2015 LSBC 16
Report issued: April 9, 2015
Oral reasons: March 5, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

IMRAJ SINGH GILL

APPLICANT

DECISION OF THE HEARING PANEL ON APPLICATION FOR ENROLMENT

Hearing dates:	March 4 and 5, 2015
Panel:	Gregory Petrisor, Chair Peter D. Warner, QC, Lawyer

Benjimen Meisner, Public representative, approved the decision in draft but passed away before it was finalized.

Counsel for the Law Society:	Gerald A. Cuttler
Counsel for the Applicant:	Michael D. Shirreff

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] The Applicant disclosed in his application for enrolment that he faced a charge of possessing narcotics for the purposes of trafficking in 2006. In response to further inquiries from Law Society staff, the Applicant subsequently disclosed he had received a total of five 24-hour driving prohibitions between 2004 and 2008, and also that he had been charged with having open liquor in a motor vehicle in 2009.

At issue were the Applicant's character, repute, and fitness in light of those charges and prohibitions, and in light of his incomplete disclosure in his application for enrolment.

[3] We conducted a hearing on March 4 and 5, 2015, and at the conclusion of the hearing advised counsel and the Applicant that we are satisfied the Applicant is of good character and repute, and fit to become a barrister and a solicitor of the Supreme Court. These are our reasons.

FACTS

[4] The Applicant is 28 years old. He was born in Burnaby and lived there until he was approximately six or seven years old, when his family moved to Surrey. The Applicant completed high school in Surrey.

[5] The Applicant received three 24-hour driving prohibitions for having consumed alcohol prior to driving with a novice driver's licence, one when he was 17 years old, one on his 18th birthday, (both in 2004) and one when he was 18 years old, in 2005.

[6] The Applicant attended Kwantlen College in Surrey after high school. The Applicant testified that, during his time at Kwantlen College, he had friends that were not a positive influence on him. He was not happy in his course of study at Kwantlen College. He was driving after drinking and associating with people who used and sold drugs.

[7] It was during his time attending Kwantlen College, on August 27, 2006, that the Applicant was charged with possessing narcotics, specifically cocaine and ecstasy, for the purpose of trafficking. The Applicant was 19 years old at the time. According to the Report to Crown Counsel generated by the police in their investigation, the Applicant was pulled over for failing to stop at a red light. The Applicant was driving a car registered to his father and occupied by himself and three other passengers. The investigating officer asked the Applicant if there were any drugs in the vehicle, and the Applicant handed the officer a small bag containing what appeared to be marijuana. A search of the vehicle led to the discovery of cocaine and ecstasy in the locked glove compartment. The Report to Crown Counsel states that the Applicant admitted that the drugs were his and that he sold drugs to get money for himself. The Applicant's stated estimate of the value of the cocaine was very close to the police estimate of the value of the cocaine. The police found no evidence on the Applicant's cellular telephone of his operating a "dial a dope" operation.

[8] In 2008, the Applicant was issued a further 24-hour prohibition for having consumed alcohol prior to driving with a novice driver's licence.

[9] The Applicant testified in this hearing that, despite his disclosures apparently made to the police, the drugs found in the vehicle were not his and that he never sold drugs. He testified that the marijuana belonged to a friend who was riding in the back seat when the car was pulled over, and the cocaine and ecstasy belonged to a friend sitting in the front passenger seat. That friend was known by the Applicant to be a drug dealer. The Applicant testified that he would have been familiar with the approximate value of the drugs. The Applicant admitted to having kept drugs belonging to his friend (the dealer) in his parents' house on previous occasions.

[10] The Applicant testified that he advised his family of his being charged, and as a result of their disappointment in him, and his own reflection, he decided to change the direction of his life. He began applying himself more diligently in his studies and sought better employment. He consciously changed his friend group.

[11] The Applicant testified that, with the help of his father, he retained counsel and entered a plea of not guilty in relation to the charges. The Applicant testified that he eventually approached his friend (the dealer) and asked his friend to take responsibility for the cocaine and ecstasy found in the car. The Applicant testified that his friend agreed to speak to the Applicant's lawyer. There is no evidence that the Applicant's friend ever did speak to or meet with the Applicant's lawyer, but the charges against the Applicant were stayed by Crown Counsel in approximately December of 2007.

