

2019 LSBC 03
Decision issued: February 4, 2019
Hearing ordered: August 22, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

APPLICANT 12

APPLICANT

**DECISION OF THE HEARING PANEL
ON APPLICATION FOR ENROLMENT**

Hearing dates: November 19 and 20, 2018

Panel: Jasmin Z. Ahmad, Chair
Gavin Hume, QC, Lawyer
Lance Ollenberger, Public representative

Counsel for the Law Society: Jaia Rai
Counsel for the Applicant: Michael D. Shirreff and
Jennifer Crosman

OVERVIEW

- [1] The hearing in this matter involved an application by the Applicant for enrolment in the Law Society Admission Program (LSAP). After reviewing the application, the Credentials Committee ordered a hearing into the application under the *Legal Profession Act* (the “Act”) and the Law Society Rules (the “Rules”). The Law Society gave notice to the Applicant that certain matters would be the subject of inquiry at the hearing. The specific issue raised in the notice included the Applicant’s conduct that gave rise to criminal charges and a related civil action. Subsequently, a further notice was provided to the Applicant advising that an inquiry would be made into the Applicant’s medical condition and his answer to a

question with respect to his medical condition in his application for enrolment in the LSAP. In addition, and during the course of the hearing, an issue arose with respect to an Immediate Roadside Suspension (IRS) of the Applicant and the consumption of alcohol by the Applicant prior to that suspension.

- [2] The question to be determined at this hearing is whether, in the circumstances, the Applicant meets the criteria of good character and fitness required for enrolment in LSAP as set out in section 19(a) of the Act.
- [3] Pursuant to section 22(3) of the Act and Rule 2-10(3), the Panel must do one of the following:
- (a) grant the application for enrolment;
 - (b) grant the application subject to conditions or limitations that the Panel considers appropriate, or
 - (c) reject the application.
- [4] When considering whether the section 19 criteria are met, it is necessary to focus on the character and fitness of the Applicant at the time of the hearing. The onus is on the Applicant to establish his good character and fitness at the time of the hearing, on a balance of probabilities.
- [5] At the hearing, counsel advised the Panel that they had agreed upon a draft order that set out various conditions to be complied with if the Panel concluded that the Applicant was of good character and fit to be an articulated student. After the hearing, the draft consented to by the parties was provided to the Panel.

BACKGROUND FACTS

- [6] The Applicant is a BC resident. Commencing in May 2004 until 2014, the Applicant worked in the family business, ultimately as Operations Manager. He graduated from Simon Fraser University in 2011 with a Bachelor of Arts degree. While at Simon Fraser University, he was active in the Political Science Student Union. He subsequently attended Bond University in Australia, obtaining a Masters degree in Criminology in 2013 and a Juris Doctor degree in September 2015. While at Bond University, he was active in the Peer Mentorship Program of the Canadian Law Student Association. He was also active in the Queensland Public Law Interest Public Hearing House as an administrative law clinic volunteer in 2015.

- [7] From November 2015 to December 2016 the Applicant worked at a constituency office.
- [8] The Applicant's law degree was approved by the National Committee of Accreditation of the Federation of Law Societies of Canada in July 2016. The application for enrolment in the Law Society's Admission Program was filed in March 2017. In the application, the Applicant answered yes to the question as to whether he had ever been charged with any crime or offence. He also answered yes to the question as to whether there was an outstanding civil action against him. He provided the documentation with respect to the criminal and civil matters. In June 2017, he was asked by the Law Society to provide, and did provide, a detailed written narrative describing the circumstances leading up to and surrounding the criminal matter as required by the application.
- [9] While his application was pending, and with the consent of the Law Society, the Applicant volunteered with the [a law office].
- [10] After a review of the application, the Credentials Committee ordered a hearing under Section 19(2)(c) of the Act. [A lawyer] requested and obtained permission to employ the Applicant as required under Rule 6.1-4(f) of the *Code of Professional Conduct for British Columbia*.
- [11] The criminal charges and the related civil action arose as a result of the following circumstances. On October 15, 2011 in Surrey, the Applicant and his father, accompanied by two friends, were proceeding to a restaurant to meet with the Applicant's aunt, who was in a meeting with another individual, ND, with whom she had a business arrangement that was to be discussed. As they approached the restaurant in the Applicant's vehicle, with the Applicant driving, the Applicant's father advised him that ND was leaving the restaurant and urged the Applicant to follow ND. As a result, the Applicant gave chase in his vehicle. During the chase, the Applicant drove in an erratic manner, ultimately hitting ND's vehicle, resulting in the Applicant's vehicle rolling into the ditch. The Applicant was arrested and charged with operating a motor vehicle in a manner that was dangerous to the public contrary to the *Criminal Code*, committing an assault, using a weapon and in particular a motor vehicle contrary to the *Criminal Code* and uttering a threat to cause death or bodily harm to ND contrary to the *Criminal Code*.
- [12] On January 8, 2013, the Applicant pleaded guilty to the dangerous driving charge. Counsel then spoke to sentencing. The Applicant was fined \$2,000 and prohibited from driving a vehicle for a period of one year.

