

THE LAW SOCIETY OF BRITISH COLUMBIA
In the matter of the *Legal Profession Act*, SBC 1998, c. 9
and a hearing concerning
ANTHONY JAMES LAGEMAAT
APPLICANT

DECISION OF THE HEARING PANEL
APPLICATION FOR ENROLMENT

Hearing date: March 6 and 7, 2014

Panel: Elizabeth Rowbotham, Chair
Lance Ollenberger, Public representative
Donald Silversides, QC, Lawyer

Counsel for the Law Society: Gerald Cuttler
Counsel for the Applicant: Dennis Murray, QC

BACKGROUND

- [1] The Applicant is currently 53 years old and, for many years, was a commercial fisherman engaged in the west coast fishery. In 2002, he decided to continue his education and enrolled in Langara College in Vancouver where he obtained a diploma in 2005. He then obtained a Bachelor of Arts degree from the University of British Columbia in 2008. He graduated from the Faculty of Law of the University of British Columbia in 2010 with the degree of Doctor of Jurisprudence.
- [2] The Applicant worked for J. Brian Jackson, QC in Vancouver as a summer student between his second and third years of law school and part time while attending his third year of law school.

- [3] On March 5, 2009, the Applicant applied to the Law Society to be enrolled for temporary articles with Mr. Brian Jackson. A hearing was ordered and held on March 15 and 16, 2010 and April 14, 2010 (the “2010 Hearing”). On October 7, 2010, the 2010 hearing panel found that the Applicant had not satisfied the panel that he was of good character and repute and fit to become a barrister and a solicitor of the Supreme Court and rejected his application for temporary articles.
- [4] In March, 2010, the Applicant became employed on a full-time basis by Mr. Jackson to conduct legal research and provide opinions on matters of criminal law for Mr. Jackson and other lawyers in his office and was still employed in that capacity at the time of this hearing.
- [5] On January 23, 2013, the Applicant applied to the Law Society to be enrolled as an articulated student with Mr. Jackson as his principal. On September 26, 2013, the Credentials Committee ordered that a hearing be held with respect to this application, and this Panel was constituted to conduct that hearing.

RELEVANT LEGISLATION AND RULES

- [6] The criteria for reinstatement and how the Benchers of the Law Society must deal with the application are set out in subsections 19(1) and (2) of the *Legal Profession Act* (the “Act”), as follows:
- 19(1) No person may be enrolled as an articulated 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) On receiving an application for enrollment, call and admission or reinstatement, the benchers may
- (a) grant the application,
- (b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or
- (c) order a hearing.
- [7] The panel’s obligation after conducting a credentials hearing is set out in subsections 22(1) and (3) of the Act, which provide:

22(1) This section applies to a hearing ordered under section 19(2)(c).

...

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

[8] The onus and burden of proof at the credentials hearing are set out in sub-rule 2-67(1), which provides:

2-67(1) At a hearing under this Division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19(1) of the Act and this Division.

EVIDENCE AND FACTS

[9] Mr. Lagemaat testified at the hearing of this matter. As well, counsel for the Law Society and counsel for Mr. Lagemaat jointly submitted an Agreed Statement of Facts and five volumes of documents as evidence. These included transcripts of the testimony given by witnesses at the 2010 Hearing, reports of interviews conducted by an investigator for the Law Society in 2013 and 2014, 15 current letters of reference supporting Mr. Lagemaat's application for enrolment and correspondence between Mr. Lagemaat and the woman who was his landlady in 2004. The Panel also received and considered records of counselling received by Mr. Lagemaat during the period commencing in December 2005 and ending in May 2013 and a physiological assessment of Mr. Lagemaat dated December 4, 2012.

[10] Three aspects of Mr. Lagemaat's past conduct gave rise to concerns about his character and repute and his fitness to become a lawyer and resulted in the 2010 Hearing being ordered and this hearing being ordered. These were:

- (a) allegations made by a woman with whom Mr. Lagemaat was having a relationship ("Ms. A") that on February 18, 2000 he sexually assaulted and confined her (the "Sexual Assault and Confinement Allegation");

- (b) in early 2000, Mr. Lagemaat grew marijuana plants in the home he rented (the “2000 Marijuana Cultivation Incident”); and,
- (c) in early 2004, Mr. Lagemaat grew marijuana plants in the home he rented (the “2004 Marijuana Cultivation Incident”).

Sexual assault and confinement allegation

- [11] In the mid to late 1990s, Mr. Lagemaat became involved in a physical relationship with Ms. A. The relationship was sporadic, and they never cohabited. Mr. Lagemaat described the relationship as being dysfunctional and stated that Ms. A had, on several occasions, stalked or harassed him. He testified that, for a period of time, she was living with her children in a tent on a vacant lot in the Lower Mainland.
- [12] Ms. A testified at the 2010 Hearing, and the transcript of her testimony was evidence before this Panel. Although she did not testify at this hearing, counsel for the Law Society and Mr. Lagemaat agreed that, if Ms. A had been called to testify at this hearing, her evidence would be substantially similar to the evidence she gave at the 2010 Hearing.
- [13] At the 2010 Hearing, Ms. A testified that she and Mr. Lagemaat did not have an exclusive dating relationship and that they fought constantly and argued a lot. She said that he never gave her the feeling that he was madly in love with her or that he wanted a relationship.
- [14] In 2000, Mr. Lagemaat was living in a home that he rented from Ms. B. Ms. A testified she used his key to gain access to Mr. Lagemaat’s residence in February, 2000 when he was not home. She said that, while she was in the residence, the telephone rang and was answered by the answering machine and she heard the man who was calling leave a message for Mr. Lagemaat with the names and details of women that he could date. She said this was the last straw for her and that she threw the telephone out of the window, which broke the glass, and then threw Mr. Lagemaat’s computer out of the window. She said she did so because she wanted the relationship to be over and she thought that, if she broke something and destroyed his property, Mr. Lagemaat would be so disgusted by her actions that he would not call her and that would be the end of their relationship. She also said that she was angry when she heard the telephone message and that her rage was not satisfied with throwing the telephone through the window so she also threw the computer out the window.

