

NOVA SCOTIA COURT OF APPEAL

Citation: *National Bank v. Potter*, 2004 NSCA 152

Date: 20041214

Docket: CA227827

Registry: Halifax

Between:

National Bank Financial Ltd., Joel Wiesenfeld, Alan V. Parish
and Brian K. Awad

Appellants

v.

Daniel Potter, Starr's Point Capital Incorporated, Fiona Imrie,
Gramm & Company Incorporated, 2532230 Nova Scotia Limited,
3020828 Nova Scotia Limited, Ronald Richter, Kenneth MacLeod,
Futureed.Com Ltd., Donald Snow, Meg Research.Com Limited,
3027748 Nova Scotia Limited, Calvin Wadden, Raymond Courtney,
Bernard Schelew, Blois Colpitts, Stewart McKelvey Stirling
Scales, Bruce Clarke, 2317540 Nova Scotia Limited and
Knowledge House Inc.

Respondents

- and -

Nova Scotia Barristers' Society

Intervenor

Judge: The Honourable Justice Nancy Bateman

Appeal Heard: December 8th, 2004

Subject: Appeal from interlocutory order providing directions for Chambers application

Summary: In the midst of multi-party, multi-proceeding complex litigation the judge granted an order determining what issues would be heard during an upcoming Chambers application. A significant question was whether certain e-mail communications, which had been obtained by the opposing party, were subject to solicitor-client privilege, whether the privilege had been waived or whether the documents were not privileged because they were in furtherance of an illegal purpose. The Chambers judge ruled that, at the hearing he would consider, if the documents were *prima facie* privileged, whether privilege had been waived but not whether they were made in furtherance of an illegal purpose. He concluded that if he found the documents were not otherwise privileged or that privilege had been waived, he would not need to consider the illegal purpose argument in order to resolve the question of privilege.

Issue: Did the judge apply a wrong principle of law or did a patent injustice result from the judge's ruling?

Result: Appeal dismissed without costs subject to any party's right to make further application to the judge to address the allegation of illegal purpose prior to trial.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 8 pages.