



Decision No. 20100811B

THE LAW SOCIETY OF. MANITOBA

IN THE MATTER OF:

APPLICANT A

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

**PANEL: John Neufeld - Chair
 Miriam Browne
 James Shaw**

HEARING DATES: August 11 & 25, 2010

DECISION

Re: Decision in Respect of an Appeal by Applicant A of an admission decision of The Law Society of Manitoba dated June 10, 2010.

INTRODUCTION

1. Applicant A (the "Appellant" or "Applicant A") has appealed the decision of The Law Society of Manitoba (the "Law Society") dated June 10, 2010 rejecting his application for admission to the Manitoba Canadian Professional Legal Education Development Program ("CPLED" Program) and as an Articling Student for the year 2010-2011 ("the Current Denial Decision").
2. Before the hearing, Applicant A made what he referred to as six "preliminary motions". During the hearing, he made an additional motion. On the first day of the hearing, he withdrew the first of the six Preliminary Motions that, in effect, asked the Chairperson of the Panel "to voluntarily step down".

3. All of the motions, except one, were dismissed by the Panel during the hearing. The motion that was not disposed of at the hearing, and on which the Panel reserved its decision, was to permit the Appellant to immediately enrol in the 2010-11 Manitoba CPLED Program, "on a without prejudice basis pending a completion of all different appeal proceedings regarding his application" ("Appellant's Preliminary Motion No. 6"). The Appellant's Preliminary Motion No. 6 was dismissed by the Panel unanimously in a written Decision delivered September 21, 2010. In that Decision the Panel indicated that it would be providing full written reasons at a later date. This Decision constitutes those written reasons.
4. The appeal and motions were heard over two full days, being August 11th and 25th, 2010. Applicant A was unrepresented. Ms. Darcia Senft appeared on behalf of the Law Society. The parties proceeded on the basis of their extensive written materials and oral submissions. No sworn testimony was presented.
5. The current application was made less than a year after a similar application was made by the Appellant and after unsuccessful legal challenges were launched in court by him and for which costs are still outstanding against him which have not been paid.
6. The Panel has carefully considered the parties' submissions and respective interests that are at stake. At the time this Panel advised the Law Society of its interim decision on September 21, 2010, without providing any written reasons, it believed that it was still possible for Applicant A to be admitted to the CPLED Program.
7. That motion, as indicated, was dismissed by this Panel in its written Decision of September 21, 2010. Appellant's Preliminary Motion No. 6 reads as follows:

Immediately enrolling the Appellant in the 2010-11 Manitoba CPLED Program, which is anyhow taken by the Students mostly on the internet, on a without prejudice basis and pending a completion of a different appeal proceedings regarding his application. (Interim Motion Number 6)
8. Applicant A previously made an application for admission to the Law Society on October 28, 2008. That application was denied pursuant to the Decision of Ms. Karen Dyck on August 10, 2009.
9. At that time Applicant A also asked Ms. Dyck to allow him to commence the

CPLED Program on a without prejudice basis pending the completion of any Appeals in respect of that Decision. That request was denied by Ms. Dyck on August 18, 2009.

10. Applicant A appealed both of Mrs. Dyck's Decisions but a previous Panel of the Law Society Admissions and Membership Committee ("the Previous Appeal Panel") denied the Appeal pursuant to a Decision dated September 2, 2009. Full written Decisions were provided by the Previous Appeal Panel on October 9, 2009, ("the Previous Panel Decisions"). Prior to receiving the main Decision from the Previous Appeal Panel, Applicant A filed an Appeal with the Court of Appeal of Manitoba and then brought a Motion seeking an Order directing the Law Society to enrol him in the 2009-2010 CPLED Program without prejudice and pending the competition of all court proceedings within the Appeal.
11. The Motion was dismissed, with costs, pursuant to a Decision of Mr. Justice Monnin rendered on September 29, 2009. Mr. Justice Monnin determined that the Court had no jurisdiction to determine the matter.
12. After receiving the Previous Panel Decision, Applicant A brought an Application in the Court of Queen's Bench for judicial review of the Appeal Panel's Decision denying his Appeal of Ms. Dyck's Decision on behalf of the Law Society. The Previous Appeal Panel Decision was upheld by Mr. Justice Martin on January 7, 2010.
13. Applicant A then appealed the decision of Mr. Justice Martin to the Manitoba Court of Appeal.
14. The Law Society made an application seeking security for costs. That application of The Law Society was successful pursuant to a Decision of Mr. Justice Chartier dated March 8, 2010.
15. Applicant A appealed the Decision of Mr. Justice Chartier.
16. The Court of Appeal dismissed Applicant A's appeal with costs on May 31, 2010, with written reasons dated June 1, 2010.
17. Applicant A has not paid the \$1,000.00 he was required to pay to The Law Society as security for costs and, therefore, his Appeal of the Decision of Mr. Justice Martin was terminated in accordance with the Decision of Mr. Justice Chartier.
18. Applicant A executed a new Application for Admission to the Manitoba CPLED Program and as an Articling Student on April 5, 2010 (the "New

Application").

