

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

VANESSA WINN

APPLICANT

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

Hearing dates: July 27, 28, 2016

Panel: Tony Wilson, Chair
Lois Serwa, Public representative
Donald Silversides, QC, Lawyer

Counsel for the Law Society: Gerald Cuttler
Counsel for the Applicant: Craig Dennis, QC and
Jaclyn Vanstone, articulated student

BACKGROUND

[1] The Applicant, Ms. Winn, is currently 47 years old and was born in St. John's, Newfoundland. After graduating from high school, she initially studied at Memorial University of Newfoundland, following which she travelled and taught English at a middle school in Beijing. After returning to Canada, she attended University of British Columbia where she obtained a Bachelor of Arts degree in 1993.

[2] In 1996, Ms. Winn moved to Hong Kong where she initially worked for a communications and design firm and then, in 1998, began working as a clerk at a

law firm and subsequently as a paralegal at two different law firms until 2008 when she returned to North America.

- [3] From 2008 until 2011, Ms. Winn attended law school at Golden Gate University in San Francisco where she obtained a Juris Doctor degree in law. She then took the California State Bar exam but failed to pass it.
- [4] During her first year at law school, Ms. Winn failed to follow instructions regarding the entry of identifying information on her exam envelope label at the commencement of an examination and kept her materials out and continued writing on them after it was announced the examination was completed and students were instructed to stop working (the “Academic Misconduct Allegation”).
- [5] Following her graduation from law school, Ms. Winn worked at the Union Bank in San Francisco. In August, 2013, Ms. Winn returned to British Columbia where she has since resided. For approximately three months in early 2015, Ms. Winn worked as a legal assistant for a Vancouver law firm (the “Vancouver Firm”).
- [6] In June, 2015, Ms. Winn completed an application to the Law Society to be enrolled in the Law Society Admission Program (the “Enrolment Application”) and sent it to the Law Society. The Enrolment Application included a statutory declaration made by Ms. Winn in which she solemnly declared that the information contained in the Enrolment Application was true, accurate and complete. In the Enrolment Application, Ms. Winn disclosed the Academic Misconduct Allegation. As a result of this disclosure, the Law Society requested additional information from Ms. Winn. After reviewing the Enrolment Application and the additional information that had been obtained, the Credentials Committee ordered that a hearing be held with respect to Ms. Winn’s application, and this Panel was constituted to conduct that hearing.
- [7] The Law Society delivered a notice dated May 24, 2016 to Ms. Winn pursuant to Rule 2-91 of the Law Society Rules informing her that the circumstances to be inquired into at this hearing were:
1. The allegation of academic misconduct against Ms. Winn regarding her fall 2007 Contracts exam while attending Golden Gate University (the “Academic Misconduct Allegation”);
 2. The findings of Dean S, the Associate Dean for Student Services regarding the Academic Misconduct Allegation, as set forth in the letter dated January 29, 2009 from Dean S to Ms. Winn;

3. Whether the information provided to the Law Society concerning the Academic Misconduct Allegation in the Enrolment Application (i.e. Part D, Question 4) is true, accurate and complete;
4. The civil judgment against Ms. Winn for unpaid rent in favour of St. Paul's Church in Hong Kong;
5. Whether the "No" answer provided to the Law Society concerning the question "Is there, at the present time, a civil action or civil judgment outstanding against you?" (i.e. Part E, Question 4) in the Enrolment Application is true, accurate and complete;
6. Whether the information provided to the Law Society in Schedule 1 of the Enrolment Application, which required Ms. Winn to list "all full-time or part-time employment since [Ms. Winn] graduated from high school or for the immediately preceding 10 years, whichever is lesser," is true, accurate and complete;
7. Whether the "No" answer provided to the Law Society concerning the question "Have you ever been discharged, suspended or asked to resign from any employment?" (i.e. Part E, Question 6) in the Enrolment Application is true, accurate and complete;
8. Whether the reason provided to the Law Society concerning the reason for cessation of Ms. Winn's employment with the [Vancouver Firm] in Schedule 1 of the Enrolment Application is true, accurate and complete.

RELEVANT LEGISLATION AND RULES

- [8] The criteria for reinstatement and how the benchers of the Law Society must deal with the application are set out in subsections 19(1) and (2) of the *Legal Profession Act* (the "Act"), as follows:

Applications for enrolment, call and admission, or reinstatement

- 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.
- (2) On receiving an application for enrolment, call and admission or reinstatement, the benchers may
- (a) grant the application,

- (b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or
- (c) order a hearing.

[9] The Panel's obligation after conducting a credentials hearing is set out in section 22(1) and (3) of the Act, which provides:

Credentials hearings

22 (1) This section applies to a hearing ordered under section 19 (2) (c).

...

- (3) Following a hearing, the panel must do one of the following:
 - (a) grant the application;
 - (b) grant the application subject to conditions or limitations that the panel considers appropriate;
 - (c) reject the application.

[10] The onus and burden of proof at the credentials hearing are set out in Rule 2-100(1), which provides:

Onus and burden of proof

2-100 (1) At a hearing under this division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19 (1) and this division.

EVIDENCE AND FACTS

[11] Ms. Winn testified at the hearing of this matter. As well, counsel for the Law Society and counsel for Ms. Winn jointly submitted a common book of documents, which included the Enrolment Application and letters of reference attesting to Ms. Winn's good character.

