

IN THE MATTER OF THE SECURITIES ACT
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the “Act”)

- AND -

IN THE MATTER OF AN INVESTIGATION IN RESPECT OF
KNOWLEDGE HOUSE INC.

NOTICE OF MOTION

TAKE NOTICE that a motion will be made by Calvin W. Wadden (“Wadden”) and Kenneth G. MacLeod (“MacLeod”), collectively (the “Applicants”), before a panel of the Commission on a date and time to be set by the Commission for:

1. An ORDER revoking or varying the investigation order in the matter of Knowledge House Inc. (“KHI”), issued on February 4, 2003 and the amending orders issued on April 23, 2003 and October 22, 2003 by removing the investigators named therein along with any additional Commission Staff and other persons involved in the investigation and by prohibiting the use of the fruits or work product of the investigation in any amended or new investigation or in any other proceeding on the following grounds:

- (a) the Commission Staff and other investigators interpreted the *Act* incorrectly and exceeded their jurisdiction under the *Act* when on and after August 25, 2003 they demanded and took possession of private and confidential email accounts of the Applicants from Alan Parish, Q.C. and accessed, copied and reviewed such documents without either obtaining the consent of the Applicants and other affected persons or applying to a judge of the Supreme Court for a warrant for that purpose, pursuant to section 27(5) of the *Act*;
- (b) by the conduct referred to in sub-paragraph (a), the Commission Staff and other investigators permitted an illegal search and seizure contrary to the common law and the *Canadian Charter of Rights and Freedoms* which specifically prohibits unreasonable search and seizure under s. 8;

- (c) by accepting the email accounts of the Applicants from the solicitor for National Bank Financial Limited (“NBFL”), one of the parties at the centre of the KHI controversy, which the Commission Staff and other investigators knew or ought to have known were obtained illegally, thereby creating an appearance of bias against the applicants as being unduly influenced by NBFL;
- (d) by refusing to act immediately to have the issue of solicitor-client privilege determined with respect to certain emails contained in the account of the Applicant MacLeod, Commission Staff and investigators violated the provisions of s. 29F of the *Act* which specifically sets out a procedure for dealing with claims of solicitor-client privilege; and
- (e) by refusing to follow neither the spirit nor the letter of the April 19th, 2006 order of the Nova Scotia Court of Appeal, the Commission Staff and investigators may be in contempt of that order and therefore must be barred from proceeding in a manner inconsistent with the order of the court which is binding upon the Commission.

2. An ORDER providing for the security and protection of the solicitor-client privilege in relation to certain documents in possession of Commission Staff in a manner consistent with s. 29F of the *Act*.

3. An ORDER directing Commission Staff and investigators to immediately disclose full factual circumstances surrounding the seizure of the KHI servers from Alan Parish, Q.C. including but not limited to:

- (a) how the Commission learned of the existence of the servers and Mr. Parish’s possession thereof;
- (b) what information was provided to the Commission Staff and investigators by Mr. Parish prior to seizure of the servers;
- (c) the manner in which security on the servers was penetrated;
- (d) a full description of who had access to and viewed material on the servers and when and for how long;
- (e) a full description of the use that was made of the information on the servers including whether any copies were made and if so in what medium;
- (f) a full description of what use, if any, was made of any material copied from the servers and where that material currently resides; and

- (g) such other facts as would be necessary for the Commission to make or provide instructions for the proper determination of this motion.

DATED at Halifax, Nova Scotia, this 6th day of July, 2006.

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