- [15] She then took Mr. Lagemaat's cellphone and the keys for his truck and drove the truck away. She later returned the truck to Mr. Lagemaat's residence, but when she arrived she saw the police were at his residence so she parked the vehicle around the corner and went home. The evidence at this hearing included a Vancouver Police Department report dated February 16, 2000 that showed that police attended on Mr. Lagemaat's residence on that date to investigate a report of an insecure residence after a computer was thrown out of a window of the residence.
- [16] The evidence before this Panel also included a report made to Crown counsel by the police that showed that, on February 18, 2000, Ms. A had telephoned the police to complain that Mr. Lagemaat had threatened harm to her and her three children.
- [17] The report to Crown counsel contains a description by a police officer of the investigation they and another police officer conducted of the complaint made by Ms. A that includes an interview with her on the evening of February 18, 2000. That report states that Ms. A said that, while she had been in Mr. Lagemaat's home at 5:00 p.m. on February 17, 2000 when he was not there, she had overheard a phone message indicating Mr. Lagemaat was seeing another woman and that she had lost her temper and thrown his phone and a computer out of the window. The report also states that Ms. A told them she subsequently had a telephone conversation with Mr. Lagemaat who was very angry with the damage she had caused and the money he had lost as a result of marijuana being seized by the police who investigated the incident. The report states that Ms. A said that, when she returned to Mr. Lagemaat's residence at approximately 2:00 p.m. the following day, February 18, 2000, Mr. Lagemaat grabbed and pulled her into the house and sexually assaulted her twice over a two-hour period and that he also cut up several items of clothing she was wearing, cut chunks of her hair, physically hit and kicked her and threatened her. The report also states that Ms. A mentioned to the investigating officers that, immediately after the sexual assault, she had left Mr. Lagemaat's house and had gone to a nearby thrift store to use the telephone and that she had spoken to a staff member at the store about what had happened to her and why she needed to use the telephone. The officer who wrote the report stated that the other officer had noted bruising on Ms. A's leg, arm and mouth and that she displayed signs of pain and tenderness when her right temple was touched.
- [18] The report to Crown counsel also states that, on February 20, 2000, the two investigating officers were able to speak to a staff member of the thrift store who told them that they had been working at the store a few minutes before 4:00 p.m. on February 17, 2000. The staff member told the officers that Ms. A came into the store at that time looking very distraught and that they had noticed the back of one leg of her jeans were cut as well as the top of one shoe. The staff member told the

officers that, when asked what the problem was, Ms. A said that she had been raped and beaten by her ex-boyfriend and needed to use a telephone to find a ride home. The thrift store employee also said that Ms. A's hair had been lopped off in several spots.

[19] As a result of the investigation of Ms. A's complaint, Mr. Lagemaat was charged with the following criminal offences:

- (a) sexual assault using a weapon;
- (b) uttering threats to cause death or bodily harm; and,
- (c) kidnapping with the intent to confine the victim against her will.

[20] At the 2010 Hearing Ms. A testified she had only telephoned the police out of concern about her safety and that of her children because she thought it would be reasonable for Mr. Lagemaat to retaliate for the damage she had caused to his property. In her testimony, Ms. A denied that Mr. Lagemaat had sexually assaulted her or confined her, and she stated that she had totally fabricated the allegations of sexual assault and confinement. She testified that she went to the thrift store the day after she threw the items through the window and that she went to the police two days after the throwing incident. She also testified that she cut her own hair and clothing and then went to the thrift store to provide corroboration of the false allegations she intended to make. She testified that her bruises and a lump on her head were caused by a fall she had suffered while snowboarding on a field trip with her son at Whistler. Her evidence was that Mr. Lagemaat did not have a temper and that he had never been physically violent with her.

[21] It was clear from Ms. A's evidence that she had a somewhat checkered past. She related that, about six weeks after she met Mr. Lagemaat, his ex-wife's sister had threatened her while they were in a bar and the next day that sister had called her names, so Ms. A punched her in the face. She also testified that, after breaking up with a boyfriend, she resumed a sexual relationship with him while he was living with another woman and that, during this relationship, she tape-recorded a conversation she had with the boyfriend and threatened to use it to blackmail him. She also described an incident where she assaulted a man in a bar after he had insulted her with an obscene word, as a result of which it was necessary for him to get stitches and she was charged with assault.

[22] The police report to Crown counsel states that, on February 22, 2000, Ms. A contacted one of the two investigators by telephone and advised him that she wished to recant her previous statements to the police and that she told the officer

that she had lied to the police and that she had made the whole thing up. The criminal charges, however, were not withdrawn. The matter was set for trial and, when Ms. A did not attend to testify, the charges were stayed.

- [23] In his evidence at the 2010 Hearing, Mr. Lagemaat denied that he had sexually, or in any other way, assaulted Ms. A or that he had confined her. His evidence was that, on the evening of the day on which Ms. A threw the telephone and his computer through the window, she telephoned him and he asked her to return his truck. He said that, the following day when he was fixing the broken window, Ms. A returned his truck and came into his house. Mr. Lagemaat testified Ms. A could see he was very upset and she said “perhaps you will feel better if we have sex” and that they then had sex twice and she left. He testified that, the following day, he was arrested for sexual assault. Based on the police records that formed part of the evidence, that arrest occurred on February 21, 2000.
- [24] At the hearing of the matter by this Panel, Mr. Lagemaat again denied that any sexual assault or confinement occurred, and he reaffirmed the testimony that he gave at the 2010 Hearing.
- [25] At the 2010 Hearing, the woman with whom Mr. Lagemaat was then residing, Ms. C, gave evidence in support of his application for temporary articles. Ms. C is employed in the justice system and is a person who would very likely be familiar with issues of sexual assault and violence against women. Ms. C’s young daughter lived with them. Ms. C’s evidence was that she had no concerns regarding Mr. Lagemaat being a threat to either her or her daughter.
- [26] On February 6, 2014, an investigator for the Law Society telephoned Ms. C and interviewed her. Ms. C informed the investigator that her relationship with Mr. Lagemaat had ended during the winter of 2011. Ms. C told the investigator that, during her time together with Mr. Lagemaat, he was respectful, trustworthy and dedicated and that she was not fearful of him. Notes of that interview were entered as evidence at the hearing by this Panel, and counsel for the Law Society and Mr. Lagemaat agreed that, if called to testify, Ms. C’s evidence would be substantially similar to the contents of those notes.
- [27] The evidence before this Panel also included notes of an interview conducted by an investigator for the Law Society with Ms. D on February 19, 2014. Ms. D is originally from South America and had returned there at the time the interview was conducted. She told the Law Society’s investigator that she has known Mr. Lagemaat since July, 2001 and that they had an intimate relationship from time to time over the years they knew each other. Ms. D told the investigator that Mr. Lagemaat was never physically abusive toward her during their relationship. She

described an incident that occurred when she had learned that Mr. Lagemaat had been unfaithful to her and she hit him several times. She said his only reaction was to grab her hand so that she would stop hitting him. Counsel for the Law Society and Mr. Lagemaat agree that, if called to testify, Ms. D's evidence would be substantially similar to the contents of the investigator's notes. Ms. D also wrote a letter of reference dated February 3, 2013, which formed part of the evidence at this hearing. In that letter, she stated "For all of the facts I have learned about Tony, I can testify he would never be able to sexually assault anyone."

