2010 LSBC 23

Report issued: October 07, 2010

NOTE: Pursuant to Rule 2-69.2(2) as the application was rejected the publication does not identify the Applicant.

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

Re: Applicant 3
Applicant

Decision of the Hearing Panel
on Application for Temporary Articles

Hearing date: March 15 and 16, 2010 and April 14, 2010
Panel: Kathryn Berge, QC, Chair, Haydn Acheson, David Mossop, QC
Counsel for the Law Society: Jason Twa
Counsel for the Applicant: Henry C. Wood, QC

Overview

[1] This hearing involves an application for enrolment in the Law Society of British Columbia as an articled student. The chain of events leading to this hearing arose on February 16, 2000, when the Applicant's ex-girlfriend (" Ms. M") entered his rented house without his knowledge or consent. She believed she discovered that he was seeing another woman. In a fit of jealousy, she threw his computer and phone out of a window. The smashing of the window caused a great deal of noise. Hearing the noise, a neighbour, fearing a possible break-in, phoned the police. The police arrived and, in the course of their investigation, discovered a marijuana grow-operation in the basement. The police never laid charges in regard to this grow-operation. A few days later, however, in connection with this incident, the Applicant was charged with sexually assaulting, threatening and confining Ms. M (the " 2000 Charges"). The 2000 Charges were eventually stayed as Ms. M recanted her allegations and failed to show up for the trial.

[2] The criminal courts never decided whether these events constituted a criminal offence. The Applicant subsequently went to law school and has attempted to rehabilitate himself. On December 9, 2008 and then again on March 25, 2009, he applied to the Law Society of British Columbia for temporary articles.

[3] In the course of his applications, there was disclosure of the 2000 Charges, the marijuana grow-operation discovered at that time (the " 2000 Operation") and, eventually, his involvement in a further marijuana grow-operation, which was discovered by the police in January 2004 (the " 2004 Operation"). Again, as with the 2000 Operation, the police did not lay charges.

[4] On June 10, 2009, the Credentials Committee of the Law Society ordered a hearing pursuant to section 19(2) of the *Legal Profession Act* to determine whether or not the Applicant's application for temporary articles should be granted.

Evidence

[5] The Panel heard oral evidence from five witnesses:

(a) the Applicant;
(b) Ms. M;
(c) the landlord of the house in which the Applicant was the tenant and ran the 2000 Operation and 2004 Operation (" Ms. S");
(d) his present girlfriend (" Ms. G"); and
(e) his proposed principal, Brian Jackson.

The Panel was also provided with documentary evidence, including police reports, the Applicant's articling application forms, letters of reference, and email exchanges between the Applicant and Ms. S.

[6] During the course of the hearing, an order was made concerning two of the witnesses, Ms. M and Ms. G, prohibiting disclosure of any information that would disclose the identity of either of them and specifying how that order would be implemented.

[7] All the evidence, transcripts of the hearing, and written and oral submissions of the parties were carefully considered. The parties had an opportunity to make oral submissions on the transcripts and the written submissions.

Subject Matter of the Hearing

[8] The Law Society expressed the following concerns regarding the Applicant's application for enrolment:

(a) The circumstances surrounding the Applicant being charged in 2000 with:

i. sexual assault using a weapon;
ii. uttering threats to cause death or bodily harm; and
iii. kidnapping with the intent to confine the victim against her will;

(b) The circumstances surrounding the Applicant's previous involvement in growing marijuana in 2000 and 2004; and
(c) The circumstances surrounding the Applicant's possession of an unlicensed shotgun that was seized by the police in 2000.

[9] The Law Society's position with respect to these concerns is as follows:

(a) Taken as a whole, the circumstances leading to the 2000 Charges and his involvement in the 2000 Operation and the 2004 Operation raise serious concerns regarding his character, reputation and fitness to be called as a barrister and admitted as a solicitor of the Supreme Court, and his application should be rejected;
(b) With respect to the Applicant's possession of the shotgun, the Law Society does not take issue with the Applicant's evidence that the shotgun was given to him by his grandfather. It did not make submissions on this point and does not argue that it is a matter that gives rise to concern regarding the Applicant's fitness to be called.

[10] The Applicant's position is that he does have the character, reputation and fitness to be called, for the following reasons:

(a) The basis of 2000 Charges, including the sexual assault and threatening of Ms. M and her children, is unsubstantiated and denied by Ms. M and himself;
(b) While he admits growing marijuana in 2000 and 2004, he denies that his conduct in respect of this creates any serious concerns; and
(c) Irrespective of his past behaviour and any other considerations, his conduct in recent years, and particularly during his legal education in 2007 through to 2010, reflects his rehabilitation.

[11] The contested facts surrounding the 2000 Charges were the focus of much of the evidence. We have

kept in mind that it is not our task to determine whether or not the 2000 Charges are substantiated on a civil or criminal basis. Our task is to determine the Applicant's fitness for admission. We view all of the allegations made in 2000 to be serious, particularly the allegations of sexual assault and threatening Ms. M.'s children. To the extent that they are substantiated, they are relevant to the issue of whether the Applicant's character is such that he is fit to be called. For ease of reference, where relevant we refer to only the " sexual assault" , keeping in mind that the other events may have occurred which led to the charges of confinement and threatening. We have taken all of the 2000 allegations into account in this decision and kept in mind that the Applicant was never convicted of any of the 2000 Charges.

Nature of Credentials Hearings and Applicable Test

[12] The purpose of this hearing is to determine whether the Applicant satisfies the requirement of section 19(1) of the *Legal Profession Act*, which provides that:

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

[13] Section 22(3) of the *Legal Profession Act* provides that, following a hearing, the panel must grant the application, grant it subject to appropriate conditions or limitations, or reject it.

[14] The Applicant has the burden of proving that he meets the character and fitness test on a balance of probabilities (Rule 2-67). In *Re. McOuat*, June 12, 1992 Panel Decision at p. 11 (affirmed by the Court of Appeal in *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106), the panel commented on the central question of what constitutes good character:

> What constitutes good character and repute and fitness to become a barrister and a solicitor of the Supreme Court? In an article entitled, " What is "Good Character'?" published in *The Advocate*, (1987) v. 35, at 129, Mary Southin, QC (as she then was), considered the meaning of the terms, stating:
>
> > 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.
> >
> > 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.
> >
> > 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.
> >
> > 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? ...

> If that right-thinking citizen would say, knowing as much about an applicant as the Benchers do, " I don't think much of a fellow like that. I don't think I would want him for my lawyer" , then I think the Benchers ought not to call him or her.

[15] Mary Southin's article has been quoted with approval in several other British Columbia Law Society Credentials decisions, such as *Re. Smart* (December 19, 1996 Panel Decision at p.3).

[16] The test of good character and repute has both subjective and objective aspects. This was explained by the hearing panel in *McOuat*, *supra,* at p. 12:

> The word " character" in the expression " good character and repute" has been treated in many decided cases, especially the older ones, as importing the character or " characterization" given the applicant by other persons, what may be called a subjective sense. An example is *Leader* v. *Yell* (1864), 16 CB (NS) 584; 143 ER 1256 where Erle CJ said
>
> Good or bad character does not depend on what a man knows of himself; it means his general reputation in the estimation of his neighbours.

In the same case Byles J said

> ... character does not mean a man's real conduct and mode of life, but it means his reputation among his neighbours.

In more recent cases the words " good character" seem to be applied in the context of " strength of character" or " character defect" . Used in that way the expression " good character" refers to what a man's personality, principles and beliefs actually are as opposed to the way the community regards him, whether or not he has earned the good or bad regard in which he is held. This sense may be considered objective. One tends to naturally consider it more important that a lawyer be a good person and have and act upon correct principles as opposed to being regarded, rightly or wrongly, by others as seeming to be good or bad. But we think we are required to consider the regard in which the candidate is held by others as well as the qualities of character Mr. McOuat possesses, that is both the subjective and objective senses of " good character" .

[17] In this same case, the panel explained the fitness test at pp. 17-18:

> 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 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.
>
> The cannons [sic] of legal ethics [*Professional Conduct Handbook*, chapter 1] adopted by the Law Society provide assistance, when they assert:
>
> > 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.
> >
> > 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.

[18] There is overlap between the character test and the fitness test. If this applicant fails the character test, he will automatically fail the fitness test (*McOuat, supra*).

[19] The expectations of both the public and the profession ought to be reflected in assessing fitness, character and reputation. The hearing panel in *Re. DM* (June 14,1994 Panel Decision) recognized this,

stating at pp.4-5:

> ...fitness in this context depends on good character and reputation and must reflect to some extent the expectations of both the public generally and other lawyers specifically in what both groups desire, need or otherwise seek in a member of this profession. Like it or not, lawyers are held out to represent themselves as a community to the larger public community and as a group which, because of its honesty and integrity, enjoys an especial place. Accordingly, the status of barrister and solicitor requires that a special standard of honesty, integrity, and trustworthiness be imposed, met and kept at all times so that public confidence is maintained and properly nurtured. To prove that this standard is met and will be met thus requires more than a reflection on a person's past honest conduct. The burden is high so that same public can see that was as a profession having earned and been granted their trust, will continue to work toward doing everything necessary to keep it. To this end a lawyer must not only show that he or she has all the attributes of good character - honesty being one of them - the lawyer must also show that he or she has other attributes from which a forecast of future integrity can be made. In summary, the profession at large and also the general public require lawyers to adhere to impeccable standards of behaviour and it is only through the adherence to such standards that we may achieve and keep the high regard for which we as a profession clamber and which, inter alia, gives to lawyers both status and economic advantage.

[19] The Applicant must establish that he is of good character at the time of the hearing. However, the standard is not one of perfection. The hearing panel in *Re. Lee*, 2009 LSBC 22 at para. [79] stated this principle, by quoting *Law Society of Upper Canada* v. *Schuchert,* [2001] LSDD No. 63, at para. 18:

> 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.

[20] *Re. Lee* goes on to quote *Law Society of Upper Canada* v. *Birman*, [2005] LSDD No. 13, at paras. 13 and 14, which sets out the following from the reasons in *Re Spicer* of May 1, 1994:

> 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.

[21] In the matter before this Panel, the Applicant's alleged and admitted illegal behaviour must be assessed to determine its relevance to character and fitness. In *Re. Lee, supra*, the panel set out the test for determining whether the applicant's past assaultive behaviour should bar his admission as an articled student. The factors identified in the test provide helpful guidance for Credentials panels dealing with criminal activities generally. *Re. Lee* directs the panel to consider all surrounding circumstances including, but not limited to, the past conduct in light of the applicant's age at the time of commission, the recency, reliability, seriousness and cumulative effect of the conduct and, of course, the factors underlying it. In terms of the state of an applicant's rehabilitation, the following should be considered:

(a) evidence of it;
(b) positive social contribution since the conduct;
(c) the applicant's candour in the admissions process; and
(d) materiality of any omissions or misrepresentation.

[22] Credential hearings are a challenge to panel members. They have to enquire into an applicant's " good character and repute" . This enquiry raises high human drama. In many cases, such as the one the Panel faces here, the Applicant has engaged in activity that is criminal in nature, whether or not it led to a criminal

conviction. Such activity raises an immediate concern regarding the character and fitness of the Applicant. The question becomes whether the applicant is able to demonstrate that he or she has rehabilitated himself or herself. Always a balance must be struck between protecting the public from rogue or undesirable lawyers and the concept of redemption through rehabilitation, which runs deep in western civilization.
[23] The determining factor at all Credentials hearings is the public interest. To protect the public, the Law Society must be satisfied that an applicant meets the test of being of " good character and repute" . Unlike in the disciplinary context, the onus is on the Applicant to meet this standard. In this context, public interest has a broader meaning. It is in the public interest to have articled students and lawyers from diverse backgrounds. Persons who have gone astray and have truly rehabilitated themselves can give valuable insight to clients, the courts and the public. They can become valued and trustworthy members of the profession. They set an example to all of us. However, here the onus is on this Applicant to prove his rehabilitation. It is not enough for the Applicant to appear and say, " These events happened a long time ago, and by the way, I have rehabilitated myself." A much more thorough examination is required.
[24] In such a hearing, the credibility of the Applicant and all other witnesses is key. When evidence provided is contradictory, the Panel must make those findings necessary to reach a conclusion regarding that evidence. Contradictory evidence is assessed by looking at all of the evidence as a whole, including the credibility of those attesting to it. If the Panel does not find a witness credible, the reasons for that finding must be clearly laid out.
[25] For reasons set out within this decision, this Panel does not find this Applicant to be credible. After considering the evidence as a whole, we conclude that he has not established on the balance of probabilities that he is of such character and repute that he is fit to be called as a barrister and solicitor of the Supreme Court. Therefore, the Panel does not approve this application for Temporary Articles.

