

**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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**AFFIDAVIT OF MICHAEL REID  
SWORN: February 21, 2005**

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**HILL ABRA DEWAR**  
Litigation Counsel  
2670 – 360 Main Street  
Winnipeg, Manitoba  
R3C 3Z3

**Dave Hill/Steven Field**

Telephone: (204) 943-6740  
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File No. **04182**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		
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**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*.**

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**Applicant ,**

**- and -**

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

**Respondents.**

**AFFIDAVIT OF MICHAEL REID**

I, Michael Reid, of the City of Mississauga, in the Province of Ontario,  
Executive,

**MAKE OATH AND SAY THAT:**

1. I am the Vice-President of the Applicant herein, Symbol Technologies Canada ULC (hereinafter "Symbol"), and as such have personal knowledge of the facts hereinafter deposed to by me except where same are stated to be based upon information and belief, in which case I do verily believe same to be true.

2. On November 4, 2003, the Respondent, Barcode Systems Inc. ("BSI") applied to the Competition Tribunal ("the Tribunal") in Competition Tribunal File

No. CT 2003 008, pursuant to subsection 103.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "*Act*") for leave to make an application under section 75 of the *Act* and seek an Order requiring that Symbol accept BSI as a customer on the "usual trade terms". A copy of the BSI application in File CT 2003 008 is attached hereto as Exhibit "A".

3. On December 19, 2003, Mr. Justice Schulman of the Manitoba Court of Queen's Bench, in File No. BK 03-01-36054, appointed PricewaterhouseCoopers Inc. ("PWC") as Interim Receiver "*of all property, assets and undertakings*" of BSI. A copy of Justice Schulman's December 19, 2003 Order is attached hereto as Exhibit "B".

4. Paragraph 11 of Justice Schulman's Order appointing PWC as Interim Receiver, also granted PWC the authority to initiate and continue all legal and administrative proceedings on behalf of BSI.

5. Subsequent to their appointment, PWC, as Interim Receiver of BSI, commenced proceedings in the Manitoba Court of Queen's Bench which sought essentially the same relief that BSI was seeking in its proceeding before the Tribunal. Attached hereto and marked Exhibit "C" to this my Affidavit is a copy of the Notice of Motion brought by PWC in Manitoba Court of Queen's Bench File No. BK 03-01-36054 which was returnable before Mr. Justice Schulman on Thursday, January 15, 2004. This motion sought an Order compelling Symbol to:

- (a) supply the Interim Receiver of BSI with product for the purposes of resale by the Interim Receiver to end-users on such terms and conditions as may be just;
- (b) direct its authorized dealers to supply the Interim Receiver of BSI with product for the purposes of resale by the Interim Receiver of BSI to end-users on such terms and conditions as may be just; and

- (c) provide the end-users of such product with such support and to honour such warranties as Symbol does in the ordinary course to end-users who have purchased Symbol products from authorized Symbol dealers.

6. In support of the Interim Receiver's motion, the Interim Receiver filed an Affidavit of David A. Johnson, affirmed the 14<sup>th</sup> day of January, 2004. A copy of the narrative of Mr. Johnson's affidavit is appended hereto as Exhibit "D" to this my Affidavit.

7. At paragraph 7 of Exhibit "D", David Johnson explained, and I verily believe, that the Interim Receiver was, at that time, in the midst of offering BSI's entire business for sale on a 'going concern' basis.

8. At paragraph 8 of Exhibit "D", David Johnson explained that it was likely that the Interim Receiver's ability to sell BSI as a going concern would be greatly impaired in the event that it was not able to sell to BSI's customers in the ordinary course. "In such event, it will also be difficult to maintain Barcode's sales force (all of whom the Interim Receiver had hired), the loss of which would further impair the ability to sell the business as a going concern."

9. The matter went to a hearing before Justice Schulman on January 15, 2004. Attached hereto and marked as Exhibit "E" to this my Affidavit is a copy of the Order issued by Justice Schulman compelling Symbol to supply the Interim Receiver with product for the purposes of resale by the Interim Receiver.

10. Symbol did not oppose the Order sought by the Interim Receiver for supply the Interim Receiver with products because PWC provided satisfactory evidence that it would actually pay for the product it would order.

11. Subsequent to the issuance of this Order to supply, I can confirm that Symbol did indeed supply the Interim Receiver in accordance with the Order.

12. On the same day Justice Schulman issued his Order, Exhibit "E" herein, the Tribunal issued its decision and Order in CT 2003 008, granting BSI leave pursuant to subsection 103.1(1) of the *Act* to make an application under section 75 of the *Act* and seek an Order requiring that Symbol accept BSI as a customer on the "usual trade terms". A copy of the Order and Reasons for decision are attached hereto as Exhibit "F".

13. The Tribunal in file CT 2003 008 subsequently issued two further orders. On May 19, 2004, the Tribunal ordered, among other things, that the style of cause be amended to show Price Waterhouse Coopers as Receiver and Manager for Barcode Systems Inc. as the applicant, and on June 15, 2004, the Tribunal issued an Order staying the proceeding before the Tribunal until further Order of the Tribunal. Copies of those Tribunal Orders are attached hereto as Exhibits "G" and "H" respectively.

14. Meanwhile, back in Manitoba, in February of 2004 the Interim Receiver of BSI had attained success in its marketing efforts in respect of BSI's business assets. Accordingly, it brought another Motion in the Manitoba Court of Queen's Bench before Mr. Justice Schulman. Attached hereto and marked Exhibit "I" to this my Affidavit is a copy of Interim Receiver's Notice of Motion seeking the Court's approval of an asset sale of BSI and seeking an order vesting title to said assets in the name of the purchaser.

15. Attached hereto and marked Exhibit "J" to this my Affidavit is a copy of the Affidavit of B. Jeffrey Johnson affirmed February 23, 2004 in support of the Motion seeking approval of the sale of the BSI assets.

16. Attached hereto and marked Exhibit "K" to this my Affidavit is a copy of the Order issued by Justice Schulman on Thursday, the 26<sup>th</sup> day of February, 2004, approving the sale of BSI's assets to **q.data inc.** and vesting those assets in

**q.data inc.**, free from all right, title, and interest of BSI and any claims of BSI's creditors.

17. As noted in Exhibit "B" of the affidavit of Mr. Johnson affirmed February 23, 2004, the sale of assets to **q.data inc.**, included intangible assets such as customer lists, supplier lists, copies of accounting records, quotes, proposals and such files relating to the operation of BSI as may have been reasonably necessary to enable **q.data inc.** to carry on BSI's business.

18. Attached hereto and marked Exhibit "L" to this my Affidavit is a copy of the News Release issued by **q.data inc.** in respect of their acquisition of the Canadian assets and operations of BSI, by which I am advised, and which I verily believe, that the purchase by **q. data inc.** included substantially all the assets, contracts, and customers of BSI's operations in both the Vancouver, British Columbia and Winnipeg, Manitoba offices and that the two offices will continue to operate as before but under the new corporate banner of **q.data inc.**. This News Release further advised, and I verily believe, that this acquisition followed the July 7, 2003 purchase of the BSI Toronto office by **q.data inc.** which was the subject of a prior News Release of **q.data inc.** a copy of which is attached hereto as Exhibit "M".

19. On March 1, 2004, the Interim Receiver of BSI brought a further motion in Manitoba Court of Queen's Bench File No. BK 03-01-36054 seeking the Court's assistance in facilitating the closing of the Agreement to sell BSI's assets to **q.data inc.**. Attached hereto and marked Exhibit "N" to this my Affidavit is a copy of the Notice of Motion returnable before Mr. Justice Nurgitz on Monday, March 1, 2004 which sought relief compelling NetNation Communications, Inc. ("NetNation") to reinstate all email hosting services previously provided to BSI.

20. Attached hereto and marked Exhibit "O" to this my Affidavit is a copy of the further Affidavit of B. Jeffrey Johnson affirmed the 29<sup>th</sup> day of February, 2004

in support of the Motion compelling NetNation to reinstate email hosting services to the Interim Receiver which had previously been provided to BSI.

21. Attached hereto and marked Exhibit "P" to this my Affidavit is the Order rendered by Justice Nurgitz on March 1, 2004 ordering NetNation to provide access to and redirect certain email as and when the Interim Receiver may direct.

22. At paragraph 15 of his Affidavit affirmed February 29, 2004, Mr. Johnson explained that the Interim Receiver had negotiated a sale of certain of BSI's assets on "a going concern basis", and as part of the transaction agreed to use its best efforts to ensure the forwarding of existing employee mails to the purchaser, q.data inc..

23. Following the sale by the Interim Receiver of the BSI assets to **q.data inc.** and the subsequent hiring of some of the BSI employees by **q.data inc.**, the Interim Receiver is no longer operating any business of BSI, rather the business is being pursued and operated by **q.data inc.**.

24. Now shown to me and attached hereto as Exhibit "Q" to this my Affidavit is a copy of the cover page, and pages three and four of the Fall 2004 edition of an advertising magazine entitled Best of Winnipeg Business published by Winnipeg Business Magazines of Winnipeg Manitoba. Page four features an article on Bonnie Monkman, a former employee of BSI who now works for **qdata inc.** The article makes reference to the receivership of BSI and how **qdata inc.** is now serving the former BSI customers.

25. I can confirm that following the acquisition of BSI's interests by **q.data inc.** from the Interim Receiver, Symbol has continued to supply **q.data inc.**, thereby servicing BSI's former customers.


26. Symbol continues to be the subject of a multiplicity of proceedings brought by BSI and David Sokolow. On March 19, 2003, BSI filed a Statement of Claim in the Manitoba Court of Queen's Bench against Symbol, Queens' Bench File No. CI 03-01-32071. After filing, the claim was then assigned to David Sokolow by BSI prior to the appointment of PWC as Interim Receiver. Mr. Sokolow has subsequently amended the claim. A copy of the Reamended Statement of Claim is appended hereto as Exhibit "R" to this my Affidavit. This Reamended Claim now includes a claim for damages for loss of BSI as a going concern.

27. Given that the Interim Receiver has already pursued and obtained in the Manitoba Court of Queen's Bench an Order compelling Symbol to sell and deal with the Interim Receiver as set out in Exhibit herein, and given that BSI already assigned to David Sokolow all rights of the BSI litigation in Queen's Bench File No. CI 03-01-32071, including a claim for monetary damages for the loss of BSI as a going concern, I have concluded that only reason that the Respondents are pursuing the s. 75 Competition Tribunal application is to harass Symbol and to gain some advantage in the civil claim now being pursued by David Sokolow.

28. I make this Affidavit in good faith.

SWORN before me at the City of )  
Mississauga, in the Province of )  
Ontario, this 21<sup>st</sup> day of February, )  
2005. )

  
\_\_\_\_\_  
MICHAEL REID

  
\_\_\_\_\_  
A Notary Public in and for the Province  
of Ontario

**D. GRANT ISAAC, B.COM., LL.B.**  
**BARRISTER, SOLICITOR, NOTARY**  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4



# THE COMPETITION TRIBUNAL

In the Matter of an Application by Barcode Systems Inc.  
for an Order pursuant to section 103.1  
of the *Competition Act*, RSC 1985 c. C-35, as amended  
granting leave to bring an application pursuant to  
section 75 of the *Competition Act*

BETWEEN:

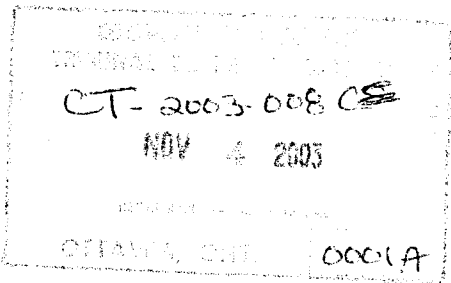
Barcode Systems Inc.

Applicant

AND:

Symbol Technologies Canada ULC

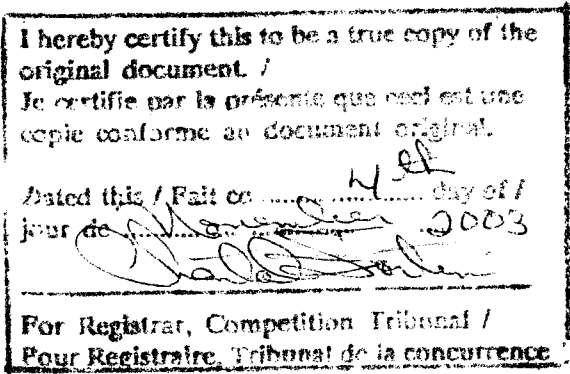
Respondent



## APPLICATION FOR LEAVE

### TAKE NOTICE THAT:

1. The Applicant, Barcode Systems Inc. ("BSI") is applying to the Competition Tribunal pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act"), seeking leave to bring an application for an Order under section 75 of the Act that the Respondent, Symbol Technologies Canada ULC ("Symbol") accept BSI as a customer on the "usual trade terms", forthwith upon issuance of said Order.



D. GRANT ISAAC, B.C.C. (Notary)  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
3045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "A" referred to in the Affidavit  
of Mike Reid sworn before me  
this 4th day of February, 2005

A Notary Public entitled to practice  
in and for the Province of Ontario

**AND TAKE NOTICE THAT:**

2. The Applicant will rely on the Statement of Grounds and Material Facts attached hereto and on the Affidavit of David Sokolow, sworn October 23, 2003.
  
3. The person against whom an Order is sought is the Respondent. Its address is set out below.
  
4. The Applicant will seek directions from the Competition Tribunal for the expeditious hearing of this application.
  
5. The Applicant requests that this application proceed in English.
  
6. The Applicant requests that documents be filed in electronic form.

Dated at Vancouver, British Columbia, this 30<sup>th</sup> day of October, 2003.

  
David P. Church  
Church & Company  
Solicitors for the Applicant

**ADDRESS FOR SERVICE**

**TO: Registrar**  
**The Competition Tribunal**  
Thomas D'Arcy McGee Building  
90, Sparks Street, Suite 600  
Ottawa, Ontario  
K1P 5B4

**AND TO: Gaston Jorre**  
**Acting Commissioner of Competition**  
Competition Bureau  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

**AND TO: Symbol Technologies Canada, ULC**  
5180 Orbitor Drive  
Mississauga, Ontario  
L4W 5L9

**The Applicant's address for service is as follows:**

c/o Church & Company  
Grosvenor Building  
900 – 1040 West Georgia Street  
Vancouver, B.C. V6E 4H1  
**Attention: David P. Church**

email: church@churchlegal.com

## **STATEMENT OF GROUNDS AND MATERIAL FACTS**

### **Material Facts**

#### **The Parties**

1. The Applicant Barcode Systems Inc. ("BSI") is a corporation incorporated under the laws of Canada. It has a head office in Winnipeg, Manitoba and is registered to carry on business in a number of jurisdictions throughout Canada.

2. The Respondent Symbol Technologies Canada ULC ("Symbol") is a corporation incorporated pursuant to the laws of the Province of Nova Scotia, with a head office in Mississauga, Ontario.

#### **Description of the Industry**

3. The bar code industry generally encompasses the manufacture, distribution, installation and maintenance of data capture systems for various different types of industries. Bar code equipment is used for labelling, tracking and identifying equipment, assets and people.

4. Equipment supplied as part of a bar code system will typically allow the end user to create bar code labels, most often with a dedicated bar code label printer, affix the labels to different kinds of products or merchandise, collate the bar code data with specific

items of product or merchandise and scan the bar code label, usually as part of a sales system or merchandise tracking system.

5. Bar code technology is used in various types of industries, such as retail outlets (merchandise tracking, stock replenishment and sales), delivery companies (package tracking) and financial institutions (data management and tracking currency operations).

### **BSI**

6. Since its inception in 1988, the Applicant has been engaged in the business of selling and servicing bar code equipment. The Applicant sells mainly to manufacturers, warehouse clients and institutions such as libraries. The Applicant does not manufacture bar code equipment. Rather, it functions in the bar code industry as a value added reseller ("VAR").

7. Typically, the Applicant will deal directly with a client, first determining the client's requirements and then designing or configuring a bar code system to meet those requirements. Once the client places its order, the Applicant then acquires the necessary equipment directly from the manufacturer, or from distributors representing the manufacturer, configures the equipment to meet the client's requirements and then installs the equipment. Often, the Applicant will then be retained to service, modify and/or upgrade the bar code equipment, as necessary.

## **Symbol**

8. Symbol Technologies Inc. ("Symbol US") is a US company, with a head office in Holtzville, New York. Symbol US is the single largest manufacturer of bar code equipment in the world. In particular, Symbol US products dominate the "scanning" segment of the bar code industry, as it owns the patent for one of the most widely used trigger / laser mechanisms in the world. That mechanism is incorporated into various types of scanners manufactured by Symbol US, as well as in numerous different application specific scanner-integrated mobile computer systems worldwide.

9. Symbol is the Canadian subsidiary of Symbol US. Symbol US products are sold and distributed in Canada through Symbol. (For the purpose of this Statement of Material Facts, Symbol US and Symbol will be collectively referred to as the "Symbol Companies". Bar code equipment manufactured by the Symbol Companies will be referred to as "Symbol Products".) Anyone wishing to obtain Symbol Products for use in Canada must obtain those products through Symbol, either directly or through specific distributors representing the Symbol Companies.

## **Symbol's Refusal to Deal**

10. BSI began dealing in Symbol Products in or about 1992. In 1994, at Symbol's request, BSI took over distribution of Symbol Products in Western Canada while operating as "Symbol Western". Over the next decade, BSI opened offices in a number of

Canadian Provinces, dealing primarily in Symbol Products. By December 2002, the Applicant's business was focussed almost exclusively in dealing with Symbol products. Symbol Products represented approximately 75% of the Applicant's business, including new sales, custom and turn key software and service / maintenance contracts.

11. At some point in 2002, Symbol US and its principals became the subject of an investigation by the Securities and Exchange Commission of the United States (the "SEC"). The SEC investigation, which implicated both Symbol US and its corporate officers, was directed at Symbol US's alleged failure to properly report financial information, including sales revenues.

12. On or about January 30, 2003, David Sokolow, the principal of BSI, was subpoenaed by the SEC. Mr. Sokolow was subsequently interviewed by SEC investigators in respect of the SEC investigation.

13. In March 2003, BSI commenced legal action in Manitoba against the Symbol Companies (the "Legal Action"). The Legal Action was founded upon an allegation that the defendants were in breach of a 1998 agreement.

14. Subsequent to the commencement of the Legal Action, Todd Abbot, the executive vice President of Symbol US, advised Mr. Sokolow that the Symbol Companies were "going to bury" the Applicant. He further stated that the Symbol Companies were

going to approach all of the Applicant's customers directly, or through another VAR, and take all of those customers.

15. On April 9, 2003, Mike Reid, the President of Symbol, advised that neither Symbol nor any of its distributors would accept purchase orders from the Applicant after April 20, 2003.

16. At or about the time the Legal Action was commenced, Symbol produced a new form of VAR agreement. Symbol advised its distributors / VARs that all previous agreements were set aside and required that any party wishing to distribute Symbol products reapply to participate under the new form of agreement.

17. The Applicant applied to participate in the new VAR agreement, but that application was rejected on May 6, 2003.

18. Since May 1, 2003, Symbol has refused to deal with the Applicant and has refused to sell any Symbol products to the Applicant.

19. As a result of Symbol's refusal to supply any of its product to the Applicant, the Applicant attempted to deal through other distributors or VARs of Symbol Products in order to acquire the Symbol Products it required in order to carry out its business. However, on various occasions, Symbol representatives have taken steps to ensure that those suppliers



do not deal with the Applicant. On more than one occasion, Symbol (or the Symbol Companies) has advised its distributors and/or VARs that it would not supply Symbol Products which were to be provided to the Applicant.

20. Further, Symbol has actively encouraged other VARs to approach the Applicant's customers with a view to taking over service contracts.

**Effect on the Applicant's Business**

21. As a result of Symbol's refusal to deal with the Applicant and the Symbol Companies' refusal to allow any of their distributors to deal with the Applicant, the Applicant has been unable to obtain Symbol Products. The effect on the Applicant's business has been devastating.

22. In the fiscal year ending September 2002, the Applicant realized revenues in excess of \$20 million. The Applicant's revenue for the fiscal year ending in September 2003 will be just under \$10 million. That drop in revenue is directly attributable to Symbol's refusal to deal with the Applicant and the steps it has taken to prevent Symbol distributors or VARs from dealing with the Applicant. Unless the Applicant is able to obtain access to Symbol Products, that drop in revenue will continue until the Applicant can no longer carry on business.

23. In addition to the Applicant's inability to sell Symbol Products to new clients, approximately 75% of the Applicant's ongoing maintenance contracts relate to clients with Symbol Products. In order to fulfil those contracts, the Applicant requires access to Symbol Products and Symbol personnel. As a result of Symbol's refusal to deal with the Applicant, it has been unable to fulfil its obligations to those clients.

24. As a result of its inability to obtain Symbol Products, the Applicant was forced to reduce its operations. To date, it has laid off approximately 50% of its workforce. Further layoffs will occur as revenues continue to drop.