- [13] In 2013, a civil claim for damages was commenced by ND. The Applicant has acknowledged that he is personally responsible for any damages sustained by ND.
- [14] As a result of the review of the materials provided with respect to the driving incident, the Law Society made further inquiries about the medical fitness of the Applicant. As a result of those inquiries, the Applicant submitted a medical report from his family physician and agreed to an independent medical examination. The medical report revealed that the Applicant had battled depression, and had other health conditions that were currently being managed but would require ongoing treatment. The independent medical examination report concluded that he had major depression that was currently in remission as a result of medical treatment. In addition, the report concluded he has ADHD, again controlled with medication, as well as a substance abuse disorder with respect to alcohol, also in remission.
- [15] The Law Society obtained the clinical notes of the Applicant's doctors. Those notes indicate the Applicant continued to struggle with depression, ADHD and alcohol abuse, all of which impacted his performance at work from time to time.
- [16] The Law Society also raised concerns with respect to the character of the Applicant due to the Applicant's negative answer to the medical fitness questions in his application for enrolment.
- [17] As a result of the information obtained during the course of the further inquiries, an amended Notice of the Circumstances to be inquired into at the hearing was provided to the Applicant's counsel. They are summarized as follows:
- (a) The Applicant's conduct that gave rise to, and the circumstances surrounding, his criminal charges and related civil action;
 - (b) The extent to which the Applicant's medical conditions raise any concerns regarding his fitness, including the need for any conditions of enrolment if we were to conclude that he has otherwise met the section 19 tests for enrolment; and
 - (c) The Applicant's state of mind regarding his answer "no" to the question as to whether or not he had any existing condition that was likely to impair his ability to function as an articulated student.
- [18] Subsequently, the Law Society was advised of a further incident that was reviewed during the hearing. On December 10, 2017 the Applicant and some friends went to dinner at a restaurant. The Applicant was the designated driver that evening. The Applicant testified that he consumed three drinks and a beer over the course of the

dinner. He testified that, in his opinion, he was not intoxicated. He was stopped by the police who had been contacted by a member of the restaurant staff indicating that an impaired driver had left the restaurant. As a result, he was issued an immediate roadside prohibition (IRP). The IRP was overturned on review.

ISSUES

[19] There are two issues:

- (a) Should the Applicant be permitted to enrol in the Law Society Admission Program (LSAP) as an articulated student pursuant to section 19 of the Act?
- (b) If the answer to (a) is yes, what conditions, if any, should be imposed?

THE LAW

[20] Section 19 of the *Legal Profession Act* provides as follows:

19(1) No person may be enrolled as an articulated student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

[21] The Applicant bears the burden of proving he is of good character and repute and fit to become a barrister and a solicitor. The standard of proof is on a balance of probabilities. (*Law Society of BC v McOuat*, 2001 BCCA 104, 84 BCLR (3d) 242).

[22] In applying the section 19 criteria, the Panel must bear in mind the obligation of the Law Society under section 3 of the Act to uphold and protect the public interest by, amongst other things, ensuring the integrity and competence of lawyers. This obligation is supported by section 19, which requires the Law Society to ascertain whether or not the Applicant is of good character and repute and at the same time fit to become a barrister and a solicitor of the Supreme Court.

