

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

APPLICANT 8

APPLICANT

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

Hearing dates: February 2, 3, 4 and 5, 2015

Panel: **Majority Decision:** Herman Van Ommen, QC, Chair
John Waddell, QC, Lawyer
Dissenting Decision: Clayton Shultz, FCA, Public representative

Counsel for the Law Society:
Counsel for the Applicant:

Gerald Cuttler
Michael Tammen, QC

INTRODUCTION

- [1] This hearing concerns the application the Applicant dated November 21, 2013 to be enrolled as an articled student.
- [2] The issue to be decided is whether the Applicant satisfies the requirements of section 19(1) of the *Legal Profession Act*, which provides:

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 fit to become a barrister and a solicitor of the Supreme Court.

- [3] Pursuant to Rule 2-67 of the Law Society Rules, the onus is on the Applicant to satisfy the Panel on a balance of probabilities that he has met the requirements of s. 19(1).
- [4] The Applicant was advised by email on March 24, 2014 that the circumstances to be inquired into at this hearing were:
- (a) the criminal charges against him on August 21, 2013 regarding an alleged assault on his wife, VB, contrary to s. 266 of the *Criminal Code*;
 - (b) his failure to disclose on his application that he had been charged on September 7, 2007 under the *Transit Conduct and Safety Regulations* for failing to retain and produce proof of payment and on September 3, 2011 under the *Motor Vehicle Act* for failing to stop on a marked line at a stop sign; and
 - (c) his credibility and candour regarding the above noted matters.

BACKGROUND

- [5] The Applicant was at the time of the hearing 30 years of age. He was born in Patiala, Punjab, India. He was educated there, receiving a Bachelors' Degree in Psychology and a Bachelor of Law from a local university of Punjabi University in Patiala.
- [6] He obtained a licence to practise from the Bar Council of Punjab and Haryana in September 1999 immediately upon graduating from University. There was no requirement to article or take any specific training prior to practising.
- [7] He practised with a senior practitioner until the fall of 2001 when he became a Tax Inspector. A letter of reference from that senior practitioner was put in evidence, and the person stated that the Applicant's performance while employed was "outstanding." He worked as a Tax Inspector until immigrating to Canada in July 2004.
- [8] He began working in Canada at a 7-11 convenience store on graveyard shifts. He worked there for almost two years, until April 2006. The store manager provided a letter of reference attesting to the Applicant's honesty and integrity.

- [9] During the next several years, the Applicant also worked for various security companies, each of whom also provided letters of reference. In November 2009, he was appointed a Special Municipal Constable with the Vancouver Police Department, Traffic Authority Unit. He worked up to 15 hours a day for the duration of the 2010 Olympics. He also had the misfortune to be on duty downtown during the Stanley Cup riots in 2011.
- [10] He received the Chief Constable's Unit citation for his work in the Olympics and a Certificate of Appreciation on the 125th Anniversary of the Police Department, partly in recognition of his work during the riots. His supervisor at VPD-Traffic Authority provided a letter of reference supporting his application. This reference letter was given with knowledge of the assault charges that will be discussed later in these reasons.
- [11] When he decided to become a lawyer in Canada, the Applicant applied to the National Committee on Accreditation and was required to write four qualifying exams. He received a Certificate of Qualification in January 2013.
- [12] He then engaged in a long, broad-ranging search for an articling position. He received an interview with the [law firm]. He travelled to Saskatchewan for that interview and was told that, although an articling position would not be available for some months, they were prepared to hire him immediately as a law clerk and then later as an articulated student. He worked as a clerk for the [law firm] for the months of October, November, December 2013 and January 2014.
- [13] The [law firm] is still prepared to provide him with articles provided his application succeeds. WS, who testified before us, proposes to be his principal.
- [14] The Applicant has been married twice. He was first married in India; it was an arranged marriage that he said did not last long. We were not given any details of their separation or divorce.
- [15] He married VB on April 8, 2011. They had a daughter on February 29, 2012. They are now estranged and have been separated since August 21, 2013.
- [16] They met during a physical testing program conducted for the RCMP by the YMCA. She also worked in the security industry and was seeking a career in policing.
- [17] The Applicant's mother came to Canada to see the new baby in July 2012. She ended up staying and living with the Applicant, his wife and their child.

