

THE LAW SOCIETY OF MANITOBA

ADMISSIONS AND EDUCATION COMMITTEE (APPEALS SUB-COMMITTEE)

IN THE MATTER OF:

TOOCHUKWU OKOGWU,

Appellant

- and -

IN THE MATTER OF: A DECISION OF THE DIRECTOR OF
ADMISSIONS AND MEMBERSHIP
Dated December 17, 2021

Appeal pursuant to Law Society Rule 5-28

Hearing Date: February 6, 2023

Panel: Dean Scaletta (Chair)
Mathieu Lafreniere (Practising Member)
Carmen Nedohin (Public Representative)

Counsel: Ayli Klein for the Law Society of Manitoba
Saul B. Simmonds, K.C. for the Appellant

REASONS FOR DECISION

Introduction

1. Toochukwu Anaele Okogwu ("Mr. Okogwu") is 49 years of age, married with three children, and is currently employed with a non-profit health care organization which supports vulnerable people of all ages who live in a group home setting.
2. Mr. Okogwu is an educated man. He holds:
 - (a) a National Diploma in Accountancy (1994) and a Higher National Diploma in Accountancy (1996), both from Akanu Ibiam Federal Polytechnic in Unwana, Nigeria;

- (b) a Masters of Business Administration in Financial Management Technology (2004) from the Federal University of Technology in Owerri, Nigeria;
- (c) a Bachelor of Laws (2008) from Ebonyi State University in Abakaliki, Nigeria;
- (d) a Barrister-at-Law degree (2010) from the Nigerian Law School in Lagos, Nigeria; and,
- (e) a Certificate of Qualification (2017) from the Federation of Law Societies of Canada National Committee on Accreditation.

He has been a member in good standing of the Nigerian Bar Association – Abakaliki Branch (the governing regulatory body for lawyers in Nigeria) since 2010. Mr. Okogwu testified that he has no complaints or discipline history with this regulator.

3. On May 28, 2021, Mr. Okogwu submitted an “Application for Admission as an Articling Student” to the Law Society of the Manitoba (“the Society”), referred to in the materials and in these Reasons as “the 2021 Application”.

On December 17, 2021, the Director of Admissions and Membership for the Society (“the Director”), denied the application for admission (“the Decision”). Mr. Okogwu contested the denial by way of a “Notice of Appeal to the Admissions and Education Committee” dated December 21, 2021. These two documents clothe this Panel with jurisdiction and serve to define the matters with which it has been tasked to deal.

4. The hearing convened on February 6, 2023, and quorum was declared pursuant to sub-Rule 5-28(2) of the *Rules of the Law Society of Manitoba* (“the Rules”). The Chair advised that, in accordance with subsection 7(5) of *The Fair Registration Practices in Regulated Professions Act (Manitoba)*, no member of the Panel was involved in the Decision under appeal.
5. At the outset of the hearing, Mr. Okogwu confirmed that he:
 - (a) was not a member of any other Canadian law society; and,

(b) had no objection to any of the Panel members either on the basis of bias or conflict, or otherwise.

6. The Chair read the following interlocutory decision of the Panel, rendered by email sent on Monday, January 23, 2023 at 3:17 PM, into the record:

The Panel met by Zoom this afternoon to consider the request by counsel that Mr. Okogwu be granted leave to give oral evidence at his appeal hearing set for Monday, February 6, 2023.

The request was made pursuant to Law Society Rule 5-28(3) and was supported by a letter from counsel for the Law Society dated January 18, 2023. The letter advised that, after discussing the matter with counsel for the Appellant:

"I am in agreement that exceptional circumstances exist such that Mr. Okogwu ought to be granted leave to provide his own oral evidence at the hearing of his appeal. We believe that the public interest would be best served by the Panel having the benefit of hearing from Mr. Okogwu directly, on both direct and cross examination, in making their determination as to the status of his appeal."

The Panel noted that counsel did not specifically articulate what the "exceptional circumstances" were in this case, but – having reviewed all or most of the Record – the members of the Panel were satisfied that "exceptional circumstances" were indeed present in this case.

The Panel therefore resolved to grant leave to Mr. Okogwu to give oral evidence at his appeal hearing.

Dean Scaletta
Chair

7. There were no other preliminary matters. Counsel for Mr. Okogwu advised the Panel that Mr. Gerry Goertzen was in attendance to provide moral support to Mr. Okogwu, but that he would not be testifying.
8. The Panel is indebted to counsel for their thoughtful and compelling submissions.
9. For the reasons which follow, the Panel has determined that the appeal must be dismissed.

Issues on Appeal

10. The issues on this appeal are three-fold:
 - (a) whether Mr. Okogwu has been deliberately deceptive by way of material misrepresentations, material omissions, or both, in his various communications with the Society prior to and in specific connection with the 2021 Application for admission;
 - (b) whether he has overcome the rebuttable presumption under the *Good Character and Fitness to Practice Guidelines For Applications Under Rules 5-4, 5-24(2), 5-28.1 and 5-28.2* ("the Guidelines"); and,
 - (c) whether he has established, on a balance of probabilities, that he is currently of sufficiently good moral character, and is an otherwise fit and proper person, to be admitted as a member of the Society.

[Note: The *Guidelines* were first promulgated by the Benchers in 1997 and were most recently revised in September, 2020.]

Standard of Review

11. Pursuant to Rule 5-28(7), the Panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions.
12. Counsel jointly submitted that the standard of review for all of the issues on appeal is that of a fresh (*de novo*) hearing where no deference is owed to the decision of the Director on findings of fact, the application of the relevant legislation to the Decision, or the exercise of discretion. It was further agreed that the Panel could consider the entire matter afresh, while taking into account the reasons of the Director (who is an acknowledged person of expertise and experience in admissions matters). Since it can make any decision that the Director could have made, the Panel is not limited to a simple correctness review.
13. The Panel accepts and adopts the submissions of counsel. It notes that there were a number of significant documents (two medical reports and fifteen character reference letters) which were not available to the Director, and that it has, in addition, had the benefit of observing Mr. Okogwu during his almost three hours of oral testimony.

Materials and Evidence Before the Appeals Sub-Committee

14. The Panel received and reviewed an extensive volume of materials, including an exhaustive Record (augmented by two additional medical reports, fifteen letters from character references, and a photograph of an individual who be referred throughout these Reasons as “BN”), a Notice of Application submitted on behalf of Mr. Okogwu, and several books of written argument and authorities. In all, more than 1,300 pages of material were submitted for consideration by the Panel, although several documents and authorities appear multiple times.

Although the Panel members have each read everything that was submitted, only those materials deemed pertinent to an understanding of these Reasons will be specifically referenced.

15. It is common practice in these appeals to list all of the individual documents considered by the Panel, either in the body of the Reasons or by attaching the Table of Contents for the Record as an Appendix. This practice is neither feasible nor desirable in this case. The Table of Contents contains the names of many individuals who were players in the criminal proceedings which form the backdrop to this appeal but whose identities are not otherwise relevant to the issues which the Panel must address.
16. In addition to the written materials, Mr. Okogwu testified in direct examination for about 90 minutes, and was cross-examined for about 80 minutes.

Background

17. Mr. Okogwu was arrested by the Winnipeg Police Service (“WPS”) on three separate occasions:
 - (a) On April 8, 2015, he was arrested at his place of employment and was charged with two counts of Sexual Assault (against JB, age 14 years, and SWS, age 16 years), one count of Sexual Interference (with JB), and one count of Uttering Threats – Cause Death or Bodily Harm (to SWS). He was released on a promise to appear and an undertaking that he would not be alone in the presence of any female under the age of 18 years.
 - (b) On November 10, 2015, he was arrested at his apartment on River Avenue, in Winnipeg and charged with one count of Fail to Comply with Conditions of Undertaking Given by Officer in Charge, based on an

allegation that he had been seen alone with a 16-year-old female. He was detained in custody at the Winnipeg Remand Centre and was later transferred to Headingley Correctional Centre ("HCC").

