

THE LAW SOCIETY OF BRITISH COLUMBIA
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning
APPLICANT 16
APPLICANT

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

Hearing date: June 3 and 4, 2009

Panel: Robert D. Punnett, QC, Chair
Haydn Acheson
David Mossop, QC

Counsel for the Applicant: Kevin Woodall
Counsel for the Law Society: Jason Twa

INTRODUCTION

- [1] This hearing concerns the enrolment of the Applicant as an articulated student.
- [2] The relevant section of the *Legal Profession Act* is section 19(1) and reads 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.*
- (2) On receiving an application for enrolment, call and admission or reinstatement, the benchers may
- (a) grant the application,

- (b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or
- (c) *order a hearing.*

- (5) The benchers may vary conditions or limitations made under subsection (2) (b) if the applicant consents in writing to the variation.

[emphasis added]

- [3] A hearing was ordered in this case. In such a hearing, the onus is on the applicant. This is set out in Rule 2-67, which reads as follows:

2-67(1) At a hearing under this Division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19(1) of the Act and this Division.

- [4] The Panel has decided that the Applicant has satisfied section 19(1) of the *Legal Profession Act*. He is a person of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court. The Applicant is allowed to enrol as an articulated student. However, his enrolment is subject to conditions and limitations as described below.

FACTS

- [5] The Applicant was born in Asia in 1981. He will turn 28 this year. His brother AB was born in Asia in 1986.
- [6] The family immigrated to Canada in 1985.
- [7] The Applicant attended a British Columbia high school and later on transferred to another British Columbia secondary school (the “BC Secondary School”).
- [8] The Applicant attended a British Columbia university (the “BC University”) between 2000 and 2004 and obtained an undergraduate degree in economics. Between 2004 and 2007 the Applicant was enrolled at the BC University law school and obtained his LLB.
- [9] The Applicant could not find articles right away after graduating from law school. He started working at a preparatory school that he set up with some friends. Unfortunately, for financial reasons the school closed. Recently the Applicant has been tutoring high school students in order to earn income.

[10] In October 2008, he obtained an articling position and submitted his application for enrolment as an articulated student to the Law Society. While he was waiting for approval from the Law Society, the Applicant worked at the prospective law firm as a legal assistant. His duties included driving the prospective principal around, drafting letters and documents and running errands.

[11] The Applicant's employment was terminated by the law firm in order to comply with the *Professional Conduct Handbook*, Chapter 13, Rule 5, which reads as follows:

5. Except with the written approval of the Law Society, a lawyer must not employ or retain in any capacity having to do with the practice of law a person who, in any jurisdiction,
 - (d) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articulated student, call and admission or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction,

...

[12] The ordering of the hearing by the Credentials Committee relates to a number of assaults by the Applicant that raise concern about his fitness to be enrolled as an articulated student. There is, in addition, a failure of the Applicant to disclose to the Law Society an assault that occurred in 2006.

[13] The Panel will review the facts in this order:

- (a) the assaults,
- (b) the attempts of the Applicant to rehabilitate himself, and
- (c) the circumstances surrounding the non-disclosure.

ASSAULT ON EF —2000

[14] In 2000, the Applicant was a Grade 12 student at the BC Secondary School. During the noon hour, the Applicant was standing outside the school with several of his friends and fellow students in the smoking area. The Applicant and some of his friends noticed another student, CD, standing on the steps by the school, staring at them.

