

2024 LSBC 44
Hearing File No.: HE20230015
Decision Issued: November 20, 2024
Notice of Referral filed: August 3, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL
HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

APPLICANT 19

APPLICANT

**DECISION OF THE HEARING PANEL ON AN
APPLICATION FOR ADMISSION ON TRANSFER**

Hearing dates: October 21 and 22, 2024

Panel: Herman Van Ommen, KC, Chair
Michael Dungey, Public representative
Kate Saunders, Lawyer

Counsel for the Law Society: David T. Eleff

Applicant appearing for himself.

OVERVIEW

[1] The Applicant seeks to be admitted to the Law Society of British Columbia (the “Law Society”).

[2] The purpose of this matter is to determine whether the Applicant is “of good character and repute and fit to become a barrister and solicitor of the Supreme Court” in accordance with section 19 of the *Legal Profession Act*, S.B.C. 1998, c. 9.

[3] On August 3, 2023, the Law Society Tribunal filed a Notice of Referral for Hearing from the Credentials Committee in respect of an application made by the Applicant to become a member of the Law Society. The concerns leading to that referral include allegations:

- (a) that, on a number of occasions, the Applicant held himself out to be a lawyer and/or provided legal services while not a member of the Law Society; and
- (b) of incompetence and lack of timeliness in some legal services delivered by the Applicant to clients while practising as a lawyer in Alberta.

[4] For the reasons set out below, the Hearing Panel grants the Applicant's application for admission to the Law Society subject to certain conditions.

[5] In accordance with Rule 2-104(1) of the Law Society Rules (the "Rules"), this Decision does not identify the Applicant.

BACKGROUND

[6] The Applicant obtained an undergraduate law degree (LLB) from a university in the United Kingdom in May 2017 but did not practise law there.

[7] From August 2017 to January 2020, the Applicant worked as a legal assistant and paralegal at two law firms in British Columbia ("Law Firm #1 (BC)" and "Law Firm #2 (BC)").

[8] In Spring 2020, he obtained a Certificate of Qualification from the Canadian National Committee on Accreditation. A Certificate of Qualification is issued to individuals who demonstrate that their knowledge of Canadian law is similar to that of someone who graduated from an approved Canadian common law program. It does not constitute a license to practise law in Canada.

[9] In October 2020, when COVID-19 restrictions were still in place, the Applicant began articling at a small Alberta law firm ("Law Firm #3 (AB)"). Both the Applicant and his principal, KA, confirmed the articling term ended on June 19, 2021, after which the Applicant enrolled in Alberta's bar admission program and passed that program's assessment in December 2021. He was admitted to the Law Society of Alberta on January 22, 2022.

[10] Documentation indicates that the Applicant's registration as a student-at-law with the Law Society of Alberta ended on October 19, 2021. However, both the Applicant and

the Law Society assert that he remained a student-at-law until his call to the bar in January 2022.

[11] Despite still being a student-at-law, the Applicant admits he was not formally supervised, by his principal or otherwise, between June 19, 2021 and January 20, 2022. KA agrees he was not supervising the Applicant during that period.

[12] KA works and resides in Alberta. Due to COVID-19 restrictions, the Applicant resided in British Columbia while he was articling. In-person meetings between the Applicant and KA took place at least once a month in BC when KA visited from Alberta. Outside of those limited in-person interactions, the Applicant and KA communicated through emails, messaging or voice calls. KA admitted the remote articling arrangement was not ideal, and the Applicant did not receive the oversight and mentorship he deserved.

[13] In October 2021, when he was no longer supervised by KA and before being admitted to the Law Society of Alberta, the Applicant provided a Limited Scope Retainer Agreement to three clients (the “Clients”) in which he referred to himself as a “lawyer” and provided a business address in Vancouver, British Columbia.

[14] The Retainer Agreement was drafted on letterhead titled “[Applicant’s Name] Law”. In the Retainer Agreement, the Applicant agreed to provide “legal services” to the Clients regarding “[l]egal advice and completion of a Partnership Agreement and Shareholder Agreement.” The Clients agreed to pay “the firm of [Applicant’s Name] Law a limited scope retainer of \$1,300.” The Applicant admits the firm “[Applicant’s Name] Law” was never registered or incorporated.

[15] The Clients paid the retainer on October 17, 2021 and the Applicant deposited the retainer into his personal bank account.

[16] The Applicant testified that the Retainer Agreement is the only time he referred to himself as a “lawyer” to the Clients. In all other interactions with the Clients, the Applicant was clear that he was a student-at-law. The Applicant’s testimony is corroborated by email exchanges with one of the Clients in which the Applicant’s email signature indicated he was a “Student at Law”.

[17] The Clients were not satisfied with the work completed by the Applicant. They sought reimbursement of the fees they paid and reported the Applicant to the Law Society alleging unlawful practice.

