

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**APPLICANT 13**

**APPLICANT**

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

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Hearing dates: March 13 and 14, 2019

Panel: Gavin Hume, QC, Chair  
Roland Krueger, CD, Public representative  
Christopher A. McPherson, QC, Bencher

Counsel for the Law Society: Gerald Cuttler, QC  
Counsel for the Applicant: David J. Taylor

**OVERVIEW**

- [1] This hearing involves the application by the Applicant for re-enrolment into the Law Society Admission Program (“LSAP”). The Applicant was previously accepted into LSAP and began his articles on May 30, 2016. He and the firm at which he was articling agreed to terminate those articles on October 16, 2016. He applied for re-enrolment on September 5, 2017. The Credentials Committee reviewed the application for re-enrolment and on December 7, 2017 ordered a hearing pursuant to section 19(2)(c) of the *Legal Profession Act* (the “Act”) and Rule 2-56(3)(c) of the Law Society Rules (the “Rules”).
- [2] The articles of the Applicant were terminated due to his conduct concerning a blog, which he had started on or about September 6, 2016, and his scanning and/or

photocopying of certain materials he had received from his wife, which had originated from the law office at which his wife was then articling.

- [3] Section 19(1) of the Act requires that no person may be enrolled as an articulated student unless that person is “of good character and repute” at the time of this hearing.<sup>1</sup> The onus is on the Applicant.<sup>2</sup>
- [4] Pursuant to section 22(3) of the Act and Rule 2-101(3) of the Rules, this Panel must either grant the application (possibly subject to conditions) or reject the application.
- [5] The quality of “good character” encompasses an appreciation of the difference between right and wrong, the moral fibre to do what is right, the belief that the law must be upheld, and the courage to see that it is upheld.<sup>3</sup>
- [6] The question of whether a person is of “good repute” is to be answered from the perspective of a decent, honest person, knowing as much about an applicant as the panel before whom he or she is appearing.<sup>4</sup>

## **BACKGROUND FACTS**

- [7] At the outset of the hearing, the parties entered into evidence as exhibits 1 and 2, Volumes 1 and 2 of a Common Book of Documents. In addition, various other documents were entered, consisting primarily of entries on the blog described more fully in paragraph 13. The Panel also had the benefit of letters of reference and email communications involving the wife of the Applicant. We also heard oral testimony of the Applicant and a former colleague. For the most part, the facts are not in dispute.
- [8] The Applicant was born on in 1990 and was raised in Ontario. He received his Bachelor of Arts from the University of Western Ontario in 2012. He received his JD from the University of Windsor in 2016. He was regularly employed both during high school and during his undergraduate degree.
- [9] While at high school, the Applicant was charged with possession of and possession for the purposes of trafficking in marijuana. He participated in a three-month Extrajudicial Sanctions Program that included counselling and urine testing. The

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<sup>1</sup> The section reads: 19(1) No person may be enrolled as an articulated student ... 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.

<sup>2</sup> *Law Society of BC v. McOuat*, 2001 BCCA 104, para. 6; Law Society Rules 2-100(1)

<sup>3</sup> “What is Good Character”, Mary Southin, QC, *The Advocate* (1977), v. 35, p. 129

<sup>4</sup> “What is Good Character”, above, p. 130

charges were stayed at the conclusion of program. The Panel does not consider these charges to be of particular significance in determining whether the Applicant is of good character and repute at the time of this hearing.

