

**NOTE: PORTIONS OF THIS DECISION HAVE BEEN REDACTED  
PURSUANT TO THE ORDER OF THE HEARING PANEL UNDER RULE 2-  
104(3)**

2016 LSBC 38

Decision issued: November 18, 2016

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a hearing concerning**

**APPLICANT 11**

**APPLICANT**

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**DECISION OF THE HEARING PANEL  
ON APPLICATION FOR CALL AND ADMISSION**

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Hearing date: November 1, 2016

Panel: Bruce LeRose, QC, Chair  
Brook Greenberg, Bencher  
Graeme Roberts, Public representative

Counsel for the Law Society: Jean P. Whittow, QC  
Counsel for the Applicant: Garth McAlister

**OVERVIEW AND SUMMARY OF DECISION**

- [1] On April 15, 2016, the Applicant applied for call to the Bar of British Columbia and for admission as a solicitor of the Supreme Court of British Columbia.
- [2] On September 6, 2016, the Credentials Committee of the Law Society of British Columbia (the “Law Society”) ordered a hearing to determine whether the Applicant satisfies the requirements for call and admission under Section 19(1) of the *Legal Profession Act*.

[3] That section provides:

**19(1)** No person may be enrolled as an articulated student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

[4] Under Law Society Rule 2-100(1), the Applicant has the burden of proving she meets these requirements on a balance of probabilities.

[5] The Applicant has admitted to collaborating with another student (“Student 1”) in respect of two Professional Legal Training Course (“PLTC”) assessments (together, the “Assessments”) when students were expressly and repeatedly instructed that such collaboration was prohibited.

[6] In this matter, the Law Society took the position that, notwithstanding the seriousness of the Applicant’s conduct, if this Panel accepted the Applicant’s evidence explaining how and why she engaged in the prohibited collaboration, it would be open to us to conclude that the Applicant is of sufficiently good character, repute and fitness to be called and admitted.

[7] The Panel found the Applicant to be credible and forthright, including with respect to her explanation of her admittedly inappropriate conduct.

[8] Given our conclusion in that regard, and in light of the Applicant’s particular circumstances, which are set out in greater detail below, the Panel finds that the Applicant has met the test and is eligible to be called and admitted.

## **FACTS AND EVIDENCE**

### **Agreed facts**

[9] At the outset of the hearing, the parties entered as Exhibit 1 an Agreed Statement of Facts pursuant to Law Society Rule 5-6(6)(a).

[10] The parties also entered into evidence as Exhibit 2, a Book of Documents comprising 15 tabs. By agreement, each of the parties admitted the authenticity of all of the documents contained in the Book of Documents. The parties also admitted that, where applicable, the documents were created on the date indicated on the face of the particular document.

[11] A summary of the facts agreed to by the parties is as follows.

- [12] The Applicant graduated from law school in 2014.
- [13] She submitted her application for enrolment in the Law Society Admission Program, which was received by the Law Society on March 13, 2015. The Applicant commenced that program on April 13, 2015.
- [14] The Applicant's principal (the "Principal") throughout her articles was and is a sole practitioner in Vancouver.
- [15] Prior to commencing PLTC in February 2016, the Applicant had completed nine months of articles with her Principal.
- [16] The PLTC Student Handbook in effect during the Applicant's PLTC session provided:

**Professional Integrity**

Students must complete assessments and examinations with professional integrity. *All assessment work and examination writing efforts must be their own.* Each individual is being assessed for licensing purposes.

**Students must not give, receive or permit any assistance whatsoever in Assessments or Examinations**

...

Examples of violation of the Professional Integrity policy include:

...

- looking at, discussing or otherwise communicating with another person any portion of the content, issues or organization of the assessment;

...

[emphasis in original]

- [17] In March 2016, PLTC students were assigned a writing assessment (the "Writing Assessment") to prepare an opinion letter and a drafting assessment (the "Drafting Assessment") to prepare a form of contract.
- [18] The written instructions provided to students for the Writing Assessment included the following direction:

Please note the Professional Integrity Policy in the Student Handbook -- in particular:

**Students must not give, receive or permit any assistance whatsoever in Assessments or Examinations.**

All work must be entirely your own. Do not discuss this Assessment with anyone.