2000 Marijuana Cultivation Incident

- [28] Mr. Lagemaat testified that his residence was located near a dog park where he frequently walked his dog. He said that, while walking his dog in the park, he met and became friends with two other men who were commercial fisherman and who lived in apartments close by and also walked their dogs in that park.
- [29] Mr. Lagemaat's evidence was that, before 2000, he had used marijuana recreationally but had never been involved in growing marijuana. He said that, in 2000 the two men he met in the park had seen him coming out of his residence near the dog park and had asked him who else lived in the house and that he had told them that he lived in the house alone. He said his two new friends had previously been involved in growing marijuana and suggested that he use a room in his house to grow marijuana on the basis that the three of them would share the marijuana equally and take it with them to smoke onboard their boats when they went fishing. He said they offered to show him how to do it and they told him about a gardening supply store on Commercial Drive where he could purchase marijuana plants to grow. He testified that there was a basement suite in his residence that had a separate bedroom that could be locked and that he used this room to grow marijuana plants that he bought at the gardening store.
- [30] He said that, after he had started to grow the marijuana, his two friends would come to the house once or twice a week to assist in its cultivation but, except for these visits and meeting them while walking their respective dogs, he had no dealings or other relationship with them.
- [31] Mr. Lagemaat testified that he did not intend to sell the marijuana to his two friends or to anyone else and that his sole purpose in growing the marijuana was to use it recreationally, although he did admit that he intended to share the marijuana with his two friends.
- [32] The police reports filed as evidence at the hearing of this application show that officers from the Vancouver Police Department attended at Mr. Lagemaat's

residence on February 16, 2000 after a report had been received from a neighbour that she had heard a loud noise and that the front window of Mr. Lagemaat's house had been smashed. The report states that, after receiving this complaint, the police attended and searched the house, as a result of which they discovered "a small marijuana grow-op in the basement (single room). No plants were growing, but a quantity of marijuana was drying in the room." The police seized and removed the marijuana, which was described as being "3 + lbs", and certain equipment that appeared to be related to the growing of the marijuana. No charges were ever laid with respect to this incident.

[33] Mr. Lagemaat testified that he had cut the marijuana only the day before the police discovered it and that he understood it would have lost a great deal more weight by the time it became fully dried.

[34] At the time of the 2010 Hearing, Mr. Lagemaat did not inform the Law Society of the names of the two friends with whom he intended to share the marijuana, and he did not provide their names in the evidence he gave at the 2010 Hearing. At the hearing before this Panel, Mr. Lagemaat testified that he never knew the last names of those men, that he did not have a close relationship with them and that his relationship with them did not last for very long. He said that he had not made any effort to find out their last names before the 2010 Hearing. He describes them as "just two guys I met at the dog park." He testified that, while preparing for the current hearing, he went to the dog park to see if they were still walking their dogs there, but he could not find them.

2004 Marijuana Cultivation Incident

[35] Mr. Lagemaat testified that, in 2004 he was attending Langara College and he was having financial difficulties because his income had dropped and he was still paying \$700 a month for child support. He said he decided to grow and sell marijuana in order to make money because he was having a real hard time getting by. He was still living in the home that he rented from Ms. B, and he purchased approximately 200 plants from the same gardening store where had purchased marijuana plants in 2000 and began cultivating 60 or 70 of those plants in the same bedroom in the basement of his residence that he had used to grow marijuana in 2000.

[36] In 2004 Mr. E was renting a suite from Mr. Lagemaat in the basement of his residence. Mr. Lagemaat testified that he did not have sufficient knowledge to cultivate marijuana and that he had only been able to grow marijuana in his first attempt in 2000 because he was assisted by the two friends that he had met in the

dog park. He said that Mr. E had some knowledge of what was required to cultivate marijuana and that he and Mr. E decided they would cultivate marijuana together in 2004.

- [37] Before the 2010 Hearing, Mr. Lagemaat had been asked by the Law Society to inform them of the name of Mr. E, but he had declined to do so. At the 2010 Hearing, Mr. Lagemaat was asked in cross-examination by counsel for the Law Society whether he would disclose the name of Mr. E, and he refused to do so. Mr. Lagemaat acknowledged at the 2010 Hearing that his withholding the name of Mr. E would prevent the Law Society from speaking with him.
- [38] On April 2, 2013, Mr. Lagemaat provided the Law Society with the name of Mr. E. The evidence before this Panel included the notes of an interview conducted by an investigator for the Law Society with Mr. E on October 1, 2013. Mr. E confirmed to the investigator that he was a tenant living in Mr. Lagemaat's residence in 2004 and that he and Mr. Lagemaat cultivated marijuana in the bedroom of Mr. E's suite. Mr. E told the investigator he did not believe Mr. Lagemaat was still involved in marijuana. Mr. E described the cultivation of the marijuana as a hobby and stated that he was not aware of any intended commercial use. Despite this statement given by Mr. E to the Law Society, Mr. Lagemaat acknowledged at the hearing before this Panel that it was his intention to sell his share of the marijuana as a way of generating additional income.
- [39] On January 7, 2004, members of the Vancouver Police Department, with a search warrant, entered Mr. Lagemaat's residence and seized 140 marijuana plants, 60 marijuana clones, one pound of dried marijuana and eight high-intensity lamps that Mr. Lagemaat was using to grow the marijuana. No one was home at the time of the search, and the police used a battering ram to gain access to the front door, which caused damage to the door. The police were assisted by City of Vancouver electrical inspectors, fire inspectors and hydro security in dismantling the marijuana-growing operation.
- [40] The discovery of the cultivation of marijuana and the removal of the plants and growing equipment resulted in BC Hydro turning off the supply of power to the residence.
- [41] On January 12, 2004, Mr. Lagemaat left a recorded message for Ms. B regarding the damage to his residence. In response, Ms. B sent him an email in the mid-afternoon of that day asking him to call her at work or at home because his message was unclear and she was not sure what had happened at the house. In the early evening of January 12, 2004, Mr. Lagemaat sent an email to Ms. B to respond to her earlier email, and the text of that email was as follows:

I do not have a chance to call you right now I am on short break. The downstairs tenant was growing an illegal substance in his bedroom. The first thing you have to know is that the house is fine. The police came in and the power is shut off. I have spoken with the city and the house needs to be looked at by the electrical inspector before the power is turned on. It is a two week waiting period for inspection. I will have the house ready as soon as I can, there is a bit of cleaning to do first. Once again there is no damage to the house and I will do everything I can to make this go smoothly.

Sorry,

Tony

- [42] On the evening of January 13, 2004, Ms. B sent Mr. Lagemaat another email asking him to call her because she had a lot of questions. He did not contact her, and Ms. B sent him another email on the afternoon of January 14, 2004 with the subject line "URGENT" in which she said:

Tony ... I am not sure how to make this clearer to you --- you NEED to contact me AS SOON AS POSSIBLE regardless of how difficult it may be for you to get to a payphone ... below are three contact numbers ----- call me RIGHT AWAY.

- [43] The morning of the following day, January 15, 2004, Mr. Lagemaat sent a brief response to Ms. B's January 14 email in which he said "I will call you noon today," but he did not call her on that day. Mr. Lagemaat did not contact Ms. B until he spoke to her on the evening of January 16, 2004.
- [44] On February 27, 2004, Ms. B sent Mr. Lagemaat an email complaining that he had been avoiding communicating with her and questioning when he intended to have the repairs completed. She also mentioned in her email that he had partially moved out, and she asked whether he intended to return to the residence. In response, Mr. Lagemaat wrote an email to Ms. B on February 29 in which he told her that it had been difficult to perform the necessary repairs because there were no lights or heat, that he had decided he could not afford to pay another month's rent for a house that he could not live in and that he intended to vacate the residence.
- [45] Ms. B sent an email to Mr. Lagemaat on March 30, 2004 informing him the cost of the repairs and other work to the house that were required because of his growing marijuana was approximately \$12,000 to \$15,000. She stated that, if he would like to negotiate these expenses, he should contact her by April 10, 2004 and that, if he

failed to do so, she would take legal action. Mr. Lagemaat did not respond to this email and did not negotiate, or make any payment to compensate Ms. B for the cost of repairs and other work.

