

2017 LSBC 20
Decision issued: June 8, 2017
Oral decision: March 8, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

HOUTAN SANANDAJI

APPLICANT

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

Hearing dates: March 7 and 8, 2017

Panel: Sharon Matthews, QC, Chair
John Hogg, QC, Lawyer
John Lane, Public representative

Counsel for the Law Society: Gerald Cuttler
Counsel for the Applicant: Craig Jones, QC

BACKGROUND

- [1] This hearing concerns an application for enrolment to the Law Society Admission Program made on May 30, 2016 by Mr. Houtan Sanandaji.
- [2] On November 3, 2016, the Credentials Committee resolved to order a hearing into Mr. Sanandaji's application pursuant to section 19(2) of the *Legal Profession Act*. On January 31, 2017, Law Society counsel provided notice pursuant to Rule 2-91 of the Law Society Rules to Mr. Sanandaji's counsel that the circumstances to be inquired into at the hearing are:
- (a) The charges against Mr. Sanandaji on or about November 8, 2008 under section 254(5) of the *Criminal Code* (failure or refusal to provide

sample), section 161 of the *Motor Vehicle Act* (driving in the wrong direction) and section 144(1)(b) of the *Motor Vehicle Act* (driving without reasonable consideration);

- (b) The charge against Mr. Sanandaji on or about September 20, 2011 under section 148(1) of the *Motor Vehicle Act* (excessive speeding);
- (c) The charge against Mr. Sanandaji on or about March 15, 2014 under section 266 of the *Criminal Code* (assault);
- (d) Whether Mr. Sanandaji's application to the Law Society for articles enrolment dated May 30, 2016, was accurate and complete;
- (e) Mr. Sanandaji's candour and credibility in his dealings with the Law Society.

[3] The issue to be decided in this hearing is whether Mr. Sanandaji satisfies the requirements of section 19(1) of the *Legal Profession Act*, which provides that:

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

[4] Section 22(3) of the *Legal Profession Act* provides that, 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.

[5] Although the Rule 2-91 notice includes a speeding charge against Mr. Sanandaji on or about November 29, 2007 under section 146(1) of the *Motor Vehicle Act*, the Law Society provided notice at the hearing that it would not be pursuing this incident. In addition, the Rule 2-91 notice includes an excessive speeding charge under s. 148(1) of the *Motor Vehicle Act*. The Law Society advised at the outset that this charge was not a focus of its concerns. As the hearing unfolded, there was also no emphasis placed on the excessive speeding charge.

- [6] At the conclusion of the hearing we ruled that Mr. Sanandaji had satisfied us that he is of good character and repute and fit to become a barrister and solicitor. We ordered that he be permitted to enroll in the Law Society Admission Program. With regard to costs, we advised the parties they could make submissions if necessary. These are our reasons for our order.

ISSUE

- [7] The issue is whether Mr. Sanandaji is of good character and repute and fit to become a barrister and a solicitor of the Supreme Court. In particular, it must be determined whether Mr. Sanandaji has established on the balance of probabilities that he is of good character and repute and fit to become a barrister and solicitor given the charges enumerated in the Law Society's Rule 2-91 notice (refusing to provide a breath sample, driving in the wrong direction and driving without reasonable consideration; excessive speeding; and assault), considered together with the manner in which he addressed these charges on his application for enrolment and subsequent communications with the Law Society. It is the latter point, the manner in which he addressed these issues with the Law Society, that were the focus of the hearing.

FACTS

- [8] Evidence was adduced by agreed facts pertaining to the assault charge, oral evidence of Mr. Sanandaji and Maryam Sodagar, one of his proposed principals, and documentary evidence (some of which was agreed to be admitted for the truth of its contents, some of which was only agreed to be evidence that the things recorded in the document were recorded as apparent from the documents).
- [9] Except where we note otherwise, the following are the facts we find based on this evidence.

Mr. Sanandaji's background, education and work history prior to law school

- [10] Mr. Sanandaji was born in Tehran, Iran. In 1999, at the age of 16, he convinced his parents to let him leave Iran on his own. He did so because he had seen injustices with which he did not agree and he wanted to seek a better future for himself elsewhere. He went to the Ukraine for two years where he learned to speak Russian and some Ukrainian.
- [11] While in the Ukraine he became convinced that his best opportunity for a better life was in North America. He applied for a study permit and came to Vancouver on

April 22, 2002 at the age of 18, speaking Farsi, Russian and Ukrainian. He had no family here (all of his immediate family is in Iran). He commenced studying English. His first friends were from the Russian immigrant community because he could communicate with them. They called him “Vlad” as a nickname because they could not pronounce “Houtan” and, when they tried, it sounded like an indecent word in Russian.

