2013 LSBC 20
Report issued: August 1, 2013

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

JAGDEEP SINGH MANGAT

Applicant

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

Hearing date: April 17 and 18, 2013
Panel: Kathryn Berge, QC, Chair, Dr. Gail Bellward, Public Representative, Peter Warner, QC, Lawyer

Counsel for the Law Society: Henry C. Wood, QC
Counsel for the Respondent: George K. Macintosh, QC and Ryan Androsoff

overview

[1] The Applicant, 39 years of age, articled in Ontario, was called to the Bar there on September 21, 2011 and has not practised since. He applied for call, and admission to the Law Society of British Columbia on transfer from Ontario. On September 6, 2012 the Credentials Committee ordered a hearing pursuant to Section 19(2) of the *Legal Profession Act* and Law Society Rule 2-50(3)(c).

[2] The purpose of this hearing is to determine whether or not the Applicant meets the criteria under Section 19(1) of the *Legal Profession Act* requiring that he be "of good character and repute and … fit to become a barrister and a solicitor of the Supreme Court" prior to call and admission in British Columbia.

[3] The Panel finds that the Applicant has met the test of fitness to be called and orders that he may be called as a barrister and solicitor in the Province of British Columbia.

THE LAW ON GOOD CHARACTER, REPUTE AND FITNESS

[4] Under Rule 2-67, the Applicant bears the burden of proving that he is of good character and repute and fit to become a barrister and a solicitor. The standard of proof is on the balance of probabilities (*Law Society of BC v. McOuat* (2001), 84 BCLR (3d) 242 (CA)).

[5] In an article by Mary Southin, QC, (as she then was) "What is 'Good Character'?"(1977), 35 The Advocate 129, it states:

> 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? ...

[6] In *Law Society of BC v. McOuat*, Panel Decision (June 12, 1992) page 17, the Hearing Panel explained the fitness test as follows:

> 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.

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

> … 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 again breach the public trust. The issue is his character today, not the risk of his re-offending.

[8] That case is similar to this one as it involved a 38 year old law student with criminal convictions for breaking and entering with intent to commit theft, two counts of theft under $200, two counts of theft under $1,000, welfare fraud and substance abuse, which offences occurred between the ages of 17 and 27. The Panel found that the existence of a criminal record, even for serious offences, was not of itself an impediment to admission to the bar and went on to find that the applicant had rehabilitated himself and was now of good character and he was accordingly admitted to the bar of Ontario.

[9] In the case of *Law Society of Upper Canada v. Birman*, [2005] LSDD No. 13, at paragraphs 13 and 14, the following is stated, quoting the reasons of Convocation in *Re: Spicer* dated 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. ... It is also important to acknowledge that no applicant should be held to a standard of perfection.

PRELIMINARY APPLICATIONS

[10] At the start of the hearing, the Applicant applied pursuant to Rule 5-6(1) and (2) for orders excluding all members of the public from certain portions of the hearing dealing with specific issues, and excluding from public access, all transcripts taken and exhibits and other evidence tendered at the hearing on those same issues. This application was granted for the reasons set out below (the "Hearing Order").

[11] Prior to submitting evidence in support of the Hearing Order, and in order to safely and freely tender such evidence and hear the outcome of those applications, the Applicant made a preliminary application to exclude the public and for non-disclosure of all evidence and submissions made in the preliminary application. This preliminary application was granted (the "Preliminary Application Order").

[12] The Preliminary Application Order and the Hearing Order were made by consent. Evidence heard in support of the application established, to the satisfaction of the Panel and with the consent of Law Society counsel, that the Orders made were necessary in order to prevent harm arising from the evidence in connection with the following three factual areas:

> (a) Particular, narrow facts about the Applicant's criminal history that, if discovered by certain persons, could reasonably present a risk to the Applicant's life or health;
>
> (b) Facts about family members of the Applicant that, if revealed publicly, would cause significant reputational and vocational harm to those third-party family members and their spouses; and
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> (c) Facts concerning one specific aspect of the Applicant's medical history that had a relationship to the facts set out in (a) and (b) above.