Moral character determination by California State Bar

[12] It was a requirement of the California State Bar that a candidate for admission successfully pass the California State Bar examinations and apply for and obtain a determination of one's moral character by the State Bar. Although Ms. Winn failed her examinations, she did apply in writing for the determination of moral character (the "Moral Character Determination Application") and, as part of that application, she provided information regarding her personal circumstances, her employment history and her academic records. The Moral Character Determination Application

contained several questions and requirements to provide information that were similar to many of those contained in the Enrolment Application.

- [13] Based on her Moral Character Determination Application and on additional information she submitted, the State Bar made a positive determination of Ms. Winn's moral character on April 17, 2013.
- [14] As part of its investigation, the Law Society asked Ms. Winn to authorize the California State Bar to provide a copy of the Moral Character Determination Application to the Law Society and, after receiving Ms. Winn's consent, the State Bar sent a copy of that application to the Law Society, and that application was included in the evidence placed before this Panel.

Academic misconduct allegation

- [15] Question number 4 of Part D of the Enrolment Application contained the following question followed by "yes" and "no" boxes to be selected by the applicant:

While attending at a post-secondary institution, have allegations of misconduct, including academic misconduct, ever been made against you or have you ever been suspended, required to withdraw, expelled or penalized by a post-secondary institution for misconduct?

If "yes", please provide details of the allegations, suspension, expulsion or penalty imposed upon you.

- [16] Ms. Winn ticked the "yes" box and provided the following detail in response to question number 4:

During my first term of law school I handwrote (rather than typed) all my first set of exams in Dec. 2008. Another student alleged that I was still writing my answer after the proctor had called time for one of my exams. The Associate Dean of Law Student Services, [Dean S] spoke with me and I told her that I was writing my exam number and other information on the covers of my exam booklets and honestly believed it was alright to do so. After a full investigation, in which the Associate Dean interviewed the proctor and other students present during the same exam I was cleared of such "cheating" or "academic dishonesty" allegation as the Associate Dean accepted that I was just writing my exam number/info on the booklets and not trying to gain a material advantage or deliberately trying to circumvent any instructions or rules.

[17] By way of a letter dated July 7, 2015, the Law Society asked Ms. Winn to provide supporting documentation regarding her affirmative answer to question 4 of Part D of the Enrolment Application, such as correspondence from the university. Ms. Winn responded to this request in a letter dated July 8, 2015 to the Law Society with which she enclosed a set of documents relating to the investigation by Dean S in January, 2009, and Ms. Winn stated the following regarding the Academic Misconduct Allegation in her letter:

To avoid confusion, please be informed that the original allegation by a fellow student was that I was still writing my exam answer after time was called by the proctor. This was the specific allegation I was cleared of. Penalty for such misconduct would have been a failing grade in that subject — which I did not receive in the end. My letter dated January 20, 2009 was requested by [Dean S] after she interviewed me in person and the letter dated January 29, 2009 is [Dean S's] letter concluding her investigation into the matter.

[emphasis in original]

[18] With her July 8, 2015 letter, Ms. Winn sent the Law Society a copy of a letter dated January 29, 2009 addressed to her from Dean S, which set out Dean S's findings regarding the Academic Misconduct Allegation and the requirements imposed by her upon Ms. Winn as a result of those findings. The relevant portions of that letter are as follows:

I have completed my investigation into the informal complaint filed against you regarding your fall 2008 Contracts I exam. In the course of my investigation, you acknowledged and admitted that you did keep your exam materials out and write your exam number, professor's name and a couple of non-sentence, non-word markings (such as punctuation) on your exam materials after the proctor stated that the exam had ended and instructed all students to stop working and put away their exam materials. Thus, I find that you violated two Standards of Student Conduct described in the *Student Handbook*:

1. Section B, Definition of "Cheating," 6.d: "Disobeying exam instructions and procedures, including those described in the ... handbook and those provided orally or in writing by the proctor or instructor."
2. Section C.17.: "Failure to comply with directions of School of Law ... employees. ..."

I also find that you violated the Examination Procedures described in the Administrative Rules and Procedures section of the *Student Handbook* (pp. 72-73), which state:

“Students should write their exam numbers on the exam envelope label as soon as the exam begins. Exam number, course, instructor, and semester should be written on all blue books and multiple choice answer sheets, if applicable. A student should write his or her exam number on each page of the test question sheet ... **No extra time will be given at the end of the exam to write the exam number on any of the exam materials** ... Students must notify the exam proctor immediately if there are any problem. [sic]”

“h. Conclusion of Exams

Students must write their exam number, course name, and instructor on all blue book covers before the end of the exam is announced. When the exam proctor calls “time,” students must stop writing or typing, close their blue books or shut down computer, and put all exam material (questions, scratch paper, blue books, and any other exam materials) back in the exam envelope.”

Your failure to comply with the clear and specific exam instructions provided in the *Student Handbook*, in the written instructions for the exam, and by the proctors indicates a lack of respect for rules and a lack of integrity and professionalism. These behaviors are unacceptable, disruptive, and disrespectful.

...

In consequence for violating the above stated rules and standards of professionalism, you will be required to read the Exam Procedures, the Standards of Student Conduct, and any other sections of the *Student Handbook* that you have not read or do not recall. You will be required to complete this assignment by Friday, February 6, 2009, and will be required to follow up with me promptly to ask any questions you may have about the Handbook. At this time, I have determined to not reduce your grade, but instead am agreeing to your proposal to consider including your participation in educating and training incoming students on cheating, honesty, exam rules and other administrative responsibilities. You and I will communicate over the summer to determine if and how

your experience can best be communicated to incoming students in a meaningful and impactful way for them.

