

THE LAW SOCIETY OF BRITISH COLUMBIA

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

and a hearing concerning

VANESSA LAUREN DE JONG

APPLICANT

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

Hearing date: November 9, 2017

Panel: John Waddell, QC, Chair
Paula Cayley, Public representative
Brook Greenberg, Bencher

Counsel for the Law Society: Michael D. Shirreff
Counsel for the Applicant: Henry Wood, QC

OVERVIEW

- [1] On February 27, 2017, the applicant Vanessa de Jong (the “Applicant”) applied to be enrolled in the Law Society Admission Program (the “LSAP”).
- [2] On July 6, 2017, the Credentials Committee of the Law Society of British Columbia (the “Law Society”) ordered a hearing to determine whether the Applicant satisfies the requirements under s. 19(1) of the *Legal Profession Act* (the “Act”) for admission into the LSAP, and ultimately for call and admission as a member of the Law Society.
- [3] That section provides:

No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and 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] This hearing as to the Applicant's character and fitness is required as a result of the Applicant's significant history of criminal conduct, commencing in 1999 when she was approximately 15 years old and continuing until 2007. The Applicant's conduct resulted in a number of criminal charges and a conviction, as set out in greater detail below.
- [6] In addition to her criminal activity, the Applicant also made a consumer proposal (the "Consumer Proposal") in April 2007.
- [7] The Applicant submitted that she last engaged in criminal activities in 2007 and that she has made substantial rehabilitative steps over the ensuing decade. Both counsel for the Applicant and counsel for the Law Society characterized the Applicant as having successfully "turned her life around."
- [8] On that basis, the Applicant asked the Panel to conclude that she now satisfies the requirements of s. 19(1) of the Act, and should be permitted to enter the LSAP with the goal of being called and admitted.
- [9] The application was heard on November 9, 2017.
- [10] At the conclusion of the hearing, the Panel unanimously found that, notwithstanding the Applicant's past criminal conduct and the Consumer Proposal, she had rehabilitated herself and now satisfies the requirements of s. 19(1) of the Act. The Panel's order was made with reasons to follow.
- [11] These are the Panel's reasons.

FACTS AND EVIDENCE

Facts

- [12] At the outset of the hearing, the parties entered into evidence, as Exhibits 1 and 2 respectively, a document agreement entered into by the parties and a Common Book of Documents (the "Common Book").

- [13] The document agreement included that each of the documents contained in the Common Book was “admitted into evidence for the proof of the truth of the matters recorded in it.” Accordingly, the following underlying facts contained in the Common Book were not in dispute between the parties.
- [14] The Applicant was born on April 2, 1984 and was raised in Alberta.
- [15] In 1999, at around age 15, the Applicant began to socialize with students at her high school who were members of a gang. These students were involved in selling illegal drugs.
- [16] Through her association with these students, the Applicant began to use drugs, including “crystal meth”. The Applicant also began to sell drugs, primarily marijuana.
- [17] In 2000, the Applicant left home and moved in with her then boyfriend. While that relationship was not a healthy one, because her boyfriend did not use “hard drugs” the Applicant decided to quit using crystal meth.
- [18] Despite no longer using crystal meth, the Applicant continued to drink alcohol, use marijuana and sell drugs.
- [19] As a result of these activities, on August 14, 2002, the Applicant was charged with possession of cocaine and possession of the proceeds of crime.
- [20] On June 26, 2006, the Applicant was charged with possession for the purpose of trafficking cocaine, possession of marijuana, and possession of the proceeds of crime.
- [21] In August 2006, the Applicant was charged with possessing the proceeds of crime, possessing a weapon, and breaching a recognizance.
- [22] On October 14, 2006, the Applicant was charged with 20 criminal counts, including breach of a recognizance; possession of a firearm, possession of stolen property, and possession for the purpose of trafficking cocaine.
- [23] On April 5, 2007, the Applicant made the Consumer Proposal.
- [24] In 2007, the Applicant was charged with failure to comply with a recognizance.
- [25] On May 17, 2010, the Applicant pleaded guilty to possession for the purpose of trafficking cocaine and was sentenced to 20 months community imprisonment with certain conditions.

- [26] In 2013, the Applicant began attending law school at the University of Victoria Law School. From 2015 to 2017, the Applicant completed her law degree at the University of British Columbia (“UBC”).
- [27] The Applicant has received an offer of articles from a Vancouver law firm (the “Firm”) if she is admitted to the LSAP.
- [28] The Applicant was served by the Law Society with the requisite notice of this hearing.

Evidence

- [29] In addition to the admitted facts contained in the Common Book, the Panel heard evidence from two witnesses: (i) the Applicant; and (ii) a lawyer (the “Lawyer”) who practises at the Firm.
- [30] The Panel was also provided with a collection of letters submitted in support of the Applicant and her application (the “Letters”).

The Applicant’s testimony

- [31] The Applicant gave evidence in support of her application. In her testimony she expanded upon the facts contained in the Common Book.

