2023 LSBC 17
Hearing File No.: HE20190008
Decision Issued: April 20, 2023
Credentials Hearing ordered: January 24, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

NIDA CHAUDHRY

APPLICANT

DECISION OF THE HEARING PANEL ON APPLICATION FOR REINSTATEMENT

Hearing dates:	June 21, 22, 23 2021 and September 15, 16 2022
Panel:	Chelsea D. Wilson, Chair Carol Gibson, Public representative Shannon Salter, Lawyer[1]
Counsel for the Applicant:	David Donohoe, for the hearing dates June 21 to 23, 2021. The Applicant appeared without counsel for the hearing dates September 15 and 16, 2022
Counsel for the Law Society:	J. Jaia Rai
Written reasons of the Panel by:	Chelsea D. Wilson

[1] Ms. Salter did not participate in the preparation of these reasons.

BACKGROUND

[1] Nida Chaudhry (the "Applicant") was called and admitted as a member of the Law Society of British Columbia (the "Law Society") on July 25, 2011. She was disbarred on November 6, 2018 by order of a hearing panel following the hearing of a citation issued against her on October 5, 2018 (the "Citation").

[2] While a member of the Law Society, the Applicant practised law in British Columbia from the time of her call to the bar in July 2011 until June 1, 2015 as follows:

(a) From July 25, 2011 until June 3, 2012, she practised law with the law firm Newport Law in Port Moody.

(b) From June 4, 2012 until February 2, 2014, she practised law as a sole practitioner through her own law firm, Infinite Law.

(c) From February 3, 2014 until June 1, 2015, she practised law with the law firm Segev Homenick LLP ("Segev").

[3] The conduct that resulted in the Citation took place between July 2012 and April 2014 and came to the attention of the Law Society during a routine compliance audit of the Applicant's sole practice at Infinite Law (the "Compliance Audit").

[4] On or about June 2, 2015, the Applicant moved to Dubai, where her husband had been working for the previous year, and started work with TWS Legal Consultants ("TWS"). She maintained membership with the Law Society, initially as a practising lawyer and then as a non-practising member effective November 23, 2017, until her disbarment.

[5] On May 30, 2018 the Applicant tendered to the Discipline Committee a conditional admission to the allegations set out in the Citation and a consent to a specific disciplinary action, namely disbarment. On June 7, 2018 the Discipline Committee accepted the Applicant's proposal and pursuant to then Rule 4-30 of the Law Society Rules (the "Rules") instructed discipline counsel to recommend its acceptance to the hearing panel established to conduct the hearing of the Citation.

[6] The hearing of the Citation proceeded on July 10, 2018 on the written record and without an oral hearing. In reasons issued on November 6, 2018, the hearing panel made findings and orders in accordance with the Rule 4-30 consent proposal made by the Applicant and accepted by the Discipline Committee: *Law Society of BC v. Chaudhry*, 2018 LSBC 31 (the "Disbarment Decision").

[7] The Applicant delivered an application for reinstatement of membership with the Law Society approximately six weeks after her disbarment, while she was working in Dubai.

At the time she did not intend to return to British Columbia to practise law. Rather, she sought reinstatement for purposes of her employment in Dubai.

[8] The Credentials Committee ordered a hearing into the reinstatement application at their January 24, 2019 meeting, and the Applicant was given notice accordingly. Under section 19(3) of the *Legal Profession Act* (the "*Act*") and Rule 2-85(11)(a) of the Rules, a hearing is mandatory to determine applications for reinstatement by a disbarred lawyer.

[9] The Applicant worked at TWS until September 2019 and returned to British Columbia on November 7, 2019. The Applicant received formal notice of matters specified in Rule 2-91(1) of the Rules by letter dated April 28, 2020 from counsel for the Law Society. The letter gave notice to the Applicant that the following circumstances would be inquired into at the Reinstatement Hearing:

> 1. Circumstances related to the hearing of the Citation issued against the Applicant on October 5, 2018, including but not limited to:
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> a) The conduct underlying the proven Citation.
>
> b) The admissions made by [the Applicant], including admissions accepted by the Discipline Committee, and tendered in evidence at the hearing.
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> c) The Hearing Panel's findings and orders made, set out in the Panel's written decision issued on November 6, 2018.
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> 2. The discrepancies between the admissions made by the Applicant in the Citation hearing that her misappropriation was intentional and her characterization of her conduct in her reinstatement application.
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> 3. The work and activities the Applicant engaged in since her disbarment, including the work she performed while employed with TWS in Dubai and circumstances that led to Nita Maru of TWS retracting her character reference letter dated December 17, 2018.

[10] The Applicant left her application for reinstatement in abeyance until January 2021. She has received an offer from Robert Monterio, a lawyer practising in Vancouver, to work with him under supervision if her membership is reinstated.

[11] This Panel was convened to determine the Applicant's application for reinstatement as a member of the Law Society. At the commencement of the Reinstatement Hearing, the Applicant made a preliminary application to testify about her state of mind at the

time of her misconduct and the proceedings related to the Citation. The preliminary application was opposed by the Law Society. The Applicant's position was that her misconduct did not involve dishonesty and that her admission and the panel's finding in the Disbarment Decision that she committed intentional misappropriation was not an admission or finding of dishonest conduct.

[12] This Panel issued its decision on the preliminary application on March 10, 2022: *Law Society of BC v. Chaudhry*, 2022 LSBC 10 (the "March 2022 Decision"). In the March 2022 Decision, we dismissed the preliminary application and held that any evidence that contradicts admissions made in the hearing of the Citation and the findings made by the panel in the Disbarment Decision is inadmissible at the Reinstatement Hearing. We found that the Applicant's admission of intentional misappropriation in the hearing of the Citation and the discipline panel's finding of intentional misappropriation are an admission and finding of dishonest conduct. Further, we held that the Applicant's testimony that she did not have actual knowledge that she was taking client trust funds, that she did not mean to misappropriate client trust funds and that she lacked dishonest intent when she committed the misappropriation was inadmissible in the Reinstatement Hearing.

LEGISLATION AND RULES

[13] The criteria for reinstatement are set out in section 19(1) of the *Act*, which provides:

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

[14] The onus is on the Applicant to satisfy the Panel on a balance of probabilities that she is of good character and repute and fit to be reinstated (Rule 2-100, now Rule 5-6.2).

[15] Pursuant to section 22(3) of the *Act*, following the Reinstatement Hearing, the Panel must either grant the application, grant the application subject to conditions or limitations that the Panel considers appropriate, or reject the application.

ISSUE

[16] The issue to be decided is whether the Applicant satisfies the requirements of s. 19(1) of the *Act* that she is a person of good character and repute and is fit to become a barrister and solicitor of the Supreme Court.

LEGAL PRINCIPLES AND CASE LAW

[17] The Law Society's powers, including those of its committees and the LSBC Tribunal, are derived entirely from statute. Section 3 of the *Act* sets out the Law Society's statutory mandate "to uphold and protect the public interest in the administration of justice" by "regulating the practice of law," amongst other things. As stated by the Bencher review panel in *Law Society of BC v. Gayman*, 2012 LSBC 30 ("*Gayman review*") at para. 12:

> … in assessing the criteria of good character, repute and fitness as specified in s. 19(1) of the *Act*, consideration of the overriding objectives and duties of the Law Society to uphold and protect the public interest as set out in s. 3 are necessarily and appropriately included in this consideration.

Therefore, protection of the public interest in the administration of justice, which includes public confidence in the profession, is the lens through which this Panel considers the Applicant's application for reinstatement.

[18] The leading authority on the evaluation of the criteria in s. 19(1) of the *Act* is *McOuat v. Law Society of BC*, (1993) 25 BCAC 248, 1993 CanLII 1794 (*McOuat).* In *McOuat*, the Court of Appeal dismissed an appeal by the applicant of an order of a credentials panel rejecting his reinstatement as a member of the Law Society. Mr. McOuat had been disbarred in 1982 for his conduct in misappropriating client trust funds for a period of about six years starting in 1976. He applied for reinstatement in 1990, some eight years after his disbarment.

