2016 LSBC 12
Decision issued: March 22, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a section 47 review concerning

APPLICANT 8

APPLICANT

DECISION OF THE REVIEW BOARD

Review date:	January 28, 2016
Review Board:	Gregory Petrisor, Chair Ralston S. Alexander, QC, Lawyer Glenys Blackadder, Public representative Craig Ferris, QC, Bencher Jamie Maclaren, Bencher June Preston, Public representative Sandra Weafer, Lawyer
Counsel for the Law Society:	Gerald Cuttler
Counsel for the Applicant:	Michael Tammen, QC

BACKGROUND

[1] This is a review pursuant to section 47 of the *Legal Profession Act* (the "Act") arising from a hearing panel's decision issued June 1, 2015 [2015 LSBC 23] (the "Decision"). The decision issued from a hearing panel in respect of the Applicant's application for enrolment as an articled student.

[2] The hearing panel approved the application by a two to one majority decision. The Credentials Committee requested a review of the decision. Section 47 of the Act requires a review of the panel decision "on the record." In this case, the "record"

consisted of approximately 670 pages of transcript of the testimony and argument before the hearing panel, the Applicant's application for enrolment as an articled student, approximately 800 pages of Common Books of Documents before the hearing panel and the decision of the hearing panel, both the majority and the minority dissenting opinions.

[3] The Applicant was legally trained in India and practised there from 1989 to 2001 when he became a tax inspector. He immigrated to Canada in 2004 and worked at various jobs until 2012 when he decided to renew his career in the legal profession. This step required him to validate his legal qualifications through the accreditation regime administered by the Federation of Law Societies of Canada. He wrote the four exams required of him and qualified to seek a legal position in Canada in January 2013.

[4] After a lengthy quest for articles he was offered a position to commence when an existing student was finished articles some months hence. He worked as a paralegal at the firm for the intervening months while awaiting the completion of his fellow student's articles.

[5] The Applicant was married for a second time in June 2011. The Applicant and his second wife had their only child, a daughter, on February 29, 2012.

MATERIAL FACTS

[6] Counsel for both parties before the Review Board acknowledged that the facts behind the difficulties facing the Applicant are not much in dispute. Where the hearing panel had difficulty with the facts as a result of conflicting evidence, it was able to determine that the differences in the evidence of the parties, though significant, were not determinative of the question before the panel.

[7] Following the birth of their daughter, the Applicant's mother came to live with the couple, in part it appears to assist with baby minding responsibilities since both parents had full time employment. The mother was a source of friction in the family.

[8] By the summer of 2013 it appears that difficulties in the marriage had reached a crisis point. In response to a seemingly benign inquiry about the plans for dinner, a dispute between the parties emerged. The Applicant responded with a shockingly profane text message to his wife, and that message was followed up with a further equally profane message in response to a bland reply to the first message.

[9] Shortly following this incident, a dispute about the Applicant's mother erupted. The Applicant threatened his wife with disclosure of allegedly questionable immigration related marriage practices of her family if she did not stop demeaning his mother's status in Canada as a "visitor."

[10] It appears that his wife did not respond appropriately to the threat, so the Applicant sent a letter of complaint to the Canadian High Commission in New Delhi alleging improper activity involving marriages and immigration by family members of his wife.

[11] The next event of significance is a physical altercation that occurred on the morning of August 15, 2013 when the Applicant returned from a jog that had commenced when he left the home in company with his mother. His mother was not with him when he returned, and his wife inquired of the whereabouts of the mother. This inquiry appeared to enrage the Applicant and the physical altercation ensued.

[12] The wife complained of the Applicant's choking her and "slamming her against the kitchen counter." The Applicant's version of events suggests that he was defending himself from a frontal assault by his wife. The Applicant's mother returned from her walk in the midst of these events, and she testified at the hearing to her version of the dispute. Her testimony differed in some respects from that of the Applicant. The wife of the Applicant visited a doctor on the following day complaining of pain in her neck and back.

[13] The hearing panel did not reconcile the conflicting stories on the alleged assault.

[14] Several days after this incident, the Applicant became aware that an uncle of his wife had called the Applicant's father in India to warn of serious consequences for the Applicant if the alleged mistreatment of the wife continued.

[15] When the Applicant learned of this call, he called the RCMP to report the threat against him by the uncle. The uncle advised the Applicant's wife of the RCMP intervention by the Applicant, and that apparently moved the wife to report the assault by the Applicant that had occurred a few days earlier. On August 21, 2013, the Applicant was charged with a domestic violence offence under section 266 of the *Criminal Code*. He provided a "no contact" undertaking and was released.