19. The New Application was made pursuant to Law Society Rule 5-4, which requires that an applicant for admission as an Articling Student must provide *inter alia*, proof that the Applicant is of good moral character and a fit and proper person to be admitted.
20. By letter dated June 10, 2010, Mr. Richard Porcher, Director of Admissions and Membership of The Law Society, wrote to Applicant A, denying his current application for admission (the "Current Denial Decision").
21. The Current Denial Decision set out several reasons for denying the New Application. Mr. Porcher, in the Current Denial Decision determined that there had been no material passage of time since the events that gave rise to the concerns before the Previous Appeal Panel as to Applicant A's character and fitness and his New Application.
22. Secondly, Mr. Porcher advised, in the Current Denial Decision, that there were other considerations that raised the same concerns that had been addressed in the Previous Panel Decision. Specifically, Mr. Porcher raised concerns about Applicant A's arrest at the Law Courts Building on December 8, 2009, and an inaccurate comment made by Applicant A in his factum dated March 22, 2010, as well as misstatements contained in Applicant A's Affidavit dated February 19, 2010, which once more raised concerns about Applicant A's integrity.
23. It was also noted by Mr. Porcher in the Current Denial Decision that Applicant A has been subject to several orders for Costs made by various Courts in relation to his proceeding with the Law Society, and that those costs had not been paid.
24. On June 11, 2010, Applicant A filed his Notice of Appeal from the Current Denial Decision.

RELEVANT LEGISLATION

25. These matters proceeded under Law Society Rule 5-28 which provides, in part as follows:

Appeal of admissions decisions

5-28(1) A decision of the chief executive officer made pursuant to the rules in this division may be appealed to the committee within 14 days of receipt of written confirmation of the decision and the right to appeal (ENACTED 10/07)

Decision of panel final

5-28(7) 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. (ENACTED 05/08;AM. 06/09)

26. The Law Society of course is also subject to the Fair Registration Practices in Regulated Professions Act, SM 2007C-21 (The "Fair Registration Practices Act"), which determines how appeals of this nature should be determined. It provides a framework under which Appeals are to be conducted by Regulated Professions such as The Law Society.
27. Section 4 of the Fair Registration Practices Act imposes a general duty on all regulated professions, such as The Law Society of Manitoba, to "provide registration practices that are transparent, objective, impartial and fair." Added to that it provides as follows in Section 6 and 7:

Timely decision, responses and reasons

6. A regulated profession must

(a) make registration decisions within a reasonable time; and

(b) provide written responses to applicants within a reasonable time in respect of all

(c) provide written reasons to applicants within a reasonable time in respect of all

i, registration decisions refusing to grant registration, or granting registration subject to conditions, and

ii. internal review or appeal decisions,

including, where practical, information respecting measures or programs that may be available to assist unsuccessful applicants in obtaining registration at a later date.

Internal review or appeal

7(1) A regulated profession must provide an internal review of, or appeal from, its registration decisions within a reasonable time.

Submissions by applicant

7(2) A regulated profession must provide an applicant for registration with an opportunity to make submissions respecting any internal review or appeal.

How to make submissions

7(3) A regulated profession may specify whether submissions respecting an internal review or appeal are to be submitted orally, in writing or by electronic means.

Information on appeal rights

7(4) A regulated profession must inform an applicant of any rights that he or she may have to request a review of, or appeal from, the decision, and provide information about the procedures and time frames of a review or appeal.

Decision-maker

7(5) No one who acted as a decision-maker in respect of a registration decision may act as a decision-maker in an internal review or appeal in respect of the registration decision.

28. The Governing Statute of the Legal Profession in Manitoba is of course the Legal Profession Act (C.C.S.M. C.L107) (the "Act") which provides in relevant parts as follows:

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.

Who is a member

17(1) The following persons are members of the society:

- (a) lawyers registered in the rolls of the society;
- (b) persons registered in the student register;
- (c) other persons who qualify as members under the rules.

Qualification for membership

17(2) No person may become a member or be reinstated as 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;

(d) establish requirements and procedures for the reinstatement of former members;

(e) govern practising certificates;

(f) govern the resumption of practice by non-practising members.

... (emphasis added)

29. Pursuant to these Statutory Provisions, the Benchers of the Law Society of Manitoba, its governing body, have passed rule 5.4 related to the Application for Admission as an Articling Student which provides as follows:

5.4 Subject to rule 5-4.1, an applicant for admission as an articling student must, by May 31 in the calendar year in which articles commence:

(d) provide proof that he or she has a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian University (a "Canadian common law degree") or an equivalent qualification, dated not more than 6 years before the date of the application for admission; or

(e) provide proof that he or she is the recipient of a certificate of equivalency from the National Committee on Accreditation dated not more than 6 years before the date of the application for admission;

and must

(f) provide proof that he or she is of **good moral character and a fit and proper person** to be admitted; (emphasis added)

(g) enter into an articling agreement with a practising lawyer who has been approved by the chief executive officer to act as a principal and submit an acceptable Education Plan; (ENACTED 05/07)

(h) furnish all documentation required by the chief executive office; and

(i) pay the student admission fee under subsection 19(1) of the Act. (A.M. 06/03; 04/04; 12/05; 05/07; 10/07; 10/08) (emphasis added)

30. It is precisely Rule 5-4(c) highlighted above, that is at issue in this Appeal, as it was in the Previous Panel Decision.

MATERIALS BEFORE THE PANEL

31. Application of Applicant A for admission to the CPLED Program and as an Articling Student,

Letter of Applicant A to Law Society dated April 5, 2010, together with enclosures referred to therein, including copies of Original Certificate of Character,

CPLED Education Agreement,

Consent of Applicant A, Consent and Request to RCMP to forward results of Finger Print Criminal Record Search to Law Society,

Letter of reference from Wanda Yamamoto, Manager, Volunteer Services, of Manitoba Interfaith Immigration Council Inc., dated March 9, 2010,

Letter to Law Society from Applicant A dated April 19, 2010,

Letter from Tayeb Meridji, Labour Market Specialist, with Success Skill Centre, dated April 15, 2010,

Additional letter from Applicant A to Law Society dated April 29, 2010, together with letter from Alfred Koineh, MSW, Social Worker/Counsellor, Mount Carmel Clinic dated April 28, 2010,