- (c) On December 2, 2015, he was arrested at HCC and charged with one count of Procuring a Person Under 18 Years of Age to Provide Sexual Services (AL, age 16 years) and one count of Fail to Comply with Conditions of Undertaking Given by Officer in Charge, based on allegations that he had been alone with AL on several occasions.
18. After his bail was revoked (following his second arrest), Mr. Okogwu remained incarcerated for a total of eight months and thirteen days from about November 10, 2015 to about July 23, 2016. He was held first at the Winnipeg Remand Centre for about a week and then at HCC for the remainder of the time.
19. Following a Preliminary Inquiry in June, 2016 and July, 2016, Mr. Okogwu was committed to stand trial on all of the charges and released on bail. Trials dates for the following year were set but on August 9, 2017, the Crown entered stays of proceedings on every one of the charges. As is usually the case, the Crown did not disclose its reasons for the decision to stay.
20. Mr. Okogwu had first applied for admission to the CPLED program and as an articling student in February, 2014. He re-applied for these same purposes in November, 2017.
21. In the interim, he successfully completed the (now "legacy") CPLED program in April, 2015 but did not commence or complete his articles.
22. Mr. Okogwu has no criminal record and has no criminal charges pending against him.

Evidence of Alleged Attempts to Mislead the Society

23. What follows is not intended to be an exhaustive recitation of every instance, however minor, of misleading behaviour on the part of Mr. Okogwu in his dealings with the Society. Rather, the intent is to show that deception was practised at the material times, and that it continued right up to and including the hearing on February 6, 2023.

24. While the specific focus of this inquiry relates to the 2021 Application dated May 24, 2021 and the Decision pertaining to it dated December 17, 2021, there is evidence in the Record of a disturbing pattern of omissions, half-truths, and blatant falsehoods on the part of Mr. Okogwu dating back to his “Application for Admission to the 2018-19 CPLED Program and as an Articling Student” dated November 23, 2017 (“the 2017 Application”) (Tab 22).
25. Q. 24 of the 2017 Application reads: “Is there to your knowledge or belief any event, circumstance, condition or matter not disclosed in your replies to the preceding questions that touches on or may concern your conduct, character and reputation, and that you know or believe might be thought to be an impediment to your admission, or any matter that could warrant further inquiry by the Society?” Mr. Okogwu testified that he did not think the Society would be interested in criminal charges which had been stayed. This strikes the Panel as self-serving rationalization. The allegations underlying the charges were serious, involving as they did both the abuse of vulnerable young girls and the apparent breach of an undertaking given to facilitate his release from custody after his first arrest. The earliest of those charges had been pending from April, 2015 until August, 2017, just three months before the submission of the Application. It was not for Mr. Okogwu to determine what would, or would not, be of interest or concern to the Society. As noted in *Applicant A (Kalo)* (para. 172), his obligation – one of “utmost good faith” – was to make full disclosure and let the Society perform its statutory “gatekeeper” role in whatever manner it saw fit.
26. Of particular note in this regard are his answers to two previous questions.
27. His “No” response to Q.16 (“Are you currently charged with any offence under a federal statute?”) was accurate as far as went, but the question was surely a clue that the Society had an interest in charges of that nature. Q. 24 invited further elaboration, but Mr. Okogwu declined to provide it.
28. The “No” response to Q. 20 (“Have you ever had order of committal or an order for the issue of a writ of attachment made against you?”) was, however, unequivocally false. Mr. Okogwu had in fact been committed to stand trial on all of the then pending criminal charges just over a year prior to the 2017 Application. [Note: Mr. Simmonds argued that the evidentiary standard for a committal following a Preliminary Inquiry is a low one, and he is right. A former Provincial Court Judge once likened their role in the conduct of a Preliminary Inquiry to that of a potted plant. Regardless, the question was whether an order of committal had ever issued, not whether the evidence adduced in support of it

was of sufficient weight to support a conviction. The truthful answer would have been "Yes".]

29. At some point in late 2017 or early 2018, the Society became aware of the 2015 criminal charges and the 2017 stay of proceedings. On February 23, 2018 (Tab 37), the Director wrote to Mr. Okogwu with respect to the charges. He requested particulars of the "entire circumstances" giving rise to the charges and, in addition advised that: (i) "the charges were extremely serious and raise a rebuttable presumption that you do not meet the good character requirement", (ii) "if you mislead or attempt to mislead the Law Society that would be evidence that you do not meet the good character requirement and would result in your application being rejected", and (iii) "it is your obligation to make full and complete disclosure to the Law Society as part of your application and in any response you provide to the Law Society's further inquiries".
30. Mr. Okogwu responded with a five-page, typewritten letter dated "February 5, 2018" (Tab 38). [Note: The date is undoubtedly a typographical error; the letter was received by the Society on March 6, 2018 and was very likely intended to be dated the previous day.] In that letter, Mr. Okogwu flatly denies knowing, or ever having met, any of the complainants. He makes one passing reference to BN (see below under the heading "BN"), albeit without naming him, but says nothing about what he knew (or at least very strongly suspected) about the likely involvement of BN with the crimes in question. Instead, Mr. Okogwu dedicates most of the letter to attacking the veracity of the various complainants and impugning the integrity of the WPS personnel involved with the investigation of the complaints.
31. In the closing paragraph of the letter, Mr. Okogwu indicated a willingness to meet with the Society to address any further concerns or questions arising from his written response. Arrangements were made for him to attend for an interview with Mr. Christopher Donaldson, Legal Counsel, Complaints Resolution Department ("the Donaldson Interview") on June 18, 2018. The interview lasted for 2 hours and 12 minutes; the transcript is found at Tab 48 of the Record.
32. At the outset of the Donaldson Interview, Mr. Okogwu affirmed to tell the truth. He said he understood the importance of honesty in the proceedings, and further that he understood that the "repercussions" of dishonesty on his part could include the rejection of his application for admission as an articling

student. (Pages 2-3) Yet according to the expert reports cited below, before Mr. Okogwu had even arrived at the Society offices that day, he had already resolved to downplay and “misrepresent” to Mr. Donaldson his “awareness of the complainants” in the criminal proceedings.

33. During the Donaldson Interview, Mr. Okogwu offered up a series of “half-truths” which, in the view of the Panel, were clearly intended to mislead the Society and to hinder its investigation into the serious allegations which had been made against him. In no particular order of importance, the Panel notes that:
- (a) At Pages 11-15, Mr. Okogwu was asked about the use of the blue PT Cruiser he had owned in 2015; specifically, who he might have given rides to in the vehicle and who may have been permitted to use it from time to time. It *had* to have been patently obvious to him that Mr. Donaldson was looking for *some* explanation of how the various victims and witnesses had been able to so accurately identify his vehicle. And he *had* to have known that it was a virtual certainty that his roommate BN (who had long since vanished from his life and who no longer needed the “protection” afforded by Mr. Okogwu lying about those activities) had been using his vehicle for the nefarious purposes described in the disclosures in the criminal proceedings. Yet in his responses to the 20+ questions put to him, Mr. Okogwu does not – even once – say what he knew about the likely involvement of BN.
 - (b) At Pages 15-21, Mr. Okogwu was asked about the apartment on River Avenue in Winnipeg where he was living in 2015. Although he was never asked, point blank, “Who else was living with you in the apartment?”, Mr. Okogwu never once mentions that BN was sharing it with him at the time of the alleged criminal offences. More importantly, he leaves Mr. Donaldson with the distinct impression that his wife and child were living with him in Winnipeg when, in fact, both of them were still living in Nigeria until the following year.
 - (c) At Pages 45-63, Mr. Okogwu was asked about specific allegations made by the various victims and witnesses, including the facts that at least one of them had correctly stated that he lived in “Apartment 6” at the material time and had accurately described the apartment, that two of them had picked him out of a photo lineup, and that another of

them had produced a date-stamped photo of his blue PT Cruiser parked in front of the offices of a child welfare agency (the latter being the key piece of evidence that led directly to the “breach of condition” charge being laid against him).

By this time, Mr. Okogwu was intimately familiar with the contents of the disclosures in the criminal proceedings (as is clear from many of his responses) and yet rather than stating the obvious – that it was virtually certain that it was BN, not him, who they were all talking about – he engaged in deliberate deception and deflection by repeatedly suggesting that mistakes and lying by the witnesses, and racial profiling and witness manipulation by the WPS and others, were the only plausible explanations for the evidence then being discussed.

One glaring example of this lack of candour is found at Page 49, Line 22 where the following exchange is recorded:

MR. DONALDSON: Okay. You don't have an explanation for how they both chose the same person, Ms. [JB] and Ms. [SS]?

MR. OKOGWU: Like I said, it's just manipulation.

An even more blatant example of this behaviour is the exchange starting at Page 73, Line 5, which reads:

MR. DONALDSON: So you're saying it's possible that someone else was using your car and was at [the location of the child welfare agency], or are you saying your car was never there at all?