[16] The Applicant hired experienced criminal counsel, and the domestic violence charge was resolved in November by the Applicant providing a recognizance under section 810 of the *Criminal Code*. The recognizance required him to acknowledge that his wife had reasonable grounds to fear that he would cause her physical harm.

[17] The Applicant then embarked on a series of Provincial Court proceedings, including a small claims action, to recover damages for the alleged false accusation of the assault. He claimed that he had become distressed, started gambling and lost all of his savings at a casino, and had suffered defamation and loss of income.

[18] Many other Provincial Court applications relating to access and custody for the daughter were commenced by the Applicant. So many applications were mounted by the Applicant that he became the subject of an unusual order by the Provincial Court that no further proceedings be commenced without the prior approval of the Court. A decision in one of the Provincial Court matters was on reserve at the time of the Review hearing.

[19] The hearing panel considered evidence regarding the extent to which the Applicant had apologized to his wife for the events surrounding the alleged assault. The Applicant had testified that he did apologize to his wife. She denied that he had done so. The hearing panel found that, if an apology had been provided, it was not sincerely offered in view of the subsequent inconsistent behaviour of the Applicant, including the small claims action noted above.

DECISION OF THE HEARING PANEL

[20] The hearing panel decision of the majority contains the following paragraphs:

> [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.
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> [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.
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> [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.
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> [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.
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> [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.

[21] The dissenting decision (the "Dissent") adopted the facts as described by the majority but determined that the Applicant had not met the requirements of section 19(1) of the Act. The Dissent noted the opinion expressed in *Re: Schuchert*, 2001 CanLII 21449 as follows:

> 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*.
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> [emphasis added in the Dissent]

[22] The Dissent applied the reasoning from *Re Applicant 3*, 2010 LSBC 23, as to the need for an assessment of character "at the time of the hearing" in the following passage:

> … 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.

[23] The Dissent then analyzed the chronology of events before the hearing panel and determined that the Applicant had not met the onus upon him to demonstrate good character and repute and concluded:

> [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.

[24] The Dissent would have refused the Applicant's request for admission to articles.

STANDARD ON REVIEW

[25] It is now well settled that, where the review board is asked to review a decision of mixed fact and law, the correct standard to be applied on the review is reasonableness. That is, given that the hearing panel was required to resolve issues that included both a factual component and a legal component, did the hearing panel come to a conclusion that is "reasonable" in all of the circumstances. An example of a question that includes both fact and law is found where a hearing panel is asked to make determinations of credibility in respect of testimony given by a party to the hearing.

[26] By contrast, where a review board is looking to review a decision of a hearing panel where the question to be decided by the hearing panel is a question of law alone, then it is the law that the correct standard to be applied on review is "correctness." That is, in applying the law to the legal issue before the hearing panel did, the hearing panel come to the correct conclusion? An example of a question for a hearing panel that is made up entirely of legal issues, without any factual components to be considered, is what is the test for good character imposed by section 19 of the Act and at what point in the application process is that test to be met?

[27] This issue was recently examined by the Court of Appeal in the case of *Mohan v. Law Society of British Columbia*, 2013 BCCA 489. In this case, a review board reversed a decision of a hearing panel on the basis that the hearing panel had not made an express finding that the evidence of the applicant on a key point in issue was believed or found to be credible. The review board believed that, since the board found that the decision of the hearing panel was not correct, it was open to them to reverse the decision.

[28] The Court of Appeal began its analysis by noting that the Review Board appeared to adopt the correct test, namely correctness, except in circumstances where another test would apply where the hearing panel determined matters of fact based upon *viva voce* evidence. The Court then examined the equivalent process in Ontario where the review panel is called the appeal panel. In the case of *Law Society of Upper Canada v. Evans*, 2007 ONLSAP 5, the following comments of the Appeal Panel were referenced with approval by the Court of Appeal:

> [79] The jurisdiction of the Appeal Panel is set out in s. 49.35 of the *Law Society Act*. The Appeal Panel is a review tribunal and does not conduct a trial *de novo*. The standard of appellate review is correctness for questions of law, and reasonableness for questions of fact or of mixed fact and law (*Law Society of Upper Canada v. Crozier*, 2005 CanLII 38899, 203 OAC 176, [2005] OJ No. 4520 (Div. Ct.), para. 71, and *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 SCR 247, para. 42).
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> [80] Where findings of facts are based upon credibility assessments, as is the case with regard to Mr. Evans, it is of particular importance for the Appeal Panel to recognize the deference built into the standard of reasonableness. An Appeal Panel is not well-situated to make its own assessments of credibility, nor is it permitted to do so (*Law Society of Upper Canada v. Baksh,* 2006 ONLSAP 6 para. 13).