[18] When responding to the Clients’ concerns, the Applicant stated in an email that he “had the document reviewed by [his] principle (*sic*) as a student at law”. When the Panel

questioned KA about the Retainer Agreement, he had no recollection of reviewing it and confirmed he was not formally supervising the Applicant at the time the document was drafted. After the Panel pressed the Applicant, he admitted the statement was not true but dismissed it as a “mistake”.

[19] On November 10, 2021, the Law Society wrote to the Applicant advising that it received a complaint about the services rendered to the Clients. It raised concerns about offering legal services and the Applicant holding himself out as a lawyer in BC. The Law Society required the Applicant to sign a written commitment to not perform any of the acts defined in the *Legal Profession Act* as the practice of law including the following:

- (a) “drawing, revising or settling any document relating in any way to a proceeding under a statute of Canada or British Columbia”;
- (b) “doing any act or negotiating in any way for the settlement of, or settling, a claim or demand for damages”;
- (c) “giving legal advice”; and
- (d) falsely representing himself as “a lawyer” or “an articulated student, a student-at-law or a law clerk”,

(the “Commitment”).

[20] The Applicant signed the Commitment on November 21, 2021 and, in December 2021, refunded the Clients the fees they paid him.

[21] Commencing on December 6, 2021, the Applicant was contracted by a law firm in British Columbia (“Law Firm #4 (BC)”) to do research and start training in anticipation of being admitted to the bar.

[22] On January 22, 2022, the Applicant was admitted as a lawyer to the Law Society of Alberta but continued to reside in BC. Based on advice provided to him by his employer at Law Firm #4 (BC) as well as his own review of the requirements, the Applicant believed he was eligible to practise law in BC without a permit under the National Mobility Agreement. He testified that he did not understand that he had an “economic nexus” with BC that rendered him ineligible. The Applicant now understands that an “economic nexus” with BC is established where an individual is a resident of the Province.

[23] Relying on a mistaken assumption that he was eligible to practise in BC, the Applicant continued to work with Law Firm #4 (BC) and held himself out to be a lawyer. He also started to attend court appearances on behalf of clients holding himself out to be

“an agent for [his employer]”. The Applicant states he never held himself out as “counsel” in a BC court.

[24] On January 27, 2022, the Law Society received an Application to Transfer to British Columbia from the Applicant (the “Application”). The Applicant indicated he intended to commence practising law in BC in February 2022.

[25] Following a request for further information from the Law Society in March 2022 (the “Law Society’s Letter”), the Applicant realized he incorrectly interpreted the Law Society’s interjurisdictional practice requirements and resigned from his position with Law Firm #4 (BC).

[26] Between January 22 and March 4, 2022, the Applicant admits he held himself out to be a lawyer to four clients:

- (a) one client in an employment matter;
- (b) one client in a matrimonial matter;
- (c) one client in a breach of contract matter; and
- (d) one client in a tort matter.

[27] In respect of three of the clients, he acted on a *pro bono* basis. The retainer obtained from the fourth client was refunded following the Applicant’s receipt of the Law Society’s Letter.

[28] In May 2022, while waiting for his Application to be processed by the Law Society, the Applicant accepted a position as a paralegal with another firm in British Columbia (“Law Firm #5 (BC)”) where he worked primarily on personal injury files. The Applicant resigned from his position for health reasons in Spring 2023.

[29] The Applicant began his first role as qualified legal counsel in October 2023 at a law firm located in a remote community in Alberta doing primarily family law (“Law Firm #6 (AB)”). The firm required the Applicant to work on-site at least 50 percent of the time. The Applicant continued to reside in BC and travelled to Alberta when required. While in Alberta, he stayed in short-term rental accommodation. The Applicant found the work arrangement taxing both physically and financially, and did not feel comfortable in the remote community. He and his former employer both testified that the Applicant worked on-site approximately 20 to 30 percent of the time.

[30] The Applicant resigned from his position at Law Firm #6 (AB) in May 2024 when NHF, one of the senior partners at the firm, requested the Applicant work exclusively in

the office for a period of at least six months. While the Applicant and NHF agree that the in-office work request was the impetus for the Applicant's departure from the firm, their evidence differs regarding the motivation for the request.

[31] NHF testified that in January 2024 he started to receive complaints from clients regarding the Applicant's timeliness and responsiveness as well as the Applicant missing meetings. NHF also developed concerns about the Applicant's basic legal knowledge and began to review the Applicant's work more closely. He estimated the Applicant's knowledge and experience to be commensurate with a student with six months of articling experience. He formed additional concerns regarding the Applicant's billing practices. In NHF's assessment, the Applicant's bills were higher than industry standard and he appeared to charge clients for the time he took to learn fundamental or basic legal concepts. NHF testified that in May 2024 his concerns led him to request that the Applicant work exclusively in the office for a period of at least six months to facilitate more direct mentorship and guidance.