Background

- [32] According to the Applicant, up to age 15 she had not been popular in school and did not fit in well. She testified she had been considered to be something of a “book worm” by other students.
- [33] Around the time she turned 15, however, she began to receive attention from certain male students at her school. The Applicant testified that these students were popular, and therefore, she was happy to become a part of their social circle.
- [34] The Applicant testified that these popular students provided her with a type of social engagement that she had not had up to that point. She described herself as having “latched on to this group.”
- [35] Unfortunately, these same students were members of a gang and were involved in the sale of illegal drugs.

- [36] The Applicant frequently attended parties with these students and began using alcohol and drugs herself. The Applicant also began selling marijuana to support her own drug use.
- [37] The Applicant acknowledged that, at the time she was involved in this lifestyle, she thought it was fun and exciting.
- [38] The Applicant testified that she first tried crystal meth when she was 15 or 16 years old and then became a relatively heavy user.
- [39] She decided to quit using crystal meth after she moved in with her boyfriend at the time, who sold hard drugs, but did not use them himself. The fact that her boyfriend did not use hard drugs, as well as negative experiences related to the use of crystal meth, convinced the Applicant to stop using it.
- [40] The Applicant was able to stop using crystal meth on her own, without counselling or other treatment. She described that effort as “difficult, but positive.”
- [41] Although she stopped using crystal meth, she continued to sell drugs, as did her then boyfriend. She also continued to use alcohol and marijuana.

The Applicant’s criminal charges and convictions

- [42] The Applicant described that, in 2002 she was living in an apartment with her then boyfriend and another friend.
- [43] In 2002 that apartment was raided by police, which resulted in charges being brought against her for possession of cocaine and possession of the proceeds of crime. Those charges were ultimately stayed.
- [44] In cross-examination, the Applicant admitted that having been charged criminally at that time was not enough to convince her to change the direction of her life. However, the Applicant also testified that, after being charged, she did break up with her then boyfriend. She also attempted to extricate herself from association with the gang and stop selling drugs.
- [45] Despite these efforts, the Applicant later reconnected with her friends from high school and began going out socially with them again. As a result, she fell back into the gang lifestyle and returned to selling drugs.
- [46] The Applicant again admitted that, at the time, she was enamoured with this way of life and that she had offered to return to working as a drug runner for the gang.

- [47] As a result, the gang sent the Applicant to Fort McMurray to sell crack cocaine. She testified that she primarily sold small amounts of crack cocaine to street addicts.
- [48] While she was actually living in a hotel in Fort McMurray, the Applicant told her parents that she was working at a hotel in Banff for the summer. Eventually, the Applicant's parents discovered her tale of summer employment in Banff was untrue. The Applicant's relationship with her parents was severely damaged by her deception.
- [49] The Applicant described that, in June 2006, she was pulled over while driving in Fort McMurray and was charged with possession for the purpose of trafficking cocaine, possession of marijuana and possession of the proceeds of crime.
- [50] The Applicant testified that she did not tell her parents that she had been arrested and charged, although they eventually discovered this fact through their acquaintances.
- [51] The Applicant related that her relationship with her parents was very poor by that time.
- [52] Rather than ask her parents for support in dealing with the charges, the Applicant allowed the gang with which she was associated to pay her legal fees. Consequently, she became indebted to the gang and was expected to continue working to repay the costs of her legal defence.
- [53] To that end, the gang sent the Applicant to Grande Prairie to sell drugs. There, the hotel room in which she was living in August 2006 was also raided by the police. Following the raid, the Applicant was charged with possessing the proceeds of crime, possessing a weapon and breaching a recognizance.
- [54] The charge of possession of a weapon related to brass knuckles that were found in a drawer in the hotel room, but which the Applicant testified were not hers.
- [55] Again in cross-examination, the Applicant was asked why these charges were not enough for her to change the direction of her life at that time. The Applicant testified, she was immersed in the gang lifestyle and had severed all of her other relationships, including communication with her parents. She was enthralled by the life she was living and did not recognize the impact it had on others.
- [56] After her arrest in Grande Prairie, the gang sent the Applicant back to Edmonton. In Edmonton the Applicant began running larger amounts of drugs to the street level sellers.