- [46] In addition to the power to the residence being cut off, the City of Vancouver required Ms. B to perform work on the residence to ensure that it complied with the requirements of the building code then in effect. Ms. B testified at the 2010 Hearing that Mr. Lagemaat's cultivation of marijuana resulted in her being required both to repair damage to the residence caused by the cultivation and to hire an electrician and a plumber to perform the work necessary to ensure the residence complied with the current building code in order for her to obtain an occupancy permit. She estimated that the cost of these repairs and other work, including fees paid for inspections and to the City of Vancouver, was between \$12,000 and \$15,000.
- [47] Ms. B told the panel at the 2010 Hearing that, because Mr. Lagemaat had lied to her and had abused the trust she had placed in him, she would be really upset if he were given the privilege of working as a lawyer. She said that she did not know whether Mr. Lagemaat had turned his life around but, if he had, at the time of the 2010 Hearing he still had not made any effort over the previous six years to contact her to discuss what happened, to try to make amends or even to apologize.
- [48] The evidence before this Panel included a letter that Mr. Lagemaat wrote to Ms. B on June 7, 2012. In that letter he acknowledged that he was growing marijuana in 2004 and that the way he had dealt with her as his landlady was wrong, and he apologized for his conduct. He explained in this letter what steps he had taken to rehabilitate himself and set out some of the reasons why he thought he had behaved as he did in 2004. He also apologized for failing to compensate her for the damage caused to her home and for failing to contact her. He explained his current financial and other circumstances. He said that he was not yet in a position to compensate her fully for the damages to her house or the cost of repairs but that he intended to do so fully when he was able. In this letter, Mr. Lagemaat said that he would welcome an opportunity to talk to Ms. B face to face and to apologize to her in person. With that letter he sent her an initial cheque dated June 1, 2012 payable to her in the amount of \$1,000, together with a series of post-dated cheques, each in the amount of \$200, dated the first days of each of the months of July through December, 2012 and the first day of January, 2013.
- [49] On June 29, 2012, Ms. B responded to the letter she received from Mr. Lagemaat by way of an email. She thanked him for his letter and stated an apology was a good start. She asked him to tell her what he was doing now. Mr. Lagemaat

replied to Ms. B in a lengthy email on July 1, 2012 in which he explained how he was now employed and told her about his voluntary involvement with a gospel mission in the Lower Mainland. He also described seeing a therapist on a weekly basis. In an email sent to Mr. Lagemaat on July 3, 2012, Ms. B thanked him for providing her with the information about himself and his circumstances. In that email she said she accepted his apology but she would not cash any of the cheques he had sent her. Instead, she asked Mr. Lagemaat to continue to attend therapy, give back to the community and pursue his dream of becoming a lawyer. She said that, when he was in a better financial position, she would discuss him paying her and that she trusted he would know when a good time would be for him to do that.

[50] An investigator for the Law Society interviewed Ms. B on October 1, 2013. A transcript of that interview was placed in evidence before this Panel. Counsel for the Law Society and Mr. Lagemaat agreed that, if called to testify at this hearing, Ms. B's evidence would be substantially similar to the contents of this transcript. In this interview, Ms. B confirmed that the cost of the repairs and other work required as a result of the growing of marijuana by Mr. Lagemaat was between \$12,000 and \$15,000, including lost rent. She said that, at the time, Mr. Lagemaat avoided her and that she could not contact him. She said he initially told her he did not know about the growing of marijuana and it was a tenant downstairs who was responsible for it. She said she had had no contact with Mr. Lagemaat since early 2004 until she received his June, 2012 letter, except for the 2010 Hearing when they were in the same room but, even then, she had no contact with him. Ms. B said that, based on the apology letter and the subsequent email from Mr. Lagemaat, she believes it was necessary for him to become emotionally ready to open up about his life and to deal with his demons. Ms. B told the investigator that she feels Mr. Lagemaat has changed in the past couple of years and that she has forgiven him for what he did in 2004. She believes his letter to her was sincere. She confirmed that she had told Mr. Lagemaat she was not going to cash the cheques that he sent her and that, sometime in the future when he is in a better financial position, she intended to talk to him about starting to pay her back.

[51] At the hearing before this Panel, Mr. Lagemaat expressed his remorse for the damage he had caused to Ms. B's property, the cost that she incurred as a result of his actions and his failure to apologize, compensate or contact her until 2012. He reiterated his intention to repay Ms. B fully for the cost she incurred and said that he would pay her whatever amount she calculated the cost was. We believe that his testimony in this regard was genuine and sincere, that he truly does regret the harm and hurt he caused Ms. B, and that he does intend to compensate her fully.

Counselling and psychological assessment

- [52] At the 2010 Hearing, Mr. Lagemaat entered into evidence a letter from a person who had been counselling him for approximately four years. In that letter the counsellor stated that Mr. Lagemaat had made significant changes within himself and in his ability to lead a full and fulfilling life. The letter also stated that he had made use of therapy to address his regrets and remorse about poor decisions that he had made prior to coming to his decision to turn his life around and that he had now developed the requisite skills with which to make sound decisions. The counsellor stated that she had found Mr. Lagemaat to be an honourable and trustworthy person.
- [53] The 2010 Hearing panel gave very little, if any, weight to this letter because it was not an expert report, did not purport to be one and clearly stated it was only a letter of reference. That panel also noted that no qualifications of the counsellor were provided, nor were specifics of her position, experience or of any testing done on the Applicant and that there was no explanation of the treatment pursued or how the writer had reached her conclusions.
- [54] The Panel at this hearing was provided with a full record of the counselling received by Mr. Lagemaat during the period of time beginning on December 5, 2005 and ending on May 16, 2013, consisting of 288 pages.
- [55] The evidence before this Panel also included a 14-page letter dated December 4, 2012 written by Dr. F, a clinical and consulting psychologist, which provided Dr. F's psychological assessment of Mr. Lagemaat. In addition to that letter, Dr. F's handwritten notes of his clinical interview of Mr. Lagemaat on November 5, 2012 formed part of the evidence before this Panel.
- [56] It is clear from the counselling records provided to this Panel and from Dr. F's psychological assessment that Mr. Lagemaat had a very difficult childhood and that, as a result of incidents that occurred during his early years, his ability to relate to other persons and make appropriate decisions was adversely affected. We are satisfied on the evidence before us that Mr. Lagemaat has successfully dealt with these psychological issues through the counselling he has received and the other efforts he has made to overcome them.
- [57] Mr. Lagemaat continued to meet weekly with his psychological therapist until the spring of 2013. At that time, the therapist informed Mr. Lagemaat that his lengthy course of counselling appeared to have been successful and that it did not appear as if he needed to continue with the therapy, and Mr. Lagemaat agreed that it would

be appropriate to terminate his therapy. His last session of therapy was held on May 16, 2013.