Letter to Applicant A from Richard Porcher, Director of Admissions and

Membership, Law Society of Manitoba, dated May 13, 2010,

Supplementary Affidavit of Allen Fineblit Q.C. dated February 26, 2010,

Letter to Mr. Robert Millman the office of the Fairness Commissioner, from Allen Fineblit Q.C., Chief Executive Officer of Law Society, dated February 28, 2010,

Letter from Robert Millman, Planning and Policy Analyst, office of the Manitoba Fairness Commissioner, to Law Society of Manitoba dated February 24, 2010,

Letter to Applicant A from Ximena Munoz, Manitoba Fairness Commissioner, dated February 24, 2010 together with Affidavit of Service of Letter signed by Gary P. Stelter, dated February 8, 2010,

Letter to Applicant A from Darcia A. C. Senft, General Council of Law Society of Manitoba, dated February 4, 2010, together with Affidavit of Service of Gary P. Stelter sworn March 1, 2010,

Letter to Applicant A from Darcia A.C. Senft, General Council Law Society of Manitoba, dated February 26, 2010,

Bill of Costs In Matter of Applicant A and Law Society of Manitoba in File No. CI-09-01-63339, dated February 25, 2010,

Letter to Court of Appeal from Darcia A.C. Senft, General Counsel I Law Society of Manitoba, dated February 26, 2010, together with Order of the Court of Appeal pursuant to File No. AI 10-30-07302, dated January 28, 2010,

Response to Richard Porcher, Director of Admissions and Membership, Law Society of Manitoba, from Applicant A dated May 21, 2010, together with Exhibits therein marked,

Letter to Richard Porcher, Director of Admissions and Membership, Law Society of Manitoba from Applicant A, dated May 27, 2010, containing "supplementary evidence" together with Exhibits therein marked,

Letter to Applicant A from Karen L. Dyck, Director of Admissions and Membership, Law Society of Manitoba dated August 10, 2009,

The Previous Panel Decision, dated October 9, 2009,

Winnipeg Police Service Arrest Report of Applicant A of December 8, 2009, together with two narratives,

The Oral Decision of Mr. Justice Martin of the Court of Queen's Bench dated January 7, 2010,

Supplementary Affidavit of Applicant A in the Court of Appeal dated February 19, 2010,

Decision of Court of Appeal in Docket AI 10-30-07302, dated March 8, 2010,

Factum of Applicant A in Court of Appeal AI 10-30-07340, dated March 22, 2010,

Decision of Madam Justice Hamilton of Court of Appeal dated June 1, 2010,

Pages 9-32 of Joseph Gallagher to Law Society of Manitoba (the "Gallagher Report") with Appendix "A" from Applicant A dated May 23, 2009,

Decision of Previous Appeal Panel with regard to an Interim Motion of Applicant A, dated September 2, 2009,

Judgement of P. Ward, Deputy Registrar, Court of Queen's Bench, in matter of Law Society of Manitoba and Applicant A, pursuant to CI-09-01-63339 dated January 27, 2010, together with Bill of Costs,

Order of Madam Justice Beard, in the Court of Appeal AI 10-3007302, dated March 5, 2010,

Order of Mister Justice Chartier of Court of Appeal dated March 8, 2010, Bill of Costs pursuant to Court of Appeal File No. AI 1030-07302,

Order of Court of Appeal AI 10-30-07340 of G. Soaper, dated June 30, 2010,

Certificate of Decision Court of Appeal AI 10-30-07340 dated June 30, 2010,

Decision of Hamilton J. A. Court of Appeal of Manitoba, dated June 1, 2010,

"Appeal Book" of Applicant A together with letter to Law Society of Manitoba

from Applicant A dated January 25, 2010,

Email from Applicant A to Darcia Senft dated February 27, 2010,

Email to Darcia Senft from Applicant A, dated March 31, 2010,

Letter from Applicant A to Law Society of Manitoba, dated April 5, 2010,

Letter from Applicant A to Richard Porcher, Law Society of Manitoba, dated April 29, 2010, with exhibit marked,

Letter from Alfred Koineh, MSW, Social Worker/Counsellor, Mount Carmel Clinic, dated April 28, 2010, "First Koineh Letter",

Letter from Alfred Koineh, MSW, Social Worker/Counsellor, Mount Carmel Clinic, dated July 19, 2010 "Second Koineh Letter",

Letter to Applicant A from Myfanwy Bowman dated April 26, 2010,

Letter to Applicant A from Gil Clifford, Executive Director, dated May 11, 2010,

Letter to Applicant A from Myers Norris Penny dated June 24, 2010,

Law Society of Manitoba Communique dated March, 2010,

Email to Richard Porcher from Applicant A dated April 6, 2010,

Email to Applicant A from Richard Porcher, dated April 26, 2010,

Email to Applicant A from Myfanwy Bowman, April 29, 2010,

Letter to Court of Appeal from Darcia A.C. Senft, on behalf of Law Society of Manitoba, dated May 11, 2010,

Letter to Richard Porcher, Director of Admissions and Membership, Law Society of Manitoba, from Applicant A dated May 21, 2010, together with Exhibits "A", "B", and "C",

Email to Robert Millman from Applicant A dated, May 14, 2010,

Email to Applicant A from Robert Millman, dated May 14, 2010,

Email to Applicant A from Robert Millman dated May 14, 2010,

Letter to Richard Porcher, Director of Admissions and Membership, Law Society of Manitoba, from Applicant A dated, May 27, 2010,

Letter to Richard Porcher, Director of Admissions and Membership, Law Society of Manitoba, from Sheldon Rosenstock, dated, May 25, 2010,

Email to Darcia Senft from Applicant A dated June, 8, 2010,

Letter to Applicant A from Scott W. Armstrong, LLB, Official Receiver, Senior Debtor Compliance Bankruptcy Analyst, office of the Superintendent of Bankruptcy Canada, dated June 24, 2010,