25. In September 2003, as a result of the Applicant's financial circumstances, created by Symbol's refusal to provide Symbol Products to the Applicant, the Applicant's bank, the Royal Bank of Canada in Winnipeg, Manitoba made a demand in respect of outstanding loans owed by the Applicant. The Applicant is presently in negotiation with the Royal Bank, but, if revenues continue to fall as they have been since Symbol stopped dealing with the Applicant, the Applicant will be forced into receivership in the near future.

26. The Applicant is ready, willing and able to meet the usual trade terms for the purchase and supply of Symbol Products, just as it was able to do so during the 11 years prior to the Symbol Companies' refusal to supply Symbol Products.

27. There is no shortage of Symbol Products in the market. The only reason the Applicant has been unable to obtain such products is the refusal of Symbol to supply Symbol Products to the Applicant and the refusal of the Symbol Companies to allow their distributors to provide Symbol Products to the Applicant.

**Basis for Application Pursuant to section 103.1**

28. The test for granting leave under section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “*Act*”) is set out in subsection 103.1(7), as follows:

The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the application is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

29. In this application, the Applicant seeks leave to bring an application for an order pursuant to section 75 of the *Act*, which states as follows:

(1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

- (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,
- (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,
- (c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,
- (d) the product is in ample supply, and
- (e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual

trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

30. In National Capital News Canada v. Milliken, (2002) 23 CPR (4<sup>th</sup>) 77, the Competition Tribunal set out the following test which must be met in order to obtain leave under section 103.1 of the *Act*:

... the appropriate standard under subsection 103.1(7) is whether the leave application is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order.

31. This test is clearly met in the present application, as the following points are clearly established on the evidence before the Tribunal:

- (a) the Respondent is engaged in activity which constitutes a refusal to deal under section 75 of the *Act*; and

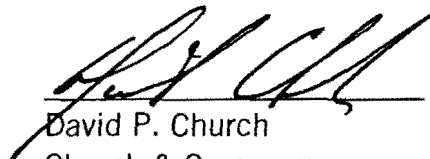
**Affidavit of David Sokolow, sworn October 23, 2003 ("Sokolow Affidavit"),  
paras. 25-35**

- (b) the Applicant's business is directly and substantially affected by the Respondent's refusal to deal, and refusal to allow others to deal, with it.


**Sokolow Affidavit, paras. 36-40**

32. The actions of Symbol in refusing to deal with the Applicant and in refusing to allow its distributors / VARs to deal with Applicant clearly fall within the scope of activity prescribed by section 75 of the *Act* and clearly amounts to a practice which, at the very least, could be subject to an Order under that section.

Dated at Vancouver, British Columbia, this 30<sup>th</sup> day of October, 2003.

  
David P. Church  
Church & Company  
Solicitors for the Applicant

310

127 

File No. CI 03-01-36054

THE QUEEN'S BENCH  
WINNIPEG CENTRE  
IN BANKRUPTCY

IN THE MATTER OF: *The Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, s. 47(1)*

BETWEEN:

ROYAL BANK OF CANADA,

applicant,

- and -

BARCODE SYSTEMS INC.,

respondent.

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ORDER

FILED  
QUEEN'S BENCH

DEC 19 2003

LAW COURTS  
WINNIPEG

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FILLMORE RILEY  
Barristers & Solicitors  
1700 - 360 Main Street  
Winnipeg, Manitoba  
R3C 3Z3

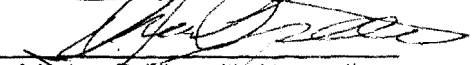
Phone: 957-8321

DAVID J. KROFT/D. WAYNE LESLIE

File: 180142-20

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. **LAW 4Y4**

This is Exhibit "B" referred to in the Affidavit of  
Mike Reid sworn before me  
this 19th day of February, 2005

  
A Notary Public entitled to practice  
In and for the Province of Ontario

THE QUEEN'S BENCH  
WINNIPEG CENTRE  
IN BANKRUPTCY

311

THE HONOURABLE )  
JUSTICE *SCHULMAN* )  
)

The *19<sup>th</sup>* day of December, 2003

IN THE MATTER OF:      The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, s. 47(1)

BETWEEN:

ROYAL BANK OF CANADA,

applicant,

- and -

BARCODE SYSTEMS INC.,

respondent.

ORDER

THIS APPLICATION, made by the applicant, was heard this day, at the Law Courts Building, Broadway and Kennedy Street, Winnipeg, Manitoba, in the presence of counsel for the applicant and counsel for the respondent.

ON READING the notice of application, the affidavit of David Scruton sworn December , 2003, and the consent of PricewaterhouseCoopers Inc. to its appointment as interim receiver, all filed, and on hearing the submissions of counsel for the applicant.

- 1 THIS COURT ORDERS that the time for service of the notice of application be and the same is hereby abridged and that further service thereof is hereby dispensed with.
  
2. THIS COURT ORDERS that effective immediately, PricewaterhouseCoopers Inc. is hereby appointed interim receiver pursuant to s. 47(1) of the *Bankruptcy and Insolvency Act* (the "Receiver"), without security, of all of the property, assets and undertaking of the respondent, Barcode Systems Inc., wheresoever situate, (the "Property"), with power to act at once to administer, manage, take control of, receive, preserve, protect, dispose of, deal with and sell the Property or any part thereof as it sees fit, until further Order of the Court.
  
- 3 THIS COURT ORDERS that, subject to any valid claim to solicitor-client privilege, the respondent, its present and former officers, directors, solicitors, accountants, agents, custodians, managers, employees, servants, shareholders, any persons acting on their instructions or behalf, and all other persons having notice of this Order (collectively the "Affected Persons"), shall forthwith grant access to and deliver possession of the Property of every nature and kind whatsoever and wheresoever situate to the Receiver including, without limitation:
  - a) all information, including copies of all documents, related to action commenced by the respondent in Manitoba Court of Queen's Bench file no. CI 03-01-32071 against Symbol Technologies Canada, Inc. and Symbol Technologies, Inc ,



**313**

- b) all monies, cash on hand, cheques, post-dated cheques and remittances of any kind relating to the Property;
- c) all books, securities, documents, contracts, agreements, deeds, drawings, papers, records, computer records (including computer facilities and access codes) and accounts of every kind relating thereto; and
- d) any other records and information of every nature and kind relating to the Property or the business carried on by the respondent and to provide or permit the Receiver to make, retain and take away copies thereof, and to allow the Receiver immediate, continued and unrestricted access to the Property;

and all the Affected Persons are hereby restrained and enjoined from disturbing or interfering with the Property or the Receiver and with the exercise by the Receiver of its powers and the performance by the Receiver of its duties hereunder.

- 4. THIS COURT ORDERS that if the respondent's records are stored in a computer, including any electronic data processing system, whether in the possession of the respondent or a third party, including, without limitation, any internet service providers accessible to any of the Affected Persons, such persons shall, at the request of the Receiver, give the Receiver access thereto to retrieve such

information in such manner as the Receiver, in its discretion, considers reasonable and expedient.

5 THIS COURT ORDERS that, included within its powers, the Receiver shall be at liberty, but is not obligated, to take such steps on behalf of or in the name of the respondent as it deems appropriate to receive, preserve, protect and realize on the Property, including, without further Order of the Court:

- a) to carry on the business pertaining to the Property, including the power to sell, lease, mortgage, manage and operate the Property or any part or parts thereof in the ordinary course of business including, the power to lend money to the respondent's affiliate Barcode Systems Inc., a Washington, U.S.A. corporation, on an unsecured basis on such terms as to repayment and security;
- b) to obtain appraisals of the Property or any part or parts thereof;
- c) to solicit offers to purchase the Property or any part or parts thereof, whether directly or indirectly through agents, auctioneers or liquidators, whether for cash or on credit, privately or otherwise;
- d) to sell, transfer or assign, whether on credit, by private tender, public auction or otherwise, the whole of the Property or any part or parts thereof out of the ordinary course of business;

**315**

- e) to pay any debts, claims, obligations or liabilities of the respondent which have priority over the claims of the applicant and to pay such other debts, claims, obligations or liabilities of the respondent as the Receiver deems necessary or advisable to protect or properly realize on the Property, provided that all of the aforementioned payments are to be allowed to the Receiver in passing its accounts and shall form part of the Receiver's First Charge, as herein defined, on the Property;
- f) to employ and retain, and terminate, if deemed necessary, such agents, assistants, experts, auditors, advisors, consultants, employees, and legal counsel as the Receiver may consider necessary or desirable;
- g) to extend the time for payment of any monies now or hereafter due or owing to the respondent pertaining to the Property, with or without security, and to settle or compromise any such indebtedness;
- h) to apply for any permits, licences, approvals, or permissions as may be required by any authority with respect to the Property;
- i) to assume any contracts, licenses, or permits to which the respondent is a party or refrain from assuming same.

- j) to execute, sign, issue, endorse or negotiate in the name of and on behalf of the respondent, all necessary cheques, leases, bills of sale, conveyances, bills of lading, deeds and documents of whatever nature necessary or incidental to the exercise of the powers granted herein;
  - k) to change locks and security codes, including computer access and security codes, engage independent security personnel and obtain adequate insurance coverage;
  - l) to vote any shares and exercise any rights which the respondent may have as a shareholder;
  - m) to make an assignment of the Property for the general benefit of the respondent's creditors pursuant to the *Bankruptcy and Insolvency Act*, or to consent to a receiving order against the respondent;
  - n) to file a Notice of Intention to Make a Proposal or a Proposal on behalf of the respondent pursuant to the *Bankruptcy and Insolvency Act*.
- 6 THIS COURT ORDERS that nothing contained in this order shall be deemed to constitute the Receiver an employer, successor employer or related employer of the employees of the respondent within the meaning of any legislation, federal or provincial, or deem the Receiver liable for any wages, including severance pay,

termination pay or vacation pay, excepting thereout any wages that the Receiver may agree to pay to any employees.

7. THIS COURT ORDERS that the Receiver shall be at liberty to apply to court from time to time for directions and guidance in the exercise of its powers and the performance of its duties hereunder, as deemed necessary.
8. THIS COURT ORDERS that no actions or proceedings shall be taken or continued against the respondent or the Receiver without the prior written consent of the Receiver or without leave of the court being first obtained on not less than seven (7) days notice to the Receiver, provided always that any recognized public authority, taking action solely to protect imminent and material danger to life, health, limb or property shall not be so restrained.
9. THIS COURT ORDERS that all persons are enjoined from disturbing, discontinuing, cutting off or interfering with any utilities or other like services, including but not limited to the furnishing of fuel, gas, oil, heat, electricity, garbage collection, water, computers, telephones and telecopiers, computer hardware and software support, electronic, internet, electronic mail or any other utilities of like kind, furnished up to the present date to the respondent whether in the respondent's name or in the name of another in respect of any of the Property. All persons are hereby restrained and enjoined from terminating, determining or cancelling agreements, or cutting off, discontinuing or altering any such utilities or services to the respondent or relating to

the Property, subject to the obligation of the Receiver to pay for such utilities or services provided to the Receiver subsequent to the occupation by the Receiver of any premises to which the utilities or services are supplied at the normal prices other than standby fees, deposits or similar charges, except with the prior written consent of the Receiver or on further order of the court on at least seven (7) days notice to the Receiver.

10. THIS COURT ORDERS that all funds, monies, cheques, instruments and other forms of payment received or collected by the Receiver from and after the making of this Order from any source whatsoever, including from the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited by the Receiver and such monies, net of any disbursements provided for herein, shall be held by the Receiver to be paid by the terms of this Order or any further Order of the court.

11 THIS COURT ORDERS that the Receiver is hereby fully authorized and empowered, but not obligated, to initiate, prosecute and continue the prosecution of any and all actions, applications, administrative hearings, arbitrations or proceedings as may in its judgment be necessary or desirable to properly receive, manage, operate, preserve, protect or realize upon the Property and to secure payment of rent and accounts from the Property, to defend all applications, proceedings, actions, administrative hearings or arbitrations now pending or hereafter instituted

against the respondent or the Receiver, the prosecution or defence of which will, in the judgment of the Receiver, be necessary to properly receive, manage, operate, protect, preserve or realize on the Property or to protect the administration by the Receiver of the property, and to settle or compromise any such actions, applications, proceedings, administrative hearings or arbitrations which, in the judgment of the Receiver should be settled or compromised. The authority hereby bestowed shall extend to such appeals or applications for judicial review as the Receiver shall deem proper and advisable in respect of any order or judgment pronounced in any such application, proceeding or action, administrative hearing or arbitration.

12 THIS COURT ORDERS that the Receiver shall pass its accounts from time to time and shall pay the balance in its hands as this Court may direct.

13 THIS COURT ORDERS that the Receiver's remuneration and any expenses which may be properly made or incurred by the Receiver in connection with the exercise of its powers and the performance of its duties hereunder (including without limitation any fees and disbursements of its legal counsel on a solicitor and own client basis) shall be allowed to the Receiver in the passing of its accounts and shall form a first and specific fixed charge on the Property in priority to any and all charges or claims of the applicant or any other person and all encumbrances subsequent thereto (the "Receiver's First Charge").

- 14 THIS COURT ORDERS that the Receiver shall be at liberty, from time to time, to pay, from monies in its hands, costs and other expenses relating to the Property, including its own remuneration and disbursements and that of its legal counsel, whether incurred prior to or subsequent to the date of this Order. Any amounts so applied against the Receiver's remuneration and expenses shall constitute advances against the amounts allowed on the passing of the Receiver's accounts.
15. THIS COURT ORDERS that the Receiver is hereby indemnified out of the Property from and against all liabilities arising out the performance of its duties as Receiver pursuant to the terms of this Order, save and except for any gross negligence or wilful misconduct on the part of the Receiver with respect to such duties, and the Receiver shall have a charge on the Property for such indemnity in priority to all security, charges and encumbrances affecting the Property, excepting only the Receiver's First Charge
- 16 THIS COURT ORDERS that the Receiver shall be at liberty and is hereby empowered to borrow monies without personal liability from time to time as it may consider necessary, with such fees and at such rate or rates of interest as it deems advisable and for such period or periods as it may be able to arrange, for the purpose of exercising its powers and performing its duties. The monies authorized to be borrowed and interest thereon shall form a first specific fixed charge on the Property and/or its proceeds ranking in priority to the charge of the applicant, and all encumbrances subsequent thereto, but subject to the Receiver's First Charge and



the rights of the Receiver to be indemnified out of the Property with respect to its liability, expenses and its own remuneration properly incurred, as provided herein.

17 THIS COURT ORDERS that all monies from time to time borrowed by the Receiver pursuant to this Order or any further order of the Court shall rank *pari passu*.

18 THIS COURT ORDERS that any monies authorized to be borrowed hereunder shall be evidenced and secured by certificates issued by the Receiver substantially in the form of the draft certificate appended as schedule "A" hereto, which security shall not be enforced without leave of the Court first being obtained and upon seven (7) days notice to the Receiver.

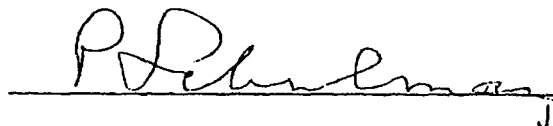
19 THIS COURT ORDERS AND SEEKS the aid and recognition of any Court or administrative, regulatory or governmental body in Canada and any Court or administrative, regulatory or governmental body in the United States of America to act in aid of or to become complementary in the carrying out of the terms of this Order pursuant to s. 188 of the *Bankruptcy and Insolvency Act*.

20 THIS COURT ORDERS that the Receiver is authorized and empowered to apply to any Canadian or foreign court, tribunal or administrative body, for orders aiding, assisting or recognizing the appointment of the Receiver and confirming the powers of the Receiver in any other jurisdictions, and all courts of all such jurisdictions, both foreign and domestic, are hereby respectfully requested to make such orders and

provide such other aid, assistance and recognition to the Receiver as an officer of this Court as they may deem necessary or appropriate in furtherance of this Order or any subsequent Order in this proceeding

21. THIS COURT ORDERS that any persons affected by this Order shall be liberty to seek relief on such terms as may be just, in the circumstances, on seven (7) days notice to the Receiver.

December 19, 2003

A handwritten signature in cursive script, appearing to read "P. Schulman", is written over a horizontal line. The signature is positioned to the right of the date.

SCHEDULE "A"

AMOUNT. \$ \_\_\_\_\_ RECEIVER CERTIFICATE NO \_\_\_\_\_

- 1 THIS IS TO CERTIFY that PricewaterhouseCoopers Inc., the Interim Receiver (the "Receiver") over the assets, property and undertaking of Barcode Systems Inc (the "Property"), appointed by Order of the Manitoba Court of Queen's Bench dated the \_\_\_ day of December, 2003 in court file no CI 03-01-\_\_\_\_\_ (the "Order"), acknowledges that, as Receiver, it is indebted to \_\_\_\_\_ (the "Lender") on account of this certificate in the maximum principal amount of \$\_\_\_\_\_, which the Receiver is authorized to borrow pursuant to the Order
  
- 2 The principal amount which may from time to time be outstanding on account of this certificate is payable on demand with interest thereon calculated and payable monthly on the \_\_\_ day of each and every month at the rate of \_\_\_ per annum (both after as well as before demand) to the date of payment. The first payment of interest shall be calculated for the period commencing \_\_\_ and shall be payable on the \_\_\_\_\_ of \_\_\_\_\_.
  
- 3 The principal amount with interest thereon is by the terms of the Order, together with the principal amounts and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, together with all other assets and property which are now or may hereafter be in the custody and control of the Receiver (the "Charge"), in priority to the security interests of Royal Bank of Canada and all subsequent encumbrances thereto, but subject to the right of the Receiver to indemnity out of the Property in respect of its remuneration and its expenses and legal costs properly incurred

- 4 Until the Lender delivers or issues a written notice to the Receiver pursuant to paragraph 2 hereof, the Receiver may borrow, repay and reborrow, and the Lender may advance on account of this certificate such principal amounts as the Receiver may require; provided that the principal amount outstanding shall at no time exceed \$\_\_\_\_\_.
- 5 At any time, the Receiver may make payments on account of the principal amount outstanding as it considers appropriate or desirable, without any penalty.
- 6 All monies payable in respect of principal and interest under this certificate are payable at Winnipeg.
- 7 Until all liability in respect of this certificate shall have been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the Lender, without the prior written consent of the Lender.
- 8 All liability in respect of the whole or any part of the principal amount for which this certificate is issued and interest thereon shall at any time or from time to time be terminated on tender to the Lender of the outstanding balance of the principal amount together with interest accrued thereon to the date of tender.
- 9 The Charge shall operate so as to permit the Receiver to deal with the Property and all other assets and property coming under the control of the Receiver as authorized by the Order and as authorized by any further or other order of the Court.

10 Notwithstanding any other provisions hereof, the Charge created hereby shall not cease to operate or be or be deemed to be void by reason of the principal amount outstanding hereunder becoming or being zero at any time or from time to time.

11 The Receiver does not undertake and it is not under any personal liability to pay any amount in respect of which it may issue certificates under the terms of the Order

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

**PricewaterhouseCoopers Inc.**  
as Receiver of the assets, property  
and undertaking of Barcode Systems Inc.

Per: \_\_\_\_\_

Name:

Title:

Suit No. BK 03-01-36054

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF: **The Bankruptcy and Insolvency Act, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)**

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

Respondent.


---

**NOTICE OF MOTION**

Hearing Date: Thursday, January 15, 2004, at 1:00 PM  
before Mr. Justice Schulman

---

This is Exhibit "A" referred to in the Affidavit  
of Steven Field sworn before me  
this 20 day of September, 2004



A Barrister-at-Law entitled to practice  
in and for the Province of Manitoba

**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3Z5

**RICHARD W. SCHWARTZ**  
Telephone: (204) 944-8777  
Fax: (204) 947-2502  
File No. 032!

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "C" referred to in the Affidavit  
of Mike Reid sworn before me,  
this 20 day of February, 2005



A Notary Public entitled to practice  
in and for the Province of Ontario

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:

**The *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)**

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

Respondent.

**NOTICE OF MOTION**

THE INTERIM RECEIVER, PRICEWATERHOUSECOOPERS INC., will make a motion before the Honourable Mr. Justice Schulman on Thursday, January 15, 2004, at 1:00 PM, or as soon after that time as the motion can be heard, at The Law Courts Complex, in Winnipeg, Manitoba.