[emphasis in original]

- [19] The written instructions provided to students for the Drafting Assessment included the same direction.
- [20] On April 7, 2016, a PLTC instructor noticed similarities in the Drafting Assessments submitted by the Applicant and Student 1.
- [21] The Deputy Director of PLTC, Lynn Burns, reviewed the Drafting Assessments submitted by the Applicant and Student 1, and concluded that they had collaborated.
- [22] Ms. Burns then compared the two students' Writing Assessments which had been previously submitted at the end of March 2016, and concluded that they had collaborated on the Writing Assessment as well.
- [23] The Applicant submitted her application for call and admission on April 15, 2016.
- [24] On May 5, 2016, Ms. Burns emailed the Applicant to advise her that she had not passed the Writing or Drafting Assessments. In her email, Ms. Burns also requested a meeting with the Applicant.
- [25] On May 9, 2016, Ms. Burns and the Applicant met. Minutes of the meeting (the "Minutes") were prepared by a member of PLTC staff.
- [26] The Applicant agrees that the Minutes accurately reflect the discussions between her and Ms. Burns. The Minutes were included in Exhibit 2, the Book of Documents.
- [27] According to the Minutes, when Ms. Burns asked the Applicant to explain the similarities between her Assessments and Student 1's Assessment:

[The Applicant] immediately admitted that she did get help from another student. They read over each other's drafts of the assessment, gave and received suggestions for improvement and implemented some of them.

[The Applicant] said that during this time, she did not consider this cheating.

- [28] The Minutes also record that the Applicant explained that she had not copied the other student's work, and that she reiterated that she did not consider mere collaboration to have been cheating at the time she did it.
- [29] Shortly after the meeting, Ms. Burns emailed the Applicant to request that she provide all emails between the Applicant and Student 1 relating to the Assessments. In her email Ms. Burns also wrote:

Thank you for meeting with me this morning and conducting yourself professionally.

- [30] On May 11, 2016, the Applicant forwarded to Ms. Burns copies of emails between the Applicant and Student 1 related to their collaboration on the Assessments.
- [31] On May 17, 2016, the Applicant forwarded to Ms. Burns additional communications related to the collaboration exchanged between the Applicant and Student 1 using Facebook Messenger.
- [32] On June 16, 2016, the Applicant sent a letter to the Credentials Committee apologizing for collaborating on the Assessments (the "Apology").
- [33] In the Apology, which was included in the Book of Documents, the Applicant wrote:

I write to apologize for collaborating on the writing and drafting assessments during the Spring 2016 session of the Professional Legal Training Course ("PLTC").

Although I was not intending to violate the Professional Integrity Policy or cheat, and did not consider my actions to be cheating at the time, I now fully understand and appreciate that I was engaging in conduct that was explicitly set out in the Professional Integrity Policy as a violation of said policy and is classified as cheating.

I accept responsibility for my actions and what follows is not an excuse, but is rather to provide context as to why I was not thinking clearly at the time.

For the last several months I have been experiencing several stresses in both my professional and personal life which lead [sic] me to become

overwhelmed, feel very down and generally prevented me from thinking clearly and focusing on things outside of these stresses.

[34] [redacted]

[35] The Applicant wrote in the Apology that she had continued to struggle with these issues while she attended PLTC.

[36] The Applicant explained in the Apology that because of the difficulties she had experienced, she was not sufficiently focused on PLTC. As a result, she had not drawn the correct distinctions between exercises in class, in respect of which the instructors encouraged collaboration, and the Assessments for which collaboration was prohibited.

[37] The Applicant confirmed in the Apology that she was aware at the time she submitted the Assessments that copying another student's work was cheating, but that she had failed to consider collaboration as cheating at the time.

[38] Finally, the Applicant advised she had taken steps to address the negative impacts that stresses in her professional and personal life had on her.

[39] Ms. Burns made a report as to the Applicant's conduct to the Credentials Committee on July 7, 2016.

[40] On September 6, 2016, the Credentials Committee ordered a hearing into the Applicant's application for call and admission and ordered the Applicant to complete remedial work in PLTC. The Applicant has now completed that remedial work.

[41] The Law Society delivered the requisite notice regarding the hearing of this matter to the Applicant's counsel on October 3, 2016.

### **Evidence**

[42] In addition to the Agreed Statement of Facts and the Book of Documents, the Panel heard the evidence of two witnesses: (a) the Applicant; and (b) SH.

### **The Applicant's testimony**

#### **Background**

[43] The Applicant was born and grew up in another Canadian province, where her parents both still reside, and most of the Applicant's closest friends live.

- [44] After law school the Applicant moved to Vancouver because she was in a long-term romantic relationship with another law student (the “Partner”) who had articles in Vancouver. The Applicant began living together with her Partner in Vancouver.
- [45] The Applicant had great difficulty finding an articling position in Vancouver. She testified that she found it very stressful to be unable to obtain articles.
- [46] Eventually, in February 2015, the Applicant began working for the lawyer who would become her Principal on a temporary basis akin to an internship.
- [47] On April 16, 2015, the Applicant formally began her articles with her Principal.