[12] In 2008, the Applicant was issued a 24-hour driving prohibition for having consumed alcohol prior to driving with a novice driver's licence.

[13] The Applicant attended a Responsible Drivers course in approximately 2009. He testified that the information he received in the course made an impact on him, and he now has a "zero tolerance policy" towards driving after drinking. He testified that he now realizes that alcohol can impair a person's judgment, even if the person is not intoxicated. There is no evidence that the Applicant has had any further driving suspensions or that he has any alcohol related difficulties.

[14] The Applicant was charged in 2009 with having open liquor in a vehicle. The Applicant and his friend Sean Roberts, who was present at the time of the charge, testified that the only alcohol in the vehicle was four unopened cans of beer in a six-pack box. The Applicant and Mr. Roberts both testified that it was Mr. Roberts who was driving when they were pulled over. Mr. Roberts testified that the beer and the vehicle belonged to him. The Applicant testified that he did not know the

beer was in the car when they were pulled over. The Applicant testified that he disputed the charge, and the officer who issued the charge did not attend court on the scheduled date for hearing.

[15] The Applicant obtained a degree in Criminology from Simon Fraser University and a law degree from Bond University. He continues to live with his family and proposes to article with Avtar Dhinsa, who practises in Burnaby.

[16] The Applicant failed to disclose his 24-hour driving prohibitions, his charges for having open liquor in a vehicle, and his other traffic violation on his application for enrolment to the Law Society. He testified that he did not remember the open liquor and traffic violation at the time he prepared his application and that, after consultation with Mr. Dhinsa, determined that the 24-hour driving prohibitions were not "charges" and therefore did not need to be disclosed. Mr. Dhinsa also testified and verified that he advised the Applicant that he did not consider the 24-hour driving prohibitions to be charges and did not think they needed to be disclosed.

DISCUSSION

[17] It is clearly set out in Rule 2-67(1) of the Law Society Rules and Section 19(1) of the *Legal Profession Act* that the Applicant bears the onus of proving, on a balance of probabilities, that he is of good character and repute, and fit to become a barrister and a solicitor of the Supreme Court.

[18] Good character and repute are not defined in the *Legal Profession Act* or in the Law Society Rules but have been described by Mary Southin, QC in an article entitled, "What is 'Good Character'" published in *The Advocate*, (1977) v. 35. At page 129, the author states:

> I think in the context "good character" means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia *at the time of application*.
>
> Character within the Act comprises in my opinion at least these qualities:
>
> 1. An appreciation of the difference between right and wrong;
>
> 2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;

> 3. A belief that the law 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.
>
> [emphasis added]

[19] The description of good character and good repute given by Ms. Southin have been adopted and endorsed repeatedly by hearing panels in decisions such as this. In *Law Society of BC v. McQuat*, panel decision (June 12, 1992), the hearing panel held at pp. 12 – 13 that consideration of the applicant's character includes a subjective consideration of the community's assessment of the applicant's character as well as objective consideration of what may be described as the applicant's strength of character, referring to his or her personality, principles and beliefs.

[20] The hearing panel in *McQuat* at pp. 17-18 described fitness as possessing the qualities of character necessary for a lawyer to properly meet the numerous and weighty demands of practising as a barrister and solicitor. Those qualities are stated to include a commitment to speak the truth no matter the personal cost, resolve to place the client's interests first, and never to expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

[21] It is up to the Applicant to prove, on a balance of probabilities, that he is currently of good character and repute and fit to be called as a barrister and admitted as a

solicitor of the Supreme Court. The Applicant's past conduct, though relevant, is not determinative.

[22] The Applicant concedes that, at the time he was charged with possession of narcotics for the purpose of trafficking, he would not have been able to prove that he was of good character and repute. The evidence does, however, establish that the Applicant has rehabilitated himself. He reflected on the situation he was in, took responsibility, and made the effort to improve his situation. The Applicant was able to change his life's trajectory and has earned the respect of people who have written letters of reference and who gave evidence in this hearing.

[23] The evidence of the Applicant's current employer and proposed principal, Mr. Dhinsa, was particularly helpful. Mr. Dhinsa described the Applicant as competent, able to work at high capacity, able to handle stress, disciplined, motivated and mature. He also described the Applicant as honest, trustworthy and reliable. He stated he believes that the Applicant has a true desire to serve the public and to see justice done. Mr. Dhinsa also testified that he has tried to share his sense of duty within the profession and the community as a whole with the Applicant. Mr. Dhinsa testified that he believes the Applicant will be a good addition to the bar.