Facts Regarding Past Conduct

Procedural and General

[26] At the outset of the hearing, the Law Society put into evidence the various police reports regarding the events of February 16 and 17, 2000 that led to the 2000 Charges. Subject to several points that were identified, the Applicant agreed that the statements made in the police records were accurate statements, documents and observations on the part of the police officers. However, he disputes the occurrence of many of the events described in these police reports.
[27] In order to accommodate Ms. M as a witness, the Applicant's testimony was interrupted in the middle of his cross-examination. Ms. M testified and then the Applicant's cross-examination resumed. As a result of this anomaly, Ms. M provided evidence that, in various respects, contradicted the evidence already provided by the Applicant. He was then cross-examined on these discrepancies, some of which may be understandable given that individuals have different experiences of the same events, and a range of opinions and recollections are to be expected. Some other recollections of important events diverged so strongly that the credibility of both witnesses must be assessed.
[28] At the time of the hearing, the Applicant was 49 years of age. He was born in a small community and grew up on a dairy farm. His father died when he was 12 and the family moved into the small community. He graduated from a high school nearby. After high school, he worked at odd jobs and ultimately embarked upon a career as a commercial fisherman.
[29] His youth was marked by verbal and physical abuse at the hands of his mother. He maintains that some aspects of the abuse continued until she died a few years ago. Since 2006 the Applicant has sought

counseling to deal with the aftermath of this abuse.
[30] In 1992 the Applicant married. He and his spouse had two children, born in 1992 and 1994. The couple broke up in 1995 due to the fact the Applicant spent a great deal of time away from home fishing.
[31] He has been significantly involved in raising his children. He generally cared for them every weekend and coached them in youth soccer for nearly 10 years. Despite the many financial challenges that go with raising children while attending school full-time, the Applicant is proud of the fact that he has never missed a child support payment nor asked for any reduction in the monthly child support amount payable due to his reduced income.
[32] As a parent, the Applicant became very concerned about the dangers and injuries he encountered while fishing as well as the effects upon his children of having their father away for many months of the year. He went to the Pacific Marine Training College and obtained a First Mate's Ticket, but could not find a position. He decided to pursue post-secondary education. He dreamt of being a lawyer from an early age, but his primary goal was to pursue higher education in order to create a life that provided more opportunity and work that would not take him away from his children.
[33] Therefore, in 2002, the Applicant began upon a challenging and lengthy educational path: community college attendance, followed by the achievement of an undergraduate degree in geography and law school between 2006 and 2010. Throughout these years of post-secondary schooling, he juggled part-time work, often for professors, with parenting and the financial responsibilities that come with adult life. During law school he was an award-winning participant in *pro bono* legal programs and for the Salvation Army.
[34] From approximately June 1999 until January 2004 when the 2004 Operation was discovered, the Applicant rented a house on Victoria Drive in Vancouver (" Victoria Drive"). Victoria Drive was owned by a young woman, Ms. S. At that time she lived at home with her parents and her father was significantly involved in some aspects of the tenancy. The Applicant developed a good relationship with Ms. S. and her father. From time to time he dropped off fish for Ms. S.'s father to enjoy, always paid his rent on time and generally established himself as an excellent tenant. During the years of the tenancy, Ms. S. never had a reason to inspect Victoria Drive, since she saw the Applicant as an ideal, " low-maintenance" tenant whom she came to trust.
[35] Overall, the Applicant portrayed himself as a person who is good at relationships. Beyond the relationship with Ms. S. and her father, he maintained a relationship of sorts with Ms. M over many years and developed good working relationships with professors from whom he acquired much-needed work during his university years. He now enjoys a new relationship with Ms. G and has developed a positive working relationship with his prospective principal, Mr. Jackson. During law school he maintained significant volunteer commitments in various legal *pro bono* programs and earned the respect of his supervisors in those programs.
[36] The Applicant testified that, early in his first year of law school, he reviewed the relevant statute and became aware that it would be required that he demonstrate his good character before he would be allowed to become a member of the Bar.
[37] He has now applied to the Law Society for temporary articles twice. In the first application of December 12, 2008, he briefly stated that he had been charged with offences laid in 2000 by a party who had been stalking him. He correctly advised there were no convictions, and attached some of the police and Provincial Court records relating to the 2000 Charges.
[38] He eventually withdrew this articling application and submitted a second application on March 5, 2009. In it, some details of the February, 2000 events were provided: the first but not the second grow-operation was revealed, plus some documentation and a description of his version of the facts surrounding the 2000 Charges. He asserted that the sex was consensual and that there " was absolutely no evidence of the

alleged assault. The police notes state that ... [Ms. M] alleged that I cut her blouse and bra off with scissors but there was no evidence of this."
[39] The 2004 Operation was disclosed by the Applicant's counsel in correspondence shortly after the second application was filed.

2000 Charges

Relationship with Ms. M prior to February 16, 2000

[40] The Applicant testified that he and Ms. M both grew up in the same small community, so they knew of one another. In approximately 1997, they became acquainted after meeting at a bar. Ms. M was a single parent with four children, having unfortunately lost a fifth child.
[41] Both the Applicant and Ms. M explained that they had a strange, dysfunctional relationship. There was not any real dating between them. Instead there seems to have been a series of frequent sexual encounters over the years. After approximately two years, the Applicant told Ms. M that he did not want to be involved in the relationship any longer. The Applicant testified that Ms. M did not accept the termination of the relationship and that, during 1999, Ms. M engaged in behaviour that he considered to be stalking.
[42] The Applicant gave evidence of the following stalking incidents involving Ms. M.:

(a) He received a pamphlet slipped under his door entitled, " Are you Being Stalked?" The pamphlet was from the same educational institution that Ms. M was attending. He believed that she had sent it.
(b) Ms. M jumped in the back of his truck and refused to get out despite the Applicant pleading with her to do so. Ms. M refused, staying in the back of the truck for approximately 20 minutes until she overheard him calling the police through the window, which was partially rolled down. The Applicant stated that he did not roll down his window all the way because he was concerned Ms. M could reach into the cab of the truck.
(c) Ms. M showed up once while he was taking classes at the Pacific Marine Training College and held up a pair of girl's panties, saying " Who the ... do these belong to?" in the class.
(d) Ms. M showed up at his house. Because he would not let her in, she began screaming and banged and kicked the door. During that incident, Ms. M told the Applicant that she would get him. The Applicant stated that he called the police.
(e) Ms. M used his name to open up a BC Hydro account on Vancouver Island without his knowledge. The account became overdue and, as a result, BC Hydro cut off his power. The Applicant provided a copy of his application to BC Hydro confirming the application to cancel the account.

(f) Ms. M made a copy of the key to his house. This was later confirmed when Ms. M gained access to his house on February 16, 2000.

[43] The Applicant stated that these incidents caused him great concern. He became convinced that Ms. M was going to do something to try to harm him more seriously at some point. He denied an existing relationship between them by February 2000.
[44] At the hearing, Ms. M gave a somewhat different view of the nature and length of their relationship. When asked how long the relationship lasted, Ms. M stated, " We slept together for five years," and later in her evidence she said it lasted four years. She described how they fought constantly and that he would call her when it was convenient for him. A relationship of some sort was still ongoing as of February 2000. The police report relating to the 2000 Charges states that, during the investigation, Ms. M told the police that she had been dating the Applicant for approximately three years, that they never had resided together and that they would normally see each other two to three times a week.
[45] Ms. M testified that she house-sat Victoria Drive for the Applicant in late 1999 for a period of time.

During that time, she was not aware of any grow-operation.

[46] As stated, the Applicant had earlier testified that he had no ongoing relationship with Ms. M., as she had been stalking him. However, when questioned in cross-examination as to Ms. M.'s evidence on the house-sitting, the Applicant admitted that she had house-sat at Victoria Drive early on in his tenancy, living there sometime between August and November 1999. Although he had testified that, during this period of time, Ms. M was harassing him and he was fearful of her, the Applicant stated the following in cross-examination:

> Q. You are fearful of her yet you let her stay in your house?
> A. I was fearful of her, but I spent time with her and let her stay in my house, yes.
> Q. And why would you let her stay in your house if you have this fear of her?
> A. Well, there is some very deep reasons for that. I tended at that time in my life to make some very dangerous decisions and that's something that I have addressed in counselling and I made dangerous life decisions. I made dangerous decisions - I did the most dangerous type of fishing. I was on the most dangerous boat. That was the boat that went out in the worst weather and I just tended to make dangerous decisions at that kind of low period in my life.
>
> Q. Some incidents of some poor judgment?
> A. Yes, very poor judgment.
>
> *Transcript*, March 15, 2010, Cross-examination of the Applicant.

[47] Ms. M told the Panel that she tried to get pregnant by the Applicant in November 1999 in order to force him into a more committed, intimate relationship. She found out that she was pregnant in December 1999. He " freaked out" and made it clear he would not want his child to be raised by someone on welfare, making reference to the fact that she had no money and no income. He alternated between offering to take her shopping and threatening to never talk to her again if she had the baby. At his urging, she had an abortion in January 2000.

[48] Ms. M described how, following the abortion, the Applicant took her out to celebrate her January birthday. He gave her a nice top. She testified that she felt very conflicted and angry with him and " not in her right mind" . She explained that, overall, she expected more of the relationship than the Applicant. She described that nothing she did would make him love her. She had hoped at one time for cohabitation or perhaps marriage.

[49] When cross-examined as to Ms. M.'s evidence on the pregnancy, the Applicant agreed that Ms. M had become pregnant and had had an abortion in January 2000, but denied that he had any knowledge that he had made her pregnant.

February 16, 2000 Break-In

[50] On the evening of February 16, 2000, Ms. M went to the Applicant's Victoria Drive residence when he was not home. The Applicant testified that she went without his knowledge or permission. She gained entrance to the house by using the key that she had copied from the Applicant's key. While in his residence, she heard an answering machine message, which she believed confirmed her concerns that he was seeing another woman. She became angry and threw the Applicant's computer and his telephone through the front window. When leaving, she took his cell phone and the keys to his truck and drove away in his truck. Ms. M explained her reasoning for throwing the Applicant's belongings through the window:

> ...So my thinking at the time was that I wanted the relationship to be over, and if I broke something, destroyed his property, that he would be so disgusted by my actions that he would not call me, that that would be the end of the relationship, and I had thought that his house insurance would cover the damage, so I figured it was a win-win situation...

Transcript, March 15, 2010, Cross-examination of Ms. M.

[51] It is noteworthy that, although Ms. M testified that she did not want the Applicant to call her, she took his truck, keys and cell phone. These were actions that would guarantee further contact between the two of them.

[52] Hearing a disturbance, a neighbour called the police, who came to the house to investigate and discovered the 2000 Operation. The police seized a significant amount of grow-operation equipment, a quantity of dried marijuana, the gun and a " large sum of cash." They also interviewed the Applicant when he returned home.

[53] The Applicant testified that, when he arrived home and saw the broken window and his computer tower, monitor and telephone lying on the front lawn, he immediately pieced together that Ms. M had done this, since he suspected that she had made a copy of his keys at some point.

February 17, 2000 Alleged Sexual Assault

[54] The Applicant and the Law Society agree on the following:

(a) The next day, February 17, 2000, Ms. M returned to Victoria Drive with the Applicant's truck;
(b) They had sex twice;
(c) Later that same day, Ms. M. contacted the police and reported that she had been assaulted, confined and threatened;
(d) The police investigated and the 2000 Charges were laid on February 21, 2000. A peace bond (the " No-Contact Order") was issued, barring the Applicant from any contact with Ms. M and her children;
(e) On February 22, 2000, Ms. M contacted the police again and recanted her story.
(f) When Ms. M did not appear to give evidence on the November, 2000 date set for trial, the 2000 Charges were stayed.

[55] Beyond these facts, we heard divergent versions of the context and events of February 16 and 17, 2000.

[56] The Law Society relies upon the version of the events summarized in the police reports and report to Crown Counsel prepared in relation to the events that occurred between February 16 and 22, 2000. After being edited for readability and privacy, these reports (the " Police Narrative") summarize the events of February 16 and 17, 2000 in the following manner, beginning after the break-in on the evening of February 16, 2000:

(a) On February 16, 2000, Ms. M called the Applicant at 9 p.m. He was very angry with the damage she had caused and the money he had lost as a result of his marijuana being seized. The Applicant told Ms. M that he wanted restitution for all the damage she had done. He told her she should be doing everything in her power to make him happy because of all she had cost him. They spoke of a repayment plan for the computer and damage. He told her that, because of what she had done, he was out $15,000 for the drugs seized, that he wouldn't be able to pay his rent and that he therefore would be evicted. He also said that because of her, the tenant in the basement was arrested on an immigration warrant and was going to be thrown out of the country. He said she should come to his house, clean up the glass outside, and see the mess caused by the police after they discovered the drugs, shotgun and 9mm bullets.
(b) Ms. M felt bad because of everything she had done and the grief she had brought upon him, so she drove to his place at approximately 1 p.m. on February 17. She knocked on his door when she arrived, but there was no answer. She also called him on her cell phone and didn't get any response. She assumed he was sleeping so she started cleaning up the broken glass outside. She went to his backyard to get a broom to sweep the sidewalk and, when she returned to the front of the house, the Applicant was at the window. He came outside and told her to come into the house. She said she didn't

want to come inside because she was afraid he would hurt her. He said he wouldn't hurt her but proceeded to grab her by the arm and pull her up the front stairs and inside the house. Once inside he locked the front door.