### **Difficulties in the Applicant’s personal life**

- [48] In April 2015, the Applicant’s mother was diagnosed with a brain tumour. The Applicant testified she was upset and concerned for her mother’s health until it was eventually determined in October 2015 that the tumour was benign.
- [49] [redacted]
- [50] [redacted]
- [51] The Applicant testified that she did not handle the end of this relationship with her Partner well. She felt upset and sad. It was all she could think about. The Applicant testified that, because most of her friends and family were not in BC and the few friends she had in Vancouver were friends of her Partner, she had no one to assist her through this difficult period. She found it hard to cope.
- [52] During this period in late 2015, the Applicant could not sleep. She felt anxious, stressed and overwhelmed. The Applicant attended at a walk-in medical clinic on at least one occasion as a result of her feelings of stress and anxiety during this time.

### **The Applicant’s articling experience**

- [53] The Applicant testified that the stress and anxiety in her personal life was exacerbated by issues in her professional life as well.
- [54] Initially, the stresses in her professional life related to the work demands made by her Principal.

- [55] The Applicant testified that, although she was paid less as an articulated student than most of her colleagues, her Principal required her to be in the office from 9:00 am to 10:00 pm each weekday, as well as for much of the day on Saturday and Sunday as well.
- [56] During the summer of 2015 she worked almost every weekend day, from just after 9:00 am until 6:00 pm.
- [57] The Applicant had very little social life as a result.
- [58] The Applicant's evidence was that she was required to keep these hours not because of any particular work deadline, but as a matter of routine. Her Principal would tell her each night when she was permitted to leave the office.
- [59] [redacted]
- [60] [redacted]
- [61] [redacted]
- [62] [redacted]
- [63] [redacted]
- [64] [redacted]
- [65] [redacted]

### **The Applicant at PLTC**

- [66] The Applicant testified that when she arrived at PLTC in February 2016, her personal life had fallen apart and her work life had fallen apart. The Applicant felt that she did not have anyone to turn to for help.
- [67] The Applicant called her mother crying almost every day. She testified that she was "a mess" during PLTC.
- [68] At PLTC she met Student 1 and they became close. She worked with Student 1 in class, where collaboration was permitted and even encouraged by the PLTC instructors.
- [69] The Applicant testified that Student 1 told her that some of the other students had set up a study group and they wanted her to join. The Applicant was flattered to be

invited to the study group and liked receiving the positive attention after having felt so bad about herself for so long.

- [70] The Applicant testified that she had indeed collaborated with Student 1 in respect of both the Writing and Drafting Assessments. She and Student 1 had developed an outline for the Writing Assessment together. They had exchanged drafts of their Drafting Assessments and given each other comments and suggestions.
- [71] She admitted that her collaboration with Student 1 had been wrong; however, she testified that at the time of her conduct, she had not consciously intended to ignore the PLTC rules.
- [72] Rather, the Applicant gave evidence that she had fallen into a pattern of communicating with Student 1 in respect of work for which they were permitted to collaborate. She had continued communicating with Student 1 even when collaboration was prohibited without thinking about whether such cooperation was still permitted.
- [73] The communications between the Applicant and Student 1 about the Assessments were voluminous.
- [74] As the Applicant admitted in cross-examination, she exchanged dozens of messages with Student 1 about the Assessments. In respect of the Writing Assessment, the Applicant admitted that she and Student 1 had together created a detailed outline for the content of the opinion letter.
- [75] The Applicant admitted that she had reviewed the bolded text in both the Writing Assessment and Drafting Assessment instructions from PLTC, that students were not to give or receive any assistance. She testified that she simply did not think about that instruction.
- [76] The Applicant testified that, because her life was in such turmoil at the time, she did not pay as much attention to PLTC matters as she should have. She now cannot believe she collaborated with Student 1 when it was so clearly prohibited to do so.
- [77] The Applicant was directed in both examination-in-chief and cross-examination to a particular exchange of communications on Facebook Messenger between the Applicant and Student 1:

Student 1: A little worried about getting done for working together if our shit looks too much alike. But trust we can figure out a way not to plagiarize each others [sic] crapola.

Applicant: Ya I'm super paranoid about that shit so you don't need to worry about me taking yours or anything.

(together, the "Facebook Messages")