- [10] In his application for temporary articles, the Applicant disclosed the details of his charges and the counselling and personal reflection he underwent as a result. The Credentials Officer at the Law Society who reviewed his application for summer articles had no questions regarding the Applicant's charges.
- [11] The Applicant obtained summer articles at S LLP, a firm of about 12 lawyers in Vancouver, BC where he worked from May 4 to August 14, 2015.
- [12] After his subsequent application for admission into LSAP was accepted, the Applicant commenced his full articles, again at S LLP, on May 30, 2016. He started his articles by taking the Professional Legal Training Course ("PLTC"). He began working in the office at S LLP on about August 8, 2016. It was during the course of those articles that the conduct that lies at the heart of this hearing took place.
- [13] That conduct is summarized as follows:
- (a) On about September 6, 2016, he created a blog entitled BC Driving Prohibitions Blog (the "Blog"). He uploaded a considerable number of posts to the Blog, which consisted, for the most part, of publicly available information concerning driving prohibitions.
  - (b) From about September 10 to September 11, 2016, the Applicant scanned and/or photocopied a number of documents, namely:
    - i. A client file (the "Client File") that he received from his wife, which he knew was from the law office where she was articling and which contained confidential client information; and
    - ii. A binder of materials related to speeding offences (the "Binder") that he also received from his wife, which he knew or ought to have known contained confidential and/or proprietary information;
  - (c) On about September 13, 2016, the Applicant responded to some comments posted on the Blog. He provided information concerning driving prohibitions. In one of the comments he posed as his wife, and

suggested to the person with whom he was corresponding that he contact the firm where his wife worked.<sup>5</sup>

- (d) On about September 15, 2016, the Applicant responded to an inquiry on the Blog from a different person. He suggested that she contact a law firm in Vancouver that specialized in the area, although he did not provide the name of any particular firm.<sup>6</sup>

[14] The Applicant also made a number of requests of the government of British Columbia pursuant to the Freedom of Information and Protection of Privacy Act (“FOIPPA”) and engaged in correspondence with analysts from the department that handles such requests.

[15] Some of the conduct of the Applicant took place during business hours at the firm where he was articling, and he used some of the firm’s resources. The Panel does not consider the use of the firm’s resources as particularly aggravating, although we do acknowledge that, depending on the circumstances, it may have been inappropriate.

[16] On September 16, 2016, the firm at which the Applicant’s wife was articling filed a Notice of Civil Claim. The Notice of Civil Claim alleged a number of wrongdoings on the part of the Applicant and his wife. The claim against the Applicant was dismissed by Consent Order without costs to any party on July 10, 2017. A Release of all Claims was signed by the Plaintiffs.

[17] On the day that the Notice of Civil Claim was filed, S LLP placed the Applicant on paid leave. On October 14, 2016, S LLP and the Applicant agreed to terminate the articles of the Applicant.

[18] On September 5, 2017, the Applicant applied for re-enrolment in LSAP, and this hearing was ordered as a result of the review of that application by the Credentials Committee.

## **ISSUES**

[19] The issue is whether the Applicant, at the time of this hearing, is fit to be admitted into LSAP. In large part, that determination depends on whether the Panel is satisfied that he has appropriately addressed the issues that arise from his conduct while articling in September 2016. As part of this determination, it is necessary for

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<sup>5</sup> Exhibit 2, Common Book of Documents, Volume 2, tab 13

<sup>6</sup> Exhibit 2, Common Book of Documents, Volume 2, tab 15

the Panel to consider all the evidence at this hearing and, in particular, to assess the Applicant's credibility.

## **EVIDENCE**

[20] The Panel considered letters of reference and other documentary material and heard evidence from BG and the Applicant. The most important evidence was from the Applicant himself.

### **Letters of reference**

[21] The Panel reviewed the following nine letters in support of the Applicant:

- (a) BG, a friend and lawyer who articulated with the Applicant and provided oral testimony;
- (b) GI, a lawyer and friend who went to law school with the Applicant;
- (c) The Honourable Justice D of the Ontario Court of Justice;
- (d) MH, a lawyer and friend who also went to law school with the Applicant;
- (e) SY, CEO of C Corporation;
- (f) MA, a lawyer and friend who also went to law school with the Applicant;
- (g) Derek LaCroix, QC, Executive Director of the Lawyers Assistance Program ("LAP");
- (h) DE, Professor of Law, University of Windsor; and
- (i) GD, corporate counsel for C Group of Companies.

