

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 157

Date: 2026 09 02
File No.: KBG-BF-00201-2025
Judicial Centre: Battleford

BETWEEN:

CALROC INDUSTRIES INC.

APPLICANT

- and -

MINISTRY OF FINANCE and BOARD
OF REVENUE COMMISSIONERS

RESPONDENTS

Counsel:

Kurtis G. Wintermute, K.C.
Justin T. Stevenson

for the applicant
for the respondent, Ministry of Finance

FIAT
September 2, 2026

SINCLAIR J.

[1] This decision addresses the admissibility of affidavits filed by the applicant, Calroc Industries Inc. [Calroc], in relation to a provincial sales tax [PST] appeal. Calroc seeks to supplement the record that was before the Board of Revenue Commissioners [Board] through the affidavits. The Ministry of Finance [Finance] opposes the application to adduce fresh evidence on the appeal.

[2] For the reasons given below, I am prepared to allow the introduction of some, but not all of the evidence filed by Calroc.

FACTS

[3] For the purposes of this application, I will not set out the complete factual background that leads to this appeal. However, a few salient facts are:

- a. Calroc was issued a notice of assessment on July 22, 2024 in relation to unpaid PST for the period of July 1, 2018 to April 30, 2024 pursuant to a PST audit conducted by Finance. Finance determined that Calroc owed \$1,623,597.82 in unremitted PST;
- b. Calroc appealed the notice of assessment;
- c. Shortly after the appeal was filed, Finance found errors in its own calculations. As a result, a revised audit package was issued by Finance on December 13, 2024 which determined Calroc's liability to be \$1,397,256.71;
- d. Finance's revised calculation broke down PST for three time periods:
 - i. July 2018 to May 2021 – Calroc reported PST collected of \$561,667.91 to Finance. Based on a general ledger produced by Calroc [GL1], Finance determined that Calroc had collected \$681,223.81 of PST from customers. The difference between these sums (\$199,555.90) was determined to be due and owing by Calroc;
 - ii. June 2021 to February 2023 – Calroc reported no PST collected for this time period to Finance. Finance determined that Calroc's assertion that it had not collected PST from customers was incorrect based on information that Finance obtained from Calroc's customers and other sources. Finance, thus, estimated the

PST owing for this time period by averaging the PST collected by Calroc for the 2018 to 2021 years using GL1. This resulted in \$430,500 (\$20,055 per month) of PST being determined to be owed by Calroc for this time period;

- iii. March 2023 to April 2024 – Finance, using GL1, determined that Calroc had unremitted PST of \$234,908.
- e. In addition, Finance determined that certain adjustments that Calroc made to its PST payable account were not supported by documentation supplied by Calroc. Those “Schedule 02 – Posting Errors”, as labelled by Finance, total \$206,850.70. Calroc attempted to justify these reductions to the PST payable account by supplying a second general ledger [GL2] with different information than GL1;
- f. The “Schedule 02 – Posting Errors” and unremitted PST from July 2018 to April 2024, plus interest and penalties resulted in Finance’s determination that Calroc had a liability of \$1,397,256.71;
- g. Calroc filed its written submissions and documentary evidence in support of its appeal to the Board on June 20, 2025. Calroc was unrepresented throughout the appeal to the Board;
- h. On August 5, 2025, Finance filed its written submissions and documentary evidence with the Board;
- i. On August 18, 2025, Calroc filed its final submissions with the Board;
- j. On September 4, 2025, the appeal was heard by the Board. At the hearing, Pam Wells [Ms. Wells], the chief financial officer [CFO] for Calroc, testified and was cross-examined. Finance’s auditor, Rebecca Douan

[Ms. Douan], also testified and was cross-examined;

- k. During the appeal hearing, Ms. Wells testified that Calroc was completing a forensic audit to determine the PST that was collected from 2021 to 2024. She noted that Calroc's accounting program had "crashed". The record filed with the Court does not indicate that Calroc sought an adjournment of the appeal hearing to complete the "forensic audit";
- l. Although portions of GL1 were filed by the parties in the Board hearing, the parties did not include the portions of the GL1 for 2018 and 2019 in that hearing. Accordingly, the record before the Court on this appeal does not include the information from the GL1 for 2018 and 2019; and
- m. The Board upheld Finance's determination that Calroc had a tax liability of \$1,397,256.71.

