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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 4

Respondent

Decision of the Hearing Panel on Application for Enrolment

Hearing date: November 21, 2012
Panel: Herman Van Ommen, Chair, John Ferguson, Public Representative, John Hogg, QC, Lawyer

Counsel for the Law Society: Henry Wood, QC
Counsel for the Respondent: Joseph Doyle

introduction

[1] The Applicant applies for enrolment in the Law Society Admission Program. The purpose of this hearing is to determine whether the Applicant meets the statutory criteria set out in section 19(1) of the *Legal Profession Act* which states:

> No person may be enrolled as an articled student … 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.

[2] The Applicant was educated in India and practised as a lawyer there for a little more than two years. He immigrated to Canada in 2002 and became a citizen in November 2005. He received a Certificate of Qualification issued by the National Committee on Accreditation of the Federation of Law Societies of Canada on November 29, 2011.

[3] In January 2007 the Applicant was involved in a hit and run accident. He was given a violation ticket for failing to remain at the scene of the accident. He was also charged with “impaired driving” and “driving with a blood alcohol level in excess of .08”. The Applicant was not convicted of any of those offences. It is the circumstances surrounding the January 2007 accident and impaired driving charge, his disclosure of those events to the Law Society, and his credibility before this Panel that were the focus of this hearing.

EVENTS OF JANUARY 2, 2007

[4] At the hearing, the Applicant was the only witness called. However, several documents—the Report to Crown Counsel, Report to Superintendant, and notes of the investigating officer and the breathalyzer technician—were admitted by agreement into evidence (with one exception) as proof of the truth of the contents in them.

[5] The Applicant testified that he had dinner at home on January 2, 2007 and drank a 12 ounce bottle of beer with dinner. After dinner he drove to pick up a friend. He was driving south on 128th Street in Surrey, BC and stopped at the intersection with 64th Avenue. He was preparing to turn right, westbound on 64th Avenue. He says he saw a car approaching the intersection also travelling westbound on 64th Avenue but in the centre westbound lane. He proceeded with his right turn into the curb lane westbound on 64th. He says he completed his turn when the other driver changed lanes suddenly pulling into the curb lane. The back passenger corner of that car came into contact with the front driver's corner of the Applicant's car. There was damage to both cars. The Applicant says the driver did not stop and sped off before he could obtain the licence number of that car.

[6] The Applicant says he pulled over and checked the damage to his car. He noted that it was minimal so decided not to call ICBC or the police at that time. He says he was stopped there for about five minutes. He then drove to his friend's house where he stayed for approximately 20 to 30 minutes. While there, he had a drink of rum which he estimates to have been about one to two ounces.

[7] The Applicant left his friend's house to return home and was apprehended by the police who had received a complaint from the other driver about a hit and run. The other driver described the Applicant's car and gave its licence plate number. When the police stopped the Applicant, the officer observed damage to the front driver side of the Applicant's car. The officer advised the Applicant that he was suspected of failing to remain at the scene of an accident. The Applicant denied having been in an accident. The police officer smelled alcohol on the Applicant. The police officer asked if the Applicant had been drinking; the Applicant denied that he had.

[8] The police officer proceeded to demand that the Applicant provide a breath sample for an Approved Screening Device. The police described the Applicant as behaving in a belligerent manner. On being read the Approved Screening Device demand, the Applicant said that he was not able to understand. It was only after further explanation by the police officer that the Applicant indicated that he understood. The Applicant then blew into the Screening Device and registered a fail.

[9] On being arrested and being read his rights, the Applicant said that he did not understand what he was being told. He was transported to the police station and was asked whether he wished to speak to a lawyer. The police officer dialed Legal Aid for him, gave him the phone and left the room. When the police officer returned to the room, the Applicant gave him the phone, and the police officer spoke to the Legal Aid worker who advised that the Applicant said that he did not understand what he was being told. The police officer made arrangements with the Legal Aid worker to obtain a Punjabi speaking translator who then assisted in advising the Applicant of his rights.