[18] Troubles in the marriage culminated with a charge of assault against the Applicant on August 21, 2013. Precisely what happened on that day is in dispute. Much of the testimony heard concerned this event and the surrounding circumstances. There is much less dispute about the surrounding circumstances, so we will deal with those matters first.

THE MARITAL PROBLEMS

[19] In June of 2013, the Applicant and his wife had a telephone conversation about what to have for dinner. This turned into an argument; the Applicant said his wife offended him saying nasty words to him. He testified that she said “you are a mama’s boy” and suggested his previous wife left him because he was unable to satisfy her physically. The following text exchange ensued:

He texted to her:

Fuck off bitch. What do u think u are? If you don’t have manners of how to talk over the phone with someone then why do u fuckin call and then bitch around with me?

all you do everyday is wash the utensils. You are busy on just one day but behave as if u are the busiest bitch in this country.

FUCK YOU BITCH.

She replied a few minutes later:

Thank you for your good comments.

He responded:

This is what you deserve. Why don’t you bitch around with your fuckin family like this? Take your shit to them, we don’t need it.

She replied again:

Again thank you.

His last response to her was:

Shut up. Do ur work.

- [20] In the weeks prior to August 2013 the Applicant said that he had noticed his wife “putting down” his mother because “she is on a visitor visa.” He told her that, if she did not stop, “then I have to do something about it because now I know how some of your family members have come here. So I won’t mind letting the Canadian High Commission in New Delhi know about it”
- [21] On August 11, 2013, the Applicant did in fact send an email to the Canadian High Commission in New Delhi alleging that his wife’s uncle had been involved in improper activities concerning marriage and immigration.
- [22] The alleged assault occurred on either August 15, as the wife alleges, or August 16 as the Applicant alleges. In the week following the incident, the Applicant became aware that the wife’s uncle had called the Applicant’s father in India. The call concerned the Applicant’s treatment of his wife, and he understood her uncle had said to his father that the uncle would have the police take the Applicant away.
- [23] Upon learning of this call, the Applicant decided to report his wife’s uncle to the RCMP for uttering threats. He did this by telephone at around 3:17 pm on August 21, 2013. The police contacted the uncle promptly. The wife’s uncle told her about the complaint. She then decided to report an alleged assault by the Applicant that had occurred six days before. She went to the police station in Surrey that same day at around 9:45 pm. The Applicant was charged with domestic violence under Section 266 of the *Criminal Code* on August 21 and signed an undertaking to abstain from communicating with his wife.
- [24] The Applicant retained experienced criminal counsel shortly thereafter. In an email to his counsel he stated:

Also, FYI, although I must say that the relationship with the Complainant is now over due to a lack of trust but if it helps in getting the charge dropped we can keep this fact confidential.

There can be a possibility that the Complainant might try to go easy on this charge with the public prosecutor provided she thinks that I have learned a lesson the hard way and gone down on my knees unconditionally surrendering to all her wishes. I believe that the motives of this complaint is not to get me convicted but to make me hen-pecked sans self-respect.

And then I am free to end this relationship later whenever I want.

- [25] The criminal proceedings were resolved on November 18, 2013 when the Applicant, with the benefit of counsel, entered into a recognizance pursuant to

Section 810 of the *Criminal Code*. This required him to admit that there were reasonable grounds to fear that he would cause personal injury to his spouse.