- [57] In October 2006, the police raided the townhouse in which the Applicant was living. She testified that she was unaware that one of her roommates was keeping large amounts of drugs and a gun in the residence. Although she was engaged in transferring drugs for the gang, the Applicant kept her supply of drugs hidden outside of the house.
- [58] As a result of that raid, the Applicant was charged with 20 criminal counts, including possession of a firearm and possession for the purpose of trafficking cocaine.
- [59] The Applicant testified that, because of the number and severity of the charges, as well as the fact that she was in breach of two recognizances, she was advised that her situation was now extremely serious.
- [60] The Applicant decided at that point to re-connect with her parents with whom she had not been in contact for some time. The Applicant told her parents that she would be in jail for a long time and that she did not want anything from them except for them to remain in her life.
- [61] The Applicant spent two and a half months imprisoned in the Edmonton remand facility, and then a further three months at a facility in Fort Saskatchewan.
- [62] Throughout this period, the Applicant testified that her parents were a significant source of support. At that point she felt ashamed that she was putting her parents through such an ordeal.
- [63] The Applicant testified that, previously, she had not considered the consequences that her conduct had on others, particularly her parents. According to the Applicant, her time in custody made her realize the impact that her criminal activities had on others.
- [64] In particular, the Applicant spent part of her time in custody with a woman to whom she had previously sold drugs. Consequently, the Applicant was able to see the deleterious effects that her criminal activities had on others.
- [65] The Applicant testified that, in her experience, 80 to 90 per cent of those incarcerated with her appeared to be indigenous.
- [66] The Applicant noted that many of the people who were in custody did not have her advantaged background or family support. Most of those she encountered did not have the financial resources to pay bail.

- [67] All of these observations while incarcerated led the Applicant to realize that she had contributed to these circumstances through her activities selling drugs.
- [68] The Applicant testified that her experiences in custody made a significant impression upon her and are the source of her commitment to addressing issues such as the over-incarceration of indigenous people in Canadian prisons.
- [69] At the conclusion of her time in the Fort Saskatchewan facility, the Applicant was released from custody into the supervision of her grandfather.
- [70] Following the Applicant's release, she began working as a server at a local restaurant. She was later promoted to the position of manager.
- [71] In the summer of 2007, the Applicant testified that she committed another criminal act when she broke a condition of her release by travelling to Fort McMurray to attend the birthday celebration of a friend. The Applicant was stopped at a police road check and found to be in breach of recognizance.
- [72] The Applicant acknowledged this conduct was a grave error in judgment and admitted it demonstrated that, at that time, she still harboured an entirely inappropriate disregard for the law.
- [73] In response to questions from the Panel, the Applicant testified that, at that time, she had a romantic interest in the person she went to visit, which affected her judgment. The Applicant did not try to excuse her conduct, but rather offered this explanation in response to the Panel's inquiries.
- [74] In 2010, the Applicant pleaded guilty to charges of possession for the purpose of trafficking cocaine. She was sentenced to 20 months community imprisonment, with conditions.
- [75] The Applicant admitted that she had committed more criminal conduct than that for which she was convicted or charged.
- [76] The Applicant testified that she made the Consumer Proposal in 2007 as a result of her financial difficulties related, in part, to her legal defence costs.

The Applicant's rehabilitation

- [77] In her application to the Law Society for enrolment in the LSAP, the Applicant described not only the criminal conduct in which she had engaged, but also, "how [she] arrived at a significant turnaround and the desire to pursue a legal career."

[78] The Applicant testified that the primary turning point for her came during the time she spent incarcerated in 2006. She testified that her time in custody:

- (a) helped to break the hold that the gang had on her, including the financial obligations related to her defence costs;
- (b) allowed her to stop using illicit substances;
- (c) resulted in her contacting and reconciling with her parents; and
- (d) made evident to her the harm her conduct had caused to less advantaged members of society.

[79] These factors combined to convince the Applicant to work toward changing the direction of her life.

[80] The Applicant admitted that she did breach her recognizance in 2007 despite having reached this primary “turning point”. However, she also testified that she engaged in this misconduct before she had gained her current appreciation for the law.

[81] The Applicant testified that, following her release from custody, she returned to her post-secondary studies. As a result of her experiences while imprisoned, she decided to study anthropology as her major.

[82] Between 2010 and 2012 she completed her degree in anthropology.

[83] The Applicant then decided to study law in the hope that, in her practice, she could address the over-incarceration of indigenous people. She was admitted to the law school at the University of Victoria and commenced her studies in September 2013.

[84] The Applicant was also married that same year. She had met the man who would become her spouse in Alberta after her release from the Fort Saskatchewan facility. The Applicant’s spouse has been another source of support for the Applicant in her rehabilitation efforts.

[85] Because she and her husband were living in Vancouver rather than Victoria at the time, the Applicant found the first year of law school challenging. She received reasonably good grades despite these difficulties. Nevertheless, after her first year of law school the Applicant took a year away from her studies and then transferred to UBC to continue pursuing her law degree.