Volunteer activities

- [58] In his testimony before this Panel, Mr. Lagemaat spent considerable time describing his volunteer activities, particularly with a gospel mission located on the east side of the City of Vancouver (the “Mission”), which provides services to homeless people and persons suffering from addictions or mental illness or who are otherwise in great need. Since the spring of 2011, Mr. Lagemaat has worked at the Mission as a volunteer every Tuesday and, when the need has arisen, also on Fridays. He prepares meals, and he meets and talks with persons using the services offered by the Mission. This Panel was impressed by the empathy he appeared to have with those he was serving and his genuine concern for them. He emphasized that, regardless of the outcome of this hearing, he intends to continue with this volunteer service, and we believe he was sincere when he expressed that intention.
- [59] Filed as evidence at this hearing were letters of reference from the manager of volunteer resources for the Mission, an outreach worker for the Mission and the chaplain of the Mission. The manager of volunteer resources described Mr. Lagemaat as a reliable and valued volunteer who is always on time and ready to contribute as needed. The outreach worker described Mr. Lagemaat as always very helpful and ready to lend a hand and stated that he has a heart of compassion and cares very much for the welfare of those who come to the Mission for physical, mental and spiritual support. The chaplain described Mr. Lagemaat as a person who has shown openness to all kinds of people and who has respect for them no matter what the race, religion or background. He said that Mr. Lagemaat is always on time and that he cannot remember him missing a day. He described Mr. Lagemaat’s volunteer services as cleaning the floor and tables, serving tables, coffee and doing whatever he is asked to do.

Reference letters

- [60] In addition to the reference letters from personnel at the Mission, there were 12 other letters of reference filed as evidence before this Panel.
- [61] We give a great deal of weight to a letter of reference dated March 25, 2013 written to the Law Society by J. Brian Jackson, QC. In that letter Mr. Jackson stated that, although he is nearing that age where retirement is a distinct possibility, he is hopeful that Mr. Lagemaat might be able to article with him and perhaps a couple

of other lawyers who have expressed interest, if he is enrolled as an articled student.

- [62] Mr. Jackson is a senior, highly skilled and very respected member of the legal profession.
- [63] Mr. Jackson also provided a letter of reference that was entered as evidence at the 2010 Hearing. He also testified at the 2010 Hearing and gave favourable evidence regarding Mr. Lagemaat. The 2010 hearing panel did not give a great deal of weight to Mr. Jackson's letter of reference or his testimony because his evidence was that he wrote the letter of reference approximately two weeks after Mr. Lagemaat came to work in his office and that he had not read the attachments to the two articling applications submitted by Mr. Lagemaat, the police reports or any other documentation relating to the alleged sexual assault. That panel stated that, although two weeks of working with a person might be sufficient time to evaluate legal and writing skills, it is a slim window in which to assess character and fitness. They concluded that, because Mr. Jackson did not have the benefit of detailed knowledge of the police narrative and had not reviewed the full articling application, including the nature of the criminal charges laid against Mr. Lagemaat in 2000, Mr. Jackson had only a casual and minimized view of the reported facts regarding the alleged sexual assault.
- [64] It is clear from his 2013 letter of reference that Mr. Jackson now has full knowledge of all of the allegations made against Mr. Lagemaat by Ms. A and of the circumstances surrounding the 2000 Marijuana Cultivation Incident and 2004 Marijuana Cultivation Incident.
- [65] We found the following passages in Mr. Jackson's 2013 letter to be particularly important:

I have been aware of the past allegations in regard to Mr. Lagemaat and have read the particulars of the incidents that have been raised. In terms of the allegations of sexual assault, threatening and confinement from the year 2000, I can assure the recipients of this letter that I have scrupulously been vigilant in monitoring his conduct and attitude for any sign that would reflect any indication of a current attitude marked by callousness, a disposition to anger or frustration, irrational behavior or any sort of deceptive, unethical behavior. I have observed nothing troubling. To the contrary, he is consistently kind, courteous, helpful and ethical in his conduct.

Mr. Lagemaat has clearly made bad decisions and bad choices in the past. In regard to the marijuana offences, I can attest unequivocally that Mr. Lagemaat regrets those decisions made during that period of his life. Although I am not in a position to excuse him, I have no difficulty in saying that it is my belief that he is completely rehabilitated in regard to any offences of that nature.

Further, as I have known I would be called on to attest to his character if I felt it was appropriate, I have never heard Mr. Lagemaat express any unethical thoughts or make any comments to give me concern in that regard. In fact we have discussed ethical matters on more than a few occasions and his instincts in that regard are good and I hope that I have given him good guidance.

...

I have seen many practitioners enter the profession over the years. I view Mr. Lagemaat as a future credit to the profession and, coincidentally, a shining example of rehabilitation, a concept that my area of practice recognizes as possible and worthy of reward when demonstrated in concrete ways such as those evidenced by Mr. Lagemaat.

- [66] Henry K. Brown, another senior lawyer with 40 years of experience, is a sole practitioner who shares office space with Mr. Jackson. Mr. Brown has employed Mr. Lagemaat to undertake legal research and has observed legal research performed by Mr. Lagemaat for others who work in the same office. He says he has total trust in the integrity of his research as well as his astute legal analysis. He received copies of the police reports that relate to the alleged sexual assault and confinement and the two marijuana cultivation incidents. With respect to the allegations made by Ms. A, Mr. Brown states that they are totally and absolutely inconsistent with the character of Mr. Lagemaat, whom he has known over the past four years. He describes Mr. Lagemaat's work ethic as being formidable and his commitment to community volunteer service as exemplary, and says that he has a deep concern for the marginalized of our community.
- [67] A similar glowing letter of reference was provided by J. Douglas Jevning, another senior lawyer, who has shared office space with Mr. Jackson for 26 years. Mr. Jevning is fully aware of the decision of the 2011 hearing panel and has read the various police reports relating to the sexual assault and confinement allegation and the two marijuana-growing incidents. With respect to the allegations of Ms. A, Mr. Jevning states that he does not believe the allegations are true and that, in the period he has known Mr. Lagemaat, Mr. Jevning has never observed him to even

raise his voice, much less his fist to any person. He says that the details of the alleged sexual assault are completely antithetical to any comprehension he has of Mr. Lagemaat and that he simply cannot reconcile the nature of these allegations with the character, personality and fibre of Mr. Lagemaat, whom he knows well. With respect to Mr. Lagemaat's honesty and trustworthiness, Mr. Jevning says that they have never been called into question in his experience and that he trusts him implicitly, both professionally and personally. He says that the mistakes of the past are far behind Mr. Lagemaat and that he is contrite and remorseful and has proved this consistently in his life, both personally and through his employment.