[13] After hearing this evidence and the joint submissions of counsel, the Panel made the Preliminary Application Order and the Hearing Order and determined that these Orders could be made without unreasonably denying the public, including Law Society members, access to and knowledge about this application for admission, while avoiding exposure of the Applicant and his family members to the risks outlined above.

[14] Both the Preliminary Hearing Order and the Hearing Order implement a system of public exclusion, transcript redaction, redaction of evidence and restricted disclosure of certain facts and documents in these reasons, in order to afford the protections described above.

[15] The Orders were made in reliance upon the principles set out in two authorities: *Law Society of BC v. Marcotte*, 2010 LSBC 18 and *CW v. LGM*, 2004 BCSC 1499, 36 BCLR (4th) 181, a decision of the Honorable Mr. Justice Joyce. The *Marcotte* case involved an application to exclude two members of the public from the hearing because of their alleged prior aggressive attacks on Ms. Marcotte's reputation. The *CW* case involved an application to maintain the anonymity of a complainant who was the victim of sexual abuse. While these cases differ significantly from the Applicant's application for a very limited redacting process and for different reasons, several statements of principle in Mr. Justice Joyce's decision are helpful in this case:

> In order to maintain public confidence in our system of justice it is critical that the proceedings of the court be open to the public and not conducted in secret. Public scrutiny protects the integrity of the process and promotes respect for and confidence in the judicial system. (para. [7])
>
> I think the following principles can be distilled from the cases I have referred to:
>
> 1. The principle that the court's process must be open to public scrutiny must give way when

it is necessary to ensure that justice is done.

2. There must be some social value or public interest of superordinate importance in order to curtail public accessibility.

3. The onus is on the person seeking to restrict public accessibility to demonstrate that the order is necessary in order to achieve justice. The test is not one of convenience but of necessity.

4. The mere private interest of a litigant to avoid embarrassment is not sufficient to displace the public interest in an open court process.

5. The categories of circumstances that may be viewed as constituting a social value of superordinate importance should not be considered closed. … (para. [25]).

[16] Justice Joyce then went on to list a number of circumstances that are not applicable to this case and concluded by saying:

> Finally, it is my view that the principle of the open court should be displaced only to the extent that is necessary to preserve the superordinate social value.

[17] The Panel is satisfied that the very limited redacting and exclusion provisions set out in the Orders are appropriate and necessary, and that the Applicant has met the onus of establishing the superordinate social value of the Orders.

EVIDENCE AND FINDINGS OF FACTS

[18] The evidence at the hearing spanned an unusually wide range of topics. The conclusions of fact and the legal implications arising from them are key to the Panel's decision. We deal below with each category of evidence and our findings of fact arising from the evidence within the comments that follow each general category of facts.

[19] The evidence taken during the hearing comprised the following:

(a) An Agreed Statement of Facts;

(b) The Applicant's affidavit sworn April 11, 2013;

(c) A joint Book of Documents;

(d) The Applicant's book of email communication with character references;

(e) The Applicant's Document Book;

(f) The Applicant's evidence under oath at the hearing;

(g) Redacted versions of exhibits pursuant to the Hearing Exclusion Orders.

Law Society of Upper Canada Admissions

[20] The Applicant was admitted to the Law Society of Upper Canada on September 21, 2011. When he applied to that Law Society, an investigation was initiated, which resulted in admission. In the hearing, the Applicant's counsel submitted that the Law Society of Upper Canada had received substantially the same disclosure regarding the Applicant's background and criminal history as was provided by the Applicant to the Law Society of British Columbia, the only substantive difference being that Ontario seeks disclosure of

criminal convictions only, whereas British Columbia seeks disclosure of all charges and convictions. In this instance, there is a considerable discrepancy between the lists of criminal charges and convictions, in that the list of charges is significantly longer than the list of convictions. This arose because the Applicant was charged with various criminal charges that ultimately resulted in acquittal, were withdrawn by the Crown or, for other reasons, did not result in a conviction. Both counsel submitted that there were no material adverse conclusions that should be drawn by the Panel from the differences between the two lists. The Panel agrees, as the key issue was the Applicant's present character and repute and not the level of disclosure required by different law societies.