Letter to Whom it May Concern from Tayeb Meridji, Labour Market Specialist, Success Skills Centre, dated July 15, 2010,

Copy of Editorial from Jewish Post and News, Wednesday, October 18, 2006,

Letter to Applicant A from United Way of Winnipeg, dated July 15, 2010,

Variation Order Court of Queen's Bench (Family Division) of Madam Justice Diamond, File No. FD 03-01-69719, dated January 25, 2010,

Affidavit of Applicant A, dated June 23, 2010,

Letter to Applicant A from Manitoba Housing - Application Intake Services, dated June 25, 2010,

Memorandum from Brenda Silver - Director of Professional Education and Competence to Admissions and Education Committee Appeal Panel,

Email to Richard Porcher from Applicant A, dated June 11, 2010,

Supplementary Appeal Book of Applicant A together with Exhibits "A", "B", "C",

Letter to Applicant A from T. Jordan, Intake Specialist Family Services and Housing, dated June 26, 2010,

Letter to Applicant A from Mario J. Santos, Chair, Legal Aid Management Council, dated July 23, 2010,

Letter to Ms. Silver from Applicant A, dated July 28, 2010,

Summary of References in Gallagher Report, (Number 64-67),

Paragraphs 51, 52, 53 of Decision of Madam Justice Allen,

List of "6" Preliminary Motions of Applicant A,

Factum of Appellant Applicant A,

Second Supplementary Appeal Book of Applicant A with Certificate of Discharge from Bankruptcy of Applicant A,

32. The Panel also received a Brief and Authorities of the Law Society of Manitoba which included the following:

1. *Dunsmuir v. New Brunswick* [2008]1 S.C.R. 190
2. *Lawyers and Ethics Professional Responsibility and Discipline*, by Gavin MacKenzie, Paragraphs 232-23.3
3. The Law Society of Upper Canada Report to Convocation in the matter of an Application for Re-admission by George Stephen Weisman,
4. *Preyra v. Law Society of Upper Canada* [2000] L.S.D.D. No.60
5. *Hutton v. Law Society of Newfoundland* in the matter of an appeal from Eric Hutton [1992] N.J. No. 276
6. *McQuat v. Law Society of British Columbia* [1993] B.C.J. No. 807
7. *Preyra v. Law Society of Upper Canada* [2003] L.S.D.D. No. 25

Appellant's List of Authorities including the following Case Authorities:

8. *Guttman v. Law Society of Manitoba* [2010] M.J. No. 198
9. *R. V. Danson* [1982] O.J. No. 573
10. Law Society of Manitoba Appeal of Decision dated September 10, 2008,
11. *Law Society of Upper Canada v. Ashamall* [2009] L.S.D.D. No. 60
12. *Law Society of Upper Canada v. Shore* [2006] L.S.D.D. No. 63
13. *Law Society of Upper Canada v. Levesque* [2005] L.S.D.D. No. 38 (The Levesque Decision)
14. *Hutton v. Law Society of Newfoundland* [1992] N.J. No. 276
15. *Mondersir v. Manitoba Association of Optometrists* [2001] M.J. No. 497
16. *Albionex Overseas Ltd. V. Conagra Ltd.* [2007] M.J. No. 466

17. Fair Registration Practices and Regulated Professions Act
18. Freedom of Information and Protection of Privacy Act
19. Interpretation Act

33. On the first day of the hearing, namely, the 11th day of August, 2010, the following Additional materials were provided to the Panel:

1. Email exchanges between Applicant A and the Law Society between July 22 & 23, 2010 marked as schedule "A";
2. Two emails from Applicant A to Ms. Senft dated June 10, 2010 marked as schedule "B";
3. Copy of letter from Scott Armstrong to Applicant A dated June 24,, 2010 marked as schedule "C"
4. Copy of letter from Richard Porcher of Law Society to Applicant A dated January 29, 2010 marked as schedule "D";
5. Memo from Brenda Silver of Law Society with "Two last exhibits Submitted by Applicant in advance, for continuation of his appeal
 - a) The first exhibit consists of 2 emails one from Applicant A to Ms. Senft dated August 23, 2010; the other is Ms. Senft's response of the same date ;
 - b) The second exhibit is Applicant A's email to Mr. Gallagher dated August 20, 2010 and Mr. Gallagher's response dated August 24, 2010.

34. During the hearing it was also noticed that odd numbered pages of the Gallagher Report were missing and those were subsequently delivered to the Panel by Counsel, Darcia A.C. Senft.

ISSUES

35. Did the Previous Panel Decision to deny Applicant A's Application for admission to CPLED as subsequently affirmed by the Court of Queen's Bench establish a rebuttable presumption that Applicant A was not of good character and a fit and proper person to be admitted?
36. If such a rebuttable presumption is established has Applicant A submitted sufficient evidence and argument to this Panel to rebut that presumption?

DECISION

37. It was argued by the Law Society of Manitoba that the Previous Panel Decision as affirmed by the Court of Queen's Bench did establish a rebuttable presumption that Applicant A is not of good character and a fit

and proper person to be admitted. Applicant A did not present any compelling counter arguments to this assertion. The Panel therefore agrees with the submission of the Law Society that the Previous Panel Decision did in fact create a rebuttable presumption that the Appellant is not of good character and a fit and proper person to be admitted.