- [26] Subsequent to their separation and apart from the criminal proceedings, there has been lengthy and protracted litigation concerning access to the child and other matters.
- [27] The Applicant commenced a family law proceeding in Provincial Court on September 4, 2013 seeking access. Since then there have been numerous applications and several days of trial.
- [28] Noteworthy though is a Provincial Court Order made on March 25, 2014 prohibiting the Applicant from filing any further Provincial court applications without leave. Three days later, he filed a Notice of Family Claim in Supreme Court. He sought only an Order of Divorce on grounds that they had been living separate and apart. They had not yet been living separate and apart for one year. The action was commenced earlier than necessary. Although doing so was not a breach of the Provincial Court order, the Applicant was continuing the same type of conduct that the order sought to prevent.
- [29] The Applicant then engaged in a lengthy and unnecessary exchange with his wife's counsel regarding service of the Supreme Court proceedings on the Applicant. He initially texted his wife to arrange a time for service. Her counsel responded on her behalf advising that the documents could be dropped off at counsel's office and counsel would deliver them to her client. This was not satisfactory to the Applicant, who insisted that counsel agree to swear an affidavit of service and deliver it to the Registry. The Applicant testified he was acting on information received from the Registry. The length and tone of his communications with counsel at that time reveal a person more intent on winning a point than accomplishing service of legal documents.
- [30] The Applicant also commenced an action in Small Claims Court on January 29, 2014. In it he alleged that he had been charged because of his wife's false statements. Further, he alleged that, because of her actions, he became distressed, started gambling and lost all his savings at a casino. He sought damages for mental distress and defamation as well as loss of income.
- [31] He appeared before a Judge on March 31, 2014 and attempted to obtain judgment by default. It was denied. He testified before this Panel that commencing this action was a mistake of judgment and that he did not intend to proceed with the case. This intention had not been previously communicated to his wife or her

counsel. The Small Claims action has not been dismissed to the Panel's knowledge.

THE EVENT

[32] At the hearing, the Applicant's wife described the assault on her by the Applicant as follows:

- (a) Her husband and his mother left the house together for a walk in the morning;
- (b) When he returned alone she asked "where is your mother?";
- (c) He responded "Who are you to ask about my mother?";
- (d) He took her to the sink in the kitchen and choked her so that she could not breathe properly;
- (e) The mother returned and upon being told what occurred said "Beat her more";
- (f) When the mother noticed that the wife was not breathing properly she said "Let her go or she will die."

[33] In cross-examination the wife elaborated saying that the Applicant had grabbed her and thrown her against the sink with both hands around her neck. The impact against the counter or edge of the sink caused her pain and pinned her arms behind her back. She denied scratching the Applicant's arm or tearing his shirt.

[34] The Applicant's evidence was quite different. He testified:

- (a) He and his mother left the house in the morning together; she to go for a walk and he to go for a jog on a different route;
- (b) On his return home, while he was removing his shoes, his wife accosted him asking him where his mother was;
- (c) He said that he did not know as they had gone different routes;
- (d) His wife refused to believe him and said that she did not want him and his mother to go out together ever again;
- (e) He became angry and his mother returned from her walk;

- (f) He told his mother what had just transpired and she tried to reason with the wife who then “taunted” him;
- (g) He walked into the kitchen to put away his water bottle and said “I’ll do whatever I want to do”;
- (h) The wife entered the kitchen from the other entrance and attacked him. He said “She came to claw my face.” He raised his right arm to shield his face. Her hand came into contact with his elbow drawing blood and then he “swiped” both of her arms to the side to divert her attack;
- (i) His mother had also entered the kitchen through the same entrance the wife had used and was standing behind the wife during the attack;
- (j) He then moved to the living room when the wife attacked him again. He moved sideways from her, and she landed on the couch in a seating position;
- (k) At this point the wife made a loud noise, started to cry and left to go to work shortly thereafter.

[35] The Applicant’s mother also testified about the events that day and supported his testimony except in two respects. First, she testified that she entered the kitchen through the same entrance as the Applicant had and that she was standing behind the Applicant when the wife attacked him. Second, she testified that in the second attack in the living room, that the wife tore the Applicant’s t-shirt. The mother, in fact, brought the t-shirt and it was marked as an exhibit in this hearing showing a tear that had subsequently been mended.

[36] The evidence the Applicant gave concerning this event is hard to reconcile with his admission in agreeing to the recognizance, that the wife had reasonable grounds to fear personal harm from him in that event. At the same time, the evidence that the wife gave differs in some material respects from the statements she gave to the police on August 21, 2013, six days after the event.

[37] In her statement to the police the wife stated:

- (a) that the Applicant had only one hand around her throat;
- (b) she was able to breathe;
- (c) while he had his hand around her throat he said “talk now, talk now”;

- (d) his mother pulled her hair at the time this was occurring;
- (e) that she scratched his arm to get away from him.