[10] The Report to Crown Counsel contains the following observations by the police officers:

> [Applicant] challenged the reason as to why he was arrested. [He] said that he did not feel he was a criminal because he did not kill anyone; shoot anyone or commit any other "serious" offence.
>
> [Applicant] would get angry and stare down Constable Smith, then he would say something in a silly way, like in the middle of a stare down, he said "happy New Year", then laughed.

> Further, [Applicant] would say that Constable Smith had ruined his life and that he was praying for God to forgive Constable Smith. Constable Smith witnessed [Applicant] put his hands in front of him and lean between his legs in a manner that looked like praying …
>
> … Constable Smith asked Applicant what car he had hit, and the [Applicant] replied it was a blue car that looked like it might have been a Pontiac.

[11] The police officer recorded in his hand written notes that, before the observation period, the Applicant asked to use the washroom and swore at the officer telling him to "f*** off".

[12] After the first sample of breath was provided, which registered 170 milligrams, and during the observation period before the second test, the Applicant stated "every test will be failed." The second sample provided also registered at 170 milligrams.

[13] When advising the Applicant about the administrative driving suspension, the police officer made the following observations: "While Constable Smith served [the Applicant] his Administration Driving Prohibition [the Applicant] asked several questions regarding when he was allowed to drive and seemed to understand the answers after he asked clarifying questions showing that he was able to comprehend English and that he understood his prohibition."

[14] The Applicant retained counsel who obtained an expert opinion regarding the breathalyzer readings and the physical symptoms exhibited by the Applicant that evening. The expert's opinion was based on the Applicant's assertion that he drank 12 ounces of beer between 8 and 9:30 p.m. and one to two ounces of rum between 10 and 10:45 p.m.

[15] The expert's opinion was that, based on that drinking pattern, the Applicant would not have had a blood alcohol concentration greater than .08% at any time that evening. He also noted that a person with a blood alcohol level of 170 milligrams in 100 millilitres of blood would display symptoms of impairment such as "slurred speech and some noticeable problems with balance, walk and coordination."

[16] The criminal charges of impaired driving and driving with a blood alcohol level in excess of .08% were stayed by the Crown in July 2008. The violation ticket for failing to remain at the scene of an accident was dismissed for want of prosecution on February 27, 2008.

DISCLOSURE TO THE LAW SOCIETY

[17] With his Application for Enrolment dated February 28, 2011, the Applicant enclosed a letter explaining the charges, which he disclosed in answer to Question 1 of Part B of the Application. In that letter he disclosed that he had received a violation ticket for failing to remain at the scene of an accident that had been dismissed and a charge of impaired driving that had been stayed. He did not provide substantive details of the circumstances surrounding those two charges but advised that he was seeking documents and would provide more information subsequently.

[18] In an email to the Law Society dated May 17, 2011 he wrote:

> That evening, I was driving to one of my friend's home to pick up another friend. I took a Right Turn on 64 Avenue at 128 Street in Surrey; when another vehicle which was coming on the 64 avenue (West Bound) strike with my car. It was a fender bender accident, According to ICBC records damage claim was only $1,051 to other vehicle. After an accident, another vehicle was driving just behind my car. I pulled my car in the Right lane to exchange the information, but another vehicle did not stop at the location. I came out of my car and noticed no big damage to my vehicle that was the reason not to inform the Police or ICBC at that time, keeping in mind it was a

minor accident and will notify the ICBC early next morning. But other vehicle driver informed Police or ICBC on same evening.

At my friend's home, I had a glass of liquor and on my way back to my home; I was stopped by Police officer who charged me.

[19] The Applicant then obtained the Report to Crown Counsel and other documents from the RCMP and his own counsel. One of the documents obtained was an Expert Report from Zenon Samilla, an expert in breathalyzer testing.

[20] The Law Society, in a letter dated July 14, 2011, asked the Applicant the following:

1. The Report to Crown Counsel states at page 1:

> … Constable Smith told him that he had stopped his vehicle for failing to remain at the scene of an accident. [Applicant] stated that he had not been in an accident … Constable Smith said that his vehicle had reportedly been in an accident, [Applicant] stated he did not know anything.