- [15] One of the students in the Applicant's group suggested that the group play "rock, paper, scissors" with the loser having to approach CD and tell him to stop staring.
- [16] The student who lost approached CD, slapping him with an open hand on the back of the shoulder and back of the head to gain his attention. Another student also approached CD and words were exchanged.
- [17] Another student, EF, a friend of CD, saw the commotion around CD and approached him. He was told by one of the two students talking with CD to leave. EF refused. Several other students from the smoking area, including the Applicant, then approached CD and EF and surrounded them.
- [18] One of the students then hit EF in the face. While another student stepped in to stop that student from any further physical contact, the Applicant grabbed EF by the throat, pulled his hair and smashed EF's head into a metal post. One witness reported hearing a "ding" sound upon EF's head hitting the metal post. Another student stepped in to stop the Applicant and the fight ended.
- [19] EF ended up with a lump on his head the size of a golf ball as a result of having his head smashed into the metal post by the Applicant and a bleeding nose from being punched in the face by the other student.
- [20] The Applicant was suspended from school as a result of this incident. He was charged with assault. The charges were stayed by the prosecution in 2001. The matter was diverted with the Applicant completing the diversion conditions.
- [21] The Applicant in his oral evidence stated that he had assaulted EF to look strong or tough before his friends and also wanted to end the situation as quickly and effectively as possible. He explains his behaviour as being immature. He also admits to failing to understand the consequences of his actions.

ASSAULT ON AB —2003

- [22] In 2003, the Applicant was residing in his parents' home along with his brother, AB.
- [23] In January 2003, the Applicant and his mother became engaged in an argument over the use of one of the family's vehicles. During the argument, the Applicant and his mother began yelling at one another. The Applicant became angry and threw a chair across the room.
- [24] AB was upstairs in his bedroom. He heard loud arguing that sounded like screaming. He then heard banging that sounded like furniture being thrown. AB

went downstairs to see what was going on and found his mother and the Applicant arguing.

- [25] In an effort to stop the argument, AB opened the front door to the residence with the hope that the Applicant and his mother would be embarrassed and stop arguing. He was told by both the Applicant and his mother to close the door.
- [26] AB started to head back upstairs to his bedroom and saw the Applicant staring at him. AB stated to the Applicant, "Are you going to release your anger on me too?", at which point the Applicant became very angry and grabbed AB's face and hair. At this point, AB was part way up the stairs and the Applicant pulled AB down to the bottom of the stairs by his hair. The Applicant then punched AB two or three times in the face and a couple of times around the shoulders.
- [27] The Applicant's mother grabbed him and pulled him away from AB and asked him, "Why are you beating on your little brother?" The Applicant responded by telling his mother to get out of his way. His mother stated something to the effect of "kill me", to which the Applicant said "I could kill you too".
- [28] AB went to check out his eye in the living room mirror. Further words were exchanged between AB and the Applicant, which again made the Applicant angry, and he ran at AB. He grabbed AB by the hair again and threw him onto the sofa. The Applicant then punched AB a couple of times in the face. AB attempted to cover his face with his hands and the Applicant began hitting him in the body with his fists. The Applicant's mother attempted to pull the Applicant off of AB.
- [29] AB began screaming at the Applicant, "Violence is bad. Violence is bad." The Applicant then lifted up a tennis racket and, holding the racket at an angle, hit AB on the left side of the head with the metal frame of the racket.
- [30] AB knelt down on the floor and said to the Applicant, "You want to kill me. Kill me now, go ahead." The Applicant stepped on AB a couple of times.
- [31] A neighbour then came in the house and lightly pulled AB out of the house. AB sat outside his residence and asked the neighbour to call the police. He could still hear his mother and the Applicant arguing. Shortly thereafter the police arrived.
- [32] As a result of the altercation with the Applicant, AB suffered:

(d) (a) a swollen right eye with bruising on the outer corner;

(e) (b) a couple of bumps on his head that were tender to the touch;

- (f) (c) several fresh red marks on the left side of his head that were linear in shape and appeared consistent with being struck on the head with the rim of a tennis racket;
- (g) red linear marks on the back of his neck;
- (h) a fresh bleeding scrape on his forehead at the hairline on the left side;
- (i) a couple of bleeding cuts to the back and base of his right middle finger;
- (j) some faint red marks on the back of his left shoulder where he had been punched; and
- (k) bent eyeglasses.

[33] After the incident, AB was upset. When speaking with the police, his voice was shaky, and he was gasping for air. He told the police that he did not want the Applicant residing at the residence and that he wanted the Applicant charged.

[34] The Applicant was charged with the assault of AB. He was released on a Promise to Appear with the condition that he not attend at his family's residence and have no contact with his brother, AB.

