2015 LSBC 55
Decision issued: December 3, 2015
Hearing ordered: August 27, 2014

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a section 47 review concerning

LYLE DANIEL PERRY

APPLICANT

DECISION OF THE REVIEW BOARD

Review date:	September 23, 2015
Review Board:	Maria Morellato, QC, Chair Jasmin Z. Ahmad, Lawyer Dennis J. Day, Public representative Miriam Kresivo, QC, Bencher Richard B. Lindsay, QC, Lawyer Jamie Maclaren, Bencher June Preston, Public representative
Counsel for the Law Society:	Jean Whittow, QC
Counsel for the Applicant:	Henry Wood, QC

BACKGROUND

[1] This is a Review pursuant to section 47 of the *Legal Profession Act* (the "Act") arising from the hearing panel's decision issued April 2, 2015 (the "Decision"), indexed as 2015 LSBC 13. The Decision was made in respect of the application made by Lyle Daniel Perry (the "Applicant") for enrolment as an articled student.

[2] The Applicant had been previously called to the bar in South Africa. He conceded that, after immigrating to Canada and prior to making his application for enrolment as an articled student, he had engaged in the unauthorized practice of law by offering and providing legal services contrary to the Act.

[3] In December 2011, the Law Society directed the Applicant to immediately cease practising law and to sign an undertaking and covenant not to engage in the practice of law and not to falsely represent himself as being, among other things, a lawyer or articled student.

[4] On December 7, 2011, the Applicant signed and returned the undertaking to the Law Society.

[5] Concerns were raised regarding whether the Applicant had engaged in the unauthorized practice of law subsequent to signing the undertaking and, if so, the circumstances in which he did so, whether he conducted the unauthorized practice of law knowing he was acting in contravention of the Act and whether his response to communications from the Law Society in respect of his practice of law lacked sincerity and candour.

[6] In that context, the hearing panel was asked to assess whether the Applicant had discharged the onus on him to prove that he met the requirement of s. 19 of the Act that he was of "good character and repute" so as to allow him to be enrolled as an articled student.

[7] The Decision of the hearing panel was split. The chair of the hearing panel (the "Minority") made findings of fact and concluded that the Applicant did not meet the s. 19 test of "good character and repute."

[8] The two other members of the hearing panel (the "Majority") adopted many, but not all, of the findings of fact made by the Minority and made independent findings of fact and credibility. The Majority concluded that the Applicant is "a person of good character and fit to be admitted into the Law Society Admission Program.. The Majority allowed the application for enrolment " … subject to the condition that, before the articling agreement is entered into, any prospective principal must be informed of [its] decision and be given a copy of [its] decision."

[9] The Law Society has sought a review of the Decision. It seeks an order that a decision denying the Applicant's application for enrolment be substituted for the Decision.

SUMMARY OF THE HEARING PANEL'S DECISION

Findings of fact common to the Majority and the Minority

[10] Although they came to different conclusions, except for certain stated exceptions, the Majority adopted the findings of fact made by the Minority. Those common findings of fact are summarized as follows:

Date	Event
2010	
August 23	Called to the bar in South Africa (para. 4)
2011	Immigration to British Columbia (para. 6)
May 18	The Applicant posted a Craigslist advertisement "in an attempt to attract customers for legal work" (para. 6)
June	… to approximately the fall of 2013, employed as "Manager of Legal." That title was altered in summer 2013 to "Compliance Manager" (para. 12)
October 19	The Applicant posted a second Craigslist advertisement entitled, "Need any contracts drafted or reviewed? (All of B.C.)" and referring to himself as a "lawyer from overseas" (para. 6)
October	The Applicant performed work for two paying customers and invoiced them a total amount of approximately $8,140 (para. 7)
November	In response to a private investigator hired by the Law Society, Applicant sent an email to the private investigator stating, among other things, "I can definitely assist you with an employment agreement for your employees"
	The Applicant declined a face-to-face meeting with the private investigator and subsequently advised the private investigator by email that he had taken on full-time