[68] Another letter of reference was written by James W. Sherren, who was called to the bar in 1996 and also practises in a suite of offices shared by Mr. Jackson and two other lawyers. He has known Mr. Lagemaat for approximately four years and is familiar with both the 2010 hearing decision and the circumstances of the sexual assault and confinement allegations and two marijuana-growing incidents. He too has employed Mr. Lagemaat for legal research and says that Mr. Lagemaat has the sort of valuable opinions and insights into criminal law issues that can only be the product of much study and effort on his part. He speaks highly of Mr. Lagemaat's work product, work habits, ethics and community service. With respect to the 2000 and 2004 incidents, Mr. Sherren states that he does not believe them to be reflective of Mr. Lagemaat's current character and fitness to practise law. He says that Mr. Lagemaat impresses him today in all respects as a trustworthy, earnest, open and responsible individual who has never, in Mr. Sherren's experience, evidenced anything other than care and respect for other people's physical and emotional well-being and dignity. He says the police incident reports of 2000 and 2004 are not representative of Mr. Lagemaat's present-day character and disposition.

[69] Favourable letters of reference were also submitted by R.A. (Sandy) Roth, who shares office space with Mr. Jackson and who has known Mr. Lagemaat since 2008, by Sarah A. Jackson, a lawyer who attended law school with Mr. Lagemaat and who is the daughter of Brian Jackson, by Brent V. Bagnall, a lawyer with 24 years experience, many as a prosecutor, and now in private practice who, together with another lawyer, was assisted by Mr. Lagemaat over a 12- month period in a particular case, and by two legal assistants who provide services to Mr. Jackson and those with whom he shares offices. All were aware of the details of the sexual assault and confinement allegations and the marijuana-growing incidents. All spoke very highly both of Mr. Lagemaat's legal skills and work habits and his personal ethics and character.

[70] A letter of reference written in 2010 by Brian Higgins, a senior member of the legal profession, now retired, was filed as evidence at the 2010 Hearing. In that letter of

reference, Mr. Higgins stated he was aware of the alleged sexual assault by Mr. Lagemaat and his involvement in the two marijuana-growing incidents. At that time, Mr. Higgins was the supervising lawyer of the Law Student's Legal Advice Program in Vancouver, of which Mr. Lagemaat had been a member since his first semester at law school in 2007. Mr. Lagemaat was also employed as a full-time clinician at their Carnegie Clinic in the downtown east side during the summer after his first year at law school, and during this second year at law school, he acted as the head of the clinic. In his 2010 letter of reference, Mr. Higgins spoke highly of Mr. Lagemaat's skills, dedication and attitude. In that letter Mr. Higgins stated that he had no hesitation in telling the panel that he truly believed Mr. Lagemaat would be a honourable, trustworthy and valued member of the Bar and that, while he fully recognized that Mr. Lagemaat had made some poor decisions in the past that clearly contravened the law, Mr. Higgins was confident that the man he had come to know would never put himself in that position again.

- [71] In their decision, the 2010 Hearing panel acknowledged that Mr. Higgins was a prominent, well-respected member of the Bar whose opinion would generally be accorded significant weight. They characterized his reference as a glowing letter of support that described Mr. Lagemaat's exceptional efforts during law school to volunteer at the UBC law student's clinic. They gave very little weight to his letter of reference, however, because his experience of Mr. Lagemaat appeared to be limited to seeing him in the volunteer legal clinic setting where, clearly, Mr. Lagemaat distinguished himself. The 2010 Hearing panel was not concerned about Mr. Lagemaat's ability to do well in a supervised legal clinic setting but, instead, with his ability to demonstrate character and moral fitness when demanding private and uncomfortable choices were before him in the future, and they did not believe Mr. Higgins' letter of reference addressed those issues.
- [72] Mr. Higgins wrote a new letter of reference dated March 5, 2013, which was evidence before this Panel, to update his 2010 letter of reference. In his current letter, Mr. Higgins states that he has read the police reports relating to the marijuana-growing incidents in 2000 and 2004 and the police report relating to the criminal charges resulting from the allegations by Ms. A. He states that, although he had not read those reports when he wrote his 2010 letter of reference, nothing new arose from his present reading of them because Mr. Lagemaat had fully informed him of all of the circumstances relating to his past in regard to those events before he wrote the 2010 letter of reference. Mr. Higgins reconfirmed his letter of reference and expressed the view that the course Mr. Lagemaat has taken since the 2000 and 2004 allegations and incidents will enable him to become a very valuable member of the legal profession.

- [73] Also before the Panel were the letters of reference by Ms. D and a letter of reference by Mr. Lagemaat's adult daughter.
- [74] All of the 12 additional letters of reference spoke highly of Mr. Lagemaat, his character and reputation and his fitness to become a lawyer.

DISCUSSION AND ANALYSIS

- [75] Section 19(1) of the Act requires this Panel to determine whether we are satisfied that the Applicant is of good character and repute and fit to become a barrister and a solicitor of the Supreme Court at the present time. While the Applicant's conduct in 2000 and 2004 and his character and fitness at the time of the 2010 hearing are relevant as predictors of his future conduct and, therefore, his character and fitness to be enrolled as an articulated student and, potentially, to become a practising lawyer, our task is not to determine what his character was in 2000, 2004 or 2010 but to determine whether he is now of a good character and can be trusted to act honestly and ethically in the best interest of clients.
- [76] A leading authority on the question of what constitutes being "of good character and repute," including fitness to be a barrister and a solicitor, is the decision of the court of appeal for British Columbia in *McOuat v. Law Society of British Columbia*, [1993] BCJ No. 807. At paras. 6 and 7, the Court of Appeal approved the following statements by the panel who considered Mr. McOuat's application for reinstatement:

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".

It is for this panel acting reasonably upon the evidence before it to decide whether Mr. McOuat has discharged the burden of satisfying the panel that he is fit to become a barrister and solicitor. The objective sense of "good character" overlaps with the requirement of fitness.

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 never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

The cannons [sic] of legal ethics adopted by the Law Society provide assistance, when they assert:

A lawyer is a minister of justice, an officer of the Courts, a client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is a lawyer's duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to clients, be candid and courteous in relations with other layers [sic] and demonstrate personal integrity.

To be fit to practice a lawyer must be ethically equipped to never break the client's trust.

- [77] The onus is on the Applicant to satisfy us, on a balance of probabilities, that he has met the requirements for enrolment as set out in section 19(1) of the Act and as articulated by the court in cases such as *McOuat*, (*supra*).
- [78] The panel in the 2010 Hearing found that Mr. Lagemaat's application for temporary articles had to be rejected on the basis he had not met his burden proving his then current good character, reputation and fitness to be called. That finding was based on the following two inter-related grounds:
- (a) Mr. Lagemaat was not sufficiently forthright, truthful and frank in the evidence he gave at the 2010 Hearing; and,
 - (b) Mr. Lagemaat had not satisfied the 2010 Hearing panel that he was sufficiently rehabilitated.
- [79] With respect to the Sexual Assault and Confinement Allegation, the 2010 hearing panel found it was unnecessary to come to a conclusion as to whether the alleged assault and confinement occurred. They found there was evidence going to both sides on this issue, and even though they did not make a decision as to whether these events occurred, they were not prepared to decide that they did not occur.
- [80] The previous panel was very critical of the testimony the Applicant gave at the 2010 Hearing. They concluded that the Applicant's testimony regarding the Sexual

Assault and Confinement Allegation and his overall relationship with Ms. A was not credible.

