2009 LSBC 14
Report issued: May 13, 2009

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

**Inderbir Singh Buttar**

Applicant

## Decision of the Hearing Panel on Application for Call and Admission

Hearing date: October 28 and 29, 2008 and January 6, 2009

Panel: Terence La Liberte, QC, Chair, Leon Getz, QC, David Mossop, QC

Counsel for the Law Society: Jason Twa
Counsel for the Respondent: Craig Dennis, Anu Sandhu (October 28 and 29, 2008 only)

### Introduction

[1] The question before us is whether, in the words of section 19(1) of the *Legal Profession Act,* the Applicant is a " person of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court." Law Society Rule 2-67 places the onus on the Applicant " to satisfy the panel on the balance of probabilities" that he meets the requirements of that section.

[2] On October 4, 2007, in anticipation of a hearing on this question, counsel for the Law Society wrote to counsel for the Applicant and advised that the hearing would inquire into the Applicant's conduct while enrolled as an articled student, including:

(a) his performance on substantive legal tasks while articling;

(b) his romantic relationship with a potentially vulnerable co-worker;

(c) failing to be forthright and honest with his Principal; and

(d) having pornographic material displayed on his computer in the office.

[3] We heard evidence about these matters from a number of witnesses, and we begin by reviewing the principal parts of that evidence.

### The Applicant and the Law Firm

[4] The Applicant is now almost 32. He was born in the Punjab region of India and received his initial university education in that country. He initially came to Canada with his parents in 2000, having one year of study remaining in order to complete a combined arts and law degree. In 2002 he returned to India, completed his educational program and in 2003 was called to the bar. He then spent six months practising law. He was married in India in 2003 and returned to Canada with his wife, from whom he is now separated.

There are two children of the marriage.

[5] In June 2006, following two years of study at the University of Windsor mandated by the National Committee on Accreditation, the Applicant was issued a National Certificate of Qualification that permitted him to article in any common law jurisdiction in Canada.

[6] The Applicant took some steps to qualify for practice in Ontario, including some preliminary efforts to find articles, but before he had completed the requirements there he decided for various reasons, including the fact that his parents lived in British Columbia, to focus his efforts on this Province.

[7] The Applicant enquired about articling positions at a number of firms in British Columbia, among them that of his eventual Principal. The Principal testified that, in about March 2006, she received an unsolicited email from him enquiring about articles, and she asked her associate to advise him that they were not looking for an articled student. After several further exchanges in which the Principal reiterated her lack of interest in having a student, she agreed to meet with him and they met in the boardroom at her office. She testified that she felt sorry for him.

> He was having a tough time. He seemed to me to be a man that really genuinely wanted to practise law. He clearly was having difficulty, and I just felt that perhaps he needed a - he needed some opportunity and - you know, if nobody else was offering that to him, then that was my ethical responsibility as a lawyer to give him some opportunity to be able to practise law, and so I said to him that I would consider taking him on.

The Principal's change of heart was also influenced by the fact that her associate was due to depart on maternity leave. The Applicant was told that the firm would be unable to pay him a salary.

[8] The Applicant began his articles in July 2006 and completed them on May 4, 2007. Shortly thereafter he enrolled in PLTC and, in due course, though not without some hiccups along the way, completed the programme in July 2008.

[9] The firm is small, consisting of two lawyers ? the Principal and an associate ? and two or three support staff. The entire complement of the firm, which practises personal injury and general civil litigation and family law, is female. Both the Principal and the associate are members of the South Asian community.

[10] The firm conducts its practice from premises located in suburban Vancouver. The office occupies an area of approximately 1,000 square feet embracing two lawyers' offices, a boardroom, a secretarial area, a reception area and an office sublet by the husband of the Principal, a psychologist, a small kitchen and a file room. There was no vacant office space to accommodate the Applicant, and aside from a period during the absence of the associate on maternity leave, he mostly worked on a small computer table in the boardroom. Not surprisingly, there were interruptions when one or other of the lawyers met with clients on matters not involving the Applicant.