MR. OKOGWU: That is what I don't know how to even explain. My car never went-- I never drove there. I don't know where this particular place is. I never drove there. I never drove there. That is the point I am trying to make, I never drove there.

MR. DONALDSON: You never drove there?

MR. OKOGWU: Yes.

MR. DONALDSON: The picture that's in the disclosure the police say was taken from [the child welfare agency]. So are you saying somebody else was driving your car that morning and had the car at [the child welfare agency], or are you saying that the picture has been manipulated or was taken at some other time or a different location?

MR. OKOGWU: Yes, that's what I'm saying, it's manipulated.

34. The Director wrote to Mr. Okogwu on September 27, 2018 (Tab 34A) and advised that the 2017 Application had been rejected based on his failure to meet the good character requirement. Mr. Okogwu filed a Notice of Appeal dated October 11, 2018 (Tab 34B), but he later withdrew it; the matter never

proceeded to a hearing. The Panel makes no findings with respect to the validity or otherwise of any of the comments made by the Director in that letter.

35. What is relevant to the present appeal, however, is what Mr. Okogwu wrote in his three-page, typewritten letter to the Society dated September 27, 2019 (Tab 64) in support of a separate application for an abridgement of the two-year waiting period stipulated by Rule 5-28.1(2). In this letter, Mr. Okogwu:

(a) twice says that he was “*living alone* at [REDACTED] River Avenue [in Winnipeg]” (Emphasis added);

[Note: On the second occasion, he adds: “(from August 2014 to November 10, 2015)”.]

(b) writes that: “At [HCC] ... [I] maintained a *peaceful and cordial relationship* with all inmates and staff at the facility” (Emphasis added); and,

(c) writes that: “... I quite understand how [the 2015 criminal charges] came about. The charges were as a result of my poor decisions while living alone at [REDACTED] River Avenue, Winnipeg. I surrounded myself with bad friends who impacted me negatively. ... I sincerely regret my actions that led those charges as well accept responsibilities of same. I also acknowledge that my behaviour has hurt some individuals and I apologize for my wrongful behaviour. ... I still genuinely apologise to all the persons my behaviour affected in the most negative way.”

These statements are astounding in light of his assertions during the Donaldson Interview to the effect that he had *no* idea – apart from racial profiling and police manipulation – how he came to be the subject of the 2015 police investigations that led to the criminal charges.

And he is *still* not demonstrating the candour and forthrightness that the Director expressly told him (in the letter at Tab 37) that the Society expected of him. What “actions” is he talking about? Who is he apologizing to, and why?

36. It is clear that the Director shared these concerns. In his letter to Mr. Okogwu dated November 26, 2019, he wrote: “I have also considered your statements of regret, acceptance and apology. However, those statements are vague and do not disclose what specific actions you regret and what conduct you are specifically accepting responsibility for. I also do not know what specific

behaviour you are admitting to have committed and which you acknowledging was hurtful to others. The Law Society has very serious concerns about your conduct and your vague statements do not alleviate those concerns.”

37. The next piece of correspondence relevant to this appeal is the three-page, typewritten letter from Mr. Okogwu to the Society dated June 5, 2021 (Tab 70), one week after he had submitted the 2021 Application. In this letter, for the very first time, Mr. Okogwu expressly acknowledges having at least *met* the complainants in the criminal proceedings and, again for the very first time, provides some details regarding BN and his relationships with both himself and the complainants. The following excerpts from the letter warrant particular attention:
- (a) “[Regarding the complainants], I want to add that I was not deliberately deceptive during [the Donaldson Interview]. I have taken time to review everything that happened, and I came to the realization that I did not properly understand the questions put to me when Mr. Donaldson asked me if I knew the girls. I said that I do not know any of them not because I do not know them in person but because I do not have any relationship with any of them to know them in any meaningful way. Although I have seen each of them visit on separate occasions with my friend [BN] who lived with me in my River Avenue Apartment, the reality however, is that I have not had a conversation with them and do not have any intimate relationship with any of them.”
 - (b) “My involvement with all the girls mentioned was to the extent that I saw them with [BN]... He was the one who brought them to my apartment without my consent to drink and party.”
 - (c) “[BN] also uses my car (the PT Cruiser) to run errands and was the one who used my vehicle to pick and drop the girls during some of those incidences (*sic*) without fully disclosing his dealings to me. ... I have not seen him till date.”
 - (d) “... I also take responsibility for the fact that it was in my suite at my River Avenue apartment the said incidents happened. My car was also used to pick and drop them off in some of the circumstances *which I was aware of but did nothing meaningful to stop it and protect the girls because I didn't know they were underaged.*” (Emphasis added.)

- (e) "... At the time the Law Society was investigating the [2015 criminal] charges, I was still traumatized with the experience I had during my 8 months and 13 days incarceration at [HCC] and the way [the WPS] treated me with indignity. ... The investigation by the Law Society stirred up the residues of the emotional trauma [from the experience with HCC and the WPS]. I was truly not past the experience and trauma at the time."
- (f) "... My intention was never to mislead the law society, I honestly did not fully understand the question in addition to the emotional and psychological trauma I was going through at the time after my incarceration."

BN

38. The ephemeral "BN" is indeed an enigma. The Panel has no real evidence of his existence. There is one mention of a "BN" at Tab 40.J.5 (on the last page of a WPS "Narrative" dated September 30, 2015), then he disappears from the Record until Mr. Okogwu describes their living arrangements for the first time at Tab 70 (his letter to the Society dated June 5, 2021). The materials before the Panel include a photo of a young black man against a nondescript background, with no indication of where or when it was taken, or by whom, and with nothing but the word of Mr. Okogwu that it actually depicts "BN".
39. The Panel was told that BN came into the life of Mr. Okogwu at a local community event, introduced to him as an individual from his own home town in Nigeria who was said to be the younger cousin of his best friend while growing up. BN was said to be enrolled in a Masters program at the University of Winnipeg, yet – according to Mr. Okogwu – BN had no lodgings, no employment, and no money. Just before the second arrest of Mr. Okogwu, BN vanished from his apartment – and his life – never to be seen, or even heard of, again.
40. Yet this mysterious and apparently transient individual has emerged as the villain of this narrative, the possible (perhaps even likely) perpetrator of the crimes with which only Mr. Okogwu has ever been charged.

Expert Evidence

41. The Record contains three formal expert reports.

42. At the behest of Mr. Okogwu (before he was represented by legal counsel), Dr. Michael Stambrook, C.Psych., met with him on two occasions (June 15, 2020 and June 23, 2020), administered a battery of common psychological tests, reviewed some of the communications between Mr. Okogwu and the Society, and reviewed the various reference letters then in existence. He then produced a six-page report dated August 17, 2020 (“the Stambrook Report”).
43. The salient points in the Stambrook Report include the following:
- (a) Dr. Stambrook found “no thought process abnormality” and “no attention or concentration variability”.
 - (b) Mr. Okogwu “stated that he only had incidental and non-criminal involvement with the complainants [in the criminal matters]”. [Note: This is in stark contrast to his representations to the Society in 2018 to the effect that he had had *no* involvement whatsoever with any of the complainants.]
 - (c) Dr. Stambrook found “no indications of psychopathology other than for suspiciousness that [Dr. Stambrook] had determined was related to [the dealings Mr. Okogwu had had with the Society]”.
 - (d) “There was some tendency to present himself in a favorable light or that [Mr. Okogwu] had a need for social approval although there was no distinct Clinical Syndrome reflected in his responding with his personality style reflective of some compulsivity, reactivity, and suspiciousness that likely was related to the [Society] issues.”
 - (e) “[T]here was no evidence of Mental Illness, an Antisocial Personality Disorder, or a Substance Use Disorder and that he was presenting in a stable and motivated fashion. Mr. Okogwu agreed with these conclusions.”
44. Dr. Stambrook also sent an email to Mr. Okogwu on June 16, 2021 which reads, in part:

“While I can clearly state that, as a matter of the obvious, being arrested, charged with serious offences, and having been incarcerated initially at the Remand Centre and then at the [HCC] for 8 months prior to the charges being stayed, would have been unsettling, stressful, and anxiety-

arousing, I cannot offer any further information here as I had not seen you around that time and had only evaluated you on 2 occasions, June 15 and 23, 2020, at a time remote from when these issues arose and, for that matter, when you were interviewed by the ... Society."