[32] The Applicant testified that NHF required the Applicant to work exclusively from the office because NHF sensed the Applicant was not happy at the firm and NHF wanted to maintain the Applicant as an employee. However, when given the opportunity, the Applicant declined to cross-examine NHF on his evidence or give NHF the opportunity to explain the contradiction in evidence. Further, the Applicant's evidence is hearsay and speculative. Where the Applicant and NHF's evidence regarding this issue contradicts, the Panel prefers the evidence of NHF: *Browne v. Dunn* (1893), 6 R. 67 (HL), 1893 CanLII 65 (FOREP).

[33] At some point later in 2024, the Applicant worked at another law firm in Alberta for a period of approximately four months ("Law Firm #7 (AB)") doing primarily family, immigration and criminal law. Law Firm #7 (AB) was in an urban center. The Applicant testified that he worked onsite at that firm approximately 40 percent of the time and appeared in court on several matters.

[34] The Applicant decided to leave Law Firm #7 (AB) and return to Law Firm #3 (AB) to work with his former principal, KA, as a contractor. His new position with Law Firm #3 (AB) started on October 1, 2024 and he is practising primarily civil, family, immigration and criminal law. He has sole conduct of all the files on which he is currently working. The Applicant continues to reside in British Columbia. When he is required to work onsite in Alberta, the Applicant self-funds his flights and short-term rental accommodation.

[35] If his Application is granted, the Applicant intends to practise in both Alberta and British Columbia. The Applicant testified that he is committed to practising with KA at Law Firm #7 (AB) and to traveling to Alberta every other week. He hopes to be able to

provide legal services within BC and is considering seeking an office sharing arrangement with a former colleague, CD. KA is supportive of the Applicant's ambitions in this regard and open to considering expanding Law Firm #7 (AB)'s practice into British Columbia.

[36] KA is currently a non-practising member of the Law Society of BC, admitted in 2019. He acknowledged he has not offered any legal services in BC, and does not have a strong understanding of the procedural rules and province-specific laws in BC. He does not attend any legal educational seminars hosted by BC-based providers or otherwise proactively seek education about BC law or legal processes. There are no other lawyers at Law Firm #7 (AB) who are members of the Law Society of BC. However, KA hopes that if the Applicant develops a BC-based practice, the Applicant will assist KA in expanding his BC-based network and practice.

[37] On October 12, 2022, the Credentials Committee of the Law Society referred the Application to a hearing pursuant to Law Society Rule 2-83 and section 19(2)(c) of the *Legal Profession Act*. The Law Society provided the Applicant with notice that the following circumstances form the subject of this hearing:

- (a) [The Applicant's] conduct as an articulated student, in particular:
 - (i) Providing legal services for a fee in contravention to the Legal Profession Act;
 - (ii) Making representations that [the Applicant was] a practising lawyer when [he] had not yet been called to the bar in any jurisdiction;
 - (iii) Making representations that [he was] a lawyer at "[Applicant's Name] Law" when that in fact was not a registered law firm.
- (b) [The Applicant's] conduct while employed as an associate at [Law Firm #4 (BC)] in [city], B.C., in particular:
 - (i) Providing legal services in British Columbia without the requisite interjurisdictional practice permit, in contravention of section 15 of the *Legal Profession Act* and Law Society Rules 2-15 to 2-27;
 - (ii) Failing to identify that [the Applicant was] a visiting lawyer from Alberta when providing services within British Columbia.
- (c) [The Applicant's] conduct while employed as an associated (*sic*) at [Law Firm #6 (AB)] in [city], Alberta, in particular:

- (i) Whether [the Applicant] provided competent legal services to clients;
- (ii) Complaints received from clients about missed meetings, lack of forward progress on matters for clients and poor communication;
- (iii) Concerns about [the Applicant's] ability to work unsupervised and absent direct mentorship.

CHARACTER AND FITNESS WITNESSES

Law Society's Witness

[38] At the hearing, the Law Society presented NHF as its sole witness. NHF was admitted to the Law Society of Alberta in 2014. He opened Law Firm #3 (AB) in a remote community in 2015. Since then, he has grown the firm to employ multiple lawyers, with a primary focus on family law.

[39] NHF expressed concerns about the Applicant's legal proficiency, timeliness and client service standards. He recalled that, during the interview process at Law Firm #3 (AB), the Applicant represented himself as familiar with basic principles and procedures in family law. However, once he began work, the Applicant's knowledge appeared significantly less advanced than stated. For instance, he lacked understanding of fundamental concepts like exemptions in property division, enforcement clauses and trust conditions. Additionally, his written advocacy skills were underdeveloped. Rather than acknowledging these gaps, the Applicant often guessed. When the knowledge gaps were pointed out, the Applicant seemed neither humbled nor motivated to learn, with NHF describing him as "not knowing what he does not know and not caring to learn."