[22] Counsel for the Law Society took issue with the admissibility of the letter from SY, whom he wished to cross-examine. The Applicant chose not to call SY. After considering submissions, the Panel admitted the letter but has given it very little weight. Similarly, the Panel has given little weight to the letter from GD, who also did not testify.

[23] Overall, the letters express support for the Applicant, and most set out the opinions of the writers regarding the Applicant's character and integrity. The Panel

considers the letters from Justice D and DE to be the most helpful regarding our assessment of the Applicant's character today.

- [24] The letter from Mr. LaCroix confirms that the Applicant met with him five times between October and December 2017 for help dealing with relationship and work issues. The Applicant attended all scheduled meetings and did the homework assigned. The Applicant had previously met with Susan Burak of the same office 14 times in 2016 and 2017 and with Bena Stock five times in September and October, 2017. The Applicant kept his appointments and participated in the sessions.
- [25] The Panel considers the letters from GI, MH and MA to be of somewhat limited assistance but finds them helpful concerning the background of the Applicant.

### **Other documentary evidence**

- [26] The Panel considered a number of posts from the Blog. The Blog itself was entitled "BC Driving Prohibitions Blog". It described itself as providing "high-quality legal *information* about driving prohibitions in BC." [emphasis added] It stated that it was created by MD, an articulated student. In fact, it was created by the Applicant. It contained a "Contact" page and a "Disclaimer" page. The disclaimer stated that it was intended to provide "general information" and did not constitute legal advice. It further recommended that any visitor to the Blog seeking advice should contact a lawyer and ought not to act on the information contained in the Blog "without consulting ... a lawyer who can provide legal instructions."<sup>7</sup>
- [27] The Blog contained a number of posts on such topics as the "Responsible Driver Program", "Rights at a DUI check", and "Driving Prohibition Review, a Guide". All of this information was from publicly available sources.<sup>8</sup>
- [28] The Panel was referred to communications between the Applicant and the Department of Information Access Operations within the BC Ministry of Finance.<sup>9</sup> At first, the Applicant used an assumed name, John Smith, but was later told that applicants' names are not made public. In one request, the Applicant asked for copies of correspondence and reviews between the law firm where his wife was articling and various departments within the Government of BC.<sup>10</sup>

<sup>7</sup> Exhibit 2, Common Book of Documents, Volume 2, tabs 1 - 3

<sup>8</sup> Exhibit 2, Common Book of Documents, Volume 2, tabs 5 - 12

<sup>9</sup> Exhibit 2, Common Book of Documents, Volume 2, tabs 16 & 18. See also Exhibit 4, Selection of Documents Provided by Applicant, pp 5-18, pp 79 - 85

<sup>10</sup> Exhibit 4, Selection of Documents Provided by Applicant, pp 13 - 15

- [29] The Panel carefully reviewed the Applicant's application for re-enrolment in LSAP dated September 5, 2017, which is the subject of this hearing. In that application the Applicant set out his factual summary concerning the Blog and his other conduct while articling at S LLP. He referred to publishing posts based upon research of publicly available sources, including ICBC, the Government of BC, the *Motor Vehicle Act*, RoadsafetyBC, CanLII and Westlaw. He also specifically disclosed his correspondence with the two persons who asked questions on the Blog.<sup>11</sup>
- [30] In his application for re-enrolment, the Applicant further disclosed his conduct in dealing with the Client File and the Binder and discussed the termination of his articles at S LLP. He also set out the context in which his conduct occurred, including the difficulties faced by his wife during her articles. He wrote that he started the website to "test the waters," and further that he thought that the documents belonging to the firm where his wife was articling could be "useful" if he and/or his wife were to work in that field after articling. The Applicant elaborated on his thoughts about, and reasons for, engaging in his wrongful conduct during his testimony.<sup>12</sup>
- [31] The Panel was also provided with copies of some of the pleadings in the lawsuit started by the former law firm of the Applicant's wife. While useful as information, given the nature of pleadings the Panel does not consider the allegations and responses particularly relevant to its determination.<sup>13</sup>
- [32] The Panel also considered a letter dated September 23, 2016 from counsel for the Applicant and his wife (at the time) to the Law Society. While this letter is somewhat inconsistent with the testimony of the Applicant, given that the Applicant did not review it before it was sent by his counsel, the Panel does not consider the differences to be material to our assessment of the credibility of the Applicant.