- [12] Mr. Sanandaji applied for and was accepted to study tourism management at what was then University College of the Cariboo in Kamloops. By the time he graduated that post-secondary institution it had become a degree-granting university, Thompson Rivers University. He graduated with a Bachelors in Tourism Management in 2006.
- [13] He took a series of jobs in the tourist industry including with a company called R Co. at which his job was to assist persons from other countries come and work in the resort industry in Canada. This involved helping them understand and navigate the system to obtain work and study visas, a system which he had worked through himself. He moved from R Co. to a company called I Co., doing the same thing.
- [14] In around 2009 he moved to Ontario for I Co. During his time in Ontario he began to consider applying to law school. Although by any standards he had achieved what any first generation immigrant would be proud to achieve: linguistic proficiency and a career in a very short period of time; he was still motivated by the same things that had caused him to convince his parents to permit him to leave Iran on his own. First, he has a drive for a better life combined with an entrepreneurial spirit that came out in his evidence on more than one occasion. Second, he has a conviction to right injustice. Third, he is determined to use these impulses to help people, in particular immigrants.
- [15] He wrote the LSAT and applied to law schools in Canada. He also started studying French. He was accepted to law school at Thompson Rivers University and commenced classes in September 2013.

Failure to provide a breath sample charge

- [16] In 2008, Mr. Sanandaji was out with a group of friends in Vancouver at a bar. He was the designated driver. He testified he had not been drinking alcohol. They left the bar and he accidentally turned right on Hornby Street, which is a one way street. They were travelling against the traffic, and Mr. Sanandaji immediately pulled into a parking lot.

- [17] Mr. Sanandaji's evidence is that police pulled in behind him, an officer approached the car and asked him if had been drinking, to which he said no. The police officer who approached the car asked him to get out of the vehicle and told him the vehicle smelled like alcohol. Mr. Sanandaji told him that his friends had been drinking. Mr. Sanandaji was asked again if had been drinking, and he said no. Mr. Sanandaji was asked if he would provide a breath sample, and he agreed to do so. Mr. Sanandaji said he blew into the machine and it did not register any alcohol. He was told he was not trying hard enough so he continued to try. He asserts he was making a genuine effort, but the police accused him of not making an effort to blow and charged him with failure to provide a breath sample, driving the wrong way and driving without reasonable consideration for other persons using the highway.
- [18] We also had before us the police file, including the reports of the officers that evening. As will be recounted later, there was considerable back and forth between Mr. Sanandaji and the Law Society about these charges during the application process prior to the Credentials Committee ordering this hearing. Mr. Sanandaji did not have any records when he made the application. In order to respond to the Law Society's requests for more information, he made a Freedom of Information application to the Vancouver Police Department and obtained the police reports, which he provided to the Law Society. These reports are not evidence of their contents, but only that the contents were recorded by the authors of the documents.
- [19] According to the report of the constable who interacted directly with Mr. Sanandaji, Mr. Sanandaji refused to look at the police officer when he approached the vehicle and continued to refuse to look at him or to speak to him when he asked for his driver's licence and registration. The police officer formed the impression that he would not look at him or speak to him because he was impaired. On this basis he was asked to provide a breath sample and told how to blow. The police report indicates the officer did not believe he was making a genuine effort to provide a breath sample. The police report does not recount that the police officer asked him whether he had been drinking, rather demanded the breath sample on the basis that he refused to look at the officer or talk to him.
- [20] The officer who was not, according to his report, interacting with Mr. Sanandaji recorded that Mr. Sanandaji had red, glassy eyes, slurred speech (which would seem to contradict the first officer's assertion that Mr. Sanandaji refused to speak), was licking his lips and was swaying as he stood. The report of the officer who directly interacted with Mr. Sanandaji did not record any of these indicia of impairment.