- [38] When asked about these inconsistencies she testified that she was extremely upset when giving that statement and that under stress she does not always express herself properly. In light of these inconsistencies though, the Panel is not prepared to rely on the wife's evidence where it is contradicted by other evidence.
- [39] It is clear that an argument occurred one morning. Whether the date was August 15 or 16 matters little. The argument escalated to a physical altercation. There clearly was physical contact.
- [40] We do not need to find who initiated the physical contact or the extent of that contact for our purposes. For this hearing, it is sufficient to find that the Applicant's actions that day provided reasonable grounds for his wife to fear that he would cause her physical injury. This is the admission he made when entering into the recognizance on November 18, 2013.

FAILING TO DISCLOSE

- [41] The Law Society alleges the Applicant failed to disclose two previous charges in his application; one for failing to have proof of payment on transit, and one for failing to stop at a stop sign. It is clear that he did fail to disclose those charges, and that disclosure was required.
- [42] The Applicant testified that he was focused on properly disclosing the assault charge, and suspension of his position at the Vancouver Police Department that resulted from the criminal charge, and simply forgot about those two prior incidents.
- [43] We accept his explanation as there does not appear to be other incidents of forgetfulness. He should have been more careful. When signing the application he was declaring under oath that the information in the application was "true, accurate and complete." Clearly, it was not complete. Counsel for the Law Society did not place much significance on the failure to disclose the charges.

CHARACTER EVIDENCE

- [44] In addition to work-related references, which were all laudatory, the Applicant called two friends. They testified partly as fact witnesses, but primarily as

character witnesses. The facts to which they testified did not assist the Panel in its deliberations on the facts. Their comments on the Applicant's character were of not much assistance either. They were clearly friends without the distance and objectivity that would make their views and assessments helpful.

- [45] When they were referred to comments the Applicant made to his wife they expressed shock that the Applicant would speak in such a manner to his wife. They both agreed that type of behaviour was inappropriate.

APPLICANT'S CANDOUR

- [46] The Law Society asserted that the Panel ought to be concerned about the Applicant's candour. Counsel asserted the Applicant's evidence before the Panel concerning the alleged assault was different from his prior statement to the Law Society, and to his criminal defence counsel.
- [47] First, in his application, he provided a detailed explanation of the "Actual Incident." In it he does not mention the second attack in the living room that he described in detail before the Panel. This is a material omission in his statement.
- [48] Secondly, although counsel retained to defend the criminal charges was not called as a witness, his file was put into evidence. We reviewed his handwritten notes of his initial interview with the Applicant. In them there is a note "incident – Aug. 15th." Law Society counsel asked us to infer that the note reflects the Applicant's advice to his lawyer that the incident occurred on August 15th, which is contrary to the evidence he gave in this hearing. We are not prepared to draw that inference as it is just as likely they were referring to the date on which it was alleged in the charge that the incident occurred.
- [49] We do not entirely accept the Applicant's version of the incident that occurred, but are not prepared to find that he was lying either to the Panel or in his application.
- [50] Nevertheless, we are concerned about his lack of understanding in relation to what he asserts was his apology to his wife. We acknowledge that making an apology in these circumstances is difficult, particularly because he is and was of the view that she lied about the assault.
- [51] One of the conditions of the recognizance that he consented to was that he attend counselling as directed by the probation officer. The officer provided him with a workbook concerning respectful relationships that he was required to complete. As a result of taking the course, and of his own accord, he wrote an "Apology Letter." It was addressed to his probation officer, not his wife. In that letter he wrote:

... I admit that being the more educated spouse with sufficient relevant exposure, I had the greater responsibility to judge my married life circumstances and analyze the behaviour pattern of my spouse effectively before deciding how to deal with the situation, no matter howsoever challenging. ...

I have very recently apologized to her in person, with all sincerity from my heart and no motive, saying with a heavy voice “I apologize for the way I responded to whatever you did. My responses were not to the level expected from a person of my profile.” My omissions, even though may not be criminal, were still a part of my ‘karma’ for which I must accept responsibility.