THE MOTION IS FOR an order:

1. for short leave for the hearing of the motion;
2. compelling Symbol Technologies Canada, Inc. and/or Symbol Technologies Inc. (collectively. "Symbol") to supply the Interim Receiver with product for the purposes of resale by the Interim Receiver to end-users on such terms and conditions as may be just;

3. compelling Symbol to direct its authorized dealers to supply the Interim Receiver with product for the purposes of resale by the Interim Receiver to end-users on such terms and conditions as may be just;
4. compelling Symbol to provide the end-users of such product with such support and to honour such warranties as Symbol does in the ordinary course to end-users who have purchased Symbol product from authorized Symbol dealers
5. costs;
6. such further and other relief as may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. Paragraphs 2, 5, 7, and 9 of the Order made by Mr. Justice Schulman on December 19, 2003;
2. Sections 47(2) and 47.1(2) of the *Bankruptcy and Insolvency Act*;
3. Section 55 of *The Court of Queen's Bench Act*;
4. The Interim Receiver has orders on hand from various of Barcode's customers for Symbol product and, moreover, the opportunity to generate revenue by obtaining further orders. It does not, however, have sufficient Symbol product on hand to fill even those orders which it has received to date, and has been unable to purchase such product from Symbol or any of its authorized dealers;
5. Even were the Interim Receiver able to purchase such product, it is concerned that Barcode's customers may not receive product support and warranty support from Symbol absent Symbol approving/authorizing those sales as to date, at least, Symbol



has failed or refused to assure the Interim Receiver that Barcode's customers will receive the necessary product support and warranty support from Symbol.

6. The Interim Receiver is currently offering Barcode's business for sale on a going concern basis. The business has been advertised for sale and an information package relating to the business has been prepared. The Interim Receiver has received requests for further information from a number of parties, each of which has executed a Confidentiality Agreement. A significant portion of the value of the business as a going concern is related to the customer base.

7. In the event the existing orders can not be filled within the next few working days, it appears that the sales and, more importantly, the customers to whom those sales would be made, will be lost, likely irretrievably so;

8. As such, it is likely that the Interim Receiver's ability to sell Barcode as a going concern would be greatly impaired in the event it was not able to sell to Barcode's customers in the ordinary course. In such event, it will also be difficult to maintain Barcode's sales force (all of which the Interim Receiver has hired), the loss of which would further impair the ability to sell the business as a going concern.

9. Such further and other grounds as counsel may advise.

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

1. The Order made by Mr. Justice Schulman on December 19, 2003;
2. Affidavit of David A. Johnson sworn January 14, 2004, to be filed, and;
3. Such further and other material as counsel may advise.

Date: January 14, 2004

**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3Z5  
Telephone: (204) 944-8777  
**Richard W. Schwartz**  
Counsel for the Interim Receiver

TO: **AIKINS**  
30<sup>th</sup> Floor – 360 Main St.  
Winnipeg, Manitoba  
R3C 4G1  
Telephone: (204) 957-4627  
**Colin R. MacArthur, Q.C.**  
Counsel for Symbol Technologies  
Canada, Inc. and Symbol Technologies Inc.

Suit No. BK 03-01-36054

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF: **The Bankruptcy and Insolvency Act, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)**

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,


Respondent.

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**AFFIDAVIT OF DAVID A. JOHNSON**  
AFFIRMED THE 14<sup>th</sup> DAY OF JANUARY, 2004  
Hearing Date: Thursday, January 15, 2004, at 1:00 PM  
before Mr. Justice Schulman

---

This is Exhibit "B" referred to in the Affidavit  
of Steven Field sworn before me  
this 2<sup>nd</sup> day of September, 2004


  
A Barrister-at-Law entitled to practice  
in and for the Province of Manitoba

**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3Z5

**RICHARD W. SCHWARTZ**

Telephone: (204) 944-8777  
Fax: (204) 947-2593  
File No. 032544

This is Exhibit "D" referred to in the Affidavit of  
Mike Reid sworn before me  
this 2<sup>nd</sup> day of February, 2005

  
A Notary Public entitled to practice  
In and for the Province of Ontario

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:                    **The *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)**

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

Respondent.

**AFFIDAVIT OF DAVID A. JOHNSON**

I, DAVID A. JOHNSON, of the City of Winnipeg, in the Province of Manitoba, Certified General Accountant and Trustee-in-Bankruptcy, AFFIRM AND SAY THAT:

1. I am a Vice-President of PricewaterhouseCoopers Inc., Interim Receiver of the Respondent herein, and am involved on a day-to-day basis with this matter. As such, I have personal knowledge of the facts hereinafter deposed to by me, except where those facts are stated to be based upon information and belief, in which case I have stated the source of my information and my belief in its truth.
  
2. I am advised by Mr. Earl Ray, Barcode's V.P. of Finance, that the majority of Barcode's business has historically consisted of the sale of product manufactured by Symbol Technologies Canada, Inc. and/or Symbol Technologies Inc. (collectively, "Symbol"), which was supplied by Symbol and various of its authorized dealers.

3. The Interim Receiver has orders on hand from various of Barcode's customers for Symbol product and, moreover, the opportunity to generate revenue by obtaining further orders. It does not, however, have sufficient Symbol product on hand to fill even those orders which it has received to date, and has been unable to purchase such product from Symbol or one of its authorized dealers, Scan Source, the particulars of which will follow.

4. At some point within the last one to two years, Scan Source was Barcode's single largest supplier of Symbol product. From discussions with the employees of Barcode, however, I was given to understand that it was unlikely that Scan Source would agree to supply the Interim Receiver with Symbol product. In order to determine if that was in fact the case, I contacted Laurie Bolt, the Regional Credit Manager of Scan Source. She advised me and I do verily believe that Scan Source will not in fact provide Symbol product to the Interim Receiver. In response to my questions as to why that was so and whether there was anything that the Interim Receiver could do which would change that situation, Ms. Bolt further advised me that she couldn't give me any additional information but would raise my questions with her legal department and that she would then get back to me.

5. Even were the Interim Receiver able to purchase such product from Scan Source or some other authorized dealer, I am concerned that Barcode's customers may not receive product support and warranty support from Symbol absent Symbol approving/authorizing those sales as to date, at least, Symbol has refused to assure the Interim Receiver that Barcode's customers will receive the necessary product support and warranty support from Symbol.

6. In the event existing orders cannot be filled within the next few working days, it appears that sales will be lost and, more importantly, the customers to whom those sales would be made may be lost, possibly irretrievably so.

7. I also note that a significant portion of Barcode's business involved repeat sales to Barcode's existing customer base. The Interim Receiver is currently offering Barcode's entire business for sale on a going concern basis, and to that end the Interim Receiver has placed a number of advertisements. An information package relating to the business has accordingly been prepared, and the Interim Receiver has received requests for a copy of it from a number of parties, each of which has executed a Confidentiality Agreement.

8. As such, it is likely that the Interim Receiver's ability to sell Barcode as a going concern would be greatly impaired in the event it was not able to sell to Barcode's customers in the ordinary course. In such event, it will also be difficult to maintain Barcode's sales force (all of whom the Interim Receiver has hired), the loss of which would further impair the ability to sell the business as a going concern.

9. Discussions have been had with counsel for Symbol in order to arrive at an arrangement whereby the Interim Receiver would be able to buy Symbol product and assure Barcode's customers that same (and the existing Symbol product in Barcode's inventory) will be covered by Symbol's usual product and warranty support. To that end, the Interim Receiver has assured Symbol's counsel that such an arrangement would be without prejudice to Symbol's and Barcode's positions in respect of the litigation between them, that sales of Symbol product would be to end-users only, that for the purpose of allowing Symbol to vet that arrangement the Interim Receiver would divulge the names of those customers, and that the Interim Receiver itself would be

responsible for payment of any and all product which it orders. To date, however, and unfortunately, nothing has been agreed to.

10. I make this affidavit *bona fide*.

AFFIRMED before me at the )  
City of Winnipeg, in the )  
Province of Manitoba, this 14<sup>th</sup> )  
day of January, 2004. )  
)  
)

\_\_\_\_\_  
DAVID A. JOHNSON

\_\_\_\_\_  
A Notary Public in and for  
the Province of Manitoba





**THE QUEEN'S BENCH**  
**In Bankruptcy and Insolvency**  
Winnipeg Centre

THE HONOURABLE                    )  
   )  
 MR. JUSTICE SCHULMAN         )     Thursday, the 15<sup>th</sup> day of January, 2004

IN THE MATTER OF:                 **The Bankruptcy and Insolvency Act, R.S.C. 1985,**  
   **c. B-3, as amended, s. 47(1)**

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

Respondent.

**ORDER**

THIS MOTION, made by the Interim Receiver of Barcode Systems Inc. ("Barcode") for, *inter alia*, an order compelling Symbol Technologies Canada, Inc. and/or Symbol Technologies Inc. (collectively. "Symbol") to supply the Interim Receiver with product for the purposes of resale by the Interim Receiver, was heard this day at The Law Courts Complex, in Winnipeg, Manitoba.

UPON HEARING reading the Affidavit of David A. Johnston affirmed January 14, 2004, upon hearing counsel for the Interim Receiver, and upon hearing counsel for Symbol say that the motion was not opposed.

1. THIS COURT ORDERS THAT the Interim Receiver be and is hereby granted short leave for the hearing of this motion;

2. THIS COURT ORDERS THAT until further order of this Court, Symbol be and is hereby compelled to supply, or cause to be supplied, Symbol product to the Interim Receiver for the purposes of resale by the Interim Receiver to Barcode's customers, upon such terms and conditions as Symbol would ordinarily provide to one of its authorized distributors;

3. <sup>PS</sup> THIS COURT ORDERS THAT until further order of this Court, Symbol be and is hereby <sup>directed to authorize v</sup> ~~compelled to direct~~ its authorized distributors to supply the Interim Receiver with product for the purposes of resale by the Interim Receiver to Barcode's customers, upon such terms and conditions as such distributor would ordinarily provide to one of its authorized dealers;

4. THIS COURT ORDERS THAT Symbol be and is hereby compelled to provide such customers with such support and to honour such warranties as Symbol does in the ordinary course to end-users who have purchased Symbol product from authorized Symbol dealers.

5. THIS COURT ORDERS THAT either the Interim Receiver or Symbol shall be entitled to apply for such further or other order as may be <sup>just.</sup> ~~necessary to give effect to the~~ terms hereof. <sup>PS</sup>

Date: January 15, 2004

P. Schulman  
Schulman, J

Competition Tribunal



Tribunal de la Concurrence

Reference: *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 Comp. Trib. 1  
File no.: CT2003008  
Registry document no.: 0011

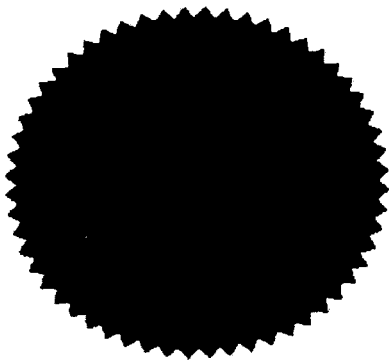
IN THE MATTER OF an application by Barcode Systems Inc., for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, granting leave to bring an application under section 75 of the Act.

BETWEEN:

Barcode Systems Inc.  
(applicant)

and

Symbol Technologies Canada ULC  
(respondent)



Decided on the basis of the written record.  
Member: Lemieux J. (presiding)  
Date of reasons and order: 20040115  
Reasons and order signed by: Lemieux J.

**REASONS AND ORDER REGARDING APPLICATION FOR LEAVE TO MAKE AN APPLICATION UNDER SECTION 75 OF THE COMPETITION ACT**

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "F" referred to in the Affidavit of Mike Reid sworn before me this 24 day of February, 2005

A Notary Public entitled to practice  
In and for the Province of Ontario

[1] Barcode Systems Inc. ("Barcode") has applied to the Competition Tribunal (the "Tribunal") pursuant to subsection 103.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") for leave to make an application under section 75 of that Act.

[2] Barcode alleges Symbol Technologies Canada ULC ("Symbol"), a subsidiary of Symbol Technologies Inc. ("Symbol US"), is refusing to supply it with barcode scanners contrary to the provisions of section 75 of the Act and seeks an order, if leave is granted and appropriate findings are made by the Tribunal, that Symbol accept Barcode as a customer on the "usual trade terms" forthwith upon the issuance of such an order.

[3] This application for leave is only the second such application to the Tribunal brought under the recent amendments to the Act providing for what has been termed as "a private access action" because the Commissioner of Competition (the "Commissioner") does not initiate the proceeding.

[4] The first application for leave was decided by Justice Dawson in *National Capital News v. Milliken*, 2002 Comp. Trib. 41 ("National Capital News"), a decision which I endorse entirely.

[5] The test for the Tribunal granting leave is set out in subsection 103.1(7) of the Act. It provides as follows:

The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section. (emphasis added)

[6] In this case, the practice that is complained of and that could be subject to an order under section 75 of the Act is Symbol's refusal to sell its products to Barcode after Symbol terminated its ten year relationship with Barcode in March 2003.

[7] I make the following points about the Tribunal's test for granting leave.

[8] What the Tribunal must have reason to believe is that Barcode is directly and substantially affected in its business by Symbol's refusal to sell. The Tribunal is not required to have reason to believe that Symbol's refusal to deal has or is likely to have an adverse effect on competition in a market at this stage.

[9] I make this observation because Symbol, in its vigorous opposition to leave being granted, described what, in its view, was a highly competitive marketplace and argued that Barcode had provided no evidence as to this requirement as described in paragraph 75(1)(e) of the Act.

[10] As I read the Act, adverse effect on competition in a market is a necessary element to the Tribunal finding a breach of section 75 and a necessary condition in order that the Tribunal make a remedial order under that section. It is not, however, part of the test for the Tribunal's granting leave or not.

[11] Justice Dawson in *National Capital News*, *supra*, described what kind of proof the Tribunal had to have before it in order to have "reason to believe". She concluded that

...the leave application [must be] supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in [its] business by a reviewable practice [the refusal to deal here], and that the practice in question could be subject to an order.

[12] What this standard of proof means is that the applicant Barcode must advance sufficient credible evidence supported by an affidavit to satisfy the Tribunal that there is a reasonable possibility that its business has been directly and substantially affected because of Symbol's refusal to deal.

[13] The Tribunal measures the evidence on a scale which is less than the balance of probabilities. It is not sufficient, however, that the evidence shows a mere possibility that Barcode's business has been directly and substantially affected by Symbol's refusal to supply.

[14] Barcode's evidence was to the effect Symbol's refusal to supply, either directly or by preventing Symbol distributors or Symbol resellers from doing so, has now caused a substantial loss of revenues to the point where it, if continued, would force Barcode out of business. On December 19, 2003, on petition from the Royal Bank of Canada, an interim Receiver was appointed of all the property, assets and undertakings of Barcode.

[15] Barcode states Symbol's actions also critically impacted its ability to perform its ongoing maintenance contracts.

[16] Barcode asserts that, as of the filing of its application, 50 percent of its employees have been laid off.

[17] Symbol filed written representations and affidavits to counter Barcode. Symbol outlines the reasons why it is not supplying Barcode with the Symbol products. Specifically it denies that Barcode's business has been substantially affected. It says Barcode has not been precluded from carrying on business by any actions attributable to Symbol.

[18] Symbol states, if Barcode suffered any loss, it is because it breached its contract with Symbol or because of factors which have nothing to do with Symbol such as declining market conditions generally, increased competition from suppliers, exchange rate changes and Barcode's failure to meet usual trade terms with its current suppliers.

[19] On an application for leave, it is not the function of the Tribunal to make credibility findings based on affidavits which have not been cross-examined. I note that the Act requires an applicant to support an application for leave by a sworn affidavit while, for a person opposing leave only written representations are contemplated.

[20] These provisions confirm that the Tribunal's role when granting leave is a screening function simply deciding on the sufficiency of evidence advanced.

[21] There may be situations, however, where it can be demonstrated that an applicant's evidence is simply not credible without engaging the Tribunal in weighing contested statements from opposing parties and the applicant. This is not the case here.

[22] I close on a procedural point. Both Symbol and Barcode have sought leave to file additional material as a result of the limited right of reply granted by the Tribunal to Barcode, as an exception in the interest of justice.

[23] In only exceptional circumstances will the Tribunal grant parties a right of reply in leave applications which are to be dealt with expeditiously.

[24] The Tribunal sees no need to have additional evidence before it as proposed by Barcode or Symbol.

**FOR THESE REASONS THE TRIBUNAL ORDERS THAT:**

[25] The application for leave is granted.

[26] The Tribunal is prepared to expedite the hearing of the application and invites the parties to communicate with the Deputy Registrar of the Tribunal for this purpose.

DATED at Ottawa, this 15<sup>th</sup> day of January, 2004.

SIGNED on behalf of the Tribunal by the judicial member.

(s) François Lemieux

**REPRESENTATIVES**

**For the applicant:**

**Barcode Systems Inc.**

**David P. Church**

**For the respondent:**

**Symbol Technologies Canada ULC**

**Colin MacArthur, Q.C.**

Con

Competition Tribunal



Tribunal de la Concurrence

Reference: *Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 Comp. Trib. 5  
 File no.: CT2003008  
 Registry document no.: 0016

IN THE MATTER OF an application by Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc., for an order pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34.

BETWEEN:

**Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc.**  
 (applicant)

and

pur. **Symbol Technologies Canada ULC**  
 (respondent)

Date of conference call: 20040518  
 Member: Lemieux J. (presiding)  
 Date of order: 20040519  
 Order signed by: Lemieux J.

**ORDER SETTING A DATE FOR FILING OF APPLICATION UNDER SECTION 75 OF THE COMPETITION ACT**

**D. GRANT ISAAC, B.COM., LL.B.**  
 BARRISTER, SOLICITOR, NOTARY  
 The Heritage  
 5045 Orbitor Drive  
 Building 12, Suite 104  
 Mississauga, Ont. L4W 4Y4

This is Exhibit "G" referred to in the Affidavit of Mike Reid sworn before me this 22<sup>nd</sup> day of February, 2005

  
 A Notary Public entitled to practice in and for the Province of Ontario



[1] FURTHER TO an application for leave pursuant to subsection 103.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") to make an application under section 75 of that Act;

[2] AND FURTHER TO the Reasons and Order Regarding Application for Leave to Make an Application Under Section 75 of the *Competition Act*, [2004] C.C.T.D. No. 1 (QL);

[3] AND FURTHER TO subsection 103.1(8) of the Act and the Practice Directions for the Competition Tribunal dated August 30, 2002 (the "Practice Directions");

[4] AND ON CONSIDERING the submissions of counsel for both the applicant and the respondent at a conference call on May 18, 2004;

[5] AND ON CONSIDERING the consent of the parties to change the style of cause to reflect the appointment of Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc.;

THE TRIBUNAL ORDERS THAT:

[6] The applicant shall file its application under section 75 of the Act within 30 days of the date of this order.

[7] The respondent shall file a response within 30 days after the service of the application pursuant to subsection 113(1) of the Practice Directions.

[8] After the expiration of the period for filing a response, the registry of the Competition Tribunal shall contact counsel for the parties to set a date for a case management conference pursuant to section 120 of the Practice Directions.

[9] The style of cause shall be amended to reflect the appointment of Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc.

DATED at Ottawa, this 19<sup>th</sup> day of May, 2004.

SIGNED on behalf of the Tribunal by the judicial member.

(s) François Lemieux

**APPEARANCES**

**For the applicant:**

**Price Waterhouse Coopers as Receiver and Manager of  
Barcode Systems Inc.**

**Lindy J.R. Choy**

**For the respondent:**

**Symbol Technologies Canada ULC**

**David Hill**



Reference: *Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 Comp. Trib. 9  
File no.: CT2003008  
Registry document no.: 0020

IN THE MATTER OF an application by Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc., for an order pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34.

BETWEEN:

**Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc.**  
(applicant)

and


**Symbol Technologies Canada ULC**  
(respondent)

Decided on the basis of the written record.  
Member: Lemieux J. (presiding)  
Date of order: 20040615  
Order signed by: Lemieux J.

**ORDER STAYING THE PROCEEDING**

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "H" referred to in the Affidavit of Mike Reid sworn before me this 25th day of February, 2005.

  
A Notary Public entitled to practice  
In and for the Province of Ontario

[1] FURTHER TO an application for leave pursuant to subsection 103.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") to make an application under section 75 of that Act;

[2] AND FURTHER TO the Reasons and Order Regarding Application for Leave to Make an Application Under Section 75 of the *Competition Act*, [2004] C.C.T.D. No. 1 (QL);

[3] AND FURTHER TO the Order Setting a Date for Filing of Application Under Section 75 of the *Competition Act*, dated May 19, 2004 (the "Tribunal Order dated May 19, 2004");

[4] AND FURTHER TO the letter of Lindy J.R. Choy on behalf of the applicant, Price Waterhouse Coopers as Receiver and Manager of Barcode Systems Inc., dated June 8, 2004, and the letter of Dave Hill, on behalf of Symbol Technologies Canada ULC, dated June 11, 2004;

[5] AND ON CONSIDERING the consent of the parties to stay the requirement to file an application pursuant to section 75 of the Act until such time as all appeals of the decision to grant leave have been concluded;

THE TRIBUNAL ORDERS THAT:

[6] On consent of the parties, this proceeding is stayed until further order of the Competition Tribunal (the "Tribunal").

[7] This stay may be lifted by the Tribunal, at the request of a party upon motion duly served on the other party.

DATED at Ottawa, this 15<sup>th</sup> day of June, 2004.

