

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

MANULIFE BANK OF CANADA	)	S. Eros
	)	<i>on behalf of the Appellant</i>
)	
<i>(Applicant) Respondent</i>	)	C. E. Howden and
	)	J. Thiessen
	)	<i>for the Respondent</i>
)	
<i>- and -</i>	)	R. A. McFadyen
	)	<i>for the Receiver</i>
	)	<i>Lazer Grant LLP</i>
6393927 MANITOBA LTD.)	
	)	<i>Chambers motion heard:</i>
	)	January 9, 2026
<i>(Respondent) Appellant</i>)	
	)	<i>Decision pronounced:</i>
	)	February 13, 2026

BEARD JA

THE ISSUES

[1] This is a motion by Manulife Bank of Canada (Manulife) to either strike the notice of appeal filed in this matter, or to cancel the statutory stay of proceedings regarding its receivership order.

[2] By order dated August 12, 2025, Manulife obtained a receivership order (the receivership order) under section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [the *BIA*] and section 55 of *The Court of King’s Bench Act*, CCSM c C280 [the *KB Act*], appointing a receiver and

manager (the receiver) of certain assets owned by 6393927 Manitoba Ltd. (639), primarily the building and land located at 635 Mulvey Avenue in Winnipeg, Manitoba (the property). On August 13, 2025, Scott Eros (Mr. Eros), one of the two shareholders of 639, filed a notice of appeal from the receivership order, purportedly on behalf of 639. Under section 195 of the *BIA*, an order is automatically stayed when an appeal therefrom is filed.

[3] Manulife is requesting the following relief:

- (i) an order striking out the notice of appeal due to 639's failure to apply for leave to appeal, which it states is required under section 193(e) of the *BIA*;
- (ii) an order striking out the notice of appeal on the basis that it was filed by Mr. Eros without the consent of 639 or lawful authority to do so and is, therefore, invalid;
- (iii) an order that 639 does not have standing to appear in this Court unless it is represented by qualified legal counsel; and/or
- (iv) an order cancelling the automatic stay of the receivership order mandated under section 195 of the *BIA* upon filing the notice of appeal.

[4] On the question of Mr. Eros' legal authority to represent 639, Manulife argues that, because Mr. Eros is not a member of the Manitoba Bar, he does not have the right to represent 639, a corporation, in this Court.

BACKGROUND

[5] The following facts are not in dispute. Mr. Eros and Ashley Lauren Timony (Ms Timony) were the registered shareholders, directors and officers of 639. They began cohabiting in 2010, and separated in 2021. The separation led to court proceedings and, on April 7, 2022, an order was granted under *The Corporations Act*, CCSM c C225, which ordered that 639 be dissolved and that Mr. Eros be removed as a director of 639, effective immediately (the 2022 court order). A change was registered in the Companies Office on June 14, 2022, removing Mr. Eros as a director and officer, leaving Ms Timony as the sole director and officer. A Companies Office search dated August 15, 2025, shows Ms Timony as the sole director and officer on that date.

[6] The property had been given as security, which included registered mortgages, for two loans by Manulife to 639. The mortgages were in default in December 2024, and they matured in February 2025. When the default was not remedied, Manulife took steps to realize on its security, including filing a notice of exercising power of sale against the property.

[7] In mid-June 2025, there was a fire in the property. 639 filed a claim with its insurer, Wawanesa Insurance (Wawanesa). In late June 2025, Wawanesa gave notice that it was cancelling the fire insurance policy on the property effective August 15, 2025, alleging that Mr. Eros/639 was not cooperating with its investigation. Mr. Eros contacted Manulife, stating that Wawanesa wanted to cancel the fire insurance, so he wanted to sue Wawanesa. He also stated that 639 would not be able to get new coverage with another insurer until the open claim with Wawanesa was resolved.

