2015 LSBC 13
Decision issued: April 2, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

LYLE DANIEL PERRY

APPLICANT

DECISION OF THE HEARING PANEL
ON APPLICATION FOR ENROLMENT

Hearing date:	October 23, 2014
Panel:	**Dissenting decision:** Gregory Petrisor, Chair **Majority decision:** Adam Eneas, Public representative Shona Moore, QC, Lawyer
Counsel for the Law Society:	Gerald A. Cuttler
Counsel for the Applicant:	Henry C. Wood, QC

DISSENTING DECISION OF GREGORY PETRISOR

INTRODUCTION

[1] The Applicant has applied for enrolment into the Law Society Admission Program as an articled student. At issue is whether or not he has met the onus upon him to prove he is a person of good character and repute, and fit to become a barrister and a solicitor of the Supreme Court as required by Section 19(1) of the *Legal Profession Act*.

[2] This Hearing Panel is required to assess the Applicant's character, repute and fitness in the context of concerns that he engaged in the unauthorized practice of law in British Columbia and that his response to communications from the Law Society and his application for enrolment as an articled student may have lacked sincerity and candour.

FACTS

[3] The Applicant testified at the hearing as the sole witness.

[4] The Applicant is 29 years of age. He was raised and obtained his education in South Africa. The Applicant completed articles, was called to the bar, admitted and enrolled as an attorney of the High Court of Australia on August 23, 2010. He practised in South Africa before emigrating to British Columbia.

[5] The Applicant admitted the following in cross-examination:

(a) he knew he had to be qualified, admitted and licensed to practise law in South Africa;

(b) he knew that the practice of law by persons not authorized was prohibited in South Africa;

(c) he was "acutely aware," in his words, that lawyers have to carry professional insurance in South Africa;

(d) his goal has been to become qualified to practise law in Canada;

(e) he knew that obtaining qualification to practise law would require his going through a series of steps; and

(f) he knew or expected his practising law in Canada would require his becoming qualified and would also require his obtaining professional insurance.

[6] Following his immigration to British Columbia, the Applicant posted an advertisement on Craigslist on May 18, 2011, in an attempt to attract customers for legal work. The Applicant subsequently ran a similar or identical advertisement on October 19, 2011, in the Vancouver Craigslist listings. A copy of the second advertisement was tendered as an exhibit in the hearing. In that advertisement, entitled, "Need any contracts drafted or reviewed? (All of B.C)" [sic], the Applicant referred to himself as a "lawyer from overseas." The advertisement

referred to the "drafting of any contractual documentation you or your business requires," "the review and amendment of contracts," and "Employment and Independent Contractor Agreements to Service, Sales and Business Agreements ... ." The advertisement also contained the notation, "Get the services of a lawyer at a fraction of the price you would pay at a law firm in BC."

[7] The Applicant testified that he performed work for two paying customers and invoiced them a total amount of approximately $8,140. The Applicant testified that he obtained that work through responding to advertisements placed by the customers and not as a result of his own advertisements.

[8] The Applicant responded to a private investigator hired by the Law Society who had responded to the Applicant's October Craigslist advertisement, posing as a potential customer. On November 1, 2011, the Applicant sent an email to the private investigator and stated, "I can definitely assist you with an employment agreement for your employees." The Applicant estimated it would take him "around 1 hour to 2 hours work" to draw up an employment agreement. In that same email, the Applicant advised his hourly rate was $75 per hour and compared that rate to $200 or more that would be charged by a law firm.

[9] On November 2, 2011, the private investigator proposed to meet with the Applicant. The Applicant declined a face to face meeting and suggested a telephone conference instead. On November 17, 2011, the Applicant sent the private investigator an email advising that he (the Applicant) had taken on full-time employment with a company in downtown Vancouver and would not be able to assist the private investigator with the matter.