THE DISPUTED AFFIDAVITS

[4] While still self-represented, Calroc filed an affidavit of Ms. Wells sworn on December 19, 2025 [First Affidavit]. The affidavit is quite brief (1 page, excluding exhibits).

[5] There are five exhibits attached to the First Affidavit:

- a. Ms. Wells' affidavit indicates that Exhibit "A" is Calroc's "audited financial documents" which Ms. Wells suggests establishes that Calroc owes \$309,510.37 in PST. Upon review of Exhibit "A", there is nothing on the face of the document to suggest that it is, in fact, an audited document. Exhibit "A" appears to be general ledger reports for the period of January 1, 2018 to April 30, 2024. On the last page of the exhibit, the document indicates that it was generated on October 16, 2025. It is not

clear whether this document mirrors GL1 or GL2. It may be another general ledger altogether;

- b. Exhibit “B” is an email string between Ms. Wells and a customer about an invoice sent, but not paid;
- c. Exhibit “C” is a copy of a notice of application filed with the Court in Regina on October 24, 2025;
- d. Exhibit “D” is a copy of an originating application. The document does not contain a court file number and is not signed by the local registrar. I presume it is unfiled; and
- e. Exhibit “E” is an affidavit of personal service, originating application and a two-paragraph affidavit. The documents are not marked as if they have been filed.

[6] After legal counsel was engaged, Calroc filed a subsequent affidavit [Second Affidavit]. The Second Affidavit contains significantly more information and narrative. My summary of the information in the affidavit is as follows:

- a. Paragraphs 1-7 are largely narrative to establish the audit process, along with an admission that Ms. Wells unknowingly provided incorrect information to the auditor. Most notably, paragraph 7 references Exhibit “A” which contains the information reviewed by Ms. Douan from GL1 for the period of July 1, 2018 to December 31, 2020, most of which was not part of the material filed with the Board;
- b. Paragraphs 8 to 10 reference communications between Calroc and Ms. Douan. Exhibit “B” referenced at paragraph 10 of the Second Affidavit is a copy of Finance’s revised audit adjustments and revised

working papers. Those documents duplicate documents in the hearing book (pages 89-98);

- c. Paragraphs 11 to 13 of the Second Affidavit are Ms. Wells' explanation of Finance's revised audit adjustments and revised working papers;
- d. Paragraphs 14 to 25 of the Second Affidavit are Ms. Wells' breakdown of the alleged errors made by Ms. Douan for the period of July 31, 2018 to May 31, 2021 relying on the information in GL1. Ms. Wells notes that Calroc only takes issue with Finance's calculations for the time periods of July 31, 2018, August 31, 2018, December 31, 2018 and January 31, 2020. Exhibit "C" is a general ledger report for PST charges on sales for the months of July 4, 2018 to February 28, 2019 broken down by month with highlighting. Ms. Wells' indicates that the same information, although not broken down by month and without highlighting, is contained at Exhibit "A". The highlighting is meant to emphasize that Ms. Douan failed to take into account journal entries in GL1 that reversed other journal entries. Exhibit "D" is the portion of the general ledger report related to PST for the period of January 1, 2020 to February 29, 2020 broken down by month with highlighting. Ms. Wells indicates that the same information is contained in Exhibit "A", although not broken down by month. Exhibit "E" is schedule 1 of Finance's revised audit results (a duplication of pages 95 and 96 of the hearing book), but with added highlighting and a column added with Calroc's calculations on the PST that Calroc says should be owing by it.
- e. Paragraphs 26 to 31 of the Second Affidavit are Ms. Wells' comments with respect to PST for the period of June 30, 2021 to February 28, 2023. Most notably, at paragraphs 27 to 31, Ms. Wells notes that Calroc