38. The burden is on Applicant A to establish to the satisfaction of the Law Society that his character has changed sufficiently for him to be permitted to be admitted to the CPLED Program and as an Articling Student. This Panel does not intend to review the analysis of the law delivered by the Previous Panel Decision (with which it agrees) but to concentrate instead on the extent to which the Appellant has by evidence and argument established that his character has changed since the time of the Previous Panel Decision.
39. This Panel is of the view that Applicant A has not provided sufficient evidence that his character has changed sufficiently that he should now be admitted to the CPLED Program and as an Articling Student.
40. Both the Law Society and the Appellant agreed that the appropriate standard of review for a Panel such as this, when considering the Current Denial Decision made by Mr. Porcher on behalf of the Law Society is one of correctness. This Panel agrees with that position.
41. The respected author, Gavin Mackenzie in his text "*Lawyer's and Ethics*" stated that:

The purpose of the good character requirements are the same as the purposes of professional discipline: to protect the public, to maintain high ethical standards, to maintain public confidence in the legal profession and its ability to regulate itself, and to deal fairly with persons whose livelihood and reputation are affected... The requirement that lawyers must be of good character finds expression also in what is in most jurisdictions not coincidentally the first rule of professional conduct: lawyers must discharge with integrity all duties owed to clients, the court, the public, and other members of the profession...

42. "Good character" per se is not defined in the Legal Profession Act, nor the Rules of the Law Society, nor, frankly, in the jurisprudence. Nonetheless, there are important guidelines that have been established from time to time in the authorities, which this Panel have found helpful. Also of assistance

were the "Guidelines for Good Character" found at Tab 3 of the Brief of the Law Society.

43. For example, in an analogous application for readmission to the Law Society of Upper Canada, in the case of *The Law Society of Upper Canada v. Wiseman* [1997] L.S.U.C. No. it was asserted that,

...(b) Applicants must show by a **long course of conduct** that they are persons to be trusted, who are in every way fit to be lawyers. (c) Applicants must show that their conduct is unimpeached and unimpeachable, and this can only be established by evidence of trustworthy persons, especially members of the profession and persons with whom applicants have been associated since disbarment. (d) **A sufficient period of time must have elapsed** before an application for readmission will be granted. (e) Applicants must show **substantial and satisfactory evidence that it is extremely unlikely that they will misconduct** themselves in future if permitted to resume practice, (f) Applicants must show that they have **purged their guilt**...(emphasis added)

44. The application of the Appellant is analogous to an application for reinstatement after disbarment. In these circumstances, the Appellant must establish that by a long course of conduct, a sufficient period of time has elapsed from his previous failure to be admitted and that there is substantial and satisfactory evidence submitted to the Law Society that makes it extremely unlikely that the Appellant will misconduct himself in the future, as he has in the past, and that the Appellant has purged his guilt. That is what the Panel wanted to see and what the Appellant has failed to demonstrate.

45. This Panel accepts the Decision of the Law Society of Upper Canada in *The Law Society of Upper Canada v. Preyra* [2000] L.S.D.D. No. 60 ("the Preyra Decision") that the definition of good character is an evolving definition and that it is not possible to make an exhaustive definition but does rather refer to a bundle of attributes which, when taken together amount to good character. As it stated,

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 other, **integrity, candor, empathy and honesty**. (emphasis added)

46. As stated in the Previous Panel Decision, the onus is on the Appellant to prove that he is of good character at the time of the hearing of the application. It is the view of this Panel, that the Appellant has failed to so establish that he is in fact of good character at the time of hearing. In fact, some of the actions of the Appellant since the Previous Panel Decision specifically indicate that he lacks sufficient integrity, candor, empathy and honesty, to be of good character sufficient to enable the Appellant to be permitted in the CPLED Program and as an Articling Student.
47. In light of the Previous Panel Decision, it is particularly noteworthy that the burden upon the Appellant is a heavy one. Statements made in the Previous Panel Decision make it clear that at that time, the actions of the Appellant were "**not yet even remotely appropriate for the practice of law in Manitoba**" (emphasis added). These are serious statements and require substantial evidence of change to convince this Panel that the Appellant's character has changed sufficiently to be admitted at this time.
48. The Panel does not think it is necessary to review the list of numerous incidents of serious misconduct on the part of the Appellant that were considered by the Previous Appeal Panel. The conduct of the Appellant provided substantial evidence that his character at that time was seriously deficient. This was by no means a borderline case. As a result, the burden on the Appellant to prove that his character has changed sufficiently, is substantial. As was stated in the *Preyra* Decision, at para 85, "the more serious the misconduct, the more evidence that will be required of the genuineness of the rehabilitation."
49. This Panel accepts, as did the Previous Appeal Panel, that character is not stagnant and unchanging, but rather evolves over time.
50. This Panel also accepts the statement made in the *Lesveque* Decision that, "people are not born with good character; they earn it. No matter how egregious their conduct may be in the past good character can be earned."
51. However, this Panel also accepts the statement made by the Previous Appeal Panel that "while it is true people can change, they do not do so overnight."
52. Thus, this Panel is of the view that the Appellant has a heavy burden to prove that his conduct has changed sufficiently that he can now be characterized as a person of good character and a fit and proper person to be admitted to the CPLED Program and as an Articling Student.