- [81] Also of concern to that panel was the manner in which the Applicant dealt with Ms. B. They found that he led her to believe that the 2004 Marijuana Cultivation Incident was the first instance of his cultivating marijuana in the house he rented from her and that he further misled her by trying to deflect all responsibility for the marijuana growing operation onto his tenant. As well, the 2010 Hearing panel concluded that an applicant of good character would likely, at the time of the 2010 Hearing, have attempted some restitution for Ms. B or, at a minimum, expressed his sincere apology for his conduct at the end of his tenancy, but by the time of the 2010 Hearing, he had made no plan to make any sort of restitution to Ms. B.
- [82] They also found that his refusal to provide the name of the tenant at the time of the 2004 Marijuana Cultivation Incident was inconsistent with a forthright approach to his application for temporary articles. In addition, they found that the Applicant's evidence at the 2010 Hearing tended to minimize the seriousness of his involvement in the 2000 and 2004 Marijuana Cultivation Incidents and that, throughout his testimony, he downplayed his knowledge of those incidents.
- [83] In reaching their decision, the 2010 Hearing panel also discounted the Applicant's assertions that he had changed for the better in a fundamental fashion because of the lack of weight they put on his own evidence regarding his past conduct.
- [84] They also discounted the evidence of three individuals who provided independent oral testimony regarding the Applicant's rehabilitation because they were not familiar with the full particulars of the police reports regarding the Sexual Assault and Confinement Allegation. The previous panel found that the violence of the conduct reflected in those reports created a *prima facie* concern regarding character that was critical to answer and that it would have been helpful to know if the independent character witnesses would view the Applicant's character in the same light had they had a chance to consider the reports and discuss them fully with him when their only exposure to the facts appeared to be the Applicant's self-exculpatory account of the facts.
- [85] We have carefully considered the findings made by the 2010 hearing panel and the basis on which they made those findings.
- [86] We have also considered the following submissions made by counsel for the Law Society as to how we should deal with the findings of the 2010 hearing panel and what differences may exist between the evidence considered by the 2010 hearing panel and the evidence heard by this Panel:

- (a) Mr. Lagemaat's testimony appeared to Law Society counsel to be straightforward and respectful. His answers to questions concerning professional ethics, honesty and integrity appeared to be reasonable and sincere. He acknowledged his mistakes, expressed remorse and did not seek to blame others. Nor did he pretend that he would not face further struggles in his life. It is open to the Hearing Panel to infer from Mr. Lagemaat's evidence that he is likely to deal with future problems and stresses in an honest and forthright manner;
- (b) The evidence concerning Mr. Lagemaat's counselling indicates that he has made a serious and determined effort to overcome the issues that Mr. Lagemaat has faced in his life and that he concluded counselling at an appropriate time, with the approval and support of his counsellor;
- (c) Dr. F's psychological assessment is generally supportive of the conclusion that Mr. Lagemaat is currently fit to be enrolled as an articled student;
- (d) The lawyers who provided reference letters support Mr. Lagemaat's enrolment as an articled student and speak highly of him. It is open to the Hearing Panel to conclude that Mr. Lagemaat's current reputation is consistent with the conclusion that he is now of good repute;
- (e) Mr. Lagemaat's continuing volunteer work has been consistent and appears to be founded on a dedication to help those less fortunate, rather than on a motivation to simply create a pretense of good works. Mr. Lagemaat's explanation for his volunteer work (in effect, "there but for the Grace of God go I") also appears to be reasonable in the context of his life experience;
- (f) Mr. Lagemaat testified that he intends to compensate Ms. B, regardless of the outcome of this hearing. Mr. Lagemaat could have and should have apologized to Ms. B and taken steps to compensate her much earlier. However, he has now done so, he is undertaking to provide compensation and Ms. B is supportive of him and his application. Again, it must be recognized that the issue is Mr. Lagemaat's character, reputation and fitness *today*;
- (g) Mr. Lagemaat has consistently maintained that Ms. A's accusations against him in 2000 were false. Ms. A retracted her accusations. There is at least one aspect of the police report (described at p. 11, paragraph 18 B iv of Mr. Murray's submission) that appears to be significantly

inconsistent with the accusations Ms. A initially made. In these circumstances, the Panel may conclude that Mr. Lagemaat's consistent denial of Ms. A's accusations against him in 2000 should not be seen as an indication that he has not been rehabilitated (*Watt* case, Common Book of Authorities Tab 11, paras. 48-52);

- (h) The evidence of Ms. C and Ms. D is consistent with the conclusion that Mr. Lagemaat did not have and does not now have any tendency towards violence against women.

[87] The *Watt* case referred to by counsel for the Law Society is *Watt v. The Law Society of Upper Canada*, 2005 CanLII 21111 (Ont SCJ), in which Mr. Justice Molloy stated the following at paras. 50, 51 and 52:

[50] In that same case, [*In Re Hiss* (1975), Mass., 333 NE 2d 429 (SJC)], Tauro CJ eloquently described the dilemma facing an honest person who does not accept a finding of guilt against him, stating as follows at p. 437:

Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance creates a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard-retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law. Men who are honest would prefer to relinquish the opportunity conditioned by this rule: "Circumstances may be made to bring innocence under the penalties of the law. If so brought, escape by confession of guilt ... may be rejected, – preferring to be the victim of the law rather than its acknowledged transgressor – preferring death even to such certain infamy." *Burdick v. United States*, 236 US 79, 90-91 (1915). Honest men would suffer permanent disbarment under such a rule. Others, less sure of their moral positions, would be tempted to commit perjury by admitting to a nonexistent offense (or to an offense they believe is nonexistent) to secure reinstatement. So regarded, this rule, intended to maintain the integrity of the

bar, would encourage corruption in these latter petitioners for reinstatement and, again paradoxically, might permit reinstatement of those least fit to serve. We do not consider in this context the person who admits committing the alleged criminal act but honestly believes it is not unlawful.

Accordingly, we refuse to disqualify a petitioner for reinstatement solely because he continues to protest his innocence of the crime of which he was convicted. Repentance or lack of repentance is evidence, like any other, to be considered in the evaluation of a petitioner's character and of the likely repercussions of his requested reinstatement.

[51] That is not to say that an admission of guilt is not a relevant factor to take into account in considering readmission. It clearly is. Indeed, it is typically a significant positive factor in determining whether an applicant has purged his guilt. It does not follow, however, that an absence of such an admission, should be a negative factor. ...