### **Testimony of BG**

- [33] BG articulated at S LLP at the same time as the Applicant. In his evidence, he discussed the type of work and the workload at the firm. BG related an incident where the Applicant accepted the responsibility for an error made by BG. The Applicant disclosed to BG the general nature of his wrongful conduct about two weeks after he had stopped working at the firm.

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<sup>11</sup> Exhibit 1, Common Book of Documents, Volume 1, tab 26, Appendix 3

<sup>12</sup> Exhibit 1, Common Book of Documents, Volume 1, tab 26, Appendix 3

<sup>13</sup> Exhibit 1, Common Book of Documents, Volume 1, tabs 16, 19, 23, and 25

- [34] In particular, the Applicant told BG that he had misappropriated confidential information from another law firm, had launched a website that provided legal information, had made copies of client information and communicated with the public about legal issues, all unrelated to the work at S LLP.
- [35] BG was not aware of the conduct while it was taking place, although he was aware that the wife of the Applicant was having deep problems during her articles, although not the precise nature of those problems.
- [36] Until this hearing, BG was not aware that the Applicant had used the resources of S LLP to copy and/or scan documents. He testified that knowing this information does not change his views concerning the Applicant.

### **Testimony of the Applicant**

#### **Background**

- [37] The Panel heard evidence from the Applicant over two days. While we had some reservations about his testimony, particularly about his apparent focus on the difficulties his wife was experiencing during her articles as an explanation for his conduct, on balance the Panel concludes that he was forthright in his answers and appreciates that his actions were wrong. He acknowledges that he compromised himself, his wife and the firms where they were articling. Most importantly, he fully understands that clients are owed a duty of confidentiality to which every lawyer and articled student must strictly adhere.
- [38] During his testimony, the Applicant expanded upon the facts contained in the Common Book of Documents. He elaborated upon his thinking at the time and further explained the nature of the difficulties his wife was facing during her articles and the effect that had upon their relationship and his conduct.
- [39] By way of background, the Applicant told the Panel about his education, his work history and his volunteering and community involvement. He discussed his criminal charges as a youth and their resolution. He described a close knit family based in Ontario. He also talked about meeting his future wife and their decision to come to Vancouver.

#### **Articling**

- [40] The Applicant obtained summer articles for 2015 in Vancouver. He then had the opportunity to return for full articles in 2016. His wife obtained articles in the

Vancouver area at a firm practising criminal law, which was her interest. They decided to come to Vancouver to start a life and their careers.

- [41] While the Applicant's family was all in Ontario, his wife had family in the Vancouver area, and both he and his wife were anticipating family support. Unfortunately, due to a breakdown within her family, the support was not forthcoming once they arrived in Vancouver.
- [42] The Applicant began his articles with PLTC. Once at his firm, he found articling enjoyable and described himself as happy there. He was interested in business, corporate, commercial and securities law. He felt that his articles were going well.
- [43] The same could not be said about the experience his wife was having. The Applicant understood from her that she was very unhappy, felt she was receiving very little training, was working long hours, was not being paid well and complained of being "harassed" by someone at her firm. The Applicant described his wife as extremely stressed, unable to sleep, depressed and anxious. She began to look for other articles.
- [44] The Applicant testified that he also became anxious. He described himself as hopeless and unable to cope. He found it difficult to deal with such serious issues while just starting his articles, especially since there was no direct family support. Their marriage suffered. Eventually, they separated and now have virtually no contact with one another.