[10] On November 3, 2011, an apparent potential customer responded to the Applicant's Craigslist advertisement. The Applicant responded the same day (within minutes) and advised, "I can definitely assist you with the contract for this distribution contract. You certainly need some written agreement in place before taking on the distribution." The Applicant advised that his hourly rate was $75 per hour and compared that to the $200 or more a law firm would charge. The Applicant estimated that it would take him two to three hours to draft a distribution agreement. The Applicant testified that he received further contact from the potential customer on November 5, 2011, but for reasons he could not recall, he did not return that last contact from the potential customer and had no further contact with that potential customer.

[11] On December 6, 2011, a letter from Law Society staff counsel, Unauthorized Practice, was forwarded to the Applicant. Staff counsel directed the Applicant to immediately cease practising law and to sign and return an enclosed undertaking

and covenant. The Applicant responded on December 7, 2011, assuring staff counsel that he had deleted the advertisement "some time ago," that he had made a decision not to offer or provide those services, and that he was currently not and would not in the future be in contravention of the *Legal Profession Act*. The Applicant signed and returned the undertaking and covenant. According to the Applicant, his title with that employer changed from "Manager of Legal" to "Compliance Manager" in approximately the summer of 2013.

[12] From approximately June of 2011 to approximately the fall of 2013, an organization employed the Applicant, who had the title "Manager of Legal" for most of that time. The Applicant, in his testimony, described that employment as part-time, although he was on call more or less on a full-time basis. In his testimony he described his duties as liaising with external counsel and managing processes relating to legal documentation. In his testimony he described his duties further as largely clerical, including the input of data relating to franchises. The Applicant denied any involvement in drafting of franchise agreements for his employer. According to the Applicant, his title with that employer changed to "Compliance Manager" in approximately the summer of 2013. On a printout of his LinkedIn profile dated July 29, 2014, the Applicant described his employment as "Manager of Legal" and described his duties to include:

> Franchise Law — drive development, maintenance and execution of corporate and regulatory requirements for Canada and US;
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> Contract Management;
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> Legal Compliance Management;
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> Risk Management; and
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> Legal Planning.

[13] From approximately February of 2012 for approximately one year, the Applicant was employed by a consulting firm. In his testimony, the Applicant described that employment as part-time, approximately 10 hours per month, eventually dropping off to no hours. In his testimony, he described his duties as attending meetings, completing intake documents for company clients, and working on governance guidelines. The Applicant testified that he performed those duties under supervision. On his LinkedIn profile page, the Applicant, as of July 29, 2014, described his employment with that firm as including:

> Conducting governance reviews; and

Assessing legislation, regulations and bylaws.

[14] The Applicant submitted an application for enrolment in the Law Society Admission Program as an articled student on May 7, 2014. In his application, the Applicant:

(a) failed to provide his residential addresses for the preceding five years; and

(b) failed to list the consulting firm he worked for in 2012 and 2013 in his employment history.

[15] The Applicant provided copies of printouts of email correspondence between himself and former customers. That correspondence includes the following:

(a) In an email dated February 14, 2012 to KG, the Applicant wrote, "I have been informed by the Law Society that I am not authorized to give anything akin to 'legal advice' notwithstanding the full disclosure of my qualifications to you (and to others)";

(b) In an email dated February 24, 2012 GG (no apparent relation to KG) requested assistance from the Applicant. The Applicant, in a responding email to GG dated the same day, wrote:

> Thanks for the call, I really wish I wasn't obligated to do this, but I cannot assist you. This is beyond the services which the Law Society allows me to perform. This is drafting up an entire contract for a five year term between yourself and CH. It is a substantial amount of legal work to be done and certainly goes into the realm of 'legal advice' which I have been forbidden from performing. I will be able to simplify your sales contract for you (it also arguably is on the boarder line [sic]), but I won't leave you with a document which you feel is not manageable and suitable for your operation. That should be fairly straight forward. I would love to assist you and truly feel this is something I am capable of handling however, I cannot run the risk of the Law Society discovering the legal advice being provided. Especially in light of the fact I have provided them a signed and dated undertaking to not do so from that date forward.

