

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

Michael Grant Gayman

Applicant

**Decision of the Hearing Panel
on Application for Reinstatement**

Hearing date: December 16, 2011

Written submissions received: February 24, 2012 and February 28, 2012

Panel: David Mossop, QC, Chair, Paula M. Cayley, James E. Dorsey, QC

Counsel for the Law Society: Henry C. Wood, QC

Counsel for the Applicant: Richard Lindsay, QC and Colleen O'Neill (Articled Student)

overview

[1] This is a credentials hearing. The Applicant, Michael Grant Gayman, requests readmission to the Law Society of British Columbia, as a barrister and solicitor. The Applicant was disbarred by a hearing panel of the Law Society on May 6, 1999. The basis for disbarment was conduct unbecoming a lawyer. Specifically, the Applicant, acting as a trustee, knowingly breached a trust instrument resulting in a loss of approximately one million dollars to some 20 investors.

[2] However, this is more than a credentials hearing. It is the story of a human journey. The Applicant had a promising legal career, but he made a serious mistake and was disbarred for it. The Applicant has tried to rehabilitate himself ever since. This story is told within the background of substance abuse, primarily alcoholism. It is a story of a man who gradually permitted alcohol to become the centre of his life and lost everything. At one stage of his alcoholism, the Applicant was drunk and was crawling in the slush on a winter's day in Fort McMurray. This is a sad story.

[3] This is also an uplifting story, for the Applicant obtained help from the Salvation Army and has been sober for about nine years at the time of this decision.

[4] The disbarment of a lawyer is a form of capital punishment, which the Law Society uses in the most serious of cases. However, resurrection is possible, though it is a rare event. In other words, a disbarred lawyer can be reinstated.

[5] The two major questions facing this Panel are:

(a) Under what circumstances may a disbarred lawyer be reinstated? and

(b) Have the circumstances been met in this case?

[6] This Panel has decided that, in the exceptional circumstances of this case, the Applicant should be reinstated, but only under strict conditions.

Facts

[7] This journey begins on February 15, 1951, when Mr. Gayman was born in Vancouver. He was not brought up by his natural parents. He was adopted into a middle class family living in the Dunbar area. His adopted father was a doctor. His adopted mother was trained as a school teacher, though she spent most of her time looking after Mr. Gayman and his adopted siblings.

[8] By all accounts, Mr. Gayman had a happy childhood. He was placed in an accelerated program in elementary school and completed grades 4, 5 and 6 in two years. In other words, he skipped a grade. He is still proud of this accomplishment.

[9] Mr. Gayman entered high school when he was of a young age. This caused some problems. Mr. Gayman felt he did not fit in at high school, and in fact, he did not fit in until he reached grade 11. At that time he had become an excellent rugby player. He had also been elected to the student council.

[10] In grade 12, Mr. Gayman remained on the honour roll of his high school. However, he began to lose interest in school.

[11] At this time, Mr. Gayman began to drink perhaps a couple of beers on social occasions. His parents and school personnel were concerned about his behaviour. However, he graduated from high school with honours.

[12] At this point in his life, Mr. Gayman showed a great deal of potential and promise. However, at the same time, there were indications in his life that he may turn in the wrong direction. These competing forces were pulling on Mr. Gayman in different directions, at this time and for the rest of his life.

[13] Mr. Gayman was accepted as an undergraduate at UBC. He became involved in the social life, including playing bridge and pool. Mr. Gayman also began to use marijuana. Mr. Gayman's academic performance took a nose dive. He limped through first year and did not complete second year. He dropped out of UBC.

[14] Mr. Gayman began working at logging camps up and down the coast of British Columbia. He was drinking during this period of time and continued to use marijuana and hash when he was not working at the camps.

[15] Mr. Gayman worked at the logging camps for about three years, and then, around the age of 21, he returned to post-secondary education and picked up some credits.

[16] Mr. Gayman's next significant job was working as a waiter at the Keg and Cleaver in Richmond, later known as the Boathouse. He found that he could make a great deal of money, and he had access to an unlimited supply of free liquor. At this point in time he became a heavy drinker, and his tolerance for alcohol became high.

[17] At this job, Mr. Gayman met his future wife, a cocktail waitress. In 1974, at 23 years of age, Mr. Gayman married in Vancouver.

[18] The couple continued working at the Keg. Their first child was born in 1976. Then the couple had two more children.

[19] Ultimately, Mr. Gayman obtained a BA in psychology and graduated from UBC Law School.

Early Legal Career

[20] Mr. Gayman articulated with a distinguished downtown law firm. He was called to the Bar on May 12, 1980.

[21] Early on he was approached by Bill McDonald, a prominent lawyer, to be an associate with his firm. Ultimately, Mr. Gayman became a partner and the firm expanded to five associates. The firm became quite successful.

[22] At this point in his life journey, Mr. Gayman looked forward to a profitable and successful legal career. Of more importance, he had a wonderful family.

[23] However, he found early on that drinking was very much part of the business of practising law.

Breach of Trust

[24] Mr. Gayman had been called to the Bar for about four years when a high school friend approached him about acting as a trustee. The high school friend introduced him to SP, principal of a research company. It should be noted that at this time Mr. Gayman had practised almost exclusively in the area of employment law. He had limited knowledge of trust and tax law. However, Mr. Gayman agreed to take on the position of a trustee.

[25] Another lawyer had drawn up the trust agreement, and this lawyer was someone for whom Mr. Gayman had a great deal of respect. That lawyer, however, was not available to act as trustee. Although it is not totally clear, it seems the lawyer was going to be out of town for the relevant period of time.