### **The wrongful conduct**

- [45] According to the Applicant, his wrongful conduct arose in the context of the stress within the marriage and as a way to support his wife. During his cross-examination, he accepted the proposition that he expected articling to be hard work and to involve considerable stress, both on himself and his wife.
- [46] On cross-examination, he agreed that he got the idea for the Blog in part because his wife told him that she understood that some young associates at her firm had very high incomes. He thought that, if he developed the Blog then perhaps he and his wife could go into a potentially lucrative practice together after articles.
- [47] Much of the evidence concerning the potentially lucrative nature of "driving law", as it was described, arose during cross-examination. The Applicant agreed that he saw a business opportunity in the area. He agreed that he did not discuss any of his activities nor his interest in the area with anyone at S LLP.

- [48] The Applicant testified about the mechanics of setting up the Blog, including the research that he did through publicly available websites, and his concerns about whether the Blog was legal “information” and therefore acceptable as opposed to legal “advice”, which would not have been. He told the Panel how he synthesized the information he obtained and built the content of the Blog over a few days. The Blog went “live” on September 6, 2016.
- [49] The Applicant agreed that he sought information concerning requests made by his wife’s law firm under FOIPPA. He further agreed that, if possible, he would have liked to eventually replicate some of the success of his wife’s law firm, and he did not want that firm to know that he was seeking such information. He described the area of “driving law” as “Plan B”, although at the time of his conduct his hope was to eventually get an offer at S LLP at the end of his articles.
- [50] He acknowledged that he used his wife’s name, not his own, as the creator of the Blog. During his communications with one of the visitors, he posed as his wife, and referred that person to his wife’s law firm. The Applicant explained this deceitful conduct as a “foolish” attempt by him to support his wife because he thought that, if she was seen as generating business for her firm, she might be seen in a “better light” as a result. In cross-examination, he accepted the proposition that, given the atmosphere at his wife’s firm, this rationale might not have been logical or rational, but maintained that his primary motivation was to help his wife.
- [51] As it turned out, this visitor to the Blog was a friend or acquaintance of the principal of the law firm where the Applicant’s wife worked. These communications took place on Tuesday, September 13, 2016 using an email address [at the University of Windsor](#).<sup>14</sup>
- [52] Two days later, the Applicant responded to another visitor to the Blog using the same email address, but essentially suggested that that person contact a lawyer.<sup>15</sup> The Applicant testified that he wanted to be clear that he was not providing legal advice, and by the time he responded to this second visitor, he had reflected to some degree on his conduct and felt he had gone too far with his previous responses.
- [53] The Applicant said that he never turned his mind to his own articling agreement at S LLP in relation to the Blog, nor to the inappropriate nature of his conduct until after he became aware of the lawsuit. At that time it became clear to him that he had made a “grave mistake.”

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<sup>14</sup> Exhibit 2, Common Book of Documents, Volume 2, tab 13

<sup>15</sup> Exhibit 2, Common Book of Documents, Volume 2, tab 15

- [54] The Applicant admitted that he was involved in copying the Client File and the Binder. He explained to the Panel that his wife was about to start her PLTC but had been asked to do some work for her firm. According to the Applicant, his wife told him that she did not feel safe and comfortable at her office, particularly in the evening or on weekends.
- [55] The Applicant said that he did not review the Client File and did not review the Binder in detail. He later scanned and emailed the documents to himself because of his “mindset” at the time and told the Panel that he often emailed documents to himself so he could look at them later. He thought that the Client File and the Binder could be potential precedents if he and his wife later entered into practice together in the area after their articles.
- [56] The Applicant denied using any of the material in the Client File or the Binder for the Blog or in any manner at all.
- [57] At the time, he did not turn his mind to whether this unauthorized duplication was appropriate.
- [58] The Applicant has reflected on his conduct and agrees that it was highly inappropriate for many reasons, including the following:
- (a) It was material related to his wife’s work at her law firm;
  - (b) The material should not have been in his possession at all, let alone copied, scanned and emailed;
  - (c) The Client File contained confidential information;
  - (d) He was not authorized to be in possession of the Binder, which belonged to his wife’s law firm.
- [59] The Applicant expressed remorse and regret for his actions and took responsibility for them.