SIGNED on behalf of the Tribunal by the judicial member.

(s) François Lemieux

COUNSEL

For the applicant:

Price Waterhouse Coopers as Receiver and Manager of  
Barcode Systems Inc.

Lindy J.R. Choy

For the respondent:

Symbol Technologies Canada ULC

David Hill



**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:                    **The *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)**

BETWEEN:

**ROYAL BANK OF CANADA,**

Applicant,

- and -

**BARCODE SYSTEMS INC.,**

Respondent.

**NOTICE OF MOTION**

THE INTERIM RECEIVER, PricewaterhouseCoopers Inc., will make a motion before the Honourable Mr. Justice Schulman on Thursday, February 26, 2004, at 9:00 AM, or as soon after that time as the motion can be heard, at The Law Courts Complex, in Winnipeg, Manitoba.

THE MOTION IS FOR an order:

1. for short leave for the hearing of the motion, if necessary;
2. approving the sale of certain of the assets of Barcode Systems Inc.;
3. vesting title to the said assets in the name of the purchaser thereof;
4. such further and other relief as may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Interim Receiver has solicited and received offers for the assets of Barcode Systems Inc.;
2. The Interim Receiver has received an offer from a purchaser which requires court approval and a vesting order;
3. The Interim Receiver is of the opinion that the terms of the said offer are, in the circumstance of this case, commercially reasonable;
4. Paragraphs 2, 5(a), (c), (d), and (j), and 7 of the Order of Mr. Justice Schulman made on December 19, 2003;
5. Section 47(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3
6. Such further and other grounds as counsel may advise.

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

1. The Order made by Mr. Justice Schulman on December 19, 2003;
2. Affidavit of B. Jeffrey Johnson, to be sworn;
3. Such further and other material as counsel may advise.

Date: February 20, 2004

**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba R3C 3Z5  
Telephone: (204) 944-8777  
**Richard W. Schwartz**  
Counsel for the Interim Receiver



TO: Fillmore Riley LLP  
Barristers and Solicitors  
1700 - 360 Main Street  
Winnipeg, Manitoba  
R3C 3Z3  
Attention: David Kroft  
Counsel for the Royal Bank  
of Canada

AND TO: Thompson, Dorfman, Sweatman  
Barristers and Solicitors  
2200 - 201 Portage Avenue  
Winnipeg, Manitoba  
R3B 3L3  
Attention: Bill Olson  
Counsel for David Sokolow

AND TO: Manitoba Capital Fund  
1445 - 444 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3T1  
Attention: Ken Prazniuk

AND TO: Booth, Dennehy, Ernst & Kelsch  
Barristers and Solicitors  
387 Broadway Avenue  
Winnipeg, Manitoba  
R3C 0V5  
Attention: Michael Dennehy  
Counsel for Barcode Systems Inc.

AND TO: Business Development Bank of Canada  
1100 - 155 Carlton Street  
Winnipeg, Manitoba  
R3C 3H8  
Attention: Ken Sims, Area Manager

AND TO: Business Development Bank of Canada  
110 Barclay Centre  
44 - 7<sup>th</sup> Avenue  
Calgary, Alberta  
T2P 0X8  
Attention: Walter Maciurzynski

AND TO: Harry Mann  
c/o Barcode Systems Inc.  
15665 Medina Road  
Plymouth, MN 55447

AND TO: Lazer Grant Inc.  
400 – 309 McDermot Avenue  
Winnipeg, Manitoba  
R3A 1T3  
Attention: Joel Lazer  
Trustee of the Proposal of  
Barcode Systems Inc.

Suit No. CI 03-01-36054

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF: **The Bankruptcy and Insolvency Act, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)**

BETWEEN:

**ROYAL BANK OF CANADA,**

Applicant,

- and -

**BARCODE SYSTEMS INC.,**

Respondent.


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**AFFIDAVIT OF B. JEFFREY JOHNSON**  
AFFIRMED THE 23<sup>rd</sup> DAY OF FEBRUARY, 2004  
Hearing Date: Thursday, February 26, 2004, at 9:00 AM  
before Mr. Justice Schulman

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**FILED**  
**QUEEN'S BENCH**  
**FEB 24 2004**  
**LAW COURTS**  
**WINNIPEG**

This is Exhibit "E" referred to in the Affidavit  
of Steven Field sworn before me  
this 26<sup>th</sup> day of September, 2004

  
A Barrister-at-Law entitled to practice  
in and for the Province of Manitoba

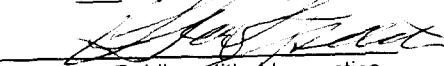
**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3Z5

**RICHARD W. SCHWARTZ**

Telephone: (204) 944-8777  
Fax: (204) 947-2593  
File No. 032

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "J" referred to in the Affidavit of  
Mike Reid sworn before me  
this 20<sup>th</sup> day of February, 2005

  
A Notary Public entitled to practice  
In and for the Province of Ontario

THE QUEEN'S BENCH  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:

The *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

Respondent.

AFFIDAVIT OF B. JEFFREY JOHNSON

I, B. JEFFREY JOHNSON, of the City of Winnipeg, in the Province of Manitoba,  
Trustee-in-Bankruptcy, AFFIRM AND SAY THAT:

1. I am a Senior Vice-president of PricewaterhouseCoopers Inc., Interim Receiver of Barcode Systems Inc. ("Barcode"), and am involved on a day-to-day basis with this matter. As such, I have personal knowledge of the facts hereinafter deposed to by me,

except where those facts are stated to be based upon information and belief, in which case I have stated the source of my information and my belief in its truth.

2. I make this affidavit in connection with a proposed sale of certain of Barcode's assets to q.data inc., the particulars of which are hereinafter set out.

3. By way of background, I note that the Interim Receiver was appointed by this Court on December 19, 2003, at which time it took steps to continue the operations of the Company. New arrangements were made with former Barcode employees to work for the Interim Receiver on a day-to-day basis.

4. Thereafter, the Interim Receiver began preparing an information package (entitled "Confidential Information Document") relating to Barcode, which included background information, financial information, a detailed description of Barcode's assets, the conditions under which the business was to be offered for sale, and other pertinent information. A copy of the entire package is available for review by the Court, but for reasons of confidentiality only the Conditions of Sale are attached hereto as Exhibit "A".

5. The Interim Receiver placed advertisements in the Globe and Mail on January 7, 2004, and in the Winnipeg Free Press and the Vancouver Sun on January 10, 2004, advising of the availability of the Confidential Information Document and seeking expressions of interest.

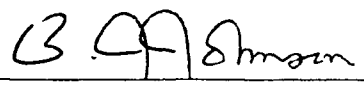
6. The Interim Receiver received numerous requests for the Confidential Information Document, which by design would be provided only to parties who signed a Confidentiality Agreement. Such agreements were signed by approximately 36 parties, all of whom then received the Confidential Information Document.
  
7. The Interim Receiver also accumulated additional information which was made available to interested parties. A number of parties reviewed it, and were also given access to the employee group.
  
8. Interested parties were to submit offers by no later than February 10, 2004, and on or before that date offers or indications of interest were received from the following parties:
  - a) Canadian Marking Systems Inc.
  - b) Ken Walford
  - c) Bold Line Solutions Inc. / Real Projects Inc.
  - d) q.data inc.
  
9. The response received from Ken Walford was not a formal offer, but rather an expression of interest subject to performing further due diligence and obtaining financing. After clarifying the assets to be subject to the offer, Mr. Walford conditionally offered to purchase all assets except for receivables for the amount of \$200,000.00.
  
10. The offer received from Canadian Marketing Systems was subject to a number of conditions and was restricted to the purchase of intangible assets, and was in the amount of \$60,000.00.

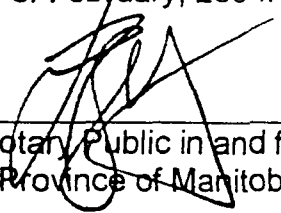
11. The offer received from Bold Line Solutions Inc. / Real Projects Inc. was subject to certain conditions, and was in the amount of \$40,000.00 for fixed assets and intangibles. They also made a separate offer for inventory at 7% of the current book value.
  
12. The offer received from q.data inc. was for \$200,000.00 and contemplated that q.data inc. would hire a number of Barcode's former employees. It did not include Barcode's accounts receivable, nor in excess of 90% of its inventory (at book value). The Interim Receiver considered it to be the best available offer, and after negotiation a final offer in the form attached hereto as Exhibit "B" was, subject to approval by this Court, accepted by the Interim Receiver.
  
13. That offer allows the q.data inc. to use the Winnipeg and Vancouver premises for a fixed period of time on the basis that it pays the related costs. During that period, the Interim Receiver can use those premises at no cost for the purposes of disposing the balance of Barcode's inventory. q.data inc. is also obliged to provide the Interim Receiver with 150 hours of employee time at no cost for the purpose of providing the Interim Receiver with assistance in resolving receivable issues, to complete sales, to deal with inventory movement, and other matters.
  
14. q.data inc. has since removed or waived all conditions related to its offer and now wishes to close the sale. The Interim Receiver recommends that same be approved by this Court, and that a vesting order issue in favour of q.data inc. in the manner contemplated by the offer and the Conditions of Sale.

15. Since its appointment, the Interim Receiver has realized on Barcode's accounts receivable and, as above noted, has carried on Barcode's business. To date, approximately \$486,000.00 has been collected on Barcode's accounts receivable, and the Interim Receiver has made sales totalling approximately \$373,000.00.

16. I make this affidavit *bona fide*.

AFFIRMED before me at the )  
 City of Winnipeg, in the )  
 Province of Manitoba, this 23<sup>rd</sup> )  
 day of February, 2004. )  
 )  
 )

  
 \_\_\_\_\_  
 B. JEFFREY JOHNSON

  
 \_\_\_\_\_  
 A Notary Public in and for  
 the Province of Manitoba



In the Affidavit of D. DAVID A. JOHNSON  
sworn before me on this 10th day of  
Winnipeg in the Province of Manitoba 39  
of Manitoba on the 23rd  
day of February 2004

### CONDITIONS OF SALE

1. **Assets for sale**

PricewaterhouseCoopers Inc. (the "Vendor"), solely in its capacity as the court-appointed Interim Receiver of the property, assets and undertakings of Barcode Systems Inc. (the "Company"), and not in any personal capacity, is soliciting offers to purchase the business and assets of the Company (the "Assets") described in Schedule "A" attached hereto.

The Vendor will sell the Assets pursuant to such powers of sale that are contained in the Order of the Court of Queen's Bench of Manitoba appointing the Vendor. These Conditions of Sale including the schedules attached hereto, and any offer submitted pursuant to sections 3, constitute the entire agreement between the parties with respect to its subject matter.

2. **Disclaimer**

Any information prepared or made available by the Vendor in connection with soliciting offers to purchase the Assets does not form part of these Conditions of Sale, and has been prepared and provided solely for the convenience of prospective purchasers. The Vendor makes no representation or warranty that such information is complete or accurate and any and all representations or warranties, express or implied, are hereby expressly disclaimed.

The description of the Assets provided in Schedule "A" annexed to these Conditions of Sale has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete or accurate.

3. **Submission of Offers**

Any person wishing to purchase the Assets shall submit a written offer addressed to PricewaterhouseCoopers Inc., One Lombard Place, Suite 2300, Winnipeg, Manitoba, R3B 0X6, Attention: Mr. David A. Johnson, delivered or mailed with postage prepaid so as to be received at the address before 12 o'clock in the afternoon, CST, on February 10, 2004 (the "Offer Closing Date"). The Vendor shall have no obligation, at law or in equity or otherwise, to consider or accept any offer which it does not receive by such time. The Vendor, however, reserves the right to negotiate a sale to any party at any time.

4. **Form of Offer**

Every offer submitted shall be in writing in the form attached as Schedule "B". These Conditions of Sale shall be deemed to form part of any offer, whether or not the offer is in the form contemplated by the attached Schedule "B" and all sales will be in accordance with these Conditions of Sale. Offers received by the Vendor

that are not in the form of offer set out in Schedule "B" may, at the discretion of the Vendor, be rejected.

5. **Offer for Entire Parcel**

Offers must be submitted for all of the property as identified in Schedule "A". If an offeror wishes to exclude specific classes of assets from its offer to purchase the business, the offeror shall, in its offer, clearly identify the classes of assets to be excluded.

Due to ongoing operations, the levels of inventory and accounts receivable are changing regularly. As a result, any offer being made which includes the inventory and accounts receivable must also contain the means of adjustment, if any, which the offeror will require for changes in the actual inventory and accounts receivable at closing.

In all cases, the offeror will provide as part of its offer, an allocation of its offer price between the classes of assets.

6. **Deposit**

The offeror shall deliver with its offer a certified cheque or bank draft of a chartered bank of Canada payable to "PricewaterhouseCoopers Inc., in Trust", in the amount equal to ten per cent (10%) of the total amount of the offer ("Purchase Price") as a deposit, to be held by the Vendor in accordance with the terms of these Conditions of Sale. If an offer is accepted by the Vendor, the said cheque or bank draft shall be deemed a cash deposit to be applied against the Purchase Price payable to the Vendor on the Date of Closing (as such term is hereinafter defined). The accepted offer will become an agreement to purchase the Assets on the terms of these Conditions of Sale, all of which terms will form part of such agreement, and the successful offeror (the "Purchaser") shall complete the purchase in accordance with the terms of the agreement.

7. **Acceptance of Offer**

The highest, or any offer, will not necessarily be accepted. The Vendor reserves the right to dispose of the Assets at any time and in any manner it chooses in its sole and absolute discretion.

8. **Offer Irrevocable**

In consideration of the Vendor making available to offerors these Conditions of Sale, other information and the opportunity to inspect the Assets, the offeror agrees that its offer, once delivered, is irrevocable and cannot be retracted, withdrawn, varied or countermanded prior to the acceptance or rejection thereof.

9. **Communication of Acceptance**

If any offer is accepted by the Vendor, the Vendor will communicate its acceptance to the offerer (the "Purchaser") within 5 business days after the Offer Closing Date. At the sole option of the Vendor, the notice of acceptance may be by facsimile or other means of recorded telecommunication or delivery to the address set forth in the offer. Communication of acceptance shall be deemed effectively given when such notice has been sent by the Vendor, whether by facsimile or delivered as the case may be.

10. **Rejected Offers**

Each offer submitted shall be and remain the property of the Vendor, and no offeror shall be entitled to its return. Cheques or drafts accompanying offers that are not accepted by the Vendor shall be returned, without interest, by delivery or prepaid registered mail addressed to the offerer at the address given in the offer within 5 business days after the Offer Closing Date.

11. **Binding Agreement**

When an offer is accepted, the terms of the offer and its acceptance, together with these Conditions of Sale, shall constitute a binding agreement of purchase and sale (the "Agreement").

In the case of any ambiguity or conflict between the terms of the offer and these Conditions of Sale, the provisions of these Conditions of Sale shall govern.

12. **No Vendor's Liability**

It is understood and agreed that in offering the Assets for sale and in proceeding with the sale, the Vendor is acting solely in its capacity as Court-appointed Interim Receiver of the Company, and neither it nor its agents, officers or employees have any personal or corporate liability under, or as a result of, the Agreement.

The Purchaser further acknowledges that if the Agreement is rescinded or terminated for any reason whatsoever, or should any party subject to a Confidentiality Agreement be in violation of any of the terms contained therein, the Vendor shall not be liable for any losses, expenses or damages suffered by the Purchaser whatsoever. In the event of any violation of the any of the terms of a Confidentiality Agreement, the Vendor's sole obligation will be to assign to the Purchaser its right to an action, if any, against the party alleged to have violated the Confidentiality Agreement.

## 13. Date of Closing

The closing of the purchase and sale shall take place at the offices of the Vendor ten (10) business days after acceptance (the "Date of Closing"), subject to such extensions as the Vendor may require pursuant to paragraph 15. The balance of the Purchase Price after application of the deposit shall be paid by the Purchaser in cash, by bank draft, or by certified cheque on the Date of Closing.

## 14. "As Is, Where Is"

The offer will be accepted by the Vendor on the basis that, notwithstanding anything else contained herein, it is acknowledged and agreed that the Purchaser shall be deemed to have purchased the Assets on the following basis:

- (a) the Purchaser has conducted or will conduct its own investigations as to the matters set out in paragraph (e) hereof;
- (b) the Purchaser has inspected the Assets, satisfied itself with respect to the Assets and all matters and things connected with or in any way related to the Assets, and to have relied entirely upon its own investigations and inspections in entering into this Agreement and purchasing and accepting the Assets;
- (c) the Purchaser is purchasing the Assets on an "as is, where is" basis;
- (d) the Assets are being purchased as they will exist and as they will be located on the Date of Closing; and
- (e) the Vendor has made no representations, warranties, statements or promises (save and except as expressly stated in the Agreement) and has not agreed to any condition with respect to the Assets, whether statutory (including, without limitation, under the Sale of Goods Act (Manitoba)), express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, all of which are expressly excluded, as to:
  - (i) title, including, without limitation, the existence, validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims or demands of whatsoever nature or kind affecting or in any way relating to any or all of the Assets;
  - (ii) the existence, condition, merchantability, description, fitness for any particular purpose or use, suitability, durability, marketability, condition, quantity or quality thereof of any or all of the Assets;
  - (iii) the presence or absence of contaminants on, in or about the Assets; the discharge of contaminants from, on or in relation to the Assets; the existence, state, nature, identity, extent or effect of any administrative orders, control orders, stop orders, compliance orders or any other orders, proceedings or actions under any and all provincial and federal legislation or any other applicable law in relation to the Assets; nor the existence,

state, nature, kind, identity, extent or effect of any liability on the Purchaser to fulfil any obligations with respect to the environmental condition or quality of the Assets. The Purchaser acknowledges that it accepts the Assets subject to the environmental condition and any contamination, whether or not such environmental condition or contamination is known to the Vendor or the Lender prior to the Date of Closing, and acknowledges that the Purchaser will have no recourse against the Vendor or the Secured Creditor for any such pre-existing environmental conditions or contamination; or

- (iv) any other matter or thing whatsoever in respect of any or all of the Assets.

Nothing in the Agreement shall be construed as an attempt to assign any contractual rights forming part of the Assets that are not assignable in whole or in part without the consent of the other party to such contract, unless such consent shall have been given or the assignment is otherwise lawful.

#### 15. Approvals and Consents

- (a) **Vesting Order:** The Vendor shall apply to the Court for an order ("Vesting Order") on terms reasonably satisfactory to the Purchaser vesting title to the Assets in the Purchaser.
- (b) **Pursuit of Applications:** The Vendor shall diligently pursue such applications and shall promptly notify the Purchaser of its disposition. The Purchaser, at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Vesting Order including, without limitation, such information as the Court may require to reasonably evaluate the Purchaser's financial ability to perform its obligation hereunder.
- (c) **Conditions Precedent:** If the Court shall not have granted the Vesting Order before the Date of Closing, the Agreement shall, subject to the Vendor's Election (as such term is hereinafter defined), automatically be terminated, whereupon the only obligation of the Vendor shall be to return the applicable deposit without interest, costs, set-off or abatement. The Purchaser expressly acknowledges that the Vendor shall have no obligation to the Purchaser, at law or in equity or otherwise, to accept or recommend to the Court for approval the highest or any offer for the Assets, including the Agreement.
- (d) **Vendor's Election:** In the event that the Court shall not have granted the Vesting Order before the Date of Closing, or if the Vendor has been restrained or otherwise prevented from closing pending an appeal of the Vesting Order, but the Vendor in good faith believes that the granting of the Vesting Order or dismissal of such appeal is likely to occur within a reasonable period of time (which time shall not exceed ninety days), then the Vendor shall have the unilateral option to elect (the Vendor's Election) to extend the Date of Closing one or more times for such periods of time (however, in total not exceeding ninety (90) days as the Vendor determines to be necessary to achieve any such required consent or approval or for any applicable right of appeal to expire. It shall be a condition of the Vendor's

exercise of the Vendor's Election that the Vendor is diligently and in good faith pursuing the receipt of the outstanding approval.

16. **Non-Canadian Persons**

The Purchaser shall represent to the Vendor in its offer whether it is, or is not, a non-Canadian person as defined in the Investment Canada Act (in this paragraph, the "Act"). If the Purchaser is a non-Canadian person, the Purchaser shall be responsible for ensuring that the transaction complies with the Act within 10 days after notification by the Vendor to the Purchaser of its acceptance of the Purchaser's offer. If the transaction must be approved by Investment Canada, the Purchaser shall, at its own expense, forthwith apply for and use its best efforts to obtain that approval within 20 days after notification by the Vendor to the Purchaser of its acceptance of the Purchaser's offer. The Purchaser shall bear the costs and expenses of the Vendor, including all legal costs if any, in connection with the Purchaser obtaining the requisite approval pursuant to the Act, and the Purchaser shall close the transaction contemplated by the Agreement within 10 days after such approval has been obtained.