At page 2, it states that you later acknowledged being in an accident. It states:

> Later in the observation period, Constable Smith asked [Applicant] what car he had hit, [Applicant] replied it was a blue car …

Do you agree with these statements? If yes, given that you had been in an accident, please address why you initially told the police officer that you had not been in an accident.

2. The Report to Crown Counsel states at page 1:

> Constable Smith asked [Applicant] if he had anything to drink to which [Applicant] replied no.

… At page 3, it states that during the process of testing for blood alcohol levels at the police station, you told the police officers that "every test will be failed". It further states that you "understood what was going on" and that you knew what the "probable result would be" (of the alcohol tests).

Do you agree with these statements? If yes, given that you did drink prior to driving during this incident, please address why you initially told the police officer that you did not have anything to drink.

[21] The Applicant, after having reviewed the Report to Crown Counsel and the handwritten notes of the investigating officer and breathalyzer technician, wrote in reply to the Law Society as follows:

> The said incident took place 4 ½ years ago. As a reasonable person, it is very hard to remember what I had said 4 ½ months ago and here we are talking about January 2007. It is very hard to recall what statements, I gave and what conversation took place between me and the police officer.
>
> Be frank, it is totally out of my memory. I only came to know about these statements after reading the crown counsel report.
>
> But what I can say about the incident what I believed that I presumed and was confident that consumption of one beer and one glass of liquor will not exceed the legal limit. I can't say specifically about the conversation of January 2007. *But as per my knowledge, I have never denied my involvement in an accident and consumption of alcohol to the police.*
>
> This was my first incident with police and as a reasonable person, it is quite common to be confused, when you were suddenly stopped by police and questioned and later on; handcuffed. I

was quite confident, when I said I am not criminal, because as a reasonable person, I assume that consumption of alcohol was not above the legal limit; above all I was involved in an accident *(which I never denied)* but I did not thought [sic] that I was involved in a hit & run because as a prudent driver, I took all the reasonable steps.

[emphasis added]

TESTIMONY

[22] The Applicant testified that the accident was caused by the other driver pulling into his lane in front of him, causing the accident and then leaving the scene. That is, the Applicant was the victim of a hit and run, not the perpetrator.

[23] He testified that he found it easier to understand issues like his legal rights when they were explained to him in Punjabi. He testified that his request for an interpreter and his protestations that he did not understand the police officers were sincere.

[24] He admits his behaviour as recorded by the police officers. He testified that at the time he was confident he was not impaired because he had only one bottle of beer with supper and one drink of rum later after the accident. He testified that when he said “every test will be failed” he meant that he was confident that the test would show that he was not impaired.

NATURE OF CREDENTIALS HEARINGS AND APPLICABLE TEST

[25] The purpose of this hearing is to determine whether the Applicant satisfies the requirement of section 19(1) of the *Legal Profession Act* set out above.

[26] The Applicant has the burden of proving that he meets the character and fitness test on a balance of probabilities (Rule 2-67).

[27] In an article entitled, “What is ‘Good Character’?”, (1977) 35 *The Advocate* 129, Mary F. Southin, QC (as she then was), considered the meaning of good character, 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.

[28] The test of good character and repute has both subjective and objective aspects. This was explained by the hearing panel in *Law Society of BC v. McOuat* (Panel decision June 12, 1992, affirmed by the Court of Appeal in *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106), 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”.

[29] 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 what the personal cost, resolve to place the client’s interest first and to never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

[30] The hearing panel in *Re: DM* (June 14,1994 Panel Decision) considered the public interest, 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.

ISSUES

[31] We will focus on the following issues in our analysis concerning whether the Applicant has proven on the balance of probabilities that he is of good character. The issues of concern are as follows:

(a) he lied to the police when initially asked about being involved in an accident;

(b) he lied to the police when initially asked about drinking before driving;

(c) his belligerent behaviour with the police;

(d) his letter to the Law Society made in response to the July 14, 2011 request in which he denied lying to the police about being in an accident or consuming alcohol;

(e) his evidence before us that the other driver was at fault and left the scene of the accident;

(f) his evidence before us that his statement "every test will be failed" was meant to convey his confidence that he was not impaired.