- [78] The Applicant testified that she was surprised to see the reference in Student 1's message to "working together." She recalled that, at the time, she had associated "cheating" with plagiarism. That is the reason that, in her response, she had stated she would not take Student 1's work.
- [79] In cross-examination, counsel for the Law Society put it to the Applicant that the Facebook Messages in fact showed that she was "at pains to avoid getting caught" collaborating. The Applicant disagreed with this proposition. She testified that she was focused on her concern about plagiarism, not collaborating.
- [80] While Student 1 did reference "working together" in his message, the Applicant's response confirming she would not "take" his work is consistent with her evidence that she was focused on the issue of plagiarism. The Applicant's evidence is also consistent with the initial explanation she gave to Ms. Burns as recorded in the Minutes, before the Applicant had collected the emails and Facebook Messages she exchanged with Student 1.
- [81] The Applicant confirmed in cross-examination that, at the time she was communicating with Student 1 about the Assessments, she did not consider collaboration to be cheating. She stated that she had not thought about the rules against collaborating.
- [82] The Applicant testified that, in her meeting with Ms. Burns, she had focused on being honest and open about her collaboration. She did not try to hide the fact that she had collaborated or blame anyone else.
- [83] The Applicant agreed to provide the emails between the Applicant and Student 1.
- [84] Subsequently, the Applicant realized she had also communicated with Student 1 by Facebook Messenger, and she voluntarily provided those messages to Ms. Burns as well.

### **Post PLTC**

- [85] The Applicant testified that she has now come to realize the impact that stresses in her life can have on her decision-making. She does not offer the stresses as an excuse for her behaviour, but as an explanation for why she did not pay sufficient attention to the rules governing the Assessments.

[86] [redacted]

[87] The Applicant recognizes that the practice of law is stressful and that she cannot ever again allow stress to impact her decision-making in such a destructive manner.

[88] For that reason the Applicant consulted LAP and has received counselling, which has helped her to deal more appropriately with stress. She testified that she does not let problems take over her thinking now.

[89] The Applicant has no plans to discontinue the LAP counselling.

[90] The Applicant testified that she has never before had her integrity called into issue. She strives in her life to follow all applicable rules and has never even received a speeding ticket.

[91] The Applicant confirmed in cross-examination that she admitted to her conduct so readily and without making excuses because she realized then that what she had done was wrong and in breach of the PLTC rules for the Assessments.

### **SH's testimony**

[92] SH testified that she is very close to the Applicant, and considers herself one of her best friends.

[93] The two of them met at the beginning of law school in 2011 and have been friends ever since.

[94] Both SH and the Applicant moved to Vancouver after they graduated from law school in May 2014.

[95] SH testified that the Applicant had moved to Vancouver after law school to live with her then Partner.

[96] As far as SH is aware, the Applicant had no other close friends in Vancouver when she moved there.

[97] Both SH and the Applicant's Partner had articles in Vancouver, but the Applicant had a great deal of difficulty finding articles.

[98] [redacted]

[99] SH also testified that, once the Applicant began her articles, she was working extremely long hours. The Applicant worked more hours than SH. The Applicant was regularly in the office past 10:00 pm.

[100] [redacted]

[101] [redacted]

[102] SH testified that, in February 2016, when the Applicant commenced PLTC, she was very sad. The Applicant appeared to SH to be lost, distant and down. The Applicant was not doing great. The Applicant “was a mess.”

[103] SH recalled at some point observing the Applicant apparently having panic attacks and was scared for her. She was aware that the Applicant had attended at a walk-in medical clinic for at least one such incident.

[104] At PLTC, the Applicant met Student 1, and she spoke about him to SH. The Applicant also reported to SH that she had joined a study group with Student 1.

[105] SH perceived that the Applicant was flattered by the positive attention from Student 1, and that there may have been some romantic spark.

[106] SH became aware of the collaboration issue after the Applicant received the email from Ms. Burns advising that she had not passed the Writing or Drafting Assessments.

[107] At that point, the Applicant confided in SH and told her that she, the Applicant, “had made a mistake.” According to SH, the Applicant said, “I cannot believe I made such a big mistake. I did not realize what I was doing.”

[108] When asked to comment on the Applicant’s character, SH described her as being of “very good character, loyal and caring.”

[109] According to SH, the Applicant is there for her friends, is honest and a very good person. SH testified she had no reason to doubt the Applicant’s integrity, even in light of the admitted collaboration with Student 1.

[110] SH’s evidence was that the Applicant had made an isolated mistake while she had a lot of other things going on in her life. She described the Applicant’s conduct as out of character. SH believed the Applicant was truly sorry for her conduct. She confirmed her view that the Applicant would make a very good lawyer.

[111] [redacted]

[112] In cross-examination, SH confirmed that she was aware from having attended PLTC 11 months prior to the Applicant that collaboration on assessments was prohibited.

[113] SH testified that, in addition to the written instructions, in her experience, the PLTC instructors addressed the prohibition on collaboration in class.

[114] Despite these admonitions, SH had heard about others at PLTC having discussed their assessment assignments. SH clarified that she did not know for sure that others in her PLTC session had collaborated, but she heard discussions that implied some students had.

[115] SH also testified that PLTC encourages collaboration for in-class assignments, but then for assessments instructs students to stop collaborating as they had previously.

