

2024 LSBC 12  
Hearing File No.: HE20230011  
Decision Issued: February 27, 2024  
Notice of Referral Issued: October 12, 2023

THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL  
HEARING DIVISION

BETWEEN:

**THE LAW SOCIETY OF BRITISH COLUMBIA**

AND:

**APPLICANT 18**

APPLICANT

**DECISION OF THE HEARING PANEL  
ON AN APPLICATION FOR ENROLLMENT**

Hearing dates: December 4 and 5, 2023

Panel: Herman Van Ommen, KC, Chair  
Warren Funt, Public representative  
Krista L. Simon, Lawyer

Law Society Counsel: Michael Shirreff, Elizabeth Allan

Counsel for the Applicant: Jaia Rai

Written reasons of the Panel by: Krista L. Simon

## BACKGROUND

[1] On June 14, 2023, the Credentials Committee of the Law Society of British Columbia referred the Applicant's application for enrollment in the Law Society Admission Program ("LSAP") to a hearing under s. 19(2)(c) of the *Legal Professional Act*, SBC 1998, c. 9 (the "*Act*") and Rule 2-83(3)(c) of the Law Society Rules 2015 (the "Rules").

[2] On Oct 12, 2023, the Law Society provided notice to the Applicant pursuant to Rule 2-91 of the Rules of the issues and circumstances to be inquired into at the hearing.

[3] The purpose of the hearing 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(1) of the *Act* which provides:

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

[4] A hearing was held on December 4 and 5, 2023 (the "Hearing").

[5] In accordance with Rule 2-92, the Credentials Committee set an amount to be deposited as security for costs of this proceeding (\$4,000). The Applicant deposited the necessary security with the Law Society.

[6] A Joint Book of Documents and Document Agreement were entered as exhibits at the Hearing. A Common Book of Authorities was provided to the Panel.

[7] For the reasons that follow, the Panel finds the Applicant is of good character and repute and is fit to become a barrister and solicitor of the Supreme Court, subject to the terms outlined below, and he may enroll in the LSAP.

## BURDEN AND STANDARD OF PROOF

[8] The Applicant bears the burden of proof that he is of good character and repute and fit to become a barrister and solicitor. The standard is on a balance of probabilities (See *Law Society of BC v. De Jong*, 2017 LSBC 44, at para. 114, citing *Law Society of BC v. McOuat*, 2001 BCCA 104, 83 BCLR (3d) 242 (CA)).

## **CIRCUMSTANCES GIVING RISE TO THE REFERRAL TO HEARING**

[9] The circumstances being inquired into at the Hearing arise from the Applicant's conduct while enrolled as a student at a university (the "University"). Over the course of several months in 2015 and 2016, the Applicant sexually harassed a fellow student at the University (the "Complainant"). The Applicant created multiple anonymous Snapchat accounts through which he sent sexually explicit and aggressive photos and texts to the Complainant.

### **Circumstances of the misconduct and disciplinary action**

[10] There is no dispute as to the facts of the Applicant's misconduct and the subsequent disciplinary proceeding at the University. Accordingly, we summarize the facts giving rise to the referral to the Hearing.

[11] In September 2015, the Applicant was a 19-year-old student in his second year at the University and was a resident assistant ("RA") for approximately 12 to 15 other male students in his dorm. The male dorm was often "partnered up" for on-campus events with the female dorm in the same residence, which consisted of approximately the same number of female students. One of the students in the female dorm was the Complainant, a student that the Applicant met that year during her first-year orientation.

[12] While he was already in a relationship with another person, the Applicant found the Complainant attractive and found her Snapchat account information through social media. Snapchat is an instant messaging app which, at the relevant time, allowed the user to send messages and pictures which would only be available to the recipient for a short time before they then become inaccessible. There was no ability to keep a record of those messages in the application. The Applicant acknowledged that this was an attractive feature of this platform at the time he was sending the offensive and harmful messages.