[29] The Court of Appeal noted in *Mohan* that similar considerations had been adopted in British Columbia. In the case of *Law Society of British Columbia v Berge*, 2007 LSBC 7, the following was noted on this subject:

> [21] The standard of review described above [correctness] is subject to one qualification, namely, that where issues of credibility are concerned, the Benchers should only interfere if the Hearing Panel made a clear and palpable error. See *Law Society of BC v. Hops,* 1999 LSBC 29 and *Law Society of BC v. Dobbin* 1999 LSBC 27.

[30] The Court further observed that the issue in *Mohan* was not whether the review board applied the correct standard of review but rather, whether the review board was correct in its determination that the hearing panel had not made a determination of the credibility of the applicant. If no finding of credibility was made by the hearing panel, then no deference was owed, but if a finding of credibility was made, then deference was owed, but not accorded, from the review board.

[31] The Court of Appeal reviewed all of the evidence considered and reported by the hearing panel in its reasons for judgment and found that a finding of credibility of the Applicant Mohan had been made by the hearing panel. With that determination made, the standard of review became "reasonableness" and not correctness. The review panel did not accord the hearing panel appropriate deference and, with that oversight, fell into error. The decision of the review panel was reversed.

[32] The issue of the correct standard to apply was considered recently by a review board in the case of the *Law Society of BC v. Perry*, 2015 LSBC 55. That board discussed a decision of the Court of Appeal in the case of *Kay v. Law Society of British Columbia*, 2015 BCCA 303, as follows:

> [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:
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> > 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.
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> [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*, 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).

[33] We will articulate our understanding of our task and the necessary standard of review that is applicable to the task we identify. For completeness, we offer alternative reasoning to the same conclusion.

POSITION OF THE PARTIES

[34] The Law Society argued that the majority decision of the hearing panel erred by failing to correctly apply the test in Section 19(1) in three ways:

(a) By failing to recognize that the section 19(1) test for character is the same for an application for admission as an articled student as it is for an application for admission as a member of the Law Society;

(b) By failing to recognize that a determination of good character and repute is a precondition to granting an application for enrolment as an articled student; and

(c) By failing to reject the Applicant's application on the basis that he had not overcome the onus upon him on the balance of probabilities to demonstrate that he met the requirements of section 19(1).

[35] The Law Society argued that the findings of the majority hearing panel as disclosed in its decision are inconsistent with a finding, on the balance of probabilities, that the Applicant had met the test for character described at section 19(1) of the Act.

[36] It argued that, with the decision read as a whole, there was no finding by the hearing panel that the Applicant was of good character and repute; to the contrary, the decision contains many references that specifically question the character of the Applicant.

[37] The Law Society urged that the correct standard to be applied by this Review Board was correctness because the decision under review was a pure question of law, namely did the hearing panel apply the correct test in its deliberation on the application.

[38] Counsel for the Applicant argued that the correct standard to be applied was reasonableness and suggested that the majority "reasonably decided the case as a whole, and arrived at a decision which was well within a range of acceptable outcomes."

[39] Counsel argued that a finding of good character was necessarily implied by the decision of the majority of the hearing panel when it decided to permit the Applicant to enrol as an articled student. The hearing panel majority was clearly mindful of the test for admission because it reproduced the test at the outset of its decision and referred to it in its reasoning.

[40] Counsel for the Applicant suggested that "the decision reached by the majority was a sensible one, which struck an appropriate balance among the interests of the applicant, the Law Society and the public." He argued that this was not a case where the hearing panel hoped "that the leopard would change its proverbial spots." Rather, this decision recognized that, not only was the test of character and fitness imprecise and difficult to measure, but that arriving at an answer to the fundamental question was as much art as science.