[40] NHF noted the Applicant's personable qualities, describing him as charming, likeable, charismatic and ambitious. Nonetheless, NHF advised that he would be unable to provide a positive reference for the Applicant to a prospective employer.

Applicant's Witnesses

Applicant

[41] The Applicant admitted to multiple allegations of unauthorized practice. He acknowledged that referring to himself as a "lawyer" in the Retainer Agreement and referencing a non-existent firm were inappropriate. Additionally, he admitted to unauthorized practice in early 2022 when he represented clients in BC and appeared in

court as an agent for his employer. He characterizes these actions as mistakes typical of an ambitious student-at-law and newly called lawyer from another jurisdiction.

[42] Although the Applicant did not cross-examine NHF, he disputed NHF's claims about his lack of knowledge and experience. The Applicant emphasized that he had "won" many cases in court, appearing to equate success in court with fitness to practise law. He did, however, acknowledge the challenges of remote articling and expressed that he would benefit from working in a physical setting with other lawyers.

[43] The Applicant portrayed himself as sincere and remorseful, claiming to have learned the importance of consistency and precision. However, he showed no remorse when he admitted to the Panel that his statement to the Clients about his principal reviewing his work was untrue.

[44] The Applicant underscored his long-term involvement in two volunteer organizations as evidence of his character. One organization provides opportunities for children in rural areas of another country, and the other supports youth sports participation. He has volunteered with both organizations for several years.

[45] In addition to his testimony, the Applicant presented five witnesses who attested to his character.

Lawyer CD

[46] CD was admitted to the Law Society in 2020 after earning his law degree in a foreign jurisdiction. After practising with an insurance defence firm for one year, CD incorporated his own firm where he currently practises.

[47] CD met the Applicant when they both worked at Law Firm #2 (BC), where the Applicant was a paralegal and CD was a lawyer. CD did not work directly with the Applicant or review any of the Applicant's work.

[48] CD corroborated the Applicant's testimony regarding his involvement with two volunteer organizations.

[49] On a few occasions, the Applicant and CD discussed that the Applicant engaged in unauthorized practice by drafting a shareholders' agreement. CD was also aware that the Applicant engaged in unauthorized practice while working at Law Firm #4 (BC). However, CD was not aware that the Applicant referred to himself as a "lawyer" at "[Applicant's Name] Firm" in the Retainer Agreement.

[50] CD believes the Applicant possesses the character necessary to be admitted to the Law Society and, if asked, would be willing to supervise the Applicant. However, CD acknowledges his own experience is limited.

Lawyer SC

[51] SC was admitted to the Law Society in 2022 after earning his law degree in a foreign jurisdiction.

[52] SC met the Applicant when they both worked at Law Firm #5 (BC), where the Applicant was a paralegal and SC was a lawyer. Although SC did not supervise the Applicant and could not specifically recall reviewing any of his work, he remembered the Applicant as dedicated to clients and eager to learn.

[53] Like CD, SC corroborated the Applicant's testimony regarding his involvement with two volunteer organizations.

[54] The Applicant informed SC that he had engaged in unauthorized practice, though SC was unaware of the specifics.

[55] SC believes the Applicant would benefit greatly from strong mentorship to develop professionally as a lawyer. With adequate support, SC feels the Applicant has the potential to be a competent lawyer and possesses the character necessary to be admitted to the Law Society.

Lawyer LC

[56] LC was admitted to the Law Society in 2021 after earning his law degree in British Columbia.

[57] LC also met the Applicant at Law Firm #5 (BC), where LC worked as a lawyer. Although he did not supervise or mentor the Applicant, LC recalled reviewing claims drafted by the Applicant and, during his testimony, shared no issues with the quality of that work.

[58] LC also corroborated the Applicant's testimony about his involvement in two volunteer organizations.

[59] The Applicant informed LC that he made an error while a student-at-law in Alberta. Although LC was not aware of the details regarding the error, he believes their discussions indicate the Applicant has learned more about the importance of professional and ethical obligations for lawyers.

[60] In LC's opinion, the Applicant would benefit from a year of supervision under a BC lawyer, including weekly meetings. LC believes the Applicant has the necessary character for admission to the Law Society.

Lawyer KA

[61] When KA attended the hearing, he expressed surprise that it was a formal hearing, as he had understood it to be a meeting with a Law Society representative.

[62] KA is the founder of Law Firm #3 (AB). As discussed above, he served as the Applicant's principal during his articles and recently re-hired the Applicant as a contractor with his firm. They have consistently maintained a mentor/mentee-like relationship, with the Applicant intermittently seeking professional advice from KA since his articles.