### **THE LAW ON GOOD CHARACTER, REPUTE AND FITNESS**

[116] The Applicant bears the burden of proving that she is of good character and repute and fit to become a barrister and a solicitor. The standard of proof is on the balance of probabilities (*Law Society of BC v. McOuat*, 2001 BCCA 104, 84 BCLR (3d) 242).

[117] What comprises “good character and repute” was described in an article by Mary Southin, QC, (as she then was) “What is ‘Good Character’?” (1977), 35 *The Advocate* 129, as follows:

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

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

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

1. The common or general estimate of a person with respect to character or other qualities; the relative estimation or esteem in which a person is held.

2. The condition, quality or fact of being highly regarded or esteemed; also respectability, good report.

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

[118] The settled legal principles governing Section 19(1) applications on the issue of character and fitness were succinctly summarized in *Re: Mohan*, 2012 LSBC 24, as follows:

- (a) It is the Applicant's character and fitness at the time of the hearing, viewed on a balance of probabilities that is determinative of the application, *Law Society of BC v. Lee*, 2009 LSBC 22, paras. [79] and [80] citing *Law Society of Upper Canada v. Schuchert*, 2001 LSDD No. 63;
- (b) The test does not require perfection or certainty: *Schuchert* (supra);
- (c) The question becomes whether the Applicant is able to demonstrate that he or she has rehabilitated himself or herself, there being a balance to be struck between protecting the public and a concept of redemption through rehabilitation. (*Re: Applicant 3*, 2010 LSBC 23, para. [22]);
- (d) Because every person's character is formed over time and in response to a myriad of influences, it seems clear that no isolated act or series of acts necessarily defines or fixes one's essential nature for all time (*Law Society of Upper Canada v. Birman*, [2005] LSDD No. 13, at paras. 13 and 14, quoting the reasons of Convocation in *Re Spicer*, dated May 1, 1994:13 and quoted in *Lee* (supra);
- (e) 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 the personal cost, resolve to place the client's interest first and to never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client. (from *Re: McOuat*, Panel decision June 12, 1992, upheld by the BC Court of Appeal in *McOuat v. Law Society of BC*, [1993] BCJ 807 (CA));

- (f) Good or bad character does not depend on what [one] knows of [oneself]; it means [one's] general reputation in the estimation of [one's] neighbours (*Leader v. Yell* (1864), 16 CB (NS) 584, referred to in *McOuat* (supra));
- (g) The status of barrister and solicitor requires that a special standard of honesty, integrity and trustworthiness be imposed, met and kept at all times so that public confidence is maintained and properly nurtured. *Law Society of BC v. DM*, June 14, 1992 Panel decision.

[119] In *Law Society of Alberta v. Cattermole*, January 18, 2008 Report of the Hearing Committee, the Hearing Committee considered the appropriate sanction in the discipline context for an articling student who had plagiarized a portion of an ethics assignment during her participation in the Alberta bar admission course.

[120] In that case, the student compounded her dishonesty in having copied part of another student's assignment, by then initially denying the plagiarism to both her principal and the Deputy Director of the bar admission course.

[121] The day after her initial denials of the plagiarism, the student admitted her misconduct.

[122] In deciding that a reprimand was sufficient punishment, the Hearing Committee held:

[39] We note that the loss of good character is similarly a process not an event. *A person of good character can be overwhelmed and behave inappropriately in an isolated incident without the fundamental character of the individual being corrupted.*

[40] Ms. Cattermole's history shows strength of character and a commitment to her career and to others. *This is the first incident of bad behavior to our knowledge and is to be balanced by much behavior that is to be commended. The circumstances leading up to the plagiarism reveal a high level of stress and isolation for someone so young. She was caught, she did lie about the events when initially confronted. However, such denials lasted less than a day and then she accepted responsibility for her actions.*

[emphasis added]

[123] The Hearing Committee went on to note that stress is not an excuse for lying and that lawyers must learn to handle stress as part of the everyday life of a lawyer.

Nevertheless, the Hearing Committee concluded that the consequences of the student's conduct, including the delay to her call date, comprised a sufficient sanction to prevent her from ever repeating such behaviour.

[124] In contrast to *Cattermole*, in *Law Society of Upper Canada v. Burgess*, 2006 ONLSHP 0066, the applicant was not permitted call and admission to the Law Society of Upper Canada after being found not to be of good character.

[125] There, Ms. Burgess had plagiarized an essay during her fourth year of an Honours BA program at the University of Toronto.

[126] While Ms. Burgess had been caught plagiarizing the panel held:

[17] What is of much more serious weight are the ongoing and persistent lies told by Ms. Burgess to the Law Society of Upper Canada and to various persons who provided her with character references.

[127] On the basis of the subsequent lies told by Ms. Burgess, the panel concluded that she had not satisfied the onus of proof that she was then of sufficiently good character to be called and admitted.