[8] On August 5, 2025, Manulife filed a notice of application in the Court of King's Bench under section 243(1) of the *BIA* and section 55 of the *KB Act* for the appointment of a receiver and manager of the property. The application was heard and the receivership order was granted on August 11, 2025, and the order was signed on August 12, 2025. Mr. Eros filed a notice of appeal of that order in this Court on behalf of 639 on August 13, 2025, and he filed a statement of claim in the Court of King's Bench, also on behalf of 639, against Wawanesa on August 14, 2025.

[9] On August 18, 2025, Manulife filed the notice of motion that is the subject of this proceeding. The motion is, in part, the result of the application of section 195 of the *BIA*, which states that there will be an automatic stay of all proceedings under an order that has been appealed until the appeal has been disposed of, unless the stay has been varied or cancelled.

[10] Manulife's motion was returnable on August 21, 2025 (the August hearing). On that date, counsel for Manulife confirmed that, when the fire insurance was cancelled effective August 15, 2025, Manulife purchased its own fire insurance to cover the property and Mr. Eros acknowledged that he could not get fire insurance. As a result, I granted an order cancelling the section 195 stay of proceedings to permit the receiver to take control of and manage the property, with the condition that it could not apply to the Court of King's Bench to approve a sale of the property pending further order of this Court.

[11] The motion was adjourned to Wednesday, November 5, 2025, to provide Mr. Eros with time to respond to Manulife's motion and to take further steps to respond to the outstanding issues regarding his role in 639 and

to complete the arrangements for the new financing that he said had been approved. This included confirming that he had been reinstated as a director of 639; arranging for 639 to obtain legal counsel to conduct the appeal; amending the notice of appeal to include an application for leave to appeal, if required; and causing 639 to file a brief to respond to the issue of leave to appeal.

[12] When we reconvened on November 5, 2025 (the November hearing), Mr. Eros provided a search from the Companies Office showing him as a director and officer of 639, but 639 had not engaged legal counsel and a brief had not been filed to respond to the issues in Manulife's motion.

[13] At that November hearing, Mr. Eros focussed on his intention to obtain financing to buy out Manulife, stating that he required more time to put the arrangements in place; he did not address the failure to obtain legal counsel for 639 or to file a brief addressing the issue of leave to appeal. Manulife raised a concern as to the validity of his reinstatement as a director and officer, including that there was no indication that Ms Timony had consented to the change or that the 2022 court order had been varied to permit that change.

[14] The motion was adjourned to Friday, January 9, 2026 (the January hearing), to proceed on that date. Lengthy directions were given at the November hearing, in consultation with the parties, setting out a schedule for documents to be filed and served and the steps to be taken in order to proceed with Manulife's motion on the January date. Mr. Eros has taken none of those steps, and he has not filed any documents to respond to the outstanding issues.

[15] That said, since mid-December, Mr. Eros has sent many, many emails to counsel for Manulife, Wawanesa, the receiver and others,

threatening, through 639, to take legal action against them, which he began forwarding to the court registry office in early January. The receiver has provided an affidavit attaching the emails that were sent to the registry office, as well as those that were sent to the parties and counsel but not forwarded to the registry office. Again, in the days before the January hearing, Mr. Eros sent a flurry of emails to the registry office in the form of legal demands, such as a demand addressed to telephone companies and the receiver that their records be preserved, and to others alleging misconduct on the part of counsel and the receiver.

[16] These documents have been received in this proceeding, not as proof of the truth of their contents, but as proof that the documents were sent and of the statements and allegations that they contain.

JURISDICTION OF A JUDGE IN CHAMBERS

[17] *The Court of Appeal Act*, CCSM c C240 [the *CA Act*], requires that matters in this Court be decided by a panel of at least three judges (see s 14), while, absent specific statutory authority, the jurisdiction of a single judge in chambers is limited to determining applications or motions incidental to a cause or matter pending in the Court, provided that it does “not involv[e] the decision of that cause or matter” (*ibid*, s 7(1)). The word “incidental” has been interpreted to mean “having ‘a minor or subordinate role in relation to the outcome of the appeal’ [and that] as a general rule that if the order sought disposes or determines the outcome of the appeal, then the matter would be more than incidental to the matter pending in [the] court” (*Canada (Attorney General) v Courchene*, 2010 MBCA 4 at para 5 [*Courchene*], quoting *Strata Plan 1229 (Owners) v Trivantor Investments International Ltd*, 1996 CanLII

986 at para 25 (BCCA); see also *British Aviation Insurance Group v Coseco Insurance Co*, 2010 MBCA 56 at paras 2-3).