[21] Law Society counsel submitted that the Ontario assessment regarding the Applicant was prepared by an investigator employed by the Law Society of Upper Canada. He investigated the disclosed material and interviewed the Applicant. His recommendation was made without a formal hearing and without cross-examination by counsel. Nonetheless he found the Applicant to be of good character and repute and fit to become a barrister and solicitor. The Law Society of Upper Canada accepted that recommendation.

Applicant's General Background

[22] The Agreed Statement of Facts and other evidence admitted set out the Applicant's personal history and significant criminal background, a summary of which is as follows:

(a) As a child living in a rough area in East Vancouver, the Applicant's home neighbourhood environment exposed him to bullying, beatings, weapons, police activity, threats and fear. His parents arranged for him to attend Eric Hamber High School, away from his neighbourhood, on the west side of Vancouver where he was one of only a few minority students. After suffering constant racial insults, bullying and beatings he was drawn to and then protected by an Asian youth gang. Members of that gang beat and intimidated the bully that had been tormenting the Applicant.

(b) Gang life, gang activities, truancy and disruptive activities in his classes led to several school expulsions, followed by school transfers, followed by more expulsions and eventually he dropped out of school.

(c) At 17, in June 1991, he was charged with possession of a prohibited weapon (two sawed-off shot guns) and possession of one ounce of cocaine.

(d) In October 1991 he was charged with two counts of carrying a concealed weapon (imitation handgun), and a month later the police searched him and his home and found him in possession of another imitation handgun and three grams of cocaine.

(e) In December 1991 he operated the getaway car in an armed robbery of a Safeway store and three weeks later he again operated the getaway car in an armed robbery of the same Safeway store. The sum of $6,000 was stolen the first time and $46,000 the second time.

(f) The following night he was involved in an incident resulting in charges of carrying a concealed handgun and possession of a weapon for a dangerous purpose, after brandishing it during a large-scale night club fight between the Applicant and his cohorts and another group of young men.

(h) The Applicant pleaded guilty to both robbery counts and the weapons charge and was sentenced to one year of incarceration, two years probation and a ten-year weapons prohibition. Pursuant to the sentencing judge's recommendation, the Applicant served his jail sentence at New Haven Correctional Centre, a minimum security facility in Burnaby, and was later granted day passes to attend high school equivalency courses at Vancouver Community College. He was granted early release after serving nine months.

(i) In August 1994 he stole a box of drinking glasses from Hudson's Bay and was charged with possession of a small quantity of cocaine, which he intended to sell. The charge was later stayed.

(j) In November 1997 in an effort to move to New York to be with his girlfriend, he stole and used licence plates and was caught at the border and deported to Canada with charges later withdrawn.

(k) The Applicant was charged with 23 regulatory offences from 14 incidents between 1993 and 1997 (one involving liquor, three failure to pay transit fares and the remainder *Motor Vehicle Act* contraventions). From 2000 to 2005 he was charged with 19 more offences, one Motor Vehicle Act offence and 18 failures to pay transit fares. From 2006 to mid-2007 he received five more tickets for failure to pay transit fares.

(l) In May, 2004 he was charged with obstructing and assaulting a police officer at a labour rally but was later acquitted following trial.

(m) On March 21, 2007 the National Parole Board granted the Applicant a pardon in relation to his three youth court and three adult court convictions.

(n) By July 3, 2012 the Applicant had paid in full all fines owed for regulatory violation tickets.

Applicant's Education and Rehabilitation

[23] The Applicant traces his ascent from the most troubled period of his life to his decision in 1997 to complete his High School General Equivalency Diploma, followed by UBC studies to gain his real estate licence.

[24] In 1998, at the age of 24, he was accepted to Douglas College where he joined the United Nations Club and co-founded the Human Rights Club, participating through May 2001. In August, 2000 he worked for a time as an immigration consultant and advocate.