[63] Like the Applicant's other witnesses, KA corroborated the Applicant's testimony about his involvement in two volunteer organizations. KA added that he felt the Applicant would be a positive influence on KA's adult son and hopes the Applicant will mentor him.

[64] In Alberta, an applicant seeking admission to the Law Society of Alberta is presented to the Alberta Court of Queen's Bench by a member of the Alberta bar. KA presented the Applicant in January 2022. The Applicant waited to disclose to KA that he engaged in unauthorized practice in 2021 until after the Applicant presented the Applicant. When KA learned of the Applicant's conduct, he admonished the Applicant. Somewhat incongruously, KA also testified that the Applicant has never misled him.

[65] In addition to the Applicant, KA was principal to two other articulated students and has worked with four other lawyers at Law Firm #3 (AB). When asked to compare the Applicant's skills and knowledge with those of other articulated students and lawyers he has worked with, KA did not respond. However, KA advised the Applicant is prompt with his work and maintains a strong relationship with his clients.

[66] KA believes the Applicant has the necessary character for admission to the Law Society.

Lawyer SB

[67] SB was admitted to the Law Society in 2016, following over 20 years of legal practice in foreign jurisdictions. He currently practises general civil litigation, immigration and administrative law in British Columbia.

[68] A friend of the Applicant's father, SB has known the Applicant for over a decade. They also worked together for five months at Law Firm #2 (BC), where SB was a lawyer and the Applicant was a paralegal. Although SB did not supervise him, the Applicant drafted claims and mediation briefs for SB. Since then, the Applicant has occasionally sought SB's professional advice.

[69] SB did not provide testimony on the quality of the Applicant's work as a paralegal.

[70] Like the Applicant's other witnesses, SB confirmed the Applicant's involvement in two volunteer organizations.

[71] The Applicant informed SB that he had drafted a contract for clients and represented himself as a lawyer in the Retainer Agreement. SB expressed disappointment, noting he only learned of this conduct afterward and would have advised the Applicant against it.

[72] SB attributed the Applicant's actions to "youthful exuberance," describing him as straightforward, honest and transparent. He believes the Applicant takes professional integrity seriously and has learned from this error.

[73] SB feels the Applicant possesses all the qualities required for admission to the Law Society and would be willing to formally mentor him.

POSITION OF THE LAW SOCIETY

[74] The Law Society takes no position on whether the Application should be granted.

[75] If the Panel is inclined to grant the Application, the Law Society submits the Applicant's admission to the Law Society should be conditional on the Applicant entering into a formal mentorship agreement for a period of not less than five years.

POSITION OF THE APPLICANT

[76] The Applicant submits that his Application should be granted.

[77] If he is required to be supervised by a member of the Law Society, the Applicant submits it should be for a term of one year.

ANALYSIS

Evidence Presented Regarding Specific Concerns Raised by Law Society

[78] The Law Society raised two main concerns forming the basis for referring the Application to this hearing:

- (a) on a number of occasions, the Applicant held himself out to be a lawyer and/or provided legal services while not a member of the Law Society; and
- (b) incompetence and lack of timeliness in some legal services delivered by the Applicant to clients while practising as a lawyer in Alberta.

[79] The Applicant admits the allegations in (a) but does not admit to the allegations in (b).

[80] The Law Society's only evidence regarding competence was the testimony of NHF, who stated that the Applicant's work fell short of what NHF expected from a lawyer of the Applicant's experience, both in quality and timeliness. However, NHF did not provide specific instances or details of the alleged issues.

[81] Additionally, the Law Society did not submit expert evidence regarding the expected competence level for a lawyer of the Applicant's call year. Generally, this Tribunal should refrain from determining competence without expert evidence unless:

- (a) the issues are non-technical or can be assessed by an average person; or
- (b) the conduct is so blatantly substandard that it clearly falls below acceptable practice standards without needing specific parameters.

Law Society of BC v. Guo, 2023 LSBC 30 at paras. 406 to 412

[82] Without specific instances of alleged incompetence or supporting expert evidence, this Panel finds the Law Society did not establish its concerns regarding the Applicant's competence and timeliness in providing legal services while practising in Alberta. Those concerns do not form part of this Panel's consideration of the Application.

[83] Nevertheless, the onus is on the Applicant to satisfy that he meets the test to be admitted to the Law Society, on the balance of probabilities: Rule 5-6.2.

Test for Admission

[84] The role of this Panel is not to determine whether the Applicant's conduct would amount to professional misconduct if he were a member of the Law Society. It is to determine whether, on the basis of the evidence presented to the Panel, the Applicant should be admitted to the Law Society. The Law Society is responsible for protecting the public interest by, among other things, ensuring the integrity, honour and competence of lawyers: *Legal Profession Act*, s.3(b).

[85] To be admitted to the Law Society, an applicant must meet the test set out in section 19(1) of the *Legal Profession Act* which 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.