[35] The assault charges were stayed as a result of the Applicant agreeing to an alternative measures plan. The diversion required the Applicant to complete 15 hours of community direct service, attend and complete counselling sessions and provide proof of being on the BC University waitlist for counselling and to attend sessions as directed.

[36] The Applicant complied with the terms of his alternative measures plan.

[37] The Applicant testified that this was the first time his brother had talked to him in such a rude way. The Applicant became frustrated and wanted to get respect from his brother but did not know how. That is why he resorted to violence.

ASSAULT ON GH —2004

[38] GH is the former girlfriend of the Applicant. They broke up in approximately June, 2004 after having dated for approximately three years.

[39] On an evening in September 2004, the Applicant was at a cafe near the BC University. GH was also at the cafe with some of her friends. The Applicant

approached GH, and she got upset with him as she was busy and did not wish to speak with him. The Applicant asked GH to speak with her outside and she agreed.

- [40] Outside the cafe, an argument ensued between the Applicant and GH. The Applicant became angry and slapped GH with an open hand on her left cheek. A witness reported that the slap made a loud “crack” sound. GH began crying and put her hand up to her face. During this time, the Applicant was yelling and kicking a wall and some shrubs.
- [41] GH went back into the cafe, and the Applicant tried to follow her but was held back by another individual. The Applicant then returned to his home.
- [42] Two witnesses to the incident called Campus Security.
- [43] When questioned by the police, GH told them that she did not think the incident was serious and did not want to press charges against the Applicant. She did not want him to get into any trouble over the incident but wanted him to get help.
- [44] Later that evening, the police attended at the Applicant’s parents’ house where he was residing. The Applicant admitted to the police officers that he had slapped GH, he knew it was wrong and he should have known better. The Applicant was fully cooperative with the police investigation.
- [45] The Applicant was arrested and charged with assault on GH.
- [46] The Applicant admitted the allegations and entered into a section 810 peace bond to keep the peace and be of good behaviour and to refrain from any contact with GH.
- [47] The Applicant was asked why he slapped his ex-girlfriend. He stated he wanted to get back together with her. He thought she was feeling the same way but obviously it was not true. He felt frustrated. Looking back at the situation, he stated to the Panel, he felt he had slapped her because he was not getting respect from her.

2006 INCIDENT

- [48] There is another incident in which the Applicant got himself into a physical altercation with his younger brother AB. This took place in 2006.
- [49] There are inconsistencies in the recollections of the Applicant and AB about exactly what happened.
- [50] In fact, the Applicant could not remember the incident when it was brought to his attention by the Law Society for the first time. His brother gave evidence that he

could not remember exactly what happened. However, there are a number of things that both the Applicant and his younger brother agree on. These include:

- (a) AB and his father were plastering a wall in the home;
- (b) the Applicant heard AB talk to his father in a disrespectful manner;
- (c) words were exchanged between the brothers;
- (d) the Applicant threw the first punch;
- (e) a scuffle developed between the two brothers;
- (f) AB had a putty knife in his hand; and
- (g) during the physical confrontation between the brothers, the Applicant grabbed a kitchen knife which was approximately a foot in length.

[51] AB's version is that he did not intend to threaten his brother with the putty knife, though AB feels his brother could have interpreted his actions in such a way. The Applicant's version of the event is that his brother put a putty knife to his throat in a threatening manner. AB denies putting the putty knife close to his brother's throat.

[52] The Applicant maintains that he never intended to use the kitchen knife on his brother. One of his parents was restraining him, and the Applicant's testimony is that he did not try very hard to free himself from his parent.

[53] In his testimony AB stated that his brother came to him in a somewhat threatening manner. The police were never called and no charges were ever laid in regards to this incident.

[54] The Panel finds the Applicant grabbed the knife to threaten his brother. The Applicant admits that, after grabbing the knife, he stated to his brother, "I will kill you, you son of a bitch."

[55] AB told the Panel he was looking for a fight with his brother before the confrontation started.