- [86] The Applicant excelled academically in her two years at UBC. She testified that, through her studies, she came to respect and even to love the law. This appreciation stands in sharp contrast to her admitted prior disregard for the law.
- [87] The Applicant testified that she now wishes to use her experience and her abilities to help others.
- [88] During her time at UBC, the Applicant participated in UBC's Innocence Project (the "Innocence Project"). In fact, the Applicant continued to assist in the matter to which she had been assigned even after her two terms with the Innocence Project were complete. The Director of the Innocence Project provided one of the letters of support for the Applicant.
- [89] The Applicant travelled to speak to a class in Alberta about "women and crime", and she also visited an institution in Matsqui to speak to inmates there about her experiences.
- [90] According to the Applicant, she sought out articles from a criminal law firm in particular, because she wished to engage in legal aid criminal law work to help people in circumstances like those of the individuals she met while incarcerated.
- [91] The Applicant was offered articles by the Firm, which is holding a position for her pending the outcome of this hearing. During the period that she has been unable to accept articles, the Applicant has been volunteering with the Firm, as well as doing some paid clerical work.
- [92] Three lawyers from the Firm wrote letters supportive of the Applicant, which were included among the Letters entered into evidence.
- [93] The Applicant testified that, if she is admitted to the LSAP, she will begin the Professional Legal Training Course in May 2018. On the other hand, if her application is not granted, she expressed her intention to continue her legal studies and seek a teaching position in law.
- [94] The Applicant was asked in cross-examination and by the Panel whether there should be concerns about the Applicant practising criminal law, and potentially coming into contact with the very lifestyle she had previously found enticing.
- [95] The Applicant testified in response that she had worked very hard to turn her life around and to accomplish all that she had. The Applicant stated that she had finally made her parents proud of her. She also now wished to use her experience to help others. The Applicant testified she was not going to throw all of that away now.

She further testified that she had come to love the law as a result of her studies, and was now ashamed of her prior conduct and her previous disrespect for the law.

[96] The Applicant testified that there is no longer anything appealing to her about the criminal lifestyle, and nothing about it that she misses.

[97] The Applicant testified that she feels fortunate to be joining, if permitted, a supportive and collegial law firm that will help her to learn to practise law and to maintain a healthy professional distance while working on matters about which she is clearly passionate.

The Lawyer's testimony

[98] The Lawyer testified in support of the Applicant.

[99] The Lawyer has been called in British Columbia for seven years, and has practised at the Firm since then.

[100] The Lawyer provided one of the Letters supporting the Applicant. In her testimony, the Lawyer expanded on the contents of her letter.

[101] The Lawyer testified that, during the interview process, the Applicant had disclosed her criminal record without having to be prompted. Over the course of two interviews, the Applicant was asked many questions about her past by various members of the Firm. According to the Lawyer, the Applicant was candid and honest and gave mature and insightful accounts of her past conduct.

[102] In cross-examination, the Lawyer described the Applicant's approach to the interview process as "very forthright."

[103] She testified that the Firm determined unanimously to offer the Applicant articles even though they knew her past conduct may preclude her from taking on such a position.

[104] The Lawyer also testified that the Applicant had been volunteering at the Firm almost every day, including most Sundays, even though it is uncertain that the Applicant will be able to accept an articling position and be called.

[105] The Lawyer testified that she has worked with the Applicant on several projects and described the Applicant as dedicated, as well as passionate about criminal defence work and the law. She characterized the Applicant as very intelligent and diligent in her work.

[106] The Lawyer testified that she trusts the Applicant and she believes the Applicant will become an excellent lawyer if given the opportunity.

The Letters of support

[107] The Applicant tendered nine Letters in support of her application, authored by a family member, friends of her family, as well as from law school professors and lawyers from the Firm who have worked with the Applicant.

[108] The Law Society did not object to the introduction into evidence of the Letters.

[109] In closing submissions, counsel for the Law Society cautioned the Panel against placing too much weight on the Letters from the family member and from other letter writers who had not worked with the Applicant in a professional capacity.

[110] Significantly, counsel for the Law Society also advised the Panel that he had contacted the authors of the Letters to ensure they were fully aware of the Applicant's criminal background. Counsel for the Law Society confirmed that the Applicant had fully and candidly advised all of the writers about her criminal activities before they had drafted their Letters.

[111] Mindful of the Law Society's submission to consider the source of each of the Letters, a number of themes can be drawn from them as follows:

- (a) the Applicant was frank and forthcoming to the authors of the Letters about her criminal history before they agreed to provide their letters of support; (Exhibit 4, Tabs 3 to 8)
- (b) the Applicant became a dedicated and excellent student at law school; (Exhibit 4, Tabs 1, 3 and 4)
- (c) the Applicant has shown a significant commitment to volunteer work and a particular dedication to seeking justice for disadvantaged members of society who have become involved with the criminal justice system; (Exhibit 4, Tabs 3, 7, 8)
- (d) the Applicant appears to have turned her life around and learned from her mistakes; (Exhibit 4, Tabs 3, 6, 8, 9)
- (e) the Applicant is sincere and trustworthy; (Exhibit 4, Tabs 4, 5 and 7) and
- (f) the Applicant would make a positive addition to the profession (Exhibit 4, Tabs 1 to 4, and 7 to 9).

ISSUE

[112] As set out above, the issue to be determined in this hearing is whether the Applicant now satisfies the requirements of s. 19(1) of the Act.

THE LAW

[113] The parties agreed as to the authorities and the principles that are relevant to this matter, which are summarized below.