APPLICATION TO ADMIT ADDITIONAL EVIDENCE

[41] At the conclusion of his case, counsel for the Applicant sought leave to adduce additional evidence for consideration by the Review Board as provided in section 47(4) of the Act. This section permits a review on the record to consider additional evidence in "special circumstances." The section provides no guidance on the nature of the "special circumstances" contemplated and leaves review boards to make the determination on a case by case basis. The additional evidence sought to be introduced was in the nature of reports of the progress of the Applicant in his articles, which he commenced following the release of the decision of the majority.

[42] The Review Board recessed to consider the request and determined that, since the time at which the character of the Applicant was to be determined was the date of the hearing (February 2, 3, 4, and 5, 2015) there was no probative value in evidence dating from and after July 2015. It determined that the "special circumstances" required by section 47(4) of the Act had not been made out.

ISSUE FOR DETERMINATION

[43] We have determined that the issue for our determination is whether the hearing panel correctly applied the test for good character found at section 19(1) of the Act.

It is our finding that this question is one of law only and that, therefore, the standard of review is correctness.

[44] If our reasoning on this first issue is found to be in error, or if we have failed to properly identify this issue for consideration, we have also considered the decision of the majority of the hearing panel to determine, in all of the circumstances described, if the decision of the Majority is reasonable.

DISCUSSION

[45] The hearing panel noted (paragraph 61) that this was "an application to become enrolled as an articled student, *not called and admitted as a lawyer."* [emphasis added]. It went on, in the same paragraph "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 repute at that time."

[46] This language raises important considerations for the Review Board. The highlighted language suggests that the hearing panel believed that there is a difference between the application of the character test in section 19 for applicants to be enrolled as articled students and applicants to be called and admitted as lawyers. There is no other reasonable interpretation of this observation by the majority of the hearing panel than that it believed that there was a different standard for character for articled students than for applicants for call and admission to the bar.

[47] The belief of the hearing panel that there is a different standard for articling admission is further validated by the language that followed in the same paragraph. The hearing panel majority noted that the Credentials Committee would have a further consideration of the character and repute of this applicant and so any deficiencies in character apprehended by the hearing panel could be addressed by the Credentials Committee when the Applicant seeks call and admission to the bar.

[48] This analysis by the hearing panel is materially flawed, in several respects. First, it has been universally accepted that the test for character is identical for applicants regardless of the nature of their application. It matters not that the applicant may be seeking to enroll in the articling program or instead is seeking reinstatement following a disbarment and subsequent rehabilitation. Good character is good character.

[49] The second flaw in the analysis of the majority demonstrated by the language of paragraph 61 is the implicit suggestion that a further consideration by the Credentials Committee of the Applicant's suitability for admission is inevitable. It is in no way certain that a further consideration of this Applicant's suitability will

occur following this positive determination by the hearing panel. The structure of the Act is clear. An assessment of the character of the Applicant is made by the hearing panel and if that determination is positive, that is if the Applicant is found to be of good character and repute, as was necessarily implied by the decision of the majority in this case, there is no automatic further reference to anyone on the application for call and admission following satisfactory completion of the articling requirements.

[50] The Rules of the Law Society describe the process when the Executive Director receives an application for call and admission from a person seeking membership in the Law Society. Rule 2-83 provides:

> **Consideration of application for call and admission**
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> (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.
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> (2) On an application for call and admission, the Executive Director may
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> (a) authorize the call and admission of the applicant without conditions or limitations, or
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> (b) refer the application to the Credentials Committee.
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> (3) When the Executive Director refers an application to the Credentials Committee under subrule (2), the Committee may
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> (a) authorize the call and admission of the applicant without conditions or limitations,
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> (b) authorize the call and admission of the applicant with conditions or limitations on the applicant's practice, if the applicant consents in writing to those conditions or limitations, or
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> (c) order a hearing.

[51] This Rule clearly authorizes the Executive Director to further investigate the character of the Applicant by directing the application to the Credentials Committee, but there is, equally clearly, no obligation upon him to do so. It would be reasonable in all of the circumstances, if no further incidents of difficulty

emerged during the articling experience, for the Executive Director to simply approve the application for call and admission without further inquiry. This decision by the Executive Director could be supported on the basis that the "character" issues had been considered and approved by the hearing panel and that, therefore, in the absence of intervening events in articles, no further consideration is necessary.

[52] The next issue for consideration in the analysis of the decision of the majority of the hearing panel is the timing of its determination on character. The time at which the character of the Applicant must be considered is at the time of the hearing to investigate the question. This is not disputed by the Applicant. With agreement that the effective time for the determination is the time of the hearing, we examine the language of the majority decision to ensure that this timing was appreciated by the majority and also to ensure that the timing test was properly applied.