45. At the behest of Mr. Simmonds, Dr. Kent Somers, Registered Psychologist, met with Mr. Okogwu once by telephone (March 21, 2022) and once in person (March 28, 2022) "for a total of 2.5 hours of contact", reviewed the Stambrook Report and his June 16, 2021 email, reviewed some of the communications between Mr. Okogwu and the Society, and requested and reviewed additional reference letters. He then produced a five-page report dated May 18, 2022 ("the Somers Report").
46. The salient points in the Somers Report include the following:
 - (a) "While he does not present characteristically as being prone to paranoia or suspiciousness, ..., Mr. Okogwu reported that he was acutely fearful of further accusations impacting him and his family after his release from HCC. It was in this frame of mind, he reported, that he participated [in the Donaldson Interview] regarding his application for Admission as an Articling Student. That is, he reported that he had imagined, prior to [the] interview and because of the questioning, including as to his awareness of the complainants prior to his having been criminally charged, that the representatives of [the Society] were colluding with law enforcement and attempting to entrap him. His reaction, as such, was to deny awareness of the complainants, he reported. *While he knew this to be a misrepresentation*, he reported that *it was behaviour motivated by anxiety and harm-avoidance*, again, related to his treatment by WPS personnel and his time in remand custody. He acknowledged that he reported in this manner ... [during the Donaldson Interview] and then in [a] written submission to [the Society - Tab 38 of the Record]." (Emphasis added.)
 - (b) "While these statements [one each from his sister (March 31, 2022), his wife (March 30, 2022), and his Pastor (April 1, 2022)] are all offered after the fact, they are made by individuals who were privy to [his] thoughts and fears at the time of [the Donaldson Interview]]. His beliefs, as he and they describe them, were evidently distorted ..., he was feeling particularly vulnerable having been in remand custody

and so having been intimately aware of the power of law enforcement and correctional systems, and as such his anxiety was acute. The reporting of [these] three individuals coincide with his explanation in our interviews about his behaviour at the time of his initial interviews with [the Society]. His subsequent reporting in early 2018 maintained the content of his initial report ..., but he ultimately conceded his misrepresentation.”

[Note: Dr. Somers does not seem to appreciate that almost two years had elapsed between the date Mr. Okogwu was released from HCC (July 23, 2016) and the date when he attended the Donaldson Interview (June 18, 2018).]

“Mr. Okogwu’s explanation of his initial reporting and misrepresentation did not confide the abject terror that he had evidently experienced at the time of [the Donaldson Interview]. Instead, he summarized it, as [the Director] notes, as ‘emotional trauma’ caused by ‘involvement with’ WPS and HCC, a highly intellectualized and objective statement, void of affect. What Mr. Okogwu described in our interviews, expressing what is most emotionally vulnerable, is supported by the reporting of three others who were privy to his experiences, that his ‘responses to the ... Society’ were motivated by fear and irrationality, specifically of betrayal of his confidences in [the Donaldson Interview] so as to lead to further incarceration by WPS or even deportation. He initially attempted to maintain his report, for example, in his 2018 letter cited by [the Director], even though it was based on distorted thinking and acute emotional arousal. He ultimately opted to explain his behaviour, albeit doing so in a manner that shared little of his actual experience, likely having opted to do so in this manner to retain a semblance of dignity.”

- (c) “I cannot attest as to Mr. Okogwu’s state of mind at time of his release from remand custody, but in polling the observations of those close to him and in his confidence at that time, he was evidently acutely distressed by his circumstances as he has claimed. Clinically, it is credible that his actions at that time were influenced by elevated anxiety and fears specific to real experiences ... but also by distorted perceptions specific to those fears ... That he has acknowledged this misrepresentation more recently is consistent with his taking

personal responsibility for his actions and inviting accountability, including with [the Society].”

47. Mr. Gary Goertzen, MA, RP, Addiction, Trauma & Criminology Specialist, submitted a 16-page report dated August 21, 2022 (“the Goertzen Report”) based on the three counselling sessions which Mr. Okogwu had attended up to that time. Mr. Goertzen reviewed some of the communications between Mr. Okogwu and the Society, as well as other collateral materials. He also conducted numerous “actuarial examinations”, nine of which are specifically identified on the second page of the report.
48. The salient points in the Goertzen include the following:
 - (a) Incarceration is “an overwhelmingly negative experience” which may cause an individual such as Mr. Okogwu to “adapt with unhealthy coping skills” such as “making misleading statements [to the Society] as [a] means of coping with those unwelcome thoughts of being treated prejudicially [by the WPS and the Society]”. The “incarceration experience is characterized by bullying, substance use, emotional flattening, psychological stress, strain on social bonds, self-isolation, and violence”. Further, the “negative effects of incarceration appear to be enduring and widespread, extending outside of prison [and into the “periods of post-prison adjustment]”.
 - (b) While the results of some the tests he administered six years after Mr. Okogwu had been released from HCC made it “apparent that [he] suffered with symptoms reflective of the PTSD criteria noted in the DSM-5 for diagnosis”, Mr. Goertzen opined that “Mr. Okogwu is no longer suffering [from] nor impaired by PTSD surrounding the legal circumstances”. He goes on to state that “it is notable that during the time of his PTSD symptoms it would have been reasonable to expect that the acute stress along with having learned how to cope while in custody would have distorted his behavior and thus helps understand his misleading statements as being related to this matter at hand, not necessarily an all-encompassing issue of character”.
 - (c) The “supplement scale” scores set out in detail in the report are “over-all average to excellent, indicating [Mr. Okogwu] does not have any serious personality problems but instead is well adjusted and capable of above average functioning”.

(d) In his conclusion, Mr. Goertzen states: “Mr. Okogwu is of sound mind and aspires to be of sound character. I believe he does not pose any extraordinary risk of compromising his professional integrity because of this situation but instead has learned valuable lessons about himself personally and professionally to safeguard and maintain truthful and transparent communication and conduct.”

49. Mr. Okogwu testified that he saw Drs. Stambrook and Somers for assessment purposes only and has not received any psychological or other treatment from either of them. He has not been treated by Mr. Goertzen, and has only spoken to him twice (by telephone, for about five minutes each time) since his report was prepared. Mr. Okogwu is not currently engaged in any other form of psychological treatment program.
50. The contents of the medical reports – which the Society consented to being entered into evidence without the necessity of hearing directly from authors – are not unique in cases of this type. Misbehaviour by lawyers often occurs during times of extraordinary stress in their lives, and often those stressors are unrelated to their work. It is clear from the reports that Mr. Okogwu was not under the care of any of the authors of the reports when his misbehaviour occurred, meaning (as is often the case) that all of these practitioners must of necessity rely upon “self-reports” from Mr. Okogwu (and, in this case, his wife, sister, and Pastor) as to what was going on his life at the various material times. Notwithstanding these shortcomings, the reports are deserving of serious and careful consideration.

Prison Experience & Post-Traumatic Stress Disorder (“PTSD”)

51. The testimony which Mr. Okogwu gave concerning the abuses he says he suffered while in custody at HCC is troubling on a number of planes, not the least of which is the sharp contrast between that oral testimony in 2023 and the contents of his letter to the Society dated September 27, 2019 (Tab 64). But given the severity and frequency of those alleged abuses (albeit mostly at the hands of other inmates), it seems unlikely that those in authority at the institution would not have made *some* record of the incidents. At a minimum, Mr. Okogwu would have required medical attention to treat his injuries, probably on several occasions.
52. Yet there is no evidence that copies of records of this kind (assuming they actually exist) were ever requested – by Mr. Okogwu, or by anyone on his behalf.

Dr. Somers and Mr. Goertzen both appear to have simply accepted his version of what occurred at HCC. The Panel acknowledges that a number of “reliability checks” were run by each practitioner, but these are hardly a substitute for contemporaneous records of the types of egregious abuse that Mr. Okogwu described.

53. The Panel accepts that PTSD is a serious mental health issue and that it is a known and recognized response to traumatic events which are outside of the range of usual human experience.
54. The Panel notes, however, that while Drs. Stambrook and Somers both reference the time Mr. Okogwu spent incarcerated (Dr. Somers in rather more detail than Dr. Stambrook), neither actually posits a diagnosis of “PTSD”. Both, in fact, expressly recognize that their involvement with Mr. Okogwu (several years after both his release from HCC and the Donaldson Interview) was too remote in time to opine with any degree of certainty on his frame of mind at those two critical times.
55. Mr. Goertzen is the one expert who comes closest to a “diagnosis” of PTSD, but even he is vague as to when those symptoms would have been an active influence upon the behaviours of Mr. Okogwu. He says that his testing in 2022 disclosed symptoms which were “reflective” of the accepted diagnostic criteria for PTSD, yet starting two lines further down he says that “Mr. Okogwu is no longer suffering nor impaired by PTSD”. Mr. Goertzen goes on to attribute his behaviours (primarily in 2018, but before and after as well) to the PTSD symptoms he says he detected in 2022. He then states that Mr. Okogwu had, at the time of his report, “resolved PTSD”.