I will keep a copy of this letter in my office. At this point, I will not put anything regarding this complaint or its resolution in your Golden Gate University student file. However, if you are ever asked by a licensing authority, educational institution, or any other such entity if you have been disciplined by an educational institution, you should answer that question affirmatively and provide an explanation of this complaint and resolution.

[emphasis in the original]

[19] We find that Ms. Winn satisfied the requirement imposed by Dean S in her January 29, 2009 letter before the deadline for doing so, that no further action was taken against Ms. Winn as a result of the academic misconduct allegation and that she received a passing grade on the 2008 contracts examination in respect of which the allegation was made.

[20] Section 13.1 of the Moral Character Determination Application completed by Ms. Winn contained the following question, which was very similar to question 4 of Part D of the Enrolment Application:

Have you ever BEEN FOUND TO HAVE VIOLATED A COLLEGE OR UNIVERSITY HONOR CODE OR been dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, or requested to resign or allowed to resign in lieu of discipline by any college or university (including law school), or otherwise subjected to discipline by any such institution or requested or advised by any such institution to discontinue your studies therein?

[21] Ms. Winn answered question 13.1 in the affirmative and completed and included in the application a Form 9 in which she provided the following additional information with respect to her affirmative answer:

Fall 2008 was my first semester of law school at Golden Gate University School of Law (GGUSOL). After the end of my very first set of final exams in December 2008, a student made an informal complaint against me to Student Services. The student alleged she saw me writing in my “Bluebooks” of my contracts exam after the proctor called time. Dean [S], the Dean of Student Services, conducted an informal investigation which included interviewing me, the proctor, and other students. We were asked to sign confidentiality agreements as well. I admitted to Dean [S] that the

proctor said “time, put your things aside” and that I did this, put my exam materials on a pile on top of the envelope as I had done with my other exams before this. I also admitted to writing my exam number and some other required information on the cover of a Bluebook when I noticed I had not filled it in, and to correcting a couple of punctuation errors I spotted. I was not trying to cheat, disobey or gain a material advantage and told Dean [S] that I did not realize I was doing anything wrong. Also, I admitted to Dean [S] that I had not read the Student Handbook, nor was I aware of the “post-time” exam procedures in there that she pointed out. I also told Dean [S] that in my other exams I had placed my exam materials (I handwrote all my exams the first semester) *on top of* the envelope as I had seen other students do, and that none of the proctors had corrected me or any other student for doing this. Because of this the Dean of Student Services, Dean [S] asked me to read and copy out the relevant Handbook provision to ensure I knew it from then on. The investigation was completed in late January 2009 with the *result that no formal scholastic discipline or punishment* was charged or filed against me nor was anything formally filed in my student record by GGUSOL. My grade was unaffected for that course as well.

Please contact Dean [S] for your further information.

[emphasis on the original]

- [22] In a letter dated July 28, 2015, the Law Society informed Ms. Winn that it appeared she had not provided a complete explanation in the Enrolment Application of the Academic Misconduct Allegation and that she had not described the resolution of it. The Law Society asked her to explain why she did not disclose in the Enrolment Application that she was alleged to have violated, and was found guilty of violating, sections of the Standards of Student Conduct and the Examination Procedures. Ms. Winn responded to this letter in a letter dated July 31, 2015 to the Law Society in which she acknowledged that she had answered question 4 of Part D regarding academic misconduct too narrowly and subjectively. She stated she had assumed that the Law Society would obtain official details from Dean S and Golden Gate Law School. She explained that this was the process that had been followed when she disclosed the Academic Misconduct Allegation in the Moral Character Determination Application. In that letter she said that, when she completed the Enrolment Application, she had not been able to locate the January 29, 2009 letter that Dean S wrote to her. She also said the following:

I could not remember the specifics of Dean [S's] resolution letter other than it being clear to me after the interviews that Dean [S] had pointed out that penalty for academic misconduct violation was a failing grade and I knew I did not get a failing grade for that subject in the end. I could not remember the particulars of the resolution or resolution letter other than that I did not get a failing grade and thought it better to state what I did know and let the official documents supply the details of the resolution. This was my thinking at the time as I expected that the process would be similar to my experience with the California State Bar where I checked the "yes" box in a very similar misconduct question, provided a brief explanation, and was subsequently contacted and notified by the review officer that he would contact my law school on this matter. In that case there was nothing requested from me other than directing him to contact Dean [S], rather than the Registrar's Office, for the supporting documentation he sought.

- [23] At the hearing of this matter, Ms. Winn was examined in chief by her own counsel and questioned extensively by counsel for the Law Society and by members of this Panel as to why she had not provided more details in her response to question number 4 of Part D of the Enrolment Application or disclosed that Dean S had made findings that she had violated two standards of Student Conduct and had violated the Administrative Rules and Procedure sections of the Student Handbook.
- [24] Ms. Winn testified that, in hindsight, she should have provided more detail of the outcome of the investigation by Dean S. She testified that she had made a mistake by parsing question number 4 and that she thought that the requirements imposed by Dean S in resolving the matter were an exoneration of her actions in continuing to write on her examination booklet after the time had expired even though she had committed technical breaches of the rules relating to examinations.
- [25] We note that Ms. Winn's answer to question number 4 of Part D in her Enrolment Application was similar to and consistent with the answer and information she gave with respect to the similar question in section 13.1 of the Moral Character Determination Application.
- [26] When questioned about her response to question number 4 of Part D of the Enrolment Application, Ms. Winn cooperated fully with the Law Society and provided all of the information available to her.
- [27] We find that, in her testimony at this hearing, Ms. Winn was fully responsive and honest with respect to the Academic Misconduct Allegation and her response to the question in the Enrolment Application regarding academic misconduct.