Date	Event
	employment and would not be able to assist the private investigator with the matter (paras. 8-9)
November 3, 2011	The Applicant responded to a potential customer who had responded to his Craigslist advertisement advising, among other things, that: "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 testified that he received further contact from the potential customer on November 5, 2011, but for reasons he could not recall, he had no further contact with that potential customer (para. 10).
December 7	In response to the correspondence from Law Society staff counsel, the Applicant signed and returned to the Law Society an undertaking and covenant not to engage in the practice of law and not falsely represent himself as being, among other things, a lawyer or articled student (para. 11)
	The Applicant assured Law Society counsel that he had deleted the Craigslist advertisement "some time ago," that he had made the 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 Act (para. 11)
2012	Beginning in February 2012 and for approximately one year, the Applicant was employed by a consulting firm (para. 13)
	That employment did not constitute the practice of law (paras. 23 and 49)
February 14	In email 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)." (para. 15)
February 24	Email exchange with GG: "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." (para. 15)
2013	
February 12	Email exchange with KG requesting advice: the Applicant 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 …" (para. 15)
March 26	Email in which GG requested advice re proposed settlement: the Applicant responded in an email dated the same day, "… I unfortunately cannot assist you," but then goes on to say, "I can however provide you with a few words of guidance." (para. 15)
Undated	The Applicant "may have engaged in 'closing off ends' for customers" (para. 17)

2014	
May 7	The Applicant submitted his application for enrolment as an articled student. The Applicant did not intentionally provide false information, or seek to mislead the Law Society, on that application (paras. 32 and 60)
July 29	LinkedIn Profile described the Applicant's employment as "Manager of Legal" (para. 12)

Minority analysis

[11] Notwithstanding the agreement with respect to many of the facts, the Minority and the Majority diverged in their findings regarding the extent of the unauthorized practice and, in particular, the Applicant's explanation for that practice.

[12] In that regard, the Minority made findings of fact and made assessments of credibility regarding the Applicant's conduct both prior to and after December 7, 2011 when he provided the undertaking to the Law Society.

[13] The Minority held that it was "clear" that the Applicant did engage in the practice of law prior to December 7, 2011. In the Minority's view, the Applicant's pre-December 2011 conduct did not "inspire confidence in the Applicant's character, integrity and judgment."

[14] The Minority also found that the Applicant continued that unauthorized practice after he provided the undertaking to the Law Society on December 7, 2011, expressly finding that "[a]lthough 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." (para. 35)

[15] Of the Applicant's post-undertaking conduct, the Minority stated:

> [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 [Act] dealing with unauthorized practice of law and to consider the undertaking and covenant he signed.

[16] Having made those findings of fact, the Minority concluded as follows:

> [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 the 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.
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> [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.

Majority analysis

[17] Like the Minority, the Majority made findings of fact regarding the Applicant's conduct both prior to and after December 7, 2011 when he provided the undertaking to the Law Society.

[18] Like the Minority, the Majority found that the Applicant had engaged in the unauthorized practice of law before giving the undertaking on December 7, 2011. However, it disagreed with the Minority's conclusion that his explanation for doing so "[did] not ring true," stating at para. 51 as follows:

> We disagree. Rather, we accept the Applicant's evidence that he was not aware that the [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 is 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.

[19] The Majority also disagreed with the Minority's assessment that the Applicant's explanation of ceasing contact with potential clients in November 2011 (around the time of the Law Society investigation into the Applicant's unauthorized practice of law was under was underway) "did not ring true." It concluded at para. 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 pressures of his other work commitments. …

[20] In respect of the Applicant's conduct after the Applicant provided the undertaking to the Law Society on December 7, 2011, the Majority held at para. 65 as follows:

> 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 the 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.

[21] The Majority concluded as follows:

> [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.
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> [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 2001. 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.

POSITION OF THE PARTIES

[22] The Law Society has taken the position that the hearing panel erred by failing to apply the correct legal test to determine whether the Applicant met the statutory conditions required for enrolment as an articled student. It says it did so in two ways.

[23] First, relying primarily on paragraph 68 of the Decision, the Law Society has taken the position that the Majority applied a "reduced standard" in its assessment of the Applicant's character and repute on the basis of his status as a prospective articled student as opposed to being a practising member of the profession.

[24] It argued that applying that reduced standard is contrary to the provisions of the Act, which provide for the same test regardless of whether the application concerns enrolment, admission or reinstatement.

