

2015 LSBC 12
Decision issued: April 1, 2015
Oral reasons: February 27, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

NELSON SELAMAJ

APPLICANT

**DECISION OF THE HEARING PANEL
ON APPLICATION FOR ENROLMENT**

Hearing dates: February 24, 25, 27, 2015

Panel: Jamie Maclaren, Chair
Gavin Hume, QC, Lawyer
John Lane, Public representative

Counsel for the Law Society: Gerald Cuttler
Counsel for the Applicant: Craig Jones, QC

OVERVIEW

- [1] The Applicant, Nelson Selamaj, applied for enrolment as an articled student with the Law Society on April 23, 2014.
- [2] On June 12, 2014, the Credentials Committee ordered a hearing to determine whether the Applicant meets the standard for enrolment under section 19(1) of the *Legal Profession Act*:

19(1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are

satisfied that *the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.*

[emphasis added]

- [3] In determining whether he meets the standard for enrolment, the Panel inquired into the Applicant's following circumstances:
- (a) three separate *Criminal Code* charges from 2005, 2006 and 2010;
 - (b) two separate *Controlled Drugs and Substances Act* charges from 2006 and 2009;
 - (c) several separate traffic, driving and parking offences and charges between 2005 and 2013;
 - (d) his inaccurate and incomplete June 20, 2013 application to the Law Society for Temporary Articles enrolment; and
 - (e) his candour and credibility in his dealings with the Law Society from June 20, 2013 onward.
- [4] The onus is on the Applicant to satisfy the Panel of his "good character and repute" on the balance of probabilities. This includes demonstrating that he is rehabilitated and trustworthy at the time of the hearing.
- [5] The Panel is mindful of protecting the public from the dangers presented by reckless or deceitful articulated students and lawyers, while giving due credence to the concept of redemption through rehabilitation. We are also mindful of the public's interest in being served by articulated students and lawyers from a range of cultural and socioeconomic backgrounds that reflects its own diversity.
- [6] Despite his reckless and criminal behaviour as a younger man, the Applicant now demonstrates a highly evolved respect for the rule of law. He has numerous positive character references from prominent members of the British Columbia legal community, most of whom testified at the hearing, and all of whom had prior knowledge of the Applicant's past charges and offences. Though the Applicant was less than forthright in the unique circumstances surrounding his 2013 application for Temporary Articles and subsequent correspondence with the Law Society, he was completely candid and forthright in his 2014 application for enrolment as an articulated student, and throughout his testimony.

- [7] The Panel finds that the Applicant is now a person of good character and repute, and is fit to become a barrister and a solicitor of the Supreme Court. We grant his application for enrolment as an articled student without conditions.

BACKGROUND

- [8] The Applicant is 28 years old. He was born and raised with two older brothers in Albania during a period of profound political upheaval. His parents were part of a successful popular movement to topple the communist government of the day, but fell into disfavour with the regime that followed. The Applicant's family fled persecution and immigrated to Canada in 2001 when the Applicant was 14 years old. They settled in a northern suburb of Toronto, lived together in a small apartment and were eventually granted refugee status.
- [9] The Applicant performed well in his first Canadian high school despite his poor grasp of the English language. But he struggled for social inclusion among his peers and sought out the familiar company of eastern European immigrants from nearby neighbourhoods. Shortly after his 16th birthday, the Applicant bought a used car with earnings from part-time restaurant jobs. He and his friends would then converge upon suburban parking lots to socialize. They would often drink alcohol, smoke marijuana and play loud music in their cars, and this predictably attracted regular police attention. The Applicant recalled being pulled over by police an average of twice per week during this time. Looking back while under cross-examination, he characterized his former self as "a punk on the street."
- [10] At the same time as the Applicant engaged in casual unlawful behaviour with his friends, he excelled in school and became attracted to the prospect of a legal career. He entered York University in the fall of 2004 and thus became the first member of his extended family to proceed beyond high school. He paid his tuition with his earnings from several restaurant and bar jobs and increasingly selected courses with a focus on the law. He graduated in October 2009 with an Honours Bachelor Degree in Political Science.
- [11] After university graduation, the Applicant sought employment in the legal sector. He first volunteered his time with a local lawyer of Albanian origin. The lawyer employed him to assist with file management across a diverse range of legal matters. The Applicant worked in the law office from November 2009 to April 2011, when he also volunteered to assist and represent new immigrants and refugees in their application processes.