[86] "Good character" is comprised of the "qualities which might reasonably be considered in the eyes of reasonable [people] to be relevant to the practice of law in British Columbia at the time of application": M. Southin, Q.C. (as she was then), "What is 'Good Character'?" (1977) 35 Advocate 129 to 136 ("Southin Thesis") at 129. It includes at least the following qualities:

- (a) an appreciation of the difference between right and wrong;
- (b) 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; and
- (c) 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 it is upheld.

[87] "Good repute" requires a right-thinking member of society to consider the applicant to be such. If that right-thinking citizen, knowing as much about the applicant as the panel, does not have confidence in the applicant and would not want the applicant to be their lawyer, then the panel ought not to grant the application for admission: Southin Thesis at 130.

[88] The assessments of good character and repute involve both objective and subjective elements. The objective aspects evaluate the applicant's actual qualities, including personality, principles and beliefs. The subjective aspects gauge the applicant's reputation, reflecting how they are perceived by others: *Law Society of BC v. Applicant 3*, 2010 LSBC 23 at paras. 14 to 17.

[89] “Fitness” implies possession of the qualities of character to manage the numerous and weighty demands placed upon a lawyer: *Law Society of BC v. McOuat*, 1993 CanLII 1794 (BCCA) (“*McOuat*”) at paras. 6 and 7. It reflects both the public and members of the profession’s expectations of lawyers: *Law Society of BC v. DM*, December 15, 1994, Hearing Panel Report, at pp. 4 and 5.

[90] An applicant who fails the good character test cannot satisfy the fitness test. However, an applicant may possess good character but still fail the fitness test if, for instance, they lack the necessary education or skills to practise law: *Law Society of BC v. Lee*, 2009 LSBC 22 at para. 76.

[91] The applicant’s character, repute and fitness *at the time of the hearing* is determinative of the application: Southin Thesis at 129. The test does not involve an assessment of the likelihood of the applicant breaching professional responsibilities, nor does it allow the panel to grant forgiveness to an applicant. Perfection or certainty is not required. No specific act or combination of acts necessarily disqualifies an applicant. Each case is unique and must be evaluated on its own merits: *Law Society of BC v. Applicant 9*, 2016 LSBC 14 at para. 44.

[92] Following a hearing, a panel must either grant the application, reject the application, or grant the application subject to conditions or limitations the panel considers appropriate: *Legal Profession Act*, s. 22(2).

Applicant’s Character

[93] The testimony of the Applicant and witnesses suggests that the Applicant understands the difference between right and wrong. However, the Panel is concerned that the Applicant may lack the moral conviction to choose what is right, especially when it is uncomfortable. Notably, the Applicant only admitted that his statement to the Clients – indicating that KA had reviewed his work – was untrue when directly questioned by the Panel. In doing so, he showed no contrition, instead dismissing the statement in his email as merely a “mistake.”

[94] On the other hand, all the Applicant’s witnesses confirmed the Applicant disclosed his conduct to them. The extent of the witnesses’ knowledge of the Applicant’s problematic conduct varied. None were aware of the specific details. The Applicant was sufficiently forthright, albeit not flawlessly so.

[95] All of the Applicant’s witnesses believe he possesses the character required for admission to the Law Society. However, none provided a substantive basis for their belief. Each had varying levels of professional exposure to the Applicant, but none worked with him for more than nine months, and only one directly supervised his work.

None of the witnesses observed the Applicant's character being tested outside of the incidents of unauthorized practice.

Applicant's Repute

[96] The Applicant is eager, charming, likable, charismatic and ambitious. However, he does not inspire confidence and appears to lack curiosity about the law, focusing solely on representing clients without a demonstrated interest in further education or developing legal expertise.

[97] Of the seven witnesses who testified, only one – NHF – expressed a lack of confidence in the Applicant. All other witnesses felt that the Applicant possesses the character qualities necessary to handle the significant and varied demands of the legal profession. Some witnesses also suggested that the Applicant either requires or would benefit from mentorship.

Applicant's Fitness

[98] The Applicant's failure to acknowledge his misrepresentation to the Clients also raises concerns regarding his fitness. The qualities necessary to demonstrate fitness cannot be fully enumerated "but among them must be found a commitment to speak the truth no matter what the personal cost ...":*McOuat* at para. 6. The Applicant demonstrated that commitment to some extent by admitting some of his previous conduct but with limitation.

[99] Since being called to the bar in Alberta two and a half years ago, the Applicant has worked at four different firms. The employer at the firm where he spent the longest tenure, Law Firm #6 (AB), raised concerns about the Applicant's legal knowledge, training and willingness to learn.

[100] The Applicant's own evidence suggests that he equates success in court with fitness to practise law. While he reviewed the required materials to apply for admission to the Law Society, in the intervening two and a half years, the Applicant has undertaken no additional education or training specific to practising in British Columbia.