[26] Even though the matter was outside Mr. Gayman's area of expertise, he agreed to act as trustee. As Mr. Gayman stated in his testimony, he was dazzled by the prospect of being trustee of a complicated scheme of over one million dollars.

[27] This scheme or trust was set up to take advantage of the Scientific Research Tax Credit (SRTC), then in existence under the *Income Tax Act*. Some of these schemes were valid; others were found out to be scams or fraudulent in nature. At the time Mr. Gayman agreed to act as trustee, he had no reason to question the validity of the scheme.

[28] The Trust Agreement, to which Mr. Gayman was a party, obliged him to hold approximately one million dollars as trustee on specific terms and conditions set out in the Agreement. The essence of the Agreement was that, if the purchasers of the tax credit were unable to obtain the tax advantages intended, the trustee would disburse the funds to Revenue Canada. Alternatively, the trustee would disburse the funds to the research company in accordance with the requirements of the *Income Tax Act* on documented proof that the expenditures were permitted under the *Act* such that the purchasers would receive the tax benefit. Once Mr. Gayman had been appointed trustee, SP immediately approached him. SP wanted approximately \$350,000 to be disbursed to the company immediately. He proposed this despite the requirement of the Trust Agreement that such funds should not be released until some important documentation was in place.

[29] However, SP was able to convince Mr. Gayman, even though Mr. Gayman knew this was in breach of the Trust Agreement. SP basically said the documents were forthcoming and the money was needed immediately. Mr. Gayman released \$350,000 to the research company.

[30] Shortly thereafter, the same SP informed Mr. Gayman that he had lost the \$350,000 on unauthorized expenditures, either in the stock market or other investments. SP asked Mr. Gayman to release the

remainder of the funds.

[31] Mr. Gayman panicked and advanced the funds to the research company in the vain hope the funds could be restored in their entirety. He knew what he was doing was in breach of the Trust Agreement; however, he went ahead with it anyway. SP and the accountant involved in the Trust Agreement fled the jurisdiction. It seems they were in cahoots, and the scheme was fraudulent in nature.

[32] As it turned out, the SRTC was disallowed. Revenue Canada concluded the scheme was fraudulent.

[33] The various purchasers of the tax credit were denied deductibility of the monies that they had expended to purchase the tax credit. Further, the inappropriate disbursement of funds by Mr. Gayman caused the purchasers to lose the back-up or security that had been structured into the Agreement to protect them in the event the scheme was not approved by Revenue Canada or should there otherwise be a failure on the part of the research company to perform some obligations under the terms of the tax credit purchase.

[34] Mr. Gayman, in his testimony in front of this hearing panel, explained his behaviour at this point in time in the following way:

A ... It was a high school friend of mine who advised me of this thing. He indicated that all the documentation was -- the scheme had been drawn up. He named the lawyer that had been involved in the -- in the preparation. It was someone I knew professionally and someone I respected. And I was told that this person could not be there for the closing. That he had to be out of town on something and they needed somebody who could stand in as trustee and could I do it as trustee.

It was basically outside of the area of my practice. And it had nothing to do with labour relations and employment law. And I offered to do it. And I may have been a little bit dazzled by the thought of, you know, being the trustee of this complicated scheme and -- let's face it, a million dollars is an awful lot of money today. It was a lot more then. ...

And SP came to me and said what they needed was to set up a line of credit in order to finance some of the purchases that were being made to facilitate the affairs of the company. The business operation that would qualify for this. And he indicated that the accountant, HD, wasn't available and would be back shortly and if I would be prepared to basically transfer some of the trust funds from Swiss Bank Core, which is where the funds were held, to the Royal Bank of Canada.

And, as all of the reports show, I agreed to do that. And I knew, at the time, I did not have the necessary documentation for the release. I acknowledge that.

Q Then what happened following the second release?

A At some point in the New Year, so 1985, SP told me that he had lost the funds on investments that were not authorized investments. ... And I basically -- I lost it. I was beside myself. In my mind I saw -- and I should say, also, HD, the accountant, hadn't shown up in between the time I made the initial advance on the expectation that he would return and provide me with the necessary certificates. And by then SP told me that he lost the funds.

So HD has disappeared. And I'm realizing that I've made a horrendous mistake. And I don't mind saying I saw everything I had crashing down. I lost it. I panicked. I didn't release the balance of the funds immediately. But when I say, "I lost it," I was beside myself and drinking insanely, and, you know --

Q How long had you been called to the bar before this happened?

A A little over four years.

Q So you now panic and –

A I basically --

Q What then happens with SP?

A I basically said to him, "Well, you've got to get it back." "You've got to get this back." And I advanced the rest of the funds.

I think in hindsight I've realized that it wasn't just the -- the hope that he could restore the trust funds. It was, in part, just a desire to be completely out of it. You know, I -- I was sickened by the whole thing. As I said, I saw my whole life crashing down and losing everything I had. And I think that was -- at least, initially, I said, "You have to get this money back." And I decided that I was sticking my head in the sand. And I wanted to be out of it. And then, of course, it just hung like a Sword of Damocles over my head.

The World Comes Crashing Down

[35] Three forces began to come down upon Mr. Gayman. They were the investors, the Law Society and his dependency on alcohol.

[36] The investors in the SRTC began making inquiries of Mr. Gayman. He basically ignored these inquiries and failed to respond.

[37] The investors even sent a letter of complaint to Mr. Gayman's partner. His partner told Mr. Gayman to take care of it. Mr. Gayman did not.