- [52] The Applicant testified that he said those words or something similar, to his wife in the fall of 2013, after he had entered into the recognizance. His wife insists that he never apologized. If he did apologize, his subsequent conduct is not consistent with a true apology. The commencement of a small claims action within a month or two of the apology, the frequent motions that required an order of the Court to prevent and the circumstances of his insisting on personal service of the Supreme Court proceedings, are the actions of a person still motivated by bitterness.
- [53] The wording of the alleged apology is also noteworthy. The Applicant refers to his “omission” but his conduct in relation to the text message is certainly not an omission. The express reference to his superiority is inconsistent with him having achieved real insight into his own failings and alleged contribution. We do not accept that he is truly remorseful for his part in the marital breakdown.
- [54] His text messages to his wife, even if provoked, are inexcusable. If he were a lawyer, that conduct might well be considered conduct unbecoming. The manner in which he has conducted the litigation is not consistent with the standards expected of lawyers in British Columbia. His threat to report the wife’s uncle to the authorities if his wife did not respect his mother would be improper for a lawyer. Finally, his suggestion to his counsel that his true feelings regarding his relationship with his wife be “kept confidential” until after the criminal proceedings were concluded was devious and would also be improper for a lawyer.

THE LAW

- [55] There is an extensive well-developed body of law concerning the application of s. 19(1) of the *Legal Profession Act*. The starting point of most discussions is a

reference to the writing of Mary Southin, QC, as she then was. Her article “What is Good Character” is published in *The Advocate*, 1977. In it she wrote:

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

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

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

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

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

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

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

[56] The authorities make it clear that, because lawyers enjoy a special place in society, the status of barrister and solicitor requires that a special standard of honesty and

integrity and trustworthiness be imposed and kept at all times. The hearing panel in the 1994 decision in the matter of credentials hearing involving DM wrote:

... To prove that this standard is met and will be met thus requires more than a reflection on a person's past honest conduct. The burden is high so that same public can see that we as a profession having earned and been granted their trust, will continue to work toward doing everything necessary to keep it. To this end a lawyer must not only show that he or she has all the attributes of good character – honesty being one of them – the lawyer must also show that he or she has other attributes from which a forecast of future integrity can be made. In summary, the profession at large and also the general public require lawyers to adhere to impeccable standards of behaviour and it is only through the adherence to such standards that we may achieve and keep the high regard for which we as a profession clamour and which, *inter alia*, gives to lawyers both status and economic advantage.

[57] Notwithstanding the high standards discussed, perfection is not required. The panel in *Law Society of BC v. Buttar*, 2009 LSBC 14, wrote:

The authorities do not say that it is an irreducible minimum condition for admission to the bar that the applicant must have displayed absolute and unwavering honesty, forthrightness and abstention from lies, dissembling or other forms of deception at all time in all matters of every kind. If they did, the number of members of the bar would, we venture to think, be considerably smaller than it is. While the authorities abound in ringing declarations about the importance of “a commitment to speak the truth no matter what the cost” ... it is clear that, as the hearing panel in *Law Society of Upper Canada v. Birman*, [2005] LSDD No. 13 put it (at paragraph 14), “no applicant should be held to a standard of perfection.”

CONCLUSION

[58] When considered in its totality, the Applicant's treatment of his wife offers evidence of serious character flaws. Matrimonial disputes often provoke intense and unflattering behaviour by people involved in that kind of visceral conflict. The Applicant sent his wife abusive and profane text messages that are quoted above. From an email he sent to his criminal defence counsel, we know that he was prepared to deceive his wife about the degree of interest he had in repairing the relationship in order to persuade her to soften her approach to the criminal charges he was facing. He has conducted litigation against his wife in a manner that

required a court order to prevent him from filing further materials. As that litigation was ongoing at the time of this hearing, we are not fully apprised of the evidence or the outcome of that litigation. The results of the hearing in progress may become important when it comes time for the Law Society to decide whether to admit him to the bar upon successful completion of the professional legal training course and articles.