[23] There have been a number of decisions over the years that provide guidance on how to apply the section 19 criteria. Most recently, there was a useful review of those decisions in *Law Society of BC v. de Jong*, 2017 LSBC 44. In that decision, the panel considered the application for enrolment of an applicant who had been involved in extensive criminal activity. The panel concluded that, at the time of the application, the applicant had met the onus of establishing that she was sufficiently

of good character and repute to be admitted into the LSAP and become an articulated student.

- [24] In reaching that decision, the panel reviewed with approval (as have many panels) the discussion of good character contained in the article entitled “What is Good Character” by Mary Southin, QC (as she then was) found in *The Advocate* (1977) v. 35 at 129. Ms. Southin expressed the view that character within the meaning of the *Legal Profession Act* comprises those qualities that may reasonably be considered relevant to the practice of law, including: “an appreciation of the difference between right and wrong; the moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself; and a belief that the law, at least so far as it forbids things which are *malum in se*, must be upheld and the courage to see that it is upheld.”
- [25] Repute generally refers to the reputation, respectability and esteem in which a person is held. After considering the definitions of repute and reputation, Ms. Southin went on to conclude that, in answering the question of good repute, it is necessary to consider whether a right-thinking member of the community would consider the applicant of good repute.
- [26] At paras. 119 to 135, the panel in *de Jong* engaged in an extensive review of a number of authorities that addressed the issues of previous criminal conduct, rehabilitation and current good character. It concluded in para. 156 that the existence of a prior criminal record, even involving serious offences, does not, in and of itself, prevent an applicant from satisfying the good character test.
- [27] The panel in *de Jong* concluded that, despite the extensive criminal activity of the applicant, she met the test of good character and repute in view of the many steps of rehabilitation taken by the applicant. The factors that the panel considered relevant included the insight the applicant had about her past conduct and the fact that she did not seek to minimize or excuse her conduct, her forthright and honest description of her past conduct with those that supported her in her application, her academic success, her volunteer work and the support and confidence of those she had worked with in a professional context.

EVIDENCE

- [28] As described above, the Applicant was driving with his father and two friends. The initial objective was to attend his grandparents’ house for a religious function. On the way, his father received a call from his sister, the Applicant’s aunt, who was to

meet with an individual with whom she had a business arrangement with respect to which there was a monetary disagreement. The Applicant was then asked to drive to a restaurant where the meeting was to take place. As he was pulling into the parking lot, his aunt phoned his father again. His father advised that the individual with whom the aunt was to meet was refusing to attend the meeting and was leaving the restaurant and parking lot. He was told to stop the vehicle. The Applicant started to follow the individual in his truck. After chasing the vehicle and in attempting to pass it, he brushed the side of the other vehicle and ended up rolling his vehicle into the ditch. The police attended, and he was arrested and ultimately charged with the three offences described-above.

- [29] The Applicant pleaded guilty to the dangerous driving charge on January 8, 2013. In speaking to sentence, his counsel made reference to the unfortunate death of the Applicant's brother and the fact that the Applicant suffered from depression resulting in his taking time off from his education studies. The Applicant was fined \$2,000 and prohibited from driving for a year.
- [30] The Applicant's actions were in breach of his insurance coverage. He therefore has entered into a payment program with ICBC for the damages sustained by the vehicles. In 2013, a civil action was commenced against him. He is not insured with respect to that claim. He acknowledges that he will be responsible for any damages awarded.
- [31] The Applicant admitted that, in following the other vehicle, he was driving over the speed limit and in an unsafe manner. He acknowledged that he endangered other drivers on the road. He expressed embarrassment about his behaviour. He expressed the view that, as a result of considering his behaviour and what he had learned as a result of his studies, he would not behave in a similar manner. In saying that, he accepted full responsibility for his behaviour.
- [32] The Applicant provided full details of the incident that gave rise to the criminal charges and the civil claim. After the Credentials Committee reviewed the materials, it decided to refer the application to a hearing. Counsel for the Law Society, after reviewing the materials, noted the reference to depression in the submission on sentencing. As a result, she made further inquiries with respect to that.
- [33] The Applicant provided a detailed report from his doctor. The medical report established that the Applicant had suffered and continued to suffer from depression and had been diagnosed with ADHD with respect to which he received treatment. The report also indicated that the Applicant had from time to time engaged in excessive consumption of alcohol.