[19] In dismissing the appeal and upholding the panel's decision to deny Mr. McOuat's application for reinstatement, the court endorsed the panel's interpretation that good character and repute have both a subjective and an objective aspect and that the good character and fitness to become a barrister and solicitor tests overlap. At paras. 6 and 7, the court endorsed the following statement by the panel:

> … The objective sense of "good character" overlaps with the requirement of fitness.
>
> The demands placed upon a lawyer by the calling of barrister and solicitor are numerous and weighty and "fitness" implies possession of those qualities of character to deal with the demands properly. The qualities cannot be exhaustively listed but among them must be found a commitment to speak the truth no matter what the personal cost, resolve to place the client's interest first and to never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

…

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

[20] In an article entitled, "What is Good 'Character'?" published in the *The Advocate,* (1977) v. 35 at p. 129, Mary Southin, QC (as she then was), considered the meaning of the term, stating:

> 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.
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> Character within the Act comprises in my opinion at least these qualities:
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> 1. An appreciation of the difference between right and wrong;
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> 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;
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> 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.
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> 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:
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> 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.
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> 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? ...
>
> If that right-thinking citizen would say, knowing as much about an applicant as the Benchers do, "I don't think much of a fellow like that. I don't think I would want him for my lawyer", then I think the Benchers ought not to call him or her.

[21] This article has been quoted with approval by several credentials hearing panels, including *Law Society of BC v. Schuetz,* 2011 LSBC 14 at para. 72 (*Schuetz*).

[22] In *Schuetz*, the hearing panel considered the s. 19(1) criteria in the context of an application by a former member who voluntarily ceased membership with the Law Society for health (substance use) reasons on the condition that he not operate a trust account or otherwise deal with clients' money. At paras. 2 to 4, the hearing panel held:

> [2] This section is the "gateway" to the practice of law. The section sets out criteria for becoming an articled student, becoming a lawyer for the first time, and for readmission to the practice of law. Although the standard is the same, a hearing panel applies that standard in a different context … For lawyers seeking readmission, the hearing panel will look into:
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> (a) his or her dealings with the Law Society prior to ceasing to be a member (this would include the conduct record);
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> (b) the reason he or she ceased to be a member. If it is substance abuse or a mental health problem, the hearing panel must be satisfied these problems are adequately dealt with;
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> (c) what the lawyer has been doing during his or her period away from practice.
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> [3] The above considerations are not exhaustive, and the hearing panel may look at other factors too.
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> [4] The contextual analysis described above is to determine whether the applicant is of "good character and repute". This has a strong public interest component. That public interest component can be divided into two general categories. The first is public protection. The public must be protected from individuals who misuse their position as a lawyer. However, public interest also has a "public inclusive provision". It is in the interest of the public to have lawyers from diverse backgrounds and diverse experiences. As we will see later on, the Applicant does come from a rather unique background. Sometimes, these two aspects of public interest do not conflict. Sometimes, they do conflict and, if there is conflict, public protection prevails and the lawyer is not readmitted. However, in other cases, a hearing panel may add conditions on the readmission to protect the public and, at the same time, give the public a diverse pool of lawyers to serve the public in general.

[23] The test for determining whether the Applicant had been rehabilitated so as to be reinstated is set out in the case of *Watt v. Law Society of Upper Canada*, [2005] OJ No. 2431 (Divisional Court) at para. 14, as follows:

(1) Is there a long course of conduct showing that the applicant is a person to be trusted?

(2) Has the applicant's conduct since disbarment been unimpeachable?

(3) Has there been a sufficient lapse of time since the disbarment?

(4) Has the applicant purged his guilt?

(5) Is there substantial evidence that the applicant is extremely unlikely to misconduct himself again if readmitted?

(6) Has the applicant remained current in the law through continuing legal education or is there an appropriate plan to become current?

[24] The *Watt* test was adopted in this jurisdiction by the Bencher review panel in *Gayman review*.

[25] As noted by the Bencher review panels in both *Gayman review* at paras. 23 to 25 and *Re Applicant 6,* 2014 LSBC 37 at para. 20, further guidance in the consideration and determination of an application for reinstatement to the Law Society can be taken from the case of *Levenson v. Law Society of Upper Canada,* 2009 ONLSHP 98, which sets out ten principles to be considered when using the six-part *Watt* test. These principles are:

1. The Society regulates the legal profession in the public interest.

2. Public confidence in the legal profession is more important than the fortunes of any one lawyer.

3. The ability to practise law is not a right but a privilege.

4. Once the privilege is lost, it is hard to regain.

5. The privilege may be regained no matter how egregious the conduct that led to its loss provided sufficiently compelling evidence of rehabilitation is presented. This will be hard to do.

6. The privilege may be regained where, as in *Goldman,* the misconduct was committed as a result of a psychiatric or medical disorder that is very unlikely to recur because the disorder has been successfully treated.

7. The privilege may be regained where, as in *Manek*, the misconduct did not have its origins in a medical or psychiatric disorder, but the applicant has established genuine and enduring rehabilitation.

8. The legal profession, of all professions, has a special responsibility to recognize cases of true rehabilitation; however, as rehabilitation will be claimed by virtually all applicants, independent corroborating evidence is required to establish that the rehabilitation is genuine and enduring.

9. The burden of proof on an applicant seeking re-admission is at least as high as the burden on the Society when it seeks to disbar a lawyer.

10. The reinstatement must not be detrimental to the integrity and standing of the bar, the judicial system, or the administration of justice, or be contrary to the public interest.

[26] It is evident from the above test and principles that reinstatement as a lawyer is not easily attainable. Law Society counsel referred the Panel to the case of *Gayman*, 2012 LSBC 12 ("*Gayman*"), upheld on review in *Gayman review*, and to *Law Society of BC v. Mainland*, 2014 LSBC 56. In *Gayman*, a lawyer was reinstated following disbarment. In *Mainland*, a lawyer relinquished his membership in the Law Society and undertook not to practise law after he misappropriated legal fees and disbursements, but later succeeded on his third attempt to be reinstated as a lawyer.

[27] In *Gayman*, the applicant had been disbarred for conduct unbecoming a lawyer. Mr. Gayman had, acting as a trustee, knowingly breached a trust instrument resulting in a loss of approximately one million dollars to some 20 investors. Mr. Gayman suffered from substance dependence at the time of the conduct that led to his disbarment. He waited ten years after his disbarment to apply for reinstatement. The Applicant provided evidence of rehabilitation based on events that took place after his disbarment. He proved that he had undertaken a long and successful road to recovery. Following participation in a Salvation Army detox program and other programs, the applicant began working for the Salvation Army and moved up the corporate ladder within the organization. Mr. Gayman was appointed to the Board of Directors of the Western Recovery Foundation and became a director of the Turning Point Society. He also re-established a relationship with his family. Mr. Gayman filed a comprehensive medical report regarding his substance use. He also produced various letters from senior members of the bar and a Master of the BC Supreme Court attesting to his good character.

[28] In granting reinstatement subject to conditions, the hearing panel cautioned against reliance on the outcome of the *Gayman* case by disbarred lawyers seeking reinstatement. At para. 122 the hearing panel stated:

> This is an exceptional case. The Applicant had a serious alcohol dependency. He has dealt with it effectively for nine years. He has gone through a fundamental character change. His mistakes and cover-up were serious. However, these mistakes were not part of a pattern of professional misconduct or conduct unbecoming. They were isolated. The evidence is overwhelming that his character was changed and that there is little or no chance he will repeat the same or similar mistake. This exceptional case should not be used by disbarred lawyers to gain reinstatement. There are few Mr. Gaymans.

[29] As indicated above, the hearing panel's decision in *Gayman* was affirmed by a Bencher review panel in *Gayman review*.

[30] In *Mainland,* the hearing panel considered Mr. Mainland's third application over the prior 24 years to be reinstated as a lawyer in British Columbia. In the mid-1980s, after misappropriating legal fees and disbursements totalling some $8,950 on 14 separate occasions, Mr. Mainland relinquished his membership in the Law Society and undertook not to practise law again unless authorized to do so. Mr. Mainland first applied for reinstatement in 1990 and made a second application for reinstatement in 1994. His third reinstatement application was filed with the Law Society in 2013.