- [59] The character flaws revealed in the hearing are troubling. We have had to consider whether those flaws were provoked and exposed only because of the particular stresses of a matrimonial break up and whether they could become a factor in the Applicant's practising life as a member of the Law Society of BC.
- [60] We weigh against those serious issues the fact that he clearly worked very hard since coming to this country. His employers, past and present, attest to him being honest and diligent. If it were not for the dispute with his wife, which shows him in a very poor light, his employment record depicts him to be an exemplary candidate to be enrolled as an articled student. He could be held up as an example of an immigrant coming to this country succeeding through perseverance and hard work.
- [61] We also note that this is an application to become enrolled as an articled student, not called and admitted as a lawyer. If enrolled, the Applicant still has to undergo the process of learning through PLTC and articles to appreciate the standards that he must meet in both his personal and professional life. When the Credentials Committee considers his application to be called as a lawyer, they must be satisfied that the Applicant is of good character and fit at that time.
- [62] Although the Applicant's behaviour in relation to his wife leaves much to be desired, we do not believe he has such a defect in character that it should prevent him from starting on the road toward becoming a lawyer. We do not believe that the behaviour discussed above will be exhibited in his practice as an articled student.
- [63] We grant his application to become enrolled as an articled student, but, because of our concerns about his behaviour in relation to his wife, we feel it is necessary to impose conditions on his enrolment. These conditions are:
- (a) a copy of these reasons must be provided to his principal and employer and counsellor;
 - (b) the principal must undertake to the Law Society to inform the Law Society forthwith in writing of any inappropriate behaviour involving the

Applicant that the principal becomes aware of, whether or not such a behaviour occurs during working hours;

- (c) the principal must undertake to provide quarterly reports to the Law Society setting out how the Applicant is progressing;
- (d) the Applicant must see a psychologist trained in matrimonial counselling, approved by the Law Society, to obtain one-on-one counselling concerning his relationship and dispute with his wife;
- (e) the Applicant must consent to the counsellor preparing a report to the Law Society describing the counselling program and the Applicant's involvement in and completion of the program.

COSTS

[64] The parties are at liberty to make submissions in writing concerning costs.

DISSENTING DECISION OF CLAYTON SHULTZ

[65] I agree with the findings of fact set out in the reasons of the Majority Decision. I do not, however, agree that the Applicant has met the requirements of Section 19(1) of the *Legal Professions Act*, which provides:

No person may be enrolled as an articulated student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

[66] Rule 2-67 of the Law Society Rules imposes an onus on the Applicant to satisfy the Benchers that he has met the s. 19(1) standard. It is significant that “good character and repute” must exist at the time of the application to become enrolled as an articulated student; there is no implication in the Act or the Rules that a panel may accept an undertaking from an applicant to redress any deficiency in his character or reputation during the articling period as a basis for overlooking current issues.

[67] In *Re. Schuchert*, 2001 CanLII 21499 at paragraph 20, the panel said:

It is important not to confuse the good character requirement for admission with notions about forgiveness or about giving the applicant a second chance. The Admissions panel is not in the forgiveness business; the test to be applied is clear, and the admissions panel is to determine if

the applicant is of good character *today*. The *Law Society Act* does not permit an admissions panel to apply any test other than that relating to the applicant's good character *at the time of the hearing*.

[emphasis added]

[68] A rationale for the "time of the hearing" requirement is stated at *Re. Applicant 3*, 2010 LSBC 23, paragraph 163:

... he cannot be given the benefit of the doubt that he will become more honest and perceptive of correct conduct once he is called to the Bar. This would transfer the risk to the public and the profession. Law Society members must be equipped when they are called to serve the public and to maintain and nurture public confidence in the profession.

[69] The Applicant's character and repute must be assessed in the context of the entirety of the matters involving character and repute that were brought to the Panel's attention by the Applicant, the Law Society and the witnesses called. These are summarized in chronological order below:

| yy/mm/dd | Incident | Paragraph in the Majority Reasons |
|-----------------|---|--|
| 2013/06 | The odious text message from the Applicant to his wife. | 19 |
| 2013/08/11 | Email from the Applicant to the Canadian High Commission in New Delhi alleging improprieties committed by his wife's uncle. | 21 |
| 2013/08/15 | Physical altercation between the Applicant and his wife; conflicting testimony. | 32 <i>et seq</i> |
| 2013/08/21 | The Applicant reports his wife's uncle to the RCMP for uttering "threats." | 23 |
| 2013/08/21 | The wife reports the August 15 altercation to the RCMP | 23 |
| 2013/08/21 | The Applicant is charged with domestic violence under Section 266 of the <i>Criminal Code (the "Code")</i> | 23 |
| 2013/08/ | The Applicant retains experienced criminal counsel and sends an email to that counsel of questionable propriety | 24 |