## Performance of Substantive Legal Tasks

[11] There were concerns about the Applicant's performance throughout the entire period of his articles. We heard oral evidence about this from the Applicant and from his Principal and her associate. Based on this testimony and on our review of a number of written evaluations of his work done by the Principal, it is fair to say that the Principal's view was that, even by the end of the articling period, he demonstrated little better than a marginally acceptable level of skill. Despite this, on May 4, 2007, the Principal prepared and signed a form, also signed by the Applicant, expressing her belief that the Applicant had " met all the skill and practice requirements outlined in the checklist and as such is competent to be admitted to the bar" and gained

practical experience and training in certain specified practice areas. This document is, as we understand it, intended to satisfy the requirements of Law Society Rule 2-48(1)(a)(ii) and (iii.1). The Principal made it clear to the Applicant, however, that she was not going to send the form to the Law Society until he had commenced the PLTC.

[12] In fact, the form was never sent in. Instead, in July 2007 the Principal sent a letter to the Law Society saying, as she put it in testifying, that while from a competency point of view he did meet the test for call and admission, " in terms of the ethics, the good character and fitness test" he did not do so.

## The Applicant's Romantic Relationship with a Co-worker

[13] As we understand it, it is not the fact that there was a romantic relationship between the Applicant and the co-worker that is considered relevant to whether the Applicant satisfies the condition of section 19(1) of the *Legal Profession Act,* but whether the co-worker was " *potentially vulnerable*" . The italicized words are of surprisingly ? one might think fatally ? uncertain import in a document intended to give the Applicant notice of the matter to be considered. We say no more about this since, in our view, the concern is simply not supported by the evidence.

[14] The essential facts are these. In October, 2006 the firm hired a new and highly experienced paralegal, and she began to assist the Applicant with his work. By February 2007 what had begun as a working association between two employees had evolved into a romantic relationship. That relationship continues. In their evidence before us, both the Applicant and the paralegal affirmed their intention to marry; and the paralegal testified that the two hope to have children.

[15] Not long after beginning work at the law firm the paralegal suffered several misfortunes. In December she separated from her husband of ten years. In January 2007 she was involved in a serious motor-vehicle accident. She suffered some physical injuries, and her car was destroyed.

[16] Perhaps as the result of these events the paralegal began to experience feelings of what she described as " sadness" . She consulted her physician who prescribed an anti-depressant. There is conflicting evidence about whether, and if so, to what extent her behaviour while at work was suggestive of her fragile emotional state. The Principal testified that the paralegal frequently cried and displayed other signs of distress while at work. The paralegal admitted to crying once or twice but denied that her personal difficulties had any impact upon her work or behaviour while at work. At all events, in April 2007 she left her employment at the firm and the following June was diagnosed as having bi-polar disorder.

[17] In her evidence before us the Principal testified that she was " very upset" when she learned of the relationship between the Applicant and the paralegal because, among other things, the latter was " emotionally vulnerable" . She also described the paralegal as " emotionally fragile" and expressed the view that this ought to have been obvious to the Applicant.

[18] The Principal's characterization of the paralegal's condition at the time is quite possibly well-founded, though we note that it is but a lay opinion. That having been said, however, given her view of the paralegal's emotional health, we think that the Principal was entitled to be concerned about the matter, though no effort seems to have been made to contact the paralegal to get her side of the story. Based on the evidence that we heard, we do not think that there is any ground for concluding that the Applicant took advantage of the paralegal, exploited any actual or potential emotional vulnerability that she suffered or may have suffered, made unwanted advances to her or sexually harassed her. The substance of the evidence of both of them was an emphatic denial of anything of the sort and an affirmation that their relationship was entirely voluntary and fully consensual.