[31] The hearing panel found that during the period leading up to and surrounding the thefts, Mr. Mainland had been under considerable stress. His young daughter was born prematurely and continued to suffer from serious and chronic medical conditions. His marriage also broke down during this time.

[32] As was the case in *Gayman*, Mr. Mainland provided evidence regarding events that took place after his resignation to establish rehabilitation. Following his resignation from the Law Society, Mr. Mainland worked as a Communications and Development Officer for an Alcohol and Drug Education service from May 1987 to May 1989. In June 1987, a law firm hired Mr. Mainland as supervisor of its corporate service department. Mr. Mainland continued to be employed by the same employer thereafter, and for three to four years had been working almost exclusively as a senior trademark paralegal. Mr. Mainland's third reinstatement application was supported by four character reference letters, three of whom were written by lawyers at the law firm at which he worked including the managing partner. Three of the four character referees also testified at the hearing.

[33] We set out below the *Mainland* hearing panel's assessment and application of the six *Watt* factors at some length as they are instructive in understanding why Mr. Mainland's third application for reinstatement was successful and the evidence that was adduced to prove he should be reinstated. At paras. 52 to 62, the hearing panel found as follows:

> **1. Is there a long course of conduct showing that the applicant is a person to be trusted?**
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> [52] The evidence in this regard came primarily from Mr. Tougas, Mr. Gustafson and Mr. Hughes as mentioned above. The Panel accepts their evidence in relation to the trust they place in Mr. Mainland. These witnesses appear to be highly regarded individuals who have been in a position to assess Mr. Mainland over the 20 years since the last hearing.
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> [53] The duration of Mr. Mainland's employment at the law firm and the continued and strong support by his employer ought not to be underestimated. It is a testament to the faith and trust they place in him. In some respects, the character witnesses called in his support are better placed to make an assessment of character than this Panel. This is not to say we are fettering our decision-making responsibility or deferring to these three witnesses, but rather, we simply make the point that we found their evidence persuasive and have taken some degree of guidance and comfort from their collective, long-term assessment.
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> [54] The course of employment with McMillan LLP is set out above in paragraphs [25] and [26] through the evidence of Mr. Gustafson. The evidence demonstrates a steady growth of responsibility over a considerable period of time. The Panel was impressed with this evidence, and it clearly showed a belief that Mr. Mainland was a "person to be trusted." If there were doubts about Mr. Mainland's character, he would likely not have continued in their employment for 25 years. It is a testament to McMillan LLP that they have continued to support Mr. Mainland for such a lengthy period of time in his efforts to be reinstated.
>
> [55] In addition, we have the evidence of Mr. Mainland himself. While we must be cautious about placing too much weight upon his own evidence as to his "character", we are of the view that his tenacity and strong commitment to be reinstated, coupled with his many years of principled service as a paralegal at McMillan LLP, is a strong indication that he is very unlikely to repeat any behaviour similar to that which led to his resignation as a lawyer. It is difficult to imagine that a person, who would persist through three reinstatement applications over a 25-year period, would take any action that might jeopardize his re-

admission or standing as a lawyer. This gives the Panel a strong sense that the public is protected.

2. Has the applicant's conduct since ceasing to be a lawyer been unimpeachable?

[56] The Panel accepts the evidence of Messrs. Gustafson, Hughes and Tougas. All were impressive assessors of the character of Mr. Mainland, and all spoke to a consistent pattern of loyal, competent and honourable service during the course of his employment over the span of 25 years.

[57] As set out in paragraphs [18] to [22] above, we are cognizant that, in April of 1999, after he ceased practising, Mr. Mainland made a Consumer Proposal under the *Bankruptcy Act*. The proposal was approved under the *Bankruptcy Act* and 12 years have now passed since Mr. Mainland fully satisfied its terms and provisions. In light of the evidence before us on this issue, including the submissions of the Law Society, we are satisfied that Mr. Mainland has fulfilled his legal obligations to pay his debts, that he has put his financial house in order, and that he has been financially sound and responsible for over a decade.

3. Has there been a sufficient lapse of time since the applicant ceased to be a lawyer?

[58] There is no established or set time period during which rehabilitation can be said to have occurred. This is a fact-dependent finding that must be assessed case by case. Clearly, the two earlier panels were of the view that the time period for rehabilitation was insufficient in the four and eight years following his resignation. We are now 28 years past his resignation in 1986.

[59] Mr. Mainland was called in 1980. His career as a lawyer ended six years later. He has continued as a paralegal steadily for nearly three decades. In the view of the Panel there has been "a sufficient lapse of time" to allow him to be readmitted, subject to conditions regarding his re-qualification to be stipulated by the Credentials Committee.

4. Has the applicant purged his guilt?

[60] In this case, the evidence clearly supports a finding that Mr. Mainland has led an up-standing life since his serious misbehaviour nearly 30 years ago. Based upon the evidence of those who know him most intimately, we are of the view he has done what is required. We hasten to add what we stated earlier. A re-admission application is not a process of forgiveness. Rather, it is a process of assessment in the public interest. We have no doubt Mr. Mainland regrets his behaviour. More importantly, however, we believe on the evidence before us that his regret has led to the prerequisite character change that allows us to make a finding that his character now warrants re-admission.

5. Is there substantial evidence that the applicant is extremely unlikely to misconduct himself again if re-admitted?

[61] Based upon the evidence, we are of the view the Applicant is "extremely unlikely to misconduct himself" in the future. All the factors we have assessed suggest he is now rehabilitated and a person of good character. In our view, Mr. Mainland has done an excellent job in this regard. His employer is also in large measure responsible for his rehabilitation, and it appears certain that the employment relationship will continue. Mr Mainland is patently indebted to McMillan LLP for its continued support. Senior members of his firm, who are also members of the Law Society, have stood by him for a very long time. It would be the most egregious affront to them if he were to misconduct himself. We very much doubt this will occur.

6. Has the applicant remained current in the law through continuing legal education or is there an appropriate plan to become current?

[62] As set out at paragraphs [25] and [26] above, Mr. Mainland has been practising as a paralegal with a specialty in trademark law and has regularly attended courses in this field. Clearly, his work as a lawyer will be more challenging, with greater responsibility. This will require additional courses and upgrading. In this regard, we defer to the Credentials Committee to set out the requirements necessary to institute an appropriate plan for further continuing legal education under the rules for returning to practice after a long absence.

[34] In the result, the hearing panel concluded that Mr. Mainland had met the evidentiary burden of proving, on a balance of probabilities, that he was a person of good character and held that he should be reinstated and permitted to practise law when he met all conditions imposed by the Credentials Committee.

[35] In *Gayman*, the hearing panel cautioned that the application of the *Watt* test should always be flexible. No two cases are alike, and each case must be decided on its own facts. As noted by the hearing panel, at para. 101:

> …The flexibility is necessary to recognize that reinstatement of a lawyer, even a disbarred lawyer, is always fact sensitive. Legal principles can only be general guidelines.

[36] On the topic of whether granting reinstatement on conditions provides an adequate level of public protection, in *McOuat* at para. 17, the court endorsed the following comments of the hearing panel rejecting the notion that conditions would be adequate in that case:

> It has been suggested that whatever worry we may be left with concerning the possibility of fresh misappropriation could be cured by placing restrictions upon his freedom to practice such as prohibiting him from handling trust funds with or without a requirement that he practice only in association with another member of the Law Society.
>
> A reinstatement with practice conditions is appropriate in some circumstances, especially where the concern is about an adequate skill level or a successful recovery from substance abuse rather than moral fitness. Even then there is a risk that a member, though prohibited from certain acts by what amounts to a private arrangement between him- and herself and the Law Society, is nonetheless in a position as regards the public to have them repose trust in a lawyer as a fully qualified member.
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> But, deeper than that we are under the statutory constraints that we must not readmit persons about whose fitness we are not satisfied simply because we hope to prevent the effect of the unfitness from damaging the public or members of the profession by some specially crafted safeguard.