Character References

56. Several aspects of the fifteen character references warrant comment. In no particular order of importance:
 - (a) five are from close relatives;
 - (b) five others are from current or former co-workers who are not aware of the circumstances of his arrests and incarceration, or of the communications to and from the Society;
 - (c) the remaining five are from close family friends, including one who is a lawyer licensed to practise in Manitoba;

- (d) all of the letters paint a glowing picture of Mr. Okogwu, with variations of words such as “hardworking”, “integrity”, “trustworthy”, “honest”, “dedicated”, “reliable”, and “high moral character” each appearing several times;
 - (e) not a single cautionary (“negative”) comment can be found in any of the letters;
 - (f) the same phrase (“well known to me”) appears in seven of the letters;
 - (g) nine letters “recommend” or “strongly recommend” that Mr. Okogwu be admitted as a member of the Society and be permitted to practise law, or opine that he would “make a good lawyer”, or urge the Society to render such assistance as may be needed to ensure that he is licensed to practise in Manitoba; and,
 - (h) one person wrote: “I assess him to be a fit and proper person to be admitted into any professional association.”
57. The Panel appreciates the effort each of the references put into their letters, and has carefully considered their comments, observations, and opinions. Having said that, it bears noting that the role of the referees is not to usurp the deliberative and decision-making functions of the Panel but, rather, to provide facts that will inform, and assist the Panel with, the exercise those functions.

Relevant Statutory Provisions

58. *The Legal Profession Act*
Subsections 3(1), 3(2), 4(5), 4(6), 17(2), & 17(5)(a) to 17(5)(c)
59. *Code of Professional Conduct*
Rule 2.1-1 and Commentary [1]
60. *Law Society Rules*
Rules 5-4(1)(a)(iii), 5-4(2), 5-28(1), 5-28(3), 5-28(7), 5-28.1(1)(a), & 5-28.1(2)
61. The full texts of these provisions are set out in Appendix “A” to these Reasons.
62. The Benchers have also established *Guidelines for Appeals of Admissions Decisions and Good Character and Fitness to Practice Guidelines for*

Applications Under Rules 5-4, 5-24(2), 5-28.1 and 5-28.2, copies of which are attached as Appendix "B" and Appendix "C", respectively, to these Reasons.

Relevant Authorities and Principles

63. Both counsel provided copies of the authorities upon which they intended to rely in their submissions. The legal principles applicable to the issues on this appeal are fairly well-settled such that there was a fair degree of overlap in the authorities cited.

64. The guiding principles applicable to cases such as this include (in no particular order of importance):

(a) Integrity is the foundation of the legal profession. It is first rule in the *Code of Professional Conduct* and every other rule is based upon it. Clients must have faith that their lawyers are totally trustworthy. They must know that their money is safe, that their instructions will be followed and that they will be kept informed as to exactly what is happening with their matter. Without this level of trust, the profession cannot function.

Law Society of Manitoba v. McKinnon, 2010 MBLS 5 (CanLII), p. 2

(b) There are three basic qualities of good character and repute:

(i) an appreciation of the difference between right and wrong;

(ii) 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; and,

(iii) a belief that the law (at least so far as it forbids things), must be upheld and encouraged to see that it is upheld.

Mary F. Southin, QC (later JA), *What is Good Character?* (1987), *The Advocate* 129

(c) The character of an applicant must be assessed as fairly and as dispassionately as possible but no applicant should be held to a standard of perfection. People can and do change, but they do not do so overnight. Concepts such as forgiveness or "giving someone a chance" are not appropriate considerations in an assessment of good character.

Applicant A (Kalo) – Appeal of Admission Decision No. 20090826B, paras. 155-159, & 164

- (d) It is the current state of the character of the Appellant which is to be assessed, not the past, nor the future. Character is not immutable and may evolve over time; and the passage of time may change the assessment. Speculation as to future character developments should not occur. Past conduct may inform the assessment of current character, to some extent, but past misconduct is generally not fatal for all time.

Ewald Bergen v. Law Society of Manitoba, 2016 MBL 15 (CanLII), para. 42.

- (e) Character evidence is common [in discipline cases] and can be persuasive, but it is much less valuable if the witnesses are not fully informed of the facts. Even then, it is difficult to gauge the extent to which the evidence is affected by factors such as friendship. Virtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients. The Panel must ensure that the process is not transformed from a deliberative process into a referendum.

Lawyers & Ethics: Professional Responsibility and Discipline, Gavin McKenzie, Carswell 2012, citing *Re Curtis*, report of discipline hearing panel of Law Society of Upper Canada, September 29, 1993, p. 8, citing *R. v. Profit* (1992), 11 O.R. (3d) 98 (Ont. C.A.) at p. 105

- (f) The credibility of interested witnesses ... cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, *the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.* (Emphasis added.)

Faryna v. Chorny, [1952] 2 D.L.R. 354 (B.C.C.A.), p. 357

Positions of the Parties

65. Counsel for Mr. Okogwu argues that notwithstanding his documented (and tacitly, if not expressly, admitted) attempts by Mr. Okogwu to mislead the Society prior to, and in connection with, the 2021 Application, he is currently of sufficient good character to qualify him for admission as an articling student. He has: (i)

worked hard to better understand his prior transgressions, (ii) a good job where, on a daily basis, he ministers to some of the most vulnerable members of society, (iii) made numerous other positive contributions to his community, and (iv) become a devoted husband and father. Counsel asserts that the impugned behaviours have been explained in the medical reports, and points to the numerous character references as evidence of his fitness to practise law in Manitoba.

66. The position of the Society is concisely set out in the closing paragraph of its written submission: "... Mr. Okogwu has lied to protect his own interests too many times to overcome the presumption against him. He is a proven liar, and his character and integrity are not suitable for admission to the Society." The denial of the 2021 Application was based not on the substance of the serious allegations of criminal behaviour leveled against him, but rather on the material misrepresentations and omissions he made prior to, and in furtherance, of that Application. Those misrepresentations and omissions, which continued right up to and including the hearing, clearly demonstrate that he continues to lack the good character of all of those who seek admission to the Society.

Analysis

General Observations

67. Mr. Goertzen wrote in his report that "when a person offers truth on the heels of untruth, it can be hard to believe". This is a sentiment which the Panel wholeheartedly endorses.
68. The "gatekeeper" role of the Society is arguably its most important one; far more important than its discipline role, which some would argue represents a failure of the screening/gatekeeper function. The Society takes this role as guardian of the public interest very seriously.

Credibility

69. The credibility of Mr. Okogwu has been put squarely at issue in these proceedings, by himself and by the Society. It is therefore incumbent on the Panel to assess his credibility, in accordance with the long-standing authorities on the point, and to explain its reasons for that assessment.
70. From the time when the Society first began its investigation into the "good character" of Mr. Okogwu, his various versions of what he calls "the Truth" has, to borrow from the submission of his counsel, "evolved". His oral testimony at the hearing was at times compelling and at times exasperating; compelling during his direct examination, when he was articulate and displayed genuine

emotion at appropriate times, and exasperating during much of his cross-examination, when many of his responses (or, perhaps more accurately, non-responses) to what seemed to be straightforward questions can most charitably be described as “evasive”.

71. The Panel is particularly concerned with what it perceives to be a refusal, or perhaps an inability, on the part of Mr. Okogwu to accept responsibility and accountability for what were obvious attempts on his part to mislead the Society. He never actually acknowledged – to the Society or to this Panel – that he had been less than forthright during the Donaldson Interview and in his prior and subsequent written communications with the Society. Rather, he made certain disclosures to each of the experts in an apparent attempt to craft an explanation for why he did what he did. But even then – when reading the reports – one is left to guess what, *exactly*, he was conceding.
72. After reading the Somers Report and the Goertzen Report, the Panel anticipated that Mr. Okogwu would use the opportunity he had been granted to augment the written materials with his oral testimony by expressly and unequivocally accepting responsibility and accountability for his actions. Those acknowledgements never came, and his credibility, in the view of the Panel, was irreparably impaired. The disappointment in the caucus room at the conclusion of the hearing was palpable.