contacted all of its customers to obtain Calroc's previously issued invoices and determine the PST charged to the customers. Exhibit "F" is an alleged complete set of all of the original invoices issued by Calroc for the period of June 2021 to April 2024 (where the invoices were not cancelled by the customer). Exhibits "G" to "K" are calculations generated by Calroc on the PST charged to customers, based on the information at Exhibit "F".

- f. Paragraphs 32 to 34 of the Second Affidavit addresses the time period of March 31, 2023 to April 30, 2024. Ms. Wells notes that Calroc only takes issue with Ms. Douan's calculations for the months of March 2024 and April 2024. Exhibit "L" to the affidavit is an email from a customer to Calroc requesting that an invoice be cancelled, which Calroc indicates is the discrepancy between what Calroc says is owing for PST compared to Finance's calculation. Exhibit "M" is Calroc's bank account statement for the month of April 2024 showing a deposit of \$187,173.75 which is tendered to demonstrate that Calroc had only received 25% of an invoiced amount rather than the entire amount invoiced (Calroc argues that PST was only payable on the amount paid);
- g. Paragraphs 35 to 43 of the Second Affidavit address the "Schedule 02 – Posting Errors". In large measure, Ms. Wells explains Calroc's position that Finance double-counted various posting adjustments. Exhibit "N" is a duplication of a page from the Hearing Book. Exhibit "O" are likewise duplication of pages from the Hearing Book, but with highlighting. Exhibit "P" is Calroc's own calculation of its posting errors.

ISSUES

- [7] The sole issue on this application is whether some or all of the First

Affidavit and Second Affidavit should be considered by the Court on this appeal.

ANALYSIS

The Test to Admit Fresh Evidence

[8] The relevant statutory provisions respecting the appeal in *The Revenue and Financial Services Act*, SS 1983, c R-22.01 [Act], indicate as follows:

21(1) Subject to subsection (2), a person aggrieved by a decision of the board made pursuant to section 20 may appeal to the court.

(2) Where another Act provides for an appeal from a decision of the board, the provisions of the other Act apply.

(3) An appellant shall deposit with or send by registered mail to the registrar of the court a notice of appeal in duplicate, in a form prescribed by the board not later than 30 days from the date of the decision of the board.

...

(11) On appeal, the court shall apply the following standards of review:

(a) correctness with respect to questions of law;

(b) palpable and overriding error with respect to questions of fact and mixed fact and law.

(12) At the hearing of the appeal, the court shall hear and consider the cause based on the material which was before the board at the hearing conducted before it and on any further material or evidence that the court may, on any terms that it considers appropriate, permit.

(13) The court may:

(a) affirm the decision of the board;

(b) amend or reverse the decision of the board insofar as it is based on any error in law; or

(c) refer the matter of assessment back to the minister for reconsideration.

...

62(1) Subject to subsection (2), the minister or an appellant may appeal a decision of the Board of Revenue Commissioners made pursuant to section 61 in accordance with sections 21 to 23.

[9] There is an interesting juxtaposition between s. 21(11) and s. 21(12) of the *Act*. The standard of review set out at s. 21(11) of the *Act* mirrors the appellate standard as articulated in *Housen v Nikolaisen*, 2002 SCC 33. Thus, s. 21(11) of the *Act* contemplates the Court having a true “appellate” function. Section 21(12) of the *Act* provides that, in hearing the appeal, the Court shall consider the information that was before the Board and any further material or evidence that the Court may permit. Arguably at least, s. 21(12) of the *Act* allows the Court greater latitude to supplement the record before the Board than would traditionally be permitted in an appellate context. There is no prior case law analyzing s. 21(12) of the *Act* as to when it is appropriate for the Court to allow fresh evidence to be filed on appeal.