(c) The Applicant immediately pinned Ms. M down on the floor, putting his knees on her shoulders. He ripped her shirt down the centre. He told her he was going to " ... her several times." He had a pair of scissors with him and proceeded to cut her bra, took off her pants and forced vaginal intercourse with her. He refused to wear a condom saying that " he hadn't ... anyone else" . While she was on the ground, he hit her in the side of the head and said he was going to break her nose. He said this would happen before she left because he wanted her to be able to look in the mirror and remember what had happened. He also kicked her very hard on the back of her left leg. He then took the scissors and cut large chunks out of her hair. The actual intercourse lasted around 5 minutes.
(d) When he finished having, sex he was still very angry and was yelling at her about all the things she had caused to happen, blaming her for everything going wrong in his life. He said he wouldn't be able to get his Marine Captain's certificate because he would now have a record for trafficking. He would have to go back to work fishing to earn money, and because of this he wouldn't be able to see his kids. He also said how much his kids had loved the computer and now didn't have it to use because she broke it.

(e) This conversation occurred after the sexual assault. She was seated on a chair, and he was seated on the sofa. He would get up every once in a while and walk over to her and slap her on the side of the head. He did this repeatedly on the right side of her head near the temple area covered by hair.
(f) In order to try to buy more time and not be beaten, she asked him if she could go to the bathroom. She also tried to calm the situation by telling him she would give him whatever money she had, including her rent money. He was still angry and took the scissors and proceeded to cut the top of her shoe, purse strap, and the back of her jeans. On three separate occasions, he cut chunks out of her hair. Most of the time that he was yelling at her and hitting her, the scissors remained in his hands. Ms. M asked him several times to stop and put the scissors down. During this time, Ms. M was wearing nothing other than the Applicant's Lee Stormrider jacket, because he had taken off or ruined all her clothing. She had put his jacket on after coming out of the bathroom since it was on the chair where she was seated.
(g) The Applicant also held the scissors in his hand the second time he raped her. Ms. M again asked him to put the scissors down because she was afraid he would stick them up her. He told her he intended to rape her several times. He was going to tie her up with duct tape in order to keep her there while he attended an appointment at 4 p.m. He went towards the kitchen at one point to get the duct tape. She stayed behind in the living room and went toward the front door. She managed to unlock the dead bolt and the doorknob but couldn't get the latch undone. He returned and locked the door and said, " You're not going anywhere."

(h) She returned to the sofa and tried to calm him down and talk rationally. He would become angry and violent every time he started to think about his situation and would strike her in the head. She even suggested sex the second time to calm him down and to keep herself from being hit again. She thinks the actual intercourse lasted about less than 5 minutes the second time. Both incidents took place on the floor of the living room.
(i) After the second sexual assault, Ms. M was allowed to get up. They had come to an informal agreement on the repayment schedule, and he had given her his bank account number in order for her to deposit the money. She put her torn clothing back on and was allowed to leave just prior to his 4:00 appointment. He used some clear tape to put her shoe together so she could walk. Before she left, he threatened to harm her and her kids if she didn't pay him. He said he was going to come to her place

that evening. If she paid him, then he wouldn't hurt her children. He told her she would have to move and that there was no place where she could escape this. He said no matter where she went that he would find her. He made reference to how it only cost him $300 to find that person who was killed in Bellingham and that it would only cost $200 dollars to have someone find her here. (Note: this last sentence of the Police Narrative does not entirely make sense. We include it here verbatim.)

(j) She left the house and walked into a thrift store on Commercial Drive to use a phone to get a ride home. The store clerk reported that Ms. M came in looking very distraught and told the clerk that she had been raped and beaten by her ex-boyfriend and needed to use a telephone to find a ride home. The clerk felt the lump on the side of Ms. M.'s head and observed her cut clothing, including the cut back side of one leg of her jeans and the top of one shoe which had been put back together with clear tape. The clerk also observed that Ms. M's hair had been lopped off in several spots.
(k) Ms. M returned home and, after thinking about what happened, decided to call the police. She phoned the local police because she was worried for the safety of herself and her children.

[57] The police report contains a further note, again edited for readability:

On February 19, 2000, Ms. M contacted the Applicant regarding the money payment arrangements. He continued to make verbal threats saying he didn't feel sufficient damage had been done to make her realize the significance of what she had caused. He said he was going to smash her in the face and break her nose no matter where he ran into her. They agreed that Ms. M would pay him $360 on Monday, Feb. 21, $859 dollars (her rent money) before the end of February and then $100 dollars a month for the next 18 months.

[58] The local police took a series of steps:

(a) They arranged for victim/witness services to move Ms. M and her children to a place of safety;
(b) They seized the cut jeans she had been wearing as well as the hair she had preserved. Detectives went to Ms. M's residence to retrieve the coat and shoe that had been cut by the suspect. The coat had a clean cut approximately 4 inches long where it buttoned up. The shoe had been cleanly cut on the top portion;
(c) The police conducted a videotaped interview with Ms. M, in which she repeated the substance of the allegations recited earlier;
(d) Sexual assault team members were called out and performed the physical examination and collected specimens for forensic examination. Significant evidence of a physical assault was observed. This included a large bruise on the back of Ms. M's left upper leg, fingertip bruising on the right upper arm, bruising inside and out of the left corner of the mouth, pain and tenderness upon touching the right temple area of the head, a bruise above the right knee, a smaller bruise below the right knee and petechial bruising on the left upper arm. The genital examination did not show anything noteworthy, although samples were taken;
(e) On February 20, 2000 the detectives met with Ms. M and reported that, " We met with the victim to take photographs of bruises she received during the assault, the large bruise on the back of her left leg and bruising on her right leg. Ms. M handed over the bra, which had been cut by the accused and the purse with the cut strap."

[59] On February 21, 2000 the Applicant, wearing his Lee Stormrider jacket, was arrested and charged with the 2000 Charges. The No-Contact Order was issued.

[60] On February 22, 2000 Ms. M contacted the police to advise that she wished to " recant her story, that she had lied to the police and made the whole thing up, and wished to make her statement immediately." The detective reminded her that there was physical and medical evidence to corroborate her statement. He said that she didn't care and that she " just wanted the charges to go away."

[61] The police report contains a section headed " Investigator's Observations" , which follows the report

regarding Ms. M's February 22, 2000 retraction of her complaint:

> The victim expressed reluctance to proceed with charges against the accused from the very beginning. The significant risk to her children and other repercussions from the accused were factors in the requesting of charges. Her emotional stability is questionable.
>
> Victim has consistently shown a great deal of concern for accused in regards to his custodial status, his financial and work situations. From the onset of this investigation, she has blamed herself for this incident. She is intent upon paying [the Applicant] for the damage done to his house, the loss of his marijuana and grow-op equipment as well as the cash he laid out for the marijuana seized by the police. The investigators believe that Ms. M will do anything within her power to have the charges dropped against [the Applicant], and this includes the recanting of her original statement.
>
> The physical evidence documented by [police] and photographed ... corroborates the victim's original version of events. ...

[62] At the hearing, Ms. M denied the occurrence of almost all of the February 17 events that she had reported to the police, but admitted contacting them and making a report. Among other things, she denied having gone to Victoria Drive on February 17, 2000 or having had sex that day with the Applicant there.
[63] In contrast, the Applicant testified that Ms. M did come to Victoria Drive on February 17, 2000. He admitted that a few but not all of the February 17 events set out in the Police Narrative occurred.
[64] He testified to the following version of the events: Ms. M phoned him in the evening of February 16, after the break-in. He asked her to return his truck. She arrived at his home the next day with his truck. He was feeling very upset. According to the Applicant, Ms. M said to him, " Perhaps you will feel better if we have sex." The Applicant stated that he had consensual sex with Ms. M twice, and that she then left. He denied that sexual assault or any other assault took place. He denied threatening Ms. M's children or uttering any other threats. In terms of his emotional response to the events of the previous day, the Applicant testified as follows:

> Q. At some point she says, " You will feel better if we have sex."
> A. Yes.
> Q. Do you recall anything other than that?
> A. I don't recall. Sorry.
>
> Q. Were you angry or not?
> A. I don't think I was really angry. I'm still not really angry at her.
> Q. So she broke into your house, threw stuff through your window, it resulted in the police finding a marijuana grow op, and you don't recall ever really talking to her about it?
> A. I don't recall ever talking to her about it. I have never asked her why. I just - it was all just so out of place to me and out of the ordinary and devastating that I just - she was probably the last person I would want to talk to about it. I didn't really - I don't think I really cared what her explanation was at that point.
>
> *Transcript*, March 15, 2010, Cross-examination of the Applicant.

[65] The Applicant testified that, despite the fact that he was being stalked by Ms. M and that he was convinced that she was going to harm him, he decided to have sex with her, possibly to make himself feel better and to avoid making her any angrier. He was " devastated" and probably was not thinking rationally as he would have in a normal situation. In hindsight, he feels he acted with very poor judgment. He did not ask Ms. M to make restitution.
[66] In terms of Ms. M's testimony as to the events, in her direct examination by the Applicant's counsel, she was asked only two questions: 1) Was the complaint she made to the police true?; and 2) Had she retracted

it? She answered " no" to the first question and " yes" to the second. Through her voice and her demeanour, Ms. M appeared somewhat confused and hesitant in giving these answers. Her voice was so soft she had to be asked to speak up.

[67] In Ms. M's cross-examination, considerably more information was reviewed, including the fact that she does not recall communicating with the Applicant at all on February 17, the day after she broke into his house, did not go to his residence that day or within a couple of days after the break-in and various specifics regarding their relationship, the pregnancy and the abortion.

[68] She explained that the true facts regarding the events of February 17 and 18 are as follows**:**

(a) On February 16, she cut up her own clothing prior to phoning the police. She then travelled from her home to the Commercial Drive thrift store in order to corroborate her story, travelling by bus, skytrain and on foot;

(b) She cut her own hair, again to provide evidence to corroborate her story to the police;

(c) The bruising on her body was the result of a snowboarding trip to Whistler with her son;

(d) She made up the sexual assault allegation in order to protect herself before the Applicant could take retaliatory action against her. She believed it would be reasonable for him to retaliate against her because she had thrown his computer through his window.

(e) Because of her concern regarding retaliation, after the break-in she called her insurance company to confirm whether she would be covered if the Applicant were to damage her property. She learned that she would not be covered by her insurance for such loss, under such circumstances. Therefore, she next called the police with the intention of asking them what her options would be if she wished to protect her belongings against the Applicant's potential retaliation. She stated the following:

> Well, in the afternoon after I had thrown the computer through his window I had expected retaliation. And I had phoned my insurance company just to clarify if [the Applicant] comes and throws my TV through my window, which an eye for an eye, that's the kind of thinking that if you do something to somebody they are going to do something back to you, so my insurance company said that we wouldn't be covered in those instances because it's not a random act of violence. It's not like somebody breaking into your house and breaking your things. So I called the police in the afternoon with the intention of asking them what my options would be to protect myself from him if he was to damage my belongings.
>
> ...It [the police report] had indicated that I had mentioned a concern for my children's safety or my own, and I didn't. It was not - that wasn't the reason that I had contacted the police. But after they [the police] came to the house, it was 2:30, and I was expecting my kids home from school by 3:00, and I really just wanted them to be out of the house before then and it just didn't work that way and they kept asking me questions and then I was just sort of digging myself deeper and deeper and deeper and the next thing you know I was at the police station and then I was at a safe house. It just spiralled....

Q. So you called the police to ask them about your options should [the Applicant] come and start throwing your property around. How is it that the police ended up at your house?

A. Because I phoned them and they came by. I don't know. You would have to ask them. Honestly it's a long time ago. I remember making the phone call. When you phone the police station, you talk to somebody at the front desk. They put me through to an officer, and then they sent someone to the house for further questions. And then the people, the officer, the detectives from Vancouver that got involved after the fact, they weren't [local] police, you know, someone contacts someone and they show up.

Q. *And when was it that you began to make the allegations of the sexual assault? Was it on the phone with the police or when they arrived at your house or your residence?*

A. *I believe it was later at the police station* because that was 11 p.m. by the time I was taken out of the [local] police station from when I first phoned, so that's, you know, a good eight hours that I was with the police.

Q. And these allegations were all due to the fact that you were just upset and angry with [the Applicant]?

A. That's correct.

Q. *And was it something you had planned to do when you called the police, or was it something that just got out of control when you talked to the police?*

A. *It was all very spontaneous. I was working from the gut*. You know, I didn't - I planned to look and rifle through his things, but what were the odds that the phone would ring just then and that the message would be left. It was all very - I wouldn't say serendipitous, but it was what it was. It all came to fruition and a head and that was just - I was flying by the cuff.

[emphasis added]

Transcript, March 15, 2010, Cross-examination of Ms. M.

[69] When asked in cross-examination as to how the physical evidence came into being if the allegation was simply spontaneous, Ms. M responded, as follows:

Q. So it wasn't spontaneous in terms of your discussion with the police. You had it planned when you called the police then?

A. No. No. I told you my initial reasoning for calling the police was out of concern for -

Q. Maybe I'm not understanding the timeline correct. You called the police?

A. Yes, at 2 p.m. the next day.

Q. 2 p.m. the next day. You had no intention at that point of making allegations of sexual assault; is that right?

A. Whether I had or hadn't, I mean, I had given it thought.

Q. So you did, then? You intended to make an allegation of sexual assault when you called the police?

A. Possibly.

Q. You don't know?

A. Well, I did.

Q. You did what?

A. I did make allegations of sexual assault.

Transcript, March 15, 2010, Cross-examination of Ms. M.