- [21] Mr. Sanandaji was closely cross-examined on the police report. He said that there was a conversation prior to the breath sample, that he told the officer he was designated driver and had not been drinking, and that he did try to provide a breath sample on each occasion he was asked to blow. He said he was not impaired and was not displaying the indicia of impairment. He said he was upset and nervous because he obviously had made a mistake by driving down a wrong way street and he thought he was going to get an expensive ticket. Mr. Sanandaji had also provided information to the Law Society about two previous roadside suspensions he received (discussed below). He agreed he had been drinking on those occasions. As a result of those experiences he would not drive if he had been drinking and he had not been drinking the night of the wrong way turn.
- [22] Mr. Sanandaji was charged with refusal to provide a breath sample as well as driving the wrong way and driving without reasonable consideration. His car was towed. He was given a 24-hour driving prohibition, but he was not charged with impaired driving.
- [23] Mr. Sanandaji retained counsel to defend him on the charges. Before they came to trial, he had moved to Ontario. Mr. Sanandaji does not know how many appearances there were, but he did not attend any. He travelled back to Vancouver for the trial. The day before the trial was to take place he received a telephone call from his counsel. Mr. Sanandaji understood that the charges had been dropped except the charge of driving the wrong way for which he would have to pay a traffic violation. He was happy to receive this news. He knew he had driven the wrong way and so was prepared to accept responsibility for that.
- [24] The evidence before us was that of Mr. Sanandaji. We observed him closely and we are satisfied he was telling the truth. We find that he had not been drinking, that he drove the wrong way on Hornby Street, and that he attempted to provide a breath sample when asked to do so.

Excessive speeding charge

- [25] The only evidence before us was that Mr. Sanandaji was given a ticket for excessive speeding in 2011. Counsel for the Law Society said he placed no emphasis on this incident and noted that Mr. Sanandaji had a clean driving record since then.

Law school

- [26] In his first semester of law school, Mr. Sanandaji was part of a group of students and professors involved in setting up a legal clinic. He volunteered at the legal clinic on Fridays and attended as a volunteer every Friday that the clinic was open. In each semester he volunteered for no credit or compensation except his sixth and final semester at law school at which he was able to use his clinic work to write a research paper. In addition, as will be described below, his clinic work was eligible towards the community service hours he completed in the alternative measures plan instituted as a condition to stay the assault charge.
- [27] Thompson Rivers University has a significant body of international students. Many of them attended the clinic with questions about immigration and visa issues. Mr. Sanandaji testified that he immigrated on his own without help. He wanted to help people who wanted the same things in life he wanted. In addition to meeting with clients at the regular clinic hours, he developed, on his own initiative, a power point presentation answering the most frequent questions he received. He took this and presented it to international students and then fielded their additional questions from time to time. Each of these presentations was two to three hours in length.
- [28] Also while in law school, he took a course about lawyering in the 21st century that challenged students to “think outside the box” and come up with an innovative way to tackle a legal problem. Mr. Sanandaji’s group proposed a cell phone app called “Summons” that would allow a chambers clerk to page a lawyer when his or her matter was to be called so that the lawyer did not have to sit in chambers waiting for the matter to be called and charge his or her client for that down time. This idea received some press attention. After graduation, Mr. Sanandaji’s group formed a not-for-profit society to pursue this idea further.
- [29] Mr. Sanandaji submitted three letters of reference, two from professors at TRU and one from his employer, Maryam Sodagar.
- [30] One professor was Mr. Sanandaji’s professor in the Lawyering in the 21st century course. She describes the work done by Mr. Sanandaji and his group as described above. She also describes him as insightful, honest, diligent and polite.
- [31] The other law professor is the professor with whom Mr. Sanandaji worked at the legal clinic. Her letter was not prepared for this hearing but for an award for which Mr. Sanandaji was nominated. The professor chronicles his work in the legal clinic and the public legal education workshop he developed for international students. In that letter, the professor notes that Mr. Sanandaji was

the founder of a company, S. Co., in which he assisted clients with work visas and other visas and working permits.

- [32] This latter statement was not accurate. Mr. Sanandaji explained that his LinkedIn profile describes him as the founder of S Co. that was operated by the Houtan Group. The profile shows that as a going concern, but really S Co. was an idea that Mr. Sanandaji had after he had left I Co. and was working on getting into law school. It was a Plan B that he was considering, but then he was accepted into law school. He did not take it off his LinkedIn profile, and so it remained there, giving the appearance that this was a going concern. When Mr. Sanandaji saw this in the professor's letter, he brought it to her attention. But by that time the award had been made (to someone else) and so she did not change her letter.