(c) In an email dated February 12, 2013, KG asked the Applicant to help with changes to a licensing agreement. The Applicant, in an email dated

February 20, 2013, apologized for not replying sooner because he had "been mulling over" the proposal, and he further stated, "... I realize the chances of the Law Society finding out about me assisting you is slim. While I still don't agree with the Law Society's requests, the risk is simply not worth the reward in this case," and

(d) In an email dated March 26, 2013 GG wrote, "Lyle I need a lawyer to send a note to a wacky ex-employee's lawyer who has just delivered a WITHOUT PREJUDICE letter but, offering a settlement that is outrageous. Are you available?" The Applicant responded in an email dated the same day. In that email the Applicant advised, "... I unfortunately cannot assist you," but then goes on to say, "I can however provide you with a few words of guidance." The Applicant then went on to provide legal advice as to the meaning of "without prejudice" on the letter from counsel and the rationale behind it. The Applicant provided further legal advice regarding the content of without prejudice correspondence and on the admission of liability in correspondence.

[16] In connection with his application for enrolment in the admission program, the Applicant exchanged correspondence with Law Society staff. In correspondence, the Applicant asserted he had never held himself out or posed as a lawyer authorized to practise law in British Columbia. In his testimony, the Applicant conceded that assertion was perhaps not clearly justified, but he does not believe he deceived anyone into believing that he was qualified to practise law in British Columbia.

[17] In cross-examination, the Applicant stated he may have engaged in "closing off ends" for customers after he signed the undertaking and covenant not to engage in practising law. He asserted that the simplifying of a contract, prospectively, is not in his view, giving legal advice. The Applicant maintained that his advice to GG regarding without prejudice correspondence was elementary and not a contradiction of his undertaking and covenant.

[18] The Applicant conceded that he breached the provisions of the *Legal Profession Act* and engaged in the unauthorized practice of law prior to signing the undertaking and covenant, but not afterward. He characterized that engagement as the product of a lack of understanding of the provisions in the Act, and of naïveté.

ANALYSIS

[19] Rule 2-67(1) of the Law Society Rules and Section 19(1) of the *Legal Profession Act*, taken together, make clear that the onus is on the applicant to satisfy the Hearing Panel, on a balance of probabilities, that he or she is of good character and repute, and is fit to become a barrister and a solicitor of the Supreme Court.

[20] In an oft-quoted article published in *The Advocate* entitled "What is 'Good Character'?", Mary Southin wrote, at page 129, that good character, as referred to in the *Legal Profession Act*, comprises at least:

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; and

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.

In that same article, she notes the *Shorter Oxford Dictionary* definition of repute as "the reputation of a particular person" and the definition of 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.

[21] In July 2014, the working group of the National Admission Standards Project, Federation of Law Societies of Canada, published a consultation report. At page 8, the working group identified an applicant's conduct in specified areas as relevant to an assessment of an applicant's suitability to practise law. Those areas are identified as:

(a) respect for the rule of law and the administration of justice;

(b) honesty;

(c) governability; and

(d) financial responsibility (which is not a relevant factor in this matter).

[22] Counsel for the Applicant submits that the Applicant's conduct should not be measured against a standard of perfection or certainty. He also submits that it is the Applicant's character and fitness at the time of the hearing, and not during some prior period, that is determinative of the application. I agree with both of those submissions.

[23] Despite inconsistencies in the Applicant's description of his employment duties prior to his application for enrolment, I do not find that it is proven, on a balance of probabilities, that the Applicant engaged in the practice of law in his previous employment.

[24] Outside of that employment, however, the evidence is clear that the Applicant did engage in the practice of law, drafting contracts for paying customers. The Applicant held himself out as a lawyer, and targeted small business owners in British Columbia with his advertisements published on Craigslist. The Applicant held himself out as a qualified lawyer in an advertisement relating to a venture apparently operated by himself and his wife, and in my view, he held himself out as performing legal work on his LinkedIn profile.

[25] The actions described in the immediately preceding paragraph do not, in my view, inspire confidence in the Applicant's character, integrity and judgment. The fact that the Applicant had previously been admitted to the bar, and practised in a jurisdiction where the practice of law is regulated makes the Applicant's actions more troubling.