[13] The Applicant created an anonymous Snapchat account. At first the Complainant engaged in some communication, seemingly in an effort to determine who he was. The Applicant lied about the details of his identity.

[14] Over the next months, the nature of the Applicant's messages became more sexual and escalated to having a more violent sexual nature. Undeterred by the Complainant blocking his Snapchat account, the Applicant created four or five new anonymous Snapchat accounts and continued to send unwelcome, explicit, threatening and aggressive sexual content, including nude photos of himself.

[15] In around April 2016, the Applicant informed the Complainant of his identity. The Applicant characterizes this as a step toward understanding his misconduct and the harm to the Complainant.

[16] The Complainant informed her own RA of what had been going on between her and the Applicant, namely his aggressive sexual communications. When confronted by a Residence Director, the Applicant initially denied the allegations. In a follow up meeting the next day, the Applicant admitted he was the person responsible for the aggressive sexual communications. He explains his initial denial as a panicked reaction arising from a fear of judgment and shame.

[17] In April 2016, the Applicant sent an apology by text message, acknowledging his terrible behaviour and that his behaviour had caused hurt and damage to the Complainant. The Applicant believed the matter was resolved.

[18] Both students returned to the University for the fall semester. The Applicant says he tried to refrain from campus activities and monitored class lists to ensure that he was not in any of the same classes as the Complainant.

[19] In September 2017, the Complainant filed a formal harassment complaint with the University against the Applicant. (No copy of the complaint document was available for the Hearing, although the Applicant's response to the complaint formed part of the evidence.)

[20] A formal complaint process ensued. The Applicant apologized in his formal response. In November 2017, the University's Senior Harassment Officer found that the Applicant had sexually harassed the Complainant over the course of several months in 2015 and 2016. The remedial measures included: he would not live on campus and would not be in the same classes as the Complainant; he would not have a student leadership role for the remainder of the academic year; he would send a letter of apology to the Complainant; and counselling and peer support should continue to be made available through campus/university resources.

[21] The Applicant did not appeal the decision.

[22] In a letter dated November 6, 2017, the Applicant wrote a final apology to the Complainant. He was clear in taking responsibility for his behaviour, characterizing what he did as "wrong and inappropriate". He wrote:

I have no excuse and will never make any attempt to justify what I did. What I did was wrong of me and I am deeply sorry for all the ways that my poor

decisions have caused any harm or anxiety for you. I wish that I had never ever done this and will commit to never doing anything like this ever again.

[23] The Applicant subsequently attended a men's group on campus for support and accountability, and obtained some counselling at the University, and then privately in 2019. He went on to share his experiences with his family, some friends, and his girlfriend (now fiancé).

[24] Although not called as a witness, the Law Society advised the Panel that it was in contact with the Complainant. The Law Society says it would have called her as a witness if she had given a contradictory account of the facts as outlined in the documents provided. Those documents indicate that once the Complainant knew the Applicant's identity and knowing they both lived in the same building, and no action had yet been taken by the University, the Complainant moved home to live with her parents and commuted to school. She suffered anxiety attacks at least into the fall of 2017.

#### **Application for articles and disclosure to the Law Society**

[25] The Applicant went on to graduate from university and law school, and interviewed for articling positions. He obtained an offer for an articling position with a downtown Vancouver law firm. He disclosed his misconduct to the law firm in the context of completing his articling application to the Law Society in January 2023.

[26] The law firm continues to hold his position open pending the outcome of the Hearing.

#### **LEGAL PRINCIPLES**

[27] The parties have referred to prior decisions intended to establish the applicable legal principles. Key principles were set out in *Law Society of BC v. Applicant 9*, 2016 LSBC 14.

[28] The Panel accepts the key principles for assessing good character are set out in an often-cited article from *The Advocate* entitled "What is 'Good Character'" (1977), v. 35, p. 129 to 130 as follows:

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

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

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

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

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

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

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.