- [34] The Law Society was also provided with the Applicant's clinical notes from two of his treating physicians. He was cross-examined with respect to the notes. The notes indicated that he suffers from depression and had trouble with the medical treatment program at various points in time. The notes also indicated that, from time to time, the Applicant had difficulty working and with alcohol abuse. From time to time he had difficulty attending work on time, and his symptoms were impacting his performance at work.
- [35] The Law Society subsequently arranged for the Applicant to be assessed by a psychiatrist with respect to his mental health, his ADHD and his treatments. The psychiatrist expressed an opinion on the Applicant's current mental condition and his ability to function as an articulated student and lawyer. In addition, the psychiatrist made recommendations, as requested, for ongoing treatment to ensure that he would have the ability to carry out the functions normally required of an articulated student or lawyer.
- [36] The diagnosis of the psychiatrist was that the Applicant suffered from major depression, recurrent (in medical remission) ADHD mixed and controlled with medication and had a Substance Abuse Disorder, specifically alcohol, again in remission. He went on to express the opinion that the Applicant is capable of performing as a lawyer but would need to remain compliant with his medication and follow up with treatment. He went on to make some recommendations with respect to ongoing treatment.
- [37] In addition to the forgoing, the Law Society was advised by the Applicant's counsel that the Applicant had received an IRP on December 10, 2017. He had attended dinner with some friends. They had agreed that he would be the designated driver. Despite that, he consumed three drinks and a beer during the course of the meal. As a result of a report from the staff at the restaurant, the police pulled over the vehicle that the Applicant was driving. He attempted to provide a breath sample but was unsuccessful. He then was issued an IRP which was successfully appealed, and the driving prohibition and other penalties were revoked.
- [38] The Applicant indicated that he did not think that he was impaired given the period of time during which he drank and his weight at the time. He indicated that he had never been told by any medical practitioner that he was not allowed to drink while on medication. In his view, depending on his mood, he was able to drink while on medication.
- [39] The Applicant attended Simon Fraser University and obtained his Bachelor of Arts in 2011. Subsequent to the criminal charges in 2011, the Applicant attended Bond

University in Australia, obtaining his Masters of Criminology in 2013 and his Juris Doctor in 2015.

- [40] At Simon Fraser University, the Applicant was active in the Political Science Student Union. While at Bond University he was active in the Canadian Law Student Association where he offered assistance to new students. He also acted as an Administrative Law Clinic Assistant with the Queensland Public Law Interest Public Clearing House for a period of time.
- [41] The Applicant has actively volunteered in the community. He has been active as a volunteer at a community centre and has volunteered serving free food to the Vancouver Downtown Eastside homeless population. He has also been active in a constituency office during the election. He recently volunteered during the Provincial election, assisting with campaigning, processing and analyzing data, and training volunteers. The Panel was provided with a number of reference letters. A review of the letters indicates the Applicant shared the details of the 2011 charges with the authors of the letters. Despite those details, the authors supported his application indicating that, in their view, his actions were inconsistent with the individual they knew.
- [42] One of the letters provided was from a lawyer who has offered the Applicant an articling position if his application is successful. [The lawyer] also gave evidence at the hearing. He had been provided with the details that gave rise to the criminal charges before making his decision to offer employment. [The lawyer] first was introduced to the Applicant when he also volunteered during the 2015 Federal election. As a result, [the lawyer] worked with the Applicant who helped him with his obligations. [The lawyer] was impressed with how hard he worked and his knowledge of what needed to be done. Subsequently they discussed the possibility of the Applicant articling with him. The Applicant made a full disclosure of the criminal charges. While the National Committee on Accreditation application was pending, the Applicant volunteered in the lawyer's office. Once the hearing into the Applicants application was ordered by the Credentials Committee, [the lawyer] obtained permission from the Law Society to continue to engage the Applicant. He worked closely with the Applicant. He described the Applicant as a hard worker who paid attention to details. He did not think there were any issues with respect to integrity. During cross-examination, he confirmed that, in his view, the 2011 incident was not reflective of how he thought the Applicant would react as a student or lawyer. He was willing to employ the Applicant as an articulated student.