[26] The Applicant characterized his unauthorized practice of law as attributable to a lack of knowledge and naïveté. In his testimony, he emphasized his use of the phrase "lawyer from overseas" as providing disclosure of his limits of qualifications to practise law.

[27] The Applicant's explanation for his cessation of contact with a prospective customer, and a private investigator posing as a potential customer, do not ring true. In each of those instances, the Applicant responded to communication very quickly, advised prospective customers he could assist them, and compared his hourly rate to those charged by law firms. The Applicant, over the course of approximately three days, went from enthusiastically pursuing possible legal work opportunities to, in one case, simply ceasing contact and in the other, providing an untrue excuse of having recently taken on full-time employment.

[28] On December 6, 2011, correspondence from the Law Society, Unauthorized Practice counsel was forwarded to the Applicant. In that correspondence, counsel specifically advised the Applicant that drafting contracts and giving legal advice is

included in the statutory determination of the practice of law. Counsel also provided a copy of the relevant sections of the *Legal Profession Act*. The undertaking and covenant that the Applicant signed almost exactly mirror the wording of Section 1 of the Act. The Applicant had no excuse for being unfamiliar with his obligations relating to the practice of law after that correspondence.

[29] Upon receipt of the correspondence from the Law Society Unauthorized Practice counsel, the Applicant:

(a) immediately signed and returned the undertaking and covenant;

(b) advised counsel, "The advertisement to which you refer had been deleted some time ago";

(c) assured counsel, "I presently am not and shall not in the future be in contradiction of the *Legal Profession Act*"; and

(d) apologized "for any actions that the Law Society may have viewed as a transgression of the *Legal Profession Act*."

[30] It is the Applicant's conduct after December 6, 2011 that is the most troubling. After that date, the Applicant had a reasonable opportunity to familiarize himself with the provisions in the *Legal Profession Act* dealing with unauthorized practice of law and to consider the undertaking and covenant he signed.

[31] As previously stated, the Applicant's evidence was that he may have assisted customers with tying up loose ends in relation to contract matters, even after he signed the undertaking and covenant. The Applicant, in his correspondence with former customers, made reference to his inability to provide legal advice, but in the example of GG, the Applicant then proceeded to give legal advice. Based upon his evidence, the Applicant did not consider the advice he provided to GG about without prejudice communications to be legal advice because the advice was elementary in nature.

[32] I do not find the Applicant intentionally attempted to provide false information on his Application for Enrolment.

[33] I note the letters of reference provided to the Applicant by the lawyers he had interacted with, one from Washington State and one from British Columbia. The Applicant is described in one of the letters as "honest, inquisitive, sincere and forthright" and as having showed "excellent character." The only evidence regarding the Applicant's repute is that he is of good repute.

[34] The Applicant, based on correspondence with GG and his own testimony, took the view that his simplifying contracts was not in contradiction of the Act or a breach of his undertaking, although it was in his words, "arguably ... on the boarder line [sic]." The Applicant assured GG he would not leave GG with a document that is not manageable and suitable for his operations.

[35] Credit must be given to the Applicant for disclosing in this proceeding email correspondence between himself and his former customers. However, that correspondence illustrates a profound lack of insight on the part of the Applicant. Nowhere in his correspondence does he suggest his former customers seek advice or services from a properly qualified and practising lawyer. In his evidence, the Applicant did not offer any appreciation for a purpose behind the regulation of the practice of law. Nowhere does the Applicant acknowledge the risk he placed on his paying customers. The Applicant submits that he has accepted and respected the restriction of his practising law. Although the Applicant has paid lip service to his inability to practise law or provide legal advice, he clearly did not accept or respect that restriction.

