Citation: 7451190 Manitoba Ltd v CWB Maxium Financial Inc et al, 2019 MBCA 28

Date: 20190320
Docket: AI19-30-09213

IN THE COURT OF APPEAL OF MANITOBA

IN THE MATTER OF: ***The Appointment of a Receiver pursuant to Section 243 of the Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended, and Section 55 of The Court of Queen's Bench Act, CCSM c C280***

B E T W E E N:

	)	***M. Kalo*** *and*
	)	***D. L. Jorgenson***
	)	*on behalf of the Appellant*
CWB MAXIUM FINANCIAL INC.	)	
	)	***C. E. Howden***
	)	*for the Respondent*
(Applicant) Respondent	)	*CWB Maxium Financial*
	)	*Inc.*
- and -	)	
	)	***No appearance***
6934235 MANITOBA LTD. carrying on	)	*for the Respondents*
business as WHITE CROSS PHARMACY	)	*6934235 Manitoba Ltd.*
WOLSELEY and 7085797 MANITOBA INC.	)	*c.o.b. as White Cross*
	)	*Pharmacy Wolseley and*
	)	*7085797 Manitoba Inc.*
(Respondents) Respondents	)	
	)	***R. H. Kravetsky***
- and -	)	*for The Law Society of*
	)	*Manitoba*
7451190 MANITOBA LTD.	)	
	)	*Chambers motion heard:*
	)	***February 28, 2019***
(Respondent) Appellant	)	
	)	*Decision pronounced:*
	)	***March 20, 2019***

MAINELLA JA

[1] The principal question before me in this chambers proceeding is the discretion of the Court to grant the privilege of audience to a non-lawyer, who is a director of a corporation.

[2] Michael Kalo is the sole director of 7451190 Manitoba Ltd. (the company). He is not a licenced lawyer in Manitoba, or elsewhere in Canada. Mr. Kalo commenced an appeal of a receivership order on behalf of the company pursuant to section 193 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the *BIA*). The appeal was not filed within the time required by law. Mr. Kalo has carried on the appeal and seeks to argue it on behalf of the company.

[3] Four legal issues have been raised before me. First, whether Mr. Kalo should be granted audience in the chambers proceedings related to the appeal based on his status as a director of the company. Second, whether or not the nature of the company's appeal requires leave or is of right under section 193 of the *BIA* (see *PricewaterhouseCoopers Inc v Ramdath*, 2018 MBCA 41 at paras 19-20). Third, if the company requires leave to appeal the receivership order under section 193(e) of the *BIA*, should leave to appeal be granted (see *PricewaterhouseCoopers Inc v Ramdath*, 2018 MBCA 71 at paras 14-24). Fourth, whether the company should be granted an extension of time to file its notice of appeal and, if leave is required, its application for leave to appeal.

[4] After hearing from the parties, and counsel from the Law Society, I decided the first issue and exercised my discretion to deny Mr. Kalo the privilege of audience to represent the company and adjourned determination

of the other three issues with reasons to follow. These are those reasons.

Background

The Receivership Order

[5] The applicant is the secured creditor of the company and the two other corporate respondents carrying on business as a Winnipeg pharmacy. Based on a default of various loan agreements by all three of the respondents the applicant made an application in the Court of Queen's Bench for the appointment of MNP Ltd. as receiver and manager, without security, of all of the assets, undertakings and properties of the company and the two other corporate respondents. The total indebtedness claimed by the applicant from the three respondents as of November 2, 2018, was $2,153,863.07.

[6] The receivership application was heard on December 20, 2018. At that time, Daren Lee Jorgenson was the manager of the pharmacy. He is a non-lawyer and was permitted to represent the company on the receivership application. His son, Eaton Jorgenson, was the sole officer and director of the company at the time. The other corporate respondents did not appear on the receivership application or otherwise oppose it. The officers and directors of the other corporate respondents are not family members of Mr. D. Jorgenson.

[7] Mr. D. Jorgenson admitted at the hearing of the receivership application that no payments on the loans owed to the applicant had deliberately been made after October 15, 2018, because of a dispute between him and the applicant as to an advance of $206,000 to the company in June 2018. Mr. D. Jorgenson alleges that an officer of the applicant colluded with former directors and shareholders of the company to allow them to

misappropriate that advance once the company received it, and therefore it should not form any part of the indebtedness claimed by the applicant. Mr. D. Jorgenson advised that he has reported the alleged theft to police and other authorities. The applicant denies the allegation.