[128] In addition to the decisions summarized above, the Panel in the matter at hand was provided with a document entitled "Summary of Prior Credentials Decisions Relating to Allegations of Collaboration During PLTC," which was prepared jointly by both counsel.

[129] This summary sets out the various conditions that have been imposed by the Credentials Committee, rather than by a hearing panel, on students accused of collaborating on assessments at PLTC.

[130] The students in those circumstances have generally been required by the Credentials Committee to repeat a portion of PLTC and had their articles extended. Some students were also required to draft an anonymous paper to be published in the *Bencher's Bulletin* or to be shared with future PLTC students detailing their experiences as a result of being caught collaborating.

## THE POSITION OF THE PARTIES

### The Law Society

- [131] In closing submissions, counsel for the Law Society took the position that it was open to this Panel to conclude the Applicant was fit to be called and admitted if the Panel was satisfied with her explanation as to how and why her collaboration with Student 1 occurred.
- [132] Counsel confirmed that the Law Society did not urge the Panel to find the Applicant's evidence was not credible in this regard, but that such a conclusion was open to us.
- [133] Counsel for the Law Society noted that the Applicant had admitted that she intended to collaborate with Student 1, and that there were hundreds of messages that demonstrated the extent of the collaboration.
- [134] The Law Society submitted that, while the Applicant testified that, at the time, she did not consider the collaboration to be cheating because she had not gone so far as to plagiarize Student 1's work, the Applicant's explanation ignored the plain wording of the policy and instructions that she had been provided.
- [135] Counsel for the Law Society described the Applicant's conduct as an "egregious breach" of the prohibition on collaboration for PLTC Assessments.
- [136] Nevertheless, the Law Society went on to submit that the Panel should have particular consideration of the following three factors in making its determination:
- (a) After her inappropriate conduct, the Applicant made every proper response. She immediately admitted what she had done without any prevarication. She cooperated in providing all of the emails to Ms. Burns, and then voluntarily delivered the additional Facebook Messenger communications. She also ceased all communication with Student 1.
  - (b) PLTC does create a culture of collaboration, encouraging students to work together, until it is time to complete the assessments, then suddenly the students are instructed to stop all collaboration.
  - (c) There is no other event in the Applicant's history that casts doubt on her integrity. This was essentially an isolated incident that played out over one week in the Applicant's life.

[137] Counsel for the Law Society described the decision of the Law Society of Upper Canada in *Burgess* as a case with “extreme facts,” which was distinguishable from the Applicant’s circumstances. Unlike in *Burgess*, the Applicant admitted her conduct and had not lied repeatedly to avoid the consequences of her collaboration.

[138] The Law Society took the position that, if the Panel was satisfied that the Applicant was of good character, we still may wish to consider conditions, such as a requirement that the Applicant continue to attend LAP counselling.

### **The Applicant**

[139] Counsel for the Applicant also placed great emphasis on the Applicant’s conduct following the discovery that she had improperly collaborated with Student 1.

[140] He submitted that the more common response by those caught in similar circumstances is to lie or blame the other student involved. However, the Applicant did neither of those things. Rather, counsel submitted, the Applicant did what was right regardless of the consequences to her.

[141] Counsel for the Applicant urged us to find that the Applicant’s behaviour in this regard, doing what was right no matter the consequences, fell squarely within the description of good character provided by Mary Southin, QC (as she then was).

[142] Moreover, the Applicant sought counselling to address the underlying issues of the stresses in her life to help ensure she did not make such a mistake again.

[143] Counsel for the Applicant submitted that the Panel should accept the Applicant’s explanation as to how and why she collaborated when doing so was clearly prohibited. The Applicant’s life was “a mess” when she arrived at PLTC.  
[redacted]

[144] As a result, the Applicant was not paying proper attention to PLTC or thinking clearly about the rules that applied to the Assessments.

[145] The Applicant considered plagiarism to be prohibited, but incorrectly viewed collaboration as acceptable.

[146] Counsel argued that the Applicant’s evidence that she was not thinking about the rules that applied to the Assessments was credible and reasonable in the circumstances. He submitted that no one was saying that the Applicant was right to believe that collaboration was permitted, but that her explanation that she did not consider it to be cheating at the time was a genuine one.

[147] Counsel for the Applicant submitted that everyone makes mistakes, but one can learn most about someone's character by how they respond to their mistakes.

[148] Here, the Applicant had shown her true character in the forthright manner with which she addressed her error.

[149] Counsel placed significant weight on Ms. Burns' characterization of the Applicant as having conducted herself professionally in the meeting in which the Applicant admitted to collaborating.

[150] Counsel urged the Panel to find the Applicant had satisfied the onus of demonstrating that she was of good character and repute and allow her to be called and admitted to the bar without further conditions.