In the event Investment Canada's approval is required, but is refused, within the aforesaid 20-day period, the Agreement shall be deemed null and void and the Purchaser shall be entitled only to a return of the deposit money without interest, set-off or abatement subject only to deduction for costs and expenses incurred by the Vendor. In the event Investment Canada has neither approved nor disapproved the application of the Purchaser within the said 20-day period, at the written option of the Vendor, the Agreement may be extended for such further period as the Vendor shall stipulate in writing or, alternatively, at the option of the Vendor, shall be deemed null and void and, in the latter event, the Purchaser shall be entitled only to a return of the deposit money without interest, set-off or abatement, subject only to deduction for costs and expenses incurred by the Vendor.

17. **Responsibility for Taxes**

The Purchaser shall pay at the Date of Closing, by certified cheque or bank draft in addition to the Purchase Price, all applicable federal and provincial sales and transfer taxes exigible in connection with this transaction ("Taxes"). Alternatively, where applicable, at the sole and reasonable opinion of the Vendor, the Purchaser shall have the option of furnishing the Vendor with such purchase exemption certificates, elections and other documentation as are in form and content satisfactory to the Vendor, together with an indemnity satisfactory to the Vendor. Such indemnity shall hold the Vendor harmless from any costs, expenses or damages suffered by the Vendor as a result of any failure by the Purchaser either to pay any taxes exigible in accordance with this paragraph, whether arising from reassessment or otherwise, or to file the appropriate certificates, elections or other documentation required of it pursuant to the taxation statutes governing the granting of such exemptions.

18. **Bills of Sale and Other Closing Documentation**

At the Date of Closing, the Purchaser shall be entitled to a bill of sale in form and substance satisfactory to both counsel for the Vendor and the Purchaser, acting reasonably, as may be necessary to transfer its right, title and interest, if any, in and to the Assets to the Purchaser in the manner contemplated herein.

19. **Assignment**

The Purchaser shall not be entitled to assign all or any part of its interest in the Agreement to any third party without the prior written consent of the Vendor, which consent may be arbitrarily withheld.

20. **Possession**

The Purchaser shall not be entitled to possession of the Assets until the Purchase Price, Taxes and all other payments to be made by the Purchaser pursuant to the Agreement have been paid in full.

21. **Loss Prior to Closing**

The Assets shall remain at the risk of the Vendor as its interest may appear until completion of the transactions of sale and purchase as contemplated in the Agreement.

Pending closing, the Vendor shall hold all insurance policies and proceeds thereof in trust for itself, the Purchaser and all other parties as their respective interests may appear. In the event of damage to any of the Assets prior to the Date of Closing, the Purchaser may, at its option:

- (a) reduce the Purchase Price by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair, by an amount equal to the replacement cost (based on the physical condition of such assets immediately prior to their damage or destruction) of the assets forming part of the Assets so damaged or destroyed, and thereafter complete the purchase of the Assets;
- (b) complete the transactions set out in the Agreement without reduction of the Purchase Price, in which event all proceeds of insurance or compensation shall be payable to the Purchaser; or
- (c) in the event of substantial damage to the Assets, rescind the Agreement, in which case the parties hereto shall have no further rights and remedies against each other, except for the right of the Purchaser to obtain a return of its deposit without interest, costs, set-off or abatement.

22. **Waiver of Conditions**

Any one or more of the terms of these Conditions of Sale may be waived by the Vendor in whole or in part, and any such waiver is binding on the Vendor only if made in writing. If the Vendor refuses to waive a term or condition that is for its exclusive benefit, and such condition cannot be complied with by the Purchaser, then either the Vendor or the Purchaser may, on notice in writing to the other party, rescind the Agreement, and the parties shall have no further rights and remedies against each other.

23. **Status of Vendor**

The Vendor represents and warrants to the Purchaser that it is not now and will not be at the Date of Closing a "non-resident person" of Canada within the meaning of section 116 of the Income Tax Act (Canada). This representation and warranty shall survive the closing of the Agreement.

24. **Failure of Purchaser**

If an offeror purports to revoke, retract, withdraw, vary or countermand its offer, or if the Purchaser fails to comply with any of the terms of the Agreement, the deposit and all other payments made by the offeror or the Purchaser to the Vendor shall be forfeited to the Vendor on account of liquidated damages and not as a penalty. The Assets affected thereby may be sold or resold by the Vendor in such manner and on such terms and conditions as the Vendor in its sole discretion determines and the deficiency, if any, of such sale or resale, together with all costs, damages and expenses attending the same, occasioned by the Purchaser, including legal fees incurred by the Vendor on a solicitor and its own client basis, shall be paid forthwith by the Purchaser to the Vendor.

25. **Offer by Resident of Quebec**

The submission of any offer by a resident of the Province of Quebec will be deemed to constitute a declaration and acknowledgement by the resident that it has requested that these Conditions of Sale, the form of offer referred to herein, and all other documentation relating to its offer and the acceptance thereof, be drawn up in the English language.

La présentation d'une soumission par une personne résidente dans la province de Québec constituera la reconnaissance expresse par la soumissionnaire et le vendeur qu'ils ont consenti à ce que ces Conditions de Vente et la formule de soumission mentionnée dans ces conditions ainsi que tous autres documents relatifs à la soumission et à son acceptation soient rédigées en anglais.



26. **Notice**

All notices, requests, consents, acceptances, elections, waivers and other communications contemplated herein shall be in writing, and shall be effective on personal delivery thereof, transmitted by facsimile or other electronic means of deliverance, or 3 days after placement in Canadian mails, postage prepaid, registered mail.

Such notices in the case of the Vendor shall be sent to the offices of PricewaterhouseCoopers Inc., One Lombard Place, Suite 2300, Winnipeg, Manitoba, R3B 0X6, (Facsimile No. 204-956-1404), Attention: Mr. David A. Johnson and such notices in the case of the offeror shall be sent to the address shown in the offeror's offer form.

27. **Vendor's Obligation to Complete**

The Vendor's obligation to complete the transaction contemplated by the Agreement shall be relieved if, on or before the Date of Closing, the Assets or any part thereof has been redeemed or removed from the Vendor's control by any means or process, or if this transaction is restrained by an injunction or other order issued by a Court of competent jurisdiction, whereupon the only obligation of the Vendor shall be to return the applicable deposit, without interest, costs, set-off or abatement. For greater certainty, if, prior to closing, the sale is enjoined by a third party by any legal process or action, the Agreement shall be terminated at the option of the Vendor, and the deposit returned to the Purchaser (provided enjoinder is not by reason of the Purchaser's default or action), and the Purchaser shall release the Vendor from any further obligation or liability in connection with the Agreement.

28. **Non-Merger**

Notwithstanding the completion of the transactions set out in the Agreement or the delivery of documents pursuant to the Agreement, the obligations, covenants, representations and warranties of the parties hereto shall survive the completion of the transactions set out in the Agreement and shall remain in full force and effect and shall not merge as a result thereof.

29. **Jurisdiction**

The validity and interpretation of these Conditions of Sale, and of the Agreement, shall be governed by and construed in accordance with the laws of the Province of Manitoba and the applicable laws of Canada. The courts of the Province of Manitoba shall have sole and exclusive jurisdiction with respect to any dispute arising out of these Conditions of Sale or the Agreement.

30. **Successors**

The Agreement shall be binding upon and enure to the benefit of the parties thereto, and their successors and permitted assigns.

31. **Commissions**

The Vendor shall not be required to pay any commission with respect to a sale made pursuant to these Conditions of Sale.

32. **Time**

All stipulations as to time are strictly of the essence of the Agreement, any rule or law or equity notwithstanding.

Dated in Winnipeg, Manitoba, this 13th day of January, 2004.

PricewaterhouseCoopers Inc.,  
Court Appointed Interim Receiver  
of Barcode Systems Inc.

Per:

SCHEDULE "A"

Accounts Receivable

Inventory

Fixed Assets

Intagibles

SCHEDULE "B"

FORM OF OFFER PURSUANT TO CONDITIONS OF SALE

TO: PricewaterhouseCoopers Inc.  
Court-appointed Interim Receiver  
Barcode Systems Inc.  
One Lombard, Suite 2300  
Winnipeg, Manitoba  
R3B 0X6

Attention: David A. Johnson

1. \_\_\_\_\_  
Name of Offeror

2. \_\_\_\_\_  
Address of Offeror

3. \_\_\_\_\_  
Telephone number

4. \_\_\_\_\_  
Facsimile number

5. The undersigned hereby submits an offer of \$ \_\_\_\_\_ allocated as follows:

Accounts receivable	\$ _____
Inventory	\$ _____
Fixed assets	\$ _____
Intangibles	\$ _____

Should the levels of accounts receivable and inventory change prior to closing, adjustments thereto will be made on the following basis at closing.

6. Enclosed is a certified cheque or bank draft payable to "PricewaterhouseCoopers Inc. - in Trust", in the amount of \$ \_\_\_\_\_ (dollars) representing 10% of the total amount of this offer.

7. The undersigned (or each of them, if more than one) hereby represents and warrants that it (is/is not) a "non-Canadian" as defined in the Investment Canada Act (Canada).
8. The undersigned acknowledges receipt of a copy of the Conditions of Sale as stipulated by PricewaterhouseCoopers Inc. and acknowledges that such Conditions of Sale are deemed to form part of this offer and agrees to be bound by them.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2004.

Name of Offeror

\_\_\_\_\_

Per:

\_\_\_\_\_

SCHEDULE "B"

FORM OF OFFER PURSUANT TO CONDITIONS OF SALE

TO: PricewaterhouseCoopers Inc.  
 Court-appointed Interim Receiver  
 Barcode Systems Inc.  
 One Lombard, Suite 2300  
 Winnipeg, Manitoba  
 R3B 0X6

Attention: David A. Johnson

This is Exhibit B referred to  
 in the Affidavit of B. JEFFREY JOHNSON  
 sworn before me at the City of  
WINNIPEG, in the Province  
 of MANITOBA, this 23<sup>rd</sup>  
 day of February, A.D. 2004

*[Signature]*  
 NOTARY PUBLIC IN AND  
 FOR THE PROVINCE OF MANITOBA

1. G. data inc.  
 Name of Offeror

2. 6 Shields Court Unit 101  
 Address of Offeror Markham, ON

3. 905-477-1367  
 Telephone number

4. 905-477-0679  
 Facsimile number.

5. The undersigned hereby submits an offer of \$ 200,000 allocated as follows:

Accounts receivable	\$ <u>      </u>
Inventory	\$ <u>40,000</u>
Fixed assets	\$ <u>157,900</u>
Intangibles	\$ <u>100</u>

Should the levels of accounts receivable and inventory change prior to closing, adjustments thereto will be made on the following basis at closing.

6. Enclosed is a certified cheque or bank draft payable to "PricewaterhouseCoopers Inc. - in Trust", in the amount of \$ 20,000 (dollars) representing 10% of the total amount of this offer.

*99 02*

7. The undersigned (or each of them, if more than one) hereby represents and warrants that it (is/is not) a "non-Canadian" as defined in the Investment Canada Act (Canada).
8. The undersigned acknowledges receipt of a copy of the Conditions of Sale as stipulated by PricewaterhouseCoopers Inc. and acknowledges that such Conditions of Sale are deemed to form part of this offer and agrees to be bound by them.

Dated at Markham this 13<sup>th</sup> day of Feb, 2004.

Name of Offeror

G. Data Inc

Per:

[Signature]

## Schedule 5

FOR VALUE RECEIVED, the following offer is made by q.data inc. ("Purchaser") to the Vendor in accordance with the Terms and Conditions of sale as presented by PricewaterhouseCoopers Inc. as Court Appointed Interim Receiver on behalf of Barcode Systems Inc. (the "Company") in its Information Document for the following property assets and undertaking of the Company:

**Accounts Receivable:** The Purchaser is not buying accounts receivable.

**Inventory:** the inventory noted in Schedule 5A, allocated in the amounts prescribed and subject to adjustment on closing for any items consumed since the pre-closing inventory verification. The closing adjustment will be 25% of the unit cost of Appendix B in the Information Document based on post closing verification by the Purchaser that such inventory continues to be on hand and in working order. Subject to adjustment, the allocation to inventory is \$40,000.

**Fixed Assets:** to all tools, bench equipment, furniture, telephone systems, telephone lines, computers, and network equipment from the Company's offices in Burnaby, British Columbia and Winnipeg, Manitoba as outlined in Appendix C & D of the Information Document (excluding certain of the third party goods as listed in Schedule 5B) as well as without limitation all user licenses for Goldmine Business Contact Mgr, Accpac Financials, Microsoft Office and such other licenses to the extent assignable by the Vendor. The allocation to fixed assets is \$159,900.

### Intangibles:

- a) Certifications and service contracts as well as other arrangements with third parties to the extent they are assignable. The allocation to intangibles is \$100.
- b) Customer lists, supplier lists, and a copy of those accounting records as may be reasonably necessary to enable the Purchaser to carry on its business, in both electronic and physical formats.
- c) E-mail files and addresses.
- d) The Interim Receiver will use its best efforts to ensure the forwarding of existing employee emails for at least 1 year after the Date of Closing.
- e) Quotes, proposals and a copy of such files relating to the operation of the Company for the past two calendar years as may be reasonably necessary to enable the Purchaser to carry on its business. This does not include the operating or other records of the Interim Receiver, however access to such information will be provided where needed by Purchaser in the operation of the Company.



## OTHER TERMS AND CONDITIONS

1. **Office Premises.** Purchaser will not assume or negotiate the leases for the premises in Burnaby and Winnipeg however Purchaser reserves the right to use the premises for up to 4 months after the Date of Closing. Purchaser will pay the current base rent, common area or management fee, property or realty tax and related GST during this period and no other amounts. These amounts shall be equal to the current amounts being charged by the landlords of these premises. The Purchaser will also be responsible for utility costs related to the premises. While the Purchaser is occupying the premises, the Purchaser shall allow reasonable access to Vendor for purposes of disposing the balance of the Inventory. .
2. **Inventory.** The balance of the Appendix "B" inventory not purchased by the Purchaser will remain available for purchase from Vendor on an as needed basis at 65% of unit cost as specified in the Information Document. While this inventory remains in the current premises there shall be no charge to the Vendor for storage and Purchaser will take all necessary precautions to safeguard the inventory as it were its own, however Vendor is responsible for obtaining appropriate insurance. The Vendor may at any time remove or otherwise sell the remaining inventory without notice or obligation to the Purchaser.
3. **Closing Date to be on or about Feb 25, 2004**
4. Upon acceptance of the Offer, the Vendor shall no longer solicit competing offers nor consider any unsolicited offers, however the Interim Receiver's obligation to advise the Court of any unsolicited offers is understood.
5. **Employees.** The Purchaser will have 7 days from acceptance of this Offer to negotiate acceptable arrangements with certain of the existing employees. In the event Purchaser is unable to make such arrangements, the Purchaser will immediately advise the Vendor and the Vendor shall immediately return the Deposit without interest, deduction or abatement within 2 business days from request by Purchaser.
6. **Offer to the Courts.** Upon the Purchaser waiving the employee condition per #5 above, Vendor shall have 72 hours to schedule a hearing to seek Court approval for the sale.
7. If the Court orders Vendor to consider other offers, this shall immediately terminate the Offer and result in the return of the Deposit without interest, deduction or abatement within 2 business days.

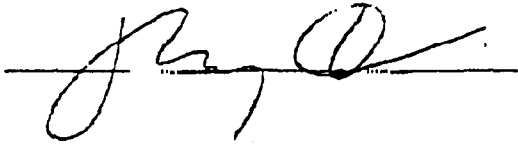
8. Vendor shall issue a letter to all parties that signed Confidentiality Agreements indicating that the Interim Receiver has concluded a transaction and reminding them of their 90 day obligations under the Agreement. Vendor would also request the return of all information in the possession of those parties. Should Purchaser believe that any party is in violation of the Confidentiality Agreement, Vendor shall communicate with those parties any apparent breach and provide Purchaser with reasonable cooperation in dealing with the same. This undertaking by the Vendor is in no way intended to limit the provision of item # 12 in the Conditions of Sale.
9. On Closing date the Vendor shall deliver to the Purchaser a bill of sale in form and substance to both counsel for the Vendor and the Purchaser, acting reasonably and a section 167 election under the Excise Tax Act in respect of Goods and Services tax.
10. For purposes of assisting the Interim Receiver, including but not limited to reasonable assistance to resolve receivable issues, complete sales entered into by the Interim Receiver prior to Closing, deal with inventory movement and sale, dealing with books and records and obtaining information contained therein, the Purchaser will provide the Interim Receiver with up to 150 hours of employee time at no cost (which time must be used within the four month period after the Date of Closing), with the Vendor being responsible for any direct costs, including travel, associated with the time provided. Thereafter employee time will be charged according to the Purchaser's rate schedule in effect at the time of request;
11. The Interim Receiver will complete sales orders with customers where related customer purchase orders have been confirmed and received prior to the Date of Closing;
12. Enclosed is a certified cheque for \$20,000 payable to PricewaterhouseCoopers Inc. in Trust, representing 10% of the offer. Balance payable upon Closing Date subject to the terms and conditions of this Offer.

If Vendor is in agreement with the foregoing please sign the duplicate copy of this offer and send by fax (with original to follow by courier) to the Purchaser by 5:00 pm (Toronto time) February 13, 2004.

Handwritten signature in black ink, appearing to be 'CA JZ'.

Dated at Markham, Ontario this 13<sup>th</sup> day of February, 2004.

Q. DATA INC.

A handwritten signature in black ink, appearing to be 'J. [unclear]', written over a horizontal line.

Vendor: Pricewaterhouse Coopers Inc.  
In its capacity as Interim Receiver of  
Barcode Systems Inc.  
per B. Johnson  
Senior Vice President

## BSI Inventory "Schedule 5A"

item	Part #	Description	Qty
	1 AP-4121-1050 US	4121 Access Point. 11 Mbps	8
	2 GTS1700-LI	3.6V LI rechrq battery	38
	3 25-16458-20	Synapse Cable adapter	70
	4 21-32665-36	UBC adapter	10
	5 GTS6800-C	PDT 6800 battery	8
	6 GTS3100-M	PDT 3100 batteries	10
	7 50-24000-024	Power supply	7
	8 TRG81XX-00	Pistol Grip	1
	9 23065-002	960 SL batteries	3
	10 21-32665	Adapter UBC2000	2
	11 ML-2499-APA-00	FNL Assy Antenna Radio	5
	12 PDT 8146-Z1A820US	POT 8146	4
	13 ST185-0200	Intfc PL USB Synapse apple	14
	14 25-54164-20	Cable 1902TKB wedge	7
	15 ST180-0201	PS2 Synapse	1
	16 25-38376-01	LS3203ER to T242X cable	1
	17 25-39803-01	Wand Cable	1
	18 25-17821-21	Synapse Cable adapter with pow	1
	19 25-16465-01	LS4004 cable	1
	20 25-09075-01	cbl assembly	1
	21 ND1222	Cbl spark synapse	2
	22 3400E)1400200	3400E ethernet	1
	23 W00408001	CL400	1
	24 AP-4121-1151 US	access point high rate	3
	25 T2425C013254504	T2425C HH w/std range	1
	26 PDT 8146-Z1A820US	PDI 8146	1
	27 2435A00423204704	2435RF	1
	28 NE6053	SPT1700 battery cover	5
	29 62799-01-00	PDT3100 display	4
	30 K360-SR21000US	P360 scanner kit	3
	31 K302FZY-KY-01	P302 fuzzy logic scanner kit	3
	32 P302FZY-1000	Phaser fuzzy logic	4
	33 3800 LR- 12 USB kit	HHP 3800 LR	9
	34 LS1908T	LS1908T RS232 kit	8
	35 P370-SR1211100US	6CN P370	1
	36 2435A006232D4704	2435 RF	1
	37 K370-SR110000US	P370 Kit Industrial	1
	38 P360 6R1214100ww	P360 scanner kit	1
	39 P370-SR12111100US	P370 Cordless scanner	1
	40 LS4006H100	Scanner keyboard wedge	2
	41 LS2106-1000	Scanner	1
	42 LS1908T-1000	LS1908T kbw RS232 USB	1
	43 PDT 6846-P2S642US	2d ind. 16 lbl	1
	44 RN-LS-3200ER	Scanner ER	1
	45 10500-2001-000	Zebra 105SL	7
	46 SPT1550-TRG80400	SPT1550, proton hp	7
	47 Z105-521-0000	Zebra 105SE	1
	48 2844-10300-0001	TLP 2844 Printer	1
	49 44000M	Print head Zebra	7
	50 25-32483	synapse adapter cable 6 ft	8
	51 ST180-0200	intc PL PS wedge synapse	21
	52 46189-5	Main belt	28
	53 CRD1500-100S	serial recharge cradle battery	5

## SCHEDULE 5B

## Vancouver

Third Party Good - Excluded from Sale

5820 Scale Pitney Bowes S/N 9890

Pitney Works

## Winnipeg

31	Reception	Office Equipment	1	Water Dispenser,
43	Product Room	Office Equipment	1	MTS DSL modem
	Controllers			
	Office	Furniture	4	Pictures in frames
	hall closet	Cleaning	1	Vacuum Cleaner Panasonic commercial CV
	Accountants			
	Office	Office Equipment	1	Bank machine and transaction printer
71	Staff Lounge	Office Equipment	1	Coffee Maker Bunn 2 burner, Budget Coffee Services
	Salemans	Office		
	Office	Equipment	1	Radio GE Am/Fm
	Accountants			
164	Office	Office Equipment	1	Scale neopost gram scale postage
	Accountants			Postage meter neopost 788-1554 (mline office
165	Office	Office Equipment	1	machines)

60<sup>k</sup>  
20

Suit No. CI 03-01-36054

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:                    **The *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, s. 47(1)**

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

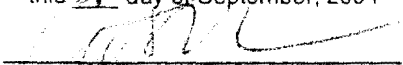
Respondent.