Assault charge, alternative measures agreement and stay of the assault charge

- [33] The following facts are agreed between the parties regarding the incident that occurred at a sports bar in Kamloops on March 14, 2014:

The applicant was attending a law school party at the sports bar during the evening of March 14, 2014.

At the end of the evening (i.e. after midnight), the applicant, who had been drinking and was impaired, attracted the attention of the bar staff, who physically escorted or ejected him from the bar. He was followed outside by several of the bar staff, and an altercation ensued in which the assistant manager, JK was pushed and fell to the ground, and in which the applicant suffered broken bones and cuts.

The applicant was hospitalized.

On March 15, 2014, the applicant was charged with assault (CCC [*Criminal Code*] s. 266) on JK.

On March 4, 2015, the morning of the applicant's scheduled trial, the applicant's counsel provided Crown Counsel with witness statements from PM, NS, and KM.

The trial was adjourned by consent, and the charge against the applicant was the subject of an Alternative Measures Referral on March 5, 2015, agreed to by the Crown and the applicant.

On or about March 16, 2015 the applicant agreed to the terms and conditions of an alternative measures plan. The alternative measures plan required the applicant to:

- (a) Complete 16 hours of community service at the TRU Legal Services Clinic;
- (b) Apologize to JK by letter;
- (c) Provide restitution to JK in an amount to be determined;
- (d) Complete the terms and conditions of the alternative measures plan by May 29, 2015.

On March 26, 2015 the Crown approved the alternative measures plan and the amount of restitution was set at \$860.00.

By May 6, 2015, the applicant had completed the terms and conditions of the alternative measures plan. ...

On June 9, 2015, the Crown directed a stay of proceedings of the assault charge.

The facts contained in the letter from Crown Counsel dated March 3, 2017 ... are true.

The facts contained in attachments to the letter from Crown Counsel ... dated March 3, 2017 ... with respect to the Alternative Measures Referral, the alternative measures plan and the applicant's completion of them (collectively, the "Attachments") are true.

The applicant does not dispute that he signed the originals of the Attachments in the locations where his signature is indicated, but does not specifically recall doing so.

The originals of documents such as the Attachments are normally stored with the Kamloops Probation Office. The parties do not require originals of the Attachments for the purpose of this hearing.

- [34] The agreed facts refer to several documents, some of which were in evidence for the truth of their contents by virtue of the agreed facts. Their significance to our findings will be discussed as appropriate.

Articling position and application for admission

- [35] Mr. Sanandaji testified that finding articles was not easy for him and that he felt constrained and limited by the assault charges pending against him during the second half of first year and most of second year. In third year, after exams ended, he met with a Vancouver firm, Sodagar & Company, the principal of whom is Ali Sodagar. Sodagar & Company has a space sharing arrangement with Sodagar Nielsen Law Group, the principal of which is Maryam Sodagar.
- [36] Maryam Sodagar testified. She testified that the practice of Ali Sodagar is focused on corporate commercial work while her practice focuses on immigration and family law. In addition to sharing space, the firms share an assistant and refer work to each other.
- [37] In 2016, these two firms were looking to hire an associate to support the work of both firms. In response to this opening, they received applications from prospective articled students and decided an articled student was an option to meet their needs if they split the articles between the two firms. They interviewed six applicants and decided on Mr. Sanandaji. That was early May of 2016, and they wished him to commence articles immediately. However, the process for admission into the Law Society Admission Program cannot be commenced until the articles have been arranged. When Mr. Sanandaji made his application, as will be discussed, there were several requests for more information, a consideration by the Credentials Committee and ultimately a referral to this hearing.
- [38] In the meantime, Mr. Sanandaji was working for these firms pending what he anticipated to be admission into the program. By August 2016, when he was advised that the matter would not be resolved soon, the firms hired another articled student to meet the need they identified, and Mr. Sanandaji continued to work in his administrative assistant role. Maryam Sodagar explained that Mr. Sanandaji had told Ali Sodagar about the issues that the Law Society was concerned about, namely the charges outlined above. The Sodagars had discussed them. Maryam Sodagar had then discussed it with Mr. Sanandaji. She was satisfied that she had a good frank discussion with him and he was not making any excuses to downplay his responsibility. She was satisfied with his response. Ali Sodagar was unable to attend the hearing but wrote a reference letter in which he praised Mr. Sanandaji for displaying a high degree of integrity, responsibility, enthusiasm for learning, professionalism and courteousness,
- [39] When asked why the firms did not just cut Mr. Sanandaji loose, Maryam Sodagar said that, by this time they had observed him for a few months and they liked

what they saw. He took directions very well, his ability to speak Farsi was an asset, he was courteous to clients, supportive of staff, hard-working and eager to learn. They felt he would be an ideal person to join their firms after articles and are prepared to support him through this hearing.