## **ANALYSIS AND DISCUSSION**

### **The Applicant's credibility**

[151] The key issue for this Panel is, as the Law Society submitted, whether we accept the Applicant's evidence that, at the time of her conduct, she did not intend to breach the PLTC rules governing the Assessments.

[152] The Applicant's evidence was that because she was not thinking clearly and was paying insufficient attention to PLTC, she incorrectly believed there was a prohibition only against plagiarism instead of the broader ban on all collaboration.

[153] Although the Law Society did not urge us to find this explanation to be false, counsel did put the Facebook Messages to her and suggested that the Applicant's words demonstrated that she had been at pains to avoid being caught collaborating. The necessary implication of that suggestion is that the Applicant knew of the ban on collaboration and was deliberately breaching it.

[154] As set out above, we accept the Applicant's evidence and her explanation for how and why she collaborated on the Assessments.

[155] The Applicant's language in the Facebook Messages does indicate that the Applicant was aware that the decision to share draft Assessments put the Applicant and Student 1 at risk of sanction for cheating.

[156] Nevertheless, the entirety of the Facebook Messages is consistent with the Applicant's evidence that, at the time, she incorrectly equated cheating with plagiarism. In particular, the Applicant responded to Student 1's concerns by

asserting, "... you don't need to worry about me taking yours or anything." The Applicant's response in this regard is consistent with her evidence that she was concerned to avoid plagiarism.

[157] We do not take this language to be evidence of a more deliberate attempt to conceal the collaboration in which the Applicant had engaged.

[158] As noted above, the explanation provided by the Applicant in her evidence was consistent with the initial explanation she provided to Ms. Burns when she was first confronted with the issue of collaboration, and prior to her collection and disclosure of the emails and Facebook Messages she sent to Ms. Burns.

[159] The Panel accepts the submission of the Law Society that the Applicant's evidence does not comprise a good explanation of why she broke the rules relating to the two Assessments. Lawyers are expected to know the rules that govern their conduct and to follow them, even when they are experiencing stressful circumstances in their professional or personal lives.

[160] Nevertheless, the Panel also accepts the submission of the Applicant, that while this is a poor explanation for her conduct, it is an honest one. She genuinely equated cheating with plagiarism at the time she engaged in the prohibited collaboration.

### **The Applicant's good character, repute and fitness**

[161] The issue for this Panel is not whether the Applicant acted in breach of the PLTC directions not to collaborate with other students on the Assessments. The Applicant admits she broke those rules.

[162] The issue also is not whether the Applicant's conduct in collaborating was wrong. The Applicant admits it was.

[163] The issue for this Panel is whether, in the circumstances, the Applicant's admitted misconduct is evidence that she is not of sufficiently good character and fitness to be called and admitted.

[164] We accept the Applicant's evidence that the extreme stresses in her life left her "a mess" when she commenced PLTC. As a result, the Applicant, inadvisably, was not paying sufficient attention to the requirements for the Assessments.

[165] We further accept that the Applicant's behaviour in breaching the prohibition on collaboration was an isolated event that was out of character for her.

[166] In arriving at this conclusion, we placed particular weight, as both the Law Society and the Applicant invited us to do, on the Applicant's conduct after the collaboration was detected.

[167] In particular the Applicant:

- (a) immediately admitted her conduct without any evasiveness or excuses;
- (b) cooperated fully in the PLTC investigation of the matter, including volunteering Facebook Messenger communications;
- (c) wrote a letter of apology; and
- (d) voluntarily sought out counselling to address the underlying issue of her response to the extreme stresses in her life.

[168] As counsel for the Law Society described it, the Applicant "did everything right" after her misconduct was discovered.

[169] Similarly, Ms. Burns expressly thanked the Applicant for "acting professionally" in their first meeting to discuss the Applicant's inappropriate collaboration.

[170] The Applicant's behaviour following the discovery of her collaboration speaks even more favourably to her good character than was the case in *Cattermole*. There, the student initially denied her plagiarism to both her principal and the Deputy Director of the Alberta bar admission course. Nonetheless, such conduct in that matter did not result in the student being denied call and admission, although it is important to recall that *Cattermole* was a discipline, rather than a credentials matter. In any event, the Hearing Committee determined that only a reprimand was required, at least in part, due to the stresses that the student had experienced leading up to her misconduct in light of the negative consequences that she had already suffered.

[171] The Applicant's case is similar to the circumstances in *Cattermole* in that the Applicant was experiencing extreme stresses in her life and has already incurred negative consequences of her conduct. However, unlike in *Cattermole*, the Applicant did not compound her breach of the PLTC rules with any attempt to deny her conduct.

[172] The Applicant's behaviour is certainly nowhere near akin to the conduct in *Burgess*, in which the student repeatedly lied about her plagiarism in an attempt to minimize its impact.