ANALYSIS

Introduction

[37] Law Society counsel submits that given the March 2022 Decision, there is no doubt that as of April 2014, which is the end date for the time of the Applicant's misconduct that resulted in her disbarment, the Applicant did not meet the criteria of s. 19(1) of the *Act*. The Applicant agreed with this proposition in cross-examination. The Panel finds that the Applicant did not meet the criteria of s. 19(1) of the *Act* as of April 2014.

[38] Law Society counsel submitted that this case has the following features not present in other cases dealing with reinstatement of disbarred lawyers, namely:

1. This reinstatement application is made by an applicant who takes a very different and contradictory view of past misconduct she admitted that led to her disbarment.

2. This Applicant applied for reinstatement almost immediately after her disbarment, and her disbarment was ordered approximately four years after her misconduct. Law Society counsel says that these facts raise a question of the starting point for the character rehabilitation analysis. This question does not appear to have been contemplated or specifically addressed by panels when reciting or discussing the *Watt* factors.

[39] The hearing panel in the Disbarment Decision found that following the Compliance Audit, the Respondent hired a bookkeeper and took steps to bring her records up to date and that in April 2014 she eliminated all of her trust shortages by means of the payment of $8,694.27 in personal funds. All of the misconduct occurred during the time that the Applicant was a sole practitioner. The Panel is satisfied that in this case the appropriate start date for assessing whether the Applicant has been rehabilitated is April 2014.

[40] The parties tendered an Agreed Statement of Facts (the "ASF") in the Reinstatement Hearing. The Applicant testified at the hearing. The Applicant also submitted character reference letters in support of her application for reinstatement. Mr. Monterio was the only character referee to testify.

The Applicant's Background and Misconduct

[41] The Applicant attended law school initially at Seattle University and then transferred to the University of Manitoba and later the University of Victoria. While in school, she held various administrative positions with different law firms. She articled in Victoria and was called and admitted as a member of the Law Society in July 2011.

[42] In the year she spent working at Newport Law following her call, the Applicant practised in various areas, including real estate, family law and civil litigation. She testified that she had no exposure to assisting staff with trust accounting at that firm.

[43] In June 2012, the Applicant opened her sole practice Infinite Law and practised there until she joined Segev in February 2014. The misconduct that led to her disbarment took place entirely during the time that she was a sole practitioner. Her misconduct came to light during a routine compliance audit.

[44] As indicated in the Disbarment Decision, the Applicant's misconduct included intentional misappropriation of client funds by the Applicant making 13 withdrawals totaling $6,154.97 from her trust account when she was not entitled to the funds. In eight of those instances, she used the funds ($3,698.53) to pay personal or business expenses. In two instances, she made double payments out of trust. In three instances, she made payments out of trust in purported payment of fees when she had not yet rendered the services or in an amount higher than billed. All payments out of trust were made when the Applicant's trust accounting records were not current.

[45] In addition to intentional misappropriation, the Applicant committed other professional misconduct, including:

1. The Applicant improperly withdrew funds ($1,362.42) from trust on three occasions purportedly in payment of fees and disbursements but without first rendering a bill in circumstances where she knew she was personally responsible for ensuring that her duties and responsibilities under Part 3, Division 7 of the Rules were carried out.

2. The Applicant withdrew funds from trust when there were insufficient funds held in trust to the credit of the clients on whose behalf the withdrawals were made on 62 occasions between June 2012 and February 2014, resulting in trust shortages, some of which were not reported to the Law Society as required or remained unrectified for 674 days. The 62 trust shortages were not identified and immediately eliminated apparently because the Applicant did not maintain appropriate and required accounting records. In many instances, the withdrawals resulting in trust shortages were made for the purposes of paying the Applicant's own accounts.

3. The Applicant breached a trust condition imposed on her in a real estate transaction. Despite receiving a reminder from opposing counsel in November 2012, her undertaking remained unfulfilled at the time of her interview with a Law Society staff lawyer in July 2017.

4. The Applicant affixed her electronic signature to a revised Form B Mortgage and filed it in the Land Title Office, representing that she complied with section 168.3 of the *Land Title Act* and had a copy of the executed Mortgage in her possession. This representation was false because the clients had not executed the document when she filed it.

5. The Applicant committed professional misconduct by mishandling trust funds in breach of other accounting requirements set out in Part 3, Division 7 of the Rules and failing to maintain books and records as required by these Rules.

[46] As is evident from the findings and reasons of the panel in the Disbarment Decision, the nature and gravity of the Applicant's misconduct was serious and significant. It is clear to this Panel that at the time this misconduct occurred, the Applicant did not meet the criteria of s. 19(1) of the *Act*. We find that the Applicant was not, at the time, a person of good character and repute fit to become a barrister and solicitor of the Supreme Court.

Employment with Segev Homenick LLP

[47] The Applicant testified that she never received any complaints about her work while practising with Segev from April 2014 to May 2015. She testified that she was prompt with clients and that partners referred work to her after observing her for a couple of months. She testified she worked in a supervised setting and had no involvement in the business management or accounting functions at this firm, beyond keeping track of her time.

Employment with TSW Legal Consultants

[48] In June 2015, the Applicant started working in Dubai with TWS. At the time she applied for reinstatement, the Applicant intended to continue to work for TWS in Dubai and required reinstatement to permit her to continue working as a legal consultant for TWS. Her employer, Ms. Maru of TWS, supported her reinstatement application in a character reference letter dated December 17, 2018. On October 8, 2019, Ms. Maru sent an email revoking her letter of support, without indicating her reasons for doing so. The Applicant was able to offer no more than speculation as to Ms. Maru's reasons. Accordingly, we give no weight to Ms. Maru's initial letter of support or her subsequent email revoking that support.

[49] The Applicant testified that she had good relations with TWS staff and Ms. Maru, even after her disbarment. She testified that following her disbarment, her role at TWS changed from legal consultant to marketing and business development because she was no longer qualified to practise law.

[50] In cross-examination, the Applicant agreed she had not tendered evidence of situations where she was required to resolve ethical dilemmas aside from declining cases where a client had wanted her to do something potentially inappropriate even though she was risking not meeting her billable targets as a result. The Applicant did not tender any evidence to indicate how many cases she declined, for what reason, or how these decisions impacted her financially.

[51] The Applicant testified that at TWS she underwent a significant learning curve by having to quickly learn and apply Sharia law. She testified that she was better equipped to deal with these challenges at TSW because her ability to manage her stress had improved.

[52] In cross-examination, the Applicant confirmed that she had no responsibility for handling client trust funds at TWS and worked in a supervised setting.

Steps taken by the Applicant following her return to Canada and Professional Development

[53] The Applicant testified that she returned to Canada on November 7, 2019. Since returning to Canada, the Applicant has not worked outside of the home and has been principally focused on raising her children. She testified that her pregnancies and disbarment likely made her an unattractive candidate for employment.

[54] The Applicant testified to her growth and the maturity that she has developed through becoming a mother. She testified that she has performed an excessive amount of research about being a mother and even created a blog about motherhood. She described how being a mother requires her to juggle multiple matters constantly and face circumstances that can be overwhelming. She gave specific examples of stressful parenting experiences, from teething to sleep training, and testified that she has been able to face and overcome these challenges as a parent due to her better ability to handle stress. She credits counselling, breathing exercises, meditation and exercise to helping deal with anxiety. The Applicant testified that she is "100 per cent confident without hesitation" that she will not repeat her misconduct.

[55] The Applicant testified that she has been doing some volunteer work and has been trying to remain current in the law. Since returning to Canada in November 2019, the Applicant has taken courses in family and estate law. The Applicant testified that she has been watching videos posted by a family law firm in Vancouver and watching webinars created by an estate law firm in Ontario. She has also been reading some of the PLTC course materials. The Applicant has taken some of the courses available on the Law Society's website, including those concerning anti-money laundering and trust accounting.

Third Party Character Evidence

[56] The Applicant submitted five character reference letters with her reinstatement application (including Ms. Maru's letter) and a further eight character reference letters shortly before the commencement of the Reinstatement Hearing in June 2021.