[25] The Law Society's second and related argument is that, in assessing the Applicant's character, the Majority placed undue reliance on its assessment of the Applicant's testimony at the hearing and conflated its assessment of credibility with the assessment of character. It argued that the Majority failed to have sufficient regard to all other relevant circumstances, including the Applicant's conduct leading up to his application for enrolment.

[26] In response to the Law Society's first position, the Applicant does not dispute that the application of reduced standard depending on the nature of the application is contrary to the provisions of the Act.

[27] However, he argued that the Law Society misconstrued the Majority's reasons by interpreting para. 68 without having regard to its reasons as a whole. By the Applicant's argument, when interpreted in the context of the Majority's reasons as a whole, there is no support for the argument that the Majority applied a "reduced standard" to its assessment of "character."

[28] The Applicant disputed the Law Society's second position that the Majority did not sufficiently consider all of the relevant circumstances, noting the detailed and comprehensive reasons of the Majority.

[29] The Applicant's final position is that, even if the Majority incorrectly applied the legal test to determine his character, this Review Board must give deference to the Majority's findings of fact and credibility, particularly in respect of the Applicant's explanation for his conduct and his state of mind. The Applicant submitted that, if the proper deference is given to those findings, they inevitably and necessarily lead to the conclusion that he meets the requirement of "good character and repute."

ISSUES

[30] The issues to be determined on this Review are:

(a) Did the hearing panel err in failing to apply the correct legal test to determine whether the Applicant met the s. 19 requirement of "good character and repute"? In particular:

(i) Did the hearing panel incorrectly apply a reduced standard in assessing "good character and repute"?; and

(ii) Did the hearing panel give undue regard to the Applicant's testimony and its assessment of the Applicant's credibility without giving due consideration to all other relevant circumstances?

(b) Even if the hearing panel erred in failing to apply the appropriate legal test, was the Decision correct?

THE LAW

Standard of review

[31] Citing the decisions of *Law Society of BC v. Hordal*, 2004 LSBC 36 and *Mohan v. Law Society of BC*, 2013 BCCA 489, the review panel in *Re: Applicant 6*, 2014 LSBC 37, recently summarized the applicable standard on review as follows:

> The standard to be applied on review is correctness or, in other words: applying the facts as found by the hearing panel to the statutory framework, is the result correct? There is one important caveat to the standard of correctness: the Benchers must give deference to the hearing panel to the findings of fact and credibility unless the hearing panel has committed an overriding or palpable error.

[32] The review panel's decision in *Re: Applicant 6* was appealed to the British Columbia Court of Appeal. In that appeal, *Kay v. Law Society of British Columbia*, 2015 BCCA 303, the Court of Appeal approved the standard adopted by the review panel, noting at para. 40 that "… determining whether a person is of good character in the context of reinstatement as a member of the Law Society is a question of mixed fact and law …" for which the standard of review is reasonableness.

[33] The Court contrasted that standard with the standard to be applied to a question of law stating, "in the present case, the Benchers accepted the factual findings of the Hearing Panel, but found that the Hearing Panel did not apply the appropriate legal test. That was a question of law reviewable on the standard of correctness." (para. 41)

[34] The deference afforded to hearing panels in respect of findings of fact and credibility has been the subject matter of a number of decisions of review panels, including *Law Society of BC v. Hops*, 1999 LSBC 29, *Law Society of BC v. Berge*, 2007 LSBC 07 and *Law Society of BC v. Christie*, 2009 LSBC 13, as well as by the Court of Appeal in *Mohan v. Law Society of British Columbia*, 2013 BCCA 489.

[35] As noted by the review panel in *Christie*:

> [25] Even if we had been inclined to the view that the evidence supported conclusions different to those reached by the Panel, those conclusions were quite explicitly based on its assessment, having heard the Applicant's evidence, of his credibility on the point. In those circumstances, the findings of the Panel are entitled to the greatest deference. The Applicant has shown us no ground for not according the Panel that deference.

Section 19 test

[36] The issue before the hearing panel was whether the Applicant satisfies the requirements of s. 19(1) of the Act for enrolment as an articled student. That section provides:

> **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]

[37] What constitutes "good character and repute" has been the subject of both judicial consideration and decisions of hearing panels of the Law Societies of British Columbia and of Upper Canada.