- [28] Ms. Winn testified over a period of two days, and we had ample opportunity to assess her creditability. We find that, when Ms. Winn completed question number 4 of Part D of the Enrolment Application, she honestly believed she was providing true, accurate and sufficiently complete information in her response to question number 4.
- [29] We therefore find that the information provided to the Law Society in her response to question number 4 of Part D of the Enrolment Application does not in any way indicate bad character.
- [30] With respect to the Academic Misconduct Allegation itself, we find that Ms. Winn failed to follow the examination procedures in that she did not write out the identification information on her examination papers at the beginning of the examination as required by those procedures. We also find that Ms. Winn violated the Standards of Student Conduct and the Examination Procedures by continuing to write after the exam proctor had called time, but that this writing consisted only of recording the examination number and professor's name and adding punctuation which did not materially affect any answer or information contained in her examination booklet. We accept Ms. Winn's explanation that she had not read the Student Handbook and was therefore unaware that she could not add this information or punctuation after time had been called.
- [31] We find that these violations of the standards and procedures were technical and minor in nature and, although they should not have been committed, they do not constitute evidence of present bad character.
- [32] Indeed, we believe it is significant that Dean S allowed Ms. Winn a passing grade in the examination notwithstanding the breaches of the standards and procedures and that she decided not to record her findings or the resolution resulting from those findings in Ms. Winn's academic record. We find that Dean S's findings and her imposition of the requirement that Ms. Winn read all portions of the Student Handbook with which she was not familiar by February 6, 2009 are not evidence of bad character.

Judgment by St. Paul's Church

- [33] Ms. Winn testified that, in 1998, while living in Hong Kong, she and a roommate rented an apartment in a residential complex owned by St. Paul's Church. Her evidence was that, after a succession of roommates, she became the sole tenant of the apartment at a time when she was unemployed and she defaulted in payment of the rent payable. St. Paul's commenced legal action against her for the arrears of rent and obtained a default judgment against her in 2003. There was no evidence as

to what the amount of the judgment was, but the evidence at the hearing of this matter included a letter dated December 24, 2007, written by the solicitors for St. Paul's Church to Ms. Winn, that referred to correspondence with Ms. Winn in 2005 and 2006, stated that there was a balance then owing on the judgment of HK\$100,000 and referred to Ms. Winn's failure to pay 16 overdue instalments. Ms. Winn testified that the Hong Kong dollar is pegged to the US dollar at a fixed rate of 7.78 Hong Kong dollars for each US dollar. We accept this evidence and, based on it, the unpaid balance of the judgment obtained by St. Paul's Church on December 24, 2007 would have been equal to approximately US\$10,604.

- [34] By way of a letter dated January 8, 2008, Ms. Winn wrote to the solicitors for St. Paul's Church confirming she had made an oral proposal earlier that day to pay the HK\$100,000 balance to St. Paul's Church by 27 monthly instalments of HK\$3,500 each plus a final payment of HK\$5,500.
- [35] By way of a letter dated June 5, 2008 St. Paul's Church informed their solicitors that the balance owed by Ms. Winn for the judgment was HK\$82,500.
- [36] In 2008 Ms. Winn decided to leave Hong Kong permanently and, before she left, wrote the following letter dated June 29, 2008 to the solicitors for St. Paul's Church regarding her departure and her payment of the balance of the judgment:

I regret to inform you that due to personal matters I am leaving Hong Kong indefinitely as of June 30, 2008 to return to North America, and that I am unable to meet my monthly repayments to St. Paul's Church henceforth until the near future due to a change in my personal circumstances.

I will repay my balance owed to St. Paul's Church in the future and I have no intention of evading my debt to them.

At this point I cannot give a concrete time of when I will repay my balance to St. Paul's Church. But I promise in good faith that I will eventually pay every dollar I owe to them.

In the meantime, I can be reached by email at [email address], as I no longer have a residential or forwarding address in Hong Kong.

- [37] Ms. Winn testified that, after she returned to British Columbia, she sent an email to St. Paul's Church giving them a Canadian email address and the street address and telephone number of her mother. Ms. Winn testified that the address for her

mother that she sent St. Paul's Church is still her mother's address, and we accept this evidence.

[38] After leaving Hong Kong in June 2008 Ms. Winn made no further payments to St. Paul's Church for the judgment and did not communicate, or attempt to communicate, with St. Paul's Church or their solicitor until February 2013.

[39] In January 2012 Ms. Winn completed and sent the Moral Character Determination Application to the State Bar of California. The civil actions and administrative proceedings portion of that application contained the following questions:

11.2 Have you or a company of which you were the officer, director, or majority shareholder ever been a party to or are you presently a party to any civil action or administrative proceeding?

11.3 Have any judgments been filed against you?

[40] Ms. Winn answered questions 11.2 and 11.3 in the affirmative. She also provided a more detailed response in Form 1 attached to the application. In that form she disclosed that the judgment had not been satisfied and stated that, when she left Hong Kong, she had informed St. Paul's Church in a letter to their solicitor that she did not then have enough money to pay them the balance and that she was leaving Hong Kong permanently but would repay them the remainder in the future when she was able to. She did not, however, specify the amount still owing.