- [40] Mr. Sanandaji's written application to the Law Society Admission Program was entered into evidence. This is a form filled out by every person who seeks enrolment into the Law Society Admission Program (articles and the Professional Legal Training Course). The form requires the applicant to provide information about their personal background, places of residence, education, employment experience, proposed articles, character and medical fitness.
- [41] In it, in response to a question about whether he had ever gone by any name other than Houtan Sanandaji, Mr. Sanandaji advised that he had used the first name Vlad informally among his Russian friends who could not pronounce his Farsi first name.
- [42] In Part E, Good character, Mr. Sanandaji responded "yes" to a question that requires a positive response if the applicant has been charged with any non-parking and non-speeding offences and/or if the applicant has been charged with parking or speeding offences totalling five or more in the last three years. The form requires a positive response to be fully particularized.
- [43] Mr. Sanandaji's particulars disclosed two criminal charges.
- [44] He described the first as a refusal to provide a breath sample in 2008. He noted in his reply that he did not have any records and so he provided the information to the best of his recollection. He also advised that he had contacted the lawyer who represented him and Vancouver City Police but no records were available anymore. He covered this incident in three paragraphs of text. The portions of the response that are germane to this hearing are his assertion that he had not been drinking and did not refuse to blow and that he described the charge was being "withdrawn" and "dropped". He also did not disclose that, in the same incident he was charged with driving in the wrong direction and driving without reasonable consideration.
- [45] As described above, we accept Mr. Sanandaji's evidence that he had not been drinking and did not refuse to blow.
- [46] With regard to the descriptions that the charges had been withdrawn/dropped and the omission of the charges of offences of driving in the wrong direction and driving without reasonable consideration, the accuracy of the particulars provided

by Mr. Sanandaji was called into question because the Law Society obtained a printout of the charges related to this incident from Court Services Online (“CSO”). The Law Society interpreted these records that the disposition was that Mr. Sanandaji was found guilty of the included lesser offence of driving in the wrong direction. I pause to note that the CSO report was hard to understand because, although the disposition of the failure to provide a breath sample charge is “GLI” (guilty of the lesser included offence), neither driving in the wrong direction nor driving without reasonable care are lesser included offences of refusing to provide a breath sample. The CSO also indicates that the traffic offences have been “DWP”.

- [47] Mr. Sanandaji’s particulars of the second charge, the assault charges from the sports bar event, total eight paragraphs. The Law Society does not take issue with Mr. Sanandaji’s description about the altercation, but rather about the outcome and the disposition of it as described in the following excerpts:

On or about March 15, 2014, I was charged with assault as a result of an incident at a law school event. I had pleaded not guilty as I genuinely believed, and still believe, that I did nothing illegal that night. The charges were later stayed by the Crown after the prosecutor had reviewed the witness statement of those present.

...

Because she [a manager of the bar] was so close to me, I extended my arms and pushed her away in a defensive way. She moved backwards, slipped and fell. She was not injured.

...

Notwithstanding that I had never meant shoving the manager to be anything but defensive, I realize that I may have over-reacted in my pain and confusion. I was and still am incredibly sorry for my part of what happened, and I wrote her an apology letter for the trouble that she had gone through on the night of the event.

On the eve of trial, my lawyer called the Crown Counsel’s attention to witness statements, including from ... one of the students who had come to my aid. I have included that statement with this letter. After reviewing the statements, and in light of my apology, the charges were dropped and no trial was necessary.