[52] ... Thus, what the Panels did amounts to exactly what the Court in *Hiss* emphasized was improper: they effectively made an admission of guilt a precondition for reinstatement. In doing so they committed an error of law. ...

[88] With respect to the Sexual Assault and Confinement Allegation we note, as pointed out by counsel for the Applicant, that the evidence contained in the police report is inconsistent with the complaint Ms. A made to the police in at least one material way. In her complaint to the police Ms. A said that the incident occurred on February 18, 2000, the same day that she made the complaint. Shortly after the complaint was made, the officers investigating the complaint interviewed an employee of the thrift store who told them that Ms. A had come to the store with cut clothing and hair and had complained of being sexually assaulted on February 17, 2000, the day before the date on which Ms. A told the police the incident had occurred. We also note that the evidence Ms. A gave at the 2010 Hearing was that she went to the thrift store to establish collaboration the day before she made the complaint to the police. The Applicant's testimony at the 2010 Hearing is also consistent with Ms. A going to the thrift store the day before the date on which she initially alleged the sexual assault and confinement occurred.

- [89] Not only did Ms. A recant the Sexual Assault and Confinement Allegation shortly after she made it, in the testimony she gave at the 2010 Hearing, she also repeatedly denied the allegation was true, and her evidence was that she had fabricated the allegation. We accept the submission of counsel for the Law Society that the evidence of Ms. C and Ms. D is consistent with the conclusion that the Applicant did not have, and does not now have, any tendency toward violence against women.
- [90] In his testimony at this hearing the Applicant clearly and consistently denied that he sexually or otherwise assaulted Ms. A or confined her. We accept his evidence with respect to the Sexual Assault and Confinement Allegation.
- [91] The Applicant was subjected to probing questioning by counsel for the Law Society in cross-examination and by members of this Panel with respect to his involvement in the two marijuana-growing incidents, particularly the 2004 Marijuana Cultivation Incident. He acknowledged that his actions in both cases were both wrong and illegal and that they resulted from his making very bad decisions. Although it does not in any way excuse his behaviour, we note that no charges were ever laid with respect to either one of the marijuana-growing incidents, which indicates that the police did not consider his actions to be serious enough to warrant a criminal prosecution.
- [92] Based on his testimony at this hearing, we are satisfied that it is unlikely that the Applicant would, at the present time or any time in the future, engage in illegal activity similar to those actions that he took when he participated in the 2000 Marijuana Cultivation Incident and the 2004 Marijuana Cultivation Incident.
- [93] We are also satisfied that the Applicant is genuinely remorseful for the consequences Ms. B suffered as a result of the 2004 Marijuana Cultivation Incident, and we are heartened by his reconciliation with Ms. B and by the support she is currently expressing for him.
- [94] Although the Applicant in the past was not of good character or fit to become a lawyer, he has satisfied us that he has now been fully rehabilitated and is currently of good character and repute and fit to become a member of the legal profession in British Columbia.
- [95] Counsel for both the Applicant and for the Law Society suggested for the Panel's consideration various conditions that we might wish to impose if we decided to grant the application for enrolment. We do not find it necessary or appropriate to impose any conditions on the Applicant's enrolment as an articulated student.

[96] The Applicant has, through counsel, offered to pay costs of this hearing in the amount of \$2,000, and counsel for the Law Society in his submissions stated that the Law Society does not oppose that submission.

CONCLUSION

[97] The Applicant has satisfied this Panel on the balance of probabilities that he is currently of good character and repute and fit to become a barrister and a solicitor of the Supreme Court.

[98] We therefore grant Mr. Lagemaat's application for enrolment as an articled student.

[99] Mr. Lagemaat must pay costs in the amount of \$2,000.

CONFIDENTIAL INFORMATION

[100] Rule 5-6(2) of the Law Society Rules provides:

- (2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interest of any person:
 - (a) an order that specific information not be disclosed;
 - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

[101] At the hearing of this matter counsel for the Applicant applied to this Panel for an order that the following evidence not be disclosed:

- (a) Exhibit 2 in this hearing, which consists of the records of the Applicant's counselling and the psychological assessment prepared by Dr. F;
- (b) the transcript of the evidence of the testimony of Ms. A at the 2010 Hearing, which is set out in a transcript of her evidence consisting of pages 144 to 184, inclusive, of Exhibit 4 in this hearing;
- (c) the transcript of the evidence of the testimony of Ms. C at the 2010 Hearing, which is set out in a transcript of her evidence consisting of pages 303 to 318, inclusive, of Exhibit 4 in this hearing;

- (d) Exhibit 7 in this hearing, which consists of additional records of the Applicant's counselling; and,
- (e) Exhibit 8 in this hearing, which consists of records of medications prescribed for the Applicant.

[102] Counsel for the Law Society supported the application by counsel for the Applicant.

[103] The parties subsequently tendered a form of order to the Panel, which, if made, would have expanded the non-disclosure order to include any evidence given at this hearing that would identify Ms. A or Ms. C. We reserved our decision with respect to the application regarding the disclosure of information. On March 7, 2014, we ordered that, until the Panel made its decision with respect to the application for enrolment, there must be no disclosure of any of the evidence contained in Exhibit 2 or of any other evidence that would allow Ms. A or Ms. C to be identified.

[104] The testimony by Ms. A at the 2010 Hearing and the other evidence regarding the Sexual Assault and Confinement Allegation contained highly private and sensitive information regarding Ms. A. Except to the extent set out in this decision, we find that it is unnecessary for members of the public or the legal profession to be privy to that information, that Ms. A is entitled to have her identity kept secret, and that it is not in the public interest that her identity be disclosed.

[105] The employment circumstances of Ms. C are such that disclosure of her identity and the testimony she gave at the 2010 Hearing and during the interview by the Law Society investigator could cause her embarrassment and adversely affect her ability to properly carry out her duties. As with Ms. A, we find that it is unnecessary for members of the public or the legal profession to be privy to that information, except to the extent set out in this decision, that Ms. C is entitled to have her identity kept secret, and that it is not in the public interest that her identity be disclosed.

[106] The counselling records and psychological assessment by Dr. F and related documentation and Exhibit 2 contain very private and personal information about the Applicant that members of the public and legal profession do not need to know about, and it is not in the public interest that they be disclosed, except to the extent set out in this decision.

[107] We therefore make the following orders pursuant to Rule 5-6(2):

- (a) no evidence entered at this hearing or heard by this Panel that would enable Ms. A or Ms. C to be identified be disclosed or published;
- (b) no references to the names of, or any information that might be capable of identifying, Ms. A or Ms. C contained in any document issued in relation to this hearing or as a result of this hearing be disclosed or published;
- (c) Exhibits 2, 7 and 8 and pages 144 to 184, inclusive, and pages 303 to 318, inclusive, of Exhibit 4 be sealed and remain sealed until either those exhibits or, in the case of Exhibit 4, those pages of Exhibit 4 are destroyed or until a resolution authorizing their unsealing is passed by the Credentials Committee of the Law Society upon such conditions, if any, as the Credentials Committee may impose.