[41] On February 12, 2013 Ms. Winn received a telephone call from a representative of the California State Bar requesting more information regarding the St. Paul's judgment.

[42] As a result of this request Ms. Winn wrote and mailed a letter to St. Paul's Church on February 12, 2013 identifying herself as a former tenant against whom they had obtained a court judgment for unpaid rent approximately ten years before and provided the address of the apartment that she had rented. In her letter she said she needed to obtain information regarding the balance of money she still owed on the judgment, and she provided them with her then current address in San Francisco.

[43] On or about March 10, 2013 Ms. Winn wrote another letter to St. Paul's Church and again requested a statement of the balance owing on the judgment.

[44] In addition to the two letters she sent them in February and March of 2013, Ms. Winn telephoned St. Paul's Church on five or six occasions during March 2013. None of her telephone calls were answered, and she was unable to leave a message because there was no answering machine or voicemail option available.

- [45] Ms. Winn wrote a letter dated April 5, 2013 to the California State Bar informing them of the two letters she had sent and the telephone calls she had made and stating that she had not received any response from St. Paul's Church.
- [46] Ms. Winn testified that, after she left Hong Kong, she had received no communication from St. Paul's Church until the fall of 2015 when she was able to speak with a representative of St. Paul's Church who informed her that they would look into the matter. In response to a follow-up email sent by Ms. Winn to St. Paul's Church she was informed by way of an email sent to her by the Church on April 8, 2016 that only five payments of HK\$3,500 of those proposed by Ms. Winn in January 2008 had been received and that Ms. Winn still owed St. Paul's Church HK\$82,500 or more, including interest and legal costs.
- [47] Question number 4 of part E of the Enrolment Application made by Ms. Winn to the Law Society on June 11, 2015 was:
- Is there, at the present time, a civil action or a civil judgment outstanding against you?
- [48] In response to question number 4 of Part E, Ms. Winn checked the "No" box.
- [49] When she was asked why she had responded in the negative to the Enrolment Application question regarding whether any judgment was outstanding against her, Ms. Winn testified that, when she completed the Enrolment Application, she was aware that St. Paul's Church had obtained a judgment but that she did not consider it to be outstanding. She said she considered that, in order for the judgment to be outstanding, St. Paul's would have wanted to receive payment of the judgment and she concluded that they did not, since they failed to respond to the two letters she sent them in 2013 and because they had made no attempt to contact her after she left Hong Kong in 2008, even though the address she had given them to contact her was still valid. Ms. Winn also testified that, when she completed the Enrolment Application, any claim for payment of the judgment by St. Paul's had become statute-barred. Ms. Winn, who had several years of experience working at law firms in Hong Kong, testified that the statute of limitations applicable to St. Paul's judgment was ten years.
- [50] We heard no evidence that the limitation period for collecting monetary judgments in Hong Kong is not ten years, and it was not suggested to Ms. Winn in her cross-examination that a ten-year limitation period does not apply to the judgment obtained by St. Paul's Church. We accept Ms. Winn's evidence that the limitation period that applied to the St. Paul's judgment was ten years. We therefore find

that, at the time Ms. Winn completed the Enrolment Application, any claim by St. Paul's Church arising out its judgment would have been statute-barred.

- [51] We note that the questions in the Moral Character Determination Application relating to claims and judgments contained significantly different wording from question 4 of part E of the Enrolment Application. The Moral Character Determination Application asked whether the applicant had “*ever* been a party to ... any civil action” and whether “any judgments had been filed against” the applicant. By contrast, the relevant question in the Enrolment Application was whether a civil action was “outstanding” against the applicant.
- [52] We accept Ms. Winn's testimony with respect to both the communications, and the lack of communications, between her and St. Paul's Church regarding their judgment and regarding the limitation period applicable to judgments in Hong Kong. We therefore find that, at the time Ms. Winn completed the Enrolment Application, the judgment obtained by St. Paul's Church was not outstanding against her.
- [53] Ms. Winn expressed regret at the hearing that she had parsed question 4 of Part E of the Enrolment Application too closely and that she had interpreted the phrasing of the question too narrowly. She testified that, if she were asked the same question today, she would disclose the judgment even though it might not be outstanding.
- [54] Ms. Winn testified she had not made any further payments on account of the judgment and that the amount stated by St. Paul's Church in April 2016 was still unpaid. She said that, if she had the money now, she would pay the balance of the judgment to St. Paul's Church and that, if she does have sufficient money in the future, she will do so.
- [55] In our view, questions 11.2 and 11.3 of the Moral Character Determination Application were such that it was necessary for Ms. Winn to answer them in the affirmative, which she did. We also find that the wording of question 4 part E of the Enrolment Application was such that Ms. Winn's answer of “No” to that question was true, accurate and complete.
- [56] We therefore find that Ms. Winn's answer to question 4 part E of the Enrolment Application does not constitute evidence of bad character.

Employment information

[57] The Moral Character Determination Application contained a section 4.2 that required the applicant to list all of her employment that was law-related since her 18th birthday and all of her employment, businesses, occupations and professions that were not law-related that lasted longer than six months since her 18th birthday. With respect to law-related employment the application form contained the following statement in boldface font:

All legal internships, externships, clerkships and law clerk positions, whether voluntary or paid positions, regardless of the length of time must be listed.