[173] Consequently, we conclude that an outcome similar to that in *Cattermole* is appropriate in this case. The Applicant's conduct was an isolated incident that occurred after the Applicant had endured prolonged and extreme stress and for which she believed she had nowhere to turn for help. When the collaboration was discovered, the Applicant did everything right, including admitting her conduct immediately.

[174] The Applicant has been required to repeat the Assessments, has had her call date delayed and has been required to explain herself to both the Credentials Committee and this Panel. There have already been significant negative impacts for the Applicant as a result of her conduct.

#### **No conditions on the Applicant's call and admission**

[175] Despite our conclusion above, the Panel gave serious consideration to the imposition of conditions for the Applicant to fulfill before call and admission could be granted.

[176] Nevertheless, we have concluded that, in the circumstances, no such conditions are required or warranted.

[177] As set out above and as in *Cattermole*, the Applicant has already experienced significant negative consequences of her conduct. No additional conditions are required to serve as specific or general deterrence.

[178] Significantly, the Applicant, on her own initiative, has apologized for her conduct and entered into counselling through LAP to help her address the underlying issues that contributed to her behaviour.

[179] The Panel considers the Applicant's decision to seek out counselling to assist her in avoiding such issues in the future to be further evidence of her good character and fitness to be called and admitted.

[180] Given that the Applicant has voluntarily sought counselling, it is unnecessary and unwarranted for this Panel to engage in the extremely difficult task of crafting and imposing conditions relating to treatment of the Applicant's health issues. Such conditions would be intrusive, difficult to develop in the absence of expert medical evidence, hard to monitor and potentially counter-productive.

[181] The Panel declines to order conditions requiring on-going counselling, but encourages the Applicant to continue receiving such assistance for as long as she finds it helpful.

- [182] All of the types of conditions the Panel might otherwise have considered have already been effectively addressed. Consequently, we find no additional conditions are necessary or appropriate in respect of the Applicant's remaining articles or future practice.
- [183] The Panel notes that, according to the memorandum prepared jointly by counsel, the Credentials Committee has in prior instances required students who have been discovered collaborating in PLTC assessments to prepare an anonymous memorandum conveying the lessons they have learned to future PLTC students.
- [184] The Panel does not order preparation of such a document as a condition of the Applicant's call and admission.
- [185] It would be problematic in the circumstances of this matter to require the Applicant to re-experience or to disclose, even anonymously, the stresses that contributed to her conduct. [redacted]
- [186] Nevertheless, the Panel believes the Applicant could significantly benefit future PLTC students and the profession generally by sharing, to the extent she feels comfortable doing so, the hard-learned insights that she has gained into the effects personal and work stress can have, as well as the resources available to students and lawyers to help better manage those stresses before they result in negative consequences.
- [187] As a result, while we do not require it, the Panel encourages the Applicant to consider sharing, through an anonymous document to be provided to PLTC or to be published in the *Benchers' Bulletin*, or both, only those portions of her experiences that she feels comfortable conveying to her colleagues and to future PLTC students.

## **CONCLUSION AND OTHER POTENTIAL ORDERS**

- [188] We find that the Applicant has satisfied the onus of demonstrating, on a balance of probabilities, that she is of sufficiently good character and repute to be called to the Bar of British Columbia and is fit for admission as a solicitor of the Supreme Court of British Columbia.
- [189] We did not receive any submissions on costs, and accordingly, if that issue is not agreed between the parties, costs can be dealt with by written submissions to be exchanged in advance and then delivered by both parties within 30 days of the delivery of this decision to the parties.

[190] Counsel for the Applicant also advised us in the course of the hearing that the Applicant wished to make an application pursuant to Law Society Rule 2-104(3) relating to publication of this decision without identifying the Applicant. Counsel advised he intended to bring such an application if it were available, depending on the outcome of this Panel's decision.

[191] In light of our ruling, such an application is available and we consider the Applicant to have commenced an application pursuant to Rule 2-104(3) in the course of the hearing as permitted under Rule 2-104(4)(a). As a result, there is no need for the Applicant to provide further notice within seven days of the delivery of this decision.

[192] Unless the Applicant withdraws the application as contemplated in Rule 2-104(5)(b), the application will be resolved by the Panel through consideration of additional written submissions to be exchanged in advance and then delivered by both parties within 30 days of the delivery of this decision to the parties.

[193] Either party may apply in writing for further directions from this Panel in respect of the exchange and delivery of further submissions regarding either the issue of costs or the application pursuant to Rule 2-104(3).

[194] The Panel wishes to thank counsel for the Law Society and the Applicant for their helpful submissions and collegial conduct of the hearing.

[195] [redacted]

[196] [redacted]

[197] [redacted]

[198] [redacted]

[199] [redacted]