[36] The Applicant's past conduct is not necessarily an accurate predictor of his future conduct, nor is it necessarily an indication of his current character, repute or fitness. However, the Applicant has engaged in conduct that, in my view, would cast serious doubt in the mind of a reasonable person upon the Applicant's good character and fitness. The Applicant's correspondence illustrates that his refusal of legal work was done strictly to protect himself, without any appreciation of the reason for restrictions placed upon him. The Applicant's correspondence and his testimony illustrate a failure on the part of the Applicant to reflect upon the circumstances of his being sanctioned for the unauthorized practice of law. He did not fully comply with the terms of the undertaking and covenant he signed.

[37] The Applicant's evidence did not indicate to me that he has learned anything from his interaction with the Law Society as a result of engaging in unauthorized practice. The Applicant provided no evidence that he has given any thought to why he was sanctioned.

[38] The Applicant has provided no evidence that his character has evolved. To the contrary, he appears to have engaged in conduct he knew or reasonably ought to have known was in breach of his responsibilities after he was sanctioned.

[39] In consideration of all the evidence, I am unable to conclude, on a balance of probabilities, that the Applicant is of good character and fit to become a barrister and a solicitor of the Supreme Court of British Columbia.

COSTS

[40] Counsel reserved the right to make submissions in respect of costs, but we did not ask for those submissions during the hearing. I agree with the majority of this Panel that the Law Society deliver its submissions in respect of costs in writing to us and to the Applicant within 14 days of the date this decision is issued, and that the Applicant deliver his submissions regarding costs to us and to the Law Society within 14 days of that date. If counsel wish to apply to make oral submissions, or wish to submit a joint submission, regarding costs, they may do so.

MAJORITY DECISION OF ADAM ENEAS AND SHONA MOORE, QC

INTRODUCTION

[41] The Applicant has applied to be enrolled in the Law Society Admission Program as an articled student. The issue before us is whether the Applicant is a person of good character and repute and fit to become a barrister and a solicitor of the Supreme Court as required by Section 19(1) of the *Legal Profession Act.*

[42] The question before us is whether the Applicant engaged in the unauthorized practice of law in British Columbia after December 7, 2011, the date on which he signed an undertaking to the Law Society to refrain from this conduct, and whether his responses to the Law Society lack the sincerity and candour expected of applicants for enrolment into the Law Society Admission Program.

[43] These are the reasons for decision of the majority of the Hearing Panel. For the reasons set out below, we conclude that the Applicant may be admitted to the Law Society Admission Program on the terms described. The Chair of the Panel reaches a contrary decision.

[44] While we differ in result, we agree with the findings of fact made by the Chair unless specifically stated otherwise.

BACKGROUND

[45] The Applicant was born in South Africa. He completed his education in South Africa and was called to the Bar and enrolled as an attorney of the High Court of Australia in August 2010. He practised briefly in South Africa as a solicitor before immigrating with his wife to Canada in 2011.

[46] On his arrival in British Columbia, the Applicant posted an advertisement on Craigslist that he could provide legal services at a rate below that of a qualified BC lawyer. The Applicant's view was that, so long as he disclosed that he was not a lawyer qualified to practise in British Columbia, it was up to potential customers to decide for themselves whether to select him to do the work or not. A Law Society investigation ensued, and the Applicant signed an undertaking on December 7, 2011 that he would not carry out any of the functions of a lawyer for, or in the expectation of, a fee, gain or reward or to generally give legal advice whether for a fee or gratuity. He further specifically undertook not to represent himself as a lawyer, as an articled student, as a lawyer of another jurisdiction or as a practitioner of foreign law holding a permit under Section 17(1)(a) of the *Legal Profession Act*.

[47] In 2014 the Applicant filed an application for enrolment in the Law Society Admissions Program. The Panel was charged with the duty of assessing the Applicant's character and repute and fitness to be enrolled as a student.

DISCUSSION

[48] During the hearing there were a number of events about which the Applicant was questioned.

Did the Applicant engage in the practice of law during the course of his employment after December 7, 2011?

[49] The Chair concludes at paragraph [23]

> [23] Despite inconsistencies in the Applicant's description of his employment duties prior to his application for enrolment, I do not find that it is proven, on a balance of probabilities, that the Applicant engaged in the practice of law in his previous employment.