- [12] The Applicant was admitted to the inaugural class at Thompson Rivers University Faculty of Law in mid-2011. He described this achievement as a major turning point in his life. Throughout his three years of law school in Kamloops, the Applicant immersed himself in his studies, but also found time to volunteer with the Canadian Civil Liberties Association, serve on the school's Articling Committee, and captain an intramural basketball team. He was selected to compete on the school's 2014 Wilson Moot team. He graduated in June 2014 with good grades.
- [13] The Applicant secured employment with the Penticton law firm of Pearce Taylor Schneiderat in the summer of 2013 between his second and third years of law school. He applied to the Law Society for Temporary Articles but was denied enrolment for many of the same reasons that motivated the Credentials Committee to order this hearing. With the Law Society's permission, he instead worked for the law firm as a legal assistant through the summer of 2013 and following his June 2014 graduation from law school.

Criminal Code charges

- [14] In the early morning of September 17, 2005, the Applicant was involved in a minor motor vehicle accident in a suburban Toronto parking lot. Once apprehended and arrested by police, he refused to provide the arresting officer with a breath sample. He was charged under *Criminal Code* section 254(2) with refusing to provide a breath sample into a Roadside Screening Device. The criminal charge was withdrawn in exchange for the Applicant pleading guilty to a careless driving offence under the *Highway Traffic Act* for which he paid a fine and received a three-month driving suspension.
- [15] On the night of December 22, 2006, the Applicant drank excessively at a Toronto bar and, at close to midnight, attempted to move his car from one parking spot to another to avoid being ticketed. In doing so, a parking enforcement officer spotted him driving the wrong way on a one-way street. The parking enforcement officer stopped the Applicant and obtained his driver's licence. Despite being stopped, the Applicant inexplicably proceeded to park his car and then return to the bar. The bar staff called a taxi to drive him home. At some point after midnight, the Applicant called the police to report his car as stolen. A few hours later, he advised the police that his car had been returned to him. He was charged under section 140 of the *Criminal Code* with committing public mischief. He pleaded guilty to the charge and received an absolute discharge.

- [16] In the early morning of September 5, 2010, another driver reported the Applicant driving dangerously in an area near his North York home. The police caught up to him in the drive-through portion of a McDonald's parking lot. He provided a breath sample above the legal limit and was charged under *Criminal Code* section 253(1) for operating a motor vehicle while impaired by alcohol. The criminal charge was withdrawn in exchange for the Applicant pleading guilty to a careless driving offence under the *Highway Traffic Act* for which he paid a \$1000 fine and received a six-month driving suspension.

Controlled Drugs and Substances Act charges

- [17] On the night of May 7, 2006, the police apprehended the Applicant and several of his friends smoking marijuana outside of a downtown Toronto nightclub. He was charged for possession of marijuana under section 4 of the *Controlled Drugs and Substances Act*. The possession charge was withdrawn in exchange for the Applicant making a charitable donation.
- [18] On the night of October 17, 2008, the police apprehended the Applicant and several of his friends smoking marijuana in a suburban Starbucks parking lot. He was charged with possession of marijuana under section 4 of the *Controlled Drugs and Substances Act*. The possession charge was withdrawn in exchange for the Applicant volunteering at a local hospital.

Traffic, driving and parking offences

- [19] Between September 2005 and December 2013, the Applicant was ticketed for a few parking offences and several minor driving offences. His latest driving offence occurred on December 13, 2013 when he was ticketed and fined under the *Motor Vehicle Act* for speeding and failing to provide a driver's licence.

2013 temporary articles application

- [20] The Applicant secured his summer 2013 job with Pearce Taylor Schneiderat in Penticton later than he had hoped. He was visiting his parents in Toronto on June 7, 2013 when the law firm offered him an interview on June 12. He immediately travelled to Penticton, interviewed and was hired for work commencing June 17. Between arriving in Penticton and commencing work, he secured a rental apartment and moved his belongings from Kamloops.
- [21] Soon after commencing work, the Applicant was encouraged by his prospective principal, Cary Schneiderat, to seek temporary articles so that he may occasionally

appear in court as permitted. The Applicant searched the internet to apprise himself of the Law Society's process for securing temporary articles. He learned that an application for temporary articles is due 30 days prior to a student's proposed start date. By his account, the Applicant then rushed to complete his application over a few hours with the aim of starting the 30 day wait period as soon as possible and thus pleasing his employer. He did not give enough regard to the thorough background information required of him. Among other things, he neglected the explicit requirement to "provide relevant supporting documents, including any court orders, with full particulars" when disclosing prior offences, delinquencies and criminal charges.