[58] When she completed her Moral Character Determination Application, Ms. Winn listed her law-related employment with a law firm in San Francisco (the “San Francisco firm”) as a law clerk, which commenced in January 2011. She also listed her law-related employment by a legal services office in northern California (the “legal services office”) as a legal intern from May 2009 to July 2009.

[59] The Enrolment Application also required an applicant to list their previous employment in Schedule 1 to the application. The instructions for completion of that schedule were as follows:

List all full-time or part-time employment since you graduated from high school or for the immediately preceding 10 years, whichever is lesser. Start with the most recent and account for the total applicable period, including time at school and unemployment periods if applicable.

[60] Unlike the Moral Character Determination Application, the Enrolment Application did not stipulate that voluntary or unpaid positions be listed.

[61] Ms. Winn did not include the period of time she acted as a law clerk at the San Francisco firm in 2011 or her position as a legal intern with the legal services office from May 2009 to July 2009 in the Enrolment Application. Instead, she accounted for the period of time from August 2008 to December 2011 in schedule 1 of the Enrolment Application as “Unemployed – At school (Golden Gate University, School of Law).”

[62] After receiving a copy of the Moral Character Determination Application, the Law Society wrote a letter dated September 2, 2015 to Ms. Winn asking her to explain why her employment at the San Francisco firm and as a summer intern by the legal

services office was not included in her response to Schedule 1 of the Enrolment Application.

[63] In a letter dated September 14, 2015 to the Law Society, Ms. Winn provided the following explanation for why she had not included her position as a law clerk with the San Francisco firm or her internship with the legal services office in Schedule 1 of the Enrolment Application:

i) San Francisco firm:

... However, because it was a law-related position, even though I was never paid by [the San Francisco firm] and it was of a voluntary internship nature, I was required to include it [in the Moral Character Determination Application]. I did not include my time as a law clerk with [the San Francisco firm] in my Admission application to BC Law Society (“LSBC Application”) because I considered it to be volunteer work and not employment.

ii) Legal services office:

This was an internship that I undertook while I was a law student. It was an unpaid internship and again, like my work at the [San Francisco firm], it was law-related. I did not include it in my LSBC Application because I considered it to be volunteer work and not employment.

[64] At the hearing of this matter, Ms. Winn testified she did not include the time she spent as a law clerk with the San Francisco firm because she had an unpaid position and she had received no compensation for what she described as an internship. She said she interpreted the instructions for Schedule 1 to the Enrolment Application to mean that she should only list full or part-time employment, and she did not consider her unpaid internship with the San Francisco firm to be employment. She also testified that her work with the legal services office was volunteer work for which she received no payment and, as with her San Francisco firm internship, she did not consider this to be employment. It was clear from her testimony that Ms. Winn did not consider herself to be an employee of either the San Francisco firm or the legal services office. We accept her evidence that, when she completed her Enrolment Application, she thought that her work with both did not constitute employment as described in Schedule 1. We find that this was a reasonable conclusion for Ms. Winn to reach. We find that, given the wording of the instructions for the completion of Schedule 1, her failure to include the San Francisco firm or the legal services office in the list of her employment did not make her list untrue, inaccurate or incomplete.

[65] At the conclusion of the hearing, counsel for the Law Society described the failure to include the San Francisco firm and the legal services office in the list of Ms. Winn's employment as being not material and informed the Panel that the Law Society was not advancing the failure to include them in the list of employment as evidence of bad character.

[66] We find that the failure by Ms. Winn to include her unpaid position as a law clerk with the San Francisco firm and her unpaid internship with the legal services office as part of her employment is not evidence of bad character.

Vancouver Firm termination

[67] In Schedule 1 of the Enrolment Application Ms. Winn listed her employment by the Vancouver Firm from January 2015 to April 2015 as part of her employment history.

[68] Ms. Winn answered "No" to question number 6 of part D of the Enrolment Application. That question was:

6. Have you ever been discharged, suspended or asked to resign from any employment?

[69] On or about April 24, 2016, after the Credentials Committee had ordered that a hearing be held with respect to Ms. Winn's application for enrolment, counsel for Ms. Winn disclosed to the Law Society, on her behalf, that the Vancouver Firm had terminated her employment on April 20, 2015 when it delivered a letter of that date to her, which stated, in part:

As per our discussion today we have decided to terminate your employment with [Vancouver Firm] effective immediately. ...

To assist you with your transition to other employment we enclose a severance cheque representing one week of your wages. ...

Notwithstanding the above, and despite no longer continuing to work with us, we hope to keep in touch and wish you the best of luck in the near future. We thank you for your time at [Vancouver Firm].

[70] Together with the letter from the Vancouver Firm to Ms. Winn dated April 20, 2015, counsel for Ms. Winn delivered a copy of the record of employment issued by the Vancouver Firm to Ms. Winn which stated that the reason for termination of her employment was "restructuring of company."

- [71] In Schedule 1 to the Enrolment Application Ms. Winn had stated the reason for the cessation of her employment with the Vancouver Firm was “contract.”
- [72] After receiving a disclosure of the April 20, 2015 letter from the Vancouver Firm to Ms. Winn, the Law Society requested that Ms. Winn provide an explanation as to why she had answered “no” to question number 6 Part D of the Enrolment Application and why she had stated “contract” as the reason for cessation of her employment with the Vancouver Firm in Schedule 1 of the Enrolment Application.
- [73] On April 29, 2016, Ms. Winn provided the following explanation to the Law Society as to why she had answered “no” to question number 6 Part D of the Enrolment Application:

In hindsight, “yes” would have been a better answer and I wish that I had provided this answer, along with the explanation that I am providing now. I can see now that answering affirmatively and erring on the side of inclusivity was the correct choice.