[53] The concluding sentence of paragraph 58 of the majority reasons requires analysis. It provides:

> 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.

[54] The suggestion that the outcome of the family litigation still in progress at the time of the hearing could have a bearing on the decision to admit the Applicant is a clear indication that the hearing panel regarded this application as a work in progress, with possible future consideration to be afforded when the decision of the Provincial Court is released. The postponement of the character determination to a future date is clearly not permitted by the law. The appropriate date for the determination of the character of the Applicant is the date of the hearing. With that principle accepted, it should be clear that the decision of the Provincial Court on a family dispute in progress at the time of the hearing can have no bearing on the question of the fitness of the Applicant for call and admission.

[55] We have discussed our concerns with the language of paragraph 61 and have noted our inability to accord that language any interpretation other than, to paraphrase, "this is only an application for admission as an articling student – someone else (the Credentials Committee) will need to be satisfied on the character issue when he seeks membership as a lawyer." This clearly suggests an expectation that the Applicant will have an opportunity to improve the "serious character flaws" identified by the hearing panel in the language reproduced above.

[56] The belief of the hearing panel that the character issues of the Applicant can improve during articles is echoed in the language of paragraph 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 *starting on the road to becoming a lawyer*. We do not believe that the behaviour discussed above will be exhibited *in his practice as an articled student*.
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> [emphasis added)

[57] The test for character in section 19(1) of the Act leaves no room for improvement during articles. A deficiency in character at the time of the hearing is dispositive of the application.

[58] The Review Board has determined that the majority of the hearing panel applied an incorrect test in its decision on the question of whether the Applicant had satisfied the burden upon him to demonstrate that he was of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court. With the application of the correct test, namely a determination of the character of the Applicant at the time of the hearing, this Review Board finds that the Applicant has not met the burden upon him to demonstrate that he is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court, and we therefore reverse the decision of the majority of the hearing panel and refuse the application of the Applicant to be admitted to the admission program.

ALTERNATIVE ANALYSIS

[59] As indicated above, the Review Board has considered an alternative analysis of the decision of the majority of the hearing panel. This alternate analysis is provided in the event the first analysis described herein is found to be in error. We intend to examine whether the decision of the majority can be supported by the evidence reported in the reasons.

[60] In undertaking this analysis we are mindful of the constraints imposed on review boards by the requirement to accord deference to the decision makers responsible for making the factual determinations. This obligation is clearly stated in many cases in language that brooks no argument. It is the exception to the "correctness" standard and where matters of mixed fact and law are involved, the standard of review is reasonableness.

[61] Review boards are also restricted in the scope of the permitted interference with the decisions of the hearing panel that made the factual determinations. We note here our confirmation that the determination of whether a particular candidate is of good character and repute and fit to become a barrister and a solicitor of the Supreme Court, is a matter of mixed fact and law and that determination by a hearing panel, if achieved by the application of the appropriate test, should only be interfered with if the review board finds the decision to be unreasonable.

[62] The work of a review board on a review from a decision of a hearing panel was fully canvassed in the *Mohan* decision, which relied upon a decision from a Law Society of Upper Canada Appeal Panel (*Kazman v. The Law Society of Upper Canada*, 2008 ONLSAP 7) as follows:

> [38] Thus, the Appeal Panel's functions consist in assessing whether a hearing panel's reasons and decisions are correct or reasonable under the applicable standard of review, and putting right, where warranted, any matters that fail under that assessment. The principles are as follows:
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> i. For questions of statutory and common law including the *Law Society Act* and other statutes and common law closely connected to its functions, constitutional authority, legislative jurisdiction, procedural fairness, natural justice, bias including reasonable apprehension of bias, and Law Society policy, the standard of review is correctness. The Appeal Panel owes little or no deference to a hearing panel on such questions. The Appeal Panel may interfere with the reasons and decisions of a hearing panel on such questions if the Appeal Panel believes that the hearing panel decided them incorrectly.
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> ii. For questions of fact, credibility, mixed fact and law, and penalty, the standard of review is reasonableness. The Appeal Panel owes higher deference to a hearing panel on such questions. The Appeal Panel may interfere with the reasons and decisions of a hearing panel on such questions only if the Appeal Panel believes that the hearing panel decided them unreasonably.
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> iii. The standard of review for the reasons and decisions of a hearing panel *as a whole* is one of reasonableness. If the Appeal Panel finds that a hearing panel incorrectly decided an issue that the hearing panel was required to decide correctly but nevertheless reasonably decided the case as a whole, the Appeal Panel should

correct the error, but otherwise not interfere with the acceptable outcome.