#### **Steps taken since the wrongful conduct**

- [60] While he was engaged in his wrongful conduct, the Applicant did not tell anyone. After he was named in the lawsuit and his articles were terminated, he came to appreciate that he needed support and had to reach out. He described the period after he was sued and lost his job as the “lowest point in my life.”

- [61] The Applicant reached out to friends and family, which he had not done before. He spoke extensively with DE and Justice D. Importantly, he sought professional advice and counselling from LAP. The sessions with LAP enabled him to be better equipped to cope with stress and anxiety. They improved his skills at self-reflection and to make healthy choices.
- [62] As referred to above, his marriage has broken down, and he and his wife have separated. This separation has also influenced the way he now looks at his conduct. He testified that he feels he has a much greater appreciation of the root causes of his behaviour that has allowed him to become a “better person.” Some of those explanations include:
- (a) his father’s alcoholism and its effect on the Applicant;
  - (b) his tendency to suppress his feelings;
  - (c) his tendency to put “blindness” on and not consider other courses of actions;
  - (d) his failure to reach out for help; and
  - (e) his reluctance to discuss problems with others.
- [63] The Applicant has learned a great deal about his shortcomings and considers himself a more empathetic person today. He is much more likely to seek support from others. He knows how important it is to maintain contact with friends and family. He credits his work with LAP for much of his greater insight.
- [64] The Applicant told the Panel that he wants to become a lawyer as he feels it is a great profession to which he is well suited. He knows now that he must be prepared to reach out for support when needed. He has continued to be active with LAP and wants to give back to the profession and to the community.

## LAW

- [65] As referred to above, the governing legislation is section 19 of the Act.
- [66] When considering section 19, the Panel must bear in mind section 3 of the Act, which says that the “object and duty” of the Law Society of BC is to uphold and protect the public interest by, among other things, “ensuring the ... integrity, honour and competence of lawyers.”<sup>16</sup>

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<sup>16</sup> *Legal Profession Act*, section 3(b)

- [67] The concepts of “good character and repute” contain both objective and subjective components. Objectively speaking, “character” refers to a person’s personality, principles and beliefs. Subjectively speaking, “repute” refers to the regard with which a person is held by others.<sup>17</sup>
- [68] The concepts of good character and repute overlap with the requirement that a person must be “fit” to become a barrister and a solicitor. “Fitness” requires that the applicant possess the qualities to deal with the demands of the profession, including a commitment to speak the truth regardless of the personal cost and the resolve always to place the client’s interests first.<sup>18</sup> It also necessarily requires that a lawyer be prepared to hold in strict confidence all information obtained from a client during their relationship.<sup>19</sup>
- [69] In assessing whether an applicant possesses the requisite good character, repute and fitness at the time of the hearing, the Panel should consider whether at the hearing the applicant fully and frankly discloses the circumstances surrounding the impugned conduct.<sup>20</sup> The candour required is greater than that expected in “ordinary commercial intercourse.” The standards of “honesty” and “integrity” are higher for a person wishing to be a barrister and solicitor.<sup>21</sup>
- [70] It is not necessary that an applicant has displayed “unwavering honesty ... and abstention from lies, dissembling or other forms of deception at all times.” The standard is not one of perfection.<sup>22</sup>
- [71] The Applicant is not required to demonstrate character, repute and fitness with certainty. Nor does one isolated act or a series of acts necessarily define the essential nature of a person. The question is whether the applicant has shown that he or she had taken the steps to rehabilitate himself or herself. The Panel must seek to strike a balance between protecting the public and the concept of redemption.<sup>23</sup>
- [72] Stress, in and of itself, is not an “excuse” for misconduct. It is manifest that lawyers must be able to handle considerable stress in their professional lives. However, the levels of stress experienced by an applicant at the time of the misconduct is a factor in determining whether the act or series of acts amounts to

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<sup>17</sup> *Law Society of BC v. McQuat*, Panel Decision, June 12, 1992, p. 11