[8] Mr. D. Jorgenson advised the judge that no payments would be made to the applicant from the operation of the pharmacy on the loan agreements until the $206,000 dispute was resolved. He asked for an adjournment of the receivership application. The judge refused the request and granted the receivership order because he was "not persuaded that the adjournment [would] serve any useful end." He stated that it was just and convenient to appoint a receiver to "preserve and protect the property pending a judicial resolution of any issues."

[9] The order was filed on the same day as it was pronounced, December 20, 2018.

[10] Mr. Kalo was not involved in any manner in the receivership application and was not present in Court when the application was heard and decided.

The Limitation Period for an Appeal of the Receivership Order

[11] Where a remedy is obtained under the *BIA* in a receivership proceeding, the appeal provisions of the *BIA* govern the limitation period to file an appeal (see *Industrial Alliance Insurance and Financial Services Inc v Wedgemount Power Limited Partnership*, 2018 BCCA 283 at paras 20-21; and *2003945 Alberta Ltd v 1951584 Ontario Inc*, 2018 ABCA 48 at para 9).

[12] Rule 31(1) of the *Bankruptcy and Insolvency General Rules*, CRC, c 368 (the *BIA Rules*) requires that an appeal must be filed in this Court "within 10 days after the day of the order or decision appealed from". Given the rules for the computation of time in the *Interpretation Act*, RSC 1985, c I-21, the company's appeal had to be filed on or before December 31, 2018, absent an order extending the time to do so by a judge of this Court.

Mr. Kalo Becomes a Director of the Company

[13] In his affidavit, Mr. Kalo says he is a close friend and confidant of Mr. D. Jorgenson and Mr. E. Jorgenson.

[14] On December 31, 2018, Mr. Kalo became the sole director of the company replacing Mr. E. Jorgenson. Mr. E. Jorgeson remained the sole officer of the company. Mr. Kalo is not being paid to act as a director of the company. Mr. D. Jorgenson and Mr. E. Jorgenson are aware that Mr. Kalo is not a licenced lawyer in Manitoba, or elsewhere in Canada. In his affidavit, Mr. Kalo says he got involved in this case because of what he calls a "great injustice" to the company "as well as to any other litigant that might be in this same situation at the 'Receivership Court' in the future."

Mr. Kalo's Legal Background

[15] Mr. Kalo is a lawyer in good standing in his native country, Israel. He is a Canadian citizen and does not have a criminal record.

[16] Mr. Kalo has completed legal studies in Canada at the University of Manitoba for the purposes of accreditation but, as previously stated, he is not a member of any law society in Canada. In his affidavit, Mr. Kalo deposes "I

have a lot of litigation experience, as self-represented, in Manitoba, including the Court of Appeal." Counsel for the applicant referred me to 24 reported decisions related to litigation involving Mr. Kalo where he has represented himself. A review of those decisions refers to other unreported decisions where Mr. Kalo has represented himself. In none of the cases cited has Mr. Kalo acted on behalf of another individual or a corporation.

[17] Several prior judicial findings regarding Mr. Kalo's legal background are noteworthy.

[18] In 2006, during the course of his family law proceedings, Mr. Kalo consented to a vexatious litigant order against himself pursuant to section 73(1) of *The Court of Queen's Bench Act*, CCSM c C280 (see *Kalo v The Law Society of Manitoba*, 2014 MBQB 24 (*Kalo QB*) at para 6).

[19] Allen J made the following comments about Mr. Kalo's conduct in Court during his family law proceedings in *Shore-Kalo v Kalo*, 2007 MBQB 197 (at paras 46-47):

> I found [Mr. Kalo] to be the most disrespectful person who has ever appeared before me. Even allowing for the stress of representing himself in a lengthy trial with a myriad of legal and emotional issues, I found his manner excessive and almost uncontrollable. He continually disregarded my instructions/admonishments, showed no regard for courtroom decorum, and interrupted and erupted whenever he felt like it. His self control was minimal.
>
> In order to manage his behaviour I was required to use measures such as the use of hand signals to signal that he must stop talking, the imposition of "time outs", sending him out into the hallway so counsel could read documents uninterrupted, and instructing witnesses not to answer his questions until he was seated so that the witness would not be bombarded with further questions and

> argument in the middle of an answer. If an evidentiary ruling went against him, he usually reacted by threatening to call a prominent member of the Jewish community as a witness.