Robert Monterio

[57] The Applicant submitted a character reference letter from Mr. Monterio dated March 22, 2021. Mr. Monterio also testified in support of the Applicant at the Reinstatement Hearing. He was the only character referee who testified.

[58] Mr. Monterio was called and admitted as a member of the Law Society in June 2005. He testified that he is a solicitor and that he does a lot of transactional work. Mr. Monterio met the Applicant in the summer of 2012 when she started her own practice and moved into the same building where he was working. He testified that they discussed matters pertaining to the practice of law, were both part of a group that met to discuss matters in furtherance of their continuing legal education requirements, and that they met one-on-one occasionally for coffee or lunch.

[59] In his letter Mr. Monterio states that he was aware the Applicant was disbarred and, through research and discussion with the Applicant, is confident he understands the nature of her actions and omissions that led to her disbarment. He states in his letter:

> While the reasons specified for Ms. Chaudhry's disbarment are multiple, I would submit most relate to the failure to retrain [*sic*] and instruct a proper legal bookkeeper and accountant and use designated software.
>
> Ms. Chaudhry has expressed to me that she understands her conduct and behaviour fell short of the requirements of her profession. She is humbled by the disbarment.
>
> I believe if Ms. Chaudhry is given a second chance, she will fully comply with the rules, laws and guidelines of our profession. I also believe Ms. Chaudhry, despite her admitted flaws, to be a person of honesty and good character.
>
> Ms. Chaudhry is the kind of lawyer our province needs. She is a mother of two children, and represents a minority community. To deny a person of Ms. Chaudhry's character and abilities from practicing law in perpetuity would be disproportionate to her admitted failures.

[60] Mr. Monterio testified that he has no reservations or doubts whatsoever about the Applicant's honesty and professional integrity. In cross-examination, he was asked how he reconciles the Disbarment Decision with his view that the Applicant is a person of honesty and integrity. He explained that he had read the Disbarment Decision and discussed the case with the Applicant and his colleagues and concluded as follows:

> So I think specifically it was my understanding that there was an admission made by Ms. Chaudhry while she was in the Middle East which led to the panel's

> decision which I think she may have made too quickly without getting proper independent expert legal advice on this specific matter, and then further to that I am still going to link the misappropriation back to actions that were careless, perhaps even reckless, but mainly they were not self-benefitting at all as far as I can tell. I don't think there's any finding of that. And I think the actions were mainly one of the omission of obtaining proper legal accounting software and retaining and instructing a proper legal accounting bookkeeper. That's how I reconcile the misappropriation with still finding good character on behalf of Ms. Chaudhry.

[61] Mr. Monterio testified that he believes Ms. Chaudhry to currently be a person of good character and states that his view has been reinforced by the adversity she has faced in this proceeding. Mr. Monterio was not able to identify anything specific that has happened since the Applicant's misconduct that has caused his view of the Applicant's conduct to change. Rather, he believes the Applicant to have had good character since the time that he met her.

[62] In his letter, Mr. Monterio expresses his view that the Applicant should be permitted to return to the practice of law, perhaps on a conditional or graduated basis, and states that to that end he has discussed working collaboratively with the Applicant should she regain readmission. In his testimony, Mr. Monterio states that he uses trust accounting software and has a dedicated bookkeeper. He states if the Applicant joined his firm, he could take time out of his busy practice to supervise and mentor her and would retain oversight and probably exclusive cheque-writing ability for some time. He testified:

> So I have always been impressed by Nida's – her attitude, her ability to build up a pretty sizable practice from scratch seemingly quite quickly, so that stuck with me, and in terms of the current opportunity for Nida, I have got a busy practice myself here, and given Nida's perceived ability and I think actual ability to do a number of things quite well and to communicate quite well with clients, I'd be interested in having her join my firm either in a capacity as an associate or even as an assistant in furtherance of her becoming an associate in the future.

[63] In cross-examination, Mr. Monterio testified that conceptually he was willing to consider entering into a formal supervision agreement in which he would take responsibility to supervise and monitor the Applicant and report to the Law Society.

Naila Sarwar

[64] The Applicant submitted with her reinstatement application a character reference letter from Naila Sarwar dated December 6, 2018. Ms. Sarwar is a UK qualified lawyer who met the Applicant during her employment with TWS in September 2017. The

Applicant was involved in training Ms. Sarwar in Dubai. The Applicant testified that she and Ms. Sarwar became close both at work and socially. Ms. Sarwar comments favourably on the Applicant's character, competence as a lawyer, and dealings with clients. She states that she has "no doubt regarding the good character and morale of Nida Chaudhry." Ms. Sarwar does not address the Applicant's misconduct that led to her disbarment or how she reconciles her observations of the Applicant with the findings in the Disbarment Decision. Ms. Sarwar does not provide any details or offer any insight into whether the Applicant encountered any situations that tested her character.

Liz Gracias

[65] The Applicant submitted a character reference letter from Liz Gracias dated December 5, 2018. This letter also accompanied the Applicant's reinstatement application. Ms. Gracias is the office manager at TWS. Ms. Gracias provides a glowing report of the Applicant's character, competence as a lawyer and dealings with clients and office staff. Ms. Gracias describes the Applicant as someone who is not afraid to decline cases where the client is adamant on proceeding down an unfair path despite the requirement that lawyers meet billable monthly targets that are five times the amount of their monthly salary. To this extent, this letter addresses situations where the Applicant was confronted with situations that tested her character and Ms. Gracias' view is that the Applicant handled those situations well. She states that it is of great shock to her that the Applicant's character would be questioned to any extent. Ms. Gracias' letter makes no mention of the Disbarment Decision or how she reconciles the findings in that decision with her observations of the Applicant's character.

[66] The Applicant submitted an email from Ms. Gracias dated September 11, 2022 in which Ms. Gracias states that she has known the Applicant for more than 7 years, and as both a lawyer employee and a friend. She states that she was aware of the Disbarment Decision when it was issued because she was the office manager at the firm where the Applicant was practising at the time. Ms. Gracias does not explain in her email how she reconciles the findings in the Disbarment Decision with her observations of the Applicant's character. The Applicant testified that she portrayed her conduct to Ms. Gracias in the same way she portrayed it to this Panel.

GG

[67] The Applicant's long-term close friend, GG, also provided a character reference letter. It is dated November 25, 2018 and was filed with the Applicant's reinstatement application. GG describes the Applicant as hard working and dedicated, and as having

a superior interpersonal skill set and honest nature. In her letter, GG does not mention the Applicant's misconduct that led to her disbarment or the Disbarment Decision.

[68] The Applicant submitted an email from GG dated September 11, 2022 in which GG references her earlier character reference letter and states that she was "aware of what was going on regarding her licence to practice law, and details which caused her to be disbarred." GG does not indicate in her email or letter how she reconciles her impression of the Applicant's character with the misconduct that led to the Applicant's disbarment. The Applicant testified that she portrayed her conduct to GG in the same way she portrayed it to this Panel. GG does not provide information regarding any situations that the Applicant may have encountered where her character was tested.

SS

[69] The Applicant also submitted a character reference letter dated December 4, 2018 from SS, a client whom the Applicant met in Dubai in the spring of 2017. SS describes the Applicant as sympathetic, understanding and prompt and indicates she was very satisfied with the quality of the Applicant's work. She states that she would like to be able to continue to reach out to the Applicant as a lawyer and strongly urges for her expeditious reinstatement. SS does not address the Applicant's misconduct that led to her disbarment or how she reconciles her observations of the Applicant with the findings in the Disbarment Decision. SS does not mention any situations the Applicant encountered that tested her character.

[70] The Applicant testified that she told SS what had happened but at the time she asked SS for this letter the Applicant did not appreciate that it was important that the character referees indicate their awareness of the misconduct and disbarment in their letters. In cross-examination, the Applicant agreed that she had portrayed her conduct to SS in the same way she had portrayed it to this Panel.