[38] As a starting point for that analysis, reference is often made to the Court of Appeal decision in *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106, and the Court's adoption of the writing of Mary Southin, QC (as she then was), "What is 'Good Character'?", published in *The Advocate*, 1977 v. 35, at 129.

[39] The authorities are also consistent that the assessment of character must be made as of the date of the hearing; in other words, the hearing panel is to consider the applicant's current character. The test does not require perfection or certainty. (*Law Society of Upper Canada* v. *Schuchert*, [2001] LSDD No. 63 at para. 19)

[40] As noted by the hearing panel in *Law Society of BC v. Mainland*, 2014 LSBC 56, the personal testimony of an applicant, even if earnest and compelling, is not, by itself, a sufficient determination of character.

[41] Hearing panels and review panels have used, to varying degrees, the factors set out by the hearing panel in *Law Society of BC v. Lee*, 2009 LSBC 22 and by the

Ontario Divisional Court in *Watt* v. *Law Society of Upper Canada*, [2005] OJ No. 2431 to inform their assessments of applicants' character pursuant to s. 19 of the Act.

[42] The factors set out in those cases have been described as "helpful guidance" and "all surrounding circumstances should be considered in assessing an applicant's character and fitness. (*Re: Applicant 3,* 2010 LSBC 23, at para. 21)

DISCUSSION AND ANALYSIS

Did the hearing panel incorrectly apply a reduced standard in assessing "good character and repute"?

[43] As set out above, s. 19 of the Act sets out the test that must be met in order to be "enrolled as an articled student, called and admitted or reinstated as a member … ." That test is the same, regardless of whether the application concerns enrolment (as was the case before the hearing panel), admission or reinstatement: the Benchers must be satisfied that the applicant is "of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court."

[44] Neither the Act nor the case authorities afford any discretion to hearing panels to apply different standards to the requirement of "good character and repute" based on whether the s. 19 applicant is a proposed articled student or a member of our profession. In our view, the application of varying standards would constitute a reversible error of law.

[45] On this Review, the Law Society has based its assertion that the Majority applied a reduced standard primarily, if not exclusively, on its interpretation of paragraph 68. Again, that paragraph reads as follows:

> 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*.
>
> [emphasis added]

[46] Without doubt, that language supports the argument of the Law Society that the Majority distinguished the Applicant's status as a prospective "articled student" from that of "a member of the profession."

[47] However, for the purpose of this Review, that distinction will only constitute an error of law if the Majority made the distinction in respect of its assessment of the Applicant's character. We conclude that it did not.

[48] First, it is of assistance to consider the significance of paragraph 68 in the context of the guidance and direction provided to the panel by Law Society counsel in respect of the statutory test to be applied on a s. 19 application. On that issue he stated in his opening statement as follows:

> … the issue to be decided is of course whether Mr. Perry meets the test. He has to satisfy this panel that he is a person of good character and repute and fit to become a barrister and solicitor in the Supreme Court. These words are well known to lawyers in our province. It's the same test that occurs over and over again. It's applied in a myriad of circumstances that lead to credentials hearings … .

[49] The Law Society's closing submission included the following guidance:

> … Keeping in mind this is an admission to get articles, it's not an admission to be practising *although the test is identical. You have to be just as fit and have good character and repute as an articled student as you do for being a lawyer*.
>
> [emphasis added]

[50] Those explicit directions and guidance undermine the assertion that the Majority misconstrued the standard to be applied in its assessment of the Applicant's character.

[51] Second, on its face, paragraph 68 expressly refers to the Applicant's "conduct" and, in particular, his interaction with potential clients after December 2011, as being "borderline." There is no reference in paragraph 68 to "character." More specifically, there is no reference in paragraph 68 to the assessment of character.

[52] The distinction between conduct and character is an important one. The two are not necessarily the same.

[53] It is easy to envision a scenario in which a lawyer's wrongful or improper conduct would not, in and of itself, lead to the conclusion that the lawyer is not of "good character and repute." In other words, improper conduct is not always reflective of bad character.