[38] In 1991, Mr. Gayman was served with a Writ of Summons by the investors near the end of the limitation period. Judgment was ultimately obtained against Mr. Gayman.

[39] The Law Society did not know of any of these events until late December of 1992, when a lawyer lodged a complaint against Mr. Gayman with the Law Society.

[40] Mr. Gayman again tried to ignore the problem. He failed to give any substantial response to the requests of the Law Society for over two years.

[41] Ultimately, Mr. Gayman was cited for professional misconduct, namely failure to respond to the Law Society. A hearing was held.

[42] The panel held that Mr. Gayman had engaged in professional misconduct by failing to respond to letters from the Law Society.

[43] Mr. Gayman was ordered to:

(a) pay a fine of \$3,000; and

(b) pay costs of \$1,750.

[44] Mr. Gayman was also reprimanded.

[45] The full facts are set out in *Law Society of BC v. Gayman*, [1995] LSDD No. 159.

[46] Mr. Gayman did not renew his membership in the Law Society for 1996, and he ceased to be a member as of January 1, 1996.

[47] Ultimately, a citation was issued by the Law Society against Mr. Gayman for breach of trust.

[48] A hearing panel was convened in 1999. The panel held Mr. Gayman's behaviour in breaching the trust was "conduct unbecoming a lawyer" under the *Legal Profession Act*. The panel was particularly concerned about the second disbursement of funds (approximately \$650,000). The panel ordered Mr. Gayman's disbarment as of May 6, 1999. The full text of the decision is found in *Law Society of BC v. Gayman*, [1999] LSDD No. 35.

Alcoholism and Drug Addiction

[49] Mr. Gayman had always been a frequent user/consumer of alcoholic beverages. As stated earlier, he started drinking in high school. Over time, he developed a high tolerance for alcohol. However, after the breach of trust, his drinking intensified.

[50] At the time of the breach, Mr. Gayman testified that he was drinking a fair amount. At another point in his testimony, he stated he was drinking "insanely" at the time of the second breach.

[51] In an expert report filed by Dr. Ray Baker, the doctor states that, by age 30, Mr. Gayman was a heavy drinker, consuming up to 26 ounces per day.

[52] After he ceased to practise law as of January 1, 1996, Mr. Gayman attempted various jobs including self-employment.

[53] In 1997, he worked for a BC furnace service company as a dispatcher. He was able to advance within the company with more responsibilities. However, his income was minimal. To satisfy his increasing demand for alcohol, he would scrounge for bottles and return them for cash to pay for drinks. In addition, to make ends meet, he would pick up cigarette butts from the sidewalk and use them.

[54] The company was aware of his drinking problem. However, they kept him on as he could do the job. Mr. Gayman was a "functioning alcoholic".

[55] In 2001, Mr. Gayman obtained a new job at B Ltd. Again, he was given more and more responsibility. He became Operations Manager. Although his drinking intensified, he was able to do the job. B Ltd., however, went out of business near the end of 2002.

[56] At the beginning of 2002, Mr. Gayman's mother died. He attempted to stop drinking. In the same year, his father died. Shortly after his father's death, he started drinking heavily again. Alcoholics may attempt to cease drinking more than once before they are successful. Therefore, Mr. Gayman's failure at this point in time is not surprising. In addition, this is not the first time Mr. Gayman attempted to quit drinking. He attempted to quit drinking in his first year of law school. Again, he failed.

[57] Mr. Gayman did attend some meetings of Alcoholics Anonymous in the mid 1980s to the late 1980s. However, he did not follow through. In addition, he did make contact with Interlock Member's Assistance Program. This program helps lawyers and their families with problems, including alcohol problems. Again, he was not ready to follow through. As Mr. Gayman stated during his testimony about his attempts to stop drinking:

What I didn't understand was that I was powerless over alcohol and that it was bigger than me. So I kept thinking I could handle it. And I kept thinking next time will be different. And that was my insanity. I kept doing the same thing over and over again expecting a different result. So, for me, I had to hit a very low bottom before I asked for help.

[58] In March 2003, Mr. Gayman moved to Fort McMurray with his new wife to make a fresh start. His first

marriage had long since ended on account of his alcoholism. His new wife worked at a bakery shop at Safeway. He got a job at Wal-Mart stocking shelves during the nightshift at \$12 per hour. This is a far cry from the hourly rate he charged when he was a practising member of the profession.

[59] However, his drinking continued, and his attempts to have a fresh start were therefore doomed to fail. His new wife left him shortly thereafter. This is another broken relationship during his journey.

Low Point

Wine hath drowned more men than the sea.

Thomas Fuller

[60] During the last night of Mr. Gayman's stay in Fort McMurray, a low point was reached. Mr. Gayman described this low point as follows:

And I have a memory that I hope I never lose which is my last night in Fort McMurray. And, of course, I had way too much to drink. But I was -- I was crawling along the sidewalk, which was covered in frozen slush and I was pushing my briefcase ahead of me because it was too heavy to carry. And, you know, it was symbolically the last vestige of my legal career. So, as I say, I don't want to lose that memory because I don't want to go back there.

Turning Point

[61] In April 2003, Mr. Gayman came back to Vancouver from Fort McMurray. He described the turning point in his life:

Well, I've come back from Fort McMurray. And I was staying at my sister's, briefly. I explored a couple of old acquaintances for job possibilities. And nothing was there. And I was sitting one night in my sister's kitchen. And she would let me to drink a little bit of wine and she would drink scotch. And we were talking about my children. And I basically broke down and said to her, "Take me to a psych ward. Take me to detox. I just want the pain to go away." So that would be the turning point.