iv. In performing its functions, the Appeal Panel shall not re-try the dispute at first instance, but shall conduct a somewhat probing examination of the reasons of the hearing panel to determine whether those reasons, taken as a whole, are reasonable, transparent, intelligible, tenable, defensible in relation to the law and the facts, and supportive of the hearing panel's decisions within a range of acceptable outcomes. If they are, the Appeal Panel shall not interfere with them even if the members of the Appeal Panel suspect that they might have preferred a different acceptable outcome.

v. The Appeal Panel's functions may be expanded only in the not usual circumstances where fresh evidence is permitted before the Appeal Panel, and then only to the extent that the fresh evidence bears upon the case.

[63] In this alternative analysis, we have sought to determine whether the majority reasons, taken as a whole, provide a reasonable basis for concluding that the Applicant has met the burden upon him to demonstrate that he is a person of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court. Could a hearing panel, considering all of the evidence provided, reasonably determine that the Applicant was a person of good character and repute and was fit to become a barrister and a solicitor of the Supreme Court?

[64] As directed by the Court of Appeal (above), we now undertake "a somewhat probing examination of the reasons of the hearing panel to determine whether those reasons, taken as a whole, are reasonable, transparent, intelligible, tenable, defensible in relation to the law and the facts, and supportive of the hearing panel's decisions within a range of acceptable outcomes."

[65] The reasons of the majority make numerous references to the character of the Applicant. We summarize those references for completeness of our examination:

(a) on the position of the Applicant in respect of his difficult stance on the issue of service of Supreme Court proceedings in the divorce – *"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.*" (Reasons – para. 29);

(b) on the question of the extent to which the Applicant was candid in his testimony – "*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."* (Reasons – para. 49);

(c) further commentary on the nature and extent of the apology offered by the Applicant to his wife regarding the physical incident – "*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.*" (Reasons – para. 52);

(d) still further commentary on the nature and extent of the apology offered by the Applicant to his wife regarding the physical incident –"*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.*" (Reasons – para. 53);

(e) general commentary on the behaviour of the Applicant throughout the events in issue – "*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.*" (Reasons – para. 54);

(f) character generally – "*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." (Reasons – para. 58);

(g) character flaws – "*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.*" (Reasons – para. 59).

[66] Against this array of negative commentary on the behaviour of the Applicant, the majority had a single paragraph of praise for the Applicant being that reproduced as [60] within paragraph 20 of these reasons.

[67] The cumulative effect of the commentary on the character of the Applicant overwhelms the single positive notation. There may even be debate as to whether a positive employment record, by itself, is any indication of underlying character in the face of the substantial commentary to the contrary found in the reasons. That the Applicant is a visible demonstration of the positive impact that perseverance and hard work can have on the successful transition of an immigrant to Canada, is also by itself no indication of good character. That single paragraph is the only "good" thing that the hearing panel had to say of the character of the Applicant.

[68] We have determined that the evidence is compelling. The determination that the majority of the hearing panel made that the Applicant is of good character is not reasonable. No other reading of the majority decision is possible. We have attempted to accord deference to the hearing panel, even though it appears that the majority failed to accord their own findings the deference those findings deserved. A plain reading of the majority reasons as a whole leads to the conclusion that a finding that the Applicant is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court is not reasonable and accordingly must be reversed.

CONCLUSION

[69] We have concluded, for the reasons indicated above, that the majority of the hearing panel misapplied the test for good character and repute described in Section 19(1) of the Act. We must accordingly reverse the decision of the majority of the

hearing panel and refuse the application of the Applicant for enrolment as an articled student.

[70] In the alternative, and after our review of all of the circumstances described in the decision of the hearing panel, and after according all appropriate deference to the hearing panel as required by law, we have determined that the decision of the majority when they find that the Applicant has satisfied the onus upon him to demonstrate that he possesses good character and repute and is fit become a barrister and a solicitor of the Supreme Court is not reasonable. With that error identified, we reverse the decision of the majority of the hearing panel and refuse the application of the Applicant for enrolment as an articled student.

[71] We have not been advised of the position of the parties on costs, and if agreement cannot be reached, we will consider written submissions on the issue.