At the time I completed the form, I read the LSBC question as referring to “with cause” contexts, and/or situations when the employment position in question was intended to be permanent. Neither was the case here. I viewed it as having reached the end date of what always was intended to be a fixed-term contract. So I did not regard the situation as fitting under “discharged, suspended or asked to resign.”

As I say, I responded with “no” because I viewed the letter dated April 20, 2015 as simply giving notice that the contractual paralegal position had come to its natural end.

- [74] At the same time, Ms. Winn provided the following explanation as to why she had given “contract” as reason for cessation when she completed schedule one to the Enrolment Application:

I viewed the paralegal position as a non-permanent position. I believed the reason for my cessation was that the contract ended. There was no end date previously specified and so I viewed the letter as simply declaring the specific end date for a fixed term contract.

- [75] At the hearing Ms. Winn testified that, in early 2015, she was attempting to identify a law firm that would offer her an articling position after she became enrolled. She also testified that she was then unemployed and needed a job to support herself and responded to an advertisement placed on Craigslist by the Vancouver Firm for a

temporary paralegal position. She testified she was interviewed by the principal of the Vancouver Firm who was then practising law in the fields of business and real estate from his apartment.

- [76] Ms. Winn testified that the principal of the Vancouver Firm told her he would be relocating his firm to new premises on Broadway in Vancouver and was currently in the process of having fixtures installed in those premises and that he hoped to be able to occupy them sometime during the spring of 2015. He also told her that he wanted to temporarily hire a paralegal to assist him with the transition to the new office. Ms. Winn said that he offered to employ her for the transitional period of time and she accepted the employment. She testified that there was no fixed date for her engagement as a paralegal to end but it was made clear to her that her employment would only continue until the law firm became established in its new premises.
- [77] Ms. Winn said that, during that initial interview and subsequently, during her employment as a paralegal, she and the principal of the Vancouver Firm discussed the possibility of him engaging her as an articled student.
- [78] Ms. Winn testified that the Vancouver Firm moved to its new premises in March of 2015 and that, after the move, she continued to be employed as a paralegal. She said she was given no advance notice of her termination date and that it came as a surprise to her when she was informed on April 20, 2015 that her engagement as a paralegal was being terminated effective immediately and that the Vancouver Law Firm would not offer her a position as an articled student. She testified that, although she was disappointed she was not offered an articled position, she accepted that she had been hired on a temporary basis to provide paralegal services only until the firm had moved into its new premises.
- [79] No evidence was adduced that Ms. Winn's engagement as a paralegal was anything other than a short-term engagement that she and her employer agreed would end after the Vancouver Firm completed its relocation to its new premises. We find that Ms. Winn's employment by the Vancouver Firm was for a limited term that was scheduled to end after the firm moved into its new premises and that her termination occurred after the firm had moved into those premises.
- [80] Counsel for the Law Society submitted that neither Ms. Winn's answer of "no" to question number 6 of Part E of the Enrolment Application nor providing "contract" as the reason for the cessation of her employment with the Vancouver Firm were bars to her enrolment and that, in his view, neither of those answers indicated a lack of fitness to become a lawyer.

- [81] We find that the fact that Ms. Winn voluntarily disclosed the circumstances surrounding the cessation of her employment with the Vancouver Firm to the Law Society is evidence of her good character.
- [82] We also find that Ms. Winn's employment as a paralegal with the Vancouver Firm was for a limited term that was to end upon the happening of a specific event, which was the relocation of the Vancouver Firm to its new offices, and that this event did occur. We therefore find that Ms. Winn's answer of "no" to question 6 of Part E of the Enrolment Application was true and accurate as was stating "contract" as the reason for cessation of that employment in Schedule 1 to the Enrolment Application.
- [83] We therefore find that Ms. Winn's employment by the Vancouver Firm and the termination of that employment is not evidence of bad character.

Letters confirming employment and good character

- [84] Early in 2016 Ms. Winn made arrangements with a Richmond law firm to engage her as an articled student if she was enrolled as an articled student. At that time she disclosed to a principal of that firm, Donald Moir, the Academic Misconduct Allegation and the circumstances surrounding the judgment obtained by St. Paul's Church. Mr. Moir wrote a letter to counsel for Ms. Winn dated April 24, 2016 in which he said he was aware of this hearing and that the proposed articling position for Ms. Winn at his law firm remained open, with him as her principal, pending the outcome of the hearing.
- [85] Jenny Hong-Gonzalez, a classmate of Ms. Winn at the Golden Gate University School of Law who now practises law in California as a registered patent attorney, wrote a letter dated April 12, 2016 stating she was aware of the Academic Misconduct Allegation and the judgment obtained by St. Paul's Church and that this hearing would be held to determine Ms. Winn's character and fitness to become a lawyer. Ms. Hong-Gonzalez stated she was not aware of any negative incidences or rumours involving Ms. Winn while she attended law school and was not aware of any academic or personal struggles she had in law school. She stated that Ms. Winn has the honesty, truthfulness and integrity to practise law, that Ms. Winn possesses the vital qualities that are necessary for the practice of law and that she believed Ms. Winn would be the ideal attorney that clients search for.
- [86] Delbert C. Gee, a Judge of the Superior Court of California for the County of Alameda since 2002, also provided a favourable letter of reference for Ms. Winn dated April 18, 2016. He stated that he has known Ms. Winn since her second year of law school and that he mentored her while she was a law student. He said that

he had many occasions to talk with her over the years before and after her graduation from law school, including in person at various conferences, over lunch and by telephone and emails since she returned to Canada and that he has gotten to know her well from his conversations with her over the years.