REASONS

[32] Before us the Applicant admitted that he lied to the police when first asked whether he had been involved in an accident and whether he had been drinking. The Report to Crown Counsel shows that, shortly thereafter, he admitted to being in an accident and consuming alcohol before driving.

[33] His initial lie to the police denying that he had been in an accident is problematic. It is inexplicable that he would deny being in an accident in the context of the accident as he described it to us. According to him, he was the victim of a hit and run. He was unable to explain why he lied about being involved in an accident. It could not be because he was worried about revealing his drinking because, as discussed below, he was confident that he was not impaired.

[34] His description of the accident is also inconsistent with the other facts from the Report to Crown Counsel that was admitted, by agreement, for its truth. According to the Report, the other driver called the police about 15 minutes after the accident occurred. The other driver described the Applicant's car and gave its licence plate number. The Applicant testified that the other car pulled in front of him, causing the accident, then left the scene. If that were so, the other driver could not have seen his licence plate number.

[35] Although he initially denied consuming alcohol, the Applicant did admit to drinking shortly before taking the roadside screening test. After registering a fail on that device he was taken to the police station. At the

police station after providing the first sample, which was 170 milligrams of alcohol per 100 millilitres of blood, he made the statement “every test will be failed”.

[36] Although this would appear to be an admission that he was impaired and knew it, the Applicant denied that this was so. In cross-examination he testified as follows:

> Q Why did you say to the officer “every test will be failed”?
>
> A Because as a reasonable person I thought that at that time that one beer and one or two ounces of drink could not impair a person so that is my presumption that I was so confident that whatever he will check that would be failed.

[37] His insistence that he was confident that he was not impaired is inconsistent with his behaviour at the police station. In particular: (a) his initial denial about drinking; (b) his statement that the police officer had ruined his life; (c) praying to God to forgive the police officer; and (d) telling the police officer to “f*** off” are not the actions of a person confident they had done nothing wrong. His general demeanour as recorded in the Report to Crown Counsel and in the police notes is inconsistent with his assertion now that he was confident that he was not impaired.

[38] The evidence he gave before this Panel is also inconsistent with his letter responding to the Law Society’s question in the letter dated July 14, 2011. When he wrote that letter he had obtained and reviewed the Report to Crown Counsel and the notes of the police officer and breathalyzer technician. In the context of very specific questions from the Law Society the essence of his response was that:

> (a) it was hard to recall exactly what was said four and a half years ago; but
>
> (b) he had not denied being in an accident or consuming alcohol before driving.

[39] When cross-examined about the apparent inconsistency the Applicant denied that he was not being honest with the Law Society in his responses.

[40] In the hearing the Applicant admitted the truth of the contents of the Report to Crown Counsel and the handwritten notes of the police officer and breathalyzer technician (with one exception). That admission had not been made at the time he wrote his letter to the Law Society. Indeed the Law Society would not have needed to pose the specific questions it did if he had simply admitted the truth of the contents of those documents. It is clear that his letter responding to the Law Society’s letter of July 14, 2011 constituted only a partial admission with a specific denial about lying to the police. At the hearing he made a more complete admission than was made initially. It is to his discredit that he was not willing to admit to the Panel that his letter was not as forthright as it ought to have been.

[41] The Applicant’s explanations concerning the circumstances of the accident, his confidence that he was not impaired, and his response to the Law Society’s letter of July 14, 2011 do not withstand scrutiny. We do not believe that he was being truthful.

[42] When considered in light of the good character test, the Applicant’s failure to convince the Panel that he was telling the truth is fatal to his application.

[43] The onus is on the Applicant to prove on a balance of probabilities that he possesses the requisite good character. Other than a letter from his former employer in India, he provided no character evidence. His oral evidence was seriously at odds with the admitted evidence, and his attempt to explain the inconsistencies did not bear the ring of truth.

ORDER

[44] For those reasons, we reject the application. The issue of costs, if not agreed upon, can be dealt with by written submissions.