[10] Calroc argues that s. 21(12) grants the Court broad discretion to allow further material or evidence to be considered on an appeal. It notes that the wording of s. 21(12) in allowing additional evidence or information is broader than similar provisions in other provincial legislation with administrative statutory appeals. Calroc points to s. 227.1 of *The Planning and Development Act, 2007*, SS 2007, c P-13.2, which expressly indicates that new evidence is not to be called on appeal unless certain criteria are met.

[11] Finance acknowledges that s. 21(12) of the *Act* allows the Court discretion to allow the filing of fresh evidence. However, it argues that such determination cannot be made in an unprincipled fashion. Further, Finance argues that s. 21(12) of the *Act* has to be read in conjunction with s. 21(11) to ensure that a hearing does not stray from an appeal on the record to a hearing *de novo*. Finance argues that the Court should have regard to the test to supplement the record on an application for

judicial review, as discussed in *Chaboyer v Saskatchewan*, 2021 SKQB 200. In addition or perhaps alternatively, Finance indicates that the Court should have regard to the appellate test to admit fresh evidence as set out in *Palmer v The Queen*, 1979 CanLII 8, [1980] 1 SCR 759 (SCC) [*Palmer*].

[12] In oral argument, I invited counsel to consider the test for the admission of fresh evidence set out in *Products Unlimited, Inc. v Five Seasons Comfort Limited*, 2026 FC 48 [*Products Unlimited, Inc.*]. This case addressed fresh evidence in the context of an appeal under s. 56(5) of the *Trademarks Act*, RSC 1985, c T-13. In its further written argument, Calroc took the position that the *Products Unlimited, Inc.* test was appropriate to an application to adduce fresh evidence under the *Act*. Finance took an opposing viewpoint.

[13] I am persuaded by Finance's position that the *Palmer* test governs the admission of fresh evidence under the *Act*. I do so because:

- a. Section 21(11) of the *Act* sets the standard of review in accordance with the traditional appellate standard. This suggests that the Court should not stray into considering new evidence on appeal, except in rare circumstances. As noted by the Supreme Court in *Barendregt v Grebliunas*, 2022 SCC 22 [*Barendregt*]:

[1] An appeal is not a retrial. Nor is it licence for an appellate court to review the evidence afresh. When appellate courts stray beyond the proper bounds of review, finality and order in our system of justice is compromised. ...;

- b. The Supreme Court in *Barendregt* noted that appellate courts are to use the *Palmer* test whenever a party seeks to adduce additional evidence on appeal;
- c. The language found at s. 21(12) of the *Act* that the Court may consider

“any further material or evidence that the court may, on any terms that it considers appropriate, permit” is not significantly different from s. 683 of the *Criminal Code*, RSC 1985, c C-46, considered in *Palmer* (which was s. 610 at the time that *Palmer* was decided). Section 683 of the *Criminal Code* allows the Court to admit evidence from any witness on appeal if the Court considers it in the interests of justice. In other words, both the *Act* and the *Criminal Code* provide discretion on whether the Court will admit fresh evidence on appeal. There is, in other words, no reason to depart from the well-known approach to fresh evidence on this appeal;

- d. The test for admission of fresh evidence on judicial review is not appropriately imported into an appeal. In conjunction with its analysis of the proper standard of review, the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, noted the importance of giving effect to the fact that an appeal is prescribed by a piece of legislation, as opposed to judicial review. Given that s. 62 of the *Act* prescribes an appeal and not judicial review, the appellate approach to fresh evidence is appropriate;
- e. The test for fresh evidence set out in *Products Unlimited, Inc.* is unique to the *Trademarks Act*. As noted by the Court at paragraph 23 of *Products Unlimited, Inc.*, s. 56(5) of the *Trademarks Act* contains language that signals that the Court can engage in an appeal *de novo* where material new evidence is permitted to be filed. Equivalent language is not found in the *Act*.