ANALYSIS AND DECISION

- [43] The first issue to be decided is whether or not the Applicant should be permitted to enrol as an articulated student.
- [44] The Applicant's prospective principal gave evidence that this Panel found most useful in deciding whether or not the Applicant was of good character and repute. He had a favourable assessment of the Applicant, having worked with him initially during the Federal election and then when the Applicant volunteered in his office. We found that [the lawyer] was a thoughtful and credible witness. As was the case in other applications for enrolment, the Panel is satisfied that a principal's assessment of an Applicant's character and his willingness to continue to employ the Applicant is likely the best evidence in respect to character. (*Law Society of BC v. Tedham*, 2014 LSBC 34, *Law Society of BC v. Gill*, 2015 LSBC 16, *de Jong*)
- [45] The Panel carefully considered the incident that gave rise to the charges in 2011. Although serious, this single incident that occurred seven years ago is not, in isolation, determinative of the Applicant's character. It does demonstrate bad judgment. It raises concerns with respect to how the Applicant would react in the face of other stresses. However, we compared this incident, although serious, with the cases in which other applicants have a more significant serious and prolonged criminal history and nonetheless, were considered to be of sufficient good character for admission to the LSAP. (*Law Society of BC v. Mangat*, 2013 LSBC 20, *Law Society of Upper Canada v. Schuchert*, 2001 CanLII 21499, [2001] LSDD No. 13, *de Jong*).
- [46] Since the incident that gave rise to the criminal charges, the Applicant has successfully completed his education, engaged in meaningful volunteer work, and thought carefully about his actions. He has acknowledged the inappropriateness of his actions and has testified that now he would not have acted in the manner that he did. We accept that he has a better understanding of his responsibilities than he exhibited in 2011.
- [47] We also considered the IRP. The Applicant justified his drinking despite being the designated driver on the evening in question, on the basis that he was never expressly told by any medical practitioner that he was not to drink while on medication. In his view, depending on his mood, he was able to drink while on medication. This raised a concern on the part of the Panel with respect to his judgment. He was the designated driver. Drinking in those circumstances revealed a lack of judgment. However, that lack of judgment was not sufficient to lead to the conclusion that he lacked the character required by section 19.

[48] The Applicant answered “no” to the following question contained in Schedule A to his Application:

- 4) Based on your personal history, your current circumstances or any professional opinion or advice you have received, do you have any existing condition that is reasonably likely to impair your ability to function as an articulated student?

[49] The Applicant testified that he believes he answered the medical fitness questions correctly. He testified that he believes that his answer is correct on the basis that, as long as he was medicated, in his view his then-existing medical conditions were not “reasonably likely to impair (his) ability to function as an articulated student.” His evidence respecting his answer to question 4 suggests he takes a very narrow view of what it means to have a condition that is reasonably likely to impair his ability to function as an articulated student. However, he explained that, as he was and is being successfully treated for his depression and ADHD, the answer was correct. If it had not been for the further inquiries made by Law Society counsel, his condition, which, without treatment, would negatively affect his ability to articulate and practise, would not have come to light. The Law Society is entitled to expect that applicants will answer all questions candidly and truthfully. However, we accept his explanation as the question is open to that possible interpretation.

[50] In the result, bearing in mind the Applicant’s steps at rehabilitation, his candid admission with respect to the mistake he made in 2011, our view of the IRP and his answer to question 4, and the evidence of his future principal, we have concluded that the Applicant is of current good character and repute and fit to become a barrister and a solicitor of the Supreme Court.

[51] That conclusion requires the Panel to consider what conditions, if any, should be imposed in order for the Applicant to enrol in the LSAP as an articulated student.