REHABILITATION

- [56] The Applicant has shown a rather lackluster attitude towards rehabilitation until recently. In addition, until recently, he did not realize how the assaults would affect his admission as an articulated student.
- [57] In regards to the 2003 incident, the Applicant stated that the reason he agreed to counselling was to have the charges diverted and he was really interested in a “quick fix”.
- [58] The Applicant readily admits that he attended the sessions with Dr. I because of this hearing in front of the Panel. However, the Applicant maintains he changed his mind as the sessions proceeded. He wanted, at that point, to start dealing with his anger management problem.
- [59] The Applicant initially saw Dr. I for four hours between early 2008. In addition, the Applicant completed a personal inventory and aggression inventory that did not contain any reference to the 2006 incident.
- [60] In a letter dated May 11, 2008 Dr. I stated that following:
- [61] The Applicant was assessed in order to evaluate his propensity towards assaultive behaviour. The Applicant has been involved in three incidents where he engaged in physically aggressive behaviour.
- [62] In describing his history, the Applicant describes having poor role models in his parents in terms of both emotional and physical restraint. There is no question that where a child or adolescent has the experience of witnessing physical violence between his two parents and also a parent who creates a family culture of emotional reactivity and physical hitting, that this is something that he would have learned.
- [63] In the examples that he provides from the time that he was in high school, I tend to accept his description that his aggressive act was not out of anger but was done more to impress his peers even though it was extremely inappropriate. When he describes his behaviour in relation to his brother, this is quite clearly part of the family and broader culture that he lives in where he felt disrespected by his brother. There was also the lead-up to this incident where he and his mother were in an argument and his brother interjected and the Applicant, rather than directing his aggression at his mother, directed it at his brother who intervened in the argument between mother and son at a point where physical aggression seemed almost

inevitable. On the third occasion when he slapped a girlfriend, this is perhaps the most concerning of the three incidents because he clearly was angry and humiliated by her and rather than stopping at a point where he expressed his anger verbally, he went on to give himself permission to slap her.

[64] In my discussions with the Applicant, he now understands that physical aggression is not a stimulus-response mechanism but rather he gave himself permission to act with physical aggression. He also now appears to have more insight into the fact that as a professional, there would be serious consequences that would jeopardize his professional status were he to ever act out physically even in a highly provocative situation. Finally, he articulates that over the past four years he has come to certain realizations about being stronger or showing restraint rather than showing aggression.

[65] If I was at this point to try to measure where I perceive his risk to be, I would put him at the low to medium level of risk. I don't think that I would put him at the low risk because of the history in his case but I also would not even put him at the medium risk because I believe that he has made definite progress over the past few years and he has come to certain realizations as he has matured over the past few years.

[66] I hope that this report will assist in better understanding this client.

[67] After Dr. I became aware of the 2006 incident he wrote a second report. He states the following:

[68] I have told the Applicant that it would be prudent for him to attend Anger Management and have given him the names of three agencies which offer suitable programs. The question is whether this changes my opinion; I think that it does which is why I have suggested that he take some steps to address and break this pattern.

[69] The Applicant subsequently took group counselling sessions, which were composed of eight or nine persons. Members, including the Applicant, had to participate and share experiences. These sessions dealt with topics such as anger management, power and control issues between the sexes, intergenerational transmission of abuse and anger management tools.

[70] The Applicant also took a six-week anger management course. These were weekly group sessions lasting approximately two hours. The Applicant engaged in the group process. Some of the topics included:

- (a) What is anger;
- (b) What is violence/abuse and what does a life free of violence/abuse look like;
- (c) Anger as a secondary emotion;
- (d) The arousal cycle – the physiology of anger and other strong emotions;
- (e) The time out;
- (f) Courage – how this fits into change;
- (g) The Wheel of Change – the Trans-theoretical Model of Change;
- (h) The experience of men, women and children during an abusive event;
- (i) What men learn about anger and violence growing up;
- (j) Communication, including assertive communication;
- (k) Relaxation, breathing, and meditation techniques;
- (l) What leads men toward and away from using violence/abuse; and
- (m) What is next? What ways can men be successful after the group is over?