[14] The test for fresh evidence in *Palmer* was summarized in *Barendregt* at para 29 as follows:

- a. The evidence could not, by the exercise of due diligence, have been

obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases);

- b. The evidence is relevant in that it bears upon a decisive or potentially decisive issue;
- c. The evidence is credible in the sense that it is reasonably capable of belief; and
- d. The evidence is such that, if believed, it could have affected the result at trial.

The *Palmer* Criteria

(a) *Due Diligence*

[15] The law generally requires litigants to put their best foot forward when first called upon to do so: *Barendregt* paras 37 and 38. This promotes finality and certainty. An appeal is not a re-do; it is a search for material error. On this component of the *Palmer* test, the focus is on why the party seeking to adduce the evidence could not, by the exercise of due diligence, file the materials in the initial instance.

[16] The due diligence criteria is not rigid and has been held to be a practical concept that is context-sensitive: *Barendregt* para 58. The interests of justice may require that fresh evidence be admitted despite an absence of due diligence: *Barendregt* para 70.

[17] There is nothing in the evidence to support that the information in the First Affidavit and Second Affidavit was unavailable to Calroc at the time of the Board hearing if Calroc had proceeded with due diligence.

[18] The text of the First Affidavit largely contains either conclusions by

Ms. Wells, as opposed to facts or references to exhibits. Exhibits “C” to “E” are court documents that have no bearing on this appeal. Calroc has provided no evidence as to why Exhibits “A” and “B” could not have been filed with the Board.

[19] In short, the due diligence criteria is not met with respect to the First Affidavit.

[20] The Second Affidavit contains information that was available at the time of the Board hearing, such as the GL1, visual aids for information in other documents (such as month-by-month breakdown of information that is in GL1), and documents already in the Hearing Book but with highlighting or positions of Calroc added to the documents.

[21] Exhibit “F” to the Second Affidavit, being the invoices submitted by Calroc to customers, should have been available to Calroc with reasonable diligence prior to the Board hearing. Calroc did not seek an adjournment of the Board hearing to gather such information. Ms. Wells’ evidence as to the efforts that she made prior to the Board hearing to obtain the information at Exhibit “F” is sparse. I am not persuaded that such information could not have been obtained with reasonable diligence by Calroc. The same could be said for Exhibits “L” and “M” which should have been available to Calroc in the Board hearing.

[22] In short, I am not satisfied that the “due diligence” criteria in *Palmer* is satisfied in relation to any material in the Second Affidavit. Whether I would permit any of such evidence to be admitted despite the lack of due diligence is addressed below.

(b) *Relevance*

[23] The second *Palmer* criteria is whether the evidence is relevant in that it bears upon a decisive or potentially decisive issue.

[24] I do not find that the evidence in the First Affidavit is relevant in that it bears upon a decisive or potentially decisive issue. The text of the First Affidavit provides little information which bears upon any issues before the Court. The exhibits are either completely irrelevant (the court documents) or sufficiently devoid of context that the evidence would not affect the outcome of the appeal (the email chain and the general ledger information).

[25] The Second Affidavit, by contrast, contains potentially relevant evidence, particularly some of the exhibits attached to the affidavit:

- a. Exhibit “A”, being GL1, for the period of July 1, 2018 to December 31, 2020, was used by Ms. Douan to calculate the PST owing by Calroc during one of the periods under appeal before the Board. Further, because the Board accepted Finance’s approach of averaging the PST payable during the period of July 2018 to May 2021 and applying that average PST to the period of June 2021 to February 2023, Exhibit “A” to the Second Affidavit is relevant to this time period as well.
- b. Exhibits “C” and “D”, being information otherwise found in the GL1 but broken down by month, is relevant to determining the PST owing by Calroc, given that it is information relied upon by Finance in assessing Calroc’s PST liability;
- c. The invoices at Exhibit “F” are relevant if they represent a complete set of the invoices sent to customers for the relevant time periods. Those documents may establish the PST charged to customers;
- d. Exhibits “G” to “K” are relevant in that they provide evidence on the PST payable if the evidence at Exhibit “F” were accepted; and
- e. Exhibits “L” and “M” are potentially relevant in that they may bear upon

a decisive issue, being the treatment of a certain invoice for the purposes of PST payable.