Good character and fitness

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

[115] In *Re: Applicant 9*, 2016 LSBC 14, the purpose and applicable principles relating to this test were described as follows:

36. Under section 3 of the *Legal Profession Act*, *the Law Society must uphold and protect the public interest by, among other things, ensuring the independence, integrity, honour and competence of lawyers.*
37. In *MacDonald Estate v. Martin*, [1990] 3 SCR 1235, the Supreme Court of Canada expressed concern that *the legal profession maintain high standards of professional conduct to promote public confidence in the administration of justice and strengthen the integrity of Canadian systems of justice.*
38. On the fundamental question of what constitutes “good character and repute” for the purpose of entry into the legal profession, the BC Court of Appeal in *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106, adopted the following oft-quoted passage from an article entitled, “What is ‘Good Character?’” by Mary Southin, QC (as she then was), published in *The Advocate*, (1977) v. 35 at 129:

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

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

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

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

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

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

...

[emphasis added]

[116] The standard in s. 19(1) of the Act applies equally whether the applicant is seeking enrolment in the LSAP or requesting call and admission. (*Re: Applicant 8*, 2015 LSBC 12 at paragraph 48)

[117] In light of the Applicant’s admitted criminal conduct and prior disrespect for the law, there is no doubt she previously did not satisfy the good character and fitness test.

[118] However, the question for this Panel is whether the Applicant has sufficiently rehabilitated herself such that she now satisfies those criteria.

Rehabilitation

[119] The parties directed the Panel to a number of authorities that address the issues of previous criminal conduct, rehabilitation and current good character.

[120] In *Law Society of Upper Canada v. Schuchert*, [2001] LSDD No. 63, the applicant disclosed a number of criminal convictions, as well as his history of drug and alcohol dependency. In allowing the Applicant to enrol in the Bar Admission Course, the hearing panel held as follows:

14. *The applicant was not of good character during the period of the offenses which resulted in criminal convictions. ...*
15. *The question for the admissions panel is whether the applicant has changed since the time of those charges and is now of good character.*
16. The purpose of the good character requirement is to ensure that the Law Society can protect the public and maintain high ethical standards in the lawyers the Law Society admits to practice. Any decision about this applicant must serve to protect the public and maintain high public confidence in the Law [S]ociety's self-governance.
17. The definition of good character is set out in previous decisions of Law Society admissions panels and is an evolving definition. The definition is not exhaustive and refers to a bundle of attributes which, when taken together, amount to good character:

Character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which would include, among others, integrity, candour, empathy and honesty.
18. The onus is on the applicant to prove that he is of good character at the time of the hearing of the application for admission. The standard of proof is the balance of probabilities. *The relevant test*

is not whether there is too great a risk of future abuse by the applicant of the public trust, but whether the applicant has established his good character at the time of the hearing on a balance of probabilities. The test does not require perfection or certainty. The applicant need not provide a warranty or assurance that he will never again breach the public trust. The issue is his character today, not the risk of his re-offending.

19. *The existence of a criminal record, even for serious offenses, is not, of itself, an impediment to admission to the bar. The test is whether the applicant has changed since the time of those charges and is now of good character.*
20. *It is important not to confuse the good character requirement for admission with notions about forgiveness or about giving an applicant a second chance. The Admissions panel is not in the forgiveness business; the test to be applied is clear, and the admissions panel is to determine if the applicant is of good character today. The Law Society Act does not permit an admissions panel to apply any test other than that relating to the applicant's good character at the time of the hearing.*
21. *The onus is on the applicant to establish he is now of good character, on the balance of probabilities, on clear and convincing evidence. The applicant's evidence was truthful, and straightforward. His self-reporting was full and frank, and consistent with his presentation to the admissions panel as a man who was, with candour, fully revealing his past conduct. The character evidence offered by the applicant described him as a person of good character and a person of integrity.*
22. *It has been twelve years since the last criminal activity for which the applicant was convicted. The applicant had a disadvantaged up-bringing, was "on the streets" early and was heavily involved in drug and alcohol abuse. Nevertheless, he stopped drinking and using drugs, he returned to school, completed a B.A. and completed law school. The applicant's criminal convictions were in a different life. He has turned the corner. He has rehabilitated himself and has shown that he is now a person of good character. Subject, of course, to completing all the requirements of the Bar*

Admission Course for admission, the applicant should be admitted to the bar of Ontario.

[emphasis added]

[121] In *Re: Applicant 3*, 2010 LSBC 23, the credentials panel held at paragraph 23:

The determining factor at all Credentials hearings is the public interest. *To protect the public, the Law Society must be satisfied that an applicant meets the test of being of “good character and repute”.* Unlike in the disciplinary context, the onus is on the Applicant to meet this standard. *In this context, public interest has a broader meaning. It is in the public interest to have articulated students and lawyers from diverse backgrounds. Persons who have gone astray and have truly rehabilitated themselves can give valuable insight to clients, the courts and the public. They can become valued and trustworthy members of the profession. They set an example to all of us.* However, here the onus is on this Applicant to prove his rehabilitation. It is not enough for the Applicant to appear and say, “These events happened a long time ago, and by the way, I have rehabilitated myself.” *A much more thorough examination is required.*

[emphasis added]

[122] The credentials panel in *Applicant 3* went on to find that the applicant had not satisfied the onus of demonstrating he had been rehabilitated. In arriving at that conclusion, the panel noted at paragraph 151 that the applicant had not told one of the witnesses who testified on his behalf about his prior criminal charges or his history with drugs until the month before the hearing, and only when it became clear that he needed the witness to testify in support of his application.