[54] For example, a lawyer's breach of an undertaking will, in most instances, constitute improper conduct. However, depending on the circumstances, the fact that a lawyer has breached an undertaking will not necessarily reflect on the lawyer's character. That will be the case, for example, if the lawyer breached the undertaking as the result of oversight or because of an honest misunderstanding as to the terms of the undertaking. In those circumstances, the improper conduct (i.e., the breach of undertaking) will not reflect "bad character."

[55] It is clear from its reasons that the Majority appreciated the difference between the assessment of the Applicant's conduct and the assessment of his character as required by s. 19 of the Act.

[56] As a notable example, it accepted the Applicant's concession that he had engaged in the unauthorized practice of law prior to December 7, 2011. Rather than concluding that that prohibited conduct necessarily reflected negatively on the Applicant's character, it engaged in an independent analysis of his character in light of that conduct.

[57] As we have set out in detail in paragraph 62 below, the Majority conducted that independent analysis of character in respect of every allegation and finding of prohibited or improper conduct, again acknowledging that its assessment of conduct (by whatever standard) did not necessarily determine its assessment of character.

[58] On those bases, notwithstanding the fact that the Applicant's status as a prospective articled student does, on its face, appear to inform the Majority's assessment of the Applicant's conduct, in the context of its analysis, we cannot conclude that paragraph 68 is indicative of the Majority's application of a "reduced standard" in its assessment of character.

Did the hearing panel incorrectly apply the relevant legal tests in assessing "good character and repute"?

[59] In its reasons, the Majority assessed the Applicant's credibility based on his testimony and conduct during the hearing. Its conclusion that the Applicant is "a person of good character and fit to be admitted into the Law Society Admission Program" was based, at least in part, on that assessment of his credibility.

[60] However, the basis of the Majority's conclusion was not limited to its assessment of the Applicant's credibility. The assertion that the Majority placed undue reliance on the Applicant's testimony and its assessment of his credibility is simply not borne out by its reasons.

[61] In fact, the Majority methodically considered each and every concern that gave rise to the credentials hearing, including the pre-December 2011 unauthorized practice of law and the allegations of improper or prohibited conduct after December 2011. It provided comprehensive and detailed reasons in which it fully reviewed and scrutinized those circumstances.

[62] Most notably, the Majority:

(a) considered the allegation that the Applicant engaged in the practice of law during the course of his employment after December 7, 2011; it agreed with the Minority's conclusion that it was not proven that "the Applicant engaged in the practice of law in his previous employment." (para. 49);

(b) accepted the Applicant's concession that he had engaged in the unauthorized practice of law prior to December 7, 2011 and expressly considered the Minority's analysis, and rejection, of the Applicant's explanation for that practice;

(c) having done so, it considered and accepted the Applicant's evidence that "*he was not aware* that the [Act] prohibited unauthorized lawyers from doing so" and that "*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." (para. 51) [emphasis added];

(d) reviewed the Applicant's explanation for his pre-December 2011 unauthorized practice; although the Majority characterized his attitude as "arrogant and foolish and ill-informed," it found that he "*acted with an honest mistaken belief.*" (para. 51) [emphasis added];

(e) thoroughly reviewed the Applicant's explanation for ceasing contact with potential clients in November 2011 and considered the Minority's conclusion that the explanation "does not ring true"; it disagreed. (para. 53);

(f) considered the allegation that the Applicant intended to mislead the Law Society by advising it on December 7, 2011 that the Craigslist postings "had been deleted some time ago"; having canvassed the Applicant's evidence on that point, the Majority concluded that the Applicant was "reckless" when he made that statement to the Law Society. (para. 56);

(g) thoroughly reviewed the allegation that the Applicant intended to deceive the Law Society by providing false information on his application for enrolment; the Majority also reviewed the Applicant's evidence in respect of that allegation; having done so, it agreed with the Minority's conclusion that "the Applicant did not intentionally provide false information to, or seek to mislead, the Law Society." (para. 60); and

(h) considered the allegation that the Applicant practised law or otherwise breached his undertaking to the Law Society after December 7, 2011; in its analysis of that issue, the Majority refers to the findings of fact made by the Minority with specific reference to the documentary evidence that was before the panel. On the basis of that review and "after careful consideration of the Applicant's evidence and his demeanour while giving evidence, along with the exhibits filed in these proceedings … ," the Majority concluded that "At the very most, the Applicant breached his undertaking when he explains the meaning of "without prejudice" to his former client … ." (para. 65).