Puneet K. Mann

[71] The Applicant submitted a character reference letter from Puneet K. Mann dated February 24, 2021. Ms. Mann's letter and the Applicant's testimony indicate that she and the Applicant have had a personal relationship and friendship since Ms. Mann was a child. Ms. Mann was the Applicant's legal assistant at Infinite Law and later Segev. She was working for the Applicant at the time of the misconduct that gave rise to the Applicant's disbarment. Ms. Mann's letter describes the Applicant as friendly and a great networker. Ms. Mann describes the Applicant as passionate about the practice of law, but states that she focused primarily on getting the work done and "perhaps did neglect the administrative side of the practice, including possibly the accounting." Ms.

Mann indicates that at the rate at which the Applicant's practice was growing, she often seemed overwhelmed by the administrative side of her practice. The Applicant testified that she portrayed her conduct to Ms. Mann in the same way that she portrayed her conduct to this Panel.

Ileana Milotin

[72] The Applicant provided a character reference letter dated March 23, 2021 from Ileana Milotin. Ms. Milotin is a real estate support representative who assisted the Applicant with setting up her residential real estate practice. Ms. Milotin states that real estate conveyancing is very demanding work and requires the highest levels of financial integrity and time management. She writes that the Applicant "never fell short of meeting these standards and she consistently showed a high level of care, effort and competency in all areas of her real estate work – including time management, funds management and client support."

[73] When asked about the discrepancy between the findings in the Disbarment Decision and Ms. Milotin's comments, the Applicant testified that Ms. Milotin had no idea of the trust accounting problems, probably because the Applicant herself had no such knowledge of the problems. The Applicant testified that she believes only Ms. Milotin's comments about funds management to be at odds with the Disbarment Decision.

[74] The Applicant later submitted an email from Ms. Milotin dated September 13, 2022 in which Mr. Milotin states that they talked a lot of about the details of the Applicant's Citation, the Compliance Audit, and "all those other stressful issues you had to deal with." The Applicant confirmed in her testimony that she portrayed her conduct to Ms. Milotin in the same way that she portrayed her conduct to this Panel.

[75] We find Ms. Milotin's comments to be directly at odds not just with respect to findings in the Disbarment Decision concerning the Applicant's management of funds, but also with respect to the Applicant's level of care, effort and competence in real estate work. The Disbarment Decision includes a finding that the Applicant failed to honour a trust condition imposed on her by opposing counsel on a real estate file and a finding that the Applicant made a false representation when affixing her electronic signature to a revised Form B Mortgage and filing it with the Land Title Office.

Raza Mirani

[76] The Applicant submitted a letter from Raza Mirani dated May 27, 2021. Mr. Mirani is a director of the Pakistan-Canada Association, where the Applicant is a member and

volunteer. He describes the Applicant as a person of honourable conduct and principles and good moral character. Mr. Mirani states that he would have "no doubt in holding her to a high moral standard, one expected of members of the legal community of course, without worrying that she may even slightly disappoint." Further, he states that he is confident in the Applicant's "ability to expertly practice as a successful lawyer." Mr. Mirani makes no mention of the Disbarment Decision or how he reconciles his views of the Applicant with the findings in the Disbarment Decision. The Applicant testified that she portrayed her conduct to Mr. Mirani in the same way she portrayed her conduct to this Panel.

Syed Ehsan Rehman

[77] Syed Ehsan Rehman provided a letter dated May 27, 2021 in support of the Applicant's reinstatement. Mr. Rehman is the Applicant's uncle. He is also the Secretary of the Muslim Education and Welfare Foundation of Canada, which is an association founded by the Applicant's grandfather. The Applicant volunteers with this association. Mr. Rehman states that he is confident that the Applicant exhibits qualities of ethics and honesty "to the highest standard and without deviation." Further, he describes the Applicant as having "a natural 'moral compass'" and an "instinctive ability to distinguish that which is morally right from wrong."

[78] Mr. Rehman's letter makes no mention of the Disbarment Decision or how he reconciles his view of the Applicant with the findings in the Disbarment Decision. The Applicant confirmed in her testimony that she portrayed her conduct to Mr. Rehman in the same way she portrayed her conduct to this Panel. The Applicant testified that these "mistakes" weigh heavily on her because of her faith and sense of right and wrong.

Rick Mann

[79] The Applicant submitted an undated letter from Rick Mann, who is a former director and now member-at-large of the Mannkind Charitable Society with which the Applicant volunteers. Mr. Mann supports the Applicant's reinstatement and describes the Applicant as demonstrating consistent drive, tenacity and compassion. He states that he is confident in the Applicant's ability to represent the society with professionalism and integrity.

[80] Although Mr. Mann makes no reference to the Disbarment Decision in his letter, the Applicant did submit an email from Mr. Mann dated September 9, 2022 in which he adds that at the time he wrote his letter he was "fully aware of the circumstances that led to the disbarment" of the Applicant. He states that he nonetheless believes that the

Applicant is a person of integrity and honesty and someone he can trust. Mr. Mann does not explain in his letter or the email how he reconciles his view of the Applicant with the findings in the Disbarment Decision. The Applicant testified that she portrayed her conduct that led to the disbarment the same way to Mr. Mann as she did to this Panel.

Dr. Monica Michel-Rancourt

[81] The Applicant submitted a letter from her friend Dr. Monica Michel-Rancourt dated June 8, 2021. Dr. Michel-Rancourt states that she cannot speak to the Applicant's practice in law or competence as a lawyer, but that she finds the Applicant to exercise a great degree of care and diligence when looking after her children and in social relations and that she would consider it atypical and unusual if the Applicant were any different in the practice of law.

[82] The Applicant also submitted an email from Dr. Michel-Rancourt dated September 6, 2022 in which the author adds that she "was aware of the details of the decision of the Hearing Panel issued on November 6, 2018." Dr. Michel-Rancourt does not explain in her letter or email how she reconciles her comments regarding the Applicant's character with the findings in the Disbarment Decision. The Applicant testified that she portrayed her conduct to Dr. Michel-Rancourt in the same way that she portrayed her conduct to this Panel.

Scott Homenick

[83] Scott Homenick provided a character reference letter dated June 9, 2021 in support of the Applicant's reinstatement application. The substance of the letter, in its entirety, provides:

> I worked with Ms. Nida Skrijelj at Segev Homenick LLP from February, 2014 to June, 2015. At all times that Ms. Skrijelj worked there, I was a partner and she was an associate. I worked with her on a number of files during that time. At all times I found her conduct to be competent and ethical.

[84] The Applicant testified she and Mr. Homenick practised in different areas of law, but that he referred family clients to her and that they "worked on a little bit of estate planning." The Applicant clarified that Mr. Homenick practises primarily corporate work, mergers and acquisitions.

[85] Mr. Homenick makes no reference in his letter to the Disbarment Decision or the Applicant's conduct that led to her disbarment.

Weight to be given to the Evidence of the Character Referees

[86] The weight to be given to the character reference letters is impacted by the extent to which the author is aware of the past misconduct and the character issues engaged by that conduct, the extent to which the author has worked with the applicant in a professional capacity and the author's knowledge of the steps taken by the Applicant to rehabilitate herself, including situations that have tested her character.

[87] In *Anhang v. The Law Society of Manitoba*, 2014 MBQB 140 at paras. 48 to 50, the Manitoba Court of Queen's Bench found that it was quite proper for the panel to take into account a character referee's lack of awareness of the circumstances resulting in the applicant's disbarment in determining what weight to give to the referee's letter. In *Applicant 6*, the Bencher review panel held, at para. 23, that the opinion of a character referee is only as strong as their knowledge of the applicant.

[88] To the extent the evidence of the character referees pertains to the Applicant's character at the time of the misconduct and directly conflicts with the findings in the Disbarment Decision, the findings in the March 2022 Decision and the Applicant's own admission that she did not meet the requirements of s. 19(1) of the *Act* at the time the misconduct occurred, we give no weight to that portion of their evidence.

[89] Mr. Monterio testified that he believes the Applicant to presently be a person of honesty and good character. We give some weight to his evidence in this regard, although the weight to be attributed to that evidence is limited by the lack of evidence given by him regarding specific instances where the Applicant demonstrated good character since the misconduct occurred and a lack of evidence from him regarding instances where the Applicant's character has been tested since the time of her misconduct.