[18] In *PricewaterhouseCoopers Inc v Ramdath*, 2018 MBCA 41, Mainella JA held that a chambers judge does not have jurisdiction under section 7(1) of the *CA Act* to strike or quash an appeal and, thus, dispose of an appellant's right of appeal (see para 18). In *Courchene*, Chartier JA found that a chambers judge does not have jurisdiction to stay an appeal (see paras 2, 6). In *Klippenstein v Manitoba Ombudsman*, 2015 MBCA 15, Mainella JA dealt with a motion under section 7(1) of the *CA Act* to stay an appeal. He found that a single judge in chambers has jurisdiction to grant a temporary stay because it is, by definition, not permanent and does not determine or dispose of the appeal (see *Klippenstein* at para 38).

[19] I have concluded that, as a judge sitting in chambers, I do not have the jurisdiction under section 7(1) of the *CA Act* to either strike the notice of appeal or to stay it on a permanent basis; those matters can only be determined by a panel of this Court.

REPRESENTATION FOR 639

[20] The law regarding the right to represent a corporation in this Court is well settled. The principles were set out by Twaddle JA, for the majority, in 2272539 *Manitoba Ltd v Manitoba (Liquor Control Commission)*, 1996 CanLII 12428 (MBCA); and by Mainella JA, in chambers, in 7451190 *Manitoba Ltd v CWB Maxium Financial Inc et al*, 2019 MBCA 28 [*CWB Maxium*], and recently adopted by Rivoalen CJM in 7602678 *Manitoba Ltd v 6399500 Manitoba Ltd*, 2024 MBCA 59.

[21] The following is a summary of those principles as they relate to proceedings in this Court, which are somewhat different from those in the Court of King's Bench:

- the common law rule that corporations must appear by legal counsel applies in an appeal hearing in this Court;
- rule 15.01(2) of the MB, *King's Bench Rules*, Man Reg 553/88, which permits a corporation to be represented by a duly authorized officer resident in Manitoba, does not apply to proceedings in this Court;
- that said, this Court may grant dispensation from this rule in exceptional circumstances;
- a judge of this Court sitting in chambers has more discretion to permit a corporation to appear by agent when arguing a leave application from an administration board or from a small claims judgment;
- the onus is on the corporation to prove that exceptional circumstances exist, which must be based on clear and unambiguous evidence;
- if leave to appeal is granted to a corporation appearing without legal counsel, the corporation must be represented by legal counsel for the appeal, and legal counsel must file the documents required for the appeal;

- helpful factors to consider in deciding whether to permit a non-lawyer to represent a corporation in chambers include the following, although all may not apply in a particular case: the capability and integrity of the layperson; 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 Legal Profession Act*, CCSM c L107; 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 *CWB Maxium* at para 39).

The Capability and Integrity of the Layperson

[22] Mr. Eros is proposing to act for 639 in his capacity as a director and officer; however, the validity of that capacity is questionable. While Mr. Eros was added as a director and officer of 639 at the Companies Office in October 2025, he has not complied with this Court's directions at the November hearing to provide a consent from Ms Timony to that change.

[23] The only evidence that has been filed raises the inference that Ms Timony is not consenting, firstly because she said in her affidavit dated August 19, 2025, that she was the sole director and officer of 639, that she supported lifting the stay of the receivership order so that the receiver could administer the property and striking the notice of appeal, and, also, because she signed a notice of discontinuance of the appeal. Further, there is no

evidence that the 2022 court order removing Mr. Eros as a director has been varied or terminated.