[20] Mr. Kalo has been unsuccessful, on three occasions (in 2008, 2010 and 2012), in being allowed to be admitted as an articling student in Manitoba and to the professional legal education program, both of which are requirements for admission into the Law Society of Manitoba. The reason for his refusal is that, in the view of the Law Society, Mr. Kalo is not of good moral character and a fit and proper person for admission (see *Kalo v The Law Society of Manitoba*, 2009 MBCA 92 at paras 4-6; *Kalo QB* at paras 7-22; and *Kalo v The Law Society of Manitoba*, 2014 MBQB 109). Mr. Kalo has been unsuccessful in challenging all of these decisions of the Law Society.

[21] The disproportionate manner in which Mr. Kalo has conducted his own personal litigation against the Law Society has led to a successful application for security for costs against him in this Court (see *Kalo v Law Society of Manitoba*, 2010 MBCA 24, aff'd 2010 MBCA 64).

[22] Although Mr. Kalo has a long history of not paying costs ordered against him according to the reported decisions referred to me, he deposes in his affidavit that he does "[not] now owe the Manitoba Law Society, or anyone else, any costs of proceedings or otherwise any money." Given I have no evidence to the contrary, I accept and rely on his sworn assertion for the purpose of making my decision. If it was the case that Mr. Kalo had not satisfied all of the cost awards against him, that would have been further reason to refuse him the privilege of audience.

[23] Mr. Kalo is a previously discharged bankrupt (see *Kalo QB* at

paras 5, 36).

[24] For completeness, I would note that counsel for the applicant, the Law Society and Mr. Kalo, referred to other more recent cases in the Court of Queen's Bench involving Mr. Kalo engaging in what counsel called the unauthorised practice of law on behalf of the company and other corporations. In reaching my decision I have not taken into consideration Mr. Kalo's recent conduct in the Court of Queen's Bench because, in some of the examples cited: the litigation is ongoing; Mr. Kalo disputes some (but not all) of the assertions of counsel as to what he has done; and a proper evidentiary record has not been placed before me.

Appeal Proceedings of the Receivership Order

[25] Mr. Kalo drafted a notice of appeal of the receivership order for the company and filed it on January 14, 2019, raising 17 particularized grounds of appeal.

[26] Mr. Kalo drafted a notice of motion for further evidence on the appeal and filed it on February 12, 2019. Mr. D. Jorgenson swore an affidavit in support of the motion that Mr. Kalo drafted.

[27] Mr. Kalo prepared an appeal book and a factum for the appeal on behalf of the company and filed both on January 31, 2019.

[28] On February 15, 2019, the applicant moved for various forms of relief including an order that the company does not have standing to argue its appeal without duly qualified legal counsel, an order striking the company's notice of appeal for failing to seek leave to appeal pursuant to section 193(e)

of the *BIA* and, in the alternative, an order extending the time for it to perfect its response to the company's appeal and the motion for further evidence.

[29] Mr. Kalo drafted a notice of motion for leave to appeal on behalf of the company and an extension of time (if required) which was filed on February 22, 2019. In support of this motion, Mr. Kalo drafted an affidavit, which he swore and filed on February 25, 2019, together with a motion brief that he prepared.

[30] In his affidavit, Mr. Kalo deposes that Mr. D. Jorgenson has advised him that the company might be insolvent at this time, "cannot afford retaining legal counsel" and has no choice but to "act in person".

[31] Mr. D. Jorgenson was present in the hearing before me and wished to address the Court. I allowed him to do so. During the course of his submissions, he advised that, if it was necessary for the company to be represented by a licenced lawyer before a panel of the Court, he could make those arrangements.

[32] The applicant makes two arguments relating to Mr. Kalo being granted audience. First, it says that, at common law, absent exceptional circumstances, an officer or director of a corporation cannot represent it in the Court of Appeal. For reasons of public policy, a corporation must ordinarily be represented by a licenced lawyer (see *2272539 Manitoba Ltd v Manitoba (Liquor Control Commission)* (1996), 139 DLR (4th) 9 at 13 (Man CA)). Second, the applicant submits that the Court has a discretion to refuse audience for an officer or director of a corporation in an appropriate case (see *54129 Manitoba Ltd v MacGillivray*, 1989 CarswellMan 175 at paras 13-18 (QB)). Given Mr. Kalo's background and that he became a director of the

company *after* the receivership order was made, the applicant argues that it would not be appropriate to grant him audience (see *National Bank of Canada v Twin Butte Energy Ltd*, 2017 ABQB 608 at paras 15-17).