PTSD

73. When Mr. Okogwu attended for the Donaldson Interview: (i) more than ten months had elapsed since his charges had been stayed (during which he had had no further involvement with the criminal justice system), (ii) almost two years had elapsed since his release from jail, and (iii) it had been more than 30 months since BN had mysteriously (and, according to Mr. Okogwu, “suspiciously”) vanished from his life.
74. Mr. Okogwu testified that while he was still at HCC, he slowly gained access to the Crown disclosure materials which have since found their way into the Record. He says he soon came to the realization that when the complainants were saying that they were in his car and in his apartment with “Dom” (a name BN answered to) or “Tom”, they were very likely talking about being with BN – a fellow Nigerian who (apart from the obvious differences in their ages) bore a striking physical resemblance to himself.
75. Mr. Okogwu is an intelligent and perceptive man. The Panel simply cannot accept his assertions that between April, 2015 and December, 2015, he had not

the slightest inkling that the offences he had been charged with were very likely being committed by BN – the *only* other person with access to the keys to both his apartment and his car during the times when the encounters with the various complainants occurred. While Mr. Okogwu may not have seen the actual disclosures until sometime later, the police questioning that occurred in conjunction with each of his arrests must surely have raised his suspicions to a fever pitch. Yet he did nothing apart from telling BN to take his “guests” elsewhere. In particular, he failed to take *any* proactive steps – such as contacting the WPS or the child protection authorities – which might have enabled those agencies to put a stop to the egregious exploitation of these extremely vulnerable young girls. He may have had no legal obligation to do anything, but – as a responsible and law-abiding adult – he most certainly had a moral one.

76. The Panel accepts that Mr. Okogwu had a very hard time during his incarceration but nonetheless finds it difficult to accept his assertion that the after-effects of that incarceration now – all these years later – provide a plausible explanation for his decision to say *nothing* to Mr. Donaldson about BN: (i) living with him in his apartment at the relevant times in 2015, (ii) having access to his vehicle during the many hours each week that Mr. Okogwu was away from home either working or studying, and (iii) partying in his apartment on an indeterminate number of occasions, with an unknown number of people each time, who may or may not have included young girls of the ages of those he was accused of having interacted with inappropriately, and who may or may not have been plied with alcohol or drugs as a prelude to sexual activity while in his apartment.
77. When the explanation now being offered for the obvious subterfuge in which Mr. Okogwu engaged in his communications with the Society since 2017 is so firmly anchored in the abuse, he says he suffered at HCC, and in his dramatic and ongoing reaction to it, it seems axiomatic that it would be incumbent on Mr. Okogwu to produce (or at least *try* to produce) *some* evidence to corroborate his allegations. In the absence of any such corroboration, the Panel is left to wonder how firm the evidentiary foundation really is for the diagnosis of Post-Traumatic Stress Disorder. There is his self-reporting, for sure, and there are the statements (four years after the fact) from his wife, his sister, and his Pastor, but nothing else of substance. There is nothing in the Record, and the Panel heard nothing on the point during the full-day hearing.

78. As previously noted, PTSD is a serious mental health condition. The Panel considers it highly unlikely that such a condition could spontaneously resolve in the absence of *any* treatment from a trained mental health professional such as a psychologist. The evidence is clear that Mr. Okogwu does not currently suffer from PTSD. The Panel finds, on a balance of probabilities, that he never did.
79. The upshot is obvious (and, frankly, inescapable) – no PTSD (resolved or otherwise), no plausible explanation for the misleading statements at the Donaldson Interview and in the letters that followed.
80. The Panel notes, parenthetically, that even if Mr. Okogwu was in the throes of a PTSD episode at the times of his deliberately misleading statements to the Society, the fact that the condition might explain his behaviour does not mean that this Panel must either excuse or condone it. As stated in *Appellant A (Kalo)*, at para. 181: "... the fact that there may be an explanation for his behaviour, even one that may be understandable, does *not* make that behaviour acceptable". Explanation and understanding do not excuse misconduct.

Bergen and Appellant A (Kalo) Decisions

81. The Panel is especially indebted to the authors of the *Bergen* and *Appellant A (Kalo)* decisions. It found in those decisions numerous comments and observations which were of great assistance in keeping the Panel focused on the purposes of the good character assessment and the critical importance of the "gatekeeper" role of the Society.
82. In no particular of importance, the Panel was guided in its deliberations by the following insights found in those prior decisions:

Bergen

- (a) "The confidence of the public in a self-regulated legal profession requires stringent watchfulness in both the discipline and admissions processes when matters of integrity and character are at issue."
(Para. 2)
- (b) "The narrow issue of fact ... was not about the historical events, but whether or not [the Appellant] had been deliberately deceptive in the course of his application ... to the [Society]." (Para. 9)
- (c) Numerous letters of support were received into evidence, and "that support matters". (Paras. 24-25)

- (d) The *Guidelines* provide an essential framework for considering whether good character has been established in a particular case. “The eighth [now seventh] point from the [Society] list, that of the public interest and confidence in the proceeding, merits an additional comment. Indeed, the overarching purpose of all of the Canadian Law Societies is to protect the public and regulate the legal profession. That foundational factor, therefore, must be given significant weight.” (Paras. 45-46)
- (e) “It may be that this conclusion [that the totality of the testimony of the Appellant was lacking credibility] is not correct and that [the Appellant] was entirely candid and truthful. The panel weighed that possibility with care, recognizing the gravity of the issue and all that flowed from it. Considering the matter on a civil standard of a balance of probabilities it determined that the more likely explanation was that these parts of the testimony were adapted by the Appellant as he went along, tailored to paint himself in the most flattering light. Though some explanations were somewhat plausible, in each instance noted above it seemed more likely than not that the simpler answer – that he was being untruthful in an effort to bolster his case – was the correct one. Cumulatively, the panel concluded that multiple material points in the Appellant’s evidence were misleading.” (Para. 99)
- (f) “Admissions departments of Law Societies across this country carry the burden of being gatekeepers. Good character standards are a preventative measure, to guard against the damage that rogue lawyers can and all too frequently do inflict upon the public at large and the regulation of the legal community. Vigilance remains essential for both the protection of the public and the maintenance of the public trust.” (Para.102)

Appellant A (Kalo)

- (a) “‘Utmost good faith’ is a deliberately chosen legal term of art. It imposes an extremely high burden of disclosure on an applicant. The reason for such an approach is perhaps obvious; the information upon which the [Society] might assess character and fitness is, absent an investigation, all in the applicant’s possession. It is the applicant who has the most direct and complete knowledge of his or her circumstances and so, in making admissions decisions the [Society] necessarily relies heavily upon the information provided by the applicant. Accordingly, it is not for

the applicant to determine what may or may not be of interest to the [Society]. Rather, it is the applicant's job to fully disclose everything that might be relevant to the issues of character and fitness and the [Society's] to determine what if anything to make of such disclosure." (Para. 172)

- (b) "... [T]he onus to make full and complete disclosure was on the Appellant and he fell short of discharging that onus. The Appellant's serious failure to complete the Application with the requisite frankness and candour raises obvious concerns about his character and fitness and necessarily creates a difficult hurdle for him to overcome in convincing the Panel that he is currently of good moral character and a fit and proper person to be admitted." (Paras. 176-177)

Application of the *Guidelines*

83. The *Guidelines* are divided into three distinct sections. This appeal is concerned only with the section at the top of the second page.
84. The section requires that the Panel consider two distinct issues: (1) whether the Record discloses "other relevant matters otherwise learned of by the law society" sufficient to "establish a rebuttable presumption that [Mr. Okogwu] is not of good character and a fit and proper person" to be admitted to the Society as an articling student; and (2) whether, upon consideration of one or more of the seven listed criteria, the Panel is of the view that Mr. Okogwu has, or has not, rebutted the presumption.
85. With respect to the first issue, the Panel is firmly of the view that, based on the evidence set out in considerable detail under the heading "Evidence of Alleged Attempts to Mislead the Society" above, the rebuttable presumption created by the *Guidelines* has indeed been established.
86. With respect to the second issue and the enumerated list of considerations, the Panel finds as follows:
1. the applicant's candour, sincerity and full disclosure in the filings and proceedings as to character and fitness;

The Panel finds that Mr. Okogwu has fallen considerably short of the mark in at least two of these three areas. While "sincerity" is inherently subjective and notoriously difficult to accurately assess, the behaviour

of Mr. Okogwu, going all the way back to the 2017 Application, was repeatedly and demonstrably lacking in the requisite level of candour mandated by the authorities.