[123] At paragraph 153, the credentials panel also held that the applicant, “appeared to find it easy to excuse his past conduct as well as his failure to provide any restitution to Ms. S for the damage he caused as her tenant.”

[124] At paragraph 155, the credentials panel concluded that this was not a case where the applicant’s evidence of rehabilitation was notable and persuasive.

[125] Similarly in *Re: Applicant 9*, the panel found at paragraph 46 that the applicant had made, “very positive and determined steps toward rehabilitation.” Nevertheless, at paragraphs 47 and 48, the panel identified more recent issues of concern, including an impaired driving incident, that indicated that the applicant had not sufficiently

addressed his impulsivity and poor judgment to satisfy the test of good character and fitness.

[126] *Re: Mangat*, 2013 LSBC 20, involved an applicant who had previously been a member of a gang, had a history of serious criminal charges and convictions, and had been imprisoned for nine months.

[127] Subsequently, the applicant freed himself of his gang involvement and became active in anti-gang youth education initiatives. During law school, the applicant also engaged in other volunteer activities.

[128] In accepting that the applicant met the good character and fitness test, the panel held as follows:

[39] In his closing submissions, Law Society counsel stated that, having heard all of the evidence on this hearing, the Law Society was not taking a position regarding the application. *Law Society counsel underlined that the Panel's determination of the Applicant's character must be based upon the Panel's assessment of the Applicant's current character. Past behaviour may influence that current assessment, but is not determinative.* He observed that the Applicant had answered questions about possibly inconsistent evidence in a forthright manner, several times admitting that he had no answer or explanation, and noted that the Applicant had not proffered facile answers. *He observed that the Applicant's turn-around of the direction of his life was both laudable and genuine; a remarkable journey.* The Panel agrees with these submissions.

[40] *The Panel observes that rehabilitation from a criminal past such as this is not only possible, but is to be encouraged. It is in the public interest to admit lawyers from diverse backgrounds with a view to meeting the legal needs of all sectors of society.*

[emphasis added]

[129] In *Law Society of BC v. Gallant*, 2017 LSBC 21, an inquiry into the applicant's character and fitness was necessitated by the fact that the applicant had been involved with gangs and right wing extremist groups. The applicant also had a significant criminal history, including convictions for assault.

[130] However, with the support and encouragement of his family, the applicant gave up using drugs and alcohol. He also broke away from his gang affiliations. Ultimately, he received a pardon for his criminal convictions.

[131] The applicant became an academic, publishing 18 articles and speaking at numerous conferences. He volunteered with anti-racism and anti-radicalization groups, and counselled people seeking to leave gangs and hate groups.

[132] The applicant then attended law school and, after graduating, sought admission to the LSAP.

[133] In support of his application, the applicant tendered 16 reference letters.

[134] After reviewing the evidence, the credentials panel held at paragraph 31:

This Panel observes, as other such panels have done in the past, (e.g., *Mangat*), that *rehabilitation from a criminal past* such as this is not only possible, *but is to be encouraged*. *It is in the public interest to admit lawyers from diverse backgrounds* with a view to meeting the legal needs of and protecting all sectors of society.

[emphasis added]

[135] In the result, the panel concluded that the applicant had been rehabilitated and now met the test in s. 19(1) of the Act.

POSITION OF THE PARTIES

The Applicant

[136] Counsel for the Applicant submitted that the Panel is to assess the Applicant's current character, not her past conduct.

[137] He emphasized that, prior to her application to the Law Society, as well as throughout the application process and this hearing, the Applicant had been completely forthright about her past. Counsel submitted the Applicant's consistent candour should be a significant consideration in the Panel's assessment of the Applicant's current character and fitness.

[138] Counsel for the Applicant also submitted that the Letters in support of the Applicant were provided by people who know the demands a career in law can place on someone and they were all fully aware of the Applicant's past conduct.

Despite their full knowledge of the Applicant's history, the authors of the Letters were all strongly supportive of the Applicant.

[139] Counsel characterized the Applicant's academic achievement in law school as exceptional and urged us to conclude that such an accomplishment illustrated the Applicant's dedication to the law. He also submitted that the Applicant's commitment to the law is evidenced by her pursuit of admission to the profession despite knowing the significant obstacle her criminal record would comprise.

[140] With respect to the Consumer Proposal, counsel for the Applicant submitted it was not a matter of significance, given the Applicant's age at the time and the circumstances in which the Consumer Proposal was made.