- [48] The Law Society obtained information from Crown Counsel, including the policy pertaining to the alternative measures program. This policy indicates that alternate measures are only recommended if Crown Counsel is satisfied that there is a substantial likelihood of conviction. Crown Counsel confirmed in a letter, which was admitted for the truth of its contents, that the policy was applied.
- [49] Mr. Sanandaji was thoroughly cross-examined about his failure to disclose that the stay was as a result of the alternate measures plan, the impression he left that the charges were stayed due to lack of merit, and his statement that the manager had not been injured.
- [50] In his evidence, Mr. Sanandaji explained that he was trying to explain the process that led to the charges being stayed. His recollection is that, on the day of trial, there was considerable back and forth discussions between his counsel and Crown Counsel about the witness statements and what the evidence would show. Mr. Sanandaji was prepared to vigorously defend himself as he did not believe that he had committed a criminal assault, rather he considered that he had defended himself after having been assaulted and in fear that he would be assaulted again. After many discussions with Crown Counsel, his counsel came to him and asked him if he would apologize and make restitution, and if he would, the charges would be dropped and there would be no trial. Mr. Sanandaji testified that he was more than willing to apologize for his role in the incident and for pushing the manager, even though he did not believe he should have been charged with assault.
- [51] He does not have a recollection of signing the alternate measures agreement, but he does recall liaising with a probation officer, being advised of the amount of restitution, and preparing an apology letter (he thinks he did so on a TRU computer in the computer lab, which is why he could not find it when he made his application). He also recalls that, at some point, he was told he would have to complete community service. He was asked if he did any volunteer work, and he told the probation officer about the legal clinic in which he volunteered. She told him that would qualify, and so he was told to track his hours and provide that information to the probation officer. He did so, and within a few months he had satisfied all the conditions, and the charges were stayed.
- [52] He perceived, and still perceives, the agreement to stay the charges as occurring as a result of the provision of the witness statements to Crown Counsel. He signed off and completed the terms of the alternative measures plan, but he was not aware such a plan would be recommended only where the Crown Counsel believed there was a substantial likelihood of conviction. He viewed the

provisions of the alternative measures plan as steps to achieve the stay, which steps were completed and the stay entered. At the time he made his application, he believed the correct description of the disposition was that it had been stayed.

- [53] With regard to his statement in his particulars that the manager was not injured, compared to his apology letter where he acknowledged she was injured, he testified that he had been told by the Crown Counsel that he needed to pay restitution to her to compensate her for missed work and because she felt she needed some counselling. He said that, up to that time, he had understood she had not been injured (especially compared to the injuries he sustained). At that time he became aware she had been shaken up and emotionally distressed by the event and he was required to make restitution for that and apologize. In providing the particulars to the Law Society he was thinking about his own significant physical injuries, for which he received hospital treatment, and he understood she did not have any physical injury such as he suffered. When he prepared the Law Society particulars he did not have the apology letter he had written a year earlier. At the time he completed the Law Society application and prepared the particulars, he did not believe she had suffered a physical injury. When he later read the police reports, he saw notes that she had cut her hands and might have a bump on the head, but the ambulance attendants did not take her to the hospital.
- [54] We accept this evidence, although we note the lingering inconsistency between his evidence and his letter of apology.
- [55] As with the failure to provide a breath sample charge, Mr. Sanandaji had very few documents when he made his application. He included what he had, which was a letter written by Crown Counsel advising the Kamloops Criminal Registry that the Crown was directing a stay of proceedings. He made inquiries with his lawyer but could not afford the cost of having his lawyer retrieve and produce his file. He contacted the Kamloops Criminal Court Registry but was told the file was no longer there. He did not think to contact Crown Counsel directly. He now wishes he had taken more steps before he put his application in to gather all the documents.
- [56] The Law Society also questioned Mr. Sanandaji about parking and speeding tickets that the CSO disclosed but were not disclosed by Mr. Sanandaji. All but one of these tickets were more than three years prior to his date of application and so not required to be disclosed. One of those, the excessive speeding ticket included in the Rule 2-91 notice, was within three years of the application (it was September 20, 2011 and the application was May 30, 2011). However it was the

only one, and the requirement to disclose is where there are five or more. The excessive speeding ticket was not pressed by the Law Society at the hearing before us, so we make no finding about it.