[24] While Mr. Eros stated at the January hearing that Ms Timony is consenting and that her lawyer filed the change of directors notice in the Companies Office, there is no evidence to support that submission. Moreover, he has failed, without explanation, to comply with the November hearing directive that he provide Ms Timony's consent in that regard.

[25] Considering all of the evidence, I have serious concerns as to the validity of Mr. Eros' appointment as a director and officer of 639.

Complexity of the Case

[26] This is a relatively complex case that involves the interpretation and application of procedural law and of the *BIA*. Mr. Eros has no legal training, but even making allowances for the fact that he is a self-represented litigant, he has not demonstrated any ability or intention to address the substantive legal aspects of this appeal in any way.

The Vulnerability of and Potential Harm to the Represented Party

[27] 639 is a small, closely-held corporation, having two shareholders—Mr. Eros and Ms Timony. Mr. Eros and Ms Timony have been involved in acrimonious litigation regarding both 639 and their separation since January 2018, a period of eight years. Mr. Eros' decisions raise concerns as to whether he will act to protect the interests of either 639 or Ms Timony. This is shown by the finding against him of serious contempt of court, the actions that led to

the cancellation of 639's fire insurance and his failure to pursue this appeal as directed, notwithstanding the mounting receivership and mortgage costs.

[28] All of this leads to the conclusion that both 639 and Ms Timony's interests are at risk at the hands of Mr. Eros.

The Prejudice to the Opposing Side

[29] The stream of emails that Mr. Eros has sent regarding opposing counsel, his complaints to the Law Society of Manitoba alleging misconduct by every lawyer involved in this matter, including Ms Timony's lawyer, and the delays in pursuing the appeal are all leading to the expenditure of a significant amount of time and legal and administration fees, all to the prejudice of other parties. Further, to the extent that these costs are paid by 639, there will be significant prejudice to Ms Timony, as they will reduce the value of 639, in which she owns half of the shares.

The Demands Upon Time and Judicial Resources

[30] In addition to the comments above, Mr. Eros has bombarded the registry office with many lengthy emails that, for the most part, are irrelevant to this proceeding and are a waste of time for counsel, the registry staff and third parties like the Law Society of Manitoba, who must address them.

The Principle of Access to Justice

[31] Access to justice often arises where a corporation cannot afford to pay legal counsel and will be prevented from having access to the courts if it is required to do so (see *CWB Maxium* at para 45). Mr. Eros has not argued that 639 cannot afford legal counsel; in fact, he stated that 639 owns other

properties. His failure to have 639 retain legal counsel appears to be due to the fact that he has no intention of pursuing the appeal, but rather, to prolong the section 195 stay while he arranges financing. Thus, based on the available evidence, requiring 639 to appear by legal counsel does not raise concerns related to its access to justice.

The Duty to Ensure That Respect for the Administration of Justice Does Not Fall Into Disrepute

[32] There is no indication that Mr. Eros intends to pursue the appeal. He stated at this hearing that he never intended to litigate the law; his goal has been to obtain financing to redeem the property. This is consistent with the grounds of appeal in the notice of appeal that he filed, which states that “Manulife will be financed out by Access Credit”. It is also consistent with his failure to comply with any of the directions given at the August and November hearings, which were directed towards readying the motion for hearing. The documents that he has filed and his submissions in Court have focussed on the arrangements he is making with a credit union for financing to repay Manulife and redeem the property.

[33] Mr. Eros’ use of the courts in this manner is a serious abuse of the judicial system, because it unnecessarily ties up judicial resources and causes delays that prejudice other litigants who are waiting to have their legitimate matters heard. While I do not find that his intention is to bring disrepute to the administration of justice, delaying this matter for ulterior purposes is not an appropriate use of judicial resources or the court system and, if permitted, will bring the administration of justice into disrepute.