### The Applicant's Failure to be Honest and Forthright with his Principal

[19] By late April or early May 2007 the Principal had begun to suspect the existence of a relationship between the Applicant and the paralegal. On May 11, her suspicions were confirmed when she received a telephone call from a third party who gave her information confidentially that, in her words, " verified for me absolutely that that relationship did exist and had existed for several months."

[20] While it is true that, prior to May 11, the Principal had never asked the Applicant whether there was such a relationship and been told that there was none, she was nonetheless distressed ? properly and understandably ? by what she learned that day. There is little doubt that, to some extent, she felt personally betrayed by someone to whom she had offered opportunity, encouragement and support, both personally and professionally. Moreover, she had some months earlier had a quite specific conversation with the Applicant ? provoked by an enquiry from him entirely unrelated to the paralegal ? about the risks inherent in social relationships with fellow employees and the importance, especially in a small office, of managing those relationships with care and discretion.

[21] Following the call on May 11, it gradually began to emerge that, starting in late April or early May, the Applicant had begun to resort to dissembling and subterfuge, all with a view to concealing the existence of his relationship with the paralegal from his Principal and fellow employees.

[22] With the knowledge of the Principal, the Applicant had planned a trip to India to attend the wedding of a cousin following completion of his articling period on May 4. The wedding was subsequently postponed, and he decided not to go; instead, he and the paralegal planned to visit India together in August 2007. He did not tell the Principal of his change of plans. He explained this on the ground that since he had completed his articling period he was not accountable to her for his movements. This was no doubt true. But he went further. At a farewell lunch for the Applicant and the paralegal on May 4, the paralegal indicated that she planned to visit India, apparently alone, in August for the first time but appeared to know little about the country and to have no particular travel plans when she got there. The Applicant apparently joined in the expressions of surprise at her lack of preparedness and the risk of travelling to India unprepared. He testified that the purpose of this dissembling was to fend off further questions from the Principal should she become aware of their intention to travel together.

[23] Moreover, the Applicant actively misled the Principal into believing that he was in or en route to India when in fact he never left the Lower Mainland. The deception had several elements. First, there was the undisclosed change of plans. Secondly, early on the morning of May 7, and somewhat to her surprise since she assumed that he had departed for India, the Principal encountered the Applicant at the office. She asked him what he was doing there ? " aren't you supposed to be in India right now" ? and he replied that his flight was leaving that evening. This was not true. Third, on May 22, believing that the Applicant had in fact gone to India and concerned that, although his commencement date for the PLTC programme was imminent she had not heard from him, she telephoned to the home of his aunt with whom he had apparently been living. A woman ? the Principal believed this to be the aunt ? answered. The Principal asked to speak to the Applicant, but the woman replied that he was not returning from India until around noon the next day, May 23. The principal left a message for the Applicant, asking him to call on his return. He did so on May 23.

[24] The Applicant and the Principal arranged to meet on May 25 and did. There is some conflict in the evidence about both the content and the tone of the discussion that took place, but the details are not important for any present purpose. What is clear, and was acknowledged by the Applicant in a letter to the Principal dated May 31, is that he was asked whether he had a romantic relationship with the paralegal and denied it. In the letter he expressed his regret at not having been forthright, apologized for his failure and

explained that his denial of a relationship was based on his view that no firm policy had been violated and that in any event the relationship was a private one of no concern to anyone else.

### The Applicant Displaying Pornographic Material on his Computer in the Office

[25] The Applicant used his own laptop computer for work purposes. On May 4, the last day of his articles, after he and the others returned from a farewell lunch, he switched on the computer and an allegedly " pornographic" movie that he and the paralegal had rented and viewed the previous evening and which he thought had been removed from the computer before he brought it into the office, was very briefly - for about 10 seconds it seems ? and soundlessly displayed on the screen. Immediately he realized what had happened he turned off the computer, thinking that the display had not been seen by anyone. He described the visible display as being a " DVD menu" . The Principal, who did in fact see the screen, described what she saw as " graphic images" from a movie, not merely a DVD menu.