We agree with that conclusion.

Does the Applicant's evidence about his unauthorized practice of law prior to giving his undertaking to the Law Society on December 7, 2011 reflect negatively on the Applicant's character?

[50] The Chair concludes at paragraphs [25] to [27]:

> [25] The actions … do not, in my view, inspire confidence in the Applicant's character, integrity and judgment. The fact that the Applicant had previously been admitted to the bar, and practised, in a jurisdiction where the practice of law is regulated makes the Applicant's actions more troubling.
>
> [26] The Applicant characterized his unauthorized practice of law as attributable to a lack of knowledge and naïveté. In his testimony, he emphasized his use of the phrase "lawyer from overseas" as providing disclosure of his limits of qualifications to practice law.
>
> [27] The Applicant's explanation for his cessation of contact with a prospective customer, and a private investigator posing as a potential customer, do not ring true. In each of those instances, the Applicant responded to communication very quickly, advised prospective customers he could assist them, and compared his hourly rate to those charged by law firms. The Applicant, over the course of approximately three days, went from enthusiastically pursuing possible legal work opportunities to, in one case, simply ceasing contact, and in the other, providing an untrue excuse of having recently taken on full-time employment.

[51] We disagree. Rather, we accept the Applicant's evidence that he was not aware that the *Legal Profession Act* prohibited unauthorized lawyers from practising law. At the time, he was a recent immigrant. His focus was on supporting himself and his wife. When he pursued legal work through the Craigslist postings, he acted on the mistaken belief that, so long as he made a full disclosure to prospective clients that he was not a qualified BC lawyer, he was breaking no law or rule. While his attitude might be characterized as arrogant and his conduct foolish and ill informed, we find that he acted with an honest mistaken belief.

[52] In paragraph [27], the Chair concludes that the Applicant's explanation for ceasing contact with potential clients in November 2011 (around the time the Law Society's unauthorized practice investigation was under way) "does not ring true."

[53] We disagree. In early November 2011, a potential client ("PC 1") contacted the Applicant in response to his posting on Craigslist. PC 1 sought advice with regards to drafting a business contract. The Applicant responded to the inquiry and invited PC 1 to contact the Applicant by telephone. Before the Applicant could meet with the PC 1, the Law Society investigation was underway. The Applicant told PC 1 that he could not assist him with his matter. To "soften the blow" the Applicant told the potential client that he had "taken on full-time services with a company in

downtown Vancouver" and did not have the time to undertake other work. In fact, the Applicant was not employed full-time with the company. His statement to his potential client was not true. As the Applicant described it, it was a "white lie" to soften the blow of withdrawing from working for PC 1. The Applicant chose the route of a "white lie" to avoid disclosing to PC 1 that he had been forced to withdraw because of a Law Society investigation.

[54] Also in November 2011 the Applicant received an inquiry from a potential client ("PC 2") regarding drafting a distribution agreement. On November 23, 2011, by email, the Applicant agreed to assist PC 2 with this matter. The potential client asked for an estimate about how long it would take to draft the contract but there is no evidence that the Applicant ever responded to PC 2. When it was put to him by counsel for the Law Society about whether he did not respond to PC 2 because he was concerned he would be found out by the Law Society, the Applicant denied that was his intention. Rather, he said, and we accept his evidence on that point, that if deception was the Applicant's intention he would not have put his ad publicly on a Craigslist posting and left it there throughout this period.

[55] On the whole of the evidence we cannot conclude that the Applicant knew he was acting improperly and did not want to be found out. Rather, we accept the Applicant's evidence that his decision to pull back from his "legal work" in November 2011 had to do with the pressures of his other work commitments. His evidence on this point is consistent with the objective facts that the Applicant took no steps, at the time, to take his Craigslist posting down, or to change his LinkedIn profile to delete reference to his then current job title – Manager of Legal.

Did the applicant intend to mislead the Law Society on December 7, 2011, when he said that the Craigslist postings "had been deleted some time ago"?