So, you know, we were raised on the west side. And she thought the psych ward was -- had more cachet than detox. So we went out to UBC Hospital to try and get me admitted. The psych ward was full, but they took me to emergency. I was there for four or five days. It was full too. So I -- I bounced around from a bed here. And one night I slept on a foamy in the storeroom.

I obviously met with doctors and psychiatrists. And after the night there, a new psychiatrist came to me and said, "Well, look, the psych ward is still full. You can see the emergency is full. You've had a few days to clear your head. You can go home."

And I said to him, "I didn't come here to clear my head. I came here because I was going to kill myself."

And somehow they were able to find a bed for me to stay that night and, much more fortunately, they were able to secure a bed for me in the Harbour Light Detox the next day.

Rehabilitation

[62] Since April 11, 2003, the day he went into the Harbour Light Detox program run by the Salvation Army,

Mr. Gayman has not consumed alcohol.

[63] The Salvation Army Detox Program and other programs saved Mr. Gayman's physical and moral life. However, these programs could not have achieved this unless Mr. Gayman was truly ready to change. He was.

[64] The Detox Program is a residential program lasting five to ten days. The purpose is to deal with the physical effects of withdrawal from alcohol consumption.

[65] During his stay in the Detox Program, Mr. Gayman learned about other programs available for alcoholics. His life changed from one of despair to one of hope.

[66] The rehab program is a twelve-step program. In phase one, the participants operate a food line. They prepare ten meals a week for the community and serve about 400 people a week.

[67] In the second phase, there is a life skills program. These life skills include resume writing, looking for work, personal hygiene and nutrition.

[68] Phase three is a supportive care program. Participants are allowed to stay in residence for about a year if they are looking for work and going to school.

[69] Mr. Gayman sailed through these three phases and began looking for work. He also began thinking about what he wanted to do with the rest of his life. During his testimony, Mr. Gayman described his thinking as follows:

I was looking for work. And I remember having an interview with the Surrey School Board for a Senior Human Resources Officer, manager's position responsible for the non-teaching unionized staff. And I'm not saying they would have given me the job or not, but in the middle of the interview I realized I didn't want it, and what I wanted to do is work at Harbour Light, even if it was working on the front desk as a desk attendant. I -- I wanted to be a piece in the puzzle that made up the big picture of the services that they provide.

[70] Fortunately, the Salvation Army saw great potential in Mr. Gayman. The Salvation Army offered him a job as assistant manager of their corrections program. He accepted.

[71] Since that day, Mr. Gayman has been employed by the Salvation Army in various positions and has moved up the corporate ladder in that organization.

[72] In March 2005, Mr. Gayman was promoted to manager of emergency shelters. This included two and a half shelters. The half refers to the additional shelter opened up during the cold weather. He had additional responsibilities for the front desk and security staff. In September 2005, the Salvation Army allowed Mr. Gayman to enter into a contract promoted with BC Housing. He became an extreme weather coordinator for the Vancouver area. This required him to put into place contingency plans for additional shelters when the weather became extreme.

[73] In 2007, Mr. Gayman took on additional responsibility as a worker in the human resources department of the Salvation Army.

[74] Finally, in July 2010, the Salvation Army asked Mr. Gayman to become director of labour relations. This was a new position. At the same time, he ceased his managerial responsibilities with the Salvation Army of BC, and he ceased his position as cold weather coordinator.

[75] In his present position as director, Mr. Gayman is responsible for 180 people. Mr. Gayman has come a long way in his life journey. At a low point, he was crawling, drunk, in the slush in Fort McMurray dragging

his briefcase. Now, he is in a senior management position with one of the most prominent NGOs in Canada.

Reconnecting with the Legal Profession

[76] During this painful journey, Mr. Gayman intentionally disconnected from fellow members of the legal profession. This is understandable because he had been disbarred.

[77] However, that began to change in the spring of 2006. Mr. Gayman took counselling at Vancouver Community College. He hoped the course would make him a better manager at the Salvation Army.

[78] During this time, Mr. Gayman decided he wanted to “give back”. He began contacting members of the legal profession.

[79] Mr. Gayman ended up in contact with the accountability group of the Lawyers Assistance Program, which exists for people who are dealing with substance abuse and involves group meetings, which are attended either on a voluntary basis or as a result of a monitoring agreement put in place by the Law Society or employers.

[80] The group includes alcoholic lawyers who are at various stages of recovery. The group welcomed Mr. Gayman with open arms. Later, Mr. Gayman was appointed to the Board of Directors of the Western Recovery Foundation. That organization holds real estate assets for three residential properties where the Turning Point Society runs recovery houses that care for alcoholics and drug addicts. Mr. Gayman also sits on the Board of Directors of the Turning Point Society.

Reconnecting with his Family

[81] Mr. Gayman has re-established a relationship with his family. In his testimony Mr. Gayman said the following:

It's much easier for me to address all the things I did wrong than it is to acknowledge the gifts that I had from recovery.

First and foremost, is to have my children back in my life. You know, I – I lost everything I had and I regained a good portion of it. And then I lost all of that again. And, you know, I – my children had, in essence, written me off once. And I regained their love and affection. And then I lost that again. So to have it now is precious.