- [22] On a single typed page appended to his application, the Applicant described his prior charges as a "misdemeanour" and "drinking and driving offences (refuse to provide breath sample and care and control)." He described his September 17, 2005 charge for refusing to provide a breath sample as having been reported by "a jealous girlfriend." He recalled his September 5, 2010 charge for operating a motor vehicle while being impaired by alcohol as taking place "on or about 2009." He made no specific mention of his December 22, 2006 public mischief charge, though he testified to having confused it for the admitted "misdemeanour." He also made no mention of his two marijuana possession charges or his various traffic, driving and parking offences. He proceeded to express remorse for his previous drinking and driving offences, which he characterized as "dangerous" and "foolish."
- [23] In his application, the Applicant also failed to include the application fee and some necessary information regarding his former places of residence, employment and education. He testified to having been unable to procure supporting documents in his rush to submit his application and to having assumed that the Law Society, as a perceived arm of government, would further investigate his listed offences.

Correspondence with the Law Society

- [24] On July 4, 2013, the Law Society wrote to the Applicant requesting his missing application fee, further personal information and full written details of the circumstances leading up to and surrounding his listed offences, including documents such as police occurrence reports, reports to Crown Counsel and court transcripts. The Applicant subsequently contacted several Ontario courthouses to procure the requested documents, but they did not arrive by July 22 when the Law Society wrote a second letter to the Applicant repeating its request for further information and documents.

- [25] On or about July 18, 2013, the Applicant was diagnosed with a serious medical condition that seemed to threaten his life. Though he continued to work regular hours at the law firm, the diagnosis occupied a majority of his waking thoughts and caused him enormous stress. His partner left him at or around this time. It was under these emotional circumstances that the Applicant wrote a July 29 letter in response to the Law Society's renewed request for further information and documents.
- [26] In his July 29 letter, the Applicant provided the missing information about his former places of residence, employment and education, and explained that he had sent the missing enrolment fee to the Law Society on July 2. Having received some general verbal information from courthouse clerks in Ontario but no documentation as of then, the Applicant also attempted to provide background and context to his three *Criminal Code* charges and two *Controlled Drugs and Substances Act* charges. His descriptions provided more precise details about each charge, but also included some misleading information, some deflections of culpability, and some implicit criticisms of related police conduct as heavy-handed and anti-immigrant.
- [27] In his testimony, the Applicant admitted to having continued a defensive approach to disclosure in his July 29 letter, and to having exaggerated some of his portrayals for effect. When he wrote the letter, his mind was distracted by anxious thoughts of his recent diagnosis. He lacked proper appreciation of the inquisitorial nature of the Law Society's application process and the full candour it required of him. His descriptions were also based on vague memories imperfectly refreshed by the verbal information from courthouse clerks in Ontario.
- [28] The Applicant applied for enrolment as an articled student on April 23, 2014. His application included 14 pages of revised descriptions of the context and nature of his charges. The details of his descriptions were supported by roughly 180 pages of official documentation, including correspondence with police departments, police occurrence reports, police notes, court files, trial transcripts, statutory declarations from witnesses, results of driving record searches and receipts of parking ticket payments. Whereas the Applicant's 2013 application for temporary articles was woefully incomplete, his 2014 application for full articles was more than complete. It featured candid and mindful expressions of accountability for his criminal charges, and no defensive explanations or deflections. The Applicant's testimony further reflected his unqualified accountability for past transgressions, and an evolved understanding of the candour and frankness required of prospective and actual members of the Law Society.

Character references

- [29] The Applicant included several positive reference letters from former employers, professors, mentors, mentees and classmates in his 2014 application for enrolment as an articulated student. Many of the references alluded to having known about the Applicant's criminal charges, while others made no mention of them. All of the references described the Applicant as a highly conscientious and trustworthy individual who would be an exemplary member of the Law Society and his chosen community.
- [30] The Applicant included many of the same reference letters and some new reference letters in his filed hearing documents. The authors of five different reference letters and one other person appeared before the Panel to testify to the Applicant's good character and repute. They included the Applicant's current employer, Carey Schneiderat, his former professor Micah Rankin, Crown Counsel Dolfi Havlovic, his work colleague Paul Varga and his former classmates Kendra Morris and Paul Bosco. They each had a good understanding of the Applicant's criminal history and recent dealings with the Law Society.
- [31] In his capacity as a partner of Pearce Taylor Schneiderat, Mr. Schneiderat had known the Applicant for a little less than two years. He explained that a sterling reputation is vital to doing good legal business in a small urban community like Penticton where social exposure and scrutiny is relatively intense. He stated that he had no issues with the Applicant representing the law firm in business and social settings alike. He portrayed the Applicant as a valuable team member and long-term investment for his firm and said he hoped to supervise his work as an articulated student if so permitted. When asked in direct examination whether he trusted the Applicant, Mr. Schneiderat responded, "I do."
- [32] As a professor at the Thompson Rivers University Faculty of Law, Mr. Rankin taught several courses of law to the Applicant. He described the Applicant as "an extremely hard-working individual" who had a very good reputation among his fellow students, who behaved well in academic and social settings, and who actively sought Mr. Rankin's help to overcome difficulties with English as a second language. He expressed unreserved faith in the Applicant's developed appreciation of the candour and honesty required of lawyers. When asked in direct examination whether he trusted the Applicant, Mr. Rankin responded, "I trust Nelson."
- [33] Ms. Havlovic is a personal friend of the Applicant with nearly 30 years experience as Crown Counsel. The Applicant and her son became good friends at law school, and the Applicant consequently spent some time with her family on holidays. She described him as "hard-working, conscientious and highly motivated to become an