<sup>18</sup> *McQuat*, above, pp. 17 - 18

<sup>19</sup> *Code of Professional Conduct*, section 3.3-1

<sup>20</sup> *In the Matter of FF and the Law Society of BC*, Panel Decision, April 9, 1979, p. 11

<sup>21</sup> *In the Matter of DM and the Law Society of BC*, Panel Decision, June 14, 1994, p. 7

<sup>22</sup> *Re: Bhuttar*, 2009 LSBC 14, para. 37

<sup>23</sup> *Re: Applicant 11*, 2016 LSBC 38, para. 118

an isolated incident that was out of character for him or her, particularly if there is evidence of steps taken towards rehabilitation.<sup>24</sup>

## **POSITION OF THE PARTIES**

### **The Law Society**

- [73] In submissions, counsel for the Law Society reminded the Panel that it must consider the character of the Applicant at the time of the hearing. Counsel correctly argued that the Panel must consider whether the Applicant presented as a credible witness during his testimony and whether he made “full and frank” disclosure both at the hearing and in his application for re-enrolment.
- [74] Counsel suggested that the lawsuit triggered the disclosure by the Applicant and questioned, absent that lawsuit, whether the Applicant would have continued to expand the Blog, use the materials that he wrongfully obtained from his wife’s law firm, and obtain further materials inappropriately. He asked the Panel to infer what *might* have happened if his wife’s law firm had not found out about the Blog.
- [75] Counsel submitted that the Panel must ask itself if the stress that Applicant’s wife was under, with his concomitant stress, was the actual reason that lay behind the Applicants admittedly wrongful conduct. Counsel referred the Panel to the evidence about the lucrative nature of a “driving defence” practice and suggested that this could have been the true motive behind his actions.
- [76] Finally, counsel pointed out that the onus is on the Applicant and that the Panel had not heard from a “critical” player: the Applicant’s wife.

### **The Applicant**

- [77] In submissions, counsel for the Applicant urged the Panel to accept that the Applicant’s conduct was an isolated series of events. In determining whether it was out of character for the Applicant, counsel asked the Panel to consider a number factors, including:
- (a) The Applicant acknowledged that his actions were wrongful and ill-advised, that he made serious errors in judgment, and that the wrongful conduct was serious;

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<sup>24</sup> *Re: Applicant 11*, above, paras 164 -166

- (b) The Applicant made “frank and forthright” disclosure of his conduct to his principal and to the Law Society, he never hid his behaviour, and he told the truth irrespective of the consequences;
- (c) The Applicant never intended to take clients or work away from his wife’s law firm;
- (d) The Applicant did not use any of the materials that he had copied or scanned;
- (e) The Applicant took steps to address his behaviour through counselling with the assistance of LAP, through which he has gained valuable insight and understanding about the nature and gravity of his mistakes and how they affected others and the reputation of the profession;
- (f) The Applicant also has reviewed readings and materials to improve his knowledge of and sensitivity to ethical issues; and
- (g) The Applicant’s history and his actions since his misconduct are evidence that he is fit to be a barrister and solicitor.

[78] The Applicant says that “bad conduct does not reflect bad character,” that he knows right from wrong and has shown that he takes his misconduct seriously, and that he committed to improving himself and learned from this experience.

[79] In answer to the suggestion that the real motive for his actions was profit, the Applicant pointed out that all the content on the Blog was publicly available, and that he did not use any of the improperly obtained material. He disclosed in his application for re-enrolment that he started the Blog to “test the waters” and with the idea that, if he decided to pursue practising in his wife’s area of law after articles, perhaps some of the material could be used as precedents.

## **ANALYSIS AND DISCUSSION**

### **Credibility**

[80] The Panel acknowledges some of the concerns raised by counsel for the Law Society. It is clear that the Applicant wishes the Panel to conclude that the principal reason that he engaged in the improper conduct was that, given the stress both he and his wife were under, he made a series of isolated, bad choices.