[25] In 2001, he transferred to Simon Fraser University (SFU). Until his graduation in 2005, with a degree in Sociology, he was active in the South Asian Students Alliance, the South Asian Network for Secularism and Democracy, the SFU Public Interest Group, the Sociology and Anthropology Students Union and the Youth of Colour in Consultation Against Systemic Racism. He also became active in anti-gang youth education initiatives, accepting speaking engagements at schools and other community forums. To impressionable young students, the Applicant presented as a street-wise person who had lived through and rejected the gang life. His strong message to students was that gang involvement can only lead three ways: to death, to jail or to addiction, and would cause heartbreak to family. He stressed that gang activities involve preying on and selling drugs to already marginalized and, in many cases, mentally ill street people. He reports that, to this day, he is still regularly approached by young people who thank him for changing or turning around their lives.

[26] The Applicant began his UBC law school studies in September, 2007 and obtained his law degree in 2010. Throughout this period he volunteered and was active with the UBC Law Students' Legal Advice Program and the Law Students of Colour United Against Systemic Racism and continued his activities as a guest speaker on youth gang issues.

[27] The Applicant completed his articles in Ontario in August 2011 at his father's law firm and was called to the Ontario Bar on September 21, 2011.

[28] He returned to British Columbia without practising in Ontario for several reasons: primarily to care for his ailing mother who had no other support, secondly because he preferred British Columbia over Ontario

and, thirdly, because he preferred to practise independently from his father, with whom, nonetheless, he enjoys a good relationship.

[29] The Applicant currently is employed as a carpenter. His goal is to practise law helping disadvantaged, low-paid workers, refugees and others who are marginalized in society. His interests include employment law, human rights and occupational safety. He testified to his strong belief in social justice and believes that his criminal past will help him better connect with and assist his target clientele. He said he might end up working in-house for a labour union or for government in the policy field.

[30] When asked, the Applicant denied any history of drug use and described himself as a social drinker.

[31] The Applicant described his life and state of mind now as a “rebirth” or “second life”. When pressed to describe his good qualities, he claimed he was a principled person deeply concerned about social justice and appreciative of his second life. He felt he was now a community-oriented, empathetic and compassionate person, committed to and focused on his future. He testified that his goal is to provide legal services to sectors of our society that are in need of legal help.

[32] When asked how he had dealt with and processed his past difficulties, he credited a supportive network of friends and associates and the timely guidance and mentorship provided by a few key people in his life, including a parole officer and a policeman. He is also able to see and understand his troubled personal past in the wider social context of the negative neighbourhood influences he grew up with. This background fuels his commitment to social justice for others.

[33] The Panel was concerned about the police report description of the Applicant by the officer who accused him of assault during the rally in 2004. In that report the Applicant was described as a highly belligerent, cursing and obstructive person. However, the Applicant asserts that he did not conduct himself in that way and that his evidence at trial on that charge was ultimately accepted over the police officer’s evidence, leading to an acquittal.

[34] Further, the Applicant was pressed to explain an inconsistency in his evidence. In his prior statements he told the Law Society of Upper Canada that the two robberies involved a White Spot and a Safeway store, but later told the Law Society of British Columbia that they were both Safeway robberies. The Applicant had no explanation as to why he made that error, speculating that he had asked his 1991 accomplice to assist him with details of the incidents and that he may have at some stage relayed incorrect information from that person. The Panel accepts that explanation.

References

[35] The Applicant tendered ten reference letters in total. They can be grouped into two categories:

a. Half of these letters were gathered before the Applicant received legal advice that a letter of reference in a hearing such as this is not compelling unless, in advance, the writer is provided with full disclosure of an applicant’s past misdeeds. However, after this advice was received, and prior to submitting the letters into evidence, the five referees were provided with written disclosure about the Applicant’s criminal charges and convictions. The evidence was that the referees chose to let their letters be submitted, despite the disclosure. They included letters from the Director of the South Asian Front Line Education Society, a Foreign Service Officer with the Department of Foreign Affairs, an SFU Professor of Sociology, the managing director of Headlines Theater, and a retired SFU Professor and President of the South Asian Network for Secularism and Democracy.

b. The second group of referees, were sent a detailed description of the Applicant’s past before the letters of reference were written. They included references from the Chair of the Department of

Sociology and Anthropology at Langara College, a coordinator with the Mental Health Action Research and Advisory Association, the President of the Canadian Labour Congress, a Constable with the South Coast Transit Police, and a youth worker at the Broadway Youth Resource Centre. The letters confirmed the Applicant's evidence regarding committed volunteer work, his integrity, maturity, excellent character and reputation in the social justice/human rights community, his frequent contributions to the SFU newspaper on topical social and political issues and his advocacy work.