[33] Mr. Kalo submits I should not follow the common law rule discussed in *2272539 Manitoba Ltd* because the decision is dated and that it is in the interests of justice for me to permit him to represent the company because he has extensive legal training and experience in the Courts. I would distill his submission to be that I should prefer the concurring decision in *2272539 Manitoba Ltd*, where Kroft JA suggests that this Court should take a more "flexible attitude" (at p 15) than strict application of the common law rule as to who may represent a corporation in this Court. The argument, in essence, is that the concurring decision in *2272539 Manitoba Ltd* is more in keeping with the modern perspective regarding access to justice, the principle of proportionality and the reality that many corporations are nothing more than small business people carrying on business in a corporate form. Mr. Kalo also asserts that his motivations for assisting Mr. D. Jorgenson and his family members are bona fide and his past background should not be reason to deprive the company of its representation of choice.

[34] Counsel for the Law Society appeared and was invited to make submissions, without objection of the parties. The Law Society says that the public interest in non-lawyers appearing before the courts on behalf of a corporation is not just the interests of the corporation in question, but is a wider analysis that includes taking into consideration the rights of other parties, the court itself and the administration of justice generally. The Law Society's view is that Mr. Kalo's conduct in the litigation relating to the appeal of the receivership order amounts to the unauthorised practice of law within

the meaning of section 20(2) of *The Legal Profession Act*, CCSM c L107 (the *LPA*), regardless of the fact that he says it is being done without remuneration and in his capacity as a director of the company. Sections 20(2) and 20(4) of the *LPA* state as follows:

> **Unauthorized practice of law**
> **20(2)** Except as permitted by or under this Act or another Act, no person shall
>
> (a) carry on the practice of law;
>
> (b) appear as a lawyer before any court or before a justice of the peace;
>
> (c) sue out any writ or process or solicit, commence, carry on or defend any action or proceeding before a court; or
>
> (d) attempt to do any of the things mentioned in clauses (a) to (c).
>
> **Exceptions**
> **20(4)** Subsection (2) does not apply to the following:
>
> (a) a public officer acting within the scope of his or her authority as a public officer;
>
> (b) a notary public exercising his or her powers as a notary public;
>
> (b.1) a district registrar or deputy district registrar under *The Real Property Act* acting within the scope of the duties of a district registrar;
>
> (c) a person preparing a document for his or her own use or to which he or she is a party;
>
> (d) a person acting on his or her own behalf in an action or a proceeding;

> (e) an officer or employee of an incorporated or unincorporated organization preparing a document for the use of the organization or to which it is a party.

Discussion and Analysis

[35] At common law, members of the Law Society enjoy the right of audience in the courts of Manitoba; for non-lawyers, audience to represent another is a privilege that may be granted in the discretion of the court (see *Re Great West Life Assurance Co and Royal Anne Hotel Co Ltd et al* (1986), 31 DLR (4th) 37 at 39-40 (BC CA)).

[36] Unlike the Court of Queen's Bench (see Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, r 15.01(2)), this Court has not modified the common law with a rule of court expressly permitting a corporation to be represented by a non-lawyer in the form of a duly authorised officer of the corporation resident in Manitoba. In his majority decision in *2272539 Manitoba Ltd*, Twaddle JA held that r 15.01(2) was "inapplicable to proceedings in this Court" (at p 13). That view was endorsed in the subsequent decision of this Court in *CJ Rental & Contracting Ltd v Hard Rock Construction Ltd et al*, 2008 MBCA 115 at para 3.

[37] In my view, it is inappropriate for me, as Mr. Kalo requests, to re-visit the applicability of r 15.01(2) in this Court generally by refusing to follow the majority decision in *2272539 Manitoba Ltd*. The simple fact is that there are outstanding issues relating to whether or not the company requires leave to appeal under section 193(e) of the *BIA* and whether it should be granted an extension of time. Those are matters under the *BIA* and the *BIA Rules* for a chambers judge to decide. In my view, it is only if this appeal were to proceed

to a hearing before a panel of this Court that the continued applicability of the majority decision in *2272539 Manitoba Ltd* would be germane.