[70] Ms. M testified that the Applicant did ask her to compensate him for the damage since he was " upset" about it, but she never paid. She said that many factors contributed to her making the sexual assault allegation: her struggle to provide for her children and to better herself through education, her emotional involvement with the Applicant over many years, her frustration at not being able to make him care for her, the pregnancy, the abortion, his slights on her parenting and her life of poverty.

Relationship with Ms. M After the 2000 Charges

[71] Ms. M testified that, after the No-Contact Order was issued, she continued to have contact with the Applicant " secretly" and had intercourse with him on various occasions. She seemed proud of the fact that he had continued to see her, and had continued to sleep with her, even though the No-Contact Order was in effect. She recalled them meeting at a hotel near her home while it was in force. Between the date of the

No-Contact Order on February 21, 2000 and June 2000 she estimated that she saw the Applicant " maybe three times" . Between June, 2000 and the date of the scheduled trial in November, 2000, she estimated that she saw the Applicant on a further three occasions. She indicated that after the incident she saw the Applicant six times in a year and spoke on the phone " maybe once a month" .

[72] In cross-examination, the Applicant agreed that he had intimate contact with Ms. M after February 2000 and that he could recall two such occasions. However, in a somewhat contradictory fashion, he also testified that he could not recall whether he met with Ms. M in contravention of the No-Contact Order, but also denied meeting with her at the hotel.

[73] A relationship of some sort between the Applicant and Ms. M is ongoing, although clearly sporadic and distant. Ms. M gave the Applicant her bank account number and he has given her money when " she was broke" , although the timing of these payments is not clear. She calls him when she feels upset; for example, when her cat died. She is reliant upon him contacting her as she has no telephone and little money. He contacted her through Facebook in order to arrange for her to testify at the hearing.

Conclusions Regarding the Sexual Assault and Other Allegations

[74] Did the sexual assault occur? Credentials hearings generally do not have to deal with this issue. Usually, there is a conviction or at least an admission of the offence under consideration. Neither exists in this case. This Panel is not a criminal court and is not bound by the criminal laws of evidence or standard of proof. However, given the gravity of the 2000 Charges, they must be considered by this Panel.

[75] Sexual assaults by their very nature generally occur in private where there are only two individuals present. In such circumstances, all of the relevant surrounding circumstances must be examined to see if an offence took place. In addition, if such evidence comes before a panel such as this, it has to determine the scope and nature of the offense.

[76] We must also consider whether making a finding of fact in the face of such contradictory evidence is required to decide the central question of whether the Applicant has met his burden of establishing the probability of his present good character, repute and fitness.

[77] The Applicant's counsel put forward a number of reasons why the alleged assault did not take place:

(a) Ms. M recanted her original allegation of sexual assault and all of the other allegations of threatening and confinement. Ten years after the event, she voluntarily recanted and now continues to deny any of these events occurred. This is not a situation of a victim of sexual assault recanting her story about a sexual assault by a current boyfriend who is in a position to influence her. The Applicant and Ms. M are no longer in a sexual relationship. There is every reason for the Panel to believe her recant.

(b) A genital examination was performed on Ms. M shortly after the alleged sexual assault, and there was no sign of assault. One would expect physical signs of a sexual assault under the circumstances described in the police reports.

(c) As Ms. M did not make her report to the police until the day after the alleged events, she had plenty of time to plan the false allegations of assault that she had made. As an example, the Applicant's counsel points out the discrepancy between the description of cut clothing described by the employee of the store and the actual clothing retrieved by police some time later, as the store employee reported fewer items being damaged than those provided by Ms. M to the police in the investigation. Ms. M had plenty of time to cut the additional clothing eventually provided to the police.

(d) If a serious assault had taken place and was so dramatic, why would Ms. M have had the presence of mind to pick up and keep pieces of her hair? The Applicant's counsel submitted that this is an indication that Ms. M planned in advance to have sexual intercourse with the Applicant and planned to create the cut hair as corroborative proof of the alleged sexual assault.

(e) Ms. M gave evidence that the Applicant was not a violent person, which is at odds with the police report description of the assault.
(f) The Applicant admits he had consensual sexual relations with Ms. M on February 17, 2000. He could have easily said that nothing at all happened in order to be consistent with Ms. M. This factor goes to his credibility.
(g) If the Panel finds what Ms. M said happened on February 16 and 17 to be unbelievable, it may find that she is an unreliable witness and thus dismiss all evidence derived from her, including the alleged sexual assault contained in the initial police report. For example, Ms. M testified that she otherwise had assaulted and blackmailed others and admitted the fraudulent use of the Applicant's name to obtain hydro services. The implication is that she is quite capable of making false allegations of sexual assault.

(h) Ms. M has explained how she received her bruises and cuts from snowboarding. Ms. M has also explained how she cut her clothing and hair. Therefore, there are alternative explanations for the evidence seized by the police.
(i) The store employee reported that Ms. M referred to the Applicant as her ex-boyfriend. This is proof that the relationship between the Applicant had ended; that being the case, his testimony that they were no longer in a relationship and he was afraid of her is credible. This supports a conclusion that Ms. M was stalking and harassing the Applicant and the sexual assault allegations were the culmination of her threat to " get him good" .

[78] However, there is another way to assess the evidence. There are three significantly different accounts of what took place on February 17, 2000 between Ms. M and the Applicant. In order to come to any findings in relation to the sexual assault, the weight of all of the evidence before the Panel must be assessed, which necessarily includes an assessment regarding the credibility of each of the three narratives and, most importantly, the credibility of the Applicant.
[79] First, the Police Narrative reflects the careful, detailed police reports to Crown Counsel made at the time that the investigation was conducted. They substantiate the sexual assault allegations. That being said, the Panel did not have complete access to the police file. Some information is missing, such as the statements from the store employee, forensic testing results and Ms. M's statement recanting her story to the police. Nevertheless, the Panel finds that the Police Narrative contains a reasonable explanation for the conduct of both parties. It has a logic and flow not found in the stories put forward by the Applicant and Ms. M. For example, Ms. M's jealous, destructive response to the telephone message is consistent with her description of herself as impulsive and somewhat violent when angered. The Police Narrative also provides a believable explanation of Ms. M's return to Victoria Drive on February 17, 2000: she wanted to clean up the house to make amends for the damage she caused the day before. In addition, the evidence is clear that the Applicant needed money at that stage of his life and the loss of the 2000 Operation was a significant blow to his plans. The anger he expressed towards Ms. M for having caused the discovery of the 2000 Operation and his demands for restitution, set out in the Police Narrative, are believable.
[80] In regard to the Applicant, several factors argue against the reliability of his evidence:

(a) It took a series of enquiries from the Law Society before the Applicant fully admitted the extent of the 2000 Charges. His statements to the Law Society regarding these events significantly understate the 2000 Charges and the evidence that supported them. His lack of frankness is striking. This leads to a concern that he was " making it up as he went along" .
(b) The Applicant argues that his credibility is supported by the fact that he has consistently maintained that the February 17 sex was consensual, despite Ms. M denying any contact of any sort that day. However, this consistency does not necessarily help his credibility. It is possible that he recalled from

his preparation for the trial on the 2000 Charges that a medical examination of Ms. M had been conducted and forensic samples taken. Therefore, when he disclosed the 2000 Charges to the Law Society in his application, he realized that it was not credible to deny all February 17 sexual contact with Ms. M. The defence of consent was, thus, the only defence available to him. At the hearing, he maintained the same approach. Having consistently maintained the only available defence does not necessarily confer credibility upon him. Beyond this, however, his story that he voluntarily had sex with a woman who he swears he was afraid of, was stalking him and who had just vandalized his house and caused his grow-operation to be seized, strains credulity.

(c) It is equally hard to accept the Applicant's testimony that he was hurt rather than angry at Ms. M for her behaviour. The Applicant had good reason to be very angry at Ms. M and, therefore had motivation to assault her: she violated his privacy, smashed his window, damaged his computer, and stole his cell phone, keys and truck. Most significantly, she exposed the Applicant's marijuana grow-operation to the police. His version of his reaction to these events was singularly unbelievable. A normal reaction would be anger, not hurt feelings. This expected reaction is convincingly supported by the facts set out in the Police Narrative and by Ms. M's testimony:

Well there was no contact order between the two of us. He was angry and I was angry so there wasn't really a lot of love or joy.

Transcript, March 15, 2010, Examination of Ms. M by Panel.

(d) The Applicant's account of his lack of a significant relationship with Ms. M after the 2000 Charges were laid lacks frankness and does not support his account that he was afraid of her. Ms. M's testimony was that she continued to have contact with the Applicant, including sexual relations, during the no contact period. Conveniently, he could not recall whether he had had sexual relations with Ms. M during that period. According to the Applicant, Ms. M had falsely accused him of sexual assault, yet he cannot remember whether he continued to engage in consensual sexual relations with her. One would expect that he would stay as far away from her as possible and certainly would remember such a significant point.

[81] There is another possible explanation for the Applicant's claim that he did not assault Ms. M. It may be that, with the benefit of self-exculpatory hindsight, he has genuinely come to believe that his actions did not constitute assault. Both he and the Police Narrative indicate that Ms. M suggested the second sexual act. Alternatively, the overall conduct may have been consistent with their relationship in some way, but Ms. M chose this particular occasion to complain to the police because of her anger with the Applicant due to the myriad problems in their relationship. Either of these possible explanations may create a situation where the Applicant feels sincerely justified in saying that the sexual assault did not occur. However, the Panel does not feel that these alternative explanations are likely to be true, given all of the circumstances and the evidence before us.

[82] To turn to Ms. M's oral evidence as to what happened on February 17 and 18, we do not find it to be credible. Her denial of the sexual assault and account of her conduct leading to her February 18 complaint to the police are unreliable for the following reasons:

(a) The overall story is improbable. As mentioned, she testified that she returned the Applicant's vehicle and went to her home, where she cut her clothing, hair and shoe. She says that she then travelled from the suburbs across the city by bus, skytrain and foot to a store on Commercial Drive in order to find a witness to whom she could state her story of the assault. Her statement that she decided to cut her own shoe, with such a long journey on public transit ahead of her, is implausible; the cut hair and other cut clothing would have been enough to create evidence of the assault without the inconvenience of a shoe held together by tape. Furthermore, by travelling such a distance in so disheveled a state, she risked

having others notice her before she reached the Applicant's Commercial Drive neighbourhood.
(b) Another inconsistency in Ms. M's story is the return of the truck to the Applicant. According to her testimony, she parked the truck several blocks away from his house, went directly home and had no contact with the Applicant for some time. If she never was in touch with the Applicant on February 17, how would she have communicated the location of the truck to him, or returned keys to him? Did he have spare keys? Her account offers no answers to these questions.
(c) Her claim that the injuries arose from snowboarding with her son at Whistler is not credible. Such injuries, including bruising of the mouth, upper arms, and throughout the body, are more consistent with a beating than snowboarding. Ms. M's initial report of a beating is corroborated by the evidence of the store employee and the medical examination.

(d) The fact that the medical examination of Ms. M's genital region disclosed no injury does not preclude the possibility of an assault. Women who are sexually assaulted may very well not fight back in order to avoid injury.
(e) The fact that Ms. M kept her hair after it had been cut by the Applicant is understandable. It is degrading to have one's hair cut without one's consent. Her having kept the hair is not, therefore, compelling evidence that she faked the assault.
(f) Ms. M's demeanour giving evidence, when confirming her retraction of the sexual assault complaint, was inconsistent with that of an individual telling the truth. When examined, she lowered her head, shifted her body in the witness stand and lowered her voice, prompting the Chair to ask her to speak up.
(g) Ms. M described some of her actions in mid-February 2000 as spontaneous. Her description of herself as a person who acts on her gut feeling and impulses was believable. The complex planning ascribed to Ms. M by the Applicant's counsel is inconsistent with her evidence of spontaneity in many situations.

[83] Why would she tell such a wild, inconsistent story to the Panel? Several reasons may have contributed to this:

(a) Ms. M's regard and feeling for the Applicant were evident in her evidence. She clearly still feels linked to him. The evidence supported the possibility of either an explicit or implicit understanding between Ms. M and the Applicant that he would provide some financial support to her. Both the Applicant and Ms. M describe him as continuing to occasionally provide small amounts of money to her. It was described as a friend helping a friend. Of more importance, the Applicant provides some emotional support to Ms. M. The relationship between the Applicant and Ms. M did not end all at once. He continued to have sexual relations with her after the complaint was made. Finally, the relationship petered out to its current minimal level, but it is clearly an important relationship to her, and she feels motivated to maintain it.
(b) She feels responsible for the events of February 16 and 17. She damaged the Applicant's property and indirectly helped the police discover his grow-operation. When the sexual assault allegedly happened, she had no immediate plans to report it to the police. However, she returned home and became more concerned that the Applicant would retaliate against her and come to damage her personal property. She first phoned the insurance company, and they told her that they would not cover any damage to her property under the circumstances that she described. She then, spontaneously, phoned the police. As she said, she got deeper and deeper into it, and the police were able to get the full story out;

(c) She is aware of the Applicant's ambitions to become a lawyer and knows that the 2000 Charges pose an obstacle to him. As a result, she feels a continuing obligation to help the Applicant. Her reasoning may be that if she had not thrown the computer and telephone out the window, the police would never have come to the house. There would have been no reason for the Applicant to be angry

at her. Therefore, he would never have assaulted her, she would never have reported it, and the 2000 Charges would not have been laid. This is why she did not show up for the sexual assault trial and now voluntarily gave evidence in front of the tribunal.