[56] The Applicant wrote to the Law Society on December 7, 2011 to return a copy of the signed undertaking. In his letter he suggested that the Craigslist postings "had been deleted some time ago." During the hearing, the Applicant admitted that he was remiss and wished that he could take back that phrase because he could not remember whether, in fact, the posting had been taken down at the time he made that statement. We have no doubt that the Applicant was reckless when he made this definitive statement to the Law Society. As lawyers we are expected to make accurate, full and complete reports to the Law Society when required to do so. This is a standard to which we must all adhere.

Did the Applicant intend to mislead the Law Society or provide false information on his application for enrolment?

[57] We turn now to the Applicant's conduct after he signed the Law Society undertaking on December 7, 2011. The Chair sets out the deficiencies in the application at paragraph [14]:

> [14] The Applicant submitted an application for enrolment in the Law Society Admission Program as an articled student on May 7, 2014. In his application, the Applicant:
>
> (a) failed to provide his residential addresses for the preceding five years; and
>
> (b) failed to list the consulting firm he worked for in 2012 and 2013 in his employment history.

[58] The Law Society wrote to the Applicant for further information about his employment history after the Law Society compared his enrolment form with his LinkedIn profile. The Applicant's LinkedIn profile identified his position at his then current employer as "Manager of Legal." He was asked to provide a full description of the work he performed in this role.

[59] The Applicant's response was prompt and detailed. Essentially his response was that his role did not involve the practice of law and that his title had changed, from "Manager of Legal" to "Compliance Manager" to describe his work more accurately. During the hearing, the Applicant was questioned closely about his duties in this role. We accept his evidence that his role was in the nature of a compliance officer and did not involve the practice of law and that he asked to change his title to avoid any suggestion that he was involved in legal work when in fact his role was tracking compliance with various franchise agreements and managing relations with external legal counsel.

[60] For reasons that include the above, we agree with the Chair's conclusion, at paragraph [32], that the Applicant did not intentionally provide false information to, or seek to mislead, the Law Society.

Did the Applicant practise law or otherwise breach his undertaking to the Law Society after December 7, 2011?

[61] The Chair sets out the Applicant's communication and interaction with existing or potential clients after December 2011 at paragraphs [15], [17] and [34] of his

reasons. There are two instances of concern. Both involve the Applicant's former client, GG.

[62] The Chair sets out the facts of the first incident at paragraph [15](b). In summary, in February 2013, the Applicant was approached by GG to draft a commercial contract. The Applicant responded:

> It is a substantial amount of legal work to be done and certainly goes into the realm of "legal advice" which I have been forbidden from performing. I will be able to simplify your sales contract for you (it also arguably is on the boarder line [sic]), but I won't leave you with a document which you feel is not manageable and suitable for your operation.

The Chair describes the incident further, at paragraph [34]:

> The Applicant, based on correspondence with GG and his own testimony, took the view that his simplifying contracts was not in contradiction of the Act or a breach of his undertaking, although it was in his words, "arguably ... on the boarder line [sic]." The Applicant assured GG he would not leave GG with a document that is not manageable and suitable for his operations.

[63] The second incident also concerns GG. This former client had received a "without prejudice" offer to settle from a lawyer acting for a former employee. GG wanted the Applicant to represent him. The Chair describes the events this way, at paragraph [15](d):

> … the Applicant wrote "... I unfortunately cannot assist you," but then goes on to say, "I can however provide you with a few words of guidance." The Applicant then went on to provide legal advice as to the meaning of "without prejudice" on the letter from counsel and the rationale behind it. The Applicant provided further legal advice regarding the content of without prejudice correspondence and on the admission of liability in correspondence.

[64] In respect of the "without prejudice" incident, the Chair concludes at paragraph [31]:

> … in the example of GG, the Applicant then proceeded to give legal advice. Based upon his evidence, the Applicant did not consider the advice he provided to GG about without prejudice communication to be legal advice because the advice was elementary in nature.