Why Does the Applicant want Reinstatement

[82] Mr. Gayman explained it this way:

... Well, as I said earlier, you know, the idea of applying for reinstatement was formulated after I took an introductory counselling course. It's been a long time in the making to get here. To some extent, my objective changed. I made a mistake a long time ago, and I compounded that. And then I ran from that. And, of course, I hid from it using alcohol and drugs. I hurt a lot of people in the process. It took a tremendous toll on me. I've had a lot of help to get to where I am now. And I'd like to acknowledge that. I'd like to acknowledge everybody in this room starting with Mr. Lindsay and Ms. O'Neil and what they have done on my behalf. ...

... When I was avoiding the Law Society with a view to maintaining my right to practise prior to being disbarred so I could continue to feed my children, I didn't give any thought to the Law Society or the legal profession whatsoever. I was concerned only about myself. And I, quite

frankly, looked at it more as what the Law Society was doing to me, rather than what I was doing to the Law Society or the legal profession. As I said, I had committed, as far as I was concerned, the ultimate breach of faith that a lawyer could do. But I looked at the Law Society as -- I wouldn't say persecuting me, but hounding me of something that I was trying to forget and put behind me.

It's two-fold. Firstly, it's the last step in a process where I can hopefully achieve closure of what is obviously the most significant event in my life, and, hopefully, finally forgive myself for that. The other aspect is to come here to the Law Society and say I'm sorry. I'm sorry for the time and trouble I caused everybody. And I'm sorry for the disrepute that I brought upon the legal profession in the process. I didn't see it then. I see it now. And I thank you for hearing my application.

[83] Mr. Gayman, in pursuit of his goal of re-establishing a relationship with lawyers and the Law Society, had a comprehensive medical report prepared on his addiction issued by Dr. Baker. An updated medical report was also filed with the Panel.

[84] Dr. Baker found that Mr. Gayman met the diagnostic criteria for alcohol and cocaine dependency. He further stated that he is uncertain whether or not Mr. Gayman met the sufficient criteria to make the diagnosis for a marijuana dependency.

[85] Dr. Baker also found that the alcohol dependency, the cocaine dependency and the marijuana abuse or dependency were in sustained remission.

[86] Dr. Baker made these comments that are of some importance:

Mr. Gayman appears to have achieved a dramatic recovery from serious substance dependence ...

Avoidance, procrastination and poor judgment are fairly stereotypical manifestations of alcoholism and other drug dependencies, especially during later stages when use of the drug or drugs is steady and excessive ...

I believe he would be capable of performing duties that were highly responsible, safety-sensitive or safety-critical. Before clearing him medically for such duties, however, I would require several things.

[87] It is of some significance that Mr. Gayman has no specific plans as far as the practice of law. Most individuals seeking reinstatement have a specific plan in place. They plan to practise. They may want to practise on their own or they may hope to go with a specific law firm. Mr. Gayman in this case, both in his original application to the Law Society and his testimony in front of this Panel, indicated he did not have a specific plan. The Panel then raised the issue as to whether the Panel had the jurisdiction to order the reinstatement of Mr. Gayman as a non-practising member. Submissions were received. The Panel has decided it does not have to make a decision on this issue. The conditions agreed by the parties address the concerns of the Panel. Any place where Mr. Gayman wants to practise law has to be approved by the Credentials Committee. Also, Mr. Gayman will be supervised for a period of time.

Cocaine Use

[88] Mr. Gayman's misuse of cocaine did not last as long as his misuse of alcohol.

[89] Mr. Gayman was introduced to cocaine in the mid 1970s. However, he did not start using cocaine regularly until the mid or late 1980s. Mr. Gayman stopped using cocaine in the early 1990s.

[90] Mr. Gayman, in his testimony, indicated that he was not using cocaine at the time of the breach of trust.

ISSUES

[91] In credentials hearings, it is traditional for the Law Society to submit a written statement. This written statement sets out the concerns that the Law Society has about the applicant. This was done in this case. Those concerns are:

- (a) the circumstances leading up to the order by a hearing panel in January 1999 that the Applicant be disbarred for a breach of trust conditions involving the improper payment out of one million dollars over the course of two separate distributions, the latter of which occurred when he had full knowledge that preconditions had not been met;
- (b) the Applicant's failures to respond to Law Society correspondence and inquiries in the course of the Law Society's investigation of the breach of trust matter;
- (c) his assignment in bankruptcy on February 18, 2005;
- (d) his failure to obey a court order, which he disclosed in response to question D9 of his application for reinstatement; and
- (e) his medical fitness, which pertains to his history of both drug (cocaine) and alcohol dependency. A comprehensive medical assessment conducted by Dr. Baker in 2008 provides extensive background.

ANALYSIS

Law on Good Character

[92] Counsel for the Applicant relied on the case of *Law Society of BC v. Schuetz*, 2011 LSBC 14. That case dealt with for three important matters. They are:

- (a) the role of section 19(1) of the *Legal Profession Act* and the role of the Hearing Panel;
- (b) the principles that other Panels have used in applying section 19(1) of the *Legal Profession Act*; and
- (c) considerations a Panel should look at in reinstating a person who has had an alcohol dependency issue.

[93] In *Law Society of BC v. Schuetz* (supra) at paragraphs 1 through 4, the Hearing Panel sets out the purpose of section 19(1) of the *Legal Profession Act* and the role of the Hearing Panel in enforcing it.

[1] ... This application triggers section 19(1) of the *Legal Profession Act* which reads as follows:

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 is fit to become a barrister and a solicitor of the Supreme Court.