[84] Ms. M's version of events provides at least a possible explanation for the undeniable parts of the Police Narrative. In particular, Ms. M had to figure out how to explain the cut hair and clothing observed and seized by the police. It is improbable that she would have shown up at the Applicant's house on February 17, 2000 with cut clothing and hair. Equally, it would be difficult for her to explain how and where she cut her hair and clothing after having " consensual sex" with the Applicant. It would be difficult to cut them in the house after the " consensual sex" , as she could have been easily discovered and questioned by the Applicant. The best available explanation Ms. M could come up with in the hearing was to insist she never saw him on February 17 but planned the cut clothing and complaint to the thrift store employee as revenge. This explanation given by Ms. M at the hearing does not appear in the police notes made at the time that she recanted her story on February 22, 2000. As earlier quoted, at that time she was concerned with the " significant risk to her children and other repercussions from the accused."

[85] In summary, the Applicant had an opportunity and a motive to sexually assault Ms. M. The assault was not limited to a sexual assault but also included a general physical assault and threatening. There is corroborative evidence, including the cut clothing, the observed injuries and the statements of the store employee corroborating Ms. M.'s original statement to the police.

[86] However, Ms. M recanted her report of the assault in 2000 and in her evidence. The Panel must look at her withdrawal of her allegations and consider whether it is believable and what motives, if any, she had and now has for recanting. The Panel has stated compelling reasons not to believe Ms. M's withdrawal of the allegations. Women who are sexually assaulted may recant for a number of reasons. The first is put forward by the Applicant's counsel: she fabricated the whole story. However, another explanation may be that the complainant feels guilty about reporting the matter to the police and the negative consequences that ensue for the party charged. This is particularly true when there is an ongoing relationship between the complainant and the accused. At the time that the allegations were first made, there was some form of ongoing relationship between Ms. M and the Applicant. There still is an ongoing relationship between them, albeit in a much different form. It appears reasonably possible that these may be contributing factors in Ms. M's decision to recant in these circumstances.

[87] In order to make a decision on the application for call and admission, must the Panel resolve the question of whether or not the sexual assault took place? There is evidence going to both sides of this issue. While it would be helpful to come to a conclusion, we find it unnecessary to answer that question. However, we are not prepared to decide that it did not occur.

[88] We do conclude that, after considering all of the evidence relating to the 2000 Charges and his overall relationship with Ms. M, the Applicant's testimony regarding the 2000 Charges is not credible.

Marijuana Grow-Operations

The 2000 Operation

[89] As described, in June 1999 the Applicant rented Victoria Drive from Ms. S. She testified that when she first met with the Applicant, he seemed responsible, very pleasant, mild mannered and " clean cut" ; she " felt safe" with him. By that that time, the Applicant had begun to attend the Pacific Marine Training Institute, and his student status was part of his desirability as a tenant. Ms. S stated that she thought the Applicant was a great, low-maintenance tenant prior to the learning of the 2004 Operation.

[90] However, by November 1999, a few months after renting Victoria Drive, the Applicant began operating the 2000 Operation in the basement. It was a hydroponic operation, meaning that the marijuana was grown

in a nutrient solution rather than in soil. When questioned, the Applicant could not say whether this was a more sophisticated operation than simply growing the plants in soil.

[91] He testified that he was growing the marijuana with two other commercial fishermen, J and L, whom he had met in the dog park across the road from his house. The Applicant was emphatic that he did not know these men prior to meeting them at the dog park and never learned their last names. He did know that they lived near Commercial Drive. They would talk when they met at the dog park. They had grown marijuana before so they had experience in setting up the operation and supplied the necessary equipment. They formed a plan that they would all split up the marijuana so that they could use it when out on their fishing boats. They had no intention of selling it.

[92] The Applicant testified that he knew growing marijuana was illegal and that he was breaking the law. He explained his feelings at the time as follows:

> Q. And did you give any though to that [breaking the law] when you were doing it?
> A. I gave a lot of thought to it.
> Q. Concerned about it?
> A. Very concerned.
> Q. And why is that?
>
> A. Because I had lived a life free of anything like that and didn't like what I was doing and felt very terrible about it every day. I thought about it every day. ...
> Q. But it was weighing on your conscience, right? You knew it was a bad thing to do, it was illegal, and it sounds to me from your evidence that it was something that was weighing on your conscience?
> A. Yes.
>
> *Transcript*, March 15, 2010, Cross-examination of the Applicant.

[93] The Applicant acknowledged that his decision to take the risk of growing marijuana demonstrated poor judgment.

[94] Although the Applicant's testimony was somewhat unspecific and at times contradictory regarding some details, he explained that the following renovations had to be done to the basement, in order to accommodate the 2000 Operation:

> (a) A temporary wall with a door was erected between the laundry room and the basement bedroom area to create the room in which the marijuana was to be grown (" Marijuana Bedroom"). This allowed him direct access to the Marijuana Bedroom from the laundry room in order to care for the plants and a smaller area available for rental, thereby effectively reducing the one-bedroom suite into a bachelor suite.
> (b) A hole was drilled between this new wall from the Marijuana Bedroom into the laundry room and a six to eight inch pipe was installed through which necessary electrical cords were run.
> (c) These cords were connected to a power bar in the laundry room. The plug was adapted so that it could be plugged into the more powerful dryer electrical receptacle to power the lights, fans and heater required to grow the marijuana.
> (d) Ventilation holes were created between the Marijuana Bedroom and the laundry room.
> (e) Smoke alarms were installed throughout the house as the Applicant was aware that a marijuana grow-operation could increase the risk of fire, and he was concerned about safety, particularly in regards to his children.

[95] The Applicant was not certain who did all of the wiring for the 2000 Operation, as he stated he did not know much about wiring. He denied that any wiring was cut in the walls. Later in the hearing, Ms. S testified that, in 2004, it was discovered that wiring had been cut and required restoration.

[96] The police discovered the 2000 Operation when they investigated the broken window caused by Ms. M's entry into the Applicant's residence. Their report indicates that, when the Applicant arrived home, he stated that he had started growing marijuana three months earlier " to obtain money for his education." In his articling application and the hearing, the Applicant testified that he could not recall making this statement. He confirmed that the marijuana was intended for personal consumption only.
[97] The police report goes on to indicate that they seized " a large amount of cash" and 3.8 pounds of " marijuana dried bud" . In his second Temporary Articles application, the Applicant says that $300 was found and that this was from selling fish. In his testimony he disputed the volume of marijuana found. He said that, as he had only cut the marijuana the day before the discovery of the 2000 Operation, so by the day of the seizure the drying process was not complete. Therefore, he says that this weight does not correctly reflect the scale of the 2000 Operation.
[98] No charges were laid, but the marijuana and the equipment were seized. Upon application approximately two weeks later, the equipment was released to him along with other personal property.
[99] The Applicant testified that a tenant, C, rented the basement at some point in early 2000. C had nothing to do with the grow-operation. The Applicant did not believe that C could smell the marijuana in the adjoining room, nor did anyone else who came to Victoria Drive in that period report smelling marijuana. He advised that he has heard that C is in India.

The 2004 Operation

[100] The Applicant testified that, several years after the 2000 Operation, he decided to set up another hydroponic marijuana grow-operation in the Marijuana Bedroom. A new tenant, who he knew from his hometown, had been renting the basement since approximately mid-2000. There was some evidence that the tenant may have started living in the premises in 2002. However, the Panel accepts the Applicant's testimony that the tenant started living there in the summer of 2000 and remained there until the discovery of the 2004 Operation (the " 2000-2004 Tenant").
[101] This time the tenant was aware of and involved in the 2004 Operation. The Applicant stated that he didn't have the knowledge to operate a marijuana grow-operation but that the tenant knew " a little" about growing marijuana.
[102] In the course of its investigation, the Law Society sought the name of the 2000-2004 Tenant from the Applicant. He declined to provide it and, in respect of this, testified that:

> (a) Initially, when the request was received, he contacted 2000-2004 Tenant to advise him he was going provide his name to the Law Society.
> (b) The 2000-2004 Tenant first attempted to blackmail him and then threatened him. The blackmail involved the 2000-2004 Tenant wanting money to talk to the Law Society, but no amount was defined. The threat consisted of the 2000-2004 Tenant stating: " You don't want to be giving my name to the Law Society."
> (c) The Applicant knew that withholding the information would prevent the Law Society from speaking to the 2000-2004 Tenant but that he " didn't consider it was really important" because he was not trying to absolve himself of any guilt regarding the marijuana grow-operation by having someone else take responsibility.

[103] The 2004 Operation was larger than the 2000 Operation, requiring the addition of a further light and a hole created from the Marijuana Bedroom through an exterior wall. The police reported that they seized 140 marijuana plants and 60 clones, as well as " 1 lb of bud" . However, the Applicant claims that this overestimates the size of the 2004 Operation as he had harvested only 60 or 70 plants and that he had bought extras that were sitting to the side. Some of these had gone rotten and could not be expected to produce. Overall, the operation could not be expected to produce a harvest of the size estimated in the

police report.

[104] The Applicant stated that, in this second operation, he intended to grow marijuana just once to make money to help pay his child support as he was struggling to support his children and attend school. Despite the drop in income that accompanied his move from fishing to school, he had never applied for a decrease in child support. The 2004 Operation was part of his " financial plan" . He intended to sell the crop to the individual from whom he had purchased the plants. When asked how much he anticipated making by selling the marijuana, he indicated that he did not anticipate any particular amount. He just hoped it would pay child support for a few months. He could not think of any other options to make money while he was attending school. His evidence continued:

> Q. Okay. So the only options that you were going to consider were options that included you continuing to go to school full-time?
> A. As I said, it was poor, poor decision, poor judgment. I'll, I'll admit that, yes.
> Q. Well, it was poor judgment, it was selfish, wasn't it?
> A. Of course.
> Q. You decided to put another person's property at risk, right?
> A. Yes, I admit that.
>
> *Transcript*, March 16, 2010, Cross-examination of the Applicant.

[105] The Applicant claimed his dire financial circumstances motivated him to start the 2004 Operation to make money to meet his child support payments. However, he acknowledged that although he never was able to sell the marijuana seized by the police, he still managed to make his child support payments by cutting down on his monthly expenses. He conceded that reducing expenses had been an option available to him prior to starting the 2004 Operation.

[106] With respect to this decision to grow marijuana, the Applicant stated that it was " very poor judgment, and it was at a time in my life when I was making poor decisions." He was questioned as to why he proceeded with another venture in 2004 if it weighed on his conscience in 2000:

> Q. Now you told the Panel yesterday that when you were involved in the 2000 grow op that you felt very bad about it. And I asked you if it weighed on your conscience that you were doing this and you told me that it did. And I'm curious as to why, knowing, having had that experience in 2000, you didn't feel good about yourself because you indicated you'd always been a law abiding citizen and here you were doing this, it weighed on your conscience, you were caught, you were lucky enough not to be charged, and then four years later, you do it all over again, why?
> A. I believe I answered that question why.
> Q. Because of your finances?
> A. That's what I answered, yes.
> Q. Did it weigh on your conscience this time or was it easier this time?
> A. Of course it did.
>
> *Transcript*, March 16, 2010, Cross-examination of the Applicant.

[107] As a result of the police discovering the 2004 Operation in January 2004, the occupancy permit for Victoria Drive was suspended and power service was cut to the residence. He was forced to advise Ms. S in an email dated January 12, 2004. The Applicant told her:

> ...the downstairs tenant was growing an illegal substance in his bedroom. The first thing you have to know is that the house is fine. The police came in and the power is shut off. I have spoken with the city and the house needs to be looked at by the electrical inspector before the power is turned on. It is a two week waiting period for inspection. I will have the house ready as soon as I can, there is

a bit of cleaning to do first. Once again there is no damage to the house and I will do everything I can to make this go smoothly.

[108] The Applicant admitted that he was not " entirely honest" with Ms. S about the 2004 marijuana grow-operation after it was discovered by the police in that he told her that the tenant in the basement was growing the marijuana. In his direct examination, he said he did this because:

> I was ashamed and embarrassed about what I had done and attempted to mitigate my involvement and I had hoped throughout to be able to stay in the house.
>
> *Transcript*, March 15, 2010, In Chief Examination of the Applicant.

[109] With respect to the January 12, 2004 email, Ms. S said that, given her past relationship and experience with the Applicant, she trusted him and trusted his word that the house was fine. They engaged in a series of email correspondence, with Ms. S insisting that the Applicant contact her immediately so they could discuss this urgent matter. She wanted to keep her father from finding out about the difficulties. However, the Applicant did not contact her for several days and her frustration was evident from her emails to him. On January 17, 2004, the Applicant emailed Ms. S to apologize for the difficulties and promised, " I will do everything I can to make this go as smoothly as possible for everyone." A later email promised that all repairs would be completed by January 23, 2004.

[110] By mid-February, 2004, Ms. S still had not been able to confirm arrangements with the Applicant for the municipal inspection of the repairs required to restore the electrical service. She finally went to inspect the house herself, and she found it significantly damaged, some repairs underway and most of the Applicant's belongings not in evidence.