---

**ORDER**

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This is Exhibit "F" referred to in the Affidavit  
of Steven Field sworn before me  
this 27<sup>th</sup> day of September, 2004



A Barrister-at-Law entitled to practice  
in and for the Province of Manitoba

FILED  
QUEEN'S BENCH  
MAR 03 2004  
LAW COURTS  
WINNIPEG

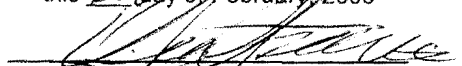
**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3Z5

**RICHARD W. SCHWARTZ**

Telephone: (204) 944-8777  
Fax: (204) 947-2593  
File No. 03254

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "K" referred to in the Affidavit  
of Mike Reid sworn before me  
this 27<sup>th</sup> day of February, 2005




A Notary Public entitled to practice  
in and for the Province of Ontario



Barcode Systems Inc., Manitoba Capital Fund, Business Development Bank of Canada, Harry Mann, and Lazer Grant Inc., although duly served as appears from the Affidavit of Linda Anne Fedun sworn February 25, 2004, and upon hearing that the purchaser had paid the balance of the purchase price to the Interim Receiver.

1. THIS COURT ORDERS THAT the Interim Receiver be and is hereby granted short leave for the hearing of this motion.
2. THIS COURT ORDERS THAT the sale of Barcode's assets to q.data inc. as particularized in Exhibit "B" to the Affidavit of B. Jeffrey Johnson be and the same is hereby approved.
3. THIS COURT ORDERS THAT the said assets be and the same are hereby vested in q.data inc., free from all the right, title, and interest of Barcode and any all claims of Barcode's secured, preferred, and unsecured creditors, howsoever and whenever perfected, created, or deemed to have been created.

Date: February 26, 2004

  
Schulman, J



News Release

For Immediate Release

**Q.DATA ACQUIRES OPERATIONS OF BARCODE SYSTEMS INC.**

**February 26, 2004, Markham ON** – Q.DATA INC has acquired the Canadian assets and operations of Barcode Systems Inc. (BSI) who was forced into receivership on Dec 19, 2003. This purchase includes substantially all the assets, contracts, and customers of BSI's operations in both the Vancouver, British Columbia and Winnipeg, Manitoba offices. The two offices will continue to operate as before but under the new corporate banner of q.data. This acquisition follows the July 7 2003 purchase of the BSI Toronto office by q.data.

"With the addition of these two offices q.data is now a national organization that can support customers across Canada," said Jeff Lem, President q.data. "But most importantly I'm truly excited by the new staff and customers we're bringing aboard and the great opportunities ahead of us."

**About q.data**

Q.data is a leader in wireless and wired automated data collection since 1993. With over 4,000 customers across North America, q.data's best of breed solution combines the best in data collection hardware with our own software products for manufacturers, warehouses, and field service workers. Our solutions provide customers with significant benefits that generate measurable bottom line results.

**For Further Information:** visit [www.qdata.com](http://www.qdata.com) or call 800-900-SCAN  
**contact:** Randy Bunka, Vice President

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "L" referred to in the Affidavit of  
Mike Reid sworn before me  
this 26 day of February, 2004

  
A Notary Public entitled to practice  
In and for the Province of Ontario



For Immediate Release:

Barcode Systems, Inc. (BSI) and q.data inc. have announced q.data's acquisition of BSI's Mississauga, Ontario Canada Division. This acquisition will include the consolidation into the q.data corporate entity, all BSI Mississauga operations, personnel and business related activities in the Ontario region and throughout the remaining Eastern Canadian Provinces. This initiative will significantly enhance continuity of support for past and present customers, as well as extend q.data's custom and turn key software solutions capabilities including service and support for all ongoing and future requirements. Barcode Systems, Inc. will continue to focus on strengthening market presence west of Ontario and throughout the entire US region. Barcode Systems, Inc. and q.data inc. are now positioned as the preeminent Auto ID solutions providers with complete one stop shopping for sales, service and support.

About q.data inc. - q.data inc. is a leader in the field of radio frequency data collection software, hardware installations, service, and support since 1993. With more than 300 installations across North America, q.data inc.'s "best of breed" philosophy provides their customers with the "right tool for the right job". Customers include Fortune 1000 companies from the financial, government, manufacturing, and pharmaceutical industries. q.data inc.'s products and services are used to enhance customers' bottom line while providing improved decision making through accurate real time data.

About BSI - Since 1988, Barcode Systems Inc. has been providing innovative bar code solutions and service to our customers. We have helped countless businesses establish their data capture systems on time and on budget. From project management and site surveys to complete installation, service, maintenance and rental solutions, Barcode Systems Inc. has the Auto ID expertise and experience to guarantee success. BSI integrates a wide variety of bar code and wireless technologies from the leading Auto ID industry manufacturers. We deliver solutions through our team of manufacturer certified sales representatives and systems engineers. We fully support our solutions after installation.

Inquiries:

<http://www.qdatainc.com>

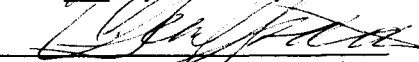
<http://www.bsirect.com>

[info@qdatainc.com](mailto:info@qdatainc.com)

[info@bsirect.com](mailto:info@bsirect.com)

**D. GRANT ISAAC, B.COM., LL.B.**  
**BARRISTER, SOLICITOR, NOTARY**  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "M" referred to in the Affidavit of Mike Reid sworn before me this 12th day of February, 2005

  
A Notary Public entitled to practice in and for the Province of Ontario



THE QUEEN'S BENCH  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:                    The *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
  c. B-3, as amended, s. 47(1)

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

Respondent.

NOTICE OF MOTION

THE INTERIM RECEIVER of Barcode Systems Inc. ("Barcode Canada"), PricewaterhouseCoopers Inc., will make an *ex parte* motion before the Honourable Mr. Justice Nurgitz on Monday, March 1, 2004, at 9:00 AM, or as soon after that time as the motion can be heard, at The Law Courts Complex, in Winnipeg, Manitoba.

THE MOTION IS FOR an order:

1. compelling NetNation Communications, Inc. ("NetNation") to forthwith reinstate any and all email hosting services previously provided to Barcode Canada and any and all email addresses previously owned by Barcode Canada;

2. compelling NetNation to provide access to, and/or redirect, any and all email sent to such addresses as and when the Interim Receiver may direct;
3. compelling NetNation provide the Interim Receiver with any and all information that the Interim Receiver may require in relation to the said email addresses.
4. compelling Barcode Systems, Inc. (in Washington, U.S.A), David Sokolow, Andy Mattice, and any other entity or person who may from time-to-time have access to, control over, and/or involvement with the email hosting service formerly provided to Barcode Canada to do all things within their power and control to assist and/or enable NetNation to do as is ordered in paragraphs 1, 2, and 3 hereof;
5. providing that no person save for the Interim Receiver shall, without specific written authorization first being obtained from the Interim Receiver or until further order of this Court, access, interfere with, terminate, cease, change, alter, modify, administer, cause any of those things to be done, or otherwise affect the said email hosting service and email addresses;
6. providing that no person save for the Interim Receiver shall, without specific written authorization first being obtained from the Interim Receiver or until further order of this Court, review, read, forward, redirect, alter, reply to, or otherwise make any use whatsoever of email sent to Barcode Canada and/or the said email addresses;
7. for such further and other relief as may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. up until some time on Thursday, February 26, 2004, the Interim Receiver was provided with full and unrestricted access to the email accounts and email hosting services that had previously been provided to Barcode Canada;
2. on February 26, 2004, David Sokolow apparently caused those services to be suspended, and as such access to the email accounts has been denied or terminated;
3. the Interim Receiver has sold certain of Barcode's assets to q.data inc., which sale was approved by Order of Mr. Justice Schulman made on February 26, 2004. As part of its ongoing obligations in relation to that sale, the Interim Receiver is use its best efforts to ensure the forwarding of existing employee emails for a period of one year;
4. absent the access to the email accounts and the web hosting services noted above, q.data inc. is unable to receive Barcode Canada emails;
5. paragraphs 2, 3, 4, 5(a) and (j), 7, 9, and 11 of the Order of Mr. Justice Schulman made on December 19, 2003;
6. section 47(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
7. QB Rules 37.06(2) and (3)
8. such further and other grounds as counsel may advise.

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

1. The Order made by Mr. Justice Schulman on December 19, 2003;

2. The Order made by Mr. Justice Schulman on February 26, 2004;
3. The Affidavit of B. Jeffrey Johnson affirmed February 29, 2004;
4. Such further and other material as counsel may advise.

Date: March 1, 2004

**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba R3C 3Z5  
Telephone: (204) 944-8777  
**Richard W. Schwartz**  
Counsel for the Interim Receiver

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:

*The Bankruptcy and Insolvency Act, R.S.C. 1985,*  
c. B-3, as amended, s. 47(1)

BETWEEN:

**ROYAL BANK OF CANADA,**

Applicant,

- and -

FILED  
QUEEN'S BENCH

**BARCODE SYSTEMS INC.,**

MAR 1 2004

Respondent.

LAW COURTS  
WINNIPEG

**AFFIDAVIT OF B. JEFFREY JOHNSON**  
AFFIRMED THE 29<sup>th</sup> DAY OF FEBRUARY, 2004  
Hearing Date: Monday, March 1, 2004, at 9:00 AM  
before Mr. Justice Nurgitz

**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3Z5

**RICHARD W. SCHWARTZ**

Telephone: (204) 944-8777  
Fax: (204) 947-2593  
File No. 032544

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "H" referred to in the Affidavit  
of Steven Field sworn before me  
this \_\_\_ day of September, 2004

\_\_\_\_\_  
A Barrister-at-Law entitled to practice  
in and for the Province of Manitoba

This is Exhibit "O" referred to in the Affidavit  
of Mike Reid sworn before me  
this \_\_\_ day of February, 2005

\_\_\_\_\_  
A Notary Public entitled to practice  
in and for the Province of Ontario





day basis with this matter. As such, I have personal knowledge of the facts hereinafter deposed to by me, except where those facts are stated to be based upon information and belief, in which case I have stated the source of my information and my belief in its truth.

2. I make this affidavit in connection with the termination of email and web hosting services that PricewaterhouseCoopers Inc. had been provided with since it was appointed as Interim Receiver of Barcode Canada on December 19, 2004, pursuant to the Order made by Mr. Justice Schulman.

3. By way of background, I note that following its appointment, the Interim Receiver took steps to continue the operations of Barcode Canada. New arrangements were made with former Barcode Canada employees to work for the Interim Receiver on a day-to-day basis, and to that end it was vital that they continued to have access to their email.

4. By way of further background, I note that Barcode Canada had operated as a business group with its sister company located in Seattle, Washington, Barcode Systems, Inc. ("Barcode Washington") under the common control of Mr. David Sokolow for a number of years. Barcode Washington is currently in Chapter 11 proceedings.

5. The web site and email services for both companies have been hosted by NetNation Communications, Inc. ("NetNation"), a Vancouver company. The NetNation account has been with Barcode Washington, although the services provided related to both Barcode Canada and Barcode Washington.

6. The web site was apparently developed over time and relates to the operations of both companies. The related domain name is [www.bsirect.com](http://www.bsirect.com), and is registered to Barcode Washington. Attached in that regard as Exhibit "A" is a copy of the print out of a "who is" search, which lists the name of the registrant, the registrar, the administrative contact, the technical contact, the billing contact, and the domain servers.
7. As a result, Barcode Washington has essentially been providing web hosting and email services to Barcode Canada. Attached in that regard as Exhibit "B" is an email dated January 14, 2004, from Mr. Sokolow, wherein he confirms that Barcode Washington hosts and maintains web support for Barcode Canada and that Barcode Canada has paid Barcode Washington for those services. In that email, he also indicates that Barcode Washington is prepared to continue those services for \$500.00 (US) per month.
8. By way of background, the hosting services provided by NetNation involves the customer having an administrator who is authorized to update and change the web site and email services. I understand that this administrator has access to all emails to the extent they are stored on NetNation's server. At the time of the appointment of the Interim Receiver, there were two such administrators (or at least, there were two individuals who had administrative control or access) in relation to Barcode's business, one being a Mr. Andy Mattice (a Barcode Washington employee) and the other a Mr. Dwight Woods (a Barcode Canada employee). Mr. Woods' authorization to act as an administrator was, however, terminated without notice to the Interim Receiver sometime in January.

9. By return email to Mr. Sokolow on January 15, 2004, I advised him that the email and web site services could not be disturbed pursuant to paragraph 9 of Mr. Justice Schulman's Order of December 19, 2003. I also noted that the Interim Receiver objected to the removal of Mr. Woods as an administrator by Barcode Washington, and requested that he be reinstated. A copy of my email is attached as Exhibit "C"
10. I received a response to that by way of an email from Mr. Sokolow on January 26, 2004, a copy of which is attached as Exhibit "D". In that email, Mr. Sokolow again makes reference to the \$500.00 (US) per month fee.
11. The matter of what would be a reasonable fee has not yet been resolved, nor was Mr. Woods reinstated as an administrator. As noted in Mr. Sokolow's email of January 26, 2004, the basis for the termination of Mr. Woods' authorization was a concern that he would have access to information sensitive to Barcode Washington. This is this same concern that the Interim Receiver has with regard to Barcode Washington having access to information sensitive to Barcode Canada.
12. In connection with an anticipated sale by the Interim Receiver of some or all of Barcode Canada's business, I sent an email to Mr. Sokolow on February 10, 2004, requesting that he consent to the redirection of the emails related to Barcode Canada and its employees. A copy of that email is attached as Exhibit "E".
13. Mr. Sokolow responded to that by way of email on February 13, 2004, a copy of which is attached as Exhibit "F". As noted in his response, Mr. Sokolow indicated he would "cooperate fully with any new owner".

14. At the time, I believed that either Barcode Washington and any purchaser would reach an agreement on the forwarding of emails or, alternatively, the Interim Receiver would continue the service itself.

15. As set out in my Affidavit affirmed February 23, 2004, the Interim Receiver negotiated a sale of certain of Barcode Canada's assets on a going concern basis, and as part of the transaction agreed to use its best efforts to ensure the forwarding of existing employee emails to the purchaser, q.data inc. Based upon later discussions I had with Mr. Sokolow, I am aware that he saw a copy of my Affidavit and was aware of this provision prior to the closing of that transaction on February 26, 2004.

16. Without any notice or warning whatever to the Interim Receiver or q.data inc., Mr. Sokolow immediately after the closing of the sale discontinued the email service to, at least, those former Barcode Canada employees hired by q.data inc.

17. I became aware of that at approximately 4:00 PM on February 26, 2004, and then contacted Mr. Sokolow immediately to discuss what had happened. During this discussion, I was advised by Mr. Sokolow that he considered the matter to be an issue between himself and q.data inc. He also advised that it was his intention to compete with q.data inc. In response to my question as to whether he was reviewing Barcode Canada's emails, Mr. Sokolow advised that he was not.

18. After consultation with the Interim Receiver's counsel, I met with Mr. Sokolow at approximately 10:00 AM on February 27, 2004, and advised him of the Interim Receiver's position in respect of what he had advised me the day prior. At the outset of

the meeting, I also provided Mr. Sokolow with a letter which set out the Interim Receiver's position, including the right to continued service. A copy of that letter is attached as Exhibit "G".

19. During the meeting, I asked Mr. Sokolow if the matter could be resolved for the \$500 (US) per month amount that he had previously requested. In response, Mr. Sokolow advised that the matter could be resolved if the Interim Receiver paid his wages and terminated his Barcode Canada employment.

20. As regards wages, Mr. Sokolow advised that he usually received a bonus from Barcode Canada of \$50,000.00, and that he considered a payment of 2/12 (for the period December 19, 2003, to February 19, 2004) of this amount as reasonable. In addition, Mr. Sokolow said he expected to receive \$500 (US) per month for six months for the email related services.

21. I reminded Mr. Sokolow that I had previously informed him that the Interim Receiver did not hire him at the time of, or any time following, its appointment, and that the Interim Receiver has consistently taken the position that all of Barcode Canada's employees were effectively terminated by virtue of the December 19, 2003, Order.

22. I also advised Mr. Sokolow that I could not agree with his terms and that if we could not resolve the matter of email service, the Interim Receiver might have no choice but to take the matter to court.

23. Mr. Sokolow in turn advised that he expected to receive notice of any hearing in that regard and that he wanted to be present at it.
24. After discussion with counsel for the Interim Receiver, however, it was determined that no notice would be provided, in part because of the potential for delay and in part because of the rather clear wording of paragraph 9 of Mr. Justice Schulman's Order of December 19, 2003.
25. During the meeting on February 27, 2004, I also advised Mr. Sokolow that I had just determined that the web site, which is at least in part an asset of Barcode Canada, had been altered, presumably by him or Barcode Washington. The web site had contained email links which allowed Canadian customers to reach Canadian service locations and also provided information on Barcode Canada, but now only references Barcode Washington.
26. I understand from Mr. Dave Johnson of my office that NetNation can make changes to the email accounts and redirect any emails received, but does not control the actions of the email administrator, whom I expect continues to be Mr. Mattice (Barcode Washington's employee). Accordingly, the email administrator could change or terminate access to the email accounts at any time or, for that matter, access and read individual emails residing on NetNation's server.
27. As such, the Interim Receiver is concerned about Barcode Washington's access to Barcode Canada's emails.

28. The email addresses of the former Barcode Canada employees are as follows:

- a) dwoods@bsidirect.com
- b) jgenders@bsidirect.com
- c) mbog@bsidirect.com
- d) pnarang@bsidirect.com
- e) smountford@bsidirect.com
- f) sdemsey@bsidirect.com
- g) asaindon@bsidirect.com
- h) eray@bsidirect.com
- i) gfrankel@bsidirect.com
- j) hdraper@bsidirect.com
- k) wmercier@bsidirect.com
- l) kklippenstein@bsidirect.com

29. Many, but not all, of Barcode Canada's former employees were hired by q.data inc. in connection with the sale by the Interim Receiver. From my discussions with Mr. Sokolow, I understand that he may have hired some of those employees not hired by q.data inc.

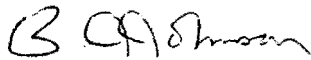
30. Save for those employees hired by q.data inc., no former Barcode Canada employee has the Interim Receiver's authority to access, read, or use any Barcode Canada email or make use of its email addresses, all of which the Interim Receiver considers to be the property of Barcode Canada.

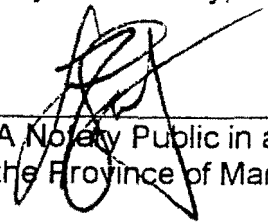


31. Having said that, it appears that at least one former Barcode Canada employee continues to have access to his email. Attached in that regard as Exhibit "H" is a copy of the emails Dave Johnson exchanged with Jan Genders on February 28, 2004. Mr. Genders was not hired by q.data inc.

32. I make this affidavit *bona fide*.

AFFIRMED before me at the )  
City of Winnipeg, in the )  
Province of Manitoba, this 29<sup>th</sup> )  
day of February, 2004. )  
)  
)

  
\_\_\_\_\_  
B. JEFFREY JOHNSON

  
\_\_\_\_\_  
A Notary Public in and for  
the Province of Manitoba

# WHOIS SEARCH RESULTS

## WHOIS RECORD FOR

bsidirect.com

Back-order this name

You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes. The data in DomainPeople, Inc.'s WHOIS database ("Data") is provided by DomainPeople, Inc. for information purposes only. DomainPeople, Inc. does not guarantee the accuracy of this Data and it is provided "as-is".

By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via mail, email (spam), telephone or facsimile, or solicitations to entities other than the data recipients own, existing customers; or (2) enable high-volume, automated, electronic processes that apply to DomainPeople, Inc. (or its systems). The compilation, repackaging, dissemination, distribution or other use of this Data is expressly prohibited without the prior written consent of DomainPeople, Inc.

You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. DomainPeople, Inc. reserves the right to terminate your access to the DomainPeople, Inc. WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy.

DomainPeople, Inc. reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by the terms of this policy.