[101] As the Applicant represented himself at the hearing, the Panel was able to observe his legal skills directly. His written and oral advocacy demonstrated areas for improvement, and he did not adequately prepare his witnesses. One witness, in fact, was surprised to learn he was attending a formal hearing, as he understood he was simply meeting with a Law Society representative.

[102] Nonetheless, the Applicant's current employer testified that the Applicant is eager to seek feedback, maintains strong client relationships, and completes his work promptly. Apart from NHF, no witnesses expressed concerns regarding the Applicant's fitness to practise law. Additionally, the Applicant appears to recognize that his articling training was limited, and he would benefit from onsite training and mentorship.

Prior Conduct

[103] When an applicant's prior conduct prompts referral of an admission application to the Tribunal, the following additional factors are relevant:

- (a) nature and duration of the problematic conduct;
- (b) the passage of time since the conduct occurred;
- (c) efforts at rehabilitation;
- (d) conduct following the problematic conduct; and
- (e) expressions of remorse and insight into the behavior.

[104] In this case, the Applicant engaged in unauthorized practice on multiple occasions. While a student-at-law in Alberta, the Applicant misrepresented himself as a lawyer. Shortly after signing a Commitment not to engage in unauthorized practice, the Applicant breached it by representing four clients in British Columbia. Although the duration of the conduct was relatively brief, ceased more than two years ago and occurred in the infancy of the Applicant's legal career, it was nonetheless repeated.

[105] The Applicant demonstrated no rehabilitative efforts. However, upon realizing his actions constituted unauthorized practice, he immediately ceased and no further allegations have arisen. Additionally, the Applicant emphatically expressed genuine remorse during the hearing.

Conclusion

[106] It is well-established that the legal profession benefits from a diverse range of backgrounds and experiences. However, the Panel is concerned about the Applicant's failure to proactively acknowledge a misrepresentation to his clients, his lack of initiative in developing knowledge and skills, and the absence of consistent and meaningful mentorship. Despite these concerns, the Applicant has demonstrated to the Panel that he meets the criteria in section 19(1) of the *Legal Professions Act*.

[107] Although the Applicant satisfies the section 19(1) criteria, the Panel believes that practice conditions are necessary to address the competence concerns highlighted by the evidence.

[108] The Panel is of the opinion that SB would be a suitable mentor for the Applicant.

ORDER REGARDING ADMISSION

[109] Pursuant to section 22(2) of the *Legal Profession Act*, the Applicant's is admitted to the Law Society subject to the following conditions:

- (a) The Applicant identifies a mentor ("Mentor") that satisfies the following criteria:
 - (i) the mentor has been a member of the Law Society of British Columbia for at least eight years;
 - (ii) the mentor has at least eight years of active practice status with the Law Society of British Columbia;
 - (iii) throughout the term of the mentorship agreement, the mentor maintains good standing and active practice status with the Law Society of British Columbia; and
 - (iv) the mentor is approved by the Executive Director of the Law Society.
- (b) The Applicant and the Mentor enter into a mentorship agreement for a period of not less than three years that codifies the requirements in subparagraphs (a) and (c) to (u) (the "Mentorship Agreement").
- (c) Within one month of approval by the Executive Director of his Mentor, the Applicant will submit to his Mentor a written summary of all his open files within the jurisdiction of British Columbia ("BC Files"). In respect of each file, that summary will contain at minimum:
 - (i) the file number;
 - (ii) the name(s) of the client(s);
 - (iii) the name(s) of opposing party(ies);
 - (iv) the nature of the file;

- (v) the nature of the work to be done;
 - (vi) whether the client is fee paying or legal aid;
 - (vii) present status of the matter;
 - (viii) any applicable limitation date; and
 - (ix) all upcoming court dates.
- (d) Within 30 days of entering into the Mentorship Agreement, the Mentor will personally conduct an initial comprehensive review of the Applicant's BC practice and each of the Applicant's open BC Files. In particular, the Mentor will consider:
- (i) the actions taken by the Applicant in each file and whether the file is progressing in a timely manner;
 - (ii) documentation of all communications in respect of the file;
 - (iii) whether the client is adequately informed; and
 - (iv) the status of the file and the actions the Applicant intends to take over the next 60 days.
- (e) For every new BC File the Applicant opens, the Applicant will provide his Mentor with a summary of the file containing the information set out in subparagraph (c)(i) to (ix).
- (f) The Mentor will review the file summaries provided by the Applicant to satisfy themselves that reasonable progress is being made and will explore the Applicant's plans for resolving or completing every BC File in conjunction with best practices. In the event of a deficiency, the Mentor will discuss the deficiency with the Applicant and form a plan with the Applicant to correct that deficiency.
- (g) The Applicant will provide the Mentor with any additional information the Mentor seeks regarding the Applicant's files within the jurisdiction of British Columbia.
- (h) The Applicant will provide the Mentor with a monthly written update of his summaries outlined in subparagraphs (c) and (d).

