

Session: Regulation of Lawyers and Regulation of the Legal Profession

Topic: Unauthorized Practice of Law

Recommended time: 80 Minutes

Score: 45 Marks

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Facts

Kumar is a foreign-trained lawyer from India who is now a permanent resident in Manitoba. He has successfully completed his assigned NCA subjects and was issued a Certificate of Accreditation. He filed an application for admission to the Law Society of Manitoba last year which was rejected on the grounds that Kumar is not of good character and a fit and proper person for admission. This is due to the fact that there is a pending disciplinary proceeding against him by the Bar Council of India involving allegations of substantial breach of professional conduct and etiquette. Kumar is opposed to the Law Society's decision and has filed an appeal.

Three months ago, Kumar joined the board of PBX Global Shipping Ltd (PBX) as the Managing Director. A few days before joining, PBX had received a Statement of Claim from the Court of Queen's Bench filed by Stanford Seamless Inc. (Stanford) for the recovery of \$3 million debt. The suit was initially against PBX and Megaton Service Ltd (Megaton) as co-defendants but Stanford later amended the process to add Kumar as the third defendant. Employing his previous law practice experience, Kumar immediately filed a defence and counterclaim for himself and on behalf of PBX against Stanford and also filed a cross-action on behalf of PBX against Megaton. He equally filed two motions for PBX that he drafted as well as affidavits he swore as deponent. When the matter came up before the motions judge, Kumar announced appearance for himself and on behalf of PBX to argue both applications.

On her part, counsel to Megaton contacted Kumar to explore possibility of settlement so that both parties may have a coordinated defence against Stanford. Megaton's counsel proposed a meeting and for this purpose, Kumar approached Collins, a sole practitioner in Brandon where Kumar had articulated. He narrated to Collins that he had taken up the new position at PBX pending resolution of his bar admission appeal. He mentioned that there is a pending litigation against himself, the company and Megaton for which the latter had proposed a meeting for the parties to discuss terms. However, he did not want to mix his role as Managing Director of PBX with that of her advocate, and so he would require the help of Collins to make use of his office and facilities for the purpose of the meeting. He informed Collins that he wasn't really

collecting any fee for acting on behalf of PBX but that all the steps he had so far taken in the suit were merely to assist PBX, since the proprietress is his friend and she's representing herself in the action. Kumar assured that he will only appear in court not as a lawyer but to assist and speak for her as a friend and that's why he filed all the defences as an agent of her company. Collins agreed to allow Kumar use his office but on condition that Kumar was not to engage in any other matter aside the one that concerns PBX. Using Collin's letterhead, Kumar then wrote a letter to Megaton as advocate to PBX setting out the terms upon which PBX may be willing to cooperate on the suit. He later informed Collins about the letter and that he had dispatched same to Megaton's counsel. Collins nodded his approval. Kumar then begged Collins to participate in the meeting as the lead counsel, assuring him that his fees for the time spent would be paid by PBX.

At the meeting, counsel to Megaton asked if Collins would be handling the matter to which he replied yes, but with the assistance of his junior colleague, Kumar. There were extensive deliberations on what would be given and taken by both parties to ensure cooperation, and at a point, Collins excused himself because he had another client waiting as he never expected the meeting to last that long. He indicated that Kumar would continue with the deliberations. At the end of the meeting, Megaton's counsel agreed with Kumar on the terms of cooperation and Kumar promised to send a draft of the agreement for endorsements. In the evening, Kumar informed Collins about the parties' resolutions and that he had drawn up the terms of settlement and sent to Megaton's counsel. Collins promised to notify him once there is a response from Megaton.

On getting wind of these activities, the Law Society of Manitoba wrote to Collins for clarifications on the events leading to the settlement between PBX and Megaton. The Law Society also applied to join the pending action as an intervener, contending that Kumar was not entitled to file the defence and counterclaim or the cross action, having not been called to the Manitoba Bar. The Law Society relied on section 20(2) of the Legal Profession Act (LPA) which provides thus:

Unauthorized practice of law

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).

Collins responded that he only allowed Kumar the use of his facilities because Kumar is a friend to the proprietress of PBX who was representing herself and the rules allow a party to assist a self-represented litigant, more so when Kumar was not being paid for the job. Collins concluded that since Kumar was only assisting PBX, he is entitled to appear in court and the court will exercise the discretion to grant him audience because a corporation can only act or speak through its officers.

Analyze the issues involved.

Notes:

This sample question and answer seeks to test your knowledge about the topic, unauthorized practice of law. In providing an answer, you must be able to distinguish between the right of self-representation and the right to represent others as far as the practice of law is concerned, as well as the limitations on these rights. All these are shown in the sample answer below.

Secondly, the question also deals with the issue of a lawyer's duty to assist in preventing the unauthorized practice of law and when a lawyer will be in breach of this obligation.