[24] We conclude that the Applicant did not intentionally withhold required information when he applied for enrolment in the articling program. He did not initially disclose the 24-hour driving prohibitions he received, but the evidence establishes that was a decision made with the advice of his employer. We find that, in the articling application, "charges" as defined does not clearly encompass administrative actions such as a roadside driving prohibition. We do not fault the Applicant for not disclosing the 24-hour driving prohibitions on his application. The Applicant testified that he initially failed to recall the traffic violation and charges for having open liquor in a vehicle that eventually came to light. In addressing those matters, the Applicant took full responsibility and did not seem to attempt to minimize their significance.

[25] In respect of the charges for possession of narcotics for the purpose of trafficking, the Applicant disclosed those charges in the first instance. He appeared to have gone to some length to obtain documentation generated in connection with those charges. The Applicant's evidence did differ in some respects from what the Applicant allegedly said to police at the time of his arrest as described in the Report to Crown Counsel. The Applicant did make several unflattering admissions during his testimony that are inconsistent with someone trying to hide evidence or minimize his responsibility. The Applicant admitted that, in his evidence, he was

at times trying to reconstruct what he thinks must have happened, and that he was very afraid and nervous at the time of his arrest. He gave his evidence at our hearing in a fashion that suggested the Applicant was anxious to please and willing to agree when questions were put to him. We do not conclude that the Applicant was dishonest in his disclosure to the Law Society or in his testimony during our hearing.

[26] In summary, the Applicant has come forward with some serious blemishes in his past conduct. Law Society staff was justified in being concerned and conducting a thorough investigation regarding the Applicant and requesting detailed information from him. The information gathered through the investigation was helpful to the Hearing Panel. The Credentials Committee ordering a hearing to determine whether or not the Applicant is of good character and repute, and fit to become a barrister and a solicitor of the Supreme Court, was appropriate in light of the information gathered and the concerns identified concerning the Applicant.

[27] Upon hearing the evidence and submissions of counsel presented to us, we have concluded that the Applicant has proven, on a balance of probabilities, that he is now a person of good character and repute, and fit to be called as a barrister and admitted as a solicitor. We find that the Applicant has shown qualities including diligence, discipline, honesty, an appreciation of right from wrong, a willingness to do right in the face of adverse consequences, and a desire to assist others in the community. The Applicant appears to have learned from past mistakes and has matured and evolved as a person. We do not believe a reasonable person with knowledge of the facts would harbour significant concern about the Applicant being admitted to the bar of this Province. We find, on the evidence, that the Applicant has shown he is fit to become a barrister and a solicitor.

COSTS

[28] As stated, we believe that conducting a hearing to determine the Applicant's character, repute and fitness was appropriate in the circumstances. For that reason, the Applicant should be responsible to pay costs in respect of this hearing. We had the benefit of submissions from counsel in respect of costs, and order that the Applicant pay costs to the Law Society in the amount of $4,000, which includes $1,000 paid by the Applicant as security for costs, inclusive of disbursements, without interest.

[29] Counsel for the Applicant asked us to order that the Applicant pay costs in $100 monthly instalments, commencing September 15, 2015. Counsel for the Law Society did not oppose the Applicant's paying costs for a period of time beginning

when the Applicant is able to make those payments. We made that order when we provided our decision orally. However, on reflection, we are precluded by Rule 5-9(5) to order the Applicant's enrollment before costs are paid. Accordingly, we recommend to the Credentials Committee that the Applicant be allowed to enroll, and that the Applicant complete his payment of costs after enrollment, applying the $1,000 held as security, and paying the balance in payments of $100 or more, commencing on September 15, 2015, and continuing on the 15th day of each month thereafter until it is paid in full.

ORDER

[30] We order that the Applicant:

(a) be enrolled in the Law Society Admission Program and be at liberty to commence articles immediately, subject to either

(i) payment of costs in full, or

(ii) authorization of the Credentials Committee;

(b) pay costs to the Law Society in the total amount of $4,000, which includes $1,000 previously paid by the Applicant as security for costs, which total is inclusive of disbursements.