[2] This section is the "gateway" to the practice of law. The section sets out criteria for becoming an articled student, becoming a lawyer for the first time, and for readmission to the practice of law. Although the standard is the same, a hearing panel applies that standard in a different context. For admission as an articled student, a hearing panel may concentrate on

events that happened prior to the application for articles. In many cases these events may include criminal activity of a youthful indiscretion or a more serious nature. For persons becoming lawyers for the first time, the hearing panel may concentrate on what happened during his or her articles as well as previous activities. For lawyers seeking readmission, the hearing panel will look into:

- (a) his or her dealings with the Law Society prior to ceasing to be a member (this would include the conduct record);
- (b) the reason he or she ceased to be a member. If it is substance abuse or a mental health problem, the hearing panel must be satisfied these problems are adequately dealt with; and
- (c) what the lawyer has been doing during his or her period away from practice.

[3] The above considerations are not exhaustive, and the hearing panel may look at other factors too.

[4] The contextual analysis described above is to determine whether the applicant is of “good character and repute”. This has a strong public interest component. That public interest component can be divided into two general categories. The first is public protection. The public must be protected from individuals who misuse their position as a lawyer. However, public interest also has a “public inclusive provision”. It is in the interest of the public to have lawyers from diverse backgrounds and diverse experiences. As we will see later on, the Applicant does come from a rather unique background. Sometimes, these two aspects of public interest do not conflict. Sometimes, they do conflict and, if there is conflict, public protection prevails and the lawyer is not readmitted. However, in other cases, a hearing panel may add conditions on the readmission to protect the public and, at the same time, give the public a diverse pool of lawyers to serve the public in general.

[94] The *Schuetz* case (*supra*) also refers to *Re-Applicant 3*, 2010 LSBC 23, paras. 12 to 21. That case sets out the general principles in applying the good character and repute test. They can be summarized as follows:

- (a) The onus is on the Applicant.
- (b) Good character is determined at the time of the Hearing; however, the standard is not one of perfection.
- (c) A person’s character can change over time. Past mistakes do not define one’s essential nature for all time. Rehabilitation is an important consideration.
- (d) The Applicant must appreciate the difference between right and wrong. In addition, the Applicant must be willing to support the rule of law.
- (e) The Applicant must have the morale fibre to do what is right no matter what the consequences. Generally, an Applicant should have the strength of character.
- (f) The Applicant should put the client’s interests first no matter what the personal cost.
- (g) The expectations, both of the public and the profession, should be considered.
- (h) The Applicant should not only be truthful, but also completely candid throughout the application and hearing process.

[95] The above principles are not exhaustive. However, they are among the most important and the most commonly referred to.

[96] The *Schuetz* case (supra) also sets out a three part test for determining whether a person should be readmitted as a member of the Law Society, when that person has had an alcohol problem. The three part test is:

- (a) Has the Applicant engaged in meaningful rehabilitation?
- (b) Can safeguards be in place to ensure the Applicant abstains from alcohol?
- (c) Can other safeguards be put in place to protect the public from the past failings of the Applicant's practice?

[97] It is important to keep in mind that, in *Schuetz* (supra), the Applicant had voluntarily resigned his membership to deal with his alcohol problem. However, he was not disbarred.

[98] Counsel for the Law Society, Mr. Wood, QC, brought to the attention of the Panel the case of *Watt v. Law Society of Upper Canada*, [2005] OJ No. 2431 (Divisional Court).

[99] That case set out a six-part test for reinstatement of a disbarred lawyer. That test is reproduced at para. 14:

- (1) Is there a long course of conduct showing that the applicant is a person to be trusted?
- (2) Has the applicant's conduct since disbarment been unimpeachable?
- (3) Has there been a sufficient lapse of time since the disbarment?
- (4) Has the applicant purged his guilt?
- (5) Is there substantial evidence that the applicant is extremely unlikely to misconduct himself again if readmitted?
- (6) Has the applicant remained current in the law through continuing legal education, or is there an appropriate plan to become current?

[100] The question for this Panel is what test should be used, the *Schuetz* test or the *Watt* test? The question pre-supposes there is a difference between the two tests. However, in the Panel's view, there is not a significant difference. The standard for admission or reinstatement is the same: "good character". However, its application is contextual. Therefore, the considerations, the inquiry and the expectations for a lawyer who has been disbarred are higher than a young student who engaged in a youthful indiscretion.

[101] The Panel has decided to apply *Watt* in this matter, in keeping with the spirit of interprovincial mobility of lawyers and the development of national standards. However, its application in British Columbia should always be flexible and consistent with the *Schuetz* decision. The flexibility is necessary to recognize that reinstatement of a lawyer, even a disbarred lawyer, is always fact sensitive. Legal principles can only be general guidelines.

What are the Issues?

[102] Before applying the *Watt* test to this application, a few words need to be said about the issues raised by the Law Society of British Columbia. They were five in number. In the Panel's view, those concerns really boil down to two major concerns:

1. the Applicant's breach of trust; and
2. his alcohol dependency.

[103] The other concerns, for the most part, stem from these considerations. The Applicant's bankruptcy grew out of his breach of trust and the tax consequences of no longer being a lawyer. The same is true of disobeying a court order. The Applicant had no money to pay off the investors. His failure to respond again stems from his breach of trust and cover-up.

[104] The final concern is the cocaine dependency. However, his cocaine use ceased in the early 1990s.

Applying the *Watt* Test to the Facts in this Case

[105] We apply the *Watt* test to the facts in this case.