excellent lawyer.” She recognized that the Applicant had taken deliberate steps to remove himself from the circle of friends and circumstances that contributed to his past criminal behaviour. She viewed him as someone who could bring beneficial perspectives to the legal profession. When asked in direct examination whether she trusted the Applicant, Ms. Havlovic responded, “Yes.”

- [34] Mr. Varga, Ms. Morris and Mr. Bosco all echoed a view of the Applicant as a hard-working and honest person. An associate at Pearce Taylor Schneiderat, Mr. Varga related that the other legal assistants at the firm looked up to the Applicant. Ms. Morris and Mr. Bosco each described circumstances in law school where the Applicant acted with uncommon selflessness and integrity.

ISSUES

- [35] The Panel must determine two issues:
- (a) Whether the Applicant has met the burden of proving that he is of good character and repute and therefore meets the standard for enrolment as an articulated student, pursuant to section 19(1) of the *Legal Profession Act*; and
 - (b) If (a) is affirmed, whether the Law Society should impose conditions or limitations on the Applicant’s enrolment as an articulated student, pursuant to section 22(3) of the *Legal Profession Act*.

ANALYSIS

- [36] Under section 3 of the *Legal Profession Act*, the Law Society must uphold and protect the public interest by, among other things, ensuring the independence, integrity, honour and competence of lawyers.
- [37] In *MacDonald Estate v. Martin*, [1990] 3 SCR 1235, the Supreme Court of Canada expressed concern that the legal profession maintain high standards of professional conduct to promote public confidence in the administration of justice and strengthen the integrity of Canadian systems of justice.
- [38] The Law Society’s high standard for enrolment as an articulated student safeguards the integrity and honour of lawyers. This is increasingly vital as more lawyers exercise their mobility rights and practise across provincial and territorial borders. By confirming that its new members are of good character and repute, the Law

Society ensures that the Canadian public is protected and well-served by lawyers in all jurisdictions and areas of practice.

- [39] Applicants for enrolment as an articulated student with the Law Society must each complete an extensive application form. The opening sentence of the application counsels the applicant to complete it “fully and precisely” since “omissions and inaccuracies in your answers may delay your enrolment.” As we have found, the Applicant more than completed his 2014 application. He answered each question in full and provided approximately 180 pages of detailed background information on achievements and transgressions alike.
- [40] The Law Society’s application for Temporary Articles features the same opening proviso regarding completeness and accuracy. As previously described, the Applicant fell far short of completing his application fully and precisely. He brushed over the specifics of his charges and offences, forgot to submit the application fee and failed to include information regarding his former places of residence, employment and education. His July 29 letter to the Law Society further lacked full accuracy and candour. It included misleading information, deflections of culpability, and misplaced criticisms of police conduct.
- [41] The discrepancies between the Applicant’s two applications and the lack of accuracy and candour in his Temporary Articles application and July 29 letter raised serious questions about the Applicant’s character, separate and apart from his criminal behaviour as a younger man. The questions, in turn, caused considerable delay in processing his application. This should serve as a caution to future applicants. The Law Society relies on full and frank disclosure of all past charges, offences and delinquencies to determine whether an applicant has moved permanently beyond disrespecting the rule of law and now meets the standard of good character.
- [42] Although past charges, offences and delinquencies are of serious concern to the Law Society, they do not themselves determine whether an applicant meets the standard for enrolment as an articulated student. The test is whether an applicant is of good character and repute at the time of the application or hearing. This provides space for self-transformation over time and recognizes the potential for redemption through rehabilitation. It creates pathways to the legal profession for people whose personal and perhaps disadvantaged circumstances once contributed to irresponsible decisions. For some, the achievable prospect of becoming a lawyer provides life-changing motivation to uphold the rule of law rather than defy it. The public interest is ultimately served by a greater diversity of articulated students and lawyers from varied cultural and socioeconomic backgrounds.