[38] More applicable to the situation involving Mr. Kalo being granted the privilege of audience to represent the company on the chambers issues is the basic proposition that a judge of this Court sitting in chambers, like any other Superior Court, has the power to control its own process, which includes the discretion to decide who may appear before it (see *54129 Manitoba Ltd* at paras 13-18*; Re Great West Life* at pp 39-40; *Halifax Regional Municipality v Ofume*, 2003 NSCA 110 at paras 21-30; and *Steele v Rendell*, 2016 NLCA 70 at para 12). As McIntyre JA (as he then was) observed in *Vernrose Holdings Ltd v Pacific Press Ltd* (1978), 88 DLR (3d) 523 (BC CA) (at p 529):

> [T]he Courts as masters of their own proceedings must retain a discretion whether to hear from time to time in the course of the dispatch of their business such persons other than barristers as they may consider should be heard in the interests of justice. The court in its discretion may grant a privilege of audience to such persons in any case where it deems it necessary or proper and deny it in other cases. This, no doubt, is a power which should be exercised rarely and with caution, and it is one the courts will be zealous to preserve.

[39] Relevant factors to take into consideration in deciding whether to grant audience to a non-lawyer to represent another are: the capability and integrity of the lay person; the complexity of the case; the vulnerability of and potential harm to the represented party; the prejudice to the opposing side; the prohibition against the unauthorised practice of law given the wording of section 20(2) of the *LPA*; the demands upon time and judicial resources; the principle of access to justice; the principle of proportionality; and the duty to ensure that respect for the administration of justice does not fall into disrepute

(see *Ofume* at para 41).

[40] Based on my review of all of the circumstances here, four factors are significant in deciding whether it is appropriate to grant Mr. Kalo the privilege of audience to represent the company.

[41] First, given the comments by Mr. D. Jorgenson to me at the hearing, the inability of the company to retain counsel in this matter if they required to do so is debatable. I am not satisfied that the company will be unduly prejudiced if Mr. Kalo is refused the privilege of audience.

[42] Mr. D. Jorgenson advised the judge who granted the receivership order that he has organised his business affairs to make himself "judgment proof". He explained that, through other corporations he controls, he is the landlord for the pharmacy and also controls the medical clinic next door, which is a source of customers to the pharmacy. He says that he only got involved in managing the pharmacy to assist the applicant because the individuals that controlled the other corporate respondents were mismanaging the pharmacy and the pharmacy could not be easily sold. He told the judge all he wants is to be paid "the rent," he doesn't "need that pharmacy in [his] life." He advised the judge that, in his view, the applicant's handling of the $206,000 advance to the company was contrary to the good faith he had shown to the applicant in running the pharmacy when others had failed, thus assisting the applicant to have the loans made to the respondents paid.

[43] The situation before me is not, to quote Kroft JA, "a one-person corporation of modest circumstances" (*2272539 Manitoba Ltd* at p 16). The record is undisputed that Mr. D. Jorgenson is a sophisticated businessperson using multiple legal entities, where friends or family members are the officers

or directors, to take advantage, as his right, of the corporate veil. One piece of evidence makes that point with crystal clarity.

[44] The affidavit filed on behalf of the applicant contains an email from Mr. D. Jorgenson dated January 31, 2019 to the applicant and numerous lawyers and business people in Winnipeg about the dispute over the $206,000 advance. In what he describes as his "little rant" he warns the applicant and the receiver that the relationship going forward with him being the landlord of the pharmacy taken over by the receivership order likely will be acrimonious. As he puts it, "I am actually smiling at this point after getting that off my chest because there is not a chance in hell that my family won't come out on top with this . . . drama so those that choose to dig their holes deeper . . . well all the power and shovels to ya".

[45] I have little doubt that if Mr. D. Jorgenson wants to turn on the financial spigot to engage a licenced lawyer for the company in this appeal he has the means to do so. It would be a fiction to have an access to justice concern in this case, if Mr. Kalo is not granted the privilege of audience to represent the company.

[46] Second, Mr. Kalo's "track record" in the Manitoba courts is of concern to me despite his lack of criminal record and being licenced as a lawyer in Israel (see *Re Great West Life* at p 50). Representation of a corporation by a licenced lawyer serves the public interest by ensuring the accuracy, efficiency and integrity of the adversarial process. Several historical antecedents of Mr. Kalo are problematic in regard to the public interest:

- He has been found to be a vexatious litigant (see *Re Great West Life* at p 43);

- He is a previously discharged bankrupt (see *Mondello, Re*, 1983 CarswellOnt 3892 at para 2 (CA)); and

- On three occasions, he has been found by the Law Society to lack the necessary character and fitness to be admitted.