[63] The comprehensive and detailed review of the Applicant's conduct belies any assertion that the Majority placed undue reliance on the Applicant's testimony without regard to the Applicant's conduct and other relevant circumstances.

[64] It is also notable that, in its reasons, the Majority reviewed and considered the Minority's analysis and conclusions. The fact that it did so and provided extensive justification for disagreeing with many of the Minority's well-considered findings, is indicative of the Majority's thorough examination of all of the circumstances before it.

[65] In light of the thorough examination and analysis of the Applicant's conduct, as well as its consideration of the Minority's analysis and conclusions, we are satisfied that the Majority gave due consideration to "all surrounding circumstances" in its analysis of the Applicant's character.

Even if the hearing panel erred in failing to apply the appropriate legal test, was the Decision correct?

[66] The reasons of the Majority are significant not only in that it thoroughly reviewed and examined all of the conduct that gave rise to the credentials hearing, but also in that it contains significant findings of fact that were relevant to its assessment of the Applicant's character. Those findings of fact militated against it concluding that that conduct negatively reflected on his character.

[67] Those findings in respect of the Applicant's pre-December 2011 conduct are emphasized in subparagraphs 62 (c) and (d) above. Other findings relating to the Applicant's state of mind after he provided the undertaking to the Law Society in December 2011 are set out in paragraphs 69 through 73 of the Decision. The most notable of those findings are summarized with our added emphasis below:

(a) The Majority held that the Applicant "*did not intentionally engage in any conduct in violation of the undertaking*" with respect to the incidents involving GG. Although it did not accept the Applicant's definition of what amounts to legal advice, they accepted "*that is what he believed at the time.*" (para. 69);

(b) With respect to the offer to simplify GG's contract, the Applicant "exercised poor judgment," the Majority was "… *satisfied that he was not motivated by any dishonest intention.*" (para. 70);

(c) The Applicant made mistakes with respect to his interactions with potential clients after December 2011. *"However, he was truthful on the stand. ...*" (para. 71);

(d) The Applicant was "sincere when he gave the undertaking," and "*to the best of his ability*," the Applicant ceased his unauthorized practice after December 2011 (para. 72); and

(e) … the Applicant has learned from this process and from giving evidence and being cross-examined during the hearing. (para. 73).

[68] By conducting the analysis and making the findings of fact that it did in those paragraphs, it is clear that the Majority concluded and recognized that not all improper, or even expressly prohibited, conduct is inconsistent with "good character." In other words, the conclusion that the Applicant engaged in the unauthorized practice of law was not, in of itself, enough to conclude that he did not meet the s. 19 requirement of "good character and repute."

[69] Rather, before the Majority made any conclusions regarding the Applicant's character, it conducted the analysis and made the findings of fact with respect to the Applicant's state of mind that it did in paras. 51 and 69 to 73. It did so having heard evidence from the Applicant and having assessed his credibility at the hearing.

[70] We agree with the Majority's analysis. Whether we would have come to the same conclusion of facts as the Majority, or accepted the Applicant's explanations of his

behaviour, are not questions for us to decide. The hearing panel is entitled to deference in respect of its findings of fact unless they are palpably wrong. In this case, we see no such error and no reason why the Majority should not be afforded deference in respect of its findings of fact.

[71] Given its findings regarding the Applicant's state of mind set out in paras. 51 and 69 to 73, we conclude that the Majority's conclusion that the Applicant is "a person of good character and fit to be admitted into the Law Society Admission Program" was correct.

CONCLUSION

[72] We conclude that the hearing panel correctly applied the legal tests to determine whether the Applicant met the s. 19 requirement of "good character and repute."

[73] We confirm the decision of the hearing panel 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 it imposed that "… before the articling agreement is entered into, any prospective principal must be informed of [the Decision] and be given a copy of [the Decision]."

[74] In light of this Review, we would add the condition that before the articling agreement is entered into, any prospective principal also be informed of the decision of this Review Board.

COSTS

[75] No submissions were made as to costs of the review. The parties will have 30 days from the date of this decision in which to make any submissions on costs.