[71] The important thing about the sessions with Dr. I and the anger management courses is what did the Applicant learn from these sessions? In his oral evidence, the Applicant stated the following:

- (a) As the Applicant attended Dr. I's session, he started wanting to deal with his anger management issues;
- (b) He saw images of himself in other members of the group;
- (c) He learned coping mechanisms;

[72] (i) He learned to try to understand the other person and why they are acting the way they do;

- [73] (ii) He learned to take time out to think things out
- (d) He learned how one can gain respect of another person by remaining calm.
- [74] The Applicant also gave examples to the Panel of situations where he has applied these techniques to avoid anger and assaultive behaviour.

FAILURE TO DISCLOSE

- [75] The Applicant disclosed as part of his application for enrolment as an articulated student the assaults that took place in 2000, 2003 and 2004.
- [76] The Law Society, through its solicitor, wrote a letter to counsel for the Applicant. This letter is dated June 2, 2008 and asks the following question:

[77] Other than the incidents disclosed in his application, has the Applicant ever been involved in any other incidents of physical altercations (regardless of whether there was police involvement or charges laid)? If so, please provide details describing the incident, including the date of the incident and the name(s) of the individual(s) involved.

- [78] Counsel for the Applicant wrote a letter, on instructions from the Applicant, back to the Law Society. This letter is dated June 17, 2008. The letter clearly answers “no” to the above inquiry. The Law Society later interviewed AB, the brother of the Applicant, and the 2006 incident came to the attention of the Law Society.
- [79] There is no doubt the Applicant did not inform the Law Society of the 2006 incident. The question remains whether he did it intentionally.

GROUND FOR REFUSAL

- [80] In a letter dated April 7, 2008 and a letter dated January 16, 2009 the Law Society of British Columbia informed the Applicant of the circumstances to be inquired into at this hearing. They are as follows:
1. The previous offences that the Applicant has been charged or convicted.
 2. The Applicant’s potential problems with anger management and his previous use of violence when dealing with disputes.

3. A physical altercation between the Applicant and his brother AB in which he threatened AB with a knife (the “2006 incident”).
4. The Applicant’s failure to disclose the 2006 incident.

LEGAL TEST

[81] GENERAL

[82] The Panel must be satisfied that the Applicant “is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.” See *Legal Profession Act*, s. 19(1).

[83] It is the Applicant that has the burden of proving that he is of good character and repute and fit to become a barrister and solicitor. The standard of proof is on the balance of probabilities. See Law Society Rule 2-67 and *Law Society of BC v. McOuat*, Panel Decision (June 12, 1992) at p. 11.

[84] In an article published in *The Advocate*, (“What is ‘Good Character’” (1977), 35 *The Advocate* 129), Mary Southin, QC (as she then was), considered the meaning of the terms “good character and repute”, stating:

[85] I think in the context “good character” means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia at the time of application.

[86] Character within the Act comprises in my opinion at least these qualities:

1. An appreciation of the difference between right and wrong;
2. 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;
3. 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.

[87] What exactly “good repute” is I am not sure. However, the Shorter Oxford Dictionary defines “repute” as “the reputation of a particular person” and defines “reputation” as:

1. The common or general estimate of a person with respect to character or other qualities; the relative estimation or esteem in which a person is held.
2. The condition, quality or fact of being highly regarded or esteemed; also respectability, good report.

[88] In the context of s. 41 I think the question of good repute is to be answered thus: would a right-thinking member of the community consider the applicant to be of good repute?

[89] Miss Southin's comments were approved by the Hearing Panel in *Law Society of BC v. JS*, Panel Decision, (December 19, 1996), in which the Panel wrote:

[90] I do not see Ms. Southin's comments as all inclusive. Certainly, other factors and considerations must come into play, but her comments provide reasonable direction for the commencement of consideration in that regard. ...

[91] In *McOuat* at p.17, the Hearing Panel explained the fitness test, as follows:

[92] The demands placed upon a lawyer by the calling of barrister and solicitor are numerous and weighty and "fitness" implies possession of those qualities of character to deal with the demands properly. *The qualities cannot be exhaustively listed but among them must be found a commitment to speak the truth no matter what the personal cost, resolve to place the client's interest first and to never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.*

[93] The canons [sic] of legal ethics adopted by the Law Society provide assistance, when they assert:

[94] A lawyer is a minister of justice, an officer of the courts, a client's advocate, and a member of an ancient, honourable and learned profession.