[34] I have heard Mr. Eros' many concerns, about which he clearly feels very passionate, regarding the actions of Manulife, Wawanesa, the receiver and their counsel related to the conduct of the receivership, the costs being incurred, and what he sees as interference with his efforts to obtain alternative financing. Those issues are not part of the appeal that has been filed, and many of them are issues that will have to be resolved by the judge who has conduct of the receivership proceedings (the judge).

Conclusion—Representation for 639

[35] In conclusion, policy dictates that, absent exceptional circumstances, a corporation must be represented by qualified legal counsel in this Court. A corporation has the onus of proving that exceptional circumstances exist such that a court or a judge should exercise their discretion and dispense with that rule.

[36] I am satisfied that, if Mr. Eros were permitted to represent 639, he would continue to delay the appeal in the hope of redeeming the property, while the receivership costs mount to the prejudice of both 639 and Ms Timony and valuable court time and resources are squandered, bringing the administration of justice into disrepute. After considering the evidence and all of the circumstances, I find that I am not satisfied that Mr. Eros should be permitted to file court documents or appear on behalf of 639.

STRIKING THE APPEAL

[37] Manulife argues that the appeal should be struck on the bases that leave to appeal is required under section 193(e) of the *BIA* and should not be

granted, and that the notice of appeal is invalid because it was filed on behalf of 639 without its consent or lawful authority.

[38] I am not satisfied that it is appropriate to determine either the leave issues or the validity of the appeal at this time. Neither Ms Timony nor 639's interests have been represented, in that no material has been filed and no arguments have been made on behalf of either to respond substantively to these issues. Further, even if I accept Manulife's position on either basis, I do not have the jurisdiction, as a chambers judge, to strike the appeal.

THE SECTION 195 STAY OF PROCEEDINGS

[39] A judge of this Court has jurisdiction, under section 195 of the *BIA*, to cancel the stay of the receivership order that arose on the filing of the appeal:

Stay of proceedings on filing of appeal

195 Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

Suspension d'instance sur un appel

195 Sauf dans la mesure où le jugement dont il est interjeté appel est sujet à exécution provisoire malgré l'appel, toutes les procédures exercées en vertu d'une ordonnance ou d'un jugement dont il est appelé sont suspendues jusqu'à ce qu'il soit disposé de l'appel; mais la Cour d'appel, ou un juge de ce tribunal, peut modifier ou annuler la suspension ou l'ordonnance d'exécution provisoire s'il apparaît que l'appel n'est pas poursuivi avec diligence, ou pour toute

autre raison qui peut être
jugée convenable.

[40] The section states that the stay can be varied or cancelled in two circumstances: if it appears that the appeal is not being prosecuted diligently *or* for such other reasons as a judge or the court deems proper. While the statute uses disjunctive language—one circumstance or the other—the jurisprudence appears to apply only one test, which incorporates the lack of diligent prosecution (where that is a factor) into an analysis that looks at the merits of the appeal, the relative prejudice to the parties, irreparable harm and balance of convenience (see *Grillone (Re)*, 2023 ONCA 844 at para 35; *Royal Bank of Canada v Bodanis*, 2020 ONCA 185 at para 13).

[41] Without deciding that issue, I will proceed on the basis that there is one test that incorporates both circumstances, recognizing that the final decision requires a weighing of the factors and that the weight given to each will depend on the facts of the case. Those factors were described in *Grillone* as follows (at para 35):

The *BIA* s. 195 jurisprudence identifies several factors courts should consider when dealing with a request to lift an automatic stay:

- The appellant’s litigation conduct, including whether the appellant is diligently prosecuting the appeal;
- The merits of the appeal;
- The relative prejudice to the parties of cancelling the stay. This typically involves applying a variation of the tripartite test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 applied on stay applications, specifically whether: (i) there is a serious issue to be appealed; (ii) the

applicants would suffer irreparable harm if the stay is not lifted; and (iii) the applicants would suffer greater harm than the respondents if the stay is not lifted;

- However, while all or part of the tripartite test may be relevant, the discretion granted by *BIA* s. 195 is broader. Accordingly, a contextual approach is appropriate that considers all the facts of the case, not merely those that engage the tripartite test, and the interests of justice generally.