- [87] Judge Gee was aware of the Academic Misconduct Allegation, the unsatisfied judgment obtained by St. Paul's Church and her failure to list the two unpaid legal internships in her Enrolment Application and described details of them in his letter.
- [88] In his letter of reference Judge Gee stated he personally endorsed the excellent moral and ethical character of Ms. Winn, particularly in regard to her honesty and integrity, for consideration by the Law Society in her application for enrolment. He also stated the following:

In the years I have known Vanessa, I have found her to be honest and trustworthy. I believe Vanessa to be of the highest ethical and moral character. She has an excellent reputation within Golden Gate University School of Law. I believe that Vanessa would be a credit to the BC Law Society. ...

I believe Vanessa has demonstrated integrity and character along her journey to become a lawyer. She has been honest with me and has never assigned blame to anyone else for the events that have led her to her present situation. She is truthful, takes responsibility for her mistakes, and treats others with respect and fairness.

I believe Vanessa Winn has the moral and ethical character necessary to be a licensed member of the BC Law Society and I unequivocally support and endorse her for your enrollment.

- [89] We gave considerable weight to the attestations of good character by Ms. Hong-Gonzalez and Judge Gee, particularly the latter. It was clear from the letter he wrote that he was familiar with the circumstances surrounding the Academic Misconduct Allegation, the judgment obtained by St. Paul's Church and the two unpaid internships and how Ms. Winn had interpreted the questions and instructions contained in the Enrolment Application that gave rise to the information she provided about them. We are satisfied that Judge Gee had ample opportunity to assess Ms. Winn's character.

DISCUSSION AND ANALYSIS

[90] Section 19(1) of the Act requires this Panel to determine whether we are satisfied that Ms. Winn is of good character and repute and fit to become a barrister and a solicitor of the Supreme Court at the present time.

[91] A leading authority on the question of what constitutes being “of good character and repute,” including fitness to be a barrister and solicitor, is the decision of the court of appeal for British Columbia in *McOuat v. Law Society of British Columbia*, [1993] BCJ No. 807. At paras. 6 and 7, the Court of Appeal approved the following statements by the panel that considered Mr. McOuat’s application for reinstatement:

But we think we are required to consider the regard in which the candidate is held by others as well as the qualities of character Mr. McOuat possesses, that is both the subjective and objective senses of “good character”.

It is for this panel acting reasonably upon the evidence before it to decide whether Mr. McOuat has discharged the burden of satisfying the panel that he is fit to become a barrister and solicitor. The objective sense of “good character” overlaps with the requirement of fitness. The demands placed upon a lawyer by the calling of barrister and solicitor are numerous and weighty and “fitness” implies possession of those qualities of character to deal with the demands properly. The qualities cannot be exhaustively listed but among them must be found a commitment to speak the truth no matter what the personal cost, resolve to place the client’s interest first and never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

The canons [sic] of legal ethics adopted by the Law Society provide assistance, when they assert:

A lawyer is a minister of justice, an officer of the Courts a client’s advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is a lawyer’s duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to clients, be candid and courteous in relations with other layers [sic] and demonstrate personal integrity.

To be fit to practice a lawyer must be ethically equipped to never break the client's trust.

- [92] The onus is on the Applicant to satisfy us, on a balance of probabilities, that she has met the requirements for enrolment as set out in section 19(1) of the Act and as articulated by the courts in cases such as *McOuat*.
- [93] Ms. Winn appeared to be a credible witness and her testimony was forthright, consistent and complete. We accept the evidence she gave regarding her interpretation of the questions and instructions in the Enrolment Application that are at issue, and we find that her answers and the information she provided in the application were not dishonest and that she did not intend to mislead the Law Society by her answers or any information she provided in the application.
- [94] On several occasions during her testimony, Ms. Winn expressed regret that she had too narrowly interpreted the questions and requests for information in the Enrolment Application. She said that, in hindsight, she should have interpreted them more broadly and, if she had the opportunity to complete the Enrolment Application again, she would provide as full and complete responses as possible. The fact that she did not do so led to this hearing being held and has resulted in substantial personal cost to her, including a significant delay in her enrolment. Future applicants should be aware that completion of the application for enrolment in the admissions program of the Law Society is not a matter to be taken lightly, and applicants should not attempt to avoid complete answers or downplay or otherwise describe a negative event in the best possible light. Applicants should be totally forthright about their past, and the failure to be forthright or otherwise downplay the negative event may well result in credentials hearings such as this one.

CONCLUSION

- [95] We find that Ms. Winn has satisfied us on a balance of probabilities that she is of good character and repute and that she is fit to become a barrister and a solicitor of the Supreme Court.
- [96] We therefore grant Ms. Winn's application for enrolment as an articulated student.

COSTS

- [97] The parties did not make any submissions on costs. The Applicant did, however, post security for costs. If the parties require an order on costs, the Panel will

consider and respond to written submissions received within 30 days of this decision being issued.