[95] In these several capacities it is a lawyer's duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

[96] [emphasis added]

[97] The character test and the fitness test overlap. If the Applicant fails the character test, he will automatically fail the fitness test. However, he may be found to be of good character but still unfit in the sense that he needs further education. *Mason v. Law Society* (1992), 63 BCLR (2d) 83 (CA) at 91; *McOuat v. Law Society (British Columbia)* (1993), 78 BCLR 106 (C.A.).

[98] The parties agree that this case comes under the “fitness test”.

[99] Section 22(3) of the *Legal Profession Act* provides that,

[100] **22(3) Following a hearing, the panel must do one of the following:**

- i. grant the application;
- ii. grant the application subject to conditions or limitations that the panel considers appropriate;
- iii. reject the application.

[101] The case law from Ontario is informative.

- a. In the case of *Law Society of Upper Canada v. Schuchert*, [2001] LSDD No. 63, at para. 18 the following is said:

[102] The relevant test is not whether there is too great a risk of future abuse by the applicant *of the public trust*, but whether the applicant has established his *good character at the time of the hearing on a balance of probabilities*. The test does not require perfection or certainty. The applicant need not provide a warranty or assurance that he will never breach the public trust.

[103] [emphasis added]

- a. In the case of *Law Society of Upper Canada v. Birman*, [2005] LSDD No. 13, at paras. 13 and 14, the following is stated, quoting the reasons of Convocation in *Re Spicer*, dated May 1, 1994:

[104] Because every person’s character is formed over time and in response to a myriad of influences, *it seems clear that no isolated act or series of acts necessarily defines or fixes one’s essential nature for all time. ...*

[105] It is also important to acknowledge that no applicant should be held to a standard of perfection.

[106] [emphasis added]

[107] The above principles apply equally to the fitness test.

ASSAULTIVE BEHAVIOUR AND ANGER MANAGEMENT

[108] Counsel for the Law Society referred us to four cases that dealt with the enrolment of articulated students and a past history of assaultive behaviour. The four cases referred to are:

[109] *Law Society of BC v. EWK* (June 16, 1976) — Panel Decision

[110] *Law Society of BC v. LCK* (August 19, 1975) — Panel Decision

[111] *Law Society of BC v. RJM* (December 28, 1995) — Panel Decision

[112] *Law Society of BC v. SC* (January 19, 1994) — Panel Decision

[113] None of the four cases referred to is directly on point. This is to be expected. Each case depends on the particular facts surrounding the assaultive behaviour. Counsel for the Law Society submits, and the Panel accepts, that the fourth case, *Law Society of BC v. SC*, is the closest to the facts of this case. Also of some significance, neither counsel presented any case where the applicant was refused admission as an articulated student on account of assaultive behaviour, though the present case comes very close.

[114] There is no rigid formula in assessing whether assaultive behaviour will bar admission as an articulated student. Instead, the Panel should consider all surrounding circumstances including, but not limited to:

- a) applicant's age at the time of the conduct;
- b) recency of the conduct;
- c) reliability of the information;
- d) seriousness of the conduct;
- e) factors underlying the conduct;
- f) cumulative effect of the conduct;
- g) evidence of rehabilitation;

- h) applicant's positive social contribution since the conduct;
- i) applicant's candour in the admissions process; and
- j) materiality of any omissions or misrepresentation.

[115] The circumstances listed above are not exhaustive. In addition, they need not be present in any given case. In some cases, some of the circumstances may stand out. In this case the three circumstances that stand out are:

- a) the seriousness of assaults;
- b) the pattern of the assaults; and
- c) the efforts of rehabilitation.

[116] The fact that there is no criminal conviction plays a minimal role. This is a civil proceeding. A criminal conviction is not necessary for a Panel to consider an assault.

ANALYSIS

[117] Counsel for the Applicant attempted to downplay the assaults or distinguish the various assaults. However, the Panel finds the assaults were serious. The smashing of a head against a metal pole, a brutal attack on a younger brother, the pulling of a knife on the same younger brother, and finally, the slapping of the face of an ex-girlfriend.