[52] The medical evidence establishes that the Applicant suffers from major depression and ADHD and has a substance abuse disorder. However, the Law Society obtained an assessment from a psychiatrist familiar with the requirements of articling and the practice of law. The opinion was that the Applicant’s major depression was in remission and that his ADHD was controlled by medication. The diagnosis was that the Applicant’s abuse of alcohol was limited in scope but that he met the criteria of having a substance abuse disorder.

[53] The psychiatrist expressed the opinion the Applicant is capable of performing as a lawyer. However, that opinion was qualified by the need for the Applicant to remain compliant with his medications as well as participating in psychiatric,

medical and counselling follow-up. The evidence established that, if he was to not comply with his medication regime or if he returned to a pattern of binge alcohol consumption, his functioning would significantly deteriorate.

- [54] We have concluded that the Applicant is fit to be enrolled in the LSAP as an articled student. However, we further conclude that certain conditions should be imposed. This is to ensure that the Applicant will maintain his fitness to be able to fulfill the role of an articling student. We are satisfied that the conditions proposed by counsel, and agreed to by the Applicant, will provide reasonable assurance that objective will be achieved.
- [55] This Panel therefore orders that the Applicant be enrolled in the LSAP on the following conditions:
- (a) The Applicant will continue treatment and counselling for the medical issues outlined in the report of Dr. Janke dated October 13, 2018 (the “Janke Report”), with his physicians, or any other physician(s) to whom he may be referred (the “Treating Physicians”) and comply with the treatment plans, including medications and advice regarding alcohol consumption (the “Treatment Plans”), recommended by the Treating Physicians;
 - (b) In addition to continuing treatment and counselling by his Treating Physicians, he will be monitored by Dr. Janke or any other registered psychiatrist to whom he is referred (the “Psychiatrist”);
 - (c) At the end of his articling term and prior to submitting to the Law Society his application for call and admission, the Applicant will submit a further report to the Law Society from Dr. Janke or the Psychiatrist that provides an update to the Janke Report and confirms that he has continued to comply with the Treatment plans (the “Follow-up Report”);
 - (d) The Follow-up Report will be provided for consideration by the Credentials Committee when determining his application for call and admission;
 - (e) He will immediately instruct his Treating Physicians and/or the Psychiatrist to report to the Law Society any relapse or material non-compliance with his Treatment Plans;

- (f) He will provide a copy of this Hearing Panel's order and written decision to his principal, or any new principal, prior to entering into an articling agreement with that principal.

[56] We do not have the jurisdiction to impose conditions with respect to the Applicant as a practising lawyer if he successfully completes his articles. However, we can make recommendations to the Credentials Committee.

[57] Therefore this Panel also recommends that the Credentials Committee approve any application for call and admission only if the Applicant agrees to the continuation of the above conditions for a minimum of three years following his call and admission and continuing thereafter until expressly released by the Credentials Committee, subject to the following modifications:

- (a) A Follow-up Report, as referred to above, will be provided to the Credentials Committee every 12 months;
- (b) If the Credentials Committee has any concerns about the annual Follow-up Reports, the Credentials Committee has the right, at its own expense, to require the Applicant to submit to a formal updated independent medical examination by a mutually agreed upon psychiatrist before releasing the Applicant from these conditions; and
- (c) The Applicant will provide a copy of this Hearing Panel's order and written decision, as well as the decision of the Credentials Committee or future panel related to his application for call and admission, to any prospective employer.

CONCLUSION AND OTHER ORDERS

[58] For the reasons set out, the Panel concludes that the Applicant has satisfied the onus of demonstrating, on a balance of probabilities, that he is of sufficient good character and repute to be admitted into the LSAP but with conditions as set out above. If he successfully completes the LSAP, we recommend that the Credentials Committee impose the conditions we have outlined above.

[59] The Panel did not receive submissions on costs. If an agreement cannot be reached with respect to costs, we request submissions on this issue within 30 days of the issuance of this decision.

[60] The Applicant requested an order under Rule 5-8 (2) that certain documents not be made available to the public given their confidential nature (commonly referred to

as a sealing order). The Panel agrees that such an order should be made. We hereby order that Exhibit 1, Tabs 7, 30 and 31; Exhibit 2, Tabs 2 and 3; and Exhibits 4 and 5 must not be made available to the public.