[29] The definition of good character as it has evolved over the years, as noted in *Law Society of Upper Canada v. Schuchert*, [2001] LSDD No. 63, cited in *De Jong* at para. 120, is as follows:

Character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which would include, among others, integrity, candour, empathy and honesty.

[30] Troubling past conduct, even conduct that is criminal in nature, is not an automatic impediment to admission to the LSAP. Rehabilitation is often a key issue in credentials hearings, such as this one, where an applicant has admitted past behaviour or decisions that raise fundamental concerns regarding the applicant's fitness (See *Law Society of BC v. Applicant 3*, 2010 LSBC 23, at para. 127).

[31] It is the Applicant's character and fitness today – at the time of the Hearing – that is determinative of this application (See *Law Society of BC v. Lee*, 2009 LSBC 22, para. 79 to 80; citing *Schuchert*).

[32] There is no difference to the test to be applied whether the applicant applies for articles or to be called and admitted as a lawyer. As noted in *Law Society of BC v. Applicant 8*, 2016 LSBC 12, the test is to be applied as of the date of hearing, without any consideration that the applicant might have improved further during articles.

[33] To meet the burden in section 19(1) of the *Act*, there must be some evidence of the applicant's actions and conduct in the intervening period since the misconduct that reveals a positive change in character, including acknowledgement and apology to those harmed, and a sincere approach to remorse and rehabilitation. In *Lee*, the hearing panel granted the applicant's enrolment application despite concluding at paragraph 56 that he has "shown a rather lacklustre attitude towards rehabilitation until recently".

[34] For rehabilitation purposes, the applicant should possess a current appreciation of the nature of their past misconduct and harms caused (See *Applicant 3* at para. 153).

[35] The test does not require perfection or certainty. The applicant need not provide a warranty or assurance that the applicant will never again breach the public trust. The analysis on a credential's application is not to be an assessment of the risk of his re-offending (See *Schuchert* at para. 18, cited in *Law Society of BC v. Mangat*, 2013 LSBC 20, at para. 7).

## **APPLICATION TO THIS CASE**

### **Applicant's Position**

[36] The Applicant concedes that had he applied to the Law Society in 2016, around the time of his misconduct, he would not have met the test to be admitted to the Law Society. He submits that he is now in a different place in his life, and the amount of time lapsed should be sufficient to address the character flaws revealed by the past misconduct.

[37] The Applicant submits that the Law Society's public interest mandate pursuant to section 3 of the *Act*, encompasses the idea that it is in the public interest to have articulated students and lawyers from diverse backgrounds. Citing *Applicant 3* and *Applicant 9*, his submissions highlight that:

Persons who have gone astray and have truly rehabilitated themselves can give valuable insight to clients, the courts and the public. They can become valued and trustworthy members of the profession. They set an example to us all.

[38] The Applicant submits that the fulsomeness of his disclosure of his past misconduct and the frankness of his testimony at the Hearing speaks to his good character. He submits that there is evidence of his remorse and rehabilitation, as well as his present good character, from other sources, whose evidence was tendered through reference letters included in the Joint Book of Documents.

### **Law Society's Position**

[39] From the outset of the Applicant's application process and in its letter dated March 7, 2023, the Law Society identified to the Applicant the factors that might be considered in evaluating good character, repute and fitness. The March 7, 2023 letter included the following list of factors:

- The applicant's age at the time of conduct in question;
- Recency of the conduct;
- Reliability of the information;
- Seriousness of the misconduct;
- Factors underlying the conduct;
- Cumulative effect of conduct or information;
- Evidence of rehabilitation;
- Applicant's positive social contribution since the conduct;
- Applicant's candor in the admissions process; and
- Materiality of any omissions or representations.

