 75 of the *Competition Act* against Symbol. The January 15, 2004 Order was subject to a further Order issued by the Tribunal on May 19, 2004 whereby the style of cause was amended to reflect the appointment of PricewaterhouseCoopers Inc. as Interim Receiver of Barcode Systems Inc. (hereinafter referred to as "PWC").
- (b) the Order of the Tribunal issued on January 15, 2004 granting leave to BSI, and subsequently to PWC, was made under Part VIII of the *Competition Act*.
- (c) the Order of the Tribunal granting leave to BSI and subsequently to PWC was granted by the Judicial member of the Tribunal, sitting on his own, based on affidavit evidence.
- (d) Section 9(4) of the *Competition Tribunal Act* provides that on a motion from a party to an application made under Part VIII of the *Competition Act*,

a judicial member may hear and determine the application in a summary way, in accordance with any rules on summary dispositions.

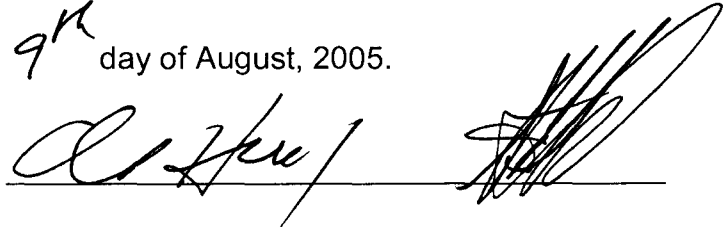
- (e) Practice Direction Rule 46.1(c) - this Motion is being filed following the expiry of the time limit allowed for the filing of a response to the Application.
- (f) BSI has filed a Response to the Application for rescission while PWC has not.
- (g) Symbol's application seeking rescission ought to be granted pursuant to Section 106 of the *Competition Act* as the circumstances that led to the making of the impugned Order have changed. In the circumstances that exist at the time this rescission application is made:
  - (i) the order granting leave would not have been made; and
  - (ii) the order granting leave would have been ineffective in achieving its intended purpose.
- (h) Such further and other grounds as counsel may advise and the Tribunal may accept.

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

- (a) Notice of Application filed February 24, 2005;
- (b) Statement of Grounds and Material Facts filed February 24, 2005;

- (c) Affidavit of Michael Reid, sworn February 21, 2005, already filed and served in these proceedings;
- (d) Memorandum of Fact and Law to be filed and served.

Dated at Winnipeg, Manitoba this 9<sup>th</sup> day of August, 2005.



Dave Hill and Steven Field  
**HILL ABRA DEWAR**  
Solicitors for the Applicant

**ADDRESSES FOR SERVICE**

TO: **Registrar**  
**The Competition Tribunal**  
Thomas D'Arcy McGee  
Building  
90, Spark Street, Ste. 600  
Ottawa ON K1P 5B4

AND TO: **PricewaterhouseCoopers Inc.**  
**Interim Receiver of Barcode Systems Inc.**  
c/o Tapper Cuddy  
Barristers and Solicitors  
Suite 1000 – 330 St. Mary Avenue  
Winnipeg, MB R3C 3Z5  
**Attn. Richard Schwartz**  
Solicitors for PricewaterhouseCoopers Inc.  
Interim Receiver of Barcode Systems Inc.

AND TO: **Gaston Jorré**  
**Acting Commissioner of**  
**Competition Bureau**  
50 Victoria Street  
Gatineau PQ K1A 0C9

AND TO: **Barcode Systems Inc.**  
c/o Thompson Dorfman Sweatman  
Barristers and Solicitors  
2200 – 201 Portage Avenue  
Winnipeg MB R3B 3L3  
**Attn: Lindy J.R. Choy,**  
Solicitors for Barcode Systems Inc.