[47] Third, while Mr. Kalo professes the skill and experience to represent the company, I am not convinced that is the case given the complexity of this proceeding. A related concern of mine to the complexity of the case and Mr. Kalo's lack of competence is that, to date, he has displayed a reckless propensity to essentially "fly blind", a quality that raises concerns about the protection of the public and the proper administration of justice. I will provide a few examples of what I mean.

[48] His argument that the company was not out of time to file its appeal, as the limitation period did not run until receipt of the transcript of the judge's decision on January 10, 2019, demonstrates a basic misunderstanding of the law. Appeal limitation periods typically are not governed by when a transcript of the judge's decision is received (see *Psaila v Psaila*, 1984 CarswellBC 628 (CA)). Depending on the relevant legislation, an appeal period runs either when the decision is pronounced or the order is entered.

[49] The language of the *BIA Rules* and the objective of the *BIA* make it clear that the appeal period runs from the day on which the decision was pronounced. That is so because expediency is important to protect the integrity of the restructuring process under the *BIA*. The wording of

section 31(1) of the *BIA Rules* is such that a final order or written reasons of the decision pronounced by the court are not required for the appeal period to begin (see *Moss, Re*, 1999 CarswellMan 482 at para 4 (CA); and *Koska (Bankruptcy) v Alberta Treasury Branches*, 2002 ABCA 138 at para 16). Delay in obtaining a transcript of the oral reasons of a judge granting an order under the *BIA* does not suspend the running of the appeal period (see *AFG Industries Ltd v Pricewaterhousecoopers Inc*, 2003 ABCA 13).

[50] Mr. Kalo was not aware of the limitation period on the company's appeal rights until it was brought to his attention by the applicant's counsel in a letter dated January 30, 2019. There is no evidence that he exercised due diligence to ensure the rights of the company were properly safeguarded prior to that date. Rather than acknowledge that he made an oversight because of the complexity of litigation relating to the *BIA*, Mr. Kalo advances a meritless argument that entirely ignores the wording of the *BIA Rules*. In his materials, he compounds the problem by blaming the registry staff for not telling him about the limitation period, rather than accepting personal responsibility for the error, which is his alone. This is a telling insight and evidence of a lack of integrity and basic civility (see *Re Great West Life* at pp 47-48).

[51] Another example of his insufficient competence to represent another is that, at the hearing, I raised with Mr. Kalo the well-established practice in this Court that counsel cannot occupy the dual roles of advocate and witness (see *R v Deslauriers* (1992), 77 CCC (3d) 329 at 336-37 (Man CA); *Wallace v United Grain Growers Ltd*, 1994 CarswellMan 455 at paras 4-5 (CA); Manitoba, "Court of Appeal Practice Guidelines" (July 2003), online (pdf): *Manitoba Courts* <www.manitobacourts.mb.ca/site/assets/files/1139/practice_guidelines.pdf>; and The Law Society of Manitoba, *Code of*

Professional Conduct, Winnipeg: Law Society of Manitoba, 2011, ch 5, section 5.2). Mr. Kalo has put himself in this situation by swearing the affidavit in support of the motion for an extension of time to file the company's appeal and also by filing a motion brief on behalf of the company on that motion. While the position of the company is salvageable—due to the fact that Mr. D. Jorgenson advised me that he could provide an affidavit in place of Mr. Kalo's to provide the evidentiary foundation for the motion for the extension of time—the fact is Mr. Kalo was unaware that what he did was inappropriate. Again, he did not exercise the necessary due diligence.

[52] The final example I will refer to is that of Mr. Kalo's written argument as to why the company does not require leave to appeal under section 193(e) of the *BIA*. The submissions are perfunctory and devoid of any meaningful analysis of the relevant legal principles, despite the fact that he was in possession of the motion brief of the applicant, which contained a number of relevant authorities. The motion brief Mr. Kalo prepared displays no appreciation of the subtle concepts as to a party's rights of appeal under section 193 of the *BIA*. The situation here is not unlike that in *Re Great West Life* where Esson JA stated, "Many of the affidavits and much of the argument contains such a jumble of facts, suspicions, argument and hyperbole that it is inordinately difficult to impose order upon it or to reach a conclusion as to what part of it, if any, is relevant and factual" (at p 47).