Registrant:  
 BARCODE SYSTEMS INC.  
 4457 140 Ave NE  
 Bellevue, WA 98005  
 United States of America

Registrar: Domain people Inc.

Domain Name: bsidirect.com  
 Created on .....Thu Dec 09 11:57:09 1999  
 Expires on .....Thu Dec 09 11:57:09 2004  
 Record last updated on .Wed Feb 11 15:15:08 2004  
 Status .....LOCK

Administrative Contact:  
 BSI  
 David Sokolow  
 4457 140 Ave NE  
 Bellevue, WA

This is Exhibit "A" referred to  
 in the Affidavit of Jeffrey Johnson  
 sworn before me at the City of  
 Winnipeg, in the Province  
 of Manitoba, this 29<sup>th</sup>  
 day of February, A.D. 2004

*[Signature]*  
 A NOTARY PUBLIC IN AND  
 FOR THE PROVINCE OF MANITOBA

# New Private Regi

Protect y  
from spa  
and teler

## \$5 a y Introdu

FIND OI

### Get the C small bu:



The CitiBusiness

We  
S

98005, US  
 (425)802-7226  
 (425)3788222  
 dsokolow@bsidirect.com

Technical Contact:

BSI  
 David Sokolow  
 4457 140 AVE NE  
 Bellevue, WA  
 98005, US  
 (425)802-7226  
 (425)3788222  
 dsokolow@bsidirect.com

Billing Contact:

BSI  
 David Sokolow  
 4457 140 Ave NE  
 Bellevue, WA  
 98005, US  
 (425)802-7226  
 (425)3788222  
 dsokolow@bsidirect.com

Domain servers in listed order:

ns1.netnation.com 204.174.223.1  
 ns2.netnation.com 204.174.223.31

(bsidirect.com)

Register your domain name at <http://www.domainpeople.com>

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Protect your personal information with Private Registration](#)

**SEARCH AGAIN**

[Actions you can take to protect your WHOIS information](#)

[Next Registration Rights](#)

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Network Solutions. You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. Network Solutions reserves the right to terminate your access to the WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy. Network Solutions reserves the right to modify these terms at any time.

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Review our Privacy Policy, Service Agreement, and Legal Notice  
© Copyright 2004 Network Solutions. All rights reserved.



"David Sokolow"  
<dsokolow@bsidirect.com>  
01/14/2004 10:29 AM

To Jeffrey .Inhnson/CA/FAS/PwC@Americas-CA  
cc <ward@pitblado.com>, <DWH11479@aol.com>  
Subject mgmt services

Jeff

As per our discussions this morning, I am outlining our position.

Barcode US hosts a web site. I am the original registrant of the access names. Barcode US pays for hosting and maintains web support. (both for customers and internal support). Barcode Canada paid for these services through the management fees that Canada paid to the US. Since your appointment you have not paid for these services. As a gesture of goodwill we are prepared to continue this service for 500.00 US per month. If you do not want this service we will terminate it immediately.

Please advise me of your intentions.

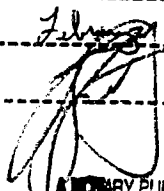
The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorized.

If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

\*\*\*\*\*

Yours Truly  
David Sokolow  
President  
Barcode Systems Inc.  
Phone (425) 378-8200  
Fax (425) 378-8222  
Mobile (425) 802-7226  
Email dsokolow@bsidirect.com  
<http://www.barcodesystemsinc.com>

This is Exhibit "A" referred to  
in the Affidavit of J. Jeffrey Johnson  
~~affirm~~ before me at the City of  
Winnipeg, in the Province  
of Manitoba, this 29<sup>th</sup>  
day of February A.D. 2004

  
NOTARY PUBLIC IN AND  
FOR THE PROVINCE OF MANITOBA

Jeffrey Johnson/CA/FAS/PwC

01/15/2004 08:50 AM

To "David Sokolow" &lt;dsokolow@bsidirect.com&gt;@INTL

cc ward@pitblado.com, rws@tcwpg.com

bcc

Subject Re: mgmt services

Pleased be advised that current services relating to the web site (as well as email related services) cannot be disturbed, discontinued or interfered with pursuant to provision 9 of the December 19th, 2003 Order of Justice Schwartz. As Interim Receiver we are prepared to pay a reasonable amount for the continuation of those services, but we need to be satisfied that the \$500 US amount you propose is reasonable.

From our discussion, you have advised that the web site is hosted by Net Nations (we believe out of Vancouver) at a cost of approximately \$150CDN / month. As far as we understand, then, your comment below that Barcode US hosts the website is incorrect.

We note that you advised us that the website was jointly developed by Barcode Canada and Barcode Washington and as evidenced by a review of the site, it would apply to operations of both companies.

We understand that the website was developed a number of years ago through a consultant engaged out of Vancouver. Please confirm if this is correct and which Company paid for the consultant services.

You have advised us that the \$500US is to cover a portion of the hosting fee to Net Nations and the costs for a person on your payroll (we understand this is Andy Mattice) who maintains the site and would also redirect customer inquiries (such as service issues) to the appropriate people. Regarding the service issues, we have determined that the website has two main contact points for customers and others, the first being the "1 888 310 7226" number and the other the email contact at "service@bsidirect.com". The former is answered in Bellevue and the latter in Vancouver. Accordingly, we understand that both Canada and the US incur time on each others behalf.

We have determined that within the last week, Dwight Wood, a Vancouver employee, was without notice removed as the email administrator with Net Nations (which we understand also provides the email services to both Companies). We consider this interfering with the established service arrangements and ask that Mr. Wood be re-established effective immediately.

We hereby formally advise you that no party other than Dwight Wood is authorized to access or even review email or other information on the Net Nations server relating to Barcode Canada. We will in fact consider access or review by anyone else to be unauthorized and, as such, a serious matter that will dealt with to the fullest extent permissible by law.

Last, we request that you forthwith provide us with a copy of the most recent Net Nations billing in order that we might understand the billing arrangements. We are prepared to cover the cost of 2/3 (on the basis that we have 2 offices) of their billings for the services we are using. Subject to other information you may provide us, we believe other matters balance off and no other payment between parties is warranted.

B. Jeffrey Johnson  
PricewaterhouseCoopers  
Financial Advisory Services (BRS)  
Direct Line: 204 926 2441  
Fax: 204 956 1404  
"David Sokolow" <dsokolow@bsidirect.com>

This is Exhibit "C" referred to  
in the Affidavit of B. Jeffrey Johnson  
taken before me at the City of  
Winnipeg, in the Province  
of Manitoba, this 29th  
day of February, A.D. 2004

  
A NOTARY PUBLIC IN AND  
FOR THE PROVINCE OF MANITOBA

Jeffrey Johnson/CA/FAS/PwC  
01/26/2004 06:06 PM

To "David Sokolow" <dsokolow@bsidirect.com>@INTL  
cc  
bcc  
Subject RE: mgmt services

The reference to Justice Schwartz should have been Justice Schulman, we apologize for any confusion. We will consider your comments below and respond shortly to the matters raised.

B. Jeffrey Johnson  
PricewaterhouseCoopers  
Financial Advisory Services (BRS)  
Direct Line: 204 926 2441  
Fax: 204 956 1404  
"David Sokolow" <dsokolow@bsidirect.com>

This is Exhibit "D" referred to  
in the Affidavit of J. Jeffrey Johnson  
sworn before me at the City of  
Winnipeg, in the Province  
of Manitoba, this 20th  
day of February, A.D. 2004.



"David Sokolow"  
<dsokolow@bsidirect.com>  
01/26/2004 02:12 PM

To Jeffrey Johnson/CA/FAS/PwC@Americas-CA  
cc  
Subject RE: mgmt services

A NOTARY PUBLIC IN AND  
FOR THE PROVINCE OF MANITOBA

Jeff

I do not know who Justice Schwartz is, however let me once again state Barcode Washington's position.

The web site was co developed over the years. We are prepared to give you a copy of the source code without any US presence. You can take that site and host it anywhere you choose.

We are under Chapter 11 protection in Washington. As such we are under strict rules with regard to expenses. Our charge to you is 500.00 US to continue providing you uninterrupted service. If you feel it is too high take your copy of the web site elsewhere.

As for Dwight Woods you informed me you terminated him in December and rehired him on a day to day basis. If it is your position you want a temporary employee to have administrative rights to Barcode Washington sensitive information please arrange a meeting with Justice Schwartz.

As for the telephone or email contact you are missing support@bsidirect which is also out of Bellevue. The service email only applies to Canada and as such is of no value to Barcode WA.

Lastly your information on web site development is incorrect. The bulk of all updating and modernization has been done in Bellevue.

-----Original Message-----

From: jeffrey.b.johnson@ca.pwc.com [mailto:jeffrey.b.johnson@ca.pwc.com]  
Sent: Thursday, January 15, 2004 6:51 AM  
To: dsokolow@bsidirect.com  
Cc: ward@pitblado.com; rws@tcwpg.com

Jeffrey Johnson/CA/FAS/PwC  
02/10/2004 01:12 PM

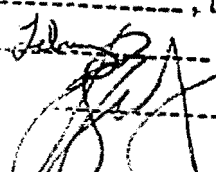
To "David Sokolow" <dsokolow@bsidirect.com>@INTL  
cc  
bcc  
Subject Barcode - email redirection

David, one of the matters we have discussed is the conflict with the Canadian email addresses, which are hosted through Net Nations. Currently, Barcode Washington has access to emails directed to Barcode Canada and its employees. This will be an ongoing problem when the business is sold.

Please advise if you will consent to a redirection of emails related to Barcode Canada and its employees. We understand this is a simple process that can be done through Net Nations.

B. Jeffrey Johnson  
PricewaterhouseCoopers  
Financial Advisory Services (BRS)  
Direct Line: 204 926 2441  
Fax: 204 956 1404

This is Exhibit "E" referred to  
in the Affidavit of J. Jeffrey Johnson  
before me at the City of  
Winnipeg, in the Province  
of Manitoba, this 29th  
day of February, A.D. 2004.

  
A NOTARY PUBLIC IN AND  
FOR THE PROVINCE OF MANITOBA





"David Sokolow"  
 <dsokolow@bsidirect.com>  
 02/13/2004 05:21 PM

To <jeffrey.b.johnson@ca.pwc.com>  
 cc  
 bcc

Subject FW: Barcode - email redirection

This is a resend

-----Original Message-----

**From:** David Sokolow [mailto:dsokolow@bsidirect.com]  
**Sent:** Thursday, February 12, 2004 5:11 PM  
**To:** 'jeffrey.b.johnson@ca.pwc.com'  
**Subject:** RE: Barcode - email redirection

Jeff

As I stated previously I will co-operate fully with any new owner. All they have to do is pay the bill BSI Washington presents to them. If they do not want to pay the bill they are welcome to get their own domain name and web site. As for Barcode Washington having access to Canadian email addresses the solution is simple, take your email addresses and change them. We have now hosted your emails and website for almost two months with no compensation.

If you want to work out an equitable solution I am all ears.

-----Original Message-----

**From:** jeffrey.b.johnson@ca.pwc.com [mailto:jeffrey.b.johnson@ca.pwc.com]  
**Sent:** Tuesday, February 10, 2004 11:13 AM  
**To:** dsokolow@bsidirect.com  
**Subject:** Barcode - email redirection

David, one of the matters we have discussed is the conflict with the Canadian email addresses, which are hosted through Net Nations. Currently, Barcode Washington has access to emails directed to Barcode Canada and its employees. This will be an ongoing problem when the business is sold.

Please advise if you will consent to a redirection of emails related to Barcode Canada and its employees. We understand this is a simple process that can be done through Net Nations.

B. Jeffrey Johnson  
 PricewaterhouseCoopers  
 Financial Advisory Services (BRS)  
 Direct Line: 204 926 2441  
 Fax: 204 956 1404

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This is Exhibit "F" referred to  
 in the Affidavit of J. Jeffrey Johnson  
 sworn before me at the City of  
Winnipeg, in the Province  
 of Manitoba, this 29<sup>th</sup>  
 day of February A.D. 2004

A NOTARY PUBLIC IN AND  
 FOR THE PROVINCE OF MANITOBA

PricewaterhouseCoopers Inc.  
 One Lombard Place, Suite 2300  
 Winnipeg, Manitoba  
 Canada R3B 0X6  
 Telephone +1 (204) 926 2400  
 Facsimile +1 (204) 944 1020  
 Direct Tel. 204-926-2441  
 Direct Fax 204-956-1404

**Private and Confidential**

February 26, 2004

Barcode Systems Inc.  
 13400 NE 20th Street  
 Suite 32  
 Bellevue, WA 98005

**Attention: Mr David Sokolow**

Dear Mr Sokolow

**RE: Barcode Systems Inc.**

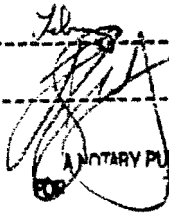
Please be advised that it is the position of the Interim Receiver, that Barcode Systems Inc. and Mr. David Sokolow have violated the December 19, 2003 Order appointing the Interim Receiver. In particular Provision 9 of the Order which requires that all persons can not disturb, discontinue, cut-off or interfere with any services, including internet and electronic mail.

As Interim Receiver we have not cancelled any such services and in transactions involving a sale by a receiver to a purchaser, the receiver may in relation to the sale choose to continue services for a period of time. This is the case and we again indicate that we require and expect continued service.

In your e-mail of February 12, 2004, you indicated that you would cooperate fully with any new owner. We have significant concerns in that it appears you intended to discontinue service immediately after court approval of the sale, thereby not providing the new owner with any opportunity to discuss some go forward arrangement. Particularly given Mr. Sokolow's comment to the writer on February 26, 2004 that he intended to directly compete with the purchaser, the discontinuance of service is very concerning.

With regard to the cost of continued service, we have always indicated we are prepared to pay a reasonable amount. We understand that the new purchaser is also prepared to pay a

This is Exhibit "G" referred to  
 in the Affidavit of J. J. Johnson  
 sworn before me at the City of  
Winnipeg, in the Province  
 of Manitoba, this 29<sup>th</sup>  
 day of February, A.D. 2004

  
 A NOTARY PUBLIC IN AND  
 OF MANITOBA

reasonable amount. Your original position was that Barcode U.S. should receive \$500 U.S per month for hosting and maintaining web support which would include related e-mail services. Please confirm if this continues to be your position.

In order to avoid unnecessary Court costs both on your side and ours, we request you restore the web and email services by 4:00 pm Winnipeg time today.

Yours truly,

PricewaterhouseCoopers Inc.  
Interim Receiver of Barcode Systems Inc.

B. Jeffrey Johnson, CA, CIRP  
Senior Vice-President  
BJJ:kk

Richard Schwartz

From: dave.a.johnson@ca.pwc.com  
Sent: February 29, 2004 11:54 AM  
To: rws@tcwpg.com  
Subject: emails with Jan Genders

This is Exhibit "H" referred to  
in the Affidavit of Dave Johnson  
sworn before me at the City of  
Winnipeg, in the Province  
of Manitoba, this 29<sup>th</sup>  
day of February A.D. 2004

**A HENRY FIELD WARD  
FOR THE PROVINCE OF MANITOBA**

--- Forwarded by Dave A. Johnson/CA/FAS/PwC on 02/29/2004 11:53 AM ---

Dave A. Johnson/CA/FAS/PwC

To "Jan Genders" <jgenders@bsidirect.com>@INTL

cc

02/29/2004 09:54 AM

Subject Re: sale of business / return of Barcode assets / completion of Shell sale [Link](#)

Jan - I understood that you were going to contact qdata to see if they were interested in selling the computer. In any event, I have sent an email to qdata asking them and suggesting that they contact you directly if they are. I expect they will be in touch in the next day or two.

With respect to the computer, any "Barcode business" information on it belongs to the company and must be returned to the Interim Receiver and then deleted from the computer if they are prepared to sell it to you.

I will let you know if I hear from qdata and ask that you let me know if they contact you directly.

Regards,

Dave Johnson  
PricewaterhouseCoopers  
Financial Advisory Services, Winnipeg  
ph: (204) 926-2423  
fax: (204) 956-1404

"Jan Genders" <jgenders@bsidirect.com>

To Dave A. Johnson/CA/FAS/PwC@Americas-CA

cc

02/28/2004 10:22 PM

Subject Re: sale of business / return of Barcode assets / completion of Shell sale

Hello David,

I am late in responding to this, however I believe I talked to you since then.

I said that I might be interested to purchase the BSI computer if it was for a reasonable price and you were going to mention this to q-data.

If this is still a possibility, let me know. The computer is somewhat old, (a 1.6 GHZ processor) and an 18GB drive, however it would spare me the tedious routine of setting up a new computer.

If they want the unit back I will of course pack it up and get it to Burnaby q-data.

Please let me know,

29/02/2004

Thank you,  
 Jan Genders  
[jgenders@dccnet.com](mailto:jgenders@dccnet.com)

Tel: 604-886-3096

----- Original Message -----

**From:** [dave.a.johnson@ca.pwc.com](mailto:dave.a.johnson@ca.pwc.com)

**To:** [jgenders@bsidirect.com](mailto:jgenders@bsidirect.com)

**Sent:** Monday, February 23, 2004 1:30 PM

**Subject:** sale of business / return of Barcode assets / completion of Shell sale

Hello Jan - I wanted to let you know the the Interim Receiver has received an acceptable offer and will be proceeding to Court later this week with respect to completion of a sale of the business. I understand that the prospective purchaser has discussed employment going forward with several former Barcode employees but that you were not one of the ones that they have contacted. As a result, and subject to the Court approving the sale, the Interim Receiver would expect to close a sale at the end of the day Thursday and, assuming the Court approves the sale, would not be in a position to continue your employment past that time. It is however our intention to receive that units on order from BSI Bellevue and to complete that sale to Shell and, once the account is collected, to make payment to you of your commission on that sale as agreed.

Given the sale, we have requested Dwight close the tunnel and request that you call or fax the office if you need or have any information which needs to be exchanged.

We also request that you pack up and return to Barcode System's Burnaby office all computer and related equipment and any and all files in your possession related to Barcode's business and customers.

If you have any questions, please do not hesitate to contact me.

Regards,

Dave Johnson  
 PricewaterhouseCoopers  
 Financial Advisory Services, Winnipeg  
 ph: (204) 926-2423  
 fax: (204) 956-1404

---

This e-mail is intended only for the person to whom it is addressed (the "addressee") and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use that a person other than the addressee makes of this communication is prohibited and any reliance or decisions made based on it, are the responsibility of such person. We accept no responsibility for any loss or damages suffered by any person other than the addressee as a result of decisions made or actions taken based on this communication or otherwise. If you received this in error, please contact the sender and destroy all copies of this e-mail.

Ce courriel est strictement reserve a l'usage de la personne a qui il est adresse (le destinataire). Il peut contenir de l'information privilegiee et confidentielle. L'examen, la reexpedition et la diffusion de ce message par une personne autre que son destinataire est interdite. Nous declinons toute responsabilite a l'egard des pertes ou des dommages subis par une personne autre que le destinataire par suite de decisions ou de mesures fondees sur le contenu de cette communication ou autrement. Si vous avez recu ce courriel par erreur, veuillez communiquer avec son expediteur et en detruire toutes les copies.

---

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29/02/2004

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File No. CI 03-01-36054

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF: **The Bankruptcy and Insolvency Act, R.S.C. 1985,**  
**c. B-3, as amended, s. 47(1)**

BETWEEN:

ROYAL BANK OF CANADA,

Applicant,

- and -

BARCODE SYSTEMS INC.,

Respondent.

---

ORDER

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THE QUEEN'S BENCH  
MAR 08 2006  
WISCONSIN  
WINNIPEG

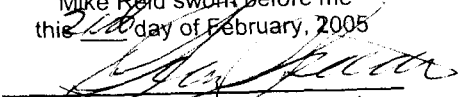
**TAPPER CUDDY**  
Barristers and Solicitors  
1000-330 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 3Z5

**RICHARD W. SCHWARTZ**

Telephone: (204) 944-8777  
Fax: (204) 947  
File No. 032:

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "P" referred to in the Affidavit of  
Mike Reid sworn before me  
this 2nd day of February, 2005

  
A Notary Public entitled to practice  
In and for the Province of Ontario





1. THIS COURT ORDERS THAT upon being provided with a copy of this Order, NetNation Communications, Inc. ("NetNation") shall forthwith reinstate the following email addresses:

- a) dwoods@bsidirect.com
- b) jgenders@bsidirect.com
- c) mbog@bsidirect.com
- d) pnarang@bsidirect.com
- e) smountford@bsidirect.com
- f) sdemsey@bsidirect.com
- g) asaindon@bsidirect.com
- h) eray@bsidirect.com
- i) gfrankel@bsidirect.com
- j) hdraper@bsidirect.com
- k) wmercier@bsidirect.com
- l) kklippenstein@bsidirect.com.

2. THIS COURT ORDERS THAT NetNation shall, as and when the Interim Receiver may direct, provide access to, and/or redirect, any and all email sent to such addresses.