53. It was noted that the New Application was made a mere seven months after the Previous Panel Decision stated in no uncertain terms that Applicant A was not of good character or a fit and proper person to be admitted.
54. Mr. Porcher, in response to the New Application, determined that in his view there had been no material passage of time since the events that gave rise to the concerns before the Previous Appeal Panel.
55. Mr. Porcher also found, no doubt relying on the *Preyra* Decision, that "the more serious the conduct, the more evidence is required of genuine rehabilitation." In that case, in stark contrast to the case of the Appellant, the evidence demonstrated exemplary behaviour spanning a course of approximately five (5) years.
56. In the Decision of Madam Justice Allen, dated July 30, 2007, that was referenced in the Previous Panel Decision, it was noted that Applicant A would say whatever was expedient and that at times he out and out lied to the Court. She determined that he made numerous overstatements, misstatements, and fabrications. Applicant A says that his misconduct was solely the result of the extremely difficult circumstances he found himself in, namely competing in Court against experienced legal counsel representing his wife, who was demanding custody of his children to whom he was clearly devoted. However, the Previous Panel Decision noted, "it is just such extreme circumstances that put people to the test".
57. Perhaps the most significant documentation to support the Appellant's application was the therapeutic assessment of Applicant A made by Alfred Koineh, MSW (the "Koineh Assessment"). The credentials of Mr. Koineh were not disputed by the Law Society. Mr. Koineh stated that he was a Social Worker and Counsellor with a Master's Degree in Social Work from the Memorial University in Newfoundland with a major in Advanced Clinical Work, who now practices at the Mount Carmel Clinic. Mr. Koineh noted that when Applicant A moved to Canada from Israel, "the loss of language, social network, familiar environment and the decision to leave his elderly parents in Israel were all emotionally and physiologically stressful." That is not denied. Mr. Koineh advises that he was given a copy of the Previous Panel Decision (what he called "The Tribunal Report"). According to Mr. Koineh, Applicant A "expressed that the 48 page tribunal report reflects legitimate reasons why his application to the Manitoba Bar Association was rejected." Mr. Koineh indicated that Applicant A had been attending weekly therapeutic sessions with him and that he had "been open and honest during sessions." While acknowledging the credentials of Mr. Koineh, the

Panel does not have the benefit of any corroborating evidence that Applicant A had "been open and honest during sessions." This is particularly troublesome in view of his known abilities and inclination to deceive when it suits his purpose.

58. This Panel takes note that the Previous Panel and Madam Justice Allen, both indicated that Applicant A was capable of being deceptive when Applicant A felt it was in his interests to do so. At least to Mr. Koineh, Applicant A did not exhibit any signs of anger towards his ex-wife, or his family, or the legal system, and in fact regretted the things that had happened during the course of the previous divorce proceedings, that were very instrumental in him not being permitted to take the CPLED Program or Article. Applicant A "reflected that his personal and therapeutic journey has enabled him to develop more sympathy and empathy towards his fellow human being." According to Mr. Koineh, Applicant A "shared" that he has come to peace with his past and has developed the ability and capacity to express his feelings in a positive way.
59. According to Mr. Koineh, Applicant A "made great strides in meeting the therapeutic goals set during the intake session." Mr. Koineh went on to add that,

This writer has noticed and observed significant positive changes in him as a person, he behaves respectfully, reasonably and responsibly while dealing with other people. He has developed the capacity and ability to better manage his emotions in a positive way and he is able to put his emotions in check while dealing (sic) emotional and sensitive situations.

60. The conclusion of Mr. Koineh was that,

I will highly recommend that he is currently given the opportunity to continue to grow in his career path, for he is now very much a changed person who has the strong desire and moral strength to become a productive and respected member of the local community and use his personal experience in order to work for social justice.

61. It is significant in the Panel's view that the Koineh Assessment is based solely on the self-reporting of Applicant A as well as the Current Denial Decision and the Previous Panel Decision. However, there is no attempt made by Mr. Koineh to address the obvious and serious shortcomings in

Applicant A's behaviour referred to in those decisions. The fact that such information was not dealt with by Mr. Koineh in his reports in our view seriously undermines his conclusions and recommendations. There is really no indication in either of Mr. Koineh's reports of any objective evidence to substantiate his opinions. For example, to this Panel's knowledge, there was no attempt by Mr. Koineh to obtain third party information or to engage Applicant A in psychological testing or observation. Nor does it appear that Mr. Koineh questioned or challenged any of Applicant A's subjective assertions about his improvement. As a result of these serious deficiencies, the Panel is of the view that the evidence is insufficient to establish to its satisfaction that Applicant A's conduct has changed enough to rebut the presumption that he faces.

62. This is particularly important in view of the acknowledged ability and inclination, clearly demonstrated in the past, of Applicant A to deceive others where Applicant A felt it was in his best interests to do so. In such circumstances, this Panel finds the report of Mr. Koineh inadequate for the purpose intended by Applicant A.
63. The Panel also takes note that there is no indication in the correspondence received from Mr. Koineh that he was aware of the case law regarding "good character" and the requirements indicated by the authorities that there should be "a long course of conduct" indicating that now the Applicant is a person to be trusted and in every way fit to be a lawyer and that "a sufficient period of time must have elapsed before an application for readmission will be granted". An Applicant such as the Appellant, must show "by substantial and satisfactory" evidence that it is extremely unlikely he will misconduct himself in the future if admitted into the CPLED Program and as an articling student. It is necessary for the Applicant to show that he has "purged" his guilt.
64. It is not enough to state, as Mr. Koineh stated, that the Appellant has a desire for change. We believe that there must be sufficient objective evidence of change at the time of application. That evidence does not exist in this case.
65. As a result, it appears to this Panel that there is an obvious disconnect between the conclusion reached by Mr. Koineh in his reports and the objective reality of the Appellant's misconduct as demonstrated by him prior to and since the Previous Panel Decision. As pointed out by Counsel for the Law Society, subjective assertions that the Appellant's character has changed are overridden by inappropriate objective actions that speak louder than words.