[141] In summary, counsel for the Applicant submitted that we should conclude the Applicant is now of good character and fit to be called to the Bar in light of:

- (a) her honesty and openness with others in disclosing her criminal past;
- (b) her academic achievement and volunteer work, demonstrating a substantially altered attitude towards the law; and
- (c) the significant support and trust expressed in her from those who had worked with the Applicant, and who were familiar with the demands of being a lawyer.

The Law Society

[142] Counsel for the Law Society did not urge us to find that the Applicant was not of good character and fit to be admitted to the LSAP or called to the Bar.

[143] Rather, his submissions were focused on:

- (a) advising the Panel of the test to be applied;
- (b) directing the Panel to the relevant authorities;
- (c) ensuring that the Applicant's evidence was tested through cross-examination; and
- (d) making certain that the evidentiary record before the Panel was as complete as possible.

[144] Counsel for the Law Society submitted that the following principles apply here:

- (a) The applicant bears the burden, on a balance of probabilities, of demonstrating her good character and fitness.
- (b) The existence of a past criminal record is not an automatic bar to the Applicant demonstrating she is now fit and of good character.
- (c) For the application to be granted, the Panel must consider the Applicant's character and fitness in light of her particular circumstances, both past and present, and determine whether the Applicant has truly rehabilitated herself.
- (d) Ensuring only those who are fit and of good character are admitted as barristers and solicitors is necessary to safeguard the public interest.

[145] Counsel for the Law Society confirmed that *Gallant*, and *Mangat* are the most germane authorities for us to consider. He acknowledged that it appeared the Applicant had turned her life around in a manner similar to the applicants in those cases. However, he also cautioned the Panel against trying to draw direct comparisons between the behaviour of the Applicant and that of the applicants described in the authorities.

[146] Counsel asserted that the Panel's task was not to weigh the "bad" and "good" conduct of the Applicant in relation to that of the parties in prior matters. Rather, he submitted our task was to assess the Applicant's current character, and whether we were satisfied that she had rehabilitated herself such that we could conclude that the Applicant is now of good character.

[147] Counsel for the Law Society also submitted that this hearing is not an exercise in punishment or forgiveness. There is no threshold of "good works" that must be achieved for the Applicant to atone for her previous misconduct.

[148] According to counsel for the Law Society, in assessing the Applicant's current character and fitness, the Panel should consider the following:

- (a) the extent of the Applicant's admitted involvement with gangs and criminal activities, including the sale of narcotics;
- (b) the Applicant's explanation as to what led her to change the direction of her life; and
- (c) whether the Applicant has demonstrated that she has truly rehabilitated herself such that she satisfies the test in s. 19(1) of the Act.

[149] With respect to the evidence, counsel for the Law Society took the position that, while we should consider the Letters provided on behalf of the Applicant, we should place more weight on Letters from those who have worked with the Applicant in a professional context. Conversely, counsel urged us to be cautious placing much, if any, weight on other Letters, particularly those from the member of the Applicant's family and from the friends of her family.

[150] As set out above, counsel for the Law Society advised that he had made inquiries of all of the writers of the Letters and they had each confirmed that the Applicant was entirely frank and honest about her past conduct.

[151] Counsel for the Law Society submitted that, amongst the most significant evidence of the Applicant's genuine rehabilitation is the degree of candour the Applicant has demonstrated:

- (a) in this process;
- (b) during her interviews with the Firm; and
- (c) with regard to those authoring the Letters in support of the Applicant.

[152] Counsel for the Law Society noted that the Applicant made no attempt to minimize or excuse her past conduct. Instead she acknowledged her significant involvement in criminal activity. The Applicant even admitted that she had been engaged in more criminal activity than that with which she was charged or convicted.

[153] Counsel for the Law Society emphasized that the Applicant's openness with the Firm, with the Law Society, and in her testimony was all worthy of our consideration.

[154] Finally, counsel submitted that the Law Society placed no particular emphasis on the fact of the Applicant's Creditor Proposal and took no position with respect to that aspect of the Applicant's record.

ANALYSIS AND DISCUSSION

[155] It is clear, based on her past conduct, that there was a time in the past when the Applicant did not satisfy the character and fitness standards of s. 19(1) of the Act.

[156] Nevertheless, the existence of a prior criminal record, even involving serious offences, is not in and of itself an impediment to the Applicant satisfying the character and fitness standards now.

[157] The key issue for this Panel is whether we accept that the Applicant has rehabilitated herself to the point where she currently satisfies the good character and fitness requirements of the Act.

[158] As indicated by the Panel's oral decision at the conclusion of the hearing, we have no hesitation in finding that the Applicant has genuinely and successfully rehabilitated herself such that she now satisfies the criteria of s. 19(1) of the Act.