[26] At their meeting on May 25 the Applicant's Principal expressed her dismay and disappointment over the incident. The Applicant explained that what had happened was unintentional and that he did not know that the disc had not been removed from the computer. He apologized. In her evidence to us the Principal seemed to accept the Applicant's contention that the display, whatever it was, was quite unintentional.

### " Good Character and Repute" and " Fit to Become a Barrister and Solicitor of the Supreme Court"

[27] In our view neither the concern based upon the Applicant's " performance on substantive legal tasks" while in articles nor that based upon the display of allegedly pornographic material on his computer ? both of which were referred to in the letter of October 4, 2007 from the Law Society's counsel to the Applicant's counsel ? raise any issue concerning his good character and repute and his fitness to become a barrister and solicitor of the Supreme Court.

[28] The person best situated to make a judgment about the Applicant's performance of substantive legal tasks while in articles was his Principal. As we have noted on May 4, 2007 she signed a form setting out the activities that the Applicant had undertaken while articled and her belief that he was competent to be admitted to the bar. Although in her oral evidence before us she described his competence as " borderline" , she did not really retreat from the opinion she expressed in May 2007.

[29] In those circumstances, we do not think that this is any ground to conclude that he is not " fit" within the meaning of section 19(1) of the *Legal Profession Act* to become a barrister and solicitor of the Supreme Court.

[30] That conclusion is sufficient to dispose of this aspect of the matter. We note, in passing, that " competence" is not a term that is used in the *Act* or in any of the rules relating to call and admission. In relation to one who has merely met the academic qualifications prescribed for admission into articles and completed a term of supervised employment under articles, its aptness seems debatable.

[31] As to the display of allegedly pornographic material on the Applicant's computer, in view of his evidence ? which was accepted by the Principal in her testimony before us ? that this was inadvertent and unintended, we also do not think that it can fairly be considered to raise an issue concerning his character and repute or his fitness to be called.

[32] This brings us to the two remaining issues canvassed before us: the Applicant's romantic relationship with a co-worker and his failure to be forthright with his principal.

[33] Perhaps the most influential discussion of the meaning and scope of the expression " good character and repute" is to be found in an article by Mary F. Southin, QC published in The Advocate, " What is ‘ Good Character'" (1977), 35 The Advocate 129. Miss Southin wrote at 129-130:

> 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.
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> Character within the Act comprises in my opinion at least these qualities:
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> 1. An appreciation of the difference between right and wrong;
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> 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.
>
> 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:
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> 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.
>
> 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?

Miss Southin's views have been cited with approval in a number of decisions both in this province and elsewhere. Few of them have added much to what she wrote.

[34] We have set out above (paragraph [18]) our overall assessment of the evidence on the subject of the romantic relationship between the Applicant and his co-worker. In essence we said there that we heard nothing that leads us to think that the relationship, as it developed, was not entirely between equals, free of imposition, exploitation, harassment or abuse. In our view, therefore, the element of the potential vulnerability of the Applicant's co-worker need not be further considered. We are left, then, with the question whether entering into a romantic relationship with a co-worker in a small law office is *per se* a ground for questioning the good character and repute of one of them.

[35] In our view the answer is " no" . The Applicant may have been indiscreet; he may have been rash; he may have shown bad judgment; but in our view his conduct in this respect cannot, to paraphrase Miss Southin, " reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia." It is not, therefore, evidence that the Applicant lacks good character.

[36] The Applicant's failure to be honest and forthright with his Principal about the relationship is somewhat more troublesome.

[37] The authorities do not say that it is an irreducible minimum condition for admission to the bar that the

applicant must have displayed absolute and unwavering honesty, forthrightness and abstention from lies, dissembling or other forms of deception at all times in all matters of every kind. If they did, the number of members of the bar would, we venture to think, be considerably smaller than it is. While the authorities abound in ringing declarations about the importance of " a commitment to speak the truth no matter what the cost" ( *McOuat v. Law Society of British Columbia*, Panel decision dated June 12, 1992, at page 17) it is clear that, as the hearing panel in *Law Society of Upper Canada v. Birman*, [2005] L.S.D.D. No. 13 put it (at para. 14), " no applicant should be held to a standard of perfection."