Alcohol Dependency and Breach of Trust

[106] One of the challenges facing this Panel is the relationship between the Applicant's alcohol dependency and his breach of trust and cover-up. On one side, the Applicant readily admits he knew what he was doing in releasing the funds the first and second time (cover-up). He also admits he knew what he was doing in failing to respond to the Law Society. The Applicant in his testimony stated two important matters:

1. At the relevant times, he did not believe his judgment was impaired; and
2. If it was impaired, he would not have recognized it.

[107] The Applicant stated it this way in his testimony:

Q ... what I'm getting at, is that your abuse of substances during this period wasn't something that took away your faculty for significant day-to-day legal and ethical judgment.

A I can't say that. I mean I didn't feel that I was -- my judgment was impaired. I am of the belief now, because one thing I got when I spent a year in treatment was an education of addiction. And I'm personally of the belief now that denial is not the unwillingness to accept something, but that also includes, in many cases, the inability to accept something. So it's quite -- if I was -- *if my judgment was impaired, it's quite likely that I would not have realized that*. Also, you know, I knew I had a drinking problem. I knew I was an alcoholic. I didn't realize I was powerless. I felt I was managing other affairs well.

[emphasis added]

[108] Dr. Baker, in his expert report, stated that procrastination and poor judgment go hand in hand with alcoholism, particularly at the later stages. The breach of trust did not take place at the later stages of the Applicant's alcoholism. However, the Panel believes his alcoholism may have played a significant part in his breach of trust, cover-up, and his failure to respond to the Law Society and the investors.

[109] The Panel wishes to emphasize that alcoholism is no defence to a disciplinary matter nor an excuse on a re-admission application. A lawyer or former lawyer cannot say I made a mistake, but I am not responsible on account I am an alcoholic. However, alcoholism coupled with real rehabilitation is an important consideration in the disciplinary action stage of a disciplinary hearing or a credentials hearing re-admitting a lawyer, even a disbarred lawyer. Whether a lawyer or former lawyer has truly rehabilitated themselves is a question of facts for the hearing panel. We find that the Applicant has rehabilitated himself

in this matter.

Is there a long course of conduct showing that the applicant is a person to be trusted?

[110] The Applicant has worked for the Salvation Army for over eight years. He has been given a great deal of responsibility in that organization. In addition, the Applicant has produced various letters from senior members of the bar attesting to his good character. In fact, one of the letters attesting to his good character comes from a Master of the BC Supreme Court.

Has the applicant's conduct since disbarment been unimpeachable?

[111] The answer to that is yes. The Applicant has shown, by his fight with alcohol dependency, a high degree of impeccable behaviour. Dr. Baker commented on it, and the Panel was very impressed by his efforts to cease drinking.

Has there been a sufficient lapse of time since the disbarment?

[112] It has been over 10 years since the Applicant was disbarred from the practice of law. In addition, he has not practised law since 1996. The Panel feels that a sufficient period of time has elapsed to demonstrate his character and fitness to practise law and for the Panel to evaluate whether there has been a demonstrable change.

Has the applicant purged his guilt?

[113] This question, in the Panel's view, has two aspects. Does the Applicant admit to his breach of trust and his alcohol dependency? The answer is yes. The Applicant freely admits that he knowingly breached the trust. He also admits to his alcohol dependency. However, in the Panel's view, there is another aspect of purging the guilt. This means making restitution or at least attempting to make restitution. In the normal course of events, a disbarred lawyer should make some efforts to compensate the victims of his behaviour. However, this is a general requirement. It is not necessary in all cases. It is significant that, in the *Watt* case referred to above, the applicant only made partial restitution. The truth is the Applicant in this case is in no position financially to make any restitution to the investors. The Applicant declared bankruptcy in 2005. Also, the Applicant has spent a great deal of time since his disbarment dealing with his dependency. This is one of the rare cases in which the Panel feels that the Applicant's failure to make any restitution to the investors is excusable.

Is there substantial evidence that the applicant is extremely unlikely to misconduct himself again if readmitted?

[114] The Panel feels that the Applicant is highly unlikely, or extremely unlikely, to misconduct himself again. The conduct record of the Applicant is generally clean. There are a few minor complaints registered. It is of some significance that after the breach of trust in 1984/85, the Applicant practised for some 11 years without any significant complaint other than the breach of trust and the failure to respond to the Law Society. This was a serious failure, but it was an isolated one.

[115] The Applicant in his testimony stated:

Q Okay. And I'm not going to beat this to death, but why -- what can you say that gives some assurance to this Panel that -- that would not repeat if you're allowed to practise law again?

A Simply what I said, that I am not the man I was then. I do not live my life the way I did then. I have a totally different set of values.

Has the applicant remained current in the law through continuing legal education or is there an appropriate plan to become current?

[116] In British Columbia, the sole jurisdiction of this credentials hearing is to determine whether the Applicant is a person of good character and repute. Since the Applicant has not practised law for almost 16 years, he has to fulfill the requirements set out in the Law Society Rules (Rule 2-55 to 2-59).

OTHER MATTERS

[117] Counsel for the Law Society stressed in his presentation to the Panel that the confidence of the public in the legal profession is an important consideration for this Panel to consider. It is sometimes necessary to refuse a person readmission in order to preserve the public's confidence in the legal profession. In other words, the individual sometimes has to be sacrificed. Mr. Wood brought to the attention of the Panel the case of *Bolton v. The Law Society*, [1994] 2 All ER 486 for this proposition.