[40] The Applicant was 18 and 19 years old at the time of the ongoing sexual harassment. He was in a leadership position. The misconduct is serious and caused harm to the Complainant. The Law Society submits that the Applicant did not really explain why he chose the specific classmate to target, and why he did not appreciate, at the time, that his online conduct would have real world consequences. He pointed mainly to his conservative religious upbringing as an explanation for his lack of appreciation of the implications of his conduct.

[41] The Law Society highlights that while the Applicant has been forthcoming with the Law Society, his characterization and description of the specific nature of his messages to



the Complainant evolved over time. The Law Society made additional requests for information to clarify the Applicant's description of his misconduct in his initial submissions to the Law Society. The Law Society suggests care be taken to review the evidence as a whole, rather than rely on one document in this regard.

[42] Given the fact that the Applicant had provided an accurate picture of his misconduct, the Law Society did not see it appropriate or necessary to involve the Complainant in the process.

[43] The Law Society accepts there is evidence of rehabilitation including: apologies, a move off campus, resigning from a leadership position, removing himself from shared classes, involvement with a student group, short periods of counselling and some self-directed reading.

[44] The Law Society *does not* take the position that the Applicant should not be admitted as an articling student, although the past misconduct was serious enough to warrant the referral to a Hearing. Also, the Law Society does not take the position that conditions should be imposed if the Panel grants the application. It submits that conditions should not be imposed in order to 'bootstrap' the good character requirement. The Law Society notes that counselling may be of some benefit to the Applicant during this articling year.

### **Application of legal principles and findings of fact**

[45] While a student at the University, over the course of several months in 2015 and 2016, the Applicant engaged in what can fairly be characterized as a campaign of unwanted aggressive sexually explicit communication with the Complainant. It was purposefully carried out in an anonymous manner through the Snapchat app. The behaviour amounts to sexual harassment, and a finding of such was made through a complaint process at the University at which both students attended.

[46] This type of behaviour is in stark contrast to the standards of behaviour that members of the public and fellow lawyers should expect of a member of the legal profession, including articling students.

[47] At the time of the misconduct in question, in 2015 and 2016, the Applicant was young, inexperienced and furthermore, particularly naïve and immature when it came to matters of a sexual nature. This does nothing to excuse the behaviour.

[48] The Applicant is not seeking to be excused for his past behaviour. There should be little doubt that the Applicant now recognizes his behaviour toward the Complainant was serious, inappropriate and harmful. He now asks to be admitted to the LSAP, submitting

that he is rehabilitated, and is of good character and repute, and a long way from the young man he was when he committed the acts of sexual harassment.

[49] The Applicant has expressed, and continues to express, remorse and regret. He has gone on to engage in work to further his personal growth, and to take on volunteer roles in his community. His apologies seem sincere. He still seems to chide himself for his past behaviour and acknowledges he still has some mental health issues connected to understanding his own behaviour and would benefit from further counselling.

[50] The Applicant provided his evidence in a straightforward manner in the Hearing. The Panel observed that he was appropriately uncomfortable in answering questions about his past behaviour, which can fairly be described as disturbing and upsetting. Nonetheless, it was concerning to the Panel throughout the Hearing process that the Applicant struggled to recognize and to articulate the harm he caused to the Complainant. This is distinct from him acknowledging his bad behaviour, which was clear throughout the Hearing.

[51] In circumstances of sexual misconduct, an apology is not enough; similarly, acknowledgement of bad behaviour is not enough. The perpetrator of any kind of sexual misconduct must acknowledge and make efforts to understand the harm caused. After questioning from both Law Society counsel and the Applicant's counsel, the Applicant did not clearly articulate his understanding of the harm he had caused. Upon urging from the Panel, the Applicant finally articulated some of the harms - that the Complainant felt unsafe and experienced anxiety following the harassment.

[52] The Panel accepts that the Applicant understands the harm caused by his actions, notwithstanding his difficulty in articulating those harms at times.