ANALYSIS AND LEGAL REASONING

Legal principles

- [57] All applicants for admission to the Law Society must be of good character and repute and fit to become a barrister and a solicitor of the Supreme Court. Most applicants satisfy this requirement through the written application that each applicant makes. Where the application is referred to a credentials hearing, the applicant bears the burden of proof. The standard of proof required is on the balance of probabilities: Law Society Rules, Rule 2-100(1).
- [58] The elements of good character and repute have been much discussed and include an appreciation of the difference between right and wrong, moral fibre to do the right thing in difficult circumstances, and the esteem (or lack of esteem) in which the person is regarded by neighbours and others who know the person: Southin, “What is ‘Good Character’?” (1977), 35 *The Advocate*, 129.
- [59] The test of good character and repute imports both a subjective and an objective sense. It calls upon the Law Society to inquire subjectively into the characterization of the person by others, as well as an objective examination of the actual attributes and behaviour of the person: *Re: McOuat*, Panel Decision (12 June 1992) at pp. 12-13, aff’d *McOuat v. Law Society of British Columbia* (1993), 78 BCLR (2d) 106, [1993] BCJ No. 807 (CA) at para. 7.
- [60] With regard to the requirement that the applicant be “fit to become a barrister and a solicitor of the Supreme Court,” also referred to as the fitness test, the inquiry is about the robustness of the applicant’s character to do the right thing in the face of adversity, including when the personal interests of the applicant are at odds doing the right thing; and to discharge the weighty demands of the role of a lawyer faithfully in accordance with the Canons of legal ethics: *McOuat*, at pp. 17-18. It includes an assessment of whether the applicant’s character is such to allow a prediction of future integrity sufficient to meet the demands of the honour of the profession.
- [61] Good character and repute and fitness are inextricably bound to each other: one cannot be fit unless one is of good character, that character must be robust to weather ethical storms (fitness) and both character and fitness must not only

actually exist, but be appreciated to exist (repute). The expectations and appreciations of the public and the profession are reflected in the assessment: *Re: DM*, Panel Decision (14 June, 1994) at p.4.

- [62] The standard is not one of perfection but it is high: *DM* at p. 5; *Re: Buttar*, 2009 LSBC 14 at para. 37, and *Law Society of Upper Canada v. Schuchert*, [2001] LSDD No. 63 at para. 20.
- [63] The assessment of good character and repute and fit to become a barrister and solicitor must be made as of the time of the application. A troubled past does not preclude an applicant from being admitted or re-admitted if his or her character, repute and fitness has reformed such that the applicant currently meets the test and allows for a prediction of future integrity: *Re: Gill*, 2015 LSBC 16 at para. 21, and *DM* at pp. 4-5.
- [64] For this reason, many cases, especially those for readmission, focus on a pattern of rehabilitation. This case is not about whether a “fall from grace” has been rehabilitated, but whether incidents in Mr. Sanandaji’s recent past, and in particular the manner in which he addressed them with the Law Society, are such that he is or is not of good character, repute and fit to become a barrister and solicitor at this time.

Evidence of good character, repute and fitness

- [65] Mr. Sanandaji left his home country so he could make a better life for himself in a society not characterized by the type of injustices he witnessed in Iran. He learned several languages and completed two degrees. His pursuit of a career in law is driven by his desire to help people go through the immigration process he navigated on his own. He not only volunteered in the TRU legal clinic, but collated the questions he was fielding from the international students and went to them with the offer of more assistance and help. These are the qualities and actions of a person who can make hard decisions, accept the consequences, overcome obstacles, and put the interests of other persons before his own. The letters of reference he received and the evidence of Maryam Sodagar demonstrate that he is highly regarded.
- [66] The question is really whether his character is robust enough to weather ethical storms. That is a question of fitness raised mainly by his dealings with the Law Society. But, as noted above, character, repute and fitness are not really separable, and in this case, the incidents raised in the Rule 2-91 notice call into question character as well as fitness.