[65] On the facts, after careful consideration of the Applicant's evidence and his demeanour while giving evidence, along with the exhibits filed in these proceedings, we conclude that there is no evidence that the Applicant ever in fact provided the potential client with a simplified version of a contract. At the very most, the Applicant breached his undertaking when he explained the meaning of "without prejudice" to his former client and its inadmissibility in certain legal proceedings.

ANALYSIS AND DECISION

[66] The Chair dismisses the Applicant's application for enrolment at paragraphs [36] and [37]:

> [36] The Applicant's past conduct is not necessarily an accurate predictor of his future conduct, nor is it necessarily an indication of his current character, repute or fitness. However, the Applicant has engaged in conduct that, in my view, would cast serious doubt in the mind of a reasonable person upon the Applicant's good character and fitness. The Applicant's correspondence illustrates that his refusal of legal work was done strictly to protect himself without any appreciation of the reason for restrictions placed upon him. The Applicant's correspondence and his testimony illustrate a failure on the part of the Applicant to reflect upon the circumstances of his being sanctioned for the unauthorized practice of law. He did not fully comply with the terms of the undertaking and covenant he signed.
>
> [37] The Applicant's evidence did not indicate to me that he has learned anything from his interaction with the Law Society as a result of engaging in unauthorized practice. The Applicant provided no evidence that he has given any thought to why he was sanctioned. The Applicant has provided no evidence that his character has evolved. To the contrary, he appears to have engaged in conduct he knew or reasonably ought to have known was in breach of his responsibilities after he was sanctioned.

[67] We accept the Chair's outline of the rules and law relevant to our deliberations in this case but depart from his conclusion that the Applicant is not a person of good character and fit to be enrolled in the Law Society Admission Program.

[68] The Applicant's compliance interaction with potential clients after his undertaking to the Law Society was "borderline." The Applicant's conduct after December

2011 does not meet the standard of a member of the profession; however we are mindful that this is an application for enrolment as an articled student.

[69] With respect to the incidents involving GG, we conclude that the Applicant did not intentionally engage in any conduct in violation of the undertaking. With respect of the offer to explain the meaning of "without prejudice," we accept the Applicant's explanation that he thought anyone could give that advice and that the explanation of the meaning of "without prejudice" did not involve being a lawyer and for that reason did not amount to legal advice. We do not accept the Applicant's definition of what amounts to legal advice, but we do accept that that is what he believed at the time.

[70] With respect to the offer to simplify GG's contract, the Applicant admitted to offering to do the work and said that he believed that it required good writing skills rather than legal knowledge. In this, the Applicant exercised poor judgment, but we are satisfied that he was not motivated by any dishonest intention.

[71] The Applicant made mistakes with respect to his interactions with potential clients after December 2011. However, he was truthful on the stand. He disclosed emails in which he was candid in his frustration with the Law Society even though they put him in a bad light.

[72] We conclude that, to the best of his ability, the Applicant ceased his unauthorized practice of law when he gave the undertaking to the Law Society in December 2011. We are satisfied that he was sincere when he gave the undertaking, although he was frustrated with the rule and with the process.

[73] Moreover, we find that the Applicant has learned from this process and from giving evidence and being cross-examined during this hearing. The Panel directly questioned him about his arrogance in presuming to criticize the Law Society in his private correspondence to potential clients, and he did not show any irritation in being accused of arrogance in this regard. We are satisfied that the Applicant has learned that he may not be reckless of the governing legislation and must adhere to all of the Law Society Rules in the future.

[74] We find that the Applicant is a person of good character and fit to be admitted into the Law Society Admission Program, subject to the condition that, before the articling agreement is entered into, any prospective principal must be informed of this decision and be given a copy of this decision.

COSTS

[75] At the hearing, counsel indicated that they wanted to make submissions on costs. As no submissions on costs were heard during the hearing, we ask counsel to to address this issue by written submissions The Law Society must file its written submissions in respect of costs within 14 days of the date this decision and the Applicant will file his response within 14 days of that date.

[76] Although we have set a submission schedule on the issue of costs, we encourage counsel to explore an agreement on quantum.