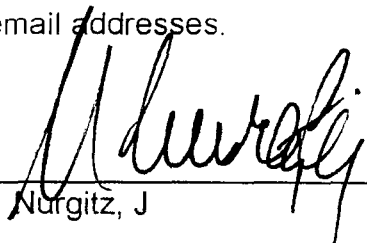
3. THIS COURT ORDERS THAT NetNation provide the Interim Receiver with any and all information that the Interim Receiver may require in relation to the said email addresses.

4. THIS COURT ORDERS THAT upon being provided with a copy of this Order, Barcode Systems, Inc. (in Washington, U.S.A), David Sokolow, Andy Mattice, and any other entity or person who may from time-to-time have access to, control over, and/or involvement with the email hosting service formerly provided to Barcode Canada shall do all things within their power and control to assist and/or enable NetNation to do as is ordered in paragraphs 1, 2, and 3 hereof.

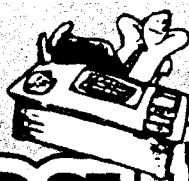
5. THIS COURT ORDERS THAT until further order of this Court, no person save for the Interim Receiver shall, without specific written authorization first being obtained from the Interim Receiver or until further order of this Court, access, interfere with, terminate, cease, change, alter, modify, administer, cause any of those things to be done, or otherwise affect the said email hosting service and email addresses.

6. THIS COURT ORDERS THAT without limiting the generality of the forgoing, no person save for the Interim Receiver shall, without specific written authorization first being obtained from the Interim Receiver or until further order of this Court, review, read, forward, redirect, alter, reply to, or otherwise make any use whatsoever of, any email sent to Barcode Canada and/or the said email addresses.

Date: March 1, 2004

  
Nurgitz, J

Best of



FALL 2004

# Winnipeg Business

Spotlight on Winnipeg's Most Successful Small Businesses

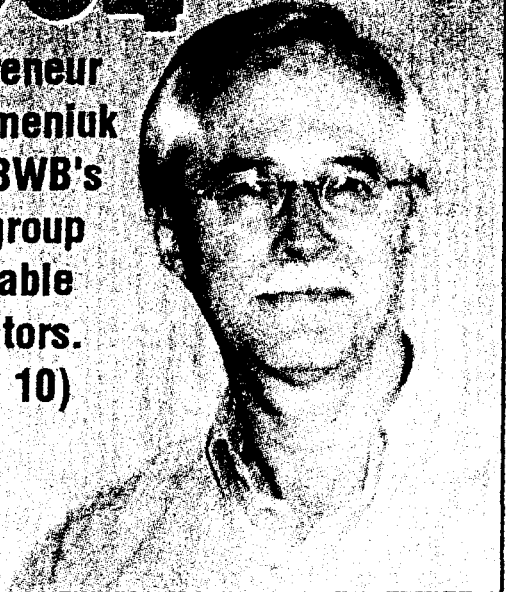
## WOMEN IN BUSINESS



Barcode expert Bonnie Monkman offers clients unique software solutions. (Page 4)

## INNOVATION 2004

Entrepreneur Tom Semeniuk heads BWB's 2004 group of notable innovators. (Page 10)



Melody Hovrisko (Page 6)



Brenda Carberry (Page 8)



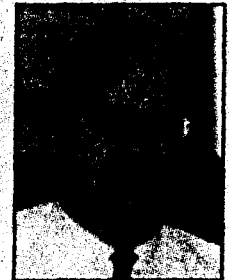
Al Smyth (Page 11)



Earl Holden (Page 13)



Carlos Machado (Page 14)



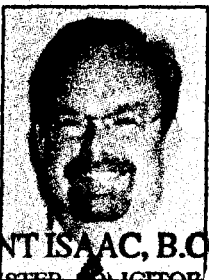
Greg Ozechowsky (Page 14)



George Yung (Page 18)



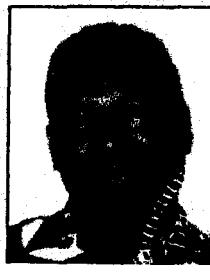
Terry Carruthers (Page 22)



ANT ISAAC, B.COM., LL.B.  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
so Planning Drive  
Burlington Suite 104  
W 4Y4



This is Exhibit "Q" referred to in the Affidavit of Mike Reid sworn before me this 24th day of February, 2005



*[Signature]*  
A Notary Public entitled to practice in and for the Province of Ontario



Conservative investment strate

# Contents

**WBM 8th Annual Women in Business Feature**  
*Women executives achieve success in many industries* ..... 4

**INNOVATON 2004**  
*New products, processes, personnel, premises & more* ..... 10

**Keystone Air Service Aims High**  
*Charter airline competes for executive clients* ..... 28

**The Amazing Career of Woodrow Clark**  
*Winnipeg's security guru offers new services* ..... 31

**Brand Name Office Technical Supplies for Less**  
*Group buying power fuels Direct Data Products growth* ..... 33

**Resident Managers Stand Guard**  
*Sentinel Self-Storage commences 30th year* ..... 34

**Earth Tech Wins Prestigious Engineering Awards**  
*Winnipeg office receives honors for major projects* ..... 35

**Insulators Thermo Applicators Go Hi-Tech**  
*Choose controlled growth to maintain customer service* ..... 36

**Family Printing Business Flourishes**  
*Alley Cat All Night Printing strives for purr-fection* ..... 37

## Best of Winnipeg Business

Best of Winnipeg Business is produced by Winnipeg Business Magazines, 678 - 776 Corydon Ave., Winnipeg, Manitoba R3M 0Y1.

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[www.winnipegbizmagazines.com](http://www.winnipegbizmagazines.com)

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# NORTH WEST COMMERCIAL TRAVELLERS' ASSOCIATION



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- Communications • Car Care • Legal Services
- Men's Clothing • Women's Clothing
- Paints & Coatings • Airport Parking
- Credit Card (Merchants) • Currency Exchange
- Travel Packages • Office Supplies & Furnishings
- Flowers • Group-rated Insurance • MORE!

### Free Bonus

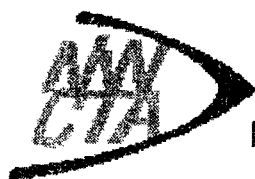
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**Terry Carruthers  
GM & CEO**

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**North West Commercial Travellers' Association**  
 Head Office - 28 Queen Elizabeth Way - Winnipeg, MB R3L 2R1  
 Tel: 284-8900 Fax: 284-8909 Email: [nwtca@nwcta.com](mailto:nwtca@nwcta.com)



# WOMEN IN BUSINESS

## Success Achieved in Many Industries

BY MARY KOWALCHUK AND MYRON LOVE

**O**ur 8th annual Women in Business participants share their stories—how perseverance and hard work have led to success.

### **qdata inc.**

When thirty year-old Bonnie Monkman joined the staff of Barcode Systems two years ago, little did she expect the rough ride it would turn out to be. Now that the uncertainty is over and the company is back in business as a branch of qdata inc. located in Markham, Ontario, Monkman and her fellow employees are feeling very positive about the future.

"Jeff Lem and Randy Bunka (qdata's co-owners) have been amazing," says Monkman, who is now qdata's office manager in Winnipeg. "During the transition, they were as helpful as they could be to all the employees who were offered a position with their company."

Monkman also compliments the former Barcode Systems' customers for their patience and understanding during the three months when Barcode Systems was in receivership before it was re-established under the qdata banner.

"Now that we are back in business as qdata," she reports, "we can offer our customers across Canada and the United States not just the hardware solutions we offered previously, but also the unique software solutions that qdata is well-known for. We have some of the top programming specialists in Canada located in our Markham office. Our project managers have logged in excess of 60,000 hours of data collection experience which ensures the success of our customers' projects."

qdata inc. was established in 1993. With the acquisition of Barcode Systems Mississauga last year and more recently the Winnipeg and Vancouver operations, the company

now has over 35 employees. qdata's client base exceeds 4,000 in North America.

"Inventory control is our specialty. Because we offer various solutions such as mobile inventory control and top-end scanning hardware, we have



*Bonnie Monkman*

the ability to provide customers like large corporations, warehouse, mass merchandisers, schools and government offices with complete solutions designed specifically for their needs. One of our specialties in Winnipeg is our custom printing of barcode labels.

"Trucking firms who transport goods across the border are required to have barcode labels (Cargo control and PARS). We are one of only a few companies in Winnipeg that offer this service because we are a pre-authorized provider of these labels by Revenue Canada. We print all kinds of barcode labels such as UPC, inventory control and asset tracking."

Other qdata services include consulting and system design, project management, site surveys, installa-

tion, system training, post-installation audit and service. All three locations have on-site service technicians who resolve the majority of problems in a short turnaround time.

Monkman notes that qdata is a certified Symbol provider and has certification with many other well-known providers such as Intermec, Teklogix, Oracle, Microsoft, IBM and Zebra. "We have just become one of Zebra's authorized RFID specialists. This requires a high level of sales expertise, technical training and a demonstrated commitment to RFID technology. We now sell Zebra's leading line of RFID printers and media."

qdata recently rolled out the newest version of the RF Plus application. The new 4.0 version was described by qdata's Business Development Manager, John Smids as "our shrink-wrapped configurable product which can be up and running within a week". Since the 3.0 version of RF Plus is qdata's custom solution and allows for flexibility, it will still be offered alongside the new 4.0 version.

The company's new Winnipeg office is located on Berry Street and is staffed by Monkman, Senior Account Manager Garry Frankel, and Service and Technical Specialist Korey Klippenstein.

"We all enjoy working for qdata," she states. "The company has opened up new growth opportunities for all of us."

She reports that qdata is contemplating further expansion due to the rapid growth in their customer base. "Our high standard of customer service allows us to provide our clients with the best possible solutions. Our customers tell us that our strong commitment to develop solutions, train staff, and offer support is much appreciated."

[www.qdata.com](http://www.qdata.com)

THE QUEEN'S BENCH  
WINNIPEG CENTRE

BETWEEN:

**BARCODE SYSTEMS INC.,**

plaintiff,

-and-

**SYMBOL TECHNOLOGIES CANADA INC. AND  
SYMBOL TECHNOLOGIES INC.,**

defendants.

(by original action)

AND BETWEEN:

**DAVID SOKOLOW AS ASSIGNEE  
OF THE INTEREST OF BARCODE SYSTEMS INC.,**

plaintiff,

-and-

**SYMBOL TECHNOLOGIES CANADA INC. AND  
SYMBOL TECHNOLOGIES INC.,**

defendants.

(by order dated November 26, 2003)

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**RE-AMENDED STATEMENT OF CLAIM**

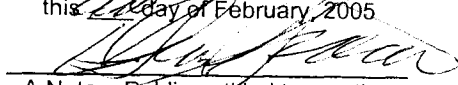
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Thompson Dorfman Sweatman LLP  
Barristers & Solicitors  
CanWest Global Place  
2200 - 201 Portage Avenue  
Winnipeg MB R3B 3L3

(Matter No. 0066030 EWO/LJC )  
(E. W. Olson, Q.C.)  
(Lindy J.R. Chou)  
(Telephone:  
(Fax No. : 9

**D. GRANT ISAAC, B.COM., LL.B.**  
BARRISTER, SOLICITOR, NOTARY  
The Heritage  
5045 Orbitor Drive  
Building 12, Suite 104  
Mississauga, Ont. L4W 4Y4

This is Exhibit "R" referred to in the Affidavit of  
Mike Reid sworn before me  
this 27th day of February, 2005



A Notary Public entitled to practice  
In and for the Province of Ontario

**THE QUEEN'S BENCH**

**WINNIPEG CENTRE**

BETWEEN:

**BARCODE SYSTEMS INC.,**

**plaintiff,**

**- and -**

**SYMBOL TECHNOLOGIES CANADA, INC and  
SYMBOL TECHNOLOGIES, INC.,**

**defendants.**

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this Court Office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 11th, 2003

Issued by (D.Tack)  
Deputy Registrar  
100c - 408 York Avenue  
Winnipeg MB R3C 0P9

TO: Symbol Technologies Canada, Inc.  
~~2540 Matheson Boulevard East~~ 5180 Orbitor Drive  
Mississauga, ON L4W 4Z2 5L9

AND TO: Symbol Technologies, Inc.  
One Symbol Plaza  
Holtsville, NY 11742-1300

Amended this 19<sup>th</sup> day of March  
20 03 on requisition

**V. ZANT  
DEPUTY REGISTRAR**

**THE QUEEN'S BENCH**

**WINNIPEG CENTRE**

BETWEEN:

**BARCODE SYSTEMS INC.,**

plaintiff,

-and-

**SYMBOL TECHNOLOGIES CANADA INC. AND  
SYMBOL TECHNOLOGIES INC.,**

defendants.

(by original action)

AND BETWEEN:

**DAVID SOKOLOW AS ASSIGNEE  
OF THE INTEREST OF BARCODE SYSTEMS INC.,**

plaintiff,

-and-

**SYMBOL TECHNOLOGIES CANADA INC. AND  
SYMBOL TECHNOLOGIES INC.,**

defendants.

(by order dated November 26, 2003)

**RE-AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this Court Office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Manitoba.

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AND TO: Symbol Technologies, Inc.  
One Symbol Plaza  
Holtsville, NY 11742-1300

**CLAIM**

1. The plaintiff claims:
  - (a) An account of sales of products and services to plaintiff's existing customers and to new sales leads in western Canada from January 29, 1998 to present;
  - (b) An order for the payment of all sums found to be due to the plaintiff upon the taking of such account;
  - (c) General damages;
  - (d) Punitive, exemplary and aggravated damages;
  - (e) Special damages;
  - (f) Interest; and

(g) Costs.

2. The plaintiff is a corporation duly incorporated under the laws of Canada, and carries on business in western Canada as a distributor and installer of bar code scanning systems, with its head office in Winnipeg, Manitoba. The plaintiff carries on its business under the names "Barcode Systems", "BSI", "Symbol Western", and "Symbol Direct".

3. The defendant Symbol Technologies Canada, Inc., is a corporation incorporated under the laws of Canada, with its head office at Mississauga, Ontario.

4. The defendant Symbol Technologies, Inc., is a corporation incorporated under the laws of the state of Delaware, and has its principal executive office at Holtsville, New York.

5. The defendants Symbol Technologies Canada, Inc. and Symbol Technologies, Inc. (collectively referred to as "Symbol") are related corporations and are part of an international family of companies which manufactures and sells bar code scanning and data capture system products and services under the trademark "Symbol".

6. In or about May, 1994, the plaintiff and Symbol entered into an business arrangement whereby the plaintiff would take over Symbol's sales and support operations in Vancouver, British Columbia, which operations serviced all of western

Canada. Western Canada was intended by the parties to include the provinces Manitoba, Saskatchewan, Alberta, and British Columbia.

7. The 1994 business arrangement between the parties provided, *inter alia*, that:

- (a) Symbol would provide all western Canada sales leads to the plaintiff with the exception of products not represented and target accounts;
- (b) Symbol would agree not to appoint any new distributors in the area as long as Symbol's standard Value Added Reseller Agreement was in effect and quotas, terms and conditions were being met by the plaintiff;  
and
- (c) Symbol would provide automatic annual renewals of its standard Value Added Reseller Agreement, if all targets, terms and conditions were met by the plaintiff.

8. In or about January, 1998, Symbol induced the plaintiff to make changes to their business arrangement. By an agreement in writing contained in a letter from Symbol to the plaintiff dated January 27, 1998 (the "1998 Agreement"), it was agreed that in exchange for the plaintiff releasing Symbol from all previous obligations, agreements or understandings, and discontinuing use of the Symbol trademark, Symbol would, *inter alia*, do the following:

- (a) Symbol would provide sales help and assistance and marketing support to the plaintiff in addition to the assistance and support outlined in Symbol's standard Reseller Channel Agreement;
- (b) Symbol would provide the plaintiff with the top level discount until December 31, 2000 without any volume requirements;
- (c) Symbol would continue to supply western Canada leads to the plaintiff;
- (d) Symbol would provide efficient processing for approval and payment of marketing assistance funds to the plaintiff;
- (e) Symbol would provide the plaintiff with timely responses for price exceptions and if unable to provide a response within 6 hours, the Canadian President of Symbol would handle the price exception.

(f) Overall, the intent of the 1998 Agreement was to give Barcode Systems Inc. a competitive edge in the marketplace, with the assistance of Symbol.

9. It was a further term of the 1998 Agreement that Symbol was required to maintain ongoing business relations with Barcode Systems Inc. and to execute standard Symbol Agreements with Barcode Systems Inc. in 1998 and subsequent years. Symbol was not entitled to terminate the business relationship and/or any standard Symbol Agreement in place at any particular time, except in the specific

named instances of bankruptcy, insolvency, filing for creditor protection, sale of business or change of ownership.

10. With respect to change of ownership, it was agreed by the parties that Symbol was bound to honour all of the terms of the 1998 Agreement for so long as David Sokolow remained a primary shareholder of Barcode Systems Inc., with provision for transferability in the event of public offering or issuance of investment capital.

11. When negotiating and entering into the 1998 Agreement, Symbol owed to the plaintiff a duty to act bona fide and in good faith.

12. Right from the outset, Symbol deliberately, maliciously and wilfully breached its duty and the express terms of the 1998 Agreement, the particulars of which are as follows:

- (a) Symbol failed to provide the plaintiff with additional sales help and assistance;
- (b) Symbol allowed its sales people to directly compete with the plaintiff for new customers as well as for new opportunities with the plaintiff's existing customers;

- (c) Symbol failed to provide the plaintiff with top level pricing by giving better pricing to other distributors, resellers and end user customers, regardless of volume;
- (d) Symbol did not process marketing assistance fund approvals and payments on a timely basis;
- (e) Symbol did not provide the plaintiff with pricing exceptions on a timely basis.

13. In further breach of the terms of the 1998 Agreement, on or after December 2, 2002, Symbol purported to terminate the standard Symbol Agreement in place at the time, and subsequently terminated the business relationship between the parties.

14. Further, it was an implied term of the 1998 Agreement that the parties act towards each other in good faith and fair dealing. Symbol breached this implied term by deliberately failing to honour its obligations under the 1998 Agreement right from the outset, the particulars of which include the following:

- (a) During the period January 29, 1998 to December 31, 2000, Symbol and its senior management, including, but not limited to, Robert Asti, Symbol's Vice President of Sales Finance, Tomo Razmilovic, Symbol's President and CEO, Frank Borghese, Symbol's Senior Vice President

of Worldwide Sales and Service, and Brian Burke, Symbol's Senior Vice President of Worldwide Operations, engaged in a fraudulent scheme that inflated the reported financial results of Symbol, which scheme was the subject of investigation and charges by the United States Securities and Exchange Commission and the United States Attorney's Office for the Eastern District of New York;

(b) The fraudulent scheme involved the following practices:

(i) "channel stuffing" whereby Symbol improperly recognized revenue on transactions in which product was sold to resellers and the resellers did not have to pay Symbol unless and until they resold the product and received payment from an end user. The resellers also had the right to return any unsold product to Symbol at no cost. Although the specific contingent payment terms and return rights varied from transaction to transaction, in each case they nullified the purported buyers obligation to pay for the product. In the event of a resale to an end user, the resellers received substantial price discounts thus guaranteeing a huge profit to the reseller, or direct cash payments disguised as rebates, marketing credits or storage fees;

(ii) "candy deals" whereby Symbol paid off resellers to purchase large volumes of Symbol product from a distributor at the end of

a quarter so that Symbol could induce the distributor to place a corresponding order with Symbol to increase inventory to meet this illusory demand. In exchange for a reseller ordering a specified volume of Symbol product from a distributor, Symbol would cover the cost of the reseller's purchase from the distributor and pay the reseller an additional amount - the "candy" - equal to 1% of the purchase price;

(iii) "end of quarter deals" whereby in exchange for placing large orders at quarter ends for Symbol product not immediately required by the reseller, Symbol would compensate the reseller for placing these orders, in the form of cash credits, or under the guise of "stocking" fees, rebates and price concessions.

(c) The effect of the fraudulent scheme on Barcode Systems Inc. was to prevent Barcode Systems Inc. from receiving the top level discount for the period January 29, 1998 to December 31, 2000, since other distributors, resellers and/or end users were afforded better prices, discounts, rebates and terms from Symbol;

(d) Barcode Systems Inc. was also grossly impaired in its ability to compete in the marketplace due to the more favourable prices, discounts, rebates and terms extended by Symbol to other distributors, resellers, and/or end users.



15. As a result of the breaches by Symbol, the plaintiff has suffered loss and damage, which include lost sales and profits from January 1998 to the present. The wrongful termination by Symbol of the business relationship and/or the standard Symbol Agreement in place between the parties has caused Barcode Systems Inc. to suffer financial loss and damage such that it is no longer able to operate as a going concern and has been placed in receivership and has made a proposal in bankruptcy.

16. The plaintiff pleads and relies on Queen's Bench Rule 17.02(h) and says that it has sustained loss and damage in Manitoba as a result of Symbol's breaches.

March , 2003

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