[118] However, this Panel feels that the public's confidence in the legal profession has a much broader meaning. In the Panel's view, the public would not have confidence in the legal profession if we did not readmit the Applicant. It is true that he breached a trust. Under the normal course of events, such an individual would not be readmitted. The disbarred Applicant must overcome the unforgettable, but not indelible, stain of past professional misconduct, which can always be cited as a reason to reject the application. The task and challenge for the Panel is to balance the reputation of the profession and risk to the public against the aspirations and interest of the Applicant. This Applicant did battle with his alcoholism and has been free of alcohol for the last nine years. In the Panel's view, the public would not have confidence in the legal profession if we did not give this individual a second chance. We would be saying to all individuals who have a drinking problem that there is no opportunity for a second chance. An individual who effectively deals with a serious alcohol dependency for nine years is a person of "good character".

CONDITIONS

[119] Counsel for the Applicant and counsel for the Law Society have agreed to certain conditions to be imposed on the Applicant if he is readmitted. Those conditions are reproduced below. The Panel agrees to these conditions.

ORDER

[120] This Panel grants the Applicant's application for reinstatement subject to the conditions below. Specifically, we find the Applicant is a person of good character and repute and is fit to be a barrister and a solicitor of the Supreme Court. As stated earlier, the Applicant has not practised law for almost 17 years, and he therefore will have to satisfy the requirements set out in the Law Society Rules (2-55 to 2-59). He must satisfy those requirements before he is formally admitted into the practice of law.

[121] The conditions are:

1. To comply with all of the recommendations made by Dr. Ray Baker in his report of September 9, 2008, which encompass the following:

- (a) If medications are required for sleep or back pain, safe, non-addictive alternatives to either

Zopiclone or Codeine are to be used;

(b) A written commitment by the Applicant to abstain from all potentially addictive mood altering drugs and alcohol, unless approved by a physician knowledgeable about the Applicant's history of substance abuse;

(c) To enroll at the Applicant's expense in a formal medical monitoring or relapse prevention process of at least 24 consecutive months duration from the date of signing, which shall be overseen by a professional independent monitor who is not involved therapeutically with him. That monitoring process shall include a written monitoring or relapse prevention agreement in a form acceptable to the Credentials Committee of the Law Society.

2. To continue to use one designated physician as his primary care physician, who will also be his main prescriber of any medications. That physician shall be provided with a copy of Dr. Baker's report of September 8, 2008 (to be edited but in a form acceptable to the Credentials Committee), a copy of the signed monitoring or relapse prevention agreement, and a copy of these conditions. The Applicant shall instruct his primary care physician to provide any related biological testing results and any abnormal liver enzyme results to his monitor, and to report promptly to the Law Society in writing any failure to follow medication recommendations, or any concern with substance abuse.

3. To consult with his primary care physician on a regular basis and to ensure that there are follow-up investigations of potentially abnormal liver enzyme levels. The outcomes of those investigations shall be provided to the Applicant's monitor.

4 To attend regularly at mutual support group meetings as specified by the relapse prevention monitor for the duration of the signed monitoring or relapse prevention agreement. One of those meeting groups shall be declared by the Applicant to be his home group, and he shall participate actively with that group.

5. To select and maintain regular meaningful contact with a same-sex sponsor in relation to his AA involvement, both by way of face-to-face meetings and telephone contact.

6. The monitoring or relapse prevention agreement may be extended beyond 24 months upon the recommendation of the monitor and/or at the direction of the Credentials Committee.

7. The monitor shall submit a report to the Law Society at the 12 month point and at the 24 month point. A further report from the monitor will also be required at the end of the monitoring period, if it is extended beyond 24 months for any reason. The monitor shall report immediately to the Law Society any non-compliance with the monitoring or relapse prevention agreement.

8. Not to operate a trust account or be a signatory upon it, unless relieved of that restriction by the Credentials Committee.

9. To practise law only in a setting approved by the Credentials Committee.

10. To report any significant change in his employment situation to the Credentials Committee.

11. For the duration of the monitoring/relapse prevention process, the monitor will advise the Law Society in writing immediately if the Applicant is not following medication recommendations or if any concern of substance abuse arises from any source whatsoever, including his biological testing, and will otherwise confirm compliance in annual reports to the Credentials Committee of the Law Society.

12. Upon obtaining employment, and for a period of at least two years following reinstatement, to enter into a workplace supervision agreement with a co-worker of equal or higher status, if required by the Credentials Committee, in which case it shall be in a form approved by the Credentials Committee. Any such agreement will include an obligation to file regular reports, as required by the Credentials Committee, commenting upon the work performance and general condition of the Applicant. Any such workplace supervisor shall be provided with a copy of Dr. Baker's report of September 8, 2008 (to be edited, but in a form approved by the Credentials Committee) in addition to a copy of these conditions, and shall report in writing any non-compliance or other concerns immediately to the Credentials Committee.

13. Subject to approval of the Credentials Committee, where that is specifically required, all other conditions may be varied or removed upon application to the President of the Law Society.

FINAL COMMENT

[122] This is an exceptional case. The Applicant had a serious alcohol dependency. He has dealt with it effectively for nine years. He has gone through a fundamental character change. His mistakes and cover-up were serious. However, these mistakes were not part of a pattern of professional misconduct or conduct unbecoming. They were isolated. The evidence is overwhelming that his character was changed and that there is little or no chance he will repeat the same or similar mistake. This exceptional case should not be used by disbarred lawyers to gain reinstatement. There are few Mr. Gaymans.

COSTS

[123] Neither of the parties made any submissions on costs. If any of the parties wish to make a submission on costs, they can do so within 30 days of the date of this decision. The other party will have 14 days to make any response.