[43] As stated in the *Law Society of Upper Canada v. Schuchert*, [2001] LSDD No. 63 at paragraph 19:

The existence of a criminal record, even for serious offenses, is not, of itself, an impediment to admission to the bar. The test is whether the applicant has changed since the time of those charges and is now of good character.

[44] In *Re: Applicant 3*, 2010 LSBC 23 at paragraph 23, the panel commented on the overriding public interest focus of enquiry into an applicant's character and repute:

[23] The determining factor at all Credentials hearings is the public interest. To protect the public, the Law Society must be satisfied that an applicant meets the test of being of "good character and repute". Unlike in the disciplinary context, the onus is on the Applicant to meet this standard. In this context, public interest has a broader meaning. It is in the public interest to have articulated students and lawyers from diverse backgrounds. Persons who have gone astray and have truly rehabilitated themselves can give valuable insight to clients, the courts and the public. They can become valued and trustworthy members of the profession. They set an example to all of us. However, here the onus is on this Applicant to prove his rehabilitation. It is not enough for the Applicant to appear and say, "These events happened a long time ago, and by the way, I have rehabilitated myself." A much more thorough examination is required.

[45] On the more fundamental question of what constitutes "good character and repute", the BC Court of Appeal, in *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106, adopted the following passage from an article entitled, "What is 'Good Character'?" by Mary Southin, QC (as she then was), published in *The Advocate*, (1987) v. 35, at 129:

I think in the context "good character" means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia at the time of application.

Character within the Act comprises in my opinion at least these qualities:

1. An appreciation of the difference between right and wrong;

2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;
3. A belief that the law at least so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld.

What exactly “good repute” is I am not sure. However, the Shorter Oxford Dictionary defines “repute” as “the reputation of a particular person” and defines “reputation” as:

1. The common or general estimate of a person with respect to character or other qualities; the relative estimation or esteem in which a person is held.
2. The condition, quality or fact of being highly regarded or esteemed; also respectability, good report.

In the context of s. 41 I think the question of good repute is to be answered thus: would a right-thinking member of the community consider the applicant to be of good repute? ...

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

[46] The Applicant explained how his circumstances as a young refugee finding his way in a new land and culture contributed to a series of irresponsible decisions and unlawful acts that only seldom culminated in criminal charges. He assumed full responsibility for those decisions and acts, and we accept that the criminal charges and the behaviour leading to them do not reflect his current character.

[47] We are more troubled by the lack of candour and completeness presented in the Applicant’s 2013 Temporary Articles application and subsequent letter to the Law Society. More than anything else, they raise serious questions about the Applicant’s character. However, when cross-examined about several documentary discrepancies and his lack of candour and completeness, the Applicant was forthright and honest about his lack of understanding and appreciation for the inquisitorial nature of the Law Society’s application process. We accept that he drafted those application documents during a period of exceptional stress and anxiety. We note that he demonstrated a substantially evolved respect for the rule

of law and the professional conduct required of articled students and lawyers in his testimony and his very thorough 2014 application for enrolment.

DECISION

[48] We are satisfied that the Applicant now understands the difference between right and wrong and has the moral fibre to do what is right no matter the circumstances.

[49] The Applicant has the support and trust of several members of the profession, including two prominent law professors and two members of his firm who have worked closely with him over the past few years. He has a sterling reputation for honesty and trustworthiness among the many mentors, former employers, colleagues and friends who either testified or wrote letters in support of his application for articles. Though we would not have found him to be of good character and repute in his earlier life, we are satisfied that he has met the burden of proving that he is of good character and repute now. We find him fit to enrol as an articled student, and we are confident that he will meet the obligations of all members of the profession to act with integrity inside and outside of professional life.

[50] We find it unnecessary to impose conditions or limitations on the Applicant's enrolment as an articled student. We do not anticipate that problems will arise during his articling period, and we note that Mr. Schneiderat will continue to monitor the Applicant's performance as part of his obligations as his principal.

COSTS

[51] We understand that, like many recent graduates of law school, the Applicant has accumulated a significant amount of debt while pursuing admission to the legal profession. Nonetheless, we find it appropriate that he bear the costs of the credential processes precipitated by his previous lack of candour and forthrightness. We set the amount of costs at \$6,000. To afford him some financial relief over time, we set the time for final payment at September 1, 2020. We recommend that the Credentials Committee proceed under Law Society Rule 5-9(6) to enrol the Applicant on the condition that he pay minimum monthly amounts to the Law Society from September 1, 2015 onward until he has paid the costs in full.