66. It is the conclusion of this Panel, that the Koineh Assessment does not clearly enough demonstrate genuine rehabilitation on the part of Applicant A, at least sufficient to rebut the presumption that he is unfit in light of the serious concerns raised about him in the past.
67. In order to rebut the presumption that Applicant A is not of good character or a fit and proper person to be a lawyer, strong and convincing evidence is required in view of the egregious behaviour of the Appellant amply demonstrated in the past. The Koineh Assessment, either alone, or together with all the other evidence submitted by Applicant A, is insufficient to support such a conclusion.
68. Unlike the *Preyra* Decision, where the Applicant demonstrated good character over approximately five (5) years, the Panel also notes that the references provided by Applicant A are also insufficient to demonstrate a substantial change of character. If Applicant A were to demonstrate improved conduct over a longer period of time, the references as well might be more convincing than they are. It was noted by the Panel that few additional references were given to it that were not available to the Previous Appeal Panel. Mr. Porcher in his reasons for denying the application of the Appellant, noted that recent conduct on the part of Applicant A raised some of the same concerns that were addressed by the Previous Appeal Panel.
69. The Panel has also not given a great deal of weight to the letter from Mr. Meridji of the Success Skills Centre, dated April 15, 2010, which although complimentary to the Appellant, only said so in the rather narrow context of supervised workshops over a very limited period of time. The Panel was also not given any evidence that indicated that Mr. Meridji knew the complete picture about Applicant A.
70. Similarly, with regard to the references from other lawyers, for whom the Appellant has worked briefly, namely, Mr. Sheldon Rosenstock and Mr. Tennenhouse, this Panel did not conclude that the references were sufficient to rebut the presumption that the Appellant faced.
71. Mr. Porcher noted that Applicant A was temporarily arrested at the Law Courts Building on December 8, 2009. The arrest report regarding the incident (Law Society Documents, Tab 12) indicates that Applicant A had been subject to a search "at which time an unknown object was located in the briefcase. When subsequently asked to identify the unknown object Applicant A commented, "It's definitely not a bomb." The Panel notes that Applicant A was not charged with an offence as a result of this incident.

Applicant A's explanation in an affidavit affirmed July 23, 2010, filed before the hearing, is that it was "an inappropriate joke." (Applicant A Appeal Book, Tab Y, para. 18) He essentially maintained that position at the hearing although he now regretted his actions and said that he had learned from them. However, even if that explanation were accepted, it was Applicant A's failure to disclose the incident on his application for admission that demonstrated to Mr. Porcher that Applicant A does not yet grasp the obligation to fully disclose all relevant incidents, material, and the like to the Law Society. Mr. Porcher concluded that the conduct in question raised concerns about Applicant A's integrity. Applicant A did not adduce any further evidence at the hearing which would cause this panel to disagree with Mr. Porcher's conclusions. These actions and omissions on the part of Applicant A have led this Panel to conclude that at the very least Applicant A has failed to demonstrate sufficient good character.

72. This Panel concludes that Applicant A continues to twist the truth where it is convenient to do so. His common response when confronted with evidence of such manipulation of the truth, is to admit that he could have phrased things "better" without acknowledging the deceptiveness of his actions. This Panel is not persuaded that his character has fundamentally changed from what it was at the time of the Previous Panel Decision. At the very least the evidence submitted by Applicant A fails to establish such a change.
73. Similar disturbing conduct was demonstrated by Applicant A in his factum of March 22, 2010. In that factum, Applicant A incorrectly stated that he never received the draft Order that was in issue, when it was later clearly demonstrated that he had in fact received the Order. Instead of acknowledging that deception, Applicant A again twisted the truth by stating that the Law Society did not need his consent in the first place and that he did not recall being served with the Order. He tried to divert the attention of the Law Society from his actions and instead chose to try to put the blame on Ms. Senft for her failure to avoid the misunderstanding. Again, Applicant A blamed others rather than forthrightly and completely acknowledging his own mistakes. At the very least such actions raise concerns for the Panel that Applicant A's character has not changed as he alleges.
74. These actions undermine Applicant A's credibility when he tries to present evidence of a sufficient character change. Instead of saying as he did before this Panel, that he could have "used more professional words," regarding the service issue referred to in the previous paragraph, Applicant A should have acknowledged forthrightly his errors. At the very least, this raises further doubts about his character and certainly does little to rebut the presumption that he faces.

75. Mr. Porcher also considered Justice Allen's decision dated August 4, 2009. He noted that she stated Applicant A's behaviour had improved. However, she also found that Applicant A had failed to comply with her order not to return to court for one year without leave of the court. Nevertheless Applicant A made several court applications and all but one was dismissed for lack of merit. Justice Allen also noted that Applicant A had breached her order by setting up an email account for his daughter by sending her three emails. Her Ladyship described Applicant A's explanation as to how that occurred as "ludicrous." That is a very significant observation, in the Panel's view because approximately eight months later, in February, 2010, the Law Society was dealing with another incident of apparent misrepresentation on the part of Applicant A pertaining to an affidavit he swore on February 19, 2010, particulars of which are set forth in the next paragraph of this decision.
76. In the Current Denial Decision, Mr. Porcher stated: "In your affidavit dated February 19, 2010, you appear to have misstated what Mr. Robert Millman had told you". Mr. Allen Fineblit, Q.C, Chief Executive Officer of the Law Society, had sent a letter dated February 23, 2010 to Mr. Robert Millman, who is a Planning and Policy Analyst with the Office of the Manitoba Fairness Commission, asking whether certain statements attributed to Mr. Millman in said Affidavit of Applicant A "accurately reflects your position." Mr. Millman responded to Mr. Fineblit by letter dated February 24, 2010. He referred to several of Applicant A's assertions in his Affidavit which he does not agree with, explains why, and then goes on to give his own version. He concludes his letter by stating: "I wish to thank you for bringing this matter to my attention and giving me the opportunity to clarify comments of public record that I consider in many respects to be confused and at times **misleading**." (emphasis added) (Tab 7 of the Law Society Documents) In a letter dated May 21, 2010 to Mr. Porcher, Applicant A responds "...I now realize that here and there I might have innocently misunderstood Mr. Millman when meeting with him." (Tab 8 of the Law Society Documents, page 9 par. 3 (d)). The Panel faced with the detailed letter from Mr. Millman and in the absence of a stronger explanation from Applicant A, complete with further and better particulars as to his version of what was said, agrees with Mr. Porcher that this incident is another example of Applicant A engaging in "misstatements and overstatements" as noted by Madam Justice Allen and, hence, raises concerns about Applicant A's integrity.
77. The Panel is also concerned by Applicant A's failure to pay five outstanding orders for costs against him totalling in excess of \$6,000. These orders are the result of Applicant A's many unsuccessful legal proceedings against the

Law Society. While some may admire Applicant A for what appears to be his dogged determination, the Panel, mindful of adverse judicial comments regarding his inappropriate behaviour together with a litany of other incidents of misconduct, has no difficulty concluding that this is another indication of Applicant A's refusal to face reality and accept responsibility for his actions.