[159] In arriving at that conclusion, the Panel considered the following:

- (a) the Applicant's criminal conduct was admittedly extensive, serious and prolonged; however,
- (b) it has been approximately ten years since the Applicant engaged in such conduct;
- (c) the Applicant explained the events that convinced her to change the direction of her life, in particular, the reconciliation with her parents and the insights she gained while incarcerated;
- (d) counsel for both parties emphasized that the Applicant had been forthright and honest about her past conduct in her dealings in this process, with her Firm, and with the authors of the Letters;
- (e) the Applicant did not seek to minimize or excuse her past conduct;
- (f) the Applicant demonstrated particular dedication to her study of the law, and attained significant academic success;
- (g) the Applicant has engaged in substantial volunteer work that is consistent with her expressed desire to use her experiences to help others; and
- (h) the Applicant has the support and confidence of those with whom she has worked in a professional context.

[160] None of these considerations on its own may have satisfied the Applicant's burden. While counsel for both parties pointed to the Applicant's honesty as being an important consideration, and the Panel treated it as such, it is possible for an applicant to be honest and forthright about the past without being fully rehabilitated.

[161] Similarly, the Applicant's academic achievement, while laudable and impressive, is not in and of itself evidence of rehabilitation. One could be a successful law student without satisfying the criteria in s. 19(1) of the Act.

[162] Nevertheless, the evidence of the Applicant's performance in law school is consistent with her evidence as to the changes in her attitude towards the law. The

Applicant's dedication to her studies is supportive of her explanation as to how she went from having a blatant disregard for the law, to aspiring to become a barrister and solicitor.

[163] Her evidence in this regard is also supported by the contents of the Letters, and the evidence of the Lawyer, which confirmed the passion the Applicant now has for the law and for assisting those who are less advantaged in our society.

[164] The Applicant's evidence with respect to her changed attitude toward the law is significant in this matter. The Applicant's last criminal act, breaching her recognizance by travelling to Fort McMurray in 2007, came after the transformative experiences she described having while incarcerated. The Applicant's evidence in respect of this conduct was that, even after she had determined to change the direction of her life, she still had disregard for the law.

[165] In other circumstances, such conduct may have been more concerning for the Panel. However, the Applicant's explanation that, through her legal studies, she has come to respect the law and is now ashamed of her prior attitude is credible and compelling.

[166] The Panel accepts the submissions of both parties that the Applicant has been honest and forthright in this hearing. We accept her evidence generally as being credible.

[167] Both parties agreed that the Consumer Proposal was not a matter to which we should give much consideration. The Panel accepts those submissions.

[168] The circumstances in this matter are unlike those in *Re: Applicant 3*. There, the panel had concerns that the applicant had not been entirely forthcoming in disclosing his past conduct to potential witnesses called to support his application. Conversely, here, counsel for the Applicant and the Law Society both described the Applicant as having been fully candid.

[169] The other apprehensions expressed by the panel in *Re: Applicant 3*, that the applicant found it easy to excuse his own conduct, also do not apply here. Again, counsel for both parties agreed in their submissions that the Applicant made no excuses for her past activities and did not attempt to minimize the conduct or her responsibility for it.

[170] The Applicant acknowledged her misconduct, expressed sincere remorse, and has been motivated by her previous actions now to use her experiences to help others.

The Applicant's volunteer activities since her return to post-secondary education demonstrate that her intentions in this regard are genuine.

[171] This is also not a matter like that in *Re: Applicant 9*, where the panel expressed concerns that the applicant still suffered from the issues that gave rise to his past misconduct.

[172] Here, the Applicant confirmed that there is no longer anything enticing to her about her prior life. She testified that she has worked too hard to abandon her achievements or to disappoint her family again. Her evidence in this respect, like the rest of her testimony, was credible and convincing.

[173] Based on all of the evidence, the Panel accepts that the Applicant has genuinely rehabilitated herself and that her circumstances are akin to those of the applicants in *Gallant* and *Mangat*. We adopt and endorse the observations made by each of those panels that:

... rehabilitation from a criminal past such as this is not only possible, but is to be encouraged. It is in the public interest to admit lawyers from diverse backgrounds with a view to meeting the legal needs of and protecting all sectors of society.

CONCLUSION AND OTHER POTENTIAL ORDERS

[174] For the reasons set out above, the Panel concludes 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 admitted into the LSAP without conditions, and subsequently to be admitted as a barrister and solicitor if and when she has completed the LSAP.

[175] We did not receive submissions on costs, and accordingly, if that issue is not agreed to between the parties, costs can be dealt with by written submissions to be exchanged in advance and then delivered by both parties by December 11, 2017, or such other date as the parties may request and the Panel order.

[176] Counsel for the Applicant also advised us in the course of the hearing that the parties may wish to make further submissions seeking an order to preserve as confidential certain aspects of the record and written decision in this matter.

[177] If either party, or the parties together seek orders with respect to confidentiality, those issues can also be dealt with by written submissions to be exchanged in

advance and then delivered by both parties by December 11, 2017, or such other date as the parties may request and the Panel order.

[178] The Panel wishes to thank counsel for the Law Society and the Applicant for their helpful submissions, as well as for their collegial and efficient conduct of the hearing.