[118] Evidence was led about Asian culture. Children are to show respect to their parents. Younger brothers are supposed to show respect for the older brother and use a specific style of language when communicating to such older brother. The younger brother, AB, did not follow that tradition in dealing with his older brother and his parents. However, that disrespect does not justify the assaults or threats made by the Applicant against his brother.

[119] The assaults are not only serious in themselves, they are part of a larger pattern. The Applicant seems to engage in assaultive behavior every couple of years. He has a serious anger management problem. In addition, his explanations for the assaults are troubling. The Applicant stated to the Panel, among other things, that he felt frustrated and that he was not respected by the other individuals. These factors led him to use violence.

[120] Finally, the last assault was relatively recent — just three years ago. Of equal importance, it was in the midst of his studies for a law degree.

[121] If the evidence before the Panel had just been the assaults, the Panel would have no hesitation in refusing enrolment as an articulated student.

[122] The legal test set out in section 19(1) of the *Legal Profession Act* is not limited to past transgressions. The question of fitness is determined at the time of the hearing. Therefore, a second stage must be addressed. Has the Applicant rehabilitated himself or has the Applicant taken steps to rehabilitate himself so the Panel feels the public is protected?

[123] The Applicant has been candid about his behaviour and its aftermath. The Panel believes the Applicant about not informing the Law Society about the 2006 incident. He states he just forgot about it.

[124] The Panel has come to the conclusion that the Applicant has passed the fitness test. The Panel was impressed not only by his efforts to rehabilitate himself but also by the evidence of what he has learned from his dealings with Dr. I and the anger management group session. He readily admits he had not taken his anger issues seriously in the past. He states he now has. The Panel believes him.

LIMITATIONS AND CONDITIONS

[125] The Applicant has taken steps to control his anger and assaultive behaviour. However, the Panel must act in the public interest. In the Panel's view, it is not in the public interest just to allow the Applicant to enrol as an articulated student. Such enrolment must be subject to the following:

- a) to continue his rehabilitation;
- b) to monitor his rehabilitation;
- c) to report any transgressions to the Law Society.

[126] Therefore the following limitations and conditions apply to the Applicant during his enrolment in the admissions program (PLTC and articling):

- a) Before the articling agreement is entered into, any prospective principal must be informed of this decision and be given a copy of this decision;
- b) The principal must undertake to the Law Society to inform the Law Society forthwith, in writing, of any aggressive behaviour involving the Applicant

that the principal becomes aware of, whether or not such behaviour occurs during working hours;

- c) The principal must undertake to provide quarterly reports to the Law Society setting out how the articulated student is progressing and dealing with his anger management issues. These reports are in addition to any other reports required by the Law Society;
- d) The Applicant must develop and follow with Dr. I, or another person designated by Dr. I, a counselling program, including one-on-one counselling dealing with anger management;
- e) The Applicant must see any psychologist or psychiatrist as directed by the Credentials Committee; and
 - a. At the end of his admission program, the Applicant must provide the Law Society with an affidavit detailing any aggressive behaviour or anger management issues involving the Applicant during his term in the admission program, whether or not such behaviour occurred during working hours.

COSTS

[127] The Applicant has attempted to find work since he graduated from law school. He is now tutoring high school students in order to earn some money. The Panel notes that, in the case of *SC*, it was ordered that the applicant pay the sum of \$100 in costs. That decision was over 15 years ago. This Panel feels an award of \$500 is appropriate in these circumstances. Any surplus cash the Applicant has should be directed towards paying his counselling bills.

[128] CONCLUDING REMARKS

[129] This hearing only pertains to the Applicant's enrolment in the admission program. The Credentials Committee still has to decide whether the Applicant should be called and admitted as a lawyer. Nothing in this decision binds the Credentials Committee in that endeavour.

[130] The ball now is now the Applicant's to run with. He can take it and win a successful legal career. He can fumble it and engage in assaultive behaviour or outbursts of anger, risking the loss of his legal career. The choice is his. Of more importance, the responsibility is his.