[53] The Panel was directed to several cases where, on the face of it, the conduct was more serious than the conduct perpetrated by the Applicant. The principles outlined in those cases assist nonetheless.

[54] One's character and fitness to be enrolled as an articling student must be judged at the time of the application for enrollment. Thus, rehabilitation is essential. While the Applicant has not engaged in an exhaustive program of counselling or education on the harms and trauma of sexual misconduct, the Panel is satisfied that he has nonetheless addressed the fundamental and most troubling aspects of his past misconduct.

[55] The documents tendered, and testimony of the Applicant himself, explain his understanding of his wrongful conduct. The Panel is satisfied that the Applicant appreciates the difference between right and wrong, and that he likely has the moral fibre to do right, even when that may be uncomfortable for him.

[56] The Applicant provided letters of reference from friends, his fiancé, and his prospective employer. Although the references provided are inherently biased given the relationship between the Applicant and the referees, and the letters from prospective employers were based on limited knowledge of him, they were useful. Of particular significance was the evidence of personal growth attested to by the Applicant's fiancé, with whom he has been in a relationship since before the first instance of misconduct.

## **CONCLUSION**

[57] Upon weighing the evidence and applying the law presented at the Hearing on December 4 to 5, 2023, the Panel has concluded that the Applicant has demonstrated, on a balance of probabilities, that he is of good character and repute and fit to enroll in the articling program with the Law Society of British Columbia in accordance with section 19(1) of the *Act*.

[58] The Applicant's enrollment as an articling student will be subject to the following conditions, which must be incorporated into his formal written articling agreement:

1. the Applicant must complete at least six hours of education or training on anti-bullying and harassment, including a component on trauma-informed practice; and
2. the education or training program must be pre-approved by the Law Society of British Columbia's Credentials Committee.

[59] It should be noted that the Panel did not order that the Applicant attend counselling. This is not because the Panel does not view counselling as important or valuable; the Panel holds the opposite view. In this case, the Applicant expressed his desire and plan to return to counselling soon. Attendance for counselling, in light of the willingness of the Applicant, is not a necessary order. The Panel encourages the Applicant to attend further counselling.

[60] The Panel had previously advised the Applicant and the Law Society, by memo dated December 22, 2023, of the Panel's decision and the conditions. These written reasons replace the memo as the formal determination of the Panel.

## **NON-DISCLOSURE APPLICATION**

[61] At the close of the Hearing, the Law Society applied under Rule 5-8(2)(a) of the Rules to anonymize any information that discloses the name of or any identifying

information of the Complainant (the “Nondisclosure Order”). The Applicant agreed with the request.

[62] Rule 5-8(2)(a) permits the panel to make an order to protect specific information from being disclosed “to protect the interests of any person.” To obtain an order pursuant to Rule 5-8(2)(a), the party seeking the order must establish that:

- (a) the tribunal’s openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[63] There is an important public interest in encouraging survivors of sexual misconduct to come forward to report incidents to regulatory bodies and other authorities, and to do so without fear of embarrassment and unnecessary distribution of their personal information. In this case, the Hearing was not initiated by the Complainant, and even if it was, her privacy interests are important. The Complainant had little involvement in the Law Society Hearing process although she was cooperative when contacted by the Law Society.

[64] The order sought in relation to the Complainant’s identifying information is necessary to prevent the risk that the Complainant, a vulnerable non-party, will be publicly identified. The benefits of the order sought far outweigh the minimal public interest in knowing the Complainant’s identity. Granting the order will protect the Complainant’s interests.

[65] The Panel grants the Nondisclosure Order as sought, in light of the sensitive and private nature of the sexual harassment.

[66] The parties did not address costs. The Panel directs that if the parties cannot agree on costs, the Law Society provide its written submissions on costs within 14 days of the date these reasons are issued and the Applicant respond in writing within 7 days following the receipt of the Law Society’s submissions. Reply, if necessary is to be provided in writing 7 days later.