[111] The Applicant's evidence was that the extent of the damage to the house as a result of the 2004 Operation consisted of the ventilation holes in the drywall and a front door frame that needed to be repaired or replaced. However, as there was no power, it was difficult to do repairs requiring power tools or a heated environment. The door, drywall replacement and necessary painting were left unfinished. He could not repair the exterior hole because of the January weather, so he covered it with a piece of plastic. It became difficult to live in an unheated house without electricity so he was forced to move out.

[112] On February 29, 2004 the Applicant advised Ms. S by email that he had moved out. He terminated the tenancy as of the end of February, without payment for the month of March, stating: " I am at sea for long periods of time ..." and " I am taking a charter on a ship and will be gone for a couple of months." The Applicant never went back to sea or took the charter. In truth, he moved to a smaller residence in the Vancouver area and carried on with his studies.

[113] In the email correspondence, the Applicant suggested that Ms. S apply his $550 damage deposit to the cost of the repairs. Ms. S testified that as a result of the damage to Victoria Drive left at the end of the Applicant's tenancy, she lost rental income and incurred expenses of approximately $12,000 to $15,000 for the following repairs: plasterboard to replace mouldy walls; painting; carpet replacement; repair of holes in walls; front door and window repair; bringing the house to conform to the building code in order to obtain an occupancy permit; and municipal fees for plumbing, electrical and building inspections.

[114] Further, Ms. S testified that, as a result of the 2004 Operation, Victoria Drive could not be insured for further rental. She eventually was required to move into the home herself for some years in order to obtain insurance.

[115] The Applicant testified that he understood that municipal policy under such circumstances is to make a landlord bring the entire house up to conformity with the current building code. In this case, various code-related upgrades were required to Victoria Drive beyond the repairs associated with the grow-operations. The Applicant acknowledged his responsibility for Ms. S's predicament, stating:

I realize that while I didn't create the damage like the stairs and the old wiring in the house, I do realize I was responsible for her having to incur the cost to bring her house up to grade, and I did and still do feel very terrible about that.

Transcript, March 15, 2010, In Chief Examination of the Applicant.

[116] The Applicant acknowledged that he has never made amends to Ms. S for the various expenses incurred because he has had no means with which to make them. He stated that:

...it always has been in the back of my mind that one day I had hoped that I - I have kept her mailing address and I had hoped one day that I could compensate her in some way. And that - I don't know if that's believable, but I have always thought that in the back of my mind because I do feel terrible about the way I left her, and I do say that in emails to her.

Transcript, March 15, 2010, In Chief Examination of the Applicant.

[117] In argument at the close of the hearing, after the topic of restitution was raised by a Panel member, the Applicant's counsel indicated his client would be willing to provide compensation to Ms. S.

[118] Ms. S was clear that she was shocked and disappointed in the Applicant's conduct following the discovery of the 2004 Operation. In terms of the central question of the Applicant's fitness to become a barrister and solicitor, she said:

...[The Applicant] lied to me and he abused the trust I had in him. I'd be really upset if the person I dealt with at that time is given the privilege to work as a lawyer for our justice system. I want to be entitled to be a fair justice system. That person I dealt with at the time I don't think can provide that. I don't know what's happened with [the Applicant] since 2004. I don't know what he's done with his life or if he's turned it around, but I'm uncomfortable with the person I dealt with at the time working in our justice system. I, I still have concerns as well, like, you know, perhaps [the Applicant] has turned his life around, but I'm just - if he has turned his life around, he hasn't made any effort over the past six years to contact me to discuss what happened, to try and make amends, any of that type of stuff, apologize, except through Mr. Wood when Mr. Wood contacted me. I would - I just would expect that if somebody's turned their life around, I would just hope that - I would expect that they would try and discuss what happened and give me, you know, their version or do something. But as I said, I don't know what he's done in the past six years. I don't know how he's changed in any way. *I just know that the person I dealt with at the time and I'm uncomfortable with that person working in our justice system.*

[emphasis added]

Transcript, March 16, 2010, In Chief Examination of Ms. S.

Conclusions regarding the 2000 and 2004 Operations

[119] The Applicant's position is that the 2000 Operation, the 2004 Operation and his lack of considerate treatment of Ms. S were isolated events, reflective of past poor judgment that does not pose any present concern in respect of his application for admission. He asserts that he has fundamentally changed as a result of his counselling, volunteer work and education.

[120] From the Applicant's point of view, the 2000 Operation should be viewed as a casual, one-time event where marijuana was grown with a couple of acquaintances for recreational purposes. His counsel points to various parts of the record to support this position:

(a) The police report referred to a " small grow-op operation" .
(b) No plants were growing, but a quantity of marijuana was drying in the room, leading to the conclusion that the grow-op had ended.
(c) The amount of marijuana discovered in the room was actually less than the amount stated in the

police report as it hadn't completely dried yet.
(d) The plants were all cut, indicating that the grow-op had ended.
(e) Ms. M had lived in the house shortly after the Applicant had moved in, and she wasn't aware of any marijuana.
(f) Only $300 in cash was seized by the police. The Applicant's testimony accounted for it as having come from the sale of fish for cash, rather than from the sale of marijuana.

[121] After considering all of the evidence from the Applicant's second articling application, the police report, Ms. M and the Applicant, the Panel finds that the 2000 Operation was a more serious endeavour than he claims. We find it probable that the 2000 Operation involved more than three acquaintances growing marijuana for recreational purposes, and that it was a commercial operation, albeit a small commercial one. The Applicant and his partners in the venture may or may not have intended to use some of the marijuana for recreational purposes, but that does not take away from its commercial scale. The factors that that the Panel uses in coming to this conclusion are:

(a) This was a significantly elaborate undertaking, occupying a full room. It required the creation of various holes in walls and a good deal of equipment including multiple lights, fans, a heater and significant electrical work.
(b) The Applicant's original statement to the police was that the money from the 2000 Operation was to be used for his education. He was attending Pacific Marine Training College at the time, and this original explanation provides a credible motive for becoming involved in the 2000 Operation. He indeed was going to college and likely needed the money for his education. However, in later correspondence to the Law Society, he stated that he did not recall making this statement to the police but, alternatively, if he did make it, it was false and he made it to get sympathy. The Panel believes that the Applicant's original statement to the police provides the more credible and reliable evidence on this point.
(c) The police report confirms the seizure of 3.5 pounds of dried bud. This volume of marijuana is more consistent with a small commercial operation than one for personal use. The Applicant denies that the marijuana was fully dried and stated that it was just harvested and, therefore, heavier than if it had been fully dried. Again, we find that the police report provides more reliable evidence than the Applicant, as the police deal extensively with marijuana and are in a better position than the Applicant to determine whether it was dried or not.

(d) We find it to be improbable that the Applicant did not know the surnames of his two associates. Withholding these surnames bars any Law Society investigation to corroborate his evidence that this was a non-commercial venture. The Panel finds the Applicant's evidence in this respect improbable for the following reasons:

i. Given that they were acquaintances for over a year, it is likely that he knew their surnames.
ii. His description of the relationship is inconsistent. In his testimony he referred to the gentlemen as acquaintances, thereby minimizing the closeness of the relationship. However, in his March 25, 2009 application to the Law Society, he referred to the gentlemen as a " group of friends" . If they were friends, he would have known their last names.
iii. The Applicant portrayed himself as a person who is good at relationships, and we find that this was warranted from the evidence presented. It seems probable that with this skill, he likely developed a friendship of sorts with the two partners that would have been sufficient to learn their last names.
iv. Alternatively, the Applicant deliberately set out not to know the surnames in order to ensure that their identities could be hidden in the event of discovery of the 2000 Operation. This arrangement would be consistent with a commercial operation.

[122] The illegal nature of the activities undertaken reflects the Applicant's lack of social responsibility and conscience in 2000 and 2004. Beyond that, he has shown that his character in these years was such that he was prepared to injure or to put at risk individuals with whom he had a personal relationship and to whom he owed personal obligations. This is illustrated by the following:

(a) He operated the marijuana grow-operations in a home he did not own. In doing so, he put Ms. S's property at risk for his own personal benefit. He did this not once, but at least twice; and
(b) The Applicant's actions increased the risk of harm to others. If his evidence in relation to the 2000 Operation is to be believed, he rented the basement suite to a tenant who apparently had no knowledge of the marijuana grow-operation. This tenant was unwittingly living in a residence where there was an illegal substance growing and an increased risk of fire. Similarly, the Applicant usually had his children over on weekends, staying in the house. In doing so, the Applicant potentially put his children's welfare and safety at risk. It is noteworthy that Ms. M testified that she lived at Victoria Drive for a time in 1999 and that she saw no grow-operation. She testified that if she had seen one, she would not have stayed in the house with her children. The implication of her evidence was that a grow-operation was a safety issue.

[123] It is common ground between the Applicant and the Law Society that the Applicant's illegal actions in relation to the 2000 Operation and the 2004 Operation do not reflect the conduct of a person of the character, reputation and fitness to become a barrister and solicitor. The question to be considered is whether or not the Applicant's explanation for these past events and his present conduct answers the concerns raised by his admitted past illegal activities. The Panel finds itself left with the following concerns about the Applicant's explanation regarding the two grow-operations:

(a) At the time of the discovery of the 2004 Operation, the Applicant led Ms. S to believe that it was the first instance of a grow-operation in Victoria Drive. He further misled her by trying to deflect all responsibility on to the 2000-2004 Tenant. An applicant of character, in preparation for this hearing, would have conducted him or herself differently in relation to Ms. S. That applicant would have, at a minimum, told her some time ago about the 2000 Operation. Instead, Ms. S learned about it only the week prior to the hearing.
(b) In 2004, the Applicant moved out of the residence without notice, left Ms. S to deal with the fallout of his conduct and never made any effort to make amends to Ms. S. An applicant of character would likely, by the time of the hearing, have attempted some restitution for Ms. S or, at a minimum, expressed a sincere apology for his conduct at the end of the tenancy. The Applicant's indication through counsel at the close of argument that he would be prepared to make some sort of restitution seems distinctly late in coming. In this regard, it should be noted that the Applicant's evidence that one day he hoped to compensate Ms. S, is at odds with his actual conduct over the past six years and his email to Ms. S, in which he terminated the tenancy and falsely told her he was going to sea. The statements in that email do not originate from a person who intends to make amends. They appear to come from a person who is attempting to wash his hands of the matter. It is noteworthy that he has given or loaned small amounts of money to Ms M who, according to the Applicant, stalked him and falsely accused him of sexual assault. However, he gave nothing to Ms. S and put no plans in place to do so prior to the hearing.

(c) It is of some significance that, after the 2000 Operation was discovered, the Applicant kept the necessary apparatus for a grow-operation in the basement for about four years after recovering it from the police two weeks after its seizure. He failed to provide a reasonable explanation as to why he kept this apparatus. The Applicant testified that the 2000 Operation and the 2004 Operation were the only two occasions in which he grew marijuana. He asks the Panel to believe that he merely had the bad luck to be caught both times that he set up grow-operations. It is quite possible that the Applicant and

the 2000 - 2004 Tenant were involved in other grow-operations at other points during the balance of 2000 until the discovery of the 2004 Operation. If the 2000-2004 Tenant did move in after the discovery of the 2000 Operation and he knew how to set up and operate a grow-operation, why would they wait more than three years to start another operation when the equipment was at hand? The Applicant certainly testified that he had a financial motive to undertake further grow-operations during this period.

(d) The Applicant's reluctance to provide the name of the 2000-2004 Tenant is inconsistent with a forthright approach to his present application. It is our view that it is probable that he decided to withhold this name in order to prevent corroboration of the overall facts in relation to the grow-operations generally or to avoid risk of unpleasant consequences to himself. One potential means of testing the Applicant's evidence as to whether he was involved in marijuana grow-operations between 2000 and 2004 would be to speak to the individuals he cooperated with to determine the length of their involvement with the Applicant in the grow- operations. Even if he really cannot name the other two individuals involved in the 2000 Operation, or locate the first tenant, C, the Panel is left with the fact that, with respect to the 2004 Operation, the primary reason there is no information about the other individual involved and his knowledge of the marijuana grow-operation is because the Applicant refuses to disclose his name and contact information.

(e) Related to the point above, it is not credible for him to explain that he continues to withhold the 2000-2004 Tenant's name because it is " unimportant" , as he accepts personal responsibility for the 2004 Operation. In this respect, the Applicant makes a current, conscious decision not to cooperate with the Law Society in order to do all possible to fully account for his past errant behaviour. This does not bode well for a person who wishes to become a member of a self-governing profession where there is a constant necessity to conform to the requirements of the governing body. The Applicant's lack of candour where it benefits his own personal convenience and safety is striking and argues against his good character and fitness to be enrolled as an articled student.
(f) Conveniently, his evidence tended to minimize the seriousness of his involvement in the 2000 Operation and 2004 Operation. It fell short of the frank admission of responsibility that the Panel feels is warranted by the overall circumstances. For example:

> i. He could not say whether a hydroponic growing operation (where marijuana is grown in a nutrient water solution without soil) is more sophisticated than simply growing the plants in soil.
> ii. The marijuana he grew in 2000 had been cut the day before the police discovered it, so that the weight of the marijuana reported by the police was misleading as to how much marijuana he had actually grown.
> iii. While the police report indicates that they found 200 marijuana plants in the 2004 Operation, the Applicant testified that he had only harvested 60 or 70 plants and had put the extra plants off to the side and that they were rotten.
> iv. He claims that he does not know how much he stood to make by selling the marijuana in 2004. However, he does state that he had a financial plan. If he had a financial plan he knew, at least in general terms, how much he planned to make. Instead, he tried to paint himself in a favourable light and stated that the money was just going to pay child support for a few months;

(g) More generally, throughout his testimony the Applicant downplayed his knowledge of the 2000 Operation and the 2004 Operation in a way that we did not find to be persuasive. We find that it is probable that he is a reasonably knowledgeable person who was quite capable of doing exactly what he was found to have done: run two modestly-sized commercial grow-operations. Given the Applicant's intellectual capacity, it was not persuasive for him to assert relative ignorance regarding these operations undertaken under his own roof. We come to this conclusion after considering all of the

evidence, particularly the extent of the renovations as well as the tenancy and the safety risks he was prepared to run. We find it likely that the Applicant's lack of knowledge is feigned in order to strengthen his position that these were isolated, casual ventures and to thereby cast his conduct in a better light.