[26] Other exhibits in the Second Affidavit though are effectively visual aids and would not bear upon a decisive or potentially decisive issue:

- a. Exhibit “B” is a duplication of material already in the hearing book;
- b. Exhibit “E” is essentially a visual aid to understand Calroc’s position on the appeal. It could more properly be understood as argument (which could be added to a brief of law) as opposed to evidence;
- c. Likewise, Exhibits “N” and “O” are materials from the hearing book; and
- d. Exhibit “P” is a visual aid to demonstrate Calroc’s position as to the PST payable if Calroc’s position is accepted in relation to the alleged “posting errors”.

(c) *Credible*

[27] The First Affidavit suffers from problems with credibility. For instance, the text of the affidavit indicates “our forensic audit is true and factual”. Calroc does not though provide evidence that a true “forensic audit” has been completed. Further, Ms. Wells alleges that Calroc sought to “submit correct documents but ... were denied by the Board”. The evidence from the hearing does not support such assertion. Some of the exhibits to the First Affidavit such as Exhibit “A” are of uncertain origin as to who completed the information in the financial statement. In short, I do not find the credibility criteria is met by the First Affidavit.

[28] Exhibits “A”, “C” and “D” of the Second Affidavit contain credible information in that those exhibits are the GL1 for certain time periods or month-by-month breakdowns of information generated from the GL1, which was relied on by

Ms. Douan to conduct the audit. Finance acknowledged in oral argument that the GL1 meets the *Palmer* “credibility” threshold.

[29] Exhibits “B”, “N” and “O” are credible in that they are documents already in the hearing book.

[30] Exhibits “E” and “P” are not “credible” in the sense that they are effectively argument and not truly evidence capable of being credible or incredible.

[31] Exhibits “L” and “M” are credible in that there is no reason to disbelieve that the email exchange between Calroc and its customer at Exhibit “L” and the bank account statement found at Exhibit “M” are genuine documents.

[32] Exhibit “F” is more problematic. Finance argues that it cannot accept the Calroc’s assertion that Exhibit “F” contains all of the original invoices issued by Calroc for the period of June 2021 to April 2024. Finance notes that Calroc, during the audit, supplied Finance with invoices that did not match the invoices that Calroc sent to its customers. The Board, in its decision, called into question the credibility of Calroc’s evidence and indicated that the Board could not give weight to Calroc’s positions given that those positions “were based on inconsistent and potentially troubling accounting practices.” The Board went on to note that Calroc “appears to have manipulated (or issued multiple versions of) customer invoices that inflate fees to offset PST.”

[33] In *Barendregt*, the Supreme Court noted that the *Palmer* credibility test is whether the evidence is credible “in the sense that it is reasonably capable of belief”. In other words, the test is not, at this juncture, whether I accept the evidence. Rather, the question is whether the information is capable of belief.

[34] I can neither accept nor reject Calroc’s evidence that the information at Exhibit “F” is what Ms. Wells purports to be in her affidavit (a complete set of all of the original invoices issued by Calroc during the period of June 2021 to April 2024).

As a result, I find that the information at Exhibit “F” is capable of being believed at this juncture without any determination that such evidence would be accepted in an eventual hearing.

[35] As a result of my determination respecting Exhibit “F”, Exhibits “G” to “K” are also credible in that those exhibits are merely calculations stemming from Exhibit “F”.

(d) *Effect on the result*

[36] Fresh evidence will not be admitted unless it could have affected the outcome of the hearing under appeal.