(See also *White Oak Commercial Finance LLC v Nygård Holdings (USA) Limited et al*, 2020 MBCA 128 at paras 23-24.)

[42] An applicant seeking the cancellation of the stay has the burden of establishing compelling reasons for the cancellation (see *Grillone* at para 35; *White Oak* at para 24). In the present case, the factors weigh heavily in favour of cancelling the stay in its entirety.

[43] First, Mr. Eros, who filed the notice of appeal, stated that his intention is not to proceed with the substance of the appeal; rather, his goal is to refinance the Manulife loans and redeem the property. To date, his strategy has been to ask for further adjournments to finalize the financing, and he has ignored all court directions regarding steps that would advance the appeal.

[44] Second, the notice of appeal that he filed does not set out any legal grounds to challenge the validity of the receivership order. The grounds are that Manulife will be financed out by Access Credit; that 639 was intentionally put into receivership by Ms Timony; and that a hearing is scheduled to preserve the property under *The Family Property Act*, CCSM c F25. There has been no evidence of any orders resulting from that hearing, and the stated

grounds of appeal do not appear to raise any issues related to the granting of the receivership order or to its validity.

[45] Further, Mr. Eros stated during the August hearing that he had the financing in place and there were just a few details to work out. He has now had over five months to complete that financing, and there is no indication that it is in place.

[46] Third, a major reason for the partial cancellation of the stay at the August hearing was that 639 could not obtain fire insurance to protect 639's interest in the property, and there has been no evidence to suggest that that situation has changed. Without the receivership order, the equity in the property would not be protected, which would prejudice 639, creditors other than Manulife (which has its own insurance) and both shareholders. That said, at the November hearing, Mr. Eros spoke to the considerable costs being incurred by the receiver to manage the property, which he said is increasing the debt to Manulife and making it difficult or impossible for him to complete his financing plans. It is clear that all stakeholders are being prejudiced by the continuation of the stay, which prevents the receiver from selling the property.

[47] Fourth, while Mr. Eros raised many issues about the management of the property, those are issues for the judge to address when the receiver applies for court approval to sell the property and to pass its accounts; they are not issues before this Court in this matter.

[48] Fifth, neither 639 nor Mr. Eros is directly prejudiced by the cancellation of the stay. While the cancellation will permit the receiver to market the property, any sale that it arranges will be subject to court approval,

as are the receiver's accounts. Mr. Eros can redeem the property at any time before a sale is concluded, and he will have the opportunity to challenge the proposed sale and the receiver's accounts before the judge when the receiver applies for approval.

[49] For these reasons, I have concluded that this is an appropriate case in which to cancel the statutory stay of proceedings in section 195 of the *BIA*, which will permit the receiver to carry out its duties under the supervision of the judge, including arranging for the sale of the property.

ORDER

[50] For the above-noted reasons, I would grant the motion in part and order as follows:

- (i) 639 must be represented in this proceeding by qualified legal counsel;
- (ii) Mr. Eros is not permitted to represent 639 or to file any further material in this Court in these proceedings, either in his personal capacity or as a director or officer of 639, without further order of the Court;
- (iii) the appeal of the receivership order is stayed until 639 retains legal counsel to represent it or until further order of the Court;
- (iv) 639 will have until March 16, 2026, to file with this Court and serve on counsel for Manulife evidence that it has retained a lawyer licenced to practice law in Manitoba to represent it in this appeal, in the form of a notice of appointment of lawyer

(Court of King's Bench Form 15B), failing which it will be open to Manulife to apply to the Court for an order striking or otherwise disposing of the appeal;

- (v) the section 195 stay of the receivership order is cancelled, including the stay of the sale of the property that was ordered at the August hearing; and
- (vi) costs are in the cause.

JA