[124] The ability to make decisions and state the truth, however uncomfortable, in accordance with the standards and principles expected of barristers and solicitors is central to meeting the test for character and fitness. The Applicant testified that, in both 2000 and 2004, he felt " terrible" about the grow-operations. However, he proceeded anyway. In the first instance, according to him, he continued with what he knew was unlawful conduct in circumstances where there was no necessity, in order to grow the marijuana for his personal use. Similarly, despite having a nagging conscience again in 2004 about growing marijuana for a second time, he did so because of his dire financial circumstances. Again, he was able to ignore his conscience, ignore that what he was doing was wrong and unlawful because it was more important to obtain quick money. He disregarded his conscience despite the fact that there were apparently other options available to him such as not continuing to go to school full-time, reducing monthly expenses, or finding a paying tenant to rent the basement suite. He did not have the discipline to act in accordance with what he says was dictated by his conscience.

[125] Should the Applicant ultimately become a lawyer, he will owe duties to his clients and to the profession, as well as to the courts, the justice system and society as a whole. His past conduct in relation to the grow-operations raises serious questions as to whether he will be able to make the right decisions to properly fulfill those duties. He has a history of making remarkably poor decisions and exercising very poor judgment. His past conduct is reflective of an individual who is prepared to ignore his conscience and take action to obtain personal benefits for himself while disregarding the welfare and interests of others .

[126] The critical question is whether the Applicant has changed and is now able to demonstrate that he will act in accordance with high principles and not make decisions on the basis of what is convenient or personally advantageous. In this regard, it is noteworthy that the Applicant's conduct in growing marijuana was not a matter of youthful indiscretion. At the time of the 2000 Operation, the Applicant was days shy of his 39th birthday. At the time of the 2004 Operation, he was almost 43 years old. One might understand, but not condone, an occasion of irresponsible or foolish conduct in circumstances when the person is young and immature, but that was not the case here. This does not mean an older person cannot change. The question then becomes whether or not true rehabilitation has taken place.

Considerations Regarding Present Character

Rehabilitation

[127] Rehabilitation is a key issue in a Credentials hearing such as this when past admitted or alleged illegal activities raise fundamental concerns regarding the applicant's fitness.

[128] The following independent evidence of rehabilitation was provided:

(a) oral evidence and letters of reference from his prospective principal, Mr. Jackson and his present girlfriend, Ms. G;

(b) reference letters from Mr. Higgins, the supervising lawyer at the Law Students' Legal Advice Program, and from the Applicant's counsellor;

(c) Salvation Army volunteer appreciation Award Certificate, given in appreciation of the Applicant's community service;

(d) Pozer Award Certificate reflecting the distinguished service to the UBC Law Students' Legal Advice Program by a first year law student.

[129] Given the Applicant's history and his knowledge that he would be required to demonstrate his good character in order to be called to the Bar, it is possible that his serious volunteer efforts during law school

were an attempt to ensure that he could demonstrate his good character at the time of his application for call and admission. This does not detract from his efforts, but it may mean that they were more calculated than motivated by a reformed character and conscience.

Testimony and Letter of Mr. Jackson, Prospective Principal

[130] The Applicant's prospective principal, Mr. Jackson, gave evidence and his letter of reference was reviewed. He testified that he had first met the Applicant through his daughter who was attending law school with the Applicant. Mr. Jackson encountered the Applicant about a dozen times in social situations over approximately four months. The Applicant then worked for Mr. Jackson as a legal researcher during the summer of 2009, as well as during his third year of law school.

[131] Mr. Jackson confirmed that he and the Applicant had discussed, in general terms, the following:

> (a) some general information regarding the 2000 and 2004 Operations; and
> (b) that one of the grow-operations was discovered due to a girlfriend throwing a computer out of a window, then coming back ... a " lover's quarrel" ensued, " they made love and that then she went and cried sexual assault and made an allegation of ... ripped clothes or something of that nature."

[132] Mr. Jackson testified that he has complete confidence in the Applicant's ability to meet the required tests of character, repute and fitness. Mr. Jackson gave glowing remarks about the quality of the Applicant's work and conduct, which, in Mr. Jackson's view, demonstrated integrity, exceptional diligence, intelligence, honesty, modesty and legal analytic abilities. It was clear that the Applicant has gained Mr. Jackson's respect and trust.

[133] In cross-examination and in response to questions from the Panel, Mr. Jackson confirmed that his letter of reference was written approximately two weeks after the Applicant began work in Mr. Jackson's office in the spring of 2009 and that he had not read the attachments to the two articling applications submitted by the Applicant, the Police Narrative nor any other documentation relating to the sexual assault.

Testimony and Letter of Ms. G, Girlfriend

[134] The Applicant's present girlfriend, Ms. G, gave evidence on his behalf and provided a written reference letter. The Applicant and Ms. G met at a Tim Hortons coffee shop in December 2007, during his first year of law school. She is a single parent with a young child who has become close to the Applicant. Their relationship has become serious and they have discussed marriage.

[135] At the beginning of the relationship, Ms. G told the Applicant that she broke up with her former husband because he continued to use marijuana over her objections and lied to her about it. In her testimony, she described herself as a person with high moral standards who believes strongly in obeying the law. She is very much against all illegal drug use. Her high moral standards are reflected in her personal and professional life. The Panel accepts that her description of herself is accurate and that she would not countenance a close personal relationship with an individual who was involved in illegal activities or whom she otherwise believed not to be honest and honorable.

[136] Ms. G confirmed that the Applicant first told her about his past illegal activities, the 2000 Charges and the difficulties with his Law Society applications approximately a month prior to the hearing. He described to her accurate details of his version of the facts regarding the alleged sexual assault and the 2000 Operation and 2004 Operation. When he was telling her about them, he had a binder with documents relating to these matters in front of him, but she did not review them. Earlier in the hearing, the Applicant testified that he never told Ms. G about these matters earlier because he feared she would leave him.

[137] In her testimony, Ms. G stated:

> Q. How did you feel a month ago when the Applicant told you about his past conduct?
> A. Well, I was certainly surprised, disappointed, but at the same time I admired the fact that he had

been honest with the Law Society. I, I truly believe that many people would not be as honest, and, and was honest with me knowing full well, at the time anyway, that I would not stick around, that I would be gone.

Transcript, March 16, 2010, Cross-examination of Ms. G.

[138] Ms. G confirmed that she has complete confidence in the Applicant, feels strongly that he is trustworthy, compassionate, and able to abide by the stringent code of ethics expected of lawyers and, overall, that he is a person of integrity. From her own observation she knows him as an excellent and responsible father, family member and individual who is passionate about law and public issues, one who is willing and able to assist the downtrodden through extraordinary personal service.

Letter from Mr. Higgins, Supervising Lawyer

[139] Starting in first year, the Applicant made exceptional efforts during law school to volunteer at the UBC Law Students' Clinic. Mr. Brian Higgins, the supervising lawyer at the clinic gave a glowing letter of support. He stated that he was aware of the alleged sexual assault, the Applicant's involvement in the 2000 Operation, 2004 Operation and the reasons why the Law Society would conduct a hearing.

[140] Mr. Higgins set out the various positions that the Applicant held, the exceptional quality of his work, ability, dedication to the clients themselves and the efforts he has undertaken as a volunteer, including work in Vancouver's Downtown Eastside. Mr. Higgins finished his letter by saying, " I truly believe [the Applicant] would be an honourable, trustworthy and valued member of the Bar."

Counsellor's Letter

[141] The Applicant also entered into evidence a letter from the person who has been counselling him for approximately four years. It states:

I am aware of the nature of your investigation and have no reservations in providing [the Applicant] with this letter of reference. He was admitted to this service March 9, 2006 and I have known him professionally as his counsellor since July 28, 2006. Throughout his treatment he has been steadfast in terms of his commitment to attend on a regular basis and has been diligent in addressing his difficulties. *As a result he has made significant changes within himself and in his ability to lead a full and fulfilling life.* At the same time he has pursued further education and has worked towards building a new career.

[The Applicant] came for help a few months after the illness and subsequent death of his mother in August 2005. He had been looking after her in the 2-3 months prior to her death and *her* emotional and verbal abuse during that period resulted in unresolved feelings re: her aggressive and violent behaviour towards him throughout his childhood to emerge. *While these issues had remained unresolved, his complex and difficult relationship with his mother had been the template by which he related to women.* As such it was extremely distressing to him and addressing these concerns formed a significant part of his treatment. I can verify that within the confidentiality provided by the therapeutic relationship, and prior to his knowledge of this investigation, his account of the events as they unfolded in relation to [Ms. M] was consistent with his presentation of them to you at this time.

[The Applicant's] impoverished upbringing left him ill equipped to deal with life stressors; however at no time have I had any concerns related to addiction or abuse of either drugs or alcohol. [The Applicant] also made use of therapy to address his regrets and remorse about poor decisions that he had made prior to coming to his decision to turn his life around. *He has now developed the requisite skills with which to make sound decisions.*

In addition to wanting to fulfill his lifetime dream of becoming a lawyer, a major motivation for [the Applicant] to change his livelihood from that of a mariner was to be more available to parent his

children. As he has been able to devote more time to them and over the course of treatment, his already deep caring for his children has been further enhanced. In making changes in his professional life, as well as his personal growth and development he has provided himself and his children with stability and a better quality of life.

It has been a pleasure to work with [the Applicant] and witness his progression in treatment. I have found him to be honorable and trustworthy person and believe that he has the capacity to make important contributions in his chosen field.

[emphasis added]

[142] This is not an expert report and does not purport to be one; it clearly states it is a letter of reference. No qualifications of the counsellor were provided nor were specifics of her position, experience or of any testing done on the Applicant. There is no explanation of the treatment pursued or how the writer reaches her conclusions.

[143] The Applicant's counsel stresses that, since the events of 2000 and 2004 took place, his client has rehabilitated himself in terms of character, conduct and judgment. He asserts that, given the relationships and work he has done in the years since beginning law school, the Applicant is now of good repute. The Applicant's counsel summarized the Applicant's evidence regarding his present life as demonstrating that he has changed his way of living and dangerous approach to decision-making:

(a) no subsequent criminal justice system involvement since the 2000 Charges;
(b) no involvement in any further marijuana grow-operations since 2004;
(c) a demonstrated determination to become educated and start a new life for the benefit of himself and his children;
(d) outstanding volunteer efforts since entering law school, including outstanding contributions to the UBC Law Student's Legal Advice Program and Salvation Army community programs;
(e) a current relationship in which it is very clear that his partner would not condone his involvement in any form of illegal activity.

[144] In terms of the Applicant's own assertions that he has changed and is now of good character, the lack of weight we put on his evidence regarding his past conduct makes it difficult to rely upon his own assertions that he has now changed for the better in a fundamental fashion.

[145] In some situations, persuasive independent evidence of current character, reputation and fitness might be able to allay other concerns regarding an applicant. However, in this instance, we have various concerns regarding this independent evidence.

[146] None of the three individuals providing independent oral testimony regarding rehabilitation had exposure to all of the evidence put forward during the hearing. To some degree, this is to be expected. Witnesses who are not parties to a proceeding are excluded from it until they have testified. However, they must be fully prepared to give their evidence through thorough exposure to all of the relevant known facts.

[147] This was not the case here. They were not familiar with the full particulars of the police reports regarding the alleged or admitted instances of the Applicant's past illegal conduct. In this regard, not much turns on the police reports of the 2000 Operation and 2004 Operation. However, the lack of the independent witnesses' exposure to the Police Narrative is important. The violence of the conduct reflected in it creates a *prima facie* concern regarding character that is critical to answer. It would have been helpful to know if these independent character witnesses would view the Applicant's character in the same light had they had a chance to consider the Police Narrative and discuss it fully with him. As it was, their only exposure to the facts appeared to be the Applicant's self-exculpatory account of the facts.

[148] The Applicant's counsel took responsibility for the fact that he did not advise his client to ensure that

each independent witness read the Police Narrative and documentation regarding the grow-operations. The Panel wants to be clear that we do not put undue emphasis upon the fact that the witnesses were not exposed to this information. However, the reality is that the witnesses' evidence was not formed in full knowledge of all of the facts and allegations. This is one of many considerations contributing to our conclusion that the Applicant has not sufficiently established his rehabilitation to meet the statutory test for fitness.