| yy/mm/dd | Incident | Paragraph in the Majority Reasons |
|------------|---|-----------------------------------|
| 2013/09/4 | The Applicant commences the family law proceeding in Provincial Court seeking access. | 27 |
| 2013/11/18 | The Applicant entered into a recognizance agreement pursuant to Section 810 of the <i>Code</i> | 25 |
| 2014/01/29 | The Applicant filed an action in Small Claims Court alleging wife's false statements caused him to be charged and therefore he started to gamble and lost all of his savings. | 30 |
| 2014/03/25 | The Provincial Court orders that further applications could not be filed without leave. | 28 |
| 2014/03/28 | The Applicant seeks a premature Order of Divorce, contrary to the spirit of the Order of the Provincial Court three days previously. | 28 |
| 2014/03/31 | The Applicant attempted to obtain judgment by default and is denied. | 31 |

[70] I have considered the following circumstances:

- (a) As noted in paragraph 60 of the Reasons of the Majority, "if it were not for the dispute with his wife, which shows him in a very poor light, his employment record depicts him to be an exemplary candidate to be enrolled as an articulated student."
- (b) Although the Applicant retained counsel for specific legal tasks, he kept control over his own file throughout. Resolving the legal, practical and emotional issues in a family matter requires an objective viewpoint and balanced judgment. It is significant that matters repeatedly got out of hand.
- (c) The fact that the [law firm] is willing to rehire the Applicant despite having full knowledge of the circumstances giving rise to this hearing and accepting the burden of regular reporting to the Law Society is a positive indicator of his conduct during the four months of his employment as a law clerk with that firm.

[71] Given my opinion that the Applicant has not yet discharged the onus to meet the requirement that he be of "good character and repute," I cannot concur with the majority opinion expressed in paragraph 62 above:

Although the Applicant's behaviour in relation to his wife leaves much to be desired, we do not believe he has such a defect that he has such a defect in character that it should prevent him from starting on the road toward becoming a lawyer. We do not believe that the behaviour discussed above will be exhibited in his practice as an articled student.

[72] In their Common Book of Authorities, counsel for the parties submitted 12 cases in matters involving admission or readmission to Articles or to the Bar, or reinstatement of a disbarred lawyer. In all cases the, adjudicators emphasized the onus on the applicant to establish good character and repute and rehabilitation from the flaws that had previously impeded his admission or readmission. The Applicant did not provide any evidence of remorse, let alone specific remedial actions such as anger management counselling, or efforts to assist his wife and their child.

[73] In my opinion, the facts and submissions presented to the Panel do not inspire confidence that the Applicant's character defects will not resurface in practice when he faces the pressures, conflicts and disagreements that lawyers must routinely cope with in an objective and balanced fashion.

DISSENTER'S OPINION

[74] I would reject the Applicant's application to commence articles *at this time*. I would, however, encourage him to reapply when he has gained experience working in a law office and obtained counselling by a psychologist trained in matrimonial counselling.

[75] My rationale is as follows:

- (a) The transgressions listed in paragraph 69 occurred before he had any practical experience working in a law office in either India or Canada. It is my opinion that not only he, but also the public to which he hopes to deliver legal services, will benefit from exposure to legal practice in addition to the normal articling period. Through the extra time spent assisting and receiving guidance from qualified lawyers in serving their clients' needs, he will have the opportunity to develop the instincts required to be a successful articled student and ultimately an effective practitioner.
- (b) A charge under the *Criminal Code* not only failed to stimulate improved behaviour, but also opened more avenues for the Applicant's exercise of

his character defects. I am concerned that he will not take seriously a result that does not cause him more inconvenience than the conditions of enrolment proposed by the majority.

- (c) A prolonged close association with a general practice firm such as the [law firm], dealing with the legal and quasi-legal communities, should result in the Applicant's developing appropriate personal behaviour practices.