- (i) At least one month prior to a scheduled trial date, the Applicant will inform the Mentor of the status of his trial preparations, including evidence and argument on all issues in dispute, and, if the Mentor requests, permit the Mentor to review the file and the preparation.
- (j) The Mentor will meet with the Applicant a minimum of every two weeks to review progress on the Applicant's open BC Files and the Applicant's practice in British Columbia generally.
- (k) The Applicant will permit the Mentor to have physical access to each BC File at the Mentor's request for the purpose of reviewing the Applicant's files. The Mentor may delegate this authority to another active member of the Law Society with not less than eight years of experience if the Mentor does not have the expertise necessary to review particular files.
- (l) The Mentor will review the Applicant's office systems and procedures relating to the Applicant's provision of legal services in British Columbia and satisfy themselves the Applicant has adequate and appropriate office systems in place. The Applicant will permit the Mentor to do so.
- (m) The Applicant agrees to follow the advice of the Mentor with respect to the provision of legal services in British Columbia and the management of his practice in British Columbia.
- (n) In the event of a disagreement between the Applicant and the Mentor regarding the handling of a BC File, they will use their best efforts to resolve that disagreement by consulting with another member of the Law Society (such as a member of the Practice Advice Department) with a view to determining the appropriate course of action to be taken in the best interests of the client.
- (o) If, after attempting to resolve the disagreement, the Applicant and the Mentor are still unable to agree on the appropriate course of action to be taken in respect of a BC File, the Applicant will be bound to follow the Mentor's advice. The Mentor will promptly inform the Monitoring and Enforcement Group of the nature and details of the disagreement.
- (p) For the duration of the Mentorship Agreement, the Mentor will provide quarterly reports to the Monitoring and Enforcement Group containing, at a minimum:
 - (i) the dates on which the Mentor and the Applicant communicated;

- (ii) particulars of any deficiencies noted by the Mentor in the Applicant's conduct of BC Files; and
- (iii) details of any corrective measures taken by the Applicant in respect of any deficiencies identified in his BC practice.

The first report will be provided three months after the Mentorship Agreement is entered into.

- (q) The Mentor will advise the Monitoring and Enforcement Group promptly of any breaches of the Mentorship Agreement.
- (r) The Mentorship Agreement will remain in effect until the Mentor is relieved of the terms of the Mentorship Agreement, the Mentor resigns, or the passage of three years, whichever occurs first.
- (s) If the Mentor wishes to resign, they will notify the Executive Director and the Applicant in writing at least 30 days in advance of the intended resignation date.
- (t) Upon receipt of notification of the Mentor's intention to resign, the Applicant may identify another mentor meeting the criteria in subparagraph (a) and seek approval from the Executive Director for that individual to assume the responsibilities of the Mentor under the Mentorship Agreement. If the Applicant is unable to locate an acceptable replacement mentor before the Mentor resigns, the Applicant must cease practising in British Columbia unless the Executive Director agrees otherwise.
- (u) The Applicant is responsible for paying all fees and disbursements the Mentor charges in relation to performing their responsibilities under the Mentorship Agreement.
- (v) When the Mentorship Agreement is entered into by the Applicant and the Mentor, the Applicant will provide the Executive Director with a copy of the executed agreement.
- (w) Before entering into the Mentorship Agreement, the Applicant will complete the Practice Management Course at the Law Society.

DISCLOSURE OF HEARING TRANSCRIPT AND EXHIBITS

[110] The Applicant seeks an order under Rule 5-8(2)(a) to prohibit public disclosure of the transcripts and exhibits in this matter. Neither the Applicant nor the Law Society provided submissions regarding the basis or appropriateness of the proposed order.

[111] If any person other than the parties to this matter requests disclosure of the transcripts or exhibits from this Hearing, the Law Society Tribunal will notify the parties. Before any portion of the transcripts or exhibits is disclosed, the parties will be given the opportunity to bring an application under Rule 5-12 (2.1) and provide submissions regarding an order under Rule 5-8(2)(a).

COSTS

[112] In accordance with Rule 2-92, the Credentials Committee set the amount to be deposited as security for costs of this proceeding at \$2,000. The Applicant deposited that amount with the Law Society in advance of the hearing.

[113] The parties did not make submissions regarding costs at the hearing.

[114] If the issue of costs is not settled between the parties, the Panel will determine costs based upon written submissions of the parties to be delivered on the following schedule:

- (a) the Law Society shall provide submissions on costs within 15 days of the issuance of this decision;
- (b) the Applicant may respond within 10 days of service of the Law Society's submissions; and
- (c) the Law Society may reply within 2 days of service of the Applicant's submissions.