[90] Mr. Monterio was the only character referee to attempt to reconcile the findings in the Disbarment Decision with a personally held belief that the Applicant is of good character. He explained that he viewed the Applicant's conduct as careless and perhaps reckless and to be mainly due to a failure to use proper legal accounting software and retain a proper legal accounting bookkeeper. His evidence in this regard is directly at odds with the findings in the Disbarment Decision and the March 2022 Decision and does not speak to any improvements in the Applicant's character since the time of her misconduct.

[91] The character referees' letters are generally supportive of the Applicant and indicate that the referees believe the Applicant to be of good character, but there is little detail in their letters of specific events or matters that inform their assessments. There is particularly little detail with respect to events or matters that post-date the Applicant's

misconduct, which is the crucial time period for assessing whether the Applicant has been rehabilitated.

[92] The only character referee to provide any evidence of situations where the Applicant's character has been tested since the misconduct is Ms. Gracias, who referenced the Applicant having declined cases at TWS when being asked to proceed down an unfair path despite the impact that such decisions would have on her own remuneration. We have given weight to Ms. Gracias' evidence in this regard. Aside from the Applicant's own testimony and Ms. Gracias' letter, we were provided with minimal evidence regarding situations that might demonstrate the Applicant's character being tested and her handling of these situations in such a way that might demonstrate she has been rehabilitated since the time the misconduct occurred.

[93] The Applicant's own evidence is that at the time the initial tranche of character letters were submitted she did not appreciate the importance of the character referees indicating their awareness of the misconduct and disbarment in their letters. It is important that the character referees indicate they are aware of the findings in the Disbarment Decision and that they explain how they reconcile their own observations with these findings, as we must be satisfied that the Applicant has been rehabilitated since the time of the misconduct so as to find her to be presently of good character and repute and fit to be reinstated.

[94] The Applicant testified that the character referees were aware of the Disbarment Decision, and some emails were supplied from the character referees confirming they were so aware. However, she also testified that she explained her conduct to the character referees in the same way she explained it to this Panel, which is to say that she was careless or reckless, contrary to the findings in the Disbarment Decision. In addition, the emails do not contain sufficient detail for this Panel to assess the extent of the character referees' knowledge of the details of the Applicant's misconduct and the findings in the Disbarment Decision. On the evidence presented, we are not satisfied that the seriousness of the Applicant's misconduct, including her dishonest conduct, was understood by the character referees so as to give these letters any more than minimal weight in assessing the Applicant's character.

[95] We have taken into consideration and given weight to Mr. Monterio's willingness to enter into a formal supervision agreement concerning the Applicant in considering whether it would be appropriate to grant the Applicant reinstatement on conditions.

Application of the Test and Principles

[96] We turn to applying the various factors to be considered in light of the *Watt* decision, together with the principles from *Levenson.* These six factors are a useful guide, but the list is not exhaustive.

Is there a long course of conduct showing that the Applicant is a person to be trusted?

[97] The Applicant relies principally on her own assurances and statements that she is presently of good character and fit to practise, based on personal growth since the time of the misconduct. Importantly, aside from the letter from Ms. Gracias, the Applicant led no independent evidence of situations she has encountered since her misconduct where her character was tested. We find that the Applicant has not satisfactorily demonstrated, through her own testimony, or the evidence of other witnesses, that since the misconduct occurred there has been a sufficiently long course of conduct on her part demonstrating she is a person to be trusted.

Has the Applicant's conduct since disbarment been unimpeachable?

[98] The misconduct that led to the Applicant's disbarment took place entirely during the time that she was a sole practitioner. As of April 2014, the Applicant had eliminated all her trust shortages using personal funds. The Applicant testified that she experienced no issues that led to problems during the time that she worked at Segev or TWS. Neither of the parties tendered evidence that would indicate the Applicant engaged in impeachable conduct since her disbarment. We find that the evidence indicates that the Applicant's conduct since disbarment has been unimpeachable.

Has there been a sufficient lapse of time since the disbarment?

[99] The Applicant was disbarred on November 6, 2018. She applied for reinstatement only some six weeks later.

[100] We agree with the comments of the Bencher review panel in *Applicant 6* at paras. 28 and 29 of that decision, where they state:

> [28]…the mere passage of time itself does not restore one's character or repair the harm one causes.
>
> [29] The lapse of time must be accompanied with other positive conduct.

[101] In some cases, eight to nine years since the end of the misconduct might constitute a sufficient lapse of time. However, the nature and gravity of the Applicant's misconduct was severe and significant, and it is imperative that we be satisfied that during the time that has since lapsed, the Applicant has rehabilitated herself. The mere passage of time does not restore character. In this case, the period of time that has lapsed is not sufficient.

Has the Applicant purged her guilt?

[102] In *Gayman*, the hearing panel held that there are two aspects to the question of whether an applicant has purged their guilt. The first aspect relates to an applicant's admission of the past misconduct and the second aspect relates to making restitution or at least attempting to make restitution.

[103] In this case, the Applicant made full restitution for the trust shortages using personal funds shortly after they were revealed in the Compliance Audit. The more difficult aspect is whether the Applicant's position in the preliminary application that her misconduct did not involve dishonesty, but rather negligence or recklessness, despite her admission and the discipline panel's finding that she committed intentional misappropriation, means that the Applicant has not admitted to the past misconduct so as to purge her guilt.

[104] Law Society counsel directed us to *Anhang*, in which the Manitoba Court of Queen's Bench dismissed an application for judicial review of a decision denying an application for reinstatement by a lawyer disbarred for misappropriation. In the reinstatement hearing, the applicant characterized his conduct as sloppy. At the end of the hearing, after considering all of the evidence, the court found that the applicant had not demonstrated genuine remorse for the conduct that resulted in his disbarment. On this point, the court held, at para. 41:

> It is apparent that the Panel was concerned that Mr. Anhang was effectively seeking to re-establish a clean record, or one "as clean as possible." In his attempt to do so, he minimized the gravity of the offences to which he had pled guilty. It is also clear from the record that Mr. Anhang lacked insight into the seriousness of his conduct and had little appreciation of the impact of it on anyone other than himself. This is reflected in his reasons for applying for reinstatement as well as his testimony throughout the hearing, which was remarkably narrow and self-focused. The characterization of his reasons for applying as "shallow" and "purely self-interest" in my view was accurate and logically raised the several concerns it did in the mind of the Panel. All of it was about Mr. Anhang and his immediate interests with little regard to anyone else.

[105] In *Watt*, the Ontario Superior Court of Justice Divisional Court, stated, at paras. 50 to 51:

> [50] In that same case [*In Re Hiss* (1975), Mass., 333 N.E. 2d 429 (S.J.C.)], Tauro C. J. eloquently described the dilemma facing an honest person who does not accept a finding of guilt against him, stating as follows at p. 437:
>
> > Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance creates a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard-retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law. Men who are honest would prefer to relinquish the opportunity conditioned by this rule: "Circumstances may be made to bring innocence under the penalties of the law. If so brought, escape by confession of guilt…may be rejected, - preferring to be the victim of the law rather than its acknowledged transgressor – preferring death even to such certain infamy." *Burdick v. United States,* 236 U.S. 79, 90-91, 35 S. Ct. 267, 269, 59 L.Ed. 476 (1915). Honest men would suffer permanent disbarment under such a rule. Others, less sure of their moral positions, would be tempted to commit perjury by admitting to a nonexistent offense (or to an offense they believe is nonexistent) to secure reinstatement. So regarded, this rule, intended to maintain the integrity of the bar, would encourage corruption in these latter petitioners for reinstatement and, again paradoxically, might permit reinstatement of those least fit to serve. We do not consider in this context the person who admits committing the alleged criminal act but honestly believes it is not unlawful.
>
> > Accordingly, we refuse to disqualify a petitioner for reinstatement solely because he continues to protest his innocence of a crime of which he was convicted. Repentance or lack of repentance is evidence, like any other, to be considered in the evaluation of a petitioner's character and of the likely repercussions of his requested reinstatement.
>
> [51] That is not to say that an admission of guilt is not a relevant factor to take into account in considering readmission. It clearly is. Indeed, it is typically a significant positive factor in determining whether an applicant has purged his guilt. It does not follow, however, that an absence of such an admission, should be a negative factor….