[36] The Panel puts greater weight on the second group of five reference letters, from which we take a few quotes. The labour leader was "impressed with his maturity and resolve to make social justice the goal for his future." A police expert on gangs believed that the Applicant's "background and passion for helping youth will contribute to him becoming an outstanding lawyer and an officer of the court in delivering justice and guidance to the people who need it most in our society." The youth worker stated that the Applicant is "sharply intelligent and wise, but also compassionate and deeply committed to justice." A Chair from the Department of Sociology and Anthropology at Langara College prepared a study guide for the National Film Board film "Warrior Boyz", which featured the Applicant in anti-gang work, and in that study guide she "acknowledged that Mr. Mangat was a source of inspiration for [her] own work in academe and anti-gang prevention."

POSITIONS OF THE PARTIES

[37] In closing submissions, the Applicant's counsel urged upon the Panel that the Applicant has amply demonstrated his rehabilitation from a life of crime to a life of constructive, legal activity and an established pattern of significant positive community contributions.

[38] He further submitted that the Applicant's federal pardon and his admission into the Law Society of Upper Canada were not determinative of the "fitness" test before us, but that they ought to be given some weight. He submitted that on a balance of probabilities, the evidence before the Panel of the Applicant's unique history and circumstances satisfies the "good character, repute and fitness" test in LPA, section 19. The Panel agrees.

[39] In his closing submissions, Law Society counsel stated that, having heard all of the evidence on this hearing, the Law Society was not taking a position regarding the application. Law Society counsel underlined that the Panel's determination of the Applicant's character must be based upon the Panel's assessment of the Applicant's current character. Past behaviour may influence that current assessment, but is not determinative. He observed that the Applicant had answered questions about possibly inconsistent evidence in a forthright manner, several times admitting that he had no answer or explanation, and noted that the Applicant had not proffered facile answers. He observed that the Applicant's turn-around of the direction of his life was both laudable and genuine; a remarkable journey. The Panel agrees with these submissions.

CONCLUSION AND ORDER

[40] The Panel observes that rehabilitation from a criminal past such as this is not only possible, but is to be encouraged. It is in the public interest to admit lawyers from diverse backgrounds with a view to meeting the legal needs of all sectors of society.

[41] We conclude that the Applicant has met the two-fold test for call and admission set out by the authorities referred to earlier in this decision:

a. In relation to requirement for good character, when a candidate for call has a significant criminal

background, the spectre of risk to the public of a future return to such conduct is always a matter of concern. We have taken that into account, but it does not outweigh the Applicant's trajectory of reform and constructive contributions to society that began, haltingly, when he returned to school in 1997. There were initial variations in the angle of that trajectory, and some setbacks. However, it is clear overall that the Applicant has profoundly transformed his life, activities, associates and goals. He has established his present good character.

b. In terms of good repute, the Panel gives significant weight to the substantive, positive letters of reference prepared by those who received advance, detailed disclosure of the Applicant's violent criminal activities and record. They demonstrate the degree to which he meets the test of being "highly regarded and esteemed" amongst those who know him. He has met the burden upon him of establishing his good repute.

c. Although not determinative in itself, the Panel takes into account the fact that the Applicant has been pardoned for his criminal convictions.

Therefore, the Panel finds that Jagdeep Mangat is a person of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court. We order that the application for call and admission is granted without conditions.

COSTS

[42] We did not receive any submissions on costs, and accordingly, if not agreed upon between counsel, costs can be dealt with by written submissions made within 30 days of the delivery of this decision to counsel. Without prejudice to any such submissions that may be made, the Panel does observe that, despite the Applicant's success in this hearing, the extent and degree of his past criminal behaviour made this hearing necessary.