Analysis of the Rule 2-91 circumstances

- [67] The circumstances enumerated must be considered individually and collectively as certain issues may not amount to falling below the good character, repute and fitness standards individually but collectively may show a pattern that does fall below the standard.
- [68] The November 2008 driving the wrong way/failing to blow/driving without reasonable consideration charges are not problematic. There is no doubt that Mr. Sanandaji was driving the wrong way, but this is a mistake that does not of itself evidence a problem with character, repute or fitness. Nor does the manner in which he dealt with the police.
- [69] However, if he had been impaired and if he had refused to blow, his disclosure to the Law Society would be false. In those circumstances, both his conduct on the night in question and his application would be problematic in terms of character, fitness and good repute. As stated above, after thorough cross-examination of the Applicant by counsel for the Law Society, we accept that the Applicant was not impaired and did not refuse to blow.
- [70] On his Law Society application form, he described the failing to blow charge as having been “withdrawn” and “later dropped”. The question is whether this characterization was accurate and, if not, whether the inaccuracy rises to the level that he is not of good character, repute and fitness. The Law Society’s concern in this regard is that the disclosure is inconsistent with the notation on the CSO printout that he was found guilty of the lesser included offence of driving in the wrong direction and he should have provided that full explanation instead of the more benign statement that the charge was withdrawn. The difficulty with this is that the CSO printout cannot be correct since driving in the wrong direction is not a lesser included offence of failure to provide a breath sample. Accordingly, Mr. Sanandaji’s explanation that the failure to provide a breath sample charge was dropped or withdrawn is not called into question by the CSO.
- [71] We are satisfied that Mr. Sanandaji was candid on his application. He disclosed that he was driving the wrong way and that he was charged with failing to blow. We find that his disclosure was consistent with the obligation to give full particulars and not the result of dishonesty or a lack of candor.
- [72] Neither the speeding nor the excessive speeding charges were asserted as amounting to evidence of problems with character, repute or fitness.

- [73] With regard to the assault, the agreed facts amount to an unfortunate bar fight after Mr. Sanandaji became intoxicated. It is not part of a pattern of behaviour, and this one bar fight does not amount to a problem with character, repute or fitness. Nor does this bar fight combined with driving the wrong way six years previously amount to a character, repute or fitness problem.
- [74] As with the failure to give a breath sample charge, the concern here is not the assault charge itself but whether he gave a full and complete account of the events that gave rise to it and the aftermath.
- [75] We considered this evidence carefully as the omission of the alternative measures plan and the statement that the manager was not injured were the issues that were most troubling to us about his disclosure to the Law Society. However, we accept his explanations. We view it as credible that Mr. Sanandaji, albeit a second year law student at the time, was not familiar with the nuances of Crown Counsel policy to divert to alternative measures to understand that Crown Counsel believed there was a reasonable likelihood of conviction.
- [76] With regard to the issue of injury to the manager, we accept that Mr. Sanandaji was acknowledging that he was required to apologize for what he did that caused the manager to miss work and to require counselling. In that context he apologized for causing her injury, but in the context of the Law Society application he asserted that she had not been injured. What he meant was she had not been physically injured. Mr. Sanandaji should have been more careful and objective when providing the particulars, but it does not rise to the level of being self-serving or intentionally misleading.
- [77] Our finding in this regard is supported by the fact that he did provide disclosure of the charges. He also disclosed his nickname “Vlad”, even though it was not an alias he had chosen to use. During the process of attempting to answer the Law Society’s questions he uncovered and disclosed other motor vehicle incidents (old roadside driving suspensions) that he had forgotten about and arguably are not required to be disclosed since he was not charged with an offence: *Gill* at para. 24.
- [78] It would have been better if the Applicant had gone down every avenue to get the CSO report and all the details from the Crown Counsel himself and presented a package that was perfectly complete. However, the standard is not one of perfection. We are of the view that the flaws in his application, discussed above, fall into the category of imperfections. They do not evidence a lack of candor or honesty that amount to a failure to show good character or that undermine

confidence that his character is robust enough to weather ethical storms in the future.

- [79] Similar disclosure issues were addressed by the panel in *Gill* at para. 25 regarding a much more troubling past with the law. The applicant gave evidence that was inconsistent with the police report to Crown Counsel. The panel assessed his evidence and found he was genuinely trying to make accurate disclosure and was not dishonest in his application or in his evidence before them. We have the same impression in this case.
- [80] We also noted the evidence of Maryam Sodagar, which allowed us to conclude that two experienced British Columbia lawyers, fully apprised of Mr. Sanandaji's past and his application to the Law Society, are prepared to support his application to the extent of holding a position open for him, writing a letter of reference and attending to testify to his personal qualities.
- [81] We are satisfied that we can predict that he will discharge his duties with integrity.

RESULT

- [82] Mr. Sanandaji is of good character, repute and fit to be enrolled into the Law Society Admission Program, allowed to commence his articles and, in due course, to become a barrister and a solicitor of the Supreme Court.
- [83] If the parties cannot agree, they may make submissions to the panel on costs within 30 days of the issuance of this decision.