[38] It is important to bear in mind that, as was also noted by the hearing panel in *Law Society of Upper Canada v. Birman* (at par. 13), " 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." We do not think that the Applicant's conduct in resorting to dissembling and subterfuge in order to conceal from his Principal his relationship with his co-worker manifested a quality that can " reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia" and hence to manifest a lack of good character for the purposes of section 19(1) of the *Legal Profession Act.*

[39] We do not wish to be understood as diminishing the importance to the articling relationship of forthrightness and honesty in dealings with one's principal. But this must be sensibly understood. It is one thing to deceive one's principal about the state of work on a client file for this goes to the core of the relationship and may, therefore, be relevant to the question of " good character" . It is quite a different matter to resort to deception and subterfuge in pursuit of a wish to protect one's personal privacy. It was not really disputed before us that this was the Applicant's motive in doing what he did.

## Conclusion on Good Character and Repute and Fitness to Become a Barrister and Solicitor of the Supreme Court

[40] We have reached the conclusion on a consideration of all of the evidence that the Applicant has satisfied the burden resting on him to show that he is a " person of good character and repute and is fit to become a barrister and solicitor of the Supreme Court" and is entitled, therefore, to be called and admitted and, subject to what is said below, his application for call and admission is granted.

## Should we Impose Conditions or Limitations upon the Applicant's Call and Admission?

[41] Section 22 of the *Legal Profession Act* deals with hearings such as this. Section 22(3) says:

> (3) Following a hearing, the panel must do one of the following:
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> (a) grant the application;
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> (b) grant the application subject to conditions or limitations that the panel considers appropriate;
>
> (c) reject the application.

[42] We have concluded that we should exercise the power to impose conditions or limitations on the Applicant's call and admission.

[43] Our primary reason for this conclusion derives from the view of the Principal, who is in the best position to judge these matters, that the Applicant had barely attained the level of skill reasonably to be expected of

someone who has completed his articles. We are particularly concerned over this because the evidence revealed the Principal to be someone who regarded her position as a principal as more than an empty formality. She took her responsibilities very seriously and devoted time and energy to discharging them. We are also concerned that the Applicant seems to have encountered some difficulty in completing successfully and in a timely way the examination requirements of the PLTC. In his evidence before us he attributed this difficulty to the stress that he suffered as the result of the Principal's letter to the Law Society in July 2007 (above, paragraph [12]), a copy of which she showed him.

[44] Secondly, while we sympathize with the Applicant's wish to preserve his privacy and that of his co-worker, we think he displayed a worrying immaturity of judgment in resorting to the subterfuges and misrepresentations that he did in order to achieve that end.

[45] For these reasons we have concluded that upon his call and admission the Applicant must:

> (a) before being permitted to commence practice, successfully complete the Small Firm Practice course prescribed by Law Society Rule 3-18.3; and
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> (b) for a period of one year from commencing practice, practise only in association with at least one lawyer who:
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> > (i) is qualified under Law Society Rule 2-30(1.1) to act as a principal; and
> >
> > (ii) is approved by the Practice Standards Committee to act as a practice supervisor and who agrees to act as such in relation to the Applicant upon the terms of a practice supervision agreement in a form approved by the Practice Standards Committee.

We note that, upon commencing to practise, the Applicant will have to satisfy the continuing professional development requirements established pursuant to Law Society Rule 3-18.3.

[46] In our opinion these conditions are in the public interest. They will also advance the interests of the Applicant.

[47] We wish to express our appreciation to both Mr. Dennis and Mr. Twa for the able, fair-minded and careful way in which they conducted themselves in this matter.