The misleading responses given during the Donaldson Interview were not the result of a momentary, impulsive decision. There was most certainly, by his own somewhat-belated admission, a considerable degree of premeditation involved.

The misleading information in his written submissions, particularly the letters found at Tabs 38, 64, and 72 of the Record, could not possibly have been anything other than deliberate and calculated efforts at deception. These letters (particularly the four-page, typewritten letter received by the Society on March 6, 2018, Tab 38, and the three-page, typewritten letter dated September 27, 2019, Tab 64) would each have taken several hours to compose and draft, and were undoubtedly proofread carefully by Mr. Okogwu to ensure that they conveyed precisely what he intended to convey.

The justification for what the experts say was happening at the time of his interactions with the Society in 2018 may be the best one available, but it does not explain why the behaviour continued well into 2021, and even up to the hearing in 2023.

The Panel is not satisfied, even today, that Mr. Okogwu has ever made the “full and complete disclosure” that he was so pointedly advised (in the letter from the Director dated February 23, 2018 at Tab 37) would be a precondition to the approval of his application.

2. the materiality of any omissions or misrepresentations;

The Panel finds that the omissions and misrepresentations detailed above, going as they did to the very heart of the concerns the Society was endeavouring to investigate and resolve, were demonstrably and unquestionably material.

3. the frequency and recency of the conduct or behaviour disclosed that gives rise to the presumption;

The impugned behaviours were frequent in the sense that they were exhibited by Mr. Okogwu in almost every communication of substance – whether oral or written – in which the circumstances of the 2015 police investigation and the ensuing criminal charges were being addressed. The behaviours first manifested in the 2017 Application and have continued up to the present time.

4. the applicant's current attitude about the subject of their disclosure;

The Society submits that Mr. Okogwu, to this day, "lacks insight" into the concerns it was trying to address before, during, and after the Donaldson Interview. The Panel accepts that this an apt descriptor of his current attitude in that, even now, Mr. Okogwu seems perplexed that events of 2015 should have engaged the interest of the Society *at all*.

5. the applicant's subsequent constructive activities and accomplishments;

The Panel finds that this criterion most definitely "tips the scale" in favour of Mr. Okogwu. The glowing references from his family members, his past and current co-workers, and the community members with whom he frequently interacts, are a testament to the good work he is doing in all of those spheres of activity.

6. evidence of character and moral fitness including the reasonably informed opinion of others regarding the applicant's present moral character; and

This criterion is discussed under the heading "Character References" above. Although the evidence is voluminous, its shortcomings (particularly the understandable the lack of objectivity in some quarters and the admitted lack of "reasonably informed opinion" in others) render this evidence as, at best, a neutral factor in the overall analysis.

7. in light of the entire record of the applicant, whether admission of the applicant would adversely affect the confidence of the public in the legal profession in Manitoba as an honourable, ethical and competent profession.

As noted by counsel for the Society in her final submission, the Society is far too often put into a position where it must, in the public interest, discipline lawyers for breaches of integrity. The proceedings damage the reputation of the profession as a whole and further damage the perception of the public regarding the ability of the Society itself to fulfill its statutory mandate to govern the profession in the public interest.

While in some cases the discreditable behaviour arises at the end of a long career of unblemished service to the public, more often than not a close examination of the pre-admission materials on their file discloses "red flags" which, if they had been acted on at the time, would have resulted in the individual being denied admission in the first place.

The Panel agrees with the submission of counsel for the Society that admitting Mr. Okogwu as an articling student would indeed "adversely affect the confidence of the public in the legal profession".

87. To summarize, the Panel finds that the results of the Society investigation raised a rebuttable presumption that Mr. Okogwu is not of good character and a fit and proper person for admission to the Society, and finds further that he has failed to rebut that presumption.

Closing Comment

88. The Panel is acutely aware that its decision may well be the "end of the line" for Mr. Okogwu after he has invested nine years of his life, and a substantial amount of time and energy, in his pursuit of membership in the Society. It is not without considerable regret that the Panel has concluded that this appeal must be dismissed.

Conclusions and Disposition

89. The Panel concludes that Mr. Okogwu:
- (a) was deliberately deceptive by way of material misrepresentations, material omissions, or both, in his various communications with the Society prior to and in specific connection with the 2021 Application for admission;
 - (b) has failed to discharge the burden on him to rebut the presumption set out in the *Guidelines*; and,

(c) has not established, on a balance of probabilities, that he is currently of sufficiently good moral character, and is an otherwise fit and proper person, to be admitted as a member of the Society.

90. Based on the material reviewed, and on the relevant authorities cited above, this Panel directs that the appeal be dismissed.

DATED this 11th day of April, 2023.



Dean Scaletta



Mathieu Lafreniere



Carmen Nedohin

Appendix "A"

Relevant Statutory Provisions***The Legal Profession Act*****Purpose**

3(1) The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.

Duties

3(2) In pursuing its purpose, the society must

- (a) establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba; and
- (b) regulate the practice of law in Manitoba.

General power to make rules

4(5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.

Rules are binding

4(6) The rules are binding on the society, the benchers, the members and everyone who practises or seeks the right to practise law under the authority of this Act, other than Part 5 (representation in highway traffic matters).

Qualification for membership

17(2) No person may become a member ... unless the benchers are satisfied that the person meets the applicable membership requirements.

Rules about membership and authority to practise

17(5) The benchers may make rules that

- (a) establish categories of membership and prescribe the rights, privileges, restrictions and obligations that apply to them;
- (b) establish requirements, including educational and moral requirements, and procedures for admitting persons as members, which may be different for different categories of membership;
- (c) govern the admission program for articling students;

Code of Professional Conduct

Chapter 2 – Standards of the Legal Profession

2.1 Integrity

2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

Law Society Rules

Part 5 – Protection of the Public

Division 1 – Admissions / Admission of Articling Students

Application for admission as an articling student

5-4(1) Subject to rule 5-4.1 [Exception: when permission is required], an applicant for admission as an articling student must,

(a) provide proof that he or she:

(iii) is of good moral character and a fit and proper person to be admitted;

Approval of applicants

5-4(2) The chief executive officer may admit a student who applies under subsection (1) or refuse to admit or impose conditions or restrictions on the applicant's admission.

Part 5 – Protection of the Public

Division 1 – Admissions / Appeals

Appeal of admissions decisions

5-28(1) Subject to subsection (8) [Exception], a decision of the chief executive officer made pursuant to the rules in this division may be appealed to the committee by the completion and filing of the required notice of appeal within 14 days of receipt of written confirmation of the decision and the right to appeal. The appeal process will be governed by guidelines adopted by the benchers.

Hearings

5-28(3) A panel must conduct an appeal based on a consideration of written submissions and other relevant materials, except where the chairperson of the committee directs or the appellant requests an oral hearing. During an oral hearing, neither the appellant nor any other person may give oral evidence, except with leave of the appeal panel and then only in such exceptional circumstances as the appeal panel may determine. The testimony of an appellant or any other person at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement. An oath must be administered by the chairperson of the panel.

Decision of panel

5-28(7) The panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions. A decision of the panel is final, except a decision to refuse to issue a practising certificate or a practising certificate free of

conditions, which decision may be appealed to the Court of Appeal pursuant to section 76 of the Act.

Application of rule

5-28.1(1) This rule applies to a person whose application:

(a) application for admission ... as an articling student, has been refused because the person has not satisfied the chief executive officer or a panel of the appeals sub-committee that he or she is of good moral character and a fit and proper person to be admitted, ...

Waiting period

5-28.1(2) Subject to subsection (3) [Abridgement], a person referred to in subsection (1) may not apply for admission, ... for a period of two years after the later of:

(a) the date the chief executive officer refused his or her application, or
(b) the date a panel of the appeals sub-committee dismissed his or her appeal of the chief executive officer's decision to refuse the application.



Guidelines for Appeals of Admissions Decisions

The following guidelines will govern appeals of admission and education decisions made by the chief executive officer under Division 1 of Part 5 of the Rules of The Law Society of Manitoba. In these guidelines, reference to the chief executive officer includes the director of admissions and membership and the director of education, as designates of the chief executive officer.