[149] In regards to the reliance that can be given to the independent oral and written evidence regarding the Applicant's current character, reputation and fitness, we have the following further comments:

(a) In terms of the oral and written evidence of Mr. Jackson, as a senior and well-respected member of the Bar, his opinion of the Applicant's fitness would generally be accorded considerable weight. However, this weight is limited by the fact that he formulated his initial letter of recommendation after working with the Applicant for only two weeks. This might be a sufficient time to evaluate an applicant's legal and writing skills, but it is a slim window in which to assess character and fitness. Further, as mentioned, Mr. Jackson did not have the benefit of detailed knowledge of the Police Narrative and had not reviewed the full articling application, including the charges attached to it. He had a casual and minimized view of the reported facts regarding the alleged sexual assault.

(b) In terms of the letter of reference provided by Mr. Higgins, he too is a prominent, well-respected member of the Bar whose opinion would generally be accorded significant weight. However, from what we can see in the letter, his experience of the Applicant is limited to seeing him in the volunteer legal clinic setting where, clearly, the Applicant distinguished himself. We are not concerned about the Applicant's ability to do well in a supervised legal clinic setting. We are concerned with his ability to demonstrate character and moral fitness when demanding private and uncomfortable choices are before him in the future. Further, Mr. Higgins was not made available for cross-examination.

(c) In terms of the weight to be placed on Ms. G's oral evidence and reference letter, other factors must also be considered:

i. She is now emotionally involved with the Applicant, as is her child, which limits her ability to be objective about his character;

ii. She did not learn of the Applicant's difficulties with his articles applications, nor his history with drugs, until a month before the hearing, when preparations for it would have been well underway. It is the Panel's assessment that, by the time she was aware of these matters, it would have been very difficult for her to back away and not support him.

(d) In terms of the counsellor's reference letter, the following considerations affect its weight:

i. There is no indication one way or the other if the counsellor had any knowledge of the full facts set out in the Police Narrative. Again, the facts mentioned in the letter appear to reflect the Applicant's version of the events;

ii. Law Society counsel advised that the counsellor's letter was only provided by the Applicant on the morning of the hearing. No mention had been made in the Applicant's articling applications or in pre-hearing correspondence of the relevance of any emotional difficulties;

iii. In other respects, the counsellor's letter raises more questions than it answers. All of these questions limit the weight that we can put on the counsellor's view that the Applicant is now of good character. We are particularly concerned with the statement:

While these issues had remained unsolved, his complex and difficult relationship with his mother had been the template which he related to women.

What is the psychological meaning of this phrase? The counsellor was not made available for cross-examination. We do not even have the counsellor's notes of the Applicant's treatment. No substantive medical evidence was presented indicating how he has changed or what treatment was given him except in a general way. This is a good example of the limitations that must be placed on this letter.

iv. We have concerns about the Applicant's counsellor giving an opinion about trustworthiness. Certainly as a citizen, she is entitled to an opinion as to the Applicant's trustworthiness and it is helpful to know that she feels him to now be trustworthy, but this evidence is not sufficiently persuasive to answer the serious concerns we have regarding his trustworthiness point arising from his evidence.

[150] Thus, the Panel is left with a very subjective letter of reference from the counsellor that makes summary, occasionally ambiguous statements, without clear explanation or foundation to back this up. Although encouraging, it is not conclusive of the Applicant's rehabilitation. In the Credentials decision *Re. Lee, supra*, the panel had the benefit of a review of a thorough expert report providing a psychological evaluation of the applicant. Such a report might have provided a counter-weight to the serious concerns we have about the Applicant's credibility and his evidence and would have been helpful here.

Other Considerations regarding Rehabilitation

[151] Two additional factors suggest that the Applicant is not sufficiently rehabilitated to be fit to be called. The first is the Applicant's decision to wait until only a month before the hearing to tell Ms. G about his difficulties with his Law Society applications, the 2000 Charges and, importantly, about his past history with drugs and involvement with the 2000 Operation and the 2004 Operation. He knew that he had a past history with drugs that she might find most objectionable. By the time of the hearing, he had known of his difficulties with his first Temporary Articles application for over a year and about this hearing for over eight months. It is surprising that he did not discuss any of this with Ms. G, given the intimacy to which they both testified and the length of their relationship. It appears possible that the Applicant's intention had been to hide his past history from Ms. G. This changed when it became clear that he would need her to be a witness at the hearing. Whether or not this was his motivation, his conduct reflects a current lack of candour and an inability to make difficult decisions that are uncomfortable for him.

[152] In regard to this, the Applicant's counsel asserted that the Applicant's lack of candour regarding all of this with Ms. G is not reflective of his fitness to be enrolled. Counsel took the position that the Applicant's lack of frank disclosure to Ms. G relates to a private intimate relationship; the Law Society need not concern itself with the details of it any more than the details of a member's marital relationship. The Panel cannot agree. In a situation such as this in which the issue in question relates directly to the Applicant's Law Society application, a nexus exists that allows us to consider this as one of many relevant factors weighed in coming to our conclusion.

[153] The second further factor demonstrating the Applicant's lack of rehabilitation is what appears to be a current failure to fully appreciate his past betrayal of Ms. S's trust. He lied to her, traded upon the relationship he had fostered with her and her father and caused her significant inconvenience and financial loss. Grow-operations in rented houses are not victimless crimes. The landlord pays a heavy price. That price was paid by Ms. S here. In his evidence, the Applicant appeared to find it easy to excuse his past conduct as well as his failure to provide any restitution to Ms. S for the damage he caused as her tenant. Further, the Panel has concern that his attitude and history of deception of Ms. S is reflected today in the breach of trust demonstrated in his recent behavior towards Ms. G. Taken together, these are further indications of a lack of sufficient rehabilitation to make the Applicant fit for call and admission.

[154] It is true that since the events of 2000 and 2004, the Applicant has shown exceptional determination in his efforts to obtain an education, pursue counselling, and do volunteer community service. However, overall, we find that the Applicant's conduct fails to meet a critical part of the *McOuat* good character test: 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. Further he has not satisfactorily established his good repute, as none of those providing evidence regarding the Applicant's current good reputation knew the full facts regarding his past conduct when they made their statements. They were not in a position to properly answer the *McOuat* test of " whether they would want a fellow like that to be my lawyer."
[155] This case is clearly distinguishable from the decision in *Re. Lee, supra*, in which, despite a history of serious past assaults, the applicant's evidence of rehabilitation was notable and persuasive.

Credibility

[156] The Panel is not aware of any Credentials decision involving an applicant admitting direct involvement in two marijuana grow-operations. Involvement in illegal conduct, such as drug trafficking, is not an automatic bar to becoming enrolled. The circumstances of an applicant's background and past conduct may serve to assist a panel in understanding why the applicant engaged in the conduct in question. If an applicant is found to be truthful, forthright and honest regarding these past matters, a hearing panel may conclude that his or her rehabilitation has been demonstrated in this regard, and the applicant is now of good character and fit to be called. Two cases illustrate this principle:

(a) *Re. DN* (December 10, 1981, Hearing Committee), the panel heard extensive testimony on the circumstances of the applicant's early life, the early death of his mother due to cancer, and his alcoholic father who sent the applicant off to live in a boarding school while providing sporadic financial support and little guidance or assistance. The applicant was convicted of cannabis possession at 16. From the age of 17, he occasionally trafficked in LSD and marijuana and admitted that, after high school, he frequently used marijuana and LSD and experimented with mushrooms, MDA and, on one occasion, cocaine. At 19, he was arrested after being found with 100 doses of LSD, some of which he admitted he intended to sell. After that incident he ceased trafficking but continued to use LSD. That same year he stopped using LSD after having an adverse reaction to it. The applicant went on to obtain an undergraduate degree and attend law school. He knew his previous arrests or convictions might prevent him from becoming a member of the Law Society and during his third year he informed all prospective principals of his previous convictions. He did not obtain employment and proceeded to graduate school, eventually teaching courses at a law school. At the time of the hearing, the applicant indicated that he had not used any drugs for three and a half years. The committee was impressed with the applicant's candour at the hearing with respect to his past conduct and noted that he made no effort to pretend that he was caught were the only occasions when he had broken the law. The committee was satisfied he was of good character and fit to be enrolled as an articling student.

(b) *Re. FF* (September, 1979, Panel Decision) the applicant had convictions for dangerous driving and possession of marijuana. He was charged with unsafe use of a firearm and being drunk in a public place. He was present in his family home on two occasions when the premises were searched for narcotics, but he was not charged. It appears from the decision that the applicant's family home was a source of drugs and constantly being monitored by the police. A marijuana grow-operation was found on the property. The applicant was never charged with respect to it and denied to the hearing panel that he had any knowledge of it. The panel found that the applicant had " failed to disclose fully or frankly the circumstances surrounding the incidents." They noted that his evidence was evasive and some of it

> was beyond belief. The panel found that the applicant had not told the truth and found that was not of good character and fit to become a barrister and a solicitor of the Supreme Court.

[157] In a similar manner as in *Re. FF, supra*, this Panel has found the Applicant's evidence regarding his past conduct to be evasive and, in many respects, improbable and beyond belief. The Applicant's recall of events seemed singularly selective and evasive.

[158] The Panel recognizes that many of these events took place over 10 years ago. However, these were important events in his life, and it would be reasonable for the Applicant's memory to be better than was demonstrated. During his testimony the Applicant used the expression " don't recall" or words to that effect at least 50 times. It is true that some of these responses were replies to questions asking whether he recalled a specific event and, in some instances, he used the expression " don't recall" , or words to that effect, more than once in answering a specific question. Even after taking that into account, the Panel finds that the Applicant was not sufficiently truthful, forthright or frank in the hearing to meet the standard required for admission, given the number of such responses and the critical areas covered by the questions eliciting these non-committal responses.

[159] For example, as discussed, the Applicant could not positively assert that he had not breached the No-Contact Order in 2000 while awaiting trial. Ms. M was clear that she and the Applicant met and were intimate during this period. After she testified regarding the breaches of the No-Contact Order, the Applicant admitted in cross-examination that he had intimate contact with her twice after the charges were laid, but he could not recall if these incidents occurred when the No-Contact Order was in effect. The timing of these encounters, and his possible breach of a court order, did not appear to be a matter of any particular importance to the Applicant. His lack of recollection regarding events of such significance was not persuasive of either his credibility or his current rehabilitation.

Conclusion

[160] *Law Society of Upper Canada v. Schuchert, supra*, involved an applicant with a lengthy criminal record who applied for admission to the law society. At para. 20 of that decision, the panel noted that people change and character at the time of the hearing is the key factor to be assessed:

> It is important not to confuse the good character requirement for admission with notions about forgiveness or about giving an applicant a second chance. The admissions panel is not in the forgiveness business; the test to be applied is clear, and the admissions panel is to determine if the applicant is of good character today. The *Law Society Act* does not permit an admissions panel to apply any test other than that relating to the applicant's good character at the time of the hearing. It's good character today, and sympathy and forgiveness doesn't enter into the equation.

[161] We find that the Applicant's application for enrolment must be rejected on the basis that he has not met his burden of proving his current good character, reputation and fitness to be called. It is tempting to turn to the principles of forgiveness and second chances discussed in *Schuchert*, *supra*, but in a different sense, and overlook the Applicant's lack of candour and the limitations of the independent evidence regarding rehabilitation because he has worked so hard to create a different sort of life.

[162] Related to this, the Applicant's counsel argues that, just because, perhaps, his client is not perfect in terms of current points of judgment regarding one matter or another, does not mean that in time he will not improve to the point that he is indeed of unimpeachable character. The Applicant's counsel asserts that there are so many indications of admirable progress that they overcome reservations arising from the past.

[163] This argument might succeed if the Law Society had the burden of proof in this situation. However, the burden is on the Applicant. The statutory test does not allow the Applicant's lack of candour to be

overlooked as a result of his volunteer commitments or the trajectory of the rate of his improvement. Similarly, he cannot be given the benefit of the doubt that he will become more honest and perceptive of correct conduct once he is called to the Bar. This would transfer the risk to the public and the profession. Law Society members must be equipped when they are called to serve the public and to maintain and nurture public confidence in the profession.

[164] In summary, the Panel finds that there are two inter-related grounds for refusing the Applicant's application for Temporary Articles, either of which would be sufficient to deny the application. He has not met the required standard in that:

(a) He was not sufficiently forthright, truthful and frank in his evidence; and
(b) He has not satisfied the Panel that he is sufficiently rehabilitated.

[165] He has not demonstrated that he is able to meet the expectations of the public and the profession for character, reputation and fitness to be called as a barrister and solicitor of the Supreme Court.

[166] The Panel concludes that this is not an appropriate case to put conditions on the enrolment of the Applicant as a Temporary Articled student. They would not be useful.

[167] The application for enrolment in temporary articles is rejected.

[168] Law Society Rule 2-28 provides that an unsuccessful applicant for enrolment, call or admission may reapply for enrolment on the earlier of the date set by a panel or two years after the date of issuance of the decision denying the previous application. No submissions were made on the point of timing of such a further application for enrolment by the Applicant. The Panel is prepared to hear submissions on this point within 30 days of the date of this decision. In the absence of any other order being made as a result of such submissions, the Applicant will be entitled to reapply two years after the issuance of this decision.

[169] Neither party made any submissions on costs. The parties will have 30 days from the date of this decision to make any submissions on costs.