[106] In *Watt*, the court concluded that although the hearing panel stated that it accepted the reasoning in *Hiss*, it failed to actually apply those principles in the case before it and improperly made an admission of guilt a precondition for reinstatement.

[107] In the case at hand, the Applicant does not deny that she committed the acts of misconduct that resulted in her disbarment, including misappropriation. The focus of her argument in the preliminary application was the proper characterization of that misconduct and the meaning of intentional misappropriation. She admits to what she did, but at least in the early part of the Reinstatement Hearing and prior to the issuance of the March 2022 Decision, did not agree with how her conduct was characterized or the meaning of her admission and the panel's finding in the Disbarment Decision that she had committed intentional misappropriation. To her credit, in the later part of the Reinstatement Hearing, the Applicant testified that she accepts this Panel's finding in the March 2022 Decision that her admission of intentional misappropriation in the discipline hearing and the discipline panel's finding of intentional misappropriation are an admission and finding of dishonest conduct, even though she does not necessarily agree with that finding.

[108] This Panel does not consider the Applicant's decision to bring the preliminary application and the issues she brought forward in that application a bar to her reinstatement. However, after considering all of evidence and having particular regard to the Applicant's testimony, we remain concerned that the Applicant has only recently, through the process of applying for reinstatement, begun to realize the seriousness of her past misconduct and the importance of lawyers' professional responsibility in these matters.

[109] One such example is the personal statement the Applicant submitted at the time of making her reinstatement application. In that personal statement, the Applicant refers to the funds she misappropriated as "trivial amounts". In a later part of the Reinstatement Hearing, the Applicant testified that she has since learned that she should not have described the amounts as trivial and apologized. She testified that she has gone through a huge learning curve getting ready for the Reinstatement Hearing by reading case law and discussing matters with counsel.

[110] It is clear from the Applicant's testimony that she is sorry for her misconduct and that she regrets her behaviour. We find that she has demonstrated genuine remorse and that she has purged her guilt. However, the recency of this development impacts the other factors and the overall issue to be considered in this reinstatement application.

Is there substantial evidence that the Applicant is extremely unlikely to commit misconduct again if readmitted?

[111] The Applicant applied for reinstatement approximately one month after her disbarment. We find that at that time the Applicant did not appreciate the ramifications of her disbarment, the need for her to rehabilitate and the requirement that she adduce substantial evidence in the reinstatement process so as to prove she had done the work necessary to become a person of good character and repute who is fit to become a barrister and solicitor of the Supreme Court.

[112] The Panel finds that the Applicant's testimony demonstrates the Applicant has matured since the time of the misconduct and that the reinstatement process itself has been a learning opportunity for the Applicant.

[113] However, the Panel finds that the evidence presented in this Reinstatement Hearing falls far short of constituting substantial evidence that the Applicant is extremely unlikely to commit misconduct again if readmitted. The case law demonstrates that the Applicant's own statements and assurances will not be enough to satisfy the test under s. 19(1) of the *Act*. We have not been presented with sufficient evidence of opportunities and events encountered by the Applicant since the time of her misconduct in order to conclude that the Applicant has overcome the significant character issues arising from her past misconduct so as to be extremely unlikely to commit misconduct again if readmitted.

Has the Applicant remained current in the law throughout continuing legal education or is there an appropriate plan to become current?

[114] The Applicant testified that she has been trying to remain current in the law. She has taken some of the courses available on the Law Society's website, including those concerning anti-money laundering and trust accounting.

[115] Since returning to Canada in November 2019, the Applicant has taken courses in family and estate law. The Applicant testified that she has been watching videos posted by a family law firm in Vancouver and watching webinars created by a leading estate law firm in Ontario. She has also been reading some of the PLTC course materials. We find that the Applicant has made some efforts to remain current in the law since the misconduct occurred.

[116] We note that given the Applicant has not been engaged in the practice of law for more than three years, she would not be permitted to practise law without first passing the qualification examination or obtaining the permission of the Credentials Committee to

be relieved of that requirement (Rule 2-89). However, that is a procedural matter that does not have bearing on the issue before this Panel in the Reinstatement Hearing.

CONCLUSION REGARDING THE REINTSTATEMENT APPLICATION

[117] The Applicant has the burden of proving on a balance of probabilities that she is of good character and repute and fit to be reinstated. As is clear from the case law, including *Levenson*, the ability to practise law is not a right but a privilege, and once the privilege is lost it is hard to regain. It is essential that sufficiently compelling evidence of rehabilitation be presented before an applicant is reinstated. We find that the Applicant has not adduced sufficiently compelling evidence of rehabilitation so as to satisfy us that she should be reinstated, with or without conditions, at this time.

[118] After considering all of the evidence, we conclude that granting the Applicant reinstatement on conditions would not provide an adequate level of public protection.

[119] The Applicant's application for reinstatement is dismissed. The Applicant has not proven that she now meets the requirements of s. 19(1) of the *Act*.

[120] We encourage the Applicant to take the steps necessary to rehabilitate herself so that she might in the future submit the evidence necessary to meet this burden. It is possible, as the cases *Gayman* and *Mainland* illustrate, for a disbarred lawyer to do the hard work necessary to rehabilitate themselves and prove that they meet the requirements of s. 19(1) of the *Act*.

JUNE 16, 2021 APPLICATION

[121] On June 16, 2021, in the midst of the Reinstatement Hearing, the Applicant brought an application to this Panel to seek an exemption from rule 6.1-4 of the *Code of Professional Conduct for BC* ("the *Code*") to allow her to engage in employment with an insured lawyer during the interim period between the hearing date of June 21, 2021 and the ultimate decision of the Panel (the "June 16, 2021 Application"). On June 20, 2021, we dismissed the June 16, 2021 Application and indicated that we would provide written reasons on the June 16, 2021 Application as part of our written reasons on the reinstatement application. These are our written reasons.

[122] Rule 6.1-4(a) of the *Code* provides:

> 6.1-4 Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate

> with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,
>
> (a) has been disbarred and struck off the Rolls, …

[123] We dismissed the June 16, 2021 Application on the basis that this Panel lacks the jurisdiction to grant the order sought by the Applicant. Under the *Act*, the governing body is the Law Society. Pursuant to s. 4 of the *Act*, the Benchers are given the authority to govern and administer the affairs of the Law Society. Under s. 8 of the *Act*, the Benchers of the Law Society may make rules to delegate any power or authority of the Benchers under the *Act* except rule-making authority to the executive director or to authorize a committee established under the *Act* to delegate authority granted to it under the *Act* to the executive director or the executive director's delegate. Law Society counsel explained that when these types of applications are received by the Law Society, they are, in accordance with the *Act*, delegated to either the Law Society's credentials committee or the Law Society's discipline committee for determination.

[124] This Panel was convened pursuant to section 19(3) of the *Act* and Rule 2-85(11)(a) of the Rules to determine whether the Applicant should be reinstated as a member of the Law Society under s. 19(1) of the *Act*. We have no inherent jurisdiction and have not been delegated the jurisdiction to determine the matter raised by the Applicant in the June 16, 2021 Application.

[125] We note that the restriction in rule 6.1-4 of the *Code* is on lawyers. The Applicant is not presently a lawyer and yet she was the person who brought the June 16, 2021 Application. At the time of the Reinstatement Hearing, Mr. Monterio had not brought an application for an exemption from rule 6.1-4 of the *Code* so as to employ the Applicant as, for example, a legal assistant. We note, without in any way commenting on the merits of any such application, that there is a potential that such an exemption being granted by the credentials committee could result in evidence that a hearing panel could consider in a future reinstatement application.

COSTS

[126] The parties did not provide the Panel with submissions on costs. If the parties are not able to agree on costs, either or both are at liberty to make submissions now that the Panel's decision on the merits of the reinstatement application has been issued.