78. While the Panel understands the argument of the Law Society regarding what it alleges to be misrepresentations made by Applicant A to Mr. Scott Armstrong of the Office of the Superintendent of Bankruptcy of Canada, as to whether those cost orders fall under the umbrella of the Appellant's bankruptcy, the evidence is not sufficient in the Panel's opinion, for the Panel to conclude that the Appellant in fact knowingly misstated the overall factual scenario to Mr. Armstrong. While it is troublesome, in the Panel's opinion, that the Appellant did not attempt to correct the "unclear" (his word) portions of Mr. Armstrong's letter of June 24, 2010, this Panel has concluded that the evidence does not clearly establish bad character on the part of the Appellant.

79. However, at no time in front of this Panel did Applicant A clearly demonstrate a true acceptance of the Previous Panel Decision nor demonstrate convincingly that he has accepted fully responsibility for his conduct. Instead, the nagging suspicion remains that Applicant A will say what he feels is expedient in these circumstances just as Madam Justice Allen earlier asserted. Actions speak louder than words. As opposed to convenient statements made by the Appellant, whether to us, or to Mr. Koineh, this Panel would rather have seen substantial evidence of good conduct sufficient to rebut the presumption that he is not of good character. Applicant A's failure to produce such evidence before this Panel is another reason for its denial of the appeal.

80. As was already noted, but it bears repeating, in the Previous Panel Decision of March 8, 2010 it was stated at para 196 that "however much his demeanour in a court or court-like setting may have improved over time, it is still not even remotely appropriate for the practice of law in Manitoba." In the light of such strong statements by a Previous Panel, it was incumbent on Applicant A to present stronger evidence of rehabilitation than he submitted.

81. Mr. Justice Chartier in his decision, dated March 8, 2010, stated that,

The Appellant has misused his right of access to the Courts in the past as is demonstrated by his numerous applications, motions and appeals and the fact that he has

been a vexatious litigant and prohibited from bringing certain types of legal proceedings, This **misuse continues in the matter** by not following the court procedure for setting down an appeal, by not signing the Order that dismissed his motion that when it was sent to him for approval, by swearing an affidavit that seems to contain statements that were improperly attributed to the office of the Manitoba Fairness Commissioner. I have no difficulty in concluding that his actions have unnecessarily lengthened and increased the costs of these proceedings and in light of this history in the courts, constitute "special circumstances". (emphasis added).

82. As Mr. Justice Chartier stated in para 10, Applicant A "chooses to act unreasonably." In the light of these circumstances, it is difficult for this Panel to conclude that Applicant A's character has changed sufficiently to warrant his admission into the CPLED Program.
83. It is important to remember, that all of these matters occurred within 2 to 5 months after the previous Panel Decision. In the light of such actions, it is very difficult to conclude that Applicant A has rebutted the presumption that he faces.
84. While the Appellant has explanations for all of these concerns, they appear to this Panel to have been crafted by him only after the inappropriate behaviour was brought to his attention on each occasion by the Law Society. It is difficult for this Panel to conclude, as Applicant A would have it, that in fact that his character has really changed. The explanations and excuses offered by the Appellant, in the Panel's view, do not have the quality of being genuine.
85. This Panel also takes note of the following:
 - a) There was a peace bond against Applicant A which remained in effect until May, 2010;
 - b) There is an outstanding Court Order still in effect that in effect declares the Appellant to be vexatious litigant;
 - c) There are outstanding Court Orders prohibiting the Appellant from communicating with staff and parents of the Asper Campus;
 - d) By reapplying for admission to the Law Society of Manitoba so soon

after the previous Panel decision, it appears to this Panel, that the Appellant has not actually taken the recommendations of Mr. Justice Martin to heart and that he did not learn sufficiently from that decision;

- e) The Appellant continues to raise the same arguments already rejected by the Courts and the previous Panel regarding his position about the Gallagher Report;
- f) Applicant A has failed to provide recent convincing references from previous employers;
- g) The Appellant's inappropriate email to Mr. Gallagher suggesting that Mr. Gallagher had shown disrespect to the Panel by not appearing as a witness in front of it. This Panel agrees with the submission of Counsel for the Law Society that this conduct is "appalling". The Panel believes this is further evidence of Applicant A's unfortunate tendency to attempt to "bully" those with contrary views into submission to his views;
- h) While the Appellant told his counsellor, Mr. Koineh, that the Previous Panel Decision reflected "legitimate reasons" as to why his previous application for admission was rejected by the Law Society, Applicant A continued to take the opposite position before the Courts and before this Panel. This is further evidence that Applicant A has not really learned what he has done wrong.

86. In conclusion, this Panel has determined that the Current Denial Decision was correct. The evidence has established on a balance of probabilities, that there is a rebuttable presumption that the Appellant is not of good character and a fit and proper person to be admitted to the CPLED Program and as an Articling Student and the Appellant has failed to rebut that presumption.

DISPOSITION

87. The Appeal is dismissed.

88. For the same reasons, Preliminary Motion # 6 is dismissed.

John E. Neufeld, Chair
Miriam Browne
James Shaw
November 25, 2010