Initiation of an Appeal

1. An appeal will be initiated by submitting a Notice of Appeal in the required form to the secretary to the Admissions and Education Committee. The appellant may be represented by counsel.
2. The completed Notice of Appeal will be provided to counsel for the Law Society and to the chairperson of the Admissions and Education Committee.
3. The appellant and counsel for the Law Society of Manitoba will receive a copy of all materials considered by the chief executive officer in making the decision, with the exception that privileged information will not be provided to the appellant.

Appeal Format

4. The appeal panel will consider an appeal based solely on written materials unless the appellant requests an oral hearing or the chairperson of the Admissions and Education Committee directs an oral hearing.

Appointment of the Appeal Panel

5. The chairperson of the Admissions and Education Committee will appoint three members of the Appeals Sub-Committee to serve on the appeal panel and will appoint one member to act as chair of the appeal panel.
6. The appellant and counsel for the Law Society will be advised of the proposed composition of the appeal panel to determine if either party has an objection based on conflict of interest or bias.

Setting the Appeal Date

7. For appeals based on written materials, the appeal date will be fixed by the chair of the appeal panel. The appellant and counsel for the Law Society will be advised of the appeal date so that they may submit written materials within the time prescribed by the guidelines.
8. If the appeal is to be considered by way of an oral hearing, once the parties agree on a date for the appeal, the chair of the Admissions and Education Committee will fix the appeal date and members of the Appeals Sub-Committee will be canvassed for their availability.

Written Materials

9. In advance of the appeal, the appellant and counsel for the Law Society may submit additional information not previously considered by the chief executive officer.
10. In support of the appeal, the appellant must provide the secretary to the Admissions and Education Committee with five copies of: any additional information not previously considered, facts and arguments, documents, and any authorities at least 21 days before the appeal date.
11. Counsel for the Law Society will be provided with one copy of the written materials submitted by the appellant.
12. In response to the appeal, counsel for the Law Society must provide the secretary to the Admissions and Education Committee with five copies of: any additional information not previously considered, facts and arguments, documents, and any authorities at least 7 days before the appeal date.
13. The appellant will be provided with one copy of the written materials submitted by counsel for the Law Society.
14. Prior to the appeal date, the appeal panel will be provided with copies of the information previously considered by the chief executive officer with the exception of information that is privileged along with copies of any written materials submitted by the appellant and by counsel for the Law Society.

15. The appellant and counsel for the Law Society may submit further written materials only with leave of the appeal panel.

Oral Hearings

16. Witnesses, including the appellant, may be called during oral hearings only with leave of the appeal panel and only in exceptional circumstances as may be determined by the appeal panel. The testimony of an appellant or witness at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement.

17. Oral hearings will be transcribed and each party will bear its own costs of obtaining a transcript, if required.

Decision of the Appeal Panel

18. The appeal panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions.

19. The appeal panel must provide written reasons for its decision and should do so within 60 days of the appeal date.

LAW SOCIETY RULES**Presentation to the Court****5-3.1** Re-numbered (05/20)**Admission of Articling Students****Application for admission as an articling student****5-4(1)** Subject to rules 5-4.1, an applicant for admission as an articling student must,

- (a) provide proof that he or she:
 - (i) has a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada (a "Canadian common law degree") dated not more than 6 years before the date of the application for admission; or
 - (ii) is the recipient of a certificate of qualification from the NCA dated not more than 6 years before the date of the application for admission;
 - (iii) is of good moral character and a fit and proper person to be admitted; and
 - (iv) has entered into an articling agreement with a principal;
- (b) submit an acceptable education plan;
- (c) furnish all documentation required by the chief executive officer; and
- (d) pay the student admission fee under subsection 19(1) of the Act.

(AM. 06/03; 04/04; 12/05; 05/07; 10/07; 10/08; 10/10; 02/13; 04/13; 05/20)

Approval of applicants**5-4(2)** The Chief Executive Officer may admit a student who applies under subsection (1) or refuse to admit or impose conditions or restrictions on the applicant's admission. (ENACTED 10/10)**Exception: when permission is required****5-4.1** An applicant for admission as an articling student who is the recipient of a "Canadian common law degree", or a certificate of qualification from the NCA, dated more than 6 years before the date of the application, must apply to the society for permission to be admitted as an articling student and the chief executive officer may refuse the application or grant the application, with or without conditions. (ENACTED 12/05) (AM. 05/07; 10/07; 04/13; 05/20)**Failure to file admissions documents by deadline****5-4.2** Repealed (05/20)**Joint responsibility of articling student and principal to file articling agreement to file education plan****5-4.3** Repealed (05/20)

required for an articling student to complete the bar admission program and articles for that purpose. (AM. 05/07)

Requirements for call

5-24(2) A lawyer who is a member of the governing body of the legal profession in another province or territory of Canada (referred to in this rule as the “applicant’s home jurisdiction”) may be called to the bar upon:

- (a) filing a formal application for call;
- (b) filing a certificate of standing from each governing body of the legal profession in another province or territory of Canada of which the applicant is a member;
- (c) providing proof of the applicant’s good moral character and repute and fitness to become a member;
- (d) presenting such further evidence as may be required;
- (e) passing such assessments or examinations on substantive law, practice and procedure in Manitoba as may be prescribed by the chief executive officer, unless the applicant is exempt under rule 5-27.1;
- (f) paying the required fee; and
- (g) fulfilling all other requirements that the chief executive officer may consider appropriate.

(AM. 05/07; 10/07; 10/08; 12/09; 10/10)

In-House counsel

5-25(1) An applicant who does not qualify for transfer under rule 5-27.1 and who fulfills the requirements set out in clauses (a) through (d) and (g) of rule 5-24(2) may apply to be called to the bar in Manitoba as in-house counsel and the chief executive officer may exempt an applicant from the requirement to write and pass the assessment or examination referred to in clause (e) of rule 5-24(2) provided the applicant certifies in a prescribed form that he or she has reviewed and understands all of the materials reasonably required to be read by the applicant. (AM. 05/07; 10/07; 10/08; 10/10)

Restrictions on practice of in-house counsel

5-25(2) An applicant who is called to the bar as in-house counsel:

- (a) is entitled to practise law in Manitoba only on behalf of his or her employer or one of its subdivisions or affiliates;
- (b) must carry professional liability insurance which extends to his or her practice of law in Manitoba and is reasonably comparable in coverage and amount to that maintained by the society;
- (c) must provide the society with a certificate of insurance evidencing the insurance coverage referred to in clause (b);

Appeals

(ENACTED 10/10)

Appeal of admissions decisions

5-28(1) Subject to subsection (8), a decision of the chief executive officer made pursuant to the rules in this division may be appealed to the committee by the completion and filing of the required notice of appeal within 14 days of receipt of written confirmation of the decision and the right to appeal. The appeal process will be governed by guidelines adopted by the benchers. (ENACTED 10/07) (AM. 04/10; 05/12)

Appointment and composition of panel

5-28(2) The chairperson of the committee must select a panel of three members of the appeals sub-committee to consider any appeal made under subsection (1). One of the panel members must be a public representative. Two of the panel members must have current practising certificates, unless it is not reasonably practicable to have two practising members on the panel, in which case the chairperson may appoint one practising member and one non-practising or inactive member to sit on the panel. (ENACTED 10/07) (AM. 05/08; 05/12)

Hearings

5-28(3) A panel must conduct an appeal based on a consideration of written submissions and other relevant materials, except where the chairperson of the committee directs or the appellant requests an oral hearing. During an oral hearing, neither the appellant nor any other person may give oral evidence, except with leave of the appeal panel and then only in such exceptional circumstances as the appeal panel may determine. The testimony of an appellant or any other person at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement. An oath must be administered by the chairperson of the panel. (ENACTED 05/08) (AM. 05/12; 05/14)

Hearing to be public

5-28(4) An oral hearing convened under sub-section (3) must be open to the public unless the panel makes an order under sub-section (5). (ENACTED 06/09)

Exclusion of members of public

5-28(5) A panel considering an appeal under sub-section (3) may make an order excluding members of the public from a hearing if it thinks that:

- (a) exclusion is necessary to prevent the disclosure of information that is subject to solicitor-client privilege; or
- (b) the public interest in the disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed.

(ENACTED 06/09)

How and when order can be made

5-28(6) A panel may make an order under subsection (5) on its own motion, or on the