[53] A fourth factor of significance is that the discretion to grant audience to a non-lawyer is not a licence for the Court to ignore the will of the Legislature concerning what constitutes the unauthorised practice of law. As Rowe JA (as he then was) explained in *Leyson Holdings Inc v Newfoundland and Labrador (Works, Services and Transportation)*, 2008 NLCA 66,

"Inherent jurisdiction cannot be exercised so as to conflict with either "relevant statutes or the rules of court" (at para 26) (see also *Baxter Student Housing Ltd et al v College Housing Co-operative Ltd et al*, [1976] 2 SCR 475 at 480; *Gotlibowicz v Gillespie*, 1996 CarswellOnt 1283 (Ct J (Gen Div Div Ct)) at para 17; *R v Stagg*, 2011 MBQB 294 at paras 21-22; and *Park Avenue Flooring Inc. v EllisDon Construction Services Inc.*, 2016 ABCA 327 at para 4). The question therefore is whether Mr. Kalo is acting contrary to section 20(2) of the *LPA*.

[54] O'Leary J (as he then was) explained the difference between being granted audience and the right to practice law in the following way in *Professional Sign Crafters (1988) Ltd v Wedekind*, 1994 CarswellAlta 90 (QB) (at para 10):

> In order to place the issues in perspective it is important to distinguish between the inherent discretion of a superior Court to permit a non-lawyer to appear physically in Court or before a judge as the representative or advocate of another person (the "right of audience"), and the right of an individual to represent another person in respect of legal matters generally, that is, the right to practice law.

[55] The difference between being granted audience and practicing law is one of degree. The nature and extent of the assistance the non-lawyer provides is determinative of whether or not the statutory prohibition in section 20(2) of the *LPA* against the unauthorised practice of law has been breached (see *Moss v NN Life Insurance Co*, 2004 MBCA 10 at paras 7, 12).

[56] The actions of Mr. Kalo in this Court to date in this proceeding contravene section 20(2) of the *LPA* and are not subject to an exception in

section 20(4). He has drafted and filed multiple pleadings, affidavits and legal briefs on behalf of the company, corresponded with counsel for the applicant and given advice to Mr. D. Jorgenson. Moreover, his appointment as a director of the company is solely because of his desire to conduct this litigation and represent the company to challenge the receivership order and the procedures generally, in what he calls "Receivership Court". While he is assisting the company without a fee, his involvement has gone well beyond modest assistance on an occasional basis; he has had full control of the company's appeal and is attempting to act as a lawyer in substance (see *Moss* at para 11).

[57] The nature and intensity of his efforts satisfies me that Mr. Kalo is attempting to appear as a lawyer in this Court contrary to sections 20(2)(b) and 20(2)(d) of the *LPA*. Also, he has commenced and carried on the appeal contrary to section 20(2)(c) of the *LPA*. The inescapable conclusion is that, if Mr. Kalo were granted audience to continue to represent the company, section 20(2) of the *LPA* would be contravened.

[58] In my view, refusing audience to Mr. Kalo to represent the company would not offend the principles of access to justice, proportionality or ensuring respect for the administration of justice. In actual fact, in my estimation, to grant him audience in this chambers proceeding to represent the company would, no doubt, lead to a disproportionate process and bring the administration of justice into disrepute.

[59] In conclusion, my assessment of the circumstances before me as a whole satisfies me that it is inappropriate to exercise my discretion to grant Mr. Kalo the privilege of audience to represent the company in this

chambers proceeding.

Disposition

[60] Mr. Kalo is refused the privilege of audience on behalf of the company in this chambers proceeding.

[61] Mr. D. Jorgenson expressed the need for a reasonable amount of time to make an alternative arrangement for representation of the company. The applicant agrees with this request. Accordingly, the hearing of the outstanding issues is adjourned sine die.

[62] The company will have until March 29, 2019, to provide evidence that it has retained a lawyer licenced to practice law in Manitoba to represent it in this chambers proceeding. Such evidence will be in the form of a notice of appointment of lawyer (Court of Queen's Bench Form 15B) to be filed in the registry of this Court and served on the applicant.

[63] I am seized of the outstanding chambers proceedings in this matter. An appearance before me can be scheduled through the registry after the company has retained a lawyer licenced to practice law in Manitoba, or, failing that, after March 29, 2019, for a hearing and determination of the merits of the outstanding issues.

[64] The question of costs will be dealt with at a future date.

Mainella JA