- [81] It is also true that it was not until cross-examination that the Applicant thoroughly discussed the fact that he was influenced by the potential for a lucrative practice in the area in which the law firm of his wife practised. It was under cross-examination that he provided evidence that, if he decided to enter into that practice area, he hoped that he and his wife could emulate the success, as he perceived it, of that law firm.
- [82] However, the Panel finds that, at no time did the Applicant minimize his desire to build a successful practice or the profit motive (albeit, at some point in the future) behind his actions. He never denied that the potential of a lucrative practice was a factor. The Panel notes that there cannot be anything “improper” about wishing to build a strong and profitable practice.
- [83] Further, his application for re-enrolment refers, at least implicitly, to a potential goal of working in the same area as his wife. We conclude that the Applicant made “full and frank” disclosure of his conduct in his application as well as in his evidence before this Panel.
- [84] The Panel further accepts that the lawsuit caused the Applicant to reflect on his conduct, which partially led to his conclusion that he had acted improperly. However, there is no evidence that would allow this Panel to draw inferences about what *might* have occurred were it not for the lawsuit. The evidence is that he immediately stopped any work on the Blog, discussed the situation with his principal and advised the Law Society. He and S LLP mutually agreed to terminate the Applicant’s articles. The evidence is clear that the Applicant took numerous, and nearly immediate, steps to address the causes of his misconduct. We are satisfied that he fully understands why his conduct was wrongful.
- [85] While the Applicant was a careful and thoughtful witness who took his time to answer certain of the questions put to him, we find that he was forthright and complete in his answers. We do not find any basis to conclude that the Applicant was not honest in his testimony.

### **The Applicant’s character, repute and fitness**

- [86] The real issue at the heart of the Panel’s deliberations is whether, in light the Applicant’s admitted misconduct, he today possesses the necessary good character and is fit to be called to the bar and admitted as a solicitor.
- [87] We accept the evidence of the Applicant that his wife was, in effect, “broken” by her articling experience. We conclude that the level of stress within their relationship was in excess of what one would expect from the vicissitudes of

articling and relationships. It was in the context of these difficulties that the Applicant engaged in this misconduct. The Panel agrees that the circumstances of his life at the time led to the Applicant failing to properly turn his mind to the nature of his conduct and the fact that it was wrong.

- [88] The Panel considered the fact that the Applicant's wife did not provide evidence. While this is a potential concern, on balance, given the current state of the relationship, we do not draw any adverse inferences concerning the testimony of the Applicant as a result.
- [89] We are of the view that his behaviour was out of character for him. In reaching this conclusion, we placed particular emphasis on his actions after the misconduct was discovered, and in particular:
- (a) He admitted his conduct;
  - (b) He acknowledged it was wrongful;
  - (c) He disclosed the misconduct to his principal and the Law Society;
  - (d) He sought out and completed counselling;
  - (e) He sought out other relevant materials and readings, in addition to his counselling, to assist him in identifying and dealing with the root causes of his behaviour;
  - (f) He successfully obtained employment and disclosed his behaviour to that employer, and counsel for that employer agreed to act as principal if the Applicant was successful in his application for re-enrolment; and
  - (g) He has realized the importance of reaching out to others for support instead of keeping everything bottled up inside.

[90] Consequently, we conclude that the Applicant's conduct was an isolated series of events and that he has since taken the appropriate steps to address his misconduct.

## **RESULT**

[91] We find that the Applicant has discharged the onus upon him and satisfied us that he is of sufficiently good character and repute and fit to become a barrister and a solicitor of the Supreme Court.

[92] The parties agree that, if this Panel saw fit to grant the application for re-enrolment, then, pursuant to section 22(3)(b) of the Act, the application should be subject to the following condition:

The Applicant may be enrolled in the Law Society Admission Program at such time as he has satisfied the Executive Director that he has complied with all the requirements of Rule 2-54(1).

[93] The Panel makes no order concerning costs at this time. If that issue is not settled between the parties, the Panel will determine costs based upon written submissions of the parties, to be exchanged in advance and delivered by both parties by May 31, 2019.

[94] The Panel wishes to thank counsel for their submissions and conduct of this hearing.