[37] There is nothing in the First Affidavit that would have affected the results from the Board hearing. Calroc’s updated general ledger found at Exhibit “A” is unsupported by source documents and would not, without more, have affected the outcome of the Board hearing. Ms. Wells’ positions, set out in her affidavit, would likewise not have affected the outcome of the hearing. The court documents attached to the affidavit are irrelevant to the decision under appeal.

[38] With respect to the Second Affidavit, the information in the affidavit and the exhibits could have had a result on the Board hearing. Focussing on just a few items, a significant component of the PST determined to be owing by Calroc is based on GL1 for the time period of 2018 to 2021; however, the Board was not provided with the entire GL1 for the 2018 to 2021 years. If Calroc’s position that information was missed by Ms. Douan during the 2018-2020 years is accepted, this could have a significant impact on the PST payable by Calroc. Likewise, if Exhibit “F” is, as purported by Calroc, a complete set of invoices sent by Calroc to customers, this could have affected the Board’s determinations.

[39] Thus, I find that the Second Affidavit meets this *Palmer* criteria.

Applying the *Palmer* principles

[40] I have found that Calroc has not satisfied the “due diligence” component of the *Palmer* test. However, as noted, there are rare occasions where, despite a lack of due diligence, the interests of justice require that fresh evidence be admitted.

[41] In this case, I find that admission of the GL1 for the months of July 2018 to December 2020 (Exhibit “A” to the Second Affidavit) is appropriate, despite the fact that Calroc could have filed such evidence at the time of the Board hearing. I make such determination because the GL1 is an essential document that should have been before the Board in the initial instance. It was key to understanding the full factual picture of the audit, in that Ms. Douan relied on the information in Exhibit “A” to make her audit determinations. More broadly, I am concerned that an injustice could be suffered if such evidence were not admitted. I have also considered that admitting such evidence now will not risk converting an appeal of this matter into a hearing *de novo*. Finance acknowledges that the evidence is credible and was already relied upon by Ms. Douan and Finance.

[42] I am also prepared to consider the evidence found at paragraphs 1 to 7 of the Second Affidavit to provide context as to the relevance of Exhibit “A”, being the GL1 for July 2018 to December 2020.

[43] I am not prepared to relax the “due diligence” component of the *Palmer* test to allow admission of the balance of the Second Affidavit. As noted, much of the information in the Second Affidavit could be contained in argument filed by Calroc, to the extent that it is based on information from the record or from Exhibit “A” to the GL1. Other information is already in evidence.

[44] Most notably, I am not prepared to admit Exhibit “F” or the documents that are generated from the information at Exhibit “F”. Admitting such evidence would

convert this appeal from an appeal on the record to an appeal *de novo*. For instance, Finance may wish to file its own evidence to put into question the completeness of the invoices at Exhibit “F”. Counsel may wish to cross-examine Ms. Wells on the content of her affidavit and the information at Exhibits “G” to “K”. I am not prepared to allow Calroc to engage in a “re-do” of the Board hearing.

[45] As set out above, Calroc had the opportunity to provide the evidence in the Second Affidavit before the Board. It did not do so. This may have been the product of an unwise decision to not engage legal counsel earlier; Calroc must live with the consequences of that decision.

CONCLUSION

[46] Finance’s application to strike the First Affidavit is granted. Costs are awarded to Finance against Calroc in the sum of \$500, payable forthwith.

[47] Calroc’s application to introduce further material or evidence is granted in part. The Court shall consider paragraphs 1 to 7 and Exhibit “A” of the Second Affidavit. The balance of the Second Affidavit shall be disregarded. Given the mixed success on this application, no costs are awarded.

[48] The parties have leave to convene a conference call with me to discuss any issues arising from this decision, including whether Finance wishes to file any response materials to the admitted portions of the Second Affidavit.

[49] Finally, I would be remiss if I did not thank counsel for their helpful materials and submissions.

J.
S.M. SINCLAIR